EU Competition Policy priorities: the view of the European Parliament 12 May 2010 Competition Day Madrid

Good morning and thank you very much for inviting me to speak at this competition day, and I have made it despite battling through volcano ash and coalition discussions!

Competition policy is a very important part of the single market, in legislative, economic, political and philosophical terms. It not only helps to ensure a level playing field between members states, it does so between companies, protects consumers and lays the foundation for success and competitiveness in the global market.

In the Economic and Monetary Affairs Committee we have competence for following competition policy in the European Parliament. Now, competition policy hits the headlines when there are high profile cases involving cartels, infringements or mergers concerning famous companies, but sometimes gets pushed into the background and out of mind when other crises occur.

For example, I remember a look of surprise and enquiry on some politicians' and journalists' faces in the UK when, during the Northern Rock bank run and talk of nationalisation, and how to get taxpayer money back through aggressive marketing, I jumped in and mentioned the matter of competition policy. The wider unfolding financial crisis subsequently made clear that competition policy had a big role, but I can tell you the Parliamentarians' postbag makes it clear that very often the concept of State aid as unfair competition is not understood.

The message is simple, and it is one that should be remembered and repeated often, in particular at Member State level. If a business is propped up by the State, it has advantages through that underpinning that competing businesses are denied. This stifles those other businesses, and

in turn can stifle innovation and growth. More generally support for an industry within one Member State undermines that industry in other Member States, and thereby also undermining the single market.

So it becomes pretty clear that the financial crisis has, at least temporarily, required emergency measures that run counter to the normal State aid rules. The Commission took steps to establish guidelines to maintain a level playing field between Member States and is now working on re-establishing normal competition. This does need to be done - for if a patient stays on life support too long the risk of a vegetative state becomes much greater.

Meanwhile regulatory responses to the financial crisis are proposing various kinds of resolution funds that would act as insurance instead of a State aid bail out. This is not without risk, usually called moral hazard, and it certainly can distort competition.

Again a personal example that happened to me a while ago was my own father happily telling me he had moved money out of a reputable building society into higher interest paying riskier ones 'because now they all have the same guarantee'.

So we have not solved all the problems yet by a long way, and this brief introduction shows how centre stage, and interconnected, Competition Policy is with economic policy and financial regulation.

Turning specifically to the current Priorities the Parliament has on Competition, it will be no surprise that issues stemming from the crisis feature highly. An exhaustive list of issues attracting our attention would be long, and rather boring, so I have selected six that are a high priority because of timing and wide relevance.

Topically, we have

First, the interconnection of competition policy with other economic and regulatory areas; and

second, adequate measures to fight the economic crisis and proper exit strategies for State aid measures.

Then we turn to issues that gained momentum during the last mandate, and to which the new Parliament has reaffirmed its interest:

So third is competition policy and consumers, in particular actions for damages; and

fourth, penalties for competition infringements, most notably cartels, covering fining and leniency policy.

Finally there are current review issues:

Fifth issue is new legislation and guidelines for vertical and horizontal Block Exemption Regulations; and

Sixth, the specific instance of Motor Vehicle Block Exemption.

I will say a few words about these in turn.

First the interconnection of competition policy with other economic areas

I have already outlined this issue in my introduction. It is perhaps worth pointing out that although the Commission has a specialised Competition Directorate the Committee on Economic and Monetary Affairs is competent for following not only competition policy, but also the

regulation and supervision of financial services and markets, the economic and monetary policies of the Union and taxation provisions. So it is not surprising that we are used to taking a broader, collective picture on all of these subjects. Indeed it is sometimes a little frustrating to us that when reporting to the committee Commissioners have tended to stick rigidly to their specialist subjects.

Again as I said in my introduction, the financial crisis required the Commission to take action to preserve a level playing field between Member States and issue guidelines for emergency actions involving mergers and State Aid. During that time the three Commissioners responsible for Economic and Monetary Affairs, Financial Markets and Competition worked closely together, and the ECON Committee has welcomed this cooperation and encouraged it. We support a horizontal approach in tackling the crisis and the establishment of a coherent crisis management framework for possible future crises. And as I have made clear, competition policy and the impact on competition must be an integrated and central tool of this future strategy.

Now when we held the Commissioner Hearings in January – and I think it is an open secret that Commissioner Almunia was a bit of a star – I asked all of them to involve the Parliament in their tripartitie discussions, and they have all, quite literally, signed up to do that. So we look forward to fruitful ways to combine our expertise. I have to confess that from our side a major restriction on us is the staggering volume of work and pressure on the formal agenda, but it is extremely important that we do not lose sight of this plan to work together.

Competition policy will also be also central to the EU 2020 strategy which aims to build a competitive, dynamic and sustainable European economy. Again as my earlier comments made clear, competition policy is at the heart of the single market, of creating the right environment for

innovation and growth and for external competitiveness. There is no hope if there is no ambition to come off life support.

