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27. Calls on those Member States that have not yet submitted an adequate map of development regions to do so forthwith and calls on the Commission to examine with due speed the operational programme for the regions for the new support period (2000-2006) in the light of the results of the sixth periodic report and to do everything possible to ensure that this support period can begin without any delay;

28. Regrets the Commission's failure to include mention in its Sixth Report of the importance at regional level, in many of the EU's regions, of the fisheries sector as an endogenous factor of economic and social development, or of the resultant need to maintain a structural policy taking account of its particularities with a view to effectively contributing to economic and social cohesion in the Union's regions;

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

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## 9. Modernisation of the rules implementing former Articles 85 and 86 of the EC Treaty

A5-0069/1999

**European Parliament resolution on the Commission White Paper on modernisation of the rules implementing Articles 85 and 86 of the EC Treaty (COM(1999) 101 – C5-0105/1999 – 1999/2108(COS))**

*The European Parliament,*

- having regard to the Commission White Paper on modernisation of the rules implementing Articles 85 and 86 of the EC Treaty <sup>(1)</sup> (COM(1999) 101 – C5-0105/1999),
  - having regard to its resolution of 18 July 1997 <sup>(2)</sup> on the Commission's Green Paper on vertical restraints in EC competition policy,
  - having regard to its resolution of 9 February 1999 <sup>(3)</sup> on the 27th report of the Commission on competition policy,
  - having regard to its opinions of 15 April 1999 <sup>(4)</sup> on the proposal for a Council regulation (EC) amending Regulation No 19/65/EEC on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices, and on the proposal for a Council regulation (EC) amending Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty,
  - having regard to the results of a hearing on the subject in the Committee on Economic and Monetary Affairs of 22 September 1999,
  - having regard to Rule 160 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A5-0069/1999),
- A. whereas competition policy is a fundamental element of the social market economy,
- B. whereas an effective competition policy will promote the competitiveness of European businesses,
- C. whereas an effective competition policy is, in particular, also in the interests of consumers, as competition constantly compels enterprises to make available better and cheaper products and services,
- D. whereas the existing system for implementing European competition rules has remained virtually unaltered since its inception in the early years of the Community, although the context has changed radically,

<sup>(1)</sup> Now Art. 81 and 82 of the EC Treaty.

<sup>(2)</sup> OJ C 286, 22.9.1997, p. 347.

<sup>(3)</sup> OJ C 150, 28.5.1999, p. 53.

<sup>(4)</sup> OJ C 219, 30.7.1999, pp. 422 and 424.

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- E. whereas in the past the existing system was perfectly justified, and has done much to help establish a European tradition of competition,
- F. whereas under the present conditions the notification and authorisation system operates slowly and cumbersome, and whereas in the period since Regulation 17 of 1962, during which hundreds of notifications have been received every year, there have been only nine cases in which the Commission has decided on prohibition,
- G. whereas the possibility of application of Community competition law by the courts will give businesses suitable means of settling their private disputes with speed and immediacy, while allowing the Commission and the national competition authorities to focus their activity on the most important cases affecting the public interest,
- H. whereas the process of liberalisation and privatisation in public service sectors has not brought about the disappearance of the dominant position of certain businesses, which are now in private hands, a concentration of considerable power enabling them to act as if they had no competitors, to the detriment of the latter, their suppliers, their customers and all consumers,
1. Considers modernisation of European competition rules to be urgent, in view of the shortcomings of the existing system on essential issues and the important changes that have taken place in the real economic world;
  2. Welcomes the Commission's proposals as a sound, while still insufficient, basis for discussion on the reforms which are under consideration;
  3. Notes that the proposals only concern the rules on agreements between undertakings which restrict competition within the common market, and stresses that the Commission envisages retaining the notification system for State aid and mergers;
  4. Supports in principle the main points in the White Paper, namely the abolition of the notification and authorisation system under Article 81 (formerly 85) of the Treaty and decentralised implementation of competition rules by enhancing the role of the authorities and courts of the Member States, as this could do much to bolster the European 'culture of competition';
  5. Urges the Commission to set up a conference on competition issues in the EU;
  6. Stresses that the modernisation of the existing system must not impair legal certainty or the consistent application of competition rules in the Community, and draws attention in this regard to its above-mentioned resolution of 18 July 1997 and opinions of 15 April 1999 on the Commission's Green Paper on vertical restraints and the ensuing regulations;
  7. Considers it necessary, therefore, that the Commission should assist the national authorities and courts by means of group exemption regulations, guidelines and notices;
  8. Calls on the Commission to monitor the quality of competition legislation in the Member States, in order to create a level playing field on the internal market;
  9. Notes that the White Paper does not contain any significant contributions for modernising the application of Article 82, and requests the Commission to focus on the prevention of abuse of a dominant position;
  10. Urges the Commission to adopt criteria for modernising the application of Article 82, by introducing elements of economic analysis and the consideration of market power to determine a dominant position; also insists on the prosecution of exploitative abuses as offences against suppliers, customers and consumers;
  11. Considers there is a need to clarify the criteria against which cases must be analysed by a specific national authority, to prevent parties from choosing to apply to the authority likely to be most favourable to them;

