Opinion of the European Economic and Social Committee on the Report from the Commission — Report on Competition Policy 2009

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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 17 December 2010.

At its 468th plenary session, held on 19 and 20 January 2011 (meeting of 19 January), the European Economic and Social Committee adopted the following opinion by 148 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 In 2009, competition policy was heavily influenced by the international economic crisis and the need to manage its after effects.

1.2 The EESC hopes that there will be maximum synergy, not only between the 2020 strategy and the strategy for sustainable development (1), as it has already recommended (2), but also between those strategies and competition policy so as to avoid overlaps or, worse still, contradictions between measures.

1.3 The Committee would again highlight the danger that this difficult economic situation could generate systemic imbalances, particularly regarding financial services, with negative effects on competition, encouraging damaging practices. Although, as already pointed out (3), the Commission cannot be responsible for managing all aspects relating to the economic crisis, it is called upon to support the work of the authorities responsible, in particular the European Central Bank and the other competition authorities, by means of a Community policy based on guidance and supervision.

1.4 This is all the more important during the current revision of the Basel Accord (4). Whereas, on the one hand, this review raises the guarantee requirements that banks must satisfy in order to limit the danger of new financial crises arising from a lack of liquidity, on the other hand the new rules would make it harder for companies to access credit, with the danger that the risk is transferred from the financial markets to the real economy. Furthermore, this review could put European banks at a disadvantage compared with their US counterparts, leading to a fall in profits and fiercer competition in the field of high risk investments.

1.5 The Committee also supports the Commission in its plan to monitor the national economic recovery plans, so as to provide an overview of progress on implementing the individual programmes, list the instruments available to speed up progress with these measures and check that coordination is functioning properly (5).

1.6 As regards the danger of bond shocks arising from the scale of the debt, especially in countries such as Portugal, Ireland, Greece and Spain, there is evidence that speculation may undermine the raw materials markets. In this regard, the Committee urges the Commission to pay attention to the problems that this would entail in terms of prices and salaries, in particular for SMEs, and act accordingly.

1.7 The Committee would propose the regular publication of a state aid monitoring report to provide a detailed picture of progress in implementing measures and quantify the fall-out on markets, with a view to preparing a plan for maximising industrial sector potential by strengthening companies, especially SMEs, and related employment levels, something that will be necessary for EU economic recovery.

(2) OJ C 128, 18.5.2010, p. 18.
(3) OJ C 228, 22.9.2009, p. 47.
(5) OJ C 228, 22.9.2009, p. 149.
1.8 The EESC has already expressed its concern regarding the possible consequences of interaction between the industrial property rights system and competition policy. It would therefore recommend that, in 2010, European competition policy should cover the application of fair and non-discriminatory conditions in this area too, and encourage small and medium-sized companies in particular to acquire industrial property rights, the difficulty of which is recognised by both the EESC and the Commission. With particular regard to the European Commission’s proposal for a regulation on the language arrangements for the EU patent, and the request by some Member States for enhanced cooperation, the EESC recommends seeking a formula that helps to boost competitiveness, innovation and a stronger internal market under equal conditions. To this end, the EU patent must not display any discrimination towards economic operators or Member States, as this would create competitive disadvantages.

1.9 The EESC argues that the agricultural sector market should be mainstreamed into all other EU policies, starting with competition policy.

1.10 In the energy sector, consumers in the various Member States are voicing great dissatisfaction with the electricity and gas markets. High prices and poor quality services generate greater costs for consumers and companies, with a clear distortion of competition.

1.11 In keeping with the principle of technological neutrality, it is necessary to increase the awareness and skill levels of managers and final users of electronic communication services in order for technology to have a positive impact on economic development, not least so as to implement the Digital Agenda principles as effectively as possible.

1.12 The EESC endorses the definition of the right to information as a combination of freedom of information, the right to inform and the right to be informed. It follows that pluralist information should be full, unbiased and independent. In addition to penalising companies that restrict pluralism to the detriment of free competition, the Commission could also be much more proactive in promoting freedom of information.

1.13 The EESC considers that since the decision was taken to open up the entire postal market to competition from 1 January 2011, the economic crisis has placed the financial stability of the traditional postal service operators responsible for services of general interest (SGI) in lasting danger. In order to ensure that these operators are able to carry out the tasks entrusted to them properly and to maintain the level and quality of employment in this sector, the EESC calls on the European institutions to put a support system in place that provides for this new situation, whose scale and potential effects were unknown at the time of adopting the third postal directive (2008/6/EC) of 20 February 2008. More generally, in the context of the current crisis, the EESC calls for the SGI to be reinforced and developed, so as to strengthen the economic, social, territorial and cultural cohesion of the European Union.

