

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

**Annual Report on Competition Policy Developments in Luxembourg**

-- 2018 --

**5-7 June 2019**

This report is submitted by Luxembourg to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

**JT03447794**

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According to article 7, paragraph 5 of the Competition Act of 23 October 2011, « *the Council draws an annual report of its activities which records its own important decisions, taking care to specify if these decisions are final. The report is forwarded to the Minister and the Luxembourg Parliament. It will be available to any interested person* ».

## *Luxemburg*

### **1. The Competition Council's activity in 2018**

1. In many ways, 2018 was a rich and intense year for the Competition Council.
2. First of all, in the field of competition law enforcement, which is the primary mission of any competition authority. In 2018, the Council adopted 12 decisions, including 10 dismissal of complaint decisions. Obviously, such an anomaly requires explanations from the competition authority.
3. Among these 10 dismissal of complaint decisions, 7 were cases in which the complainant had withdrawn his complaint. When a complainant withdraws his complaint because it has become unsustainable, and the facts initially underlying his complaint were not exceptionally serious, our competition authority is well advised to close the file and to invest its resources to much more urgent and serious cases.
4. In the case n°2018-FO-01 - Webtaxi, the Council adopted for the first time in its decision-making practice an exemption decision. By such a decision, the Council may, under certain conditions, exempt an anti-competitive agreement between undertakings where the effects of the agreement are generally beneficial to the consumer or the community. This decision and the remaining 4 dismissal of complaint decisions have been the subject of interesting debates both within the Council and among the interested public.
5. But the action of a competition authority is not limited to adopt decisions. The Law also assigns to the Council an advisory role, in the context of which it issued 7 opinions in 2018 on proposals for directives, laws and regulations. While the primary objective of the Council's opinions is to ensure that the texts entering into force in Luxembourg comply with the principles of competition law, another important aspect of this advisory role is to promote competition in order to make markets more competitive.
6. In addition, with the support of the Chamber of Commerce, the Council organized a one-day conference during which internationally renowned experts presented and discussed important aspects of competition law and its application to an audience of specialists.
7. The year 2018 was also the year of the evolution of the European framework of competition law, with the adoption of the "Directive (EU) 2019/1 (...) of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market", the so-called ECN+ Directive. A significant part of the Council's efforts was dedicated in 2018 to a major strategic review of its legal and procedural framework. Thus, the works on a reform of the national Competition Act, which will also incorporate the legal changes required by this Directive, have progressed well.
8. As every year, the councilors and their colleagues have been very active participants in the work of international competition law bodies, first and foremost the ECN, the European Competition Network. The first objective of this network is to coordinate the action of all national competition authorities in the Member States of the European Union in order to ensure consistent application of competition law throughout

Europe. In recent years, the recurrent theme of international meetings has been the digitalization of the wider economy and society, which also poses new challenges to competition policy. Are the tools currently available under competition law adapted to the digital world, with, among other things, its phenomena of massive data ("big data"), network effects, open and closed networks and monopolization of information through new and supposedly free service offers?

9. This debate will not be decided in Luxembourg, but the Council will continue to participate actively in it.

10. A review of last year would still be incomplete without a forward-looking glance at the coming year. The finalization of the reform of the legal framework and the ongoing investigations are the first priorities. Prior to investigations into anti-competitive practices, sector inquiries are the tool of choice for revealing the dynamics of markets in which effective competition appears weak. This tool will be deployed even more systematically by our authority.

11. In addition to the application of competition law, the competition authority must support the good cause, i.e. promote awareness of the benefits of competition in the markets: ensuring the best prices, quality, innovation and choice. In the absence of competitive markets, the social market economy cannot meet its ambition to ensure the well-being of all. To quote one of the latter's fathers, Ludwig Erhard, competition law is "the fundamental law of the social market economy". In order to fulfil this important advocacy mission, the Council must improve its visibility and intensify its communication with all economic actors, the political world and the general public.

#### **Box 1. « L'actualité du Conseil de la concurrence »**

The mission of the Competition Council is to ensure compliance with National and European competition rules and to ensure the proper functioning of markets. In doing so, the Council seeks to protect the interests of consumers and undertakings against anti-competitive behaviour that could have the object of the effect of restricting competition.

Within this framework, the Council must make undertakings aware of their responsibilities under competition law. In order to better communicate on these missions and generally improve understanding of the positive effects of competitive market operations, the Council will intensify its communication with undertakings, politicians and the interested public.

