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## **REPORT**

on the Reports on competition policy 2006 and 2007  
(2008/2243(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Jonathan Evans

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Reports on competition policy 2006 and 2007 (2008/2243(INI))

*The European Parliament,*

- having regard to the Commission Report on Competition Policy 2006 of 25 June 2007 (COM(2007)0358) and its Report on Competition Policy 2007 of 16 June 2008 (COM(2008)0368),
- having regard to the Commission State Aid Action Plan of 7 June 2005 on Less and better targeted state aid: a roadmap for state aid reform 2005-2009 (COM(2005)0107),
- having regard to its resolution of 14 February 2006 on State aid reform 2005-2009<sup>1</sup>,
- having regard to the Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid<sup>2</sup>,
- having regard to Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)<sup>3</sup>,
- having regard to Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector<sup>4</sup> (Motor Vehicle Block Exemption),
- having regard to the Guidelines on national regional aid for 2007-2013<sup>5</sup>,
- having regard to Commission Regulation (EC) No 1627/2006 of 24 October 2006 amending Regulation (EC) No 794/2004 as regards the standard forms for notification of aid<sup>6</sup>,
- having regard to Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid<sup>7</sup>,
- having regard to the Community Framework for State aid for Research and Development and Innovation<sup>8</sup>,
- having regard to its resolution of 27 April 2006 on sectoral aspects of the State Aid

<sup>1</sup> OJ C 290 E, 29.11.2006, p. 97.

<sup>2</sup> OJ L 379, 28.12.2006, p. 5.

<sup>3</sup> OJ L 214, 9.8.2008, p. 3.

<sup>4</sup> OJ L 203, 1.8.2002, p. 30.

<sup>5</sup> OJ C 54, 4.3.2006, p. 13.

<sup>6</sup> OJ L 302, 1.11.2006, p. 10.

<sup>7</sup> OJ L 302, 1.11.2006, p. 29.

<sup>8</sup> OJ C 323, 30.12.2006, p. 1.

Action Plan: aid for innovation<sup>1</sup>,

- having regard to the Community guidelines on state aid for environmental protection<sup>2</sup>,
- having regard to the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises<sup>3</sup>,
- having regard to the Commission Communication concerning the prolongation of the Framework on State aid to shipbuilding<sup>4</sup>,
- having regard to the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees<sup>5</sup>,
- having regard to the Commission Communication on the revision of the method for setting the reference and discount rates<sup>6</sup>,
- having regard to Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>7</sup>,
- having regard to its Written Declaration 0088/2007 on investigating and remedying the abuse of power by large supermarkets operating in the European Union<sup>8</sup>,
- having regard to the Commission's sector inquiries in the energy and retail banking sectors,
- having regard to the Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003<sup>9</sup>,
- having regard to the Commission Notice on Immunity from fines and reduction of fines in cartel cases<sup>10</sup>,
- having regard to the Commission White Paper of 2 April 2008 on Damages actions for breach of the EC antitrust rules (COM(2008)0165),
- having regard to the White Paper Sport on 11 July 2007 (COM(2007)0391),
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs (A6 –

<sup>1</sup> OJ C 296 E, 6.12.2006, p. 263.

<sup>2</sup> OJ C 82, 1.4.2008, p. 1.

<sup>3</sup> OJ C 194, 18.8.2006, p. 2.

<sup>4</sup> OJ C 173, 8.7.2008, p. 3.

<sup>5</sup> OJ C 155, 20.6.2008, p. 10.

<sup>6</sup> OJ C 14, 19.1.2008, p. 6.

<sup>7</sup> OJ L 318, 17.11.2006, p. 17.

<sup>8</sup> OJ C...

<sup>9</sup> OJ C 210, 1.9.2006, p. 2.

<sup>10</sup> OJ C 298, 8.12.2006, p. 17.

