

## Competition in a Social Market economy

*Speech by Commissioner Monti at the Conference of the European Parliament and the European Commission on 'Reform of European Competition law' in Freiburg on 9/10 November 2000*

Ladies and Gentlemen,

Let me take my turn to welcome you to this conference that has been jointly organised by the European Parliament and the European Commission to discuss the Reform of EC competition policy.

The Commission has launched a reform that aims at overhauling the whole of the competition law framework in order to ensure *more efficient enforcement* of the European competition rules and thereby reinforce their effect. A reform of this scope is an excellent opportunity to re-visit and to re-examine what is basic to our understanding.

The venue here at Freiburg of course reminds us of the Freiburg School. The Freiburg School has made a major contribution to shaping the post-war economy as one of the sources of the concept of *Soziale Marktwirtschaft* – Social market economy.

When we take a close look at what 'Social Market Economy' stands for, we find that we are in the presence of one of those basic concepts to which many policy choices can be traced back. We also realise that we are in the presence of strikingly modern ideas.

Having said this, it is not my intention to discuss here the issue whether 'Social Market economy' is a model for Europe<sup>1</sup> or whether the concept of Social Market Economy and the historic experience it encompasses is a major building block of what we sometimes call the 'European Model'. Among the many facets of the subject I would rather like to focus on some that, in my view, carry a message from which we can derive important lessons for the future.

*Reliance on the Market mechanism*

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<sup>1</sup> 'Soziale Marktwirtschaft – Ein Modell für Europa' is the title of a book published by Mr von Wogau.

The term ‘Social Market Economy’ was of course designed with care. In it the word ‘market’ takes the central position. That, I think, was intended.

The concept of Social Market Economy stands for reliance on the market mechanism. It is based on the experience that the market mechanism is the most efficient way to meet the demand from consumers for goods and services. That the market mechanism will bring companies to increase productivity, to expand, to innovate – and to create jobs. In short, it recognises that the market forces are the most efficient generator of prosperity. It therefore calls for a maximum of free market, for reliance on competition wherever possible.

Historically, as we all know, this did not seem evident at all. Those that had the courage to implement what they came to call *Soziale Marktwirtschaft* in post-war Germany were faced with scepticism from almost all political parties and a large part of the population in the early days. At that time, many people, who were lacking the most basic products, simply could not believe that their needs could be catered for without the state or state-run instances organising the economy, fixing prices etc.. When the de-blocking of market forces actually led to providing them with products, services - *and jobs*, they spoke of a *miracle*.

The effects of relying on the market forces are rarely so clearly demonstrated as under the very specific conditions of post-war Germany. However, it is not impossible to witness ‘market miracles’ nowadays even in the ‘old’ Member states of the European Community. Not so many years ago it seemed to be an eternal truth that telecommunications services could best be provided by one public operator per country. Since then, liberalisation of the telecommunications markets throughout Europe has led to an unprecedented increase in the quality and variety of services combined with an equally unprecedented decrease in prices for the consumer. Hundreds of new companies have entered the market and since the beginning of 1998 thousands of new jobs have been created.

The liberalisation experience of recent years at European level is in my view a striking example of how the courage to rely on the market forces is wanted today.

### *No Laissez-faire capitalism*

Social Market economy does however not stand for Laissez-faire-capitalism. It recognises that a functioning economy is indispensable to produce the material basis without which human society with all its other non-economic – human and cultural - dimensions cannot exist. Where no wealth is created in the first place, none can be re-distributed.

For this very reason the idea is not to leave the economy alone to any development it might take, but to create a strong framework that ensures

- First, that social standards and other objectives of the society are respected. This is reflected for example in individual and collective workers' rights, the control of working conditions, the protection of persons with specific needs etc.
- Second, that the beneficial workings of the market forces are not blocked, restrained or distorted by short-sighted actions of the market actors themselves. Hence the crucial importance of a strong competition law framework.

