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Competition Policy of the European Commission:

In the Interest of Consumers?

* Opinions expressed are personal

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I. INTRODUCTION

When in the beginning of September 1999 the new Commissioner for Competition, Mr Mario Monti was questioned by the European Parliament regarding how he saw his task as Competition Commissioner, he very clearly underlined his ambition to make the European consumers understand the interest they have in the European Competition Policy. To that end he wanted to introduce during each presidency a Competition Day for Consumers.

The launching of such European Competition Days does not imply that consumers' interests had not been taken into account in the implementation of the European Competition Policy before the present Competition Commissioner took office. Ever since the outset the aim of the European Competition Policy, as enforced by the European Commission, has been to benefit consumers, although this may have been expressed somewhat differently from, as it earlier could be phrased, to strengthen the efficiency and competitiveness of European trade and industry and thereby further the long term interests of consumers, to today's promotion of consumer welfare and ensuring an efficient allocation of resources.

While it is generally understood that competition policy improves overall economic efficiency, it is surprising, however, still to find that its most evident effect, that on consumers, is often so neglected. Consumers should therefore be better informed of, more closely taken into account, and more directly involved in, competition matters. This in turn helps competition policy to focus more clearly on actions, which are ultimately beneficial to consumers' interests. The single most important initiative has, no doubt, been the decision to organise, in association with the European Parliament, a European competition day every six months in the country holding the Council Presidency. The purpose thereof is to inform the public about the benefits that the Competition Policy can bring them in terms of lower prices, diversity of supply, improved product and service quality and also to listen to consumers' comments and concerns on specific markets for goods and services. It is my intention briefly today to recall some of the various ways in which consumers' interests are particularly taken into account in the execution of competition policy and, by giving you concrete case examples, also to demonstrate how this is practically done.

II SOME EXAMPLES OF RECENT CASES WHERE CONSUMER ASPECTS HAVE BEEN PARTICULARLY IMPORTANT

Consumers are not the only beneficiaries of competition policy, but they are no doubt very important ones. When competitive conditions are in place, producers try to attract customers by offering them a lower price, higher quality or better service than their competitors. Consumers also benefit in the long run when efforts made by firms to surpass their competitors eventually lead to greater innovation and efficiency in the production of certain goods or services. However, it is not always easy or, indeed, possible to quantify the impact on consumers of competition policy decisions. As pointed out, firms compete not only on prices. There are many other ways in which consumers can gain from certain policy decisions, e.g. by way of greater product variety or better contractual terms. In other cases, competition policy decisions concern an intermediate stage of production, so that the final consumer is not directly involved. When that is the case, antitrust decisions may increase competition in the input markets, creating the conditions for lower end-product prices. It is, however, hard to quantify how much the final consumer is likely to gain.

Many of our antitrust and merger decisions are of direct and indirect relevance to the European consumers. I would like to point out a few of them which I believe can illustrate the sort of benefits that consumers can expect from competition policy.

A. The Field of Anti-trust

1. Cartels

Over the last years the Commission has intensified its fight against hard core cartels. During the last years around three billion (3000 million) Euros in fines have been imposed upon companies participating in such cartels. I will today, by four examples, give you a flavour of what we are thus doing with the particular perspective of consumer interests in mind.

Scandinavian airline cartel[1]

I will start first with the airline cartel between Scandinavian Airlines System, *SAS*, and *Maersk Air*. The two companies notified a co-operation agreement that came into force the end of March 1999. The main areas of co-operation were code-sharing and frequent flyer programmes. Coinciding with the entry into force of the co-operation, Maersk, however, withdrew from the Copenhagen - Stockholm route, where it until then had been the only competitor for SAS. I may add that this is the most important Scandinavian route with 20 flights a day in each direction. At the same time SAS had stopped flying on the Copenhagen - Venice routes where Maersk had started operations. SAS had also withdrawn from other routes leaving

[1] IP/01/1009 of 18.07.2001

Maersk, its previous competitor on the route, as the only carrier. All this, which was not notified, formed part of a wider secret agreement between the parties that the Commission discovered as a result of on-site inspections in June 2000.

The market sharing agreement was qualified as very serious taking into account the nature of the infringement, its actual impact and the size of the relevant geographic market. SAS was fined around 40 million Euro and Maersk 13 million Euro in fines.

As a result of the decision, competition between SAS and Maersk, the two largest airlines operating to and from Denmark was restored to the benefit of consumers.

<u>The Vitamins Cartel</u>[2]:

In November 2001, the Commission adopted a decision under Article 81 of the EC Treaty and Article 53 of the EEA Agreement finding that 13 manufacturers of vitamins A, E, B1, B2, B5, B6, C, D3, H, folic acid, beta carotene and carotinoids had participated in cartels for each of these products resulting in a total of 12 separate infringements.

The Commission fined eight companies a total of more than EUR 855 million for fixing the prices of eight different products and allocating sales quotas in respect thereof. The limitation period for fines in competition cases[3] was applicable to the infringements affecting vitamins B1, B6, H and folic acid; the Commission therefore did not fine companies for their involvement in these cartels. Each agreement was a very serious infringement of the Community competition rules and as such justified the overall high level of fines imposed.

A striking feature of this complex of infringements was the role of Hoffmann-La Roche and BASF, which were fined the record high sums of 462 million and 296 million Euro respectively. These two main vitamin producers played the central role in virtually every cartel, whilst other players were involved in only a limited number of vitamin products.

The participants in each of the cartels fixed prices for the different vitamin products, allocated sales quotas, agreed on and implemented price increases and issued price announcements in accordance with their agreements. They

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[2] Case COMP/37.512; press release IP/01/1635, 21.11.2001.

[3] Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition.

also set up machinery to monitor and enforce their agreements and participated in regular meetings to implement their plans. The modus operandi of the different cartels was essentially the same. Given the continuity and similarity of method, the Commission considered it appropriate to treat in one and the same proceeding and decision the complex series of agreements covering the different vitamins.

Belgian breweries[4]

In December 2001, the Commission fined five companies a total of more than EUR 91 million for participating in two separate secret cartels on the Belgian beer market.

