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## **REPORT**

on the Commission's XXIXth report on Competition Policy (1999)  
(SEC(2000) 720 – C5-0302/2000 – 2000/2153(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Karin Riis-Jørgensen



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## PROCEDURAL PAGE

By letter of 5 May 2000, the Commission forwarded to Parliament its XXIXth report on competition policy, 1999 (SEC(2000) 720 – 2000/2153(COS)).

At the sitting of 3 July 2000 the President of Parliament announced that she had referred its report to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0302/2000).

The Committee on Economic and Monetary Affairs had appointed Karin Riis-Jørgensen rapporteur at its meeting of 23 November 1999.

The committee considered the Commission report and the draft report at its meetings of 20 June 2000 and 11 October 2000.

At the last meeting it adopted the motion for a resolution by 33 votes to 2.

The following were present for the vote

Chairwoman : Christa Randzio-Plath, vice chairman : Ioannis Theonas, rapporteur : Karin Riis-Jørgensen, Richard A. Balfe, Luis Berenguer Fuster, Pervenche Berès, Renato Brunetta (for Alejandro Agag Longo), Hans Udo Bullmann, Harald Ettl (for Simon Francis Murphy), Jonathan Evans, Ingo Friedrich (for José Manuel García-Margallo y Marfil), Robert Goebbels, Christopher Huhne, Liam Hyland, Pierre Jonckheer, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Gorka Knörr Borràs, Werner Langen (for Christoph Werner Konrad), Alain Lipietz, Astrid Lulling, Ioannis Marinos, Peter Michael Mombaur (for José Javier Pomés Ruiz), Fernando Pérez Royo, Bernhard Rapkay, Amalia Sartori, Olle Schmidt, Peter William Skinner, Charles Tannock, Marianne L.P. Thyssen, Helena Torres Marques, Bruno Trentin, Theresa Villiers, Karl von Wogau

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 12 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### European Parliament resolution on the Commission's XXIXth report on Competition Policy, 1999 (SEC(2000) 720 – C5-0302/2000 – 2000/2153(COS))

*The European Parliament,*

- having regard to the Commission report (SEC(2000) 720 – C5-0302/2000<sup>1</sup>),
  1. having regard to its resolution of 18 January 2000 on the Commission White Paper on modernisation of the rules implementing Articles 85 and 86 of the EC Treaty<sup>2</sup>,
  2. having regard to its legislative resolution of 3 May 2000 on the draft guidelines on vertical restraints<sup>3</sup>,
  3. having regard to its resolution of 18 January 2000 on the Commission Report on the implementation in 1998 of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (Steel Aid code)<sup>4</sup>,
  4. having regard to its resolution of 14 January 1999 on specific sectors<sup>5</sup>,
  5. having regard to the Eighth Survey on State Aid in the European Union (COM(2000) 205),
  6. having regard to the written reply of the Commission to its resolution of 18 January 2000 on the XXVIIIth Report on Competition Policy (1998)<sup>6</sup>,
  7. having regard to the Conclusions of the European Council of Lisbon of 23 and 24 March 2000,
- having regard to Rule 47(1) of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0290/2000),
- A. whereas European competition policy must be adapted and modernised to keep up with economic developments such as the deeper integration of the single market, globalisation and rapid technological progress,

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<sup>1</sup> OJ C not yet published.

<sup>2</sup> OJ C not yet published.

<sup>3</sup> OJ C not yet published.

<sup>4</sup> OJ C not yet published.

<sup>5</sup> OJ C 104, 14.4.1999, p. 102.

<sup>6</sup> OJ C not yet published.

