

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.7.2009
COM(2009) 374 final

REPORT FROM THE COMMISSION

Report on Competition Policy 2008

{SEC(2009) 1004}

Introduction

REPORT FROM THE COMMISSION

Report on Competition Policy 2008

{SEC(2009) 1004}

Introduction

1. This year, for the first time, the Annual Report on Competition features a chapter focusing on a topic that is considered to be of particular importance in the field of competition policy. The topic chosen for this year is "Cartels and consumers".
2. The first section of this report provides an overview of how the instruments of competition policy, namely the anti-trust rules and the rules on mergers and on State aid, were further developed and applied. The second section discusses how these and other instruments were deployed in selected sectors. Section three gives an overview of consumer related activities developed in the past year. Section four focuses on cooperation within the European Competition Network (ECN) and with national courts, while section five deals with international activities. Lastly, section six gives a brief description of inter-institutional cooperation.
3. Due to the very difficult financial and economic circumstances that Europe experienced in 2008, and the way they impacted on the viability of European businesses, particular attention is paid in this year's Report to the European Commission's assessment of rescue and restructuring measures. A request to that end was also made by the European Parliament in its resolution concerning the Annual Reports on Competition Policy for the years 2006 and 2007¹.
4. Further information can be found in a detailed Commission Staff Working Document and on the website of DG Competition².

¹ See point 30 of the [European Parliament resolution of 10 March 2009 on the Report on competition policy 2006 and 2007](#) (2008/2243(INI)).

² http://ec.europa.eu/competition/index_en.html

FOCUS CHAPTER: CARTELS AND CONSUMERS

5. The fight against cartels is central to ensuring that the benefits of a properly functioning competition regime are offered to the final consumer in a given market for products or services. Cartels are amongst the most serious violation of competition law. They shield participants from competition, thus allowing them to raise prices, restrict output and divide markets. As a result, the money ends up in the wrong place, harming consumers through higher prices and leading to a narrower choice of products and services.
6. Cases such as the Banana cartel³ show that the impact of the cartel on final consumers may be direct when they are purchaser or user of a product or service. Higher prices that result from cartels relating to consumer products are felt in the pockets of those buying these everyday products and services. Commission enforcement action – and that of the Competition Authorities in the Member States - puts a stop to this overcharging, preventing it continuing into the future and deters companies from engaging in such behaviour again.
7. Also in markets where the direct customers are industrial clients – where the breach of competition law takes place earlier in the supply chain - consumers ultimately benefit from fighting such cartels. For instance, in the *Car Glass*⁴ case, the product was car windows which consumers purchase as part of their cars and when they want repairs done. Overcharging for component parts such as car windows will affect the overall price of the car or repair. The advantages of lower prices resulting from competition cannot be passed on to consumers. Even if a higher price for an input product can be absorbed by a manufacturer before he sells on the final product, this can still ultimately create a detriment to the consumer – for example, if it results in other services being cut or less money being available for innovation and the development of future, better products. Although the amounts of price increases may be small, when combined these increases can impact on large investments in innovation, products or services. In turn, the benefits of competition are lost and, hence, overall welfare suffers.
8. The examples mentioned above demonstrate why it is essential that the Commission takes action to both stop and prevent cartels. When the Commission prohibits anticompetitive behaviour and fines cartel members, its ultimate purpose is not only to punish those members for past behaviour, but above all to deter every company from continuing or engaging in anti-competitive behaviour. The Commission itself is not involved in seeking compensation for customers in individual cases. Actions for recovery of damages following Commission decisions can be submitted to national courts (for details, see Chapter 11 of the White Paper on damages actions for breach of the EC antitrust rules⁵, which puts forward concrete policy proposals to overcome the obstacles which currently limit effective compensation).

³ Press Release IP/08/1509, 15.10.2008

⁴ Press Release IP/08/1685, 12.11.2008.

⁵ Further information on this issue and on the policy initiative of the Commission in this field can be accessed here: <http://ec.europa.eu/competition/antitrust/actionsdamages/index.html>

9. The preventive effect when fines are imposed is wider than the actual individual case. Through its fining policy, the Commission encourages a culture of compliance with competition law at the level of the entire company group. Hence, even though the action leading to a breach of the law is committed by individuals within a smaller entity of an organisation or subsidiary company, the fine at corporate level shines the spotlight on the responsibility of executives and management, boards and shareholders, to take competition law seriously and to strive to prevent breaches of the law by any member of staff within any of the businesses in which the group is involved. In this way a cartel fine is likely to have an impact on a wider sector of industry, which is likely to learn about the case and the risks associated with entering into cartel arrangements. Lastly, the Commission imposes higher fines on repeat offenders: where multiple infringements of competition law are committed by the same company, it is clear that the message about a culture of compliance has not been taken sufficiently seriously, and a stronger deterrent would seem to be necessary. In the *Car Glass* case, for example, the Commission increased the fines for the company Saint-Gobain by 60% because it was a repeat offender, having previously been fined for two cartels in the flat glass sector⁶. Such signals underline the need for compliance, as a continued or new offence will attract a much higher fine.
10. The Commission can uncover cartels in a number of ways; by analysing a market for evidence of anti-competitive behaviour or by obtaining evidence from different sources. Such evidence may come directly from consumers or other customers of the infringing companies. Alternatively, it may also come from individuals linked to a company who want to “blow the whistle”, or even from cartel members themselves, making use of the Leniency Programme. Indeed, strong cartel sanctions provide an incentive for them to withdraw from the secret agreement and to cooperate with the Commission under the Leniency Programme by providing incriminating evidence. This set of provisions is not aimed as such at enabling some infringers to escape fines for breaching the law; instead, it pursues the higher objective of putting an end to, and allowing a targeted investigation of, damaging corporate agreements.
11. Under the 2006 Leniency Programme, the first company to provide evidence can obtain full immunity from fines. This benefit acts as an extremely strong incentive to break the “code of silence” of cartels. In the *Candle Waxes* cartel, the first company to contact the Commission with information was granted full immunity; and three other cartel members each received a reduction in fines corresponding to the time when they came forward and their level of cooperation. Indeed, the pre-condition for any beneficial treatment is that undertakings provide all evidence in their possession and hence help to prove the existence of a cartel.
12. In 2008 the Commission continued its strong enforcement against cartels, fining 34 undertakings⁷ a total of EUR 2 271 million in seven cartel cases⁸. In the *Car Glass*

⁶ Commission Decision of 23 July 1984 in Case COMP/30.988 *Flat Glass (Benelux)*, OJ L 212, 8.8.1984, p. 13 and Commission Decision of 7 December 1988 in Case COMP/31.906 *Flat glass (Italy)*, OJ L 33, 4.2.1989, p. 44.

⁷ Figure excluding the companies that received immunity from fines for cooperation under the Leniency Notice.

⁸ *NBR, International Removal Services, Sodium Chlorate, Aluminium Fluoride, Candle Waxes, Bananas and Car Glass*.

case the Commission imposed the highest fine for a cartel case to date, amounting to EUR 1 383 million.

13. In 2008 the Commission services also made some general estimates of the harm to the economy caused by cartels. The Commission services looked at the 18 cartels which were the subject of Commission decisions during the years 2005 to 2007, the size of the markets involved, the cartels' duration and the very conservative assumptions regarding the estimated overcharge. Assuming an overcharge of between 5% to 15%, the harm suffered ranges from around EUR 4 billion to EUR 11 billion for these 18 cartels. Taking the middle point of this overcharge range - 10% - gives a conservative estimate of consumer harm of EUR 7.6 billion due to these cartels. Even this figure is probably too low. Indeed, economic literature on the subject suggests that the average overcharge in prices can be as high as 20% to 25%.
14. In addition, this figure does not take into account the benefits of deterrence and fostering compliance among undertakings through prohibition decisions and the imposition of fines. Strong cartel enforcement ensures that cartels that may otherwise be formed are discouraged. The Office of Fair Trading (OFT) has recently carried out a wide-ranging expert survey on this matter. This survey suggests that, for every cartel discovered, five cartels may not have been put into effect or may have been abandoned. This assumption suggests that an additional saving flowing from the 18 cartel decisions in 2005-2007, possibly of the order of some EUR 60 billion, could have accrued.

1. INSTRUMENTS

1.1. Anti-trust – Articles 81 and 82 EC

1.1.1. *Shaping the rules and policy*

15. On 2 April, the Commission adopted the **White Paper on damages actions for breach of the EU anti-trust rules**⁹, which is part of an ongoing Commission policy project.
16. The European Court of Justice has stated that, under EU law, any individual can claim compensation for harm suffered where there is a causal relationship between that harm and an agreement or practice prohibited under Article 81 EC¹⁰; however, the Commission has found that, in practice, victims of anti-trust infringements only rarely obtain compensation.
17. The White Paper puts forward concrete proposals to overcome the obstacles which currently block effective compensation, whilst ensuring respect for European legal systems and traditions. The recommendations balance the rights and obligations of both the claimant and the defendant, and include safeguards against abuses of

⁹ Further information on this issue and on the policy initiative of the Commission in this field can be accessed here: <http://ec.europa.eu/competition/antitrust/actionsdamages/index.html>

¹⁰ Joined Cases [C-295/04 to C-298/04 Manfredi](#) [2006] ECR I-6619. See also Case [C-453/99 Courage vs Crehan](#) [2001] ECR I-6297. While the ECJ only refers to infringements of Article 81 EC, it follows from the Court's reasoning that the same considerations apply for Article 82 EC as well.

litigation. The primary objective pursued is to improve compensation for all victims. At the same time, more effective compensation mechanisms will inherently produce beneficial deterrent effects. The Commission also intends to draw up non-binding guidance for quantification of damages in anti-trust cases in order to facilitate this calculation.