The first cartel involved *Interbrew*, (the world's No. 2 brewer) on the one hand, and *Alken-Maes* and *Danone* (Alken-Maes's parent company at the time), on the other. Interbrew and Alken-Maes/Danone, Nos 1 and 2 on the Belgian market, had agreed on a general non-aggression pact, the allocation of customers in the "horeca" (hotels, cafés and restaurants) or "on-trade" sector, price-fixing in the retail or "off-trade" sector, the limitation of investments and advertising in the horeca sector, a new tariff structure (horeca and retail) and a detailed monthly information exchange system concerning sales volumes (horeca and retail). The cartel lasted from 1993 until 1998. The CEOs and other senior management of the companies involved met regularly to initiate and monitor these agreements. The Commission considered the infringement to be "very serious". In setting the amount of the fine, it also took into account the fact that Danone had committed similar infringements of Article 81 in the past.[5]

The second cartel concerned private-label beer in Belgium. This is beer which supermarkets order from brewers but sell under their own label. Between October 1997 and July 1998, Interbrew, Alken-Maes, Haacht and Martens met four times to discuss the private-label beer market in Belgium in general and their prices and customers in particular. During these meetings, the four brewers also exchanged business information. This cartel was considered to be a "serious" infringement.

The disclosure of the *Belgian Beer Cartels* lead the Commission to finding similar cartels in several other Member States (e.g. France, the Netherlands and Portugal, as well as Luxembourg where a decision with fines was also adopted in December 2001).

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[4] IP/01/1739 of 05/12/2001

[5] Commission decision of 23.7.1984 (*Flat glass*) and Commission decision of 15.5.1974 (*Flat glass*).

German banks[6]

Also in December 2001 the Commission fined five German banks, for fixing prices for the exchange of the Euro-zone currencies, a total of 100 million Euros. Under the agreement the banks charged a commission of about 3% for the buying and selling of Euro Zone bank notes during the three year transitional period beginning 1 January 1999 until the Euro notes would be issued. Following an investigation in 1999 the Commission established that various German banks and one Dutch bank had taken part in a meeting at which the above mentioned agreement was concluded in October 1997.

With a view to ending the Commission's cartel proceedings, several banks which had attended the October 1997 meeting unilaterally proposed to the Commission to substantially reduce their charges for the exchange of Euro Zone bank notes. The banks thereby abandoned their collusive behaviour and recovered their freedom to set prices individually.

Considering the exceptional circumstances of this case (market disappearance as of 1 January 2002) and the immediate and direct benefits to consumers the Commission ended proceedings against those banks which had proposed and accepted a reduction in their charges.

Plasterboard[7]

In November 2002 the Commission imposed fines totalling EUR 478 million on four companies which operated a long-running cartel on the market for plasterboard, a product which is widely used in the building industry and by DIY practitioners. The plasterboard market, which had a turnover of more than EUR 1.2 billion in 1997 (the last full year of the infringement) is the largest in terms of value to have been covered by a Commission cartel decision over the last ten years or so. The cartel affected 80% of consumers in the European Union, namely in France, the United Kingdom, Germany and the Benelux countries. Two of the companies involved, Lafarge (with a fine of more than EUR 249 million) and BPB (with a fine of more than EUR 138 million), were committing their second infringement of EU law on restrictive agreements, having already been fined once in 1994.

Following a detailed investigation during which it carried out surprise inspections in 1998, the Commission concluded that, between 1992 and

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[6] IP/01/1796 of 11.12.2001.

[7] IP/02/1774 of 27.11.2002.

1998, BPB PLC (United Kingdom), Gebrüder Knauf Westdeutsche Gipswerke KG (Germany) and Société Lafarge SA (France) participated in a plasterboard cartel in the United Kingdom, Germany, France and the Benelux countries. Gyproc Benelux SA/NV (Belgium) joined the cartel in 1996.

Plasterboard is a manufactured product used as a prefabricated construction material or by DIY practitioners and consisting of a sheet of gypsum plaster sandwiched between two sheets of paper or some other material. The companies covered by the decision produce virtually all the plasterboard manufactured in the countries concerned, in some of which the name of the relevant company's product is commonly used to designate the product itself ("gyproc" in Belgium, "placoplâtre" in France), with the names of the companies being very clearly identified as a brand name by consumers (Rigips/BPB or Knauf in Germany, Lafarge in France).

The cartel started at a meeting held in London in early 1992 at which the representatives of BPB and Knauf decided to end what they called the "price war" that was then taking place and expressed the common desire to reduce competition to a level that suited their interests on the German, French, United Kingdom and Benelux markets. In previous years, the price of plasterboard had fallen sharply as a result of fierce competition, which had directly benefited consumers. Following the London meeting, a secret information-exchange system was set up to monitor market trends and avoid over-aggressive competition. Lafarge and subsequently Gyproc also joined the system, in mid-1992 and June 1996 respectively. The information assembled by the Commission showed that Top representatives of the companies repeatedly met and exchanged information on their sales volumes so as to provide mutual reassurance that the price war had ended. Similarly, they repeatedly gave each other advance warning of price increases.

2. Prevention of Parallel Trade

The Commission's constant fight against obstacles to parallel trade shows many examples of how it intervenes with the help of the Competition Policy instruments at its disposal to secure the European consumers' rights to buy products wherever, within the internal market, this is most favourable to them. While the Commission does not act as a price regulator and has no mandate or intention to try to harmonise prices in Europe, the fact that there still exists very substantial price differences for products like cars or pharmaceuticals within the different Member States has over the years induced industries to try to prevent parallel trade.

I will give you a few examples of our actions and will start with the motor vehicle sector where the price differences between the 15 Member States still are very substantial as demonstrated by our bi-annual car price reports, the next one to be published in about a months time[8].

The Car Sector

The Commission has thus so far adopted three decisions with heavy fines against major European car manufacturers (VW, Opel, DaimlerChrysler), where the main infringement was restrictions on cross-border sales:

First the Commission imposed, in 1998, a fine of ECU 102 million on *Volkswagen AG* - Europe's largest motor manufacturing group - for an infringement of Article 81(1) of the Treaty. In particular, it found that Volkswagen had systematically forced its authorised dealers in Italy to refuse to sell Volkswagen and Audi cars to foreign buyers, mainly from Germany and Austria. Since 1995 the Commission had been receiving a large number of complaints from consumers who had had difficulty buying new cars in Italy. In its decision[9] the Commission found that Volkswagen AG, its Italian subsidiary Autogerma SpA and Audi AG had devised, in concert with their Italian dealers, a strategy aimed at preventing, or at least substantially restricting, sales from Italy to other Member States, especially Germany and Austria. Volkswagen was given two months to take the steps required by the Commission in order to put an end to the practices involved.

