

European Communities

44.01
EUROPEAN PARLIAMENT

Working Documents

1976 - 1977

1 September 1976

DOCUMENT 243/76

Report

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

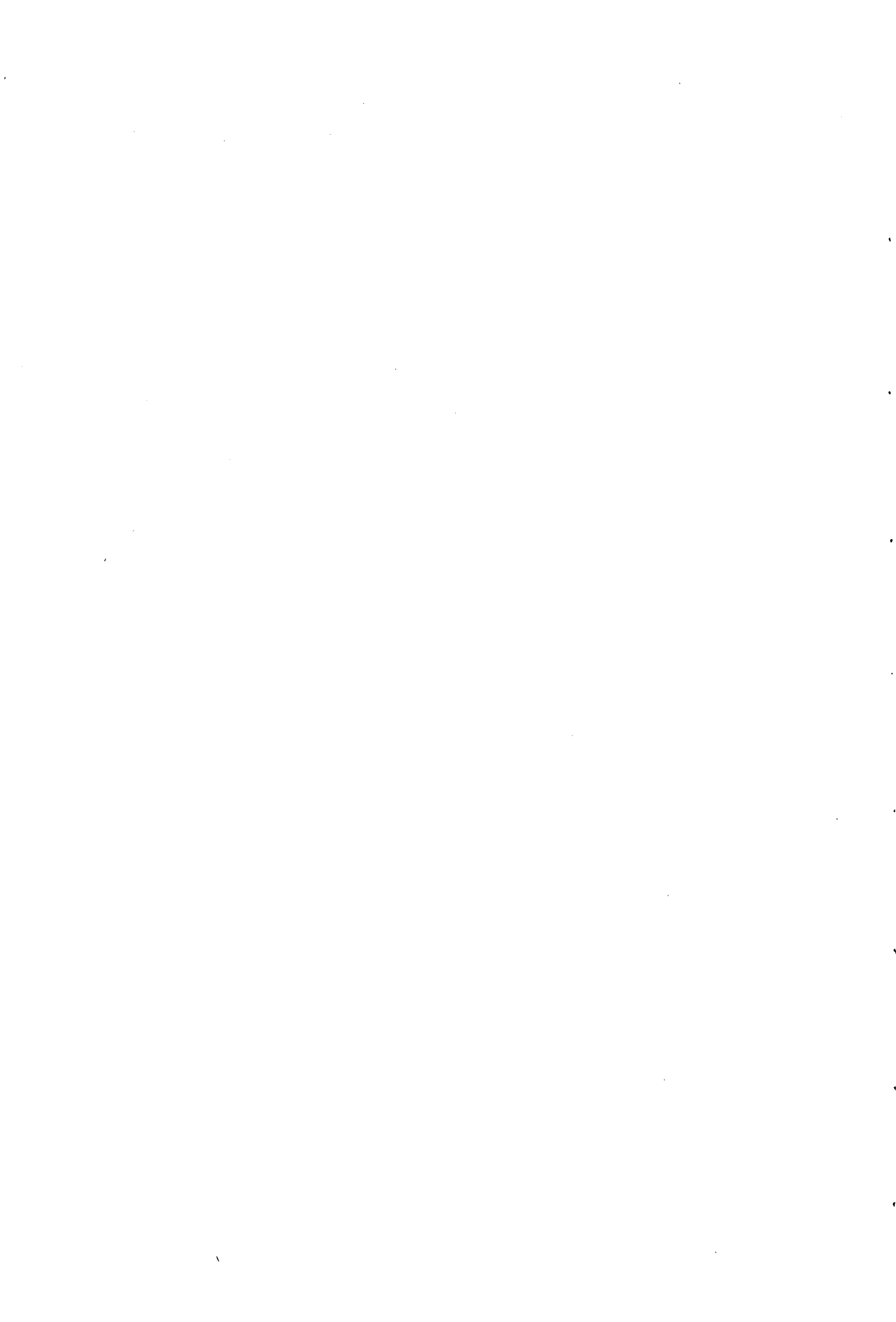
on the ~~Fifth~~ Report of the Commission of the European Communities on
Competition Policy

Rapporteur: Mr T. NORMANTON

PE 44.992/fin.

1.2.1
English Edition

EP 76-77: 243



The Commission of the European Communities forwarded to the European Parliament the Fifth Report on Competition Policy (annexed to the 'Ninth General Report on the activities of the Communities').

The European Parliament referred this report to the Committee on Economic and Monetary Affairs.

On 30 April 1976 the Committee on Economic and Monetary Affairs appointed Mr T. Normanton rapporteur. It considered the report at its meetings of 21 May, 25 June and 13 July 1976. At its meeting of 13 July 1976 the committee adopted the motion for a resolution by 9 votes in favour, 1 against, and 3 abstentions.