For this purpose, it will distribute an electronic newsletter on a regular basis. « L'actualité du Conseil de la concurrence » (« News of the Competition Council ») will draw attention to the Council's activities and developments in competition law and its policy at an European level.

Interested parties can subscribe to "L'actualité du Conseil de la concurrence" via the Council's website:

<https://concurrence.public.lu/fr/support/newsletter.html>

## 2. The regulatory and institutional framework

12. The Competition Council is an independent administrative authority whose role is to guarantee free competition and ensure the proper functioning of markets. It must ensure compliance with National and European competition rules.

13. In carrying out its functions, the Council seeks to protect the interests of consumers, but also the interests of undertakings against anti-competitive behaviour by competing undertakings that could have the effect of restricting competition. Article 6 of the Competition Act of 23 October 2011 defines the missions, competences and powers of the Competition Council, which can be summarized as follows:

- The Council applies articles 3 to 5 of the Competition Act and articles 101 and 102 of the Treaty on the Functioning of the European Union, namely the prohibition of cartels and abuses of dominant position;
- it represents the Grand Duchy of Luxembourg within the ECN, the network of European competition authorities;
- it drafts an opinion on any draft law or regulation or any other measure relating to competition issues;
- it may carry out market studies, i.e. sectoral or agreement type surveys to study the competitive functioning of markets in specific sectors;
- it may inform undertakings of the interpretation it intends to give to articles 3 to 5 in relation to new and unresolved issues;
- it shall cooperate with the European Commission and the competition authorities of the other Member States in accordance with the provisions of Regulation (EC) No 1/2003 of 16 December 2002.

14. In accordance with article 7 (3) of the Competition Act, the Council adopted its Rules of Procedure on 11 June 2012. This text organizes the administrative functioning of the Council, defines the different formations of the Council and specifies the procedure to be followed by the designated councilor, the investigators and the collegial decision-making formation.

## 2.1. The Competition Council

15. The Council is composed by a President, 3 effective councilors and 5 substitute councilors. At 31 December 2018, its composition was as follows:

- Pierre Barthelmé  
President, since the 1<sup>st</sup> of November 2018
- Mattia Melloni  
Councilor, since the 1<sup>st</sup> of May 2012
- Grazyna Piesiewicz  
Councilor, since the 1<sup>st</sup> of April 2017
- Jean-Claude Weidert  
Councilor, since the 1<sup>st</sup> of April 2012
- Pierre Calmes  
Substitute councilor, since the 1<sup>st</sup> of February 2012
- Thierry Hoscheit  
Substitute councilor, since the 1<sup>st</sup> of February 2012
- Thierry Lallemand  
Substitute councilor, since the 27<sup>th</sup> of April 2012
- Théa Harles-Walch  
Substitute councilor, since the 8<sup>th</sup> of February 2016

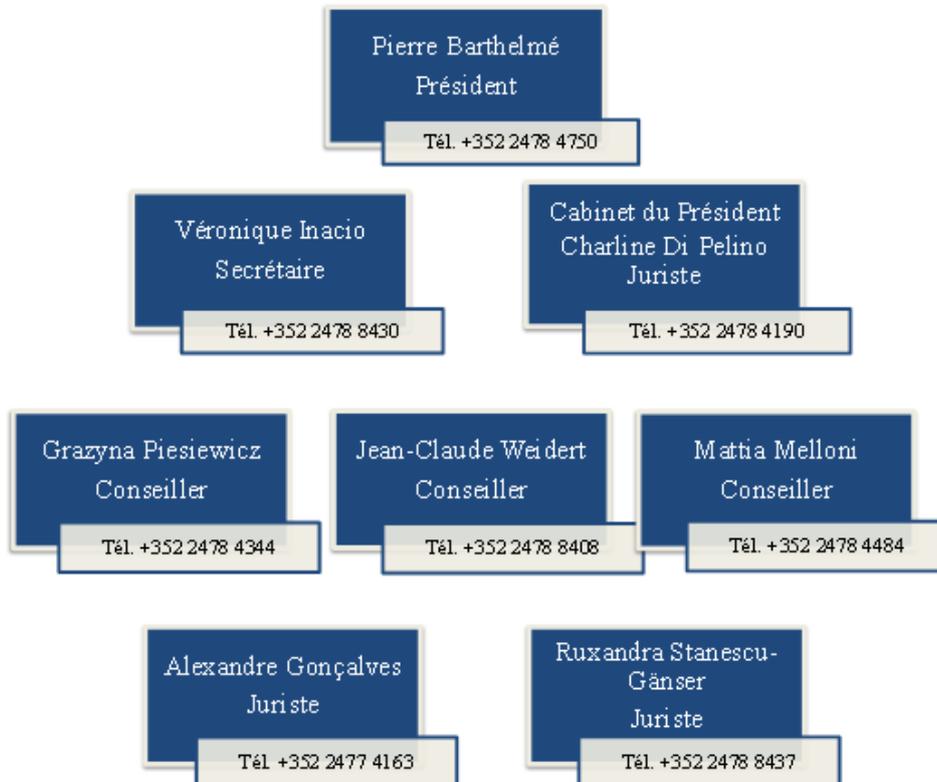
16. On January 18, 2019, Ms. Christiane Junck replaced Ms. Paulette Lenert as a substitute councilor.