- B. whereas an effective competition policy will promote the competitiveness of European business and whereas it is also in the interest of consumers because competition constantly drives enterprises to make available a greater quantity and greater variety of products and better and cheaper services,
8. whereas a strong European competition policy is necessary to foster structural reforms, which are essential for a well functioning Economic and Monetary Union,
  9. whereas the existing system for implementing European competition rules has remained principally unchanged since the early days of the Community, although the economic context has undergone radical changes,
  10. whereas the workload of the European Commission's Directorate-General for Competition Policy has grown enormously over the last few years, for reasons of increased merger activity or increased international cooperation,
- F. whereas, as expressed by the Lisbon European Council, „fair and uniformly applied competition and State aid rules are essential for ensuring that business can thrive and operate effectively on a level playing field in the internal market“,
- G. whereas the single market develops, EMU leads to more transparency and global competition intensifies, European competition policy is faced with an increasing workload of merger control activities,
- H. whereas the allocation of State aid in breach of the EC Treaty is counter productive, and favours the inefficient over the efficient, distorts competition between regions and companies and imposes an excessive burden on public budgets,
- I. whereas the Eighth Survey on State Aid in the European Union confirms that the general trend in State aid granted has continued on the downpath observed since 1993, aid levels in the manufacturing sector in ten Member States have increased,
- J. whereas the Commission has made efforts to improve its information policy on competition policy because the provision of full information and the approval of all those concerned is a prerequisite for its success (rest deleted) ,
- K. whereas the organisation of a competition day for European Citizens enhances the understanding and visibility of European competition policy in the Member States and whereas such a competition day should not be geared exclusively to consumers but to all the target groups concerned,

- L. whereas information policy alone is not enough because it is also important that there are pragmatic and reasonable rules and, where necessary, prior monitoring to ensure that competition policy is predictable,
- M. whereas the dialogue with the economic circles and consumer groups concerned could be more effective and far-reaching, as the period allowed for public assessment of a Commission communication is currently often regarded as being too short,
- N. whereas the general public has a low degree of awareness of European competition policy, but an effective competition policy requires the support of citizens,
- O. whereas the strong concentration process in the retail sector might quickly lead to negative effects not only for final consumers,
- P. Whereas sanctions should reflect the seriousness and the harmfulness of the anti-competitive conduct, special attention being paid to hard-core cartels,
- Q. whereas negotiations on the accession of new Member States from Central and Eastern Europe need to take into account the transitional nature of these economies and the effects of competition legislation on their development and a future enlarged single market,
- R. whereas the European Union had proposed that negotiations on competition policy should form part of the WTO's Ministerial Conference in Seattle last year,

11. Welcomes the XXIXth report on competition policy and considers it to be an important document, in which the Commission fulfils its duty to be accountable, as sanctioned in the Treaty;
12. Welcomes the efforts made by the Commission to modernise competition law; requests, however, at the same time that the intended reforms should not lead to a renationalisation or weakening of European competition policy and that the primacy of Community law must not be called into question;

3. Supports in principle the proposals made in the Commission White Paper on modernisation of the rules implementing Articles 81 and 82 of the EC Treaty, namely the abolition of the notification and authorisation system and decentralised implementation of competition rules by enhancing the role of the authorities and courts of the Member States; but reiterates that the Commission must bring forward proposals prior to full implementation of these rules to ensure that the intended reforms do not lead to a renationalisation or weakening of European competition policy and that the primacy of Community law is not called into question;
4. Supports the Commission's policy in the field of vertical restrictions, which presupposes a strengthening of economic analysis aspects in the assessment of anti-competitive agreements;
5. Believes that a clear mechanism is required for allocating cases between national authorities and the Commission in order to prevent jurisdiction shopping, resolve disputes over jurisdiction and prevent divergent and to prevent those concerned from benefiting from the jurisdiction of the authority that could be most favourable to them (forum shopping); considers in particular that it would be a good idea to establish a special procedure, enshrined in civil law, for dealing with restrictive practices, that would give the Commission responsibility for cases with cross-border impact;
6. Calls on the Commission to monitor the quality of competition legislation in the Member States and in the accession countries, in order to maintain a level playing field in the current internal market and ensure a common basis of understanding with Member States, which look back to different traditions and experience with competition policy;
7. Calls on the Commission to develop a coherent communication policy for EU competition policy, consisting of tools and goals of the European and national levels, and different target groups like the general public, the press, business circles and national authorities;
8. Expresses its appreciation of the improved quality of the dialogue with the Commission, in particular the responsible Commissioner; and calls for this dialogue to be further extended and increased in order to fully involve the European Parliament in the development of general EU Competition Policy, as opposed involvement in decisions in individual cases;
9. Calls, in order also to ensure more constructive dialogue with the economic circles and consumer groups concerned, for the minimum period for assessing Commission communications after they have been published to be increased from the current one month to three months;



