

TALSMANDENS GRUPPE
SPRECHERGRUPPE
SPOKESMAN'S GROUP
GROUPE DU PORTE-PAROLE
GRUPPO DEL PORTAVOCE
BUREAU VAN DE WOORDVOERDER

**INFORMATION
INFORMATISCHE AUFZEICHNUNG
INFORMATION MEMO**

**NOTE D'INFORMATION
NOTA D'INFORMAZIONE
TER DOCUMENTIE**

Brussels, May 1976

RESUME OF THE FIFTH REPORT ON COMPETITION POLICY

The economic difficulties which the Community is at present experiencing is the background to the fifth report on the competition policy which gives an overall view of the competition policy followed by the Commission in 1975.

In these circumstances, the function of the competition policy is to preserve a situation in which the structural changes that are needed can take place. Although competition policy can make only an indirect contribution to solving the economic difficulties now besetting the Community - and then only if it achieves its objectives - there can be no solution without it. The Commission has tried to ensure that competition policy satisfies the demands made of it - in the measures it has taken as regards both State aids and the business conduct of firms.

The Commission considers that the proliferation of State aids as a means of mitigating economic difficulties and their social consequences carries with it the risk of preserving industrial structures that have failed to adapt to circumstances. Restrictive agreements offer no real solution to the crisis either. The Commission is paying particular attention to the increasing popularity of joint ventures: they may in certain circumstances help industrial rationalization, but they can be a mere facade for anticompetitive agreements too. It is also clear that a more systematic control of large-scale mergers is essential if harmful developments in the structure of industry are to be prevented. The Commission has, in addition, set itself the task of following closely the effect of the growing tendency of Member States to intervene in their economies through the agency of public enterprises.

State aids

In the matter of State aids in 1975, as expected, the Commission had to deal with significantly more cases of assistance granted by Member States to offset the industrial and social effects of the serious economic crisis which the Community is experiencing. It has kept a close watch on the situation to ensure that the effect of the assistance was not simply to transfer from one Member State to another the difficulties it was intended to resolve or alleviate, and that it actively helped to solve structural problems rather than merely making them.

Two factors have had to be borne in mind. First, a return to protectionist policies, however indirect, on the part of Member States cannot provide an effective solution to the crisis. Second, a return to normal necessarily involves a structural adaptation of the machinery of production in the Community to major changes in internal demand and in the international division of labour.

The Commission has worked out new principles for coordinating regional aids throughout the Community, which take account of the economic and social requirements of each region. In implementing these principles, under the powers conferred by the Treaty in respect of State aids, the Commission will ensure that competition is not unduly distorted and consequently that national aids are commensurate with the seriousness of the regional problems to be solved. In this way it will help to make national regional policies more effective, particularly as regards the future of Community regions facing the gravest difficulties.

Restrictive agreements and abuse of dominant positions

As regards restrictive agreements and abuse of dominant positions, the Commission has taken action against attempts to divide the market, to prevent price decreases or to aggravate the rigidity of certain markets.

Apart from decisions taken on certain of the traditional anticompetitive practices prohibited by Article 85, the Commission has intervened on a whole range of sales strategies which, when operated by a dominant firm, tend to constitute an abuse within the meaning of Article 86. It attacked a dominant firm's discriminatory pricing policy not as a price control agency, but simply to enforce the clear prohibition on such practices contained in Article 86. In point of fact, the Commission did not impose a specific price reduction but merely gave an indication enabling the firm to decide an acceptable price level.

Similarly, the Commission has stated the limits within which it will tolerate selective distribution systems. The importance of the only decision issued on this subject in 1975 lies in the fact that it provides the consumer electronics industry with points of reference to bring their distribution systems into line with Article 85. The Commission had previously made similar decisions in relation to automobiles and perfumes.

The Commission has continued to clarify its policy on patent licensing agreements, which can be a classic means of separating markets. Now that seven decisions have been issued, it is possible to contemplate the preparation of a regulation exempting certain categories of patent licensing agreement, which should benefit small- and medium-sized firms in particular.

In parallel with its enforcement of the prohibition on restrictive practices, the Commission has made use of its powers under the provisions exempting international cooperation between firms to authorize a coordination of investment in the highly specific area of nuclear reprocessing and long-term specialization in the manufacture of penicillin. In the latter case, the authorization was given only after the firms had agreed to abandon their plan to form joint subsidiaries. In view of the nature of the relevant market, the Commission considered this step necessary to ensure that the two firms remained independent of each other in the market.