17. In its work, the Council relies on the collaboration of three case handlers and a secretary:

- Charline Di Pelino  
Case Handler
- Alexandre Gonçalves  
Case Handler
- Ruxandra Stanescu-Gänsler  
Case Handler
- Véronique Inacio  
Secretary

18. Mr. Pierre Rauchs, Ms. Véronique Bruck and Mr. Georges Gengler left the Council during 2018.

Figure 1.



### 3. Work of the Competition Council in 2018

#### 3.1. Enforcement of Competition Law

19. For confidentiality reasons, this report may not refer to cases that are the subject of an ongoing investigation. It therefore merely reproduces here the most important final decisions adopted by the Council in 2018:

##### 3.1.1. Decision n° 2018-FO-01 *Webtaxi*

20. Following a complaint concerning price fixing between competitors, the Competition Council opened an investigation against ProCab, now Webtaxi.

21. Webtaxi has set up a system for prior booking taxis in Luxembourg and responds to customer requests, made by telephone call, via website or via platform application, and assigns the closest taxi to the customer's place of pickup. Not only Webtaxi taxis but also independent undertakings are connected to the reservation centre for a monthly fee.

22. When a customer makes a reservation for a trip, the reservation center determines the price of the trip using an algorithm. This price, taking into account predetermined variables (price per kilometer, coverage, duration, traffic conditions), is fixed and non-negotiable, binding both the customer and the driver. This fixing constitutes a horizontal agreement on prices between the different taxi undertakings that are members of Webtaxi.

23. In its decision n°2018-FO-01, the Competition Council confirmed the existence of a price-fixing agreement between competitors prohibited under article 3 of the Competition Act. The Competition Council, after having noticed the agreement, emphasized that there is no per se prohibition of agreements between undertakings and examines whether the agreement in question qualifies for an individual exemption under article 4 of the Competition Act. The Council therefore examined the justifications for the agreement provided by the undertakings under the same article.

24. The Council subsequently studied the conditions for exempting an agreement between competitors. After having noticed, on the basis of the observations made by the parties, the efficiency gains of the agreement (reduction of empty runs, waiting time) and the benefits for consumers (including price reductions as a result of the application of the algorithm), the Council confirms that price fixing is essential to achieve the efficiency gains brought about by the agreement, as there is no viable alternative with the same pro-competitive effects.

### *3.1.2. Decision n° 2018-FO-02 Epicerie de Luxembourg*

25. By decision of 13 June 2018, the Competition Council found that, by agreeing to fix the prices of grocery products, the Pall Center group and Shopping Center Massen violated article 3 of the Competition Act of 23 October 2011.

26. Pall Center and Massen had, with two other retail distribution undertakings, Alima and Food2Go, created in March 2015 the common label "Epicerie de Luxembourg". According to its members, the aim of creating this common label was to strengthen their image and visibility in the retail trade through joint advertising actions. Thus, the targeted undertakings managed a common website and published advertising leaflets that promoted about fifty products at promotional prices.

27. In its decision n°2018-FO-02, the Council concluded that the promotional offers made by the parties constitute a horizontal price fixing agreement. However, according to article 3 of the Competition Act, such an agreement is only prohibited if it has as its object or effect a restriction of competition in a particular market. In its market analysis, the Council defined the catchment area for each of their outlets and found that only the catchment areas of the Pall Center Pommerloch and the Shopping Center Massen in Wemperhardt partially overlap. These two undertakings are therefore partially in a competitive situation.

28. The Council concludes that, among the 4 undertakings concerned, Pall Center and Massen have violated article 3 of the Competition Act of 23 October 2011.

