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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE EUROPEAN
COMMISSION**

-- 2005 --

This report is submitted by the Delegation of the European Commission to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 October 2006.

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Executive Summary¹

1. All in all, 2005 was a year of important progress both in terms of consolidation of the reformed competition regime for antitrust and mergers, and in the far-reaching reform of the state aid area. 2005 also brought important advances in the implementation of a more impact-oriented, economics-based approach to competition problems across existing instruments. In 2005 the Competition DG launched important new projects – most notably the sector inquiries – whose results will lead to new initiatives and/or enforcement actions in the years to come.

2. In *antitrust enforcement*, the Competition DG gave the highest priority to detecting, dismantling and sanctioning *cartels*. The increased focus on cartels led to the setting up of a *new* Directorate within the Competition DG on 1 June employing some 60 staff. The major task of the new *Cartels Directorate* is to streamline and accelerate the handling of these investigations which by nature are complex and lengthy, so that the investigations started can be completed within a reasonable time-frame.

3. 2005 saw the launch of the *first two sector inquiries* pursuant to Article 17 of *Regulation* (EC) No 1/2003: one in the *financial services* sector and one in the *energy* sector (gas and electricity). The Commission will use the results of these inquiries to determine if and what enforcement and regulatory actions are necessary in these sectors to ensure the proper functioning of the internal market. Analysing the results of these sectoral inquiries and giving them the appropriate follow-up will be major tasks for the Competition DG in 2006 and beyond. In addition to the sector inquiries the Competition DG launched several decisive *legislative and interpretative initiatives*, with a view to enhance European competitiveness and strengthen a competition culture in Europe. In December it published its *discussion paper* on the application of *Article 82 EC to exclusionary abuses* and its *Green Paper on damages claims*.

4. 2005 was *further the first full year of implementation of the new enforcement system set up by Regulation* (EC) No 1/2003. One can observe a further deepening of the cooperation between the EU Member States' national competition authorities (NCAs) and the Commission in the *European Competition Network* (ECN) as well as an increasing level of convergence.²

5. In the field of *mergers*, the *enforcement activity* in 2005 *increased*, due to the current *general upward trend* in merger and *acquisition activity*. The focus is on identifying competition concerns that correspond to a sound economic analysis and are grounded in facts. Particular attention was paid to mergers which might impede the achievement of EU liberalisation objectives.

6. In the field of *state aid*, 2005 saw the launching of the *State Aid Action Plan* (SAAP), a far-reaching reform package designed to deliver more focused state aid rules in order to promote better-targeted aid, for example, aid which aims at promoting innovation, risk capital, research and development.

7. In the field of *competition advocacy* the Competition DG invested considerable resources in 2005 in support of *better regulation initiatives*. This included in particular the *screening of new initiatives* by the Commission to assess their impact on competition as well as competition advocacy vis-à-vis Member States.

¹ This report to the OECD mostly follows the European Commission's 2004 Annual Report on Competition Policy. The full text of the report is available at: http://europa.eu.int/comm/competition/annual_reports/

² This is for instance reflected in the abolition of the notification system in (all but eight) Member States today. The adoption of national leniency programmes is another trend which has been very marked: whereas only three Member States had a leniency programme in 2000, there are now 19.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legislative and interpretative rules

1.1.1 Article 82 review

8. On 19 December, the Competition DG issued a discussion paper on the application of the EU competition rules prohibiting the abuse of a dominant position (Article 82 EC)³. Abuses are commonly divided into exclusionary abuses, which exclude competitors from the market, and exploitative abuses, where the dominant company exploits its market power by – for example – charging excessive prices. The discussion paper deals only with exclusionary abuses. It is designed to promote a debate as to how EU markets are best protected from exclusionary conduct by dominant companies, which is likely to limit the remaining competitive constraints on markets. The paper suggests a framework for the continued rigorous enforcement of Article 82 EC, building on the economic analysis carried out in recent cases, and setting out one possible methodology for the assessment of some of the most common abusive practices, such as predatory pricing, single branding, tying, and refusal to supply. Other forms of abuse, such as discriminatory and exploitative conduct, will be the subject of further work by the Commission in 2006.

1.1.2 Green Paper on damages actions for breach of the EC antitrust rules

9. The competition rules set out in Articles 81 and 82 EC can be enforced both by competition authorities (public enforcement) and by private parties bringing proceedings before a national court (private enforcement). With its Green Paper adopted on 19 December⁴ the Commission wishes to encourage this kind of action, of which there have been very few so far.⁵ Not only do actions for damages allow victims of infringements of EC antitrust law to obtain compensation, they also create an additional incentive for undertakings to respect the EC antitrust rules. The purpose of the Green Paper is to provoke discussion on how to increase the number of successful actions for damages relating to infringements of the EC antitrust rules. On the basis of the responses received to the Green Paper, the Commission will assess what action, if any, is necessary to further promote such claims.

1.1.3 Agreements and concerted practices

10. In 2005 the Commission pursued important initiatives to foster competition in the field of maritime and air transport as well as in the motor vehicle sector.

11. On 14 December, the Commission adopted a proposal⁶ for a Council Regulation repealing Regulation (EEC) No 4056/86 applying Articles 81 and 82 EC to *maritime transport*⁷. The objective is to

³ http://ec.europa.eu/comm/competition/antitrust/others/article_82_review.html

⁴ The Green Paper can be found at http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/gp.html. It is accompanied by a Commission staff working paper, available at http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/sp.html, which gives the background to and elaborates on the political options mentioned in the Green Paper.

⁵ See the study that was commissioned by the Commission and published in 2004, available at http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/study.html

⁶ COM (2005) 651. Proposal for a Council Regulation repealing Regulation (EEC) No 4056/86, laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, and amending Regulation (EC) No 1/2003 on the implementation of the rules on competition.

⁷ OJ L 378, 31.12.1986, p. 24.

put an end to the liner conference block exemption which allows shipping lines meeting in conferences to fix freight prices and to regulate capacity. The Council will decide on this proposal by qualified majority having consulted the European Parliament.

