

"Developments in the Competition Policy of the EEC"

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I. Introduction

I propose to take advantage of the presence of so many distinguished and influential people gathered here today to consider some very fundamental questions : What is the purpose of competition policy ? What is the Commission's competition policy ? What does the Commission intend to achieve with it ? How does the Commission intend to achieve the goals it has set itself ?

This does indeed seem to be an appropriate moment to be posing these questions. We are still in the most serious recession since the war and this is bringing about a number of fundamental social and economic changes. The most painful symptom of which is of course very high and mounting unemployment.

In the US there has been a tendency to blame antitrust policy for many of our economic ills and this view has found sympathy with the current US administration. It has not found sympathy with the European Commission.

There has also been growing pressure on competition policy in the EEC. Mr. Dekker the President of Philips, has even called for a rewriting of the competition rules of the Treaty (at the European Management Forum Symposium at Davos). I intend to show you that such talk is misguided and that, far from amending the Treaty, the Treaty provides still an appropriate basis for an updated competition policy.

I shall therefore first explain the Commission's views on the purpose and function of competition and competition policy, secondly consider the importance of competition during a recession and finally explain the means by which we are using competition policy to resolve our economic problems.

II. The purpose and functions of competition and competition policy.

A competition as a fundamental constituent part of our economic system.

It is clear from a reading of the Treaty of Rome that the Community is essentially based on a market economy in which fair and undistorted competition has a fundamental role to play.

Its functions are :

- to ensure that available resources are allocated to the most productive sectors;
- to stimulate undertakings to make the best use of their knowhow and skills and
- to encourage them to invent, develop and exploit efficiently new techniques and new products.

We firmly believe that competition is the best stimulant of economic activity since it guarantees the widest possible freedom of action to all. An active competition policy pursued in accordance with the provisions of the Treaty makes it easier for the supply and demand structures continually to adjust to technological development.

Through the interplay of decentralized decision-making machinery, competition enables and obliges enterprises continuously to improve their efficiency, which is the sine qua non for a steady improvement in living standards and employment prospects within the countries of the Community. From this point of view, competition policy is an essential means for satisfying to a great extent the individual and collective needs of our society.

It is a measure of the importance which the Community attaches to competition policy that this is the one area in which the Commission has its own autonomous powers of decision-making.

What then is the competition policy which the Commission is pursuing ?

In a phrase, it is the maintenance and reinforcement of an effective competitive structure in the Common Market.

We are facing a process of desindustrialisation in the EEC, or at least in important parts of it. This cannot be the fate of this highly developed part of the world, and we must reverse this tendency.

We want to press the competition policy into the service of the creation of a new European industrial structure. This means avoiding the artificial protection of old structures and favouring the development of a competitive industrial and distribution pattern. It will permit us to keep our borders open and to contribute to free world trade, whilst serving at the same time the interests of our consumers.

Our competition policy is influenced by a number of other factors which distinguish it from the competition policies of other authorities. First and foremost is the overriding aim of the Community, the competition and reinforcement of a single unified internal market. Secondly there is the fact that in the EEC we also have national competition policies. There are many enforcement tasks which we can - and indeed must - leave to the national competition authorities. I am thinking here of restrictions which do not affect trade between member states. Finally there is the fact that, unique among all competition authorities in the world, we also have the task of policing state aids granted by the member states to ensure that they do not distort competition.

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So much for a general description of the aims of our competition policy. I shall later describe the means by which this policy is translated into action but first I would like to deal with the question of the relevance of competition policy in a recession and comment on the attack to which the philosophy I have outlined above is now subject.

III Should the Rigour of Competition Policy Follow the Business Cycle

For the fourth successive year Europe is going through its worst recession since the war. Let me give you some facts figuring in the Commission's recently published annual economic Report for 1982 - 1983. They are not cheerful news.

Despite the forecast recovery for the second half of 1982 this year was characterized by stagnation with a growth rate of only 0.3 %. There has been a (limited) success in the struggle against inflation but unemployment has continued to increase sharply and is now 11.5 million. Zero-growth led in most member states to a shortfall in tax revenues and an increase in unemployment payments. The rapid increase in debt service costs is adding pressure to the budget deficits. The general climate of uncertainty and pessimism has been reinforced particularly by the extremely high level of world interest rates and has postponed many investment decisions of undertakings in Europe. Despite an improvement in the Community's terms of trade, two worrying facts show that there is a danger of Europe has entered a long

period of zero - growth or even depression : On the one hand we are facing an increasing number of external system shocks, such as oil shocks, major disturbances in world financial markets and political conflicts. On the other hand we begin to understand that a lot of necessary adjustments which have not taken place are accumulating and that our economy shows a growing incapacity to respond quickly to the rapid changes in the economic environment. The increased structural rigidities in our economics have profoundly changed their long-term dynamism. The Special Group of the Economic Policy Committee and Positive Adjustment Policies within the OECD have recently come to the same conclusions.

