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On 16 June 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 11 March 2009. The rapporteur was Mr BARROS VALE.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 98 votes to two with three abstentions:

1. Summary and conclusions

1.1 Every year, the European Economic and Social Committee assesses the Commission Report on Competition Policy and has used this opportunity to express a range of ideas and proposals that have often been well received by the authorities and have secured changes that the Committee broadly welcomes, with regard both to the priorities and instruments that this policy should have and the actual resources that have been used increasingly efficiently, as the EESC is pleased to note.

1.1.1 Mention must be made of the time-lag between the year under consideration (2007) and the drafting of this opinion. In consequence, the analysis is influenced not only by the period up to that date, but also by the wholly extraordinary circumstances now prevailing and which cannot be ignored.

1.2 The EESC considers, however, that new areas within the field of competition policy should be explored, moving beyond the traditional approach to the matter, which is important but somewhat limited. On previous occasions, the Committee has proposed that the Commission agree to develop new spheres of activity and at the current complex and difficult time, the need for this is even greater, given the state of the economy, and especially in light of the lessons that all those concerned must imperatively draw from the mistakes and above all the omissions that have been made and which have led to the current state of affairs.

1.3 Issues of inadequate (and in some cases even lax) regulation/supervision in sectors of strategic importance not only create unacceptable systemic imbalances and risks; they also affect healthy competition, protect wrongdoers and are enormously damaging to society as a whole. Competition policy will have to address these matters to ensure that there is no replication of the huge costs that have to be met by the majority of businesses and individuals, due to the ‘lack of competition’ caused by those whose ambition was not curbed by the inadequate market protection systems, especially the financial markets, which set the conditions for all other markets.

1.4 At another level, and also as the EESC has previously called for, an assessment needs to be made of the options to ensure better coordination (and the creation of appropriate instruments) with the other EU policies in order to prevent unfair competition at the domestic level, arising from differences in businesses’ size, location and tax environment. At the external level the EU must guarantee that third countries do not benefit artificially from breaching international rules for trade, core conventions of the ILO on labour and trade union rights, including child labour and inhuman working conditions, or basic environmental protection. The European Union should also vigorously enforce WTO rules against government export subsidies, and against other government policies which distort competition and deprive EU companies of market access.

1.5 The 2007 report addresses two new competition policy instruments not contained in the 2006 report (‘State Measures’ and ‘Competition policy in the wider policy framework’), which, given that the aim is to improve this core Community policy, is one of the most positive aspects of the Commission’s work.

1.6 With regard to implementation of the rules on State aid control, the report notes the Commission’s considerable work in this field, demonstrating the importance of this issue in 2007.
1.7 As regards the ‘role of competition policy in the wider policy framework’, the Committee welcomes the Commission’s concerns about the matter, but considers that this aspect should be further elaborated in order to clarify the ways or means of further embedding competition policy in the Lisbon Strategy. In terms of the sectoral markets that are covered, further clarification is needed of the measures to be taken, the instruments to be used and the aims to be achieved.

1.8 Despite the current importance of energy market liberalisation, the report appears to provide little information on the matter. As in the antitrust area, in which the practices covered are referred to in considerable detail, the third liberalisation package should be more thorough when addressing the aims to be achieved.

1.9 In the financial services sphere, the report addresses the issue of payment cards, stating that this is a highly concentrated industry in which competition-related problems do exist, and yet it fails to put forward any measures to remedy these issues. No reference is made to banking supervision and the monitoring of prudential rules by the competent bodies, a matter of the utmost importance and one that can give rise to anti-competitive practices that have a considerable impact on the different market players. The EESC wishes to express its deep concern about this aspect, particularly with regard to state holdings in financial institutions which have, in most cases, been very unclear.

1.10 The EESC would also prefer the report presented annually by the Commission to be less a list of achievements (often simply a catalogue of the progress made and the battles won) and more a document that more clearly counterbalances the positive steps taken (which the Committee welcomes) with the problems and obstacles identified and also proposals to remedy these and move towards new standards for competition policy.

