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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Luxembourg

-- 2021 --

This report is submitted by Luxembourg to the Competition Committee FOR INFORMATION.

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Luxembourg¹

1. Foreword of the President

1. The year 2021 was a year of adaptation. Citizens, companies, national competition authorities and state actors had to adapt to best respond to the many consequences of the Covid-19 pandemic.
2. These various adaptations were useful. Although the pandemic is still present in our daily lives, the economic situation has considerably improved. In the third quarter of 2021, the European Union's economy returned to its pre-pandemic level of production and moved from a recovery phase to an expansion phase.
3. A recovery that also took place in Luxembourg economy. While some sectors are struggling to regain their pre-crisis dynamism and are still juggling with health restrictions, such as the hospitality sector, at the end of 2021 Luxembourg's GDP recorded growth close to 7%.
4. In terms of competition enforcement, it would be an exaggeration to speak of a recovery. Indeed, competition authorities continued to carry out their missions during the pandemic.
5. At the European level, the Competition Council has closely followed the work of the European Commission on the Digital Markets Act. Signed by the heads of participating competition authorities, the European Competition Network published a joint paper on the Commission's Digital Markets Act proposal. As we had foreseen, the digital sector was a key topic in 2021, which gives us hope for good progress on competition protection in the digital sector in the following year.
6. With regard to a national dimension of competition, the year 2020 heralded the granting of new powers to the Competition Council. As of September 1, our administration became the competent authority to enforce the provisions of the law of 1 June 2021 on relations between companies within the agricultural and food supply chain.
7. In the same vein, the Council has been granted a new competence in the field of consumer protection. Under the terms of the Act of 19 November 2021, the Council will be able to bring actions for an injunction against any act contrary to the provisions of the Act of 24 May 2011 on services in the internal market.
8. The year we have lived through has also been marked by the parliamentary work on the draft law no. 7479 on competition. This law, which transposes the ECN+ Directive into national law, should radically reform national competition law in 2022.
9. Public procurement was also an important issue for the Council. In May, the Council published awareness-raising documents for businesses on its website. These documents address the issue of bid-rigging in public procurement, as well as the subject of joint tenders and joint ventures. They will be presented to interested companies and contracting authorities in the course of 2022.

¹ According to article 7, paragraph 5 of the amended Competition Act of 23 October 2011, « the Council draws an annual report of its activities which records its own important decisions, while taking care to specify if these decisions are final. The report is forwarded to the Minister [in charge of economic affairs] and the Luxembourg Parliament. It will be available to any interested person ».

10. In addition, the Council published in October the first part of its sector inquiry report on competitive tendering in public procurement procedures in the construction sector. It is more important than ever to recognise the importance of effective competition in public procurement.

11. Competition authorities have shown that they can adapt to the crisis without profoundly changing their activity. To fully illustrate this point, you will find details of our activity in the following pages. I hope you enjoy reading them.

Pierre Barthelmé

2. Presentation of the Council

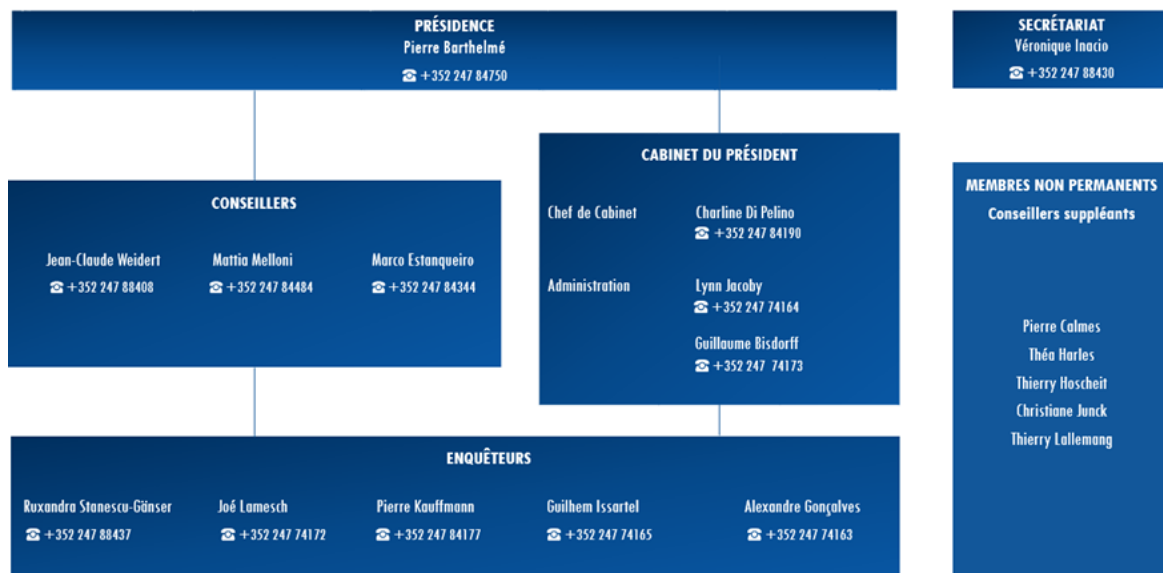
2.1. Organisation

2.1.1. Structure of the Competition Council

12. The Competition Council (hereinafter: the "Council") is an independent administrative authority whose role is to guarantee free competition and ensure the proper functioning of markets. The Council is governed by the amended Competition Act of 23 October 2011 (hereinafter: the "Competition Act").

13. On 31 December 2021, the Council had a total of twenty-two staff members, namely four effective councillors (including a president), five substitute councillors (mainly from the judiciary and called upon to sit on the decision-making body), nine permanent staff members and three non-governmental advisors, who represent the Council within the framework of the *International Competition Network*, namely Marc Barennes, Thierry Reisch and Vivien Terrien.

Figure 1.



Organisation chart of the Competition Council as of 31 December 2021

2.1.2. Role of the effective councillors

14. The President provides leadership to the Council. He convenes and chairs the meetings of the decision-making body, ensures the smooth conduct of discussions, oversees that the Council's decisions are implemented and ensures the proper functioning of the authority. He represents the Council in all judicial and extra-judicial acts.

15. For each case, he appoints an effective councillor responsible for the investigation phase. The designated councillor collects incriminating and exculpatory evidence relating to the practices under investigation.

