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REPORT

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposed Commission amendments to Regulation 67/67

Rapporteur: Mr P. BEAZLEY

On 13 December 1982 a Motion for a Resolution (Doc. 1-971/82) was referred to the Committee on Economic and Monetary Affairs as the Committee responsible. On the 11 April 1983 it was referred to the Committee on the Environment, Public Health and Consumer Protection, and on 16 May 1983 to the Legal Affairs Committee for their opinions.

On 25 January 1983, the Committee on Economic and Monetary Affairs appointed Mr Beazley as rapporteur.

The Committee considered the draft report at its meetings on 27-28 April, 25-26 May 1983 and adopted it on the latter date by a vote of 15 in favour to 2 against with 4 abstentions.

Participated in the vote:

Mr MOREAU (Chairman), Mr BEAZLEY (rapporteur), Mr BOCKLET (replacing Mr Franz according to Rule 93.2 of the Rules of Procedure), Mr BONACCINI, Mr DELOROZOY, Mrs DESOUCHES, Mr de FERRANTI, Mr FRIEDRICH, Mr FRUH (replacing Mr von Bismarck according to Rule 93.2 of the Rules of Procedure), Mr GAUTIER (deputizing for Mr. Schinzel), Mr HEINEMANN, Mr HERMAN, Mr LEONARDI, Mr MULLER-HERMAN (deputizing for Mr Beumer), Mr NEWTON DUNN (replacing Mr. Hopper according to Rule 93.2 of the Rules of Procedure), Mr PAPANTONIOU, Mr ROGALLA (deputizing for Mr Wagner), Mr von ROMPUY, Mr SCHNITKER, Mr WELSH, Mr von WOGAU

The opinion of the Committee on the Environment, Public Health and Consumer Protection is attached

The opinion of the Legal Affairs Committee will be given verbally.

The report was submitted on 26 May 1983.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

on the proposed Commission amendments to Regulation 67/67

The European Parliament :

- A. Bearing in mind the Commission proposals to amend Regulation 67/67 through separate new block exemption regulations for exclusive purchasing agreements and exclusive distribution agreements;
- B. bearing in mind its past reports on Competition policy, and in particular its reports on the Commission's 10th Report and 11th Report on Competition policy;
- C. having regard to the motion for a resolution (Doc. 1-971/82);
- D. having regard to the report from its Committee on Economic and Monetary Affairs, and to the opinions from the Committees on Environment, Public Health and Consumer Protection, and on Legal Affairs (Doc. 1-357/83);

Consultation of the Parliament on Competition policy issues

- 1. Emphasizes the need for the Parliament to be consulted on competition policy questions, and in particular on draft regulations prepared under the delegated powers granted by the Council to the Commission, in a far more systematic way than in the past, since these often raise issues of greater political importance than ones on which Parliament is formally consulted.
- 2. Believes that the revision of Regulation 67/67 represents such an issue since it is likely to lead to a more restrictive regime for exclusive purchasing and selective distribution agreements, with potentially major consequences for commercial practice in the various Member States; considers, therefore, that Parliament should have been consulted, if only on an informal basis at the very outset.

3. Regrets that the whole process of revising Regulation 67/67 has been so unsatisfactory and that in particular:
- the reasons for so drastically revising the existing Regulation 67/67 have not been stated with sufficient clarity by the Commission
 - the process of revision has taken so long - and created so much uncertainty
 - there have been so many radical changes from one draft to the next
4. Believes that it would have been far better for the Commission to have first issued a discussion paper in which it would have outlined its experience with the original Regulation 67/67, the relevant decisions of the Court of Justice, the need for reform, and the Commission's consequent objectives in this respect.
5. Recalls, its previously expressed concern⁽¹⁾ that the result of too many detailed provisions in the new drafts might be to increase the number of necessary notifications to a degree that might partially undercut the value of the block exemptions.
6. Believes that block exemption regulations should be both clear and yet sufficiently flexible if they are to result in the more efficient conduct of Community policy.

Further believes that one way to have ensured this would have been to have fewer detailed provisions but to have made greater use of the possibility of withdrawing the benefits of the block exemption in the case of abuse.

(1) In point 14 of its adopted resolution on the 11th Competition policy Report (OJ) on the basis of a report by Mr. Papantoniou (Doc. 1-845/82)

7. Underlines, therefore, the importance of introducing satisfactory expedited procedures, so that individual exemptions can more rapidly be granted, and so that the block exemptions themselves need be less detailed.

