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REPORT FROM THE COMMISSION

Report on Competition Policy 2010

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Introduction

1. To celebrate the 40th anniversary of the Report on Competition Policy, this edition begins with an overview of the major developments of competition policy and enforcement over the past 40 years. The Treaty provisions laying down the Commission's powers and responsibilities in the field of competition policies have remained remarkably stable over the past 40 years, while the economic and political environment have dramatically changed. Competition policy rules and procedures have thus undergone a constant process of adaptation in order to contribute to the major objectives of the EU: building the Single Market, making it deliver for consumers and achieving a competitive social market economy. Looking back at this evolution provides the basis for assessing the key challenges competition policy has faced in the past and those that remain to be tackled.
2. The first section of this report provides an overview of how the instruments of competition policy, namely the State aid, antitrust and merger control rules, were further developed and applied. This section also includes an update on the use of the temporary rules for State aid adopted as a response to the financial and economic crisis. The second section discusses how competition instruments were deployed in selected sectors. The third section focuses on cooperation within the European Competition Network (ECN) and with national Courts while section four deals with international activities. Section five provides an overview of consumer-related activities and dialogue with stakeholders. Last, a brief description of inter-institutional cooperation is given in section six. Unlike last year's report, the present report does not contain a focus chapter on a topic considered of particular importance in the field of competition policy.
3. This report is a non-exhaustive summary of activities undertaken by the Commission in the field of competition policy over the year 2010. Further information can be found in a detailed Commission Staff Working Document and on the website of the Competition Directorate-General¹.

¹ http://ec.europa.eu/competition/index_en.html

40TH ANNIVERSARY OF THE REPORT ON COMPETITION POLICY

COMPETITION POLICY: AN ASSET OF THE EUROPEAN UNION

Continuity and evolution in EU competition policy

4. For 40 years the Commission has documented how it has enforced and shaped EU competition policy. To mark this anniversary this year's Report steps back from the pressing urgencies of today to take view of the evolutions of competition policy.
5. The first Report on competition policy was published in 1971 in response to a request by the European Parliament. Not much later the European Economic Community faced a severe economic crisis brought about by the oil price shock of 1973, resulting in inflationary pressures. The early Reports give an account of how competition policy was used by the Commission as part of a wider policy mix to address this economic crisis. The deployment of competition policy within a coordinated policy response to deal with major economic challenges is thus not unprecedented.
6. Likewise, while the environment in which EU competition policy operates has undergone profound changes, such as rapid technological development, enlargement or globalisation, the original Treaty provisions of 1957 which prohibit certain anticompetitive agreements and abuses of dominant positions as well as the provisions on State aid have remained remarkably unchanged over time, a testament to their inherent ability to be applied in different circumstances.
7. Council Regulations, which outline the Commission's specific enforcement powers and obligations in more detail, have also been marked by considerable continuity and resilience. In the antitrust area, the 1962 Council Regulation specifying the Commission's enforcement powers was not amended until 2004. In merger control, the corresponding Regulation was adopted in 1989 and was overhauled only once thereafter. A Regulation laying out detailed procedural rules in the State aid area was adopted in 1999.
8. Given its exclusive powers in the area of competition policy, confirmed by the Lisbon Treaty, the Commission is empowered to adopt more detailed rules on how it intends to apply its main tools, *i.e.* the Treaty provisions on antitrust, mergers and State aid. This discretion in design and applying such rules has been several times confirmed by the judgments of the European Courts in Luxembourg, whose case law has played an essential role in ensuring the consistency and the efficiency of competition policy.

1966
Consten and Grundig case

The European Court establishes the principle that agreements prohibiting exports within the common market restrict competition.

1971
GEMA decision

First application of Article 82 EC (now 102 TFEU) condemning the abuse of dominance of a German collecting society refusing the admission to nationals of other Member States.

1971
Deutsche Grammophon case

The Court prohibits the holder of intellectual property rights to use them to prevent import of its own products, thus laying the basis for the principle of exhaustion of rights and confirming the importance of parallel trade.

9. This discretion has also facilitated the Commission in shaping and maintaining the regulatory framework up-to-date with the changing challenges in the making of the EU. Nevertheless, two clearly identifiable threads run through the entire history of EU competition policy: its contribution to the construction and preservation of the internal market and its contribution to consumer welfare. At the same time, competition policy has supported the main objectives of the Union as set out in the Treaties: a competitive market, economic, social and territorial cohesion and sustainable development.

Contributing to the construction of the internal market

10. A key priority in the first decades of existence of the European Economic Community was to progressively remove State-imposed barriers between the Member States. Competition rules of the EEC Treaty – in particular the antitrust rules – accompanied and supported this progressive dismantling of barriers to trade. Indeed, in the terms of the first Report on Competition Policy, "*the Community's policy must, in the first place, prevent governmental restrictions and barriers – which have been abolished – from being replaced by similar measures of private nature*"². Accordingly, the antitrust rules were rigorously enforced to prevent companies from artificially dividing the internal market through practices such as market sharing and partitioning, price discrimination or raising obstacles to parallel trade. The first antitrust cases targeting impediments to parallel imports agreed between private firms date back to the 1960s, notably the pioneering decision in 1964 against the Grundig-Consten agreement³ which led to a partitioning of the market and substantial price differences between France and Germany for the same products. Extensive enforcement activities in this area continued throughout the 1970s and beyond, targeting anticompetitive practices such as market sharing cartels⁴.

1973 <i>Commission v Germany</i>	1976 <i>Suiker Unie case (Sugar cartel)</i>	1980 <i>Philip Morris</i>
The Court establishes the Commission's right to request repayment of non-notified incompatible aid.	Holding that it is not necessary to prove that there is an actual plan, the Court condemns various sugar producers who had taken part in concerted practices to protect the position of two Dutch producers on their domestic market.	The company challenges the entire legal basis of State aid control after the Commission denied it investment aid. The Court confirms the Commission's general powers, discretion and many of its preferred modes of analysis.

² Report on Competition Policy 1971, p. 13

³ Cases C-56/64 and C-58/64 *Grundig-Consten* [1966] ECR 299

⁴ Such as the Sugar cartel – see *Suiker Unie and others v Commission*, judgment of 16.12.1975

11. The introduction of merger control in 1989 – one of the towering milestones over the past 40 years – has to be seen in the light of the qualitative leap that the internal market was undergoing in the run-up to its formal creation on 31 December 1992 after the entry into force in 1987 of the Single European Act. Competition policy took into account the new market realities of increased opportunities for European firms to merge and acquire assets across national borders. A step-change was required and the Merger Regulation of 1989 was the culmination of a campaign that the Commission had initiated already in 1973, establishing a one-stop-shop for review of mergers and acquisitions having a European dimension⁵.

An increased focus on consumer welfare

12. Subsequently, over the past two decades, the Commission's antitrust and merger policy and enforcement more effectively placed the emphasis on consumer welfare, notably through an increasingly refined economic analysis. The Commission's work on the Merger Regulation had led the way, eliminating risks of consumer harm resulting from the creation and strengthening of dominant positions through mergers.
13. In the late 1990s and early 2000s, the Commission's antitrust policy began to take major strides towards an effects-based approach, notably through the adoption of the first generation of rules on agreements between competitors (horizontal agreements) and agreements between different levels in the distribution chain (vertical agreements). This new generation of antitrust rules made it possible for the Commission, when weighing the pro- and anti-competitive aspects of different agreements, to focus on those involving companies with market power, *i.e.* where consumer harm could potentially arise.
14. This also allowed the Commission to better focus its limited resources on the most harmful agreements between firms, such as cartels which effectively have no pro-competitive effects and are therefore in practice always prohibited. As in the case of other antitrust violations by firms, the Commission can impose fines aimed at deterring such conduct. While the fight against hard-core cartels is fully recognised today as a fundamental pillar of competition policy, this was not always so and the Commission had initially proceeded step by step in the absence, by and large, of national laws and enforcement against cartels. According to one account "*[the] objective was, according to [the then Commissioner for Competition] to open an investigation into a few major cartels which were particularly damaging to the establishment of the Community*"⁶. Yet again, the connection with the progressive establishment of the internal market is stated.

1983 <i>Leeuwarder Papierwarenfabriek case</i>	1985 <i>Block exemptions</i>	1988 <i>Renault decision</i>
Annulling the Commission's decision on the ground of shortcomings in its analysis, the Court sets standards for the economic analysis required by the Commission to justify its State aid decisions.	In the 1980s, the Commission increasingly turns towards legislation for establishing competition law norms, from informal and general notices to formal and binding block exemptions.	After long negotiations, the Commission approves French State aid on certain conditions. This case is a symbol of the Commission's will to assert more effective control over State aid to industry.

⁵ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 257, 21.9.1990, p. 13)

⁶ The European Commission – History and Memories, p. 306

15. The year 2002 marked a watershed for competition policy, with the Court of First Instance annulling, in relatively swift succession, three Commission merger prohibition decisions on account of lack of sufficient economic analysis and errors of assessment. But it brought long-term benefits in that the Commission decided to rapidly upgrade its capability to undertake more sophisticated economic analysis, notably through the creation of a team of specialised economists under the responsibility of a Chief Economist as soon as 2003.
16. This greater economic orientation was being taken further in the ensuing years, in particular with the adoption of a refined substantive test⁷ which firmly placed the cursor on whether the transaction was likely to lead to a significant impediment on effective competition, notably by taking full account of the potential static and dynamic efficiencies. This new test allowed extending the Commission's review beyond the question of whether the transaction would place a firm in a dominant position, to covering other situations of unilateral anti-competitive use of market power. In that same year, the Commission adopted horizontal merger guidelines providing a clear framework for the analysis of such unilateral effects⁸.
17. With the adoption of guidance on the Commission's enforcement priorities regarding exclusionary abuses of dominant undertakings⁹, the economic approach aimed at maximising consumer welfare has become embedded into the antitrust enforcement framework. The above-mentioned document recognises that dominant firms are entitled to compete vigorously on the merits, and that as a general principle the Commission will not focus on conduct that leads to inefficient or less efficient rivals having to leave the market, provided that this is the result of competition on the basis of merits, such as the quality of their products and services.
18. The broadened focus encompassing consumer welfare – ensuring that markets can deliver the best outcomes for consumers in terms of prices, output, innovation and quality and diversity of products and services – does not mean that the internal market is no longer relevant. On the contrary, in legal terms, the nexus between competition policy and internal market was confirmed by the Lisbon Treaty. Moreover, as the crisis has shown, the integrity of the internal market must never be taken for granted. The Commission must be prepared to use all its available tools whenever this core asset of the European Union comes under attack. EU competition policy – and in particular State aid rules – proved to be of crucial value in preserving the internal market, in particular by maintaining a level playing field in the financial and industrial markets.

⁷ Introduced in 2004 in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1-22)

⁸ Such as in cases *Korsnas/Assidoman Cartonboard* or *T-Mobile Austria/Tele.ring*

⁹ Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ C 45, 24.2.2009, p. 7-20)

1989 <i>Merger Regulation</i>	1991 <i>De Havilland decision</i>	1995-1998 <i>Credit Lyonnais</i>
The Merger Regulation provides that concentrations having a Community dimension are subject to Community jurisdiction and removed from the jurisdiction of the National Competition Authorities.	For the first time the Commission prohibits a merger, namely between a Canadian company and a French/ Italian consortium.	The Commission approves the high amount of State aid only on the condition that the French Government commits itself to privatise Crédit Lyonnais in an open, transparent and non-discriminatory process.

The evolution of State aid control from humble beginnings to its current status as a cornerstone of the internal market

19. State aid control has become an essential pillar of the Single Market, ensuring that companies are able to compete on equal terms independently of where they are located and providing safeguards against Member States engaging in mutual subsidy races at the expense of each other and of the general European interest. Such subsidy races would not only lead to a wasteful use of scarce resources, they would be to the detriment of the cohesion of the EU.
20. The EU's State aid regime – a historically unique experiment¹⁰ – had to be developed gradually from scratch; indeed, an early inquiry by the Commission faced with a "jungle formed by national schemes, many of which were long-standing, complex and constantly changing"¹¹. As a matter of fact, it was not until 1973 that the Court of Justice recognised that the Commission could legally require Member States to order firms to pay back unlawfully granted State aid which was not compatible with the Treaty¹². It took another ten years until the Commission decided to enforce this principle as a matter of policy. It is telling that the Report on competition policy 1989 felt it had to state the obvious fact that "even if tolerated or accepted in the past, [State aid] compatibility with the common market must be re-examined"¹³.
21. Indeed, the number of staff dedicated to State aid control also remained comparatively low until the end of the 1990s. Even so, landmark decisions were adopted showing the determination of the Commission to tackle heavily subsidised inefficient State firms, first in large industrial sectors and then in the services sectors. For instance, important agreements were concluded between the Commission and Member States to put an end to historical unlimited guarantees to public firms¹⁴.

