European Communities

EUROPEAN PARLIAMENT

Working Documents

1973-1974

10 December 1973 DOCUMENT 264/73

Report

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

on the second report from the Commission of the European Communities on competition policy (Doc. 148/73) and

on the Communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid in 1972 (Doc. 122/73)

Rapporteur : Mr H. K. ARTZINGER

PE 34.607/fin.

English Edition

By letter of 10 September 1973 the President of the European Parliament forwarded the Second Report from the Commission of the European Communities on Competition Policy (annexed to the 'Sixth General Report on the Activities of the Communities') to the Committee on Economic and Monetary Affairs as the committee responsible and to the Committee on Energy, Research and Technology, the Committee on Regional Policy and Transport and the Committee on Social Affairs and Employment for their opinions.

At the request of the Committee on Regional Policy and Transport on 9 October, the Committee on Economic and Monetary Affairs was also designated as the committee responsible for considering the Communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid in 1972. The Committee on Regional Policy and Transport and the Committee on Budgets were asked for their opinions.

On 13 July 1973 the Committee on Economic and Monetary Affairs appointed Mr Artzinger rapporteur.

It considered the draft report at its meetings of 13 July, 14 September, 12 October, 5 November and 29 November, 1973. At the meeting of 29 November it approved the motion for a resolution unanimously.

The following were present:

Mr Lange, chairman; Mr Notenboom, vice-chairman; Mr Artzinger, rapporteur; Mr Burgbacher, Mr Flämig (deputizing for Mr Arndt), Mr Harmegnies, Mr Leenhardt, Mr Mitterdorfer, Mr Normanton, Mr Scholten and Mr Yeats.

The opinions of the Committee on Energy, Research and Technology, the Committee on Regional Policy and Transport, and the Committee on Social Affairs and Employment are attached to this report.

The opinion of the Committee on Budgets will be distributed later.

C O N T E N T S

A

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 Second Report from the Commission of the European Communities on Competition Policy and on the Communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid in 1972

The European Parliament,

- having regard to the Second Report from the Commission of the European Communities on Competition Policy (Doc. 148/73), and the Communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid in 1972 (Doc. 122/73),
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Energy, Research and Technology, the Committee on Regional Policy and Transport and the Committee on Social Affairs and Employment (Doc. 264/73),

1. Recognizes that in its Second Report on Competition Policy the Commission has met a number of wishes expressed by the European Parliament;

2. Supports the Commission's efforts to acquire powers in respect of industrial concentrations comparable with its powers on restrictive agreements;

3. Urges the Commission to submit proposals in the near future defining more clearly the scope of the Community's competition rules and those of the Member States respectively, pursuant to Article 87 (2) of the EEC Treaty;

4. Requests the Commission to consider the possibility of harmonizing national provisions on unfair competition;

5. Considers it desirable to establish a European Office for Competition Policy, which would receive political guidance from the Commission, but which would otherwise act independently in carrying out investigations and taking decisions;

6. Draws attention to the fact that recent rulings of the Court of Justice of the European Communities make it all the more essential for the Commission to decide promptly on notified agreements, clarify as soon as possible its policy on licensing and know-how agreements and turn its attention to restrictive practices in the research sector;

7. Expects the Commission to remain vigilant in the future in combating agreements designed to prevent the re-exporting of products;

8. Considers that decisions on investments are primarily business risks and should remain so, but that it may be useful for the Commission to arrange market analyses and compile supply and demand forecasts for specific sectors;

9. Awaits the early replacement of existing regional aid regulations by a regulation under which the scale of aid would be geared to the economic and social backwardness of a given region;

10. Finds that the chapter on public undertakings contains no guidelines, and reiterates its request to the Commission to draw up directives and decisions designed to remove distortion of competition between public and private undertakings;

11. Reaffirms[1] the need to amplify the Community's rules on competition by an international agreement on regulations governing competition to ensure that multinational undertakings operate under uniform conditions of competition;

12. Urges the Commission to consult the recently created consultative committee on Consumer Protection at an early stage when drawing up proposals directly affecting consumer interests;

13. Urges the Commission to collaborate in the wide dissemination of the results of comparative product tests and to promote joint studies by consumer associations in the individual Member States;

14. Requests the Commission to study the possibility of drawing up a Community regulation on misleading advertising and aggressive selling methods;

15. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

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[1] OJ No. C 14, 27 March 1973, p. 9

B

EXPLANATORY STATEMENT

I. Competition policy in 1972

In recent years Community competition policy has become a reality which the economy has to take into account. The Commission is now making full use of the substantial powers conferred upon it in this field by the Treaty. Basically the European Parliament agrees with the Commission's method of doing so. This also applies to the Commission's efforts to achieve a balance between its powers on restrictive agreements and its inadequate powers where mergers are concerned.