Present: Mr Burgbacher, acting-chairman; Mr Normanton, rapporteur; Mr Albertsen, Mr Artzinger, Lord Bessborough (deputizing for Mr Dykes), Mr Clerfayt, Mr Delmotte, Mr Deschamps, Mr Hansen (deputizing for Mr Carpentier), Mr Martens (deputizing for Mr Van der Mei), Mr Nyborg, Mr Prescott, Mr Starke and Mr Suck.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	7
Introduction	7
<u>I The Scope of Competition Policy</u>	
1. The legal basis of competition policy	8
2. The development of competition problems	9
(a) the development of competition policy	9
(b) new functions for competition policy	9
(c) the conclusions to be drawn from the Fifth Report	10
(i) Progress	10
(ii) The Gaps	11
The Scope of Competition Policy	11
The Functions of Competition Policy	13
3. The Position of the Committee on Economic and Monetary Affairs	14
(a) Previous position of the Committee on Economic and Monetary Affairs	14
(b) Present position of the Committee on Economic and Monetary Affairs	14
<u>II The Relationship between Community Law and National Legislation on Competition</u>	
Harmonisation of national legislation on competition	15
<u>III Competition Policy and Firms</u>	
Patent licensing agreements	17
Trademarks	18
Selective Marketing (Distribution)	18
Restrictive Trade Practices	19
Oil Companies	19
Multinational Companies	19
Credit Institutions	20
State Monopolies of a Commercial Character	20
Sea and Air Transport	20
Public Procurement	21
Price Studies and Consumer Policy	21
Small- and medium-sized companies	22
Insurance	22
<u>IV Competition Policy and State Aid</u>	
General	23
Regional Aid	24
Sectoral Aid	24
Energy Policy	25
Public Undertakings	25
Export Credits	26
<u>V Concentrations</u>	27

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

The European Parliament,

- having regard to the Fifth Report of the Commission of the European Communities on Competition Policy,
 - having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 243/76),
1. Welcomes the Commission's achievement in maintaining progress in the field of competition policy, which has helped to strengthen the common market despite the current severe international economic problems;
 2. Stresses, however, the need for the Commission to extend the scope and application of its competition policy to ensure that the whole range of Community activity is covered;
 3. Urges the Commission, therefore, to consider how competition policy might fruitfully be applied to such diverse areas as social policy, the approximation of laws, the relations between the EEC and state-trading countries, the accession of new Member States, the Common Agricultural Policy, fishing policy, and the law of the sea;
 4. Regrets the absence from the Fifth Report of any mention of the competition aspects of energy policy, of consumer protection, of credit institutions, of the relationship between Community and national law, or of industrial policy, fields in which competition policy clearly has a role to play and to which the European Parliament has referred in previous resolutions;
 5. Regrets also that insufficient progress has been made in removing obstacles to competition in the granting of public contracts;
 6. Notes that there has also been insufficient progress in harmonizing export credits;
 7. Stresses the importance for the Commission to monitor developments in Member States' national competition policies, with a view to determining whether or not they are in tune with the aims of a Community competition policy, and calls on the Commission to include an analysis of such developments in its future reports;

8. Urges the Commission to adopt an unambiguous policy on patent licensing, without which it is difficult for undertakings to align their activities with the requirements of the Community, and reiterates, therefore, its request to the Commission to work out precise guidelines for the content of patent agreements which could both ensure the essential protection for the granter and avoid restraints on marketing contrary to the concept of a single market;
9. Wonders why the Commission has not included in its Fifth Report evidence of its continuing investigations into price discrepancies which might indicate distortions of competition, on which it reported in its Fourth Report, especially in view of the desirability of competition policy playing a role in combating inflation;
10. Supports the Commission's efforts to prevent unfair practices such as price-fixing, as exemplified by its action against United Brands;
11. Welcomes the new principles for coordinating regional aid throughout the Community which the Commission has worked out, and places the greatest possible importance on the implementation of these principles;
12. Calls on the Commission to continue its efforts to ensure that any aids granted by Member States do contribute to the necessary restructuring of the economy, and do not simply preserve obsolete industrial structures or transfer difficulties from one Member State to another;
13. Welcomes the Commission's adoption of guidelines for judging selective distribution agreements, but hopes for continued development in this field, with a view to amplifying these basic principles;
14. Urges the Commission to investigate and develop the role which competition policy could play in helping small and medium sized firms;
15. Awaits with interest the results of the Commission's examination of the business conduct of public undertakings, and the directive which it is preparing in this field;
16. Expresses once again its regret that the Council has still not adopted the regulation on the control of concentrations between undertakings, and urges the Council to adopt this proposal, in the form approved by Parliament, without delay; expects the Commission to continue its investigations into industrial concentration within the Community and to undertake a specific commitment for future action on the proposed merger control regulation.

B
EXPLANATORY STATEMENT

INTRODUCTION

One of the major objectives underlying the establishment of the European Economic Community was, and still is, the creation of a single market in which goods and services shall be freely available, at prices which are competitive, qualities which are acceptable, and offer the consumer freedom of choice.

It follows, therefore, logically that anything which aims at or leads to the artificial division of the Community into separate markets, or which fixes or maintains prices as between one supplier and another, or which establishes policies to restrict supply or refusals to buy (other than on normal generally accepted commercial criteria), or which denies freedom of choice, must prima facie be in conflict with the Treaty of Rome, the principal legal basis on which the EEC was founded. It is by means of its competition policy that the Community aims to achieve this major objective and by the progress made that the Commission must be judged.

Having re-confirmed this, however, it is becoming increasingly clear that economic and social developments since the signing of the Treaty, both within the territories of the Community and in the world in general, are giving rise to a need to adopt a degree of flexibility of interpretation which could not have been foreseen or provided for in the original Treaty. This raises, therefore, the extremely important question of principle, when considering the Commission's Fifth Report on Competition Policy, as to whether the nature and extent of change has been recognised by the Commission and reflected in its actions.

Regardless of the policies or action programmes of the Commission, the difficulties of achieving positive progress cannot be ignored, as the forces of resistance to change from nine separate markets to the creation of one single Community market are deeply entrenched. The Commission appears to be making progress as far as the removal of legislative barriers are concerned, though these are increasingly being circumvented by what might be described as "administrative" arrangements. The Commission should be much more ruthless in this area and be prepared to expose these practices by bringing cases to the European Court of Justice, even though it may prove difficult to win all of them. Disclosure, or the threat of exposure, can be a powerful weapon in the political armoury of the Commission.