10. Calls, in the context of the forthcoming revision of the Treaty, for the codecision procedure to be applied in future to legislative acts in the field of competition which the Council adopts by a qualified majority;
11. Calls on the Commission to carry out an assessment of the effects of applying the communication of 18 July 1996 relating to the non-imposition or lowering of fines in matters relating to agreements between undertakings;
12. Calls for the staffing needs of the Directorate-General for Competition to be met by additional posts, so that the Commission may fully meet its obligations under the Treaty;
13. Welcomes the increase in the number of cases processed that have ended with a formal decision, whilst there has been a slight decrease in the number of cases concluded by means of an informal procedure;
14. Draws attention to the importance of the regulation of mergers in determining the future shape of the corporate landscape in the Community;
15. Emphasises that when examining whether a conduct restricts competition, focus should be on the harm caused to competition, not to the competitors; considers that efficiency and other pro-competitive elements should be taken into account and weighed against the anti-competitive elements of the same transaction; takes the view that competition cases should be based on economic analysis as the goal of the competition policy is to promote economic efficiency;
16. Calls for more legal certainty in the application of EU merger control; in particular given that, when dealing with mergers, the Commission has something of a dual role, as it both oversees and applies competition rules; advocates a more effective and faster time scale when it comes to appeals to the Court;
17. Proposes to the Commission that it publish communications containing interpretative notes providing guidance for citizens on the form in which it intends to apply concepts such as market shares, just as it did in 1997 in its communication relating to the definition of a reference market; calls upon the European Commission to examine alternative means of assessing market power than a pure calculation based upon market share;

18. Stresses that big companies based in small Member States must not categorically be excluded from merging in order to be competitive European wide and globally; notes that it is in particular large firms in small Member States that may see their competitiveness decline relative to that of firms in the rest of the world as a result of the internal market not being completed in full; calls therefore on the Commission to remove the remaining barriers that are aimed at preventing or delaying the removal of borders in the market, so that the whole of the EU can be regarded as one market as far as mergers are concerned;
19. Takes note of the declining level of State aid, but states that the level is still too high; demands that especially ad-hoc State aid must be lowered, due to the harmfulness of this type of State aid; considers that public undertakings should be subject to the same rules as private undertakings and that only when government entities are carrying out their public duties without any commercial dimension could some exceptions be introduced; takes the view that national exemptions should be reduced to a 'bare minimum' and that any exemptions should be transparent, proportional, clear and narrowly formulated; reiterates that EU State Aid control is centred on the principle that while State Aid is incompatible with the common market, the granting of such aid by Member States can be justified in exceptional circumstances;
20. Calls on the Member States and the Commission to work at reversing the gradual long-term upward trend in aid levels in a number of Member States; recalls that a decentralisation of State aid control can risk altering the declining level of State aid in the EU; calls on the Commission to undertake a detailed assessment of the application of State aid control to the financial services sector, recognising that the sums of State aid granted in this sector can have disproportionate effects upon competition;
21. Recommends that the Commission does not neglect minor State aid cases; points out that small State aid granted in a small market can be relatively more disturbing for an SME than larger State aid on a larger market with big enterprises;
22. Calls on the Commission to effectively execute decisions to reimburse illegally paid State aid and calls on the Commission to submit proposals for the improvement of its system to follow up these decisions;
23. Welcomes the Commission's commitment to the introduction of a State aid Register; calls on the Commission to put forward proposals for a public and regularly updated register of State aid until 31 June 2001 including the purposes of aid granted, the sectors concerned, and the companies receiving such aid, taking into account the qualitative differences in the aids granted ; recommends that regional aid will be included;
24. Welcomes the Commission's commitment to a State aid scoreboard; calls on the

Commission to introduce a league table similar to that for the internal market scoreboard, to highlight the Member States with the highest and the lowest levels of State aid until 31 June 2001 ; is aware of the fact that pertinent indicators have to be developed for the scoreboard and that the mere comparison of mere aid levels would not be sufficient;