16. In order to guarantee the principle of separation between the investigation and decision-making phases, the councillor who has investigated a case may not take part in the decision-making process. The same principle prevents the president from taking on investigative missions.

2.1.3. Role of the head of cabinet

17. The head of cabinet is responsible for all kind of internal procedures; he is supervising the exact procedure and execution, providing advice, expertise and decision support in competition matters in order to ensure the correct application of the legal provisions. Furthermore the chief of staff ensure that all internal and external procedures are consistent with the decisions or opinions issued by the Council.

2.1.4. Role of the substitute councillors

18. Substitute councillors shall be called upon to participate in the decision-making process if one effective councillor is absent or unable to assist.

2.1.5. Role of investigators

19. The Council's investigators assist the councillors in their missions.

Fields of competence

Powers granted by the amended Competition Act of 23 October 2011

20. In carrying out its missions, the Council seeks to protect not only the interests of consumers but also the interests of undertakings against anti-competitive behaviour by competitors that may have as their object or effect the restriction of competition.

21. Article 6 of the Competition Act defines the tasks, competences and powers of the Council, which can be summarized as follows:

- the Council applies Articles 3 to 5 of the Competition Act, as well as Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter: "TFEU"), namely the prohibition of cartels and abuses of a dominant position;
- it represents the Grand-Duchy of Luxembourg within the ECN, the European network of competition authorities;
- it drafts opinions on any draft legislative or regulatory text or any other measure relating to competition issues;
- it may carry out an investigation into a particular sector of the economy or a particular type of agreement in different sectors when the development of trade, price rigidity or other circumstances give rise to a presumption that competition may be restricted or distorted;

- it may inform undertakings of the interpretation it intends to give to Articles 3 to 5 in relation to new and unresolved issues by means of informal orientation letters;
- it cooperates with the European Commission as well as the competition authorities of other Member States, in accordance with the provisions of Regulation (EC) n° 1/2003 of 16 December 2002.

22. In 2021, the Council was given additional powers in terms of unfair practices and consumer protection.

Competences allocated by the law of 1 June 2021

23. The Law of 1 June 2021 on business-to-business relationships in the agricultural and food supply chain came into effect on 1 September 2021.

24. In the context of contractual relations between suppliers and purchasers of agricultural and food products, this law prohibits by operation of law certain unfair commercial practices and lists certain practices that may be permitted only if they have been previously agreed on in clear and unambiguous terms.

25. Among the prohibited practices are delayed payments, cancellations of orders at short notice, unilateral changes in contractual terms and conditions, or the unfair passing on of certain costs to the supplier.

26. The Competition Council is the competent authority to enforce these legal prohibitions. In order to investigate unfair commercial practices prohibited by law, the Competition Council may use its investigative powers under the Competition Act. The Council will also be able to impose fines and penalties if a violation of the law is found.

27. Supply agreements concluded before the entry into force of the law will have to apply by 1 June 2022.

28. No cases falling within its scope were handled by the Council in 2021.

Powers granted by the law of 19 November 2021

29. The Law of 19 November 2021 amending the Consumer Code entered into force on 6 December².

30. This law implements Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

² Loi du 19 novembre 2021 portant modification :

1° du Code de la consommation ;

2° de la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments ;

3° de la loi modifiée du 27 juillet 1991 sur les médias électroniques ;

4° de la loi modifiée du 14 août 2000 relative au commerce électronique ;

5° de la loi modifiée du 24 mai 2011 relative aux services dans le marché intérieur ;

6° de la loi modifiée du 23 octobre 2011 relative à la concurrence ;

7° de la loi modifiée du 23 décembre 2016 sur les ventes en soldes et sur trottoir et la publicité trompeuse et comparative ;

en vue de la mise en œuvre du règlement (UE) 2017/2394 du parlement européen et du Conseil du 12 décembre 2017 sur la coopération entre les autorités nationales chargées de veiller à l'application de la législation en matière de protection des consommateurs et abrogeant le règlement (CE) n°2006/2004 :

<https://legilux.public.lu/eli/etat/leg/loi/2021/11/19/a833/jo>.

31. The major contribution of this law is the designation of the Council as the competent authority to bring actions for injunctions against any act contrary to the provisions of the Law of 24 May 2011 on services in the internal market³.

32. This law aimed to put in place a systematic codification of the established case law of the European Court of Justice (ECJ) on services and to create a functional internal market by establishing a legal framework that removes unjustified obstacles to the freedom of establishment of service providers and the free movement of services between Member States.

3. Activities of the Council in 2021

3.1. Litigation activities

33. The decisions adopted by the Council in 2021 are set out hereafter.

34. For confidentiality reasons, this report does not include cases that are still under investigation or at the decision-making stage.

3.1.1. Decision n°2021-C-021 – Amazon

35. On 16 October 2021, the Council closed a case against Amazon Services Europe S.à r.l. without further action.

36. A merchant user of the Amazon Marketplace platform had complained in 2019 of behaviour that he considered constituting an abuse of a dominant position, contrary to Article 5 of the Competition Act. At the end of the investigation, no evidence was found of such a violation of competition law.

37. The complaint was accompanied by a request for interim measures, which the president of the Council had rejected by decision n°2019-MC-01 of 3 July 2019. The decision to reject the request for interim measures was appealed to the Administrative Tribunal on 2 October 2019. By judgment dated 24 March 2021, the Tribunal rejected the appeal and confirmed the decision to reject the request for interim measures adopted by the president of the Council.

3.1.2. Decision n°2021-C-02 – Neuwagen

38. In a decision dated 8 June 2021, the Council closed a case against Volkswagen AG, Skoda Auto Deutschland GmbH, Volkswagen Zentrum Aachen Jacobs Automobile GmbH, Autohaus Lademann GmbH & Co Kg, Autohaus Toepner GmbH & Co Kg, Autohaus Toepner Verwaltungs GmbH and GL Leasing GmbH without further action.

39. Following several reports from Luxembourg residents concerning online brokerage platforms on which they found it difficult to purchase vehicles of brands belonging to the Volkswagen group in Germany, the Council took the matter into its own hands in 2016 and analyzed whether these difficulties could be the result of practices subject to the cartel prohibition.

