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## Report

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

on the ~~Sixth~~ Report of the Commission of the European Communities on  
competition policy (Doc. 70/77)

Rapporteur: Mr P.B. COUSTE

PE 50.288/fin.



Having received from the Commission of the European Communities the Sixth Report on Competition Policy (published in conjunction with the 'Tenth General Report on the activities of the Communities'), the European Parliament referred this report to the Committee on Economic and Monetary Affairs.

On 24 May 1977, the Committee on Economic and Monetary Affairs appointed Mr. Cousté rapporteur. It discussed this report at its meetings of 24 May, 20 September 1977 and 19 October 1977.

At its meeting of 19 October 1977, the committee adopted the motion for a resolution by ten votes to one with one abstention.

Present: Mr GLINNE, chairman; Mr COUSTE, rapporteur; Lord ARDWICK, Mr EVANS (deputizing for Mr HAASE), Mr DELMOTTE (deputizing for Mr VAN DER HEK), Mr FLETCHER-COOKE (deputizing for Mr JAKOBSEN), Mr LANGE, Mr ver der MEI, Mr MULLER-HERMANN, Mr NORMANTON, Mr RIPAMONTI and Mr ZEYER.

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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 Sixth Report of the Commission of the European Communities on Competition Policy

The European Parliament

- having regard to the Sixth Report of the Commission of the European Communities on Competition Policy (Doc. 70/77),
  - having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 347/77 ),
1. **Emphasizes** the importance of competition policy as an essential factor in ensuring responsible price trends and the efficiency of the economy, particularly in the present economic situation, which is characterized by the need for structural changes, an increased requirement for competitiveness and the struggle against inflation;
  2. Notes with satisfaction that the Commission has acted on several requests put forward by the European Parliament on the occasion of its last report;
  3. Looks to the Commission to ensure that in scope and application, the competition policy in general covers all economic activities;
  4. Notes the ruling of the European Court of Justice on 4 April 1974 that the rules of competition are applicable to air and sea transport and awaits the Commission proposals;
  5. Appreciates the priority given by the Commission to the conduct of firms which, through mergers, specialization, technological advance or by any other means, acquire a dominant position, the abuse of which may prove prejudicial to the consumer;

6. Looks to the Commission to submit at an early date its proposal for a regulation on a block exemption for patent licensing agreements in order to preclude any misunderstandings in the matter, and reiterates its request that this regulation should contain precise guidelines to promote the economic use of new techniques within the Community<sup>1</sup>;
7. Expects the amendments now in course of preparation to Regulation No 67/67/EEC of 22 March 1967 on the application of Article 85(3) of the Treaty to certain categories of exclusive distribution agreements to take due account of complex situations, particularly with regard to highly-specialized products, for which the adoption of an unduly restricted territorial definition of the market would have prejudicial effects;
8. Considers that a system of trade-mark law applicable throughout the territory of the Community would help to promote the free movement of goods and services covered by these trade-marks, and consequently awaits fresh initiatives from the Commission to follow up the Memorandum which it presented in August 1976;
9. Regrets once more that insufficient progress has been made to eliminate both technical and administrative barriers to trade, which distort the conditions of competition; recalls in this connection the European Parliament's repeated wish to see the adoption of a new procedure;
10. Reiterates its attachment to the idea of introducing a greater degree of clarity into financial relations between states and the public undertakings referred to in Article 90 of the EEC Treaty and expects the Commission to submit a proposal for a directive to this end;
11. Expresses the wish that the Commission should resolutely pursue the steps which are still required for the complete abolition, in all Member States, of exclusive rights for the national monopolies of a commercial nature referred to in Article 37 of the EEC Treaty;
12. Notes that the Commission's first exposé of the main developments in national competition policies reveals fundamental differences in the nature and degree of the control exercised according to the legal systems in force in the different Member States; considers it necessary that the Commission should take action to ensure that these legal disparities have no prejudicial effects upon trade;
13. Expects the Commission to continue its work of scrutinizing and coordinating sectoral and regional aids and aids to the environment

