European Competition Policy

European File

Free competition between companies, both in the public and private sector, guarantees a more diversified choice for consumers and helps keep prices down. It is also a driving force in technological and economic progress since competing companies are constantly spurred on to new innovations. But, for a variety of reasons, free competition does not rule out public intervention:

- left to the free play of market forces, competition can degenerate. Certain companies may try to cheat through unfair practices or by concluding agreements with competitors which prevent the consumer from reaping the benefits of market competition. Economic concentration can also destroy competition by creating monopolies. To counter these risks, numerous countries have introduced legislation enabling them to intervene whenever fair and efficient competition is threatened;

- the free play of market forces does not always satisfy certain economic objectives (e.g. the rapid development of modern technologies, the reorganization of sectors in difficulty) and social aims (e.g. solutions to the problems arising from such reorganization, the reduction of regional inequalities). In cases like these, public aid is often necessary, at least for a certain period.

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Why a European policy?

Alongside national policies there is room for a European competition policy. The creation of the European Community has opened up a vast market of 260 million consumers where goods and services can move without restrictions—the unity of the market should not be threatened by new restrictions. European competition policy pursues the following objectives:

- ☐ removing trade restrictions in the form of cartels, market-sharing agreements, export bans, etc. Various barriers exist which are less visible but just as effective as those dismantled over the past twenty years. Consumers benefit from this policy. They can take advantage of the lowest prices, no matter which country is offering them;

- ☐ ensuring that excessive concentrations of economic power do not adversely affect the consumer or other competing firms. By preventing abuses by firms in dominant market positions, and by ensuring, particularly in the coal and steel sector, the maintenance of a number of economic decision centres, European policy preserves fair competition and market fluidity;

- ☐ preventing aids given by national authorities which discriminate between industries or distort competition and adversely affect the correct operation of the market economy and threaten the very existence of the Common Market.

The economic crisis has not caused the Nine to question its overall objectives. But it has stimulated a rethink of the advantages and disadvantages of restrictions in competition. Every country knows the dangers its exporting industries would be exposed to if its neighbours increased public aid or if certain enterprises managed to re-establish the commercial barriers already abolished. For every job saved in the short term, how many others are threatened in the long term in a world where trade is governed by the law of competitivity?

European competition policy in its broad terms is set out in the Treaties governing the Community.[1] Equality before the law of all European companies in economic competition is guaranteed by impartial authorities who are responsible for monitoring the market and who occasionally punish offenders. It is the European Commission's job to supervise the application of Community competition rules, acting either on its own initiative or upon complaints from Member States, industry or individuals. The cases dealt with are numerous. In many instances they are resolved by voluntary changes by the firms concerned, in others by bans or fines—which in some cases have amounted to millions of European units of account.[2] The Commission reports its work to the European Parliament each year. Companies can appeal against Commission decisions to the Community's Court of Justice which judges questions of legality.

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[2] Without exception, the text leaves out those specific but generally parallel, dispositions covered by the Treaty of Paris.

[2] EUA = approx. £ 0.63 or Ir. £ 0.67 (at rates current on 2 July 1979).

Company agreements

According to the European Treaties, the following are incompatible with the Common Market ideal: 'All agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their objective or effect the prevention, restriction or distortion of competition within the Common Market'.

This general ban on agreements concerns both European and non-European companies, private and public enterprises. Since 1962, companies concluding agreements likely to fall within the scope of this ban should notify the European Commission for 'negative clearance' implying that the agreement does not restrict competition. The Commission can also give the go-ahead to a project which falls within the general ban if it offers special advantages. It can at all times identify infringements and demand an end to the agreement or to other unacceptable practices.