40. In its decision, the Council analyzed in particular certain rules conditioning the granting of bonuses to dealers by the Volkswagen group, but concluded that there was no infringement.

³ <https://legilux.public.lu/eli/etat/leg/loi/2011/05/24/n1/jo>.

3.1.3. Decision 2021-C-03 – Dennemeyer

41. On 16 December 2021, the Council closed a case against CPA Global Ltd. without further action.

42. The complainant, Dennemeyer S.à r.l., active in the renewal and management of patents in the intellectual property sector, alleged that the acquisition by its competitor, CPA Global Ltd. of a shareholding in Finline A.G., one of its associates, was intended to obtain sensitive and strategic information concerning it.

43. Considering that the acquisition of this stake constituted a violation of the competition rules under Articles 3 and 5 of the Competition Act and Articles 101 and 102 TFEU, Dennemeyer referred the matter to the Competition Council.

44. The Council found that there was no sufficient evidence to conclude that there had been a violation of Articles 3 and 5 of the Competition Act and Articles 101 and 102 TFEU.

45. The deadline to appeal the decision is still running.

3.1.4. Decision 2021-C-04 – Commune d’Hesperange

46. By a decision of 22 December 2021, the Council closed a case against the municipality of Hesperange and the company Publi-Lux S.à r.l. without further action.

47. The complaint denounced alleged anti-competitive behavior in the sector of billboard advertising in the territory of the municipality of Hesperange.

48. The complainant, JC Decaux Luxembourg S.A., alleged two allegedly anti-competitive practices against the commune of Hesperange and the company Publi-Lux S.à r.l., following a contract granting Publi-Lux an exclusive right to advertise on the entire territory of the commune of Hesperange.

49. The complainant accused the commune of Hesperange of having violated national competition law by having granted Publi-Lux an exclusive right to operate advertising facilities on the communal territory without a prior call for competition. This would have put Publi-Lux S.à r.l. in a situation of abuse of a dominant position.

50. The second practice alleged by the complainant concerned an alleged abuse of a dominant position contrary to Article 5 of the Competition Act in that it led to the foreclosure of the billboard advertising market, allegedly committed by Publi-Lux through the conclusion of an exclusive billboard advertising contract with the commune of Hesperange.

51. As regards the plea under Article 106 TFEU, in which the complainant complained that the commune of Hesperange had allegedly granted an exclusive right on the territory of the commune, the Council recalled that it had no jurisdiction in this matter and therefore concluded that it could not rule on such claims.

52. As regards the plea based on Article 5 of the Competition Act, the investigation showed that Publi-Lux was not in a dominant position on the relevant markets. In the absence of a dominant position, an abuse of a dominant position cannot be characterized. Therefore, the Council concluded that there was no violation of Article 5 of the Competition Act.

53. The deadline to appeal the decision is still running.

3.1.5. Decision 2021-C-05 – Luxair Services

54. By decision dated 23 December 2021, the Council closed a case against the company Luxair Services without further action.

55. On the Council’s own initiative, this company, active on the ground handling market at Luxembourg-Findel airport, had been the subject of an investigation under Article 5 of the Competition Act.

56. As no objections were raised against the company and the investigation into whether the company was abusing its dominant position did not reveal the existence of excessive prices for ground handling services, the Council closed the case.

57. The deadline to appeal the decision is still running.

Figure 2. Chart of decisions adopted by the Council between 2007 and 2021 by type of decision

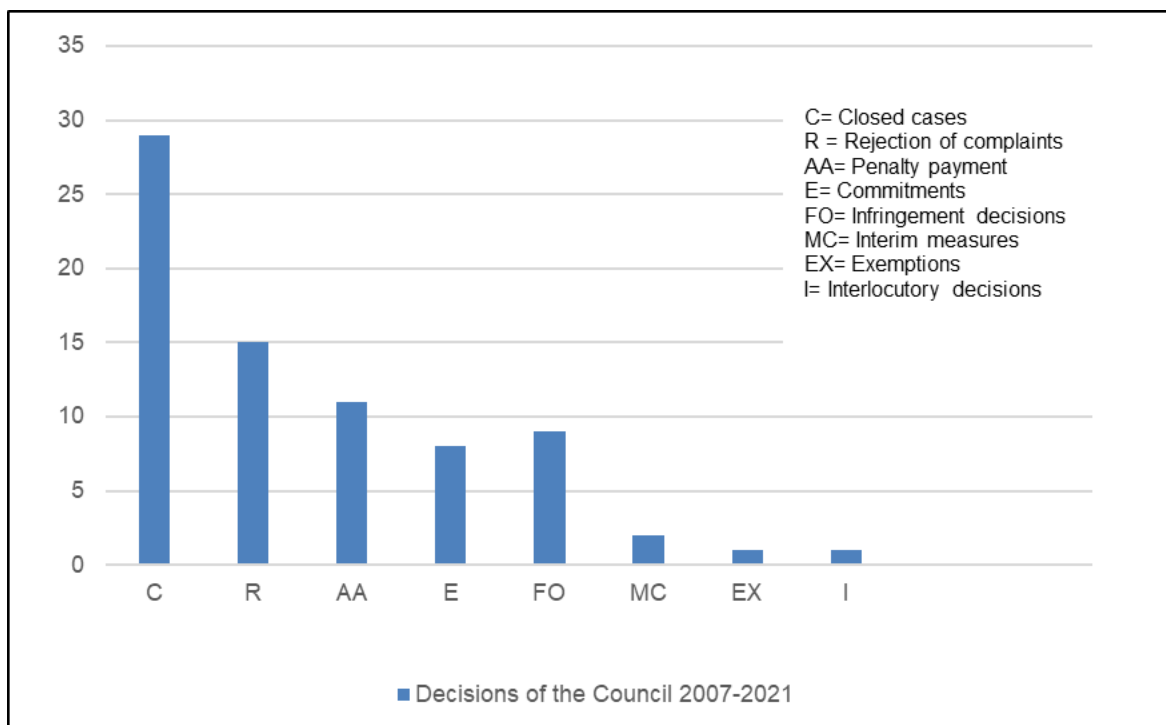
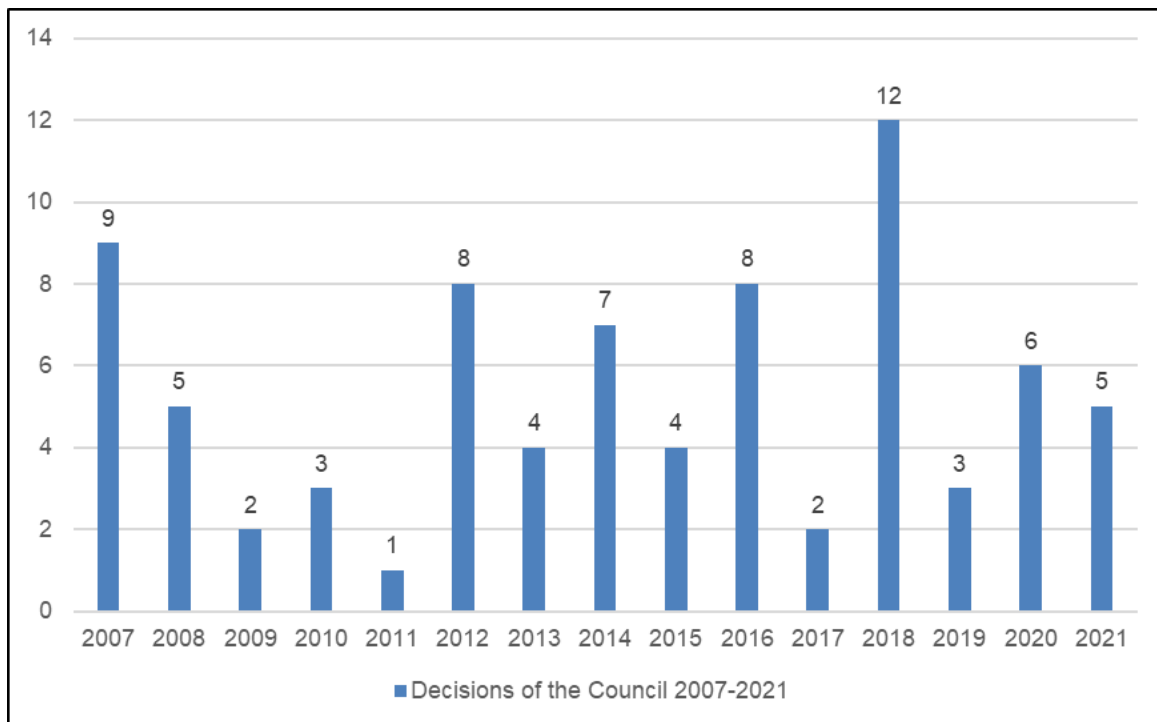