The pace of change, especially in the industrial field, is far from satisfactory and though industrial policy is outside the responsibility of the Directorate for Competition Policy, the interdependence of these two policy sectors appears to be ignored. However, comments in this report by the European Parliament's Committee on Economic and Monetary Affairs are required to concentrate on competition policy in general, and the Fifth Report in particular.

FIFTH REPORT ON COMPETITION POLICY

I THE SCOPE OF COMPETITION POLICY

1. The Committee are even more convinced this year of the need to examine competition policy in the context of its overall effect. They therefore consider it essential to preface their comments on the Commission's Fifth Report itself with a more general summary as it is important that the report on competition policy should not "develop into a report for the Directorate-General for Competition".¹

The first part of the report will deal with the legal basis of competition policy, the development of the problems of competition, the way in which they are treated in the Fifth Report of the Commission and finally the general position, past and present, of the Committee on Economic and Monetary Affairs on this subject.

1. The legal basis of competition policy

2. The question of competition is dealt with in Articles 85-94 of the Treaty of Rome, which aim at achieving effective competition for both private and public industry. This area is one where the Commission has full responsibility for the formation and application of policy. This is done by means of "notifications", enquiries and decisions which it gives or undertakes and which may be backed up ultimately by the Court of Justice of the European Communities. The Commission works out proposals for directives or regulations which it feels are necessary to make the Treaty rules effective and it submits these to the Council of Ministers for examination and approval.

It is useful to recall these Treaty articles and instruments of the Commission's competition policy in that the underlying philosophy of competition policy established in the Treaty is now more and more often being called into question. A close examination of these rules shows that the Treaty is basically neutral on the question of free market economy or State intervention. Contrary to what is still thought by some, the Treaty does not embody a purely liberal or laissez-faire philosophy; in fact Articles 85 and 86 impose rules of competition on both private and public industry.²

¹ The report drawn up on behalf of the Committee on Economic and Monetary Affairs on the Fourth Report of the Commission of the European Communities on Competition Policy by Mr Normanton (Doc.164/75); this report was not adopted by the European Parliament.

² See J. Vandamme and M. Guerrin "La Reglementation de la Concurrence dans la CEE" by Presses Universitaires de France, 1974, pp.104 and 196.

The Treaty is basically concerned with the adverse consequences for the free circulation of goods and for economic integration which may result from restrictive agreements, dominant market positions, sales monopolies or State aids.

Consequently, there is no need to call into question the philosophy of competition policy as such but rather to re-examine it in the light of recent developments and changes in the economic system.

2. The development of competition problems

a) The development of competition policy

3. Although the original purpose of competition policy was to ensure the proper functioning of a market economy, there have been marked economic changes since then that have affected the role of competition policy itself.

4. Economic development since 1958 has been characterised by rapid economic growth, the so-called consumer society, and the emergence of a meso-economy (large multinational enterprises falling between the macro and micro-economic levels). Pollution, waste and more generally the economic crisis and stagflation, from which we are slowly emerging, have to some extent resulted directly from these developments.

So since the signing of the Treaty of Rome, numerous changes in competition conditions have occurred which necessitate new developments in competition policy.

b) New functions for competition policy

5. Thus it seems that while maintaining its traditional functions, competition policy should also become an instrument to combat inflation. To strengthen competition policy indeed seems to be a way to combat inflation. In today's less competitive economy this might principally be done through the application of Article 86. In the event of the abuse of a dominant position, price fixing may result from the deterioration of competition conditions. This practice is defined in Article 86 as "applying dissimilar conditions to equivalent transactions".

6. Competition policy can and ought also to act as an instrument to re-direct the economy. Competition must be stimulated to reduce the growing downward inelasticity of prices; for example, multinational companies often fix their prices at a relatively high level compared with the prices of marginal companies (an "umbrella price").

c) The conclusions to be drawn from the Fifth Report

7. In view of the considerable changes in the economic system, it is clear that even though the Commission's Fifth Report mentions certain progress in and adaptation of the Community's competition policy, this policy nevertheless contains many gaps.

(i) Progress

8. As far as the application of Article 86 with regard to the problem of price-fixing is concerned, it may be noted that the Commission adopted an important decision in this field (United Brands Company - Chiquita Bananas). Obviously, as the report itself states, the Commission should not "set itself up as a price-control authority" but it should nevertheless be clearly understood that "the provisions of Article 86 which prohibit discriminatory and unfair prices must be enforceable".¹

More generally still, and in order to use competition policy to combat inflation effectively, one may well ask if the Commission and the Community as a whole are willing to employ the necessary resolution and resources to suppress any price-fixing which arises from the abuse of a dominant position, whether this takes the form of discriminatory and unfair prices, or from an unfair transfer-pricing system.

In this connection, it should be noted that the Commission has undertaken a certain number of enquiries (some of which have been completed) into the prices of certain pharmaceutical products, for example, or the price of oil products during the period from October 1973 to March 1974.

As regards transport policy, the Committee are pleased to note from the Fifth Report that the Commission has begun to prepare a proposal for a regulation on the application of rules of competition in the field of sea and air transport.² Sea and air transport are, in fact, the only economic sectors where no implementing provisions on rules of competition exist and this makes for uncertainty in the law, which is to the disadvantage of companies and users in this field.

9. Finally, it should be noted that if any action on prices is to be comprehensive, measures should also be taken as regards public undertakings.

¹ The Fifth Report of the Commission of the European Communities on Competition Policy, point 76.

