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Report

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

on the ~~Seventh~~ Report by the Commission of the European Communities on
competition policy (Doc. 101/78)

Rapporteur: Mr A. DAMSEAUX

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Having received from the Commission of the European Communities the Seventh Report on Competition Policy (published in conjunction with the 'Eleventh General Report on the activities of the Communities'), the European Parliament referred this report to the Committee on Economic and Monetary Affairs at the plenary sitting of 8 May 1978.

On 16 May 1978 the Committee on Economic and Monetary Affairs appointed Mr Damseaux rapporteur. It discussed this report at its meetings of 19 and 20 September 1978 and 25 and 26 September 1978.

At its meeting of 25 September 1978, the committee unanimously adopted the motion for a resolution.

Present: Mr Pisani, chairman; Mr Notenboom, vice-chairman; Mr Damseaux, rapporteur; Mr Ansquer, Lord Ardwick, Mrs Dahlerup, Mr Ellis, Mr Lange and Mr Müller-Hermann.

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A

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

MOTION FOR A RESOLUTION

on the Seventh Report of the Commission of the European Communities on competition policy

The European Parliament

- having regard to the Seventh Report of the Commission of the European Communities on competition policy (Doc.101 /78),
 - having regard to the report of the Committee on Economic and Monetary Affairs (Doc.334 /78),
1. Reaffirms that competition policy plays a fundamental part in the proper functioning of the market,
 2. Notes that in the present economic context, whose features include a low rate of growth, changing world economic trends and a need for structural change, the application of the rules of competition is difficult and all the more essential for a resurgence of protectionism is to be avoided;
 3. Emphasizes therefore, mainly with the Commission in mind, seeing that the latter holds extensive powers in this area, the need to pursue as effective, comprehensive and well-adjusted a policy of competition as possible;
 4. Considers that, to be comprehensive, competition policy should not be confined solely to the application - to which the Commission rightly devotes its efforts - of the rules of competition laid down in the Treaties, but should also comprise greater equalization of the conditions of competition as a whole;
 5. Looks forward, in view of the present lack of legal certainty in the matter, to the submission by the Commission, in the first half of 1979 at the latest, of its proposal for a regulation exempting certain categories of patent licences which, as the European Parliament has been assured, will not contain restrictive provisions likely to obstruct the transfer of technology within the Community, while affording every protection to small and medium-sized undertakings;

6. Asks the Commission that, in the forthcoming revised Regulation (EEC) No. 67/67 of 22 March 1967 on the application of Article 85(3) to certain categories of exclusive distribution agreements, it should bear in mind the wishes expressed by the European Parliament concerning the exclusion from block exemption solely of manufacturers who are actually in competition and concerning the territorial definition of the market;
7. Invites the Commission resolutely to pursue its work on the preparation of trademark legislation applicable throughout the Community;
8. Regrets that the Commission has still not submitted proposals for a new procedure which would promote the elimination of technical and administrative barriers to trade - a fundamental necessity if fair competition and equal chances for small and medium-sized undertakings are to be ensured, and calls on the Commission to submit to it proposals for a new procedure by 30 June 1979 at the latest;
9. Notes that insufficient tax harmonization encourages tax evasion and seriously impairs the equality of competition conditions; and therefore expects the Commission, and even more so the Council, to take resolute action in this area, particularly in the matter of transfer prices;
10. Asks the Commission to endeavour to draw practical conclusions from its annual analysis of developments in national competition policies by taking the necessary action to ensure that inconsistencies or loopholes in the control exercised in the individual Member States do not adversely affect trade and to implement the case law already established by the European Court of Justice;
11. Expects the Commission to ensure the strict application of the rules of competition to the air and sea transport sector and to coordinate its policies with regard to third countries;
12. Also expects the Commission to continue its work to ensure the application of competition rules in the finance sector; and requests that a progress report on this subject be included in the next report on competition policy;
13. Emphasized that greater coordination at Community level of sectoral and regional aids to employment is needed and stresses the Commission's

responsibility for ensuring that these aids are compatible and consistent with the objective of restructuring our economy and the need to maintain its competitiveness; calls upon the Commission to take special care to ensure that these aids are degressive and temporary;