¹⁰ The foundations of the concept of State aid were laid out already in 1961 in the Case 30-59 *De Gezamenlijke Steenkolenmijnen in Limburg v Haute Autorité de la Communauté Européenne du Charbon et de l'Acier* [1961] ECR 3

¹¹ The European Commission, 1958-1972 – History and memories, p. 312

¹² Case C-70/72 *Commission v Germany* [1973] ECR 813

¹³ Report on Competition Policy 1989, p. 14

¹⁴ In particular the Andreatta / Van Miert agreement of July 1993 concerning certain public undertakings in Italy (see IP/93/734, 8.9.1993) and the Monti / Koch-Weser agreement of July 2001 on the German system of State guarantees for public law credit institutions (see IP/01/1007, 17.7.2001).

1996 <i>Leniency Notice</i>	1999 <i>State aid procedural Regulation</i>	2001 <i>GE/Honeywell case</i>
Companies which provide information on a cartel before the Commission has opened an investigation can benefit from partial or total immunity from fines. Experience shows that it has led to a substantial increase in the number of cartels that have been uncovered and punished.	The Council Regulation codifies the Commission's practice and the Court's jurisprudence, providing for the first time a clear and transparent set of procedural rules and clarifying the procedures to be respected by the Commission and Member States regarding the State aid process.	The merger is permitted in the US but prohibited by the Commission because of its effects on the EU market. However, it is one of the rare examples of disagreement between the EU and US competition authorities since the Commission decision in Boeing / McDonnell Douglas in 1997.

Governance: embedding competition policy across the EU and projecting it beyond its borders

22. As a competition culture evolved, with the internal market consolidating and the Commission and, increasingly, National Competition Authorities (NCAs) developing their competition policies, time was ripe for a radical overhaul of the governance of EU competition policy. This was the so-called Modernisation of EU antitrust rules¹⁵; in fact, the entry into force of antitrust Modernisation and the enlargement took effect on the very same day: 1 May 2004.
23. In parallel, the Commission issued guidance to Member States on how it would assess support to specific policy objectives of common European interest, such as R&D, regional development, the environment or the restructuring of firms in difficulty. By 2005, State aid control was at the forefront of EU competition policy, illustrated by the status of the State Aid Action Plan as one of the two key priorities of EU competition policy for that mandate, alongside cartel enforcement. Among other things, the increased focus on State aid control has contributed to the evolution towards "*less and better targeted aid*", as highlighted by both the decreasing relative amount of aid granted by Member States (from 1.2% of EU GDP in 1992 to 0.62% in 2009, excluding crisis measures) and the increasing share of aid dedicated to objectives of common interest (from 50% in the mid-nineties to 84% in 2009)¹⁶. The State Aid Action Plan also advocated a more economic approach based on a so-called "balancing test" of the possible negative and positive effects of the aid, to be used mainly for in-depth assessments of types of aids which are typically the most distortive.
24. Under the Modernisation reforms, NCAs and national courts were empowered and obliged to apply all EU antitrust rules directly and in full to cases affecting trade between Member States, placing the NCAs on an equal footing as enforcers with the Commission as part of the European Competition Network (ECN) and emphasizing the Courts' role in antitrust private enforcement, following the *Courage v Crehan* judgment¹⁷ highlighting the need for an effective system of antitrust damages actions as part of the overall enforcement architecture¹⁸. Underlying this regime change was a sense that the competition culture of the Member States after nearly fifty years of antitrust policy had reached a sufficiently advanced state to justify a significant

¹⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25)

¹⁶ State Aid Scoreboard – Autumn 2010 Update (COM(2010) 701)

¹⁷ Case C-453/99 *Courage v Crehan* [2001] ECR I-6297

¹⁸ White Paper on Damages actions for breach of the EC antitrust rules (COM(2008) 165 final)

degree of decentralisation in its enforcement. The impending enlargement, the largest in the EU's history, added urgency to the reform process.

2001 <i>Courage v Crehan</i>	2001-2003 <i>Mandate of Hearing Officer revised and Chief Economist position created</i>	2002-2003 <i>Airtours case; Schneider Electric case and Tetra Laval case</i>
The Court rules that anyone who has suffered a harm caused by an infringement of the EC competition rules must be able to claim compensation.	These decisions aim at enhancing the objectivity and quality of the Commission's competition proceedings and the resulting decisions.	In overturning three merger prohibition decisions, the Court requires the Commission to provide adequate reasoning in its decisions, based on accurate and persuasive evidence.

25. Modernisation has significantly contributed to a more level playing field for businesses operating across borders, allowing them to plan their business strategies according to one as opposed to 27 sets of rules¹⁹. The ECN has fostered close cooperation among NCAs and the Commission which resulted in an enhanced and more consistent enforcement of EU antitrust rules. In addition, by removing the obligation to notify agreements, the reform enabled both the Commission and NCAs to focus their enforcement activities on infringements which are the most harmful for European consumers. The Commission has also been pursuing increased convergence between EU level and national merger control, drawing on the experience of the antitrust Modernisation.
26. The continuous integration of Member States' economies within a consistent competition framework has been mirrored by the advocacy efforts of the Commission to promote common competition principles internationally. In an ever more globalised economy, ensuring a more level playing field on the world stage has become an essential objective of competition policy. This led the Commission, starting from the 1990s *"to seek to encourage the application of similar policies by the Community's main trading partners, by means of bilateral agreements or through multilateral negotiation"*²⁰. Consequently, the Commission pursued a twofold strategy: it developed and strengthened direct bilateral relations with main trading partners and it invested substantially in multilateral bodies such as the OECD or the International Competition Network (ICN).
27. The first Cooperation Agreement with the US was signed already in 1991 and laid the basis for the very successful cooperation between the Commission and the US antitrust authorities. Similar agreements were concluded with Canada (1999), Japan (2003) and South Korea (2009) and have proven instrumental in addressing international antitrust cases. These bilateral efforts have been complemented at the multilateral level, in particular in the OECD and the ICN, to which the Commission has been actively involved as a founding member and which serve as important fora to spread best practices, to foster convergence and to facilitate cooperation.

¹⁹ Report on the functioning of Regulation 1/2003 (COM(2009) 206 final)
²⁰ Report on Competition Policy 1992, p. 15

2003	2004	2004
<i>Altmark Case</i>	<i>Council Regulation 1/2003 ("Modernisation Regulation")</i>	<i>Microsoft case</i>
The Court clarifies that public service obligations only escape State aid scrutiny if the undertaking entrusted with the public service is an efficient undertaking. This strengthens the Commission's powers of control of public service obligations.	The notification system for potentially anticompetitive agreements is replaced by a self-assessment system. A new framework for co-operation between the National Competition Authorities and the Commission is established.	Microsoft abused its market power by deliberately restricting interoperability between Windows PCs and non-Microsoft work group servers, and by tying its Windows Media Player with its dominant Windows operating system. By levying additional fines for non-cooperation, the Commission shows strong enforcement of its decisions.

28. The importance of the international dimension is increasingly recognised, most recently in the Report from former Competition Commissioner Mario Monti on "A New Strategy for the Single Market"²¹. While this Report lists several key challenges relating directly to the internal market dimension of EU competition, such as deepening the coherence of the implementation of antitrust rules across Member States and the coordination between the Commission and NCAs, in particular in the assessment of mergers or in the fining policies, it also emphasises the need for greater convergence on competition policy principles at the international level, especially with the fastest growing EU trade partners. Indeed, the Commission has recently been deepening its bilateral cooperation with the competition agencies of major economic powers, such as China, India and Brazil. Developing an effective competition policy and competition culture is a major challenge which requires time, as shown by the EU's own experience. At the same time, competition agencies and competition legislation have become part of mainstream economic governance as illustrated by the exponential growth over the last decades in the number of competition agencies which form part of the ICN (currently exceeding 100 agencies).

Competition policy as a tool to support competitiveness in line with the Europe 2020 Strategy

29. It is clear from the early annual Reports that the contribution and support of competition towards other policy objectives has gone well beyond being used as a crisis resolution instrument. As the EU exits from the current crisis in the face of fierce global competition, a major challenge for competition policy in the coming years will be to support as effectively as possible the Europe 2020 Strategy for smart, inclusive and sustainable growth.
30. Competition policy is well placed to make such a contribution as it is a key driver for making markets work better through an efficient allocation of resources and increased productivity and innovation. It therefore underpins the competitiveness of the EU economy, which is more important than ever to maintain economic and financial stability. Competition policy and competition-enhancing reforms must thus form an integral part of the economic governance.
31. Competition rules also recognise the need to enable Member States to promote the Union's objectives of economic, social and territorial cohesion. The regional aid guidelines facilitate the realisation of the territorial cohesion of the Union by promoting the development of poorer regions. The different State aid rules also allow

²¹ Report by Professor M. Monti to the President of the European Commission: "A new Strategy for the Single Market" of 9.5.2010

for training aid and the promotion of the access of disadvantaged and disabled workers to employment.

2009
Intel Case

2008-2010
Temporary state aid measures

Intel harmed millions of European consumers by deliberately acting to keep competitors out of the market for computer chips for many years, thus limiting consumer choice and artificially raising prices (case under appeal).

The Commission temporarily amends the rules for State aid to the financial sector and the real economy in order to allow for additional State support for financial institutions and to mitigate the effects of the crisis on the real economy. This highlights the flexibility of competition rules and their safeguarding role in coordinating Member States' actions and preserving the Single Market.

32. Another essential area where competition policy has evolved to take into account a long-term challenge to the Union is the protection of the environment and the promotion of sustainable growth. Through both its antitrust enforcement activities in the energy sector which enhances liquidity and security of supply in the internal market and its adoption of environmental State aid guidelines, which facilitate aid to address market failures in this area, the Commission has ensured that competition policy supports the shift towards a more sustainable economy.

Conclusion: resilience and adaptability of EU competition policy

33. The European Union is undergoing a period of rapid and dramatic changes. Some challenges and issues can be foreseen with some degree of certainty – the exit from the crisis, global competition and sustainable development are among the most prominent. But the EU will no doubt face other challenges which cannot be foreseen yet. Nevertheless, it is clear that competition policy throughout its existence has, against the background of a stable Treaty framework, been able to cope with the considerable evolutions of its environment. Given its resilience and adaptability, EU competition policy will continue to be one of the European Union's assets.

1. INSTRUMENTS

1.1. Follow-up to the implementation of the temporary crisis framework for State aid

1.1.1. Crisis-related support for the financial sector

34. Since the beginning of the global financial crisis in the autumn of 2008, the Commission provided detailed guidance on the criteria for the compatibility of temporary crisis-related support measures for financial institutions under Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU), whether in the form of State guarantees²², recapitalisations²³ or asset relief measures²⁴ and on

²² 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 (OJ C 270, 25.10.2008, p. 8)

²³ Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15.1.2009, p. 2)

²⁴ Communication on the treatment of impaired assets in the Community banking sector (OJ C 72 of 26.3.2009, p. 1)

the necessary restructuring measures for distressed banks²⁵. Through the application of State aid rules, the Commission ensured that distortions of competition within the internal market were limited to a minimum despite the important amounts of State aid and that beneficiary banks were restructured when necessary.

35. Between 1 October 2008 and 1 October 2010, the Commission took more than 200 decisions on State aid measures for the financial sector aiming to remedy a serious disturbance in Member States' economies. More than 40 schemes were authorised, amended or prolonged and individual decisions concerned more than 40 financial institutions. In 2009, the nominal amount of aid to the financial sector used by Member States constituted EUR 1 107 billion (9.3% of EU GDP), whereas the figure for 2008 was EUR 1 236 billion²⁶.
36. The availability of State guarantees proved to be an effective tool throughout the crisis to improve access to funding for banks and to restore market confidence. The use of recapitalisation schemes was limited in 2010 while some *ad hoc* interventions took place during 2010. However, the situation showed a reduction in the use of State capital injections in 2010 compared to 2009; moreover, banks which benefited from asset relief or capitalisation support measures in 2009 or 2010 were subject to restructuring obligations.
37. Restructuring of a number of European banks was among the main challenges of 2010 and followed three main principles: (i) the return to long-term viability without State aid, based on a sound restructuring plan, (ii) burden sharing between the bank/its stakeholders and the State and (iii) limitation of competition distortions, usually through structural (divestitures) and behavioural measures (acquisition bans or limitations on aggressive commercial behaviour). In 2010, the Commission approved 14 banks' restructuring or liquidation. The main cases concerned Aegon, Dexia, Ethias, Parex and Sparkasse Köln/Bonn²⁷; they were all approved by the Commission and included binding behavioural and structural measures. The Commission adopted a negative decision in the case of Banco Privado Português and the bank is currently in liquidation²⁸.
38. As a result of policy intervention, the severe shortage of bank funding that occurred in autumn 2008 was overcome relatively quickly. However, the sovereign crisis which struck in the first half of 2010 clearly showed that, although some improvement compared to the peak of late 2008, the level of stress in financial markets was still requiring targeted crisis-related support beyond 2010. On 1 December 2010, the Commission extended the validity of the rules for crisis-related measures for the financial sector until the end of 2011²⁹. However, given the evidence that banks were facing fewer difficulties in raising capital on the markets,

²⁵ Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rule (OJ C 195, 19.8.2009, p. 9)

²⁶ State aid scoreboard – Autumn 2010 Update (COM(2010) 701)

²⁷ Cases N372/2009 *Viability plan for Aegon*, C9/2009 *Restructuring of Dexia*, N256/2009 *Restructuring aid for Ethias*, C26/2009 *Restructuring aid for Parex* and C32/29 *Restructuring of Sparkasse Köln/Bonn*

²⁸ Case C33/2009 *Restructuring of BPP*

²⁹ Communication on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 329, 7.12.2010, p. 7)

the Commission introduced from 1 January 2011 a requirement to submit a restructuring plan for every beneficiary of a recapitalisation or an impaired asset measure, irrespective of whether the bank is considered to be fundamentally sound or distressed.