12. On 20 April, the Commission adopted Regulation (EC) No 611/2005 amending the existing block exemption Regulation for *liner shipping consortia*⁸. It prolongs Commission Regulation (EC) No 823/2000 until 25 April 2010 and allows a consortium member the right to withdraw from a consortium agreement without financial penalty after an initial period of up to 24 months, which constitutes an extension of six months as compared with the previous regime. In addition, this initial period now also applies where the parties to an existing agreement have agreed to make substantial new investment in the maritime transport services offered by the consortium. Such investment must constitute at least half of the total investment made by the consortium members. Finally, one of the basic conditions for exemption, namely the existence of effective price competition within the consortium, has been amended: “individual confidential contracts” may now also be taken into consideration to demonstrate the existence of such competition.

13. On 15 November, the Commission adopted a preliminary draft block exemption regulation, with a view to replacing Commission Regulation (EEC) No 1617/93 (*IATA Block exemption regulation*). The preliminary draft block exemption regulation provides that: consultations on tariffs for the carriage of passengers for intra-EU air services would benefit from a block exemption until 31 December 2006 (this exemption would not be prolonged after that date); consultations on slot allocation and airport scheduling would benefit from a block exemption until 31 December 2006 (this exemption would not be prolonged after that date); consultations on tariffs for passenger air services between the EU and third countries would benefit from a block exemption subject to data-reporting obligations until 30 June 2007. In parallel with the preparation of a new block exemption Regulation, Commission departments have engaged in consultations with IATA and several individual airlines on the future of interlining.

14. On 1 October, the final part of the Commission’s reform of the competition rules applicable to *motor vehicle distribution* came into force: “location clauses” in distribution contracts between carmakers and dealers are now no longer covered by the Commission’s motor vehicle block exemption Regulation (EC) No 1400/2002.

1.1.4 Procedural rules: Access to the File

15. On 13 December, the Commission adopted a *Notice on the rules for access to the Commission file* in antitrust and merger cases⁹. The Notice provides the framework for the exercise of the right to access to the file in accordance with the provisions referred to expressly in the Notice. The purpose of the Notice – which replaces the Notice on access to the file adopted in 1997 – is to enhance transparency and clarity of the Commission’s procedure in processing requests for access to the file in antitrust and merger cases.

1.1.5 Competition screening

16. A key action identified in the EU Lisbon Strategy, which was relaunched on 22-23 March, was to improve the regulatory environment at both EU and national level in order to enhance competitiveness. Under the new Impact Assessment Guidelines¹⁰ all legislative and policy initiatives are submitted to a

⁸ OJ L 101, 21.4.2005, p. 10.

⁹ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ C 325, 22.12.2005, p. 7).

¹⁰ SEC (2005) 791.

“*competition test*” with a view to avoiding unnecessary or disproportionate restrictions of competition. This is in the interests of both consumers and industry.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices

2.1.1 Summary of activities and statistics

17. In 2005, the Commission continued its strong commitment to effective antitrust enforcement. In the field of *cartels*, the Commission issued five final decisions in which it fined 37 undertakings¹¹ a total of EUR 683 million (compared with 21 undertakings and a total of EUR 390 million in fines in 2004). Statements of objections were issued in eight cartel cases. The Commission received 17 applications for immunity and 11 applications for a reduction of fines. Conditional immunity was granted in six cases. It is noted that three out of the five cartel decisions adopted in 2005 were based on the 1996 Leniency Notice, but this ratio will of course change in the future: most of the statements of objections issued in 2005 resulted from applications filed under the 2002 *Leniency Notice*¹². Five immunity applications were formally rejected as the information provided to the Commission neither allowed it to carry out surprise inspections nor to find an infringement under Article 81 EC. Three applications were considered non-eligible because the facts reported were not covered by the material scope of the Leniency Notice.

18. The Commission was further informed of some 180 new case investigations launched by NCAs. In 2005, the Commission received information pursuant to Article 11(4) of envisaged decisions in almost 80 cases, from 18 different NCAs. These cases related to a large variety of infringements in various sectors of the economy. The open and constructive discussions which took place between competition authorities in the EU in 2005 have permitted a smooth and consistent enforcement of EU competition law.

19. In the area of *abuse of dominance* the Commission sanctioned AstraZeneca for misusing the regulatory system in order to delay market entry of generic drugs competing with its blockbuster product Losec. Apart from formal infringement proceedings, use was also made of the new possibility offered by Regulation (EC) No 1/2003 to obtain binding commitments by undertakings with a view to solving competition issues. This was the case, for example, in relation to Coca-Cola’s commercial policy. In 2005, the Commission also took important steps to ensure the effective implementation of Commission decisions in the competition field, as shown by the opening of formal proceedings for non-compliance in the Microsoft case.

20. *State aid control* saw a significant increase of workload in case-handling activities, with 676 new cases registered in 2005 (an 8% increase compared with the previous year). In the state aid area, too, the amount of illegal and incompatible state aid to be recovered on the basis of decisions adopted between 2000 and mid-2005 has been reduced: of the EUR 9.4 billion total, some EUR 7.9 billion had been effectively recovered by the end of June 2005.

2.1.2 Summary of significant cases

Abuse of dominant position

21. *Astra Zeneca*: On 15 June, the Commission adopted a decision fining AstraZeneca AB and AstraZeneca Plc (AZ) EUR 60 million for having infringed Article 82 EC and Article 54 EEA by misusing

¹¹ This number does not include the immunity applicants.

¹² The new notice applies where the application for leniency reached the Commission after 19 February 2002.

public procedures and regulations in a number of EEA States with a view to excluding generic firms and parallel traders from competing against AZ's anti-ulcer product Losec¹³. The fine took into account that some features of the abuses – i.e. misuses of government procedures – can be considered novel. The relevant market comprises national markets for so-called proton pump inhibitors (PPIs) sold on prescription which are used for gastro-intestinal acid related diseases (such as ulcers). AZ's Losec was the first PPI.

22. AZ's first abuse involved misuse of a Council regulation adopted in 1992¹⁴ creating a supplementary protection certificate (SPC) under which the basic patent protection for pharmaceutical products can be extended. The abuse essentially consisted of a pattern of misleading representations made by AZ as of mid-1993 before patent offices in a number of EEA countries in connection with its SPC applications for omeprazole (the active substance in AZ's product Losec). Due to this misleading information AZ obtained extra protection in several countries. The entry of cheaper generic versions of Losec was thus delayed, entailing costs for health systems and consumers. The Commission found that the use of such procedures and regulations may be abusive in specific circumstances, in particular where the authorities or bodies applying such procedures have little or no discretion. The existence of remedies under other legal provisions cannot by itself exclude the application of Article 82 EC, even if they cover aspects of the exclusionary conduct. The Commission found in its decision that there is no reason to limit the applicability of competition law to situations where such conduct does not violate other laws and where there are no other remedies.

