Basic information

2009/2173(INI) INI - Own-initiative procedure	Procedure completed
Report on the competition policy 2008 **Subject** 2.60 Competition	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	IN 'T VELD Sophia (ALDE)	21/07/2009

Committee for opinion	Rapporteur for opinion	Appointed
INTA International Trade	The committee decided not to give an opinion.	
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	BÜTIKOFER Reinhard (Verts /ALE)	19/11/2009
IMCO Internal Market and Consumer Protection	BIELAN Adam (ECR)	17/11/2009
TRAN Transport and Tourism	The committee decided not to give an opinion.	
CULT Culture and Education	The committee decided not to give an opinion.	

European Commission

Commission DG	Commissioner
Competition	ALMUNIA Joaquín

Key events

Date	Event	Reference	Summary
23/07/2009	Non-legislative basic document published	COM(2009)0374	Summary
11/11/2009	Committee referral announced in Parliament		
23/02/2010	Vote in committee		Summary
02/03/2010	Committee report tabled for plenary	A7-0025/2010	
08/03/2010	Debate in Parliament		
09/03/2010	Decision by Parliament	T7-0050/2010	Summary
09/03/2010	Results of vote in Parliament		
09/03/2010	End of procedure in Parliament		

Technical information

Procedure reference	2009/2173(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 148-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/01190

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE430.661	20/11/2009	
Amendments tabled in committee		PE430.954	10/12/2009	
Committee opinion	ITRE	PE430.944	04/02/2010	
Committee opinion	IMCO	PE431.197	09/02/2010	
Committee report tabled for plenary, single reading		A7-0025/2010	02/03/2010	
Text adopted by Parliament, single reading		T7-0050/2010	09/03/2010	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2009)0374	23/07/2009	Summary

Commission response to text adopted in plenary	SP(2010)2718	25/06/2010	

Report on the competition policy 2008

2009/2173(INI) - 09/03/2010 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution in response to the Commission Report on Competition Policy 2008.

It welcomes the report, particularly its focus chapter on **cartels and consumers, noting that the existence of cartels harms consumers.** 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. Parliament 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. Members ask the Commission to push for the implementation of the telecom package.

State aid: Parliament 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. Parliament 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: Parliament 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.

Parliament 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.

Report on the competition policy 2008

2009/2173(INI) - 23/07/2009 - Non-legislative basic document

PURPOSE: to present the Commission Report on Competition Policy 2008.

CONTENT: the first section of this report provides an overview of how the instruments of competition policy, namely the anti-trust rules and the rules on mergers and on State aid, were further developed and applied. The second section discusses how these and other instruments were deployed in selected sectors (energy and environment; financial services; electronic communications; information technology, media; transport; pharmaceutical industry; food industry; postal services). Section three gives an overview of consumer related activities developed in the past year. Section four focuses on cooperation within the European Competition Network (ECN) and with national courts, while section five deals with international activities. Lastly, section six gives a brief description of inter-institutional cooperation.

1) Consumer activities: this year, for the first time, the Annual Report on Competition features a chapter focusing on a topic that is considered to be of particular importance in the field of competition policy. The topic chosen for this year is "Cartels and consumers". Cartels are amongst the most serious violation of competition law. The fight against cartels is central to ensuring that the benefits of a properly functioning competition regime are offered to the final consumer in a given market for products or services.

Cases such as the ***Banana cartel*** show that the impact of the cartel on final consumers may be direct when they are purchaser or user of a product or service. Also in markets where the direct customers are industrial clients – where the breach of competition law takes place earlier in the supply chain - consumers ultimately benefit from fighting such cartels. For instance, in the ***Car Glass*** case, the product was car windows which consumers purchase as part of their cars and when they want repairs done.

