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Report

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

on the Twelfth Report of the Commission of the European
Communities on Competition Policy (Doc. 1-253/83)

Rapporteur: Mr O. FRANZ

PE 86.038/fin.

The Commission of the European Communities forwarded the Twelfth Report on Competition Policy (Doc. 1-253/83) to the European Parliament. At its May 1983 part-session, the European Parliament referred this report to the Committee on Economic and Monetary Affairs as the committee responsible and to the Legal Affairs Committee for its opinion.

The Committee on Economic and Monetary Affairs had appointed Mr FRANZ rapporteur on 22 September 1982. The committee considered the report at its meetings of 19-20 September and 27-28 September 1983, and adopted it at the latter meeting by 13 votes to 6 with 1 abstention.

The following took part in the vote:

Mr MOREAU (chairman); Mr FRANZ (rapporteur); Mr ALBERS (deputizing for Mr SCHINZEL); Mr BEAZLEY, Mr BEUMER (deputizing for Mr Vergeer); Mr VON BISMARCK; Mr BONACCINI; Mrs DESOUCHES, Miss FORSTER; Mr FRIEDRICH; Mr GIAVAZZI; Mr HERMAN; Mr LEONARDI; Mr MULLER-HERMAN; Mrs NIELSEN (deputizing for Mr Nordmann); Mr PAPANTONIOU; Mr ROCALLA (deputizing for Mr Wagner); Mr VAN ROMPUY; Mr WEDEKIND (deputizing for Mr Schnitker); Mr VON WOGAU.

The opinion of the Legal Affairs Committee is attached.

The report was tabled on 3 October 1983.

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

MOTION FOR A RESOLUTION

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

The European Parliament,

- having regard to the Twelfth Report of the Commission of the European Communities on Competition Policy (Doc. 1-253/83),
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Legal Affairs Committee (Doc. 1-801/83)

Competition policy and the role of socio-economic and political interest groups

1. Reaffirms that a European economic policy relating to the market economy has the permanent task of maintaining and strengthening competition and that this must not be sacrificed to national economic objectives which have priority;
2. Stresses the vital importance of genuine, undistorted competition in economic processes and particularly for technical and economic progress;
3. Stresses its conviction that a market economy cannot be socially effective without competition and that consequently the Community's competition policy is very important for the social objectives of the Treaty of Rome (Articles 117 et seq.), the integration of the Member States, the further development of the Common Market in the direction of a fully operative internal market and overcoming the current severe economic crisis;
4. Considers it essential that competition be safeguarded institutionally by means of appropriate framework legislation;
5. Believes that the prime task of competition policy is to ensure that better performances win through (fair rewards for performance), that

positions of power on the market are kept under surveillance (control of dominant market positions) and that all those involved in the market can determine the development of the supply of goods and services by the millions of choices they make each day (democratization of the market);

6. Stresses that distortions of competition by uncontrolled national aids or state trading monopolies which are contrary to the interests of the Community are a constant reminder of the need for an active European policy on competition;
7. Points out that barriers to trade on the internal market lead to fundamental restrictions on competition;
8. Regrets that despite the requests made in the resolutions on the Tenth and Eleventh Reports on Competition Policy, the present report contains no separate chapter on this most important subject giving precise details of the contraventions recorded, the counter-measures adopted by the Commission and the Commission's thinking on the achievement of a free internal market as a pre-requisite for free competition;
9. Calls on the Commission once again to examine these matters in detail in the next report on competition policy even if it is necessary to solve organizational problems relating to terms of reference within the Commission beforehand;
10. Expects the governments of the Member States to set aside unilateral national interests and concentrate more on the achievement of a common internal market by abolishing non-tariff barriers to trade and to ensure that standards, approval procedures and related national laws within the Community are coordinated much more quickly than in the past instead of being allowed to block or even counteract each other;
11. Calls on the Council of Ministers, the national governments and the National parliaments to cooperate closely with the Commission and the European Parliament in directing their efforts towards achieving a fully operative European internal market as a basis for European Union;
12. Supports the Commission in its efforts to monitor closely the practice of granting subsidies in the Member States and to apply severe measures to put a stop to the practice in proven instances of abuse;

13. Expects the institutions of the European Community to make a more vigorous and more effective effort to ensure that where subsidies are unavoidable - and this applies both to the authorization of financing aid from the Community and to national subsidies - they are designed to serve the interests of the Community;
14. Affirms that national subsidies which are contrary to the European Treaties and the judgment of the Community institutions must not be tolerated since they distort competition and are potentially very damaging, from the political viewpoint, for the internal cohesion of the Community;
15. Expects the Commission to ensure that all subsidies which are granted by individual Member States are in line with Community objectives and are completely transparent, limited in duration and as far as possible degressive;
16. Calls on the national governments of the Member States to lay down framework conditions relating to economic, financial and social policy in cooperation with the Commission and the European Parliament to enable viable undertakings in the Community to use their own earning power to ensure their long-term competitiveness without having recourse to national subsidies;
17. Stresses that competition policy must be increasingly concerned with the effective control of international business practices which restrict competition if the results achieved in the liberalization of world trade are not to be jeopardized;
18. Stresses that subsidies hamper free world trade and therefore run directly counter to the closer integration of the developing countries in the process of the international division of labour, which should be promoted; in particular, urges the Commission to persuade Member States, in conjunction with matching steps by the USA, Japan and other countries, to de-escalate competitive and self-defeating export credits which provide their own exporters with unfair advantage;
19. Asks the Commission to monitor more closely the effects on fair competition between Community firms of nationally funded overseas aid which is tied to purchases from the country concerned;

would seem to be in the Community's interest and calls on the Commission to undertake a review of the conditions of exemption laid down in Article 85(3) of the EEC Treaty;

26. Calls for adequate account to be taken of the various demands and proposals made by the European Parliament in the pending draft regulation for the exemption by category of the selective distribution agreements in the motor vehicle sector and requests that the European Parliament's views expressed on Commission Regulation 67/67 be considered in the guidelines to be provided for the new Exclusive Distribution and Purchasing Regulation 1983/83 and 1984/83.
27. Reiterates its demand that following the rulings of the Court of Justice in the maize seed and Coditel II cases, the work undertaken by the Commission should be continued in collaboration with the economic circles concerned to ensure that the transfer of technology is not subject to excessively restrictive conditions and that small and medium-sized undertakings are guaranteed protection;
28. Fears that if the permissible regulative scope of licensing contracts is interpreted too narrowly, undertakings will be less willing to issue licensing agreements at international level which might limit the spread of new products and processes and calls therefore for a modified version of the draft regulation which is to be submitted to the Advisory Committee on Restrictive Practices and Dominant Positions to be forwarded to the European Parliament;
29. Hopes that the air transport sector will be increasingly subject to Community rules on competition whilst expressing the opinion that we should take into account the essential aspects of politics, the public sector and safety regulations relating to this sector;
30. Reiterates its approval of the principle of extending the rules governing competition to sea transport but reserves its opinion on the practical proposals put forward by the Commission pending the submission of a report by its Committee on Economic and Monetary Affairs;
31. Recalls its opinion on a proposal for a Council regulation on merger controls, which refers to the need to avoid duplicate controls and conflicts over terms of reference and basically supports the creation of effective means of controlling transfrontier mergers;