² Fifth Report, points 14 and 15

The Committee welcome , therefore, the fact that the Fifth Report includes a new chapter devoted to this subject and that the Commission intends to ensure that the financial links between governments and public undertakings are more transparent in the future. ¹

(ii) The Gaps

10. In spite of the progress made, the Community's competition policy as outlined in the Fifth Report remains in many ways insufficient, particularly in this period of change.

A less legalistic view of competition policy should go beyond scrutiny of the application of Articles 85-94 of the Treaty and include a more comprehensive approach which is unfortunately lacking in the Community competition report. It seems that when the scope and functions of competition policy are considered, its effects are or could be wider than the Commission thinks.

The Scope of Competition Policy

11. An examination of competition policy, which in all its aspects is linked to the situation both inside and outside the Community, shows that several fields are not covered in the Fifth Report. As far as the situation within the EEC is concerned, it seems advisable to draw attention to and call for consideration of the relationship and inter-action between competition policy and various other policies or fields.

It could thus be useful to consider, especially at a time when stock is being taken of the Common Agricultural Policy ² and there is the prospect of possible changes, what effect the application of the Common Agricultural Policy machinery has had on competition. Whichever way the Community fish-ing policy develops, there will be effects on competition policy, as there will also from any decisions reached by the Law of the Sea Conference. The inter-action between the social policy and competition policy is also important, and the extent to which progress in social harmonisation is essential for the success of a genuine competition policy, should be considered.

The approximation of laws (Article 100) is inseparable from competition policy. Once again, the Committee have to deplore the delays, caused mainly by the Council, in gradually eliminating technical and administrative barriers to trade. ³ Distortion to competition may result, for example, from incomplete harmonisation of legislation on public contracts.

¹ Fifth Report, point 159

² Ninth General Report on the activities of the European Communities, point 248, et seq.

³ The European Parliament has advocated the adoption of a new procedure in this area (see resolution in OJ No. C 5 of 8.1.1975).

Lastly, it is regrettable that the Fifth Report, like the Fourth Report,¹ makes no mention of the competition aspects of the Community's energy policy - common access to energy sources, common energy price level, competitiveness of Community industries, etc.; as the Committee had stressed, the common market "cannot be maintained in the long term without a common energy market."²

12. As far as relations between the EEC and third countries are concerned, a complete examination of competition policy should be made as part of an overall study of the EEC's commercial policy. Consideration of competition policy cannot be dissociated from consideration of various very important problems upon which the Fifth Report does not expand at all.

Firstly, the effect that the accession of new Member States could have on the application of rules of competition should be analysed in detail. In this respect, the Commission's opinion on the Greek application for membership is too imprecise.³

As regards relations between the EEC and state-trading countries, emphasis should be put on the need for import liberalisation agreements to be accompanied by a genuine normalisation of trade relations so that, in the words of the final Helsinki Act, there will be "an equitable distribution of comparable advantages and obligations"⁴ between the EEC and state-trading countries.

In general, and in view of the Commission's recognised powers in this field, the Commission should soon submit proposals to deal with the problem of proliferating export credits as its recent proposal to create a European Export Bank is not likely to remedy the serious distortions of competition that result from the lack of Community policy in this field.

The Committee regret that the Fifth Report artificially separates competition policy from, or fails to link it adequately to, the broader fields mentioned above. Inadequate Community action partly explains the obstacles confronting competition policy in its new role as an instrument to combat inflation and to re-direct the economy.

¹ Normanton Report (Doc.164/75), point 48

² The report drawn up on behalf of the Committee on Economic and Monetary Affairs on the effects of increased energy prices on Member States' productivity by Mr Guldberg (Doc.431/75) p.20; this report has not yet been adopted by the European Parliament.

³ Doc.COM(76) 30 final, p.12

⁴ Ninth General Report, point 512

The Functions of Competition Policy

13. If one sees competition policy as having a role in helping to resolve the current economic problems, it can be seen that it is necessary to take action in the field of consumer protection. In the new type of growth gradually emerging, the definition of a pattern of consumption tends to precede that of production. A consumer policy should contribute to the combating of abuses such as mis-representation and wilful deception. It is very much to be regretted that the Fifth Report makes no mention of this need. Rapid implementation of the Council resolution of 14 April 1975 on consumer protection and information policy is one of the things required.

14. Similarly, if one sees competition policy as an instrument for re-directing the economy, the important subject of control of industrial concentrations must be stressed. The Committee very much regret that the Council has not yet pronounced on the Commission's proposal for a regulation in this field. The very careful study carried out by the Commission on the development of concentration¹ should be followed up by a more specific commitment by the Commission on future action.²

The profit-earning capacity of small and medium-sized firms should also be increased (through appropriately structured corporation taxation, easier access to credit, technical assistance, the European Company, European Cooperation Grouping, etc.) as this is generally their sole source of finance for investment. So far, the "active" aspect of competition policy has too often been neglected in favour of a "passive" concept of pure control.

15. Finally, even with regard to traditional functions of competition policy, the method followed by the Commission in applying Articles 85 and 86 could be improved. For example, the Commission's criteria for implementing Articles 85 and 86, which may be deduced from its case by case decisions, are not given enough publicity amongst firms which may be affected. Moreover, the Commission's report and its competition policy in general suffer through not being founded on a concrete knowledge of the development of competition policies within the individual Member States and through the lack of co-ordination of national competition policies which would also involve the close coordination of national economic policies.³

¹ Fifth Report, part 3, point 160 et seq.