29. The Council also notes that the agreement in question is a cooperation agreement whose main, if not sole, effect was to grant price reductions on products on promotion, which could revive competition between the targeted undertakings and other undertakings on the distribution market.

30. Consequently, the Council concludes that the contested practice constitutes an insignificant and marginal restriction of competition, which also has pro-competitive effects and therefore does not require the imposition of a fine.

### *3.1.3. Decision n° 2018-FO-03 Luxlait*

31. By decision of 26 June 2018, the Competition Council dismissed a complaint against Luxlait for the practice of fixed resale prices.

32. The Council's investigation against Luxlait was opened following a complaint from a major retailer.<sup>1</sup> The investigation aimed to determine whether Luxlait imposed resale prices on its distributors, a practice that is contrary to article 3 of the Competition Act of 23 October 2011 and article 101 of the Treaty on the Functioning of the European Union, provisions prohibiting cartels between undertakings.

33. Since the commercial negotiations between the complainant and Luxlait for the marketing of Luxlait products failed, and in order to obtain Luxlait brand products, the complainant established commercial relations with several wholesalers active in Luxembourg who market Luxlait brand products.

34. Subsequently, these trading partners also stopped delivering Luxlait products to the complainant.

35. At the end of his investigation, which included a search of Luxlait's headquarters, the designated adviser in charge of the investigation sent a statement of objections to Luxlait.

36. In its decision n°2018-FO-03, the Council applied the so-called "triple test" method developed by the French courts to examine whether the evidence presented against Luxlait was sufficient to characterize a practice of fixed resale prices. The "triple test" consists of the verification of the following three cumulative conditions:

- the mention, between suppliers and distributors, of resale prices to the public;
- the implementation of a price policy by the manufacturer such as, for example, retail price monitoring followed by retaliatory measures in the event of prices deviating from recommended prices;
- the fact that the prices mentioned have actually been applied.

37. At the end of its analysis, the Council concludes that one of the three conditions of the test, namely the practice of a price policy by Luxlait, is not characterized. The Council considers that the evidence has, on the whole, been insufficient to establish beyond any doubt the implementation of a price policy by Luxlait. Consequently, the Council decided to close the case without further action.

38. The Council reminds undertakings that resale price practices imposed on distributors are to be considered as restrictions of competition by object which are among the most serious violations of competition law. As such, they should be refused by the distributor, failing which the distributors themselves risk being sanctioned as co-authors of a competition violation by the Council.

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<sup>1</sup> The Council has received from the complainant a reasoned request to have his name and confidential information about him deleted from this decision, which it has granted. For this reason, the name of this party appears as [the complainant] in the text of the published decision

39. The Council also emphasized that the leniency procedure provided for in article 21 of the Competition Act of 23 October 2011, which guarantees full or partial immunity to undertakings that denounce anti-competitive agreements to the Council, is also applicable to vertical agreements, such as those containing hardcore restrictions such as resale prices.

#### ***3.1.4. Decision n° 2018-C-10 D.R.D Fashion***

40. On 24 October 2018, the Competition Council closed without further action a complaint against D.R.D Fashion.

41. On July 22, 2015, the Council received a complaint from the public limited company Pall Center alleging that D.R.D. Fashion, one of its suppliers, had required it to respect a minimum margin on the sale of clothing under the "Save The Queen" brand in order to maintain compliance with the recommended selling prices in all Pall Center stores. Following requests from DRD Fashion, Pall Center had stopped all orders from this supplier.

42. Fixed selling price practices constitute a vertical agreement between a supplier and a distributor. These agreements consist in fixing selling prices and are prohibited by both national and European competition law.

43. In the present case, however, there can be no practice of fixed selling prices since the distributor has directly departed from the supplier's request by refusing it and reporting the facts to the Council. Therefore, the Council agrees with the conclusion of the advisor named in his ranking report that there is no anti-competitive agreement between Pall Center and its supplier DRD Fashion. The Council closed the case without further action. (There were no other resellers of the "Save The Queen" brand in Luxembourg at the time of the survey).