In this context, the report recalls that:

- when the Commission prohibits anticompetitive behaviour and fines cartel members, its ultimate purpose is not only to punish those members for past behaviour, but above all to deter every company from continuing or engaging in anti-competitive behaviour;
- the Commission itself is not involved in seeking compensation for customers in individual cases. Actions for recovery of damages following Commission decisions can be submitted to national courts;
- through its fining policy, the Commission encourages a culture of compliance with competition law at the level of the entire company group;
- the Commission imposes higher fines on repeat offenders.

The Commission can uncover cartels in a number of ways; by analysing a market for evidence of anti-competitive behaviour or by obtaining evidence from different sources. Such evidence may come directly from consumers or other customers of the infringing companies. Alternatively, it may also come from individuals linked to a company who want to "blow the whistle", or even from cartel members themselves, making use of the Leniency Programme. Under the **2006 Leniency Programme**, the first company to provide evidence can obtain full immunity from fines. This benefit acts as an extremely strong incentive to break the "code of silence" of cartels.

In 2008 the Commission continued its strong enforcement against cartels, **fining 34 undertakingsa total of EUR 2 271 million in seven cartel cases**. In the *Car Glass* case the Commission imposed the highest fine for a cartel case to date, amounting to EUR 1 383 million.

In 2008 the Commission services also made some **general estimates of the harm to the economy caused by cartels**. The Commission services looked at the 18 cartels which were the subject of Commission decisions during the years 2005 to 2007, the size of the markets involved, the cartels' duration and the very conservative assumptions regarding the estimated overcharge. **Assuming an overcharge of between 5% to 15%, the harm suffered ranges from around EUR 4 billion to EUR 11 billion for these 18 cartels**. Taking the middle point of this overcharge range - 10% - gives a conservative estimate of consumer harm of **EUR 7.6 billion** due to these cartels. Even this figure is probably too low.

In addition, this figure does not take into account the benefits of deterrence and fostering compliance among undertakings through prohibition decisions and the imposition of fines. **Strong cartel enforcement ensures that cartels that may otherwise be formed are discouraged**.

The level of merger notifications continued at record levels in 2008 with a total of **347 transactions being notified to the Commission**, the third highest level on record. The Commission adopted a total of **340 final decisions during the year**. Of these final decisions, 307 transactions were approved without conditions during Phase I. A total of 118 decisions were approved without conditions under the normal procedure and a further 189 were cleared using the simplified procedure. There were also 19 transactions cleared in Phase I, but subject to conditions. The Commission initiated ten Phase II proceedings during the year.

As far as **abuses of dominant position** are concerned, following a statement of objections in the ***Microsoft* case** in March 2007, the Commission adopted on 27 February a decision concluding that Microsoft had not complied with its obligation to offer complete and accurate interoperability information on reasonable and non-discriminatory terms. **A definitive penalty payment of EUR 899 million was imposed on Microsoft**. Microsoft was the first company in the history of competition policy in the EU to have periodic penalty payments imposed on it for non-compliance with a previous decision from the Commission.

2) Due to the very difficult financial and economic circumstances that Europe experienced in 2008, and the way they impacted on the viability of European businesses, particular attention is paid in this year's Report to the European Commission's assessment of rescue and restructuring measures. A request to that end was also made by the European Parliament in its resolution concerning the Annual Reports on Competition Policy for the years 2006 and 2007.

In the context of the **financial crisis**, the Commission:

- first gave initial guidance on the application of State aid rules to measures taken in relation to financial institutions, which exceptionally were based on Article 87(3)(b) of the EC Treaty which allows for aid to remedy a serious disturbance in the economy of a Member State;
- supplemented and refined its guidance with a new Communication on how Member States can recapitalise banks in the current financial crisisto ensure adequate levels of lending to the rest of the economy and stabilise financial markets, whilst avoiding excessive distortions of competition;
- adopted a new temporary frameworkproviding Member States with additional possibilities to tackle the effects of the credit squeeze on the real economy. All measures are time-limited until the end of 2010, although the Commission, based on Member States' reports, will evaluate whether the measures should be maintained beyond 2010, depending on whether the crisis continues.