23. The second abuse took place towards the end of the 1990s and consisted of AZ's requests for the deregistration of its market authorisation for Losec capsules in Denmark, Norway and Sweden in a context where Losec capsules were withdrawn from the market and Losec MUPS tablets were launched in those three countries. The selective deregistration removed the reference market authorisation on which generic firms and parallel traders arguably needed to rely at the time to enter and/or remain on the market. The Commission found that through its conduct AZ sought to extend, and in part succeeded in extending, de facto the protection afforded well beyond the period provided for in the applicable rules. This second abuse is also characterised by exclusionary intent in a regulatory context characterised by limited or no discretion on the part of the authorities concerned. Dominant companies have a special responsibility to use specific entitlements, whether private or public, in a reasonable way in respect of market access for other parties. The Commission observed in its decision that single acts involving the launch, withdrawal or requests for deregistration would not normally as such constitute an abuse.

24. *Coca Cola*¹⁵: On 22 June, the Commission adopted a commitment decision pursuant to Article 9 of Regulation (EC) No 1/2003, based on Article 82 EC and Article 54 EEA and addressed to The Coca-Cola Company (TCCC) and its three anchor bottlers, Bottling Holdings (Luxembourg) sarl, Coca-Cola Erfrischungsgetränke AG and Coca-Cola Hellenic Bottling Company SA (referred to collectively as "Coca-Cola"). The subject matter of the decision was certain business practices of TCCC and its respective bottlers in the supply of carbonated soft drinks ("CSDs") in the EU, Norway and Iceland. In its preliminary assessment addressed to Coca-Cola on 15 October 2004, the Commission expressed concerns that TCCC and its respective bottlers may have abused their joint dominant position in the national CSD markets by pursuing certain practices in the distribution channels for consumption at home ("take-home channel") and for consumption on premise ("on-premise channel"). With respect to both

¹³ Press release IP/05/737, 15.6.2005.

¹⁴ Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ L 182, 2.7.1992, p. 1).

¹⁵ Case COMP/39.116 – *Coca-Cola* (OJ L 253, 29.9.2005, p. 21, and OJ C 239, 29.9.2005, p. 19). See also http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_78.html#i39_116

distribution channels, the Commission's preliminary concerns related inter alia to exclusivity requirements, rebates granted on condition that the clients reached, on a quarterly basis, individually specified purchase thresholds separately set for colas and non-colas, tying arrangements and arrangements requiring the clients to carry for sale a range of cola stock keeping units ("SKUs") and/or non-cola SKUs. TCCC and its bottlers also attached certain exclusivity-related restrictions to the installation of technical sales equipment, such as beverage coolers and fountain dispensers.

25. In response to the preliminary assessment, Coca-Cola submitted commitments which took into account the competition issues identified. On 26 November 2004 the Commission published a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003¹⁶, inviting interested third parties to submit their observations on Coca-Cola's proposed commitments. The observations received were, on the whole, positive while indicating how the effectiveness of the commitments could be further improved (e.g. tightened wording, monitoring). In response to these observations, Coca-Cola submitted an amended commitment proposal. In light of the commitments offered, the decision concluded that there were no longer grounds for action by the Commission, without reaching a finding as to whether or not there was or had been an infringement. By adopting the decision the Commission made Coca-Cola's commitments binding upon it until 31 December 2010.

26. The Commission's decision pursuant to Article 9 states that the commitments offered by Coca-Cola are sufficient to address the preliminary competition concerns identified. In particular, Coca-Cola will refrain from concluding exclusivity agreements save in specific circumstances and from granting growth and target rebates. By providing that requirements concerning assortment and shelf-space must be defined separately for certain categories of brands, the commitments address the concern identified in the preliminary assessment that strong brands might be leveraged in favour of weaker brands. With regard to financing and technical equipment, the commitments reduce contract duration, give customers the option of repayment and termination without penalties and free up a certain share of cooler space, thus addressing the preliminary concerns that the pre-existing arrangements unduly bound customers and led to outlet exclusivity.

27. *Microsoft*: In 2005 two important issues with respect to Microsoft's compliance with the interoperability remedy were extensively discussed by the Commission with Microsoft. First, as regards the interoperability remedy (Article 5 of the Decision), the Commission focused on Microsoft's obligation to provide complete and accurate information which would allow Microsoft's competitors to develop work group server operating system products that interoperate with Windows PCs and servers on an equal basis with Microsoft's server operating system products. In order to comply with this obligation, Microsoft made available a technical description of the relevant software ("protocols") used in the communication between Windows PCs and work group servers (the "Technical Documentation"). This Technical Documentation was reviewed by the trustee¹⁷, the Commission's technical experts and several third parties. They all came to the conclusion that it failed to provide sufficient information to build competing interoperable work group server operating system products.

28. The second question with respect to Microsoft's compliance with the interoperability remedy which the Commission extensively discussed with Microsoft in 2005 concerns the reasonableness of the conditions Microsoft imposes on beneficiaries of the remedy for access to and use of the Technical Documentation. Initially, Microsoft provided a set of agreements containing the terms it intended to impose on undertakings interested in using the Technical Documentation. Following discussions with the

¹⁶ OJ C 289, 26.11.2004, p. 10.

¹⁷ On 28 July, the Commission adopted a decision concerning the monitoring trustee in the Microsoft case. The primary responsibility of the trustee is to provide expert advice to the Commission concerning compliance with the Decision.

Competition DG, Microsoft amended these agreements several times. The Competition DG also conducted a market test consulting interested undertakings on Microsoft's proposals. In light of the results of that market test and on the basis of the expert opinions on the Technical Documentation, the Commission decided to open proceedings against Microsoft in order to compel it to comply with its obligations stemming from the Decision.

29. On 10 November, the Commission adopted a decision pursuant to Article 24(1) of Regulation (EC) No 1/2003 ("the Article 24(1) Decision"). This decision is the first step in a procedure pursuant to Article 24 of the Regulation. By means of this decision, a periodic penalty payment of EUR 2 million per day was imposed on Microsoft as from 15 December in the event that it were not to comply with Article 5(a) and (c) of the Decision, i.e. its obligations to (i) supply complete and accurate interoperability information; and (ii) to make that information available on reasonable terms. On 21 December, the Commission issued a statement of objections in the procedure pursuant to Article 24 with regard to Microsoft's obligation to supply complete and accurate interoperability information. The Commission's objections were backed by further reports of the trustee in which he concluded that the Technical Documentation supplied by Microsoft in response to the Article 24(1) Decision was still incomplete and inaccurate.