25. Emphasises the importance of examining fiscal measures as well as State aid for their effect in distorting competition and calls on Member States to provide the necessary information to the Commission;
26. Expresses concern regarding the European shipbuilding industry; calls for an evaluation of the consequences of possible future South Korean aid to shipbuilders from 31. December 2000;
27. Believes that enlargement to the countries of Central and Eastern Europe could create tensions over the application of competition policy legislation, especially in the light of the modernisation of the rules implementing Articles 81 and 82 of the EC Treaty; calls on the Commission to provide sufficient assistance to establish competition and judicial authorities to enforce EC competition law and calls on the accession countries to make every effort to establish the necessary competition authorities, including the rules relating to State aid; to ensure that all candidate countries are required to fully comply with the standards set by EU Competition policy and State aid control;
28. Recommends that international co-operation should be built gradually based on existing experience and mutual trust and notes that different levels of international co-operation are consistent and mutually reinforcing; takes the view that bilateral and regional co-operation should be further strengthened in parallel to steps taken in the multilateral arena; considers that the countries not yet having competition laws should be encouraged to enact and maintain effective competition laws and establish independent competition authorities; calls on more experienced countries such as the EU to provide them with the appropriate assistance;
29. takes the view that a common form of pre-merger notification and a common waiting period could be agreed on in order to promote convergence and reduce transaction costs;
30. Welcomes the Commission's intention to make greater efforts to explain the advantages to citizens of individual decisions in the field of competition policy and to treat consumers as promoters of that policy and considers that this should form part of a wider ambition of raising the profile of the Internal Market;
31. Urges the Commission to consider replacing the soft-law approach of guidelines by specific provisions;

32. Reiterates in this connection the importance of legal certainty, which must be underpinned by straightforward, uncomplicated rules; at all events, insists on the need to repeal Regulation No 17/1962 and replace it by a proper set of procedural rules including the recognition of the rights of the defence and the legitimation of plaintiffs and victims;
33. Looks forward to being consulted on the proposal for a regulation to be adopted following the White Paper on the modernisation of competition policy and stresses that the notices on co-operation with national authorities and courts and a specific notice on complaints must be drawn up well before the regulation enters into force;
34. Stresses that the uniformity, consistency and credibility of the system for enforcing Community competition law will be jeopardised if there is any doubt whether national authorities are applying the rules uniformly or there is any suspicion that they are being unduly lenient and therefore asks the Commission to prepare, as a matter of urgency, proposals dealing with the training of national judges and officials in Community competition law and with co-operation between national authorities; emphasises that the arrangements for training national judges and officials must be extended to the candidate countries;
35. Calls on the Council as the other arm of the budgetary authority to join with Parliament in ensuring that the Commission has sufficient resources to police the competition policy which it is responsible for setting and urges the Commission to ensure that it makes optimum use of its resources, while making it abundantly plain to the national authorities that it has not only the power, but the political will and determination, to overrule national proceedings and impose its own decisions where necessary;
36. Stresses that needless procedural delays must be avoided, both in the Commission and in the Member States, and urges the Commission to introduce a system for monitoring the operation of the systems for the supervision and enforcement of competition policy which should embody specific targets in terms of the time within which procedures must be completed;
37. Reiterates its plea for the codification and simplification of the procedural rules in the field of competition law;
38. Encourages the Commission to give serious consideration to the adoption of a code of conduct which codifies its existing rules on computer searches in the course of antitrust investigations while taking full account of best practice in this area and the concerns of industry; the code should cover matters such as protection of legally privileged information and third-party documents, possible loss or destruction of data, liability for any damage caused and minimising disruption
39. Instructs its President to forward this resolution to the Commission, the Council and the competition authorities of the Member States.

## **EXPLANATORY STATEMENT**

### **Introduction**

Competition policy is clearly one of the most important policies of the European Union. It has an enormous effect on many other policy areas of the EU, like the development and stability of Economic and Monetary Union, the single market, consumer policy or even environmental policy. It promotes innovation and provides for the efficient production of goods and services. Consumers benefit in the form of lower prices, improvements in quality and increased choice. The sharp decline in prices for telecommunications services or to a certain extent electricity prices are recent proof of how beneficial competition can be to the consumer.