In October 1995 the Commission had carried out inspections at Volkswagen in Wolfsburg, at Audi in Ingolstadt, at Autogerma, the wholly owned subsidiary of Volkswagen and the official importer for both makes in Italy, in Verona and at a number of VAG dealers in the north of Italy. Papers found in the course of those inspections provided clear evidence of a market-partitioning policy pursued by Volkswagen, Audi and Autogerma.

In its decision, the Commission found that the conduct of Volkswagen/Audi was a threat to the proper functioning of the single market and a very

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8 Prices as at 001.05.2003. The previous one with prices as at 1.11.2002 was published 27.02.2003. http://europa.eu.int/comm/competition/car_sector/price_diffs/

9 Commission Decision 98/273/EC of 28 January 1998 (IV/35.733 - VW) (OJ L 124, 23.04.1998) In its judgment of 6 July 2000 in *Volkswagen*[9] the Court of First Instance confirmed the seriousness of infringements of this kind, which prevent consumers from benefiting fully from the advantages offered by the single market. The CFI upheld the substance of the Commission decision but found that it had not adduced sufficient proof of the actual existence of two of the five measures with which it found fault. The CFI based its assessment of the fine on a duration of three years instead of the ten years taken in the decision, and reduced the fine from EUR 120 million to EUR 90 million. Following an appeal against that judgment the Advocate-General Colomer gave an opinion on 17 October 2002 suggesting a rejection of the appeal.

serious infringement of Community competition law. On the basis of the measures it took, Volkswagen successfully sought to impose an export prohibition restriction. The measures in question, whether viewed as a whole or individually, were liable to significantly restrict competition. Trade between Member States was affected in that the export prohibition impose by Volkswagen restricted cross-border trading. This resulted in trade between Member States being affected significantly.

In setting the fine, the Commission took account of the duration of the infringements - more than ten years - and of the fact that, among other things, the companies in the Volkswagen group set up the system of restrictive practices by exploiting the economic strength they enjoyed in their relationship with their networks of authorised dealers in Italy. It also held that the infringement was aggravated by the fact that Volkswagen did not take the appropriate action when told by the Commission to put an end to what was a serious infringement.

This decision marked an important step in the Commission's practice in this field in that the fine involved was the highest it had ever imposed on a single firm. The size of the fine was an indication that the Commission will not tolerate practices of this kind and will act with similar determination against other manufacturers who set out to partition the market. This case should also be seen in the context of the monitoring of the then applicable block exemption Regulation of car distribution[10]. Article 11 of that Regulation required the Commission to evaluate the application of the Regulation, particularly as regards the impact of the exempted system of distribution on price differentials and on the quality of services to final users.

While the Regulation allowed the industry to establish a number of competition-restricting clauses and practices within the contractual relationships with their dealers, manufacturers were, in return, required to comply with a number of rules laid down in the Regulation, for instance not to restrict the freedom of final consumers and other network dealers to acquire cars in the Member State of their choice.

The Commission found in *Opel*[11] that the importer of Opel cars in the Netherlands, Opel Nederland BV, a subsidiary of General Motors Nederland BV, put into effect between September 1996 and January 1998

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[10] Commission Regulation (EC) No 1475/95 of 28 June 1995 (OJ L 145 29.6.1995)

[11] Decision of 20 September 2000 (OJ L 59, 28.2.2001); IP/00/1028, 20.9.2000. On 1 December Opel brought an action for annulment of the Commission's decision before the Court of First Instance (Case T-368/00).

measures restricting or preventing export sales by its dealers to both final customers and intermediaries, thereby very seriously undermining the proper functioning of the single market, one of the Community's fundamental objectives. Given the seriousness and duration of the infringement, the Commission fined Opel Nederland and General Motors Nederland EUR 43 million. Coming after the *Volkswagen I* case, this was the second major decision finding against a motor vehicle manufacturer since Regulation 1475/95 came into force.

DaimlerChrysler[12]: The Commission decided in October 2001 to impose a fine of close to EUR 72 million on DaimlerChrysler AG for infringements of the EC competition rules in the area of car distribution. The decision concerned measures adopted by DaimlerChrysler AG in order to impede parallel trade in cars and limit competition in the leasing and sale of motor vehicles.

The Commission identified three types of infringements of Article 81 of the EC Treaty. The first one consisted of measures taken by DaimlerChrysler that constitute obstacles to parallel trade. The undertaking instructed the members of its German distribution network for Mercedes passenger cars, roughly half of which are agents, not to sell cars outside their respective territory. This was done mostly in the form of circular letters. In addition, DaimlerChrysler instructed its distributors to oblige foreign consumers to pay a deposit of 15% to DaimlerChrysler when ordering a car in Germany. This was not the case for German consumers, even though they might present the same "risk" of, for instance, being unknown to the seller, ordering a car with particular specifications, or living far away.

The application of Article 81 to the restrictions agreed between DaimlerChrysler and its German agents results from the fact that these agents have to bear a considerable commercial risk linked to their activity. From the point of view of EC competition law, they must therefore be treated as dealers.

In a second infringement, DaimlerChrysler limited in Germany and Spain the sale of cars by Mercedes agents or dealers to independent leasing companies as long as these companies had not yet found customers ("lessees") for the cars concerned. As a consequence, it restricted the competition between its own leasing companies and independent leasing companies because the latter could not put cars on stock or benefit from rebates which are granted to fleet owners. Consequently, the independent leasing companies were not able to pass on such favourable conditions in

[12] Case COMP/36.264 *DaimlerChrysler*; press release IP/01/1394, 10.10.2001.

relation to prices and the availability of cars, to their clients. It is important to note that the sale of Mercedes cars to leasing companies represents a substantial part of all sales of Mercedes cars. Furthermore, it follows from Regulation 1475/95 that leasing companies have to be treated in the same way as final customers, to which distributors are completely free to sell new cars, as long as the leasing contract does not provide for a transfer of ownership of the motor vehicle or an option to purchase prior to the expiry of the contract.

Finally, DaimlerChrysler participated in a price fixing agreement in Belgium with the aim of limiting the rebates granted by its subsidiary Mercedes Belgium and the other Belgian Mercedes dealers to consumers. A "ghost shopper" investigated the sales policies of the dealers, and DaimlerChrysler agreed to enforce the agreement by reducing the supply of cars to dealers that granted higher rebates than the 3% that had been agreed.