18. In the field of anti-cartel enforcement, a new mechanism has been introduced which will allow the Commission to settle cartel cases by means of a simplified procedure. The **settlements package**, which entered into force on 1 July 2008, consists of a Commission Regulation¹¹ accompanied by a Commission Notice¹² explaining the new system in detail. If companies, having seen the evidence in the Commission file, choose to acknowledge their involvement in the cartel, the precise nature of their infringement and their liability for it, the fine imposed on the parties will be reduced by 10%. Settlements aim to simplify the administrative proceedings and might result in fewer Commission resources being devoted to litigation before the Community Courts in cartel cases, which in turn will free up Commission resources to pursue other cartel cases and open new investigations.
19. On 3 December, the Commission issued **Guidance on enforcement priorities when dealing with abusive exclusionary conduct by dominant undertakings**. The Commission will, as a matter of priority, pursue exclusionary conduct by dominant undertakings that is likely to restrict competition in such a way as to have harmful effects on consumers. The Guidance establishes the analytical framework that the Commission will use to determine whether the exclusionary conduct of a dominant undertaking is likely to result in consumer harm. The Guidance contains a general part, which sets out the main principles of an effects-based approach determining enforcement priorities in relation to Article 82 EC, and then applies this general analytical framework to the most commonly encountered forms of exclusionary conduct, such as exclusive dealing, rebates, tying and bundling, predatory practices, refusal to supply and margin squeeze. This provides transparency and predictability as to the circumstances that are liable to prompt an intervention from the Commission and, even more importantly, should dissuade dominant undertakings from engaging in certain types of conduct in the first place.
20. During 2008 the Commission also initiated, or continued, the revision of the Block Exemption Regulation applicable to vertical agreements¹³, the Motor Vehicle Block Exemption Regulation¹⁴ and the Block Exemption Regulation in the insurance sector¹⁵.

¹¹ Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases ([OJ L 171, 1.7.2008, p. 3](#)).

¹² Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases ([OJ C 167, 2.7.2008, p. 1](#)).

¹³ Commission Regulation (EC) 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices ([OJ L 336, 29.12.1999, p. 21](#)).

¹⁴ Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector ([OJ L 203, 1.8.2002, p. 30](#)).

¹⁵ Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector ([OJ L 53, 28.2.2003, p. 8](#)).

1.1.2. Applying the rules

21. In 2008, as regards the application of the **anti-trust rules to cartel cases**, the Commission adopted decisions to fine 34 undertakings¹⁶ in seven cartel cases¹⁷ a total of EUR 2 271 million. The Commission imposed the highest fine per cartel case to date of EUR 1 383 million in the *Car Glass* case.
22. Concerning the application of the **anti-trust rules to non-cartel cases**, the Commission adopted, in July, a decision¹⁸ prohibiting EEA collecting societies which are members of the *International Confederation of Societies of Authors and Composers (CISAC)* from maintaining membership restrictions and exclusivity clauses in their reciprocal bilateral agreement and a concerted practice concerning the territorial delineation of these agreements.
23. As far as **abuses of dominant position** are concerned, following a statement of objections (SO) in the *Microsoft* case in March 2007, the Commission adopted on 27 February a decision concluding that Microsoft had not complied with its obligation to offer complete and accurate interoperability information on reasonable and non-discriminatory terms. A definitive penalty payment of EUR 899 million was imposed on Microsoft¹⁹. Microsoft was the first company in the history of competition policy in the EU to have periodic penalty payments imposed on it for non-compliance with a previous decision from the Commission. The Commission pursued its proceedings against Microsoft to ensure compliance with the 2004 Decision and with the principles laid down in the judgment of the Court of First Instance (CFI) of 17 September 2007 with regard to the pricing and licensing terms for the interoperability information that Microsoft has to disclose as part of the remedy imposed by the 2004 Decision²⁰.
24. In the *Intel case*, a supplementary statement of objections (SSO) was issued on 17 June, reinforcing the Commission's preliminary view outlined in a SO of 26 July 2007 that Intel has infringed EC Treaty rules on the abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Central Processing Units (CPU) market.
25. Lastly, the Commission adopted in November a commitment decision rendering legally binding commitments offered by *E.ON* to address concerns raised in the course of an investigation pursuant to Article 82 EC, which started as a follow-up to the energy sector inquiry.

¹⁶ Figure excluding the companies that received immunity from fines for cooperation under the Leniency Notice.

¹⁷ NBR, international removal services, sodium chlorate, aluminium fluoride, candle waxes, bananas and car glass.

¹⁸ Case [COMP/38.698](#) *CISAC*.

¹⁹ Case [COMP/34.792](#) *Microsoft* (not yet published in the OJ).

²⁰ In 2006, the Commission had imposed on Microsoft a definitive penalty payment of EUR 280.5 million for not providing complete and accurate interoperability information.

1.2. State measures: Public undertakings and/or undertakings with exclusive or special rights

26. The Commission has also been active in the area of Article 86 EC, which prevents Member States from enacting or maintaining in force any measures contrary to the EC Treaty rules, in general, and to the competition rules, in particular, regarding public undertakings and undertakings to which Member States grant special or exclusive rights.
27. In March, the Commission adopted a decision finding that the Greek State had infringed Article 86 in conjunction with Article 82 EC by maintaining in force legal provisions which guaranteed the state-owned incumbent Public Power Corporation (PPC) access to almost all exploitable lignite mines in Greece²¹. Lignite-fired power generation being the cheapest form of electricity production in Greece, this situation created an inequality of opportunity between market operators and allowed PPC to maintain its dominant position on the wholesale electricity market. Greece was requested to submit proposals on how to ensure that competitors obtain sufficient access to lignite which - should the Commission consider the proposals to be satisfactory – be made legally binding on the Greek State by way of a second decision.
28. On 7 October, the Commission adopted a decision²² finding that the amendment of the Slovak Postal Act constituted an infringement of Article 86 in conjunction with Article 82 EC since it included into the reserved area ("postal monopoly") the delivery stage of hybrid mail services²³, a service which had previously been liberalised. Neither the Slovak State nor the Slovenská Pošta (the postal incumbent) had demonstrated that this extension of the postal monopoly was necessary for the provision of the postal universal service. Since the Republic of Slovakia failed to inform the Commission about any measures undertaken to put an end to the infringement, the latter initiated an infringement procedure against the Republic of Slovakia for non compliance with the decision of 7 October²⁴.

1.3. Merger control

1.3.1. *Shaping the rules and policy*

29. Remedies are modifications to a merger proposed by the merging parties to eliminate competition concerns identified by the Commission. To provide improved guidance on questions related to remedies, the Commission adopted, on 22 October, a new **Notice on Remedies**²⁵ while also amending the Implementing Regulation²⁶. The

²¹ See Press Release [IP/08/386](#), 5.3.2008.

²² [OJ C 322, 17.12.2008, p. 10](#). See also Press Release [IP/08/1467](#), 7.10.2008.

²³ Hybrid mail is a specific form of postal services where the content is electronically transferred from the sender to the postal service operator who then prints, envelopes, sorts and delivers the postal items.

²⁴ See Press Release [IP/08/1997](#), 17.12.2008.

²⁵ Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, (the "Merger Implementation Regulation"), ([OJ C 267, 22.10.2008, p. 1](#)).

²⁶ Commission Regulation (EC) No 1033/2008 of 20 October 2008 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ([OJ L 279, 22.10.2008, p. 3](#)).

remedies reform is mainly a codification of recent past practice of the Community Courts, but also takes into account the conclusions drawn from the Remedies Study²⁷ and the replies to the public consultation on a draft Remedies Notice.

30. The reform imposes more stringent information requirements on merging parties, requiring the notifying parties to systematise the information to be provided. It also clarifies and tightens up the requirements for the sufficient scope of divestitures and for the suitability of purchasers, and explains the application of "up-front buyer" provisions and "fix-it-first" solutions. The Notice underlines that non-divestiture remedies are only acceptable where they are equivalent in their effects to a divestiture and that difficulties in monitoring and risks of ineffectiveness may lead to the rejection of such remedies.

1.3.2. Applying the rules

31. The level of merger notifications continued at record levels in 2008 with a total of 347 transactions being notified to the Commission, the third highest level on record. The Commission adopted a total of 340 final decisions during the year. Of these final decisions, 307 transactions were approved without conditions during Phase I. A total of 118 decisions were approved without conditions under the normal procedure and a further 189 were cleared using the simplified procedure. There were also 19 transactions cleared in Phase I, but subject to conditions. The Commission initiated ten Phase II proceedings during the year. There was a notable increase in the number of Article 8 decisions adopted (14, or 4.0% of all notifications as opposed to 2.5 % the previous year) and in the number of Phase I (10, representing 2.9% in 2008 as opposed to 1.2% in 2007) and II withdrawals (3, amounting to 0.9% in 2008 against 0.7% in 2007). No prohibition decisions were taken during the year.

1.4. State aid control

1.4.1. Shaping the rules and policy

32. At the beginning of 2008 the Commission's focus in the State aid field was to continue with the implementation of the State Aid Action Plan (SAAP)²⁸. However, the onset of the financial and economic crisis shifted that focus and the Commission rapidly issued three Communications on the role of State aid policy in the context of the crises and the recovery process.
33. In the context of the **financial crisis**, the Commission first gave initial guidance on the application of State aid rules to measures taken in relation to financial institutions²⁹, which exceptionally were based on Article 87(3)(b) of the EC Treaty which allows for aid to remedy a serious disturbance in the economy of a Member State. Subsequently, the Commission supplemented and refined its guidance with a new Communication on how Member States can recapitalise banks in the current financial crisis³⁰ to ensure adequate levels of lending to the rest of the economy and

²⁷ [Merger Remedies Study](#), DG Competition, European Commission, October 2005.

²⁸ State Aid Action Plan – Less and better targeted State aid: a roadmap for State aid reform 2005-2009. [COM\(2005\)107 final](#), 7.6.2005.

