European Parliament Backs Commission’s Competition Policy

On 19 June 2007, the European Parliament adopted a resolution which offers broad support for the Commission’s policies for modernising competition law and which recognises the contribution made by competition policy to achieving the Lisbon Strategy goals. The Parliament’s resolution relates specifically to the Commission’s 2005 Annual Report on Competition Policy (published in July 2006). This article sets out the areas of EU competition policy addressed by the Parliament and notes certain of its specific recommendations.

Consistent interpretation and application of competition law

1. The Parliament congratulates the Commission’s success in strengthening the operation of the European Competition Network (ECN). The ECN is a forum through which the Commission and the Member States’ National Competition Authorities (NCAs) cooperate, keep each other informed of proposed decisions and exchange comments about competition law enforcement. The ECN allows the NCAs to pool their experience, identify best practices and work towards the consistent interpretation of Community competition law.

2. The sometimes divergent interpretation of Community competition law by national courts within the Member States leads to uncertainty about the enforcement of competition rules. Variations in the content of final decisions and differing timeframes are, according to the Parliament, also matters to be addressed. In this respect, the Parliament recommends that the Commission should consider the creation of a network of judicial authorities, similar to the ECN.

Merger control

1. The Parliament recommends that NCAs should develop, in the context of an information exchange network, a common database of individual merger control cases.

2. The Parliament also calls on the Commission to be vigilant in relation to anticompetitive behaviour of companies and public authorities which, it notes, can often undermine the effectiveness of structural merger control remedies.

Anti-cartel policy

The Parliament endorses the Commission’s anti-cartel activities. In particular, the Parliament supports increased use of the ECN Model Leniency Programme for whistle-blowing cartel members. It notes that rules about private damages actions for breaches of competition law should be coordinated with the leniency programme, “in order to ensure that adequate incentives for proper behaviour are in place.” It therefore appears that the Parliament is keen to ensure that the increased availability of private damages actions for breaches of competition law will not discourage potential leniency applicants from coming forward.
State aid

1. The Parliament observes that State aid policy is a central part of Community competition policy and emphasises the need for clear criteria for measuring levels of State aid. The resolution welcomes the Commission's efforts to improve the public accountability and transparency of existing State aid mechanisms. At the same time, the Parliament acknowledges that the Commission's sophisticated approach to State aid management in less developed regions of the Community can help those regions 'catch-up' with other, more developed, Member States.

2. Under EU State aid rules, it is for the Member States to take the necessary steps to recover unlawful State aid. The Parliament is concerned that several Member States recover unlawful State aid excessively slowly and that inadequate enforcement of State aid decisions and rules may cause serious harm to fair competition within the EU.

3. The Parliament recommends further Commission initiatives to harmonise national State aid practices and to ensure that State aid does not distort competition in the Community by incentivising companies to move from one Member State to another.

4. The Parliament believes that international cooperation is important to ensure consistent enforcement of competition law in cases with worldwide effects. It recommends that, in relation to sectors operating in global markets, the Commission's State aid policy must concentrate on addressing any State aid measures of third country governments which may benefit competitors of Community based companies. According to the Parliament, the Commission should take a cooperative approach when dealing with third country governments about State aid policy and should not engage in subsidy competition.

Corporate taxation

The Parliament recommends that the Commission should consider how certain corporate taxation practices in the Member States may affect tax competition within the Community. It supports the introduction of a common consolidated corporate tax base within the Community. The Parliament also notes that the tax regimes of some Swiss cantons may affect competition adversely and calls for continued dialogue with Switzerland on this matter.

Competition in the energy sector

1. The Parliament's resolution reflects widespread concerns that there is still no fully liberalised Community-wide energy market. In most Member States, existing operators have very high market shares, leading to high barriers to market entry for new competitors. The Parliament recommends the prioritisation of reducing barriers to market entry and introducing new, environmentally friendly technologies. The importance of dismantling vertical conglomerates and completing ownership unbundling in the energy sector is also emphasised in the resolution.

