Report on the competition policy 2008

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The Committee on Economic and Monetary Affairs adopted the own-initiative report drawn up by Sophia in 't VELD (ALDE, NL) in response to the Commission Report on Competition Policy 2008. It welcomes the report, particularly its focus chapter on **cartels and consumers, highlighting the fact that cartels are among the most serious violation of competition law**. Members encourage the Commission to maintain its strong enforcement against cartels, and welcome instruments such as **the settlement package**, which allows the Commission to settle cartel cases by means of a simplified procedure. They recall that the comprehensive enforcement of competition rules are essential for a properly functioning European internal market, and the fight against cartels is central to ensuring that consumers benefit through lower prices and a broader choice of products and services. The committee demands to be involved on a broad basis in the shaping of competition policy, including the introduction of a co-legislative role and a requirement that Parliament be regularly informed about any initiative in that field. It calls on the Commission to inform Parliament during the course of 2010 what specific action in the field of competition it intends to take as a result of the entry into force of the Lisbon Treaty. It also wants the next Commission report to include a dedicated focus chapter on SMEs and competition.

State aid: the committee recalls that Member State governments have granted **guarantees on bank funding** as a response to the financial crisis since October 2008, and this issuance of guaranteed bonds has been sizeable and has provided banks with a significant source of funding and insurance against the risks faced by the financial system. It takes the view that State aid policies taken in relation to financial institutions and the economic recovery process were helpful to stabilise financial market and to tackle the effects of the credit crunch on the real economy. However, Members wonder to what extent State aid granted to the financial market has caused distortions of competition. They call for **an independent report to be drawn up about the potential distortive effects of State intervention in the financial sector**, and ask the Commission to report on restructuring progress made by the beneficiaries of State aid and to provide more clarity concerning the repayment of State aid and possible sanctions for failure to repay. The committee is also concerned about the subsidies and distortions generated by the guarantees on bank funding granted by Member State governments. The Commission is asked to **assess the extent of subsidies related to guarantees on bank funding** and thus analyse their conformity with EU competition law and the measures needed to correct any distortions related to those guarantees. Furthermore, Members want the Commission to investigate, as a matter of urgency, why State aid granted to banks is not being passed on to the real economy, and to take measures against banks that demonstrably fail or refuse to pass on the benefits of State aid.

They state their belief that the system of competition rules has weathered the storm so far, but that the crisis has brought home the urgent need for an **EU framework for cross-border crisis management in the financial sector**, including a solution for the ‘too-big-to-fail’ institutions, a quick and full implementation of the recommendations of the de Larosière Report, including a single European regulator, a deposit guarantee system and a bail-out fund or equivalent system. In addition, members call on the Commission to:

- report on national State aid measures, the differences between the national schemes, their possible distortive effects on competition and the economic divergence that might result therefrom, with proposals for a more coherent, single European approach;
- step up its investigation of the scope for illegally combining State aid on the one hand and Community instruments such as the structural funds and the Globalisation Adjustment Fund on the other, so as to ensure the consistency of its action;

- explain what criteria will be used to decide on a possible extension of the Temporary Community Framework for State aid measures;
- publish, during the course of 2010, a comprehensive report on the effectiveness of State aid granted for 'green recovery' (bringing about a substantial shift towards sustainability, in particular in the automotive sector) and State aid for environmental protection;
- inform Parliament about its review of the Commission Decision on State aid for public services, which has been due since 19 December 2008 and which should now take into consideration the entry into force of the Lisbon Treaty;
- tighten up procedures further with regard to the recovery of illegal State aid and to keep up the pressure on Member States, in particular on repeat offenders;
- conduct an investigation into the generalised large-scale use, by some European firms, of low-cost highly skilled temporary labour contracts and internships, as an abusive economic strategy that is detrimental to the principles of decent work and a source of competition distortion;
- evaluate the degree to which, if at all, the different national support schemes in the automobile industry have contributed to other Community objectives, in particular sustainability and environmentally-friendly technologies.

Antitrust: the committee welcomes the adoption by the **Commission of the White Paper on damages actions for breach of antitrust rules**, and believes this is a victory for consumer protection within the EU. Members reiterate that any forthcoming proposal on collective redress must respect Parliament's view expressed in its resolution of 26 March 2009 on damages actions for breach of the EU antitrust rules and insists that Parliament must be involved in the adoption of such act. They are concerned that **the use of ever higher fines as the sole instrument may be too blunt**, not least with a view to potential job losses as a result of the inability to pay, and call for **the development of a wider range of more sophisticated instruments**, covering such issues as individual responsibility, transparency and accountability of firms, shorter procedures, the right of defence and due process, mechanisms to ensure the effective operation of leniency applications (in particular to overcome the interference caused by discovery processes in the US), corporate compliance programs and the development of European standards; favours a 'carrot-and-stick' approach with penalties that serve as an effective deterrent, in particular for repeat offenders, while encouraging compliance. They take the view that, when multiple infringements of competition law are committed by the same company, stronger deterrence measures are needed to implement antitrust rules in cartel cases or to combat abuses of dominant position.

Merger control: Members emphasise that the current economic crisis does not justify a relaxation of EU merger control policies. They welcome the aim of further improvement of the referral mechanisms, and encourage the Commission to review the effects of the two-thirds rule further. The Commission is asked to draw up a country-by-country report on the application of Article 21(4) of the EC Merger Regulation, which allows for public policy considerations to take precedence over competition considerations.

Sector inquiries: the committee invites the Commission to **set out the criteria applicable for launching a sector inquiry**. It takes the view that the Commission should act not only on complaints from industry or consumers, but also on the recommendation of Parliament. Members deplore the fact that the Commission, in its report, does not respond to the following requests made by Parliament in its resolution of 10 March 2009:

- to review the operation of abusive practices in the services sector, which may prevent small businesses from being able to tender for work;
- to ensure proper vigilance over competitive behaviour in the Union's fuel markets;
- to take measures supporting pricing competition rather than regulating retail prices in the telecoms sector.

The committee asks the Commission to investigate and propose appropriate measures on a number of sectors, particular: the food industry; online advertising and relations between the producers of

agricultural goods (in particular dairy produce), intermediate purchasers, major distributors and end consumers; media concentrations, including all channels for distribution of content, such as print, television and radio and the internet. The Commission is also asked to present an analysis of competition into certain sectors, including the telecoms, car and financial services sectors; the food industry; and the pharmaceutical sector. With regard to the energy sector, the Commission is requested to investigate the extent to which a lack of investment in infrastructure, particularly gas and electricity interconnections, is hampering competition.