The enlargement of the Community must also be considered an advantage from the point of view of competition policy. Economic power can best be held in check by effective competition. In present circumstances this presupposes a large market, with room for a suitable number of large undertakings. This is another reason for welcoming the three new Member States.

Although the Commission has made great progress, it has not yet advanced to the point where it could confine itself merely to implementing a readymade policy. Anti-concentration policy, and the policy relating to particular forms of restrictive agreement (patent and licence contracts, know-how contracts, buying and selling contracts) have not yet been clearly worked out.

The Committee on Economic and Monetary Affairs urges the Commission to submit proposals immediately, defining for instance the scope of the Community's competition rules and those of the Member States respectively, pursuant to Article 87(2), sub-paragraph (e). The Commission should also consider the possibility of harmonizing Member States' regulations on unfair competition, since a competition policy is not only designed to maintain and revive competition but also to protect those involved in the economic process against unfair competition. In the Community, the legal provisions vary enormously, and efforts must be made to achieve a measure of uniformity in this field.

In view of the greater responsibilities of the Commission and the increasing importance of competition policy in the Community, consideration must be given to the creation of a European Office for Competition Policy, which would receive political directives from the Commission, but in practice would be largely independent in its work and decision-making.

The manner in which the Commission has published this year's report on competition policy complies with several requests made by the European Parliament. For example, this year it has devoted a long chapter to public undertakings; it has also given attention to other forms of government contribution to the capital of certain undertakings (IMI and

GEPI in Italy, IDI in France). The Second Report also contains a chapter on competition policy in which the implementation of the competition rules in individual sectors is discussed. The section on banking is of particular interest here. Finally the Community's competition policy has been tied in more closely with other policies, wherever areas of convergence exist, and this also was requested by Parliament.

The following sections will cover only some areas of competition policy. It seemed opportune, this year in particular, to discuss the Commission's proposal on merger control in greater detail.

II. Restrictive agreements

Restrictive agreements still represent a form of restraint on competition which it is very difficult to control. The harder the cartel offices crack down the stronger is the tendency to resort to what the Commission euphemistically calls 'discreet forms of concerted behaviour on the market'.[1]

Nevertheless, further action must be taken against restrictive agreements when their existence is discovered by the Commission. Shortly after the period covered by the report - in February 1973 - the Court of Justice in its judgment on Haecht II took a number of major decisions which gave a new slant to the Commission's rules on restrictive agreements. This judgment makes a sharp distinction between 'old' and 'new' agreements[2].

In the case of old agreements, the national court cannot declare them invalid until the Commission has announced its decision. In the implementation of new agreements however, the risk will be borne in future by the parties to them. If a complaint is made against a restrictive agreement being declared void in a national court pursuant to Article 85(2) of the Treaty, three courses of action are open to the court:

- it can suspend proceedings and give the parties the opportunity of obtaining the Commission's opinion.
- it can decide that the agreement is not prohibited under the terms of Article 85(1).
- it can decide that the agreement contravenes the article on restrictive agreements.

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[1] Second Report on Competition Policy, p. 28

[2] For the original Member States old agreements are those concluded before 13.3.1962, the date Procedural Regulation No. 17/62 entered into force. In the three new Member States restrictive agreements concluded before 1.1.1973 and notified not later than 1.7.1973 pursuant to the Treaty of Accession are considered to be old agreements.

This applies to agreements subject to notification as well as restrictive agreements where notification is not required. It is important to note that nullity is retroactive.[1]

The Haecht II-Judgment was a sign that the Community was tightening up its competition policy. Undertakings will now definitely have to consider whether their agreement complies with the competition rules. This will give rise to a certain amount of legal confusion for some undertakings, although this is only a slight drawback, since the Commission's policy has been so clearly defined over the years that firms should no longer have any doubts. Indeed, the very fact that policy has been more clearly spelt out enabled the Court of Justice to give a new interpretation to the rules on restrictive agreements. The judgment should be an incentive to the Commission to clarify certain aspects of its policy as soon as possible; it should also result in prompt decisions being given on notified agreements.

Aspects of the policy which need to be further clarified are licensing and know-how agreements, restrictive agreements in the field of research, as well as buying and selling agreements. The dissemination of useful knowledge is frequently dependent on an exclusive licence being granted; clearly this must not be linked to a ban on re-export. The licensing agreements often contain provisions which, while restricting competition, are not essential to the protection of industrial property. The Commission intends to grant general exemption for specific know-how and licensing agreements.