Suggests that such expedited procedures might consist of publication of a proposed agreement in the Official journal, granting 60 days for comments from interested parties, including the Commission, followed by automatic approval where no objections were forthcoming.

Draft regulation on exclusive distribution

8. Welcomes certain key changes that have been made from earlier drafts of the Commission proposals on exclusive distribution, such as the deletion of the unduly restrictive 3 year clause but considers that the text still needs major improvement and clarification in several places.
9. Believes, in particular, that Article 3 (b) concerning non-reciprocal agreements between competing manufacturers still poses considerable problems, and that for instance, it will cause considerable uncertainty on the borderline as to what are and what are not "similar" goods.
10. Also expresses its concern about the likely, and too sweeping effects, of the combination of Articles 3 (a) and (b), Article 4 and Article 5. Fears that these could prove very cumbersome in practice. Points out that Article 4 (3), for instance, will complicate any assessment of whether the Regulation is applicable or not.

Draft regulation on exclusive purchasing : General provisions

11. Supports the general provisions put forward by the Commission, though with certain reservations (such as on the impacts of Articles 4 and 5), similar to those expressed above on exclusive distribution.

12. Recognises that brewery and filling station agreements pose particular problems which make them separate cases of agreement but considers that the relationship between Titles I and IV and II and III is unsatisfactory.
13. Proposes that the Commission withdraws Article 15(2) of its text of March 1983.¹

Title II (Brewery Agreements)

14. Recognizes that the multiplication of brewery agreements could pose a threat to competition when seen as a network, and that, in particular, the existence of a full tie between brewer and tenant could inhibit access to national markets by brewers in third countries, and by suppliers of other beverages including brandy, other spirits, non alcoholic beverages and food.

Regrets, however, that the Commission has never clearly laid down what it considers to be the central principle involved, and, if this is access to markets, the extent to which the continued existence of the full tie is in fact undermining such access.
15. Believes, therefore, that the Commission's proposals have been put forward too much in isolation, and with insufficient explanation.
16. Considers that this is an area in which national practices differ and the market is highly segmented as a result of deep rooted tradition and prejudice. Accordingly, the Commission is asked to produce a document itemising the distortions caused to competition in this sector and explaining the effect of its proposed legislation.
17. Supports the Commission's endeavour to improve competition in the market for beer and other drinks.

¹ IV-61-83

18. Acknowledges that the beer drinker is entitled to the widest possible range of choice and, therefore, that the preservation of local and traditional beers is an important consumer interest.
19. Recommends therefore that:
- (a) the definition of special beers in Article 7(2) should be expanded to include locally brewed beers of a type that is traditionally available in the region, in this context locally to mean within a 15 mile radius.
 - (b) the limitation of special beers to "bottles, cans and small packages" in Article 7(1) (a) be dropped.
 - (c) tenancy agreements include a tolerance clause permitting the tied tenants to buy up to 20% of his beer in the form of special beers as defined above.
 - (d) the discrimination between manufacturers and beer and independent drinks wholesalers be dropped.
 - (e) the provisions of title I be applied to brewery agreements, thus permitting a five year tie for a full range of products and services. This would be subject to the tolerance clause (see C above) and to appropriate safeguards for tenants after the expiry of the five year period."

Title III Filling station agreements

20. Considers that the Commission's proposals for a separate title dealing with filling station agreements have not been accompanied by adequate analysis of the current state of competition in the sector, and of exactly why separate provisions are needed.

Notes that the Commission has itself admitted that there have been only a small number of problem cases.

21. Notes that the different Community countries have adopted very different positions on the issues involved and have different situations, such as on the length and scope of permitted ties, the role of the state, and other factors.

Requests a Commission study on the extent to which competition in this sector could really be improved within the Community, for instance within the lubricants subsector and on the problems raised by these different national situations.

22. Supports, in principle, however, the latest proposals being put forward by the Commission, whereby an exclusive purchasing obligation lasting for 10 years would normally be limited to motor fuels only, but would be capable of extension to lubricants when the supplier has granted specific financial or economic advantages. Insists, however, on a clear definition of what is meant by the latter. Recognises, however, that some member countries have more pro-competitive regimes in this sector than others, and that this should be taken into careful account by the Commission.

23. Calls on the Commission to word Article 13 (3) of the proposal for a regulation as follows :

"The prohibitions laid down in Article 85 (1) shall not apply to agreements of the kind referred to in Articles 6 and 9 of this Regulation, which are in existence on 1 January 1984 and which are valid until after 31 December 1988, until such time as the agreement - calculated from the entry into force of the contract - exceeds the time limit laid down in Articles 6 (1) and 9 (1)."

