

**Opinion of the European Economic and Social Committee on the ‘Report from the Commission — Report on Competition Policy 2010’**

COM(2011) 328 final

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Rapporteur: **Paulo BARROS VALE**

On 10 June 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the:

*Report from the Commission — Report on Competition Policy 2010*

COM(2011) 328 final.

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 10 November 2011.

At its 476th plenary session, held on 7 and 8 December 2011 (meeting of 7 December), the European Economic and Social Committee adopted the following opinion by 116 votes in favour with 7 abstentions.

## 1. Summary and conclusions

1.1 Each year, the EESC assesses the Commission’s report on competition policy, taking the opportunity to put forward observations and recommendations which, over time, have been taken into account by the authorities, contributing to various adjustments which have led to the increased efficiency which we have seen. We are carrying out this analysis at a time when the European project is facing great challenges, given the risk of fragmentation or, as many people are saying, the threat to the very survival of the extraordinary integration achieved over little more than half a century. In the space of two generations, Europeans have managed to secure a wonderful period of peace and prosperity, based on solidarity between countries and regions and a long process of creating common policies. It is therefore against this backdrop of having to choose between unpredictable backsliding or historic progress that we must look at the different European policies, in particular competition policy. The possible renationalisation of policies as a result of the crisis and possible conflicts between Member States, together with governments intervening in economies with protectionist measures, are scenarios that would seriously affect the internal market and competition policies – which have, at least internally, proved their considerable value.

1.2 This latest report marks its 40th anniversary, laying out the key developments in competition policy and their importance in terms of achieving the EU’s objectives: the construction of the single market, passing its advantages on to consumers as the group that can most benefit from it, and the creation of a competitive social market economy. The EESC congratulates the Commission on this report and for its achievements over the last 40 years, but would note that it comes across as a document in praise of the Commission’s work, which – as the report says – steps back from current issues. The document is certainly positive, but would actually be more useful if it carried out an analysis and assessment of the strengths and weaknesses of the work done, which could even entail comparative analyses between EU Member States

and other major countries, rather than simply a self-eulogy. This 40th anniversary would have provided a golden opportunity for the Commission, on the basis of a proper analysis of history, to propose the modernisation and expansion of competition policy, assessing the developments caused by increasing globalisation and analysing the harmful effects on Europe of changes and relocations based on the unbridled exploitation of human, material and environmental resources, in parts of the world which do not apply the same values as European societies, but which exploit the purchasing power which Europe has been able to guarantee for its citizens.

1.3 The economic and financial crisis continued to have a strong impact during 2010, and on top of that came the sovereign debt crisis. The EESC would highlight the possible distortions which a continuation of the crisis and the temporary measures for combating it may cause in terms of competition and stresses the importance of its rigorous monitoring and of the appropriate corrections being made as soon as possible. It is essential that the implementation of national economic recovery plans, and their impact on competition, be monitored by evaluating the measures taken: this is the only way of ensuring informed decisions on the future of temporary anti-crisis measures that remain in place.

1.4 The EESC welcomes the developments in relation to international cooperation but would emphasise once again that it is crucial to guarantee fair external trade, ensuring that third countries do not benefit artificially from trade liberalisation through the practice of social or environmental dumping. Compliance with international fair trade rules and the fundamental rules on environmental protection, as well as freedom of establishment and business associations, must be guaranteed, and Europe has a crucial role to play in this regard. The European Union must also ensure that the WTO rules against any actions which may hinder access for European companies to the different markets are rigorously applied, by

devising rules to promote equal opportunities whatever their size, location or tax framework. The EU's competition policy needs to enter a new phase, setting new priorities, defining new instruments and taking more effective measures in the field of trade with non-EU countries. The EESC wishes to express its frustration at the fact that its previous calls in this field have not led to the modernisation and expansion of the EU's approach in this field.

1.5 Strict compliance with all aspects of the fundamental ILO conventions on trade union rights and freedoms, child labour, inhuman working conditions and the right to strike must be ensured. At internal level, the national legislations of the Member States in the fields of employment and equal opportunities also need to be harmonised in order to prevent distortions in competition. The labour market, badly hit by the crisis, needs careful attention so that the objective of inclusive growth, a priority under the Europe 2020 strategy, is to be achieved by promoting job preservation and creation and mobility.