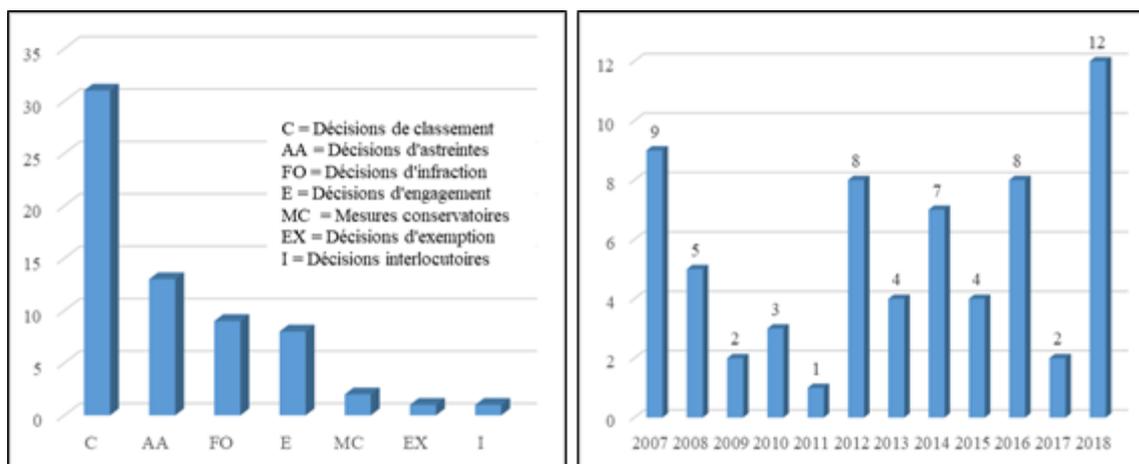
44. The Council emphasized to undertakings that resale price practices imposed on distributors are to be considered as restrictions of competition by object which are among the most serious violations of competition law. As such, they should be refused by the distributor, failing which the distributors themselves risk being sanctioned as co-authors of a competition violation by the Council.

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**Table 1. Summary table of decisions adopted in 2018**

Date	Case	Decision	Appeal (1)
08/06/2018	<a href="#">2018-FO-01 - Webtaxi</a>	Exemption	No
20/06/2018	<a href="#">2018-FO-02 - Epiceries de Luxembourg</a>	Prohibition	No
24/08/2018	<a href="#">2018-FO-03 - Luxlait</a>	Dismissal	(2)
30/10/2018	<a href="#">2018-C-06 - Moutarderie de Luxembourg</a>	Dismissal	No
30/10/2018	<a href="#">2018-C-05 - La Provençale</a>	Dismissal	No
30/10/2018	<a href="#">2018-C-07 - Maxim Pasta</a>	Dismissal	No
30/10/2018	<a href="#">2018-C-04 - Ass.ag. Kraidergenossenschaft</a>	Dismissal	No
30/10/2018	<a href="#">2018-C-08 -Moulin de Kleinbettingen</a>	Dismissal	No
19/11/2018	<a href="#">2018-C-10 D.R.D Fashion</a>	Dismissal	No
19/11/2018	<a href="#">2018-FO-11 - Taxis Colux</a>	Dismissal	(3)
21/11/2018	<a href="#">2018-FO-09 - POST Luxembourg</a>	Dismissal	No
03/12/2018	<a href="#">2018-C-12 - R+S Group GmbH</a>	Dismissal	No

Note: (1) Appeal before the Administrative Court; (2) Interlocutory action against the refusal to extend the deadline for replying to the statement of objections, declared inadmissible, n°40323 of the list of cases of the Court; (3) Appeal against 3 requests for information declared inadmissible n° 38364+39127+39876 of the list of cases of the Court.

**Figure 2. Decisions of the Council 2004-2018**

C= Dismissal of the complaint  
AA= Periodic penalty payments decisions  
FO= Prohibition decisions  
E= Commitments decisions  
MC= Interim measures decisions  
EX= Exemption decisions  
I = Interlocutory decisions

### 3.2. Advisory work

46. According to article 29 of the Competition Act of 23 October 2011, the Council has an advisory role. In this context, the Council expresses an opinion, on its own initiative or at the request of the Minister, on any question concerning competition.

