

European Communities

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EUROPEAN PARLIAMENT

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13 February 1981

DOCUMENT 1-867/80

## Report

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

**Ninth Report by the Commission of the European Communities on  
Competition Policy (Doc. 1-127/80)**

**Rapporteur: Mr J.P. MOREAU**



The Commission of the European Communities has forwarded to the European Parliament the Ninth Report on Competition Policy (published in connection with the 13th General Report on the Activities of the European Communities).

The European Parliament referred this report to the Committee on Economic and Monetary Affairs at its plenary sitting of 19 May 1980.

On 28 May 1980 the Committee on Economic and Monetary Affairs appointed Mr Moreau rapporteur. It considered this report at its meetings of 20/21 and 29 January 1981.

At its meeting of 29 January 1981, the Committee on Economic and Monetary Affairs adopted the motion for a resolution by 18 votes with 7 abstentions.

Present: Mr DELORS, chairman; Mr MACARIO and Mr DELAU, vice-chairmen; Mr J.P. MOREAU, rapporteur; Mrs BADUEL GLORIOSO (deputizing for Mr PIQUET) Mr BALFOUR, Mr BEAZLEY, Mr BEUMER, Mr von BISMARCK, Mr BONACCINI, Mr CABORN, Miss FORSTER, Mr De GOEDE, Mr DELOROZOY, Mr HERMAN, Mrs LANGE (deputizing for Mr WALTER), Mr LEONARD, Mr MARKOZANIS, Mr MIHR, Mr NYBORG, Mr PETRONIO, Mr PURVIS (deputizing for Mr HOPPER), Mr SAYN-WITTGENSTEIN-BERLEBURG, Mr SEAL (deputizing for Mr ROGERS) and Mr von WOGAU

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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 Ninth Report of the Commission of the European Communities on Competition Policy (published in connection with the Thirteenth General Report by the Commission of the European Communities).

The European Parliament

- having regard to the Ninth Report of the Commission of the European Communities on Competition Policy (Doc. 1-127/80),
  - having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 1-867/80),
1. Considers that, in the context of the European economy competition should be an important factor for regulating markets for preventing distortion, for ensuring the efficiency of the economy and for consumer protection ;
  2. Notes, however, that in the current period of recession which is characterized by minimal growth, chronic high inflation, structural changes and disparities in development between the countries of the Community, the threat of distortion of competition is growing in all its forms and at every level and could jeopardize the concept of the single market ;
  3. Observes that the number of decisions taken by the Commission has decreased over the years and that the time taken for carrying out investigations has increased ;
  4. Calls on the Commission, in view of the difficulties facing the Community and its Member States, to utilize its extensive powers in this field and implement a more active and comprehensive policy: this policy must be adapted to economic and social developments in the Community in order to ensure that rules are adopted which guarantee genuine competition that is both equitable as regards producers and beneficial to the Community's economy in general and consumers in particular ;

5. Considers that in the present state of Community development, the independence of the Commission as regards the pursuit of a competition policy must be fully safeguarded, but that the Commission must seek ways of involving employers' organizations, trade unions and consumer associations in competition policy, more specifically through the provision of information; considers further that the European Parliament and its responsible committee may exercise their indispensable supervisory powers in this respect;

- Genuine competition

6. Notes that genuine competition implies standardization and greater harmonization of the conditions of competition, which presupposes:

- the application of the rules on competition enshrined in the Treaties,
- the approximation of national legislation in this field, and
- substantial progress in the international codification of these rules;

7. Emphasizes the cardinal role played by the Commission in the application of Articles 85 and 86 of the EEC Treaty and of Articles 65 and 66 of the ECSC Treaty and urges it again to seek to implement a more rapid and more transparent procedure for dealing with cases submitted to it, one which, however, takes due account of the rights of the defendants and therefore calls for improvement wherever possible to the practical applications if the relevant procedural rules and requests:

- (a) that the Commission provide each member of the Advisory Committee at least two weeks prior to their meetings with transcripts of the Commission's decision and the reply filed by the defendants against the statement of infringement and with a copy of the minutes of the oral hearing;
- (b) that the Court make more frequent use of its Articles 24 and 61 of its Rules of Procedure to review the Commission's fact finding and to reopen the oral proceedings in cases where the Advocate-General's opinion is alleged to contain errors of fact.

8. Calls on the Commission to make all necessary arrangements to provide more extensive information on the aims and principles of its competition policy to consumer associations and to trade union and employers' organizations;

9. Takes the view that the Commission should seek the cooperation and support of all interested parties - consumers' organizations, national

monopolies commissions and the Economic and Social Committee - in order to improve its possibilities for action through a better exchange of information and by pooling available resources and experience acquired;

10. Considers, finally, that a more effective competition policy cannot be implemented without an increase in the staff allocated;

11. Emphasizes the persistent risks of market-sharing in the Community which may be engendered by certain patent licensing agreements or certain exclusive dealing or distribution agreements and, in this respect:

- reminds the Commission of its desire to receive as soon as possible the amended proposal for a regulation in respect of the exemption of patent licensing agreements, which regulation should not contain excessively restrictive provisions that would inhibit transfers of technology in the Community,
- also calls on the Commission to forward to it in good time the new proposal for a regulation concerning the exemption of certain types of exclusive dealing agreements and hopes that it will meet the wishes already expressed by the European Parliament concerning the exemption of agreements made between potential competitors, the acceptance of non-reciprocal exclusive dealing arrangements between competitors where these are small and medium-sized undertakings and the size of the territory allotted to sole distributors in the case of advanced technology products,
- hopes that the Commission will submit at an early date a proposal for a regulation on the Community trademark and a European Trademark Office,
- invites the Commission, finally, in the light of its experience and after consulting the interested parties, to draw up more precise rules governing selective distribution agreements;

12. Reaffirms its wish that the rules on competition should be applied as widely as possible; accordingly:

(a) in the transport sector

- fears that the regulation for the application of the rules on competition to air transport at present being drawn up, if confined solely to the independent activities of airlines to the exclusion of activities which reflect national constraints, will not provide the instrument which the Commission needs to ensure the increase in competition in this field which the European Parliament hopes to see;
- hopes for the early submission of a proposal for a regulation on the application of the rules on competition to sea transport,

(b) in the financial sector

- emphasizes the need to extend the rules on competition to the financial sector and is surprised that no mention is made in the Ninth Report of any continuation of the enquiries undertaken by the Commission in this field in 1979;
- urges the Commission once more to investigate, in conjunction with the financial authorities of the Member States, the obstacles which still restrict the free movement of capital and the development of a common organization of the credit market and how they may be eliminated;

(c) in the insurance sector

- calls once again on the Commission, in the absence of any mention of this subject in the report, to monitor closely the application of the rules on competition in all the insurance sectors; also asks the Commission to include in its next annual report a summary of its actions in this field and in the financial sector; and presses for the adoption of the 'Services' directive<sup>1</sup>, the absence of which is preventing competition across the frontiers of Member States;