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[1] This judgment departs considerably from the principles established by the Court of Justice in its previous jurisdiction. In the 'Bosch judgment' of 1962 the Court concluded that agreements should be regarded as valid when notification is optional, and as provisionally valid when they have been notified pursuant to Procedure at Regulation No. 17/62. The judgment did not establish, however, whether provisional validity made the agreement legally binding. The Court of Justice did not confirm this point until 1969; in the 'Portelange judgment' it was stated that notified agreements are fully effective provided that the Commission has not yet announced its decision. In the Bilger judgment the Court went even further. This stated that an agreement that is not notifiable and has not in fact been notified is fully effective as long as its nullity has not been established. Should it later be declared void, this takes effect only from the date of the judgment, as the Court of Justice established in the Bilger judgment.

The Second Report on Competition policy contains no information on buying and selling agreements nor on joint research and its benefits. The Committee on Economic and Monetary Affairs still considers that a restrictive policy should be followed in this area. If the results of joint research are exploited by large undertakings in conjunction, there is a considerable risk of serious restraint on competition.

The Commission asks that the so-called 'self-limitation agreements', (section 17) should be notified in every case and rightly adds that agreements on import curtailment in another country are part of commercial policy and should therefore remain in the hands of the public authorities. The Committee on Economic and Monetary Affairs endorses this view absolutely. There are in fact three distinct types of self-limitation agreement: agreements forming part of a trade agreement, self-limitation undertaken unilaterally by the exporting country, and finally agreements concluded by undertakings or an industrial sector in the exporting country alone or with undertakings in the importing country. Competition policy is concerned only with the last of these three. The Commission is about to consider a number of cases in this category.

From time to time it is pointed out, particularly by Parliament, that the price of one particular product varies considerably from country to country. These price differences are particularly noticeable in the motor vehicle trade. The Commission has enquired into the matter, and has managed to persuade some car manufacturers to harmonize their dealership arrangements. However, the position is still far from satisfactory.[1]

It is not really a question of denying a manufacturer the right to fix different prices for his product in different countries. But it is wrong for retailers to be prohibited from re-exporting, as is not infrequently the case. Without this ban the price differences would not be as marked as they have been in some cases. The Commission will have to take decisive action to combat such practices in the future.

III. Agreements concerning investments

The report on the resolution on the First Report of the European Communities on policy with regard to competition (PE 31.092/fin.) discusses at length the possibility of coordinating investment in certain sectors[2], and in particular those sectors in which developing production techniques are enouraging the creation of extremely large units of production. In the Second Report on Competition Policy (section 18) the Commission admits that this is a serious problem, although it

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[1] OJ No. C 39/73, p.13

[2] The European Parliament had already drawn attention to this problem in its resolution of 7 June 1971.

does not take a definite standpoint on the question. There is however a need (which will probably be even greater in the future) for a regulation giving the undertakings in the sectors concerned an idea of expected short-term, and in particular long-term supply and demand trends. This is not to suggest that the Commission should coordinate investment by the undertakings. Decisions on investments are pre-eminently an entrepreneurial risk and should remain so. It would however be useful to have market analyses and supply and demand forecasts for specific sectors drawn up under the responsibility of the Commission. On this basis the Commission should be able to recommend an investment standstill if necessary, as a result of which government investment aids would be suspended in the sectors concerned. The Committee on Economic and Monetary Affairs calls upon the Commission to state what stage it has reached in its discussions with representatives of the undertakings concerned.

IV. Regional aids

The highly complex problems of aid coordination[1] have not been made any easier by Britain's accession to the Community. On the contrary, Great Britain has a long tradition of varied and radical measures for reducing the differences between richer and poorer areas. Almost half (49%) of the active population in Britain works in areas qualifying for regional aid.

In 1971 the Six agreed on the first comprehensive measures to coordinate regional aids. As a result, since 1 January 1972, in the so-called central areas (i.e. the whole Community except for Berlin, the area of the German Federal Republic on the East German border, the Mezzogiorno and parts of west and south-west France) regional aids should in no circumstances exceed 20% of capital investment. It was stated in the Treaty of Accession that this coordination regulation should also be applied to the new Member States with effect from 1 July 1973 at the latest, by Commission decision. This has now been formally enacted, but the effect of the Commission's decision has been to postpone this until the end of 1974 at the latest. The Commission stipulated that the areas of Great Britain which receive no aid, and the so-called 'intermediate areas' would be regarded provisionally as central areas. As for Scotland, the north of England, Wales and south-west England, the Commission did not yet wish to classify them as either central or peripheral areas. These areas are to some extent in competition with areas in other Member States that do not benefit from regional aid. Community coordination will thus be of considerable importance.