This conveniently leads well into the second point:

Adequate measures to fight the economic crisis and proper exit strategy for State Aid measures

The financial crisis and the inadequacies of financial supervision and regulation have brought suspicion on 'markets' and 'free markets'. Risk aversion has become extreme and any disappointing event is now labelled improper. Some of the more extreme and populist rhetoric invoked relating to bond market movements goes so far as to suggest any moving of money to a safer position is speculation and must be stopped. It also points to denial of underlying fundamentals and serves to make markets more not less nervous. The reality is that if a racehorse goes lame the odds lengthen – but that does not mean legs, or horses, or races, should be banned.

We are living in dangerous times. Denial of the role of properly regulated - which for me means intelligently regulated and vigilantly supervised - and competitive markets, and moving instead to protectionism, State interference and a distortion of competition would both deepen and prolong the recession. There may also be longer term consequences. So competition policy must maintain its high standards. For instance, in Parliament's view, the crisis does not justify a relaxation of EU merger control rules.

I do not need to remind anyone that many Member States deemed it necessary to provide financial support for systemically important financial institutions. This bail-out by taxpayers has outraged the public, in particular when billions of Euros were then still paid out in bonuses. And workers in the real economy find it hard to stomach that they can not

have even a fraction of the amount of money used in bail-outs to help rescue their jobs, though of course stimulus programs have been allowed.

It is the painful truth that banks were rescued for the common good, even if it does not feel that way, because we do have to have access to money and payments systems to live everyday life. But in consequence we now have competition complications and implications in the banking sector that have to be sorted out. From emergency mergers and state aid to the impact of resolution and guarantee funds, not forgetting the wider questions that hang over size, governance and pricing issues in investment banking.

Parliament is concerned about the distortions generated by the guarantees on bank funding granted by Member States. It is now the case that good and prudent performers might be in worse competitive conditions than poor performers who have acted irresponsibly. Parliament has repeatedly expressed its regrets that State aid granted to banks is not being passed on to the real economy and has requested the Commission to investigate why this has happened so far. However, as we can not allow State owned banks to enjoy a lighter capital regime than other banks so account has to be taken of the pressure that pending regulation is applying on prudential provisioning.

The Temporary Framework for State aid expires at the end of this year. Parliament considers that a coherent European approach should be taken to avoid distortion of competition resulting from banks being subsidised in some Member States, while the support has been phased out in other Member States. To achieve this objective State intervention must not be unduly and artificially prolonged and exit strategies should be elaborated as soon as possible, but then implemented gradually. So some flexibility, but no toleration of laggards.

I have spent a long time on the interconnected issues around the crisis and its consequences – however, there is nothing more important for the people of Europe at the moment than trying to fix the economy. But now I move on to consumer actions and competition infringements.

Competition policy and consumers - actions for damages

One of the goals, indeed probably the single goal that underlies all competition policy, is fairness and proper pricing for consumers. Sometimes in highly complex cases it might seem buried and the Parliament wants to see a higher and more direct priority given to the consumer perspective in every competition act. This is very relevant in helping citizens to see the good of all competition policy, and therefore we support the creation of the Consumer Liaison Unit within DG Competition.

Parliament continues to encourage the Commission to maintain its strong public enforcement to prevent and act against cartels, which are extremely harmful to consumers and the whole economy.

During the last mandate we also supported the search for stronger private enforcement and welcomed the adoption by the Commission of the White Paper on damages actions for breach of antitrust rules. Individual consumers and small businesses are deterred from bringing individual actions for damages by the costs, delays, uncertainties, risks and burdens involved. In this context, collective redress, which allows the aggregation of individual actions for damages for breaches of the EC competition rules enhances victims' ability to obtain access to justice, and can also act as a deterrent.

Nevertheless we are aware that devising a system that does not run the risk of abuses seen in US-style class actions, the costs of which are passed on in prices, is not completely straightforward.

My personal view – some of which is contained in our reports – is that it is a disappointment if all we achieve is follow-on actions because that does not help dig out new cases. However, to go further it seems that ultimately we must achieve greater harmonisation in areas of commercial law such as discovery. This is not impossible, although sensitive, and appears in other areas as well - such as patent litigation.

Parliament takes the view that in order to avoid abusive litigation the power to prosecute in representative actions should be made available in the Member States to State bodies such as the Ombudsman or to qualified entities such as consumer associations.

We consider that any proposal to introduce collective redress mechanisms for breaches of the EC competition rules should accompany, and not replace, the alternative forms of protection which already exist in some Member States such as representative actions and test cases. It is particularly important that bringing private actions for damages should complement and support, not replace the enforcement of competition law by the competition authorities.

Commissioner Almunia has expressed the wish that Parliament should be involved in the adoption of such a significant act by means of the ordinary legislative procedure, which is co-decision. This has been a strong demand of the Parliament in our reports, so we welcome what the Commissioner has said.