1.6 A number of events are indicated in connection with the Europe 2020 strategy, the sector-specific developments and tools of which are set out in the report. Attention is drawn to the risks of liberalising the energy sector, with regard to both quality and continuity of supply, and prices. Concerning the Digital Agenda, emphasis is placed on the importance of electronic communication service managers and users increasing their level of knowledge so they can derive maximum benefit from efforts in this area.

1.7 Speculation on commodity prices has had an impact, although the report has nothing to say on the matter. It is crucial to support the market by devising or applying instruments that can control price volatility and cushion the impact on competition.

1.8 The EESC wishes to express its concern at the inability of the national competition authorities (NCAs) to perform their role as regulators in certain sectors in which prices are strongly influenced by variations in raw material prices, and in which increases in the cost of raw materials have had a direct and immediate impact on the final price, but in which reductions in such costs have not had the converse effect. Given their proximity to the market, NCAs must serve as the key intervention tool for competition policy, focusing action on the regional markets.

1.9 We would draw attention to the importance of supervision by NCAs in the large retail sector, in which the bargaining power of the major economic groups can lead to serious distortions in competition resulting from the abuse of a dominant position. While companies are free to decide how their products are distributed, there is reason to fear that, in

practice, agreements may involve price setting by large purchasers, in clear violation of the rules on negotiating balance, gradually leading to the destruction of the production sector and of small-scale wholesalers and retailers.

1.10 There has been no significant progress in relation to the initiative in the 2008 White Paper on damages actions for breach of the EC anti-trust rules, and consumer rights have become even more poorly protected in this area: instances of infringement of these rights have been on the increase and are going unpunished. The necessary Community proposals must urgently be drawn up in this field, in order to guarantee effective redress for cases where the harm caused is collective or widespread. Fair trade and fair competition are crucial to consumers. Information on the quality of products and services must be pertinent and complaint procedures made easier, if consumers' rights are to be guaranteed.

1.11 The EESC welcomes the work towards setting up a European patent as a tool to facilitate access to protection of ownership, which is an important incentive to investment in research and innovation, and hopes that consensus will be reached on adopting this new system for protection of ownership.

1.12 Self-regulation can be an effective means of stimulating the development of certain markets promoting fair trade. It has already proved to be a more effective and flexible tool for coping with the consequences of events on the markets and their products and services than some regulations and laws. The Commission report makes no mention of this possibility, which ought to be looked into and taken into consideration.

1.13 The transport costs of accessing central markets are often an obstacle to healthy competition between operators from remote or island EU regions and those who are better located. Compensation and instruments promoting equal opportunities need to be provided for these cases.

1.14 The EESC welcomes the Commission's declared intention to promote changes to the report on competition, by moving away from a model of simply listing points that are common knowledge, towards replying to the various requests made by the Committee. It is worth highlighting the importance of the report's content taking a more strategic view, paving the way for a debate on competition policy rather than on competition law.

1.15 However, the EESC questions the European Commission report's failure to refer to the need, pursuant to the European treaties, to ensure that competition rules are adhered to by public bodies tendering for operations open to private-sector companies.

## 2. Content of the 2010 report

2.1 The report is arranged in 6 sections: competition policy instruments, the policy's application by sector, the European Competition Network and cooperation with national courts, international activities, initiatives involving consumer organisations and interinstitutional cooperation.

### 2.2 Instruments

#### 2.2.1 Follow-up to the implementation of the temporary crisis framework for State aid

2.2.1.1 In response to the difficulties faced by the financial sector as a result of the sovereign debt crisis, the application of support measures was extended in order to facilitate banks' access to funding. Issuing state guarantees in order to facilitate such access proved to be an effective instrument.

2.2.1.2 The support measures to facilitate companies' access to credit were also extended, although the number of measures was limited and they were restricted to SMEs.

2.2.1.3 There is an urgent need to identify the impact and benefits of these measures. This would provide a basis on which to gauge the advantages and disadvantages of granting such benefits and their impact on competition, as well as the relevance of continuing such assistance during 2012.