13. Notes that as in previous years, the chapter in the Ninth Report devoted to the principal developments in national policies makes no mention of any specific initiatives taken by the Commission to remedy the persistent deficiencies in certain Member States or the divergent trends in national competition policies; such measures are essential for the creation and development of a single market in various sectors;
14. Calls on the Commission to pursue its activities relating to the adjustment of state monopolies of a commercial nature to ensure that, in the near future, none of the current commercial monopolies will be in breach of Article 37 of the EEC Treaty;
15. Recalls the serious threats to market unity caused by technical barriers to trade irrespective of whether they stem from mandatory legal provisions or from the varying standards adopted by national institutions; urges the Commission and the Council once again to extend immediately to all barriers a simplified procedure for the elimination and prevention of technical and administrative barriers to trade under Article 155 of the Treaty; calls on the Council, in this connection, to adopt the directives now held up by lack of decision on the third country problem; calls on the Commission to prevent the development of new barriers to trade by creating

<sup>1</sup> COM(80) 854/final

a more substantial body of European norms to which the Community can refer in its directives on harmonization; urges the Commission similarly, on the basis of the recent case law of the European Court of Justice relating to the application of Article 30 of the EEC Treaty, to bring before the Court every instance it detects of unjustified barriers to trade;

16. Recalls that the inadequate harmonization of laws and the lack of transparency with regard to public contracts seriously hampers the standardization of the conditions of competition; calls on the Commission to keep a strict watch on compliance by the Member States with the directives adopted so far, since such compliance is unfortunately not always forthcoming; calls on the Commission, finally, to brook no delay in its work to ensure that the directive on supplies is extended in particular to the telecommunications, transport and energy sectors and to ensure that directives  
  
are designed in such a way that small and medium-sized undertakings also have a fair chance of participating;
17. Recalls that the inadequacy of tax harmonization and fiscal control encourages tax avoidance and seriously interferes with the equality of the conditions of competition; consequently:
  - deplores the fact that the Council has not yet adopted a number of proposals on tax harmonization, some of which, relating to company taxation, have been pending for several years,
  - hopes that in the case of excise duty a solution will rapidly be found which puts an end to the current distortion of competition,
  - hopes that the Commission, in line with the wish expressed by the European Parliament last year, is now convinced that its harmonization proposals should not be limited to collection systems but also extended to the structure of taxation rates and to the basis of assessment,
  - calls on the Commission to seek, in conjunction with the authorities of the Member States, a common approach to the fixing of energy prices which reflects representative market conditions and the cost of replacing energy sources and which ensures maximum transparency;
18. Takes the view that the Community cannot, without weakening its own position, create a genuine internal competition policy unless it actively seeks to extend the rules it imposes on itself to the other countries of the world; calls on the Commission, therefore, not to confine itself simply to participating in the activities of the international bodies concerned but to contribute its utmost to :

- the campaign against international tax evasion,
- the abolition of tax havens,
- the elimination of flags of convenience,
- the abolition of other unfair practices in the field of competition;
- Controlled competition

19. Takes the view that everything should be done, in the spirit of the Treaties, to strive constantly to ensure strict competition between the main economic operators, private firms, large undertakings, small and medium-sized undertakings, public undertakings and transnational undertakings;

20. - Emphasizes that it is vital to maintain genuine equality of opportunity between private firms by means of the strict application of the rules on competition laid down in the Treaties;

- accepts that in a period of exceptional structural crisis a few closely controlled agreements of limited duration may be necessary in the European Community to assist restructuring under Community industrial policies;

- considers that the constant evolution of the market towards a generalized oligopolistic structure lying somewhere, in the Commission's own words, 'between competition and collusion' might seriously threaten competition, and that an evolution of this nature requires the Commission to reshape its competition policy with a view to preventing any irreversible evolution of the market by controlling concentrations in particular and by the integration of aid;

- deplores once again in this respect the fact that the Council has still not adopted the regulation on the control of concentrations which has been before it since 1974;

21. Welcomes the adoption by the Commission on 25 June 1980, pursuant to Article 90 of the EEC Treaty, of a first directive designed to ensure greater transparency of financial relations between Member States and public undertakings; emphasizes that the scope of this directive is very limited and calls on the Commission to pursue its work without delay in order to ensure equal transparency for most public undertakings, especially in the energy, transport and credit sectors;

and deplores the actions of the French, Italian and UK Governments which have been brought before the Court of Justice in an effort to have this important directive annulled;

<sup>1</sup> OJ No C 273/80 p.5 (Cases 188, 189 and 190/80)

22. Regrets that the Commission decided not to include in its report a review of the action on the activities of transnational undertakings, contrary to the wish expressed by the European Parliament; emphasizes that organized competition implies that the activities of transnational undertakings should be controlled without discrimination; deeply regrets that the Commission has still not submitted a proposal on transfer prices; calls on the Commission to respond to the repeated requests made by the European Parliament for more information on the activities of transnational undertakings by including in its next report a summary of the progress made in this field, both within the Community and in the various international bodies;
23. Considers that an organized competition policy must take account of the specific disadvantages of the small and medium-sized undertakings so as to enable them to contribute fully to the dynamism of the economy; recalls that in its previous report the European Parliament emphasized the need to promote favourable fiscal, financial, technological and administrative conditions for small and medium-sized undertakings; notes with interest in this respect that in its communication on telematics, the Commission intends to improve the transfer of information to small and medium-sized undertakings and to facilitate the access of the small and medium-sized undertakings to the resources of the Regional Fund; regrets that the report contains virtually no initiatives for the benefit of small and medium-sized undertakings and draws the Commission's attention to this matter;

- Beneficial competition

24. Notes that because of its inadequacies, competition does not at present produce all the beneficial effects in the Community which the economy in general and consumers as a whole should enjoy;
25. Recalls the need for close coordination at Community level of regional, sectoral and general aid policies and emphasizes the Commission's responsibilities in this field; urges the Commission in particular to draw up a more expedient procedure for monitoring general aid schemes and export aids in view of the comparative dilatoriness of the present procedure; calls for the next report to contain a detailed review of the effects of the implementation of the Council Decision of 18 December 1979 establishing Community rules for specific aid to the iron and steel industry; calls on the Commission to seek maximum consistency between the various Community policies and the competition policy; requests the

Commission to determine whether existing policy and measures on competition - e.g. as regards the nature and extent of concentration - take full account of the changed structural economic position and challenges facing the Community on the world market;

26. Considers also that the rules on competition must be applied with great care to take account of the special nature of certain goods (e.g. books) and the ultimate purpose of certain services (e.g. air transport);
27. Notes that the oligopolization of the market may in some sectors reduce the scope and intensity of competition and may in some sectors lead to artificially high price levels;
  - that there are too many price anomalies; and
  - that as a result the consumer is not benefiting as much as he should from competition as it stands at present in the Community;
28. Stresses once again that the Commission must follow up its enquiries with practical measures designed to eliminate unacceptable price disparities;
29. Instructs its President to forward this resolution to the Commission and Council of the European Communities to the Court of Justice and to the parliaments of the Member States.

