

23 March 2006

**Ms NEELIE KROES, COMMISSIONER RESPONSIBLE FOR COMPETITION  
MEETING WITH  
UNICE PRESIDENT, ERNEST-ANTOINE SEILLIÈRE**

**EUROPEAN COMPETITIVENESS IS KEY IN COMPETITION POLICY**

In 2005, the Commission adopted comprehensive policy documents setting out a wide variety of issues relevant for stimulating innovation, controlling state aid, facilitating damages actions for antitrust infringements, and the ability for dominant companies to compete on the merits.

1. It is understood that the purpose of these policy documents is to implement a pro-active approach to competition policy which should directly contribute to the Lisbon strategy. Competition policy is essential for competitiveness because it shapes fundamental economic decisions on investment, consolidation, pricing, and thereby general economic performance. Key components of the pro-active policy are:
  - a) A more economic approach as opposed to a strict legalistic approach that would unnecessarily impose constraints on undertakings and cause them to avoid innovative and pro-competitive behaviour, and;
  - b) The removal of market failures which affect the achievement of desired objectives of common interest such as innovation.
2. The Commission's reasoning is based on the premise that the focus of competition policy should be on harm to competition that will also harm consumers. The purpose of competition law is not to protect competitors from firm's genuine competition based on factors such as higher quality, novel products or better performance. Companies should be able to enhance their competitive position through behaviour which on balance has more positive than negative effects on competition and consumers. State aid should be allowed if the positive impact of the aid in terms of achieving more growth and jobs outbalances the potentially negative side effects. Member States should redirect aid towards horizontal objectives of common interest and target it to identified market failures.
3. UNICE's position is:
  - ☐ that the implementation of a pro-active approach to competition policy which directly contributes to the Lisbon strategy is the best approach for ensuring that companies can compete on the merits and invest more in innovation;
  - ☐ that the review of the rules on abuse of market power as laid down in Article 82 EC should aim at applying sound economic analysis and an investigatory approach that takes efficiencies into account in a single step analysis. When the

efficiencies outweigh the negative effects on competition and consumers, conduct should not be considered abusive;

- ☐ that the Commission should not use presumptions with respect to the assessment of abuse of market power but always carry out an economic analysis;
- ☐ that a very high standard of proving efficiencies would lead to dominant companies avoiding potentially pro-competitive behaviour to the detriment of their competitiveness;
- ☐ that the proposals to use the state aid rules to encourage companies to invest more in innovation should cover both small and large firms and be implemented as soon as possible. In addition, the outdated distinction between industrial research and pre-competitive development activity in the R&D state aid rules should be abolished to really resolve current under-investment in R&D and innovation in the EU;
- ☐ that the public and private enforcement of antitrust rules is fundamental for creating and sustaining a competitive economy but that there is no reason to treat infringement of antitrust rules any different than infringement of other EU rules. Competition law is a relatively complex area of law and considering that there is not enough clarity with respect to the substance of the rules, it is dangerous to encourage more and more disputes. Increased litigation is also very burdensome for companies; significant transaction costs serve no public interest objective and the uncertainty of litigation is very burdensome for companies.

#### **4. Energy:**

- ☐ UNICE fully supports the Commission's initiative of publishing a green paper that sets out to strengthen cooperation in the EU in the field of energy.
- ☐ The Commission can and must facilitate management of governments' responsibilities by taking more initiatives that reflect an integrated vision notably by the creation of a truly open EU market for gas and electricity.
- ☐ The Commission should use all its powers to strengthen competition. Existing legislation must be applied not only to the letter but also in spirit.