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12. Considers that, in cases where clarification is in the general interest, it should remain possible for undertakings to obtain advance clarification from the Commission, inter alia by means of reasoned opinions; however, this procedure must be confined to exceptional cases in which doubts need to be resolved, in order to prevent any repeat of the proliferating number of notifications that has made the present procedure ineffective;
13. Considers that there is a need for the Commission to show more precisely than it does in the White Paper that the reform proposals would not lead to a purely retrospective scrutiny of competition, and that the Commission's involvement will be guaranteed in equal measure in all the Member States;
14. Stresses that transparency and the rule of law for all parties must be guaranteed and considers that Regulation 17/62 should be the subject of a thorough review in its entirety, as it does not meet the present requirements, and asks the Council to adopt a new procedural regulation that will include defence rights for the accused, separation of the distinct stages of the procedure, the definition of deadlines for official procedures – for the Commission as well – and the legitimisation of those concerned and their access to the dossier;
15. Supports the Commission criterion of giving greater importance to complaints in the new system, and considers that the role of complainants must be strengthened in the Regulation itself. There is also a need to make it easier for consumer associations to intervene as complainants;
16. Underlines that proposed reforms should not lead to a renationalisation of competition policy and that the primacy of Community law must not be called into question;
17. Calls on those Member States which have not yet empowered their competition authorities and courts to apply Community law to do so as soon as possible;
18. Calls for concentration on specialised courts in all the EU Member States, in the interest of consistent application of the law in cartel proceedings, in order to safeguard legal certainty;
19. Considers it necessary, in connection with the forthcoming reform of European competition rules, to review the principle of subsidiarity, and considers it vital, in particular, to adopt clear criteria for the allocation of cases within the network of competition authorities and the law courts of the Member States;
20. Calls on the Member States to establish a network of competition authorities and, if they have not yet done so, to create the national conditions for decentralised immediate application of Articles 81 and 82 of the EC Treaty and the establishment of competition authorities that are independent of instructions;
21. Observes that the central role of the Commission as guardian of the Treaties must not be called into question;
22. Considers it necessary to intensify cooperation between the Commission and national supervisory authorities, and among national supervisory authorities, and in this connection suggests promoting exchanges of officials and joint meetings such as study seminars and the like, at which they can exchange opinions and experience, and suggest to require the national competition authorities that want to abolish the advantage of Community group exemption to provide the Commission and the other national competition authorities with information on the subject;
23. Calls on the Commission to analyse the reasons why it has been difficult for the courts in the Member States to apply Community competition law, and asks it to devise the necessary measures to remove the present obstacles;
24. Considers it important that reasons for competition decisions should continue, in the interest of the policy's transparency, to be stated in terms of their benefit to the consumer in order to make it clear to what extent decisions have taken account of the principle of 'allowing consumers a fair share of the resulting benefit';

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25. Considers it necessary to clarify further the rules on small and medium-sized enterprises and to protect such enterprises from possibly dubious penalty procedures, so that only wilful and grossly negligent violations of the cartel prohibition are penalised with fines, as well as extending the cases in which cooperation between small and medium-sized enterprises should not be regarded as an infringement of Article 81, especially when such collaboration has the aim of competing with economic operators with considerable market power, or negotiating standard conditions with suppliers or customers who have such power;
26. Considers that any increase in the Commission's investigating powers should not imply any diminution in the defence rights of those concerned;
27. Observes, with reference to the future enlargement of the European Union, that the applicant countries, all of which have undergone a protracted planned-economy phase, face special challenges in establishing an effective competition system;
28. Calls on the Commission, therefore, to offer these countries more assistance by means of information and cooperation in order to ensure that the requisite institutions with the necessary staff are operative in time;
29. Considers that, as part of the modernisation process, the application of competition rules by the Commission would gain further in efficiency and consistency if competition issues relating to all sectors were dealt with by a single Directorate-General, and calls therefore for competition issues relating to agriculture, fisheries, transport, coal and energy to be transferred to the Directorate-General for Competition;
30. Emphasises that the Commission's annual report on competition must remain the central document of Community competition policy even after the reform of the European competition system, and that the report must include all the developments and decisions that are essential for the Community and that will take place in the Member States after decentralisation;
31. Takes the view, that the modernisation of the European competition system as proposed in the White Paper is feasible under the existing provisions of the EC Treaty;
32. Instructs its President to forward this resolution to the Commission, the Council, the Court of Justice and the governments, parliaments and national competition authorities of the Member States.

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## 10. Competition Policy (1998 report)

A5-0078/1999

### European Parliament resolution on the Commission's XXVIIIth Report on Competition Policy (1998) (SEC(1999) 743 – C5-0121/1999 – 1999/2124(COS))

*The European Parliament,*

- having regard to the Commission's XXVIIIth Report on Competition Policy (1998) (SEC(1999) 743 – C5-0121/1999),
- having regard to the Commission's Seventh Survey on State Aid in the European Union in the manufacturing and certain other sectors (COM(1999) 148),
- having regard to its opinion of 1 April 1998 on the proposal for a Council Regulation on the application of Articles 92 and 93 of the EC Treaty to certain categories of horizontal State aid (COM(1997) 396) <sup>(1)</sup>,

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<sup>(1)</sup> OJ C 138, 4.5.1998, p. 97.