²⁹ [OJ C 270, 25.10.2008, p. 8.](#)

³⁰ [OJ C 10, 15.1.2009, p. 2.](#)

stabilise financial markets, whilst avoiding excessive distortions of competition. In addition, the Commission adopted a new temporary framework³¹ providing Member States with additional possibilities to tackle the effects of the credit squeeze on the real economy. All measures are time-limited until the end of 2010, although the Commission, based on Member States' reports, will evaluate whether the measures should be maintained beyond 2010, depending on whether the crisis continues.

34. As regards the **implementation of the SAAP**, the Commission adopted, as announced, a General Block Exemption Regulation (GBER)³² giving automatic approval for a range of aid measures³³ and so allowing Member States to grant such aid without first notifying the Commission, provided that they fulfil all the requirements laid down in the Regulation. In the context of the Climate Change Package, the Commission adopted new guidelines on State aid for environmental protection³⁴ which introduce a standard assessment for minor cases and a detailed assessment for cases that may involve significant distortions of competition. The Commission also prolonged the Framework on State aid rules for shipbuilding³⁵ for a further three years, until 31 December 2011. A new Notice on State aid in the form of guarantees³⁶ sets out clear and transparent methodologies to calculate the aid element in a guarantee and provides simplified rules for SMEs, including predefined safe-harbour premiums and single premium rates for low-amount guarantees.
35. In addition, public consultations were launched on new rules relating to public service broadcasting, the possible extension until 2012 of the Cinema Communication (scheduled for adoption in January 2009), the guidance documents on the in-depth assessment of regional aid to large investment projects and on criteria for the compatibility analysis in the field of training, as well as on disadvantaged and disabled workers for State aid cases subject to individual notification.
36. The Commission also launched in 2008 a number of public consultations on procedural issues, such as a consultation on a draft Best Practice Code (BPC)³⁷ on the conduct of State aid control proceedings and the draft notice on Simplified procedure (SP) for the treatment of certain types of State aid. The aim of both documents is to ensure greater transparency, predictability and efficiency of State aid procedures in line with the SAAP. The discussion with the Member States and other stakeholders regarding the BPC and SP will take place early 2009. The drafts are currently due to be adopted in the first half of 2009. The Commission also consulted on a draft Commission Notice on the enforcement of State aid law by national courts³⁸.
37. In 2008, the Commission continued its efforts to improve the enforcement and monitoring of State aid decisions. The Commission is seeking to achieve, on the

³¹ [OJ C 16, 21.1.2009, p. 1.](#)

³² [OJ L 214, 9.8.2008, p. 3.](#)

³³ Aid in favour of SME, research, innovation, regional development, training, employment, risk capital, environmental protection and entrepreneurship, among others.

³⁴ [OJ C 82, 1.4.2008, p. 1.](#)

³⁵ [OJ C 173, 8.7.2008, p. 3.](#)

³⁶ [OJ C 155, 20.6.2008, p. 10](#) and [OJ C 244, 25.9.2008, p. 32.](#)

³⁷ See Press Release [IP/08/1950](#), 11.12.2008.

³⁸ It would replace the 1995 Notice on Cooperation between national courts and the Commission in the State aid field ([OJ C 312, 23.11.1995, p. 8](#)).

basis of the recovery notice adopted in 2007³⁹, a more effective and immediate execution of recovery decisions. Information submitted by the Member States concerned shows that good progress towards recovery was made during that period. This is also reflected in the amounts of aid recovered. Of the EUR 10.3 billion of illegal and incompatible aid to be recovered under decisions adopted since 2000, some EUR 9.3 billion (i.e. 90.7% of the total amount) had actually been recovered by the end of 2008. In addition, a further EUR 2.5 billion in recovery interest had been recovered.

38. As announced in the SAAP, the Commission continued to take a strict line towards Member States that failed to effectively implement recovery decisions addressed to them. In 2008 the Commission initiated legal action under either Article 88(2) EC or Article 228(2) EC for failure by Member States to comply with recovery obligations. It decided to initiate Article 88(2) EC in five cases involving Italy and Slovakia, as well as decisions to proceed with Article 228(2) EC in eight cases involving Italy and Spain.
39. In the interest of increased transparency and better communication, DG Competition has published on its webpage a *Vademecum on State aid rules*⁴⁰ summarizing the main rules applicable to State aid control.

1.4.2. *Applying the rules*

40. The update of the State aid Scoreboard⁴¹ in autumn 2008 shows that Member States are increasingly making use of the possibilities offered by the recently revised EU State aid rules to better target their aid. Member States awarded on average 80% of their aid to horizontal objectives in 2007, compared with around 50% in the mid-1990s, with increased spending on Research and Development (R&D) and environmental aid. In the face of the current financial crisis, coordinated action by Member States and the Commission has ensured that support schemes for the financial sector have been implemented promptly in compliance with State aid rules.
41. Over the last 25 years, the overall level of State aid has fallen from over 2% of GDP in the 1980s to around 0.5% in 2007. Whilst highlighting the continuing trend for Member States to focus their aid on horizontal objectives, the Scoreboard nevertheless showed that, following the recent financial crisis, the share of rescue and restructuring aid is likely to increase significantly for some countries in 2008.
42. In 2008, the Commission approved 88 notified schemes on the basis of the 2006 Community Framework for **research and development and innovation**⁴²; 66 of these were purely R&D schemes, nine were innovation-oriented aid schemes and 13 were mixed, pursuing both R&D and innovation objectives.

³⁹ [OJ C 272, 15.11.2007, p. 4.](#)

⁴⁰ The *Vademecum* is available at http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html#vademecum

⁴¹ [COM\(2008\) 751 final, 17.11.2008.](#)

⁴² [OJ C 323, 30.12.2006, p. 1.](#)

43. In addition, an important decision⁴³ was adopted in several individual cases involving the Italian aeronautic sector, following an assessment on the basis of the Community frameworks for State aid for R&D of 1996⁴⁴ and 1986⁴⁵. The decision, adopted on 11 March, covers 17 individual R&D projects in the aeronautic sector supported by the Italian authorities during the 1990s. The decision requires the immediate reimbursement of the loans for most of the individual projects, plus interest on arrears in certain cases. The beneficiaries have reimbursed around EUR 350 million within the time limit of two months laid down by the decision.
44. In the area of **risk capital financing for SMEs**, the Commission approved 18 risk capital schemes under the Risk Capital Guidelines⁴⁶. Eleven schemes were assessed on the basis of Chapter 4 of the guidelines, since they complied with the safe harbour provisions allowing a light assessment; three schemes were assessed under Chapter 5, following a detailed assessment⁴⁷. In three cases the Commission considered that the scheme did not involve State aid⁴⁸. One scheme was partly considered as no aid and partly assessed under Chapter 4 of the Guidelines⁴⁹.
45. In the field of industrial restructuring, the Commission adopted a decision requesting Romania to recover EUR 27 million unlawful aid in relation to the privatisation of Automobile Craiova, which had been sold on conditions aiming at ensuring a certain level of production and employment, accepting in exchange a lower sales price⁵⁰. Furthermore, following several years of investigation, the Commission concluded that the attempts of the Polish authorities to restructure the shipyards in Gdynia and Szczecin and to return them to viability had failed⁵¹. As a result, the Commission required Poland to recover the illegal State aid from the shipyards through a controlled sale of the yards' assets and subsequent liquidation of the companies.

2. SECTOR DEVELOPMENTS

2.1. Energy and environment

46. The **Internal Energy Market package** proposed by the Commission on 19 September 2007 was the subject of intensive discussions between the three institutions in 2008. The Parliament adopted its first-reading opinions on the Energy

⁴³ [Case C 61/2003](#) *Loi aéronautique italienne N808/85 cas individuels*.

⁴⁴ [OJ C 45, 17.2.1996, p. 5](#).

⁴⁵ [OJ C 83, 11.4.1986, p. 2](#).

⁴⁶ [OJ C 194, 18.8.2006, p. 2](#).

⁴⁷ Cases [N 263/2007](#) *Technology Founder Fund Saxony* (OJ C 93, 15.4.2008, p. 1), [N 521/2007](#) *Risikokapitalregelung "Clusterfonds Start-up!" Freistaat Bayern* (OJ C 100, 22.4.2008, p. 2) and [N 700/2007](#) *Finance Wales JEREMIE Fund* (OJ C 331, 31.12.2008, p. 2).

⁴⁸ [N 836/2006](#) *Mittelstandsfonds Schleswig-Holstein* (OJ C 67, 12.3.2008, p. 1), [C 33/2007](#) *IBG Beteiligungsgesellschaft Sachsen-Anhalt mbH* (OJ C 246, 20.10.2007, p. 20), [N 389/2007](#) *Risk capital fund Niedersachsen* (OJ C 145, 11.6.2008, p. 1).

⁴⁹ [N 696/2007](#) *ERDF Risk Capital Fund Brandenburg* (OJ C 180, 17.7.2008, p. 3).

⁵⁰ Case [C 46/2007](#) *Privatisation of Automobile Craiova* (OJ C 239, 6.9.2008, p. 12). See Press Release [IP/08/315](#), 27.2.2008.

⁵¹ Cases [C 17/2005](#) *Restructuring aid for Stoczni Gdynia* (OJ C 220, 8.9.2005, p. 7) and [C 19/2005](#) *Restructuring aid for Szczecin shipyard* (OJ C 220, 9.9.2005, p. 7). See Press Release [IP/08/1642](#), 6.11.2008.

Package in the summer (on 18 June for electricity and on 9 July for gas). The Energy Council reached a political compromise on 10 October.