Cartels

30. *SEP and Others/Automobiles Peugeot SA*¹⁸: On 5 October, the Commission imposed a fine of EUR 49.5 million on Automobiles Peugeot SA and its wholly-owned importer Peugeot Nederland NV, for having obstructed, from January 1997 until September 2003, exports of new cars from the Netherlands to consumers resident in other Member States. In the Netherlands, prices before taxes were generally substantially lower than in other Member States such as Germany and France. By implementing a strategy designed to prevent dealers from selling cars to consumers in other Member States, so as to curb exports by Dutch Peugeot dealers, the companies committed a very serious infringement of the prohibition on restrictive agreements set out in Article 81 EC.

31. *Raw tobacco Italy*¹⁹: On 20 October, the Commission imposed fines totalling EUR 56.05 million on four Italian tobacco processors (Deltafina, Dimon – now renamed Mindo, Transcatab and Romana Tabacchi), for colluding over a period of more than six years (1995–2002) on the prices paid to tobacco growers and intermediaries and on the allocation of tobacco suppliers in Italy. The decision is also addressed to Universal Corporation (the US parent company of Deltafina and the biggest tobacco merchant worldwide) and Alliance Once International Inc., the company resulting from the merger of the parent companies of Transcatab and Dimon and the second biggest tobacco merchant worldwide. The decision also applies fines of EUR 1 000 on the processors' and producers' associations (APTI and UNITAB) for their price-fixing activities in the negotiation of sector-wide agreements. This is the second time that the Commission has taken a decision with fines in the raw tobacco sector. In October 2004, the Commission imposed fines on processors and producers associations in Spain²⁰.

32. *Industrial bags*²¹: On 30 November, the Commission fined sixteen industrial plastic bag producers a total amount of EUR 290.71 million for their participation in a cartel in Germany, the Benelux countries, France and Spain. The participants in the cartel held around 75% of the market for industrial

¹⁸ Cases COMP/36.623, COMP/36.820 and COMP/37.275.

¹⁹ Case COMP/38.281 *Raw tobacco Italy*.

²⁰ Case COMP/38.238 *Raw tobacco Spain* (an unofficial version is available on the Competition DG's website).

²¹ Case COMP/38.354 *Industrial bags*.

bags in those countries in 1996. They agreed amongst themselves prices and sales quotas by geographical area, shared the orders of large customers through allocation schemes, organised collusive bidding to tenders and exchanged information on their sales volumes and prices, some of them for over 20 years from 1982 until 2002. The cartel was organised at two levels: the global level within the framework of the professional association “Valveplast” where participants held meetings three to four times a year and the regional and functional sub-groups which also held meetings regularly.

Other agreements and concerted practices

33. *BMW and General Motors*: The BMW²² and the General Motors (Opel)²³ cases were opened in 2003/early 2004 following formal and informal complaints by several dealer associations. After in-depth investigations and constructive discussions with the parties, the Commission informed the respective complainants at the end of 2005 that, in view of measures taken by both BMW and GM, there are no longer grounds to pursue the proceedings further as far as the two central issues of the complaints are concerned. These two issues relate to (i) unjustified obstacles to multi-brand distribution and servicing, and (ii) unnecessary restrictions for garages on becoming members of these manufacturers’ authorised repair networks. In order to address concerns expressed by the Commission and to benefit from legal certainty under Commission Regulation (EC) No 1400/2002²⁴, BMW and General Motors (GM) have clarified and adjusted their respective distribution and servicing agreements by means of circular letters to all members of their various authorised dealer and repairer networks.

34. *Austrian Airlines/SAS*: In 1999 SAS and Austrian Airlines notified a cooperation agreement to the Commission to obtain an individual exemption. Under the agreement the parties cooperated on all routes worldwide, with the most far-reaching cooperation on routes between Austria and the Nordic countries. Following discussions with the Competition DG, in 2002 the parties concluded an “amended cooperation agreement”, but which still raised competition concerns on the Vienna-Copenhagen and Vienna-Stockholm routes. Therefore, the parties offered a commitment package, which includes notably access to slots, interlining agreements, access to frequent flyer programmes and a freeze on flight frequencies. On 22 September, the Commission published a notice²⁵ pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 which contained a concise summary of the cooperation agreement and the main content of the commitments.

Developments in specific sectors

35. *3G Mobile telephony*: In September, the Commission concluded its sector inquiry into the competitive situation in the market for new systems of mobile communication that are able to transmit audiovisual content (3G). This report highlights a number of potentially anticompetitive business practices, which may limit the availability of innovative mobile sport services to consumers. The report invited market players to review their business practices. It also announced that the Competition DG will, together with the NCAs concerned, review potentially harmful case situations which were identified during the sector inquiry. The report focuses on four main areas:

²² Case COMP/38.771 *Europäischer BMW- und Mini Partnerverband eV/BMW AG*.

²³ Case COMP/38.864 *PO/General Motors – Opel distribution agreements* and Case COMP/38.901 *Verband Deutscher Opel-Händler/Adam Opel*.

²⁴ Commission Regulation (EC) No 1400/2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 203, 1.8.2002).

²⁵ OJ C 233, 22.9.2005, p. 18.

- Bundling: situations where powerful media operators have bought all audiovisual rights to premium sports in a bundle in order to secure exclusivity over all platforms with no view to exploiting or sublicensing 3G rights.
- Embargoes: situations where overly restrictive conditions (serious time embargoes or unnecessary limitations of clip length) are imposed upon mobile rights that limit the practical availability of 3G content.
- Joint selling: situations where 3G rights remain unexploited, because collective selling organisations do not manage to sell the 3G rights of individual sports clubs.
- Exclusivity: exclusive attribution of 3G rights in situations leading to the monopolisation of premium content by powerful operators.