1.14 In the sphere of consumer protection, the EESC welcomes the developments towards a more structured relationship between DG Comp and the other DGs concerned with consumer affairs and consumer organisations, but regrets that another year has passed without any progress being made on the real implementation of the ‘private’ enforcement of the EU antitrust rules.

1.14.1 In spite of support from the European Parliament and the EESC, the Commission has been unable to press ahead with the initiative it launched with the 2005 green paper and the 2008 white paper aimed at securing effective EU antitrust damages actions, leaving the rights of consumers who are adversely affected by breaches of the antitrust rules unprotected.

1.14.2 The European Court of Justice has long confirmed that the full effectiveness of the antitrust rules could be jeopardised unless each individual citizen is able to seek damages for loss caused by infringements of the rules.

1.15 The EESC would like to add that concentration processes in the economy should be observed, in order to study the social and cultural impact on the industrial, commercial, craft and agricultural sectors and to develop appropriate recommendations for an active and sustainable economic policy and balanced economic structures.

1.16 As in previous opinions on competition policy, the EESC would once more draw the Commission’s attention to the issue of social dumping. Whereas on the one hand, it appreciates the Commission’s efforts on environmental issues, as reflected in the many measures adopted to address the crisis, the Committee would, on the other hand, reiterate the need to give greater and more practical consideration to the still considerable differences between national legislations on equal opportunities and employment protection. The Committee would argue that these aspects must be part and parcel not only of employment policy but also of competition policy as they are factors that can have a significant impact on market dynamics.
1.17 The EESC is pleased that in 2009 the Commission continued its efforts to clarify the relation between social and healthcare systems and the economy. It supports the Commission’s efforts to strengthen solidarity-financed social infrastructure and civil society, and to focus on the interests of European society as a whole. The EESC believes that public social systems governed by national social law should be structured in such a way as to be accessible in a non-discriminatory manner to providers and beneficiaries, and that cross-border services provision should be encouraged where the State or local/regional authorities do not themselves provide services. Relations between legally and economically independent service providers operating under public contract should be governed primarily by national social law.

2. Content of the 2009 report

2.1 The 2009 annual report on competition describes the development and application of competition policy instruments, actions to benefit consumers and cooperation at European, international and inter-institutional levels.

2.2 The Focus Chapter this year takes an in-depth look at Competition policy and the financial and economic crisis.

2.3 Competition policy and the financial and economic crisis

2.3.1 The role of competition policy in the context of the crisis

2.3.1.1 Faced with the serious economic crisis, the Commission has sought to frame policies to minimise the impact of the crisis on the real economy, to stabilise the financial system and make sure that a similar crisis does not occur again, its objective being that of preserving the internal market.

2.3.2 The Commission’s policy response

2.3.2.1 The Commission found itself managing numerous notifications of emergency aid measures adopted by the Member States, and responded within extremely tight time frames.

2.3.3 Recapitalisation of banks

2.3.3.1 Already at the end of 2008, the Commission had adopted its Recapitalisation Communication (9) which differentiates between banks that are sound and banks that are in distress, laying down guidelines for evaluating those capital injections that constitute aid.

2.3.3.2 Guarantee schemes were approved for 12 Member States (10). Seven Member States launched pure recapitalisation schemes (11), while seven others designed mixed/holistic schemes (12). Spain, Slovenia, the United Kingdom, Hungary and Germany also implemented other forms of support scheme. In terms of aid to individual entities, recapitalisation measures and other forms of support were approved for 29 organisations (13).

2.3.4 Impaired assets

2.3.4.1 In February, the Commission adopted an Impaired Assets Communication (14), which set out how it would assess asset relief measures for financial institutions under State aid rules.

2.3.5 Restructuring

2.3.5.1 In its Restructuring Communication (15) the Commission addressed the issue of moral hazard, clearly setting out the requirements that beneficiaries of aid must satisfy and ensuring that risky behaviour that has occurred in the past would not be rewarded.

2.3.6 Beyond State aid

2.3.6.1 The conditions for ‘inability to pay’ were reviewed with regard to the fines imposed by the Commission under the antitrust rules. The Commission assessed the individual requests on a case by case basis.

2.3.7 The effects of the crisis on the real economy

2.3.7.1 The Temporary Community framework (16), valid until the end of 2010, focuses on two objectives: guaranteeing companies continuity of access to financing and encouraging them to continue investing in a ‘sustainable future’.


(10) Cyprus, Denmark, Finland, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden.

(11) Denmark, Finland, France, Italy, Poland, Portugal and Sweden.