1.1.2. Implementation of the Temporary Framework for the real economy

39. In 2008, the Commission adopted the Temporary Framework (TF)³⁰ aimed at facilitating companies' access to finance in the context of the crisis. Between its introduction and 1 October 2010, the Commission approved 73 schemes and four *ad-hoc* aid measures. The volume of aid approved in 2009 was EUR 82.5 billion (0.7% of EU GDP).
40. The main measures used were the compatible limited amount of aid, the subsidised guarantees and the subsidised loans. The relaxation of the conditions for exceptional acceptance of government export credit insurance within the Community contributed to sustain trade. The risk capital adaptation was also positively perceived as an important signal for private investors. The subsidised loans for the production of green products were used by a smaller number of Member States, being notified by five of them³¹.
41. In view of the fragility of the recovery, the Commission considered premature to let the TF expire in its entirety at the end of 2010. A progressive phasing-out was considered the most suitable response to the current market situation. The Commission approved on 1 December 2010 a prolongation of the Temporary Framework³² until the end of 2011 with a focus on SMEs and a limited spectrum of measures. The measures that address outstanding market failures, in particular the remaining problems on access to finance for SMEs, were maintained, subject to tighter conditions to reflect the gradual transition into the normal State aid regime.

1.1.3. Contribution of competition policy to the economic adjustment programmes of Greece and Ireland

42. In 2010, Greece found itself in a weak fiscal position. To support the Greek government's efforts to get its economy back on track, the Commission, the European Central Bank and the International Monetary Fund (IMF) pledged on 2 May 2010 a three-year economic adjustment programme³³ financed by Euro Area Member States in bilateral loans totalling EUR 80 billion and supported by the IMF with a stand-by arrangement of about EUR 30 billion. The Greek authorities agreed to a multi-annual programme of fiscal consolidation and structural reforms in order to put the Greek economy on a sustainable path, to restore confidence on sovereign debt markets and to preserve the stability of the Euro area. In order to strengthen the Greek financial system, issuance of additional government guarantees was authorised

³⁰ Temporary framework for State aid measures to support access to finance in the current financial and economic crisis (consolidated version) (OJ C 83, 7.4.2009, p. 1)

³¹ France, Germany, Italy, Spain and the United Kingdom

³² Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 6, 11.1.2011, p. 5)

³³ The Economic Adjustment Programme for Greece, European Economy, Occasional Papers 61, May 2010

by the Commission³⁴, an independent Financial Stability Fund providing capital support to banks was established³⁵ and restructuring plans for six of the recapitalised banks were submitted in line with EU State aid rules. Moreover, the structural reforms of the economic adjustment programme included a competition related section. Greece thus cooperated with the Commission on its new investment law, on reforms of the Hellenic Competition Authority and on the liberalisation of closed professions.

43. As regards Ireland, the situation became very stressed for both the banks and the sovereign debt in the last quarter of the year. The combination of a severe economic crisis and of an oversized banking sector taking huge losses led to great pressure on the Irish sovereign debt. On 28 November 2010, a Programme was agreed between the Commission, the European Central Bank (ECB), the IMF and the Irish authorities³⁶. The Programme foresees a loan of EUR 85 billion to Ireland, of which EUR 35 billion will be available to restore banks' viability. As part of the Programme, two domestic banks will be wound down (Anglo Irish Bank & INBS), while others will be capitalised and restructured in compliance with EU State aid rules. As regards competition-related structural reforms, a number of policy measures will be taken to bolster competition in product and energy markets and other network industries. This includes introducing legislative changes to remove restrictions to trade and competition in sheltered sectors, addressing the current exclusion of certain sectors from the scope of the national competition law and improving deterrence of anticompetitive behaviour.

1.2. Antitrust enforcement

1.2.1. Shaping the rules: Review of Block Exemption Regulations

Block Exemption Regulation on vertical agreements

44. On 20 April 2010, the Commission adopted a revised Block Exemption Regulation³⁷ and guidelines³⁸ regarding vertical agreements, *i.e.* agreements between suppliers and buyers operating at different levels of the production and distribution chain for the supply and distribution of products and services.
45. The basic principle of the revised rules remains that companies with limited market power are free to decide how their products are distributed, provided their agreements do not contain price-fixing or other hardcore restrictions. However, the rules were revised in order to take into account both the buyers' and sellers' potential market power so that all parties to the agreement must have a market share under 30% for a block exemption.

³⁴ Case N260/2010 *Third prolongation of Greek bank support scheme* (OJ C 238, 3.9.2010, p. 3)

³⁵ Case N328/2010 *Recapitalisation of credit institutions in Greece under the Financial Stability Fund* (OJ C 316, 20.11.2010, p. 7)

³⁶ MEMO/10/624

³⁷ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1-7)

³⁸ Commission notice – Guidelines on Vertical Restraints (OJ C 130, 19.5.2010, p. 1-46)

46. The Regulation and accompanying guidelines also take into account the rapid development of the internet as a force for online sales and for cross-border commerce, which increases consumer choice and price competition. Through the added clarity and greater predictability of the new rules, distributors have clear incentives to develop online activities to reach and be reached by customers throughout the EU, thus ensuring the full realisation of the digital internal market.

Block Exemption Regulations on horizontal cooperation agreements

47. On 14 December 2010, the Commission adopted new rules and guidelines for the assessment of horizontal cooperation agreements, *i.e.* agreements concluded between companies operating at the same level of the supply chain, such as agreements to cooperate on research and development, production, purchasing, commercialisation, standardisation, and exchange of information. This new regime consists of two Block Exemption Regulations regarding research and development agreements on one hand and specialisation and joint production agreements on the other hand³⁹ and accompanying horizontal guidelines⁴⁰.
48. The Commission's approach enshrined in the new rules is to leave companies maximum freedom to cooperate while at the same time protecting competition from such cooperations which are contrary to Article 101 TFEU, *e.g.* by being harmful to consumers. The Commission's view on cooperation between competitors has not fundamentally changed since the previous rules were put in place in 2000. Nevertheless, the new rules on horizontal cooperation agreements are much more detailed, user-friendly and clearer than the previous ones. Two key features of the reform include the insertion of a new chapter on information exchange and a substantial revision of the chapter on standardisation agreements. The latter in particular clarifies the key conditions to ensure competitive standard-setting processes and contributes to the objective of building a more efficient standards system for Europe as set out in the Flagship Initiative "An Integrated Industrial Policy for the Globalisation Era" of the Europe 2020 strategy⁴¹.

Sectoral Block Exemption Regulations

49. In the field of insurance, the new Insurance Block Exemption Regulation⁴² was adopted on 24 March 2010. On 27 May, the Commission adopted new competition rules for agreements between vehicle manufacturers and their authorised dealers,

³⁹ Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development agreements (OJ L 335, 18.12.2010, p. 36) and Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty to categories of specialisation agreements (OJ L 335, 18.12.2010, p. 43)

⁴⁰ Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements (OJ C 11, 14.1.2011, p. 1)

⁴¹ An Integrated Industrial Policy for the Globalisation Era: Putting Competitiveness and Sustainability at Centre Stage (COM(2010) 614)

⁴² Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 83, 30.3.2010, p. 1)

repairers and spare parts distributors⁴³. The new rules broadly align competition policy in the car market to the general regime applicable to other sectors.

1.2.2. *Private enforcement of EU antitrust rules*

50. Private enforcement of the EU antitrust rules is an essential complement to a strong public enforcement by the Commission and National Competition Authorities. In its 2008 White Paper on antitrust damages actions⁴⁴, the Commission suggested a number of measures, such as collective redress and quantification of antitrust damages, to improve the possibilities for consumers and businesses to obtain compensation for harm caused to them by antitrust infringements.
51. The Commission's suggestions on collective redress triggered a broad public debate that goes beyond the boundaries of the antitrust field and focuses on the role of collective redress where a single infringement of EU rules harms large groups of victims. The Commission decided to prepare a public consultation which should contribute to identify a set of common principles for any future legislative proposals concerning collective redress. A Communication presenting such principles has been scheduled for adoption in 2011.

1.2.3. *Applying Article 101 TFEU: Cartels*

52. In 2010 the Commission adopted seven cartel decisions⁴⁵ imposing fines totalling over EUR 3 billion on 70 undertakings, maintaining its strong enforcement focus on the fight against cartels.
53. The Commission focused on making the process more efficient through the application of the settlement procedure. In 2010, the Commission adopted its two first settlement decisions: a full settlement decision in the DRAMs case and a hybrid settlement decision in the Animal Feed Phosphates case. The DRAMs case constituted a milestone in EU cartel practice since its settlement comprised all ten undertakings involved and its decision was not appealed.
54. Against the background of the economic crisis, the seven cartel decisions adopted in 2010 led to 32 applications for a fine reduction on grounds of "inability to pay"⁴⁶, nine of which were granted after a thorough analysis of the financial situations of the applicants.

1.2.4. *Applying Article 101 TFEU: Other agreements and concerted practices*

55. In 2010, the Commission put an end to a major antitrust case under Article 101 TFEU in the air transport sector by making legally binding commitments offered by

⁴³ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 129, 28.5.2010, p. 52)

⁴⁴ White Paper on Damages actions for breach of the EC antitrust rules (COM(2008) 165 final)

⁴⁵ Cases COMP/38511 *DRAMs*, COMP/39092 *Bathroom fittings & fixtures*, COMP/38344 *Pre-stressing steel*, COMP/38866 *Animal Feed Phosphates*, COMP/36212 *Carbonless paper* (re-adoption for Bolloré), COMP/39258 *Airfreight* and COMP/39309 *LCD*

⁴⁶ See Point 35 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p. 2-5)

British Airways, American Airlines and Iberia⁴⁷. This decision will entail significant benefits for European consumers by ensuring that sufficient competition on the transatlantic flights, in particular from London, is maintained.

56. In the financial services sector, the Commission made binding Visa's commitments on Multilateral Interchange Fees for immediate debit card transactions applicable to cross-border transactions in the EEA and to domestic transactions in nine EEA countries⁴⁸, bringing them in line with the MasterCard's unilateral undertakings of 1 April 2009⁴⁹ and the "merchant-indifference methodology" to modes of payment.

57. The Commission also adopted its first antitrust decision in the health services market. It imposed a fine of EUR 5 million on the French Association of Pharmacists⁵⁰ condemning its market behaviour in the French market for clinical laboratory testing.

1.2.5. *Applying Article 102 TFEU: abuse of dominant position*

58. The Commission continued its enforcement activities of Article 102 TFEU, notably in the energy sector, where it took four decisions and in the ICT sector, where it opened several proceedings.

59. In the energy sector, the Commission followed upon its 2007 energy sector inquiry, adopting four major antitrust decisions, whereby commitments proposed by undertakings to put an end to a potential infringement were made binding. They relate to incumbents in France, Sweden, Germany and Italy foreclosing access to energy markets through various means, such as long-term supply contracts with resale restrictions or limiting available transport or export capacities on energy networks⁵¹.

60. In the ICT markets, the Commission opened proceedings against IBM concerning potential abuses of a dominant position in the mainframe computer market, and against Google Inc on potential abuses of a dominant position in online search, online advertising and online advertising intermediation. The Commission launched two preliminary investigations into Apple's business practices relating to the iPhone. Both were closed after Apple proposed to change these practices⁵².

⁴⁷ Case COMP/39596 *BA/AA/IB*. See IP/10/936 and MEMO/10/330, 14.7.2010.

⁴⁸ Case COMP/39398 *Visa MIF*. See IP/10/1684, 8.12.2010.