36. *Air Transport:* A fair proportion of bilateral air service agreements concluded between Member States and third countries require or encourage air carriers designated under these agreements to agree on or coordinate tariffs and/or the capacity they operate. Such air service agreements, the Commission has argued in its decisions under Regulation (EC) No 847/2004, infringe Articles 10 and 81 EC read jointly. On 15 July and 23 December, the Commission adopted the first five decisions²⁶ under Council Regulation (EC) No 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries. The five decisions adopted by the Commission under Regulation (EC) No 847/2004 authorised the conclusion or provisional application of air service agreements negotiated by Member States with third countries *inter alia* on condition that the provisions breaching Articles 10 and 81 EC are brought in conformity with EU law within 12 months of the date of notification of the decisions.

37. *EU-US negotiations on an Open Aviation Area:* On 18 November, the Commission finalised the draft text of a new agreement with the United States of America that will replace the existing bilateral agreements concluded by Member States. This agreement will create a new cooperation framework between the Commission and the US Department of Transportation in the areas of competition law and policy in the field of air transport. The agreement, if approved, would authorize every US and every EU airline to fly between every city in the European Union and every city in the United States; to operate without restrictions on the number of flights, the aircraft used, or the routes chosen, including unlimited rights to fly beyond the EU and US to points in third countries; to set fares freely in accordance with market demand; and to enter into cooperative arrangements with other airlines, including code-sharing and leasing.

2.2 Mergers and acquisitions

2.2.1 Summary of activities and statistics

38. The number of mergers and acquisitions notified to the Commission increased considerably in 2005 to 313 cases as compared with 249 cases the previous year. In total the Commission took 296 final decisions. It took 291 clearance decisions following an initial investigation ("Phase I"). Of these, 15 were conditional clearances and 167 decisions (57%) were taken in accordance with the simplified procedure. Despite the high total number of notifications, the Commission took only five decisions following in-depth investigations ("Phase II"). Of these there were no prohibitions, two clearances without conditions and three conditional clearance decisions. In addition three notifications were withdrawn by the notifying parties in Phase II. The Commission referred seven cases to national competition authorities pursuant to

²⁶ Commission decisions C(2005)2667 and C(2005)2668 of 15 July 2005, Commission decisions C(2005)5736, C(2005)5737 and C(2005)5740 of 23 December 2005.

Article 9 of Council Regulation (EC) No 139/2004 (the “Merger Regulation”)²⁷. The Commission also received 14 requests pursuant to Article 4(4) of the Merger Regulation, 27 requests under Article 4(5) as well as four requests pursuant to Article 22.

39. The percentage of notified concentrations resulting in a prohibition decision remains modest, averaging at around 1% or 2% if Phase II withdrawals are included. There is no discernible upward or downward trend in the risk incurred by a notifying party of a prohibition decision (or withdrawal in Phase II).

2.2.2 Summary of significant cases

40. *Siemens/VA Tech*²⁸: On 13 July, the Commission authorised the proposed takeover of the *VA Tech group of Austria* by *Siemens of Germany*, subject to the condition that Siemens divests itself of VA Tech’s hydro power business and ensures the independence of metal plant builder SMS Demag. Siemens and VA Tech produce products used in areas such as *power stations, electricity supply networks, trains, steelworks and large buildings*. They are market leaders in some of the relevant products. The transaction was notified to the Commission in January, and the Commission initiated Phase II proceedings on 14 February. In particular, a subsidiary of VA Tech, VA Tech Hydro, is the European market leader for key components used in hydroelectric plants, such as turbines and generators. Siemens has a 50% stake in a joint venture with another German engineering company, Voith Siemens that is one of VA Tech Hydro’s main competitors in this market. The Commission found that a combination of the activities of VA Tech Hydro with Voith Siemens would have resulted in the creation of a dominant position in the EEA-wide market for equipment and services for hydroelectric plants, thereby significantly impeding competition in this market.

41. Siemens’ *commitment to sell VA Tech’s hydro power business*, operated by VA Tech Hydro, to a suitable purchaser meant that the overlap between the parties’ activities would be removed and hence competition would not be significantly affected. In metallurgy plant building, Siemens owned a 28% shareholding in SMS Demag, which the Commission found to be VA Tech’s main competitor in the building of steel production plants. Under the commitments given by Siemens, Siemens’ representatives on SMS Demag’s shareholder bodies will be replaced by independent trustees, thus ensuring the company’s independence from Siemens.

42. *E.ON/MOL*²⁹: On 21 December, the Commission approved, subject to conditions and obligations, the acquisition of MOL WMT and MOL Storage, two subsidiaries of MOL, the incumbent oil and gas company in Hungary, by E.ON Ruhrgas (E.ON). E.ON is a large integrated German energy operator active in gas and electricity production and supply in several European countries. In Hungary, E.ON is primarily active in the retail supply of gas and electricity through its ownership of regional distribution companies. MOL is active in gas production (MOL E&P), transmission (MOL Transmission), storage (MOL Storage) and wholesale and trading (MOL WMT). Through the transaction, E.ON acquired MOL WMT and MOL Storage. E.ON also took over the long-term gas supply contracts currently in MOL WMT’s portfolio, notably with Gazprom, and was in a position to control all of Hungary’s gas resources, both imported and domestic.

²⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004).

²⁸ Case COMP/M.3653 *Siemens/VA Tech*.

²⁹ Case COMP/M.3696 *E.ON/Mol*.

43. After an in-depth investigation, the Commission found that the operation would have anticompetitive effects in the gas and electricity wholesale and retail markets in Hungary due to the vertical integration of the dominant position in gas wholesale and storage with E.ON's activities in gas and electricity retail. The Commission found that E.ON would be in a position to use its control over gas resources in Hungary to increase its market power on the downstream markets for retail supply of gas and electricity and for generation/wholesale of electricity.

44. To address these concerns, E.ON offered a comprehensive and far-reaching package of remedies. Most notably, the remedies would achieve a full ownership unbundling of gas production and transmission activities, which are retained by MOL, from gas wholesale and storage activities, which are acquired by E.ON, through the divestiture by MOL of its remaining minority interest in MOL WMT and MOL Storage. E.ON also undertook to release significant volumes of gas onto the market at competitive conditions. E.ON committed to implement an eight-year gas release programme (1 billion cubic meters ("bcm") per year) and divest half of its 10-year gas supply contract with MOL E&P through a so-called contract release. These two measures would release 16 bcm until 2015, up to 2 bcm per year, equivalent to 14% of Hungarian consumption. This would be the most significant gas "release" ever implemented in Europe, in terms of both volumes and duration. As such, it would enable all current and future market participants to conclude gas supply contracts on a level playing field. The Commission concluded that the remedies would offer wholesalers and customers access to sizeable gas resources independently of E.ON at non-discriminatory and competitive conditions.