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<sup>1</sup> See Article 43 of the Convention for the European Patent for the Common Market OJ No. L 17, 26 January 1976

with the object of ensuring their compatibility with the goal of restructuring and the need for ensuring that our economy is competitive;

14. Deplores once more the fact that the Council has not yet adopted the regulation on the control of concentrations between undertakings;
15. Asks the Commission to take an active part in applying the principles to be observed by enterprises in their international economic activity, as laid down on the declaration published by the OECD in June 1976 and in conformity with the report adopted by the European Parliament<sup>1</sup>, and to report to it on this subject; asks the Commission, in particular, to provide all necessary information on the present state of cooperation between the anti-trust authorities in the United States and the Commission departments responsible for competition policy;
16. Looks to the Commission to submit, as soon as possible, the outstanding proposals called for in Parliament's resolution of 12 December 1974 on multinational undertakings;
17. Welcomes the Commission's intention to review the specific problems facing small and medium-sized firms, which make an important contribution to the dynamism of the economy and to innovation, and to establish a programme of measures for their support, in particular improved access to credits and to public contracts;
18. Encourages the Commission to pursue its disparity studies which, even in their present, non-definitive state, convey some very useful indications, in order to acquire a better knowledge of the way competition functions at the level of distribution; considers the price disparities already observed to be unacceptable to the consumer and a source of inflation, and consequently requests the Commission to take the necessary steps to combat the causes of these disparities, regardless of whether they may be attributed to the state of competition on the market;

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<sup>1</sup> LANGE report (Doc. 547/76)

19. Requests the Commission at an early date to report progress with its study of the application of competition rules within the financial sector;
20. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENTINTRODUCTION

1. The competition policy pursued by the Commission in 1976, as it emerges from the Sixth Report on Competition Policy, has to be seen in an economic context characterized by persisting inflation, unemployment and balance-of-payments disequilibria and by the need for the Community to face up to fierce international competition and unavoidable structural changes. This shows both the importance of competition policy in the implementation of the economic policies of the Community and the Member States and the difficulties inherent in its application.

2. Consequently, the assessments contained in the report by the European Parliament on the Fifth Report on Competition Policy are still valid. In this respect, it should be noted that the Sixth Report has taken account of many of the requests put forward by the European Parliament. Thus, there is a new chapter in the Report, analysing the main developments in national competition policies, the results of surveys of consumer price disparities for certain products are given in detail and the importance of a competition policy for small and medium-sized firms is asserted at several points.

The Committee on Economic and Monetary Affairs appreciated the quality of the Commission's document and the usefulness of the information contained therein.

3. In formulating its comments on this report the Committee on Economic and Monetary Affairs has chosen a dynamic approach which stresses the economic and political aspects of competition rather than its purely legal aspects. The Commission is, of course, bound to respect the terms of reference given to it by the Treaties. However, it is becoming clear - as was already mentioned in the report on the Fifth Report - that an economic approach to competition policy is alone capable of giving full expression to the present and potential functions of this policy, which is of vital importance for the future of the Community.

## 1. COMPETITION POLICY - A FACTOR IN REGULATING THE MARKET

4. The first and most important objective of the Community competition policy is to ensure the existence of a single market in which goods and services are available at competitive prices and are of acceptable quality. Competition policy, by protecting the fluidity of trade and the quality of competitive conditions, mainly through the application of Articles 85 and 86 of the Treaty, is an essential factor in regulating the market.

### A - Scope of competition policy

5. It is to be noted once again that the Sixth Report fails to mention certain very important sectors or aspects of the market, with the result that it cannot provide the overall view we are entitled to expect from such a document. The European Parliament, in its report on the Fifth Report on Competition Policy had stressed 'the need for the Commission to extend the scope and application of its competition policy to ensure that the whole range of Community activities are covered'<sup>1</sup>.