The depth and length of the current recession are leading to increasing pressure on competition policy and the view is gaining ground that competition rules should not apply during a recession or should be applied less rigorously. It is suggested that, in many sectors, in order to meet the competitive threat from outside our undertakings should be protected from competition from each other.

It is quite natural and normal that such pressures should build up in times of recession. In boom times when markets are growing rapidly and profit and revenue expectations are high there is enough room for all the participants. Undertakings therefore concentrate on competing and trying to conquer as great a share of the market as possible.

In times of recession the desire to reduce risks and freeze market share and profit increases and with it, in an oligopolistic world, the danger of cartellisation between the market participants grows as happened in the 1930s. It is thus in the nature of things that the work of an antitrust authority increases in times of recession.

The Commission, however, does not believe that competition policy only has a part to play when the barometer is set at fair. Quite the contrary I am convinced that it is precisely in times of recession that competition policy has an important role to play. The stimulation which competition provides to adopt to changed economic circumstances is essential to enable undertakings to recover, retain and improve their competitiveness. Cartels, on the other hand ossify outdated structures, lead to suboptimal use of resources and in the long run reduce rather than increase competitiveness.

I shall now explain some of the means by which competition policy is being used to contribute to resolution of problems.

IV The Means by which Competition Policy is Contributing to the Resolution of Our Economic Difficulties

I have so far been speaking in generalities and perhaps some of you have been wondering how exactly and concretely competition policy is contributing to the resolution of our economic difficulties ? I now intend to answer this question.

First though, what exactly are the root causes of our economic difficulties. I would briefly enumerate them as follows :

First, old ossified industrial structures which are inappropriate to the changed economic circumstances of today.

Secondly, lack of sufficient economics of scale in certain sectors when compared with our international competitors.

Thirdly, a lack of ability to adapt and change these structures to the needs of the present and of the future.

Fourthly, lack of investment in research and development in growth technologies.

Fifthly, overcapacity in some sectors.

Sixthly, and this is in many ways a consequence of other problems, lack of competitiveness.

Seventhly, growing protectionism which is an misguided short-sighted reaction to our other problems and reduces our ability to adapt old structures and develop new competitive structures.

Now what are the means by which competition policy is contributing to a resolution of these problems. I shall now give some examples which

categories. First, instances where we are acting to preserve existing competitive structures by acting against distortions of competition and, secondly, instances where we are acting to create the conditions necessary for effective competition to carry out its function.

A. Preservation of Existing Competitive Structures

1. State Aids

In my view the most important area in which we are acting to preserve competitive structures and prevent distortions of competition is in connection with state aids.

As the recession continues, the pressure on governments to grant support to undertakings increases. The argument is always the same. Undertakings and jobs must be preserved. A few figures show the extent to which the number of state aids has increased. The number of proposed aids notified to the Commission in 1976 was 45 and in 1977 this number had increased to 112. By 1981 the annual number of notifications was 141 and in 1982 it had reached 257 (of which 133 were in the steel sector alone). These figures include general aid schemes and are therefore no indication of the number of aided undertakings.

State aids can usefully contribute to the facilitating and smoothing of necessary adaptation to changed economic circumstances to the recession.

industries and the development of less favoured regions.

However they can also, if not properly controlled, lead to ever increasing dependence on and demand for aid.

Aid which is of course partly financed by taxes on healthy undertakings. Increasingly we are finding that aids are also being used as a form of protectionism.

They protect a national producer from competition from outside and thus delay or even prevent that producer from adapting to changed market conditions.

Apart from slowing down adaptation such policies also have the effect of exporting economic difficulties from one country to another. Since most of the member States' trade is within the community, such a process is extremely dangerous for the common market.

An effective community policy in this area is of the utmost importance. All state aids which affect trade between member States must be approved by the Commission. They will only be permitted if they are necessary for:

- the economic development of disadvantaged regions ;
- the promotion or execution of an important project of common European interest ;
- the development of certain economic activities or of certain economic areas.