### **Information policy**

Information about this success to the consumer and the citizen is vital to the support, coherence and stability of European competition policy. Often, the general public takes note of competition policy in the context of big mergers or the prohibition of State aid. Unfortunately, this is often perceived in a negative light. The rapporteur supports the Commission's aim to improve its communication. Furthermore, she calls on the Commission to develop a coherent communication policy for the EU competition policy consisting of tools and aims at the European and national levels, and different target groups like the general public, the press, business circles and national authorities. The Competition day for European Citizens, which the Commission organized on 9 June 2000 in Lisbon, is a facet of a communication strategy which could be developed further. The same applies to the web-site of the directorate for competition, which is a good information source for the general public.

Your rapporteur welcomes the Commission's reply to Parliament's resolution on the Commission's XXVIIIth report on Competition policy. This written dialogue forms a valuable part of the process of democratic accountability to the Parliament and adds to the positive relationship between the Committee on Economic and Monetary Affairs and the responsible Commissioner. Your rapporteur calls on the Commission to officially submit the reply sooner in all official languages. At the same time, your rapporteur wants to reiterate the need for more staff in the Directorate-General for Competition, so that the Commission may fulfil its obligations under the Treaty. Globalisation, liberalisation and enlargement are only a few areas that have led to new tasks for DG Competition. The Committee will follow up on this demand through the budgetary procedure.

### **Democratic accountability**

In previous reports on Competition Policy Parliament has called on the Commission to involve Parliament as far as is possible in the further development and implementation of competition policy. Your rapporteur believes that during the review period, Parliament's involvement has grown considerably. Certain draft texts had been sent to the Committee on Economic and Monetary Affairs to allow for its opinion. This procedure was followed for the reform on Vertical Restraints (Rapporteur Mrs Thyssen). The same procedure, with respect to existing confidentiality rules, should be followed for as many new initiatives as possible. The

Committee is currently forming an opinion on three draft group exemption regulations on the application of Articles 87 and 88 to State aid, concerning State aid to small and medium-sized enterprises, training aid and the *de minimis rule*.

These improvements will increase the legitimacy and transparency of the actions taken by the Commission.

### **Reform of the European competition system**

The drastically changing economic environment and the development of the European Union call for constant scrutiny of European competition policy. As part of its efforts to modernise competition policy, the Commission has submitted a White Paper on the rules implementing Articles 81 and 82 of the Treaty. The proposal has four main objectives: consistent implementation of competition rules, effective decentralisation, simplification of procedures and uniform application of law and policy throughout the European Union. The view of the European Parliament on the proposals is laid down in its resolution of 18 January 2000 (Rapporteur Mr von Wogau). Your rapporteur agrees with the main statements of this resolution, which supports in principle the main points of the White Paper. She would like to reiterate a few core demands, which are of crucial importance to the future of European competition policy. Firstly, the proposed reforms must not lead to a renationalisation of competition policy. The primacy of Community law must not be called into question. Therefore, the Commission is called on to monitor the quality of competition legislation in the Member States, in order to safeguard a level playing field throughout the Community. Considering the different traditions in competition legislation, this will not be an easy task to fulfil. In light of EU enlargement this task might even be more difficult. Accession countries from Eastern and Central Europe have very little experience with competition policy. An enormous effort has to be made by these countries if they are to fully implement a decentralized approach to competition legislation right from the beginning of their accession to the Community.

### **Merger control**

Merger activity continued to grow in the Community in 1999. That year, 292 cases were notified to the Commission, representing an increase of 24% from last year and an overall increase of 70% since 1997. Today's merger control is becoming increasingly complex, as it requires simultaneous analysis of several different markets. The development of the single market, transparency through EMU and globalisation are the driving forces behind these tendencies. In 1999 the Commission found it necessary to initiate the second stage of examination (phase II proceedings), lasting four months, in respect of 20 planned operations, as opposed to 12 in 1998.

Your rapporteur draws attention to the fact that the merger control activities of the Commission are of extreme importance, as they play a major role in determining the future shape of the corporate landscape in the EU. One of the key questions that have to be addressed in the future is whether, in the context of globalisation, local market dominance can be accepted in the interest of wider competitiveness. Your rapporteur also calls on the Commission to submit the Merger Review 2000 as soon as possible, in order to identify areas for improvement of merger control administration.