14. Is of the opinion that, at this period of structural change, insufficient regulation of aids and inadequate prior and retrospective control of their actual destination may lead to serious distortions of competition; invites the Commission to make the necessary modifications in its services responsible for these affairs so they may cope with the growing number of cases with which they have to deal;
15. Expects the Commission to submit shortly the proposal for a directive, now in preparation, to introduce greater transparency in the financial relations between the States and the undertakings to which Article 90 of the EEC Treaty refers; is of the opinion that, while they should be enabled to fulfil their particular tasks efficiently, private and public undertakings should be placed on a footing of complete parity as regards conditions of competition, the efficiency of public undertakings being meanwhile ensured;
16. Regrets once again that, despite the urgent requests made by the European Parliament, the Council has still not adopted the regulation on the prior control of concentrations;
17. Recalls that multinational companies must pursue their activities within the framework of appropriate rules which strike a balance between the obligations that have to be imposed upon them and the need to avoid discrimination against them; expects the Commission to provide in the next report a more detailed account of its work in this area;
18. Notes the measures taken by the Commission and the work which it has been doing for one year now to take account of the special nature of small and medium-sized undertakings, whether in respect of agreements of minor importance, exclusive dealing agreements, patent licensing agreements or subcontracting agreements; reaffirms the need to promote the activities of small and medium-sized undertakings which make an essential contribution to the dynamism of the economy, to innovation and to the safeguarding of democracy; and invites the Commission to continue unceasingly its efforts;
19. Has noted with interest the findings and the Commission's conclusions in its investigations on price differences; calls on the Commission not to confine its activities to the publication of these investigations but to take the necessary steps to combat the causes of excessive and artificial price disparities, for competition policy is of value only if it contributes effectively to protecting the consumers' purchasing power;

20. Calls on both the Commission and the Council to override administrative compartmentalization or habitual procedures in order to give greater consistency to the various activities which should, directly or indirectly, contribute to the effective implementation of competition policy and to its credibility;
21. Warns the Commission that if the creation of 'crisis cartels' is countenanced, this may jeopardise the ultimate restoration of free competition;
22. Instructs its President to forward this resolution to the Council and Commission and to the Parliaments of the Member States.

EXPLANATORY STATEMENT

1. The difficult period of transition through which the economy of Europe is now passing renders pursuance of the Community competition policy a particularly delicate task. In such conditions, the temptation - both for countries and for individual enterprises - to resort to protectionism or preferential treatment is strong. Greater vigilance is therefore needed at this time. For, if the circumstances make the application of the rules of competition more difficult, they also make them more than ever necessary if our free market economy is to be maintained.

In considering the Seventh Report on competition policy, the Committee on Economic and Monetary Affairs remained faithful to the economic and dynamic approach which, for several years now, it has adopted in preference to a strictly legalistic treatment. It was in this spirit that Mr Cousté's report on the Sixth Report on competition policy had laid particular stress on the major economic functions which competition should perform: to regulate the market, further economic efficiency, and constitute an instrument of price control.

It would seem that today the economic conditions themselves dictate the need to focus the analysis of recent developments in competition policy within the Community on the actual manner in which the competition rules are put into effect, that is, on the effectiveness of control on their application, the extent of their field of application, the coherence of action taken, the state of progress with work in hand and means of speeding it up.

It would indeed be highly regrettable if the European Parliament were to relax its vigilance in the matter of competition, one of the areas in which the Commission possesses the most extensive powers and where, consequently, the European Parliament - especially in view of its approaching direct election - should exercise its control function most punctiliously.

2. In considering competition policy the European Parliament must steer between two reefs. Its examination should not be confined to a cursory exercise, but neither should it be made the occasion for an ideological questioning of the rules of competition as such, for, whether we like it or not, they are an integral part of the philosophy of the Treaties. Parliament's report on competition policy should, instead, be principally the occasion for assessing the successes and setbacks of competition policy during the year under examination and in relation to the preceding year; it should provide the opportunity for identifying any shortcomings and inadequacies and for suggesting areas for priority action and, if

necessary, the most appropriate means for achieving progress in those areas.

3. As will be seen in the course of the present report, the Seventh Report on competition policy meets some of the points raised in the European Parliament's report on the Sixth Report on competition policy; but on several other points Parliament's wishes have not yet been satisfied.

In the pages that follow, the equalization of competition conditions, the adjustment of competition rules and the general conduct of competition policy will be considered in turn from the standpoint of the application of the rules of competition as laid down in the Treaties.

I. EQUALIZATION OF COMPETITION CONDITIONS

4. Articles 85 and 86 of the Treaty, which are rightly accorded a pre-eminent place in competition policy, concern unlawful agreements and the abuse of dominant positions, that is, forms of conduct contrary to fair and proper competition. In terms of competition policy, the application of these provisions would be insufficient unless it was accompanied by thoroughgoing efforts to equalize the conditions of competition.

A. Patent licensing agreements

5. Industrial and commercial property matters are one area where the problem of equalizing competition conditions arises, and it is for the Commission to try to reconcile the aims of legislation on industrial and commercial property, on the one hand, with the provisions of Community law on competition, on the other. As Commissioner Vouel told the European Parliament¹, it is important 'to save the Common Market from an excess of private protectionism'. In December 1977 the Commission submitted to the Advisory Committee on Restrictive Practices and Dominant Positions a new version of its draft regulation on the application of Article 85(3) of the EEC Treaty to certain categories of patent licensing agreements.