47. On 23 January the Commission put forward a far-reaching package of proposals that will deliver on the EU's ambitious commitments to fight climate change and promote renewable energy up to 2020 and beyond. In December, fully in line with the Commission's proposals, the European Parliament and Council reached an agreement on targets, which will become legally binding by 2020. It has been agreed to cut greenhouse gas emissions by 20%, to establish a 20% share for renewable energy, and to improve energy efficiency by 20%. The agreement concerned revisions to the emissions trading system, the distribution of the reduction effort outside of the emissions trading system, binding national targets for the share of renewable energy produced, a legal framework for environmentally safe carbon capture and storage (CCS) as well as related proposals on CO₂ emissions from cars and on fuel quality. This will help transform Europe into a low-carbon economy and increase its energy security. In support of the Commission's overall policies on climate change and renewable energy, the package also includes new guidelines on State aid for environmental protection, specifying the conditions under which aid for environmental protection may be declared compatible with the Treaty. These Guidelines became applicable in April. In July the Commission adopted the new General Block Exemption Regulation, under which State aid for renewable energy and energy efficiency is exempted from notification if certain criteria are met.
48. On 13 November the Commission adopted a Second **Strategic Energy Review** package⁵², containing wide-ranging proposals on enhancing the security of energy supply and stressing, inter alia, the importance of the functioning of a competitive Internal Energy market for the security of energy supply.
49. Properly functioning energy markets require that entrants can have access to energy networks and customers. The Commission has continued to focus in particular on three general types of abuses in the electricity and gas sectors that involve the main areas of market malfunctioning identified by the sector inquiry. These **antitrust investigations** focus on exclusionary conduct, exploitative abuses and collusion.
50. In 2006 the Commission initiated investigations into the German electricity market as a follow-up to the energy sector inquiry⁵³. In the course of its investigation, the Commission came to the preliminary view that *E.ON* might have abused its dominant market position in two ways: first, as a wholesaler on the electricity market, by strategically withholding production capacity of certain power plants on the wholesale market in order to drive up the price. Moreover, the Commission had concerns that E.ON had devised and implemented a strategy to deter third parties from investing in electricity generation; and secondly that, as a transmission system operator, it was favouring its own production in the secondary electricity balancing market⁵⁴. In June, the Commission consulted interested parties on the structural

⁵² See Press release [IP/08/1696](#), 13.11.2008.

⁵³ See [MEMO/06/483](#), 12.12.2006.

⁵⁴ Balancing energy is last minute electricity supply to maintain the frequency of the current in the network. The Commission had concerns that E.ON was favouring its own production affiliate, even if it charged higher prices, passing on the increased costs to the final customer, and that E.ON prevented other power producers from selling balancing energy into the E.ON markets.

commitments proposed by *E.ON* to address these concerns of anticompetitive behaviour on the German electricity markets⁵⁵. The results confirmed that the commitments were proportionate and necessary to remedy the concerns. As a result, the Commission adopted a decision on 26 November rendering the commitments offered by *E.ON* legally binding, and closed its investigation⁵⁶.

51. As regards other cases concerning the electricity market, the Commission issued a statement of objections to *Electricité de France (EdF)* in December alleging customer foreclosure through *de facto* and/or *de iure* exclusive long-term contracts between EdF and large industrial users in France⁵⁷. Furthermore, the Commission continued its investigation in *Suez/Electrabel* dealing with the same alleged behaviour in Belgium⁵⁸. After having carried out surprise inspections in 2006 on *E.ON AG (E.ON)*, *E.ON Ruhrgas AG* and *Gaz de France (GdF)* premises in Germany and France⁵⁹ and formally opening proceedings in July 2007⁶⁰, the Commission issued a statement of objections to *E.ON* and *GdF*.

2.2. Financial services

52. At the beginning of the autumn, **the financial crisis** hit the economies of EU Member States in a systemic manner. Many EU governments took measures to support financial stability, to restore confidence in the financial markets and to minimize the risk of a serious credit crunch.
53. In the field of competition policy – and of **State aid control in particular** – the role of the Commission has been to support financial stability by promptly giving legal certainty to the measures taken by Member States. The Commission also contributed to maintaining a level playing field and ensuring that national measures would not simply export problems to other Member States.
54. In its October Communication on the "application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis"⁶¹, the Commission clarified its general approach and provided guidance on a number of State interventions, particularly on State guarantees, which had been the most widespread form of response to the crisis in the initial phase.
55. Then, the recapitalisation of banks became the focus of Member States' attention. In December, the Commission provided guidance on the assessment of such measures under EU State aid rules in the Communication "The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition"⁶².
56. The consistent methodology set out in these guidance documents has enabled the rapid design and approval of a large number of national schemes and individual

⁵⁵ See [MEMO/08/396](#), 12.6.2008.

⁵⁶ See Press Release [IP/08/1774](#), 26.11.2008.

⁵⁷ See [MEMO/08/809](#), 29.12.2008.

⁵⁸ See [MEMO/07/313](#), 26.7.2007.

⁵⁹ See [MEMO/06/205](#), 17.5.2006.

⁶⁰ See [MEMO/07/316](#), 30.7.2007.

⁶¹ OJ C 270, 25.10.2008, p. 8.

⁶² OJ C 10, 15.1.2009, p. 2.

measures to tackle the crisis, whilst avoiding harmful economic imbalances between banks and between Member States.

57. The Commission approved aid in the following decisions on the basis of Article 87(3)(c): Sachsen LB⁶³; IKB⁶⁴; West LB⁶⁵; Roskilde Bank⁶⁶; Hypo Real Estate⁶⁷; Bradford and Bingley⁶⁸.
58. Due to the deepening of the crisis, the Commission decided at the beginning of October to approve State aid under Art. 87(3)(b) on aid to remedy a serious disturbance in the economy of a Member State. In 2008, the Commission approved the following *aid schemes* supporting financial stability: eleven *guarantee schemes* (Denmark⁶⁹, Finland⁷⁰, France⁷¹, Ireland⁷², Italy⁷³, Latvia⁷⁴, the Netherlands⁷⁵, Portugal⁷⁶, Slovenia⁷⁷, Spain⁷⁸ and Sweden⁷⁹); two *recapitalisation schemes* (France⁸⁰ and Italy⁸¹); one *asset purchase scheme* (Spain⁸²); and four *holistic schemes* containing two or more of the above elements (Austria⁸³, Germany⁸⁴, Greece⁸⁵, United Kingdom⁸⁶).
59. The Commission also approved a number of *individual cases* in 2008, including recapitalisation, guarantee and liquidity cases: ING⁸⁷, KBC⁸⁸, Parex⁸⁹, SNS Reaal⁹⁰, Bayern LB⁹¹, Fortis⁹², Dexia⁹³, Nord LB⁹⁴, guarantee for IKB⁹⁵, Carnegie Sweden⁹⁶, Aegon⁹⁷, Fortis Bank and Fortis Bank Luxembourg⁹⁸.

⁶³ C 9/2008 *Restructuring aid to Sachsen LB, Germany.*

⁶⁴ C 10/2008 *Restructuring aid to IKB, Germany.*

⁶⁵ C 43/2008 *Restructuring aid to West LB, Germany.*

⁶⁶ N 366/2008 *Rescue aid to Roskilde Bank, Denmark.*

⁶⁷ NN 44/2008 *Rescue aid to Hypo Real Estate, Germany.*

⁶⁸ NN 41/2008 *Rescue aid to Bradford and Bingley, UK.*

⁶⁹ NN 51/2008 *Guarantee scheme for banks in Denmark.*

⁷⁰ N 567/2008 *Finnish guarantee scheme.*

⁷¹ N 548/2008 *Financial support measures to the banking industry in France (refinancing), not yet published.*

⁷² NN 48/2008 *Guarantee scheme for banks in Ireland.*

⁷³ N 520a/2008 *Guarantee scheme for Italian banks.*

⁷⁴ N 638/2008 *Guarantee scheme for banks.*

⁷⁵ N 524/2008 *Guarantee scheme for Dutch financial institutions.*

⁷⁶ NN 60/08 *Guarantee scheme for credit institutions in Portugal.*

⁷⁷ N 531/2008 *Guarantee scheme for credit institutions in Slovenia.*

⁷⁸ NN 54b/2008 *Spanish guarantee scheme for credit institutions.*

⁷⁹ N 533/2008 *Support measures for the banking industry in Sweden.*

⁸⁰ N 613/2008 *Financial support measures to the banking industry in France (recapitalisation).*

⁸¹ N 648/2008 *Recapitalisation scheme.*

⁸² NN 54a/2008 *Fund for the Acquisition of Financial Assets in Spain.*

⁸³ N 557/2008 *Aid scheme for the Austrian financial sector.*

⁸⁴ N 512/2008 *Aid scheme for financial institutions in Germany.*

⁸⁵ N 560/2008 *Aid scheme to the banking industry in Greece.*

⁸⁶ N 507/2008 *Aid scheme to the banking industry in the UK.*

⁸⁷ N 528/2008 *Measure in favour of ING (recapitalisation), Netherlands.*

⁸⁸ N 602/2008 *KBC Recapitalisation, Belgium.*

⁸⁹ NN 68/2008 *Support measures for JSC Parex Banka, Latvia.*

⁹⁰ N 611/2008 *SNS Reaal/New capital injection by the Dutch authorities, Netherlands.*

⁹¹ N 615/2008 *Guarantee and recapitalisation for Bayern LB, Germany.*

⁹² N 574/2008 *Measures in favour of Fortis, Belgium/Luxembourg/Netherlands.*

⁹³ NN 45-49-50/2008 *Guarantee on liabilities of Dexia, Belgium.*

⁹⁴ N 655/2008 *Guarantee for Nord LB, Germany.*

60. The Commission acted quickly to restore confidence in the market. In adopting these decisions, it has provided clarity and legal certainty to Member States and demonstrated that EU State aid policy can react in a pragmatic and responsible way to the evolving market circumstances.
61. The financial crisis had a severe impact on the **real economy** of the EU. Banks were deleveraging and becoming much more risk-averse than in previous years. Companies started to experience difficulties with access to credit. The challenge for the Commission was to avoid public intervention which would distort competitive conditions on the Internal Market and undermine the objective of properly targeted State aid. Nevertheless, the Commission has acknowledged that, under certain conditions, there is a need for State aid to tackle the crisis. However, State aid should not be used to postpone or avoid a necessary restructuring of companies facing structural difficulties. With this objective in mind, the Commission took several steps to address the situation in the real economy, in addition to the specific actions taken in the financial and banking sector.
62. In particular, the Commission adopted the "Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis"⁹⁹. This Temporary Framework gives Member States additional possibilities to tackle the effects of the credit squeeze on the real economy. In order to meet these objectives, Member States may, for example, under certain conditions and until the end of 2010, grant:
- a lump sum of aid up to EUR 500 000 per company for the next two years, to relieve their current difficulties;
 - State guarantees for loans at a reduced premium;
 - subsidised loans, in particular for the production of green products (meeting environmental protection standards early or going beyond such standards);
 - risk capital aid up to EUR 2.5 million per SME per year (instead of the current EUR 1.5 million) in cases where at least 30% (instead of the current 50%) of the investment cost comes from private investors;

The burden of proof of market failures in the export credit insurance market is also lowered.