The measures adopted by DaimlerChrysler infringe the provisions of Article 81 (1), which prohibits all agreements between undertakings which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the Single Market. Moreover, Regulation 1475/95 prohibits car manufacturers and their importers from restricting, either directly or indirectly, the freedom of final consumers to buy new motor vehicles in the Member State of their choice. It therefore assures that European consumers have the option of buying a car wherever it is most advantageous to them. The regulation furthermore states that the freedom of dealers to determine prices and discounts in reselling to end consumers must not be restricted. This means that the sales prices and conditions must not be fixed by the manufacturer. They have to be determined by each individual dealer.

Video Games:

In October last year, the Commission imposed fines totalling EUR 168 million on Japanese video games maker *Nintendo*[13] and seven of its official distributors in Europe for colluding to prevent exports to high-priced from low-priced countries. The fine on Nintendo alone was calculated at EUR 149 million to reflect its size in the market concerned, the fact that it was the driving force behind the illicit behaviour and also because it continued with the infringement even after it knew the investigation was going on. Prices for play consoles and games differed widely from one European Union country to another during the period investigated by the Commission,

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[13] Cases COMP/C-3/35.587, COMP/C-3/35.706 and COMP/C-3/36.321 and IP/02/1584

with the United Kingdom up to 65% cheaper than Germany and the Netherlands.

The decision concerned Nintendo and seven distributors of Nintendo products, namely John Menzies plc (Nintendo's distributor for the United Kingdom), Concentra - Produtos para crianças S.A. (Portugal), Linea GIG. S.p.A. (Italy), Bergsala AB (Sweden), the Greek unit of Japan's Itochu Corp, Nortec A.E. (Greece), and the Belgian unit of Germany's CD-Contact Data GmbH.

In the decision, the Commission concluded that the addressees participated in an infringement of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement restricting parallel trade in Nintendo's consoles and game cartridges throughout the EEA. Apart from formal distribution agreements that restricted parallel exports, the parties collaborated closely to trace the origin of parallel trade and identify parallel traders.

The Commission had collected evidence showing that Nintendo and its distributors colluded to maintain artificially high price differences in the EU between January 1991 and 1998. According to the arrangements, each distributor was under the obligation to prevent parallel trade from its territory, i.e. exports from one country to another via unofficial distribution channels. Under the leadership of Nintendo, the companies intensively collaborated to find the source of any parallel trade. Traders that allowed parallel exports to occur were punished by being given smaller shipments or by being boycotted altogether.

The investigation showed that during the seven-year period price differences in the European Economic Area (EEA) were frequent and significant. The UK usually had the lowest prices by far, which understandably tempted traders into re-exporting cheap goods to high-price countries.

The most striking price differences were observed in early 1996, when certain Nintendo products were up to 65% cheaper in the UK when compared with the Netherlands and Germany. They were also more affordable than in Spain (up to 67% more expensive than the UK), Italy (54%) and Sweden (39%). The difference narrowed but remained significant in 1997, when the UK price for all N64 game consoles and game cartridges was 33% lower (in October) than everywhere else in the EEA.

As shown by this decision restrictions of parallel trade represent a very serious infringement of Article 81 as confirmed by the European Courts as early as 1966 in the landmark Grundig-Consten case[14] and, more recently, in the abovementioned Volkswagen decision[15]. The seriousness of the infringement and the harm caused to end-consumers led the Commission to impose a total fine of close to EUR 168 million, i.e. the fifth largest ever imposed for any anti-trust infringement. It is also by far the largest fine ever imposed for a so-called vertical infringement i.e., in this case, between a producer and its distributors as opposed to a horizontal cartel between manufacturers of the same product. The fine on Nintendo is also the fourth largest ever imposed on an individual firm for a single infringement.

The infringement was orchestrated by Nintendo, but the rest of addressees, Nintendo's independent distributors in different EEA countries, actively and, in most cases, willingly co-operated with Nintendo in the implementation of the infringement and benefited from it. In determining the fines imposed, groupings were made to reflect the real impact on competition of each undertakings' offending conduct, given the large disparities between them. In addition, a multiplying factor was applied to the starting amount of the fine set for Nintendo, John Menzies plc and Itochu Corporation to ensure a sufficiently deterrent effect in view of their size and overall resources.

Several aggravating circumstances led to increases in the amounts of fine: acting as the leader and instigator of the infringement (Nintendo), continuation of the infringement after the Commission had started its investigations (Nintendo, John Menzies plc) and an attempt to mislead the Commission with regard to the real scope of the infringement by providing incorrect information in response to a formal request for information (John Menzies plc). The Commission also recognised attenuating circumstances in this case: a purely passive role (Soc. Rep. Concentra L.DA) and the co-operation after December 1997 with the commission in the course of the administrative (Nintendo, John Menzies).

By granting large reductions to Nintendo and John Menzies plc following their co-operation, the Commission stressed the importance it attaches to such co-operation even where infringements of a vertical nature are concerned, to which the leniency notice does not apply. Finally, account was taken of the fact that Nintendo offered substantial financial

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14 The Court of Justice in its judgment of 13 July 1966, in joined cases 56 and 58-64, *Grundig-Consten* [1966] ECR 429.

15 *Volkswagen.* Commission Decision of 28.01.98 relating to a proceeding poursuant to Article 81 (ex Article 85) of the EC Treaty. OJ L124/60 of 25.04.98.

compensation to third parties having suffered financial harm from the infringement[16].

As this decision highlights, restrictions of parallel trade constitute a very serious infringement of Article 81 EC and will be pursued and sanctioned by the Commission in a way similar to its enforcement action addressing classical horizontal cartels.

3. Price Fixing

Fixing of prices is a classic element of almost all cartel cases as illustrated by the cases referred to under that heading. Thereby competitors seek to avoid having to get into price competition between each other at the expense of the consumers, who, in the end will have to pay unnecessarily high prices.

Another sort of price fixing is the one in the vertical relationship where a supplier / manufacturer tries to force his distributors to apply a given price for his products. This behaviour is also illegal and belongs to the hard core restrictions.

In the *Volkswagen II* case (Commission Decision June 2001)[17] we had an example of such behaviour. During 1996-1999 VW, through instructions to its dealers in Germany, tried to prevent any discounts being given to consumers who were buying the new VW Passat model. The idea was to bring through to the customers that the image of the brand had been strengthened by the new model. Traditionally in this sector it is known that discounts to end consumers are in the range of 8-10%.

The Commission considered this infringement as a particularly serious one and imposed a fine of EUR 30 million.

The abovementioned case against *DaimlerChrysler* contained, as described, also a price fixing part.