It emerges, however, from the Sixth Report that the scope of competition policy has not progressed since the Fifth Report. No reference - apart from one brief mention<sup>2</sup> - is made to the application of competition policy to social policy, to the harmonization of national legislations, to relations between the EEC and the state-trading countries, to the common agricultural policy, to fisheries policy and to the Law of the Sea<sup>3</sup>.

It is to be regretted that the Commission has not complied with this request by the European Parliament and is thus maintaining a far too legalistic and administrative approach to competition policy.

6. The Committee on Economic and Monetary Affairs naturally agrees that 'competition cannot take the place of economic or social policy'<sup>4</sup>. However, competition policy, as the Sixth Report rightly asserts, is 'essential to the preservation of the flexibility which the economy must have, if it is to remain adaptable'. The Commission should, therefore, carry out studies

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<sup>1</sup> Normanton Report (Doc. 243/76), paragraph 2 of the resolution

<sup>2</sup> Sixth Report on Competition Policy, introduction, p. 9

<sup>3</sup> Normanton Report, paragraph 3 of the resolution

<sup>4</sup> Sixth Report, introduction, p. 9

on, for example, the effects on competition of the application of the machinery of the common agricultural policy and the interaction between social policy, external policy and competition policy, on the same basis as the investigations which it carries out into price differentiation without, however, claiming to apply a price control policy.

7. The Committee on Economic and Monetary Affairs noted with satisfaction, in its report on the Fifth Report 'that the Commission had begun to prepare a proposal for a regulation' on transport policy. In the Sixth Report the Commission points out the difficulties it faces when drawing up regulations on the application of rules of competition to air and sea transport<sup>1</sup>.

Thus, in these sectors, where no implementing provisions for rules of competition have yet been laid down, a state of legal uncertainty persists, which is harmful to both the firms and to transport users.

#### B - Competition policy and private firms

##### (1) Direct application of the rules of competition

8. The application of Articles 85 and 86 to private firms continues to occupy a major place in the Commission's competition policy. The Sixth Report reveals that the Commission made nine formal decisions under Articles 85 and 86 of the EEC Treaty and 28 under Articles 65 and 66 of the ECSC Treaty. The Commission notes that, as its practice becomes more definitive and the jurisdiction of the Court of Justice in references for interpretation grows, many cases (380 in 1976) can be considered closed when the firms voluntarily terminate, at the Commission's request, infringements to which their attention has been drawn. It should also be noted that the Commission had 'given priority'<sup>2</sup> to cases involving the conduct of firms acquiring a dominant position on the market through mergers, specialization, technological advance or by any other means, where this is likely to harm the consumer's interests.

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<sup>1</sup> Sixth Report, page 21, paragraphs 16 et seq.

<sup>2</sup> Sixth Report, page 11

The Sixth Report shows that the Commission does not hesitate, whenever the facts so warrant, to take the decisions needed to ensure that the rules of competition are applied.

However, by its very nature, direct action on a case-by-case basis by the Commission has certain inherent disadvantages. It appears essential here for the necessary rules to be drawn up when enough experience has been acquired and the subject matter lends itself to this approach. The Sixth Report shows that a number of gaps remain as regards industrial and commercial property rights.

(2) Patent licensing agreements

9. On several occasions, the European Parliament has called upon the Commission to put forward a regulation exempting certain categories of patent licensing agreement so as to remove any uncertainty. This regulation, which should promote the marketing of new techniques within the Community, is currently under consideration by the Advisory Committee on Restrictive Practices and Dominant Positions. The Commission should make every effort to ensure that this regulation is submitted at an early date. The long delays in resolving these problems is inhibiting the flow of technology in the EEC since there is an increasing reluctance on the part of firms to enter into licensing agreements. It should be noted that, as it stands, the draft regulation grants exemption to exclusive manufacturing licenses provided that the licensed territory is not too large; exclusive sales licenses qualify for exemption during a limited period where small and medium-sized firms are concerned<sup>1</sup>.

