

Is Competition policy working for European business?

European Government Business Relations Council

Brussels - 4/03/2003

Introduction

- The recent economic forecasts made by the European Commission provide a **rather negative outlook of the economic climate** with the average growth rate in the EU estimated at just 1% in 2002, although it may raise to 2% by the end of 2003. Some of our current economic problems are clearly due to external factors, such as the global downturn, which followed September 11, 2001. However, it cannot be denied that the European economy is also burdened with **structural problems**, which decrease its competitiveness and hamper the growth opportunities.
- The European Union has clearly identified this challenge. The European Council held in **Lisbon** in March 2000 set the **ambitious objective** for the Union to become by 2010 "the most competitive and dynamic knowledge-based economy in the world capable of sustaining economic growth".
- **What role can competition policy play in responding to this challenge** and should competition authorities be more lenient during economic downturns? In my opinion, we need **more competition**, not a relaxation of the competition rules, because only then will we ensure the right incentives for innovation and productivity growth. Effective competition in Europe also ensures that companies are successful on a global scale.
- Competition policy is key **to establish a level playing field in the internal market**. This is also a major request of business community and it helps those with competitive advantages to enter into other markets. Indeed, competition policy maintains national markets open, for instance by preventing market sharing agreements or prohibiting mergers that would foreclose national markets.

Enforcement of EU competition policy and commitment to reform

Antitrust

- Let me start with the antitrust policy. **Market failures** resulting from anti-competitive behaviour of market participants, such as cartels, other anti-competitive agreements and abuse of dominant position, adversely affect efficiency in a market economy. **Take for example cartels**. Although their

impact is difficult to quantify, it is clear that they cause very substantial economic harm. Cartels that successfully reduce output and raise price above the competitive level cause customers, collectively, to purchase less of the cartelised product and to pay more for the quantity that they do purchase. Further, a cartel shelters its members from full exposure to market forces, reducing pressure on them to control costs and to innovate. **The abuse of a dominant position** results into comparable inefficiencies in the market. Holding a dominant position is not wrong in itself if it is the result of the firm's own effectiveness. But the dominant firm may be tempted to abuse that position to increase its income and consolidate its hold on the market at the expense of market efficiency.

- Consequently, for a market economy to function optimally, it is generally acknowledged that rules are required which prevent anti-competitive agreements between competitors and abuse of market power.
- Ensuring or creating the conditions which allow markets to function competitively constitutes an ongoing challenge. To better respond to that challenge we are constantly working to improve the effectiveness of antitrust enforcement. A major step in this is the **Council Regulation 1/2003** setting new enforcement rules for implementation of Article 81 and 82 of the Treaty, which was adopted at the end of last year. The central element of the new rules is that they eliminate the present notification and exemption system and introduce the direct application of Article 81 as a whole. They will also allow the national competition authorities to participate in the application of the EU competition law and the national courts to fully adjudicate a competition matter. This new system will be applied as from the 1st of May 2004.
- The entry into force of the Regulation number 1 will start a new way of anti-trust enforcement in the EU. Processing notifications - many of which pose no competition problem - will be a thing of the past. Instead, attention will focus on the most serious violations of competition law like cartels and abusive behaviour of dominant firms.
- We are already anticipating this change and focusing our resources on those anti-competitive agreements and practices that have a particularly negative impact on the European internal market. This means, in the first place, that we are giving a high priority to our fight against cartels, the most pernicious agreements among competitors.
- **Cartel policy** is, indeed, an area which provides a good example on how the EU competition policy functions to establish a level playing field for business in Europe. Take for example the cartel decisions concerning such intermediary products as graphite electrodes, citric acid, carbonless paper or plasterboard. The cartels in those markets affected a vast number of businesses - ranging from large steel industry companies (in the case of graphite electrodes) to companies in the construction sector or food industry - mainly in the form of increased prices or limited supply alternatives. In 2001, the Commission adopted 10 cartel decisions, imposing total fines nearing € 2 billion. In 2002

this level of cartel-hunting activity continued with 9 cartel decisions adopted with total fines nearing € 1 billion.