The Committee on Economic and Monetary Affairs was anxious² that this draft regulation should not contain provisions so restrictive as to obstruct the transfer of technology. The committee was assured by the Commission

¹Oral question by Mr Van Aerssen, OJ Debates, No. 229, April 1978, p.92

²See the Cousté Report on the Sixth Report on competition policy (Doc. 347/77), resolution, point 6

that it would see to it that a free market in technology was established and would develop within the Community. As it now stands, the draft regulation contains provisions favouring small and medium-sized undertakings, which we shall examine later. In any event the committee expects of the Commission that it will produce a definitive version of the regulation by the first half of 1979 at the latest. The uncertainty inherent in the present situation is harmful for the Community's technological development, since firms are reluctant to enter into licensing agreements. The new text must contain all possible measures to protect small and medium-sized undertakings.

B. Exclusive dealing agreements

6. The draft regulation amending Regulation 67/67 has just been published¹ in order to enable interested parties to make their views known. According to the draft, the new Article 3(a) would in future exclude from block exemption agreements between manufacturers of competing products whether the obligations are on one side only or, as under the present text, are mutual². The point to be made here is that the aim of such agreements when they are concluded between potential, rather than actual, competitors is often to complete the range of goods sold by a producer.

The new Article 3(c) would provide that the population of the territory covered by an exclusive dealing agreement may not as a rule have a population in excess of 100,000,000. There is a danger, however, that, formulated in these terms, the restriction does not take sufficient account of highly specialized products for which a market of 100,000,000 population may prove insufficiently profitable for a concessionary.

It would appear, however, that the Commission intends to put before the Consultative Committee some amendments concerning this matter. For instance, the exclusion from the block exemption would be confined to those cases where the manufacturers concerned are already in competition in respect of the particular products; furthermore the 100,000,000 head of population criterion would be abandoned.

C. Approximation of legislation

The approximation of legislation can make a very significant contribution to the equalization of competition conditions, for the following reasons:

¹OJ No. C 31, 7.2.1978

²Seventh Report on competition policy, Nos 37 et seq.

(a) Community trademark law

7. The Seventh Report on competition policy, like its predecessor, summarizes a number of Commission decisions¹ concerning the walling-off of markets by the use of trademarks. Following a memorandum submitted by the Commission in August 1976, the European Parliament asked for fresh initiatives in this area², because a system of trademark law applicable throughout the territory of the Community would help to promote the free movement of goods and services covered by these trademarks, as well as constituting a factor for the equalization of competition conditions.

The Seventh Report on competition policy makes no reference to this question, although it falls within the terms of reference of the Commission's department responsible for the approximation of legislation. In the Eleventh General Report on the activities of the European Communities in 1977, it is stated that the Commission put forward in 1977 a preliminary draft regulation under Article 235 of the EEC Treaty concerning this matter³. It is apparently being discussed by the Working Party on an EEC Trademark. The Committee on Economic and Monetary Affairs can only reiterate its hope that progress will be made there and will result in a draft regulation at an early date.

(b) Public contracts

8. The Seventh Report on competition policy is equally silent on the matter of the approximation of legislation on public supply contracts. Reference to the subject must be sought in the Eleventh General Report on the activities of the European Communities, which indicates little progress in this area. This is to be regretted, since inadequate approximation of legislation on public supply contracts not only hampers the Community's industrial development, but represents an obstacle to the equalization of competition conditions. The Commission should press ahead with its work in this matter so that further progress may be achieved; the question of public procurement would also seem to merit, in view of its importance, special attention from the Commission⁴.

¹Seventh Report on competition policy, Nos 134 to 143

²Doc. 347/77, resolution, point 8

³Eleventh General Report, No. 135, p.81

⁴See the Charpentier-Clarke Report (Doc. SEC(74)4272/fin.)

(c) State monopolies of a commercial character

9. The Commission has pursued its activities in this domain:

- on the question of the French alcohol monopoly, the French Government has complied with the Commission's reasoned opinion;
- as regards the French and Italian monopolies in manufactured tobacco and the Italian monopoly in matches, the Commission is continuing its endeavours;
- as regards the French petroleum monopoly, the Commission hopes that a solution will be found before the end of 1978.

