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Competition Policy 2005

European Parliament resolution of 19 June 2007 on the Report on Competition Policy 2005 (2007/2078(INI))

The European Parliament,

- having regard to the Commission Report on Competition Policy 2005 (SEC(2006)0761),
- having regard to the Commission sector inquiries in the energy and retail banking sectors,
- having regard to the objectives of the Lisbon Strategy,
- having regard to the discussion paper by the Competition Directorate-General on the application of Article 82 of the Treaty to exclusionary abuses, of December 2005,
- having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹ and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty²,
- having regard to the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003³,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)⁴,
- having regard to the DG Competition Merger Remedies Study 2005, of October 2005 (Merger Remedies Study),
- having regard to Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁵,
- having regard to the Commission Green Paper on Damages actions for breach of the EC antitrust rules (COM(2005)0672) (Damages Green Paper),
- having regard to the Commission State Aid Action Plan on Less and better targeted state aid: a roadmap for state aid reform 2005-2009 (COM(2005)0107),
- having regard to Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the

¹ OJ L 1, 4.1.2003, p. 1.

² OJ L 123, 27.4.2004, p. 18.

³ OJ C 210, 1.9.2006, p. 2.

⁴ OJ L 24, 29.1.2004, p. 1.

⁵ OJ L 140, 30.4.2004, p. 1.

- application of Articles 87 and 88 of the Treaty to national regional investment aid⁶,
- having regard to its resolution of 27 April 2006 on sectoral aspects of the State Aid Action Plan: aid for innovation⁷,
 - having regard to the Commission staff paper on a Community Framework for State aid for Research and Development and Innovation, of September 2006,
 - having regard to the Community guidelines on State aid for environmental protection⁸,
 - having regard to the Community guidelines to promote State aid and risk capital investments in small and medium-sized enterprises⁹,
 - having regard to the Guidelines on national regional aid for 2007-2013¹⁰,
 - having regard to Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest¹¹, in the version forwarded to Parliament for its opinion on 8 September 2004,
 - having regard to its resolution of 22 February 2005 on State aid in the form of public service compensation¹²,
 - having regard to the case law of the Court of Justice of the European Communities relating to services of general interest and, in particular, to the Court's judgment of 24 July 2003 in Case C-280/00¹³,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0176/2007),
1. Welcomes the Commission's action to modernise competition policy and, in particular, its reinforced stance on combating cartels, its renewed targeting of unauthorised State aid and its sector inquiries; congratulates the Commission on the steps it has taken in improving the functioning of the European Competition Network (ECN); congratulates the Commission on its achievements in the area of multilateral and bilateral cooperation and calls for further progress in its activities towards the international convergence of competition policy;

⁶ OJ L 302, 1.11.2006, p. 29.

⁷ OJ C 296 E, 6.12.2006, p. 263.

⁸ OJ C 37, 3.2.2001, p. 3.

⁹ OJ C 194, 18.8.2006, p. 2.

¹⁰ OJ C 54, 4.3.2006, p. 13.

¹¹ OJ L 312, 29.11.2005, p. 67.

¹² OJ C 304 E, 1.12.2005, p. 117.

¹³ Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

2. Welcomes the preference attributed by the Commission to an economic rather than rules-based approach to competition policy enforcement; welcomes the Commission's approach in its sector inquiries, which is closer to the realities of business practices, particularly as regards the financial services and energy sectors; further stresses that those inquiries should shed light on the current sector situation and trends in the targeted sectors and should stimulate a forward-focused policy;
3. Welcomes the Commission's efforts to improve the quality of enforcement of decisions in the context of the ECN through increased cooperation with and among national competition authorities (NCAs);
4. Renews the call, as regards cooperation with and enforcement by NCAs, for further progress in the reduction of uncertainty caused by diverging interpretations of Community competition law by national courts, as well as discrepancies in the speed, content and enforcement of final decisions; calls on the Commission to consider the creation of a network of judicial authorities, comparable to the ECN;
5. Renews the call in relation to services of general economic interest (SGEIs) given the considerable differences in policies prevailing across the Member States, for further progress in relation to both the clarification of the existing competition rules and their practical application;
6. Welcomes the increase in the adoption of procedures within the ECN Model Leniency Programme; stresses, however, that further refinement of that instrument is required in order to avoid its possible misuse, in particular by unfairly disadvantaging the weaker participants in the collusion;
7. Recalls, in this light, the need to coordinate the dual instruments of damages actions and leniency procedures, in order to ensure that adequate incentives for proper behaviour are in place;
8. Expresses concern about the excessive delay in the processes of recovery of unauthorised State aid granted by several Member States; stresses that the inadequate enforcement of rules in this area may seriously harm fair competition;
9. Welcomes the adoption of Community competition rules by the most recently acceded Member States and recommends the continued refinement of the quality of the implementation of those rules;
10. Notes the key role that adequate competition policy can play towards achieving the Lisbon Strategy goals; recalls that the role of competition policy can be enhanced if it is adequately coupled with a cohesion policy;
11. Calls on the Commission to consider carefully how tax competition among the Member States is affected by certain taxation practices, especially in relation to companies;
12. Takes the view that certain the taxation practices applied by some of the Swiss cantons could have the effect of distorting competition, and calls on the Member States and the Commission to continue their dialogue with the Swiss Confederation on these issues with a view to Swiss participation in the Code of Conduct for Business Taxation annexed to the Council conclusions of the ECOFIN Council Meeting on 1 December 1997