## State Aid

State aid is an important part of competition policy. It can distort competition, hamper development and structural reform. The rapporteur welcomes the fact that the European Council of 23 and 24 March 2000 in Lisbon reiterated the importance of State aid control by calling on the Council, the Commission and the Member States to « further their efforts to promote competition and reduce the general level of State aids, shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives of Community interest, such as employment, regional development, environment and training or research ». In respect of economic reforms for a complete and fully operational internal market, the Council emphasised that « fair and uniformly applied competition and State aid rules » are essential for « to ensure that business can thrive and operate effectively on a level playing field in the internal market ». These demands represent a solid base for a State aid policy of the EU and its Member States.

The Eighth survey on State Aid in the Union, which covers the period 1994-98, proves that there is still a long way to go to achieve the goals set out by the Lisbon Council. The overall volume of National State aid granted in the EU to the sectors covered by the Survey amounts to an annual average of 93 billion euro during the period under review. In comparison with the 104 billion euro spent in the previous period (1994-96), this is a perceptible decline in the overall levels of State aid. With the exception of a few Member States this decline is also expressed in a lower rate of the GDP per capita. As an average of the 15 Member States it fell from 1,32% to 1,12%. State aid to the manufacturing sector, which accounts for 35% of the total volume of aid granted in the Community also continued on the gradual downward path observed since 1993. Overall, your rapporteur welcomes the general decline in the granting of State aid. Nonetheless, she believes that there is still a long way to go in order to achieve aid levels that do not distort structural reform and competition.

As already called for in previous resolutions, your rapporteur reminds the Commission to introduce a public and regularly updated register of State aid which takes into account the qualitative differences in the aids granted. She also calls on the Commission again to introduce a league table similar to that for the internal market scoreboard, to highlight the Member States with the highest and the lowest levels of State aid. These measures could fundamentally affect Member States' attitude towards granting harmful aid. Your rapporteur welcomes Commissioner Monti's commitment to these measures, as he states in his foreword to the annual report: »The feasibility of a state aid Register and Scoreboard is, for example, being considered. The Register would contain factual information on all state aid decisions, whilst the Scoreboard would provide guidance to the Member States on how to evaluate more accurately the cost/benefit consequences of their state aid policies. The annual Survey on State Aid in the EU will also continue to be improved and will provide a more detailed assessment of state aid expenditure ». Your rapporteur calls on the Commission now to come forward with both proposals no later than 31 June 2001.

As stated in the annual report, the number of State aid measures that have not been notified to the Commission is still too high. Your rapporteur welcomes therefore the fact that the Court has confirmed the Commission's policy of consistently ordering the recovery of aid that has

been granted in violation of the notification obligation. As article 14 of the new procedural regulation requires Member States to execute recovery decisions immediately, your rapporteur supports the Commission in its goal to recover unlawful aid systematically and convincingly. Effective execution of decisions to reimburse aid is vital for the credibility of State aid control. Therefore, your rapporteur is asking the Commission to outline a coherent and stringent system of recovering aid.

### **International dimension**

Enlargement and globalisation are the main driving forces for a strengthened international dimension of competition policy. Your rapporteur has already made reference to the accession countries in the context of competition policy reform and the negative consequences that may arise from a lack of a tradition of applying competition policy. She therefore calls on the Commission to provide sufficient assistance to establish competition and judicial authorities to enforce EC competition law. The accession countries must make every effort to establish the necessary competition authorities and strive to create a proper competition environment.

Last year's WTO Ministerial Conference in Seattle did not reach a new agreement. Your rapporteur believes that globalisation does call for new WTO trade negotiations which should include negotiations on competition policy. Almost half of the WTO's member countries do not have any competition law at present. Many of these countries would benefit from the adoption of competition disciplines, helping them to attract foreign investment and improve the domestic business environment. Competition policies and investment do affect world trade. Therefore, the WTO ought to be sufficiently involved.



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9 October 2000

**OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL  
MARKET**

for the Committee on Economic and Monetary Affairs

on the proposal for a resolution on the European Commission's XXIXth Report  
on Competition Policy

(SEC(2000) 720 – C5-0302/2000 – 2000/2153(COS))

Draftsman: Ana Palacio Vallelersundi

**PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Ana Palacio Vallelersundi draftsman at its meeting of 21 June 2000.

It considered the draft opinion at its meetings of 12 September 2000 and 9 October 2000.