(d) Elimination of technical and administrative barriers to trade

10. In its report on the Sixth Report on competition policy¹, the European Parliament regretted that insufficient progress had been made to eliminate technical and administrative barriers to trade which were seriously impairing conditions of competition. Now, once again, it has to express its disappointment that the Commission has so far failed to submit to Parliament proposals for a new procedure, which the Committee on Economic and Monetary Affairs has repeatedly urged. In order to put an end to this situation, which is particularly disadvantageous to small and medium-sized undertakings, Parliament should invite the Commission to submit proposals for a new procedure by 30 June 1979 at the latest.

(e) Tax harmonization

11. Equalization of the conditions of competition also calls for the harmonization of taxes, in the absence of which distortions and discriminations will persist. It would be useful, in this connection, to have available a schedule of the main sources of distortion of fiscal origin which affect competition.

The Commission has been submitting a number of proposals for directives concerning tax harmonization; the Committee on Economic and Monetary Affairs can only encourage the Commission in its efforts in this direction and call on the Council to expedite its work; for the lack of tax harmonization favours tax evasion and is seriously damaging to the cause of equalization of competition conditions. The Commission should in particular see to it that action is taken on the report on the tax arrangements applying to holding companies² which it published in 1973.

¹Doc. 347/77, resolution, point 9

²Doc. COM(73) 1008/final

(f) Main developments in national competition policies

12. The brief survey of the main developments in national competition policies, for which the European Parliament had expressly asked, contains information that is useful in that it brings out the fact that national laws are still applied within the Community. The contradictions and the inadequacies of these several legislations constitute so many obstacles to the equalization of competition conditions in the Community.

In the Seventh Report the Commission noted the tendency of the Member States to strengthen their means of implementing competition policy during 1977. The Commission points out, however, that Italy still has no legislation that makes possible an effective control of competition. The Seventh Report also draws attention to the urgent need for close cooperation between the Commission and the Member States to achieve a uniform approach when the effects of the restrictive practices of one or more firms are felt in several Member States¹.

As the European Parliament had pointed out in its report on the Sixth Report on competition policy², it is important that the Commission should do more than confine itself to registering the developments and shortcomings in national policies. It should, without endeavouring to achieve complete harmonization, which would not be desirable, do everything in its power to ensure at least that the legislative lacunae and divergencies do not jeopardize trade and do not adversely affect competition at Community level. The Commission has indicated to the Committee on Economic and Monetary Affairs that it does not reject the possibility of drawing up at a later stage a regulation under Article 87 which would delineate as precisely as possible the respective powers of the Commission and of the national authorities.

D. Extension of the scope of competition policy

Another source of distortion of competition lies in the fact that competition rules embodied in the Treaties are not applied in certain areas where they ought to be applied.

(a) Application of competition rules under the Treaties to air and sea transport

13. The Commission has repeatedly and rightly made the point that competition policy can never be more than a complementary policy.

¹Seventh Report on competition policy, No. 75

²Doc. 347/77, resolution, point 12

However, without wishing to extend inordinately the scope of application of competition policy, it must be said that entire areas continue to escape its purview. This is particularly true of the application of the Treaty competition rules to air and sea transport. Yet four years have already elapsed since the judgment in Case 67/73 in which the European Court of Justice ruled that air and sea transport operations are subject to the general provisions of the Treaty on competition.

Little progress was made during 1977 on drawing up a regulation on the application of Articles 85 and 86 of the Treaty to air transport. The problem, on the other hand, has become acute, owing to the recent deterioration¹ of competition conditions in air transport, especially across the Atlantic. The IATA restrictive practices and the high cost of passenger flights between different Community Member States, the still unresolved problem of relations between charter and scheduled flights, the question of general consumer information on air-transport pricing - all these should spur the Commission to more vigorous efforts, despite the resistance and the extensive powers of the Member States in this area.

In response to concern over the above issues, the Commission has indicated that it intends to submit to the Council before the end of the year two proposals for regulations concerning the application of competition rules both to air and to sea transport. According to information provided by the Commission, undertakings operating in these sectors would be subject to the prohibitions on restrictive agreements and abuse of dominant positions contained in Articles 85 and 86, even though acting within the framework of intergovernmental agreements. The Commission is thought to envisage the exemption of certain categories of agreements, such as those which are essential to the rational operation of scheduled services, for instance agreements to coordinate timetables and carrying capacity.

As regards sea transport, the proposed regulation would also include an exemption in respect of agreements concluded under the aegis of Shipping Conferences for the purpose of ensuring the proper operation of regular sailings.

The Committee on Economic and Monetary Affairs therefore² looks forward to the Commission's proposals and hopes to be consulted in due course on these extremely important subjects.