### *The concept of the Treaty*

If we look at the Treaty, some of the same basic messages are there. Member states agreed on creating a Single Market in which the market forces are to yield a maximum of benefits to the European consumers. This is why they agreed on strong rules to protect the market forces against restriction and distortion by the Member states – e.g. by state aids - and by the economic operators themselves.

You can see the focus on consumer benefit from the very wording of the competition rules. It reflects the basic idea that the consumer should benefit to a maximum from the surplus generated. The consumer should receive more offer, better quality, more innovative products and services and lower prices. The Treaty relies on effective competition to achieve this objective.

However, the Treaty also reflects the importance of other values in the 'European Model'. The philosophy becomes very clear from the fine balance the Treaty strikes in an instance where the aim of benefiting from the market forces on the one hand and the aim of ensuring social cohesion on the other hand come to touch: I am of course referring to the area of services of general interest.

### *Services of general interest*

Services of general interest are a key element in the European model of society. A new Article in the EC Treaty now confirms their place among the shared values of the Union and their role in promoting social and territorial cohesion.

In the Community, it is above all the responsibility of public authorities at the appropriate local, regional or national level and in full transparency to define the missions of services of general interest and the way they will be fulfilled. If these public authorities consider that certain services are in the general interest and market forces may not result in a satisfactory provision, they can lay down a number of specific service provisions to meet these needs in the form of service of general interest obligations. The Community level on the other hand will ensure in the application of the Treaty rules and with the instruments at its disposal that the performance of such services, in terms of quality and prices, responds best to the needs of their users and of citizens at large.

The interplay of local, regional and national levels with the Community level gave rise to many questions. The Commission therefore recently published a new communication on the subject. This Communication sets out the basic features of the fine balance the Treaty strikes in this area by clarifying both the scope and criteria of application of internal market and competition rules. First of all, such rules apply inasmuch as activities concerned are economic activities that affect trade between Member States. Where the rules apply, compatibility with those rules is based on three principles:

- Neutrality with regard to the public or private ownership of companies;

- Member States' freedom to define services of general interest, subject to control for manifest error;
- Proportionality requiring that restrictions of competition and limitations of the freedoms of the Single Market do not exceed what is *necessary* to guarantee effective fulfilment of the mission.

In the communication the Commission also assembles currently available information on the state of play in those areas where Community action has already been taken. It thereby demonstrates the positive impact of this action on the availability, quality and affordability of services of general interest in the sectors concerned. The experience gained so far confirms the full compatibility of the Treaty rules on competition and the internal market with high standards in the provision of services of general interest. In certain circumstances, in particular where market forces alone do not result in a satisfactory provision of services, public authorities may entrust certain operators of services with obligations of general interest and where necessary grant them special or exclusive rights and/or devise a funding mechanism for their provision.

The experience gained so far clearly shows that the Community in partnership with local, regional and national authorities can develop a proactive policy at European level to ensure that all the citizens of Europe have access to the best services.

#### *Small and Medium sized companies*

A different but equally complex set of objectives is at the basis of our policy towards small and medium-sized companies. Small and medium sized companies have proved to be a major source of innovation and job creation in Europe. This applies in particular to small and medium sized companies that implement new business ideas, be it in new markets, be it by discovering promising niches in existing markets. With the spread of new communication technologies the access to a larger customer base in the whole of the Internal Market will hugely increase the chances of such companies of succeeding and at the same time improve consumer choice.

The Community has taken a range of activities in order to promote the competitiveness of small and medium sized companies. Small and medium sized companies are directly and indirectly the beneficiaries of a number of Community funding programs. They are also in the back of our minds in various initiatives of horizontal scope like the simplification of legislation that we are undertaking. And the impact of each and every initiative taken by the Commission on SMEs is analysed in detail before the initiative is taken.

In the area of competition policy in particular, small and medium sized companies are beneficiaries of Community action and the reform we are currently undertaking is going to increase this effect.

Small and medium-sized businesses with little market power are generally more likely to be victims of infringements of the Community competition rules than actively to engage in infringements themselves. They are therefore 'natural' beneficiaries of competition policy and will profit from stepping up enforcement.

