Basic information

2011/2094(INI) INI - Own-initiative procedure	Procedure completed
Annual report on EU competition policy **Subject** 2.60 Competition	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SCHWAB Andreas (PPE)	18/01/2011

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	FOX Ashley (ECR)	14/07/2011
TRAN Transport and Tourism	MARINESCU Marian-Jean (PPE)	12/07/2011

European Commission

Commission DG	Commissioner
Competition	ALMUNIA Joaquín

Key events

Date	Event	Reference	Summary
09/06/2011	Committee referral announced in Parliament		
10/06/2011	Non-legislative basic document published	COM(2011)0328	Summary
22/11/2011	Vote in committee		
29/11/2011	Committee report tabled for plenary	A7-0424/2011	Summary

15/12/2011	Results of vote in Parliament		
15/12/2011	Debate in Parliament		
02/02/2012	Decision by Parliament	T7-0031/2012	Summary
02/02/2012	End of procedure in Parliament		

Technical information	
Procedure reference	2011/2094(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/05762

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE470.074	31/08/2011	
Amendments tabled in committee		PE472.269	03/10/2011	
Committee opinion	TRAN	PE470.013	13/10/2011	
Committee opinion	IMCO	PE473.723	22/11/2011	
Committee report tabled for plenary, single reading		A7-0424/2011	29/11/2011	Summary
Text adopted by Parliament, single reading		T7-0031/2012	02/02/2012	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2011)0328	10/06/2011	Summary
Commission response to text adopted in plenary	SP(2012)260	01/06/2012	

Annual report on EU competition policy

2011/2094(INI) - 29/11/2011 - Committee report tabled for plenary, single reading

The Committee on Economic and Monetary Affairs adopted the own-initiative report by Andreas Schwab (EPP, DE) on the Annual Report on EU Competition Policy. It 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 report 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 committee calls on the Commission 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.

Members stress that the on going consolidation in the banking sector has actually increased the market share of several major financial institutions and, therefore, urge 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.

Members call on the Commission to ensure that the intended simplification of State aid rules for SGEI will not lead to deterioration in the monitoring of overcompensation. They take note of the Commission's intention to introduce a 'de minimis' arrangement in respect of State aid for SGEI, and underline that unambiguous criteria are needed to determine what services would be covered by it. Any proposal to exempt in principle further categories of SGEI from the notification requirement must be based on evidence that such an exemption from the rules is justified and necessary, and does not unduly distort competition.

Antitrust: the committee supports the Commission staff working document entitled 'Towards a Coherent European Approach to Collective Redress'. It notes that private enforcement through collective redress could facilitate EU-level compensation for harm caused to consumers and undertakings and it discusses the issues relating to collective redress. Members also discuss fining policy as an important tool for public enforcement and deterrence. It urges the Commission to incorporate a detailed basis for calculating fines, along with new fining principles, into Regulation (EC) No 1/2003. Members encourage the Commission to review its fining guidelines and suggest a series of principles to evaluate such as introducing a distinction on the level of fines for undertakings who have acted intentionally or negligently.

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, the committee 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 report also discusses **the following issues**: (i) the concentration of critical raw materials suppliers; (ii) the need to open up competition in the credit rating agencies sector; (iii) 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; (iv) 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; (v) a sector inquiry into online advertising and search engines; (vi) an inquiry into the application of public procurement rules, and whether national differences lead to a distortion of competition; (vii) the need for completion of the internal market for all transport modes as the main goal of the European transport policy; (vii) the lack of competition in the roaming market; (ix) 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.

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.

Annual Competition Report: the committee urges the Commission to include in its Annual Report certain specified matters, including a description of the instruments adopted during the year in question, together with a justification for the changes made, and a summary of the contributions received from Parliament and from stakeholders in the context of public consultations, together with a justification as to why it has accepted some of the views expressed and not others.

Lastly, Members urge 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.

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** whch 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.

Annual report on EU competition policy

2011/2094(INI) - 10/06/2011 - Non-legislative basic document

PURPOSE: to present the Commission’s 2010 report on competition policy.