² Fifth Report, point 203

³ Resolution of the European Parliament on competition rules and the position to European firms in the common market and in the world economy, point 17, OJ No. C 66/11 of 1.7.1971

3. The Position of the Committee on Economic and Monetary Affairs

From the above, it is quite clear that the effects of competition policy from the point of view of either its scope or its functions are much greater than would appear from the Commission's annual report. Such an observation is not completely new. The re-examination of competition policy which the Committee now call for is completely in accordance with the position they have adopted in the past.

a) Previous position of the Committee on Economic and Monetary Affairs

16. The reports drawn up on behalf of the Economic Committee by Mr Berkhouwer on the Rules of Competition and the Position of European Firms in the Common Market and in the World Economy,¹ which preceded and gave rise to the Commission's annual report on competition policy, contain a clear statement of the European Parliament's views.

These reports have two fundamental and complementary premises: the economic and technical necessity of creating large production units which implies the need to encourage mergers and concentrations in the individual Member States through abolishing legal and fiscal obstacles,² and on the other hand, in order to avoid distortions of competition, a parallel need for an extended control involving application for prior notification of concentration, a control on the activities of multinational companies, the application also of the Treaty rules of competition to public undertakings, "insofar as the application of such rules does not obstruct the performance in law or in fact of the particular tasks assigned to them" (Article 90), measures to harmonise and coordinate State aids, and also, measures to promote small and medium-sized firms.³

Finally, the resolution expresses the desire for a harmonisation of Community and national competition policies.⁴

b) The present position of the Committee on Economic and Monetary Affairs

17. There is not one of the conclusions of these previous reports and resolutions which might not be reiterated today in view of the fact that they aim at ensuring an increase and extension of the application of competition rules. It is with the desire to achieve this in mind that the Committee now will examine in detail the main contents of the Fifth Report.

¹ Doc.197 of 2.2.1970 and Doc.227 of 3.2.1971; see also the above-mentioned resolution of 1.7.1971 (see footnote (3), p.10).

² See points 4, 5 and 6 of the resolution of 1.7.1971

³ See points 9, 12, 13, 14 and 15 of the resolution of 1.7.1971

⁴ See point 17 of the above-mentioned resolution of 1.7.1971

II THE RELATIONSHIP BETWEEN COMMUNITY LAW AND NATIONAL LEGISLATION ON COMPETITION

18. The Committee are surprised to see that the Fifth Report contains no reference to this important subject. The Fourth Report did devote a section to this, on which the Committee commented in their report last year.

The European Parliament, in its resolution of 18 October 1974¹, called for legally-binding rules to be laid down governing the relationship between national and Community law.

The Committee wonder whether the absence of any information in the Fifth Report indicates that there has been no progress in this direction. They recall that the Commission intended to hold a meeting with Member States' experts to work out rules to improve exchange of information before the end of 1975 and would like to know if this meeting did take place and, if so, what progress was made.

19. It would be desirable to establish some legally-binding basis for exchanges of information and consultations as was done in order to combat tax evasion and avoidance.

Such compulsory consultation would not interfere with the sovereignty of national authorities/courts of justice; it would create better opportunities for adapting procedures, and so it would not in the first instance be necessary to introduce a rule compelling national authorities/courts of justice to wait for Community decisions before taking any decisions on questions in which there might be a conflict between the use of national rules and Community rules.

Harmonisation of national legislation on competition

20. As the Committee have pointed out before, the EEC Treaty does not presuppose actual harmonisation of legislation on competition in the Member States. It merely lays down a Community law for cases where trade between Member States is affected by agreements or misuse of a dominant position. In the Committee's opinion, if the Common Market is to function properly, Member States' legislation on competition will gradually have to be further harmonised in accordance with Article 235 of the EEC Treaty.

¹ O.J. No C 140, page 65 of 13.11.1974

21. In this connection, the Committee would remind the Commission that they have in the past asked for the Commission to make available to the European Parliament the reports made by the Member States to the OECD on the development of national competition policies. Reports from some of the Member States for 1974 were received by the Committee secretariat, and even more limited information (for France and Germany only) has been received for 1975. There seems to be no reason why the Commission should not provide full information to the European Parliament on developments within the Member States, if necessary by producing it itself.

Such information is necessary to verify that developments in national legislation are at variance with Community policy; parallel development at national and Community level should be the immediate aim. The information could usefully appear in the annual report on competition policy. Indeed, the European Parliament asked in a resolution¹ in 1971 that the Commission should report each year to the Parliament on the competition policy of the Community and of the Member States. The Commission has confined itself to reporting on Community developments.

¹ O.J. No C 66/13 of 1.7.1971

III COMPETITION POLICY AND FIRMS

Patent licensing agreements

22. In 1975 the Commission took a certain number of new decisions on patent licensing agreements which, although they were useful in defining certain points, did not modify the principle of the Commission's position. With regard to this, the Commission confirmed its pragmatic position according to which it does not regard "some clauses in patent licenses as per se infringements of Article 85(1) of the EEC Treaty ... the facts of each case have to be examined before it can be decided whether Article 85(1) has been infringed".¹

Such an approach does not really satisfy the wish often expressed by the Committee² to see the Commission formulate "an unambiguous policy in this area, without which it is difficult for undertakings to align their activities with the requirements of the Community"³ which implies in the long-term the definition of precise norms.⁴

23. In the introduction to the Fifth Report, it is stated that "now that seven⁵ decisions have been issued, it is possible to contemplate the preparation of a regulation exempting certain categories of patent licensing agreement"⁶, a statement which is extremely vague. This would be a step in the right direction, however, and the Committee hope that such a regulation, with the grounds for exemption clearly stated, will appear in the near future.