concerning the taxation policy¹⁴;

13. Supports the Commission's efforts to introduce a Community-wide common consolidated corporate tax base (CCCTB), since this will make for easier comparison, and draws attention to the views endorsed in its resolution of 13 December 2005 on taxation of undertakings in the European Union: a common consolidated corporate tax base¹⁵;
14. Reaffirms the need for an increased role of Parliament, including the promotion of co-decision powers, in the formulation of competition law;
15. Recalls the need to promote adequate capacity-building at Community level in order to meet the ambitious Lisbon Strategy goals and cope with the possible high levels of staff in businesses and NCAs;
16. Welcomes the efforts to strengthen the ECN's role in the field of competition enforcement through the harmonisation of practices and interpretation of norms, as well as the delegation of competences and the exchange of experiences among NCAs;
17. Expresses its concern at the relative failure to date to achieve genuine competition in the energy markets; notes that in many Member States ownership unbundling has proven insufficient to ensure adequate competition, as very high market shares of incumbent operators are associated with insufficient market access and market foreclosure;
18. Strongly believes that the introduction of a level playing field that enables new market entry and facilitates the introduction of new environmentally friendly technologies must be a priority; congratulates the Commission, in this respect, for making full use of its powers under the competition, merger and State aid rules, in order to enhance the efficiency of the energy market; welcomes the fact that in parallel to the enforcement of individual cases, the energy sector inquiry has played an important role in the Commission's work on identifying necessary regulatory changes in particular issues such as achieving adequate unbundling of network and supply activities, removing regulatory gaps in particular regarding cross-border issues, addressing market concentration and barriers to entry, and increasing transparency in market operations;
19. Underlines that the completion of ownership unbundling in the energy sector, alongside the dismantling of vertical conglomerates and guaranteeing conditions for effective market access should be given stronger priority;
20. Welcomes the overall objective of the energy inquiry which is to address the barriers currently impeding the development of an Community-wide energy market by 1 July 2007; shares the views of the Commission that the powers of NCAs need to be strengthened and that coordination must be enhanced at Community level, particularly as regards to cross-border issues; calls on the Commission to pursue enforcement action including fines against companies which breach competition rules; encourages the Commission to proceed against Member States which unduly protect national energy companies;
21. Calls on the Commission to examine the respective competition situations of rating

¹⁴ OJ C 2, 6.1.1998, p. 1.

¹⁵ OJ C 286 E, 23.11.2006, p. 229.

agencies, auditing firms, and large investment banks;