Figure 3. Chart of decisions adopted by the Council between 2007 and 2021 – decision count over time



3.2. Advisory activities

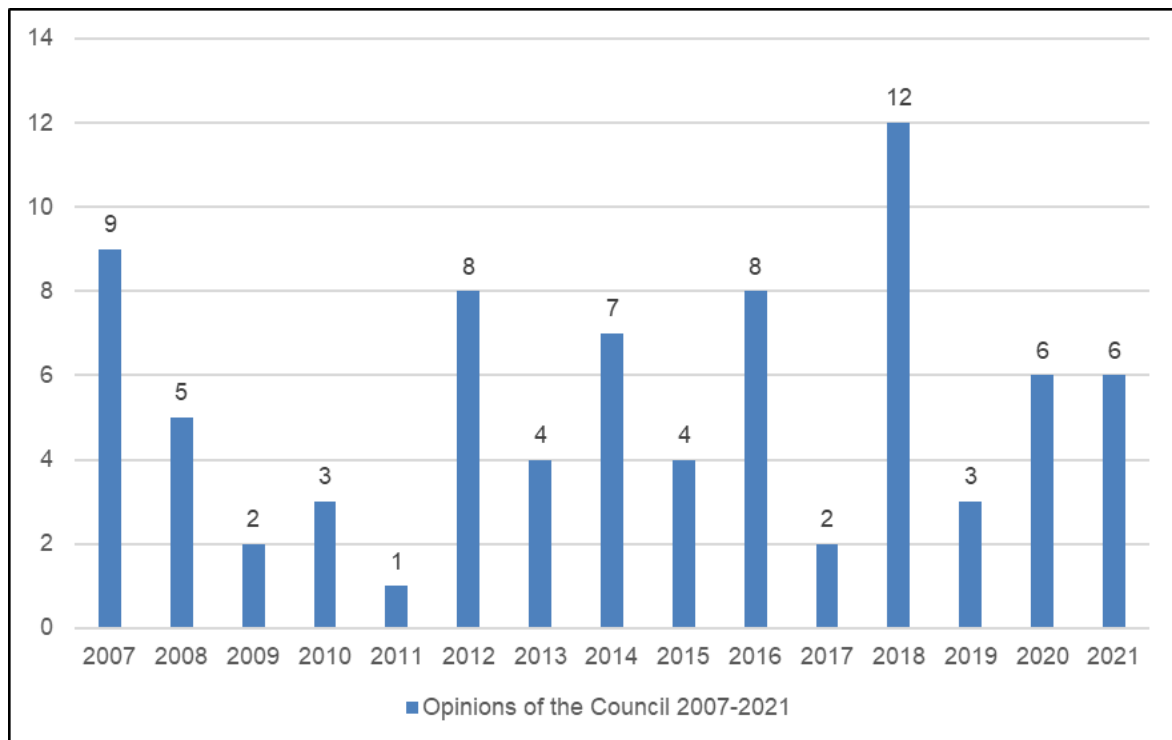
58. According to Article 29 of the Competition Act, the Council has an advisory function. Within the framework of this mission, it may issue an opinion, on its own initiative or at the request of the Minister of the Economy, on any question concerning competition.

59. In 2021, the Council issued the following opinions:

- Complementary opinion 2021-AV-01 on draft law n°7456 implementing Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.
- Opinion 2021-AV-02 on the law n°7659 amending the amended law of 21 March 2012 on waste and establishing a fund for environmental protection.
- Complementary opinion 2021-AV-03 on the law n°7646 on the relations between companies within the agricultural and food supply chain.
- Opinion 2021-AV-04 on the law n°7762 amending the law of July 5, 2016 on the organisation of cab services.
- Opinion 2021-AV-05 on draft law n°7632 transposing Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and amending the amended law of 30 May 2005 on:

- 1) organisation of the Institut Luxembourgeois de Régulation ;
- 2) amending the amended law of 22 June 1963 determining the salary regime of State employees.
- Opinion 2021-AV-06 on the draft law n°7904 amending the Consumer Code for the purpose of transposing Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards a better enforcement and a modernisation of Union consumer protection rules.

