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Methodologies for Conducting Market Studies – Note by the European Union

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm.

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1. Introduction

1. EU competition enforcement has two instruments that allow the European Commission ('Commission') to study particular sectors of the economy. 'Market studies' use softer powers to research a particular feature of an industry that may give rise to competition concerns. These market studies may be done by the Commission or contracted out to external consultants. 'Sector inquiries' use strong investigative powers to investigate key sectors of the economy where competition does not appear to be effective or where competition concerns could arise. This note will focus on the second instrument, **sector inquiries**.

2. Sector inquiries are an essential part of the proactive enforcement work of the Commission. They may be initiated when *'the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the common market'*¹. Sector inquiries allow the Commission to investigate key sectors of the economy in order to deepen its understanding of how competition works in the markets and to publish its findings. They therefore help the Commission to identify concrete competition problems and possible infringements, to target its enforcement activities as accurately as possible, and to improve the effectiveness of any remedies that would be imposed in subsequent cases.

3. Moreover, sector inquiries and the Commission's subsequent enforcement activities have proven to be useful in providing input to regulatory actions and advocacy initiatives within and outside the Commission. Last, but by no means least, they allow market participants to become more aware of any behaviour that has the potential to infringe the competition rules and to improve their competition compliance programmes.

4. Sector inquiries are, however, a very specific, resource intensive competition instrument (including for undertakings in the sector that are required to provide information to the Commission). It is therefore essential to target the sectors concerned very carefully and to focus the inquiries on the behaviour of the undertakings concerned and the application of the EU competition rules. Whereas these actions should try to limit the burden placed on the undertakings by limiting to a minimum the requested information, it is unavoidable for the Commission to gather the information it needs quickly and efficiently so that the inquiry is completed within a reasonable time, the findings of the inquiry are reliable and the conclusions robust and balanced. Therefore careful preparation based on a coherent set of criteria is essential.

5. The purpose of sector inquiries pursuant to Article 17 of Regulation 1/2003 (antitrust) or Article 20a of Regulation 659/1999 (state aid) is to achieve a better understanding of how competition functions in a particular sector of the economy or a particular type of agreement or practice across various sectors, with a view to giving effect to Articles 101, 102 and 103 of the Treaty. Sector inquiries are carried out by making use of the Commission's investigative powers. While a sector inquiry is likely to highlight areas where enforcement action may be appropriate, it is not intended that the

¹ Article 17 of Regulation 1/2003.

data gathered in the inquiry will be directly used for such action. Given its scope and broad focus, a sector inquiry is very different from investigations against specific undertakings.

6. As mentioned above, the Commission can also contract for the delivery of market studies that look into a particular feature of an industry that may give rise to competition concerns. Such studies can be launched independently of a sector inquiry (like the recent study on 'Zero-rating practices in broadband markets'²) or in connection with a sector inquiry (like the study that provided a detailed analysis of the wholesale electricity markets of six European Union Member States ('Member States') commissioned during the Energy sector inquiry³). Although it is not a general rule, sector inquiries rely more on descriptive statistics of the collected data and qualitative assessments, while external studies may employ more sophisticated data analysis, like different econometric techniques.

7. This note describes information gathering and methodology that can be applied to conduct sector inquiries. The description is based on the legal framework of sector inquiries by the Commission and draws on the experience from the latest four sector inquiries conducted by the Commission on the basis of Article 17 of Regulation 1/2003 and Article 20a of Regulation 659/1999. These are:

- The Energy sector inquiry (antitrust) that was initiated in 2005 and finalised in January 2007⁴;
- The Pharmaceutical sector inquiry (antitrust) that started in January 2008 and ended in July 2009⁵ (with continued monitoring of patent settlements⁶);
- The Capacity Mechanisms sector inquiry (state aid) that was initiated in April 2015 and finished in November 2016⁷; and
- The E-commerce sector inquiry (antitrust) that was launched in May 2015 and finalised in May 2017⁸.

² Zero-rating practices in broadband markets, June 2017; available at <http://ec.europa.eu/competition/publications/reports/kd0217687enn.pdf>.