In any case such aids must not affect trading conditions to such an extent that they are contrary to the common interest. It is this balancing of interests which dominates the Commission's assessment of state aids. In 1981 and 1982, that is since I became responsible for the Commission's policy on state aids, we have forbidden as many state aids as in all other years since the common market was set up. And, more important, roughly half

the number of all notified aids are adapted before obtaining the Commission's approval. Let me illustrate on approach with an exemple :

The French government granted an aid to the textile and clothing industry. It was a disguised aid since it took the form of a reduction of social security contributions. In granting this aid no account was taken of the competitive situation in the Community nor was it part of a restructuring of the French industry in the Community interest. The Commission therefore declared it to be incompatible with the Common Market.

In order to guide Governments (and undertakings) on what state aids do carry out a useful economic purpose and are in the interest of the Common market, we have issued guide lines for regional aids and for sectoral aids in Textiles, steel, ship-building and even for environmental protection. Others are being elaborated.

2. Prohibition Decisions against Undertaking

It has been the Commission's constant policy to prohibit under Articles 85 and 86 all attempts by undertakings to distort existing competition by agreement, concerted practices and abuses of dominant positions. This has for a long time been the area of the Commission's competition policy which has attracted the most attention. For that reason, I limit myself to mentioning this important part of the competition policy without entering

into details or enumerating well known examples.

3. Merger Control

There is, however, a major gap in the Commission's structures. There is as yet no effective ⁱⁿstrument to control mergers. Mergers can of course often have a positive effect on competitive structures but some have a detrimental effect and can even eliminate competition altogether. That is why a European instrument for the control of mergers is urgently needed. It is now ten years since the Commission proposed a merger control regulation to the Council but unfortunately no progress has yet been made despite a modification of the proposal by the Commission in 1981 to take account of the main objections the Council seemed to have.

We do of course have the limited merger control possibilities of Article 86 as established in the Continental Can case. But a regulation is still needed because the application of Article 86 has the following problems.

- there is no requirement of prior notification
- Regulation 17 procedures are too slow
- one of the undertakings must already be in a dominant position (Article 86 cannot, under present case law, be used to prevent the creation of a dominant position)
- must have "practical elimination" of Competition too late
- Industrial policy and other objectives cannot be taken into account. No Article 86(2)!

B. The Use of Competition Policy to Create the Necessary Conditions for Effective Competition

I now come to the second category of means by which we are using competition policy to help resolve our economic difficulties. These are the means we are using to create or improve the necessary conditions for effective competition with the common market.

1. Export Prohibition

The most celebrated example of the use of competition policy in this more active way is our very strict attitude to export bans within the common market and to all measures which discourage or impede "parallel" imports. The Commission accepts that the creation of the single internal market has not yet been completed and that differences in national markets persist - the most striking being differences in price levels. Parallel imports are an important equalising influence which prevent these price differentials becoming too large by transferring competitive pressure from one member state to another.

The single market is a most important precondition for competition to carry out its function of improving economic efficiency and performance on a community-wide scale.

European undertakings need a large internal market to achieve the same economics of scale and therefore have the same incentives to invest and take risks as their American and Japanese competitors.

2. Exemptions

Another means by which competition policy is being used to create or enhance the conditions necessary for effective competition is by the granting of exemptions to procompetitive agreements. The most efficient way of doing this is by means of block exemption regulations.

Thus the block exemption for specialisation agreements which has just been renewed and extended allows small and medium-sized companies to achieve economics of scale by concentrating various parts of their production at different plants belonging to them, a third party or a joint venture.

Another example is the block exemption for exclusive distribution agreements which encourages the penetration of new markets by all exclusivity and the imposition of other obligations designed to improve the chances of the successful launch of the product on the new market.

Another block exemption which is badly needed and which is now being prepared relates to Research and Development. The Commission recognises that the development of new technologies is essential for the achievement of new long-term economic growth. The expense and the risks involved in carrying out Research and Development in these fields can often be reduced if several undertakings cooperate. The Commission encourages this sort of cooperation in appropriate cases and is preparing a block exemption to exempt it and lay down the conditions and framework in which it can occur.

SME's

A common feature of the Commission's block exemption regulations in specialisation and exclusive dealing is the speed and favourable treatment accorded to small and medium sized undertakings.

The Commission recognises the enormous importance of small and medium sized undertakings for the Community economy. They constitute the most dynamic and adaptable part of the economy and are especially important in times of economic change. Small and medium sized undertakings provide employment for a large proportion of the Community workforce.