Figure 4. Number of opinions issued by the Council between 2007 and 2021

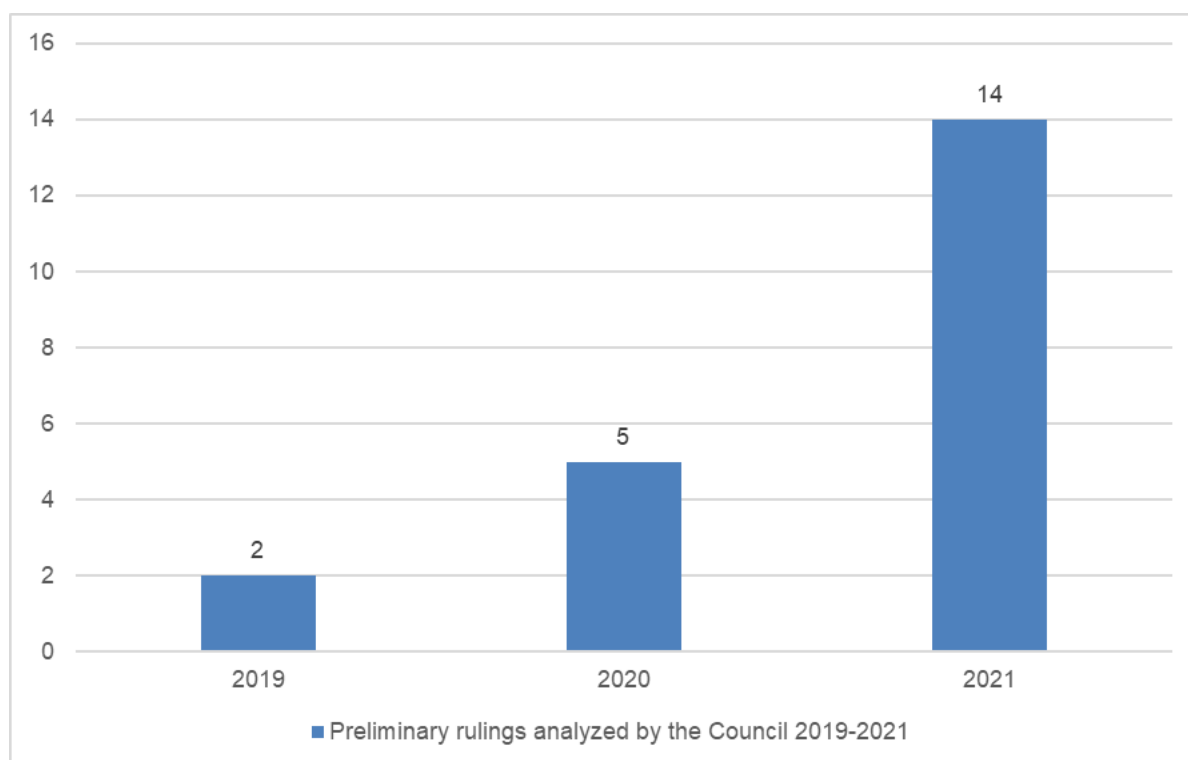


60. During the year 2021, the Council also analyzed several preliminary rulings in cooperation with the Ministry of the Economy and the Ministry of Foreign and European Affairs, which are summarized in the following table:

Table 1.

N° of the preliminary ruling	National Court	Provision(s) concerned
C-721/20	Germany	Article 102 of the TFEU
C-680/20	Italy	Articles 101 and 102 of the TFEU
C-267/20	Spain	Article 101 of the TFEU
C-25/21	Spain	Articles 101 and 102 du TFEU
C-57/21	Czech Republic	Directive 2014/104/EU
C-128/21	Lithuania	Article 101 of the TFEU
C-163/21	Spain	Directive 2014/104/EU
C-182/21	Germany	Article 102 of the TFEU
C-50/21	Spain	Article 107 of the TFEU
C-251/21	Latvia	Articles 107 and 108 of the TFEU
C-312/21	Spain	Article 101 of the TFEU
C-416/21	Germany	Article 101 of the TFEU
C-668/21	Latvia	Articles 107 and 108 of the TFEU
C-680/21	Belgium	Article 101 of the TFEU
C-333/21	Spain	Article 101 of the TFEU

Figure 5. Number of preliminary rulings analyzed by the Council between 2007 and 2021



3.3. Sector inquiries

61. According to Article 30 of the Competition Act, the Council may carry out an investigation into a particular sector of the economy or a particular type of agreements in different sectors when the development of trade, price rigidity or other circumstances give

rise to a presumption that competition may be restricted or distorted. At the end of the investigation, the Council may publish a report setting out its findings.

62. For confidentiality reasons, this report will not refer to ongoing sector enquiries.

3.3.1. Sector inquiry in the construction and public procurement sector

63. On 18 October 2021, the Council published the first part of its conclusions on competitive bidding in public procurement procedures in the construction sector.

64. On 24 September 2020, the Council opened a sectoral investigation in the construction and public procurement sector. The objective of the investigation was twofold:

- to examine whether, upstream, the public procurement markets organised in Luxembourg allow for effective and non-discriminatory competition and whether,
- downstream, the sector in question operates in a competitive manner, particularly with regard to the companies that respond to calls for tender. This is also in line with the awareness campaign launched by the Council to combat concerted bidding⁴.

65. While, overall, the conclusion is that public procurement, which has a considerable weight in the national economy, ensures satisfactory competition, it nevertheless appears that two of the objectives of the new legislation on public procurement do not seem to have been achieved.

66. The first objective concerns administrative simplification in order to facilitate access to public procurement for SMEs. The rules have become more complex and are not conducive to promoting competition in public procurement.

67. The second concerns the promotion of non-financial award criteria. The Council noted that the majority of public works contracts are still awarded on the sole basis of price.