For more than fifteen years, the European Commission has been called on to deal with a wide variety of agreements and concerted practices:

- ☐ *market-sharing agreements* which set up protected areas, often national. Among the numerous agreements which were banned were the quinine cartel (1969) which led the European Commission to impose its first fine, and the sugar cartel (1973) which met with heavy penalties—9 million European units of account, finally reduced to 1.6 million by the European Court of Justice;
- ☐ *price-fixing agreements*, such as the dyestuffs cartel (1969) covering almost 80 % of the European market, whereby manufacturers agreed their prices by equal amounts at virtually the same time. This was the first case in which firms with head offices outside the Community were fined, since they were practising on Community territory;
- ☐ *selling agencies*: the exclusive selling rights given to such intermediaries, and the allocation of supply quotas and mutual alignment of selling prices reduce competition between members of the agency and deprive customers of any real choice. This was the case, for example, of the Dutch chemical fertiliser agency which was forced to dissolve itself by the European Commission in 1978;
- ☐ *exclusive purchase agreements* from specified manufacturers or importers or exclusive supply agreements with certain purchasers. These agreements, observable on markets as varied as gramophone records (Netherlands, 1974) and heating equipment (Belgium, 1972) are banned by the European Commission. They restrict the market competition and create distortions which work against the interests of free trade;
- ☐ *certain industrial and commercial property rights*: patents and trade marks cannot systematically be used to justify attitudes or practices which restrict free competition. The 'Pentacon' affair in 1973 which, for the first time,

involved companies from an East European country, enabled the Commission to confirm its position: granting an exclusive licence can, in some cases, bring about excessive restriction of competition, particularly in cases where it forbids the licencee to contest a patent, thereby preventing him from making use of technical knowledge which may be freely available;

- ☐ *certain exclusive or selective distribution agreements*: in 1964 the European Commission ruled against an agreement which gave the distributor, Consten, absolute exclusivity for sales of Grundig products in France. The Commission has accepted, however, the selective distribution systems created by firms such as BMW or Omega to the extent that they offer the consumer safety or aftersales guarantees.

The European Commission has, therefore, a constructive approach. Economic and social progress often comes about through various forms of cooperation between companies. The Commission tries to promote these by using its powers to authorize certain agreements which—in the words of the Treaties—'contributes to improving the production or distribution of goods or to promoting technical or economic progress, (...) without imposing on the undertakings concerning restrictions which are not indispensable to the attainment of these objectives (and without) affording such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question'.

The European Commission has taken a number of decisions based on this principle which waive the obligation of notification and which give bloc authorization for several categories of agreements as long as a certain number of conditions are fulfilled. Since 1967 they have permitted exclusive distribution agreements and since 1972 manufacturing specialization agreements as long as turnover and market share limits are not exceeded.

The European Commission is particularly concerned with cooperation between small and medium-sized companies since they are often an important factor in progress. The Commission has consequently prescriber various forms of cooperation which in its opinion do not fall within the scope of their agreement bans:

- ☐ contracts for exclusive representation agreed with trade representatives;
- ☐ agreements of minor importance which relate to the turnover realized and the market shares held (not to exceed 5 %);
- ☐ subcontracting agreements;
- ☐ know-how transfer between companies, joint studies, joint use of installations, etc.

In addition to these regulations, some of which have been recently introduced, the European Commission is following the progress of the economic circumstances

in which companies benefiting from the general ban on agreements are operating. For example, when the demand for certain goods registers an unforeseen structural regression, the Commission can, under certain conditions, authorize agreements for coordinated reduction of over-capacity.

Concentrations and abuse of dominant positions

The awareness of economic reality in the application of Community competition rules is perfectly illustrated by the number of restructuration operations currently in course in the crisis-stricken steel sector. In this area, as in coal, mergers and take-overs are subject to prior authorization from the European Commission. Thus, authorizing in 1978 the acquisition of the German company Neunkirchen by the Luxembourg group ARBED together with a participation in the company Rodange-Athus, the Commission was able to oblige ARBED to divest itself of other interests which were too closely linked to the competing group Marine-Wendel.

The European Treaties do not cater for control over industrial concentration in any other sectors apart from coal and steel. In 1973 the Commission did, however, send the Community's Council of Ministers a proposal—still under discussion—that more important concentrations be scrutinized by the Commission giving it the right to ban them when they pose an obstacle to effective competition in the Common Market.