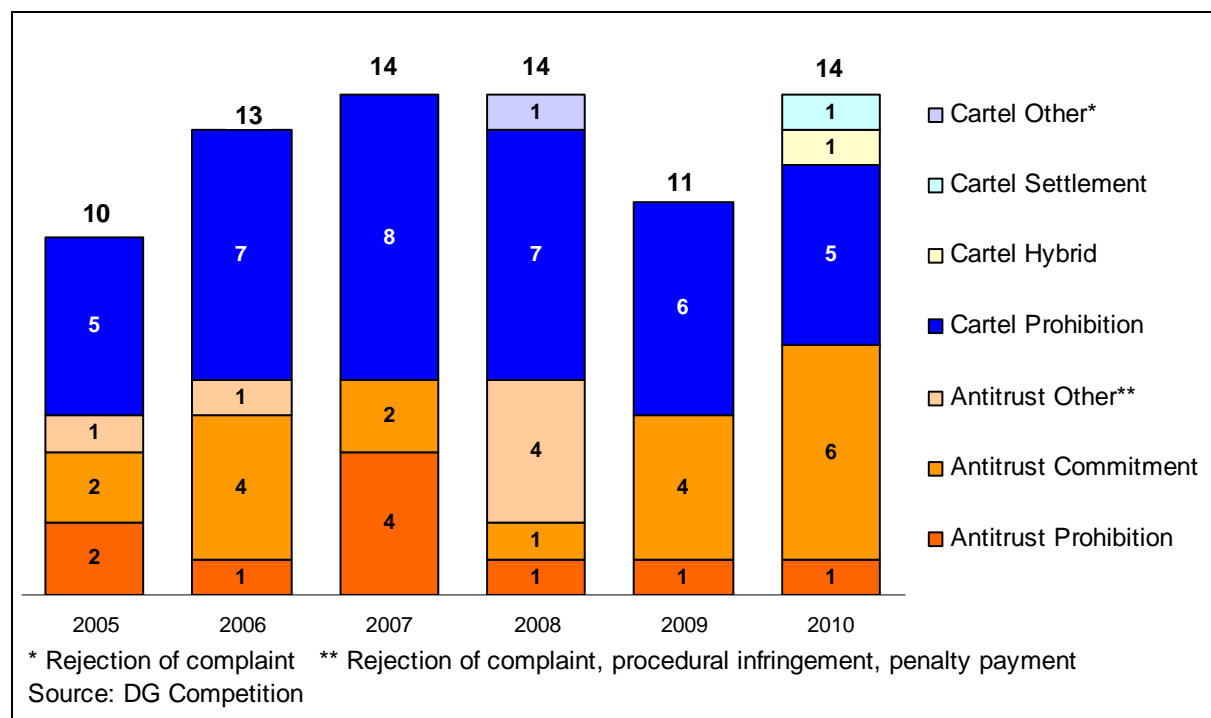
⁴⁹ Case COMP/34579 *MasterCard*. See IP/09/515, 1.4.2009.

⁵⁰ Case COMP/39510 *ONP*. See IP/10/1683, 8.12.2010.

⁵¹ See section 2.2. *infra*.

⁵² See section 2.4. *infra*.

Number of antitrust and cartels enforcement decisions per year and type, 2005-2010



1.3. Merger control

61. In 2010 the number of mergers notified was at low level due to the economic crisis. In total, 274 transactions were notified to the Commission, 16 decisions were submitted to conditions and no prohibition was decided this year. The large majority of the mergers notified were approved without conditions both under the normal procedure and the simplified procedure, which represented 55% of notifications.
62. The Commission took three decisions in 2010 following an in-depth analysis in second phase investigation for the Oracle / Sun Microsystems⁵³ (see section 2.4. *infra*), Monsanto / Syngenta⁵⁴ and Unilever / Sara Lee Body⁵⁵ mergers.
63. On 17 November 2010, after an in-depth investigation, the Commission cleared the acquisition of the global sunflower seed business of the US company Monsanto by Syngenta of Switzerland conditional upon the divestment of Monsanto's sunflower hybrids, commercialised or under official trial in Spain and Hungary, as well as the parental lines used in the creation of those hybrids or currently under development for the creation of hybrids for Spain and Hungary.
64. The Commission also cleared on the same date the planned acquisition by the Anglo-Dutch consumer goods company Unilever of the body and laundry care businesses of Sara Lee Corp of the US, subject to conditions. The Commission's in-depth investigation had shown that the merger would give Unilever a very strong leadership position in a number of deodorants markets by combining the parties'

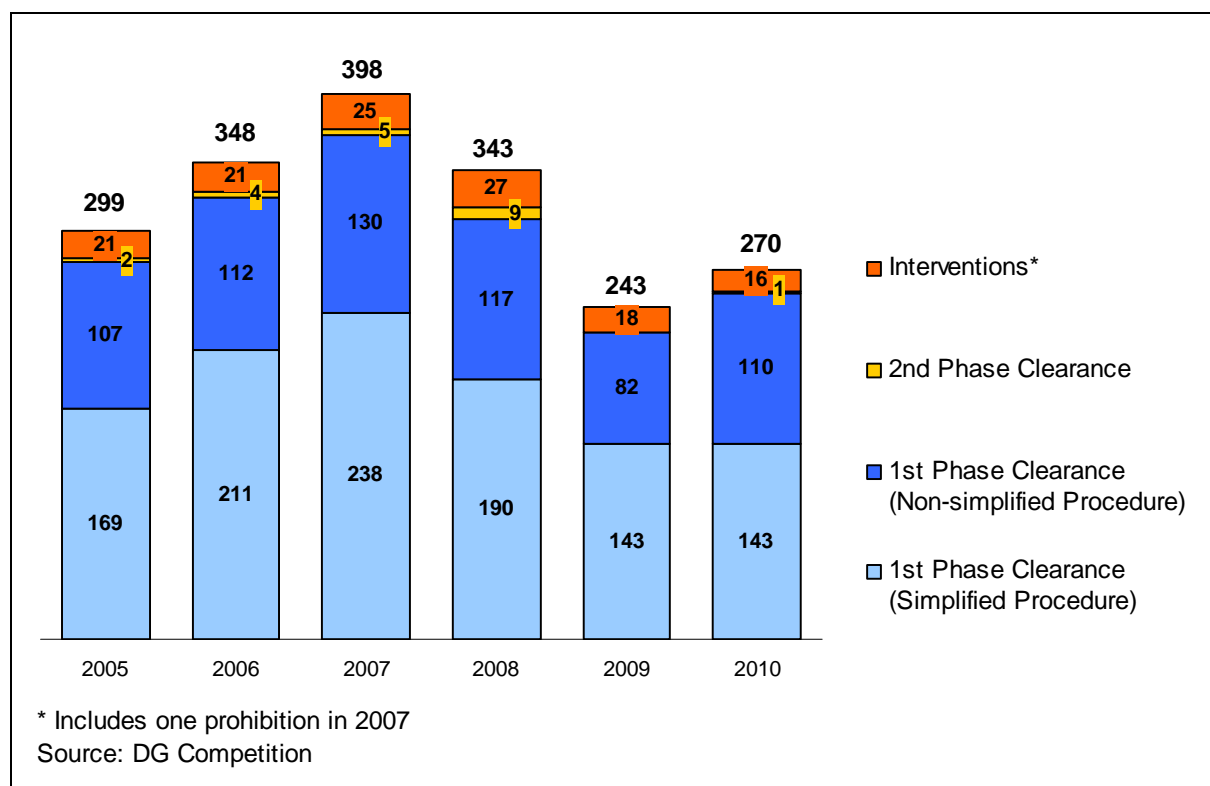
⁵³ Case COMP/M.5529 *Oracle / Sun Microsystems* (OJ C 91, 9.4.2010, p. 7)

⁵⁴ Case COMP/M.5675 *Syngenta / Monsanto's sunflower seed business*. See IP/10/1515, 17.11.2010.

⁵⁵ Case COMP/M.5658 *Unilever / Sara Lee Bodycare*. See IP/10/1514, 17.11.2010.

brands, most notably Sanex with Dove and with Rexona which presently compete against each other. To remedy these concerns, the merging parties offered to divest Sara Lee's Sanex brand and related business in Europe.

Number of merger final decisions per year and type, 2005-2010



1.4. State aid control

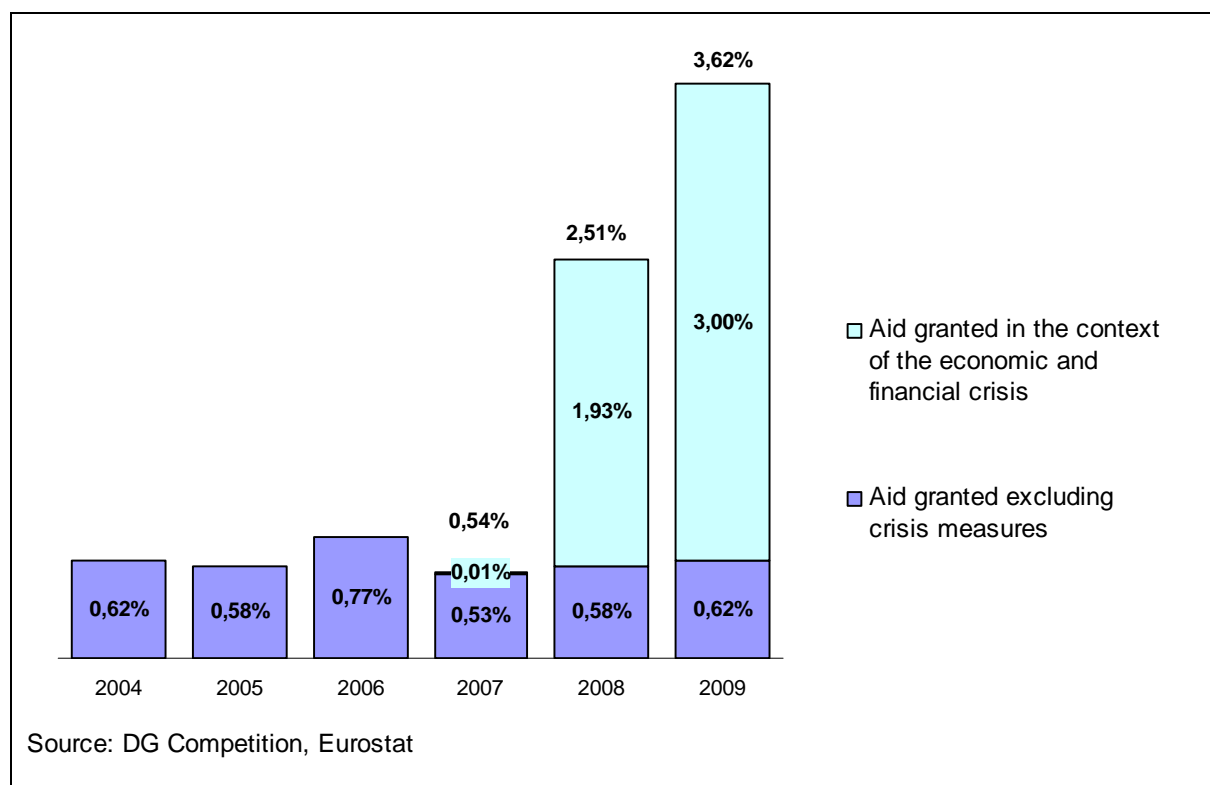
65. The majority of aid approved in 2010 related to horizontal objectives of European common interest, such as culture and heritage conservation, regional cohesion, environment protection, research, development and innovation and compensations of damages caused by natural disaster, notwithstanding aid related to the economic and financial crisis. Member States made wide use of the possibilities offered by the General Block Exemption Regulation (GBER)⁵⁶, whereby measures which fulfil its criteria may be granted without prior notification to the Commission. In 2010, the Commission was informed about the introduction of 414 such new measures by Member States.
66. In terms of amount of aid authorised, figures are compiled with one year delay in the bi-yearly State aid Scoreboards. Total aid excluding crisis-related measures amounted in 2009 to 0.62% of GDP or EUR 73.2 billion, at a slightly higher level than 2008 (0.58% of GDP). On average, 84% of aid to industry and services was directed towards horizontal objectives of common interest⁵⁷.

⁵⁶ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3)

⁵⁷ State aid scoreboard – Autumn 2010 Update (COM(2010) 701)

67. 2010 was the first full year with the Simplification Package in place. This Package comprises a Best Practice Code⁵⁸ and a Notice on a Simplified Procedure⁵⁹, both of which aim at improving the effectiveness, transparency and predictability of State aid procedures. The first results of the Best Practices Code were encouraging, in particular regarding complaints-handling, with an increasing number of complainants informed of the status of their complaints.

Evolution of total State aid granted by Member States as % of GDP in the EU, 2004-2009⁶⁰



1.4.1. Horizontal State aid

Regional aid

68. In accordance with the guidelines on national regional aid for 2007-2013⁶¹, the Commission carried out the review of the State aid status and the aid ceiling of the statistical effect regions that benefited transitionally from a status as an assisted area pursuant to Article 107(3)(a) until the end of 2010. Similarly, the Commission accepted changes to national regional State aid maps notified by three Member States

⁵⁸ Code of Best Practice for the conduct of State aid control procedures (OJ C 136, 16.6.2009, p. 13-20)

⁵⁹ Notice from the Commission on a simplified procedure for treatment of certain types of State aid (OJ C 136, 16.6.2009, p. 3-12)

⁶⁰ The total covers aid to manufacturing, services, coal, agriculture, fisheries and part of the transport sector but excludes, due to the lack of comparable data, aid to the railway sector and aid for compensation for services of general economic interest. Aid amounts refer to the aid element (or gross grant equivalent in case of guarantees or loans) contained in a State aid measure as opposed to figures in point 35 mentioning amounts of aid used by Member States. See the State aid scoreboard – Autumn 2010 Update (COM(2010) 701) for more on evolution of total State aid granted by Member States.

⁶¹ Guidelines on national regional aid 2007-2013 (OJ C 54, 4.3.2006, p. 13-44)

(France, Ireland and Italy) for certain areas eligible to regional aid on the basis of Article 107(3)(c).