22. Stresses that competition law must be applied to all players on the European market, whether or not they have their headquarters in the European Union; considers it to be important for the Commission to act with equal firmness and consistency in regard to both third-country and EU undertakings;
23. Welcomes the initiative taken by the Commission to commission a study to identify whether the rise in prices for energy is mainly due to the rise of fuel prices and the impact of the Emission Trading Scheme, or to the anti-competitive behaviour of market players;
24. Recalls the Commission's commitment to review the 'two-thirds rule' as a threshold for finding a Community impact in regard to merger proposals; suggests that progress in this area and a more consistent approach in the evaluation of comparable merger operations would be welcome whenever decisions taken at national level could have a strong impact on the market structure of neighbouring Member States;
25. Welcomes the Commission's aim to support the inter-connectivity of infrastructure networks; calls for special attention to be paid to the specific features of peripheral markets;
26. Welcomes the Commission's Damages Green Paper and underlines that the right of victims who have suffered losses as a result of anti-competitive behaviour to obtain compensation must be effective;
27. Applauds the Commission's efforts to strengthen the instruments for tackling cartels, in particular, the revision of its leniency procedures and its new guidelines on the method of setting fines, which focus on long-standing agreements in large markets;
28. Believes that the application of the Community and national merger control rules would benefit highly from cooperation among NCAs towards the implementation of a common database registering all the individual cases examined, in the context of a specific network for information exchange;
29. Welcomes the Merger Remedies Study, which examines the impact of proposed remedy measures during the period 1996 to 2000; considers that such ex-post examinations provide crucial policy insights, and, consequently, should be extended to other areas of competition policy enforcement;
30. Notes that according to the Merger Remedies Study, the effectiveness of structural remedies is often undermined by the uncompetitive behaviour of the firms and public authorities, in particular, by the limitation of market access; consequently calls on the Commission to increase its vigilance as regards that possible loophole in merger remedy enforcement;
31. Notes that State aid policy is an integral part of competition policy and that State aid control reflects the need to maintain a level playing field for all undertakings carrying out activities in the internal market; welcomes, in this respect, the Commission's efforts to increase the transparency and public accountability of the existing mechanisms of State aid; welcomes further efforts to improve transparency in this context; stresses, furthermore, the need for clear criteria for measuring State aid levels;

32. Reiterates its earlier call for follow-up and open reporting on the development of State aid, with comparisons between the Member States, with a view to achieving the desired objective of reducing such aid;
33. Recalls the need to avoid competition and duplication among Member States' State aid schemes, as well as any distortions that different national technical and financial capacities to support State aid may introduce in the internal market; suggests that further efforts by the Commission to harmonise national practices and promote the exchange of information and best practices are of the utmost relevance;
34. Recalls the principle of compatibility between State aid and Community cohesion policy; calls on the Commission, in view of the Community's objectives and cohesion policies, to ensure that State aid does not result in distorted competition by provoking the relocation of companies from one Member State to another, which may lead to subsidy-shopping by businesses without any added value for the common goals of the Community and, in particular, to the loss of jobs in one region for the benefit of another; recalls that regional aid approved outside authorised regional aid schemes intrinsically involves higher risks of distortion to competition;
35. Welcomes the increased sensitivity of the Commission in relation to Lisbon Strategy issues in the context of State aid management and its concerns regarding the 'catching-up' of less developed regions in the European Union in this area;
36. Considers that Community State aid policy, particularly regarding sectors that operate in the globalised market, must focus on aid practices by third-country governments in relation to competitors; suggests, however, that a balance should be achieved by giving preference to efforts regarding cooperation and mutual recognition, rather than through subsidy competition;
37. Recalls the need to guarantee that compliance with Community targets on climate control, combined with environmental State aid, across different countries and sectors, are compatible with competition objectives; calls on the Commission to address this issue in the forthcoming review of the environmental aid block exemption;
38. Welcomes the progress made in the context of bilateral cooperation with the European Union's main partners, namely, the United States, Canada, Japan and Korea, including dialogue on issues of common concern such as merger remedies and cartel investigations; considers such cooperation to be of crucial importance to achieving the consistent enforcement of decisions in cases with a shared impact;
39. Welcomes the Commission's cooperation with Chinese authorities in regard to the establishment of a competition authority in China; urges the Commission to continue its efforts towards instituting an effective competition culture in China;
40. Stresses that the Commission's analyses of the competition situation in various sectors as regards the acquisition of undertakings should be carried out in the light of the internal market as a whole and not principally with regard to the situation on local or national markets;
41. Stresses that the Commission's new trade agenda, in the context of which free trade agreements will be negotiated with selected partners, requires the close involvement of

the Commissioner for Competition so that the main competition issues are appropriately dealt with in the context of such agreements;

42. Calls upon the Council and the Commission to improve and better focus their joint efforts in the organisation of the Competition Day initiative to highlight to European consumers and citizens the crucial importance of Community competition policy in delivering economic growth and jobs throughout the European Union;
43. Instructs its President to forward this resolution to the Council and the Commission.