¹See oral question by Mr Nyborg concerning conditions of competition in the aviation sector, OJ Debates No. 225, 19.1.1978, pp.191-192

²Doc. 347/77, resolution, points 3 and 4

(b) Application of competition rules to finance

14. Despite the European Parliament's request¹, the Seventh Report on competition policy does not indicate any initiative on the part of the Commission in this area. Nevertheless, the Commission makes it clear that it has not been idle in this respect and that its departments have examined in the course of 1977 certain practices of banking establishments, and more particularly restrictions on access to the British foreign-exchange market. It would nevertheless be desirable for the next report on competition to review developments in this field and provide the European Parliament with all the necessary information.

In its Second Report on competition policy² the Commission had asserted the principle that the rules of competition were applicable in this sector. While the financial sector, where monetary and financial policies interact, where there is intervention by central banks, where national control authorities exercise their surveillance and where the exigencies of exchange control must apply, is undoubtedly a special case, this should not prevent the Commission from pursuing a more vigorous action in this area.

II. THE ADJUSTMENT OF COMPETITION RULES

15. The rules of competition cannot be judged, and are never applied, in a static economic context. The economic situation is constantly changing and particularly so in the present period of recession, of restructuring and of rethinking of the world economic order. This means that competition rules cannot be applied mechanically without taking into account the current economic conditions, the situation in individual industries and regions, and the nature, size and relative strengths of the economic agents.

The writers of the Treaties were well aware of this, for after Articles 85, 86 and 87 of the EEC Treaty, which lay down the rules of fair competition, they drew up provisions to govern exceptions to these principles. First among them, is the system of State aids. Today, more than ever, it is important to ensure that competition policy adjusts as closely as possible to the economic situation, i.e. that, while making

¹Doc. 347/77, resolution, point 19

²Second Report on competition policy, No. 51, p. 58

allowance for specific, transient, economic conditions, it keeps in sight the principal objective which is to serve the Community interest.

A. State aids

16. A long chapter of the Seventh Report is devoted to State aids, for, as the report points out, it is in this area that 'competition policy has been subjected to the greatest pressures'¹. The Commission has, it is true, continued its activities of supervision and control, in accordance with the duty laid upon it by Articles 92 et. seq. of the Treaty, in the matter of sectoral aids (shipbuilding, textiles). But doubts arise as to the implications of the measures taken by the Commission (mainly, the system of advance notification) and the effectiveness of the retrospective control provided by this administrative machinery, for such aids cannot be regarded as compatible unless they actually do promote the attainment of the objective of restructuring the sector concerned.

It was stressed in the European Parliament's report on the Sixth Report on competition policy that competition could play an important role in redirecting the economy. It is in this sense that competition is a factor of economic efficiency.

(a) General considerations

17. The Committee on Economic and Monetary Affairs can only applaud the Commission's statement, in the introduction to the Seventh Report¹, that aids should be granted only where they are really necessary, that their amount should be proportionate to the difficulties of each national situation and that they should be accorded in such a manner that they do in fact contribute to and bring about rapidly the necessary changes.

For what must above all be avoided is escalating national aids and it is important to promote proper selectivity in State interventions. It need hardly be added that this principles will be all the better respected when the Member States agree to coordinate their sectoral policies. For the present, although cooperation between Member States has improved in respect of the sectors in a state of crisis (shipbuilding, metallurgy, textiles), this is not the case in the advanced-technology sectors, such as the data-processing or the aeronautics industry. The

¹Seventh Report, p. 11

Council's procrastination and hesitation in putting into effect a European policy in these areas is to be deeply regretted, for it is of critical importance to both the development and the competitiveness of these sectors. To achieve consistency in the granting of aids, whether sectoral or regional, the Commission should also ensure closer consultation between its departments responsible for competition and for industrial affairs as also the Directorate-General for Regional Policy.

(b) Sectoral aids

18. In respect of shipbuilding, the Commission has done its best to keep track of developments in the aid schemes operating in the various Member States¹. More particularly, on 8 November 1977 the Commission submitted to the Council a proposal for a fourth Directive, comprising, notably, an obligation to notify the Commission of investments which would result in increased production capacity, so as to enable the Commission to object to projects contrary to the common interest. A number of Member States have expressed reservations on this. It should be made clear that these provisions, as the Commission points out, not only represent a simple legal framework for the granting of aids but are an essential factor of a sectoral approach.

The Commission has also been exercising control in respect of aids to the textiles sector and has just submitted a draft decision on a framework of controls for aids to the iron and steel industry based on Article 95 of the ECSC Treaty. The Committee on Economic and Monetary Affairs has no doubt as to the Commission's vigilance in these areas, so far as the criteria applied in the granting of aids are concerned; on the other hand, the effectiveness of these frameworks, remains, as will be seen below, open to question. It would be worth considering whether greater efficiency could not be achieved if the Commission were to reorganize its departments to allow them to tackle more effectively the growing number of cases with which they have to deal.