69. The Commission approved in 2010 regional aid to six large investment projects. Four of these projects are in the photovoltaic sector, three in Germany and one in Spain⁶², while the other investment projects are in the mechanics industry in Germany and in Italy⁶³. Furthermore, five *ad hoc* aid measures in favour of single enterprises for investments in areas under the Regional Aid maps 2007-2013 were approved, as well as ten regional aid schemes, five of which regarding outermost regions. The Commission closed in 2010 three formal investigations with one positive⁶⁴ and two negative decisions concerning an illegitimate SME bonus in favour of Sovello AG⁶⁵, and an incompatible aid measure in favour of Fri-el Acerra⁶⁶ because of the absence of incentive effect and insufficient regional contribution.

Environmental aid

70. The Commission cleared a number of measures in support of energy saving and renewable energy production under the environmental aid guidelines⁶⁷. An increasing number of these notifications concerned relatively large individual aid (above EUR 7.5 million investment aid per undertaking) and were subject to a detailed economic assessment as part of the more economic approach to State aid analysis. The approved schemes concerned mostly aid to renewable energy and to carbon capture and storage projects.

Research & Development & Innovation

71. Innovation has been placed at the heart of the Europe 2020 Strategy and the Flagship Initiative on an Innovation Union⁶⁸ outlines the necessity to improve the financing of innovation in Europe to boost its performance. The Community Framework for research and development and innovation⁶⁹ supports this objective by making it easier for Member States to better target State aid to the relevant market failures. In 2010, the Commission approved twelve aid schemes, with an overall budget of more than EUR 5 billion, on the basis of this Framework, and decided to initiate a formal investigation procedure regarding one further case which was subsequently withdrawn. Out of those measures, five were pure R&D schemes, four were innovation-oriented schemes and four were mixed. In addition, following an in-depth economic assessment, the Commission decided not to raise objections to ten individually notifiable aids to large R&D projects referring to new processes for bio-methane production, use of composite materials for the construction of specific components of aero-structures, and lithography for semiconductor devices.

⁶² Cases N641/2009 *Solibro GmbH*, N221/2009 *Wacker Chemie AG*, N237/2010 *Sovello3* and N285/2009 *Silicio Solar*

⁶³ Cases N261/2009 *Liebherr MCCtec Rostock GmbH* and N27/2010 *Fiat Powertrain Technologies in Verrone*

⁶⁴ Case C34/2008 *Deutsche Solar AG* (OJ L 7, 11.1.2010, p. 40-47)

⁶⁵ Case C27/2008 *Sovello AG (formerly EverQ) SME bonus* (OJ L 167, 1.7.2010, p. 21-38)

⁶⁶ Case C8/2009 *Fri-el Acerra s.r.l*

⁶⁷ Community guidelines on State aid for environmental protection (OJ C 82, 1.4.2008, p. 1)

⁶⁸ See the Communication on an "Innovation Union" (COM(2010) 546 final).

⁶⁹ Community framework for State aid for research and development and innovation (OJ C 323, 30.12.2006, p. 1-26)

Furthermore, it monitored information submitted on aids to 52 other R&D projects which exceeded EUR 3 million although without falling under the duty for individual notification.

72. Moreover, 40 schemes providing aid for fundamental research, 91 for industrial research and 86 for experimental development were submitted under the GBER. The GBER was also used by Member States for measures relating to innovation, 42 of which related to industrial property rights for SMEs, 21 to young innovative enterprises, 24 to innovation advisory and support services, and eleven to the loan of highly qualified personnel.

Aid to promote risk capital

73. In the area of risk capital financing for SMEs, the Commission approved seven measures under the risk capital guidelines⁷⁰ with an overall budget of EUR 380 million. Out of those measures, three did not comply with the safe harbour provisions and were subject to a detailed assessment. Furthermore, eleven additional aid schemes were implemented in 2010 under the GBER, which some Member States increasingly used for risk capital purposes.

1.4.2. Aid to coal and agricultural sectors

74. Following a proposition from the Commission in July 2010, the Council adopted a decision on State aid to facilitate the closure of uncompetitive coal mines⁷¹ on 10 December 2010 in light of the expiry of the current Regulation at the end of 2010⁷². Member States will be able to grant aid to support coal production if there is a closure plan whose deadline does not extend beyond 31 December 2018 and to cover exceptional costs (social welfare, rehabilitation of sites or removal of waste water) associated with the closure of mines until 2027.
75. The Commission assesses State aid granted to the agriculture and to the forestry sector on the basis of the guidelines for State aid in the agriculture and forestry sector 2007 to 2013⁷³. In 2010, 214 new State aid cases were registered and 161 decisions were adopted.

1.4.3. State aid enforcement by national courts

76. According to a recent study⁷⁴, more and more cases are brought before national courts. In 2010, the Commission continued its efforts to improve the system of private State aid enforcement at national level focusing on enhancing communication with national judges. In October 2010, it published a handbook on the "Enforcement

⁷⁰ Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2)

⁷¹ Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24-29)

⁷² Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ L 205, 2.8.2002, p. 1-8)

⁷³ Community guidelines for State aid in the agriculture and forestry sector 2007-2013 (OJ C 319, 27.12.2006, p. 1)

⁷⁴ 2009 Study on the enforcement of State aid law at national level available at: http://ec.europa.eu/competition/state_aid/studies_reports/enforcement_study_2009.pdf

of EU State aid law by national courts"⁷⁵ in order to assist national judges in dealing with State aid cases.

1.4.4. *Ex-post monitoring of State aid measures*

77. To ensure effective enforcement of the State aid rules, the Commission has launched regular *ex-post* monitoring exercises since 2006 for non-notified aid measures granted under the GBER or under approved schemes. In 2010, *ex-post* monitoring included measures covered by the GBER, as well as aid in the form of risk capital, aid in the transport sector, aid in the broadband area, cultural aid and aid to the shipbuilding sector. The results of the first exercises show that schemes and BERs function in a satisfactory manner. In a minority of cases substantive problems or procedural issues were identified.

1.4.5. *Recovery policy*

78. When unlawful aid is declared incompatible, the Commission is entitled to ask for its recovery by the Member State who granted it in order to restore the previous market situation. The amount of illegal and incompatible aid recovered has increased from EUR 2.3 billion in December 2004 to EUR 10.9 billion in December 2010⁷⁶. The percentage of illegal and incompatible aid still to be recovered has declined accordingly from 75% to 14%.

79. In order to ensure better enforcement of its decisions, the Commission brought proceedings in 2010 under Article 108(2)⁷⁷ in three cases and under Article 260(2)⁷⁸ in one case, thus leading to 26 cases under litigation. As of end 2010, the Commission had 41 pending active recovery cases.

2. SECTOR DEVELOPMENTS

2.1. Financial services

80. The financial and economic crisis continued into 2010 to hit the EU financial sector. The temporary regulatory framework established in 2008 was further extended to 2011 under tightened conditions. Its implementation was the main focus of competition enforcement over the year, in particular in the field of restructuring of supported financial institutions⁷⁹.

81. However, the Commission maintained its vigilance over the other competition policy challenges affecting the sector. The Commission made legally binding the commitments offered by Visa Europe in April 2010 concerning its Multilateral Interchange Fee (MIF) for immediate debit cards transactions applicable to cross-

⁷⁵ Available at: http://ec.europa.eu/competition/publications/state_aid/national_courts_booklet_en.pdf

⁷⁶ These figures do not include State aid granted to the agricultural, fishery and transport sectors.

⁷⁷ Actions under Article 108(2) are aimed at condemning a Member State for non-implementation of a State aid recovery decision.

⁷⁸ Actions under Article 260(2) are infringement actions aimed at condemning a Member State for non-implementation of a Court judgment, and may include the payment of fines.

⁷⁹ See section 1.1. *infra*.

border transactions in the EEA and to domestic transactions in nine EEA countries⁸⁰ and a number of transparency measures⁸¹. Visa Europe's maximum weighted average MIF for those transactions will be reduced to 0.2%, in line with the unilateral undertakings previously offered by MasterCard⁸². The commitments were assessed under the "merchant-indifference methodology" which seeks to set MIFs at a level at which merchants are indifferent as to whether a payment is made by immediate debit card or by cash. The Commission concluded that the MIF rate proposed by Visa Europe should be made binding and closed the proceedings as regards the specific MIFs covered by the commitments, while the rest of the case (including MIFs for credit cards) is still ongoing.

82. The Single Euro Payments Area (SEPA) continued to be an important focus of antitrust advocacy in the field of financial services in 2010, in particular through informal dialogue with the European Payments Council. For instance it was clarified that SEPA compliant card schemes do not need to cover all 32 States of the SEPA territory, giving new schemes a real chance of entering the market. In addition, the Commission adopted a proposal on establishing technical requirements for credit transfers and direct debits in Euros⁸³ on 16 December 2010. It includes provisions to forbid per transaction MIFs for SEPA Direct Debit after a transitional period but to allow MIFs for reject transactions under certain conditions.
83. On 15 September 2010, the Commission presented a proposal for a Regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories which include several measures aiming at making OTC derivatives markets safer and at enhancing financial supervision⁸⁴. It foresees a common framework for central counterparties (CCPs) in the EU and lays down the conditions for the establishment of interoperability arrangements between CCPs for cash securities. Interoperability arrangements should be welcomed from a competition perspective as they give customers a choice and allow CCPs to consolidate clearing volume at a single entity.
84. Following a two and a half years review involving all interested market players and National Competition Authorities, the Commission adopted on 24 March 2010 the new insurance Block Exemption Regulation⁸⁵ (BER) on agreements in relation to joint compilations, tables and studies and the common coverage of certain types of risks (pools) in the insurance sector. In the new BER, the Commission decided not to renew two of the four types of cooperation covered under the previous one, namely agreements concerning standard policy conditions and security devices, which are now addressed by the new Horizontal guidelines adopted in 2010.

⁸⁰ In EEA countries where the domestic MIF rates apply in the absence of other MIFs or are set directly by Visa Europe.

⁸¹ Case COMP/39398 *Visa MIF*. See IP/10/1684, 8.12.2010.

⁸² Case COMP/34579 *MasterCard*. See IP/09/515, 1.4.2009.

⁸³ Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in Euros and amending Regulation (EC) No 924/2009 (COM(2010) 775 final, 2010/373 COD)

⁸⁴ Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (COM(2010) 484/5, 2010/0250 COD)

⁸⁵ Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 83, 30.3.2010, p. 1-7)

85. The reduced merger activity persisted in 2010 in the financial sector. The Commission examined cases in the sectors of retail banking services⁸⁶, asset management⁸⁷ and distribution of mutual funds services⁸⁸. A number of cases resulted from restructuring State aid decisions in the context of the financial crisis⁸⁹.

2.2. Energy and environment

86. The Commission presented in November 2010 its energy strategy for the next ten years in the framework of the Flagship Initiative of the Europe 2020 strategy on a "Resource Efficient Europe"⁹⁰. An open and competitive single market in the energy sector should contribute to a secure and sustainable supply of energy at competitive prices by encouraging the rapid development of renewable energies and by promoting the development of new environmentally friendly technologies.

87. In 2010, the Commission continued to follow up on its 2007 energy sector inquiry, adopting four major antitrust decisions whereby the Commission made binding the commitments proposed by undertakings to put an end to an infringement. These commitments are expected to have a major structural impact on competition in the energy internal market.

88. In the EDF Customer Foreclosure case⁹¹, the Commission had concerns that EDF may have abused its dominant position in France by concluding supply contracts which foreclosed the market given their scope, duration and exclusive nature and by including resale restrictions in its supply contracts. EDF offered, for a period of ten years, to ensure that other suppliers could compete for 65% on average of the electricity EDF contracts with large French industrial users each year and to limit the duration of any new contract concluded with large industrial users to five years. In addition, EDF committed to remove all resale restrictions in its supply contracts and to assist customers wishing to resell electricity. These commitments, planned to come into effect on 1 July 2010, were postponed to 1 January 2011.

89. In the Svenska Kraftnät (SvK) case⁹², the Commission had concerns that SvK may have abused its dominant position in the Swedish electricity transmission market by limiting the export capacity available on interconnectors in order to relieve internal congestion on its network and to reserve domestic electricity for domestic consumption. SvK offered to operate the Swedish electricity market on the basis of several flexible bidding zones from 1 November 2011 on. This will allow electricity trading to adjust to available transmission capacity through market prices rather than through arbitrary measures.

⁸⁶ Cases COMP/M.5948 *Santander / Rainbow* and COMP/M.5960 *Crédit Agricole / Cassa di Risparmio della Spezia / Agences Intesa Sanpaolo*

⁸⁷ Case COMP/M.5580 *Blackrock / Barclays Global Investors UK Holdings*

⁸⁸ Cases COMP/M.5728 *Crédit Agricole / Société Générale Asset Management* and COMP/M.5726 *Deutsche Bank / Sal. Oppenheim*

⁸⁹ Cases COMP/M.5948 *Santander / Rainbow* and COMP/M.5968 *Advent / Bain capital / RBS Worldpay*

⁹⁰ See the Commission's Communications on "A resource-efficient Europe" (COM(2011) 21 final) and on "Energy 2020 – A strategy for competitive, sustainable and secure energy" (COM(2010) 639 final).