The Commission is therefore always careful to take account of the special needs of small and medium sized undertakings in the formulation of its competition policy.

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This does not mean, however, that the Commission doesn't recognize that cooperation of larger undertakings in these fields can be desirable. The impact of their cooperation on the structure of the market is in many cases so important that we have to limit the block exemptions to small and medium-sized enterprises.

Crisis Cartels

The Commission can also use the exemption procedure to help undertakings restructure and adapt themselves where they are faced with structural overcapacity.

Structural overcapacity exists where over a prolonged period the undertakings concerned have experienced a significant reduction in their rated of capacity utilization, a drop in output and substantial operating losses and there appears to be not prospect of improvement in the medium-term.

Structural overcapacity may result from entry on to the market of new products or from erroneous demand trend forecasts which gave rise to excessive investment.

In a market economy each undertaking must assess for itself whether and at what point such overcapacity becomes economically insupportable; it also has to decide on the measures needed to reduce this overcapacity. Competition policy must ensure that this reorganization process is not impeded and occurs as smoothly and quickly as possible.

Thus the Commission will approve agreements which in order to combat structural problems, provide a coordinated reduction of overcapacity.

However, the Commission must oppose agreements which, in attempting to combat structural problems, provide for price and quota fixing, and which make no contribution to solving structural problems. It must also oppose the grant of state aid designed to maintain artificially or to increase excess capacity.

A sectoral agreement providing for a coordinated reduction of overcapacity in an entire industry can be regarded as compatible with the rules of competition where :

- (i) its only objective is to reduce structural overcapacity without serving at the same time, to fix or control quantities produced, quantities delivered or prices;
- (ii) its duration is restricted. Certainly that their agreement will come to an end in the near future makes the undertakings concerned take account of the fact that in due course they will once again become full-blown competitors.
- (iii) it provides for no protectionist measures vis-à-vis outside competition, notably, imports from third countries;
- (iv) it contains, for each production unit, a detailed, binding plan of closures guaranteeing that the overcapacity will not merely be mothballed, but irreversibly dismantled;
- (v) it guarantees that, during its application, no new capacity

ring plan as replacement capacity;

- (vi) it provides, if necessary, for a system of sanctions to ensure compliance with the dismantling plan, under the sole responsibility of the undertakings concerned.

Structural overcapacity problems do not however always have to be dealt with on an industry-wide basis entered into by most of the industry. Often it is not possible or, indeed, desirable to obtain the agreement between all concerned. Bilateral agreements between large undertakings by which each agrees to close down part of its production capacity and each agrees to close down part of its production capacity and obtain its requirements from the other can have the same result and is exemptable under the same condition.

3. Surveillance of State-Owned Undertakings

Several sectors of the economy which are dominated by public undertakings are characterised by persisting national divisions and the creation of a single market has not made much progress. The Commission is anxious to ensure that public undertakings also comply with the competition rules and do not distort competition to the detriment of other undertakings. They are often in a position to do this either obtaining state aids (possibly in disguised form) or abusing the dominant positions which they often enjoy. They also may affect normal competition by their purchasing policy.

In order to control the state aid problem in relation to public undertakings, the Commission has adopted the Transparency Directive obliging member States to reveal their financial relationships with their public undertakings. The Commission will then be able to determine whether illegal state aids are being granted. The Court of Justice has, I am pleased to say, now confirmed the legality of this directive following an attack by three member States (UK, France and Italy).

The Commission has also confirmed that public undertakings are subject to Articles 85 and 86 except only where the application of these Articles obstructs the performance of their duties. Thus we have recently adopted a decision against British Telecom for restricting the services of telex retransmission agencies.

Generally the Commission intends to ensure that such public monopolies do not extend their market power into other fields.

4. Regulated Industries

Of course, public undertakings are not the only ones which have been able to resist the establishment of a single market in the Community. Insurance and Banking are two other oligopolistic sectors where undertakings in each member State are largely sheltered from competition in other member States. Here too the Commission is taking steps which will open up these sleepy markets to effective competition.

V. Conclusion

Ladies and Gentlemen, I have attempted to explain to you in the short time available to me the Commission's Competition policy.

I hope that I have shown you that we are not blindly pursuing a competition policy as an end in itself. On the contrary we view competition policy as being of essential assistance in the resolution of our economic difficulties.

[Invitation to pose questions]