68. Various **recommendations** were therefore made by the Council in the course of its investigation, namely:

- providing a better competitive environment of the engineering offices;
- the drafting of a "*Manual for the awarding of architectural and engineering contracts*" intended for contracting authorities;
- the modification of the Grand Ducal regulation determining the professional ethics of architects and consulting engineers, which contains provisions contrary to the prohibition of cartels and the law on competition;
- the easing of the legislation on variants, synonymous with innovation and creativity, in order to facilitate efficiency gains in public works contracts;
- facilitating access for SMEs to public contracts by making the selection criteria for eligible bids more flexible, in order to facilitate access to public contracts by trade for SMEs (lowering the turnover ceiling or abandoning the criterion of minimum staffing levels);
- the more restrained use of the *Leitfabrikat* in order to avoid giving an advantage to certain producers or suppliers of materials;

⁴ <https://concurrency.public.lu/fr/actualites/2020/lutte-soumissions-concertees.html>.

<https://concurrency.public.lu/fr/actualites/2020/guide-les-entreprises-communes.html>.

- the introduction of a standardized form. This would allow more companies to participate in the procedures, thus strengthening the competition;
- the modernization of the Public Procurement Portal (PMP)’s interface;
- the introduction of criteria other than price for the award of a tender (qualitative criteria);
- improving the control of administrative compliance through the systematic use of the European Single Procurement Document (ESPD) by all contracting authorities during the tender reception phase;
- increasing transparency by the systematic publication of award decisions in open procedures;
- promoting greater awareness on the part of public authorities, developing a more systematic cooperation between contracting authorities and the Council with the “*Commission des soumissions*”, and establishing a systematic access to databases containing tenderers' bids, in order to detect collusive behaviour.

69. **A second part** of this sectoral survey will be devoted to the study of companies’ behavior when they respond to public tenders.

70. In addition to the topic of competition in the public works sector, the survey also looked at certain current issues that are of concern to both companies and political decision-makers and have an impact on the competitiveness of the national economy: inert waste landfills, seconded employees and the recent shortage of construction materials.

4. Cooperation activities

4.1. ECN meetings

71. As every year, the Council has actively participated in the development of European competition policy within the European Competition Network (hereafter: “ECN”). This part of the annual report gives an overview of the discussions in which the Council participated within this network.

72. The work of the ECN within the various horizontal and sectoral expert groups is steered by the meetings of the Directors-General, which are prepared during the plenary meetings.

4.1.1. Directors-General meetings (DG meetings)

73. In 2021, the DG meetings, like the plenary meetings, were held virtually.

4.1.2. Plenary meetings

74. The plenary met virtually on 1 June and 26 October. The activity was concentrated around different projects, the main ones being 1) the Commission Regulation on foreign subsidies that are still not subject to legality control with the internal market rules; 2) the post-Brexit cooperation agreement on competition between the Union and the United Kingdom; and 3) the adoption during the 2nd half of 2022 of the Digital Markets Act (DMA).

4.1.3. “Horizontal” working groups

75. These groups bring together representatives of each national competition authority and the European Commission on specific topics, with the aim of promoting greater consistency in their decision-making practice.

Working group on Cooperation Issues and Due Process

76. This working group, whose purpose is to study the national procedures of each national competition authority (NCA) and to identify areas where potential convergence actions could arise in order to ensure greater effectiveness in the implementation of Articles 101 and 102 TFEU, met virtually on March 18 and 8 September 2021.

77. The activity of this working group for the year 2021 focused mainly on the enforcement coordination in the different Member States, as well as on the methods of recovery of the costs incurred by the authorities when offering mutual assistance to other NCAs.

Working group on Cartels

78. This working group, whose aim is to build and consolidate a genuine European anti-cartel policy within each national competition authority, met virtually twice during the year 2021, in March and November. The main topics of discussion were the settlement procedures that currently exist before the NCAs and the Commission; the updating of leniency programs in certain states and the updating of the cooperation manual.

Working group on Horizontal and abuse

79. The purpose of this working group is to identify specific and topical issues for NCAs regarding horizontal anti-competitive practices and abusive behavior. During the 2021 meetings were held virtually on May 6 and 7, discussions focused on 1) the final report drafted by the sustainability sub-group, of which the Council was a member along with other NCAs (Netherlands, Greece, Germany, France, Finland, Ireland, Hungary) and the Commission, and 2) the new versions of the block exemption regulations for certain horizontal agreements and the Commission's guidelines on horizontal agreements.

Working group on Horizontals

80. This group, whose aim is to identify specific issues related to anti-competitive practices between competitors as well as any amendments to texts on horizontal cooperation, met for the second time since the creation of the ECN in 2004, on May 6 and 7 of last year. Discussions focused on the Commission's Communication on "collective bargaining for solo self-employed", which will probably be adopted in the first half of 2022.

Working group on Digital Investigations and Artificial Intelligence

81. The meeting of this working group was held on 16-17 June 2021. The objective of this working group is to deepen the cooperation of the ECN in digital investigations, including intelligence, analysis of investigative data and digital processes in general.

82. Accordingly, during the meeting, several authorities presented their experiences in using new investigative technologies. The focus was on the detection of cartels in public procurement as well as the use of new methods in inspections.

Working group on Vertical Restraints

83. This working group deals with issues relating to vertical agreements.
84. Vertical agreements are agreements between two or more undertakings operating at different levels of the production or distribution chain
85. In 2021, the working group focused on the revision of the Block Exemption Regulation applicable to vertical agreements (Regulation (EU) No. 33/2010). This regulation exempts vertical agreements that meet certain conditions from the antitrust prohibition of Article 101 TFEU, thereby creating a safe harbor for such agreements. In parallel to the exemption regulation, the working group revised the Commission's guidelines on vertical restraints. These guidelines provide guidance on how to interpret and apply the exemption regulation and how to assess vertical agreements that fall outside the safe harbor of the regulation.
86. The European Commission had launched an in-depth review procedure in October 2018. A proposal for a text was published in July 2021. The aim is to adapt the current rules to address a lack of clarity or gaps in some places, and to bring them in line with market developments that have transformed our economies, such as the growth of e-commerce and online platforms.
87. The Council has actively contributed to this work of revising an important regulatory text, stressing the issue of territorial supply restrictions which are a problem especially for businesses in a small economy such as Luxembourg's, and exchanging with the competition authorities of Belgium and the Netherlands in order to put in place common proposals.
88. The meetings of the working group took place on 26 February, 23 April, 30 June and 29 October 2021.

