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Government restraints on competition

In a recent address to a Washington audience, Commissioner Mario Monti remarked that, on the basis of Article 86, the Commission had adopted a series of Directives to ensure the respect of competition rules by State owned undertakings. Directives require state owned undertakings to have transparent accounts enabling the Commission to identify the precise nature of their cost and revenue allocation as well as their financial relationship with the States controlling them. Decisions has also been addressed to States or local authorities whose legislation was, among other things, hampering sound competition between postal companies and mail preparation firms, was setting up discriminatory landing fees for locally established airline companies or was establishing discriminatory discounts on pilotage fees in some of Europe's most important ports.

Commission policies directed against government imposed monopolies or private bodies attempting to secure continued benefits from historic monopolies constitute only one of the cornerstones of action against undue government restraints. The Commission is also concerned by government actions that replace or strengthen private anti-competitive behavior. As the Chairman of the US Federal Trade Commission pointed out recently, it is a pyrrhic victory to break a cartel if its members successfully lobby for the authority to set prices collectively. The Court of Justice of the European Communities has, with this concern in mind, created a doctrine designed, in essence, to tackle certain types of state measures reinforcing cartels. It is apparent that classical antitrust rules are exclusively addressed to undertakings. Nevertheless, according to the Court, these antitrust rules on restraints of trade or monopolisation should be read in conjunction with the "loyalty clause" (Article 10 of the EC Treaty) obliging States to abstain from measures which jeopardise the attainment of the objectives of the Treaty. The Court has therefore concluded that States are prohibited from introducing measures which may deprive the antitrust rules of their "useful effect" by requiring or encouraging anti-competitive conduct, reinforcing the effects of such conduct, or delegating to private traders responsibility for taking key decisions affecting the economic sphere.

Airline Mergers

In the same address, Mr Monti referred to the trend in the airline industry towards acquisitions and mergers. From the Commission's point of view, no preference towards any specific institutional design or airline size should be given. It is for the market to find the optimum structure and for competition policy to make sure that liberalised markets remain accessible for competitors and that consumers can take full advantage of the benefits of liberalisation. In assessing acquisitions and mergers the key question to be answered is how much competition remains in the market. To answer it, the Commission looks both to the market shares of the parties and to barriers to new entrants. ■