10. As regards Article 43 of the Convention for the European Patent for the Common Market, the Commission points out that its position remains unchanged. On the subject of territorial restrictions on licensing agreements, the Committee on Economic and Monetary Affairs refers to its suggestion that the Commission should arrange a further conference of government experts similar to that held in December 1974 in order to try to resolve this problem with the Member States, since these restrictions on marketing are in conflict with the concept of a single market<sup>2</sup>.

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<sup>1</sup> Sixth Report, point 4, page 18

<sup>2</sup> Normanton Report (Doc 243/76), p. 18

### (3) Subcontracts

11. The European Parliament and economic circles in the Community hope that the communication from the Commission on subcontracts, which are not covered by Article 85 of the EEC Treaty and Article 65 of the ECSC Treaty, will be adopted at an early date. Clauses providing for limitations on the use by subcontractors of technical know-how developed by the prime contractor or of material belonging to him but made available to the subcontractor for the sole purpose of enabling him to meet the order would not be affected, provided that the know-how made available to the subcontractor by the prime contractor constitutes technical assistance without which the products could not be manufactured or the services provided.

The current legal uncertainty in this area is inhibiting the growing tendency of large firms to contract part of their work; it is particularly harmful to small and medium-sized firms.

### (4) Exclusive distribution agreements

12. Amendments are currently being drawn up to Regulation No 67/67/EEC of 22 March 1967 on the application of Article 85(3) of the Treaty to certain categories of exclusive distribution agreements. The need has arisen for a tighter definition of the notion of a 'defined area of the Common Market' (Art. 1(1)) in order to avoid practices which conform to the letter of the Regulation but are incompatible with its spirit in that more and more exclusive distribution agreements are being made to cover the entire territory of the Community with the exception of one small country. The new definition will have to take account of highly specialized products for which the adoption of an unduly restricted territorial market might prove insufficiently profitable for a dealer.

### (5) Community trademark

13. The Commission notes several cases where markets have been walled off by the use of trademarks. The report on the Fifth Report also drew attention to the confusion which could be experienced by consumers faced with two different products bearing the same trademark<sup>1</sup>.

The Commission brought out a memorandum in August 1976 on the introduction of a Community trademark. It is up to the Commission to ensure that work continues in this area. Since a trademark right valid throughout the Community would help to liberalize trade in branded products and services covered by trademarks, while at the same time ensuring fairer conditions of competition.

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<sup>1</sup> Normanton Report (Doc. 243/76), point 27 - HAG affair (Case 192/73)

(6) Elimination of trade barriers

Approximation of laws

14. Although strictly speaking the approximation of laws does not come under competition policy, it is inseparable from the latter. The Committee on Economic and Monetary Affairs once again deplores<sup>1</sup> the slow progress towards the gradual elimination of technical and administrative barriers to trade and reiterates the European Parliament's hope of seeing a new procedure adopted in this area<sup>1</sup>.

As regards the approximation of laws on public contracts, it should be noted that the Council adopted on 21 December 1976 the directive on the coordination of procedures for the award of public supply contracts. However, the European Parliament, when considering the four-year programme for the development of informatics, deplored the exclusion of this sector from the field of application of the directive until 1981. The European Parliament expressed the wish for more binding measures in respect of public contracts<sup>2</sup>.

C - Competition policy with respect to public undertakings

(1) Transparency of relations between states and public undertakings

15. Like the Fifth Report, the Sixth Report devotes a chapter to public undertakings. The application of rules of competition to public undertakings is a complex question in view of both the need to safeguard the effectiveness of public undertakings assigned particular tasks and the difficulties faced by the Commission in applying the provisions of Article 90 caused by the lack of transparency in the accounts of some public undertakings, in particular as regards commercially unjustified costs<sup>3</sup> and any offsetting of them.

