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THE COMPETITION POLICY OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

What you call antitrust policy in the United States is in the languages of the European Communities referred to as "politique de concurrence", "politica della concorrenza", "mededingingspolitiek", "Wettbewerbspolitik". "Antitrust policy" derives its name form the context of economic policy in the United States shortly before the turn of the century. We in Europe instead use the term "competition policy" to refer to the situation facing us today.

What is this situation?

On 1 July of last year the tariff barriers between the Member States of the European Economic Community were removed. Tariffs and quotas, the traditional instruments of mercantilism, of trade wars and the quest for national self-sufficiency, have disappeared. Labour and capital can (if we ignore the special circumstances at present prevailing in France) move freely within the EEC without let or hindrance. The result of all this is that national markets which for decades had been self-contained are more and more exposed to competition, both because new competitors have emerged in the Member States and because competitors from non-member countries are seeking to turn to good account the opportunities offered by the large European market.

An additional factor is the enormous acceleration of technical progress, reflected in a shortening of the time-span between time of invention and industrial innovation. In the 19th century it still took about 100 years from the discovery of the principle of the steam engine, and about 50 years

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from the discovery of the telephone and photography, to technical application. The time-lag in our time has shortened to five years for the splitting of the atom and for cybernetics and to no more than three years for semiconductors.

Competition policy should be carried out with regard for modern technical development and its impact on the economy of the Common Market. It must be more than a mere "anti-policy", whether directed against restrictive agreements or monopolies. True, the ban on restrictive agreements and the prohibition of abuses of dominant positions on the market provided for by Common Market rules of competition are important and permanent components of competition policy. Care must be taken to see that the Commission's aims and achievements in freeing trade from artificial barriers and distortions due to restraints of competition is not undone by the actions of firms or Governments. Each one of us, whether consumer or entrepreneur, expects the Common Market to bring an improvement in his living standards. This expectation, in addition to the political desire for European unification, was a prime consideration motivating the conclusion of the European Treaties. But our hopes will not be fulfilled unless firms in the Common Market really compete with each other as tariff, tax, and legal barriers preventing the establishment of a domestic-type market are gradually eliminated. Only this can ensure optimum use of the factors of production, the maintenance and strengthening of the competitiveness of European firms on the world market and -- beyond the purely economic objectives -- the safeguarding of freedom in a way that is consistent with our social objectives. The Commission is determined to apply the bans energetically where the need arises. The last time it made this clear was in July of this year when in two cases it imposed fines for infringement of

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Article 85. One decision related to the international quinine agreement, with which you are also familiar. The second decision was in respect of concerted practices on price increases by several manufacturers (from the Community and two non-member countries) of aniline dyestuffs.

What I have said serves to establish the scope of European competition policy. The instruments -- the ban on restrictive agreements and prohibition of abuse -- correspond to those provided by American antitrust law. The mere pursuit of a "prohibition policy" would, however, not enable us to cope correctly with the actual situation of firms in the Common Market. The process of integration and technological progress as I have described them require firms to make far-reaching adjustments and changes almost every day. Firms may as a result be confronted with major problems, necessitating even the reorganization of entire industries. The second important task of those in charge of European competition policy is in my view to help firms to adapt.

How can this be done?

It is certainly not the task of those responsible for competition policy to bring direct pressure to bear on a management to force it to take certain measures of adaptation. Nor is it our task to arrange co-operation between enterprises or to help finance adaptation investment. Other means of helping firms to adapt must be used.

Policy on restrictive agreements

Let us first consider the policy on restrictive agreements. An important way in which a firm can adapt to new market conditions is by co-operating with other firms. Co-operation may, to quote a few examples only, take the form of

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specialization agreements, joint purchasing or selling arrangements, joint research and development and licensing or exclusive dealing agreements.

Now, the rules of competition of the European Treaties apply to all these forms of co-operation. In simplified terms, the rules forbid as a matter of principle all restraints of competition which impair trade between Member States, while allowing exemption for forms of co-operation which have effects that from an overall economic point of view must be deemed beneficial. It is obvious that the opportunities for adaptation made available to firms through co-operation depend on the way these rules are interpreted and applied. Here is a field where competition policy can provide support. But here competition policy as I understand it must also provide assistance wherever it is required and justified.