The activities of small and medium sized companies themselves very often fall within the scope of block exemption regulations. This means that under the present Regulation No 17 they are already generally much less concerned to notify agreements with a view to individual exemption decisions.

Alongside the reform of the rules implementing Articles 81 and 82 through the proposed Regulation, the Commission, pursuing the more economic and reasonable approach has initiated a reform of the substantive rules in block exemption regulations, Commission notices and guidelines. A new type of block exemption regulation simplifies compliance for companies with little or no market power by introducing market share thresholds (with the exception of certain hard-core restrictions). Under this type of regulation, the vast majority of small and medium-sized businesses are able to act within 'safe harbours'.

*A strong competition law framework for the future Community*

This brings me to the second pillar of a strong framework : protecting the functioning of the market forces against restrictions by the companies themselves. There can be no doubt that the Treaty has provided us with strong rules in Articles 81 and 82. The decision making practice of the Commission and the case law of the Court of Justice over the last almost forty years have contributed to shaping a full-blown, strong competition law framework. There can be no serious doubt about that.

The world around us and the markets however have been changing and continue to do so. The completion of the internal market, globalisation of trade and rapid technological change bring about new conditions. Markets and companies have outgrown the nation state to which they were confined to a large extent in the past.

In addition, the Community is facing two major challenges at once :

- It is a few years only from the most important enlargement in its history that will potentially almost double the number of Member states.
- At the same time the ‘European model’ is put to the test of increasing international ‘competition of systems’ – a challenge that has become much more visible since the introduction of the EURO.

The question that is before us is therefore how to make the most of the excellent tools that the Treaty provides us *in the future conditions*.

If we want to uphold and develop the ‘European model’ of benefiting from the market forces to a maximum without however exposing our societies to a laissez-faire capitalism, we must implement a strong framework at European level, in the future to some extent at international level.

*A strong framework is one that ensures efficient implementation of the rules*

This leads of course inevitably to the crucial question : What is a *strong* framework under the conditions mentioned ? The Commission is convinced that the actual impact of the competition rules is determined by their efficient implementation. Similar to companies that adapt to competitive pressure, the Community system of protecting competition must adapt to the challenges facing it by becoming more efficient. This is the guiding principle of the overall reform effort launched by the Commission.

### *Horizontal agreements*

One important element in our efforts to modernise European competition policy is the on-going reform of our policy on horizontal co-operation agreements. The Commission has prepared on the one hand revised block exemption Regulations for R&D and Specialisation agreements and on the other hand draft guidelines on the applicability of Article 81 to horizontal co-operation.

The aim of these texts is to clarify the application of competition policy in the area of horizontal co-operation agreements not to re-write it. This is an important point to underline, since the proposals have been criticised by some observers in Germany as constituting a major change in approach to horizontal co-operation agreements. I would emphasise that this is definitely not the case. It is clear that we have to keep a very close eye on horizontal agreements. It is generally recognised that agreements which are concluded between competitors have a greater potential for producing negative effects on competition than other forms of agreement. This is clearly the case where competitors agree to fix prices, share markets or limit production.. We certainly do not want to give the impression that horizontal agreements which produce serious negative effects will be viewed favourably in the future.

However, absent hardcore restrictions horizontal agreements must be analysed in their economic context to establish whether they produce negative effects on the market. This is nothing new and corresponds with the text of Article 81 of the Treaty, and the existing case law.

But we need an updating and clarification of rules on horizontal agreements for two reasons:

Firstly, as a reaction to economic realities. Companies need to respond to increasing competitive pressure and a changing market place driven by globalisation, the speed of technological progress and the generally more dynamic nature of markets. Co-operation can often be a way to share risk, save costs, pool know how and launch innovation faster. In particular for small and medium sized enterprises co-operation is an important means to adapt to the changing market place. Consumers will share these benefits, provided that effective competition is maintained in the market.

The proposed reform therefore adopts a more economic approach both for the block exemptions and for the treatment of individual cases. We should recognise in particular that for most forms of co-operation, where the companies involved do not have market power, the effect of co-operation is not anti-competitive, provided that there are no hardcore restrictions. This focus on the really anti-competitive agreements will make our policy towards horizontal co-operation more effective for today's economic environment.