⁹¹ Case COMP/39386 *Long term electricity contracts in France* (OJ C 133, 22.5.2010, p. 5-6)

⁹² Case COMP/39351 *Swedish Interconnectors* (OJ C 142, 1.6.2010, p. 28-29)

90. In E.ON Gas⁹³, the Commission's investigation showed that E.ON had reserved, on a long-term basis, the largest part of the available transport capacity at the entry points to its gas transmission networks, thereby potentially preventing other gas suppliers from accessing the German gas market. The Commission reached the preliminary view that the long-term reservations might have infringed EU rules on the abuse of a dominant market position. E.ON undertook to release about 15% of pipeline capacity at the entry points to its gas networks by October 2010. From October 2015, E.ON will further reduce its bookings of entry capacity in the NetConnect Germany grid to 50% and in E.ON's grid for low-calorific gas to 64% of the pipeline capacity.
91. In the ENI case⁹⁴, the Commission had concerns that ENI may have abused its dominant position in the gas transport markets by refusing to grant competitors access to capacity available on the transport network, by granting access in an impractical manner and by strategically limiting investment in ENI's international transmission pipeline system. ENI may also have had the incentive to foreclose rivals to protect its margins in the downstream gas supply markets. ENI committed to the structural divestment of its international transport activities for the import of gas into Italy from Russia and from Northern Europe.
92. In the context of the open investigations, the Commission is still examining aid granted in the form of regulated electricity tariffs in France and Spain. Regulated tariffs may result in undue price advantages for electricity end-users and create market foreclosure. In the majority of Member States, regulated tariffs in favour of medium and large undertakings have been abolished or are being phased-out. France will phase-out regulated tariffs for medium and large undertakings in 2015, in the framework of a reform of the electricity market (loi NOME) which is set to be implemented as of 2011. Spain abolished such tariffs in 2009.
93. The Commission cleared a number of measures in support of energy saving, renewable energy production and remediation of contaminated sites under the horizontal environmental aid guidelines⁹⁵. In particular, the Commission authorised investment aid for the implementation of an innovative production process to one German steel producer and investment aid to another German steel producer for the implementation of a process recycling the gas emitted in the steelmaking process⁹⁶. The Commission cleared investment aid for the construction of a biomass boiler in France⁹⁷ and for the construction of a high-efficiency combined heat and power plant in Austria⁹⁸. The Commission also authorised aid to remediate two contaminated sites in Austria⁹⁹.
94. The Commission dealt with two individual support measures for industrial-scale carbon capture and storage (CCS) demonstration projects. The Commission

⁹³ Case COMP/39317 *E.ON Gas Foreclosure*. See IP/10/494, 4.5.2010.

⁹⁴ Case COMP/39315 *ENI*. See IP/10/1197, 29.9.2010.

⁹⁵ Community guidelines on State aid for environmental protection (OJ C 82, 1.4.2008, p.1)

⁹⁶ Case N450/2009 *Top Gas Recycling (TGR) Project - Aid to Arcelor Mittal Eisenhüttenstadt GmbH* (OJ C 94, 14.4.2010, p. 9)

⁹⁷ Case N650/2009 *Aid for the realisation of a biomass (wood) fueled thermo boiler*

⁹⁸ Case N295/2008 *Investment aid to Mellach power plant* (OJ C 154, 12.6.2010, p. 1)

⁹⁹ Cases N135/2000 *Aid for the Remediation of a Contaminated Site in Linz* (OJ C 312, 17.11.2010, p. 5-6) and N197/2010 *Individual Aid for the Remediation of the Contaminated Site in Unterkärnten* (OJ C 265, 30.9.2010, p. 1)

authorised investment aid for a CCS demonstration project in Rotterdam where the CO₂ from power generation is captured and stored in a depleted gas field¹⁰⁰. The Commission also approved investment aid to a Dutch power generator for a project in which the CCS technology is tested on a coal gasification process¹⁰¹.

95. In the area of security of electricity supply, the Commission approved aid for the construction of a 400 MW thermal power plant in Latvia¹⁰² on the basis of a number of special factors including the isolation of the Latvian energy market, Latvia's increasing dependence on gas and the closure of the Lithuanian Ignalina nuclear power plant at the end of 2009. The Commission also authorised a Dutch scheme using tax deductions to encourage investment in the exploration and exploitation of small gas fields on the Dutch continental shelf in the North Sea¹⁰³. It authorised a Spanish aid scheme intended to compensate electricity generators for using indigenous coal for some of their production as a public service obligation¹⁰⁴. While the Electricity Market Directive¹⁰⁵ allows Member States to take such measures for security of supply reasons, they are subject to State aid rules, in particular the Community framework for State aid in the form of public service compensation¹⁰⁶. The Commission found no manifest error of assessment in the justifications made by Spain as regards the definition of the public service obligation and verified that all the requirements of the framework were satisfied. Furthermore, the scheme being of a transitional nature, Spain undertook not to extend it beyond 2014; it also committed to ensure its consistency with current and future EU rules on State aid to the coal industry.

2.3. Electronic Communications

96. As a part of the Europe 2020 Strategy, the Commission launched on 26 August 2010 its Digital Agenda for Europe¹⁰⁷. It sets out the Commission's priorities in the field of the digital economy, among which the creation of a single market for telecom services. In particular, it puts forward the Commission objective to bring to near zero the difference between roaming and national tariffs by 2015. It also sets ambitious target for fast and ultra-fast internet access in Europe.
97. In 2010, more effective competition due to competition law enforcement, sector regulation, technological developments and new business models resulted in lower prices for electronic communication services and innovative service offers. A Commission report released in June 2010¹⁰⁸ showed that EU telecom markets are becoming more competitive thanks to the Commission's guidance in the consultation

¹⁰⁰ Case N381/2010 *CCS project in Rotterdam harbour area*

¹⁰¹ Case N190/2009 *CO₂ Catch-up pilot project at Nuon Buggenum plant* (OJ C 238, 3.9.2010, p. 1)

¹⁰² Case N675/2009 *Tender for Aid for New Electricity Generation Capacity* (OJ C 213, 6.8.2010, p. 1)

¹⁰³ Case N718/2009 *Development of marginal offshore gas fields* (OJ C 270, 6.10.2010, p. 1)

¹⁰⁴ Case N178/2010 *Preferential dispatch of indigenous coal plants* (OJ C 312, 17.11.2010, p. 6)

¹⁰⁵ Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37)

¹⁰⁶ Community framework for State aid in the form of public service compensation (OJ C 297, 29.11.2005, p. 4)

¹⁰⁷ A Digital Agenda for Europe (COM(2010) 245 final/2)

¹⁰⁸ Market Reviews under the EU Regulatory Framework – Further steps towards the consolidation of the internal market for electronic communications (COM(2010) 271 final)

and review process under the EU regulatory framework for electronic communications.

98. In the *Telekomunikacja Polska* case¹⁰⁹, the Commission sent on 1 March 2010 a Statement of Objections to the Polish incumbent operator, preliminary concluding that it had infringed Article 102 by abusing its dominant position in refusing to supply remunerated access to its wholesale broadband services.
99. The merger of France Télécom's and Deutsche Telekom's UK subsidiaries¹¹⁰, cleared on 1 March 2010, highlighted the importance of spectrum ownership in the development of 4G networks. The investigation showed that the parties' combined contiguous spectrum could result in the new entity being the only mobile network operator in the UK able to offer next-generation mobile data services through Long Term Evolution technology at the best possible speeds in the medium term. The clearance decision was thus conditional upon, *inter alia*, divestiture of a quarter of the parties' combined spectrum in the 1800 MHz band.
100. In order to achieve its objectives of reaching fast broadband coverage for all European citizens and ultra-fast broadband subscriptions for at least 50% of European households by 2020, the Commission assessed and approved the use of State aid and other types of public funding under the broadband guidelines¹¹¹ for approximately EUR 1.8 billion that generated total investments in broadband networks of more than EUR 3.5 billion.

2.4. Information and Communication Technology (ICT)

101. Efficient ICT products and services are essential to the smart growth put forward as a major objective of the Europe 2020 Strategy. Preserving opportunities for new firms to enter the market and challenge established players is essential to realise the full potential of the digital economy. Competition can be fostered by interoperability and efficient standards since they typically favour entry by a greater number of players and drive down the costs of innovation.
102. Against this background, the Commission sought to provide more guidance on standardisation agreements in its guidelines on cooperation agreements adopted on 14 December 2010. For the positive effects of standardisation to fully materialise, the standard-setting process should be transparent and accessible to all interested market players. In addition, holders of intellectual property rights are encouraged to commit to license on fair, reasonable and non-discriminatory terms (FRAND commitment) and effectively adhere thereto to ensure accessibility of the standard.
103. In spring 2010, the Commission launched two parallel preliminary investigations into business practices by Apple relating to the iPhone¹¹². Apple had made warranty repairs service available only in the country where the iPhone was bought, which could have potentially led to a partitioning of the EEA market. Apple had also

¹⁰⁹ Case COMP/39525 *Telekomunikacja Polska*. See IP/10/213, 1.3.2010.

¹¹⁰ Case COMP/M.5650 *T-Mobile / Orange* (OJ C 108, 28.4.2010, p. 4)

¹¹¹ Community guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 235, 30.9.2009, p. 7-25)

¹¹² See IP/10/1175, 25.9.2010.

restricted the terms and conditions of its licence agreement with independent developers of applications requiring the use of Apple's native programming tools and approved software languages to the detriment of third-party software. This could have ultimately resulted in shutting out competition from applications developed for running on other mobile platforms. Since Apple decided in September 2010 to introduce cross-border iPhone warranty repair services within the EEA and to relax the restrictions on the development tools for iPhone apps, the Commission decided to close both investigations.

104. On 26 July 2010, the Commission initiated formal antitrust investigations against IBM Corporation based on two different alleged infringements of EU antitrust rules related to the abuse of a dominant position in the market for mainframe computers¹¹³. The investigation focuses on IBM's alleged tying of mainframe hardware to its mainframe operating system and on IBM's alleged exclusionary practices towards competing suppliers of mainframe maintenance services.
105. On 30 November 2010, the Commission initiated formal proceedings against Google¹¹⁴ with a view to further investigating allegations that Google has abused a dominant market position in online search, online advertising and online advertising intermediation, following complaints from several search service providers.
106. Microsoft sent to the Commission the first two reports on the implementation of the Choice Screen software which Microsoft agreed to distribute to users of Windows within the EEA in order to offer an unbiased choice between the most widely used web browsers¹¹⁵. By the end of November 2010, the Choice Screen had been seen more than 270 million times, and more than 84 million web browsers had been downloaded through it.
107. On 21 January 2010, the Commission cleared the planned acquisition of Sun Microsystems by Oracle Corporation, the leading proprietary database software vendor¹¹⁶. The acquisition raised the issue of the competitive effect of open source software products, such as Sun's database MySQL. Following a second phase investigation, the Commission approved the acquisition unconditionally.
108. The Commission conditionally approved the acquisition of Tandberg by Cisco¹¹⁷ since the investigation revealed concerns regarding the market for high-end videoconference products due to interoperability issues. Conditions included the divestment of the Telepresence Interoperability Protocol developed by Cisco to an independent industry body to ensure interoperability and allow other vendors to participate in its development.

¹¹³ Cases COMP/39511 *IBM Corporation*, COMP/39790 *TurboHercules/IBM* and COMP/39692 *IBM Maintenance Services*. See IP/10/1006, 26.7.2010.

¹¹⁴ Cases COMP/39740 *Foundem/Google*, COMP/39775 *Ejustice/Google* and COMP/39768 *Ciao/Google*. See IP/10/1624, 30.11.2010.

¹¹⁵ Case COMP/39530 *Microsoft (tying)* (OJ C 36, 13.2.2010, p. 7).

¹¹⁶ Case COMP/M.5529 *Oracle / Sun Microsystems* (OJ C 91, 9.4.2010, p. 7)

¹¹⁷ Case COMP/M.5669 *Cisco / Tandberg*. See IP/10/377, 29.3.2010.

2.5. Media

109. In the context of the transition to digital broadcasting, the Commission sent in November 2010 a letter of formal notice to the French authorities regarding the 2007 French law granting existing analogue TV broadcasters the possibility to obtain an additional national TV channel in the digital switchover. In the absence of convincing evidence that such TV broadcasters obtained the additional channels based on objective, transparent, non-discriminatory and proportionate criteria, the Commission considered that it appeared to be in breach of EU law¹¹⁸.
110. In September 2010, under the ongoing infringement procedure concerning the Italian broadcasting legislation, the Italian Authority for Communications adopted criteria and rules aimed at ensuring that more frequencies resulting from the "digital dividend" are assigned to newcomers and smaller existing companies. The tender for such frequencies should be launched in 2011.
111. In December 2010, the Commission cleared the acquisition by News Corporation of the UK pay-TV operator British Sky Broadcasting (BSkyB)¹¹⁹. The Commission concluded that the transaction would not lead to a significant impediment to effective competition, without prejudice to the investigation by the competent UK authorities of whether it is compatible with the UK interest in media plurality.
112. The Commission 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 the State funding does not exceed what is necessary to fulfil the public service mission. On 20 July 2010, the Commission closed with a positive decision the formal investigations into the new financing system for public service broadcasters in France and Spain in view of the phasing out of advertising by those chains¹²⁰ and closed the investigation into the existing financing regime for the Dutch public service broadcasters, following amendments and formal commitments by the Netherlands¹²¹.