EXPLANATORY STATEMENT

1. In the European economy, competition plays an undebiable part and competition can serve economic policy in various different roles; in a combative role against rising prices, competition if it is genuinely respected tends to break up exclusive agreements between producers or distributors or at least to reduce their scope; in an innovative role and as a factor of technical progress and rationalization of industrial structures, competition is particularly necessary at a time when a new international order is struggling to get on its feet. Finally, competition can be put to the service of consumers for whom it should ensure the best quality/price relationship.

But, to fulfil these various roles, competition must be genuine. The market must be sufficiently diverse not to be manipulated by dominant undertakings, sufficiently transparent to allow the volume and value of transactions to be ascertained, and sufficiently flexible for the factors of production to be mobile enough to follow shifts in demand.

These conditions are clearly difficult to realize. What is more, competition policy is often in conflict with other demands such as those raised by policies for social protection or the defence of the vital interests of individual states.

Thus competition policy has its merits but also its limits. Its role should therefore not be enhanced to the exclusion of other factors; competition cannot be an end in itself. But taking into account its limits, care has to be taken, as stated expressly in Article 3 (f) of the EEC Treaty, that competition is not 'distorted'. This is mainly the task of the Commission which possesses extensive powers in this field. It is for the European Parliament to assess, with particular regard to the report put to it every year, whether the policy followed by the Commission will guarantee the proper operation of the main functions of competition.

In an economic and social situation which continues to be difficult and with the risks of protectionism growing at all levels, the supervision exercised by the European Parliament and the latter's proposals take on a very special importance. Indeed competition has to be genuine and controlled if it is to be beneficial to the economy and to the consumer. If the application of competition rules is for the benefit of everyone in the Community it must also be the concern of everyone in the Community.

I. GENUINE COMPETITION

2. A continuous effort must be made to increase the fairness of competition conditions otherwise there is no point in discussing competition at all and the market will be a fool's market which while maintaining the appearance of free competition is in fact given over to the most skilful, the best informed and most powerful economic operators to the detriment of those who keep to the rules.

The standardization of competition conditions can be brought about by:

- the strict application of the competition rules contained in the Treaties;
- the approximation of national legislation concerning competition,
- the progress on international codification of competition rules.

A. The application of the rules on competition contained in the Treaties

1. The application of Articles 85 and 86 of the EEC Treaty and Articles 65 and 66 of the ECSC Treaty

There are two sides to the application of the competition rules contained in the Treaties: common practice based on individual decisions and, on the basis of this practice, the formulation of regulations wherever this is possible and desirable.

- Practice based on decisions

3. The Commission plays a cardinal role in the application of Articles 85 and 86 of the EEC Treaty and Articles 65 and 66 of the ECSC Treaty since it selects from its dossiers those points which require its intervention, and the decisions which it consequently takes incur proceedings before the Court of Justice. However, the number of decisions taken by the Commission during the last three years has been decreasing whilst the number of cases settled amicably has remained at a standstill<sup>1</sup>.

Of course this decrease in the number of decisions largely corresponds either to the adoption of regulations exempting certain categories or to the 'test case' nature of certain decisions.

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<sup>1</sup>Application decisions:

1977:	17 under Articles 85 and 86 of the EEC Treaty
	21 under Articles 65 and 66 of the ECSC Treaty
1978:	14 under Articles 85 and 86 of the EEC Treaty
	16 under Articles 65 and 66 of the ECSC Treaty
1979:	6 under Articles 85 and 86 of the EEC Treaty
	17 under Articles 65 and 66 of the ECSC Treaty

From this point of view the number of decisions adopted is not in itself significant. However, the Commission recognizes that this task is made more complicated by increasingly numerous and sophisticated defences worked out by the legal departments of the large undertakings. Consequently the decisions taken become more and more complex and their formulation requires more and more time although the staff at the Commission's disposal (80 A grade officials) is very inadequate compared with the staff of the 'Bundeskartellamt' (130) for example, or the American anti-trust authorities (about 1,300). Apart from seeking an increase in staff, the Commission should also solicit the support and cooperation of all those interested, i.e. consumer organizations, national competition offices or departments, both sides of industry and the European Parliament and its appropriate committee, to improve information and pool resources and experience in order to remedy the unequal legal situation in which it often finds itself.

Moreover, the European Parliament was concerned, on the occasion of the preceding report, about the procedure followed which is often too dilatory. As the credibility and effectiveness of the competition policy depends on this procedure, the European Parliament recommended that the Commission should take concrete measures to establish a simplified procedure<sup>1</sup>. There is no trace of this in the ninth report. However on a particular point the Court of Justice<sup>2</sup> has recently explicitly recognized the Commission's right in certain cases to take immediately applicable provisional measures. This decision could take on great importance for European competition law in as far as the Commission will be able to order the immediate stoppage of particularly harmful competition practices. It is for the Commission to study how to implement this right.

4. Finally, apart from its dilatoriness, the procedure for the application of articles relating to exclusive agreements and dominant positions would gain by being more democratic. This remark refers particularly to the membership of the Advisory Committee on Restrictive Practices.

Article 10 of Regulation No. 17 of 6 February 1962 provides that an Advisory Committee on Restrictive Practices and Dominant Positions should be consulted prior to any decision relating to the application of Articles 85 and 86. This committee is made up of officials competent in this field designated by the Member States.

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<sup>1</sup>Damseaux report (Doc. 1-265/79), resolution paragraph 20.

<sup>2</sup>Order of the European Court of Justice of 17 January 1980 in Case 792/79, Camera Care Limited/Commission of the European Communities.

In view of the economic and social effects exerted by the state of the market and by any decisions relating to competition policy, the membership of this committee appears to be too restricted. The Commission should therefore look into ways and means of enlarging its membership.

It is also desirable that the social partners and consumer organizations should be better informed about the work of the Commission in order to take full advantage of the consultation machinery provided for under the present provisions of Regulation No. 17 (Articles 3 and 19).

In this connection, the European Bureau of Consumers Unions has recently asked that consumer organizations should be consulted whenever the Commission intends to grant an exception to the ban on restricted practices.

It would also be desirable, in order to complete the supervision procedure followed by the Commission with regard to competition policy, that the Economic and Social Committee should, like the European Parliament, deliver an opinion each year on the Commission's report.

- the formulation of regulations

5. When a body of practice has been established, the Commission works out or revises its regulations. The codification of contractual practices gives economic operators greater certainty and simplifies procedure. But the persistent risks of market-sharing which may be engendered by the various distribution agreements or patent licences must also be borne in mind.