(12) Germany, United Kingdom, Greece, Austria, Poland, Hungary and Slovakia.

(13) ING, KBC, Parex Banka, Anglo Irish Bank, Bank of Ireland, Allied Irish Bank, Fortis, Dexia, Nord LB, IKB, Kaupthing Bank Finland, Ethias, SDB, Banco Privado Portugues, Hypo Real Estate, WestLB, Fionia, HSH Nordbank, Hypo Tirol, LBBW, Kaupthing Luxembourg, Caisse d’Epargne/Banque Populaire, Mortgage Bank of Latvia, Northern Rock, Commerzbank, Lloyds Banking Group, BAWAG, Hypo Group Alpe Adria and RBS.


2.3.8 Deliveries and costs

2.3.8.1 In 2008, owing to the financial and economic crisis, the total volume of aid increased from approximately 0.5% to 2.2% of GDP, i.e. EUR 279.6 billion. Crisis related aid amounted to approximately 1.7% of the total.

2.4 Instruments

2.4.1 State aid control

2.4.1.1 In 2009, implementation of the State aid action plan (17) continued with the adoption of guidance papers on training aid (18) and aid for disadvantaged and disabled workers (19). In addition, guidelines were adopted for the detailed assessment of regional aid for major investment projects (20).

2.4.1.2 The validity of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (21) was prolonged until to October 2012.

2.4.1.3 The Simplification Package, designed to improve the effectiveness, transparency and predictability of Commission state aid procedures, came into effect on 1 September 2009 (22).

2.4.2 Antitrust

2.4.2.1 The Commission adopted six cartel decisions (23), fining 43 companies a total of EUR 1.62 billion.

2.4.2.2 The Commission adopted final decisions in the energy (RWE and GdF) and information technology (Intel, Microsoft and Rambus) sectors and decided to launch proceedings in the electronic communications (Polish and Slovak incumbents in the broadband markets) and financial services (Standard & Poor’s and Thomson Reuters) sectors.

2.4.3 Merger control

2.4.3.1 The number of mergers notified was lower than the record levels of previous years: in total the Commission was notified of 259 transactions and 243 final decisions were adopted. No prohibition decisions were taken and no new proceedings were opened under Article 21 of the EC merger regulation.

2.5 Sector developments

2.5.1 Financial Services

2.5.1.1 The Commission continued to monitor cross-border Multilateral Interchange Fees (MIFs) closely, with particular regard to VISA Europe and MasterCard.

2.5.1.2 It carried out a review of the functioning of the insurance Block Exemption Regulation, which was to expire on 31 March 2010. The new draft regulation, published for consultation in October, renews the exemption for two categories of agreement: joint compilations, tables and studies, and agreements on co-insurance and co-reinsurance pools.

2.5.2 Energy and the environment

2.5.2.1 The climate-energy legislative package adopted in April contains a directive on renewable energy, establishing sustainability criteria for biofuels and bioliquids (24) that are also relevant for the assessment of State aid in that area. The European Parliament and the Council also adopted a directive revising the EU Emissions Trading System (ETS) for greenhouse gases (25).

2.5.2.2 With regard to the energy market, in July the European Parliament and the Council adopted the Internal Energy Market package (26) and the Commission adopted a proposal for a regulation concerning measures to safeguard security of gas supply.

2.5.2.3 For the first time, the Commission imposed fines totalling EUR 1 106 million for an antitrust infringement involving market sharing in the energy sector by E.ON and GDF Suez (27).

2.5.3 Electronic communications

2.5.3.1 Up to 2009, the Commission had assessed and approved the use of State aid and other types of public funding to the sum of approximately EUR 2 billion (28) in order to promote broadband access for all European citizens.

(21) OJ C 156, 9.7.2009, p. 3.
(22) OJ C 136, 16.6.2009, p. 3 (3-12 and 13-20).
(23) Cases: COMP/39406 Marine Hoses; COMP/39401 E.ON/GDF; COMP/39396 Calcium Carbide; COMP/37956 Concrete Reinforcement Bars (readoption); COMP/39129 Power Transformers and COMP/38589 Heat Stabilisers.
(28) Including EUR 1.5 billion constituting State aid according to Article 107 TFEU.
2.5.4 Information technology

2.5.4.1 In 2009, the Commission adopted two decisions, making commitments offered by Microsoft and Rambus in relation to competition rules infringements legally binding: a third decision meanwhile imposed a fine of EUR 1.06 billion on Intel, the highest ever imposed by the Commission on a single company (29).

2.5.5 Media

2.5.5.1 The Commission continued to monitor the switch-over from analogue to digital terrestrial broadcasting in the EU Member States, especially in Italy and Germany.

