Thursday 25 November 2010

Competition horizontal cooperation rules

P7_TA(2010)0447

European Parliament resolution of 25 November 2010 on the review of the competition horizontal cooperation rules

(2012/C 99 E/20)

The European Parliament,

— having regard to Articles 101(1) and (3), 103(1) and 105(3) of the Treaty on the Functioning of the European Union (hereinafter the 'TFEU'),

— having regard to Regulation (EEC) No 2821/71 of the Council of 20 December 1971 on the application of Article 85(3) of the Treaty to categories of agreements, decisions and concerted practices [1],

— having regard to Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements [2] (the block exemption regulation on specialisation agreements, hereinafter the 'specialisation BER'),

— having regard to Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements [3] (the block exemption regulation on research and development agreements, hereinafter the 'R&D ber'),

— having regard to the Draft Commission Regulation on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of specialisation agreements (the new block exemption regulation on specialisation agreements, hereinafter the 'draft new specialisation BER'), published on 4 May 2010 for consultation on the Commission's website,

— having regard to the Draft Commission Regulation on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of research and development agreements (the new block exemption regulation on research and development agreements, hereinafter the 'draft new R&D ber'), published on 4 May 2010 for consultation on the Commission's website,

— having regard to the Commission notice on guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (hereinafter the 'horizontal guidelines') [4],

— having regard to the Draft Communication from the Commission on guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements (hereinafter the 'draft new horizontal guidelines'), published on 4 May 2010 for consultation on the Commission's website,

— having regard to the contributions from the different stakeholders sent to the Commission during the periods of public consultations and published on the Commission's website,

— having regard to the debate between Commissioner Almunia and members of the Economic and Monetary Affairs Committee on 6 July 2010,

— having regard to its resolution of 9 March 2010 on the Report on Competition Policy 2008 [5],

[1] OJ L 285, 29.12.1971, p. 46.
[2] OJ L 304, 5.12.2000, p. 3.
[3] OJ L 304, 5.12.2000, p. 7.
[4] OJ C 3, 6.1.2001, p. 2.
[5] Texts adopted, P7_TA(2010)0050.

— having regard to the question of 28 September 2010 to the Commission on the review of the competition horizontal cooperation rules (O-0131/2010 – B7-0565/2010),

— having regard to Rules 115(5) and 110(2) of its Rules of Procedure,

A. whereas both the specialisation BER and the R&D BER will expire on 31 December 2010; whereas the Commission has launched the process of reviewing both regulations and their accompanying guidelines,

B. whereas there have been significant legislative changes since the adoption of the two regulations and the horizontal guidelines, in particular the adoption of the modernisation package in 2003 which introduced the need for self-assessment by undertakings of the agreements entered into,

C. whereas the Commission has gained experience in the application of these rules during recent years and there is currently a new set of rules derived from Commission and Court case law in need of codification,

D. whereas it is good practice also to learn from the experience of the EU national competition authorities and competition authorities worldwide; whereas it is to be recommended, particularly in the context of the current economic crisis, to try to agree on convergent competition rules worldwide, given that many agreements and practices are covered by several legal competition regimes,

1. Welcomes the fact that the Commission has opened two different public consultations in connection with the review of the competition rules applicable to horizontal cooperation agreements; stresses the importance of listening to and considering as much as possible in the decision-making process the views of the stakeholders in order to achieve a realistic and balanced regulatory framework;

2. Calls on the Commission to specify clearly at the end of the review procedure how it has taken into account contributions from the stakeholders;

3. Appreciates the fact that the Commission sent Parliament the draft rules at an early stage; encourages the Commission to continue to work proactively in a spirit of openness with Parliament; welcomes the availability shown by Commissioner Almunia to debate the draft rules with the Members of the Economic and Monetary Affairs Committee;

4. Recalls the importance of legal certainty; appreciates the fact that the Commission drafted Frequently Asked Questions for the second public consultation to highlight the major changes proposed in the draft rules; calls on the Commission, once the final new regulatory framework has been adopted, to draft a summary note and new Frequently Asked Questions to explain the final framework in detail to market players;

5. Highlights the importance of the two block exemption regulations in the area of horizontal cooperation for the analysis of the agreements falling within their scope;

6. Notes that, even if an approach based on defining a safe harbour based on market shares is not perfect, it reflects an economic fact and is quite simple to understand and apply; agrees that horizontal agreements usually raise more competition concerns than vertical agreements and therefore understands that the Commission is maintaining a more restrictive approach on setting the market share threshold as regards horizontal agreements;

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7. Notes, however, that most horizontal cooperation agreements do not fall within the scope of these two block exemption regulations; asks the Commission to analyse whether stakeholders and the objective of maintaining effective competition would benefit from the establishment of new specific block exemption regulations to cover particular types of horizontal agreements other than R&D and specialisation; if the conclusion is positive, calls on the Commission to seek appropriate authorisation from the Council to adopt these new types of block exemption regulations, after consulting Parliament;

8. Takes the view that the horizontal guidelines represent a useful analysis and self-assessment tool for companies, with a sophisticated economic approach, whether or not a horizontal cooperation agreement infringes Article 101(1) TFEU;

9. Appreciates, therefore, that the new horizontal guidelines reflect the self-assessment need introduced by Regulation (EC) No 1/2003 and provide clear guidance for complex arrangements such as joint ventures and agreements covering more than one type of cooperation; takes the view that such an approach should not, however, lead to a more complicated regulatory framework;

10. Recalls, in this context, the better regulation principle of improving the quality of legislative and regulatory drafting, namely through the use of clear and precise language; favours very clear and reader-friendly guidelines, therefore, including more concrete examples where appropriate, as requested by several stakeholders;

11. Welcomes the new chapter on information exchange in the new draft horizontal guidelines; notes that this is a sensitive issue in the relationship between competitors and that it is essential for undertakings to be able to identify which information can be shared, without creating restrictive effects on competition, particularly in the current context of self-assessment of the agreements;

12. Welcomes the revision of the standardisation chapter in the draft new horizontal guidelines and the place given to environmental aspects in it; recalls the clear benefits of a transparent standard-setting process; appreciates, therefore, the provisions aiming at dealing with the inherent uncertainty surrounding the existence of intellectual property rights in this context and the commercial terms which would be adopted for their licensing; considers that it is of high importance to avoid disputes when standards are adopted;

13. Highlights the importance of respecting intellectual property rights, which decisively contribute to innovation; recalls that the capacity of innovation is a key element in building a competitive economy and meeting the EU 2020 targets; supports the prevention of any abuses of intellectual property rights through competition legislation inter alia;

14. Believes, however, that this question has to be considered in a broader substantive regulatory framework and not only in a competition policy context; stresses that this chapter of the new draft horizontal guidelines should be regarded as a piece of an integrated regulatory framework on the protection of intellectual property rights;

15. Agrees with the Commission that all parties entering into a research and development agreement must previously disclose all their existing and pending intellectual property rights in as far as they are relevant to the use of the results of the agreement by the other parties;

16. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of Member States.