

# **EU COMPETITION POLICY: Meeting the challenges**

**For**

**Global Corporate Council Association**

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## **A. Introduction**

- In the European Union, we rely on **competition as the fundamental principle** for the organisation of our economy. This is recognised in the Treaty which states in Article 4 that the Community's economic policy shall be “...*conducted in accordance with the principle of an open market economy with free competition.*”
- Indeed, the advantage of **competitive markets** is generally recognised. Competitive pressure promotes better resource allocation and less slack in the use of inputs. As a result, it fosters productivity and **economic growth**. At the same time, increased competitive pressures force companies to innovate and to bring

new products to the market as quickly as possible, which induce **dynamic efficiency** gains.

- The **ongoing challenge** faced by competition policy and enforcement is therefore ensuring or creating the conditions which allow markets to function competitively both as regards the behaviour of actors on these markets and in view of obstacles created by state measures. This certainly means enforcing competition law, but it means as well bringing the substance of the **rules more into line with the way markets** currently operate and with the integration objectives enshrined in the Treaty.
- The increasing complexities that derive from globalisation of markets and from the ongoing enlargement process renders the challenge faced by competition policy all the time more demanding.
  - Imminent **enlargement** of the European Union to 25 members implies a substantial effort both within the Union and by the 10 candidate countries for competition rules to be applied effectively upon accession of the new Members states.
  - At the same time, **globalisation** of markets requires a more sophisticated analysis of market dynamics and increased co-operation between competition policy makers around the world.

In light of this, the Commission considered that had become necessary modernising the enforcement of competition rules.

- Finally, **changes in the economic environment**, such as the reduced prospective on economic growth or the difficulties facing certain sectors which we have seen in 2002, cannot be ignored, although they are no reason to compromise the fundamental logic of an effective competition policy.

## **B. Ensuring that the Community rules are constantly kept in line with economic realities**

- Ensuring that the Union has rules encouraging the forces at work in the economy to be competitive constitutes the primary objective of competition policy. The Commission again confirmed in 2002 its concern to **free up market forces** by adjusting its legislation in line with market trends, while playing its role as an initiator of change to the full where necessary. I will illustrate this with a few notable examples.

- In the **energy sector**, political agreement was reached in November on the new directive to speed up market liberalisation for electricity and gas. By aligning the legislation on the new characteristics of those markets, the directive will eliminate the distortions of competition resulting from the different rates at which the Member States have been conducting liberalisation. The adoption in June of the regulation on cross-border trade in electricity is also a major step towards greater competition.
- Likewise, the **new postal directive** adopted on 10 June clears the way for more competition between operators on what will become a genuine single market in postal services. For its part, the new regulatory framework for **electronic communications networks** and services, which will become effective in the course of this year, assigns a more decisive role to analysis of competitive conditions with a view to rolling back “ex ante” regulation as far as possible.
- In the **state aid field** progress was also made towards simplification and clarification of the rules. The new multisectoral framework for large **regional projects**, adopted in March, lays down clearer rules for assessing major investment projects and does away with the prior notification requirement for aid granted under an already approved scheme. A new regulation on **aid for employment**, adopted on 6 November, also facilitates Member State initiatives to promote job creation by eliminating the requirement to notify certain aid measures.
- Neither must the Commission lose sight of its role as an initiator of change, where markets do not function satisfactorily in the light of the Treaty objectives. The adoption last July of the new exemption regulation for motor vehicle distribution is a concrete example of our determination to force the pace of change when it is a long time coming. The old regulation was no longer appropriate: the **integration of the car market** had not been achieved to the extent hoped for, and consumers were not receiving their share of the benefits deriving from the exempted restrictions. We had to amend the rules in order to give a fresh boost to market integration while allowing scope for business initiative.

### **C. More systematic and effective enforcement of the competition rules**

As I said in my introductory remarks, effective enforcement of competition law and policy requires some modernisation efforts in order to face the new challenges posed

by the enlargement of the European Union and, more generally, the globalisation of markets.

### **C1. Modernisation of antitrust rules**

- On 16 December the Council adopted, by a unanimous vote, a new regulation laying down the framework for applying Articles 81 and 82 of the Treaty. Its number, Regulation 1/2003, symbolises the fact that this instrument turns over a new leaf. The Commission, the national authorities and the national courts will henceforth join forces in applying a single body of rules throughout Europe.
- The reform will constitute an important step towards **decentralisation** of the application of EU antitrust law. It is in fact a new system of governance for the application of the Community antitrust rules which is better suited to the enlarged Community.
- At the same time, the reform also contains a number of safeguards ensuring a **consistent application** of the rules throughout the Community both as regards the national courts and the national competition authorities. The reform will create a **level playing field for companies** as regards agreements which affect trade between Member States. This will be a formidable factor of integration for the internal market and will give much more weight to the EU antitrust rules.
- There is no risk of re-nationalisation of competition law. The Commission stays in the game as autonomous enforcer and keeps the power to intervene if a serious divergence from established principles was occurring. We will create a network of competition authorities, called the **European Competition Network**, where the competition authorities of all Member States and the Commission will closely co-operate for the enforcement of the European antitrust rules. As a guardian of the Treaty the Commission will have a special responsibility in that network.
- Overall, this new system of enforcement will **enhance effective enforcement** of the EC competition rules in several ways:
  - it will reduce the bureaucracy for companies who do no longer have to notify agreements to the Commission;
  - it will allow the Commission to focus its enforcement activities on the most serious infringements like cartels instead of working down a pile of notifications;