CONTENT: on the 40th anniversary of the Report on Competition Policy, this edition contains an overview of the major developments of competition policy and enforcement over the past 40 years.

Evolution and adaptability of EU competition policy : the report notes that the Treaty provisions laying down the Commission's powers and responsibilities in the field of competition policies have remained remarkably stable over the past 40 years, while the economic and political environment have dramatically changed. Competition policy rules have thus undergone a constant process of adaptation in order to contribute to the major objectives of the EU: building the Single Market, making it deliver for consumers and achieving a competitive social market economy**.**

The EU is undergoing a period of rapid and dramatic changes. Some challenges and issues can be foreseen with some degree of certainty – the exit from the crisis, global competition and sustainable development are among the most prominent. But the EU will no doubt face other challenges which cannot be foreseen yet. Nevertheless, it is clear that competition policy throughout its existence has, against the background of a stable Treaty framework, been able to cope with the considerable evolutions in its environment. Given its resilience and adaptability, EU competition policy will continue to be one of the European Union's assets.

Competition policy as a tool to support competitiveness in line with the Europe 2020 Strategy: as the EU exits from the current crisis in the face of fierce global competition, a major challenge for competition policy in the coming years will be to support as effectively as possible the Europe 2020 Strategy for smart, inclusive and sustainable growth.

- The Commission considers that competition policy is well placed to make such a contribution as it is a key driver for making markets work better through an efficient allocation of resources and increased productivity and innovation. It therefore underpins the competitiveness of the EU economy, which is more important than ever to maintain economic and financial stability. Competition policy and competition-enhancing reforms must thus form an integral part of the economic governance.
- Competition rules also recognise the need to enable Member States to promote the Union's objectives of economic, social and territorial cohesion. The regional aid guidelines facilitate the realisation of the territorial cohesion of the Union by promoting the development of poorer regions. The different State aid rules also allow for training aid and the promotion of the access of disadvantaged and disabled workers to employment.

- Another essential area where competition policy has evolved to take into account a long-term challenge to the Union is the protection of the environment and the promotion of sustainable growth. Through both its antitrust enforcement activities in the energy sector which enhances liquidity and security of supply in the internal market and its adoption of environmental State aid guidelines, which facilitate aid to address market failures in this area, the Commission has ensured that competition policy supports the shift towards a more sustainable economy.

Use of instruments in 2010: the report gives an overview of how the instruments of competition policy, namely the State aid, antitrust and merger control rules, were further developed and applied.

- In 2010, la Commission adopted seven cartel decisions imposing fines totalling over EUR 3 billion on 70 undertakings, maintaining its strong enforcement focus on the fight against cartels.
- The Commission continued its enforcement activities of Article 102 TFEU (abuse of dominant position), notably in the energy sector, where it took four decisions and in the ICT sector, where it opened several proceedings.
- In 2010 the number of mergers notified was at low level due to the economic crisis. In total, 274 transactions were notified to the Commission, 16 decisions were submitted to conditions and no prohibition was decided this year.
- The majority of aid approved in 2010 related to horizontal objectives of European common interest, such as culture and heritage conservation, regional cohesion, environment protection, research, development and innovation and compensations of damages caused by natural disaster, and aid related to the economic and financial crisis. Total aid excluding crisis-related measures amounted in 2009 to 0.62% of GDP or EUR 73.2 billion, at a slightly higher level than 2008 (0.58% of GDP). On average, 84% of aid to industry and services was directed towards horizontal objectives of common interest.

The report also includes an update on the use of the temporary rules for State aid adopted as a response to the financial and economic crisis. In view of the fragility of the recovery, the Commission considered premature to let the Temporary Framework expire in its entirety at the end of 2010. A progressive phasing-out was considered the most suitable response to the current market situation. On 1 December 2010, the Commission extended the validity of the rules for crisis-related measures for the financial sector until the end of 2011. The measures that address outstanding market failures, in particular the remaining problems on access to finance for SMEs, were maintained, subject to tighter conditions to reflect the gradual transition into the normal State aid regime.