Let me review briefly the main factors involved.

(a) It is my view of paramount importance that European competition policy should be based on an approach to competition which is consistent with economic reality. I consider, for instance, that it would not be consistent with current conditions in the European economy if we started from the idea that every reduction in the number of independently-operating firms necessarily entailed less competition. This theory, from the angle of pure logic, looks convincing, but it is not compatible with the current structure of many EEC markets. Agriculture is an obvious example, but we can also quote the retail trade or the markets where a large number of small firms vie with a few giants. While in such a situation the small firms, if operating independently, may be too small to matter to the big companies, co-operation

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may enable them to challenge their powerful rivals. Here is a practical example from our experience:

The marine paint market is shared by the big international groups and a large number of small manufacturers. The big groups operate sales agencies in all major ports so that the purchaser can be offered the same product everywhere. This selling point, of great importance for paint repair work for instance, is not available to the small manufacturers. Their ability to compete is restricted. Now a number of small firms from several countries had the idea that they could offset the disadvantage by developing paints jointly, laying down certain quality standards and selling under the same trade mark. This project, which transforms the small firms of merely local importance into serious competitors for the international groups, was authorized by the Commission since we expect that will bring keener competition.

(b) As you can see from this example, we are guided in the assessment of the various forms of co-operation by the effect the agreements have on actual market trends. I need not stress that the effects of a given agreement on the market may vary fundamentally according to the market context. This is the reason why we feel that mere knowledge of the terms of an agreement is not a sufficient basis for a decision as the application of the European rules of competition. Market analysis is essential to European competition policy.

(c) A predominantly economic approach such as this cannot fail to influence the definition of restraint of competition and consequently the demarcation of the scope of European law on restrictive agreements. If we take the view that the effect of an agreement on the market is what matters, it

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stands to reason that the rules of competition should apply only to those agreements which appreciably influence market conditions. Accordingly, the Commission is able to concentrate on the really important cases. This approach is, however, also in the interest of firms in the Common Market. It is of particular importance for the myriad of small firms. But it also benefits the economy as a whole, since concentration of the Community's work on a smaller number of cases facilitates a more rapid development of the case-law.

(d) This brings me to a problem I believe we must solve. Contacts with the business world have given me the impression that at the present stage firms have everything to gain from knowing as soon as possible what is permissible and what is prohibited under European competition law. Their wishes in this respect are completely reasonable. I therefore consider it important to establish more precisely exactly what is forbidden and above all what opportunities there are for authorization under our rules of competition so that firms will understand as fully as possible the most important aspects of the Community's competition policy.

We are endeavouring to achieve this objective in two ways. The first few years, after the entry into force of the European competition law, were devoted mainly to laying the foundations, as for instance through implementing provisions. Now we are trying to increase steadily each year the number of decisions on cases involving restrictive agreements. Last year, for instance, the figure was the highest since the start of European integration. In doing so we try to choose particular cases so that a decision on them clarifies the situation in respect of the greatest possible number of similar cases. As an

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example of this working method I may cite the latest Commission decision in the matter of exclusive dealing agreements -- a decision which makes it possible to settle another eleven hundred notifications by simplified procedure. It also clarifies for the future how agreements of this type -- that is exclusive dealing agreements for sales in non-member countries -- are to be legally assessed.

The second way is based on the possibility, provided for by the EEC Treaty, of granting a block exemption from the ban on restrictive agreements. The Commission has already granted a block exemption for certain exclusive dealing agreements. We shall try to do the same for other forms of co-operation. For example, the possibility is now being considered of granting a block exemption for research and development agreements, for agreements on the uniform use of standards or types, for specialization agreements, for joint buying or selling agreements and for certain licensing agreements. We are also considering whether the conclusion of such agreements can be facilitated, for instance by withdrawing the notification requirement. A study is also being made to find out if general criteria can be established to determine whether a restraint is "appreciable", so as to enable regulations to be adopted excluding "de minimis" cases from the scope of the rules of competition.