2.3 State Aid Control

2.3.1 SAAP (State Aid Action Plan)

45. In June, the Commission launched a State Aid Action Plan³⁰ outlining the guiding principles for a comprehensive reform of state aid rules and procedures over the next five years. The Commission aims to adopt a future R&D and Innovation Framework and new Risk Capital Guidelines around the summer of 2006, a general Block Exemption Regulation at the beginning of 2007, and future Environmental Aid Guidelines in 2007. The State Aid Action Plan is based on the following core elements:

- less and better-targeted state aid, in line with the European Council's repeated declarations, so that public money is used effectively to the benefit of EU citizens in terms of improving economic efficiency, generating more growth and sustainable jobs, social and regional cohesion, improving services of general economic interest, sustainable development and cultural diversity;
- a more refined economics-based approach, so that less distortive aid, particularly where money is less readily available from financial markets, can be approved more easily and quickly and so that the Commission concentrates its resources on the cases liable to create more serious distortions of competition and trade;
- more streamlined and efficient procedures, better enforcement, higher predictability and enhanced transparency; for example, Member States currently have to notify to the Commission most of the state subsidies they plan to give. The Commission proposes to exempt more measures from this notification obligation and to simplify procedures;

³⁰ COM(2005) 107 final, 7.6.2005,

http://ec.europa.eu/comm/competition/state_aid/others/action_plan/

- a shared responsibility between the Commission and Member States: the Commission cannot improve state aid rules and practice without the effective support of Member States and their full commitment to comply with their obligations to notify envisaged aid and to enforce the rules properly.

2.3.2 Regional Aid

46. The compatibility of regional aid with the EC Treaty is governed by the Commission's Regional Aid Guidelines. The current Regional Aid Guidelines were adopted in 1998 for an unlimited period. The Commission on 21 December adopted the revised Guidelines, which should apply for the whole of the next Structural Fund programming period, from 2007 to 2013. Three principles have been of fundamental importance: a) the *need to refocus regional aid on the most deprived regions* of the EU of 25, and soon to be 27, Member States, while allowing sufficient flexibility for the Member States themselves to designate other regions as eligible for support based on local conditions in terms of wealth and unemployment; b) the *need to improve the overall competitiveness* of the EU, its Member States and its regions by means of clearly differentiated and well-balanced aid intensity ceilings, to reflect the importance of the individual regional problems as well as concerns about the spillovers to the non-assisted areas; and c) *the need to ensure a smooth transition* from the present system to the new approach that gives enough time to adjust and does not put at risk what has been achieved in the past.

2.3.3 R & D and Innovation

47. The existing Community Framework for state aid for Research and Development³¹ was to expire on 31 December³² but was prolonged until 31 December 2006³³. In September, the Commission launched a public consultation on measures to improve state aid for innovation. The suggested improvements, set out in a draft Communication on state aid for Innovation³⁴, include rules for aid that funds innovation, criteria to help public authorities to target aid more effectively, clarifying the rules to increase legal certainty and simplification of the regulatory framework. The Communication invited comments on a series of concrete measures for which state aid could be authorised by the Commission through ex-ante rules and criteria. On the basis of the consultation, which the Commission is currently assessing, new provisions will be integrated into the existing state aid rules.

48. In line with the refined economics-based approach laid down in the State Aid Action Plan, the Communication sets out a *clear methodology* for formulating state aid measures for innovation activities. The principles are that state aid can be authorised where (i) the aid instrument targets a *well-defined market failure*; (ii) state aid is an appropriate policy instrument (which is not always the case, as sometimes structural policies or regulatory action may be more appropriate); (iii) the aid has an *incentive effect on innovation* and is *proportionate* to the defined objective; and (iv) distortions of competition are limited. The proposals for innovation aid cover *six broad areas*: *innovative start-ups*; *risk capital*; the integration of innovation into the existing rules on *state aid for research and development (R&D)*; *innovation intermediaries*; *training* and mobility between university research personnel and SMEs; and *poles of excellence* for projects of common European interest.

³¹ OJ C 45, 17.2.1996, as amended by the Commission communication amending the Community framework for state aid for research and development (OJ C 48, 13.2.1998, p. 2).

³² OJ C 111, 8.5.2002.

³³ OJ C 310, 8.12.2005.

³⁴ COM(2005) 436 final, 21.9.2005. Press release IP/05/1169, 21.9.2005. MEMO/05/33.

2.3.4 Enforcement of state aid rules in individual cases

49. Concerning *enforcement of the state aid regime* the Commission dealt inter alia with a number of important cases involving restructuring aid in the areas of steel and shipbuilding (such as the monitoring of *Alstom –France*³⁵; *Frucona -Slovakia*³⁶; *Chemische Werke Piesteritz GmbH- Germany*³⁷; *Euromoteurs*³⁸ and *Ernault*³⁹ -France; or *British Energy plc -UK*⁴⁰) and environmental aid.

50. In March, the Commission approved schemes for *innovation aid to shipbuilding* for Germany⁴¹, France⁴² and Spain⁴³, the first of their kind after the entry into force in January 2004 of the new Framework on state aid to shipbuilding (“the Shipbuilding Framework”)⁴⁴. All the above schemes follow a similar structure with regard to the eligibility of the recipients and projects, eligible costs and procedural requirements (e.g. the innovative project is assessed by an independent expert competent in the area of shipbuilding). The detailed conditions of application of the Shipbuilding Framework’s provisions on innovation aid result from close cooperation between the Commission and European industry.

51. Furthermore, the Commission took several decisions concerning the *restructuring of the steel industry* in the new Member States. While restructuring aid to the steel sector is generally prohibited under EU rules, two Protocols to the Accession Treaty (on the restructuring of the Czech (No 2) and Polish (No 8) steel industry) grant a derogation from this rule. The Protocols allow the granting of restructuring state aid on the basis of a national restructuring plan which must restore steel producers' viability by 2006. The plan's implementation is being monitored by the Commission⁴⁵.

52. With regard to *environmental aid* the Commission approved on 20 October a EUR 58.8 million scheme, notified by the United Kingdom, for wave and tidal stream demonstration energy plants. To achieve an acceptable rate of return, these types of projects require relatively high investment and high operating aid. The operating aid complies with the rules in the Guidelines on aid for environmental protection⁴⁶. On 22 June, the Commission authorised EUR 47.3 million in operating aid to AVR (Rotterdam) of the Netherlands for hazardous waste disposal over the period 2002-2005. The aid compensated for the cost of a service of general economic interest, which consisted in the proper treatment of hazardous waste originating in the Netherlands.