(c) Regional aids

19. The Commission is now completing its technical work on the measurability of 'opaque' aids in this sphere and will be able to submit to the Council a communication redefining the principles of coordination for regional aids².

¹Seventh Report, Nos. 188 to 201

²Seventh Report, No. 165

In its reports on the Fifth and Sixth Reports on competition policy¹, the European Parliament had mentioned the tendency of certain Member States to reduce their national regional aids as Community aids increased.

(d) Aids to employment

20. In the face of a very high unemployment rate in the Community, the Member States have been stepping up assistance for job creation and job maintenance. The various forms of temporary aids (premiums or relief from certain social charges or tax liabilities) mean in effect that a part of the wage cost incurred for newly-recruited workers, which are normally borne by the employers, are taken over by society as a whole. While the social benefits of these measures must be acknowledged, attention should, nevertheless, be drawn to the risks inherent in them: in economic terms, when they help to maintain uncompetitive production, and more particularly in terms of possible infringement of the rules of competition. For the artificial reduction of labour costs, which these aids occasion may be seriously damaging to output and employment in competing firms - either within the same or in other Member States - that do not benefit from such aids. Employment-aid policies may also be harmful to certain small, regionally-based private undertakings which do not receive such aids. The Commission was right to request the British Government to take certain appropriate measures in respect of the application of the Temporary Employment Subsidy (TES) scheme and of its possible prolongation².

The Committee on Economic and Monetary Affairs must therefore insist in the strongest terms on the need for greater coordination at Community level of these aids to employment to ensure their compatibility and consistency with the objective of restructuring our economy and maintaining its competitiveness.

B. Public undertakings

21. The rules of competition must also take account of the diversities between undertakings and they cannot, therefore, be applied mechanically. They must accordingly take into consideration the specific nature of public undertakings. Their effectiveness in accomplishing the particular tasks assigned to them must be safeguarded. Nevertheless, it is also

¹Doc. 347/77, p. 18

²Seventh Report, Nos. 233 et seq.

important to achieve greater transparency in relations between the State and public undertakings, both for the purpose of securing equality of competition conditions between private and public undertakings and to ensure efficiency. The Seventh Report makes only very brief reference to the draft directive which the Commission is preparing on this matter pursuant to Article 90(3). The Commission has explained the main lines of this draft to the Committee on Economic and Monetary Affairs. By this directive the Member States would be compelled to notify to the Commission allocations to public enterprises of public funds for certain specific purposes, including payments to offset non-commercial costs. Most public services in the Member States and undertakings of small economic importance would be excluded from the provisions of the draft directive.

The Committee on Economic and Monetary Affairs looks forward, therefore, to an early submission by the Commission of this draft, which is 'now at an advanced stage of preparation'¹, and expects to be consulted on it in due course.

C. Control of concentrations

22. The Seventh Report notes a tendency towards structural stability, due particularly to the very high degree of concentration in various product markets². In some 250 markets the leading firm has been found to have a market share of more than 25% and in about 100 cases a share as high as 50%. However, the largest undertakings are almost never the most profitable ones. What is more, structural rigidity has a significant influence on price trends.³

Regret must therefore be expressed once again that the Council has not yet adopted the regulation on the control of concentrations. In the Commission's own opinion the present structure of concentrations is such that in many cases a further concentration operation would result in virtual monopoly. As Commissioner Haferkamp recently stated⁴, retrospective control is not sufficient to ensure a competitive market structure and only prior control can prevent abuses.

¹Seventh Report, No. 271

²Seventh Report, No. 321

³Report of the working party on inflation problems (Maldague Report), of 3.3.1976

⁴Debates, 15.6.1978, p.258

D. Activities of multinational companies

23. The Commission has confined itself to a very brief statement, without explanatory details, that it is exchanging information on competition issues of mutual interest with the American Anti-trust Authorities¹. The European Parliament in its resolution² had called on the Commission to take an active part in applying the principles to be observed by multinational enterprises in their economic activity (OECD declaration of June 1976), to report to Parliament on this, and to submit as soon as possible the outstanding proposals on multinational undertakings called for in Parliament's resolution of 12 December 1974.

Multinational undertakings can play an important part in solving current economic problems, especially as regards structural changes, provided that their activities remain within the framework of appropriate rules which strike a balance between the obligations that have to be imposed upon them on the one hand, and the need to avoid discrimination against them, on the other.