47. In 2018, the Council published the following opinions:

- Opinion n°[2018-AV-01](#) of 3 April 2018 on draft law n°7228 amending (1) the amended Act of 2 September 2011 regulating access to the professions of artisan, merchant, industrial and certain liberal professions
- Opinion n°[2018-AV-02](#) of 11 July 2018 on the draft regulation ILR/T18/XX on the conditions for the application and implementation of the economic reproducibility test (market 4/2007)
- Opinion n°[2018-AV-03](#) of 19 July 2018 on the draft regulation ILR/T18/XXX of the Institut luxembourgeois de régulation (*Luxembourgish regulatory institute*) on the setting of tariff ceilings for access to civil engineering infrastructure, unbundling of the local loop
- Opinion n°[2018-AV-04](#) of 5 September 2018 on draft law n°7310 of 22 May 2018 amending the amended law of 9 December 1976 on the organisation of the notarial profession
- Opinion n°[2018-AV-05](#) of 25 October 2018 on four draft regulations of the Institut luxembourgeois de Régulation in the field of electronic communications
- Opinion n°[2018-AV-06](#) of 14 November 2018 on a draft grand-ducal regulation on the use of electronic means in public procurement procedures
- Opinion n°[2018-AV-07](#) of 18 December 2018 on Bill 7366 on unjustified geographical blocking and other forms of discrimination in the internal market

### **3.3. International cooperation**

#### ***3.3.1. ECN meetings***

48. As every year, the Council has actively participated in the development of the European competition policy within the European Competition Network (the ECN). This section of the 2018 Annual report provides an overview of the discussions in which the Council participated within this network.

49. The steering of the ECN's work within the various horizontal and sectoral expert groups is ensured by the meetings of the Directors-General, which are prepared by the plenary meetings.

#### ***3.3.2. Plenary and Directors-General meetings***

50. ECN plenary meetings were held in Brussels on 13 March and 23 October 2018.

**Figure 3. ECN Plenary meeting in Brussels**



51. At these two meetings, the national competition authorities (NCAs) and the Commission discuss issues that are subsequently taken up in the meetings of the Directors-General. In 2018, the following themes were at the forefront of the concerns of the plenary meeting

52. the entry into force of Regulation 2016/679 on Personal Data (PIMPR) and its application by NCAs;

- artificial intelligence and competition rules;
- the adoption and transposition of Directive (EU) 2019/1 aimed to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (the ECN+ Directive);
- leniency and vertical agreements;
- the new Regulation (EU) 2017/2394 on the cooperation of authorities responsible for the enforcement of consumer protection legislation.

### ***3.3.3. « Horizontal » working groups***

53. These groups bring together representatives of each national competition authority and the Commission in order to promote greater consistency in their decision-making practice. There are currently six working groups, namely the Working Group on Cooperation and Procedural Safeguards, Cartels, Fines, Horizontal Restrictions and Abuse, Vertical Restrictions and the FIT (Forensic Information Technology) Group, in addition to the Working Group which brings together all the chief economists of the NCAs.

#### ***The Working Group on Cooperation and Procedural Safeguards (WGCIDP)***

54. This working group, whose purpose is to study the national procedures of each national competition authority and identify the areas in which potential convergence actions could be carried out in order to ensure greater effectiveness in the implementation of articles 101 and 102 TFEU, met on 8 March and 25 September 2018.

55. The main activity of the working group on cooperation and procedural safeguards focused mainly on two projects, namely that on cooperation between NCAs under article 22 of Regulation 1/2003, as well as on the processing of personal data in NCAs investigations.

*The Working Group on Cartel (WG on Cartels)*

56. This working group, whose aim is to build and consolidate a genuine European anti-trust policy with each national competition authority, met twice in 2018, on 9-10 July and 9-10 October.

57. During the first meeting, the NCAs' discussions and presentations focused mainly on the progress of the procedure for adopting the proposed ECN+ Directive and the Informant Project Team project. This project allowed several NCAs to take the floor to present the results of their latest discussions.

58. The other main theme was leniency, with a review of the NCAs' replies to the questionnaire sent by the Commission and various presentations by the NCAs on the practical effects of leniency policy within their authority.

59. Some of the themes raised in July were put back on the table at the 2nd meeting in October. The Commission submitted replies to additional questions to the NCAs in addition to the leniency questionnaire previously sent. Discussions on the Informant Project Team and its compliance with the Directive on the protection of persons reporting breaches of EU law were also held.

*The working group on fines (WG on fines)*

60. The working group on fines, whose aim is to identify specific topics in which potential convergence actions on fines could be carried out, was reactivated in 2012. This working group did not meet during 2018.

*The "horizontals and abuse" Working Group*

61. The "horizontals and abuse" working group, whose purpose is to identify specific and topical issues for NCAs regarding anti-competitive horizontal practices and abusive behaviour, met only once in 2018, on 25 April. The main activity of this group has focused on the relationship between competition rules and sustainable trade.