Working group on Digital Markets

89. The meeting of this working group was held on 27 May 2021. The Digital Economy Think Tank provided an update on ongoing investigations against digital companies and addressed the issue of algorithms deployed on online platforms.

Working group of "Chief Economists"

90. This working group met on 16 November 2021 to discuss certain restrictive practices in relation to sales of Apple products via Amazon platforms, competition law reform in Germany, sustainability agreements, deficiencies in merger control enforcement and certain recent merger cases.

Working group on Mergers

91. During four meetings in 2021, the working group discussed several issues related to merger control in Europe.
92. The discussions were dominated by the Commission's new approach to Article 22 of the EU Merger Regulation. This article allows one or more Member States to ask the European Commission to examine a merger that does not have a European dimension. The Commission wants to encourage the use of this article in order to be able to analyze mergers that do not meet the notification thresholds but which nevertheless represent a risk for competition (a problem sometimes referred to as "killer acquisitions"). In order to limit the legal uncertainty resulting from this new approach, new guidelines were prepared and discussed in the working group.

93. Other issues were proposed procedural changes at the European level and the increasing concentration in certain sectors of the economy. Finally, national competition authorities presented current policy developments as well as discussions on some recent cases.

4.1.4. Working groups on specific sectors

94. The ECN also has various working groups focused on specific economic areas or sectors. In 2021, the Council followed up on the work of the Food, Health and Pharma, Energy and Financial services sector-specific groups.

Food sector

95. Within the framework of the "Food" working group, several NCAs presented the cases and sectoral investigations that they had closed in the agri-food sector during the year (24-25 May and 1-2 December). In particular, the Council presented the Bahlsen cases at the first meeting of the group on 24 and 25 February.

Health and Pharma sector

96. The Health and Pharma working group met three times this year: in March, June and November.

97. These meetings provided an opportunity to discuss recent decisions adopted by the various competition authorities in this area, as well as legislative revisions concerning orphan drugs and biosimilarity. Particular attention was paid to cases of excessive pricing and divisional games.

Financial services sector

98. This group met on 20th October. The European Commission and the NCAs presented cases and sectoral investigations they have closed in the financial sector during the year.

Energy sector

99. The Energy Working Group met via video conference on 30 September 2021. Several NCAs presented the cases and sector investigations they had conducted in the energy sector during the year.

Ad hoc exchanges

100. On 15 April 2021, after the closing of the public consultation, a working group on the Commission's market definition communication met, to identify elements of the communication that should be revised. A first draft text will be published in 2022.

101. The Council participated in the evaluation of the notice on market definition used in European Union competition law. This notice, intended to guide companies and competition authorities, dates from 1997 and does not fully take into account the evolution of best practices and case law in the Union. It will have to be adapted to the economic realities of today's increasingly digital, interconnected and global markets. The working group examined issues such as the use and purpose of substitution tests, digital markets, particularly in the absence of monetary prices, digital "ecosystems", the evaluation of geographic markets in a context of globalization, quantitative techniques and the calculation of market shares.

102. On 7 December, the Council participated in the conference organised by the Dutch Competition Authority on resale price maintenance (RPM), the objective of which was to discuss the different methods used to detect RPM. Besides the Dutch and Luxembourg NCAs, the Belgian NCA also took part in the conference. During the conference, the Council illustrated to the participants the different methods it had used to characterize the infringement in the Bahlsen decisions.

4.2. The Competition Day

103. The Presidency of the Council of the European Union traditionally organises the European Competition Days together with the European Consumer Day. The Council participated on 15 June 2021. Due to the pandemic, the conference was held by video conference. The topics of the conference were the issue of competition in digital ecosystems and the scope of the competitive effects of so-called "killer acquisitions".

4.3. Organisation for Economic Co-operation and Development (OECD)

104. The OECD deals with competition issues through the meetings of the Competition Committee and the Global Forum on Competition.

105. The Competition Committee promotes discussion and analysis of competition policy issues.

106. The OECD Global Forum on Competition annually brings together competition officials from more than 100 authorities and organisations from around the world to discuss key issues and recent trends in competition law. In 2021, the Forum was held on 6-8 December 2021 and the following topics were discussed: trade, development and competition followed by economic analysis and evidence in abuse of dominance cases and ultimately neutrality.

107. In 2021, the Council also participated in online webinars organised by the OECD. On 18 and 19 November, for example, it attended the workshop on "Regulatory barriers to competition in professional services". This was an opportunity to measure the impact on competition of the regulation of regulated professions such as bailiffs and notaries.

4.4. International Competition Network (ICN)

108. At the international level, the Council actively follows the work of the International Competition Network.

109. The ICN brings together various national competition authorities worldwide and serves as a forum for discussion of competition law enforcement issues.

110. Non-governmental agents appointed by the Board participate in meetings and discussions within this network. Marc Barennes, Vivien Terrien and Thierry Reisch were appointed in this capacity for two years.

111. In February 2021, the Council participated in a webinar on compliance programs that companies can put in place to ensure that their activities comply with competition law and on the role that national competition authorities can play in this regard.