(a) distribution agreements

- exclusive dealing agreements

The Commission has undertaken a complete recasting of Regulation 67/67 on the block exemption of exclusive dealing agreements, to take account of European case law, practical experience of the application of this regulation, economic developments and the future prospects of Community enlargement.

It will soon be submitting to the European Parliament this new proposal for a regulation which should meet the desires previously expressed by the Committee on Economic and Monetary Affairs in respect of the exemption of agreements between potential competitors, the acceptance of non-reciprocal exclusive dealing agreements between competitors where these are small and medium-sized undertakings and the size of the territory allotted to sole distributors in the case of advanced technology products.

- selective distribution

6. As the Commission observes, selective distribution, whether on a qualitative or quantitative basis, may be used to delimit more closely the circle of appointed dealers, to limit trade or to influence price levels. It is therefore important to see that these agreements do not strengthen the tendency towards price rigidity. The Commission should therefore, in the light of its experience and after consulting those concerned, establish precise regulations on selective distribution agreements.

(b) industrial property

It is a difficult task to reconcile the aims of industrial and commercial property law with the principles of Community competition law. The Commission has been engaged in this for several years.

- patent licences

7. As regards patent licences a proposal for a regulation applying Article 85(3) to categories of patent licences which comply with the exemption conditions laid down in Article 85(3) has been in preparation for a number of years. The latest version of this proposal<sup>1</sup> was received with many reservations by the circles concerned. The fear of industry is that the over-restrictive approach adopted by the Commission should stand in the way of transfers of technology in the Community and reduce innovation capacity and prejudice the rights attached to patents. The European Parliament has taken up these concerns and asked that the modified version of the proposal for a regulation submitted to the Advisory Committee on Restrictive Practices and Dominant Positions should be forwarded to Parliament. The work of the Commission has at present come to a standstill pending the judgment of the Court of Justice in the 'maize seed' case (258/78) which touches on problems connected with the restrictive nature of exclusive dealing and territorial protection.

- the trademark

8. On many occasions the European Parliament has had the opportunity to stress that the implementation of a trademark law applicable throughout the Community would doubtless contribute to the liberalization of trade in goods and services covered by such trademarks. The Commission has very recently submitted a proposal for a regulation on the Community trademark and a proposal for a directive on national trademark laws.

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<sup>1</sup>OJ No. C 58, 3.3.1979

2. The scope of the competition rules contained in the Treaties

9. The non-applicability of competition rules to certain fields of economic life seriously undermines the standardization of competition conditions in the Community. The Committee on Economic and Monetary Affairs has been very attentive to this question of the scope of competition policy. The Ninth Report contains very few notable details on this point.

- air transport

A first important step was taken with the publication, on 4 July 1979, of the Commission's Memorandum on the development of air transport services. The Committee on Economic and Monetary Affairs had the opportunity when the draft report on restrictions of competition in the air transport sector<sup>1</sup> was adopted to approve this memorandum which contains various proposals designed to increase competition in this field, dealing particularly with the opening up of the market and the flexibility and transparency of fares. It is also indispensable that the Commission should create for itself a legal instrument which would allow it to ensure effectively that companies respect the competition rules. Although the regulation at present being prepared confines itself to the independent activities of airlines, to the exclusion of activities which reflect national constraints, it will not provide the instrument which the Commission needs to ensure a genuine increase in competition in this field.

- sea transport

The Commission should also present in the very near future a regulation for the application of Articles 85 and 86 of the EEC Treaty to sea transport. Although this regulation should not call into question the present structure of sea transport and in particular the role of liner conferences, it should however ensure genuine competition in this sector. The European Parliament expects to be consulted in due course on this proposal.

- financial and insurance sectors

In contrast, the Ninth Report makes no mention of the specific initiative undertaken by the Commission regarding the extension of the application of competition rules in the financial and insurance sectors. The next report should contain a review of the Commission's activities in these two fields.

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<sup>1</sup>Schwartzenberg report (Doc. 1-724/79)

(b) the approximation of national laws

10. However strictly the competition rules contained in the Treaty are applied, this will not suffice to bring about the standardization of competition conditions as long as national laws remain too divergent. What is needed is the further development of national competition laws and at the same time a concerted effort to harmonize legal, technical and fiscal provisions.

1. Principal developments during 1979-1980

On the subject of developments in national competition policies, the Commission considers that the differences between the bodies of legislation is gradually diminishing and concludes with the hope 'that the increasing consultation and cooperation between the Commission and the Member States at Community level will be instrumental in accelerating this process'<sup>1</sup>.

This wait-and-see policy is hardly compatible with the real development of competition legislation in the Member States which sometimes shows a serious and persistent inadequacy in certain Member States, particularly Italy, and also a divergence in the development of the policies pursued. This is the case for example with the various recent national laws relating to the supervision of mergers which might cause difficulties when the regulation on the control of mergers still waiting to be dealt with by the Council is finally implemented.

2. Legal provisions on monopolies

11. The European Court of Justice, in its recent judgment of 13 March 1979<sup>2</sup> gave a very useful definition of Article 37 of the EEC Treaty concerning the progressive adjustment of state monopolies of a commercial character. The Court stressed on this occasion the fact that the existence of state monopolies should not be allowed to prejudice the equality of opportunity which must be guaranteed to products imported from other Member States. The Court condemned the discrimination which existed in respect of Article 37 in the sale, in the case of the French alcohol monopoly, of alcohol subsidized from public funds at an abnormally low resale price in comparison with alcohol of similar quality which might be imported from other Member States.

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<sup>1</sup>Ninth Report on competition policy, point 45, page 41

<sup>2</sup>Judgment of 13 March 1979 - Case 91/78 Hansen, Reports 1979, p. 935

The Commission should therefore, with the support of this new piece of case law, spare no efforts to ensure in the near future that henceforth none of the existing commercial monopolies should be in breach of Article 37 of the EEC Treaty. Finally, it is noted with satisfaction that, as envisaged in the Eighth Report on competition policy, the new oil regime introduced in France on 29 June 1979 now conforms with Article 37 of the Treaty.

3. Elimination of technical and administrative barriers to trade  
- procedure for eliminating technical barriers

12. The Thirteenth General Report<sup>1</sup> records the adoption by the Council of 11 new directives and by the Commission of 7 directives adapting existing provisions to technical progress. This figure which is comparable to the preceding years suggests a fairly slow rate of elimination.

As the Commission indicates, the revival of protectionist measures which the Community is at present confronting represents a risk for the principle of the free circulation of goods. The deterioration of the situation in this field, besides representing a setback for basic Community achievements, may seriously upset the pursuit of a genuine competition policy.