At the latter meeting it adopted the conclusions below unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman and draftsman; Rainer Wieland, vice-chairman; Luis Berenguer Fuster, Charlotte Cederschiöld, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, Heidi Anneli Hautala, Ioannis Koukiadis, Klaus-Heiner Lehne, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Gary Titley and Diana Paulette Wallis.

## SHORT JUSTIFICATION

### BACKGROUND/GENERAL COMMENTS

The XXIXth Report on Competition Policy begins with a restatement of the Commission's intention to pursue the modernisation of competition law and its two principal objectives of maintaining competitive markets and preventing anti-competitive practices from undermining the objectives of the single market. Reassuringly in the light of the disquiet aroused by the recent White Paper, as discussed in this committee's opinion of 17 November 1999, the report expressly refers to the Amsterdam Treaty as having reaffirmed the Commission's role as the authority responsible for enforcing the competition rules and the compatibility of the principles of free competition and services of general economic interest.

#### **1. Information policy aimed at the general public**

The report rightly identifies the benefits of competition policy for consumers. Greater efforts are to be made to explain the advantages to citizens of individual decisions and to treat consumers as promoters of competition policy. This is consistent with this committee's concern to raise the profile of the Internal Market (see Parliament's resolution of 13 April 2000 on the Strategy for Europe's Internal Market). All too often, Commission decisions in the field of competition are presented in the press as defeats for national interests, rather than victories for the Internal Market and for the consumer. How the Commission can best tackle this question of improving public information and consumer involvement could well be addressed by the forthcoming European Parliament and Commission Internal Market Forum.

#### **2. New legislation on vertical restraints**

The new block exemption Regulation No 2790/1999 constitutes an improvement. Even so the rules in this field are still complicated and difficult to understand. It is to be hoped that the Commission will take heed of the warranted concerns expressed by industry about the needless complexity of the draft block exemption regulations on specialisation and research and development, especially in the light of the intention expressed in the White Paper to switch to a directly applicable exemption system under Article 81 EC. National courts and competition authorities must be completely clear about their obligations, which should be readily comprehensible to undertakings. Consequently, there should be the widest possible consultations, not only on the proposed legislation, but also on the draft guidelines on the applicability of Article 81 to horizontal co-operation agreements. This exercise should not be rushed given the primordial importance of legal certainty in a Community governed by the rule of law and in a fully-fledged single market. By the same token, the Communication on the relevant market urgently needs updating and revamping, bearing in mind the phenomenon of globalisation and the rapid pace of technological change. In all these cases, the Commission needs to maintain a continuous dialogue with industry. The Commission is also urged to examine whether the soft law approach of guidelines might not be more appropriately replaced by specific provisions. All these comments apply equally *mutatis mutandis* to the process for the supervision of State aids under Articles 87 to 89 EC.

#### **3. Modernisation of the rules implementing Articles 81 and 82 EC**

Following on from the White Paper, the Commission is to produce a proposal for a regulation, on which Parliament will be consulted. At this juncture, it is merely observed that the "other instruments" referred to in the report (notices on co-operation with national authorities and courts and a specific notice on complaints) should be drawn up well before the regulation enters into force. This applies even more to the training of national judges and the rules on the operation of the "network made up of the Commission and the national authorities". It cannot be stressed too strongly that the uniformity of the whole system - and its credibility - will be jeopardised if there is even a mere suspicion that national authorities cannot be relied on to implement the competition rules in the same way or that some are more lenient than others. This could threaten the integrity of the Internal Market. The success of the proposed new system depends on national authorities' understanding and accepting the principles of competition policy. The Commission must take the time to inculcate those principles in the Member States and must be given sufficient resources to police the competition policy which it is responsible for setting. It must make it clear that it not only has the power, but also the political will and determination, to overrule national proceedings and impose its own decisions where necessary. This will be particularly important in the context of enlargement.

At least, there are some hopeful signs from co-operation with national authorities and courts that competition issues are being taken more seriously in at least some Member States. The *Orangina/Coca Cola* case is particularly interesting in this regard as marking the first application of the Community-law concept of a joint dominant position by the French authorities.

