

24 March 2010

MEETING OF MR JOAQUIN ALMUNIA, VICE-PRESIDENT OF THE EUROPEAN COMMISSION IN CHARGE OF COMPETITION POLICY, WITH BUSINESSEUROPE PRESIDENT AND DIRECTOR GENERAL

24 MARCH 2010, BRUSSELS

BUSINESSEUROPE PRIORITIES ON COMPETITION POLICY

BUSINESSEUROPE is resolutely in favour of developing and sustaining a competitive commercial environment in the EU and is convinced that competition provides the best incentive for efficiency, encourages innovation and guarantees consumers the best choice. We are also supportive of an efficient redress system for consumers.

Antitrust law is crucial and its enforcement is fundamental for creating and sustaining a competitive economy. It needs to provide companies with legal certainty and uniform application of its principles across the EU and worldwide.

It is in the interest of companies that wrongdoings are condemned and victims compensated. We need a balanced system for fighting against antitrust breaches and ensuring compensation. Compensation and enforcement are however two separate objectives: enforcement must stay firmly in the hands of public authorities.

BUSINESSEUROPE also supports effective enforcement and application of state aid rules to maintain a well-functioning Single Market and a level playing field for all undertakings, no matter in which Member State they are established.

BUSINESSEUROPE believes that:

- improving public enforcement and procedural fairness in antitrust proceedings is key;
- there is a need to avoid encouraging private enforcement through collective actions;
- flexibility in the application of state aid rules in the context of the crisis must remain limited to what is strictly necessary.



ON IMPROVING PUBLIC ENFORCEMENT AND PROCEDURAL FAIRNESS

We appreciate the Commission's reflection for improving the current public enforcement system. There is a general public perception that the Commission's procedures need improvement. Public enforcement can be reinforced by a higher level of procedural fairness:

- Safeguards should be introduced within the current Commission's enforcement setting to improve fairness and ensure sound decision-making: the Commission's procedures lack a proper separation of investigative and decisional functions.
- Companies subject to investigations should be granted the possibility to prove their compliance efforts and have this recognised and valued by the Commission; this would encourage businesses to implement effective compliance programmes, which would help in successfully preventing illegal actions from arising in the first place.
- All competition authorities in the EU and worldwide can improve on their enforcement practices. It is important that the Commission engages in a dialogue on international due process best practices with Member States' competition authorities and with other agencies worldwide.
- BUSINESSEUROPE believes the Commission is well-placed internationally to take a leading role on this matter. We would in particular like to encourage the promotion of a regular high-level dialogue with the US antitrust authorities.

ON DAMAGES ACTIONS

There is a focus on judicial collective actions essentially aimed at creating instruments for individuals to enforce competition. BUSINESSEUROPE supports effective redress for victims of antitrust violations but does not believe that this can be best achieved through more litigation. Non judicial redress mechanisms are available and the Commission should take these options into consideration:

- We are actively promoting alternative dispute resolution mechanisms (ADRs) like mediation and arbitration, as a simpler, cheaper and faster way to provide redress.
- Enforcement should remain in the remits of public authorities. If authorities do not have enough resources, the solution is providing them with more funds and staff. This will improve enforcement and deterrence, help victims who will be able to rely on a decision by an authority when claiming damages, and avoid risks of abuses.
- The introduction of procedural advantages for plaintiffs is an incentive to litigation. It will inevitably lead to increase the number of court cases and introduce a litigation culture in Europe. Without adequate safeguards, it will also introduce a real risk of abuses.
- We have been strongly critical of the previous thinking of DG COMP. Many aspects of the Commission's earlier approach would have fostered litigation, its costs and the risk of abuse, without leading to better compensation. BUSINESSEUROPE is looking forward to engage in a constructive debate aimed at finding balanced ways of redress.



STATE AID POLICY

State aid policy should redirect aid towards objectives of common interest and target it to identified market failures. BUSINESSEUROPE highlights the importance that measures taken on the application of State aid rules in the context of the crisis do not distort competition and remain temporary, and their application is subject to strict monitoring:

- State aid rules must respond to systemic market failures and provide opportunities to support companies, while ensuring coordination and strict enforcement to avoid distortions.
- A phasing out of the measures introduced under the Temporary Framework should be planned, to ensure the best possible functioning of the Internal Market.
- In order to maintain a level playing field, the flexibility in the application of State aid rules, justified by the crisis, must remain confined to what is strictly necessary. It should not give rise to a subsidy race and unfair damage to healthy companies.

BUSINESSEUROPE strongly supports the willingness and effort of the Commission to provide transparent, effective and predictable State aid policy and enforcement. This will be beneficial for all parties and will result in a more efficient single market.

In the area of R&D aid, the Commission should complement the “new” EU state aid rules for R&D with clearer operational guidelines. This can participate in creating a conducive environment, able to foster industrial investment in R&D and innovation.

Finally, the new rules on carbon emissions contain state aid elements. We support the need to stimulate investment in certain types of low carbon technology, to adequately compensate electricity-intensive industries for the adverse impact of higher power prices and to permit the exclusion of small emitters. The guidelines expected by DG COMP must balance these against the need to minimise distortions of competition. We offer our support to work closely with the Commission as it develops the guidelines.

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