In 1975 there were fourteen decisions under Articles 85 and 86 of the EEC Treaty and twenty-two decisions under Articles 65 and 66 of the ECSC Treaty. In the EEC field, therefore, approximately one hundred decisions have been issued since the Treaty's competition rules began to be enforced. Apart from restoring competition to a number of markets in the Community, the Commission's gradually developing case law has clarified the significance of the rules laid down by the Treaties. In 1975, as in previous years, a large number of cases were settled without a formal decision being made. Although this procedure is less well known and has less legal value than a formal decision, its importance should not be underestimated, as it enables some cases to be settled with a minimum of administrative intervention.

In 1975, for instance, it was used to separate the joint interests of two major continental glass manufacturers as regards safety glass for motor vehicles and to bring the marketing in the Community of Brazilian coffee into line with the rules of competition.

When the oil crisis arose in the autumn of 1973, the Commission publicly warned the oil companies to refrain from indulging in restrictive or abusive practices. The Commission has now nearly completed its examination of a complaint concerning a refusal to supply in a case which may well constitute abuse of a dominant position. The report on the behaviour of the oil companies in the Community during the crisis period sets out the results of the Commission's inquiries under Articles 85 and 86. The Commission has decided that there must be further investigation of the terms of sale of aviation jet fuel (kerosene) to the airlines and of naphtha to the chemical industry, the use of certain arrangements for publishing oil prices by the oil companies and public supply contracts with electricity companies.

The Commission has begun work on proposals to the Council for special regulations applying the rules of competition to sea and air transport, which will take account of the need for uniform application of these rules and at the same time of the specific features of these modes of transport. The Court of Justice has held that the general rules of the EEC Treaty apply to sea and air transport, so the rules of competition applying to firms under Articles 85 and 90 also apply.

Research programme on concentration

Work on the research programme on concentration continued in 1975, and results have now been published in nearly a hundred studies on individual industries or markets. These reports have highlighted the need both for periodic updating and for further consideration of certain points which would help to explain how competition actually functions in the main product markets. This research is especially valuable in the current inflationary situation in that inflation is particularly rife in concentrated industries in the Member States.

Given the importance to the Community of the rapid introduction of a more systematic means of controlling large-scale mergers, which would help to maintain effective competition, the Commission has asked the Council to intensify its work on the proposed merger control regulation.

LIST OF DECISIONS ON INDIVIDUAL CASES CONCERNING
ARTICLES 85 and 86 OF THE EEC TREATY IN 1975

Decision of 8 January 1975 on a proceeding under Article 85 of the EEC Treaty "Preserved mushrooms"	IP(75)11 of 22.1.75
Decision of 5 March 1975 on a proceeding under Article 85 of the EEC Treaty "Sirdar/Phildar"	IP(75)87 of 7.5.75
Decision of 3 June 1975 on a proceeding under Article 85 of the EEC Treaty "Haarden- en Kachelhandel"	IP(75)115 of 13.6.75
Decision of 14 July 1975 on a proceeding under Article 85 of the EEC Treaty "Intergroup"	IP(75)128 of 18.7.75
Decision of 15 July 1975 on a proceeding under Article 85 of the EEC Treaty "IFTRA Aluminium"	IP(75)148 of 31.7.75
Decision of 17 July 1975 on a proceeding under Article 85 of the EEC Treaty "UNIDI"	IP(75)146 of 23.7.75
Decision of 18 July 1975 on a proceeding under Article 85 of the EEC Treaty "Kabelmetal"	IP(75)151 of 24.7.75
Decision of 25 July 1975 on a proceeding under Article 85 of the EEC Treaty "Bronbemaling"	IP(75)172 of 3.10.75
Decision of 23 October 1975 on a proceeding under Article 85 of the EEC Treaty "Transocean"	
Decision of 21 November 1975 on a proceeding under Article 85 of the EEC Treaty "Bomee-Stichting"	IP(75)203 of 25.11.75
Decision of 2 December 1975 on a proceeding under Article 85 of the EEC Treaty "ACIP/Beyrard"	IP(75)219 of 18.12.75
Decision of 15 December 1975 on a proceeding under Article 85 of the EEC Treaty "Bayer/Gist"	IP(75)228 of 18.12.75
Decision of 15 December 1975 on a proceeding under Article 85 of the EEC Treaty "SABA"	IP(75)234 of 18.12.75
Decision of 17 December 1975 on a proceeding under Article 86 of the EEC Treaty "United Brands Co."	IP(75)232 of 18.12.75
Decision of 23 December 1975 on a proceeding under Article 85 of the EEC Treaty "United Reprocessors GmbH" and "KEWA"	IP(76)4 of 14.1.76