

# Annual report on EU competition policy

2011/2094(INI) - 02/02/2012 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution in response to the Annual Report on EU Competition Policy.

The text adopted in plenary had been tabled by the EPP, S&D, ALDE, ECR, Greens/EFA as a joint resolution aiming to replace the motion for a resolution tabled by the Committee on Economic and Monetary Affairs.

Parliament welcomes the Commission Report on Competition Policy 2010, and highlights, on the occasion of the 40th anniversary of this report, the numerous benefits that EU competition policy has brought, stating that it is a constructive and stabilising factor in the EU's financial system and in the real economy in general. Members feel that improved price transparency is essential in stimulating competition in the single market and offering real choice to consumers.

**Control of State aid:** the resolution stresses that the temporary regime applicable to State aid has been positive as an initial reaction to the crisis, but that it cannot be prolonged unduly. It emphasises the need to discontinue temporary measures and exemptions as soon as possible and as soon as the economic situation allows it. It urges the Commission to link the extension **of the temporary State aid to the banking sector beyond 2011 with enhanced and more stringent conditions** related to the reduction of the balance sheet composition and size. This must include a proper focus on retail lending as well as stronger restrictions on bonuses, distribution of dividends and other operations on an ex post basis.

The Commission is called upon to come forward with the **legislative proposal to address in a true European framework the resolution of failing banks**, guaranteeing a common rulebook as well as a common set of intervention tools and triggers, and limiting taxpayers' involvement to a minimum, namely through the creation of harmonised self-financed (on a risk based approach) industry resolution funds.

Parliament stresses that the on-going consolidation in the banking sector has actually increased the market share of several major financial institutions and, therefore, urges the Commission to maintain a close watch on the sector in order to **enhance competition in European banking markets, including by imposing restructuring plans** that imply the separation of banking activities where retail deposits allow these institutions to fund riskier investment banking activities.

The Commission is also invited to ensure that the **intended simplification of State aid rules for SGEI** will not lead to deterioration in the monitoring of overcompensation. Parliament takes note of the Commission's intention to introduce a 'de minimis' arrangement in respect of State aid for SGEI, and underlines that unambiguous criteria are needed to determine what services would be covered by it.

Members underline the importance of fostering competition in all sectors and not least in the **service sector**, which constitutes 70% of the European economy. They further highlight the right to establish new companies and services. They consider that State aid should **support innovation and research clusters** and thereby support entrepreneurship.

**Antitrust:** the resolution suggests, should the Commission submit a proposal for a horizontal framework governing [collective redress](#), that where appropriate a principle governing **follow-on action** could be adopted whereby private enforcement under collective redress may be implemented if there has been a prior infringement decision by the Commission or a national competition authority. Parliament notes that establishing the principle of follow-on action does not in general preclude the possibility of providing for

both stand-alone and follow-on actions. It believes that proper account should be taken of the specific issues arising in the competition field and that any instrument applicable to collective redress must take full and proper account of the specific nature of the antitrust sector. Members reiterate that, as regards collective redress in competition policy, **safeguards need to be introduced in order to prevent the development of a class-action system** involving frivolous claims and excessive litigation and to guarantee equality of arms in court proceedings.

The resolution stresses that any horizontal framework must ensure compliance with two basic premises:

1. Member States will not apply more restrictive conditions to the collective redress cases arising out of the infringement of EU law than those applied to cases arising out of the infringement of national law;
2. none of the principles laid out in the horizontal framework will prevent the adoption of further measures to ensure that EU law is fully effective.

Members welcome the legislative instrument announced by the Commission in its **2012 Work Programme covering actions for damages for breaches of antitrust law**. They stress that it should take account of earlier Parliament resolutions on the topic, and emphasises that it should be adopted under the ordinary legislative procedure.

The resolution notes that **the method for setting fines** is contained in a non-legislative instrument - the 2006 Fining Guidelines - and urges once again the Commission to incorporate a detailed basis for calculating fines, along with new fining principles, into Regulation (EC) No 1/2003. It encourages the Commission to review its fining guidelines and suggests that it evaluate principles such as:

- introducing a distinction on the level of fines for undertakings who have acted intentionally or negligently;
- taking into account the interaction between public and private liabilities under EU antitrust law;
- specifying conditions under which parent companies who exercise decisive influence over a subsidiary but are not directly involved in an infringement should be made jointly and severally liable for antitrust infringements on the part of their subsidiaries;
- requiring, as regards recidivism, a clear connection between, on one hand, the infringement under investigation and past infringements and, on the other, the undertaking concerned.

The Commission is urged to take a closer look at trickle-down economics when analysing possible abuses of dominant positions, when it discovers that the dominant position has not been abused.

**Merger control:** Members believe that the economic and financial crisis cannot justify a relaxation of EU merger control policies. They call on the Commission to ensure that mergers, and in particular mergers designed to rescue or restructure ailing banks, do not create more 'too big to fail' and more generally systemic institutions.

**International cooperation:** Members encourage the Commission to conclude bilateral cooperation agreements on competition enforcement, and welcome the announcement of the negotiation of such an agreement with Switzerland.

**Specific sectors:** insofar as an open and **competitive single market in energy** has not yet been fully achieved, Parliament asks the Commission to actively monitor competition in energy markets, specifically whenever privatisation of public utilities originates in monopolistic or oligopolistic markets. Members note that the three largest players still represent about 75% (electricity) and above 60% (gas) of the market, despite the gradual opening of the markets in the mid-1990s. The Commission is invited to issue guidelines in order to improve the access by renewables to the energy network.

The resolution also discusses **the following issues**:

- the **concentration of critical raw materials suppliers** which may be harmful to the activity of client sectors and a more eco-efficient economy;
- the need to open up competition in the **credit rating agencies sector**, particularly in so far as barriers to entry, alleged collusive practices and abuse of dominant positions are concerned;
- the need to **monitor developments in commodity-related markets** push forward ambitious legislative proposals within the revision of MiFID and MAD framework in order to tackle speculative practices which adversely affects European industry;
- the competition situation in the retail sector, in particular the consequences of alleged abuse of market power by dominant retail chains in the agriculture and food market;
- carry out a competition inquiry in the agro-food industry to investigate the effect of the market power that major suppliers and retailers hold on the functioning of that market;
- sector inquiry into **online advertising and search engines**;
- an inquiry into the application of **public procurement rules**, and whether national differences lead to a distortion of competition;
- the need for completion of the internal market for **all transport modes** as the main goal of the European transport policy (the EU still lacks a sufficiently interconnected, interoperable and efficient cross-border transport infrastructure network, which is indispensable for fair competition within the completion of the internal market);
- the lack of competition in the **roaming market**;
- the need to analyse the **aviation sector**, in particular code-share agreements between airlines which in many cases do not produce any benefits for consumers.

Parliament urges the Commission to examine the extent to which a too generous allocation of free European Union Allowances (EUA) permits in certain sectors may distort competition.

**Competition Dialogue:** Members call for the conclusion of an agreement between Parliament and the Commission setting up a comprehensive dialogue on competition policy which should strengthen the role of Parliament as the directly elected body representing European citizens.

Parliament urges the Commission to present the **Competition Work Programme** at the beginning of each year, including a detailed list of the binding and non-binding competition instruments expected to be adopted during the coming year and of the public consultations envisaged.