³ Structure and performance of six wholesale electricity markets in 2003, 2004 and 2005, April 2007; available at http://ec.europa.eu/competition/sectors/energy/2005_inquiry/.

⁴ Commission Communication of 1 January 2007, COM(2006) 851.

⁵ The full text of the Commission Communication on the final report is available at the website of DG Competition: <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>.

⁶ The reports on the monitoring of patent settlements are available at the website of DG Competition: <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>.

⁷ Report from the Commission, 30 November 2016, COM(2016) 752.

⁸ Report from the Commission, 10 May 2017, COM(2017) 229.

2. Information gathering

2.1. Information gathering powers

2.1.1. Antitrust

8. Article 17(2) states that the Commission's normal powers to investigate antitrust infringements under Regulation 1/2003 (except inspections in private homes) can be used to carry out sector inquiries. The Commission is allowed to request all types of information from companies, including confidential information and business secrets, that it deems necessary to investigate a given sector.

9. All sector inquiries rely intensively on the Commission's power to send information requests. These requests are a tool for the Commission to ask for a complete and systematic set of information, including data that allow to better understand the underlying strategies and to establish industry trends.

10. The so called 'simple' requests for information are sent on the basis of Article 18(2) of Regulation 1/2003. Under this provision, undertakings can be fined for supplying 'incorrect or misleading information' however they cannot be fined if they provide incomplete information or if they do not supply information within the deadline.

11. The Commission can (and does) also request information by way of a formal decision on the basis of Article 18(3) of Regulation 1/2003 and any refusal or delay by a company to provide the information may lead to a sanction imposed by the Commission.

12. In order to facilitate the data collection through questionnaires and the subsequent analysis, and in view of the large numbers of respondents, the Commission often uses web-based questionnaires via a system called 'e-questionnaire' rather than traditional (paper-based) questionnaires.

13. Another instrument available to the Commission in the course of sector inquiries is the possibility to carry out unannounced inspections in business premises, usually conducted simultaneously in a number of companies in different Member States. This investigatory power can be an important tool in a sector inquiry with a view to gathering evidence that might be difficult to collect through other means and is considered necessary to understand the business practices and circumstances investigated.

14. Inspections require a lot of resources from all stakeholders: the Commission, the national competition authorities, the undertakings concerned and their lawyers. The use of inspections in a particular sector inquiry is therefore carefully assessed by the Commission and depends on the circumstances of the individual inquiry and notably on the type of information the Commission needs for its inquiry. It is important to bear in mind that the decisions to launch inspections are subject to the legal standard set out in Article 20 of Regulation 1/2003. Also, the Commission carefully selects the companies which will be subjected to inspections using objective criteria and carrying out a careful selection process.

15. In practice, inspections have so far not often been used in sector inquiries. Of the four above-mentioned inquiries, inspections have only been used in the case of the Pharmaceutical sector inquiry.

2.1.2. State aid

16. The state aid procedure is mostly a bilateral process between the European Commission and Member States (Article 5 of Regulation 2015/1589). Only in specific circumstances, after the initiation of the formal investigation procedure and where the procedure has been ineffective, the Commission may formally request market information from undertakings or associations of undertakings (Article 7 of Regulation 2015/1589). Fines and periodic payments can also be imposed (Article 8 of Regulation 2015/1589).

17. Following the Modernization of the State aid Procedural Regulation, the Commission can organise a sector inquiry into sectors of the economy and into aid instruments (Article 25 of Regulation 2015/1589).

18. Sector inquiries are carried out by making full use of the Commission's investigative powers. This comprises the possibility to make requests for information to Member States or to undertakings. In that context also fines and periodic penalty payments could be imposed.

2.2. Information gathering process

2.2.1. Type of information collected and information sources

19. The type of information that is collected in sector inquiries is very wide ranging. This is not surprising as sector inquiries are meant to discover whether competition may be restricted or distorted in a particular sector of the economy or whether there are general competition concerns with a particular type of agreements across various sectors. In order to uncover such wide-scale issues and to understand them in their context, varied information about a large range stakeholders, as well as general background information needs to be collected.