- Another challenging area are the **abuse of dominant position** cases. Take for example the postal sector, where the Commission issued in 2001 its first decisions finding an abuse of a dominant position. In fact, a total of three decisions were taken concerning this sector:
 - Deutsche Post's abuse by granting fidelity rebates and engaging in predatory pricing in the business parcel services;
 - Deutsche Post's abuse in the German letter market by intercepting, surcharging and delaying incoming international mail;
 - the Belgian postal operator's (De Post/La Poste) abuse by making a preferential tariff in the general letter mail service subject to acceptance of a supplementary contract covering a new business-to-business mail service.

These decisions made it clear that the Commission will not accept that postal incumbents exploit the resources of their statutory monopoly in order to eliminate competitors providing services in areas which are open to competition.

- Another example is the **block exemption regulation on car distribution** which came into force in October 2002. Over the last twenty years, motor vehicle production in Europe has gone through major modernisation process, but distribution models had remained almost unaltered, based on tied control combining both selectivity and territorial exclusivity. The evaluation undertaken by the Commission of this type of distribution in the automotive sector concluded that intrabrand competition was not effective and that the distribution activity was foreclosed to any type of innovative distribution mode. The new block exemption makes it possible for dealers to offer competing brands in the same show-room, and, from 2005, to open further retail outlets anywhere they think they could make good business, without being stopped by the manufacturers.

Merger control

- A law governing merger control is an essential instrument in any competition policy armoury. By providing for a system of *ex ante* control of industrial concentration, the EC merger control has the primary role of seeking to prevent the creation of market structures that would be likely to impede the incentives for enterprises to compete in those markets.
- For that reason, central to any system of merger control should be a **competition-based standard in the review of merger cases**. By seeking to preserve the competitive process, merger control plays an important role in guaranteeing efficiency in production, in preserving the incentive for enterprises to innovate, in ensuring the optimal allocation of resources within the economy and, finally benefiting the customers be they industrial customers or final consumers.
- It should be stressed that most contemplated transactions do not pose a threat to competition, and indeed, a lot of such transactions may result in efficiencies

and enhanced economic performance generally. A minority of proposed mergers may give rise to concerns about likely anti-competitive effects. In those circumstances, merger control is required in order to ensure the remedy, or, if necessary, the prohibition of such transaction. In fact, outright prohibitions are very rare: the total of 18 such prohibitions since 1990 represents just under 1% of all notified transactions.

- The vast majority of competition concerns that arise in merger cases are addressed by divestments. The most recent example is the acquisition of Pharmacia Corporation by Pfizer Inc. in a deal which creates the largest pharmaceutical company in the world. The acquisition was approved by the Commission on 27 February 2003 following the commitments offered by the parties to alleviate competition concerns. Again majority of commitments consist of divestment of existing business, including some products that are still under development.
- To ensure effectiveness and right focus of the EU merger control, we are improving our enforcement tools also in this field. The **reform package** adopted by the Commission on 11 December builds on what is generally regarded as a successful record. In particular, the proposed reform is designed to produce a system which improves the quality of the Commission's decision-making, while at the same time enhancing the due process guarantees enjoyed by the merging companies.
- The package consists of three elements:
 - a new Merger Regulation, which, for example, clarifies the dominance test and introduces a degree of flexibility into the timetable for examination of cases,
 - a notice containing comprehensive guidelines on the assessment of dominance in mergers between competing firms and
 - a "best practice guidelines" covering the day-to-day handling of merger cases and the Commission's relationship with the merging parties and interested third parties, in particular concerning the timing of meetings, transparency and due process in merger proceedings.

