

Competition policy. 34th 2004 report

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In 2004 the work of the Directorate-General for Competition (DG Competition) was affected by major changes: enlargement of the EU to 25 members, the modernization of competition rules, the arrival in November of a new Commission, and the internal reorganization. These developments are reflected in the general objectives of the Commission's competition policy for 2005. The 2004 Annual Competition Report therefore provides the appropriate occasion to set out for a wider public the direction that will be taken by the Commission's work in the competition policy field in the medium term.

The key objective on the political agenda of the new Commission is to reinvigorate the Lisbon process launched by the European Council in 2000, the overall aim of which is to make the EU the most dynamic and competitive knowledge-based economy in the world. In this context, the Commission will make progress with its ambitious legislative review process in the competition policy field, with special reference to state aid, and will pursue the modernization of antitrust rules and the substantial merger control reforms started in 2004. The Commission intends to promote proactive enforcement of competition rules across the EU. Among the key priority policy areas identified as important to the achievement of the Lisbon objectives, competition policy can make important contributions in three respects:

Promoting the knowledge-based society: Strong competitive pressure provides powerful incentives for companies to continuously engage in innovation and research and development (R&D). By strengthening the incentives for innovation while focusing on those restrictions that can seriously hinder competition, competition policy can contribute to making the EU economies more dynamic. In particular, state aid policy may contribute to the knowledge-based society by better targeting the resources available for public support in fields such as research and development, innovation and training.

Fostering the internal market: Twelve years after its completion on paper, the internal market has not yet realized its full potential. One reason is that there is no automatic link between removal of barriers to cross-border trade and effective competition. Both the regulatory framework and its enforcement have to create an environment which actually induces and favours competition, new entry and innovation. Open and competitive European markets will make European companies more competitive internationally, to the benefit of European consumers and European employment. The very enforcement of competition rules, which is intended to remove the major obstacles to market competition, helps to create sound conditions for growth.

Promoting a favorable business climate: Competition policy can make a significant contribution to creating conditions that are favourable to business. State aid rules play an important role in the efforts to increase the availability of risk capital for start-ups and small and medium-sized enterprises. Also, international competition policy helps develop global coherence and the predictability that business needs. Finally, competition principles can allow screening of new and existing regulatory frameworks in other important policy areas, so as to ensure that regulation does not unnecessarily curb competition.

General competition policy objectives are as follows:

Enforcement priorities: focusing enforcement actions on the most harmful anticompetitive practices for the European economy. The new Antitrust and Merger Regulations will allow DG Competition to better prioritise its enforcement activity, in order to focus on the most harmful practices and mergers in terms of impact on consumer welfare.

In the antitrust field, Regulation 1/2003/EC created a new enforcement system in which the Commission and Member States are all competent to fully apply EU competition rules. To that end, the Commission and the 25 Member States have created a European Competition Network (ECN) in which DG Competition plays a central role. However, it will require a better surveillance of markets in order to identify those practices which are likely to create the greatest harm to competition and the consumer. The new Regulation was also the first step in strengthening private enforcement before national courts by giving the latter the power to also apply Article 81(3).

In the field of merger control, the new Regulation has enhanced the possibilities for referring cases from Member States to the Commission and vice versa, which should help the Commission to focus its enforcement activities on cases that have a clear cross-border impact. Moreover, the new substantive test of “significant impediment to effective competition” has made it clear that all anticompetitive mergers are covered by the new Regulation.

In the state aid field, DG Competition will focus more particularly on the enforcement of negative decisions and the reimbursement on incompatible state aid. Moreover, improved international cooperation, both bilateral and multilateral, will continue to be crucial to guaranteeing the effectiveness of European competition policy in combating anticompetitive practices with international scope.

Enhancing competitiveness within the EU by helping to shape the regulatory framework: Regulation, at both Community and national level, may unnecessarily hold back competition and curb the potential of the internal market. In certain sectors, such as the liberalised network industries, and in particular in the energy sector, there is a need to promote a regulatory framework creating the conditions for market entry and promoting competition. Competition advocacy and policy screening should therefore be used to influence national and EU legislation in order to ensure that safeguarding competitive markets is given due consideration.

Competition rules on monitoring state aid should be reviewed to ensure that they take more account of the specific market failures affecting the level of EU investment in R&D and access to risk capital, on the one hand, and the persistence of disparities in regional development, on the other.

Focusing action on key sectors for the internal market and the Lisbon agenda: Emphasis should be put on removing obstacles to competition in the recently liberalised sectors as well as certain other regulated sectors, notably telecommunications, postal services, energy and transport. These sectors provide essential inputs to many other economic sectors and are of key importance for Europe’s competitiveness. Opening up the possibilities for an increased number of service providers to compete should lead to wider choice, better quality and lower prices for consumers. The evolution of the telecommunications sector in the last ten years is a good example of the benefits of liberalisation. The recently liberalised sectors are, however, affected by various distortions of competition, ranging from harmful commercial behaviour on the part of the undertakings concerned to inadequate regulation or even state aid. Due consideration should be given to the fact that these sectors may be characterised by public service obligations, as regards the provision of services of general economic interest (SGEI), which must be fulfilled. Nevertheless, the Commission has to ensure that subsidies granted for the functioning of these public services do not exceed what is needed. Moreover, it is necessary to be more explicit in identifying which problems are most appropriately solved through the application of competition law. In this regard it is important to strive for an integrated sectoral regulatory and enforcement policy.

A number of other sectors which are important for the global competitiveness of Europe's economy feature considerable self-regulation or a mix of self-regulation and regulation by the State. This is the case in particular of financial services. Creating an efficient and liquid capital market is one of the key objectives of the Financial Services Action Plan. A number of internal market policy initiatives, culminating in the new Investment Services Directive, were launched during the last Commission's term of office to remove barriers to cross-border securities trading and facilitate competition between investment firms. Competition policy constitutes an important complement to this liberalisation process. In addition, retail financial services play a major role in the everyday life of European Union citizens. These services must be provided under competitive conditions, which mean that the individual consumer has a larger choice of products and services of a higher quality at the best possible price.