Competition policy. 30th report 2000

2001/2130(COS) - 16/05/2001 - Document attached to the procedure

The Commission presented a draft Notice on agreements of minor importance which do not appreciably restrict competition under Article 81 (1) of the EC Treaty ("de minimis" Notice"). Article 81, paragraph 1 of the EC Treaty prohibits agreements which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market. However, according to the Court of Justice, this provision is not applicable where the impact of the agreement on intra-community trade or on competition is not appreciable. In the present communication the Commission quantifies, with the help of market share thresholds, what is not an appreciable restriction of competition. This Notice also applies to decisions by associations of undertakings and to concerted practices. The Commission holds the view that agreements between undertakings which affect trade between Member States do not appreciably restrict competition within the meaning of Article 81(1): - if the aggregate market share held by all the parties to the agreement does not exceed 10% on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are actual or potential competitors on any of the affected relevant markets (agreements between competitors); - if the market share held by each of the parties to the agreement does not exceed 15% on any of the relevant markets affected by the agreement, where the agreement is made between undertakings which are not actual or potential competitors on any of the affected relevant markets (agreements between non-competitors). In cases where it is difficult to classify the agreement as either an agreement between competitors or an agreement between non-competitors the 10% threshold is applicable. Where in an affected relevant market competition is restricted by the cumulative effect of parallel networks of agreements for the sale of goods or services established by several suppliers or distributors and which have similar effects on the market, the market share threshold under point 8 is reduced to 5% both for agreements between competitors and for agreements between non-competitors. The agreement of a supplier or distributor with a market share not exceeding 5% are in general not considered to contribute significantly to a cumulative foreclosure effect resulting from agreements of several suppliers or distributors.