In these circumstances, it is important to follow up the deliberations which the European Parliament in particular has instigated over the last few years on the improvement of procedures. The Commission realizes that the effort which has been proceeding for ten years should be 'amplified and diversified' with a clearer definition of the policy line which the Commission intends to pursue<sup>2</sup>. The Commission stresses the need to 'tackle the immense area of technical barriers resulting not from mandatory legal provisions but from the adoption of different standards by the Member States' standards institutions' and to 'prevent new barriers from being set up'. Moreover, the European Court of Justice, in the 'Cassis de Dijon' case<sup>3</sup> very opportunely laid down the interpretation which would permit proceedings against new forms of barriers to trade which contravene the Treaty. Apart from the proposal for a directive concerning products for the building trade which the Council has not yet adopted, the Committee on Economic and Monetary Affairs can only insist once again on its desire for a simplified procedure for the elimination of barriers under

<sup>1</sup>Thirteenth General Report, point 101, p.75

<sup>2</sup>Thirteenth General Report, point 99, p.74

<sup>3</sup>Case 120/78, 20 February 1979 - Reports 1979, p.649

Article 155 of the EEC Treaty to be extended in the near future to all barriers.

- public contracts

13. The inadequate harmonization of legislation and of transparency concerning public contracts is an obstacle to the standardization of competition conditions and industrial development in the Community. The Commission should therefore keep a strict watch on compliance by the Member States with the directives on the awarding of contracts adopted so far since this compliance has not always been forthcoming as the table below shows.

PUBLIC SUPPLY CONTRACTS

Number of notices of public contracts  
advertized in the Official Journal

Member State	1978	1979	1980 (from 1.1 to 30.6)
B.....	16	68	24
DK.....	13	23	25
D.....	1	121	114
F.....	9	344	198
IRL.....	-	4	3
IT.....	-	0	0
L.....	-	5	5
NL.....	-	5	14
UK.....	200	60	174
TOTAL EEC	329	1,008	557

The Commission has moreover recently presented recommendations concerning telecommunications designed, amongst other things, to extend existing Community procedure in this sector. The Commission is asked to submit proposals in other sectors which have not yet been covered by the supplies directive, such as transport and energy.

4. Tax harmonization

14. The standardization of competition conditions also requires a minimum amount of tax harmonization within the Community if discrimination and distortion are not to be perpetuated. In this respect there are several Commission proposals still before the Council; including the proposal for a seventh directive on VAT<sup>1</sup>

<sup>1</sup>Written Question by Mr Møller, No. 511/80 of 9 June 1980

(used goods and works of art), the tenth directive on the hiring of moveable tangible property and the proposal for a directive for a common taxation system applicable to parent companies and subsidiaries of various Member States and the proposal for a directive on a common taxation system applicable to mergers, hive-offs and transfers of assets<sup>1</sup>, these two last proposals being very old since the European Parliament's opinion dates from 9 April 1970.

As regards excise duties on alcohol, the recent decisions of the European Court of Justice handed down on 27 February 1980 are important since the discrimination on the amount of tax imposed on alcoholic beverages in France, Italy, Denmark and Ireland is criticized by the Court as being contrary to Article 95 of the EEC Treaty. Moreover, the United Kingdom imposes five times more tax on wine than on beer. Without giving a definite ruling, the Court of Justice has partly admitted the Commission's submission that wine and beer are products which are to a certain degree interchangeable and therefore in competition.

Moreover, on 26 June 1979 the Commission forwarded a communication to the Council containing compromise solutions for the main problems connected with the harmonization of the structure of excise duties on beer, wine and alcohol. It is to be hoped that in this complex matter a solution will soon be found to put a stop to these tax-generated distortions of competition.

As concerns direct taxation, attention is drawn to the desire expressed by the European Parliament last year<sup>2</sup> that tax harmonization should not be limited to collection systems but should also extend to rates and to the basis of assessment.

Finally, the tax element of energy costs varies greatly from one Member State to another; it seems essential that the Commission should work together with the authorities of the Member States to seek means of standardizing at least to some extent the cost of energy. Given the importance of this factor in most production processes, serious competition distortion will continue to affect firms in the Member States as long as tax differences in this field have not been ironed out.

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<sup>1</sup>Written Question by Mr Seeler, No. 60/80 of 19 March 1980;

<sup>2</sup>Interim report by Mr Nyborg on a proposal for a directive on the harmonization of company taxation and of withholding taxes on dividends, resolution, (Doc.104/79)

C. International codification of competition rules

17. The European Community's competition policy cannot be studied in isolation from the world context. There must be harmonization of competition rules at world level and international cooperation in the fight against those monopolies which operate to the detriment of the market, and against any misuse of dominant positions which may not be covered either by Community legislation or national legislation. Although this will be very difficult to achieve, the Community must do everything it can to help.

In fact, the Community cannot create a genuine internal competition policy without detriment to itself if it does not seek to extend the rules which it imposes on itself to the other countries of the world.

1. Work concerning restrictive practices in international trade

The 9th Report contains sufficiently precise details of the state of progress of work in the OECD and UNCTAD.

- work in the OECD

18. On 25 September 1979 the OECD Council adopted two recommendations, one on increased cooperation between member countries on restrictive practices affecting international trade and the other asking governments of Member States to restrict the number and scope of exemptions to regulations. More information could be provided on the exact scope of these recommendations.

The problems of concentration and competition policy and those posed by purchasing power have been or are to be the subject of reports by OECD working parties.

- work in UNCTAD

19. UNCTAD held a conference on restrictive business practices from 19 November to 7 December 1979.

On this occasion attitudes did come closer, particularly between Group B and the Group of 77, on the non-binding legal nature of principles and rules in respect of preferential treatment, on the exceptions given under national and regional laws and the status of relationships between companies of the same group. It was possible to conclude negotiations on the establishment of an international code on restricted business practices in April 1980.

As regards the code of conduct on transfer of technology, negotiations have not yet been concluded. There is an agreement on the non-binding legal nature of the code, on the principle of adoption of the code (in the form of a United Nations resolution) and on eleven clauses (price maintenance, tying, patent pools and cross licences). But on a number of other clauses, the Ninth Report indicates that the industrialized market economy countries have not yet given their agreement. While taking into consideration wherever possible the inherent constraints of developing countries, it is in fact important that Community competition law and even more so the competition policies of the various Member States should not be outflanked by certain UNCTAD proposals which link competition with other political objectives.

## 2. Tax havens

20. As the Commission again stated during the colloquium on international tax avoidance organized by the Council of Europe from 5 - 7 March 1980, isolated action by the Community could cause a flight of capital towards third countries. This problem of international tax avoidance can only be solved by concerted action on a larger scale.