*The Working Group on Vertical Restraints*

62. This working group deals with issues relating to vertical anti-competitive practices, i.e. between undertakings active at different levels of the production or distribution chain, as well as the relevant regulatory texts. The group met on 5 March 2018 in Brussels. The two main themes of the meeting were recent developments in the field of bans on online platforms and difficulties in proving an anti-competitive practice or agreement in vertical cases in the absence of an explicit agreement. The Council presented a case of export restrictions by certain car distributors in Germany.

*The FIT group (Forensic Information Technology)*

63. This working group, whose purpose is to exchange and study best practices and national experiences in the field of forensic and computer analysis in investigations conducted by competition authorities, met from 27 to 28 September 2018.

64. In addition to exchanging the latest experiences in the conduct of inspections, the group's activity focused mainly on access to data stored in the cloud, the processing of personal data during inspections, and the use of artificial intelligence tools by competition authorities.

65. The Competition Council has invited the relevant services of the judicial police to participate in future meetings of the group; the judicial police has responded positively to this invitation and the Council hopes to be able to institutionalize joint participation in the future.

#### *The Chief Economists Working Group*

66. This working group met on 7 June in Brussels and on 17 October in Lisbon. The purpose of this working group is to bring together the heads of the economic departments of the NCAs and the European Commission in order to stimulate an exchange of views on the concepts and methods to be used in the context of the economic analyses to be carried out by the NCAs.

67. The first meeting focused on the analytical problems of the massive data economy ("big data"), market definition based on a quantitative analysis of demand, the detection of price reports by competing undertakings and the impact of mergers on investment and innovation.

68. The second meeting was mainly devoted to new developments in the analysis of loyalty discounts granted by dominant undertakings, as well as to the presentation and analysis of two recent cases of abuse of dominant position in network industries.

#### *Other working groups*

69. The Council did not follow the working group on mergers, as Luxembourg does not have any legal provisions on company mergers.

#### *3.3.4. « Sectoral » working groups*

70. The ECN has various working groups that deal with the application of competition law to certain areas or economic sectors. In 2018, the Council monitored the work of the Food, Banking & Payments, Telecoms, Digital Markets, and Pharma & Health sector groups.

##### *Food*

71. The sectoral group on Food, whose main objective is to coordinate the various national and European affairs in the food sector, met on 5 July 2018. This meeting focused on the presentation of different cases handled by NCAs in the food distribution and agricultural products sector. In this context, the Council presented a case concerning a horizontal cartel between several distributors in the large food retail sector (Decision 2018-FO-03 Epicerie de Luxembourg).

##### *Banking & Payments*

72. The working group on banking & payments, which aims to identify specific and topical issues for NCAs in banking and payments, met only once in 2018, on 21 March. The main activity of this group was mainly focused on the Commission's Visa and Mastercard cases as well as some cases handled by NCAs in the E-payments sector.

### *Telecoms*

73. The meeting of this working group took place on 20 June 2018 in Brussels. Topics covered included network neutrality and its implications for competition law; network sharing cases in the Czech Republic, Hungary, Germany, France and an intervention by the European Regulatory Coordination Office (BEREC); Sectoral surveys on the movement of mobile service prices, in particular following the European roaming regulation; the problem of access to mobile infrastructure and new generation fixed networks (NGA); the new electronic communications code under adoption, whose priorities are connectivity, investment stimulation and consumer rights.

### *Digital markets*

74. The Digital Markets Working Group, created in 2017 at the instigation of Germany, met once in 2018, on 7 February. The members of the group continued their discussion on the issue of market definition in the case of two-sided markets, supplemented by a presentation from the Chief Economist's department of the Directorate-General for Competition (DG COMP).

75. In addition, the group discussed issues related to the German authority's Facebook investigation and the sector inquiries in Germany (ongoing) and France (completed) in the online advertising sector. The discussion on the latter topic was informed by DG COMP's presentation of M&A cases in the sector (Google/Double Click 2008, Microsoft/Yahoo 2010, Telefonica UK/Vodafone UK 2012, FB/Whatsapp 2014).

### *Pharma & Health*

76. The group met twice in 2018, on 21 June and 15 November. At the first meeting, after the presentation of the cases, market studies and sector inquiries underway in a series of NCAs, participants discussed the issue of barriers to market penetration by generic medicines and excessive prices in the sector.