63. The Commission adopted a proactive approach by ensuring that crisis measures were approved very swiftly. The first measures were approved at the end of the year (N 661/08 KfW-run loan component of the German Konjunkturprogramm and N 668/08 Federal Framework "Small amounts of compatible aid", both in Germany).

⁹⁵ N 639/2008 *Guarantee for IKB, Germany.*

⁹⁶ NN 64/2008 *Emergency rescue measures regarding Carnegie Investment Bank, Sweden.*

⁹⁷ N 569/2008 *Measure in favour of Aegon, Netherlands.*

⁹⁸ NN 42-46-53A/2008 *Restructuring aid to Fortis Bank and Fortis Bank Luxembourg.*

⁹⁹ OJ C 16, 22.1.2009, p. 1.

2.3. Electronic communications

64. The electronic communications sector in the EU continues to experience rapid technological and commercial change and, in 2008, for the sixth consecutive year, it increased investment in the sector. The transition from former national monopolies towards competition continued in 2008.
65. The EU regulatory framework for electronic communications (Regulatory Framework)¹⁰⁰, which is designed to facilitate access to legacy infrastructure, foster investment in alternative network infrastructure and bring choice and lower prices for consumers, still continues to provide the legal framework for the vast majority of providers of electronic communications services. In 2008, **the Commission assessed** 121 notifications from National Regulatory Authorities and adopted 83 comments letters and 33 no-comments letters within the Community consultation mechanism under Article 7 of the Framework Directive. In five cases, the Commission raised serious doubts as to the compatibility of the notified measures with EU law and opened second phase investigations under Article 7(4) of the Framework Directive.
66. The Regulatory Framework and the underlying competition law principles allow the defining of sub-national geographic markets where different conditions of competition clearly arise, which allows regulation to focus on those areas where there is still a need for *ex ante* regulation. This approach has been adopted by several National Regulatory Authorities (NRA) in their efforts at deregulation and assessment of electronic communication markets. Against the background of increasing competition, particularly in the retail markets, the 2007 Commission Recommendation¹⁰¹ on the relevant markets susceptible to *ex ante* regulation is now producing results. In 2008, most NRAs concluded, that, even when national specificities were taken into account, all or a number of the markets no longer listed in the Recommendation needed to be deregulated.
67. The Commission continued its work on the **review of the Regulatory Framework** in 2008. On 24 September, the European Parliament adopted opinions on the Commission's legislative proposals in its first reading, and on 27 November the Council of the European Union reached a political agreement on the package of measures to reform the EU electronic communications framework.

¹⁰⁰ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ([OJ L 108, 24.4.2002, p. 33](#)), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ([OJ L 108, 24.4.2002, p. 7](#)), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ([OJ L 108, 24.4.2002 p. 21](#)), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ([OJ L 108, 24.4.2002, p. 51](#)), Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ([OJ L 201, 31.7.2002, p. 37](#)).

¹⁰¹ Commission recommendation of 17.12.2007 on relevant product and service markets within the electronic communications sector ([OJ L 344, 28.12.2007, p. 65](#)).

68. In view of the fact that **termination rates** in the EU are high and not regulated consistently in the EU, the Commission has proposed a **Recommendation**, to be adopted in 2009, that would bring termination rates down to an efficient level, thereby ensuring a consistent approach to regulating these rates. In addition, the Commission is currently working towards a **Recommendation on the appropriate regulatory approach and remedies** applicable in the context of new generation network access. The Commission also streamlined its **Recommendation on notifications, time limits and consultations** provided for in Article 7 of the Framework Directive¹⁰² with a view of reducing bureaucracy and improving efficiency in the cooperation between the NRA and the Commission.
69. In the field of **State aid** in the electronic communications sector, the Commission encourages State aid measures that are aimed at providing equitable broadband coverage at affordable prices for European citizens. In 2008, the Commission identified two major trends of public interventions on the broadband market. Whereas some Member States focus primarily on supporting affordable basic broadband services, typically in rural areas where such services do not exist, with a view to providing broadband services for all citizens and companies, the Commission has noted that public intervention in some Member States is gradually shifting towards support for very high speed broadband networks, the so-called "next generation" networks¹⁰³. Commission decisions on State aid to broadband fell into the former category in 2008.
70. The Commission is also preparing State aid guidelines on the application of EU state aid rules to public funding for the deployment of broadband networks, including the deployment of so-called next generation access broadband networks.

2.4. Information technology

71. The information and communication technology (ICT) sector is characterised by digital convergence and the concomitant and growing importance of interoperability and standard setting. The market is moving towards more convergent services and vertical and horizontal integration, where companies seek to control digital as well as physical networks, and are aiming to set and control the standard platforms.
72. As regards **competition enforcement** in the ICT sector, and following up the Commission's proceedings against *Microsoft* and the reduction in its licence fees for interoperability information in 2007, Microsoft voluntarily launched its "interoperability principles" and disclosed a wide range of information relating to interoperability on its website on 21 February.
73. In the *Intel* case, the Commission issued a SSO on 17 June, reinforcing its preliminary view expressed in a SO of July 2007 that Intel had infringed EC Treaty

¹⁰² Commission Recommendation of 15.10.2008 on notifications, time limits and consultation provided for in Article 7 of Directive 2002/21/EG of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services ([OJ L 301, 12.11.2008, p. 23](#)).

¹⁰³ Next generation access networks is a broad term to describe the new, typically fibre-based, broadband networks that will provide much faster and more symmetrical broadband connection for the end-users than the current ones (for instance, ADSL).

rules on abuse of a dominant position (Article 82) with the aim of excluding its main rival, AMD, from the x86 Central Processing Units (CPU) market.

74. In the field of **merger control**, the Commission issued two decisions in the field of the satellite navigation industry. On 14 May, the Commission approved¹⁰⁴ the acquisition by *TomTom*, a manufacturer of Portable Navigation Devices (PND) and navigation software, of *Tele Atlas*, one of two suppliers of navigable digital map databases with EEA-wide coverage. On 26 June, the proposed acquisition¹⁰⁵ of *NAVTEQ*, the only credible competitor to *Tele Atlas*, by *Nokia*, a manufacturer of mobile handsets, was approved. Both transactions were vertical in nature and required an in-depth analysis applying the recently adopted Non-Horizontal Merger Guidelines.

2.5. Media

75. On 17 September, at the **Roundtable on opportunities and barriers to on-line retailing in the European Single Market**, high-level discussions were held with senior consumer and industry representatives on the business opportunities created by the Internet and the existing barriers to increased online retailing of music and goods in Europe. More than 30 contributions were received in response to an issues paper published for the group by DG Competition, and a follow-up meeting focusing on the online distribution of music was held on 16 December.
76. As regards the management of music rights, the Commission issued on 16 July an important decision against 24 EEA collecting societies¹⁰⁶ which manage music rights on behalf of their authors (both composers and lyricists). The *CISAC decision* prohibits membership and exclusivity clauses in the reciprocal representation agreements between collecting societies for all modes of exploitation and a concerted practice concerning the territorial delineation of these representation agreements for internet, cable retransmission and satellite exploitation of these rights.
77. The prohibited restrictions protected an exclusive position for collecting societies on their respective territories for both the management of rights and the licensing of the repertoires to users. The membership clause prevented right holders from appointing a collecting society of their choice as their rights manager. The exclusivity clause and the concerted practice impeded the emergence of competition between societies for licensing of rights and the emergence of multi territorial licenses.
78. In 2008, the Commission continued to further **monitor the transition from analogue to digital terrestrial broadcasting** in the EU Member States. In the context of the ongoing infringement procedure under Article 226 EC against Italy, following the complaint by the Italian consumers' association Altroconsumo¹⁰⁷, the Commission services reviewed the new amendments to the Italian broadcasting

¹⁰⁴ Case [COMP/M.4854 TomTom/Tele Atlas](#).

¹⁰⁵ Case [COMP/M.4942 Nokia/NAVTEQ](#).

¹⁰⁶ Case [COMP/38.698 CISAC Agreement](#).

¹⁰⁷ See Press Release [IP/07/1114](#), 18.8.2007 and document submitted by Altroconsumo to the Commission in October 2008, which is available at <http://www.altroconsumo.it/mercato-e-concorrenza/altroconsumo-esposto-alla-commissione-europea-sul-passaggio-al-digitale-si-parte-il-15-ottobre-ma-la-concorrenza-e-all-italiana-s222543.htm>.

regime¹⁰⁸ and exchanged views with the Italian authorities as regards the scope of the new legislation and criteria for the digitalization of terrestrial television networks. The amendments to the regime should lead to more frequencies being available to new entrants and smaller existing broadcasters.

