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REPORT

on the Commission's XXXIIIrd Report on Competition Policy - 2003
(2004/2139(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Commission's XXXIIIrd Report on Competition Policy - 2003 (2004/2139(INI))

The European Parliament,

- having regard to the XXXIIIrd Report on Competition Policy - 2003 (SEC(2004)0658),
 - having regard to Rules 112(2) and 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0024/2005),
- A. recalling that raising the competitiveness of European businesses is one of the key objectives of the Lisbon Strategy,
- B. emphasising the need for a continued and vigorous monitoring of distortions in competition,
- C. mindful of the business community's need for the highest degree of legal certainty regarding merger control policy,
- D. noting in particular the significant volume of cases undertaken by the Competition Directorate-General of the Commission, where Commission decisions have either been fully accepted by the parties or upheld by the Courts,
1. Welcomes the XXXIIIrd report on Competition Policy, which highlights the major structural reforms of competition policy and enforcement taken forward under Commissioner Monti's leadership;
 2. Congratulates the Commissioner on maintaining constant and vigorous monitoring of distortions in competition, while undertaking far-reaching reorganisation and renewal of the anti-trust, merger control and state aid rules, as well as internal reorganisation of the Competition Directorate;
 3. Welcomes the adoption of a series of acts included in the modernisation package, namely the initiatives in the field of cooperation between the various enforcers of EU competition rules – the Commission, national competition authorities and national courts; in this connection, considers that it is also worth mentioning the appointment of a Chief Competition Economist, the strengthening of the role of the Hearing Officer and the reinforcement of the cartel unit, which will reduce the time required to conclude cartel cases;
 4. Regrets the need for renewal of the "temporary defensive mechanism" by the Council justifying the granting of aid of up to EUR 100 million to shipyards in Germany, the Netherlands, Finland and Denmark as a response to unfair competition from shipyards in South Korea, and looks to an early resolution of the dispute in the World Trade

Organisation, before the date of expiry of the current mechanism in March 2005;

5. Urges that the limited number of cases in which the Commission's decisions have been reviewed by the Court of Justice and set aside, should not be seen as undermining confidence in the overall system of analysis and enforcement;
6. Welcomes the development of a specific chapter in the Report on Competition Policy highlighting the Commission's approach in relation to the conditions under which Member States may give financial support to those entrusted with the operation of services of general interest, and following the Commission's report to the Laeken European Council of 14 and 15 December 2001, the Green Paper on services of general interest (COM(2003)0270) adopted by the Commission in May 2003 and the Altmark judgment¹, urges the Commission to bring forward proposals to increase legal certainty, define good governance and assist national and regional authorities in complying with Articles 87 and 88 of the Treaty;
7. Urges the Commission to continue to review the operation of the judicial system in relation to competition cases, in order to consider improvements to the speed of access to justice, and in order to maximise the experience and skills of the judiciary dealing with competition cases;
8. Continues to support a more proactive role for the European Parliament in the development of competition policy through promoting co-decision powers for the Parliament, and regrets that the Commission and Council were not able to support this in the draft Treaty establishing a Constitution for Europe;
9. Welcomes the revision of state aid rules reorientating Commission interest towards cases and issues of significance for the further development of the internal market which has streamlined and simplified notification and the filing of complaints, and clarified further the 'de minimis' and Research and Development principles;
10. Welcomes the view taken by the Commission that state aid for research & development will represent an incentive for SMEs to engage in more research and development, and the consequent proposed amendment to the Regulation in order to include R&D aid, and calls the attention of the Commission to the differing national capacities within the EU 25 countries to engage in such programmes;
11. Urges the Commission to further develop work on the impact on private companies of emission trading mechanisms, quotas, allowances, certificates and credits under the Kyoto Protocol agreement;
12. Welcomes the environment-friendly criteria of the Commission applied in the approval of several environmental aid schemes and urges the Commission to further develop the conditions of transparency for such schemes so that they may serve as precedents for other regions and Member States;
13. Congratulates the Commission on responding positively to previous Parliament resolutions by establishing a dedicated Enforcement Unit for State Aid, charged with the responsibility of enforcing Commission decisions, particularly in the area of recovering

unlawful state aid;