This statement must be followed up by action. But the Commission seems to be waiting for the acceptance of reciprocal procedures between the administrations of Member States before fighting tax avoidance. This is self-delusion. At the same time it is too easy for the Commission to make regular reference to the report which it undertook in 1972 on the tax arrangements applying to holding companies (this report contains an analysis of the problems arising from international tax avoidance inside and outside the Community) since the Council has never discussed this report<sup>1</sup>.

Contrary to the thesis put forward by the Commission<sup>2</sup>, maintenance of genuine competition implies the progressive abolition of tax havens. It is for the Commission to encourage Member States to look at this question and to generate concerted action vis-à-vis adjacent states which are in the nature of tax havens and with the signatory states of the Lomé Convention. It is in fact inconsistent and pointless to enforce competition rules within the Community and at the same time to acknowledge that tax avoidance can thrive on the edge or even in the centre of this Community (Switzerland).

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<sup>1</sup>Answer to the written question by Mr Debré No. 1492/79 of 15 January 1980

<sup>2</sup>Answer to the written question by Mrs VAYSSADE and Mr J. MOREAU, No. 83/80, OJ No. C 167/29

### 3. Flags of convenience

21. Genuine competition in the field of international commercial shipping would require the progressive abolition of flags of convenience. The negotiations which were held during January 1980 within the context of UNCTAD have not been concluded. The Commission should not confine itself simply to taking part in these conferences but should also make a more active effort to seek ways of remedying this state of affairs.

## II. CONTROLLED COMPETITION

22. Genuine competition must also be equitable. The objective of a rational competition policy designed principally for the general interest of the Community should not be confined to the strict and automatic application of the competition rules which the Community has adopted. Perfect competition is a theoretical model. It would also be wrong to seek competitiveness at any price. The market must not become a jungle. On the contrary, competition between the main economic operators, private and public, must be organized and adapted where necessary to take account of their size, the aims which they pursue and the functions which they fulfil.

### A. Supervision of the activities of private firms

23. The wish to improve the procedure for the application of Articles 85 and 86 of the EEC Treaty to exclusive agreements and the abuse of dominant positions has already been indicated above. Indeed, strict application of these provisions is essential if a check is to be kept on the activities of private firms.

But the present economic circumstances, and in particular the need to radically reorganise the production apparatus, means that in certain conditions and provided the firms have the capacity, in a given sector the firms themselves may and must play their due role as regards restructuring. It is important that in each sector affected by restructuring solutions should be chosen which are the least onerous from the point of view of social and budgetary costs and the most likely to re-establish competitiveness in the sector concerned. This is the problem of the crisis cartels.

### - crisis cartels

24. The Commission accepts<sup>1</sup> that such agreements between firms aimed at reducing structural excess capacity may be authorized under Article 85(3) 'but only where the firm has not simultaneously, whether by agreement or concerted practice, fixed either prices or production or delivery quotas'. The Commission is at present looking at the compatibility with Article 85 of the amended agreement between producers of man-made fibres.

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<sup>1</sup>Eighth Report on competition policy, page 12

At all events, as the Commission recalls<sup>1</sup>, it is important in such cases that the firms concerned should take the necessary measures to limit the social repercussions of restructuring operations.

It is to be hoped that the acceptance, under these strict conditions, of price cartels in certain sectors in difficulties will be a problem of no more than a short-term economic nature. On the other hand, the constant evolution of the market towards a generalized oligopolistic structure affects the very concept of competition.

- the oligopolistic trend of markets

25. In the Ninth Report, the Commission notes the following development during the last decade as regards the concentration of markets:

- a constant growth of oligopoly, the effect of which is to reduce both the scope and intensity of competition,
- a gradual and continuous growth, in both absolute and relative terms, in the size of industrial production units, and even more so in the size of trading units,
- the development of a new form of oligopolistic specialization at transnational level in which elements of competition are closely bound up with elements of technical or commercial cooperation and quasi-monopolistic rigidity.

The Commission cannot confine itself simply to ascertaining this new trend towards a dynamic oligopolistic equilibrium lying, as it states, somewhere between competition and collusion<sup>2</sup>. Moreover, the Commission's conclusions are corroborated by a recent report published by the OECD in February 1980 on concentration and competition policy. The OECD committee of experts responsible for this report considered that the present level of concentration which is already very high in a certain number of important branches of industry could have disastrous political and social consequences. To counter this development, the report contained a number of suggestions such as the refinement of statistics (by branch of industry and also the overall concentration by Member State) and the strengthening of legislation on the control of horizontal, vertical or heterogeneous mergers.

This trend makes it all the more necessary today for the Council to adopt the regulation on the control of concentrations which has been before it since 1974.

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<sup>1</sup> Answer to the written question by Mrs Vayssade, Mr Pecheron, Mr Moreau and Mr Martinet, No. 1098/79 - OJ No. C 137, 9 June 1980

<sup>2</sup> Ninth Report, point 221, page 141

Generally speaking, this trend calls for a redefinition of the Commission's competition policy going beyond case-by-case decisions under Articles 85 and 86. Competition policy should be reorientated so that the control of concentration, combined with integrated assistance, can prevent any irreversible development of the market away from an optimum level of competition, without which competition will be neither genuine nor equitable.

B. Supervision of the activities of public undertakings

26. A first directive on the transparency of financial relations between Member States and public undertakings, a directive advocated by the European Parliament for many years, was adopted by the Commission on 25 June 1980<sup>1</sup>. The Committee on Economic and Monetary Affairs, which is kept informed of the Commission's general guidelines in this field, expressed its agreement with this subject<sup>2</sup>. It is indeed important to establish equitable treatment between private and public undertakings. The latter should not benefit from undue advantages but at the same time the constraints inherent in their obligations as a public service must be taken carefully into consideration. If there is to be fair treatment between private and public undertakings it is indispensable to create the necessary transparency of financial relations between public undertakings and states.

This first directive adopted by the Commission does not cover the major public services (water, electricity, transport, post, telecommunications, banks and savings banks). As it stands 90% of the undertakings it covers are Italian and virtually all the rest French.

The Commission must move on from this first stage, which is very restrictive in scope, and it is to be hoped that the work undertaken to examine specific measures to ensure a similar transparency for the public undertakings which are at present excluded will be concluded fairly rapidly.

C. Controlling the activities of transnational undertakings

27. Contrary to the wish expressed in the European Parliament's last report<sup>3</sup>, the Ninth Report does not contain a review of action on the activities of transnational undertakings. This is regrettable. It can indeed be seen to what extent the transnational companies, by virtue of

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<sup>1</sup>OJ No. L 195, 29 July 1980

<sup>2</sup>Meeting of 31 January 1980

<sup>3</sup>Damseaux Report, Doc. 1-625/79, resolution, paragraph 18

their size, their liquid assets and the concentration of their power of decision are able to exert a dominant position on the market thus gradually reducing free competition.