In the *Telefonica/Sogecable/Audiovisual Sport*[18] case, involving the market of pay-TV rights to football matches in Spain, the Commission's action has

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16 Because this is a vertical infringement, the 1996 Leniency Notice did not apply. However, the 1998 Method on how to calculate fines in antitrust infringements does also afford the opportunity to take into account co-operation in an investigation outside the scope of the 1996 Leniency Notice.

17 IP/01/760 of 30/05/2001.

18 Reference IP/00/23.11.2000.

put an end to the agreement to fix the price for watching football matches in Spain in pay-per-view. In the early days of September 2000, when the new football season began, there was evidence of very strong competition between the broadcasters in the form of promotions based on the transmission of football matches. While these offers focused on new subscribers, there was also evidence that some cable operators reduced significantly the prices they charged all categories of customer. Later, the Spanish digital terrestrial operator cut pay-per-view football prices by up to 50%. Thanks to the Commission's action consumers could also benefit from a much broader choice: football rights previously available only to digital satellite operators were made accessible also to other broadcasters, giving rise to a wide range of football transmissions on all three digital delivery systems (satellite, terrestrial and cable).

4. The Application of Article 81(3) in Individual Cases

While it may be that the Commission will not always have specifically addressed the relevance of one of its actions from the consumer interest point of view when it adopts a negative decision under Article 81(1), it will certainly always do so if it is granting an exemption under Article 81(3). Since that only can be done if the criterion that consumers have to get a fair share of the benefit from the resulting agreement or concerted practice. This criterion tends frequently in the end not only to be the decisive one but also the main stumbling block for granting a favourable decision.

In the following we will give a few examples of Article 81(3) decisions and the reasoning therein regarding consumer benefits.

VW/Ford

In 1992 the Commission adopted a decision pursuant to the then Article 85 of the EC Treaty[19], by which the Commission declared Article 85(1) of the Treaty inapplicable to the joint venture set up between *Ford of Europe Inc* and *Volkwagen AG*. In another decision of the same date the Commission dismissed a complaint lodged by the French competitor *Matra Hachette SA* directed against any approval of the joint venture between Ford and Volkswagen. The joint venture, known as AutoEuropa, was set up in Portugal, for the production of a multi-purpose vehicle (MPV). The agreement provided that the two founders were to own half of the joint venture each. Among the many pleas launched by Matra against the

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[19] IV/33.814-Ford/Volkswagen, OJ 1993 L 20 H14, page 14.

Commission decision was one questioning whether the agreement provided consumers with a fair share of the resulting benefit. On this point the Court in its judgment of 15 July 1999[20] concluded as follows:

"120 The Court would point out in the first place that, according to the second of the four conditions laid down by Article 85(3) of the Treaty, agreements qualifying for exemption are those which allow consumers 'a fair share of the resulting benefit'. The question whether the project in question satisfies that condition is examined in paragraph 27 of the Decision, according to which the exempted project will enable economies to scale to be achieved and promote intensified competition in the market, to the benefit of the European consumer.

121 Examination of the applicant's criticisms on this point shows that they raise two main questions.

122 The first question is whether, as contended, the advantage given to the consumer must be assessed by reference to the present state of the market or by reference to the advantage that might have been afforded to the consumer in the event of the founders having chosen to penetrate the market individually. The Court considers that, as rightly maintained by the Commission, the applicant's reasoning is based on false premises. At that stage of the examination of the application for exemption, it is incumbent upon the Commission to appraise the project submitted to it as objectively as possible, without in any way considering the third of the four conditions laid down by Article 85(3) of the Treaty that the Commission may, in order to appraise the indispensability of the restrictions on competition resulting from the project in question, take account of other possible choices. The applicant's view that the advantage made available to the consumer by the project in question should be assessed by reference to the advantage accruing to the consumer from other technologically possible or economically viable choices is therefore, to that extent, unfounded.

123 The applicant's argument then raises the question whether the project at issue is capable of affording the founders a collective dominant position. In that regard, the applicant's reasoning is based on the idea that the existence of considerable excess production capacity, linked with substantial State aid, enables the founders to engage in unfair practices, ousting the competition and, in the longer term, giving the

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[20] Case T-17/93 ECR, [1994] 595.

founders a collective dominant position, which they will abuse to the detriment of the consumer.

124 The Court considers that the applicant's reasoning takes for granted, successively, the acquisition by the founders of a collective dominant position, then the abuse by those undertaking of that position, Such reasoning is purely hypothetical and can only be rejected, without its being necessary for the Court to say whether, in the presence of an adequately substantiated infringement of Article 86 of the Treaty, the Commission is required to reject a request for an exemption.

125 In short, the Court considers that the statements contained in paragraph 27 of the Decision have not been seriously contested by the applicant, and therefore the Decision cannot be regarded as vitiated by a manifest error of assessment on that point."

<u>CECED</u>

Article 6 of the EC Treaty stipulates that Community policy on the environment must be integrated into the other Community policies. Environmental concerns are in no way incompatible with competition policy, provided that restrictions of competition are proportionate and necessary for achieving the environmental objectives pursued.

This principle is clearly illustrated by the *CECED* decision[21] in which the Commission approved for the first time an agreement to stop production with a view to improving the environmental performance of products. The participants in the agreement, nearly all the European producers and importers of domestic washing machines, will stop producing or importing into the EU the least energy-efficient machines in order to reduce the energy consumption of such appliances and thereby reduce pollutant emissions from power generation.

Although participants restricted their freedom to manufacture and market certain types of washing machine, thereby restricting competition within the meaning of Article 81(1) of the EC Treaty, the agreement fulfilled the conditions for exemption under Article 81(3): it would bring advantages and considerable savings for consumers, in particular by reducing pollutant emissions from electricity generation. The Commission decision to exempt the agreement took account of this positive contribution to the EU's environmental objectives for the benefit of present and future generations.

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[21] F-1/36.718; OJ L 187, 26.07.2000; Press Release IP/00/148, 11.02.2000.

GE/PW (Engine Alliance)

On 14 September the Commission adopted a formal decision under Article 81(3) of the EC Treaty approving the creation of the Engine Alliance, a joint venture between *General Electric Aircraft Engines (GE)* and *Pratt & Whitney* (P&W)[22]. The exemption was granted for a period of 15 years.

The joint venture aimed at developing and selling a new jet engine intended to equip Airbus's future very large aircraft, known at the time as the A3XX aircraft but later named Airbus 380. GE and P&W are two of the world's three manufacturers of large jet engines. The third manufacturer, Rolls-Royce, did not have to develop a completely new engine for the A3XX aircraft, but would be able to offer a derivative of its existing Trent engine.