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<sup>1</sup> Normanton Report (Doc. 243/76), p. 11

<sup>2</sup> Cousté Report (Doc. 235/77) paragraphs 8 and 9 of the resolution

<sup>3</sup> Sixth Report, point 275, p. 145

In its report on the Fifth Report, the Committee on Economic and Monetary Affairs welcomed the fact that the Commission had decided to prepare a directive 'based on Article 90(3) to make the financial links between governments and public undertakings more transparent'<sup>1</sup>.

The Sixth Report, however, confines itself to listing the possibilities open under Article 90 of the EEC Treaty to the Commission and to any persons adversely affected; no mention is made of the preparation of the directive referred to in the Fifth Report.

(2) State Monopolies of a Commercial Character

16. In three judgments delivered on 3 and 17 February 1976 in Case 59-75 (Manghera) concerning the Italiana manufactured tobacco monopoly and in cases 45-75 (REWE) and 91-75 (MIRITZ) concerning the German alcohol monopoly, the Court ruled that Article 37(1) requires the abolition from 31 December 1969 of the exclusive right of a State monopoly of a commercial character to import from other Member States.

The Commission should now take without delay the steps which are still required for the States involved to comply henceforth with the provisions of Article 37 of the Treaty (France: alcohol monopoly - France and Italy: maintenance of retail sales monopoly and exclusive right to export manufactured tobacco - France: oil monopoly), including the progressive adjustment of state monopolies of a commercial character in the original Member States with respect to the new Member States, pursuant to the provisions of Article 44 of the Act of Accession. It is only by taking more resolute action that the Commission will succeed in completely suppressing national monopolies of a commercial character in all Member States.

Furthermore, the Committee on Economic and Monetary Affairs had called on the Commission to continue its efforts to ensure that there was no abuse of a dominant position by these monopolies<sup>2</sup>. The Sixth Report makes no reference to this matter.

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<sup>1</sup> Normanton Report (Doc. 243/76), p. 26

<sup>2</sup> Normanton Report, point 35, p. 20

## D - National competition policies

17. The inclusion in the Sixth Report, as requested by Parliament, of an outline of the main developments in the competition policy of the Member States is to be welcomed. It reveals the existence of major differences, since, for example, some Member States simply punish abuse, others base their action on the principle of prohibition and one Member State (Italy), has 'no effective control at present in the field of competition'.<sup>1</sup>

This exposé, however, does not go beyond the descriptive stage. The Commission, which possesses, under the Treaties, all the necessary instruments, should take action, to ensure that these differences in legislation and national competition policy have no prejudicial effects on trade within the Community.

It should be noted that there is an increasing trend in Member States towards control of concentrations. Consequently, the risk of different laws being adopted in this area is increasing and these laws might conflict with the proposed regulation still under consideration by the Council.

## II - COMPETITION POLICY - A FACTOR OF ECONOMIC EFFICIENCY

18. In the process of structural change which the Community must undergo in order to adjust to the consequences of a new international division of labour, competition policy has a vital role to play. As noted in the Fifth Report, it can act as an instrument to re-direct the economy<sup>2</sup>. By monitoring aid, controlling concentrations and encouraging small and medium-sized firms, competition policy can be seen as a factor of economic efficiency. As the Sixth Report rightly points out, we must avoid 'the illusion that economic and social problems can be solved either by Community or national protectionism'<sup>3</sup>.

### A - State aids

#### (1) General

19. The Committee on Economic and Monetary Affairs wishes to remind the Council and the Commission that the best way of avoiding a competitive escalation in national aids and of encouraging greater selectivity in the granting of aid, is to introduce a genuine industrial policy. The Committee on Economic and Monetary Affairs deplores the Council's dilatoriness and reticence in adopting and implementing, in particular, European policies on informatics and aeronautics.

