

Speaking notes

Re. Mr von Bismarck's report on the draft regulation on concentrations

1. I must start by confessing that the subject we are going to discuss is, for me at least, a very sad affair. Sad because we have recently "celebrated" the tenth anniversary of the Commission's sending of a draft regulation on merger control to the Council, without any real progress having been made. Ten years later the proposal is still "gathering dust" in the Council. This record of legislative dilatoriness is worthy of the Guinness Book of Records!

No blame attaches to the Parliament in all this : Parliament, and the Economic and Social Committee, delivered opinions on the draft regulation way back in 1974. Both bodies at that time supported the principle of the need for a control instrument.

In the Council, however, the proposal has not got beyond the discussion stage.

2. When we look back on developments over the past ten years, the question arises whether the situation has not changed so much since then that our whole philosophy underlying the then proposal has not been overtaken by events. In other words, are there circumstances in which now, in 1983, there will no longer be any need for a Community instrument for merger control?

The answer is No.

3. In 1983 such an instrument is perhaps more important than ever before. Our present policy towards administering the competition rules is not only to apply them defensively, but also to apply them dynamically, offensively. To do so we need to have a means of controlling the structure within a given industry. Whilst our policy is sympathetic towards, for example, forms of cooperation in the small and medium-sized firm sector, at the same time we

must be able to intervene in structural changes involving big firms where these may have damaging consequences. Such structural changes can be dangerous for the intensity of concentration within an industry and, in the long run, for the competitiveness of our economy.

4. Thus what we are taking about here is the phenomenon of concentration. The studies we have made indicate that over the past few years there has been a general slowing in the increase in concentration. The degree of concentration has remained fairly constant almost everywhere for some time. This might be taken as a sign that further concentration - more mergers - was no longer a real danger, so that a merger control instrument was now superfluous. Unfortunately, this not so. On the contrary, in many industries we find a strongly oligopolistic structure, where a small number of very big firms dominant a market.

Now in general .. fairly intense competition exists between those few large firms. Further concentration could endanger that competition. As we are dealing with oligopolies here, every merger means the amalgamation of very powerful competitors, which will have especially big effects on the industry in question.

In order to cope with situations such as these a merger control instrument is, here and now, of paramount importance.

5. This is the thinking behind the present draft regulation.

Let me sketch in some of the background to the proposal.

As I mentioned above, our 1973 draft was, at the time, approved by Parliament and the Economic and Social Committee. The problems arose in the Council; discussions remained bogged down for year after year. To speed things up a bit, at the end of 1981 the Commission submitted a revised proposal to the

Council. The basic principles of the first draft remained the same, but the new version took into account a number of important political stumbling blocks that had emerged in the preceding discussions.

The changes are roughly as follows :

- Greater emphasis is given to the fact that the Community control is mainly aimed at mergers on a Community-wide scale, and
  - it has been tried to involve the Member States to a greater extent in the decision-making process, though without diminishing the Commission's independent powers.
6. This brings me to the item on today's agenda, the Parliament's reaction to the amended proposal.

I am very pleased that the draft resolution now to be voted on approves the principles of our proposal. In fact, it extends the principles, that is the resolution in some respects goes further than our proposal :

- It is suggested that account be taken not only of competition at European level but at world level. This idea is only acceptable insofar as there is no question of backdoor protectionism. In other words, as long as the European market is really open to competition from outside, then this competition <sup>could</sup> be taken into account in appraising the consequences of a merger.
- The resolution discusses the desirability of finding a solution to avoid conflicts of competence between the Commission and the Member States. We agree that this would be ideal.

- In the preamble it is stressed that the responsibility for this area lies with the Commission. We agree wholeheartedly with this, and incidentally never had any intention of yielding that responsibility. However, we are very grateful to the Parliament for having made this point so clear.

7. I will not go into the detailed proposals for amendments to the text of the regulation itself. A general remark, however : the resolution proposes that the threshold for application of the regulation be raised (from 500 to 750 million ECU), to give the Commission an opportunity to gain experience during the initial stage with a small number of cases. We are grateful for this concern and have no objection of principle to it. In fact the sums involved are so big that raising the threshold will not greatly change matters. And in any event, the addition of a market share criterion would be a means of catching extreme cases.
8. Finally it only remains for me to hope that the Commission, armed with the positive opinions of the Parliament and the Economic and Social Committee, can take up the fight again in the Council.

It is time this sorry tale ended.

The dubious honour of getting into the Guinness Book or Records should not be made into even more of a scandal. Ten years has been long enough.