24. The Committee have noted with satisfaction the signature in Luxembourg on 15 December 1975 of a Convention for the European Patent for the Common Market. They have long desired the adoption of such a Convention which creates a Community law above Member States' legislation but deplore that it has not been ratified. It is regrettable though to note the existence, although the Commission was not able to give its approval to it, of an Article (43(2)) which allows infringement proceedings to be brought against a licensee who supplies patented goods to customers outside his allotted territory but within the Common Market. This limitation on the principle of non-separation of markets undermines the efforts which the Commission has made in this field.

¹ Fifth Report of the Commission, page 22

² See the Artzinger Report on the Third Report on Competition Policy (Doc. 290/74) and the Normanton Report on the Fourth Report (Doc. 164/75); the latter report was not adopted by the European Parliament

³ Normanton Report (Doc. 164/75), motion for a resolution point 14

⁴ Normanton Report (Doc. 164/75), explanatory note point 21

⁵ In some language versions, six

⁶ Fifth Report of the Commission, page 8

25. The European Parliament believes that the problems faced by the Commission in this field arise from the conflict between the Treaty of Rome and national systems of industrial property law. This conflict is apparent in Article 43 of the Convention for the European Patent for the Common Market. There is evidence that the long delay in resolving these problems is inhibiting the flow of technology in the EEC; there is an increasing reluctance on the part of firms to enter into license agreements.

26. The European Parliament therefore makes proposals for dealing with two of the most difficult and fundamental aspects of the problem. The Commission should consider laying down guidelines on exclusive rights in license agreements to say when such rights are regarded as permissible. On the subject of territorial restrictions on license agreements, the Commission should arrange a further conference of government experts similar to that held in December 1974 in order to try and resolve this problem with the Member States.

Trademarks

27. The Committee note the Commission's efforts to apply the Court of Justice's rulings concerning the free movement of trademarked goods.¹ They would recall, however, that they drew attention last year², in connection with the ruling on Hag Coffee (Case 192/73) to the confusion which could be experienced by consumers faced with two different products with the same trademark.

Selective Marketing (Distribution)

28. The Committee recall that their report last year urged "the Commission to establish guidelines for judging selective distribution arrangements"³ and are therefore pleased that the Commission has "stated the limits within which it will tolerate selective distribution systems"⁴. Nevertheless, in view of the generality these guidelines, the Committee would stress the need for continued development in this field, with a view to amplifying these basic principles.

¹ Fourth Report of the Commission, point 60

² Normanton Report (Doc. 164/75), point 24

³ Normanton Report (Doc. 164/75), motion for a resolution point 15

⁴ Fifth Report of the Commission, page 8

Restrictive Trade Practices

29. The Committee agree that "the Commission's gradually developing case law has clarified the significance of the rules laid down by the Treaties"¹.

They feel, however, that it would be particularly useful here for the Commission to clearly indicate in its reports the benefits which might be expected to accrue to the consumer as a result of actions in this field.

Oil Companies

30. The Committee note that the Commission states the conclusions of its report on the behaviour of the oil companies in the Fifth Report, and await with interest the results of the Commission's further investigation into certain aspects of the oil business. They will not comment on the conclusions of the Commission Report here, in view of the fact that they are preparing a separate report on this subject.²

Multinational Companies

31. The Committee recall that in their two previous reports they welcomed the fact that the Commission was taking part in international cooperation and the control of restrictive practices within the framework of the OECD which, they felt, offered even greater scope than cooperation within the Community.³ The Fifth Report confines itself to saying that guidelines are being worked out within the OECD to help multinationals comply with the basic objectives of host countries.⁴

The Committee have discussed this topic separately, paying particular attention to the results of the meeting between delegations from the European Parliament and the United States Congress. The question of whether rules for the conduct of multinational companies should be voluntary or legally binding was considered, and, in view of the fact that some members of the Committee thought that it would be undesirable for Member States to sign the recently drawn up OECD code which would not have legal force, the Committee decided to make a separate report on this subject.

They will therefore, at this stage, only reaffirm the importance of competition policy in this area, and ask the Commission whether their view as stated in the Third Report, that 'no practical difficulties have arisen in the past from the fact that a firm is multinational' (i.e. from the point of view of competition), remains unchanged.

¹ Fifth Report of the Commission, page 9

² PE 43.650/rev.

³ Artzinger Report (Doc. 290/74) Explanatory statement, point 8

⁴ Normanton Report (Doc. 164/75) Explanatory statement, points 30 and 31

Fifth Report of the Commission, point 17

Credit Institutions

32. The Committee regret the absence of any reference to these in the Fifth Report, as this is clearly an area of great importance from the point of view of competition policy. It is vital that greater harmonisation of provisions on banking be achieved to enable full competition between banks in different Member States. In this context the Committee would refer to their Report¹ on coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions where they called for the Commission to consider the extent to which Commission provisions should later ensure that different kinds of credit institutions in the various national markets should be subject to uniform conditions of competition, and to their report of last year.²

State Monopolies of a Commercial Character

33. The Committee are dismayed to hear from the Commission that although the French and Italian sales monopolies for tobacco have now been formally abolished, the two monopolistic organisations have been trying to maintain their position by making exclusive agreements with producers of tobacco products in other countries. The Committee hope that the Commission will be able to take speedy action to prevent any such abuse. They also await with interest the results of the Commission's investigation of Benelux's tobacco pricing system to ascertain whether there has been any breach of the Treaty.

34. The Committee note that the Court of Justice has not yet given a ruling as to whether a national organisation of the market in alcohol is compatible with the Treaty, and that the Commission are awaiting this before taking any further action regarding adjustment of the French and German alcohol monopolies vis-à-vis the new Member States.