32. Acknowledges the role of the small and medium-sized undertakings, which can best improve their efficiency in the framework of a coherent, market-orientated economic policy;
33. Supports therefore the programmes and specific measures adopted by the Commission with a view to improving cooperation and the promotion of the investment potential of small and medium-sized undertakings and expects the Commission to exploit the opportunities available to it in this field more fully than in the past and - as announced - to seek new ways of encouraging these undertakings, bearing in mind that the European Parliament should be involved in its deliberations;
34. Calls on the Commission to adopt appropriate measures to simplify exemption declarations for agreements which satisfy the conditions set out in Article 85(3) and acknowledges that the Commission has increased the legal status of comfort letters to speed up the administrative procedure ;
35. Welcomes the additional guarantees that cases will be handled objectively during the administrative procedure as regards both inspections and the post of Hearing Officer;
36. Supports the Commission's position of principle on the rules governing competition and measures to reduce structural overcapacity, particularly as regards the conditions which, in its opinion, must be fulfilled for the approval of agreements which restrict competition in whole sections of the economy;
37. Expresses the opinion that approval should be given in the context of programmes and initiatives adopted by the Commission to price-fixing and quota agreements between undertakings as back-up measures in certain justified and exceptional circumstances if they contribute to the reduction of structural overcapacity;

Main decisions and measures taken by the Commission

38. Recognizes that, qualitatively and quantitatively, the decisions and measures taken by the Commission meet the greater demands placed on it as the guardian of competition;

39. Expects the Commission to continue to uphold its policy in future using all the means at its disposal;
Renews its calls to the Commission for greatly expanded research on the efficiency and competitiveness of the Community economic structures especially in a world context, and on the role of public assistance and intervention and of mergers in the process of economic adjustment;
stresses the need to incorporate the results of such research into the actual application of competition policy.
Urges once again the Commission to introduce measures ensuring greater coordination between DC IV and other departments, especially those dealing with economic, fiscal, industrial and regional problems, so as to provide the organizational structure for integrating the objectives of competition policy with those of other Community policies.

Major developments in national competition policies

40. Fears that the enlargement of the Community towards the south will cause considerable problems as regards the orientation of economic policy towards the market economy and the establishment of a viable level of competition and calls on the Commission to take every opportunity to make these principles clear to the national governments;

Competition policy and state aids to undertakings

41. Welcomes the Commission's unequivocal stance on the negative impact of state aids to undertakings and calls for a more determined effort than has been made in the past to put an end to them;
42. Expects the Commission to involve the European Parliament from the outset in the formulation of the planned guidelines to establish the exceptional circumstances under which state aids serve the common interest;
43. Considers that the Commission must differentiate more clearly than in the past between subsidies and funds to promote research and development and must ensure that the latter are not blocked;
44. Supports the Commission on the implementation of the European Parliament's proposals to restore the international competitiveness of the European steel industry by restructuring and by reducing structural overcapacity;

45. Welcomes the fact that, at its request, the Commission has specified the criteria on which it bases its regional analyses when assessing regional aids, but notes the absence of details on how these factors are combined and weighted in the system of assessment used by the Commission;
46. Notes with satisfaction the successful activities of the Commission in transforming state trading monopolies and urges it to continue its work in this field;
47. Underlines the danger of the concentration effect of nationalizing undertakings and the consequent growing tendency of the Member States to subsidize public sector undertakings at the expense of private sector competition;
48. Welcomes the Commission's announcement of investigations into the financial relations between the Member States and their public undertakings in certain sectors and hopes that these investigations will be extended to other major sectors such as air transport and the banking sector;
49. Notes that nationalization is not prohibited by the wording of the EEC Treaty but that it runs counter to the market economy system which also finds expression in the Community's rules on competition;

The development of concentration, competition and competitiveness

50. Welcomes the investigations into competitiveness, the early results of which clearly show the substantial differences in the competitiveness of various sectors within the Member States and indicate possible starting points for improvement and calls on the Commission to pursue these investigations with determination;

The Commission's reactions to the European Parliament's resolutions on the Tenth and Eleventh Reports on Competition Policy

51. Expresses its disapproval at the fact that many of the points raised in the previous reports by Mr Beazley and Mr Papantoniou on the Tenth and Eleventh Reports on Competition Policy have received little or no attention from the Commission:

- two-tier system of judicial review of Commission decisions¹,
- expedited procedures²,
- further research into competition³,
- application of the rules governing competition to small and medium-sized undertakings⁴,
- lack of adequate copyright protection on a Community basis⁵,
- the international orientation of the Commission⁶,
- study of the implications of the accession of Spain and Portugal⁷
- abolition of barriers to trade in the Community's internal market⁸
- investigation into competition in the banking sector⁹
- full list of aids¹⁰
- regular consultation of Parliament¹¹;

Final remarks

52. Points out that the Treaties invest the European Community with the responsibility for competition at home and for free trade world wide and that this implies a duty constantly to improve the climate for competition;
53. Notes with satisfaction that, despite the reservations expressed above, the Twelfth Report on Competition Policy is very clear and demonstrates that the Commission has resolved to take more determined action than in the past to uphold undistorted competition based on the market economy system of the European Communities and to maintain it for the benefit of the Community;
54. Instructs its President to forward this resolution together with the report by its committee to the Council and the Commission.

¹ Paragraph 41 of the resolution on the Tenth Report, paragraph 47 of the resolution on the Eleventh Report

² Paragraph 41 of the resolution on the Tenth Report, paragraphs 50-52 of the resolution on the Eleventh Report

³ Paragraph 47 of the resolution on the Tenth Report, paragraphs 54-58 of the resolution on the Eleventh Report

⁴ Paragraphs 24-26 of the resolution on the Eleventh Report

⁵ Paragraph 44 of the resolution on the Eleventh Report

⁶ Paragraphs 36-38 of the resolution on the Tenth Report, paragraphs 41-45 of the resolution on the Eleventh Report

⁷ Paragraph 35 of the resolution on the Tenth Report, paragraph 40 of the resolution on the Eleventh Report

⁸ Paragraph 60 of the resolution on the Eleventh Report

⁹ Paragraph 11 of the resolution on the Eleventh Report

¹⁰ Paragraph 37 of the resolution on the Eleventh Report

¹¹ Paragraph 21 of the resolution on the Eleventh Report

EXPLANATORY STATEMENTI. INTRODUCTION

1. The Commission's Twelfth Report on Competition Policy opens with the following accurate and unequivocal remark:

'Maintenance of undistorted competition is one of the fundamental principles of the free market economy on which the Community is based; the Commission's task, pursuant to the Treaties, is to secure its application'.

A sub-clause in the Eleventh Report on Competition Policy states that the Community 'is essentially based on a market economy'. The commitment to competition and the Commission's awareness of its task of maintaining undistorted competition are stronger than in previous reports and we welcome both the plain words and the unequivocal statements.