Concluding comments

24. Understands the Commission's desire to ensure longer-term certainty by providing for 15 years duration of the block exemptions.

Suggests, therefore, that the new regulations be promulgated for a shorter initial period of time to see how they operate in practice.

25. Requests, moreover, if the Commission then wishes to make further major revisions that it first submit a background report on the workings of the new regulations and the problems that have arisen, in order that it can be debated by the Parliament and other interested parties.

Recognizes the Parliament's role in these matters can only at present be an informal one but insists, however, that any preliminary draft regulations be then automatically transmitted to the Parliament, giving it enough time for informal comment before publication in the Official Journal. Calls, finally, for transmission of any further drafts to the Parliament so that it can again comment when important material changes have been made.

26. Instructs its President to forward this resolution and the report of its Committee to the Commission.

EXPLANATORY STATEMENTIntroduction

1. As this report represents the first occasion on which Parliament has undertaken a detailed examination of a Regulation being proposed by the Commission's Directorate-General for Competition (DG IV) under the delegated powers conferred upon it, your rapporteur feels that it is appropriate to begin with a discussion of the principles involved in closer Parliament involvement in such matters in the future. The report continues by looking at the complicated background to the proposed revisions of Regulation 67/67. The report examines the issues posed by the draft proposals on exclusive distribution. It then looks at more detail at the Commission's proposals concerning exclusive purchasing, and at the specific proposals concerning filling station and brewery agreements. In the latter context he suggests that a wider approach to problems of competition in the Community beer sector needs to be formulated by the Commission.

The issues posed by closer Parliament involvement
in Commission competition policy proposals

2. Competition policy is one of the areas where the Commission's powers are subject to least restriction. Besides the broad powers given the Commission by Council Regulation 17 to implement Articles 85 and 86 of the Treaty, the Commission has also been delegated extensive powers to issue regulations in particular fields. Regulation 67/67, for instance, whose revision is now in question, was issued by the Commission acting under Council Regulation 19/65, which authorized the Commission to issue group exemptions for certain bilateral exclusive distribution agreements, and for bilateral agreements concerning the acquisition and use of industrial property rights.

The Commission is thus given considerable latitude to take decisions which are binding in their entirety and directly applicable in all member States, without having to seek the formal approval of the Council, with the role of the member States being restricted to being consulted (through the Advisory Committee on Restrictive Practices and Monopolies), and without formal consultation of the Parliament.

3. Your rapporteur would like to underline a number of points in this connection.

Firstly it should be strongly welcomed that the Commission does have considerable powers in this field, and that, for once, it can take decisions itself without leaving the last word to the Council. It is also highly understandable that the Commission should not wish to see its freedom to manoeuvre restricted any more than it is at present.

4. Nevertheless, in recent years, the Commission has put forward a number of proposals that have proved to be extremely controversial, such as the proposed block exemptions on patent licensing, motor vehicle distribution and servicing agreements and its proposals on exclusive purchasing and exclusive distribution agreements which are meant to replace the existing Regulation 67/67. Provisions such as those in the preliminary draft regulation on motor distribution which would open up the scope for parallel imports when there are price differences for the same make of more than 12% within the Community, and the provisions to loosen the tie on beer in the proposed revised Regulation 67/67, are matters of intense public interest which are not narrowly technical in scope.
5. It surely follows then that there should be a public debate on these issues. And yet the individual comments that are submitted to the Commission are not made publicly available (and not even summarized in the Commission's Annual Reports on Competition Policy), and the discussions within the Advisory Committee are kept confidential.
6. Even the argument that the current state of affairs expedites Commission decisions does not stand up to examination. With the exception of the

revised block exemption for specialisation agreements the various Commission proposals for block exemptions which have been submitted in recent years have not yet been adopted, and the proposals to amend Regulation 67/67, in particular, have had to go through numerous drafts, and have been under consideration for around 6 years.

7. The Commission seems to be beginning to recognize that the political support of the Parliament could be useful, and on a couple of occasions until now (its proposal on the transparency of financial relations, and that on motor vehicle distribution) has sent its preliminary texts on an informal basis to Parliament's Committee on Economic and Monetary Affairs. But, as pointed out in paragraph 21 of its Resolution on the 11th Report on Competition Policy Parliament has regretted the inconsistency of the Commission in submitting certain proposals but not others.