2. Content of the 2007 report

2.1 With regard to the instruments of competition policy, the report sets out for each instrument, as it has done every year, the vision that has guided the Commission’s work in the year under consideration:

— Concerning ‘antitrust’ measures, more effective steps to counter such practices were promoted, with the introduction of incentives for those concerned to report any occurrences. In response to the European Parliament’s request for the Commission to draw up a White Paper with detailed proposals to ensure more effective antitrust damages claims, the Commission held a number of consultations with governments, judges and representatives of the different sectors affected by these issues.

— Priority was also attached to the ‘detection, investigation and sanctioning of cartels’ with 41 companies (the same number as in 2006), being fined a total of EUR 3 334 million (compared to 1 846 million the previous year).

— In the field of ‘State measures’, the Commission closed an infringement procedure against the Czech Republic for having limited the power of the national competition authority to apply competition rules in the electronic communications sector. A decision was also adopted, based on the EC Merger Regulation, declaring that the Spanish authority regulating the sector had breached this regulation.

— With regard to ‘merger control’, a Consolidated Notice was adopted on competition-related issues, as well as guidelines on the assessment of non-horizontal mergers and a public consultation was launched on remedies in this field.

— ‘State aid control’ was also one of the Commission’s concerns, with a new method having been adopted for setting reference rates, and a consultation was launched on a draft General Block Exemption Regulation and the procedure for revising the Commission Notice on State aid in the form of guarantees was launched.

— Concerning the ‘role of competition policy in the wider policy framework’, the Lisbon strategy was reviewed and a proposal was made to further embed competition in order to enhance sectoral market monitoring.

2.2 At the sectoral level, the 2007 report covers the most important measures carried out in key areas of the economy, including:

— Energy, in which the proposal was put forward for a third liberalisation package for the electricity and gas markets. In the antitrust area, efforts focused on foreclosure and collusion (market sharing).
— **Financial services**, in which the final reports were published on the sector-specific investigations into the European retail banking and business insurance markets.

— **Electronic communications**, in which the existing regulatory framework has helped to make communications markets increasingly competitive. It was recommended that the number of markets susceptible to *ex ante* regulation be reduced, a regulation on roaming was proposed and a number of decisions were adopted on public funding schemes for broadband access.

— **Information technology**, in which the proceedings previously opened against Microsoft, AMD and Rambus continued.

— **The media**, in which the Commission continued to monitor the switchover from analogue to digital broadcasting and to give high priority to ensuring that premium content is made available under open and transparent conditions.

— **The automotive industry**, in which the Motor Vehicle Block Exemption Regulation strengthens intra-brand competition.

— **Transport**, where the aim was for competition policy to ensure the efficient functioning of markets that have been recently liberalised.

— **Postal services**, with regard to which the Commission negotiated its proposal on fully opening up EU postal services markets to competition.

2.3 There appear to be a number of inconsistencies or a lack of clarity in certain spheres of activity, such as electronic communications, where it is hard to understand the need for and aims of the new regulatory package referred to in point 48 (on electronic communications), as this could clash with point 44, which refers to the current package's contribution to increasing competition.

2.4 In the field of information technology too, nothing is said about the aims or measures to be adopted. Reference is made only to cases opened in previous years but there is no mention of setting rules and policies or the measures the Commission intends to implement.

2.5 Here again, mention should be made of the new situation created by the Internet. It is the focus of intensive commercial activity but is subject to only embryonic rules, providing endless potential for anti-competitive practices, unfettered by any real consumer protection. Internet business therefore urgently needs to be regulated.

2.6 In the transport sector, it is worth highlighting the detailed and welcome reference to the measures taken in the different transport sectors: road, rail (both goods and passenger transport), maritime transport and aviation.

2.7 With regard to postal services, there is a lack of clarity concerning the process of negotiating the Commission proposal for opening up EU postal services fully to competition.

2.8 The report’s description of the workings of the European Competition Network is clear and detailed, as is its account of the activities of the national competition authorities. It is worth highlighting the point concerning the improvement seen in cooperation between members of the ECN. Also to be welcomed are the Commission’s endeavours during the year under consideration to become involved in international activities and interinstitutional cooperation.

2.9 As part of the enlargement process, efforts continued to promote the enforcement of competition rules by the candidate countries and work started on requiring those countries to provide credible evidence demonstrating that these rules have been adopted.