2. The condemnation of the proliferation of subsidies is just as unequivocal as the commitment to undistorted competition. Whereas, in 1981, the Commission referred on page 12 of its report to its positive approach to aid which was limited by the need to avoid distortions of competition within the Community, the Twelfth Report states quite clearly, on page 11, that the Commission now authorizes 'only those aids which can genuinely improve the competitiveness of European industry and are essentially apt to ensure the eventual creation of lasting employment'.

3. It is gratifying that the Commission has laid much greater emphasis than in the past on the importance of the European Parliament and on the scope and content of cooperation with the European Parliament. This is apparent even from the presentation of the report. Cooperation with the European Parliament and its importance for competition policy is now dealt with in a somewhat longer section at the very beginning of the report rather than in Section 1 of Chapter 6 as in the Eleventh Report. Whereas the Eleventh Report states, in an almost condescending manner, that Parliament's suggestions are often quite helpful (p. 104), the new report states (p. 18) that Parliament's annual discussions of the Commission's reports on competition policy are of particular importance. There should be greater coordination between Commission and Parliament.

The Commission should, in particular, take greater advantage of opportunities for consulting the European Parliament informally in instances where no formal opinion from Parliament is prescribed, in order to ensure that basically parallel measures aimed at enforcing the principles of competition are coordinated as early and as thoroughly as possible under the economic policy of the European Community.

4. This report contains an analysis of the main issues dealt with in the Commission's Twelfth Report on Competition Policy. It merely touches on issues dealt with elsewhere in Parliament and looks in depth at a number of topics of major importance.

Section II concerns competition policy and the role of socio-economic and political interest groups. Section III contains an examination of competition policy with regard to undertakings with special reference to specialization and distribution agreements, patent licensing agreements, the application of the rules of competition to air and sea transport, merger controls, small and medium-sized undertakings and measures to reduce structural overcapacity. It also contains the European Parliament's proposals on new procedures. Section IV includes comments on the main decisions and measures taken by the Commission as seen from Parliament's viewpoint. Section V provides a brief survey of the major developments in national competition policies and includes references to the enlargement of the Community.

Section VI contains a discussion of competition policy with regard to state aids to undertakings with particular reference to controls on aid granted by individual Member States and to the transformation of state trading monopolies and public undertakings. A number of problems concerning the development of concentration, competition and competitiveness are examined in Section VII and finally, in Section VIII, consideration is given to the Commission's reactions to the opinions and demands made by Parliament in its reports on the Tenth and Eleventh Reports on Competition Policy.

II. Competition policy and the role of socio-economic and political interest groups

1. The key to the Community's market economy system is the freedom of economic activity, bounded and directed by competition and the law.

Competition is a means of bringing consumers' wishes to bear on the market and of ensuring the most cost-efficient use of production factors for the economy as a whole.

The conditions of competition therefore mean that constant efforts must be made to meet the requirements of the population in order to maintain profits. Competition is also a process by which solutions to problems are found. This includes such innovations as the introduction of new products, processes and types of organization. New goods are not invented by consumers but by undertakings which develop them and offer them to the consumer who then determines the economic success of each innovation under the conditions of competition.

2. The socially committed market economy has proved its economic and social potential over more than 30 years and despite a great deal of hostility. This system is based on the market mechanism and on competition. The state is responsible for laying down the framework of the system in which the private economic groups operate and for correcting socially and economically undesirable aspects of the market. A number of changes have taken place in the economic order of many Community countries in the past few years. It has undergone further development and now operates under general conditions which differ quite substantially from those of the 1950s. The basic principle that the less the state has recourse to direct intervention the better the economic process usually operates is still valid, although it is increasingly ignored.

3. The task of an effective Community competition policy is therefore to uphold the central importance of competition for the European Community.

It will be of particular importance in the immediate future in view of the continuing economic crisis and its effect on European integration. Only unfettered and undistorted competition will maintain the full dynamism of the economy, provide adequate stimulation for technical and economic progress and provide the best possible guidance for the totality of economic processes.

4. External economic factors are of vital importance in this context. A fully operative Community internal market is the sole means of maintaining the competitiveness of European industry in the face of international competition. In addition to this, the very complex and diverse nature of the Community's external trade - as distinct from that of the USA or Japan - means that the Community must advocate a free world system at all times. The long-term political, social and economic consequences of a relapse into protectionism would be dire.

5. The decision to abolish duties within the European Community as laid down in the Treaty of Rome in 1958 was to lead to the creation of a European internal market. The major sources of growth in the economy of the post-war period were unleashed. For 15 years, trade within the European Community developed much faster than trade with the rest of the world. Today, 25 years after the founding of the European Community the free internal market of the European Community has still not been achieved, contrary to the spirit and the letter of the Treaties, contrary to the wishes of the European Parliament and the Commission and contrary to the requirements of the Europe of the present and the future.

6. Competition in the European Community is constantly hampered by barriers to trade. The pressure of unemployment in the past few years has led to an increase in non-tariff technical and administrative barriers to trade which prevent the creation of a free market within the European Community and are diametrically opposed to the objectives of the Community.

Today, roughly DM 650,000 m worth of trade or approximately 55% of the external trade of the Community countries is done on this internal market. According to figures supplied by the Commission, existing restrictions on trade currently result in costs equal to 5% of total turnover within the Community or over DM 30,000 m, which could easily be put to much better use elsewhere. No Community country can afford to neglect the Common Market. But the positive effects of a fully operative internal market could be much greater as can be seen from the American and Japanese markets. We must endeavour to achieve this aim. National barriers to trade must not be allowed to jeopardize the results achieved by the dismantling of tariffs.

7. Barriers to trade which restrict competition within the Community arise principally as a result of:

- disadvantages caused by clear preference being given by principals to tenders from their own country despite the competitiveness of tenders submitted by competitors from other countries and by open or covert subsidizing of domestic firms,
- obstacles caused by differing legislation in the Community countries and a lack of harmonization of taxation, by security and technical standards, by veterinary and sanitary regulations, consumer protection and environmental regulations which are applied differently in the various Community countries,
- trade restrictions caused by obstacles to goods traffic at the internal borders of the Community, by delays at border checks and by excessive red tape and paperwork.

8. Many undertakings in the Community countries which would fold under the conditions of free competition are supported in an effort to reduce unemployment in the country in question. Exports are encouraged whilst imports are discouraged. Although some Member States have become particularly adept at this practice, none can be exonerated from violation of the basic rules of the EEC Treaty concerning the defence of competition against distortion.

9. The Commission rightly sees the public sector as one of its main concerns in the field of competition policy. This was not always the case. In the early days, the Commission was concerned almost exclusively with monitoring undertakings, a task which is clearly much easier than pitting itself against the might of the Member States on which it is dependent in a number of respects. The additional powers granted to the Commission to carry out this important task are very welcome.

The issue at stake in the debate on the economic system is the future of Europe. If we are unable to overcome protectionism and establish a genuine internal market, then GATT, which has far fewer means at its disposal, has no chance of succeeding with the liberalization of world trade. There can be no unity or self-assertion for Europe without economic integration.