0011/2009),

1. Welcomes publication of the Commission's Competition Policy Reports for 2006 and 2007;
2. Continues to support a more proactive role for Parliament in the development of competition policy through the introduction of the co-decision procedure;
3. Congratulates the Commission on its effective challenging of the operation of unlawful hardcore cartels and the record fines imposed on offenders;
4. Calls upon the Commission and Council, with regard to the Commission's review of the functioning of Regulation (EC) No 1/2003<sup>1</sup>, to incorporate the fining principles into Regulation 1/2003 and further improve and specify those principles in order to comply with the requirements of general legal principles;
5. Supports the use of the revised leniency notice and procedure to encourage the provision of information about the operation of unlawful hardcore cartels;
6. Welcomes the publication of the White Paper on damages actions for breach of EC anti-trust rules but urges that reform be pursued in such a way as to ensure that the negative effects of the US system are not repeated in the European Union;
7. Requests that the Commission provide better information in future reports on the role and involvement in competition cases of the Commission Consumer Liaison Officer;
8. Expresses its concern to avoid the abuse of market power by major corporations, and calls upon the Commission to undertake an analysis of the effects on competition of unequal relationships between suppliers, namely food producers, and retailers, in view of possible abuses of dominant position; looks forward to the reporting by the Commission's working group on buying power;
9. Calls on the Commission to consider reviewing the operation of abusive practices in the services sector, which may prevent small businesses from being able to tender for work; notes the problem that self-employed people and freelancers are sometimes denied the possibility of applying standard tariffs in cases where they are almost exclusively economically dependent on one or a few large users of their resources and calls upon the Commission to examine how they may organise negotiate and conclude collective agreements consistent with competition law principles;
10. Calls on the Commission to consider conducting a sector inquiry into on-line advertising.
11. Calls on the Commission to undertake an analysis of possible national differences in the application of public procurement rules and possible distortions of competition as a result of these.

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<sup>1</sup> Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

12. Notes that the Commission reports record activity in respect of the following three sectors: antitrust fines for cartels, the number of merger cases notified to the Commission, and the number of State aid notifications to the Commission; urges the Commission, therefore, to undertake an urgent review of staff resources in order to ensure that its Directorate General for Competition has appropriate staff numbers to deal with its rising workload;
13. Underlines that the application of competition rules to mergers and acquisitions must be evaluated from the perspective of the entire internal market, and not just parts thereof;
14. Welcomes evidence in the Commission's Competition Policy Reports for 2006 and 2007 of the effectiveness of the restructuring of the Merger Control unit in the Directorate General for Competition along sectoral lines with strengthened economic analyses, and peer review;
15. Welcomes the announcement of the launch of a review of the Merger Regulation<sup>1</sup>; repeats its view that the current provisions are insufficient in view of increasingly integrated and complex European markets and that a review should be undertaken with a view to seeking a consistent approach in the evaluation of comparable merger operations;
16. Notes the record level of State aid notifications, and welcomes the publication of the General Block Exemption Regulation to cover SMEs, research and development aid in favour of SMEs, aid for employment, training aid, and regional aid;
17. Welcomes, in particular, the possibility of subsidising employers as regards costs incurred by their employees relating to the car of children and parents;
18. Welcomes a review of the State aid scoreboard but urges the Commission to undertake analyses of the effectiveness of State aid and urges that a revision of the scoreboard identify those Member States that have failed adequately to pursue the recovery of illegal State aid;
19. Welcomes the publication of the revised Community guidelines on State aid for environmental protection, guaranteeing that Member States may support the production of renewable energy and energy efficient cogeneration by granting operating aid that covers in full the difference between production costs and market price;
20. Renews its call for further progress in relation to both the clarification of the existing competition rules and their practical application in relation to services of general economic interest, given the considerable differences in policies prevailing across the Member States;
21. Regrets that energy consumers in the European Union continue to suffer from disproportionate price increases and a distorted energy market, which was recognised as a

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<sup>1</sup> Council Regulation 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004).

result of the Commission's sector inquiry as not functioning properly; stresses again the importance of a fully completed and well-functioning internal market for energy;