³⁵ Case C 58/2003, conditional decision of 7 July 2004.

³⁶ Concerning the write-off by the Slovak tax authorities of a tax debt owed by Frucona Kosice; Case C 25/2005 (ex NN 21/2005, ex CP 193/2004); *Measures in favour of Frucona Kosice* (OJ C 233, 22.9.2005).

³⁷ Case C 43/2001 *Chemische Werke Piesteritz GmbH* (OJ L 296, 12.11.2005).

³⁸ Case C 1/2005 *Restructuring aid for Euromoteurs* (OJ C 137, 4.6.2005).

³⁹ Case N 250/2005 *Restructuring aid in favour of Ernault* (OJ C 324, 21.12.2005).

⁴⁰ Case C 52/2003 *Aid in favour of British Energy plc* (OJ L 142, 6.6.2005).

⁴¹ Case N 452/2004 *Innovation aid for shipbuilding* (OJ C 235, 23.9.2005).

⁴² Case N 429/2004 *Innovation aid for shipbuilding* (OJ C 256, 15.10.2005).

⁴³ Case N 423/2004 *Innovation aid for shipbuilding* (OJ C 250, 8.10.2005).

⁴⁴ OJ C 317, 30.12.2003.

⁴⁵ More detail is provided in COM(2005) 359 final of 3.8.2005. Second monitoring report on steel restructuring in the Czech Republic and Poland. See also

<http://ec.europa.eu/comm/enterprise/steel/index.htm>

⁴⁶ Community Guidelines on state aid for environmental protection (OJ C 37, 3.2.2001, p. 3).

3. Contribution to the formulation and implementation of other policies

53. The Competition DG contributes to the elaboration of all major policies within the scope of activity of the European Commission. Examples of such areas covered are energy, financial services and liberal professions.

54. *Inquiry into the energy sector:* On 13 June, the Commission adopted a decision⁴⁷ launching sector inquiries into the gas and electricity sectors pursuant to the Commission's powers under Article 17 of Council Regulation (EC) No 1/2003. The inquiries focus on the recently liberalized electricity and gas industries. Market integration has been disappointingly slow and has so far failed to make a significant dent in the often high levels of concentration that are a characteristic of both sectors. Significant price rises occurred in 2004 and 2005 and customers have increasingly complained of their inability to secure competitive offers from suppliers.

55. *Inquiry into the financial services sector:* On 13 June, on the basis of its powers under Article 17 of Regulation (EC) No 1/2003, the Commission launched inquiries into the financial services sector⁴⁸. The inquiries examine retail banking (payment cards, current accounts, lending for SMEs⁴⁹) and business insurance. In payment cards, the inquiry builds on the market knowledge the Commission has already developed through cases. On core retail banking services, the inquiry will explore, among other issues, low levels of market integration, effective choice on the demand side and barriers to market entry. The inquiry into business insurance will examine in particular the extent of cooperation among insurers and insurance associations in areas such as the setting of standard policy conditions⁵⁰. While in many cases such cooperation may create efficiencies, possibly distorting forms of cooperation may limit the potential for the demand side to negotiate terms of coverage and may also restrict competition and innovation in the market.

56. *Inquiry into the Professional Services sector:* The Commission's work in the professional services sector continued with the publication of its first follow-up report to the 2004 Report "Competition in Professional Services"⁵¹. The 2004 Report analysed the scope for reform or modernisation of specific professional rules. The follow-up report was published on 5 September. It consists of two separate documents. The first is a Commission Communication "Professional Services – Scope for more reform"⁵²,

⁴⁷ Commission Decision (EC) No C(2005)1682 of 13 June 2005 initiating an inquiry into the gas and electricity sectors pursuant to Article 17 of Council Regulation (EC) No 1/2003. See http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/energy/decision_en.pdf

⁴⁸ See: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/communication_en.pdf

⁴⁹ See: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/decision_retailbanking_en.pdf

⁵⁰ See: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/decision_insurance_en.pdf

⁵¹ The Report is available at: http://ec.europa.eu/comm/competition/liberal_professions/final_communication_en.pdf
(This was supplemented by the Stocktaking Exercise on Regulation of Professional Services in the ten new EU Member States, published in November 2004, which can be found at: http://ec.europa.eu/comm/competition/liberalization/conference/overview_of_regulation_in_the_eu_professions.pdf).

⁵² The follow-up report is available at: <http://ec.europa.eu/comm/competition/antitrust/legislation/#liberal>

and the second, annexed to the Communication, a Commission staff working document entitled “Progress by Member States in reviewing and eliminating unjustified restrictions to Competition in the area of Professional Services”. The report finds a mixed picture in terms of reform activity during 2004/05. A handful of countries are making good progress while in others the reform process has yet to get started. The Commission’s analysis suggests that progress is being hampered in most Member States by several factors, including a lack of national political support and little appetite for reform from the professions themselves.

4. International cooperation

4.1 Enlargement

57. On 3 October, the EU opened accession negotiations with *Turkey* and *Croatia*. The first round of discussions on the competition chapter (“acquis screening”) took place in November and December. The candidate countries are expected to establish a legislative framework for antitrust policy, merger control and state aid control, set up competition and state aid authorities and ensure effective enforcement of these rules by the time of a possible accession. In the run-up to the accession of *Romania and Bulgaria* in 2007, the Commission closely monitored the preparations for membership and assisted in the enforcement of the competition rules.

4.2 Bilateral cooperation with third countries

58. During 2005, the Commission continued its close cooperation with the *US, Canada and Japan* (with these countries it has concluded formal cooperation agreements⁵³). Contacts range from cooperation in individual cases to cooperation in relation to more general competition policy-related matters. Cooperation in merger control with the *US antitrust agencies* continued at a high level of intensity during 2005. A number of merger cases involved substantial cooperation, such as *Johnson & Johnson/Guidant*⁵⁴, *Procter & Gamble/Gillette* or *Reuters/Telerate* case⁵⁵. There were also frequent contacts in cartel cases, especially as a result of simultaneous applications for immunity in the US and the EU. In a number of instances, coordination of investigative measures and coordinated enforcement actions took place. Cooperation with the *Canadian Competition Bureau* concerned both case-related and more general policy issues. In February a meeting to discuss merger remedies was held in Paris; in June representatives of the Bureau met with their EU counterparts twice to discuss cooperation in cartel investigations and in dominance and other non-cartel cases. Contacts with the *Japanese Fair Trade Commission (JFTC)* have increased considerably in the course of 2005.