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[1] Communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid in 1972 (Doc. 122/73).

There is a time limit on the present regulation since coordination regulations for regional aid in all areas of the enlarged Community must be introduced by 31 December 1974. The Commission would be well advised not to wait until this date, as the negotiations on setting up a common regional fund are likely to be difficult if a satisfactory solution is not found to the classification of areas in Member States. The division of the whole Community into central and peripheral areas, made in October 1971, should soon be replaced by a regulation under which the scale of aid would be geared to the economic and social backwardness of the region concerned, as Parliament proposed in its resolution of 12 February 1973.[1]

V. Public undertakings

The statistics on public undertakings given by the Commission in its Second Report on Competition Policy (section 127 ff.) show that these undertakings are still of great importance despite their diminishing contribution to the gross national product. Relations between public undertakings and the state are a serious problem for the Commission. There is difficulty even in defining the term 'public undertaking' (section 130 of the Second Report on Competition Policy). In a country like Italy in particular, it is almost impossible to obtain a clear picture of the highly complex relations between the state and the undertakings in which it has a major interest. It is encouraging that in France some progress has been made in applying the principles of business management to public undertakings. In Italy, on the other hand, the situation has become even more confused, since public undertakings are being used increasingly as an instrument of regional and social policy. The President of the Central Bank of Italy, Mr Carli, recently described in very pessimistic terms[2] the effects of extending the operational scope of public undertakings in Italy, mainly through measures to support undertakings which had fallen into difficulties. These measures were not part of a systematic economic policy, but were of a fairly arbitrary nature and their effect would be to gradually isolate the Italian economy from European integration. This warning from the President of the Italian Central Bank should be taken seriously.

In the chapter 'Public Undertakings' the Commission assembles a number of facts which are of great interest as a first analysis of the problem. However, the Commission has drawn scarcely any political conclusions in its report.

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[1] OJ No. C 14/73

[2] Relazione del Governatore della Banca d'Italia sull'esercizio 1972

VI. Multinational undertakings

The Berkhouwer report on the First Report of the European Communities on policy with regard to competition[1] contains an analysis of the special features of multinational undertakings as they affect competition policy. In sections 52 and 53 of this report, certain conclusions are drawn from this analysis, some of which are incorporated in the European Parliament's resolution of 12 February 1973.

There is no reason to amend these conclusions. In a recent memorandum to the Council, the Danish Government drew attention to the problems raised by the rapid development of multinationals and put forward a number of requests which are broadly in line with those made by the European Parliament and the Committee on Economic and Monetary Affairs. The matter is currently being discussed in the OECD and the United Nations[2].

VII. Consumer Policy

The part of the Second Report on Competition Policy dealing with consumer protection contains little that is new. The Committee on Social Affairs and Employment likewise regrets that consumer problems receive so little attention in the report[3]. It will be necessary to await the consumer policy programme which, according to a recent answer to a written question[4], the Commission proposes to submit by the end of the year.

Competition policy is ultimately consumer policy. As such, it has an important function, especially now that it is often the manufacturer and no longer the customer who has the biggest say. The freedom of choice still left to the consumer is in many cases, moreover, being eroded by restriction of competition and biased market information[5].

Inadequate consumer information encourages the formation of oligopolies, by giving large undertakings the opportunity to exploit advertising in selling their products to an ill-informed public.

The declaration following the Paris Summit Conference of October 1972 called strongly for action to protect consumers. So far it has brought few practical results, apart from the recent formation by the Commission of a consultative committee consisting of 25 members, due to hold its first meeting shortly.

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1 PE 31.092/fin.

2 IMF survey, 11 June 1973

3 Opinion of the Committee on Social Affairs and Employment, PE 34.300/fin.

4 OJ No. C 68/73

5 'Bericht des Bundeskartellamtes über seine Tätigkeit im Jahre 1972 sowie über Lage und Entwicklung auf seinem Aufgabengebiet', p.11

There are two aspects to consumer policy: promotion of market transparency for the consumer and the creation of conditions under which consumer organizations can help to influence policy in various areas.

In connection with the first point, the Committee on Economic and Monetary Affairs notes with interest that consumer organizations from various Member States are already collaborating on comparative product tests.

Television programmes dealing with product tests are also of considerable importance in working towards greater market transparency. Such programmes should therefore be put out more frequently, preferably at peak viewing times. Efforts should be made to provide at least as much viewing time for such bradcasts as for advertising.