14. Welcomes the further development of the State Aid scoreboard in internet format as an important instrument for transparency and informing consumers of the Commission's activities;
15. Welcomes the progress towards implementing Commissioner Monti's programme for modernising the Commission's anti-trust rules, with its increased focus on investigation and penalising hard-core cartels, but expresses its concern that the 2003 Report on Competition Policy does not appear as yet to demonstrate any significant reduction in the backlog of cases under investigation by the Commission;
16. Expresses its concern at the continued failure to achieve full liberalisation in the EU gas and electricity markets;
17. Welcomes the Commission initiatives in relation to relevant markets, such as telecommunications, and the setting up of task forces between the Competition and the Information Society DGs to manage the consultation process;
18. Welcomes the Commission's appointment of a Consumer Liaison Officer in order to better develop and facilitate the Commission's dialogue with consumers;
19. Believes that the effective application of competition policy is an essential tool to achieve an efficient market structure which operates in the interests of consumers, and has a positive and significant impact upon their daily lives; wishes to emphasise that closer integration of the internal market sometimes makes it more natural to analyse the state of competition on the whole internal market, rather than on different submarkets (as has been the case in several recent merger decisions) and calls on the Commission to produce clearer guidelines on its interpretation of 'the market' in such cases;
20. Welcomes the Commission's continued commitment to the European Competition Days as an important opportunity to explain the positive impact of competition policy for consumers in all parts of the EU, but calls on the national authorities hosting these conferences to integrate consumer organisations and the national media within the programme planning of the European Competition Days;
21. Welcomes the Commission's new rules on motor vehicle distribution, looks for greater progress in reducing the major variations in new motor vehicle prices between Member States, and regrets the current evidence that these disparities remain significant;
22. Calls for further progress in relation to the motor vehicle repair market particularly in relation to access to technical information and easier availability of access to motor car spare parts;
23. Welcomes elements of the Commission's reform of the merger control regulation, but regrets that Parliament's concerns about some elements of the related proposal regarding legal certainty and fair process were not supported by the Commission;
24. Welcomes the reorganisation of the Competition Directorate-General of the Commission

in the context of the merger control, particularly the restructuring along sectoral lines, the strengthening of economic assessment and greater definition concerning the role of consumers;

25. Welcomes the Commission's commitment to help the ten new Member States to adapt rapidly to the competition rules, anti-trust legislation and, in particular, state-aid regulation and urges the Commission to pursue the process of technical assistance and cooperation;
26. Welcomes the Commission's commitment to pursue a policy of enhanced bilateral cooperation with the Community's main trading partners and to expand multilateral cooperation in the field of competition; in particular, the Commission must be congratulated for concluding cooperation agreements in competition matters with the United States, Canada and Japan;
27. Urges the Commission to continue to cooperate with OECD countries, Asian countries (with a particular focus on China) and Latin American countries;
28. Urges the Commission to pursue negotiations with the WTO on the interaction between trade and competition policy in the spirit of the Doha Declaration of November 2001;
29. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

From the establishment of the European Community under the Treaty of Rome an effective competition policy has always been recognised as an essential tool to achieve an efficient market structure operating in the interests of consumers. The delivery of this policy has already had a positive and significant impact upon the daily lives of the peoples of Europe. Under Commissioner Monti's leadership, the Commission has not only maintained its responsibility for constant and vigorous monitoring of distortions in competition; it has also undertaken an ambitious far reaching programme of review reorganisation and renewal of the rules and practical arrangements governing anti-trust policy, the merger control regime and state aid controls. Successful implementation of these reforms will be a crucial element in raising the competitiveness of European businesses, which is a key objective of the European Council outlined at Lisbon.

The Commission's 2003 Report on the work of the Competition Directorate sets out the progress made to date. The modernisation of the rules concerning the Commission's antitrust policy has now been implemented and will undoubtedly bring about major changes in the practical implementation of Articles 81 and 82 of the EC Treaty. The shift in focus of limited Commission staff resources onto the investigation and penalising of hard-core cartels, should help to further reduce distortions in competition. The winding up of the notification system is reflected in the decline in notifications from 101 in 2002 to 71 in 2003. Complaints have also fallen from 129 to 94, and the new regime of active investigation by the Commission is underlined by the increase in own initiative cases, at 97 the highest undertaken by the Commission since 1998. Nevertheless, the 2003 report does not yet reveal any significant fall in the backlog of cases still to be closed by the Commission, notwithstanding this anticipated improvement in the focus of the Commission's work. There has been a steady reduction in the volume of outstanding cases from 840 in 2001 to 805 in 2002 and 760 in 2003. It may confidently be expected that this reduction will be more clearly evident in next year's report.

In the area of merger control, the Commission has undertaken a significant reform of the existing rules after a major consultation exercise. The reform has taken place against a backdrop of declining merger activity. Notifications fell in 2003 to 212, the lowest figure for six years. The European Parliament would have preferred that the reform of the rules governing referral had been simplified along the lines originally proposed by the Commission itself. It is also necessary to ensure the highest degree of legal certainty is achieved in order that companies can be clear about the implications of their commercial decisions. Nevertheless, the reorganisation of the Competition Directorate, particularly the restructuring along sectoral lines, the appointment of a Chief Competition Economist and the setting up of panels to scrutinise investigating teams' conclusions, should all help to streamline the decision-making process and strengthen economic assessment in merger cases. This should not only improve confidence in the system, but also reduce the number of occasions when Commission decisions are overturned by the Courts.