2.5.6 Pharmaceutical industry and health

2.5.6.1 Having completed its inquiry on the pharmaceuticals sector, the Commission reaffirmed the urgent need for the establishment of a Community patent and for a unified and specialised patent litigation system in Europe.

2.5.6.2 The Commission’s actions in the field of health services were geared towards State aid, following a number of complaints from private hospitals against allegedly unfair treatment or excessive compensation towards publicly-owned hospitals in various Member States (30).

2.5.7 Transport

2.5.7.1 In the area of rail transport, the Commission approved the acquisition of Polish railway company PCC Logistics by Deutsche Bahn AG (31); meanwhile it also referred back to France a concentration by which SNCF would take joint control of Keolis, an undertaking active in passenger public transport (32).

2.5.7.2 In the area of maritime transport, the Commission adopted a communication on State aid to ship management companies (33). Positive decisions were also adopted regarding State aid to seafarers in Italy (34) and Finland (35) and the Commission concluded the formal procedure opened in 2007 regarding the DIS regime in Denmark, and the investigation regarding tonnage tax schemes in Ireland (36), Denmark (37), the Netherlands (38), Slovenia (39) and Poland (40).

2.5.7.3 The Commission is monitoring the airline industry, which is going through a process of consolidation with joint venture agreements covering transatlantic routes (41), mergers of both network and low-cost carriers (42), and acquisitions by large network carriers of smaller regional players (43).

2.5.8 Postal services

2.5.8.1 As regards the application of State aid rules to the postal sector, the Commission adopted several decisions aiming to ensure that postal operators entrusted with services of general economic interest and their subsidiaries do not enjoy unduly granted advantages.

2.5.9 Automotive industry

2.5.9.1 The Commission welcomed the positive impact on sales of the scrapping schemes introduced in various national markets. The smooth running of the information mechanism set up by Directive 98/34/EC guaranteed transparency, exchange of information and the prevention of obstacles to the single market.

2.5.9.2 The Commission also authorised several State aid schemes to encourage vehicle development in response to growing demand from customers for greener cars, and to tighter environmental regulations.

2.5.9.3 In the antitrust field, a new draft Block Exemption Regulation for the automotive sector was published for public consultation in December.

2.5.10 Food industry

2.5.10.1 In October, the Commission published the results of a food industry fact-finding exercise and incorporated it into the Commission Communication on A better functioning of the food supply chain (44).

2.5.10.2 A Dairy market situation report (45) was also adopted, this being one of the sectors that faced the greatest difficulties in 2009: links with the sector’s national authorities also intensified.

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(30) Case NN54/2009.
(31) Case COMP/M.5480.
(32) Case COMP/M.5557, SNCF/CDPQ/Keolis/Effia.
(40) Case C34/2007.
(42) COMP/M.5364, Iberia/Vueling/Clickair.
2.6 Consumer activities

2.6.1 The Commission continued its activities in this field during the year both through the work of the Consumer Liaison Unit, set up by DG Competition in 2008, and through the Subgroup on competition set up as part of the European Consumer Consultative Group (ECCG) in 2003.

2.7 The European Competition Network and cooperation with national courts

2.7.1 A meeting between DG Competition and the heads of all the national competition authorities (NCAs) resulted in the unanimous endorsement of the report on leniency convergence under the European Competition Network Model Leniency Programme (46).

2.7.2 The Commission was informed of 129 new case investigations launched by NCAs and of 69 envisaged decisions (47) representing an increase of 15% as compared with 2008.

2.8 International activities

2.8.1 DG Competition continued to work together with other international organisations active in the field (International Competition Network (ICN); OECD Competition Committee; UNCTAD’s Intergovernmental Group of Experts (IGE) on Competition Law and Policy).

2.8.2 The Commission maintained close cooperation with the United States, Canada, Japan, China and India and signed new cooperation agreements with South Korea (48) and Brazil. Special attention has been given to cooperation with Croatia and Turkey, which have to fulfil ‘opening benchmarks’ before accession negotiations on the competition chapter can begin and with the western Balkan countries and Iceland with a view to future EU membership.

2.9 Interinstitutional cooperation


2.9.2 The Council received various contributions from the Commission on competition policy in respect of conclusions adopted in different Council formations such as ECOFIN, the Competitiveness, Transport, Telecommunications and Energy councils and the European Council.

2.9.3 DG Competition has cooperated actively with the EESC on various subjects, including the adaptation of SMEs to global market changes, shipbuilding and State aid.


The President
of the European Economic and Social Committee
Staffan NILSSON