Consumer organizations are already doing useful work in a preventive sense, since manufacturers appear increasingly willing to take their recommendations into account even at the product-development stage. These organizations therefore help in establishing standards, and this obviously places certain responsibilities on them.

Furthermore, the consumer organizations must set out to influence policies and laws directly affecting consumer interests. The Committee on Economic and Monetary Affairs endorses a proposal from the Consultative Assembly of the Council of Europe for an independent organization to be set up in each country to advise governments and parliaments on legislation and policy. Both consumers and industry should be properly represented in these organizations. Great importance is attached to independence from the authorities, since in many markets a substantial proportion of the supply is in the hands of the government, which has to look after other interests in addition to those of the consumer. Government independence does not necessarily imply total financial autonomy; indeed, consumer organizations could not do their job properly without public funds.

Finally, the Commission should investigate the possibility of drawing up a Community regulation to combat misleading advertising and aggressive selling methods.

OPINION OF THE COMMITTEE ON ENERGY, RESEARCH AND TECHNOLOGY

Letter from the chairman, Mr SPRINGORUM, to the chairman of the Committee on Economic and Monetary Affairs, Mr LANGE

Dear Mr Lange,

By letter of 10 September 1973 the President asked this committee for its opinion on the Second Report on Competition Policy (Doc. 148/73).

As you will recall, this committee submitted an opinion drafted by Mr VANDEWIELE to your committee on the First Report on Competition Policy (PE 30.993/fin.), asking the Commission to deal in more detail with competition in the energy sector in future reports.

On examining the Second Report on Competition, the Committee on Energy, Research and Technology found that this request has been met. It therefore has nothing to add to its opinion on the First Report on Competition, which was intended to be final. It would be grateful, however, if your committee could mention in its report that the request expressed last year has been met.

The Committee on Energy, Research and Technology will also refer in its own reports to the situation described in the Second Report on Competition, whenever it has immediate cause to do so.

Yours faithfully,

(sgd.) G. SPRINGORUM

Opinion of the Committee on Regional Policy and Transport
Draftsman : Mr K. Mitterdorfer

The Committee on Regional Policy and Transport appointed Mr MITTERDORFER draftsman of an opinion on the communication from the Commission of the European Communities on the implementation of the principles of coordination of regional aid (Doc. 122/73) on 12 September 1973 and on the second report from the Commission of the European Communities on competition policy (Doc. 148/73) on 26 September 1973.

At its meeting of 4 December 1973 the committee discussed and adopted the draft opinion unamiously.

Present at the meeting: Mr James Hill, chairman; Mr Mitterdorfer, draftsman; Mr Eisma, Mr van der Gun, Mr Herbert, Mr Johnston, Mr Mursch, Mr Pounder, Mr Schwabe, Mr Starke.

1. Under the Treaties establishing the European Communities it is the Community institutions' task to ensure that competition is not distorted in the Common Market.

Competition is considered to be the best incentive to economic activity. An active competition policy should facilitate the continuous adaptation of supply and demand structures to the development of technologies; its objective is to ensure the best possible use of production factors.

2. In its resolution on 'the rules of competition and the position of European undertakings in the Common Market and world economy' of 17 June 1971, the European Parliament requested the Commission to report annually on the development of competition policy.

To meet this request, the Commission has drawn up since 1972 an annual general report on events in competition policy. The advantage of this report is that it makes it possible to follow the development of the rules of competition as their content becomes clear and accurately defined, competition policy being subject to a process of evolution in the same way as the areas to which it applies.

The Commission's report contains all the decisions it has taken on agreements (Article 85 of the EEC Treaty and Article 65 of the ECSC Treaty), concentrations (Article 86 of the EEC Treaty and Article 66 of the ECSC Treaty) and state aid (Article 92 of the EEC Treaty and Article 67 of the ECSC Treaty).

3. Competition policy is not restricted to compelling undertakings to observe certain rules of competition; it should also ensure that Community interests are the dominant factor in the field of state aid.

The Member States are making increasing use of aid as an instrument of economic policy.

Even though the free play of market forces is conducive to progress and the best means of ensuring optimal allocation of production factors, there are situations in which it alone does not allow certain development objectives to be achieved within a reasonable period and without excessive social tension.

Where government action is taken, the aim is therefore to reintegrate certain sectors or regions into a practicable and efficient competitive system by reducing the social costs of the necessary charges. Thus regional policy supports competition policy by allowing the emergence, in certain regions, of conditions of competition likely to result in harmonious development of the Community.

However, regional aid has given rise to a situation in which Member States try to outdo each other, and this has jeopardized the balance that is being sought. In coordinating regional aid granted in the central regions[1] the Commission found in 1971 a means of eliminating the unfavourable effects of regional aid.