8. So without entering a discussion on whether more formal powers should eventually be sought by the Parliament in this sphere your rapporteur wishes to emphasize the importance of the Parliament being consulted on at least an informal basis in a far more systematic way than in the past. As a result of its debates Parliament may not always support all the Commission's proposals but its support, once achieved, will lend greater weight to Commission initiatives on controversial questions.

Regulation 67/67 and the Commission's proposals to amend it

As mentioned above, Resolution 67/67 ⁽¹⁾ was drawn up by the Commission acting under the delegated powers given to it under Council Regulation 19/65. Regulation 67/67 deals with the application of Article 85 - 3 of the Treaty to certain categories of exclusive dealing agreements. It deals with both exclusive distribution and exclusive purchasing agreements, although it covers the former more explicitly. It sets down the conditions under which such agreements can be granted a block exemption from the application of Article 85 of the Treaty, outlining, for instance, acceptable and unacceptable restrictions on the parties and conditions under which the group exemption can be revoked in individual cases.

Regulation 67/67 has been of great importance in that it covers a field in which the Commission had previously been inundated with requests for individual exemptions. By accepting that exclusive dealing agreements meeting certain conditions have public policy advantages that outweigh any restrictions of competition that are involved, Regulation 67/67 has provided for greater certainty for enterprises, and has resulted in a reduced work load for the Commission.

Regulation 67/67 had an original duration of 5 years, but it was extended for a further 10 years in 1972.

-]. Some years before its renewal was strictly necessary, the Commission, citing its experience in operating the Regulation, and also the growing jurisprudence of the European Court of Justice, began to put forward proposals, not merely for its renewal in terms of time, but also for its extensive revision. A first such draft was put forward in early 1978 ⁽²⁾.

(1) Published in O.J. 849/67

(2) O.J. C 31.2.78

Among the major changes proposed were the deletion of existing Article 1 (2) which excluded agreements with purely domestic effects within the Member States from the scope of the block exemption, and an extension of the provision dealing with exclusive purchasing. It would also have excluded non-reciprocal agreements between competing manufacturers from the benefits of the block exemption (Resolution 67/67 only excludes reciprocal agreements, where the danger of market sharing is more obvious). Finally, among the other more controversial proposed changes were the exclusion of the availability of the exemption where the population of the territory covered by the contracts exceeded 100 million, or where the goods sold by a manufacturer under exclusive purchasing agreements represented, in a substantial part of the Common Market, more than 15% of such goods or similar goods.

11. The Commission's proposals were extremely controversial and have now gone through a number of new drafts. On July 10, 1982 a new text was again published in the Official Journal ⁽¹⁾, including separate proposals for exclusive distribution and for exclusive purchasing. A further text was circulated in the autumn before the meeting with the Advisory Committee, at which the Commission's proposal met a hostile reception from the representatives of certain Member States. As a result of the volume of comments received it was not possible for the Commission to produce a new version of Resolution 67/67 before it expired at the end of 1982, and it was necessary to prolong the existing Resolution for 6 months. A further draft was circulated by the Commission in February 1983, and it is most specifically this text which has been the subject of comments from your rapporteur.
12. Nevertheless, before his report was discussed in Committee, the Commission put forward yet further modifications to its proposals, with a view to a further informal discussion in the Advisory Committee. While restricted essentially to Titles II and III of the exclusive purchasing regulation, the changes that were proposed were nevertheless important ones.

(1) O.J. C 172/12

general comments

13. Certain initial comments must be made. Firstly, the whole process of revision has taken an extremely long time.

Secondly, the target has been a rapidly moving one. Both scope and content of the Commission's proposals have changed considerably from draft to draft. The Commission started off by covering exclusive purchasing and exclusive distribution within the same revised text, as in the original 67/67, and subsequently these were divided into two separate regulations. Separate titles were also added to the draft regulation on exclusive purchasing to deal with the specific cases of brewery and filling station agreements.

14. Many changes have also been made in the content. At one stage, for instance, there was a three year clause in the draft regulation on exclusive distribution, and then it was deleted. Similarly, at one stage, the title on filling station agreements permitted lubricants to be tied, and later they were excluded. At one stage the beer tie in the section on brewery agreements was limited to draught beers, and the concept of special beers was deleted; later the reference to draught beer was removed, and the concept of special beers reintroduced, and the idea of giving separate treatment to smaller and medium-small brewers was also dropped. These are a few, and very selective examples of the very many changes that have been made, and which have rendered it so difficult to get an idea of the final form that any revision is likely to take. The fact that the Commission has recently proposed further major changes to the Titles on brewery and filling station agreements strongly reinforces this point.
15. Thirdly, and clearly related to the above two points, the Commission has been insufficiently explicit as to what exactly it has been trying to achieve. Rather than issue successive drafts, and then have them shot down it would surely have been far better for the Commission to have first issued a discussion paper in which it would have outlined its experience with the original 67/67, the relevant decisions of the Court, and the Commission's consequent objectives for reform.