Without going into detail at this point on the very broad question of the international economic activity of undertakings and governments which is at present the subject of a report being prepared by the Committee on Economic and Monetary Affairs<sup>1</sup>, mention should be made here again of some essential measures which must be taken, without discriminating against these companies, in order to control the activities of multinationals particularly with regard to the campaign against tax avoidance.

- campaign against tax avoidance

The dearth of institutional activity evidenced by the Commission in this field is very regrettable, as we have stated above. Apart from work in international bodies in which it has taken part, the Commission does not seem to have taken any particular initiative on transfer prices. But, essentially, the phenomenon of tax avoidance takes the form of transfer prices. The OECD's recent very precise study<sup>2</sup> on this subject does however give very exact details of the various manifestations, consequences and means of controlling and preventing such manipulations.

The European Parliament has often clearly expressed its point of view on the question of fighting the tax avoidance practised by transnational companies<sup>3</sup> and has asked not only for regulations on transfer prices but also for an improvement in the information provided about the operations of transnational companies (regular compilation and publication of details of transactions by transnational companies). Reference is also made, for the record, to the Commission's proposal of June 1974 on tax arrangements for holding companies, which is still before the Council.

- control of concentrations and investments

28. The procedures for obtaining information and exerting control, whether legal, fiscal or financial, and the implementation of codes of conduct will not by themselves reduce the harmful intrigues of

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<sup>1</sup> Caborn draft report on enterprises and governments in international economic activity (PE 66.923)

<sup>2</sup> Report of the OECD's Fiscal Affairs Committee on transfer prices in multinational firms, 1979.

<sup>3</sup> Leenhardt report (Doc. 292/74) adopted on 12 December 1974 - Lange report (Doc. 547/76) adopted on 19 April 1977

transnational companies. It is necessary to add preventive provisions to these measures.

Indeed, the best way of controlling the transactions of transnational companies is for the international community to assume the right to control and if needs be to limit the development of these companies.

The Thirteenth General Report on the Activities of the European Communities makes no mention of progress in the Council (there are still differences on the annual business figures, the mandatory or voluntary nature of notification and on the exclusive or non-exclusive nature of the Commission's powers). Thus, at present, and in the absence of any regulations, the Community has no legal means, barring Article 66 of the ECSC Treaty, of controlling the concentration which while not being exclusively the domain of transnational firms is one of their most pronounced characteristics.

Supervision of investments constitutes another form of preventive control of operations by transnational firms. It would be desirable for the multinational undertakings to be obliged to report on their projected investments to the appropriate authorities in the countries where the investments are to be made. There should be international agreements to harmonize existing national regulations on investment.

#### D. Aid to small firms

29. Inequitable competition which favours large production or trading units is bound to harm small firms.

In order to enable small firms to make a contribution to the dynamism of the economy and to innovation, competition rules should not put a brake on their development and should be adapted to their needs and their specific nature.

The Ninth Report contains few new elements in this respect. Thus the revised draft block exemption regulation for patent licences has been made more flexible vis-à-vis small firms since the Commission indicates that in its view 'export bans can be exempted only under certain tightly defined conditions, notably in favour of small and medium-sized businesses'<sup>1</sup>.

Similarly in the chapter devoted to the main decisions and standards for the application of competition rules the Commission reports, with regard to the Transocean decision<sup>2</sup>, the continuation of the practice of taking decisions in favour of cooperation agreements which support the competitiveness of small firms.

<sup>1</sup>Ninth Report, point 11, page 22.

<sup>2</sup>Ninth Report, point 87, page 60.

Apart from this wish to adapt competition rules to the specific nature of small firms, the European Parliament stressed very clearly in the preceding report the need to promote favourable fiscal, financial, technological and administrative conditions for small firms. It is interesting to note in this respect the Commission's intention, recorded in its document on new information technologies, to accelerate the transfer of information to small and medium-sized companies<sup>1</sup>. The important thing here is to allow small firms access to data banks designed to promote their development with regard to exports and cooperation and international sub-contracting, and to make management tasks easier.

But apart from this, the Commission seems to have taken hardly any initiatives in the tax field, and particularly regarding administration, to allow small firms to overcome their disadvantages as regards competition vis-à-vis the large economic units. A whole range of measures is needed to allow small firms to compete on an equal footing, including tax measures (staggered payment of death duties, tax relief for new or expanding small firms), financial facilities (loans from the EIB and also from other Community institutions in particular the ERDF; full involvement of small firms in the procedures for deciding on and controlling the allocation of these funds) and increased vocational training facilities.

### III. BENEFICIAL COMPETITION

Competition should not be considered in isolation; it must be beneficial to the economy in general, to which it can have the merit of imparting dynamism, to competitiveness and to the consumer. However, it is difficult today for Community citizens to believe in the much-vaunted merits of competition while inflation and unemployment continue to be rife. This means that any examination of competition policy must look at what the objectives of competition should be.

#### A. The merits of competitiveness for the economy

30. Competition can only be beneficial for the economy in general if it is properly organized. In a mixed economy where the laws of the market and state support have to be combined, the largest possible measure of consistency has to be sought, while preserving the competitiveness of industry and the interests of the workers, sectors and regions concerned.

This requires in particular effective integration of state

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<sup>1</sup>Doc. COM(79) 650 final, point 3.3.3, page 29.

aid and the pursuit of long-term consistency in the conduct of competition policy and its dovetailing with other Community policies.

(a) Integration of aid

31. In a general statement, the Commission notes that 'the year 1979 was essentially one of consolidation'. This serene approach contrasts with the announcement made by the Commission that it has had to insist recently that Member States should notify it of all aid projects in pursuance of Article 93 of the EEC Treaty. Reading through the chapter concerned with aid, it would appear that as in the past the Commission is experiencing many difficulties in this complex and delicate field in enforcing compliance with competition rules and often only manages to do this by way of laborious compromises which in many cases considerably slow down its action.

- regional aid:

32. The Commission sees to the proper application of the revised principles on the coordination of regional aid, in force since 1 January 1979. It is good to see that the Commission has started looking into the problem of the combination of regional aid with other types of assistance. It is important that regional aid should be as transparent as possible in order to counter the tendency which has sometimes been noted for certain Member States, for example, to reduce their own regional aid as Community aid is increased. In this respect it should also be noted that the Commission is trying to improve the quality of regional statistics.

- sectoral aids:

33. The need to integrate aid has been particularly felt in the industrial sectors which are afflicted by the crisis.

In the shipbuilding sector the Commission has applied the provisions contained in the fourth directive adopted in April 1978 and this has helped to reduce competition distortions. The continuation of the crisis makes it impossible to suspend this aid in the immediate future and warrants the presentation of a fifth directive to run until 31 December 1982 covering all aids which directly or indirectly affect competition conditions. Such aid must be provisional and degressive.