59. During 2005, the Competition DG engaged in cooperation with the competition authorities of a number of other OECD countries, including Australia, Korea, Russia and China. Cooperation between the Competition DG and the *Korean Fair Trade Commission (KFTC)* is based on a Memorandum of Understanding (MoU) which was signed in October 2004. The Road Map for a Common Economic Space between the EU and *Russia*, agreed at the EU-Russia summit of 10 May, includes a substantial section on competition. The Competition DG provided input on matters relating to a draft new anti-monopoly law for the Russian Federation, which was before the Duma at that time. Cooperation with China is based on the 2004 Terms of Reference on structured dialogue on competition policy⁵⁶. During 2005, contacts with

⁵³ US: OJ L 95, 27.4.1995, p. 47; Canada: OJ L 175, 10.7.1999, p. 50; Japan: OJ L 183, 22.7.2003, p. 12

⁵⁴ Case M.3687

⁵⁵ Case M.3692

⁵⁶ Terms of Reference of the EU-China competition policy dialogue. Signed in Brussels on 6 May 2004.

Chinese authorities on competition policy matters increased considerably and dealt with both general policy issues and questions concerning the establishment of a competition authority.

4.3 *Multilateral cooperation*

60. In 2005 the Commission continued its strong involvement in the *International Competition Network* (ICN), which continued to grow in membership in 2005 with over 90 agencies as members. The level of activity remained high, as was evidenced at the annual conference in Bonn, Germany, in June. The Commission/DG Competition co-chairs the cartels working group, which completed a number of significant projects in 2005 including a report on building blocks for effective anti-cartel regimes, an anti-cartel enforcement manual and a template for providing information concerning laws and regulations regarding cartels. In November the annual ICN cartels workshop (organised by the cartels working group) took place in Seoul, South Korea.

61. In 2005, the *OECD Competition Committee* for the first time held a *peer review examination of competition law and policy in the EU*. The OECD Secretariat completed the report after the oral examination and published it in the OECD publications series⁵⁷. The peer review report outlines the following *four policy options* for consideration: a) relationships among the leniency programmes of the EU and the national enforcement agencies; b) economics-based approach to dominance, make liability depend upon effects that harm competition; assessing the scope for recoupment should be an integral part of such an approach; c) increase further the Competition DG's capacity for economic analysis by increasing the staffing in the Chief Economist Team; d) consider means for extending sanctions to individuals as well as firms, such as coordination with application of Member State laws that provide for individual sanctions.

62. The Competition DG is analysing each of these options further in its ongoing policy development projects. In the field of leniency policy, the Competition DG is working towards what is broadly referred to as a one-stop-shop system. Concerning abuse of dominance, the Competition DG issued a discussion paper in December, which also addresses the issues raised in the peer review report. The Competition DG has been building up economic expertise in recent years. Economists work in various departments of the Directorate-General and form part of multidisciplinary case teams. The Chief Economist Team provides further support. Concerning cartel sanctions, the system in the EU is based on effective application of a combination of corporate and individual sanctions at Community and national level. There is scope for examining how to fully use the options available in this system.

63. In addition to the peer review, the Competition DG continued its active involvement in the work of the OECD. During 2005, it presented *eight written submissions* to the Competition Committee covering the following discussion topics in OECD roundtables: a) structural separation in rail transport; b) cross-border remedies in merger review; c) competition on the merits; d) evaluation of actions and resources of competition authorities; e) impact of substitute services on regulation; f) discovery and gathering of evidence; g) barriers to entry; h) competition and efficiency in the provision of hospital services.

⁵⁷ The report is available on the OECD website: <http://www.oecd.org/dataoecd/7/41/35908641.pdf>

5. Resources

4.1 Resources overall (current numbers and change over previous year)

Annual budget 2005: 90 million

Number of employees (person-years) 2005:

A grade	405
B grade	109
Support staff (C and D grades together)	223
TOTAL	737

Educational/academic background of staff:

Economists	35%
Lawyers	41%
Other professionals	24%

4.2 Human resources in 2005 (person-years) applied to

Enforcement against anticompetitive practices:	51%
Merger review and enforcement:	15%
Control of State aid:	28%
Int. cooperation/admin. support, coordination:	6%

5. Reports and studies on competition policy issues

64. The European Commission carries out or commissions studies on competition policy issues both relating to policy development and in context of individual cases.

65. The *Merger Remedies Study* was published on 21 October. This was a major ex post evaluation exercise reviewing the design and implementation of merger commitments accepted by the Commission over a five-year period, 1996 to 2000. The objectives of the Study were to identify with the benefit of hindsight i.e. three to five years after the Commission's decision: (i) any serious issues arising in the design and implementation of remedies; (ii) the effectiveness of the Commission's merger remedies policy during the reference period; and (iii) areas for further improvement of the Commission's existing merger remedies policy and practice. The Study analysed 40 Commission decisions, which included 96 different remedies. These 96 remedies accounted for 42% of the 227 remedies adopted by the Commission during this five-year reference period and are a representative sample as regards the types of remedies accepted, the number of remedies accepted in Phase I or after an in-depth Phase II investigation, and the different industrial sectors involved. The vast majority of remedies examined – 84 out of the total 96 – consisted of divestiture commitments. The Study's findings confirmed the relevance of various aspects of the Commission's merger remedies practice introduced since 2000, i.e. after the reference period of the selected sample, such as the Remedies Notice and the Model Commitments Texts. Nevertheless, the findings also identified a number of serious issues regarding the design and implementation of the analysed remedies which require further attention.

66. As a complement, the Commission commissioned a *study* to carry out an *ex post economic analysis* of merger remedies. The analysis was designed to assess the economic effectiveness of a smaller

number of remedies with simple econometric simulation models. Results of this study will be published in 2006.

67. In the ambit of its activities in *international relations* the Competition DG also financed and supervised an expert *study* that responds to a number of questions from the emerging Chinese competition authorities relating to the EU approach and experience in developing an effective legislative and enforcement framework for competition policy.