4. The first report on competition policy[2] outlined the principles of coordination applicable from 1 January 1972 to regional aid granted by the Member States in the central regions of the Community. It stated that coordination would be gradual. The year 1972 was therefore a transitional year used to carry out the technical work needed for full implementation of the coordination principles.

The precise nature of this work is described in the second report on competition policy,[3] which we are now discussing. The results of this work are described in the Communication from the Commission of the European Communities on the implementation of Principles of Coordination of Regional Aid in 1972,[4] which we must therefore examine together with the abovementioned document.

The Commission's communication represents the first report that it is required to submit annually to the Council and to the other Community authorities on the implementation of the principles of coordination of regional aid.

5. This report and the section entitled 'Aid schemes for regional purposes' of the report on competition discuss the work done in 1972. This covered:

(a) Internal <u>administrative measures</u> adopted by the Member States to ensure compliance with the coordination principles and the forwarding of information to the responsible authorities;

(b) Establishment of a <u>method of supervising</u> the application of the co-ordination principles. This supervision is carried out by the Commission on the basis of <u>a posteriori</u> notification of significant cases applying (assisted investments of 4m u.a. and above if new jobs are created and of 3m u.a. and above if new jobs are not created). The details of the notification of such cases, their frequency and the information to be provided have also been established;

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1 - General regional aid schemes (communication from the Commission to the Council), OJ No. C 111, 4.11.71, p.7;

- First resolution of 20 October 1971 by the representatives of the governments of the Member States meeting in Council on general regional aid schemes, OJ No. C 111, 4.11.71, p.1

2 Doc. 31/72 - No. 143 to 153

3 Doc. 148/73 - No. 83 to 88

4 Doc. 122/73

(c) Technical work designed to make certain types of aid easier to investigate. Work is continuing in this field. It has in particular been decided to fix for certain types of aid (particularly tax concessions) a standard ceiling in subsidy equivalents which cannot be exceeded. Progress has also been made in respect of other types of aid such as aid for land acquisition and for construction. Work is continuing on state guarantees;

(e) Technical work concerning assessment of the impact of regional aid on the different sectors of the economy. The aim here was to establish a method of analysis which allows an assessment of the impact of aid on the various sectors. The method adopted reveals which industries or branches of industry benefit most from regional aid and, among these, which involve the greatest hazards from the point of view of Community trade and competition. This method also makes it possible to determine the Member State or States in which problems might exist in these industries or branches of industry and the causes of the situations thus diagnosed. None of this technical work requires particular comment.

6. Paragraph 88 of the Report on Competition points out that the coordination principles will apply to the new Member States from 1 July 1973 at the latest. The first six months of the year were allowed for adjustment of the Communication to the Council and the first resolution on regional aids, adopted by the Member States meeting within the Council, to take account of enlargement.

The last sub-paragraph of paragraph 88 states that this work had been 'made more difficult than expected by the fact that in two States, Denmark and the United Kingdom, new aid schemes were brought in during the period.'

In fact, the new Member States ought to have taken account of the resolution of 20 October 1971 when introducing new aid schemes. This resolution imposes a ceiling on aid granted in the central regions, stipulates that aid must be easy to investigate and refers to the regional specificity of such aid.

The extension of the coordination principles to the new Member States is essential. Regions of the new Member States which are in direct competition with other Member States must not be declared peripheral without Community control since this would allow them to receive limitless amounts of regional aid, and attempts to attract new investors would seriously distort competition. Moreover, enlargement should lead to certain regions losing their peripheral character within the Community.

It was therefore necessary to find a balanced solution which took account of the constraints to which the Six were subject and which would apply to the acceding countries.

The Commission consequently took a decision in June 1973, pursuant to Article 154 of the Treaty of Accession, on the coordination of regional aid schemes in the new Member States.[1]

The Commission thus decided on the demarcation of the central regions of the three new Member States to which the coordination principles would apply from 1 July 1973 onwards.

In addition, the Commission will be laying down, by 31 December 1974, rules governing coordination in all regions of the enlarged Community, i.e. central and other regions. These rules may make provision for various types of region in which different ceilings of aid concentration will apply. They must also consider the specific problems facing each of the peripheral regions.

The Commission's attention should be drawn to the need to take account of decisions taken in the meantime on Community regional policy, when coordinating regional aid.

7. Pursuant to Articles 92 et seq. of the EEC Treaty and the abovementioned coordination principles, the Commission expressed its views in 1972 on aid schemes instituted in Germany, Belgium, France and Italy. These schemes concerned:

- investment bonuses in the German coal areas,
- the Belgian economic growth law,
- the new French regional bonus scheme,
- assistance to industrial undertakings in the autonomous region of Friuli-Venezia Giulia.