79. The Commission also continued to approve **State financing for public service broadcasters** where both the public service remit and the financing are determined in full transparency, and where State funding does not exceed what is necessary to fulfil the public service mission. In 2008, the Commission adopted two decisions concerning the financing of public service broadcasters pursuant to Article 86(2) EC in combination with the Broadcasting Communication. The first of these concerned the general financing system of the Belgian (Flemish) public service broadcaster VRT¹⁰⁹. The second decision concerned the financing regime in favour of the Irish public service broadcasters RTE and TG4¹¹⁰. The Commission also approved urgent State aid to remedy the tight financial situation of two public broadcasters, France Télévisions¹¹¹, under Article 86(2) EC and TV2 Danmark¹¹², under Article 87(3)(c) EC and the provisions on aid to **rescue and restructuring**.
80. In November, following a public consultation carried out between January and March, the Commission presented a new **draft Broadcasting Communication**¹¹³ for further public consultation, aiming to provide more clarity to all market participants and to secure a framework which is suitably adapted to the new technological environment.
81. In October, the Commission launched a **public consultation** on its plans to extend the State aid assessment criteria of its **Cinema Communication**¹¹⁴. Under the current criteria, State support for film production can be exempted under certain conditions, in particular where such support concerns cultural films, while respecting certain thresholds regarding territorial requirements and aid intensity.
82. In 2008, the Commission approved several film support schemes, examples of which include the Hungarian film support scheme¹¹⁵, the Italian film production tax incentives¹¹⁶, the Finnish film support scheme¹¹⁷, and the German film support scheme¹¹⁸.
83. Finally, the Commission approved **two major acquisitions** in the field of media in 2008. On 14 February, the Commission cleared the proposed acquisition of the UK-

¹⁰⁸ Article 8-novies of Law n. 101/08 (Legge 06/06/2008, n. 101 – Conversione in legge, con modificazioni, del decreto-legge 8 aprile 2008, n. 59, recante disposizioni urgenti per l'attuazione di obblighi comunitari e l'esecuzione di sentenze della Corte di giustizia delle Comunità europee), published in Gazzetta Ufficiale della Repubblica Italiana – Serie Generale, numero 132, 7 giugno 2008.

¹⁰⁹ Case [E 8/2006](#) *State funding for Flemish public broadcaster VRT*.

¹¹⁰ Case [E 4/2005](#) *State aid financing of RTE and TNAG (TG4)*.

¹¹¹ Case [N 279/2008](#) *Capital injection for France Télévisions* (not yet published in the OJ).

¹¹² Case [N 287/2008](#) *Rescue Aid to TV2/Danmark A/S* (OJ C 9, 14.1.2009, p. 3).

¹¹³ See IP/08/1626 of 4.11.2008.

¹¹⁴ See IP/08/1580 of 24.10.2008.

¹¹⁵ Case [N 202/2008](#) *Hungarian film support scheme* (OJ C 237, 28.10.2008, p. 1).

¹¹⁶ Case [N 595/2008](#) *Tax incentives for film production* (not yet published in the OJ).

¹¹⁷ Case [NN 70/2006](#) *Aid Scheme to cinema in Finland* (not yet published in the OJ).

¹¹⁸ Case [N 477/2008](#) *German film support scheme* (not yet published in the OJ).

based *Reuters Group* by the Canadian *Thomson Corporation*, subject to conditions and obligations. On 11 March the Commission, applying the Non-Horizontal Merger Guidelines for the first time, approved the proposed acquisition by *Google* of the online advertising technology company *DoubleClick*¹¹⁹.

2.6. Transport

84. The year 2008 proved a challenging one for the transport sector, which first experienced the steady increase in fuel prices in the first half of the year and then the economic crisis in the second half. The slowdown of the economy has significantly affected both freight and passenger services of all types of transport services. Against this general background of economic crisis, further consolidation has taken place in the transport sector and is likely to continue in 2009.
85. In the **road transport** sector, the Commission continues to apply the existing State aid rules to public service contracts and public service obligations, since the revised Regulation for public services in the field of land transport¹²⁰ is not in force. Following the *Altmark*-ruling¹²¹, the Commission has received and examined a large number of complaints, as well as certain notifications of subsidies to local and regional bus services, mainly focusing on contracts that have been awarded without a prior public tender. The Commission issued a final positive decision concerning a public service contract for public passenger transport by bus in the district of Lienz in Austria¹²². It also opened a formal investigation procedure on measures in favour of the French company *Sernam*, which is the road transport subsidiary of Société nationale des chemins de Fer Français (SNCF), due to concerns about whether the conditions laid down in its decision of 20 October 2004 have been complied with.
86. In the field of **rail transport and combined transport**, rail transport services for freight were fully opened to competition in the EU on 1 January 2007, whereas international passenger rail services will be opened to competition as from 1 January 2010. **The Guidelines on State aid for railway undertakings**¹²³ entered into force in July. These guidelines set out in detail the Commission's approach to State aid to railway undertakings as defined in Directive 91/440/EEC¹²⁴ and to urban, suburban and regional passenger transport undertakings with the aim of improving the transparency of public financing and legal certainty. In 2008, the Commission adopted several **decisions** to promote rail transport and combined transport¹²⁵. In 2008, the Commission also issued a number of decisions in the field of **mergers**. On 19 March, the Commission cleared the acquisition of the Spanish logistics provider

¹¹⁹ Case [COMP/M.4731](#).

¹²⁰ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) no. 1191/69 and no. 1107/70 ([OJ L 315, 3.12.2007, p. 1](#)).

¹²¹ Case [C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH \("Altmark"\)](#) [2003] ECR I-7747.

¹²² Case [C 16/2007](#) (not yet published in the OJ).

¹²³ [OJ C 184, 22.7.2008, p. 13](#).

¹²⁴ Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ([OJ L 237, 24.8.1991, p. 25](#)).

¹²⁵ Cases [N 685/2007](#) (OJ C 140, 6.6.2008, p. 1); N 495/2007 (OJ C 152, 18.06.2008, p.21); N 11/2008 and N 34/2008 (OJ C 38, 17.02.2009, p.3); N 159/2008 (OJ C202, 08.08.2008, p.2); N 195/2008 (OJ C 329, 24.12.2008, p. 3); and N 352/2008 (OJ C 7, 13.01.2008, p.1).

Transfesa by the German State-owned railway company *Deutsche Bahn*¹²⁶. On 25 November, the Commission approved¹²⁷ the acquisition of Hungarian *MÁV Cargo* by the Austrian company *RCA* subject to conditions.

87. On 1 July, the Commission adopted **Guidelines on the application of Article 81 of the EC Treaty to maritime transport services**¹²⁸ in view of the repeal of Regulation 4056/86 on liner conferences as of 18 October and the extension of the scope of Regulation 1/2003 to include *cabotage* and international tramp vessel services. The Guidelines set out the principles that the Commission will follow when defining markets and assessing information exchange schemes in liner shipping as well as cooperation agreements involving maritime *cabotage*, liner and/or tramp vessel services.
88. On 21 October, the Commission published the **Draft Block Exemption Regulation** on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (“consortia”)¹²⁹, in view of the expiration of the block exemption Regulation in 2010. Once the BER is adopted, the reform of the competition rules that apply to maritime transport services - initiated in 2003 - will be completed.
89. On 12 December, the Commission issued **guidance on the treatment of State aid measures complementing Community funding for the launching of the motorways of the sea**¹³⁰ with the intention of aligning the maximum aid intensity and duration provided for in the Community guidelines on State aid to maritime transport¹³¹ so as to include the more favourable conditions allowed for projects covered by the second “Marco Polo” programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system (“Marco Polo II”)¹³² and by Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (TEN-T)¹³³.
90. Finally, in the field of **services of general economic interest**, following an in-depth investigation, the Commission deemed that the compensation paid by the French State to *Société Nationale Maritime Corse-Méditerranée* (SNCM) for discharging public service obligations in the period 1991-2001 to be compatible with the common market¹³⁴. In contrast, the Commission decided to initiate a formal investigation procedure regarding a compensation system for *CalMac* and *Northlink*

¹²⁶ Case COMP/M.4786 *Deutsche Bahn/Transfesa*.

¹²⁷ Case COMP/M.5096 *RCA/MÁV Cargo*.

¹²⁸ [OJ C 245, 26.9.2008, p. 2](#). See also Press release [IP/08/1063](#), 1.7.2008.

¹²⁹ [OJ C 266, 21.10.2008, p. 2](#) See also Press release [IP/08/1566](#), 22.10.2008.

¹³⁰ Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea ([OJ C 317, 12.12.2008, p. 10](#)).

¹³¹ [OJ C 13, 17.1.2004, p. 3](#).

¹³² Established by Regulation (EC) no. 1692/2006 of the European Parliament and of the Council of 24 October 2006 ([OJ L 328, 24.11.2006, p. 1](#)).

¹³³ [OJ L 228, 9.9.1996, p. 1](#).

¹³⁴ Case [C 58/2002](#) (not yet published in the OJ).

to discharge public service obligations related to the operation of ferry boats for passenger traffic between the Scottish islands¹³⁵.