In the iron and steel sector, on 18 December 1979 the Council gave its unanimous assent to a draft decision establishing Community rules for specific aid to the steel industry. The Ninth Report

comments on the provisions contained in this decision but went to press too early to contain a first review of the application of this procedure. It will be recalled that the decision applies until 31 December 1981 and provides that all aid given to iron and steel industries should be subject to control. This is essential if the rules are to retain their fairness and effectiveness. The European Parliament also stressed at the time the need to avoid any discrimination between public undertakings and private enterprise. The Commission's Tenth Report should consequently contain a complete review of the enforcement of this decision and the extent to which its provisions have been observed.

For the textiles and clothing industries the Commission has decided in view of the persistent considerable excess of capacity to extend the aid control measures by a further two years.

The control of general aid schemes continues to present the Commission with certain problems since it is unable to take a definitive position on general aid schemes when they are first notified<sup>1</sup>. In the past the European Parliament has noted the slowness with which certain of these aids are phased out when they are incompatible with the rules of the Treaty and it is for the Commission to work out a more expedient procedure.

The same applies to export aids within the Community where the procedure followed by the Commission again appears to be very slow<sup>2</sup>. In intra-Community relations such aids are absolutely incompatible with the general principle of the Common Market, except in certain cases involving small firms.

Finally the European Parliament must insist that the Commission keep a strict check on employment aid which is only acceptable if its genuine objective is to create new jobs.

(b) Social and regional requirements

34.

Exceptions can only be made to the competition rules contained in the Treaty regarding exclusive agreements or aid if other social, economic, or regional factors are involved. It goes without saying that competition makes for a better distribution of the factors of production, and encourages innovation and economic progress. However during a period of recession and industrial reorganization it may become necessary partially to suspend the application of competition rules to allow a certain economic sector to reorganize itself. This is provided for in the Treaties and this is what the Commission

<sup>1</sup> Ninth Report on competition policy, point 183, p.111

<sup>2</sup> Ninth Report on competition policy, point 188, p. 114

has had to do when it authorizes, for example, crisis cartels, or accepts various kinds of aid or fixes production quotas, minimum prices or guide prices.

In this respect the Committee on Economic and Monetary Affairs cannot emphasize strongly enough that the extra benefits which industry gains from exceptional measures adopted by the Commission as a result of the reduction or suspension of competition must be used to protect jobs, or reorganize or modernize the production apparatus.

Thus it is for the Commission to prevent, especially during a period of recession, the uncontrolled granting of aid by States to multinational firms. Such aid distorts competition, ruins the effectiveness of programmes for specific sectors or regions as defined by the Commission and is entirely unwarranted from the social or regional point of view.

In this respect the Commission's decision to ban aid which the Dutch Government was intending to grant to the subsidiary of a large international group in the manufactured tobacco sector (Philip Morris) is of great interest<sup>1</sup>.

(c) The consistency of Community policies

35. The European Parliament has often stressed in its report the need to ensure close coordination between the competition policy and other Community policies. The introduction to the Ninth Report states that 'if we are to advance towards greater economic and social justice, other Community policies must be pressed into service, always of course ensuring that they are consistent with the competition policy'<sup>2</sup>.

The Ninth Report unfortunately does not contain a chapter on the effect of other community policies on competition (contrary to the desire of the European Parliament expressed in 1979); this would make it possible to ascertain any conflicts between the various policies and to put things right<sup>3</sup>. Here it can only be recalled that competition policy cannot be isolated from other policies whether within or outside the Community and it is therefore necessary to ensure the closest possible coordination both between Directorate-Generals (DG I, IV, VIII and III) and within the College of Commissioners.

B. The Merits of competition for the consumer

The consumer is the final judge of the advantages of competition

<sup>1</sup> Thirteenth General Report, point 164, p. 100

<sup>2</sup> Ninth Report, introduction, page 11

<sup>3</sup> DAMSEAU report, explanatory statement p. 28, point 28

but it would not seem on reading the Ninth Report that the consumer would have any reason to be generally satisfied with the present state of conditions regarding competition in the Community. In fact one notes a constant increase in prices and too many price anomalies, and the fact that consumer organizations have insufficient say in the way competition policy is carried out?

(a) Prices

36. If there was genuine competition there would also be a drop in prices. Most often this is not the case. The Commission notes that during the last ten years there has been a constant growth of oligopoly which has progressively reduced the scope and intensity of competition<sup>1</sup>.

The Maldaque Report<sup>2</sup> stressed at the time the harmful consequences for competition, the level of prices and inflation of the development of 'meso-economic' undertakings. The strategies of the large firms (price umbrellas, price ceilings,) inevitably lead to a virtual elimination of lower price ranges. The only remedy for this situation is for the Commission to have, among other things, instruments which will enable it to prevent, by controlling investments and concentrations, any irreversible development of the market away from an optimum degree of competition.

(b) Price Anomalies

37. During the year under review the Commission has undertaken enquiries on the formation of prices, and more particularly on the distribution and formation of prices with regard to food<sup>3</sup>. The outcome of these enquiries as reported in the Ninth Report shows the existence of serious anomalies in price formation. The methods used by the large trading units as part of their strategy are numerous:

- considerable and frequent variations in prices independent of production costs, the sole purpose being to 'render the market less transparent and confuse the consumer'<sup>4</sup>;
- frequent changes in 'loss leaders',
- the launching of unbranded products at prices calculated to eliminate branded goods, followed by drastic increases in those prices once they have won a substantial slice of the market

<sup>1</sup> Ninth Report, point 221, p.141

<sup>2</sup> Maldaque report on the problems of inflation - 1976, pp. 7 et seq.

<sup>3</sup> Ninth Report, point 224 et seq, p. 152

<sup>4</sup> Ninth Report, point 223, p. 154

These strategies often ultimately lead to considerable price disparities between the countries of the Community<sup>1</sup>.

All in all, the consumer is the victim of these strategies involving the blocking or excessive dispersal of prices. These policies are contrary to the rules of competition and also reinforce the powers of the large distributors to the detriment not only of consumers but also of producers if the prices charged put a brake on consumption.

Consequently such practices are inequitable, they are harmful to the general economy and should be eliminated. Unfortunately the Commission, as the European Parliament has often stressed, confines itself to noting this state of affairs without really implementing action which could put an end to these anomalies<sup>2</sup>.

(c) The involvement of consumers in competition policy

38. It goes without saying that to combat such practices which distort competition and reduce greatly the advantages which can be expected of competition, the Commission could find no better ally than the consumers' organizations. Their close involvement in competition policy is, as has been stated above, therefore necessary and it is for the Commission to seek ways and means of ensuring this.

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<sup>1</sup> The German record dealer has to pay 62% more than his British counterpart - in the drinks trade disparities are also very marked (point 251)

<sup>2</sup> Ninth Report on competition policy, point 259, p. 165: 'Here we have a series of anomalies of competition which are without doubt serious and detailed specific studies are accordingly in progress'.