2.6. Pharmaceutical industry

113. Following the conclusion of the inquiry into the pharmaceutical sector in 2009¹²², the Commission announced the revision of the so-called "Transparency Directive" setting minimum rules for pricing and reimbursement procedures¹²³. The review will examine ways to improve the transparency of such measures and to avoid related market access delays, in particular for generic medicines. A number of Member States (*e.g.* Spain, Italy or Austria) also took up recommendations from the sector inquiry on improving market access for generic medicines.

¹¹⁸ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21-26)

¹¹⁹ Case COMP/M.5932 *News Corp / BSkyB*. See IP/10/1767, 21.12.2010.

¹²⁰ Cases C27/2009 *Subvention pluriannuelle pour France Télévisions* and C38/2009 *New tax-based funding system for public broadcasting in Spain* (OJ L 1, 4.1.2011, p. 9-19)

¹²¹ Case E5/2005 *Yearly financing of Dutch public broadcasters* (OJ C 74, 24.3.2010, p. 4)

¹²² Executive Summary of the Pharmaceutical Sector Inquiry, 8.7.2009

¹²³ Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ L 40, 11.2.1989, p. 8-11)

114. The sector inquiry also contributed to the momentum towards the adoption of the Community patent and the specialised patent litigation system in Europe as advocated and proposed by the Commission. On 10 December 2010, the Council indicated that an enhanced cooperation is the only option for moving ahead on the creation of a unified EU patent system. The Commission submitted such a proposal on 14 December 2010¹²⁴.
115. The Commission also started to monitor patent settlements in the EU¹²⁵. The proportion of patent settlements in the pharmaceutical sector that are potentially problematic fell to 10% in the period July 2008 to December 2009 compared with 22% in the period covered by the sector inquiry (January 2000-June 2008). The simultaneous increase in the overall number of patent settlements increased showed that companies are not prevented from concluding settlements by the Commission's ongoing enforcement action.
116. Different enforcement actions are under way as a direct follow-up to the sector inquiry. The Commission is investigating patent settlement agreements concluded by Servier and a number of generic operators for the hypertension drug perindopril¹²⁶. On similar issues, the Commission also opened formal proceeding against the Danish pharmaceutical undertaking Lundbeck relating to its antidepressant drug citalopram¹²⁷.
117. The pharmaceutical sector also became a priority for a number of National Competition Authorities (NCA). For instance, in the UK, the Office of Fair Trading (OFT) issued a Statement of Objections to Reckitt Benckiser in February 2010 which admitted the infringement and agreed to pay a fine of GBP 10.2 million¹²⁸. The Italian NCA opened a formal investigation against the originator company Pfizer over a potential abuse of the patent system by artificially prolonging patent protection for the drug latanoprost.
118. The consolidation trend in the pharmaceutical sector continued in both the originator and the generic segments of the market. The main cases that were examined were Abbott / Solvay Pharmaceuticals, Teva / Ratiopharm and Novartis / Alcon¹²⁹. These cases were cleared in the first phase with commitments. Given that pharmaceutical companies are often active worldwide, the procedures involved cooperation with other competition authorities around the world.

2.7. Healthcare services

119. The Commission adopted its first antitrust decision in the health services market imposing a fine of EUR 5 million on the French Association of Pharmacists (ONP)¹³⁰. The Commission condemned the market behaviour of ONP in the French

¹²⁴ Proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection (COM(2010) 790 final, 2010/0384 NLE)

¹²⁵ Available at: <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry>

¹²⁶ Case COMP/39612 *Servier (perindopril)*

¹²⁷ Case COMP/39226 *Lundbeck*.

¹²⁸ Available at: <http://www.offt.gov.uk/news-and-updates/press/today?prid=749499>

¹²⁹ Cases COMP/M.5661 *Abbott / Solvay Pharmaceuticals* (OJ C 89, 7.4.2010, p. 1) and COMP/M.5778 *Novartis / Alcon*

¹³⁰ Case COMP/39510 *ONP*. See IP/10/1683, 8.12.2010.

market for clinical laboratory testing. In particular, it established that ONP limited possible price reductions for clinical testing and restricted the development of certain groups of laboratories with a view to protecting the economic interests of the majority of its members.

120. During 2010, the Commission examined a number of complaints lodged by private health service providers against their allegedly unfair treatment or against potential excessive compensation of publicly-owned hospitals. These complaints usually came from operators in Member States with health care markets more open to competition (e.g. Belgium, France, Germany and the Netherlands).

2.8. Transport

121. The economic downturn of 2009 had a significant impact on almost all transport sectors but 2010 proved to be a year of progressive recovery. By the end of 2010, prices in air and maritime transport had largely come back to pre-crisis levels.

2.8.1. Air transport

122. On 14 July 2010, the Commission put an end to a major antitrust case under Article 101 in the air transport sector by making legally binding commitments offered by British Airways, American Airlines and Iberia¹³¹ in response to the competition concerns stemming from their agreement to coordinate prices, capacity, schedules, marketing and sales and to share revenues on transatlantic routes. To address the identified competition concerns, the three airline companies committed to release seven slot pairs at London Heathrow or London Gatwick airports on four routes, to offer fare combinability and special pro-rate agreements and to provide competitors access to the parties' frequent flyer programmes. This decision will entail significant benefits for European consumers by ensuring that sufficient competition on the transatlantic flights, in particular from London, is maintained.
123. In 2010, air transport concentrations constituted an important focal point in merger control, reflecting the ongoing industry consolidation. On 14 July 2010, the Commission cleared the merger between British Airways and Iberia following a market investigation which showed that the merged entity will continue to face sufficient competition in passenger and air cargo transport as well as ground handling¹³². On 27 July 2010, the Commission approved the merger of United Airlines and Continental Airlines which are both US carriers providing scheduled air passenger and cargo transport between the EEA and the US¹³³. The market investigation confirmed the complementary nature of their transatlantic networks. On 30 July 2010, the Commission opened an in-depth investigation of the planned merger between Olympic Air and Aegean Airlines following initial indications that the proposed concentration would lead to very high market shares on a number of routes¹³⁴.

¹³¹ Case COMP/39596 *BA/AA/IB*. See IP/10/936 and MEMO/10/330, 14.7.2010.

¹³² Case COMP/M.5747 *British Airways / Iberia* (OJ C 241, 8.9.2010, p. 1)

¹³³ Case COMP/M.5889 *United Airlines / Continental Airlines* (OJ C 225, 20.8.2010, p. 1)

¹³⁴ Case COMP/M.5830 *Olympic Air / Aegean Airlines*, (OJ C 174, 1.7.2010, p. 16)

124. The Eyjafjallajökull volcano eruption in Iceland in April 2010 created a cloud of volcanic ash which covered most of Europe, except the Mediterranean region airspace. On 4 May 2010, the Council agreed to "recall the existing legal framework applicable to potential support measures by Member States" (Article 107(2)(b) TFEU) in its conclusions on the EU response to the consequences of the volcanic ash cloud on air transport. However, no Member State expressed in 2010 its intention to grant State aid to the air transport industry in the above mentioned context.
125. Several State aids for investments in airport infrastructure were approved as compatible with the internal market for airports in the UK (Derry Airport), in Finland (Vaasa airport and Oulu airport) and in Latvia (Riga Airport)¹³⁵. The Commission also closed the formal investigation procedure into the agreement concluded until 2016 between Bratislava Airport and Ryanair by concluding that no advantage was being granted to Ryanair¹³⁶.
126. Besides, the Commission opened formal investigation procedures in February 2010 on the State aid aspects of a loan granted to ČSA-Czech Airlines by a State-owned entity (Osinek) as well as a subsequent liberation of the collaterals of the loan¹³⁷ and into several measures granted by the Hungarian authorities to support Malév, the national air carrier, in the context of its privatisation and subsequent re-nationalisation¹³⁸ in December 2010. Finally, the Commission authorised in November 2010 a rescue aid in the form of a loan facility worth EUR 52 million for the Maltese flag carrier¹³⁹ to tackle liquidity problems faced by Air Malta until a sound restructuring plan is submitted to the Commission.

2.8.2. Rail and inland transport

127. The Commission adopted a proposal to recast the first railway package on 17 September 2010¹⁴⁰. The proposal aims at increasing competition on rail market by improving access to rail-related services such as terminals and maintenance facilities and by strengthening the powers of the national rail regulators.
128. In the field of State aid control, the Commission adopted in February 2010 its first decision applying the new regulation on public passenger transport services which entered into force on 3 December 2009¹⁴¹. The Commission thus concluded the formal investigation procedure initiated in 2008 regarding the public-service contracts of the Danish railway company Danske Statsbaner (DSB)¹⁴². It found that

¹³⁵ Cases NN65/2009 *Derry Airport* (OJ C 144, 3.6.2010, p. 27), N397/2009 *Vaasa Airport* (OJ C 29, 5.2.2010), N286/2010 *Oulu Airport* and N41/2010 *Riga Airport* (OJ C 143, 2.6.2010)

¹³⁶ Case C12/2008 (ex NN74/2007) *Agreement between Bratislava Airport and Ryanair*

¹³⁷ Case C6/2010 *Possible State aid implications of a loan provided by Osinek a.s.* See IP/10/179, 24.2.2010.

¹³⁸ Case C38/2010 *Malév Hungarian Airlines*. See IP/10/1753, 21.12.2010.

¹³⁹ Case N504/2010 *Air Malta plc*. See IP/10/1509, 15.11.2010.

¹⁴⁰ Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (COM(2010) 475 final, COD 2010/0253)

¹⁴¹ Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23 October 2007 on public passenger services by rail and road repealing Council regulations (EEC) No 1191/69 and No 1107/70 (OJ L 315, 3.12.2007, p. 1-13)

¹⁴² Case C41/2008 *Public service contracts between the Danish Government and Danske Statsbaner*. See IP/10/178, 24.2.2010.

the compensation paid by the Danish government every year to DSB for the costs incurred in meeting its public-service obligations was limited to what was strictly necessary to cover those costs. The Commission authorised on 26 May 2010 the plan of Société nationale des chemins de fer belges (SNCB) to restructure its freight activities¹⁴³ and authorised in December 2010 a rescue aid of around EUR 128 million for BDZ EAD, the State-owned Bulgarian railway operating on both freight and passenger railway markets¹⁴⁴.

129. In the field of merger control, several acquisitions were approved by the Commission conditional to the divestment of activities in certain geographic markets, such as the proposed acquisition of rail and bus operator Arriva plc of the UK by Deutsche Bahn¹⁴⁵ or to commitments to ensure an effective access for new entrants, such as the "New Eurostar" joint venture between the SNCF and London Continental Railways¹⁴⁶.

2.8.3. *Maritime transport*

130. The Commission continued in 2010 to pursue advocacy efforts *vis-à-vis* third countries in the area of maritime antitrust. Its consistent message is to advocate the exemption from antitrust rules of certain consortia – an operational cooperation between liner shipping carriers for joint service of cargo carriage – whilst prohibiting all forms of price-fixing and capacity-fixing agreements.
131. In January 2010 the Commission initiated proceedings against the "Baltic Max Feeder" scheme whereby owners of container vessels intended to jointly cover the costs of removing vessels from service¹⁴⁷. The planned scheme was subsequently abandoned and the case closed.
132. Also in January the Commission approved for the first time aid for launching a "Motorways of the Sea" project on the basis of both the maritime guidelines and the complementary aid guidelines¹⁴⁸. The project concerns the establishment of a maritime link between the French port of Nantes-Saint Nazaire and the Spanish port of Gijón¹⁴⁹ and aims at capturing between 3% and 5% of the road traffic currently passing through the west of the Pyrenees.
133. As regards State aid to finance port infrastructure, the Commission decided to launch a study to collect information to better understand the functioning of ports and the public financing of their infrastructure. On the basis of its results, the Commission will be able to define a reliable approach for moving forward in that field.

¹⁴³ Case N726/2009 *Aide à la restructuration des activités "fret" de la SA de droit public SNCB*. See IP/10/615, 26.5.2010.

¹⁴⁴ Case N402/2010 *Rescue aid for the Bulgarian State Railways EAD (BDZ)*. See IP/10/1733.

¹⁴⁵ Case COMP/M.5855 *Deutsche Bahn / Arriva plc* (OJ C 276, 13.10.2010, p. 1)

¹⁴⁶ Case COMP/M.5655 *SNCF / LCR / Eurostar* (OJ C 272, 8.10.2010, p. 2)

¹⁴⁷ Case COMP/39699 *Baltic Max Feeder*. See IP/10/374, 26.3.2010.