For this reason, the Committee on Economic and Monetary Affairs would have liked to see more information on this subject in the report on competition policy. The Commission has stated that it will inform the European Parliament of the progress of its work, carried out mainly within the framework of the OECD, and aimed at strengthening the mechanisms for international consultation on those cases where information necessary for investigation of a case is available only outside the area of jurisdiction of the authority making the investigation. No mention is made of proposals for directives concerning transfer prices, either in the Seventh Report or in the Eleventh General Report on the activities of the European Communities. The European Parliament expects to see not merely an exchange of information between Member States on the results of experiments carried out in this sphere, but compliance with Article 10 of the directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. Mr Leenhardt's report on multinational undertakings and Community regulations made clear that Parliament expected the Commission not only to keep a close watch on oligopolistic situations as mentioned in Articles 85 and 86 - which the Commission is doing - but also 'to combat restrictive trade practices' and 'the arbitrary fixing of the transfer price between parent and

¹Seventh Report, No. 74

²Doc. 347/77, resolution, points 15 and 16

subsidiary company'¹.

E. Small and medium-sized undertakings

24. Application of the rules of competition should, on the other hand, be adapted to the specific difficulties experienced by small and medium-sized undertakings, which, as the Sixth Report on competition policy stressed², make an important contribution to the dynamism of the economy and to innovation; the rules of competition should not needlessly restrain the development of small businesses.

With this in mind, the Committee on Economic and Monetary Affairs welcomes the measures taken by the Commission in the course of the year under consideration, which are described in the Seventh Report in the section devoted to small business³. Thus, the Commission has raised to 50 million u.a. the limit for aggregate annual turnover which was set in its Notice of 27 May 1970 concerning agreements of minor importance, seeing that, below this threshold, agreements between undertakings do not appreciably affect competition⁴.

Other provisions favouring small and medium-sized undertakings include the exemption under Article 85(3) for certain categories of exclusive dealing agreements in Regulation No. 67/67, now being amended⁵; and the exemption, under Article 85(3), of certain categories of specialization agreements in Regulation No. 2779/72⁶.

As regards patent licensing agreements, the changes contained in the revised version should promote the transfer of technology within the Community, particularly towards small and medium-sized undertakings, which should now enjoy the benefits of both greater legal certainty and of fewer administrative formalities, which are often a serious difficulty for small firms. The revised draft also provides for exemption, for firms with an annual turnover of less than 100 million e.u.a., whether they operate under a patent or a licence, from exclusive territorial distribution clauses comprising prohibitions on exports.

¹Doc. 292/74, resolution, point 12

²Doc. 347/77, resolution, point 17

³Seventh Report, Nos. 21 to 26

⁴Seventh Report, Nos. 41 to 42

⁵Seventh Report, No. 24

⁶Seventh Report, No. 35

Finally, the Commission intends to publish at an early date its communication on certain subcontracting agreements¹ falling outside the scope of Article 85(1) of the Treaty. This communication will provide greater legal certainty for small and medium-sized undertakings very many of which devote part or all of their activity to subcontracted work. The Commission has also made sure that these firms can preserve maximum economic freedom in those cases where, for the purpose of executing the contract, the principal contractor must make his knowhow available to the subcontractor.

The Commission should be invited not to confine itself to these measures, but to pursue unceasingly its work on behalf of small and medium-sized undertakings.

III. THE GENERAL CONDUCT OF COMPETITION POLICY

25. After studying the Seventh Report on competition policy, the Committee on Economic and Monetary Affairs did not only come to the conclusion that greater equalization of competition conditions and the continuous and precise adjustment of competition rules to the economic conditions were necessary: the Committee also concerned itself with the degree of effectiveness with which the rules of competition were applied and with the consistency of the various measures making up competition policy. In the committee's view these two considerations should inform the general conduct of competition policy.

A. The effective application of competition rules

(a) Commission investigations

Essential as are the studies and investigations undertaken by the Commission - often, in fact, at the request of the European Parliament - it is important that these researches should have practical consequences.

- investigations on price differences

26. The Commission's research programme on distribution and prices² went forward during 1977, and now for the first time the Commission is able to provide some information on the development of 'power relationships' between producers and distributors (in particular, large retailers). These show that there exists, in all countries, a trend towards a higher degree of concentration and power on the buying side (major retailers or distributors).

¹Seventh Report, No. 24, point 4

²Seventh Report, Nos. 301 et seq.

Whether the advantages obtained by the major distributors from the producers result in lower prices for the ultimate consumers remains an open question. Similarly, the sample for the survey on foods and beverages, begun in January 1976, has been extended, and confirms that large price differences exist between points of sale situated in the same town or region of a country. The food survey shows that, frequently in such places, differences of 40% or more are noted between different sales points: 'depending on the shop where the consumer does his shopping in any given town or region, he may end up paying twice the price he paid six or twelve months earlier'¹. Finally, the survey notes high and increasing mark-ups, which may be as much as 80% of the purchase price².