91. In the field of **aviation**, the **Air Service Regulation**¹³⁶ entered into force on 1 November and now provides the legal framework for air transport in the EU, setting out the rules on the grant and oversight of operating licences of Community air carriers, market access, aircraft registration and leasing, public service obligations, traffic distribution between airports and pricing. In addition, the Commission continued its work towards a new Regulation simplifying and modernising the rules relating to computer reservation systems (CRS)¹³⁷.
92. In 2008, the Commission was called upon to decide on several **rescue and restructuring measures** when air transport companies were first faced with high crude oil prices and then falling demand as a result of the financial and economic crisis. In the case of *Olympic Airways / Olympic Airlines*, the Commission found that a privatisation plan submitted by the Greek authorities involving the sale of certain assets of the two companies in bundled form did not involve State aid, provided that the undertakings given by the Greek authorities were fully met¹³⁸. In a separate but related decision¹³⁹, the Commission held that, since its last decision in 2005, Greece had granted further State aid to the flagship carrier, and ordered the recovery thereof. In June, the Commission opened the formal investigation procedure with regard to a EUR 300 million loan by the Italian State to *Alitalia*¹⁴⁰. In November, the Commission issued a final negative decision ordering recovery of the incompatible aid¹⁴¹. Simultaneously, the Commission approved the liquidation plan of *Alitalia*¹⁴².
93. In the field of **airport infrastructure**, the Commission closed the formal investigation procedure concerning State measures involving the *DHL Group* and the *Leipzig-Halle Airport*¹⁴³. The Commission held that the capital injections to *Leipzig Airport* were compatible with the Treaty rules. In contrast, the assurances granted to *DHL* and the comfort letter in favour of *DHL* were deemed incompatible with the Treaty rules. The Commission ordered the recovery of the incompatible aid linked to the assurances and prohibited the granting of the comfort letter. The Court of First Instance annulled a Commission decision of 2004 ordering Belgium to recover incompatible aid extended to *Ryanair* linked to its establishment at Charleroi airport¹⁴⁴. The Court held that the Commission should have examined the measures granted by the Walloon Region and by Brussels South Charleroi Airport together and should have applied the private investor principle to the measures adopted by the Walloon Region, since there were close economic links binding these two entities.

¹³⁵ Case C16/2008 (OJ C 126, 23.05.2008, p.16)

¹³⁶ Regulation (EC) No 1008/2008 on the common rules for the air services in the Community replacing regulations 2407/92, 2408/92 and 2409/92 (the "so-called Third Package") ([OJ L 293, 31.10.2008, p. 3](#)).

¹³⁷ The proposed Regulation will replace Regulation (EC) n° 2299/89 (OJ L 220, 29.7.1989, p. 1).

¹³⁸ Cases [N 321/2008](#), [N 322/2008](#) and [N 323/2008](#) (not yet published in the OJ).

¹³⁹ Case [C 61/2007](#) (not yet published in the OJ).

¹⁴⁰ Case [NN 31/2008](#) (OJ C 184, 22.7.2008, p. 34).

¹⁴¹ Case [C 26/2008](#) (not yet published in the OJ).

¹⁴² Case [N 510/2008](#) (OJ C 46, 25.2.2009, p. 6).

¹⁴³ Case [C 48/2006](#) (OJ L 346, 23.12.2008, p. 1).

¹⁴⁴ Case [T-196/04](#) *Application by Ryanair for the annulment of Commission Decision 2004/393/EC of 12 February 2004 concerning advantages granted by the Walloon Region and Brussels South Charleroi Airport to Ryanair in connection with its establishment at Charleroi.*

94. In the area of **mergers**, on 6 August the Commission approved the proposed acquisition of *Northwest Airline Corporation* ("NWA") by *Delta Air Lines, Inc.* ("Delta")¹⁴⁵ - both U.S. carriers - under the EU Merger Regulation. On 17 December, after an in-depth investigation, the Commission approved the concentration between *KLM* and *Martinair*¹⁴⁶.
95. In the framework of the **EU-US open aviation agreement** signed in April 2007, which includes provisions for the strengthening of cooperation between the Commission and the US Department of Transportation (DoT) in the field of competition, the Commission and the US DoT launched a **joint research project on airline alliances**¹⁴⁷ in March. The aim of this project is to deepen their understanding of transatlantic air services, the effects of alliances on airline competition and possible changes in the role of alliances following the EU-US open aviation agreement.

2.7. Pharmaceutical industry

96. As regards the application of EU **anti-trust rules** in the pharmaceutical sector, the most important action taken by the Commission in 2008 was to launch the **sector inquiry into pharmaceuticals**¹⁴⁸ on 15 January. On the same date, the Commission carried out unannounced inspections at the premises of a number of originator and generic companies in the EU. This was the first time that the Commission launched a sector inquiry with upfront inspections.
97. The sector inquiry was opened in response to information indicating that competition in the pharmaceutical market in the EU may not be working properly. The signs of this were a decline in innovation, measured by the decreasing number of novel medicines reaching the market each year, and instances of delayed market entry of generic medicines. The inquiry sought to examine whether certain practices of pharmaceutical companies may be among the reasons for the generic delay and the decline in innovation. The inquiry focused in particular on the practices which originator companies may use to block or delay not only competition by generic companies, but also the development of competing originator products. It also summarised the shortcomings in the regulatory framework applicable to the pharmaceutical sector as reported by respondent companies and public authorities.
98. In the course of the inquiry, the Commission consulted all interested stakeholders, such as originator and generic companies, industry associations, consumer and patients' associations, insurance companies, associations of doctors, pharmacists and hospitals, health authorities, the European Patent Office (EPO), parallel traders, and NCAs. The Commission gathered data on the basis of requests for information sent to over 100 pharmaceutical companies active in the EU as well as to various other stakeholders. The data concern a sample of 219 chemical molecules relating to

¹⁴⁵ Case COMP/M.5181.

¹⁴⁶ Case COMP/M.5141.

¹⁴⁷ See Press Release [IP/08/459](#), 18.3.2008.

¹⁴⁸ [Case COMP/39.514](#) *Commission Decision of 15 January 2008 initiating an inquiry into the pharmaceutical sector pursuant to Article 17 of Council Regulation (EC) No 1/2003*. More information is available on: <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>

prescription medicines for human use, which were sold in the EU in the period 2000 to 2007.

99. On 28 November, the Commission published its preliminary report on the pharmaceutical sector inquiry¹⁴⁹. The report confirmed that there is indeed a delay of generic entry and a decline in innovation, and it examined some of the possible causes, most prominently those stemming from company behaviour. The preliminary report underlines the key role of patent rights for the pharmaceutical sector. It does not identify individual cases of wrongdoing or provide any guidance on the compatibility of the practices examined with EC competition rules.
100. The sector inquiry findings indicate that originator companies design and implement a variety of strategies (a so-called "tool-box") in order to ensure continued revenue streams from their medicines. The successful implementation of these strategies may have the effect of delaying or blocking entry, but the report stresses that company behaviour might not be the only cause of the delays faced by generic companies as regards the market entry of their products.
101. Stakeholders also submitted comments on the regulatory framework applicable to the pharmaceutical sector, highlighting perceived difficulties and shortcomings in relation to market entry and competition. Generic companies and originator companies agree on the need for a single Community patent and a unified and specialised patent judiciary in Europe. The preliminary findings of the sector inquiry also support these views. Stakeholders also highlight what they perceive as bottlenecks in the marketing authorisation and pricing and reimbursement procedures, which may contribute to delays in bringing pharmaceutical products to market.

2.8. Food industry

102. In response to the soaring food prices in the latter part of 2007 and the first half of 2008, the Commission issued the **Communication "Tackling the challenge of rising food prices - Directions for EU action"** in May¹⁵⁰ creating a Task Force with the objective to examine the functioning of the food supply chain, including concentration and market segmentation of the food retail and distribution sectors in the EU. This was followed by a second **Communication on "Food Prices in Europe"** in December¹⁵¹, which proposed a roadmap to improve the functioning of the food supply chain.

¹⁴⁹ [Pharmaceutical Sector Inquiry, Preliminary Report, DG Competition Staff Working Paper](#), 28.11.2008.

¹⁵⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions - Tackling the challenge of rising food prices Directions for EU action ([COM\(2008\) 321 final, 20.5.2008](#)). The Communication analyses structural and cyclical factors and proposes a three-pronged policy response, including short-term measures in the context of the Health Check of the Common Agricultural Policy and in the monitoring of the retail sector; initiatives to enhance agricultural supply and ensure food security including the promotion of sustainable future generations of biofuels; and initiatives to contribute to the global effort to tackle the effects of price rises on poor populations.

¹⁵¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions – Food Prices in Europe ([COM\(2008\) 821 final, 9.12.2008](#)).

103. In terms of competition policy, the Communication calls for ensuring a vigorous and coherent enforcement of competition rules in the food supply markets by the Commission and national competition authorities (NCA), whilst emphasising the importance of anti-trust and merger instruments.
104. In 2008, the Commission continued to ensure the compliance by *Coca-Cola* with its earlier commitments and fined a cartel of *banana traders* under Article 81 EC. At national level, Competition Authorities have closely scrutinised food-related sectors and have initiated a number of investigations. A coherent and coordinated approach is crucial, given that retail markets are often defined at most as national in scope. In this context, DG Competition held two meetings of the ECN Food Subgroup in July and November to discuss and exchange best practices on issues related to food retail markets.
105. The consolidation of the food sector is reflected in several merger cases that were notified to the Commission in 2008. A number of these concentrations were subject to an in-depth investigation or approved in the first phase only following important divestitures. In the *Friesland/Campina* case¹⁵² the Commission undertook an in-depth investigation of the proposed merger between two Dutch Dairy cooperatives that are active in a range of dairy markets. This concentration was approved following commitments submitted by the parties and ensuring access to raw milk in the Netherlands. In *ABF/GBI*¹⁵³, the Commission conducted an in-depth investigation of the acquisition of parts of GBI by Associated British Foods (ABF) and approved the transaction subject to conditions. Finally, in the food retail sector, the Commission examined the proposed acquisition of *ADEG* of Austria by the German *REWE Group*¹⁵⁴ and approved the transaction subject to conditions.