20. Industry-level information may, for instance, be gathered from academic studies or industry sources such as trade associations, consumer associations or other representatives of consumers. Our experience shows that, where they exist, sectoral regulators are usually a good source of industry data. They can also be helpful to gather information on the legal framework of the sector in particular Member States. European-level regulatory information from other Commission services can also be used. Industry-level information may be collected, for example, on barriers to entry, product and geographic markets, regulatory safeguards, etc.

21. Company-level data is usually gathered from companies themselves or third-party providers, for example (depending on the subject matter of the inquiry) on pricing and volume data, financial statements, sales data, contracts, correspondence, business strategies and considerations, companies' activities and the types of contractual restrictions included in contracts with other market participants, etc.

22. For example, the E-commerce sector inquiry, at its launch, identified that cross-border online trade grew at a considerably lower rate than at national level. For this reason, much of the information gathered focused on cross-border online trade and potential limitations to it.

23. As a public authority, the Commission has the duty to cause as little disruption in normal business activities as possible. The objective of the sector inquiry helps identifying the companies to gather information from and on what practices the information gathering should focus.

2.2.2. Ways of collecting the information

24. Information gathering always starts with desktop research. The Commission reviews existing academic, regulatory and policy papers. This may be followed by obtaining more background information through meeting people with industry knowledge, for example academics, regulators or trade associations.

25. The Commission may also complement this information in the initial stages of the inquiry with information available from our case enforcement and market monitoring experience, as well as the experience of other Commission services.

26. Background research is also employed to identify what information is not available from public sources. More onerous information gathering techniques could then be used to obtain information that is considered necessary in view of the objectives, but is difficult to obtain from public sources. This is typically related to detailed, company-level data.

27. Nevertheless, before turning to industry participants, we also consider obtaining detailed company-level data from third parties. The Commission has agreements with several data providers and sometimes information that is useful for the sector inquiry can be gathered from these providers. Also, the Commission may send requests for information to third parties to obtain such information.

28. Once some relevant public and third-party sources have been explored, the Commission moves into more intensive information gathering. This is done using our usual methods discussed above: inspections and requests for information in antitrust and requests for information to Member States and undertakings in state aid.

29. These methods are applied with the view of avoiding unnecessary disruption to normal business activities. For example, inspections are rarely used (see above) and the Commission only inspects a carefully selected number of companies. Similarly, gathering information through requests for information is sometimes discussed with industry bodies beforehand: questionnaires may be 'road tested' with the industry before being sent out, and the mechanism of sending supplementary clarification questions may be discussed and agreed upon with industry associations. For example, in the e-commerce sector inquiry specific questions were discussed with industry associations for a 'reality check'.

30. The Commission usually (for example, in all four recent sector inquiries) holds meetings with stakeholders and regulators in order to get in-depth qualitative observations on the functioning of the sector. The information obtained through (informal) meetings complements well the information obtained through formal channels.

31. Then there is yet another method of information gathering during sector inquiries: public consultations. Although this is not a legal requirement, as a general rule it may be considered appropriate for the Commission to publish its preliminary conclusions in the form of a preliminary or interim report. A public consultation on the interim report increases the transparency of proceedings and may allow feedback on the Commission's preliminary views from all stakeholders. Stakeholders are invited to send in comments on the content of the preliminary report and to attend a public presentation of the findings (if such event is organised). The public consultation allows the industry, as well as other stakeholders, to comment on the preliminary findings of the Commission, correct any errors, and provide additional facts or context. It also allows stakeholders to propose remedies addressing the shortcomings identified in the preliminary report.

32. Also, prior to the publication of the final report, the Commission may present it to national competition authorities and possibly other authorities for detailed feedback on the findings.

33. The Commission's experience is that the public consultation and the meeting with public authorities in sector inquiries provide very useful additional information.

3. Information analysis

3.1. Choice of methodology

34. In most sector inquiries the Commission relies on data description (for example, calculating response frequencies or averages) and on an extensive qualitative analysis of all the responses.