In each case the Commission made sure that planned aid was specifically regional in nature.

In all cases the Commission is rightly opposed to aid which does not have necessary structural or regional adjustments as its basic objective. It is also justifiably in favour of aid being granted where problems are most serious.

8. With regard to aid schemes for individual industries, the Commission has introduced Community rules which must be observed when aid is granted.

These rules concern two branches of the transport industry: shipbuilding and aircraft production. In various Member States both branches are characterized by their failure to adapt at national level to the necessities of competitiveness at world level, the result being a considerable drain on public resources.

[1] Communication from the Commission to the Council on 'general regional aid schemes' of 27 June 1973 - COM(73) 1110.

Two major agreements have been established in the ship-building sector: a directive adopted on 20 July 1972 by the Council of the European Communities[1] concerning shipbuilding aids and a general arrangement adopted by the OECD Council on 20 October 1972 with regard to the gradual elimination of obstacles to the achievement of normal conditions of competition with respect to ship-building.

In the field of aircraft production the Commission has submitted to the Council a memorandum on the 'industrial and technology policy measures to be adopted in the aircraft production industry'. On this occasion, the Commission proposed a 'framework arrangement' for aids.

In view of the special features of undertakings in the transport sector and the fact that the definition of the competition rules applicable to it forms part of the common transport policy, the Council decided that Regulation No. 17/62[2] implementing Articles 85 and 86 of the Treaty should not apply to this sector.

Special methods of implementation are described in Regulation No. 1017/68 of 19 July 1968[3], which provides for the non-applicability of the prohibition of agreements having as their sole object the joint application of technical improvements or technical cooperation and the grouping of small and medium-sized undertakings with the object of financing or jointly acquiring materials and transport supplies directly related to their activities.

Regulation No. 1017/68 also introduces an exception to the principle of prior notification stipulated by Regulation No. 17.

To date, the Commission has not had to institute proceedings to put a stop to infringements.

The relevant departments of the Commission have examined the operations of five Rhine navigation pools and conventions: the Duisburg Freight Convention, the French Rhine Traffic Convention, the Kettwig Pool, the Rhine Container-Linie and the Rhine Grain Shipping Convention. The question was whether these pools and conventions allowed effective competition on the transport markets in question. At the present stage of its investigations the Commission has not decided to institute proceedings with a view to the termination of infringements arising from the Rhine pools and conventions.

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[1] OJ No. L 169 of 27.7.1972

[2] OJ No. 13 of 21.2.1962, p. 204

[3] OJ No. L 175 of 23.7.1968, p.

Opinion of the Committee on Social Affairs and Employment

Draftsman : Lord O'Hagan

On 9 October 1973 the Committee on Social Affairs and Employment appointed Lord O'HAGAN draftsman. It considered the Opinion at its meeting of 24 October 1973 and adopted it unanimously.

The following were present: Mr Betrand, chairman; Mr Adams, vice-chairman, Mr Durand, vice-chairman; Lord O'Hagan, draftsman of the opinion; Mr Yeats, Mr Vernaschi, Mr Pisoni, Mr Harzschel, Mr van der Gun, Mr Bermani, Mr Vermeylen, Miss Lulling and Mrs Nielsen (deputuzing for Mr Christensen).

SECOND REPORT ON COMPETITION POLICY

(Doc. 148/73)

Introduction

1. In every Member State large companies are gaining an ever stronger position. For example, in the United Kingdom, the share of the 100 largest industrial undertakings in total turnover rose from 26 % in 1953 to 50 % in 1970. In the Federal Republic of Germany the share rose from 34 % in 1954 to 50 % in 1964. Naturally, such concentration has an important impact on international as well as national markets, and can become a serious danger to the steady development of genuine free competition.

2. For the EEC itself, such agglomerations pose an important challenge, not only in that the task of maintaining free competition may grow more complicated, but also because the new enlarged Community proclaims that it attaches equal importance to social and economic policies. Thus the social aspects of competition policy can, in all modesty, be seen as suitable grounds on which to judge the outcome of the intentions of those Heads of State or Government who signed the Paris Communiqué of 31 October 1972.

3. Those who signed in favour of free competition did so in the knowledge that a sufficient supply of products at reasonable prices can be ensured, only if there is adequate and genuine competition between suppliers. Without such competition, the consumer will pay unfairly high prices.