On all these matters, the Commission should not confine its activities to obtaining more precise knowledge, necessary though that is, of the workings of competition at the distribution level. It is equally important, as the European Parliament urged in its resolution on the Sixth Report, to combat the causes of the excessive and artificial price disparities.

It would not seem that mere publication of the results of such investigations is enough to increase the transparency of markets by making the consumers aware, as the Commission hopes, of the price differences found, and by encouraging potential competitors to penetrate what appear to be profitable markets.

It should not be forgotten that competition policy is of value only if it effectively safeguards the consumers' purchasing power. In this sense, it can be regarded as an instrument of price policy.

This is why it is important that the Commission should keep a vigilant watch over the application of Articles 85 and 86 of the Treaty; the Commission states that this is what it firmly intends to do³ on the basis of the European Court of Justice decision in the United Brands case.

- results of the naphta market enquiry

27. The findings of the enquiry into the market for naphta for petrochemical use and into the behaviour of the oil companies in the years 1973 - 1975 show⁴ that the Commission did not discover any restrictive practices between firms or abuses of dominant positions, nor actual instances of price discrimination. But the report also shows that the

¹Seventh Report, No. 324

²Seventh Report, No. 318

³Seventh Report, introduction, p. 10

⁴Seventh Report, No. 34

structure of the naphta market is not very competitive.

The Commission intends therefore to investigate agreements between parent companies, especially those establishing joint subsidiaries. An analysis of the reliability of Platt's Oilgram quotations is still in progress, and the results should be available by the end of September. These investigations are useful only insofar as they lead to practical measures. The Committee on Economic and Monetary Affairs will be watching out for such actions, for they reflect the effectiveness of competition policy. The same applies to the IBM investigation now being carried out by the Commission.

(b) Effective supervision and control of aids

28. Articles 92 et seq. of the Treaty allow the granting of State aids only by way of exception, and only insofar as they are compatible with the common market. However, as the Commission points out, it is not surprising that, in a period of recession and restructuration, this sector of competition policy should be subject to particularly acute strains.

In a situation of opposing demands for job preservation in declining sectors and for the maintenance of competition vis-à-vis the outside world, the regulation of aids is an aspect of competition policy which is particularly difficult to implement. The essential point, however, is the effectiveness of the aids. While it is not easy to measure this comprehensively or precisely, it is important, nevertheless, to ensure at least that the granting of aids is subject to detailed and rational control. The Commission is certainly aware of the problems inherent in the control of aids, but it can be questioned to what extent the administrative control machinery now used by the Commission for this purpose (the fixing of sectoral objectives, the system of prior notification pursuant to Article 93(3), periodic reviews, etc.) is in fact effective. For, as the Commission itself readily admits, the growing number of proposed national aid schemes, and the need to examine their likely effects in detail, present serious practical difficulties for the Commission's competent departments, which are not always adequately equipped to perform this task¹. Yet inadequate control of aids would result in distortion of competition.

If the Commission's resources prove inadequate, it will be obliged to relinquish this task of control to undertakings in the sectors concerned, and we shall inevitably witness the resurgence of cartels. The Commission's attention should be drawn to the fact that recourse to 'crisis cartels' could jeopardize the ultimate restoration of free competition.

¹The Commission is also at present faced with difficulties in implementing anti-crisis measures in the iron and steel industry, and in most cases has to rely on the voluntary cooperation of the interested parties.

B. Consistent implementation of competition policy

29. Only a consistent implementation of competition policy can ensure that the rules of competition are effectively applied. If competition policy at Community level is to be consistent, there must be a sufficient measure of cooperation between the Member States, not only in applying competition rights in the strictest sense of the term but also - and this is where the need for an economic approach is seen - in pursuing policies of harmonization of legislation and of taxation and in implementing restructuring plans - to quote but a few examples.

The Committee on Economic and Monetary Affairs therefore most earnestly solicits the Commission to make every effort, both in its own work and in its relations with the Member States, to override administrative compartmentalization whereby matters as closely linked in a context of competition policy as tax harmonization, the policy of industrial restructuring, the law on industrial and commercial property, etc. lie within the competence of several directorates, each of which may sometimes have its own approach. This appeal for consistency is equally addressed to the Council, whose procrastination on some matters, such as the regulation on concentrations, the elimination of technical obstacles and tax harmonization, creates so many obstacles to the effective implementation of competition policy.

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Greater equality of competition conditions, continuous and precise adjustment of the rules of competition, the effective and consistent implementation of competition policy - these are the requirements which the European Parliament, especially on the occasion of its annual consideration of the Commission's report, must emphasize and over whose fulfilment it must watch, for, without them, competition policy would no longer be credible.