Report on competition policy 2009

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The Committee on Economic and Monetary Affairs adopted the own-initiative report by Derk Jan EPPINK (ECR, BE) on the Report on Competition Policy 2009.

Members welcome this Report and note that the Commission was quick to react to the financial crisis.

The committee continues to support a **more active role for Parliament** in the shaping of competition policy through the introduction of a co-legislative role. It asks for Parliament to be informed regularly of any initiatives in this field and invites the Commission once again, as the sole EU-wide competent competition authority, to report to Parliament in detail and annually about the follow-up to Parliament's recommendations and to explain any departure from Parliament's recommendations.

The committee stresses that an EU competition policy based on the principles of open markets and a level playing field in all sectors is a **cornerstone of a successful internal market** and a precondition for the creation of sustainable and knowledge-based jobs.

The report stresses the importance of services of general interest in meeting the basic needs of the public. It stresses the need to draft clear competition rules that are **helpful and useful for SMEs**.

Members underline the need for developing **synergies between competition and consumer protection policies**, including creating a European form of collective redress for individual victims of competition law violations, based on the criteria laid down in Parliament’s resolution of 26 March 2009, stipulating that compensation should be paid to the identified group of people or their nominee only for the damage actually suffered.

The report recalls its resolution of 25 April 2007 on the Green Paper on damages actions for breach of the EC antitrust rules and stresses that the pending legislative proposal in relation thereto should include the content of Parliament’s resolution of 26 March 2009.

The committee underlines that the current drive for fiscal consolidation and sustainable recovery should be used by Member States in order to progress towards a more level fiscal playing field. It considers, in this respect, that environmental (carbon, resource) taxation provides an appropriate solution.

(1) Competition Policy and the Financial and Economic Crisis: Members welcome the temporary State aid rules established in response to the financial and economic crisis. They emphasise the **need to discontinue temporary measures** and exemptions as soon as possible, particularly in the **automotive sector**. They urge the Commission to provide clarity on the phasing out criteria that will be used to decide on their possible extension.

The Commission is called upon to:

- prepare a detailed evaluation of decisions adopted within the framework of the application of the temporary State aid measures in response to the economic and financial crisis;
- publish, during the course of 2010, a comprehensive report on the effectiveness of State aid granted for 'green recovery' and State aid for environmental protection;
- ensure that banks reimburse State aid as soon as the financial sector has recovered, ensuring fair competition within the internal market and a level playing field with regard to exit conditions;
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- clarify the binding restructuring measures related to potential distortive effects resulting in differences in repayment conditions between Member States.

(2) State aid control: the report stresses that it is important for the Commission to monitor the use of State aid carefully in order to ensure that these support arrangements are not used to protect national industries in a manner detrimental to the internal market and European consumers. Members consider it essential, when assessing whether State aid is compatible with the Treaty, to find the **right balance** between the negative effects of State aid on competition and public finances and its positive effects in terms of common interests.

The committee urges the Commission to **carefully inspect fiscal State aid regimes** in force in certain Member States to check their non-discriminatory and transparent nature. The Commission is urged to examine the extent to which a too generous allocation of free EUA (European Union Allowances) permits in certain sectors may distort competition.

The report underlines that State aid should be channelled primarily into **promoting common-interest projects within the Union**, such as the deployment of broadband and energy infrastructures.

Members reiterate their support for the Commission guidelines on State aid for environmental protection in the field of **transport**, with a view to bolstering sustainability in the European transport sector.

(3) Antitrust: the committee recalls that cartels represent some of the most serious violations of competition law. It believes that such infringements of competition law run counter to the interests of EU citizens since they do not allow consumers to benefit from lower prices.

Members welcome the firm stance the Commission has taken on anti-competitive behaviour in recent years and the extension of the Vertical Block Exemption Regulation. They point out, however that the Commission has failed to take sufficient account of the specific circumstances relating to online sales, particularly with regard to the Digital Agenda and in view of its current efforts to complete the **internal market for e-commerce**.

The Commission is invited to consider, within the integrated regulatory framework on the **protection of intellectual property rights**, the use of competition legislation as a tool for preventing any abuse of IPRs.

Members believe that the use of ever **higher fines** as the sole antitrust instrument may be too blunt, not least in view of the job losses that may result from an inability to make payments, 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, corporate compliance programmes and the development of European standards.

The report favours a '**carrot-and-stick**' approach with penalties that serve as an effective deterrent, in particular for repeat offenders, while encouraging compliance.

(4) Sector developments: the Commission is invited, inter alia, to:

- monitor developments in commodity-related markets following the conclusions of the European Council of June 2008 and, where appropriate, to tackle speculation;
- go to great lengths to ensure that data on **financial markets** is disclosed in full compliance with the provisions of EU competition law and;
- supervise **SEPA** (the Single Euro Payments Area) and continue efforts to ensure effective competition on the payment cards markets, in accordance with the principles of SEPA, with a view to facilitating cross-border payments and maximising the potential of the internal market;

- monitor closely the implementation of the **third energy liberalisation package** by Member States and to assess its effectiveness in creating a functioning internal market and encourage the Commission to initiate a further inquiry into the energy sector;
- follow closely technological developments in the **digital market** and to react swiftly where necessary in order to keep digital platforms as open as possible by strictly applying competition rules;
- make sure that NRAs in the **telecommunications** sector follow its recommendation on call termination rates, in to eliminate distortion of competition;
- ask the Commission to envisage in its 2011 review of Regulation (EC) No 544/2009 the option of **totally abolishing intra-EU roaming fees**;
- report on, and speed up progress on its investigations into, the application of State aid rules to the **postal sector**;
- look in greater detail at competition in the **agro-industrial sector** in terms of transparency and consumer price evolution and to produce a study focusing in particular on the effects of the market power that major food suppliers and wholesale distributors have which allows them to influence the functioning of the food market;
- improve competition in the **pharmaceutical sector** and asks the Commission to expedite the completion of the internal market in medicines;
- monitor the **health sector** and, in particular, competition between public and private hospitals;
- secure completion of the **internal market for transport**, and fair competition in the transport field;
- seek the completion of the **single railway market** through the opening of national passenger transport markets.

Lastly, the report supports firmly the creation of an **EU patent** and an EU-wide patent dispute settlement mechanism to tackle competition distortions caused by the current provisions on patents.