Moreover, it is vital that the limited number of cases that are reviewed by the Court of Justice and set aside should not be seen as undermining confidence in the overall system of analysis and enforcement. There is a significant volume of cases undertaken by the Competition Directorate of the European Commission, where Commission decisions have either been fully

accepted by the parties or upheld by the Courts.

The Commission must also continue to review the operation of the judicial system in relation to competition cases, in order to consider improvements to the speed of access to justice, and to maximise the experience and skills of the judiciary dealing with competition cases.

It is also important that there has also been greater definition concerning the role of consumers in the process. The establishment of new Consumer Liaison Officer is a welcome development in improving the Commission's dialogue with consumers.

The partnership between the European Parliament and the Commission in the continued promotion of the European Competition Day in member states has proved a great success. The programme could be improved further if the events gave less attention to the legal and philosophical debates over competition policy reform and greater attention to the positive impact of competition policy on the daily lives of consumers. More benefit could be derived if there were more dialogue between Commission and Parliament on the agreed format, content and information channels to enable this event to receive the widest possible publicity.

The third major area where the Commission has undertaken major structural reform is in the field of State Aid control. As in the other areas of Commission activity, reform of the rules has proceeded whilst the Commission has maintained its obligation to effectively monitor State Aid as provided for under the Treaty. The 2003 report draws attention to further progress in the decline in the overall volume of State Aid in the then 15 member states, down from a high of E60bn in 1998 to E49bn in 2002. Nevertheless this reduction is at least part due to the expiry of special arrangements applying to the Lander in Germany, and the 2002 figure remains too high. The reform proposals are therefore timely. The revision of the rules re-orientating Commission interest towards cases and issues of significance for further development of the internal market have streamlined and simplified the notification and the filing of complaints, and clarified further the 'de minimis' and Research and Development principles. This should provide enhanced transparency and legal certainty, and reduce the unnecessary procedural burden, thus facilitating rapid decisionsmaking

The further development of the state aid scoreboard in its internet format has provided a practical demonstration of transparency, highlighting the sectors and member states in which State Aid provision has been made. Information about the types and amounts of aid being granted are now easily comparable, clearly demonstrating the effects of different forms of aid on competition. The European Parliament has previously expressed its concern over the slow progress in enforcing recovery of aid deemed repayable within member states, primarily because of inertia on the part of the member states originally granting the aid. Hence, the establishment of a dedicated Enforcement Unit for State Aid, charged with the responsibility of enforcing Commission decisions, particularly in the area of recovering unlawful state aid, is a very positive step.

Your rapporteur also regrets the need for renewal of the 'temporary defence mechanism' by the Council of Ministers justifying the granting of aid of up to €100m to shipyards in Germany, the Netherlands, Finland and Denmark. This decision as a response to unfair competition from shipyards in South Korea has the potential to distort competition between aided shipyards in Europe against unaided European shipyards, and thus has the potential to

load one unfairness upon another. We look to an early resolution of the dispute in the WTO, before the date of expiry of the current mechanism in March 2005.

It is important to differentiate illegal State Aid from regional or government support for services of general interest, which are acceptable activities. The 2003 Report builds on the structure of previous reports by including a chapter on services of general interest which assists in clarification of Commission policy. Following the *Altmark* judgment, it is even more important that the Commission bring forward proposals to clearly set out the rules and status of services of general interest, thus increasing legal certainty, defining good governance and assisting national and regional authorities in complying with Articles 87 and 88 of the Treaty.

The 2003 Report draws attention to the preparatory work being undertaken by the Commission on implementing new block exemption regulations governing motor vehicle distribution. This is an important area where the interests of consumers have long required action at Commission level. The new rules are also a significant step towards ensuring the smooth functioning of the single market. Notwithstanding the assurances from motor car manufacturers that the disparities in car prices were being reduced, the report highlights that there has been no evidence of reduction in these disparities throughout 2002, confirming the need for firm and decisive action by the Commission in this area.

The Commission has been able to report progress in the consumer interest in opening the motor vehicle repair market, which should now be built upon particularly in relation to access to technical information and easier availability of access to motor car spare parts.

The 2003 Report also draws attention to the Commission's international activities. Commissioner Monti has been at the forefront of improving information and cooperation in the international arena, as well as fostering the development and focus of national competition authorities in the new member states. The development of the International Competition Network, and closer cooperation with regulators in the USA are clear evidence of his success in this area.

The Economic and Monetary Affairs Committee of the European Parliament has frequently expressed its warm appreciation of the cooperative relationship which Commissioner Monti and his directorate have established with the European Parliament. The Commissioner has an outstanding legacy of significant structural reform, detailed practical application and raising the profile of EU Competition Policy internationally. While the Committee regrets that the Commissioner was not able to support its long established aspiration to share the powers of policy co-decision with the Commission, the Committee recognised that the Commissioner frequently gave the same attention to the views of Parliament as if such powers did exist. It is to be hoped that Commissioner Monti's successor and the Competition Directorate will continue to build on this legacy.