16. A further important question is whether the much more detailed nature of the new drafts replacing regulation 67/67 is not likely to lead to more individual notifications than is presently the case. If this is true, it would at least partially undercut the value of the block exemption, create less certainty for enterprises, and more work for the Commission.
17. Your rapporteur also notes that several submissions have been made to the Commission suggesting that the new texts contain less detailed provisions, but that greater use should be made of the possibility of withdrawing the benefits of the block exemption in the case of abuse. Your rapporteur sympathizes with this suggestion, and believes that it could have ensured that special situations in particular markets or in particular industries could have been taken account of by the Commission, but without the block exemptions themselves having to cover too many different eventualities.
18. One final general point that your rapporteur would make concerns expedited procedures.

At the very least the Commission will have to speed up its handling of individual cases if the block exemption is adopted in its present form. Your rapporteur notes that the problem of expedited procedures has been raised on several occasions by the Parliament. The Commission has got to come more effectively to grips with this problem, and it should spell out what sort of expedited procedures it is prepared to consider, and what sort of criteria would be used in judging individual exemptions.

Your rapporteur would suggest expedited procedures on the following lines:

- Publication of a proposed agreement in the Official Journal, followed by 60 days for comments from interested parties including the Commission, followed by automatic approval where no objections were forthcoming.

Draft regulation on exclusive distribution

19. This has been less controversial than the draft resolution on exclusive purchasing. Nevertheless certain of its proposed provisions have been the subject of many adverse comments such as Article 3(b), which lays down that the block exemption would not apply in the case of non-reciprocal agreements between manufactures of identical or similar goods, unless at least one of them has a total annual turnover of no more than 100 million ECU.

20. Your rapporteur points out that Article 3(b) could have considerable practical importance in such fields as pharmaceuticals or alcohol spirits distribution, where it may often be the sales force of what the Commission would define as a competing manufacturer which is in the best position to distribute such products, and to permit the penetration of a product into a new market, thus enhancing rather than reducing competition.

He would point out additionally that interpretation of the concept of "similar" goods could pose considerable difficulties. Are cognac and whisky similar? Where can the dividing line be drawn?

21. A related factor giving rise to concern is what would seem to be the much too sweeping combined effects of Articles 3(a) and (b), Article 4 and Article 5 of the draft resolution. Not only could these greatly increase the work load of the Commission, but they could also prove very cumbersome to implement. To give just one example Article 4-3 could pose considerable problems of interpretation.

Draft regulation on exclusive purchasing

22. Your rapporteur will not make any specific comments on the general provisions of the Commission's proposed draft regulation on exclusive purchasing, except to point out that some of the general reservations that he expressed above concerning exclusive distribution also apply to the draft on exclusive purchasing.
23. One important point of principle, however, is whether the Commission should have attempted to draw up separate rules for brewery and filling station agreements as in the present Titles II and III of the draft regulation.
24. As a general rule your rapporteur believes that it is simpler and more flexible to make regulations on such matters as block exemptions in terms generally applicable to all sectors, and with speeded-up procedures to deal with special situations or complaints.
25. Nevertheless there may be certain circumstances when special provisions for particular sectors may be justified.

On the balance your rapporteur feels that the case for special provisions for brewery agreements is probably well-founded from the Community point of view. His more detailed views on this subject, however, are explained below.

He is less convinced, however, as regards filling station agreements. Again his views are outlined below.

26. Nevertheless your rapporteur does feel that the Commission should have done a much better job in explaining why special provisions for these two sectors were necessary. Insufficient guidance is given in the recitals to the Commission's drafts. The background work that has been done by the Commission is rather scattered and no concise summary of the problems involved is available. The Commission has never properly explained why its first drafts revising Regulation 67/67 did not include special provisions for these sectors (although the Commission says in its answer in OJ C93/23 of 7.4.83 to written question No. 1764/82 that "its findings as to the state of competition on the Community market in beer are based mainly on the results of an inquiry into the industry which was carried out between 1969 and 1971 in the six old member states, and extended to Denmark, Ireland and the United Kingdom in 1974 and 1975") and why it subsequently felt impelled to introduce such provisions.

The Commission's reasons for singling out filling station agreements are even less transparent.