The Engine Alliance would be owned and run by GE and P&W, which had allocated responsibility for the different engine parts between them. The Engine Alliance would be in charge of the final assembly and the sale and marketing of the new engine.

In its decision, the Commission came to the conclusion that, although it might be economically more efficient for the parties to develop the new engine jointly, it would have been technologically and economically feasible for both parties to develop it individually. The creation of the joint venture appreciably restricted competition for the new engine, since it reduced the number of engine suppliers from three potential suppliers to two. It therefore fell within the scope of Article 81(1) of the EC Treaty.

However, the Commission considered that the joint venture fulfilled the conditions for an individual exemption under Article 81(3) of the EC Treaty. The Engine Alliance enabled GE and P&W to each concentrate on the specific aspects in which they had a technological advantage. It would thus enable them to develop a new engine fulfilling stricter performance targets than any existing engine within a shorter time frame and at a lower cost than would otherwise have been possible. Competition would not be eliminated, since Rolls-Royce will be able to offer a new version of its Trent engine in competition with the new engine. Under the heading "Benefits for Consumers" the Commission in its decision stated:

> "The new engine will offer both airframe manufacturers and airlines a technically advanced engine. In this respect, Airbus has declared that it is in favour of the Engine Alliance, which will provide it with an additional offer of engines for the envisaged A3XX aircraft.

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22 Press Release IP/99/684, 15.9.1999.

> The new engine may also offer other benefits, since it will reduce operating costs, service longer routes on a non-stop basis and meet new airport noise restrictions. The reduced operating costs are likely to benefit airframe manufacturers and airlines and also, ultimately, airline passengers by means of lower prices, due to the strong competitive pressure on the market."

The market for large jet engines is highly concentrated, with only three operators. It is further characterised by very high barriers to entry. To safeguard competition on this market, it is important to ensure that the co-operation between the two manufacturers is limited in scope and does not extend into other market segments where GE and P&W currently compete. In its decision, the Commission considered that there was a risk that the joint venture might provide an incentive for the parties to adapt the jointly produced engine for use on aircraft for which it was not originally intended instead of individually developing new engines. The exemption was therefore granted subject to a number of strict conditions.

British Midland / Lufthansa / SAS[23]

In March, 2000, *British Midland International*, *Lufthansa* and *SAS* notified a joint venture agreement under which they agreed to co-ordinate their services to and from London Heathrow and Manchester Internal airports.

The Commission acknowledged that, in terms of efficiency gains and competition, the agreement's overall effect was positive in that it led to a re-organisation and expansion of the parties' existing networks. However, the agreement provided that Lufthansa was to be granted the exclusive right to operate flights on almost all routes between London and Frankfurt. The London-Frankfurt market is one of the busiest in Europe. The Commission concluded that British Midland's withdrawal from the London-Frankfurt route represented an appreciable restriction of competition on this market. It was concerned that the agreement might even have the affect of eliminating competition altogether. Only Lufthansa and British Airways would have remained, and Lufthansa/British Midland would have been in a much better position with regard to access to slots in both ends of the market. In contrast, British Airways was hampered in its efforts to increase its frequencies by a shortage of slots at Frankfurt.

With a view to addressing the Commission's competition concerns, the parties gave a commitment to make slots available at Frankfurt airport so as to allow a new entrant or an existing competitor, in particular British

[23] Press Release IP/01/831 of 13.06.2000.

Airways, to increase its frequencies on this route and compete on an equal footing with Lufthansa. British Airways has since requested and obtained some of these slots. As a result, customers should benefit from a wider choice of air transport services to more destinations, better connections, convenient scheduling and seamless travel. The Commission in June 2001 informed the parties that it granted them an exemption for six years.

5. The Application of Article 81(3) through a Block Exemption Regulation

The issuing of a Block Exemption Regulation (BE) for specific categories of agreements or practices is an efficient way of facilitating the compliance by economic operators with the competition rules in Articles 81 and 82. The possibility of doing so is, however, conditional on the BER fulfilling all the criteria for an exemption under Article 81(3) and not least the one regarding consumers having to receive a fair share of the benefits resulting from the exempted agreements or practices. Furthermore if the Commission would, during the validity of the BER, find that this is no more the case, it may engage of procedure for withdrawal of the BER.

A recent example where the Commission, in its evaluation of the operation of a BER, found that the criteria under Article 81(3) and in particular the one regarding the consumer interest, were no longer fulfilled was Reg 1475/95 regarding the distribution and services of motor vehicles.

Thus the Commission's publication in November 2000 of the evaluation report[24] foreseen under Article 11 of that Regulation, made it clear that the old system of motor vehicle distribution in Europe as governed by the first Reg 123/85 and then with minor modifications extended by Reg 1475/95 would have to be radically changed.

Following extensive consultations with representatives for all interested circles, and not least consumers, as well as a number of expert studies, the Commission in February 2002 presented its draft new BER for the motor vehicle sector[25] whereby a radical overhaul of the whole system was suggested. Based on the Evaluation Report and the numerous comments thereon the Commission set out in the new regime to remedy the competition problems thus identified. The new rules are designed to increase competition and bring tangible benefits to European consumers for

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[24] http://europa.eu.int/comm/competition/car_sector/distribution/#report.

[25] http://europa.eu.int/comm/competition/car_sector/distribution/#reg_1475_95.

both vehicle sales and servicing. The regulation will open the way to greater use of new distribution techniques such as Internet sales. It will lead to more competition between dealers, make cross-border purchases of new vehicles significantly easier, and lead to greater price competition. Consumers will be better informed and it will be easier to compare cars and associated services offered by dealers. Car owners will have easier access to after-sales servicing, potentially at lower prices. The quality of vehicle servicing and repairs will be fully maintained. With regard to all these aspects, the driving theme that has inspired the draft regulation is that the consumers' interests must be put first.

After an intensive debate and extraordinarily tough lobbying from car manufacturers, the Commission on 17 July 2002 adopted the new BER 1400/02 on distribution and service of motor vehicles[26]. In doing so the Commission was strongly supported by the European Parliament, whose suggestions it also mostly took on board.

6. Regulated Sectors

Obviously developments which are important for many consumers take place in sectors which are regulated or subject to deregulation. I'll limit myself to give you one such example out of several concerning the sector of telecommunications.

In November 2002, the Commission decided, with regard to the telecommunications sector, to close the *leased line sector inquiry* it had launched in 1999, since the concerns relating to high prices and issues of possible discrimination were now being adequately addressed, both at national level through the enforcement of the EU sector-specific regulation by national regulatory authorities (NRAs), and through own-initiative procedures by the Commission relating to specific EU Member States[27].