22. Supports the Commission in its endeavours to further develop the European gas and electricity markets, with a crucial element being the separation of the transmission networks on the one hand, and the production and supply activities on the other (unbundling), with ownership unbundling being decisive with regard to transmission, whereas functional unbundling is sufficient as far as local distribution networks are concerned;
23. Expresses concern at the lack of transparency in the formation of fuel prices in European markets; asks the Commission to ensure proper vigilance over competitive behaviour in those markets;
24. Calls for mechanisms to be put in place to ensure that the adoption of the Emissions Trading Scheme does not cause distortions in competition both internally and as regards external competitors;
25. Notes that as long ago as 9 October 2007, the Council invited the Commission to consider streamlining procedures to focus on how State aid enquiries under critical circumstances could be dealt with rapidly;
26. Notes the increasing amount of State aid; calls for further detailed guidelines aiming for less but better-targeted State aid;
27. Recognises the applicability of Article 87(3)(b) of the Treaty to the circumstances currently facing Member States' economies as a result of the turbulence on the financial markets; considers it necessary, however, that the Commission remain strongly vigilant as regards financial rescue packages to ensure the compatibility of emergency actions with principles of fair competition;
28. Warns against the effective suspension of the competition rules; stresses the need to scrutinise rescue operations in detail and ensure they are in conformity with Treaty provisions; requests the Commission to give a comprehensive ex post report to Parliament and to Member States' parliaments on the application of competition rules in each individual case in its next Annual Competition Policy Report.
29. Expresses concern at the ongoing contraction in economic activity in the European Union, which is forecasted to extend into 2009; considers it appropriate that, in the framework of the competition rules, adequate response mechanisms, such as restructuring aid or the globalisation adjustment fund, are deployed to combat the growth and employment impact from the credit crisis;
30. Urges the Commission to recognise the need to put in place mechanisms which minimise distortions of competition and the potential abuse of the preferential situations of beneficiaries brought about by State guarantees;
31. Urges the Commission to enforce behavioural constraints on financial institutions in

receipt of State aid in order to ensure that such institutions do not engage in aggressive expansion against the background of the guarantee to the detriment of competitors;

32. Welcomes the significant reduction in the disparity of new car prices across the European Union which have come about since the implementation of the Motor Vehicle Block Exemption and looks forward to the Commission's evaluation of the effectiveness of that regulation;
33. Welcomes the Commission's action in reducing telecoms roaming charges; notes, however, that prices are staying just below the regulated price cap; calls for measures supporting pricing competition instead of regulation of retail prices;
34. Welcomes the contribution of the Commission's Directorate General for Competition to the White Paper on Sport, which, inter alia, draws attention to the established case law of the Court of Justice of the European Communities, and the decision-making practice of the Commission with respect to the application of Articles 81 and 82 of the EC Treaty to the sports sector;
35. Invites the Commission to take greater account of the international dimension of its policies as regards the European Union's competitiveness on the global level and to demand respect for and the application of the reciprocity principle in trade negotiations;
36. Considers it crucial that competition policy is adequately addressed in the framework of the negotiation of bilateral trade agreements; calls for the Directorate General for Competition to be actively involved in those negotiations in order to secure mutual recognition of competitive practices, particularly in the areas of State aid, public procurement, services, investment and trade facilitation;
37. Urges the Commission to review the structure of its participation in the International Competition Network and at the European Competition Day in order to ensure that the public is more widely and better informed about the key importance of competition policy in underpinning economic growth and employment;

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38. Instructs its President to forward this resolution to the Council and the Commission.

## **EXPLANATORY STATEMENT**

### **THE CONTINUING IMPORTANCE OF EU COMPETITION POLICY**

The goal of EU competition policy is to make markets work better for the benefit of European consumers and businesses. The European Parliament has consistently reaffirmed its commitment to the principle of free fair and open competition as originally outlined in the Treaty of Rome and reaffirmed by the Internal Market and Competition Protocol of the Reform Treaty signed in Portugal on the 13 December.

The Commission's Annual Reports on Competition Policy 2006 and 2007 outline the work undertaken by the Commission in pursuit of these objectives and also look to the likelihood of further Commission intervention in the context of the financial markets crisis.

The Reports are set out in a format which examines Antitrust, Merger Control, and State Aid issues, before proceeding to consider developments and actions at the Industry sector level.

### **ANTITRUST**

The Commission's modernisation of Competition Policy was designed to free Commission resources to more effectively tackle cartels, restrictive trade practices and the abuse of market power. A key element in the implementation of this during 2007 has been the revision of the leniency notice in 2006, encouraging the reporting of illegal behaviour by offering immunity or a reduction in fines.