35. The Committee also note that the existence of certain State production monopolies does not conflict with the Treaty, but call on the Commission to continue its efforts to ensure that there is no abuse of a dominant position by these monopolies.

Sea and Air Transport

36. The Commission states in the Fifth Report that it has begun work on proposals to the Council for special regulations applying the rules of competition to sea and air transport in accordance with the Court of Justice's ruling confirming that the general provisions of the Treaty were applicable in these sectors³.

¹ Scholten Report (Doc.66/75)

² Normanton Report (Doc.164/75), motion for a resolution, para.12

³ Fifth Report page 9

It is clear that the Community rules of competition have not been strictly applied in these fields in the past, and it is regrettable that the Commission does not give more information about the action it intends to take.

In the Fifth Report the Commission says merely that any regulations "will take account of the need for uniform application of these (competition) rules and at the same time of the specific features of these modes of transport"¹. In the Commission report and proposal to the Council for an action programme for the European Aeronautical Sector (Doc.319/75), the Commission speaks of "a system of regulated competition"¹, but although the Committee sought clarification on this point during their discussions preparing their report², none has been forthcoming.

Public Procurement

37. This is an issue which is clearly of great importance for competition policy. If governments give unjustified preference to their national firms, as regrettably they often do (defence procurement is an outstanding example), competition between firms in different Member States is distorted. The Commission has in the past given some consideration to this problem, but development seems to be slow. In any case, such progress as there may have been should be described in the Commission's reports on competition policy.

Price studies and Consumer Policy

38. The Committee are extremely disappointed to discover that, in spite of the fact that they welcomed "the Commission's attempt to try to uncover infringements of the EEC's competition rules through comparisons of prices for identical goods in the different Member States" and urged the Commission "to elaborate the analyses and to expand the range of goods for which price comparisons are made"³, the Commission has apparently not continued with the type of study it initiated last year.

The regret occasioned by this lapse is reinforced by the surprising absence of any reference to consumer policy in the Fifth Report. The Commission acknowledges the role that competition policy can play in helping to control inflation, and while its statement that "measures to halt the abuse of dominant position cannot be converted into systematic monitoring of prices"⁴ may be accepted, it is very important to identify the causes of price differences for identical products between Member States, which can, after all, be one of several indications that Community rules on competition are being broken.

¹ Doc.319/75, Article 3(a)

² Guldberg Report (PE 43.158/rev.) point 43

³ Normanton Report (Doc.164/75) Resolution point 13

⁴ Fifth Report, page 13.

In this connection, it should be remembered that the excessive complexity of customs formalities and the existence of administrative or technical obstacles to trade constitute a not inconsiderable factor in increasing the cost of products and price variations. Continued action in this field is important, as the European Parliament has pointed out several times¹.

Small- and medium-sized companies

39. The Committee note the Commission's statement that the regulation it is preparing exempting certain categories of patent licensing agreement should benefit small- and medium-sized firms in particular². In view of the desirability, for both economic and social reasons, of strengthening these firms, given the trend towards ever larger and more impersonal economic organisations, the Committee would be interested to hear the Commission's views on how competition policy might play a role. In any case the Committee will be preparing a separate report on this subject.

Insurance

40. In view of the extent to which the Commission is proposing regulations which apply to insurance activities in the Community, it is somewhat surprising that it has not taken into account the competition aspects of these policies.

¹ Mitterdorfer Report (Doc.22/75) on the customs union, including the programme for the simplification of customs procedures.

² Fifth Report, Introduction p.8

IV COMPETITION POLICY AND STATE AID

General

41. As the Committee feared, last year the Commission had "to deal with significantly more cases of assistance granted by Member States to offset the industrial and social effects of the serious economic crisis which the Community is experiencing"¹. The Committee fully appreciate the necessity of Member States trying to offset these industrial and social effects, but question whether this is always done in the most desirable way with regard to the development of the Community as a whole.

It bears repeating, in spite of the frequency with which it has been stated in the past, that if the Community is to overcome its present serious economic difficulties, there will have to be a considerable structural adaptation in its economic system. State aids should be designed for the purpose of achieving this restructuring. Insofar as they do this, they may be regarded as desirable, but insofar as they merely serve to prop up an obsolete industrial structure, or inhibit logical and natural forces for changes, they are to be deplored. It is clearly foolish, moreover, for the Member States of the Community to seek to bolster their own industry at the expense of that of other Member States, with the result that higher and higher aids by Member States cancel out the effect of each other.

42. If competing and competition-distorting national aids are to be avoided, the Commission must play a large role. There are two facets of this role: industrial policy and competition policy. An industrial policy is vital if the Community is to achieve a rational economic (and social) development. It must decide in the light of the changed world situation, which industrial sectors should be developed, and which allowed to decline. The Committee assume that the Commission is fully aware of the need for such a policy, and that it will pay due attention to this in its forthcoming Medium-Term Economic Programme, but there is little or no evidence in the Commission's reports generally in support of it.

43. The rules of competition must then be enforced to ensure that rational economic development is not jeopardised by the introduction or continuation of incompatible national aids. Commission action should aim at preventing the introduction of new aids which would distort competition or merely lead to a round of aid increases by all the Member States. The Fifth Report indicates that it has had some success in this field, but competing and

¹ Fifth Report, Introduction page 7

competition-distorting aids indubitably continue to exist, and the Commission must be careful not to give the impression that it will adapt its competition rules to justify almost any form of aid which a Member State desires to introduce.

