

INFORMATION

C O M P E T I T I O N

COMMISSION'S ANNUAL REPORT ON COMPETITION

49/73

Since 1972 the Commission's annual report to the European Parliament on the outstanding events in competition policy has become an annual publication.

The policy covers inter-company agreements (EEC Treaty Article 85 and ECSC Treaty Article 65), mergers and concentrations (Articles 86 and 66 respectively) and State aids (Articles 90 and 67). The report notes all the decisions taken by the Commission in these fields.

Most of them stem from established Community practice already confirmed by rulings of the Court, and do not call for special comment.

This applies to the decisions which pass judgement on exclusive representation agreements which contain the absolute territorial protection clause, prohibiting "parallel" reexports by the concessionary to other Common Market countries.

Apart from the cases which go as far as a prohibition decision, there are a large number which are settled informally, by the contracting parties agreeing to amend their agreements in such a way as to eliminate the offending clauses.

It is now fully established that a buyer must be in a position to cover his requirements from any of the Common Market countries, even if his establishment is in the area of one particular national representative or concessionary. In this the Commission's intention is to keep open the channels of intra-community trade. To this end it has renewed for 10 years its regulation 67/67 on exclusive representation agreements which expired at the end of 1972.

The main interest of the Commission report, however, is primarily the year-by-year record of the development of the rules of competition as they are

progressively formulated and defined. The competition policy is concerned with real-life conditions and must conform to changes in their pattern. The year 1972 brought in new elements in several fields.

Dominant positions

Article 66 of the ECSC Treaty is expressly concerned with mergers and concentrations which are subject to preliminary authorisation by the Commission. The EEC Treaty is less explicit; and Article 86 only mentions and prohibits "abuses of a dominant position". In the Commission's view, there can be no doubt that an abuse of a dominant position exists as soon as the concentration has, for practical purposes, eliminated competition and put an end to the consumer's right to freedom in the choice of his supplier.

This opinion was confirmed by the Court of Justice in its judgement on the appeal by Continental Can against a decision by the Commission relating to the abuse of a dominant position. The Commission had taken the view that because of the elimination of competition in the market concerned, an abuse of a dominant position was constituted by the takeover by the dominant German company Schmalbach (controlled by Continental Can) of a dominant Netherlands company (Thomassen-Verblifa) in the metal packaging industry. The Court did not accept the facts put forward by the Commission to prove the absence of competition in the metal packaging market, and accordingly reversed the Commission's decision. It nevertheless confirmed the Commission view on the fundamental issue. This was that a dominant position becomes in itself excessive, and subject to condemnation, from the moment when the concentration reaches a point at which the only surviving firms are dependent on the dominant undertaking. The Court ruled that the proof of abuse of a dominant position must be established in the light of the objectives of the Treaty, which require that competition should not be falsified or eliminated. It also ruled that a practice which is forbidden to an inter-company agreement (by Article 85) cannot be made lawful by virtue of the sole fact that it was done through a merger.

If therefore the Commission can establish clearly in a well-defined market that competitive products are lacking (including of course substitution products and products imported from outside the Community) it will not be without a case against a merger or concentration, the powers of which are deemed to be excessive.

State aids

In the first report on competition policy the Commission stated its general interpretation of the Treaty provisions regarding State aids and the direction it intends to give to their enforcement. It demonstrated that there is no contradiction between the competition policy on the one hand and the various structural policies -- industrial, regional or social -- in which the aid provisions are aimed at least as much to guarantee better order in the structural development of the Community as to build up an effective competition.

On the other hand, the Commission takes an adverse view of aid which is not based and angled on structural or regional adaptations which are really necessary. It is continuing its work on harmonising the aids given, bringing them to a level consistent with the character and dimensions of the problems it is sought to resolve and to promote a common method of aid evaluation.

In the central industrial regions the regional aid is subject to a ceiling. For sector aids the Commission has introduced Community disciplines to which the interventions must conform. These have been applied to textiles and ship-building, and aircraft construction is now concerned with them.

In conclusion, the progress which has been secured in relation to regional and sector aids has led the Commission on to consideration of State interventions which take other forms, such as general aids and temporary participation in the capital of firms.

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