State aid

- Let me now turn to the third main pillar of EU competition policy: State aid control. By giving certain firms or products favoured treatment to the detriment of other firms or products, State aid seriously disrupts normal competitive forces. As a result, neither the beneficiaries of State aid nor their competitors prosper in the long term. Very often, public subsidies only delay restructuring of ailing operations without helping the recipient actually to return to competitiveness. Unsubsidised firms who must compete with those receiving public support may ultimately run into difficulties, causing loss of competitiveness and endangering the jobs of their employees. Ultimately, then, the entire market will suffer from State aid. Therefore, State aid that distorts competition in the EU is prohibited.
- Along the line of the above-referred Lisbon objectives, Member States have undertaken a commitment to reduce the levels of State aid and redirect aid to

horizontal objectives of common European interest, and to target it to identified market failures. Thus, in general terms, aid can be approved if it serves generally defined objectives, such as research and development, environment, regional development, or the development of SMEs, and if it avoids undue distortions of competition.

- One of the more obvious forms of aid is that of **subsidies to attract inward investment**, where we have an obvious interest in avoiding a subsidy auction. Thus our rules cap the amount of aid which may be granted, allowing fairly generous subsidies in the poorer less-developed regions, but little if any support in the more advanced areas, except for SMEs.
- An example of somehow hidden aids are the complex forms of **support** that Member States sometimes give **to their publicly owned companies**. It is clearly necessary to ensure that private enterprises can compete on equal terms. In recent years we have been looking very carefully at the different types of guarantees which Member States give to the debts of their publicly owned companies which protect them from bankruptcy.
- In the case of **public banks in Germany**, we found that state guarantees gave the public banks a substantial competitive advantage because they were able to obtain capital on far more favourable terms than private banks. We have thus reached agreement with Germany on the phasing out of these guarantees and the definite end of such guarantees (as of 19 July 2005) is now also stipulated in German law.
- The Commission should also be vigilant with regards to **aid to rescue or restructure companies in difficulty**. Particularly in times of economic slowdown, as the present one, there is a strong temptation by governments to help national companies to overcome difficulties. We have recently seen, for instance, attempts to rescue phone operators in major EU Member States. Such aid risks to cause competitive disadvantage for more efficient operators in the market and, therefore, such aid schemes are subject to very strict conditions. It should also be noted that rescue and restructuring aid are among the types of aid that should be reduced in line with the Lisbon conclusions.
- As in the antitrust and merger control field, also in the area of State aid control there is scope to **simplify, rationalise and modernise** the rules and procedures. We have a comprehensive programme to reform the rules of procedure, including internal working methods, and to simplify and update the substantive rules. In order to ensure that the legitimacy of State aid is understood and accepted, DG Competition will also reinforce its activities of communication. There is also room for increased priority-setting; tools have to be developed to single out cases which raise substantial competition problems so as not to deal with cases that are less important in terms of distortions of competition.

Liberalisation

- Last but not least, liberalisation policies which open markets to competition also bring clear long term benefits to business. The liberalisation of the **energy**

and telecommunication sectors are good examples of the Commission's actions in this respect.

- To give some examples of concrete measures, let's look at the electricity sector. On the 16th of October 2002 the Commission initiated State aid proceedings that seek to end some advantages, such as an unlimited state guarantee and a tax relief, from which the French electricity producer EDF has benefited. On the same day, the Commission opened proceedings against Spain and Italy concerning legislation hindering acquisitions by EDF of shareholdings in electricity companies in these countries. Both measures show our determination to remove all obstacles to competition, including those created by the Member States.
- Today, we start to see the results of the Commission's actions in these sectors: over the past five years (1997-2002) the electricity prices dropped 9% for industrial users and 4% for households. The results are more spectacular in the telecommunications sector, where the liberalisation process is more advanced: during the same period, the price of long-distance and international phone calls fell by 60%. These **substantial price decreases** clearly increase the competitiveness of industrial users of these services.

Conclusion

- To conclude, competition on open markets is the best answer to the challenges of a changing world. It is the motor for reform and innovation. Only with this mechanism in place, the society can continue to generate economic growth, competitiveness and employment as a whole, in the interest of both EU business and EU citizens.