The second reason for our review in the field of horizontal agreements is that a clarification of the rules is an essential pillar in our attempts to modernise competition policy. The approach is similar to that recently adopted for vertical agreements and serves an important purpose in the context of the over-all reform: It allows companies to assess themselves whether or not an agreement is restrictive of competition and whether it comes under Article 81(3).

The Commission aims at finalising the block exemption Regulations and the Guidelines by the end of this year. This would not only avoid a legal vacuum after the expiry of the current Regulations, it would also largely contribute to keeping EC competition policy up-to-date.

### *New implementing regulation*

The aim to strengthen the EC competition framework is in particular reflected in the Commission's proposal for a new implementing regulation for Articles 81 and 82. A large part of the Conference will be dealing with this subject and I do not intend to pre-empt what you, the experts on this matter, will discuss in much more detail. However I would like to highlight a few points.

The objective to achieve more efficient enforcement is of course reflected in the proposed much stronger involvement of national competition authorities and national courts in the implementation of the EC rules. More enforcers means more deterrent effect. It is of course also reflected in the proposed abolition of the notification system that will allow the Commission to refocus its direct enforcement action on the detection of the most serious infringements instead of handling notifications.

It is also behind the Commission's proposal that the Commission and the national competition authorities should form a network and work closely together in the application of the EC competition rules. The network will provide an infrastructure for mutual exchange of information, including confidential information, and assistance, thereby expanding considerably the scope for each member of the network to enforce the competition rules effectively. The network will also ensure an efficient allocation of cases based on the principle that cases should be dealt with by the best placed authority.

Under the Commission's proposal the action of public authorities will be complemented by more private enforcement through national courts. National courts will play an important and enhanced role in the enforcement of Community competition rules. They can grant damages and order or refuse the performance of contracts.

More efficient enforcement is quite obviously also behind the adaptation and clarification proposed to the Commission's powers of investigation.

A major leap forward in terms of efficient enforcement throughout Europe will also be achieved if the Council adopts the Commission's proposal to provide for exclusive application of the EC competition rules to cases affecting trade between Member states.

In the public debate, it was mostly companies that have raised the issue of the present patchwork of 16 competition law systems in the Community, calling for more level playing field. There is much to say in favour of that argument, in particular with a view to enlargement and despite the fact that many national laws are more or less similar to the EC rules: Historic experience teaches us that no such thing as two identical sets of rules exist even if the letter of the law is the same or

similar. You can easily see that from the numerous countries to which the French Civil Code was exported: Through case law and modifications they soon grew apart.

However, it is the enforcers who should long have adopted the argument. Because it means that they will work more efficiently. National enforcers will fully contribute and benefit from a shared and growing basis of common case practice. Application of the rules by all will be hugely enriched by the sharing of experience. Experience gained in Member state A will no longer be confined to the books on the competition law of A, it will be available to enforcers in all other member states – and the Commission.

Finally, applying the EC competition rules will also mean that national competition authorities will acquire a new power: They will fully participate in the application of the autonomous EC rules – under the ultimate control of the Court of Justice.

### *Conclusion*

This brings me back to the beginning of this ‘tour d’horizon’ on the roots and the present reform of competition policy in Europe. We have seen that many elements which are still guiding principles to our action today go back a long way and that it is most useful to reinforce our awareness of those basic elements in order not to miss the lessons they can teach us.

The development of the Community is an unprecedented one. This is true for what has been achieved in terms of integration – and in particular market integration to the benefit of consumers, companies and our societies as a whole. It is also unprecedented as regards the application for membership by a large number of candidate countries and as regards the international role the Community is called upon to play.

We will have to rise to these challenges. We must re-think and adapt our basic concepts on another scale. The Commission itself has taken some time to realise all the implications of overhauling the EC competition law framework today. Maybe we all need some time and some more in-depth discussion on the issues raised by this reform. I am confident that this conference will help to enhance our thinking.