¹⁴⁸ 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)

¹⁴⁹ Cases N573/2009 and N647/2009 *Aide à la mise en œuvre et à l'exploitation de l'autoroute de la mer entre le port de Nantes-Saint-Nazaire (France) et le port de Gijon (Espagne) opérée par GLD Atlantique* (OJ C 74, 24.3.2010, p. 5)

2.9. Postal services

134. Under the third Postal Directive¹⁵⁰, most Member States will have to accomplish full market opening by eliminating any remaining reserved area by 31 December 2010, with a two years extension allowed for eleven Member States¹⁵¹. The liberalisation process is progressing swiftly and certain Member States (Estonia, Finland, Germany, the Netherlands, Sweden and the United Kingdom) already fully opened their postal markets ahead of the deadline. Despite the progress to date, genuine competition, notably in the letter mail segment, is only just beginning to emerge. It is essential to ensure that the possible compensation received by the universal service provider for the delivery of public service is consistent with the actual costs of the services and does not constitute an unfair advantage in order to ensure a level playing field between competitors and to promote competition in the postal services.
135. In this context, the Commission continued in 2010 its investigation opened in 2007 into the alleged overcompensation of Deutsche Post AG¹⁵² for carrying out its universal service obligations from 1989 to 2007. Following the confirmation of the annulment of the 2002 Commission decision by the Court of Justice¹⁵³, the ongoing investigation follows, as demanded by the Court of Justice, a comprehensive approach including all universal services provided by Deutsche Post.
136. In 2010, the Commission continued its formal investigation procedure opened in 2009 in order to examine whether certain measures in favour of the Belgian postal operator De Post - La Poste are in line with EU State aid rules¹⁵⁴. The Commission's current investigation, opened on 13 July 2009, is proceeding swiftly with active cooperation from the Belgian authorities and concerns a number of measures, including the compensation granted by Belgium for public service tasks, capital injections, relief of pension liabilities, transfer of buildings and tax exemptions.
137. With its final decision of 26 January 2010¹⁵⁵, the Commission closed the formal investigation procedure in which it had examined an alleged State aid granted in favour of French La Poste in the form of an unlimited State guarantee resulting from its public-law status. The Commission did not challenge the public service mission of La Poste nor its public ownership and control in light of the neutrality of European rules regarding property regimes applicable in Member States. However, it considered that the State guarantee resulting from the special status of La Poste represented incompatible State aid and should be removed, which was achieved through the conversion of La Poste into a public limited company on 1 March 2010¹⁵⁶.

¹⁵⁰ Directive 2008/6/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)

¹⁵¹ Czech Republic, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Poland, Romania and Slovakia

¹⁵² Case C36/2007 *Complaint against the German State for unlawful State aid to Deutsche Post* (OJ C 245, 19.10.2007 p. 21)

¹⁵³ Case C-399/08 P *European Commission v Deutsche Post AG*

¹⁵⁴ Case C20/2009 (ex N763/2002) *Mesures en faveur de La Poste* (OJ C 176, 29.7.2009, p. 17)

¹⁵⁵ Case C56/2007 *Garantie d'Etat illimitée - La Poste (France)* (OJ L 274, 19.10.2010, p. 1)

¹⁵⁶ Loi No 2010-123 du 9 février 2010 relative à l'entreprise publique La Poste et aux activités postales

2.10. Automotive industry

138. In 2010, the motor vehicle sector began to emerge from the crisis that hit it particularly hard in 2008 and 2009. In addition to sustaining this recovery, future challenges for the industry include the launch of more resource-efficient cars and the tailoring of distribution networks to demand levels and growing international competition. Potential competition issues include managing the necessary restructuring of the sector and fostering the development of "greener" cars while maintaining a level playing field.
139. On 27 May 2010, the Commission adopted new competition rules for agreements between vehicle manufacturers and their authorised dealers, repairers and spare parts distributors. The new framework applies the general Vertical Block Exemption Regulation adopted on 20 April 2010 to such agreements from 2010 as regards the aftermarkets, and 2013 as regards the markets for the sale of new vehicles. In addition, the Commission adopted Regulation 461/2010¹⁵⁷, which sets out three supplementary hardcore clauses relating to spare parts distribution, and a detailed set of supplementary guidelines for assessing vertical agreements in the sector¹⁵⁸. The new rules represent a flexible and proportionate response to the differing intensities of competition on the primary and aftermarkets, and broadly align the rules applicable to agreements between car manufacturers and their authorised dealers, repairers and spare part distributors with the general regime.
140. In 2010, 15 mergers in the automotive industry were notified to the Commission and all were cleared in the first phase without commitments. The acquisition of Volvo Cars by the Chinese companies Geely and Daqing¹⁵⁹ was the only case involving car manufacturers.
141. The automotive sector had the possibility to make use of the exceptional support measures contained in the State aid Temporary Framework as long as the approved schemes were not restricted to this activity but open to all the sectors of the economy. In particular, the Commission authorised in February 2010 the plans notified by Sweden to provide a guarantee that would enable Saab Automobile AB¹⁶⁰ to access a loan from the European Investment Bank (EIB) for an investment project worth EUR 1 billion related *inter alia* to fuel efficiency and car safety. On 16 December, the Commission authorised a comparable guarantee by Sweden to enable Volvo Cars Corporation to access a EUR 500 million loan from the EIB to finance research and engineering activities related to fuel efficiency and road safety¹⁶¹.

¹⁵⁷ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 129, 28.5.2010, p. 52-57)

¹⁵⁸ Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (OJ C 138, 28.5.2010, p. 16)

¹⁵⁹ Case COMP/M.5789 *Geely / Daqing / Volvo Cars* (OJ C 187, 10.7.2010, p. 3)

¹⁶⁰ Case N541/2009 *State guarantee in favour of SAAB*

¹⁶¹ Case N520/2010 *State guarantees in favour of Volvo Personvagnar AB (Volvo Cars Corporation)*

2.11. Food supply chain

142. In July 2010, the Commission set up the High Level Forum for a Better Functioning Food Supply Chain¹⁶². The Forum will in particular tackle unfair trading practices resulting from contractual imbalances and differences in bargaining power between suppliers and buyers. These practices, which must be distinguished from anticompetitive practices, normally fall under national contract or commercial laws.
143. Several potential competition challenges are nonetheless affecting the food supply chain in Europe. The ECN Food Subgroup continued to serve as an operational framework for discussion and coordination among National Competition Authorities (NCAs) on these issues. A significant number of NCAs have actively undertaken inquiries in the food and retail sectors.
144. Special attention was devoted to the dairy sector in light of the difficulties faced by dairy farmers during the recent milk crisis. Following the High-Level Group on Milk recommendations, the Commission adopted a legislative proposal¹⁶³ in December 2010 on contractual relationships in the milk sector. The proposal allows collective bargaining negotiations by producer organisations of milk farmers subject to certain limits based on their share of EU-wide and national milk production volumes. The proposal also provides for a "safety clause" allowing the competent NCA or the Commission to decide that the negotiations by a producer organisation may not take place where they would limit competition severely or where they would inflict a serious prejudice to dairy processors, in particular SMEs.

3. THE EUROPEAN COMPETITION NETWORK AND COOPERATION WITH NATIONAL COURTS

145. In 2010, the European Competition Network (ECN) continued to be a very active forum for discussion and exchange of good practices on the enforcement of EU antitrust rules across the 27 Member States. The Commission was informed under Article 11(3) of Regulation 1/2003¹⁶⁴ of 158 new case investigations launched by National Competition Authorities (NCA) in 2010, *inter alia* in the transport, energy, manufacturing, media and telecom sectors. Moreover, the number of enforcement decisions reported by NCAs and reviewed by the Commission increased by 36% compared to 2009. As in previous years, the Commission did not initiate in 2010 any proceedings with the view to ensuring coherency in decision-making.
146. The Commission responded to two requests from national courts (Spain and Belgium) under Article 15(1) of Regulation 1/2003 which allows national judges to ask the Commission for information in its possession or for an opinion on questions concerning the application of the EU competition rules.

¹⁶² Commission decision of 30.7.2010 (OJ C 210, 3.8.2010, p. 4), see also A better functioning food supply chain in Europe (COM(2009) 591 final).

¹⁶³ Proposal of 9 December 2010 for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector (COM(2010) 728)

¹⁶⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1-25)

147. The Commission submitted written observations in three cases under Article 15(3) of Regulation 1/2003. The observations were submitted to the High Court of Ireland regarding conditions of Article 101(3) TFEU with a particular focus on capacity-reducing restructuring agreements, to the Supreme Court of the Slovak Republic in relation to the application of the economic continuity of undertakings and the effectiveness of fines and to the Dutch Supreme Court regarding the non-tax deductibility of fines.
148. The Working Groups on horizontal agreements and on vertical restraints were particularly active this year in the context of the review of the corresponding Block Exemption Regulations and accompanying guidelines. A Merger Working Group was also established.
149. In 2010, the ECN launched a publication for the attention of the legal and business communities as well as of consumer organisations and academics, the ECN Brief, aiming at increasing public awareness of the activities conducted by the ECN.

4. INTERNATIONAL ACTIVITIES

150. The Commission continued to play a leading role in the International Competition Network (ICN), notably through its involvement in the Steering Group's "Second Decade Project" reflecting on the ICN future in the globalised economy. The Commission contributed to the work of the OECD Competition Committee and participated in the three sessions held in 2010. It also took part in the Sixth Review Conference of the United Nations Conference on Trade and Development.
151. As in previous years, cooperation with US authorities was intensive and the Commissioner for Competition regularly met his US counterparts, Chairman Jon Leibowitz of the FTC and Christine Varney, the Assistant Attorney General. A number of important antitrust and merger cases investigated in 2010 affected both the EU and US markets. EU-US Best Practices on cooperation in reviewing mergers proved to be a useful framework for example in the Cisco / Tandberg and Novartis / Alcon cases.
152. In December 2010, the Council gave a mandate to the Commission to negotiate an agreement on cooperation in competition matters with the Swiss Confederation. This agreement should be based on the agreements concluded so far with the United States, Canada, Japan and Korea and could in addition include provisions on the exchange of confidential information.
153. Cooperation with China remained a priority in 2010. In addition to regular discussions concerning the anti-monopoly law and its implementing legislation, issues relating to concrete cases were discussed during high-level visits in Beijing and Brussels respectively.
154. Close technical cooperation between DG Competition and the Competition Commission of India continued in 2010, in particular in the fields of restrictive agreements, abuse of dominance and merger control.
155. DG Competition played an active role in the ongoing negotiations on Free Trade Agreements (FTAs) and other bilateral agreements with a large number of individual

third countries or third country groupings. In particular, the Foreign Affairs Council authorised on 16 September 2010 the signature of the EU-Korea FTA which is the first to contain a prohibition on certain types of subsidies. The EU also concluded negotiations for FTAs containing a competition chapter with the Andean Countries (Columbia and Peru) as well as with Central America.

156. Significant progress was made by both Croatia and Turkey in fulfilling opening benchmarks of the competition chapter for EU admission requirements. In June, the Council decided to open the accession negotiations on the competition chapter with Croatia while the Turkish Parliament adopted a State aid law in October 2010.

5. DIALOGUE WITH CONSUMER ORGANISATIONS AND STAKEHOLDERS

157. The European Consumer Consultative Group (ECCG) subgroup on competition, consisting of one representative of national consumer organisations for each Member State and one representative from the European consumer association (BEUC) was consulted in 2010 on important issues such as vertical restraints and remedies and issued an opinion on actions for damages¹⁶⁵, endorsed by the plenary ECCG.

158. A consumer corner on DG Competition's website was further developed and made available in every official language since mid-2010. The website presents in a simple language the role of competition policy and the main competition cases.

159. DG Competition published the results of the first comprehensive survey of stakeholders about their views on the perceived quality of DG Competition's actions¹⁶⁶. The survey was carried out in two parts by two independent market research organisations among professional stakeholders and citizens in all EU Member States¹⁶⁷. The study highlighted significant praise for the effectiveness of DG Competition's work and the integrity of its staff. The survey also provided several areas of constructive criticism, together with suggestions for improvement.

6. INTER-INSTITUTIONAL COOPERATION

160. Following the European Parliament elections in 2009, and the start of the new Commission mandate in 2010, the new Framework Agreement between the two institutions was adopted in October 2010¹⁶⁸.

161. In 2010, the Parliament adopted Resolutions on the Report on Competition Policy 2008, on the Motor Vehicle Block Exemption Regulation, on Horizontal Agreements and on the Council decision on State aid for the closure of uncompetitive coal mines. In addition to the regular dialogue between the Commissioner and the Economic and Monetary Affairs Committee (ECON) in June and November, Vice-President Almunia announced the prolongation of the temporary State aid rules adopted in

¹⁶⁵ Available at: http://ec.europa.eu/consumers/empowerment/eccg_en.htm

¹⁶⁶ Available at: http://ec.europa.eu/competition/publications/reports/surveys_en.html

¹⁶⁷ Flash Eurobarometer Survey "EU citizens' perceptions about competition policy" by Gallup Hungary and Eurobarometer Qualitative Study "DG Competition stakeholder Study" by TNS qual+

¹⁶⁸ Framework Agreement of 20 October 2010 on relations between the European Parliament and the Commission

response to the financial and economic crisis to Members of the ECON committee in October.

162. The Commission cooperated closely with the Council by informing it of important policy initiatives in the field of competition, in particular on the temporary State aid measures in the context of the financial and economic crisis. The Council decision on State aid for the closure of uncompetitive coal mines was also an important file.
163. After having been informed by the Commission, the European Economic and Social Committee adopted opinions on the Report on Competition Policy 2008, on uncompetitive coal mines, on shipbuilding, and on the Motor Vehicle BER, thus contributing to the policy debates in the field of competition policy.