In future the Commission should put forward its case much more clearly.

Special provisions for brewery agreements (Title II)

27. These provisions are highly controversial. In essence and in their latest form, they would permit a tie between a brewer and a publican lasting up to 10 years to benefit from the block exemption, but only on condition that the tie was limited to beer, except for "special" beers. Only independent drinks wholesalers would be able to impose a wider tie.
28. Two related and fundamental questions must be raised with regard to these provisions. Should there be special provisions at all? What anti-competitive effects are there in the beer sector which need to be tackled at Community level?

29. The Commission argues that cases like the Concordia case mean that national brewery agreements must be covered in some way by a revised regulation 67/67. Given the need for some revision in this respect the Commission goes on to argue that while individual such agreements do not pose threats to competition in isolation the multiplication of brewery agreements could pose a threat to competition when seen as a network. In particular, the existence of a full tie could inhibit access to national markets by brewers in third countries. While it would be unrealistic, and too disruptive, to remove the central element of the tie, that dealing with draught beer - some loosening of the tie with regard to special beers, wine, spirits, soft drinks and other products - would be desirable, and hence the special provisions in Title II.

30. Your rapporteur has several observations in this regard. Firstly the Commission has failed to make sufficiently clear the principle under which it is acting. Presumably it is the point about access to markets which is decisive. But nowhere is this explicitly stated by the Commission.⁽¹⁾ Furthermore, if this is the key principle involved, why does the Commission not discuss in some detail the impacts of a tie limited only to draught beer, and why it feels that the benefits to the consumer of leaving that part of the tie intact outweigh any anti-competitive impacts that it may have. If the Commission is simply moved by political realism in leaving this part of the tie intact does this not undercut its own principle?

31. Secondly, if access to markets is the key principle involved, what evidence has the Commission accumulated that the continued existence of the full tie is seriously undermining such access?

32. The Community market for beer is highly segmented. To a large extent, and one which is very difficult to calculate, this is due to differences in national taste. Nevertheless there are other factors, such as varying national legislation and customs which encourage segmentation of the market more than would otherwise be the case. The existing system of brewery agreements, notably in the United Kingdom, is one such case. Another is the German Reinheitsgebot, or pure Beer law. Yet another are Danish packaging laws. These all have the effect of making it more difficult for beers from other Community countries to penetrate individual national markets. If access to markets is a vital principle then the whole range of factors which affect it should be examined by the Commission.

(1) The Commission's case as outlined above was obtained by your rapporteur through informal contacts with the Commission. Nowhere is it clearly expressed in writing.

33. Your rapporteur accepts that the existing tied-house system in the United Kingdom may well have certain anti-competitive effects. The Monopolies Commission report of April 1969⁽¹⁾ for instance did indeed conclude that the system had a number of disadvantages though its suggested solution was not that now advocated by the Commission but instead a relaxation of U.K. licensing laws.
34. Nevertheless the Commission's current proposal by establishing a special title dealing with brewery agreements without putting it into the broader context of distortions of competition in the Community brewery sector as a whole, would seem to be incomplete, and appear to unfairly single out one problem affecting one country in particular.
35. Your rapporteur believes instead that the Commission should prepare a framework report on problems of competition in the beer sector, examining the full range of factors which might distort competition, and outlining Commission objectives and possible ways in which these objectives might be met. This is particularly important given the controversial and even emotive nature of this sector, and the inevitable and unfair charges that the Commission is trying to promote "Eurobeer" and so on. It would be far better for the Commission to give its analysis and explain what it is trying to do. Specific proposals that might follow would then be less open to misinterpretation.
36. Your rapporteur feels then that there may well be a case for special provisions but that the Commission's proposals have been put forward too much in isolation, and with insufficient explanation. Nevertheless he would like to make a few additional comments on them on their merits.
37. Firstly, the comments made above (in paragraphs 13 and 14) about a rapidly moving target have been particularly true in the case of the brewery agreements provisions. About the only firm decision has been that the basic beer tie should continue to enjoy automatic exemption. The Commission has constantly changed its mind about what exceptions should be allowed as regards special beers, about whether there should be special regimes for smaller brewers or for independent wholesalers, or concerning loan agreements as opposed to

(1) A report on the supply of beer - 24 April 1969

tenancies, and whether there should be a qualified choice between the special provisions and the general provisions of the regulation. After several years of consultations, and after numerous drafts, the Commission has remained uncertain on a number of key factors.