3. **A new generation of competition policies and identifying problems that need to be addressed in the current economic situation**

3.1 The EESC considers that it must take this opportunity to opt for a new approach that is no longer confined, where competition policy is concerned, to assessing and commenting on the areas selected by the Commission for inclusion in its annual report. The EESC should go further and propose other areas to be covered by a future generation of competition policies.
Consequently:

3.1.1 First of all, in today's turbulent world, as demonstrated by the developments in economic globalisation and the recent lessons taught by the speeding-up of this process, a new generation of competition policies must be inextricably linked to the new concepts and priorities of a Common European External Trade Policy.

3.1.1.1 This Common European External Trade Policy must guarantee that third countries do not benefit artificially from trade liberalisation as the result of breaching international rules for trade and core conventions of the ILO on trade union rights, including child labour and inhuman working conditions, the rules for basic environmental protection, or the rules on the freedom of establishment and business associations, which may lead to social or environmental dumping. The European Union should also vigorously enforce WTO rules against government export subsidies, and against other government policies which distort competition and deprive EU companies of market access.

3.1.1.2 Europe should continue to work for a level playing field in the area of international trade, and strengthen the authority of the WTO to take action against government subsidies, and against social and environmental dumping in breach of international agreements. European organised civil society also demands that the trade policy and the rights of individual companies and employees accruing from the international agreements in the framework of the WTO, ILO etc. must always be fully enforced by the European Commission. In particular, the rights of individual companies and employees must not be allowed to be ignored or acted upon less than fully, because of general foreign policy considerations, or because of the special interests of individual companies or of individual Member States.

3.1.1.3 It unreasonable and unjustifiable that Europe should strive to impose rules that its own economic actors must comply with in order to ensure balance in competition and in the market whilst frequently ignoring the unfair competition imported on a daily basis from other parts of the world. Only a genuine link between competition policy and a fair common external trade policy, together with clear and bold stances in the WTO can restore balance to the current state of affairs.

3.1.2 Secondly, there is a need to start addressing a certain type of internal imbalance in the field of competition policy that promotes distortions, assessing the consequences of the market players' different characteristics and setting rules that take account of the fact that small and micro-enterprises are by their very nature dependent on their ability to compete with large companies. Similarly, companies in remoter areas are also at a disadvantage in relation to businesses located near major centres of consumption. In future, therefore, European Economic, Social and Territorial Cohesion policies should be closely linked to competition policy, which should be increasingly alert to the variety of factors influencing the markets.

3.2 The economic backdrop against which the Commission's work in 2007 is assessed also requires the EESC to raise a series of practical questions. Because of their topicality and outstanding importance, these questions warrant the attention of Europe's political decision-makers, since they demonstrate the inadequacy of current instruments to address phenomena facing both businesses and the general public.

3.2.1 Regardless of the aims of protecting the economy as a whole and of not benefiting some businesses and/or sectors at the expense of others, and however laudable these aims might be, can Member States be allowed to intervene, by helping certain economic players (and indirectly their shareholders, employees, creditors and suppliers), at the expense of all the others, in scenarios in which those who do not comply reap the benefits and those who do, suffer? What might be the effects of the distortion to competition caused by a new wave of unfair treatment of economic players?

3.2.2 While reaffirming the pressing need for a strong and cohesive competition policy to guide the overall action of the European Union, the EESC understands and agrees that, under exceptional circumstances such as at present, exceptional measures – even distortions of competition – may be introduced. However, these deliberate, authorised distortions must be constantly and closely monitored by the Commission, and corrected as soon as the economic situation returns to normal.
3.2.3 In order to prevent distortions of competition in any sector, allowing governments to offer tax and/or financial incentives that can be accessed transparently and by everyone (providing they meet certain objective criteria) might be the best means of encouraging economic development without causing unjustified discrimination.

3.2.4 What steps were taken by the competition authorities at the different tiers to ensure that the system operated properly during the recent price crisis, either for consumer fuels or for basic foodstuffs? In this instance, the repercussions of the higher costs of raw materials on the final price were immediate and direct, while falling costs did not have the same effect, producing the universal impression that the key players were colluding to fix prices.

3.2.5 The time, therefore, has come for the Commission to adopt a less stringent and broader approach to competition policy. The EESC thus calls on the Commission to consider the matter and urges it to present new ambitions for this area, which is of such enormous importance to European integration.


The President
of the European Economic and Social Committee
Mario SEPI