The conclusions of the first phase of the inquiry had emphasised high prices and diverging pricing policies in the EU that were not justified by cost differences[28]. In November 2000, the Competition Directorate-General had opened five own-initiative investigations into possible excessive prices and/or discriminatory behaviour in the provision of leased lines in Belgium,

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[26] http://europa.eu.int/comm/competition/car_sector/distribution/#final_reg.

[27] IP/02/1852, 11.12.2002.

[28] For more details of the outcome of the sector inquiry, see working document of September 2000 at: http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/leased_lines/

Italy, Greece, Portugal and Spain. Two years later, the Commission found a considerable decrease in leased line prices across the EU. For example, since the launch of the sector inquiry in July 1999, international leased line prices have gone down by 30-40% on average[29]. A second important outcome is a pro-active stance on the part of NRAs regarding the provision of leased lines and pricing for such lines.

The Commission therefore decided to close its own-initiative investigations regarding Belgium and Italy given the evidence of significant improvements in the competitive situation in those Member States. Similarly, subject to a further decrease in prices for international leased lines between neighbouring or nearby EU Member States or further justification of their level, the Spanish case might be closed. The Competition Directorate-General will continue to closely monitor the situation in Portugal and Greece

B. The Field of Merger Control

Many of the Commission's decisions in the field of merger control also have a direct impact on the daily life of consumers. In the following a few such examples will be given.

In the case of the merger between the German electricity companies *Veba* and *Viag*[30] from the year 2000, the operation was made conditional on full compliance with strict divestment undertakings by the parties. This was to ensure that competition in the recently liberalised German electricity market would not be impeded by a dominant duopoly between Veba/Viag and their biggest Competitor RWE. In dealing with the case, the Commission co-operated closely with the German Bundeskartellamt, which had to investigate the parallel merger of RWE and VEW and cleared it under similar conditions. As a result, German electricity consumers will continue to benefit from competition in electricity supply, which has already led to significant price cuts for both industrial and household consumers since regional monopolies of power utilities were legally abolished two years ago. Without the far-reaching conditions imposed by the Commission and the Bundeskartellamt, the two mergers would have led to a situation where, in the absence of effective competition, prices in Germany would have been

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29 For more details of the outcome of the sector inquiry and the individual own-initiative cases, see explanatory memorandum of November 2002 at: http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/leased_lines/

30 Press Release IP/00/613 of 13.06.2000.

likely to increase again towards the previous level, cancelling out the benefits of liberalisation. Enhanced competition in electricity supply as a result of liberalisation may also lead to improvement of the services offered by utilities (e.g. multi-utility services, more consumer choice as regards source of supply - "green" power etc).

The same year the Commission also imposed conditions on the merger between *TotalFina* and *Elf Aquitaine*[31], which would have risked impeding effective competition on several product markets in France. These included such vital markets for consumers as the wholesale market in domestic heating fuel, the retail market in liquefied petroleum gases (LPG) and the sale of motor fuel on French motorways. The required sell-off of a large proportion of the merged entity's investments in transport and storage logistics will allow non-integrated producers to remain competitive in the retail market for domestic heating fuel and for LPG and, therefore, exert downward pressure on prices. On the market for motor fuel on motorways, the required divestment of 70 petrol stations will preserve conditions of effective competition and allow the entry of a large retail operator (Carrefour) into a sector traditionally monopolised by energy groups. This latter aspect should develop competition not only on prices, but also on the supply of additional services to consumers.

In the *Nordia/Postgirot*[32] case, the Commission in 2001 approved the acquisition by the Scandinavian banking group Nordea of sole control of Sweden's Postgirot Bank AB, subject to conditions. Postgirot was a wholly owned subsidiary of state-owned Posten AB, the Swedish Post Office. It owned and operated an in-house giro payment system, which it used to supply distance payment services to retail and corporate customers. Postgirot also provided banking services to household and corporate customers, including deposits, lending, international payments, trade finance and card services. The deal initially raised competition concerns as Nordea would have controlled both Postgirot and Bankgirot, the two main bank payments systems used by Swedish households to pay electricity, telephone and other bills. Such a significant level of influence could have led to price increases directly affecting consumers' daily banking needs. Nordea undertook, however, to reduce its stake in Bankgirot to 10%, a level which would no longer give it decisive influence over the company, and to withdraw from Privatgirot, a company which competed with Postgirot in giro-related technical services. By accepting these undertakings and making approval of the merger conditional on them, the Commission made

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31 IP/00/135 of 09.02.2000

32 IP/01/1552 of 08/11/2001

sure that the newly-created entity would continue to face competition to the advantage of final consumers.

C. Some Comments on these Examples

As explained in the introduction, one of the main purposes of the European competition policy is to promote the interests of consumers, that is, to ensure that consumers benefit from the wealth generated by the European Economy. This objective, which Commissioner Monti has emphasised on various occasions and continues to consider one of his top priorities, is horizontal in nature: The Commission thus takes the interests of consumers into account in all aspects of its competition policy, namely in countering anti-competitive agreements, not least hard core cartels, abuses of dominant positions and obstacles to parallel trade, but also in the control of concentrations and state aid granted by Member States.

It must be admitted that it is frequently difficult for individual consumers to appreciate the impact that the competition policy has on their daily lives. This is because of the complexity of many individual competition cases and the fact that the Commission's action in this field often impacts more indirectly on their interests, while, for example, the termination of a cartel in the field of consumer goods or the provision of excessive prices charged by a dominant telecommunications operator may directly result in a drop of prices which is felt in the budget of every household. An efficient merger control system may not necessarily be perceived as beneficial by the consumers who profit from it. This is indeed because control in the EU serves to pre-empt negative effects of concentrations on consumer welfare which might otherwise have occurred. The positive results of merger control are therefore often only apparent in the longer term. Also with regard to state aid it is clear that the control thereof plays a part in efficient resource allocation within the European economy, thus contributing to a sound economic environment for companies and consumers alike. In its state aid decisions the Commission take into account aspects related to the proper functioning of services of general interest.

For a number of the cases mentioned among the examples above the consumer benefits of the Commission's action would seem pretty obvious. This goes for instance for the cartels whereby collusion on prices to the detriment of consumers have been stopped. As to the cases regarding prevention of parallel trade it is also clear that only the vigilance of the Commission's enforcement of the EC competition rules can secure the consumers' rights to seek supplies wherever in the European Union it is most advantageous to them.