38. The main question that remains to be answered once the basic beer tie itself is exempted concerns the degree to which the exclusive purchasing obligation or "tie" for special beers, and for other drinks, food and services should be loosened.
39. Your rapporteur has studied a wide range of submissions on this point, in considerable measure from the United Kingdom which (with Germany, but to a lesser extent) seems to be the Community country most concerned by the proposals.
40. In general the brewers, both large and small, are opposed to the proposals. They disagree anyway with the idea of a separate title concerning brewery agreements, and argue that the proposals will have a number of adverse effects. If special beer, and other drinks and products other than beer could no longer be tied, brewers profits would be severely affected on the margin. Rents would have to be raised, some pubs would be placed under direct management, and in some cases pubs, particularly in remote rural areas, would have to close altogether. Furthermore loosening the brewer's control over the supply of amusement-with-prizes machines could even up possibilities for abuse by criminal elements. The overall effects of the proposal could also have adverse effects on employment.
41. The licensed victuallers on the other hand are generally in support of the Commission's proposals, and believe that there would be positive effects from their enactment. They reject the various arguments put forward by the brewers and believe that loosening the tie would lead to greater choice for consumers at more favourable prices. They do not believe that currently advantageous distribution arrangements would be completely undercut, and feel that the endangered rural pub argument is specious. They also feel that there are other means of controlling amusement machine abuses other than through the brewer's control.

Other organisations, such as other drinks companies, and certain consumer organisations, have also broadly supported the Commission's proposals or even claimed that they do not go far enough.

42. Your rapporteur is still not satisfied with the Commission's proposals in particular with the various ways in which the Commission has been proposing a partial liberalization of the tie even as regards beer. The Commission has proposed that dealers should have a certain freedom as regards so-called "special" or distinctive beers which are not manufactured or at least offered by the supplier. And yet, in the view of your rapporteur the Commission has failed to come up with a definition capable of standing up to the differing market circumstances in the different member states. The alternative of allowing the dealer the possibility of offering beers of other origins up to a certain but low percentage (eg. 5% or 10%) of his total beer sales avoids this problem of definition, but would appear to be extremely hard to implement in practice.
43. The Commission has also been uncertain as to whether to permit a more favourable regime for smaller brewers, whereby only they would be permitted to enforce a full tie. While understanding its motivation your rapporteur feels that on balance such a solution would be undesirable, in that it would at least partially undercut that increased access to markets that appears to be the main public policy purpose of loosening the full tie, and would also create unfair discrimination between firms just above and just below the dividing line.
44. On both the above issues your rapporteur would prefer not to see special exceptions written into Title II. He feels that the concept of special beers should be dropped and that there should be no special rules for smaller breweries. Similarly he is opposed to the idea of a special regime for independent drinks wholesalers which the Commission has been recently mooting. The reasons for such favourable treatment have not been clearly laid out. Your rapporteur is pleased, however, that the Commission has dropped the idea of distinguishing between tenancy and loan agreements, as the basis for whether a supplier could opt for either the general rules of Title I or the special provisions of Title II, or be restricted merely to the latter: Such a discrimination had been proposed by the Commission in its previous draft.

Special provisions for filling station agreements (Title III)

45. The Commission is also proposing a special set of provisions concerning exclusive purchasing agreements at filling stations. The case for such

special provisions has been even less well presented than those for beer, and to your rapporteur seem less convincing.

46. The problem is again that the Commission has not stated clearly what it is aiming at. Again, it should first have prepared a report outlining the current state of competition in this sector, the scope for increasing such competition at Community level, and the possible means of so doing.
47. In practice the chances of finding an acceptable compromise at Community level appear rather low. The different Community countries have adopted very different positions on the issues involved, and have quite different situations concerning the length and scope of permitted ties, the respective roles of the state, and so on. The United Kingdom, Ireland and Denmark have more pro-competitive regimes than the other member states and in the United Kingdom, for instance, the length of the permitted tie is only 5 years, and the tie is restricted essentially to motor fuels except in certain limited circumstances. In certain other countries ties are permitted for a full range of products, and for ten years or more.
48. The Commission's current proposals appear to put forward a compromise which will be welcome to few. While clearly aiming at Community rules aligned closer to the more pro-competitive regimes such as that in the United Kingdom, they nevertheless do not go as far as the current United Kingdom rules as contained in the so-called "undertakings". They would allow, for instance, a ten year rather than a five year tie for motor fuels and would permit oil companies to tie dealers for lubricants as well on a wider basis than under the 'undertakings'.
49. So uncertain has the Commission been as to whether its proposals are practicable that it has stated very recently that it is still prepared to consider renunciation of any block exemption for filling station agreements. This is an extraordinary admission by the Commission at such a late stage in the proceedings.
50. Your rapporteur feels that such a solution may well still be the most appropriate.