35. Most of the quantitative results, when questions relate to the prevalence of certain practices, are reported as proportions of respondents who gave a certain reply to a question, often calculated separately for different subcategories of interest defined on the basis of respondent characteristics, such as their Member State, turnover size, their answer to another question, etc. Similarly, if the questions relate to prices, quantities or other quantitative parameters then the results of the inquiry will be based on averages and variances of these replies on the basis of respondent characteristics.

36. Qualitative analysis of further information provided by respondents (for example contracts, responses to open questions and remarks) is used to complement the quantitative results in order to draw conclusions on the basis of the overall evidence.

37. Sometimes more advanced data analysis is also used to complement descriptive data analysis and qualitative assessments in sector inquiries, though this is rather the exception than the rule. This was done, for example, in the Pharma sector inquiry, where in addition to general statistical methods applied to data from the whole sector, there was also a full regression analysis on generic entry, possible delays and other related circumstances.

38. In the Energy sector inquiry more sophisticated statistical methods were used in the accompanying studies that were prepared by external consultants during the inquiry.

39. The choice of analytical methods is influenced by both the objective of the sector inquiry (see the example of the Pharma sector inquiry) and by the time and resource constraints faced by the Commission.

40. Inconsistencies between different types of information are usually dealt with on a case-by-case basis to determine the best approach, leading normally to one of the following outcomes: (i) contradicting results would be reported if they come from different sources (for instance, different views expressed by different market players to the same qualitative questions), (ii) there would be no sufficient basis to report on a given result, or (iii) one result would be reported (based on the criteria of reliability of the source and the plausibility of the conclusions in view of observed market behaviour).

4. Case studies

4.1. Energy sector inquiry

41. The Energy sector inquiry was launched in June 2005. The reason to conduct the inquiry was that, despite the liberalisation of the internal energy market, barriers to free competition remained. Significant rises in gas and electricity wholesale prices that could not be fully explained by higher primary fuel costs and environmental obligations were observed, and there were persistent complaints about entry barriers and limited possibilities to exercise customer choice. During the sector inquiry the scope of the information requested was extended to cover also downstream and balancing markets.

42. The geographic scope the inquiry covered gas and electricity markets in all 25 Member States at the time. The Commission sent over 3 000 requests for information in the summer of 2005, addressed to companies operating both in the electricity and gas markets. The addressees of the sector inquiry were divided into several categories, such as by country of operation, whether the addressee was a customer or a supplier, or a distribution or transmission network operator.

43. Once the Commission collected all the replies to the sector inquiry, it grouped the answers into five main issues (five barriers to a fully functioning internal energy market, distinguished separately for the electricity and gas markets). The further analysis was conducted separately within each of the identified issues. This approach allowed the Commission to later propose structural, regulatory and competition remedies specific to each of the issues identified.

44. In November 2005 the Commission published an Issues Paper setting out areas of possible market malfunctioning. The Preliminary Report was published in February 2006, which included a detailed descriptive analysis undertaken of the data gathered during the sector inquiry (both quantitative and qualitative data). The Commission launched a public consultation on the Preliminary Report.

45. In addition, the Commission contracted, in spring 2006, for two studies, one on the importance of the liquefied natural gas (LNG) for Europe's future gas supplies and the other on the level of concentration and the price information in electricity wholesale markets. The latter study carried out a detailed analysis of the wholesale electricity markets of six Member States in the period between 2003 and 2005. The study analysed data provided by market operators, and analysed hourly data on virtually all power plants in each market. This study analysed hour-by-hour concentration in electricity generation and the effects of a number of market characteristics (interconnectors, long-term contracts and reserves) on concentration in six Member States.

46. The final results of the sector inquiry, including the outcomes of the two external studies and the public consultation on the Preliminary Report were published in January 2007. Prior to the publication, in November 2006, the Commission presented the Final Report to the national competition authorities and energy regulators.

