

EUROPEAN BACKGROUND INFORMATION COMMUNITY

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BACKGROUND NOTE

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DEVELOPMENTS IN THE EC COMPETITION POLICY

The European Community's competition policy became more firmly established during 1973, according to the Commission's third annual report on competition. Important developments were made in such areas as merger control and multinational corporations, while other lines of the EC competition policy continued to be strengthened and amplified.

Growth of Concentration and Merger Control

The rapid trend toward business concentration in the Common Market poses a severe threat to competition in the Community. Between 1962 and 1970, the number of mergers involving a controlling interest takeover grew from 173 to 612 in the original six member Community, an increase of 350 per cent. The rate of mergers between 1962 and 1966 nearly doubled between 1966 and 1970. Concentration has reduced some sectors to only four manufacturers. In others, the number has been reduced by as much as half.

The applicability of EC Treaty of Rome Article 86 (forbidding abuse of a dominant position) to merger control was confirmed by an important Court of Justice decision in the Continental Can case during February 1973. Although the Court reversed the Commission's decision against Continental Can for insufficient proof, it ruled that the acquisition of a competitor by a dominant firm, leaving in the market only companies that are dependent on a dominant firm and which do not constitute an adequate counterweight, amounts to an abuse of a dominant position. The case clearly established the Commission's right to intervene when mergers impair or threaten to impair competition.

The Commission's work to regulate mergers was bolstered by a December 1973 Council resolution inviting member states to help the Commission with economic and commercial research needed to apply Article 86. The Council also called on the Nine for more stringent and vigorous application of their laws to investigate market abuses.

The Commission proposed broad merger control regulations to the Council of Ministers on July 20, 1973, to guarantee merger compatibility with EC economic and social objectives. These laws would essentially require companies to seek Commission approval of merger plans if aggregate sales total at least 1 billion units of account (UA). (One UA equals \$1.20635 at current rates.) Mergers in the coal and steel industry are already subject to Commission authorization under the European Coal and Steel Community Treaty.

The Commission recognizes that certain mergers have to be exempt from the proposed regulations for considerations of economic stability and efficiency. In the steel industry, for example, the Commission authorized the acquisition of Rheinstahl AG by August Thyssen-Hutte AG, forming the EC steel industry's largest concentration. The Thyssen-Rheinstahl merger was allowed with conditions guaranteeing the independence of other EC steel processors and producers.

Eliminating Restrictive Agreements

The Commission stepped up its efforts to eliminate or modify restrictive or abusive company sales, distribution, and patent licensing agreements violating EC competition regulations. Commission decisions brought compliance from French and German potash producers, a Dutch hunting cartridge cartel, Belgian waterheater distributors, and Dutch and Belgian sulphuric acid sales agencies. In one case, after Commission intervention, Du Pont de Nemours (Deutschland) GmbH, the German subsidiary of the American company, dropped restrictive sales and pricing provisions from its sales terms.

Commission action against such agreements appears to be having a deterrent effect. Last year a number of cases were settled before formal Commission decisions were adopted and several restrictive agreements were voluntarily abandoned or modified to conform with the EC Treaty.

Some exemptions to the EC ban on restrictive agreements were granted by the Commission to encourage forms of transnational cooperation which would improve the competitive ability of companies on the world market. Such an exemption was granted to the Transocean Marine Paint Association of 20 medium sized paint-making firms, allowing them to sell identical quality paint under the Transocean trademark in association assigned territories. The Commission did, however, outlaw export restrictions which had previously been imposed by Transocean.

Current EC Problems

EC competition policy was put to work to help restrain inflation and resolve problems precipitated by the energy crisis and rapid development of multinational corporations. Commission member Albert Borchette explained the intentions of the Community's policy toward multinationals in an April 26 speech in Luxembourg: "We are not, in principle, against big businesses, but they must play the game. We are not against foreign or American investments, but they must play the game--play the game of economic democracy which protects against abuse of power and protects each citizen, that is to say, each consumer." Borschette is in charge of EC competition matters. Extreme difficulties experienced by Europe's independent petroleum product distributors in obtaining enough supplies to stay in business during the energy crisis prompted a December 21, 1973 Commission decision to investigate large oil company supply operations. Companies refusing to supply independent distributors on an equal basis could be fined.

With regard to multinationals, the Commission sent several proposals to the Council, designed to avert competition disruption in the Community and has supported international cooperation on the control of restrictive trade practices and dominant market positions.

The Commission is keeping a closer watch on the EC inflation situation through price movement and comparison information exchanges with member states. These exchanges were initiated pursuant to a December 1973 Council resolution. The Commission is also supervising markets where competition alone cannot keep prices down and intervenes when restrictive or discriminatory practices keep them inordinately high.

State and Industrial aids

As a result of the accession to the Community of Britain, Ireland, and Denmark in 1973, the EC policy on regional aids had to be adapted to the enlarged Community. Following meetings with senior national state aid officials in May 1973, the Commission sent the Council a June 28 communication designating the central regions in the new member states to which EC principles for coordinating state aids would apply after July 1, 1973. The Commission will draw up a procedure for coordinating aid throughout the Community by December 31, 1974. A November 28 communication to the Council proposed major guidelines for coordinating EC aid principles by January 1, 1975.

The Commission also worked toward giving a Community orientation and context to aid for specific industries as an effective basis for creating a real EC industrial policy. Last year for instance, the Commission sent the Council several proposals to strengthen the shipbuilding industry's competitive ability by granting temporary EC coordinated assistance through the European Social Fund. The measures, replacing member state aid, would retain the balance of supply and demand in that industry which is currently facing overcapacity problems.

Monopolies

The Commission has made further progress toward ending or aligning state commercial monopolies with Common Market Treaty provisions. Its primary objective has been to abolish monopolies' exclusive import, export, and/or marketing rights which violate treaty freedom of movement provisions. Commission intervention led France to adjust or abolish its match, gunpowder, and explosives monopolies. Last year, it adjusted its potash and slag monopolies. Italy, which had already ended its cigarette lighter and paper flints monopolies, last year ended its match and food salt monopolies. Its industrial salt monopoly was ended this year. France and Italy have also undertaken to abolish their manufactured tobacco monopolies before the end of 1975. Several infringement procedures initiated by the Commission against monopolies such as the French alcohol monopoly are still pending.

EC Work in OECD

The Commission has long been active in the Organization for Economic Cooperation and Development (OECD) Committee on Restrictive Practices, working to harmonize competition rules worldwide. The Commission also continued its work in various OECD committees dealing with inflation, restrictive patent and licensing agreements, export agreements, mergers, and multinational corporations.