<sup>1</sup>

Sixth Report, points 66 to 109

<sup>2</sup> Normanton Report, Doc. 243/76 point 6, p.9

<sup>3</sup> Sixth Report, introduction, p.9

The Committee on Economic and Monetary Affairs also noted with satisfaction the replies by the Commission representative during the debate in the European Parliament on 16 June 1977 to an oral question concerning national aids and economic integration. On that occasion, Commissioner VOUEL stated that the Commission, despite current economic difficulties and pressure from political and business circles, was determined to :

- oppose indirect protectionism in the form of export aids or aid designed to cover part of the running costs of the undertakings;
- tolerate aids designed to preserve the status quo only in cases where they are justified by strong social arguments and to enable the necessary structural transformations to be made;
- work on the principle that the amount of aid grant should be proportional to the relative gravity of the problems and that a similar level of aid should be granted in similar cases.

(2) Sectoral aids

20. The Sixth Report shows more clearly than previous reports that the Commission has intervened on several occasions to remind Member States of their obligation to comply with Community principles when granting aid. In accordance with the request of the European Parliament<sup>1</sup>, the Sixth Report gives details, in particular, of several interventions by the Commission in respect of aids to shipbuilding to ensure compliance with the provisions of the Third Directive of the Council<sup>2</sup>. The Commission is, however, invited to submit at an early date a new proposal in this area, since the Third Directive expires on 31 December 1977. It should also be noted that the Commission decided, in the textile sector, to take decisions on aids on the basis of more narrowly defined sectoral situations, rather than on the basis of a general industry-wide assessment, since the situation in the various sectors of the industry sometimes varies quite markedly, without however modifying its overall aid policy. (Point 233)

As regards the iron and steel industry, the committee awaits with interest a detailed statement, in the next report on competition policy, on the management of national aids in the light of the criteria of common interest defined by the Commission when implementing its anti-crisis plan.

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<sup>1</sup> Normanton Report, (Doc.243/76), point 46, p.25

<sup>2</sup> Sixth Report, point 213 et seq.

### (3) Regional aids

21. In the case of regional aids, the committee is pleased to note that the Commission has continued its efforts to ensure that the coordination principles laid down last year are generally applied<sup>1</sup>. The Commission's activities in this area are all the more necessary in that 50% of all regional assistance at present granted by Member States, is in forms that cannot be measured with sufficient clarity. The Committee on Economic and Monetary Affairs therefore expects the Commission to put forward more detailed proposals on ways of measuring opaque aids and coordinating them<sup>4</sup>.

In its report on the Fifth Report<sup>2</sup>, the European Parliament mentioned the tendency of certain Member States to reduce national regional aids as Community aids increased; the Sixth Report does not take up position on this question.

### (4) Aids to the environment

22. The Commission has had to make use on several occasions of the guidelines contained in its memorandum on the Community approach to State aids in environmental matters. No mention is made of progress on the draft Council recommendation to the Member States concerning the assessment of pollution control costs in industry.<sup>3</sup>

## B Control of concentrations

### (1) Regulation on the control of concentrations

23. It is once again to be deplored that the Council has not yet adopted the regulation on the control of concentrations - an essential component of competition policy. It emerges from the most recent progress report on consideration of the proposal by the permanent representatives that serious divergencies remain with respect to annual turnover, the compulsory or voluntary nature of notification and the exclusive or non-exclusive nature of the Commission's powers in this field.

The Sixth Report points out that, although concentration remains stable where it is already at a high level, it has increased sharply in food distribution and household electrical appliances<sup>5</sup>. Furthermore, the research carried out by the Commission into the development of concentration and competition shows that 'the largest firms are hardly ever the most profitable (and are unlikely to be the most efficient)'<sup>6</sup>.