47. The findings of the sector inquiry were that particular problems in the energy sector at the time included high levels of market concentration; vertical integration of supply, generation and infrastructure leading to a lack of equal access to, and insufficient investment in infrastructure; and, possible collusion between incumbent operators to share markets. To tackle these problems, the Commission decided to pursue follow up action in individual cases under the competition rules (such as, for example, the *Eni*

(2010) case⁹ or the *RWE gas foreclosure* (2009) case¹⁰). The findings of the inquiry were also used as an input to improve the regulatory framework for energy liberalisation. The Commission also conducted a number of inspections in companies where these particular issues warranted investigation even before the conclusions of the sector inquiry.

4.2. Pharma sector inquiry

48. The inquiry began in January 2008 to examine the reasons for observed delays in the entry of generic medicines to the market and the apparent decline in innovation as measured by the number of new medicines coming to the market.

49. The geographic scope of the inquiry was the 27 Member States forming part of the European Union at the time. For certain sections, the analysis was limited to a more narrow selection of Member States. The period of inquiry was 2000 to 2007, but for certain sections updates up to June 2008 were requested. It has to be kept in mind that during this period a number of changes occurred (such as the enlargement of the European Union to 25 and later to 27 Member States and significant changes in the pharmaceutical regulatory framework).

50. The Commission selected 43 originator companies and 27 generic companies for in depth analysis. They represented 80 % of the relevant turnover in the European Union and were typically larger scale companies active in more than one Member State.

51. The inquiry concerned prescription medicines for human use. A sample of 219 substances was selected for the in-depth investigation. The selected molecules accounted for nearly 50% of the overall turnover of prescription medicines in the European Union in 2007. Medicines sold over-the-counter, medicines for animal use and medical devices and health services were not subject to the inquiry.

52. In the sector inquiry, the following type of information was, for example, gathered:

- Internal company documents
- Data on patents and patent applications
- Data on litigation and interim measures as well as opposition proceedings
- Data on marketing authorisation and pricing and reimbursement approvals.
- Data on patent licenses

53. As to the means of formal information collection, information requests (approximately 200) and inspections were used. This was also complemented by meetings with stakeholders.

54. Next to descriptive data analysis and qualitative assessments as well as more general descriptive statistical methods, also a full regression analysis on generic entry, possible delays and other related circumstances was undertaken.

55. Preliminary results were published in November 2008 and the Commission presented the preliminary findings at a conference in Brussels. In the ensuing public consultation, more than 70 submissions were received from stakeholders. Consumer associations, health insurers and the generics industry have welcomed the results arguing

⁹ Case COMP/39.315 — ENI

¹⁰ Case COMP/39.402 — RWE Gas Foreclosure

that they confirm their concerns. The originator industry and their advisors have supported the call for the creation of a Community Patent and a specialised litigation system, whilst arguing that generic delay and the decline in innovation is caused by regulatory shortcomings.

56. In the final report, on the basis of a sample of medicines that faced loss of exclusivity in the period 2000-2007 in 17 Member States, the inquiry found that citizens waited more than seven months after patent expiry for cheaper generic medicines, costing them 20% in extra spending.

57. Generic delays matter as generic products are on average 40% cheaper two years after market entry compared to the originator medicines. Competition by generic products thus results in substantially lower prices for consumers. The inquiry showed that originator companies use a variety of instruments to extend the commercial life of their products without generic entry for as long as possible.

58. The inquiry also confirmed a decline of novel medicines reaching the market and pointed to certain company practices that might contribute to this phenomenon.

59. Reacting to the findings, the Commission has applied increased scrutiny under antitrust law to the sector to bring specific cases where appropriate. Following the sector inquiry, the Commission adopted a number of pay for delay decisions against pharmaceutical companies, where the originator company paid off the generic competitor in return for not entering the market. These were the *Lundbeck* (2013)¹¹, *Fentanyl* (2013)¹², and *Servier* (2014)¹³ decisions.

60. The Commission has also carried out further focused monitoring of settlements that may limit the market entry of generic medicines. The 8th patent settlement monitoring exercise (covering the year 2016) is currently in preparation.