10. Parliament's reports on the Tenth and Eleventh Reports on Competition Policy called for consideration to be given to barriers to trade in the internal market in the next report on competition. This request was simply ignored in the Eleventh Report and in the new report the Commission has merely paid lip-service to Parliament's wishes. It admits, on page 10, that reinforcement of competition and consolidation of the unified market go hand in hand and refers in other places, e.g. pages 18-19, to the importance of the internal market in competition policy.

11. In addition to barriers to trade in the internal market, competition is severely restricted by the subsidies, which are the worst form of protectionism.

There has been a growing tendency towards state aids and subsidies in the past few years although this subject has been discussed in detail in the last three Commission reports. We must continue to stress the fact that subsidies, and particularly maintenance subsidies, are one of the greatest enemies of competition and the cause of many undesirable trends in the European economy. Maintenance subsidies prevent the closure of old firms which are no longer viable and create many obstacles which prevent competitive firms from making the profits which are essential to finance the modernization needed to maintain jobs in the long term.

12. Subsidies lead to major distortions of competition in the European Community. Their effect has been that, in many cases, sectors which were not exposed to competition are not competitive on the world market today. Subsidies stifle the economy's decision-making capacity, potential and willingness to take risks which are the building blocks of a market economy. They reduce the adaptability of individual undertakings whilst limiting the effectiveness of the mechanism controlling the market economy and reducing the productivity and elasticity of the economy as a whole.

13. If we do not make a more determined effort to put an end to the proliferation of subsidies in Europe, many sectors will cease to be competitive within a few years. Some subsidies are, of course, essential but they must be completely transparent, subject to strict deadlines and degressive.

It is most encouraging that the Commission's statements of principle coincide with the European Parliament's basic demands on this subject. The importance of stringent measures is reflected in the fact that the Twelfth Report on Competition Policy lists twice as many aids as the Eleventh Report.

14. The general principle that the less the state has recourse to direct intervention, the better the economic process operates, is still valid but is increasingly ignored within the Community. The growing belief in the control of cyclical fluctuations and the guidance of economic processes has resulted in an increase in state intervention in these general processes and in the decision-making processes of individual undertakings worldwide. States intervene more and more in instances of actual or putative sectoral, cyclical or structural weaknesses or faults, usually with the pretext of maintaining jobs - and there are endless opportunities for intervening in the general economic process. They range from regulations, such as bans and admission restrictions, and measures relating to external trade, such as tariffs and quotas, to subsidies, i.e. financial assistance and tax incentives. However justified and reasonable these individual measures may be, they all influence the development of the economy as a whole. Some areas of production are favoured and others discouraged. Consequently, many problems have only become critical because the orientation and sanction mechanisms built into the market have been put out of action and the search for effective solutions to problems concerning the market economy has been hampered, resulting in false adjustments and distortions. Intervention in one sector has led to disturbances in other sectors thereby creating the need for intervention in those sectors too. This is precisely what the market mechanism is designed to prevent.

15. An effective economic policy designed to open up competition is of vital importance for the EEC Member States. The maintenance of free external trade plays an essential part in this policy. In most cases, external trade is the only means of creating markets of sufficient size to allow us to take full advantage of lower prices made possible by large quantities of goods without lessening the intensity of competition.

16. Roughly half of the Community's exports go to countries outside the EEC. The Community currently has on average the lowest customs tariff in world trade in industrial products; it has fought for the development and maintenance of free world trade but the fight against protectionist tendencies is of crucial importance in times when the rate of expansion in world trade is declining.

We must constantly demonstrate our commitment to free world trade and to opening markets for exports from the developing countries. The shortage of raw materials in Europe means that we are more dependent than almost any other region of the world on free world trade. Free world trade is our only means of earning the currency we so desperately need to pay for our imports of oil and raw materials. We constantly forget that trade increases with growing industrialization. We should encourage the industrialization of the developing countries as this will result in increased competition and provide us with fresh impetus. The lack of competition which we have witnessed in many sectors has meant that some industrialists have taken the wrong decisions or no decisions at all and that some have failed to innovate enough and have misjudged future prospects. We need more free trade and hence more competition in Europe and not more protectionism if we are to avoid gambling away our future.

17. Protectionism is a contagious disease which is as rife today as the plague was in the Middle Ages and which is just as deadly. If we do not increase competition and reduce protectionism, we not only run the risk of seeing the current grave structural crisis become a world economic crisis but we will also endanger our democratic systems. Never in the history of the Community has so little stood between the blessings and curses of its economic policy. As a market, an economic unit and a political force, the vast territory of Europe is a blessing. It remains a blessing despite the endless compromises which have to be made between partners who are still very unequal.

The Member States apply different framework conditions to sales and price formation, systems of taxation, interest rates, technical specifications and the level of state intervention in the freedom of their undertakings to make decisions.

18. The Community's international economic relations have gone through three very different phases of development since the Second World War:

- an initial phase, lasting until 1960, of stable nominal exchange rates and relatively little in the way of complex international trade patterns
- a second phase in the 1960s with relatively small fluctuations in exchange rates, the cost of raw materials falling in real terms and the expansion and growth of external economic relations

- a third phase with the price of oil, energy and other raw materials rising in real terms coupled with massive shifts in the international system of exchange rates.

We are still in this third phase. It is marked, particularly in the old industrialized countries, by minimal growth of the domestic economy in real terms, high inflation rates, a massive transfer of purchasing power to the oil-producing countries, high unemployment, declining productivity, attempts to restrict free world trade and competition and, as a result, minimal growth in the total volume of world trade.

World trade, which in the past was largely the domain of the old industrialized nations with the less developed countries being reduced for the most part to the status of suppliers of cheap raw materials and energy and of welcome outlets for industrial exports, will (have to) undergo a transformation as a result of the change in roles in the process of the international division of labour which is based not on the short-term exploitation of the supremacy of the industrialized nations and oil-producing countries, but on a fair division of labour for the good of all concerned, i.e. an increased division of labour worldwide as a way out of the present international structural adjustment crisis.

19. Basically speaking, voluntary restraint agreements are a substitute for prohibitive tariffs and they also prevent the circumvention of tariffs by means of price cuts. Official restrictions are imposed on foreign suppliers of goods in demand on the home market. This effectively means that domestic consumers are denied access to some of the goods which they would like to buy; the restriction of supply also prevents price cuts which would otherwise filter through the system. Even more than in the case of 'nursing' tariffs, the consumer also has to pay for the backwardness of his national industry and, if things go well, for its renovation.

Voluntary restraints may create a breathing space for domestic industry but they also sap the drive to introduce new ideas and further postpone vital adjustments.

20. There is evidence to suggest that we can counter the 'Japanese challenge' without recourse to protectionist measures, as witness the dynamic strategies pursued by two European manufacturers of machine tools.