#### 2.2.2 Economic adjustment programmes

2.2.2.1 The economic adjustment programmes for Greece and Ireland imposed competition-related measures. In Greece, these involved reform of the NCA, liberalisation of closed professions and a new investment law. In Ireland, they entailed legislative changes to remove restrictions to trade and competition in sectors currently protected by national legislation.

2.2.2.2 National overindebtedness is primarily a cause of distortion to competition because it promotes the activity of certain economic players. Secondly, by requiring citizens to make greater efforts that are essential to balancing public accounts, it puts them in a weaker position than others. Support for Greece and Ireland, together with that for Portugal, must continue and requires careful attention regarding the possible impact of these measures on distorting competition.

#### 2.2.3 Application of anti-trust measures

2.2.3.1 Application of anti-trust measures was intensive, the Commission having introduced changes to the block exemption regulations, both vertical and horizontal.

2.2.3.2 In the context of the 2008 White Paper on damages actions for breach of the EC anti-trust rules – and contrary to

the suggestion made in several EESC opinions to establish a collective redress and compensation procedure (group action at Community level) – it was decided to launch a further public consultation which is not expected to identify the common principles that should be taken into account when drawing up legislative proposals concerning collective redress. Legislative solutions to protect consumers and businesses must urgently be found in this regard.

2.2.3.3 It is worth noting the imposition of fines on 70 undertakings (27 more than in 2009) following on from the seven cartel decisions, and the adoption of a first anti-trust decision in the health services market.

2.2.3.4 The fight against abuse of dominant positions led to four decisions in the energy sector and the opening of several proceedings in the Information and Communications Technology (ICT) sector.

#### 2.2.4 Merger control

As a result of the economic crisis, the number of mergers during 2010 was relatively low. 274 transactions were notified to the Commission, 16 decisions were submitted to conditions and no prohibition was decided.

#### 2.2.5 State aid control

2.2.5.1 The majority of aid approved in 2010 related to horizontal objectives of European common interest (culture and heritage conservation, regional cohesion, environment protection, research, development and innovation, and compensation for damages caused by natural disaster).

2.2.5.2 Attention is drawn to the publication of a handbook on the enforcement of EU State aid law by national courts in order to assist national judges, in response to the increasing number of cases relating to State aid brought before national courts.

### 2.3 Sector developments

2.3.1 In the financial services sector, the main activity in terms of competition was the implementation of the temporary regulatory framework for the sector. A reduced number of merger cases were examined, relating to the restructuring conditions for granting State aid. Efforts to bring about financial stabilisation are essential and must continue, although the dangers posed by the risk of market speculation must not be underestimated in order to avoid the same situation as has arisen in the USA.

Following the work carried out previously, the Commission made legally binding the commitments offered by Visa regarding its multilateral interchange fee (MIF).

2.3.2 In November 2010, the energy strategy for the next ten years in the framework of the Europe 2020 strategy was presented, aimed at creating a single market in the energy sector. The creation of an open, competitive market in this sector is clearly of benefit to consumers, but consumers' concerns must be stressed regarding the quality and continuity of energy supply, particularly in cases where services are provided by companies located outside the country in question.

Measures relating to renewable energy production, energy saving and the remediation of contaminated sites continued to be incentivised, in keeping with the climate/energy objectives laid down in the Europe 2020 strategy.

2.3.3 As a part of the Europe 2020 strategy, the Commission launched the Digital Agenda for Europe, with the main objective of creating a single market for telecom services, with particular emphasis on bringing to near zero the difference between roaming and national tariffs and on achieving broadband coverage for all European citizens. A major challenge now emerging is to strike a balance in competition between e-commerce operators and small businesses and to protect consumers against unfair practices. Consumer confidence in operators' legitimacy, security of payments and protection of personal data must be boosted.

2.3.4 In the ITC market, the Commission's action focused on providing guidelines on cooperation agreements as a means for promoting competition on the market and hence to contribute to one of the objectives of the Europe 2020 strategy of providing efficient products and services. Attention must continue to be paid in this area to training for both operators and end users in order to increase their skills.

2.3.5 With regard to the media, the Commission continued to assist the transition from analogue to digital broadcasting.

2.3.6 In view of the urgent need to create a Community patent, work is continuing on the creation of a unified EU patent system for the pharmaceuticals industry. A revision of the 'Transparency Directive' setting minimum rules for pricing and reimbursement procedures for proprietary medicinal products was also announced.