4.3. Capacity mechanisms sector inquiry

61. The sector inquiry was launched in April 2015 to examine the financial support that EU Member States grant to electricity producers and consumers to safeguard security of electricity supply (capacity mechanisms). The inquiry was launched because the Commission had concerns that capacity mechanisms might unduly favour particular producers or technologies and may create obstacles to electricity trade across borders, in breach of EU state aid rules.

62. To assess these concerns, the Commission collected information from market participants and public bodies on existing and planned capacity mechanisms in 11 Member States. The Commission sent more than 200 questionnaires to stakeholders of which about two thirds replied. The market participants were active in generation, demand response, supply, trading, or were power exchanges or storage operators.

63. The questions covered the general functioning of the electricity markets, the security of electricity supply situation as well as the experience with existing capacity mechanisms. As this was a market-wide sector inquiry, broader market indicators such as

¹¹ Commission Decision, Case AT.39226 – LUNDBECK, 19 June 2013; C (2013) 3803.

¹² Commission Decision, Case AT.39685 – FENTANYL, 10 December 2013; C (2013) 8870.

¹³ Commission Decision, Case AT.39612 – PERINDOPRIL (SERVIER), 9 July 2014; C (2014) 4955.

reliability standards, adequacy assessments and design features of capacity mechanism were more important than company specific data.

64. In State aid procedures, information can normally be gathered only from Member State authorities. The sector inquiry allowed to directly addressing market stakeholders. Information was essentially based on a standardised electronic questionnaire to public authorities and market stakeholders. There were two types of questionnaires: one for public authorities with a focus on the regulatory and market framework, and a second for market participants with a focus on their investment behaviour and experience on market functioning. There were also numerous interviews with stakeholders, in particular trade associations of the various types of market players e.g. renewables producers, traders or network operators.

65. The information gathered allowed for a description of the market functioning in particular with respect to security of supply e.g. the presence of 'missing money'¹⁴. Moreover, detailed information that was gathered on the various design features of capacity mechanisms e.g. relating to allocation procedures, eligibility criteria and obligations and penalties also allowed for a comparison of the various past, existing or planned capacity mechanisms.

66. In April 2016, the Commission published an interim report and invited the public to comment on it. The findings were also presented to Member State authorities and in conferences to broader audiences. In reply to the public consultation, the Commission received 114 submissions discussing various areas of the interim report.

67. The Capacity mechanism sector inquiry provided input to and complemented the Clean Energy for All Europeans Package¹⁵ presented by the Commission to create modern, better working, more integrated electricity markets in the European Union.

68. The sector inquiry concluded that Member States had often failed to adequately assess the need for a capacity mechanism before introducing one. Furthermore, many Member States had yet to implement market reforms that are indispensable to deliver on security of supply issues. Where a capacity mechanism is necessary, the final report of the inquiry gives practical guidance to Member States on which types of capacity mechanisms may be most suitable to solve the problem identified.

69. Since the inquiry found that a number of existing capacity mechanisms had major shortcomings, the Commission would continue to work with the Member States to bring these schemes in line with state aid rules. In addition, any new plans of Member States to introduce capacity mechanisms would be assessed in light of the insight gained from the sector inquiry.

4.4. E-commerce sector inquiry

70. The e-commerce sector inquiry was launched in May 2015 as part of the Digital Single Market Strategy of the Commission that aims at improving access of citizens and business to goods and services via e-commerce across the European Union. The E-commerce sector inquiry allowed the Commission to obtain an overview of the prevailing

¹⁴ 'Missing money' refers to the idea that prices in the energy market do not fully reflect the value of investment in the resources needed to meet expectations for reliability.

¹⁵ Commission Communication of 30 November 2016, COM(2016) 860.

market trends and gather evidence on competition barriers linked to the growth of e-commerce. It also allowed the Commission to understand the prevalence of certain business practices and their underlying rationale, and ultimately to identify priorities for enforcing the EU competition rules.