MAHO was one of the first to apply the Japanese model of mass production and standardization and has managed to achieve remarkable results under conditions of free competition. The company manufactures universal milling, drilling and boring machines and CNC machining centres using standardized techniques (middle-range technology) and mass production. It unquestionably holds first place on the European market for CNC machining centres of the size it makes, beating even the competition from Japanese models. This success is the result of the skilful combination of standardization, mass production, a high degree of comfort, highly developed manufacturing and assembly techniques and swift adaptability to market trends.

TRUMPF is an example of a manufacturer brimming with new ideas who has been able to carve out and extend its market at home and abroad by virtue of specialization and the latest in high technology.

The company manufactures sheet metal working machines and CNC sheet metal machining centres for punching, nibbling and laser cutting. The world's first NC sheet metal machining centre was produced in 1967 and the world's first CNC plasma cutting machine with no adverse environmental effects in 1981. As far as the technology is concerned, TRUMPF leads the world and is one of the most advanced firms in the sector. A new development centre was set up in 1980.

21. For a long time, Europe has lulled itself into believing that the practical reasons for Japan's competitiveness are lower wages, social contributions, taxes and interest rates in addition to new factories and advances in the use of automation and that this kind of inequality between different countries will virtually balance itself out in the long term by the adaptation of general economic processes, e.g. changes in exchange rates.

A few examples will demonstrate how far behind the times Europe is:

- In 1970 there were only a few Japanese production industries in Europe - today there are over 100. Roughly 26,000 European workers receive their wages - indirectly at least - from Japan.
- Forty new Japanese firms have been founded in Europe since 1980. So far, Japan has invested a total of DM 2,500 m in Europe.

- According to figures supplied by the manufacturer's association in Tokyo, the value of the machine tools manufactured in Japan in 1982 was \$3,200 m, which was more than the value of those produced in the USA (\$2,900 m). West Germany, which led the world for a long time, was in third place with \$2,400 m.
- In October 1982, there were 47,101 Japanese citizens living in the Community:

West Germany	14,436
United Kingdom	13,400
France	8,724
Italy	3,250
Belgium	3,216
Netherlands	2,133
Greece	1,019
Denmark	594
Republic of Ireland	222
Luxembourg	107

In December 1982 there were 17,412 European citizens living in Japan, of whom 10,917 were living in Tokyo and the surrounding area.

- There are unfortunately no statistics on how many of the Germans and Europeans in Japan speak Japanese and how many of the Japanese in Germany or the Community speak German.

According to the estimates of the German Chamber of Trade and Industry in Tokyo, however, there are at least ten times as many German-speaking Japanese in West Germany as there are Japanese-speaking Germans in Japan. This shortfall on the German side is particularly noticeable amongst students as there are fifteen times as many Japanese students of German as there are German students of Japanese; the figures are 3,000 : 200. It is unlikely that the ratio in other European countries is any better.

Although the European economy is still discovering many new technologies - Europe still issues more licences to Japan than it receives - it lags behind Japan in their practical application. There are many examples to prove that discoveries are often made in Europe whilst innovation takes place in Japan.

III. Competition policy with regard to undertakings

Specialization agreements

22. The Commission has adopted a new regulation on exemption by category of specialization agreements which came into force on 1 January 1983. The new regulation takes up the basic principles contained in the previous regulation and extends them for fifteen years. In order to ensure that specialization agreements do not result in a loss of competition in a substantial proportion of the goods concerned, exemption by category will only be valid if the undertakings' share of the market does not exceed 15% and the total turnover of the undertakings concerned does not exceed 300 m ECU (with a 10% margin of tolerance). For the first time, exemptions by category are being granted for specialization cooperation arrangements in Community undertakings so that from now on agreements under which the parties undertake to manufacture certain products or arrange for their manufacture on a joint basis are admissible. This is a welcome development.

23. The new text retains the significant restriction laid down in earlier regulations on specialization, that exemptions by category apply only to small and medium-sized undertakings (Article 3(b)). As in German law, major undertakings require individual exemption. A crucial question for the future is whether the Commission will succeed in developing procedures to speed up the time-consuming and complex system of granting individual exemptions under Article 85(3) of the EEC Treaty. During talks on European competition policy between the Federal Association of German Industry (BDI) and the Directorate-General for Competition held on 14 January 1983, it was announced that this matter would be given the highest priority in future.

Distribution agreements

24. Against the background of persistent differences of opinion between the Commission, European Parliament and Member States on a follow-up regulation, the Commission extended to 30 June 1983 Regulation No. 67/67/EEC on exemption by category of exclusive distribution agreements, which was valid until 31 December 1982. The deliberations on a follow-up regulation to this were continued on the basis of new Commission proposals. The Commission still considers it essential to introduce two separate regulations for exclusive distribution agreements and exclusive purchasing agreements for resale

purposes with special arrangements for greements concerning brewery supplies and filling stations. Whereas there are no fundamental differences between the Commission and the Member States on the draft regulation for exemption by category of exclusive distribution agreements, the draft regulation on exemption by category of exclusive purchasing agreements still raises considerable problems, particularly as regards the special arrangements governing brewery supplies and filling stations.

Patent licensing agreements

25. Having heard the parties concerned on the draft for exemptions by category of patent licensing agreements in October 1979, the Commission announced that it did not intend to continue its work on the draft until the Court of Justice had given its ruling on the maize seed case (Judgment of 21 September 1978, OJ No. L 286 of 12 October 1978).

The judgment of the Court of Justice in Case No. 258/78 (Maize seed case of 8 June 1982) and its subsequent judgment in Case No. 262/81 (Coditel II of 6 October 1982) are the first instances of consideration of the admissibility of obligations between the licensor and the licensee in the light of the ban laid down in Article 85(1) of the EEC Treaty. The basic ruling given in both judgments is that territorial exclusivity as such was not subject to the ban imposed under Article 85(1).

26. The proposal for a regulation on exemption by category of patent licensing agreements currently under consideration must contribute to a rationalization of the problems concerning the application of Article 85(3). It must ensure clarity and certainty as regards the legal situation and create a more favourable climate for research and development projects and the transfer of technology.

It should under no circumstances deter undertakings from signing licensing agreements but should make patents and industrial property rights instruments of competition and of technical and economic progress.

All undertakings must have the opportunity of participating in the exchange of technologies and know-how irrespective of their size. A more active licensing market is an important pre-requisite for speeding up the process of innovation which is in itself a worthwhile objective.

Air and sea transport

27. A viable level of competition in the transport network presupposes that all those involved in the market operate under roughly equal conditions. State-owned companies and companies receiving considerable support from the state, as competition free from the threat of bankruptcy, have as little place in a market based on competition as do monopolies, cartels and other concentrations of market power.

28. The fact that the air transport sector has so far escaped Community regulations, unlike other transport sectors, and is subject only to various national regulations and interests and to supranational agreements between companies, has admittedly resulted in an operative European air transport system but it has also created a system of tariffs which is complex even for the specialist and is completely impenetrable for the consumer and has led to a lack of transparency on the market and the compartmentalization of national markets which can only be remedied by competition. Competition, which ensures that the market operates for the benefit of consumers, presupposes that all the competing undertakings have equal opportunities. These equal opportunities are certainly not yet available in air transport and the framework conditions for creating them must be developed before the sector can be opened up to free competition.