2.9. Postal services

106. A major new phase for postal services is marked by the **third Postal Directive** adopted by the Parliament and the Council in February¹⁵⁵. Under this Directive, full market opening will have to be accomplished by most Member States by 31 December 2010, with a further two years allowed for some Member States. The Directive provides for the abolition of the reserved area in all Member States, the confirmation of the scope and standard of a universal postal service and the upgrading of the role of national regulatory authorities to allow a variety of measures that Member States may take, if necessary, to safeguard and finance the universal service. The role of State aid and, hence, the Commission's control thereof will consequently increase in importance.
107. As regards the **application of State aid rules to the postal sector** in 2008, the Commission adopted several decisions aimed at ensuring that postal operators entrusted with services of general economic interest and their subsidiaries do not enjoy unduly granted advantages. The Commission continued its investigation

¹⁵² [Case COMP/M.5046 *Friesland Foods/Campina*](#) (not yet published in the OJ).

¹⁵³ [Case COMP/M.4980 *ABF/GBI BUSINESS*](#) (not yet published in the OJ).

¹⁵⁴ [Case COMP/M.5047 *REWE/ADEG*](#) (not yet published in the OJ).

¹⁵⁵ Directive 2008/06/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services ([OJ L 52, 27.2.2008, p. 3](#)).

concerning the alleged overcompensation of *Deutsche Post AG*¹⁵⁶ for the carrying out of its universal service obligations, and in October enacted an information injunction against Germany due to the refusal by Germany to supply the requested information. Lastly, the Commission also examined whether postal operators received other forms of aid from the State. In this context it closed the investigations into aid granted to *Leipzig Airport and DHL*¹⁵⁷. While it cleared the aid granted to Leipzig airport for the construction of the southern runway, the Commission prohibited the letter of comfort and certain other guarantees which DHL received as aid for the move of its European hub to Leipzig. The aid which had already been made available to DHL will have to be reimbursed.

3. CONSUMER ACTIVITIES

108. The Commission places consumers' concerns at the heart of its competition activities and considers it essential that the main thrust of competition policy should be on maximizing consumer welfare.
109. Integrating the consumers' dimension into competition policy requires a proper dialogue between the Commission services and the consumers or the associations that represent them. That is why a dedicated Consumer Liaison unit was created in 2008 within DG Competition. Consumers and their representatives are now able to provide the Commission services with information that is helpful both for a better understanding of the markets and for identifying potential market malfunctioning¹⁵⁸. They are also best placed to report directly on how they perceive the impact of a particular action.
110. In developing a public policy, it is important to understand the concerns of and impacts on major stakeholders, and consumers are no exception. Using their input, the Commission is better able to understand how these policies would operate in practice and to ensure that their objectives can be fully realised. By way of example, both the Roundtable on opportunities and barriers to online retailing and the European Single Market¹⁵⁹ and the White Paper on Private Damages included extensive consultation, where the views of consumers and their representatives were actively sought. Also, in the course of the Pharmaceutical Sector Inquiry¹⁶⁰ and on a regular basis, in a number of merger cases, the consumer perception has helped the Commission services to better place all aspects of the market in context when identifying problems and solutions. The Guidance on enforcement priorities when dealing with exclusionary conduct¹⁶¹ reaffirmed the importance of this approach and these will be rolled out during 2009 and beyond.

¹⁵⁶ Case [C 36/2007](#) *Complaint against the German State for unlawful State aid to Deutsche Post* (OJ C 245, 19.10.2007 p. 21).

¹⁵⁷ [Case C 48/2006](#) *Measures by Germany to assist DHL and Leipzig Halle Airport* (OJ L 346, 23.12.2008, p. 1).

¹⁵⁸ During 2008, DG Competition received approximately 2 500 letters from citizens on anti-trust, mergers and State aid issues.

¹⁵⁹ For further details see http://ec.europa.eu/competition/sectors/media/online_commerce.html

¹⁶⁰ See Press Release [IP/08/1829](#), 28.11.2008.

¹⁶¹ See Press Release [IP/08/1877](#), 3.12.2008.

4. THE EUROPEAN COMPETITION NETWORK AND NATIONAL COURTS

111. The ECN provides a platform for EU competition authorities to constructively coordinate enforcement action, ensure consistency and discuss policy issues of common interest.
112. During 2008 the ECN met in different formations, ranging from the annual meeting of the heads of all the competition authorities to the sectoral sub-groups, without forgetting the plenary meetings and the working groups. The main topics discussed during 2008 were (1) recent developments in competition policy, (2) national competition authorities' experience with the enforcement instruments of Regulation 1/2003, (3) the revision of the Commission policy on horizontal agreements and vertical restraints, (4) sectoral issues such as "sticky retail prices", the multilateral interchange fees (MIF) and Single Euro Payments Area (SEPA) files and the pharmaceutical sector inquiry.
113. 2008 also saw the continuation of the "convergence" process observed in the context of Regulation 1/2003. A prime example of this trend is the ECN Model Leniency Programme. By the end of 2008, twenty-five Member States had leniency programmes and the remaining two (Malta and Slovenia) are expected to introduce them in the near future. Moreover, many ECN members have aligned their programmes with the ECN Model Programme or are in the process of doing so.
114. An important aspect of the ECN work is the cooperation on individual cases. In 2008, under Article 11(3) of Regulation 1/2003, the Commission was informed of approximately 150 new case investigations¹⁶² launched by national competition authorities. As in previous years and thanks to the flexible and pragmatic approach introduced by the Regulation and the Network Notice, there were very few instances where case-allocation discussions took place and even fewer occasions where a case changed hands. In order to ensure a consistent application of EU law, the Commission services reviewed or advised on 61 envisaged decisions communicated pursuant to Article 11(4) of Regulation 1/2003.
115. Also the mechanisms for cooperation with national courts in the application of EU competition law, set out in Article 15 of Regulation 1/2003, functioned promptly in 2008. The Commission received several requests for opinions which were pending at the end of the year, as well as copies of some 50 judgments handed down by national courts. In addition, DG Competition concluded fifteen grant agreements for the training of judges and launched a new call for proposals for this type of activity.

5. INTERNATIONAL ACTIVITIES

116. In an increasingly globalised world economy, competition policy must also adopt a global outlook. DG Competition responds to this challenge by reinforcing and extending its relations with partners all over the world in both bilateral and

¹⁶² More than 55% concerned the application of Article 81 EC (mainly in the area of cartels), 30% concerned the application of Article 82 EC and the remainder concerned the application of both Article 81 and 82 EC (notably in the energy, food media, transport, telecommunications and postal sectors).

multilateral *fora*. Commissioner Kroes attaches the highest importance to effective international cooperation in the area of competition.

117. In the context of **enlargement**, during 2008, cooperation with Croatia and Turkey was particularly close. Considerable progress has been made by Croatia in fulfilling the opening benchmarks for the starting of accession negotiations on the competition chapter, including on the remaining important issue of the restructuring of its shipyards, while Turkey has yet to introduce a system for the control and monitoring of State aid. DG Competition also assisted the Western Balkan countries in further aligning their competition rules with EU law, which included help in drafting laws on competition and State aid and advice on setting up the necessary institutions for the enforcement of these rules.
118. As far as **bilateral cooperation** is concerned, the Commission continued its close cooperation with the European Free Trade Association (EFTA) Surveillance Authority in enforcing the Agreement on the European Economic Area (EEA). As in previous years there were intensive exchanges under dedicated cooperation agreements on competition matters with the United States, Canada and Japan. Cooperation with China and Korea also remained a priority in 2008. Moreover, DG Competition played an active role in the ongoing negotiations on Free Trade Agreements (FTA) with Ukraine, India and South Korea, and on the trade part of the Association Agreement with Central America, with a view to ensuring that anti-competitive practices (including State aid) do not erode the trade and other economic benefits sought through those agreements.
119. In the area of **multilateral cooperation**, DG Competition continued to play a leading role in the International Competition Network (ICN), where it is a member of the Steering Group, co-chair of the cartels Working Group and an active member of the other Working Groups (on mergers, competition policy implementation, unilateral conduct and advocacy). DG Competition continued to contribute actively to the work of the OECD Competition Committee and played a leading role in a round table discussion at the annual conference of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy of the United Nations Conference on Trade and Development (UNCTAD).

6. INTER-INSTITUTIONAL COOPERATION

120. In 2008, the Commission continued its cooperation with the other Community institutions in accordance with the respective agreements or protocols entered into by the relevant institutions¹⁶³.
121. In 2008, the **European Parliament (EP)** adopted a resolution or a report on the following topics: the retail banking sector inquiry, the agreement concluded between the Government of the Republic of Korea and the European Community concerning cooperation on anti-competitive activities and the White Paper on Damages Actions.

¹⁶³ Framework Agreement of 26 May 2005 on relations between the European Parliament and the Commission; Protocol of Cooperation between the European Commission and the European Economic and Social Committee of 7 November 2005; Protocol on the Cooperation Arrangements between the European Commission and the Committee of the Regions of 17 November 2005.

The Annual Competition Reports 2006 and 2007 were also discussed at committee level during 2008 and are due to be adopted in 2009. The Commission also participated in discussions held in the EP on other related topics, including the application of State aid response to the unfolding financial and economic crisis.

122. The Commission cooperates closely with the **Council** by informing it of important policy initiatives in the field of competition, such as on State aid measures for the banking industry and other additional State aid measures in the context of the financial and economic crisis. In 2008, the Commission made contributions on competition policy mainly in respect of conclusions adopted in the Competitiveness Council (such as on the Lisbon strategy, industrial policy and SME policy), the Transport, Telecommunications and Energy Council (Internal Energy Market Legislative Package, Energy/Climate package) and the Economic and Financial Affairs Council (Single Market Review, Single Euro Payments Area, risk capital, European Economic Recovery Plan).
123. The Commission informs the **European Economic and Social Committee (EESC)** and the **Committee of the Regions** about major policy initiatives, and participates in debates that may be held in the respective Committee on those initiatives. One example is the adoption of the EESC report on the Commission's Annual Report on Competition Policy. During 2008 the Commission participated in EESC working group meetings on Competition and Democracy in the Internal Market, the Annual Competition Report 2007, and the White Paper on damages actions.