71. The sector inquiry covered all 28 Member States and the Commission requested information from a variety of actors in e-commerce markets both in relation to the online sales of consumer goods as well as in relation to the online distribution of digital content. During the inquiry, the Commission has gathered evidence from nearly 1900 companies operating in e-commerce of consumer goods and digital content.

72. The Commission also reviewed existing academic and policy papers and reports and held a number of round tables with academics and meetings with trade associations.

73. It appeared from information available to the Commission prior to the launch of the sector inquiry that cross-border online trade grew at a considerably lower rate than at national level. For this reason, much of the information gathered focused on cross-border online trade and potential limitations to it.

74. The Commission, therefore, asked for a large amount of distribution and license agreements during the sector inquiry to identify (contractual) limitations to cross-border trade and has analysed around 8000 contracts.

75. Given that the E-commerce sector inquiry concerned two distinct areas with different market players and different features (consumer goods and digital content), as well as involving companies active at different levels of the distribution chain, different questionnaires had to be prepared. With respect to consumer goods, questionnaires were sent to retailers, manufacturers, e-commerce platforms (marketplaces and price comparison websites) and payment service providers. The following product categories were covered: clothing, shoes and accessories; consumer electronics (including computer hardware); electrical household appliances; computer games and software; toys and childcare articles; books; CDs, DVDs and Blu-ray discs; cosmetic and healthcare products; sports and outdoor equipment; and house and garden.

76. With respect to digital content, the Commission sent questionnaires to service providers and right holders offering the following types of digital content: films, sports, fiction TV (e.g. drama), children programmes, TV non-fiction (e.g. documentaries), music and news.

77. The sample of respondents was designed to ensure a broad representation of companies and business models active in e-commerce. The Commission used web-based questionnaires to facilitate data collection and the analysis or replies.

78. The information requested ranged from information about companies e-commerce activities to the type of contractual restrictions included in contracts with other market participants. The Commission did not purchase any data from third parties. The Commission asked factual information from companies, such as sales data, contracts, correspondence, business strategies and considerations in relation to online distribution of certain goods and digital content.

79. All available data was pooled together to carry out a quantitative analysis of the prevailing trends in the distribution of goods and digital content online. This was complemented by a qualitative assessment.

80. Quantitative analysis of certain responses was deemed to be the most appropriate methodology to determine the prevalence of certain limitations. Qualitative analysis of responses and further information provided by respondents (e.g. contract, responses to open questions and remarks) was used to complement the quantitative results in order to draw conclusions on the basis of the overall evidence. In particular, qualitative analysis of the responses was the main methodology to evaluate the reasons for the reported limitations and business conducts.

81. Following the publication of the preliminary results, the Commission organised a stakeholder conference and invited interested stakeholders to comment on its preliminary findings within a given deadline. During the public consultation the Commission received 66 responses from stakeholders, the majority of which were business associations but also consumer organisations and ministries replied.

82. As regards to consumer goods, the Commission, in the final report of the inquiry, concluded that

- A large proportion of manufacturers decided over the last ten years to sell their products directly to consumers through their own online retail shops, thereby competing increasingly with their distributors.
- Increased use of selective distribution systems, where the products can only be sold by pre-selected authorised sellers, allows manufacturers to better control their distribution networks, in particular in terms of the quality of distribution but also price.
- Increased use of contractual restrictions to better control product distribution. Depending on the business model and strategy, such restrictions may take various forms, such as pricing restrictions, marketplace (platform) bans, restrictions on the use of price comparison tools and exclusion of pure online players from distribution networks.

83. With respect to digital content, the sector inquiry confirmed that the availability of licences from content copyright holders is essential for digital content providers and a key factor that determines the level of competition in the market. The inquiry also found certain licensing practices that may make it more difficult for new online business models and services to emerge. Finally, one of the key findings of the sector inquiry was that almost 60% of digital content providers who participated in the inquiry have contractually agreed with right holders to 'geo-block'.

84. As a follow up to the E-commerce sector inquiry the Commission will step up enforcement to target the most widespread business practices in e-commerce that negatively affect competition in the EU Single Market and to ensure consistent application of EU competition rules in these markets.