<sup>1</sup> Sixth General Report, point 192

<sup>2</sup> Normanton Report

<sup>3</sup> First Report on the State of the Environment, p.234

<sup>4</sup> Sixth Report, point 197

<sup>5</sup> Sixth Report, point 319, p.187

<sup>6</sup> Sixth Report, point 305

Finally, the report by the Study Group on the Problems of Inflation (Maldague Report)<sup>1</sup>, on which the Commission has not yet taken up a position, devotes considerable space to the analysis of the inflationary effects of the rigid structures existing in the 'meso-economic' sector and suggests a number of measures to ensure greater transparency and increased activity of these firms.

There are, thus, many reasons why the Council must, as a matter of urgency, adopt the regulation on concentrations both from the economic point of view, if we wish to combat inflation, and from the legal point of view, since national laws are currently being drafted.

## (2) Behaviour of multinational undertakings

24. As regards the activities of multinational undertakings which are likely to inhibit competition, particular reference should be made to the declarations by the governments of the Member States of the OECD, adopted in June 1976, and the report drawn up on behalf of the Committee on Economic and Monetary Affairs on the principles to be observed by enterprises and governments in international economic activity<sup>2</sup>.

This report called upon the Council 'to adopt without delay the proposals submitted by the Commission and supported by Parliament' and expected 'the Commission to submit as soon as possible all the proposals called for by the European Parliament in its resolution of 12 December 1974'.

Thus, the Committee on Economic and Monetary Affairs awaits with interest the new proposals which the Commission will put forward in this area and would be particularly interested to know what progress has been made with the proposal for a directive on transfer prices. Furthermore, the Committee notes with interest the application of the 'effects' theory in connection with two recent decisions (United Brands and Hoffmann-la-Roche) from which it emerges that the fact that an undertaking has its headquarters outside the Community does not exclude it from the scope of the Community rules governing competition<sup>3</sup>. It appears that the anti-trust authorities in the United States and the Commission departments responsible for competition policy intend to develop their cooperation. Given that their approaches will necessarily differ, the Committee on Economic and Monetary Affairs would like to be informed of the nature of the planned cooperation.

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<sup>1</sup> Report by the Study Group on the Problems of Inflation, 3.3.1976

<sup>2</sup> Lange Report - Doc. 547/76

<sup>3</sup> Sixth Report, point 37

### C - Promotion of small and medium-sized firms

25. As the study carried out for the first time by the Commission in the Sixth Report on the relation between size of firm and performance shows, the largest firms are not necessarily the most profitable.

The findings of this study give added weight to the request made by the European Parliament in the Fifth Report on the subject of 'the role which competition policy could play in helping small and medium-sized firms'<sup>1</sup>.

The Sixth Report recognizes that medium-sized firms 'make an important contribution to stimulating the economy... and make a substantial contribution to the renewal of economic structures and the maintenance of effective competition'<sup>2</sup>.

The Commission, which is rightly opposed to artificial protectionist measures, lists the types of State aid to small and medium-size firms which could be approved<sup>3</sup>: loans at preferential rates, the setting up by the public authorities of specialized agencies to provide risk capital, incentives for research and development in the form of grants - reimbursable or otherwise.

But coordination at national level is required. A Community programme should be introduced to promote small and medium-sized enterprises since otherwise they will be unable to play their role in the development of competition.

### III. COMPETITION POLICY - INSTRUMENT OF PRICE POLICY

26. Finally, competition policy can be one instrument of price policy. The Commission neither has the power nor the will to become a price control body. Nevertheless, one of the functions of competition policy is to defend the consumer's purchasing power and guarantee an acceptable quality for the products and services he is offered. Competition policy can help abolish certain excessive price discrepancies, thereby eliminating certain irrational aspects of the European economy which public opinion rightly considers incompatible with the existence of an economic Community.