Turning now to:

Penalties for competition infringements - fining policy

With regard to fines, Parliament agrees with the principle that fines should be proportionate to the infringement. However it is a problem that

SMEs are comparatively harder hit by higher fines than larger companies and the ability to pay has to be considered carefully when taking a decision.

Parliament would also welcome the development of a wider range of more sophisticated penalties, in particular individual liability and the consideration of presence of corporate compliance programmes in the determination of the level of the fine and the establishment of heavy deterrence measures for repeat offenders. I think on the matter of presence or absence of compliance we had rather more in mind an increase in penalty for not having a program than a reduction of penalty for having such a program.

Individual liability, although not existent in all Member States, could be developed at EU level. This does not necessarily mean a criminal liability, as it is difficult to argue that the EU has competence to establish criminal penalties in this area. But individual administrative liability, with appropriate penalties such as disqualification, should be possible to implement. As ever this must also be looked at in the wider sense, in this instance on the matter of EU wide enforcement of disqualification of directors within company law.

A more sophisticated approach could also be developed through the definition of specific criteria on how a company should be considered to have acted intentionally or negligently and on how parent-companies should be held liable for the subsidiaries' behaviour.

We have held some interesting seminars within the Parliament on this subject and are keen to explore further, not least as one expert advised us that in his view ‘compliance programmes’ could in fact be turned into ways to educate employees how to cover their tracks and avoid being caught.

Now to review of block exemptions.

Review of new legislation and guidelines - vertical and horizontal BER

Parliament is also following the review of the block exemption regulations, more specifically the vertical, insurance and the motor vehicles block exemption regulations. The revision of the verticals new regulatory framework was discussed with Commissioner Almunia on 4 March.

The Commission has now opened a public consultation on the two horizontal block exemption regulations dealing with research and development, on the one hand, and specialisation agreements, on the other hand, together with the accompanying horizontal guidelines. Parliament will certainly contribute to this discussion later on this year.

Motor Vehicle Block Exemption Regulation

Parliament is very concerned about the Motor Vehicle Block Exemption Regulation. Not only does this potentially impact on consumers wishing to purchase and service cars, it affects large numbers of employees within small businesses in the motor vehicle market.

With these factors in mind, Parliament has expressed its views several times on the review of the Motor Vehicles Block Exemption Regulation to insist that the interests of the small and medium-sized players in the motor vehicles markets should be duly taken into consideration. We listened to stakeholders at an ECON workshop on the review of the Regulation, which took place on 12 April. Parliament adopted a resolution expressing its opinion on this review last week, on 6 May. In that resolution

Parliament welcomed the openness of the Commission during the review process. We believe open consultations are a very good practice, as long as the stakeholders' remarks are somehow taken into consideration. However, Parliament also expressed its concern with some aspects of this reform. As you know, the EU is currently facing an exceptional financial and economic crisis and unemployment rates are high. The European automotive industry is a key sector of the European economy, contributing to employment, innovation and the competitiveness of the whole economy. We believe that it is necessary to establish general conditions to make this sector sustainable and enable it to remain economically efficient and more environmentally sustainable.

There is also a need to ensure that small and medium-sized players in this market enjoy favourable conditions. We cannot forget the importance of SMEs as job-providers and as suppliers of proximity. However several motor vehicles dealers and repair businesses have expressed serious concerns about the new regulatory framework, arguing that it will lead to a further deterioration of the power balance between manufacturers and the rest of the automotive value chain.

Therefore Parliament is not in favour of the removal of certain conditions imposed by the current motor vehicle block exemption regulation, namely the contractual clauses on multi-branding, notice of termination, duration, arbitration of disputes, litigation and business transfers within the network. Parliament recalled, in particular, that the need to simplify the conditions for business transfers is part of the first principle of the Small Business Act.

Parliament is also not in favour of a non-binding Code of Conduct setting out mutual obligations between franchised dealers and their suppliers, since it will be ineffective in protecting dealers' interests vis-à-vis manufacturers.

Finally, to move to a more general note on SMEs, Parliament has repeatedly called for SME-friendly competition rules, respectful of the Small Business Act for Europe. In particular, we have called on the Commission to include a focus chapter on SMEs and competition in its next annual competition report.

So as you can see, we have before us issues of detail within specific industries, discussion and development of new legislation such as around infringements, and tackling the challenges to competition policy resulting from the financial crisis and rescue packages.

In general terms EU competition policy is a success. Some aspects of its structure, the network of national competition authorities, have been held out as a model, or at least a benchmark, for other regulatory frameworks including the new financial supervisory architecture. Maybe you are about to get overtaken by the financial supervision common rulebook - but the point is that in both instances convergence of both practice and penalties is crucial.

But it is not perfect and still suffers from a democratic deficit in that it needs to be taken and explained more to the ordinary citizens and small businesses. Events such as these competition days do of course play a part in this channel of communication, and I wish to thank you for inviting me and giving me the opportunity to put forward the view from the Parliament.

Thank you.