As regards the **implementation of the SAAP**, the Commission adopted:

- a General Block Exemption Regulation (GBER)giving automatic approval for a range of aid measuresand so allowing Member States to grant such aid without first notifying the Commission, provided that they fulfil all the requirements laid down in the Regulation;
- in the context of the Climate Change Package, new guidelines on State aid for environmental protectionwhich introduce a standard assessment for minor cases and a detailed assessment for cases that may involve significant distortions of competition;
- a prolongation of the Framework on State aid rules for shipbuildingfor a further three years, until 31 December 2011;
- a new Notice on State aid in the form of guarantees whichsets out clear and transparent methodologies to calculate the aid element in a guarantee and provides simplified rules for SMEs, including predefined safe-harbour premiums and single premium rates for low-amount guarantees.

In addition, **public consultations** were launched on:

- new rules relating to public service broadcasting;
- the possible extension until 2012 of the Cinema Communication (scheduled for adoption in January 2009);
- the guidance documents on the in-depth assessment of regional aid to large investment projects and on criteria for the compatibility analysis in the field of training, as well as on disadvantaged and disabled workers for State aid cases subject to individual notification;
- a draft Best Practice Code on the conduct of State aid control proceedings and the draft notice on Simplified procedure for the treatment of certain types of State aid. The aim of both documents is to ensure greater transparency, predictability and efficiency of State aid procedures in line with the State Aid Action Plan. The drafts are currently due to be adopted in the first half of 2009.
- a draft Commission Notice on the enforcement of State aid law by national courts.

3) Recovery of State Aids: in 2008, the Commission continued its efforts to improve the enforcement and monitoring of State aid decisions. The Commission is seeking to achieve, on the basis of the recovery notice adopted in 2007, a more effective and immediate execution of recovery decisions.

Information submitted by the Member States concerned shows that good progress towards recovery was made during that period. This is also reflected in the amounts of aid recovered. This is also reflected in the amounts of aid recovered. **Of the EUR 10.3 billion of illegal and incompatible aid to be recovered under decisions adopted since 2000, some EUR 9.3 billion (i.e. 90.7% of the total amount) had actually been recovered by the end of 2008**. In addition, a further EUR 2.5 billion in recovery interest had been recovered.

As announced in the State Aid Action Plan, the Commission continued to take a strict line towards Member States that failed to effectively implement recovery decisions addressed to them.

In 2008, the Commission approved 88 notified schemes on the basis of the 2006 Community Framework for **research and development and innovation.**

In the area of risk capital financing for SMEs, the Commission approved 18 risk capital schemes under the **Risk Capital Guidelines**.

In addition, an important decisionwas adopted in several individual cases involving the Italian **aeronautic sector** supported by the Italian authorities during the 1990s. The decision requires the immediate reimbursement of the loans for most of the individual projects, plus interest on arrears in certain cases. The beneficiaries have reimbursed around EUR 350 million within the time limit of two months laid down by the decision.

4) Consumer activities: the Commission places consumers' concerns at the heart of its competition activities and considers it essential that the main thrust of competition policy should be on maximizing consumer welfare. That is why a **dedicated Consumer Liaison unit** was created in 2008 within DG Competition.

Consumers and their representatives are now able to provide the Commission services with information that is helpful both for a better understanding of the markets and for identifying potential market malfunctioning. They are also best placed to report directly on how they perceive the impact of a particular action.

5) Inter-institutional cooperation: in 2008, the Commission continued its cooperation with the other Community institutions in accordance with the respective agreements or protocols entered into by the relevant institutions. Also in 2008, the European Parliament adopted a resolution or a report on the following topics: the retail banking sector inquiry, the agreement concluded between the Government of the Republic of Korea and the European Community concerning cooperation on anti-competitive activities and the White Paper on Damages Actions.

The Annual Competition Reports 2006 and 2007 were also discussed at committee level during 2008 and are due to be adopted in 2009. The Commission also participated in discussions held in the European Parliament on other related topics, including the application of State aid response to the unfolding financial and economic crisis.