Nevertheless, if the Commission does go ahead with a compromise on the present lines it should at least take into account the situation of member states with their

own more pro-competitive regimes.

In addition, if the tie is to be extended to cover lubricants as well in cases where specific financial or economic advantages are granted by the supplier, (such as the construction of a lubricant bay), then the nature of these advantages must be very carefully spelled out by the Commission.

Finally, the Commission should make it clear that oil companies could be allowed to insist on dealers stocking a full range of their products on a non-exclusive basis.

Concluding comments

51. Your rapporteur believes that the replacements for Regulation 67/67 should be promulgated for a shorter period than the Commission's suggestion of 15 years. The original Regulation 67/67 was promulgated for an initial period of 5 years only, but then extended for another 10 years without modification.

Since there are many uncertainties about the effects of the proposed new regulations it would surely be better to follow this precedent and promulgate them for a shorter initial period of time to see how they operate in practice.

MOTION FOR A RESOLUTION Doc. 1-971/82

tabled by Mr Welsh, Mrs Nielsen, Mr Herman, Mr Leonardi, Mr Bonaccini, Mr Carossino, Mr Schinzel, Mrs Desouches, Mr Rogalla and Mr Deleau
pursuant to Rule 47 of the Rules of Procedure
on the proposed Commission amendment to Regulation 67/67

The European Parliament,

- A. Having regard to the Treaty of Rome and particularly Articles 85-87 thereof,
- B. Having regard to the 11th Report on Competition Policy (Doc. 1-86/82),
- C. Having regard to the Report by Mr Beazley on the 10th Report on Competition Policy (Doc. 1-689/81),
- D. Having regard to Regulation 67/67 of the EEC which exempts certain exclusive distribution and exclusive purchasing agreements,
- E. Noting that the Commission has published draft proposals to amend Regulation 67/67 from 1 January 1983,
- F. Aware that the draft proposals contain special provision regarding block exemption for exclusive purchasing agreements for beer and for motor fuel franchises,
- G. Aware that the Commission has published four sets of amendments to its original proposals and following a meeting of the Advisory Committee has decided to prolong the present Regulation until June 1983,
1. Considers that important political and economic issues are involved in the amendment to Regulation 67/67 and that Parliament should express its views on these matters;
2. Believes that Parliament's opinion would be of constructive assistance to the Commission in reconciling the different economic interests and considerations;
3. Instructs its relevant committee to prepare an opinion on the proposals to amend Regulation 67/67 for consideration by Parliament in plenary session.

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH, AND
CONSUMER PROTECTION

Letter from the Chairman of the Committee to Mr MOREAU,
Chairman of the Committee on Economic
and Monetary Affairs

Subject : proposed Commission amendments to Regulation 67/67 (Motion
for a Resolution tabled by Mr WELSH and others pursuant to
Rule 47 of the Rules of Procedure) (Doc. 1-971/82)

Luxembourg, 18 March 1983

Dear Mr Moreau,

At its meeting of 22 March 1983 the Committee on the Environment, Public Health and Consumer Protection considered the above motion for a resolution on the proposals from the Commission to the Council to amend Regulation 67/67/EEC.

This committee considers that the present exclusive purchasing agreements particularly with regard to breweries are contrary to the spirit of free trade upheld in the EEC Treaty. While this committee can accept the arguments in favour of maintaining the 'tie' system for natural (draught or bulk) beer it can see little justification for the extension of this exemption to wines, spirits, food, entertainment equipment and other articles according to the brewers' choice.

This committee therefore supports the Commission's proposals which should, if accepted by the Council, result in a freer choice for the consumer and in many cases lower retail prices.

Please consider this letter as the opinion of the Committee on the Environment, Public Health and Consumer Protection on the above-mentioned draft proposal.

Yours sincerely,

Kenneth COLLINS
Chairman

The following took part in the vote: Mr COLLINS, Chairman; Mr JOHNSON and Mrs WEBER, Vice-Chairman; Mr BOMBARD; Mrs DURY (deputising for Mrs PANTAZI); Mr FORTH; Mrs HOOPER; Mrs LENTZ-CORNETTE; Mr MUNTINGH; Mr PROTOPAPADAKIS (deputising for Mr DEL DUCA); Mrs SCHLEICHER; Mrs SEIBEL-EMMERLING and Mr VANDEMEULEBROUCKE.