- it will allow the National Competition Authorities like the OFT and the Bundeskartellamt to participate in the application of EU competition law because the Commission has no longer a monopoly over the exemption rule;
- it will allow national courts to fully adjudicate a competition matter where up till now they were blocked in their action by the exemption monopoly of the Commission.
- The reform will bring about a **change of culture for companies** and their lawyers. On the one hand, companies will have more security to enforce their agreements before national courts and less administrative burden. On the other hand, companies will have to carry out more self-assessment of their agreements and practices. They will no longer be able to ask systematically competition authorities to assess ex ante the legality of their transactions. The consequence of the new system for companies will be more security but also more responsibility.

## **C2. Merger Review**

- The other on-going reform that will shape future competition policy is the review of the EC's system of merger control, laid down in the EC Merger Regulation, which the Commission proposed on 11 December last year.
- Higher levels of industrial concentration have necessitated greater sophistication in the **economic analysis** contained in the Commission's reasoned decisions in the field of merger control, and those decisions have been subject to increasingly close scrutiny by the European courts.
- What the Commission is proposing, therefore, are significant improvements to enhance the transparency and consistency of the Commission's policy, making sure that our investigations of proposed mergers are more thorough, more focused, and firmly grounded in sound economic reasoning.
- The Commission's Green Paper launched a reflection on the merits and shortcomings of **substantive test** based on the concept of 'dominance'. It was concluded that any potential drawbacks to retention of the dominance test appear, at least at present, to be more theoretical than real. Indeed, we believe that the dominance test, if properly interpreted, is capable of dealing with the full range of anti-competitive scenarios which mergers may engender.
- However, in view of the potential "gap" or gaps in the scope of our current test, the Commission proposes to **clarify the current test** so as to make it clear that the

test applies to situations of oligopoly which may give rise to competition problems (so-called "unilateral effects").

- In its **draft Notice** on the assessment of dominance in "horizontal" mergers, the Commission intends to lay down guidelines on the interpretation and practical application of the substantive test in mergers between competing firms. The aim is to provide more legal certainty and better guidance, for instance on the concept of dominance.
- The Commission also proposes to deal with the issue of **efficiencies** in merger analysis, clarifying the extent to which efficiency considerations are taken into account in the Commission's merger analysis.
- One of the main objectives of the review is also to simplify the system for the referral of merger cases from the Commission to national competition authorities and vice versa (**jurisdiction**). The aim is to ensure that the best-placed authority examines a particular transaction while at the same time reducing the incidence of "multiple filing", i.e. notification to numerous competition authorities within the EU.
- A series of further non-legislative measures designed to improve the **quality of the Commission's decision-making** in merger cases will also be introduced, while at the same time enhancing the opportunity for merging companies' views to be taken into account throughout the investigative process. The new measures include, for example, the appointment, for all in-depth merger investigations, of a peer review panel composed of experienced officials, whose task it will be to scrutinise the investigating team's conclusions with a "fresh pair of eyes" at key points of the enquiry.
- The current Merger Regulation ensures that mergers are examined within tight deadlines. The Commission is firmly opposed to a general erosion of the tight **timetable**. However, it is proposed to introduce a degree of flexibility into the timeframe, in particular for complex cases.

#### **D. International co-operation**

- But these efforts would be in vain if we lost sight of the fact that globalisation makes it essential for us to discuss competition issues with our trading partners. Our efforts will bear fruit only if similar action is taken in other countries. That is

why the Commission have always endeavoured to develop international co-operation in the field of competition policy and enforcement, at both bilateral and multilateral level.

- With a view to **preparing for enlargement**, efforts by the candidate countries to implement the *acquis communautaire*, particularly in the state aid field, continued, and this enabled negotiations with the Czech Republic, Hungary, Malta, Poland and Slovakia to be rounded off before the end of the year.
- As far as **bilateral co-operation** is concerned, clear headway was made towards the conclusion of a co-operation agreement with Japan, with the adoption of a proposal for a Council decision to that effect.
- Finally, at **multilateral level**, work progressed satisfactorily. The inaugural conference of the International Competition Network was held in Naples in September, and the WTO working group on trade and competition continued its discussions at meetings where we put forward highly concrete proposals.

## **E. Conclusions**

Significant challenges are posed to competition policy in its role of encouraging the forces at work in the economy to be competitive. The Commission has taken up these challenges and launched a very ambitious programme of changes to the system of enforcement of Community competition rules. Yet, I am confident that the result will meet the high expectations that European industry and consumers vest in the Commission's competition policy.