2.3.7 In the healthcare sector, various complaints lodged by private health service providers against their allegedly unfair treatment compared to public providers were examined. Nothing, however, is said about the outcomes of these complaints.

2.3.8 Having been seriously affected by the crisis in 2009, 2010 was a year of recovery for the transport sector, with prices largely returning to pre-crisis levels.

2.3.8.1 In the air transport sector, the commitments offered by British Airways, American Airlines and Iberia regarding transatlantic routes were made legally binding and the

mergers between British Airways and Iberia and between United Airlines and Continental Airlines were authorised.

2.3.8.2 In rail and inland transport, a proposal to recast the first railway package was adopted with the aim of strengthening competition, by establishing a single European railway area.

2.3.8.3 Turning to maritime transport, aid for a 'Motorways of the Sea' project was approved on the basis of the sector's guidelines and the complementary aid guidelines, with the aim of capturing road traffic between France and Spain. The Commission also launched a study on the workings and public financing of port infrastructure.

2.3.9 The deadline for full opening of the postal services market was extended for eleven Member States, and the Commission continued to monitor the liberalisation, ensuring that providers of the public service are not given any unfair advantage.

2.3.10 In the automotive sector, the main concerns in terms of competition are the necessary restructuring of the sector and fostering the development of greener cars.

A vertical block exemption regulation was adopted for the after-markets and for the sale of new vehicles, concerning vehicle manufacturers and authorised dealers, repairers and spare-parts distributors; 15 mergers in the automotive sector were also cleared.

2.3.11 The High Level Forum for a Better Functioning Food Supply Chain was established in response to the competition problems resulting from the differences in bargaining power between suppliers and buyers in food distribution.

The sector is increasingly dominated by large groups, to the clear detriment of both small-scale trade, which cannot compete in terms of price, and small retailers, producers and distributors whose profit margins are squeezed by the power of the large groups. There is a lack of preventive action on the part of the NCAs in the sector regarding possible abuses of dominant positions, which are highly damaging to the market. It is not enough to single out instances of best practice: action should instead focus on supervision and on penalising practices that promote abuse of dominant positions.

#### 2.4 *The European Competition Network and cooperation with national courts*

The European Competition Network continued its activities, demonstrating its importance in the discussion and exchange of good practices on the enforcement of anti-trust rules. A merger working group was established and a review carried out of the block exemption regulations and accompanying guidelines regarding horizontal agreements and vertical restraints.

## 2.5 *International activities*

2.5.1 Work continued on international cooperation in relation to competition and the Commission continued to participate in the International Competition Network and in the OECD Competition Committee. Cooperation with the USA was intensive and negotiations with the Swiss Confederation regarding competition were launched. Of note are the priority attached to cooperation with China and the discussions concerning the anti-monopoly law, as well as the activities of DG Competition with India regarding restrictive agreements, abuse of dominance and merger control.

2.5.2 Finally, the accession negotiations on the competition chapter were opened with Croatia and the Turkish Parliament adopted a State aid law.

## 2.6 *Dialogue with consumer organisations and stakeholders*

2.6.1 A page for consumers was made available on DG Competition's website in every official language explaining the role of competition policy and its main initiatives and objectives.

2.6.2 The European Consumer Consultative Group (ECCG) issued an opinion on actions for damages and was consulted on vertical restraints.

## 2.7 *Interinstitutional cooperation*

2.7.1 A new framework agreement between the **European Parliament** and the **Commission** entered into force in October.

2.7.2 The **European Parliament** adopted resolutions on the 2008 report on competition policy, on the motor vehicle block exemption regulation, on horizontal agreements and on the Council decision on State aid for the closure of uncompetitive coal mines.

2.7.3 The Commission informed the **Council** of initiatives in the field of competition, with particular emphasis on the State aid rules in the context of the crisis.

2.7.4 The EESC made its contribution in the field of competition policy by adopting opinions on the 2008 report on competition policy, on uncompetitive coal mines, on shipbuilding and on the motor vehicle BER.

Brussels, 7 December 2011.

*The President*  
*of the European Economic and Social Committee*  
Staffan NILSSON

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