This will involve a transitional period similar to those required in the past for the railways and the road and inland waterway transport sectors.

It will take some time to establish free competition in this sector but it will be possible to make a number of improvements in the current unsatisfactory situation in the medium term by increasing the inadequate level of competition as a result of the Commission regulation.

29. A special motion for a resolution on sea transport is currently before the European Parliament and we must not anticipate the outcome here.

Merger_controls

30. Whilst Articles 85 and 86 of the EEC Treaty provide adequate coverage of the obligations and rights connected with the maintenance of competition taking account of existing structures - as reported in the explanatory statement to the European Parliament's motion for a resolution on the proposal for a regulation on the control of concentrations between undertakings - there has to date been no means of preventing mergers which restrict or even eliminate competition in some sectors in the Community. In future, a European Cartels Office should take precedence over the national cartels offices to prevent national restrictions which do not serve the European interest.

It should be borne in mind during the formulation of merger control measures at Community level not only that the current economic structures in the Member States are still very different and that the parameters for assessing the benefits or disadvantages of mergers differ significantly, but also that the existing legal instruments give different forms to the type of control exercised.

31. The Commission's second attempt to create measures for controlling trans-frontier mergers should therefore be welcomed in principle. The following additions, already requested by the European Parliament, should be made to this regulation:

- (a) the avoidance of duplication in the controls exercised by European and national authorities,
- (b) the elimination of conflicts over terms of reference as between the authorities mentioned in (a),
- (c) measures to ensure that the Community's terms of reference cannot be invalidated by national activities.

Application_of_the_rules_of_competition_to_small_and_medium-sized_undertakings

32. The Commission's plans for small and medium-sized undertakings in the field of cooperation between undertakings and promotion of investment potential are a positive development but unfortunately, the Commission does

not make full use of the opportunities available to it in this sector as a whole. It fails to comment on the long-standing request for a European law on 'sociétés anonymes' or on the activities of the Brussels cooperation office which is primarily designed to promote greater cooperation between small and medium-sized undertakings within the Community countries but which has more recently been entrusted with new tasks relating to third countries and applicant nations.

33. The exemption of measures to promote innovation and investment potential in small and medium-sized undertakings from the basic ban on subsidies is a positive step. Regrettably, the report makes no mention of the fact that small and medium-sized undertakings are placed at a competitive disadvantage by the huge subsidies granted to major undertakings which they are required to help finance with their taxes. The abolition of subsidy competition in international trade is one of the fundamental principles of the policy relating to small and medium-sized undertakings as laid down in the Magna Carta of small and medium-sized undertakings.

Procedures

34. The European Parliament welcomes the fact that the Commission has increased the legal status of comfort letters in the case of agreements which, prima facie, raise no problems in relation to the rules of competition and therefore require no formal decision, particularly in the form of negative clearance, as these measures will speed up the administrative procedure. Prior publication in the Official Journal will enable third parties to express their opinion. This new procedure, which was first announced in the Eleventh Report, will not only speed up the administrative procedure but will also counter the criticism which has been levelled at comfort letters.

It is critical of the fact that despite its statement in the Eleventh Report, paragraph 15, the Commission has taken no steps to simplify exemption declarations for agreements which clearly satisfy the conditions of Article 85(3) of the EEC Treaty. In the Eleventh Report, the Commission expressed the hope that simplification would make it possible specifically to solve the vast numbers of problems arising in connection with these agreements and having the same basic features. Parliament maintains its demand that the Commission should adopt the necessary measures in accordance with the statement made in the Eleventh Report.

35. The introduction of an explanatory memorandum giving details of the scope and limits of the powers of the officers responsible for carrying out inspections and the rights of the undertakings under inspection is a positive step towards responsible and equal treatment based on the rule of law.

The explanatory memorandum seems to be a suitable instrument for reducing or even dispelling mistrust between undertakings and the Commission.

The Commission's reminder to the undertakings concerned that they must provide the officials with information beyond the scope of the documents requested is a standard requirement to ensure the fairness of the proceedings.

Regrettably, the Twelfth Report contains no details of its examination of the possibility referred to in paragraph 25 of the Eleventh Report of entrusting the inspection of documents containing business secrets of another undertaking to accountants or 'fiduciaries'.

The Commission decided not to introduce the system of administrative law judges modelled on the American system but created in their place the post of Hearing Officer with extensive terms of reference. This official will obviously now play a key part in the administrative procedure but the extent of his independence from the Commission is still a matter of some concern. The fact that, from the administrative viewpoint, the official belongs to the Directorate-General for Competition indicates the need for an improved legal channel independent of the Commission to deal with decisions taken by the Commission under cartel law.

36. In the Eleventh Report, the Commission decided to instigate a two-tier system of judicial review in which the court of first instance would examine both the de facto and de jure aspects of a Commission decision (administrative act) whilst the second court would confine itself to matters of law (revision).

The Commission also pointed out in the Eleventh Report that the workload of the Court of Justice, as the sole review body, was excessive. The fact that the Twelfth Report simply ignores this central issue of the two-tier system of judicial review is totally incomprehensible.

The creation of the post of hearing officer is not an acceptable alternative to an independent system of judicial review. Parliament maintains its demand that the Commission take the necessary steps to improve the legal review of its decision under cartel law.

Rules of competition and measures to reduce structural overcapacity

37. The Commission has expressed its concern at the fact that the current economic crisis has led both states and undertakings increasingly to adopt measures which jeopardize the market economy thereby threatening the continued existence of the European Community. It therefore advocates an active policy on competition to overcome our present economic difficulties and calls for a policy of austerity as regards state aids, cartels and abuses of power.

It is only prepared to condone agreements in restraint of competition which relate to a sector as a whole provided they are aimed solely at achieving a coordinated reduction of overcapacity and do not otherwise restrict free decision-making by the firms involved. The necessary structural reorganization must not be achieved by 'unsuitable means such as price-fixing or quota agreements' nor by state aids which lead to artificial preservation of surplus capacity. Even if we agree with the basic position adopted by the Commission, price-fixing and quota agreements might be considered as possible back-up measures in individual cases pursuant to the UNICE proposal.

38. Parliament welcomes the conditions laid down by the Commission for approval of cartels formed during a structural crisis:

The agreement must contain a detailed and binding programme of closures for each production centre, which ensures, on the one hand, that overcapacity is irreversibly dismantled and, on the other, that while the plan is in operation no new capacity is created, except for replacement centres provided for in the reorganization programme. It must be limited from the outset to the period necessary for the technical implementation of the envisaged programme of cutbacks. The creation of a system for exchanging information to check that promised reductions of capacity are being implemented is admissible provided it does not in any way help to coordinate on the utilization of remaining capacity or to align conditions of sale.