In 2006 and 2007, 81 undertakings were fined well over 5 billion euros as a result of their participation in hard core cartels - a record figure, with significant increases on repeat offenders and those obstructing enquiries.

The Commission has also rightly moved forward with its work on a new White Paper on damages actions for breach of EC anti-trust rules in order to ensure more effective antitrust damages claims. It is important that the Commissioner has made it clear that this reform must be structured in such a way as to ensure that the negative effects of the US regime have no prospect of being replicated in the EU. Your rapporteur is also unclear what role is currently performed by the Commission's Consumer Liaison officer as it seems that this reform is one in which the consumer interests are well represented.

The European Parliament has also previously expressed its concern to ensure that the damaging economic effects of market power are properly addressed. In the context of major supermarket retailers, concerns have been expressed about the unequal relationship between food producers and retailers, which would merit some investigation. Similarly small businesses in the services sector can frequently find themselves excluded from being able to tender for work. The Commission should be vigilant to guard against abuses in these areas.

### **MERGER CONTROL**

Following further clarification of the rules applicable under the Merger Regulation, the

Commission has issued a jurisdictional notice and Guidelines on the assessment of non-horizontal mergers which have assisted businesses to more clearly understand the Commission's approach on these matters.

The reports highlight a growing number of merger cases notified to the Commission. In 2006 and 2007, the total number of cases notified reached 752, almost reaching the total level of cases in the three preceding years. 2007 saw an all time record level of notifications at 402. Of these, the Commission only imposed one prohibition, with 18 clearances with conditions in the first Phase and five with conditions in the second. Two notifications were withdrawn. These outcomes are significant evidence of the effectiveness of the restructuring of the merger control section along sectoral lines and the strengthened economic analyses being undertaken by the Commission.

### **STATE AID**

In 2006 and 2007, a record 1699 State Aid notifications were made to the Commission - again a record figure, with a further 1510 measures taken without prior notification. 5% of these cases were found to be incompatible with the common market. In light of the current financial turmoil, and recession, it is highly likely that the number of these cases will increase further.

The action of the Commission to begin work on the consolidation of the General Block Exemption covering SME, Research and Development aid in favour of SMEs, aid for employment, training aid and regional aid is therefore welcome.

Further revisions have taken place to the State Aid scoreboard. Many of these are welcome in encouraging less and better targeted aid and assessing responses to the Lisbon targets, but there still does not appear to be enough in the Scoreboard on an analysis of the effectiveness of aid already granted.

It would also be helpful if the scoreboard was adapted to clearly identify those countries which have failed to adequately pursue the recovery of illegal State Aid.

### **State Aid for Environmental Protection**

The Commission highlights in its 2007 report its preparatory work leading to publication of the revised Community guidelines on State Aid for Environmental Protection on 23 January 2008. These Guidelines guarantee that Member States may support the production of renewable energy and energy efficient cogeneration by granting operating aid that covers the full difference between production costs and market price.

### **OVERVIEW OF INDUSTRY SECTORS**

The 2006 and 2007 reports deal comprehensively with the Commission's work across a wide range of industry sectors. The format of the reports is helpful in terms of its structure by identifying each of the Commission's actions in each of the industry sectors identified. Particular sectors which your rapporteur would wish to highlight are:

#### **Energy:**

The Commission produced its final report on the gas and electricity sectors in 2006, concluding that the energy markets are not functioning properly, with negative impacts of European businesses and consumers. The widespread disparity in energy prices and recent cripplingly high increases in European prices are directly attributable to the failure of the European Council to properly address the issues identified by the Commission in its sectoral analysis.

### **Financial Services**

The Commission has undertaken significant investigation of financial services issues in 2006 and 2007. Initially, these investigations touched upon governance of the European Payments Council, access to card schemes and infrastructures, the markets for payment cards and payment systems, and markets for current accounts and related services. The Commission also undertook an investigation into the provision of insurance products and services to businesses, which identified concerns about the lack of spontaneous disclosure of remuneration and likely conflicts of interest on the part of brokers and other insurance intermediaries.