The proposed reform of the enforcement of competition policy is intended to make the application of the competition rules more effective and reduce the bureaucratic burden for industry. The proposed introduction of a four-month deadline within which the Commission must inform complainants of the action which it proposes to take is welcome, but it would be desirable to introduce a readily verifiable system for monitoring the effectiveness of the reforms, embodying wherever possible specific targets in terms of the time within which procedures must be completed. In the sphere of State aid and mergers in particular, delay can have pernicious effects and should be minimised.

#### **4. Procedural rules**

The two procedural innovations reported by the Commission (concerning consultation of the Advisory Committee following publication of a notice under Article 19(3) of Regulation No 17 and the possibility for firms to nominate a lawyer to receive correspondence) are minor. The entry into force of Regulation No 659/1999 laying down detailed rules for the application of Article 93 was welcome and it is hoped that it will be regularly updated. Since the field of competition law is complex and diverse and the procedural rules necessarily intricate, every effort should be made to codify and clarify those rules across the board.

As far as third-party rights are concerned, it is disturbing to note that, following the 1998 judgment in Case T-95/96 *Gestevisión Telecinco SA v. Commission* [1998] ECR II-3407, the Commission was found on 3 June 1999 to have been excessively protracted in conducting a preliminary examination of government measures denounced as incompatible with Article 81(7) EC (judgment in Case T-17/96 *Télévision française 1 (TF1) v. Commission* [1999] ECR

II-1757).

A matter not raised in the report, which has been causing some concern in industry, is computer searches by competition authorities in the course of antitrust investigations. Such searches raise a number of serious issues relating to protection of legally privileged information and third-party documents, possible loss or destruction of data, liability for any damage caused and minimising disruption of business. The Commission is urged to give serious consideration to this matter.

## **CONCLUSIONS**

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following conclusions in its report:

1. Welcomes the Commission's intention to make greater efforts to explain the advantages to citizens of individual decisions in the field of competition policy and to treat consumers as promoters of that policy and considers that this should form part of a wider ambition of raising the profile of the Internal Market;
  
2. Calls on the Commission to submit without delay the report it has announced on Commission Regulation (EC) No 1475/95 concerning categories of motor vehicle distribution and servicing agreements, and believes that, pending the outcome of this report, it is desirable, in the interest of legal certainty for SMEs and consumers, for the regulation to be reformed rather than simply annulled;
  
3. Urges the Commission to consider replacing the soft-law approach of guidelines by specific provisions;

4. Reiterates in this connection the importance of legal certainty, which must be underpinned by straightforward, uncomplicated rules; at all events, insists on the need to repeal Regulation No 17/1962 and replace it by a proper set of procedural rules including the recognition of the rights of the defence and the legitimisation of plaintiffs and victims;
  
5. Looks forward to being consulted on the proposal for a regulation to be adopted following the White Paper on the modernisation of competition policy and stresses that the notices on co-operation with national authorities and courts and a specific notice on complaints must be drawn up well before the regulation enters into force;
  
6. Stresses that the uniformity, consistency and credibility of the system for enforcing Community competition law will be jeopardised if there is any doubt whether national authorities are applying the rules uniformly or there is any suspicion that they are being unduly lenient and therefore asks the Commission to prepare, as a matter of urgency, proposals dealing with the training of national judges and officials in Community competition law and with co-operation between national authorities;
  
7. Emphasises that the arrangements for training national judges and officials must be extended to the candidate countries;
  
8. Calls on the Council as the other arm of the budgetary authority to join with Parliament in ensuring that the Commission has sufficient resources to police the competition policy which it is responsible for setting and urges the Commission to ensure that it makes optimum use of its resources, while making it abundantly plain to the national authorities that it has not only the power, but the political will and determination, to overrule national proceedings and impose its own decisions where necessary;

9. Stresses that needless procedural delays must be avoided, both in the Commission and in the Member States, and urges the Commission to introduce a system for monitoring the operation of the systems for the supervision and enforcement of competition policy which should embody specific targets in terms of the time within which procedures must be completed;
  
10. Reiterates its plea for the codification and simplification of the procedural rules in the field of competition law;
  
11. Encourages the Commission to give serious consideration to the adoption of a code of conduct which codifies its existing rules on computer searches in the course of antitrust investigations while taking full account of best practice in this area and the concerns of industry; the code should cover matters such as protection of legally privileged information and third-party documents, possible loss or destruction of data, liability for any damage caused and minimising disruption of business.