4. It is therefore not emotional or naive for the Social Affairs and Employment Committee to express anxiety about the concentration of economic power within Member States or the increasing strength of multinational corporations ; such organisations have an immense influence on the choice and price of goods available to the consumer.

5. Multinational companies especially deserve this Committee's attention. Some of those companies have annual budgets bigger than those of most of our Member States. Others appear to be accountable to nobody, and pass money across the exchanges in a way that contributes to monetary instability, which in turn has repercussions on economic and social policy. Such manoeuvres can easily be carried out with no reference to national or Community social policy ; in reality the laying off of labour in one country because it is cheaper in another, can produce very unpleasant social consequences.

6. The Committee on Social Affairs and Employment believes that the social implications of such activities call for Community attention.

The Heads of State or Government, in the Final Communiqué, instructed the Institutions to seek out ways and means of 'strengthening and coordinating consumer protection'. It is in that spirit the Committee has examined the Second Report on Competition Policy.

Specific Comments

7. Competition is already one of the few sectors in which the Commission can act independently of the Council of Ministers, and, particularly since 1970, the Commission has pursued an active competition policy. In 1971 came the Commission's first recourse to Article 86, when the German Company GEMA was forced to modify certain monopolistic practices in connection with musical performance rights in Germany. In December 1971 the Commission ordered Continental Can, the huge American company, to divest itself of a newly acquired Dutch firm ; although the European Court squashed the Commission's order on the grounds that the Commission had not proved the case on the facts, it was important that the Court expressly upheld the Commission's interpretation of Article 86.

The Commission is currently investigating the activities of Hoffman La Roche, the multinational drugs firm in conflict with the British Government.

So it is clear that the Commission has already established a good track-record, in spite of the small size of its staff.

8. At present, the Commission is hoping for additional powers to regulate those mergers not dealt with in Article 85 or 86 of the EEC Treaty. A draft regulation has already been published, and the Commission hopes it would become effective on 1 January 1975.

The Commission's own figure for the Six show how necessary the regulation really is. In comparison with 1962-66, the rate of increase per year in the number of mergers doubled during 1966-70. It was also found in studies of a wide range of sectors that, in every case, the four largest undertakings had increased their share of total turnover.

9. It is against this background that the draft regulation calls for mergers of concerns whose total annual turnover exceeds 1,000 million u.a. to be notified three months in advance. The same conditions can also apply as a preventative measure even if the total turnover does not exceed 200 million u.a. and the market share is not greater than 25 %.

10. Naturally it would be impossible to reproduce the whole directive in this report, and of course it will be subject to many modifications. At the moment, business interests are particularly concerned about the delays likely to be caused by the Commission's deliberations.

It is perhaps worth noting that, as a result of the accession of the three new Member States, the area of validity of Community competition law extends to other former EFTA countries since, in their trade agreements, those countries pledged themselves to the safeguarding of free competition.

11. Thus the Committee on Social Affairs and Employment studied the Second Report on Competition Policy in the knowledge that the Commission is hoping for new powers to regulate mergers. Before the Council agreed to such proposals, the Commission will continue to take action, where appropriate, against mergers and the abuse of dominant positions, under Article 85 and 86 of the EEC Treaty.

However, Europe's economic health calls for stronger controls over mergers, particularly where multinational companies are involved. The consumers of the Community can only benefit if the Commission is better equipped to ensure genuine free competition.

Conclusions

The Committee on Social Affairs and Employment

1. feels that it should concentrate on the social points of the Commission's Second Report on Competition Policy ;

2. notes with disappointment, while admiring and endorsing the activity of the Commission as chronicled on pages 15-161, that pages 163-170, which are devoted to consumer protection, compare somewhat feebly to the much larger earlier sections of the Report, nor does it see where the content of these few pages give any compensation for their lack of length ;

3. considers the Commission's activities on behalf of the consumer, as listed on pages 170-171, as very inadequate ; feels that the Commission will not honour the aims of the Paris Communiqué which called for 'strengthening and coordinating consumer protection', unless the number of personnel employed in this area is greatly increased ;

4. demands further information from the Commission concerning its contacts with national and Community consumer groups ;

5. recognises that links with such bodies are important ;
welcomes the foundation of a directorate for consumer protection ;

requests full cooperation between the Directorate-General for competition policy and the directorate for consumer protection ;

6. insists on detailed information concerning the way in which the Commission intends tackling the problem of public corporations ;

7. asks that the Commission examine the question of fixing the size of mergers, which should be registered to 1000 million u.a., when even smaller multinational companies may well play disruptive roles in the social and economic life of Member States ;

8. hopes that despite its lack of staff the Commission will be able to achieve its objectives of monitoring free competition and of studying market trends.