With regard to the few examples given as to individual exemption decisions it is obvious that it frequently is very difficult to quantify, in an assessment regarding the future, the resulting benefit for the consumers of an exempted restriction. The case of the recent review of the European regime for car distribution is perhaps one of the most prominent examples of the Commission having emphasised the role of consumer interests for such a block exemption regulation at all to be feasible. The selection of cases quoted here has been made only in order to give some illustration. Certainly there may be, among the great number of cases that the Commission deals with, many more which also could have been chosen.

III The Importance of Consumer Action

A. In relation to Competition Authorities

What do we learn from the above examples from the practical life of DG Competition regarding the relevance for consumers of a strong enforcement of the competition rules?

I think that one conclusion is that as much as competition helps consumers, consumers should also actively help competition. The European competition authorities need support and understanding from consumers of the interest they have, not only in the short term but also in the long term, in healthy competition and an efficient enforcement of European Competition Rules by the competent competition authority, be it at a European level the European Commission or at a national level like a National Competition Authority. Competition law and the enforcement thereof is the consumers' best friend. However, it is important that we have active consumers who can give the competition authorities, both market information and evidence of the particular interests of consumers that should be protected. I will, through two examples, again from the car sector, try to explain what I mean.

First, I would address the importance of having active consumers and give you the example of consumer complaints in the motor vehicle sector: The responsible unit F-2 in DG Competition handles several hundred direct complaints/letters from consumers mainly on delivery time and price differentials. Such consumer complaints were at the origin of all the Commission's decisions against car manufacturers. While a simple letter rarely is enough, a series thereof normally can provide the Commission services with a basis to open an investigation. Beyond that, these letters are all treated in order to resolve the practical problems with the manufacturer itself. The job for the colleagues in that unit is not always easy but the result as to settling practical problems is now quite a success.

The other example concerns the input from consumer organisations to the regulatory review I just mentioned in the motor vehicle sector. In our work, of more than three years, on the substantial review of car distribution in Europe, which resulted in the new Car Block Exemption Regulation 1400/02 that came into force last October, we had very valuable input from consumer organisations like BEUC and the national consumer associations as well as from motor associations like FIA and the national motor associations. It was very important as always that we could receive input from consumers to counterbalance somewhat the extremely heavy industrial lobby.

In order to receive essential input from, and raise awareness among consumers about its work in the competition field, the Commission pursues a number of avenues. As already mentioned "European Commission Day" is held twice a year in the country holding the EU Presidency, with the active participation of the Commission and the European Parliament. These events serve to make competition matters more accessible to consumers and their representatives. The Commission also co-operates intensively with consumer organisation, notably BEUC, the Europe-wide consumer association, and encourages national consumer organisation to become more actively involved in pointing out areas of particular concern to consumers. The Commission's Annual Report to the European Parliament on its competition policy is another channel of communication with consumers.

I would also like to say a few words on the fundamental reform at European level that is the decentralisation of the enforcement of Articles 81 and 82. This means that much of the work today done at European level by the EU Commission, from 1 May 2004 should be handled by the then 25 national competition authorities. These latter should then be prepared and equipped sufficiently well to take on this. To a great extent this will indirectly bring about a considerable harmonisation of competition policy in Europe to the benefit of EU consumers. The European Competition Network (ECN) composed of the 25 national competition authorities with the Commission at the centre will here be extremely important.

The reforms currently being undertaken in the antitrust field and in relation to the control of concentrations will help to bring the decision-making process closer to consumers. More specifically, the decentralised application of antitrust rules will allow consumers to address their grievances to national competition authorities which will be fully involved in the implementation of European antitrust rules. These rules are directly applicable in all Member States and the reform also strengthens the role of national courts in punishing infringements. In the context of the proposed reform of the Merger Regulation there are plans to create a Consumer Liaison Officer function within DG Competition in order further to enhance consumer involvement in merger proceedings as well as other competition proceedings.

B. Private Enforcement

Another aspect of importance for European consumers and complementary to the enforcement of competition rules by public authorities, is the possibility for private actors to ask judges to order the termination of illegal behaviour or to grant damages resulting from such illegal behaviour. It is clear to any observer that private enforcement of the EC competition rules is lagging far behind public enforcement. The lack of a clear set of rules and economic incentives for claims of damages in the EU Member States are two of the main reasons why there is presently virtually no successful private litigation for damages in connection with infringements of the EC competition rules. This has a negative impact on compliance incentives and ultimately the efficiency of the EC competition rules themselves. It has a direct negative impact on consumers who are not able to make their interests prevail in terms of claims for damages in court. Whilst the nullity provided for by Article 81(2) is a strong sanction, nullity of a contract is not sufficient to make good the loss caused by anti-competitive behaviour. In 2001, in a preliminary ruling in the case of *Courage v. Chehan* the Court of Justice stated that "*the full effectiveness of Article 85 of the Treaty and, in particular, the practical effect of the prohibition laid down in Article 85(1) would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition… Actions for damages before the national courts can make a significant contribution to the maintenance of effective competition in the Community*". This case law requires Member States to provide for the possibility for individuals to claim damages. The Court has since its 1963 preliminary ruling in the *Van Gend & Loos* case repeatedly stated that the national courts must safeguard the rights which result from the direct applicability of Treaty provisions.

The reason why in Europe private action has not been successful in the field of competition is mainly due to the difficulty of proving the infringement and the resulting damage and to the lack of economic incentives to bring private actions. In the US private actions represent 90% of all antitrust enforcement while in Europe it probably represents less than 10% and for successful damage claims less than 1%. Exploring the legal context in which private enforcement takes place within the United States, we immediately identify a number of incentives that are generally unknown in Europe, namely class action, contingency fees and treble damages.

It would not be the objective of the promotion of private action in Europe to facilitate certain excesses of private action known in the US with its system of punitive damages and class actions which lead to abusive settlements or contingency fees. There are less extreme ways to promote private action which could make a significant contribution to stimulating private action in Europe.

Promoting private action would to me seem a logical complement to Council Regulation 1/2003 which pursued the objective of facilitating private enforcement before national courts by removing the Commission's exclusive power to apply Article 81(3). This was a necessary but not sufficient condition to promote private action in Europe. Further steps should in my view now be contemplated.

IV Conclusion

Having now finally arrived at answering the question raised by the programme title, "Competition Policy of the European Commission in the interest of consumers?", I would like to replace the question mark by three exclamation marks and give you the unequivocal answer: Yes indeed the European competition policy is in the interest of consumers!!!