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<sup>1</sup> Normanton Report, (Doc. 243/76), paragraph 14 of the resolution

<sup>2</sup> Sixth Report, point 253

<sup>3</sup> Sixth Report, point 255

## A - Investigations into price disparities

27. The Committee on Economic and Monetary Affairs is pleased to note that, in response to the wish expressed by the European Parliament, the Sixth Report devotes considerable space to the question of differing prices for identical products within the Community. Competition policy has an important role to play in the struggle against inflation. The Commission, by means of suitable studies, is attempting to assess the impact on prices of the following factors in particular:

- significant relationships between the structure of international trade and comparative trends in retail prices, depending on the point of manufacture or origin;
- the application of certain regional pricing systems. The study carried out by the Commission recommends that ex-works prices be the general terms of sale, rather than delivered prices<sup>1</sup>.

The results of these investigations, particularly the pilot study of food prices (Point 306) are extremely interesting. The survey shows that considerable price differences exist between the different sales points. However, the conclusions the Commission draws from these complex and provisional surveys remain somewhat ambiguous. The Commission notes that, for identical products, 'frequently in the same town or region, the price of an article may increase considerably (e.g. by 50%) at one sales point, while it may be considerably reduced elsewhere (e.g. by 60%)'. But the existence of these substantial price differences is not, in the Commission's view, necessarily a negative phenomenon from the point of view of the workings of competition.

These contradictions reflect the Commission's fear that an increase in concentration in the distribution sector will lead to a considerable reduction in the present level of competition. Nevertheless, such price differences are unacceptable for the consumer and are inflationary in nature.

As the Commission points out<sup>2</sup>, there is a need for 'fuller knowledge of the workings of competition at the level of distribution'. The information campaign which the Commission is waging in an attempt to increase the transparency of the market should enable distributors and consumers to take advantage of these price differences which remain considerable as between regions or within a given region.

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<sup>1</sup> Sixth Report, points 47 and 48

<sup>2</sup> Sixth Report, point 319, p.187

It appears that the Commission has abandoned the idea of dealing with the price surveys by means of a regulation because of the complexity of the subject and is turning its attention towards Community coordinations of national initiatives<sup>1</sup>. This new approach could well prove slow and problematical.

28. Furthermore, the Commission rightly notes that, 'apart from purely competitive factors, there are a large number of other factors which may help to promote or maintain price differentiation'<sup>2</sup>. Price regulation in certain countries, differences between national laws on marketing and fluctuations in currency exchange rates all affect the degree of price differentiation.

The Commission should act more resolutely to ensure that the steps needed for the gradual abolition of these factors of price differentiation, which are independent of the workings of competition, are taken.

#### B - Spot checks

29. As regards spot checks, the Commission points out<sup>3</sup> that it 'has made no attempt to establish general criteria for all cases, to determine whether the pricing policy of dominant firms constitutes abuse'. It should be noted that the Commission intends to continue its intervention policy wherever it finds persisting, major differences in prices for which there are no objective justifications<sup>3</sup>, an approach it defined in its decision on the United Brands Corporation (Chiquita bananas) approved by the European Parliament<sup>4</sup>.

- In the field of informatics, the Commission draws attention to the European Parliament's resolution on the four-year programme, in which it 'stresses that the Commission must be provided with the means required to detect and take immediate action against any abuse of a dominant position'<sup>5</sup>;
- As regards the pharmaceutical industry, the Sixth Report makes no mention of progress made with surveys currently being undertaken. The Committee considers that it would be desirable for concerted action to be taken by the Commission and the various national bodies responsible for monitoring prices in this area;
- Finally, the Sixth Report makes no mention of the results of the retroactive checks<sup>6</sup> decided by the Commission on certain aspects of the oil industry.

<sup>1</sup> Sixth Report, point 52, p.37

<sup>2</sup> Sixth Report, point 46, p.35

<sup>3</sup> Sixth Report, point 46, p.35

<sup>4</sup> Normanton Report (Doc. 243/76), point 8, p.10

<sup>5</sup> Cousté Report - Doc. 255/77, paragraph 12 of the resolution

<sup>6</sup> Fifth Report, p.9.