I do not intend to hide the fact that this work is running into great difficulties. In connection with the agreements referred to, no experience is yet available as to the effects of such general measures. It is proving extremely difficult to formulate general rules to exempt certain forms of co-operation, to make them comprehensive enough so that exemption is a meaningful proposition and yet not so comprehensive as to include agreements which do not justify exemption.

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This is a new area of the law on restrictive agreements. We have moved into it because we know that traditional policy alone cannot cope adequately with today's situation in the Common Market. Under the pressure of developments, European business is being forced to seek out new methods of research, production and marketing. These developments are also compelling European competition policy to break new ground.

Policy on industrial combination

Having outlined the basic ideas behind our policy on restrictive agreements, I now want to discuss policy in the field of industrial combination. This policy is determined by our concept of the future structure of European business. It also depends, of course, on the legal opportunities provided for the Commission under the European Treaties.

In my view the structures of the European markets must satisfy two conditions. They must show a degree of combination which is sufficiently low to ensure effective competition. At the same time, however, the degree of combination must be sufficiently high to enable firms to attain the size required if the problems of research, production and marketing are to be solved rationally. Whether firms should work towards what they believe to be the right scale of operations through internal growth or through amalgamation is a decision to be taken by themselves. In any event, my impression is that since the beginning of European integration a steadily increasing number of firms have been choosing the method of amalgamation. At present not a day passes without the press reporting new mergers or merger negotiations. I believe that in the vast majority of these cases the aim is to adjust the market structure in response to the growing pressure of competition on the European and the world market. These

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combinations are, as a general rule, not aimed at restricting competition but at improving competitiveness and adapting to the new scale of the market. In these cases, a reduction of the number of independent firms can intensify competition. Such combinations are in harmony with the objectives of European competition policy for, to use a quotation from your Supreme Court which aptly describes our policy, "It is competition, not competitors, which the Act protects".

At present cases of combination of firms from differing member countries are few and far between. The vast majority of amalgamations remain within the national framework or link firms from a Member State with firms from outside the Community. The Commission is working hard to achieve the elimination of these obstacles. Of late there have, however, been some cases which show that the Governments of some member countries prefer to restructure industries in a national framework and that they therefore bring some pressure to bear to prevent multinational arrangements.

I am concerned about this trend. Quite apart from the fact that amalgamations between firms from different Member States can help to speed up integration of the markets, my main point is that the framework within which the new market structures are developing should be the Common Market and not the frontiers of the country involved. If a firm wants to combine with another firm in order to step up productivity, it should be given the opportunity to choose, as a general principle, the partner which, through its range of production or its marketing system, makes the best match. This is also a matter of optimum allocation of the factors of production, upon which depends the economic success expected of the Economic Community.

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So far I have spoken of combinations which we welcome. There are, however, also markets - though at the moment small in number - the structure of which is already such that additional mergers between certain firms would endanger workable competition. The European Treaties, which (Article 3 of the EEC Treaty) provide for a system ensuring that competition is not distorted, bind the Community to act if faced with such a development. We therefore construe Article 86, which prohibits the abuse of a dominant position, to mean that a combination which eliminates effective competition constitutes a case of abuse and is consequently prohibited.

There are in the present situation, as national markets are more and more exposed to competition from foreign firms, and as competition increases, including competition from non-EEC firms, only a few markets in which here is a threat to workable competition. There has therefore not so far been any occasion to apply Article 86 to a case of amalgamation.

The Commission is doubtless in a stronger position with regard to combination in the coal and steel industry, since the ECSC Treaty allows amalgamations only if they are authorized by the Commission. Recognizing that these industries are passing through a period of structural reform, we have in the past endorsed most co-operation and combination plans. But we also realize that coal, and particularly steel, will in future increasingly pose the problem of the maintenance of effective competition between a small number of competitors.

Conclusion

Our aim is to make Europe's economy strong and efficient. The establishment and strengthening of the European Economic Community have provided us

with a great opportunity to achieve this objective. The process of integration, which is spreading to an ever-increasing number of markets, is releasing stimuli which can have a creative effect if the free play of market forces is safeguarded. This is why the task of ensuring free and undistorted competition has a key position and key importance in the European Treaties. Those in charge of the Community's competition policy bear the great responsibility for accomplishing this task.