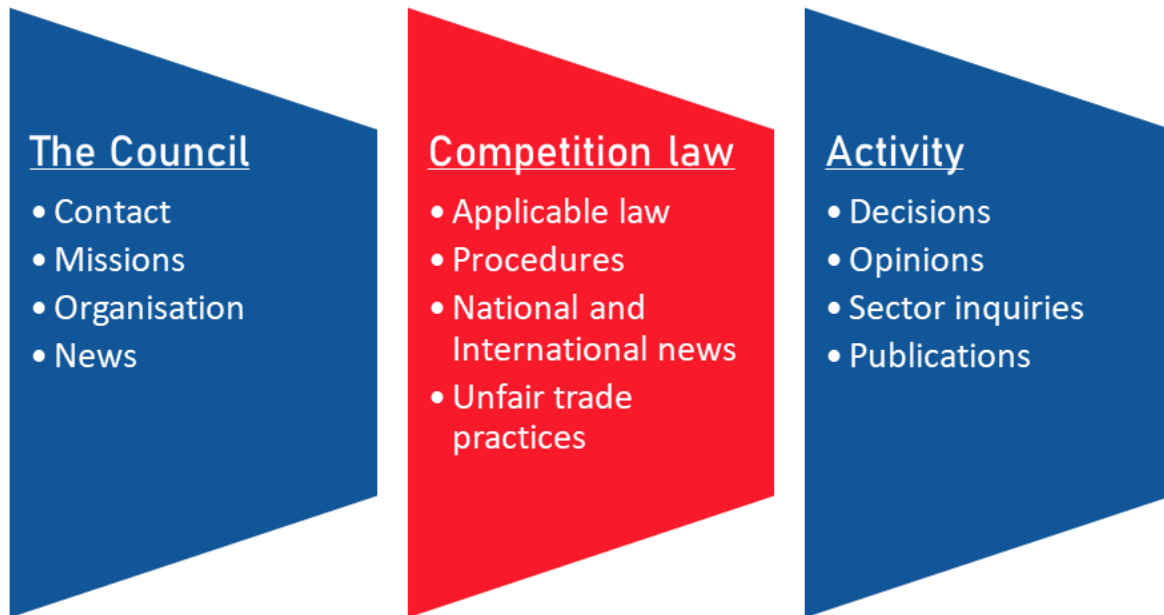
112. From 13 to 15 October 2021, the Hungarian Competition Authority organised the 20th annual conference of the International Competition Network. Among other things, the conference provided an overview of the intersection between competition, consumer and data protection policies and the Hungarian Competition Authority's special project on "Sustainable Development and Competition Law".

5. Awareness-raising and communication actions (advocacy)

5.1. Website

113. The Council's website www.concurrence.lu, a contact point between the administration and its users, provides information on the Council's activities and the most important aspects of competition law in Luxembourg:

Figure 6.



114. In 2021, the Council published on its website documents for businesses and contracting authorities aimed at raising awareness of the potential harm to competition when participating in a tender procedure, of joint bids submitted in the context of a tender and of the issue of joint ventures. In addition to disseminating these documents to the general public, in 2022 the Council will organise information meetings for interested parties.

5.2. Newsletter

115. Throughout the year 2021, the Council continued to send out its newsletter entitled "Competition issues in Luxembourg and abroad".

116. All newsletters issued by the Council are available on its website, under: <https://concurrence.public.lu/fr/support/newsletter.html>.

5.3. Social media

117. Since 2019, the Council is active on Twitter (https://twitter.com/concurrence_lux) and LinkedIn (<https://www.linkedin.com/company/concurrencelux/>).

118. As of 31 December 2021, the Council had over 450 followers on its Twitter account and over 603 followers on its LinkedIn account.

5.4. Midi de la concurrence

119. As part of the "Midi de la concurrence" event series, the Council aims to provide a platform for stakeholders to discuss current competition issues.

120. On 1 July 2021, the Competition Council hosted a competition afternoon dedicated to recent European competition case law.

121. Mattia Melloni, councillor, reviewed five judgments adopted by the Court of Justice of the European Union (CJEU).

122. Among the topics chosen were the statute of limitations, the liability of a subsidiary in the context of a private enforcement and the concepts of essential facilities and restriction by object.

123. The event ended with the spotlight on the US case regarding Facebook's takeover of WhatsApp and Instagram.

6. Learning activities

6.1. Seminars provided by the Council

6.1.1. Seminar at the Institut d'Etudes Politiques de Strasbourg (IEP)

124. This year, the Council continued its cooperation with the IEP of Strasbourg, by providing students of the Master II in European Economic and Regulatory Law with a "Moot Court" type seminar, giving students the opportunity to analyse a case from its investigation to the decision-making phase.

6.1.2. Seminar at the Université de Lorraine de Nancy

125. For several years now, the Council has been offering students of the Master II International and European Business Lawyer programme a course in European competition law.

126. These collaborations are also an opportunity for students to join the Council for an internship. In the course of 2021, the Competition Council thus welcomed seven students from various universities.

6.1.3. President's speech at the University of Luxembourg

127. At the invitation of the University of Luxembourg, the president of the Council spoke on the role and functioning of the Council and on current issues in competition law.

128. An interesting exchange to bring the Council closer to students and to offer them the possibility to apply for internships at the authority.

6.2. Learning courses attended by the Council's staff

6.2.1. Participation in the "AI and Law" training of the "Brussels School of Competition"

129. In order to increase the Council's technical capabilities and its understanding of new technologies, a member of the Council is participating in the "AI and Law" training, organised by the Brussels School of Competition, which runs from the end of November until June 2022.

6.2.2. *Winter Course on European Antitrust Law*

130. In December 2021, several members of the Council participated in the annual conference on European antitrust law organised by the Academy of European Law. The annual conference allows for an interesting exchange of information between the different enforcement authorities of the member states, the judges of the European courts and the lawyers specialized in competition law.

131. This meeting allowed an exchange on several current topics, including the regulation on the Vertical Agreements Block Exemption Regulation (VBER) and the Digital Markets Act (DMA).

6.2.3. *Webinars*

132. Again this year, the Competition Council has carefully followed several webinars.

ERA Webinar "Competition Law Infringements in Public Procurement Markets"

133. Several of the Council's investigators participated in the ERA workshop of 21 April 2021, entitled "Competition Law Infringements in Public Procurement Markets". The purpose of this workshop was to expose best practices in terms of prevention and detection of collusion in public procurement markets

Webinar organised by the Croatian Competition Authority on "Settlements in competition law"

134. The conference, organised on 2 December 2021 by the Croatian Competition Authority, focused on the settlement procedure in competition law.

7. Closing remarks

135. The year 2022 looks as promising as the year 2021.

136. With the introduction of the future reform of the national competition law, the Council should soon become a public institution. The future "Competition Authority" will have increased means to enforce competition rules on the territory of the Grand Duchy more effectively.

137. This new status will also have an impact on the competences of the Council. The law of March 5, 2021 on certain procedures for implementing Regulation (EU) No. 2019/1150 of the European Parliament and of the Council of 20 June 2019 promoting fairness and transparency for business users of online intermediation has indeed granted the future competition authority the power to bring actions for injunctions in the event of a breach of the law.

138. These are promising changes for businesses, consumers and competition as a whole.