77. In addition, the Commission representatives presented the results of the studies carried out with a view to revising the Regulation on medicinal products for orphan and pediatric diseases and the challenges of the imminent discussion in the WTO on competition law as a basis for compulsory licenses on medicinal products.

78. At the second meeting, the Commission presented the forthcoming BER report on competition in the pharmaceutical sector, to be published in 2019. In addition, some NCAs have submitted ongoing cases relating in particular to parallel trade and excessive prices as well as vexatious disputes in the pharmaceutical sector.

#### ***3.3.5. Advisory Committee***

79. The Council took part in the Advisory Committee on Anti-Competitive Practices. Created by article 14 of Regulation 1/2003, this committee brings together the Commission services (representatives of the Legal Service and DG COMP) as well as all representatives of the national competition authorities in order to enable them to give their opinions on draft Commission decisions.

80. Indeed, when adopting a decision ordering the termination of an infringement or accepting commitments, the Commission is obliged to consult the Advisory Committee. The Advisory Committee may also be asked to give its opinion on any draft text relating

to the Union's competition rules, such as Commission notices or guidelines. However, its opinion is not binding.

81. In 2018, the Council took part in the meetings of the Advisory Committee on Mergers as a "rapporteur" in the Thales/Gemalto case. In addition, on 10 July 2018, two members of the Council also visited the Advisory Committee dealing with the Philips, Asus, Pioneer and Denon & Marantz cases, in particular concerning the violation of article 101 TFEU for imposing minimum selling prices on European distributors of household electrical products.

### ***3.3.6. Competition Day***

82. The Member State holding the Presidency of the Council of the European Union traditionally organizes the European Competition Days. This event took place on 31 May 2018 in Sofia with the participation of the President of the Council.

### ***3.3.7. The Organisation for Economic Co-operation and Development (OECD)***

83. The OECD deals with competition issues at meetings of the Competition Committee and the Global Competition Forum.

84. The Global Competition Forum brings together annually competition officials from more than 100 authorities and organizations from around the world to discuss a wide range of key issues, including the link between competition policy and other cornerstones of economic development.

85. The Competition Council encourages exchanges of views and analysis on competition policy issues. The President of the Council attended the meeting "Taxi, ride-sourcing and ride-sharing services" on June 4, 2018.

### ***3.3.8. International private organisations: ICN and ECA***

86. The Council has joined the international organisations which are the International Competition Network (ICN) and the Association of European Competition Authorities (ECA). These forums hold annual meetings and have established working groups on specific issues.

87. The ICN brings together the various national competition authorities at the global level and serves as a discussion forum for topics related to the application of competition law. The Council was represented by its President at the ICN annual meeting held from 20-23 March in Delhi.

88. The ECA, a discussion forum of the EEA competition authorities, met on 8 and 9 March 2018 in Copenhagen at the invitation of the Danish Competition and Consumer Authority. The meeting brought together some thirty authorities represented by their directors or representatives. The interventions and debates concerned, inter alia, issues raised by the Intel judgment of the ECJ, the Commission's Qualcomm decision, abuses in the pharmaceutical sector, as well as new challenges posed by digitalization, in particular online platforms.

### ***3.3.9. Summer School on Advanced Competition Law and Economics***

89. The Council participated at the 4th "Summer School on Advanced Competition Law and Economics" organized by the Italian Antitrust Observatory dedicated to two topics, "Digital Economy and Competition Law" and "Brexit".

### 3.3.10. Seminar at the Institute of Political Studies in Strasbourg (IPS)

90. In the framework of its cooperation with the IPS (*Institut d'Etudes Politiques*) of Strasbourg, the President and a case handler of the Council gave to the students of the Master II Law of Economics and Regulation in Europe a seminar over several sessions, based on the model of a "Moot Court" practical exercise, giving students the opportunity to study a case from its investigation to its decision-making phase.

### 3.4. Communication policy and public events

91. The website of the Competition Council at [www.concurrence.lu](http://www.concurrence.lu) provides to the public information on the Council's activities and the most important aspects of competition law in Luxembourg. The Council publishes all its publications there, with the exception of decisions on leniency applications and confidentiality applications.

92. On 28 September 2018, the Council, in collaboration with the Chamber of Commerce, organized a conference on current developments in national and European competition policy. The conference included roundtable presentations on the following topics:

- Competition law and the administrative judge;
- Focus on public procurement;
- Restrictions of competition in distribution;
- The future European framework for the resources of national competition authorities (ECN+ Directive).

Figure 4.



Source: Pierre Guersing, Chamber of commerce