IV. Main decisions and measures taken by the Commission

39. When considering the practical decisions taken by the Commission, special attention must be given to the proceedings against British Telecommunications. This undertaking had, in the Commission's opinion, misused its dominating position on the market by denying private message forwarding agencies in the

United Kingdom the possibility of forwarding messages from and to other countries via the United Kingdom. This meant that users resident in other Member States of the Community were prevented from taking advantage of the differences in tariff structures, effective cost and exchange rate fluctuations offered by sending telex messages to countries outside Europe via the United Kingdom. This decision marked the first instance of competition rules being applied to the telecommunications sector.

V. Major developments in national competition policies

40. There are fears that the balance of power between Member States which are predominantly based on a market economy system and those based on a planned economy will be disturbed by the future accession of Spain and Portugal.

It is to be hoped that these countries will in future direct their economies on the principle of free competition as enshrined in the EEC Treaty.

VI. Competition policy and state aids to undertakings

41. In 1982, the Commission received 232 applications for aid, of which 104 were approved. Over 128 applications were processed using the procedure laid down in Article 93 of the EEC Treaty and negative clearance was applied in only 13 cases.

The Commission rightly stresses the danger of considerable damage to trade between the Member States. Competition based on aids produces effects similar to state protectionism. Existing economic difficulties are not overcome but are merely shifted from one Member State to another. The European Parliament welcomes the fact that the Commission has developed stringent guidelines to assess whether it is possible to make exceptions in relation to the basic ban in principle on aids which distort or threaten to distort competition. The Commission intends in future to demand the repayment of aid granted in contravention of Community law and this is a welcome development. At the same time it is also preparing guidelines to establish which state aids serve the common interest particularly in cases where developments on the world market make a policy of economic incentives for industrial restructuring or conversion appropriate.

Sectoral, general and regional aids

42. We must draw a strict distinction between the various types of state aid. Our efforts must be directed against the distortion of competition caused by subsidized steel production and we must support the Commission's efforts, made at Parliament's request, to restore the competitiveness of the European steel industry by restructuring and by reducing overcapacity.

It is, however, difficult to see why the steel industry, where more research and development is essential for competitiveness to be maintained, is to be excluded under the aids code from the general programme to promote research and development.

43. The section on the restructuring effort contains details of the varying intensity of individual types of aid. In view of the current situation, these distinctions are not very helpful; loans and guarantees must also be counted in full as aid.

The Commission rejects the proposal to fix the maximum amount of aid according to the tonnage of reduced capacity. We must agree with that. However, it is essential to ensure a high degree of transparency of the aid granted and to provide clear justifications to enable the Commission to check that equal treatment is being applied.

44. Belgium, France and Italy have submitted sectoral programmes in the textile sector. Despite the appeal still pending on the 1982 decision to approve the Belgian textile plan, the Commission has approved both the Italian and Belgian programmes for 1983 - with a number of provisos. The French proposal was rejected. The European Parliament reaffirms its belief that a proliferation of aid should be avoided in the interests of all concerned and will continue to express its opposition to the spread of sectoral subsidies.

45. The regulation on aid to the shipbuilding industry was extended for two years on 21 December 1982. The Commission has undertaken to tighten up controls on aid, to maintain the principle of degressive aid and to resume its work on a new, improved directive to be adopted in the near future.

In view of the difficulty of the situation and continuing distortions of competition in the shipbuilding industry, the European Parliament assumes that the Commission's efforts will continue to be directed towards reducing the volume of all aid including the payment of compensation to offset losses.

Public undertakings

46. In the case of public undertakings, the Commission works on the principle that the application of Community competition rules must not be restricted in law and complains quite rightly that the expansion of the public sector is coupled with increasing State influence on market activities. Further investigations are to be carried out into the financial relations between the Member States and their public undertakings to ascertain whether state measures include a proportion of aid. This is a most welcome move.

In its judgment of 6 July 1982, the Court of Justice confirmed the directive on transparency and information has initially been requested on the automobile, synthetic fibres, textile machinery, tobacco manufacturing and shipbuilding industries. The results of these investigations should be submitted to the European Parliament as soon as possible.

VII. The development of concentration, competition and competitiveness

47. The overall results of investigations show that in the period 1973-1981 the level of concentration within the Community differed widely between sectors but had remained relatively stable on the whole. The - as yet - incomplete investigation into competitiveness has drawn attention to obvious dangers.

Of the many relevant inhibitive factors identified by studies of individual sectors, the Commission draws attention first and foremost to the negative impact of institutional framework conditions. The intensity of competition and competitiveness are reduced when individual states introduce regulations which encourage the compartmentalization of markets, when the activities of public monopolies favour home producers or when protectionist measures are introduced to deal with imports from third countries and even from other Member States.

The existence of a large number of small and medium-sized undertakings on an open world market, on the other hand, produces intense competition and a generally satisfactory level of competitiveness amongst European manufacturers.

VIII. Commission's reactions to the European Parliament's resolutions on the Tenth and Eleventh Reports on Competition Policy

48. The most striking omission by the Commission in the Twelfth Report is any reference to Parliament's suggestion for a two-tier system of judicial review of Commission decisions, with a special competition court of first instance dealing with questions both of fact and of law, and with the Court of Justice merely re-examining questions of law. Parliament had asked the Commission to report back on this in its resolution on the Tenth Report, and the Commission had responded favourably in the Eleventh Report, stating that it was in favour of the introduction of such a two-tier system of judicial review, and that it believed 'that in future this reform would be the most appropriate way of improving all administrative and legal procedures relating to competition cases'.

In its resolution on the Eleventh Report Parliament then made (paragraph 47) a very specific request, reiterating its belief that a reform of this kind could well be highly desirable and calling on the Commission 'to report back as soon as possible, and at the latest by the next year's report on the practicalities of such a proposal and in particular, on how a competition court might be constituted and on the exact range of its functions'.

This request has been completely ignored by the Commission in the Twelfth Report and there is no reference to the subject at all. Even if the Commission has completely changed its mind, and believes the idea to be impracticable, even though originally mooted by the Court of Justice itself, it should at least say so in clear terms.

49. The second major question concerning procedures on which the Commission has been particularly unresponsive is that of expedited Commission procedures. Parliament has repeatedly drawn attention to this issue, and cited the growing backlog of pending cases of all kinds to point out the need for reforms of some kind. In paragraph 52 of its resolution on the Eleventh Report, for instance, Parliament asked the Commission to consider very

specific recommendations for expediting its procedures, namely the amendment of Regulation No. 17 of 1962 so as to confer automatic exemption on an agreement after the lapse of a specified period or else to provide some form of provisional exemption after an uncontested period (such as 90 days) from the publication of an agreement and until a final decision by the Commission.

The Commission's response has been extremely limited, and has been restricted to a statement that it has increased the value of comfort letters. Such a response is totally inadequate.

50. Parliament's resolution on the Tenth Report on Competition Policy called for a reinforcement of the economic assessment capabilities of DG IV and for its economic research to be better integrated with the rest of its activities (paragraph 47). There was no effective response to this in the Eleventh Report.