From July 2007, the attention of DG COMP was being directed to the recapitalisation of German banks, quickly followed by rescue aid claims in respect of IKB, Sachsen LB, and Northern Rock. By 9 October, the ECOFIN Council had invited the Commission to consider streamlining procedures to focus on how State Aid enquiries under critical circumstances could be rapidly dealt with. In its outlook for 2008, the report foresees that the instability and volatility which affected markets towards the end of 2007 would continue well into 2008 and that banks would suffer mortgage payment defaults and asset devaluations leading to significant losses. The Commission foresaw the need for additional capital or state support to overcome the ongoing crisis. In the current context it is essential that if state support is used to assist financial institutions, then that aid must comply with EU-wide rules and guidance which do not produce distortions in competition in the sector.

### **Automotive Industry**

The Commission continues to publish regular reports on car prices in Europe. Six years ago this disparity was more than 10% between member states. These surveys have shown a consistent narrowing in the disparity in new car prices across the EU, confirming a strong and more effective market. Work began in 2007 on the 2008 Evaluation report on the operation and effectiveness of the Motor Vehicle Block Exemption Regulation 1400/2002.

While the new car sector has seen a more effective market, the situation in respect of car repairs and car parts is less satisfactory, with blockages in the flow of technical information and access to spare parts.

### **Telecoms/Media**

Your rapporteur congratulates Commissioner Kroes for her role in actively supporting and contributing extensively to the Commission's action in respect of reducing telecom roaming charges, and in moving forward with similar proposals in respect of data download tariffs.

The 2007 Report also refers specifically to the adoption of the White Paper on Sport in the context of the Commission's role in Media and Sport issues. The Commission has rightly drawn attention in Annex I on 'Sport and EU Competition rules' to its position on the main case law of the Community courts and the decision-making practice of the Commission with respect to the application of Articles 81 and 82 of the EC Treaty in the sport sector.

#### **EFFECTIVENESS OF COMPETITION ENFORCEMENT:**

The modernisation of competition policy has been a critical factor in creating the new structure and operation of EU Competition Policy enforcement. An essential element of this has been the co-operation and co-ordination undertaken through the national competition authorities through the European Competition Network. The European Parliament expressed real concern that without an effective ECN, modernisation would mean little other than a re-nationalisation of competition policy which would have clearly undermined the concept of the uniform application of an EU wide competition policy enforcement. The 2006 and 2007 reports positively assess the effectiveness and development of the ECN working along lines of flexibility and pragmatism. Also welcome is the work undertaken in financing the training and judicial cooperation between national judges working on the interpretation and enforcement of EU Competition law.

#### **Bi-lateral Co-operation:**

The close co-operation between the European Commission and the DoJ and FTC in the United States is a model of transatlantic regulatory co-operation, which other regulators should consider emulating.

The Commission should also be congratulated on its role in assisting the Chinese authorities in the development of their new anti-monopoly law.

#### **Multilateral Cooperation:**

While DG Competition plays a key role in the International Competition Network, the role is too often visible only to other regulators and 'industry insiders'. Similar concerns persist in respect of the Commission and Parliament participation in the Annual Competition Day, which sometimes seems indistinguishable from a legal seminar. More work still needs to be undertaken to explain to EU citizens the importance of supporting free fair and open competition across the European Union.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	20.1.2009
<b>Result of final vote</b>	+ : 29 - : 1 0 : 11
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Paolo Bartolozzi, Zsolt László Becsey, Pervenche Berès, Slavi Binev, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Louis Grech, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Kurt Joachim Lauk, Astrid Lulling, Gay Mitchell, Sirpa Pietikäinen, John Purvis, Bernhard Rapkay, Heide Rühle, Antolín Sánchez Presedo, Salvador Domingo Sanz Palacio, Peter Skinner, Margarita Starkevičiūtė, Ieke van den Burg, Cornelis Visser, Sahra Wagenknecht
<b>Substitute(s) present for the final vote</b>	Daniel Dăianu, Mia De Vits, Valdis Dombrovskis, Harald Ettl, Werner Langen, Klaus-Heiner Lehne, Bilyana Ilieva Raeva, Margaritis Schinas