2. The Parliament acknowledges and endorses two Commission initiatives aimed at increasing efficiency and competition in the energy markets: firstly, the Commission's inquiry into the energy sector and, secondly, the Commission's commissioning of a study into whether rises in energy prices are due to the rise of fuel prices and the impact of the Emission Trading Scheme or to anti-competitive behaviour in the energy market.

Other areas of competition policy considered by the Parliament

In addition to the policy areas discussed above, the Parliament also:

- welcomes the Commission's move away from a rules-based approach to competition policy and towards an economic approach. Similarly, the Parliament approves of the Commission's approach to its sector inquiries, which now reflects the realities of business practices;
> calls for an increased role for the Parliament in the formulation of competition law, including the increased use of co-decision powers;

> calls on the Commission to investigate levels of competition in relation to ratings agencies, auditors and large investment banks;

> welcomes the Commission’s recent initiative to promote private actions for damages for breaches of competition law and emphasises that victims of anti-competitive behaviour should have access to effective means of recovering their losses;

> notes the differing policies of the Member States in relation to services of general economic interest (SGEIs). It calls for the clarification of both the substance and the method of application of current SGEI rules.

**Comment**

The Parliament’s resolution has no legislative effect but will nonetheless be welcomed by the Commission as it continues to reform and modernise competition law. The resolution demonstrates a convergence of views between the Commission and the Parliament about important aspects of competition law policy and shows no areas of fundamental policy disagreement. The support of the Parliament gives added weight to the Commission’s competition policy initiatives.

**Sources**


European Parliament press release of 19.06.2007: ‘Broad support for EU competition policy’
Merger Control

Notifications
3. **Luvata / Eco** – Proposed acquisition by Luvata S.a.r.l, controlled by Nordic Capital (USA), of Eco S.p.A.. Luvata and Eco are both manufacturers for heat exchange products (OJ C 137/9, 21.06.2007).

4. **Simplified procedure cases**
   > **Doughty Hanson / Axcom** (OJ C 133/20, 15.06.2007).
   > **MSREF / Hilton Hotels / Portfolio Hotels** (OJ C 133/21, 15.06.2007).
   > **Terra Firma / EMI** (OJ C 133/22, 15.06.2007).
   > **AXA / Monte dei Paschi / JV** (OJ C 135/20, 19.06.2007).
   > **AIG Capital Partners / Bulgarian Telecommunications Company** (OJ C 135/21, 19.06.2007).
   > **Mapfre / Cattolica / JV** (OJ C 137/8, 21.06.2007).

Initiation of Phase II Investigation
5. **Commission opens in-depth investigation into proposed takeover of Constantia's particle board division by the Kronospan Group** – The European Commission has opened a detailed investigation under the ECMR into the planned acquisition of the raw and coated particle board business of Constantia Industries AG of Austria by Kronospan Holding GmbH of Germany, a member of the Kronospan Group. Both companies are active in the manufacture and supply of wood based products, in particular raw and coated particle board, decorative laminates and components. The Commission has concerns that the proposed takeover might significantly impede competition in the area of raw particle board. The new entity would have a strong position in this area on the Austrian, Hungarian and Slovakian markets (IP/07/842, 15.06.2007).

Phase I Clearances
6. **Unconditional clearances**
   > **Dow Chemical / Wolff** (IP/07/857, 20.06.2007).

7. **Unconditional clearances: simplified procedure**
   > **De Agostini / Santé Holdings / Générale de Santé** (MEX/07/0615, 15.06.2007).
   > **PPR / PUMA** (MEX/07/0615, 15.06.2007).
   > **Iberdrola / api / SER** (MEX/07/0618, 18.06.2007).
   > **KKR / Stefano Pessina / Alliance Boots** (MEX/07/0618, 18.06.2007).
   > **ABN AMRO / OSG** (MEX/07/0619, 19.06.2007).
   > **RWE Power / Carbon Austria / JV** (MEX/07/0619, 19.06.2007).
   > **voestalpine / Böhler-Uddeholm** (MEX/07/0619, 19.06.2007).
> Wingas / Hydrowingas (MEX/07/0620, 20.06.2007).
> Veolia / Sulo (MEX/07/0620, 20.06.2007).
> GE / NewsCorp / JV (MEX/07/0621, 21.06.2007).

**Miscellaneous**