

## STATEMENT

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To the European Commission

### **REFORM OF THE APPLICATION PRACTICE OF ARTICLE 82 OF THE EC TREATY**

#### **Background**

On 19 December 2005, the European Commission published a discussion paper on the reform of the application of Article 82 of the Treaty (DG Competition discussion paper on the application of Article 82 of the Treaty to exclusionary abuses, December 82). As its statement, the Finnish Central Chamber of Commerce presents the following.

The Central Chamber of Commerce considers the purpose of the discussion paper of the Commission on the reform of the application of Article 82 of the Treaty important and, in principle, correct. There is a need to clarify the principles regarding the application of the Article. The permitted co-operation of undertakings may be endangered if competition legislation is difficult to understand especially for small undertakings. There is likewise a need to clarify the mutual relationship between the application practice and the competition rules. What is especially positive is the aim of protecting competition, and not competitors. As for the goal of the reform, it is appropriate that the goal set is the evaluation of the actual economic effects of the operating methods of undertakings.

What should be emphasised in the evaluation of competition-law effects, are the reasons resulting in the exit of undertakings from the markets. Therefore it is important clearly to differentiate between foreclosure from the markets for acceptable economic grounds, such as greater efficiency than in other undertakings, and, on the other hand, foreclosure with artificial means.

The position of an undertaking in the markets may be based on innovativeness and effectiveness of operations. A strong position in the markets, attained through internal growth, does not, as such, harm

competition. The dynamic nature of the markets has to be taken into account in the evaluation, because even a high market share is not necessarily an indication of a dominant market position in the quickly changing markets. Further, the evaluation has to avoid too narrow a market definition.

The discussion paper of the Commission does not, in all respects, give sufficient answers to the needs to reform the application of Article 82. The document must, for example, have a clear definition of exclusion from the markets. Especially, the prerequisites to be set for negative foreclosure should be defined. This involves for example measures artificially reducing the choices of the customers, resulting in the exclusion of smaller and more efficient competitors from the markets while, at the same time, harming the financial position of the consumers.

Competition legislation should interfere only with measures of dominant undertakings with a clear negative effect on the position of the consumers in the markets. In certain cases, such as cases of price rebates, the reform shall contain a more extensive evaluation of the effects than merely a more extensive presentation of the existing practice of the Court of the European Communities.

The presentation of the Commission contains certain problems. The proposal of the Commission on the calculation of costs may result in extensive interference with the pricing of undertakings. The application of general competition law must avoid direct interference with the pricing of undertakings. Also the model presented to calculate the share of costs of the customers is too formal and results rather in the protection of competitors than customers. Too formal regulation may also result in the protection of inefficient undertakings.

The Central Chamber of Commerce considers that the discussion paper of the Commission forms a good basis for a reform of the application of Article 82, but that, in many respects, it requires a deeper evaluation of the effects of measures by undertakings.

CENTRAL CHAMBER OF COMMERCE

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