Regional Aid

44. The Committee are pleased to note that, following their request in the Normanton Report last year asking the Commission "to aim at a coordinated Community aid system covering the various rules concerning the granting of national aid"¹, the Commission "has worked out new principles for coordinating regional aid throughout the Commission which take account of the economic and social requirements of each region".² It is vital that a high degree of transparency for regional aid must be achieved if regional development plans are to be properly evaluated within the context of overall economic development. Moreover, the application of ceilings of intensity of aids is important if those regions most in need of help are to be given the desired priority. The Commission's principles, if assiduously applied, should enable a Community regional policy to achieve some measure of success.

One important point which deserves consideration is the tendency reported for some Member States to cut regional aid from national sources when their aid from Community sources is increased. Such conduct, besides affecting competition in the widest sense, to a large extent frustrates the aims of a Community regional policy (a policy which is already completely inadequate), and is to be deplored. If the Community is to mean anything to its citizens, then Community aid of all kinds must be identified and seen as such. The link with "Brussels" must be visible and not concealed within the handouts of Member States. The Community (including the European Parliament) aid to refugee and disaster funds (e.g. the Sahel and Friuli) is a particular case in point.

Sectoral Aid

45. The Fifth Report outlines action which has been taken by Member States to support specific sectors of industry. The Committee note that while the Commission in one or two cases prevailed upon a Member State to modify a proposed scheme of aid to conform to Community principles, in most instances it raised no objection to the aid measures proposed on the grounds that they did conform to the principles and conditions the Commission sought to enforce.

¹ Normanton Report (Doc.164/75) resolution point 8

² Fifth Report, Introduction p.8

Here it is opportune to reiterate two points made above. First, it must be stressed that the principal aim behind any sectoral aid must be the restructuring of that sector to conform to changed world conditions, though, as the Commission states, aid which in itself neither aimed at nor resulted in structural improvement would be allowed in the case of two categories of undertaking - "those which are basically sound and whose problems will disappear as soon as the economy picks up and those where rationalisation is called for but which need a respite while the necessary programmes are studied, formulated and initiated."¹

Second, though there is some scepticism on this, the reason for the Commission's approval in nearly all cases of sectoral aid may well be that the Member States took the Commission's views into account before making proposals for new aids, but if this is the case the Commission should make it clear, as it is important not to give the impression that Community rules can be adapted to fit almost any case.

45. In one specific instance the Committee would welcome further information from the Commission. The Third Directive on aids to shipbuilding, which was adopted by the Council on July 10, 1975, provided for a gradual reduction in national aids to this sector. The Committee would like to know if the planned reductions, and certain other specific conditions, are being fulfilled.

Energy Policy

47. In a year in which the Community's economy has been so acutely affected by the energy crisis, it seems strange that the Fifth Report makes no mention of the competition aspects of a Community energy policy. In view of the necessity to make progress at Community level in this vital area, and bearing in mind the fact that action to develop Community supplies of energy may not be strictly in accordance with the principles of free competition, this is a serious omission² by the Commission.

Public Undertakings

48. The Committee are content to observe that the Commission is finally intending to examine whether "the business conduct of public undertakings, which may be supported by public funds for fairly long periods, could lead to distortions of competition"³. The directive which the Commission states

¹ Fifth Report, point 133

² See also the Guldberg Report (Doc. 431/75) on energy prices and the competitiveness of European industry.

³ Fifth Report, point 159.

it is preparing "based on Article 90(3) of the EEC Treaty with the three-fold aim of clarifying for Member States their responsibilities under Article 90 introducing rules which will put the Commission in a better position to check on compliance with the Treaty by Member States operating through public undertakings and by the undertakings themselves, and finally making the financial links between governments and public undertakings more transparent", should be introduced without delay.

49. The Committee wonder whether the Commission might not have a wider role to play in this area with particular reference to the need to preserve fair competition between the public and private sectors. The Commission should consider drawing up criteria for what is fair and what is unfair competition. These criteria would apply equally to both sectors, public and private. The Commission might also be prepared to act as arbitrator in particular cases involving disputes between firms in the two sectors.

Export Credits

50. The Committee are concerned to discover that export credits, which are having a growing influence on the implementation of Community competition policy, are not mentioned in the Fifth Report. In view of recent developments in this field - the gentleman's agreement between the USA, Japan and four EEC Member States (France, Germany, Italy and Britain), the extension of the cost increase guarantee system and the Commission's plan to establish a European Export Bank¹ (a step which many of the Committee feel is completely irrelevant to the main problem of harmonising export credits) - the problem should certainly have been included in the Fifth Report, as there are distorting effects within the Community as well as outside.

¹ Committee on Economic and Monetary Affairs opinions to the Committee on External Economic Relations (PE 43.238/fin.) on export aid and PE 44.463 on a European Export Bank.

V CONCENTRATIONS

51. The Committee are disappointed to see that the 32 pages devoted by the Fifth Report to this subject are purely descriptive; no conclusions are drawn by the Commission from the data it has amassed. It states, for example, that "in 1973 and 1974 the number of national and international operations in the Community continued to rise, the highest increase being in takeovers and mergers"¹ but does not use this piece of information to decide what action, if any, should be taken in this field. It might conclude for instance that this increased the need for strict control to prevent the abuse of dominant positions.

52. The Committee, however, will stress yet again² the necessity for the Council to adopt the proposal for a regulation on the control of concentrations between undertakings in the form approved by the European Parliament. The Commission is well aware of the importance of action in this respect at least for it states that it "has asked the Council to intensify its work on the proposed merger control regulation."³

¹ Fifth Report, point 202

² Artzinger Report 1974, resolution point 11 and Normanton Report, resolution point 19

³ Fifth Report, Introduction, page 9