While waiting for a decision on this point, the European Commission is not totally without weapons. The Treaties stipulate that 'any abuse by one or more undertakings of a dominant position within the Common Market or in a substantial part of it shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States'. The application of these provisions to industrial concentration highlights the Continental Can affair (1971-73). On this occasion, the European Court of Justice, although it aquitted the giant American packaging company, agreed that certain concentrations constitute an abuse of dominant position.

Unfair pricing, production and market restrictions, and discrimination between trading parties, etc. can be mentioned as other types of punishable market abuse. Two examples illustrate this: the judgment against the Commercial Solvents Corporation which cut off a supply of chemicals (used in anti-tuberculosis drugs) to an Italian drug manufacturer, Zoja; and the ruling against United Brands Company, confirmed by the European Court of Justice in 1978, which said that the company had restricted the market by preventing its distributors to resell bananas in their green state, and discriminated against a customer 'guilty' of having participated in the publicity campaign of a competing brand.

State ownership

European competition policy looks after the Community interest in regard to Member States, particularly when they act as entrepreneurs:

- ☐ in 1962 the Community could record 18 commercial monopolies, dealing in products as diverse as potassium, gunpowder, explosives, alcohol and tobacco. By negotiating with and sometimes taking offenders to the European Court of Justice, the Commission has often been able to achieve the objective set by the European Treaties: the exclusion of all discrimination regarding the conditions under which goods are procured and marketed between nationals of Member States. But problems exist (alcohol in France and in Germany, tobacco in France and Italy, matches in Italy) which the European Commission wants to settle before the end of 1979;

- ☐ the European Treaties are completely neutral as regards ownership. Public enterprises must also respect the body of competition rules. The Commission is currently preparing a draft directive to ensure the financial 'transparency' of the dealings of these companies with public authorities. The aim is to prevent unfair advantages (such as holdings being acquired that carry no right to remuneration) which can amount to disguised subsidies which are incompatible with the Common Market.

State aid

The problem of public aid given to companies regardless of whether they are public or private still remains. The European Treaties state that these aids are incompatible with the Common Market when they are likely to affect trade between the Nine and adversely affect competing companies. However, certain social, regional or sectoral aids are allowed—clearly defined and limited—to correct regional imbalances or help certain industries readapt:

- ☐ regional aid normally aims to bring about a better balance in the economic development of the Community. To ensure that its distribution does not cause distortions contrary to the common interest, and to avoid excessive outbidding in the field of investment location, the European Commission has, since 1975, inplemented coordination principles (revised in 1978) which set Community ceilings;

- ☐ environmental aid is subject to European guidelines to ensure they do not deviate too much from the 'polluter pays' principle;

- ☐ sectoral aids have a tendency—due to the economic crisis—to multiply in those sectors in trouble. The Commission's criteria, published in May 1978, take account of the general crisis situation. The Commission insists that such aids must be exceptional, limited in time and geared to its objective: the

progressive restoration of the long term viability of sectors in difficulty by resolving their structural problems. More specific guidelines have been prescribed for four sectors:

- shipbuilding was the subject of a fourth directive in 1978 setting out aid conditions;
- textiles was the subject of a framework of aids drawn up in 1971 and defined more closely in 1976;
- synthetic fibres;
- steel industry.

General aids which are introduced to meet a number of different objectives also tend to multiply in times of crisis. These aids can create enormous distortions in competition between companies, according to their country of operation. The European Commission strictly controls the applications of these aids to avoid serious distortions. Thus in 1978 it ruled against the UK's Temporary Employment Subsidy (which it had authorized in 1975 on account of the crisis) because its use appeared to distort Community competition rules.

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Preventing States from favouring certain economic agents and thereby provoking considerable distortions in competition, preventing companies from restricting markets and re-establishing new barriers to trade: this is the dual objective of the European competition policy. It aims to defend consumer interests and, in the long run, to ensure the dynamism of our economy ■

The contents of this publication do not necessarily reflect the official views of the Institutions of the Community.

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