This then became a major theme in Parliament's resolution on the Eleventh Report which included a whole section (paragraphs 54 to 58), 'on strengthening and redirecting the Commission's economic research on competition policy matters'. This made a number of general criticisms, such as that the Commission's economic research often seemed inadequately linked to the practical economic issues encountered by DG IV in its everyday work, and that whole areas of the Commission's activity, in particular the control of government assistance to, and intervention in industry had not received any systematic analytic treatment. It also noted that there had often been considerable criticism of the Commission's economic judgment in specific cases, such as in its definition of relevant markets. The resolution put forward some practical suggestions for more clearly directed research, and also called for particular subjects to be studied by outside experts in the 'evolution of concentration and competition' series, and for more information on the practical use subsequently made of these studies.

Other paragraphs in the resolution renewed Parliament's previous 'call to the Commission for greatly expanded research on the efficiency and competitiveness of the Community economic structures, especially in a world context, and on the role of public assistance and intervention and of mergers in the process of economic adjustment' (paragraph 4) and also renewed Parliament's previous request 'for the overall competitive effects of

distribution agreements to be examined in greater detail from an economic rather than just a legal point of view, and for the complex issues raised by parallel importing to be more closely examined'.

51. The Commission's response in the Twelfth Report is essentially limited to the comment (page 17, paragraph 2) that 'other suggestions include the call ... for intensified economic research'. As regards the international aspects of competition the Twelfth Report states (page 12 of the Introduction): 'the Commission naturally takes account of the intensity of international competition in the common market or in a substantial part thereof'. There is no subsequent discussion of how it achieves this. In the final paragraph of the Twelfth Report, however, a general statement is made that 'in future work a more consistent attempt should be made to incorporate the specific results of the programme of studies into the overall assessment of the competitive situation in the Community'. This should indeed be forcefully pursued. Nevertheless this rather tentative statement is not enough.

The Commission also concludes (paragraph 243) 'that while the methodology used in analysing the competitive situation has now been fairly well developed, the need to deepen its empirical application should be reflected more in future work'. A tentative start has been made in this report with the discussions on pricing policy in the motor vehicle industry and in the book trade, both sectors in which Parliament has taken a strong interest. It is essential to link research more closely with practical priorities. Unfortunately there is still not enough evidence that the Commission has given this matter its full attention.

The section at the end of the report on the development of concentration, competition and competitiveness still appears to take little or no account of Parliament's suggestions, either those of a general nature made in both the resolutions on the Tenth and Eleventh Reports, nor the specific comments made in the resolution on the Eleventh Report. It is essential that the Commission provide a more comprehensive reply to Parliament's criticisms.

52. In its resolution on the Eleventh Report Parliament made two special requests which have not been properly taken account of by the Commission in the section of the Twelfth Report (paragraphs 25 to 28) on small and medium-sized undertakings (SMUs), namely Parliament's request (paragraph 26 of its

resolution) that the Commission carry out a more detailed review of the application of the competition rules to small and medium-sized undertakings and of any special problems that have arisen, with a view to seeing whether further measures were needed, and its request that (paragraph 25 of its resolution) the Commission should publish a guide on Community competition policy for SMUs, in the context of the 1983 Year of SMUs.

53. In paragraph 23 of its resolution on the Eleventh Report Parliament expressed satisfaction that the Commission had included a new section on non-Community undertakings, including multinationals, in the Eleventh Report, and requested that sections on these themes be included in subsequent annual reports. The Twelfth Report contains no such section.

The resolution on the Eleventh Report also contained another request (paragraph 30) closely related to the theme of multinationals, which deplored the Commission's failure to acknowledge Parliament's repeated calls for action to eliminate transfer pricing abuses, and asked the Commission to take steps in this field. This too appears to have been overlooked by the Commission.

54. Parliament's resolutions on both the Tenth and Eleventh Reports on Competition Policy asked for studies on the implications of Spanish and Portuguese accession to the Community for competition policy. There was no response from the Commission in the Eleventh Report, nor is there now in the Twelfth.

55. Parliament had called in paragraph 60 of its resolution on the Eleventh Report 'most emphatically for the inclusion of a chapter on non-tariff barriers ...'. This has been explicitly rejected by the Commission in the Twelfth Report.

56. The chapter in the Twelfth Report (Chapter V) on 'Commission involvement in work concerning restrictive practices and state aids in international trade' is very meagre. For instance, the section (paragraph 157) on cooperation between the Commission and the anti-trust authorities of non-member countries merely states with the utmost blandness that 'there have been bilateral contacts with the anti-trust authorities of several OECD member countries in the course of Community proceedings involving firms from those countries', while not discussing the issues raised by the extraterritorial

application of competition laws on which Parliament had asked the Commission to act in paragraph 43 of its resolution on the Eleventh Report. As regards the proposed international code of conduct on the transfer of technology, on which Parliament had expressed regret that there was currently deadlock (paragraph 42 of its resolution on the Eleventh Report) the Commission merely notes (paragraph 156 of the Twelfth Report) that the deadlock persists, without explaining why.

Parliament's repeated requests (e.g. paragraph 38 of its resolution on the Tenth Report and paragraph 45 of the resolution on the Eleventh Report) for the Commission to contribute in establishing international initiatives to tackle the problems of international tax evasion, flags of convenience and other unfair practices in the field of competition such as the existence of marked international differences in foreign investment incentives and regulations, have been ignored by the Commission in the Twelfth Report.

57. The Commission has not yet responded to Parliament's request (paragraph 11 of its resolution on the Eleventh Report) for an analysis of the state of competition in the banking sector. The chapter on economic research does say, however, that the Commission's programme of studies includes plans for analysis of the study of competition in banking and insurance. This proposal should be put into effect as soon as possible.

58. Parliament had welcomed (paragraph 37 of its resolution on the Eleventh Report) the list of state aids to which the Commission had raised no objection at the time but had asked for a full list of all current aids specifying their duration. In the Twelfth Report this list has now been divided into aids falling under the Treaty of Rome and under the European Coal and Steel Treaty, but a full list of all current aids and their duration has still not been provided.

59. Parliament expressed regret (paragraph 2 of its resolution on the Eleventh Report) that the Commission was being inconsistent in submitting certain proposals to the appropriate committee of Parliament for its comments before official publication of the proposals in the Official Journal while not submitting others, and requested that all such proposals be transferred to Parliament's appropriate committee at a preliminary stage. This request was forcefully reiterated in Parliament's resolution on the revision of Regulation 67/67.

The issue is mentioned in the Twelfth Report (paragraph 3) where the Commission discusses its consultation policy with respect to its delegated powers. This does not, however, fully respond to Parliament's request in one sense, in that it fails to state whether it will systematically consult Parliament in this way. There should be a stronger undertaking on this matter from the Commission in the future, given that the procedure would remain an informal rather than formal one.

IX. Final remarks

60. It has been shown that an active policy on competition is preferably to interventionist strategies for solving structural problems in individual sectors of the economy. Such interventionist policies have always degenerated in the past into conservative protectionist policies. Effective competition, on the other hand, produces greater incentives for innovation and more mobility. Competition calls for adaptability, flexibility and mobility and thereby facilitates the structural changes vital to the Community's economy.