

**Directorate General for Competition
Annual Activity Report 2005**

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Part 1: Policy Results.

1.1. Political achievements.

Competition policy's contribution to the Commission's strategic objectives.

Competition policy takes on a particular importance in the context of the economic and social challenges currently facing the EU. The speed and intensity of globalization and technological change in the world economy create both opportunities and challenges. There is wide consensus and compelling evidence that, subject to some essential ground rules to ensure fair as well as free trade, exposure to international trade stimulates productivity and growth. However, facing global competition requires EU and national policies aimed at greater flexibility for firms to meet the challenges of rapid change, as well as public support to research and development (R&D), education and infrastructure investment – all of this while ensuring that individuals have the skills and training to retain employment in a world where specific jobs may rapidly appear and disappear.

As a response to this common challenge, in July 2005 the Commission tabled a comprehensive plan called the “Community Lisbon Program”, a renewed strategy for growth and jobs. Two key policy objectives of the Lisbon program are extending and deepening the internal market, and ensuring open and competitive markets inside and outside Europe. The program foresees specific actions aimed at completing the internal market, as well as other actions that support and complement national measures, including in particular in the field of State aid policy, in three major areas of activity: **promoting knowledge and innovation for growth, making Europe a more attractive place to invest and work**, and promoting the creation of **more and better jobs**.

Competition policy contributes to Europe's ability to meet the economic and social challenges of rapid change in today's global economy in the following ways:

- By protecting competition in markets, EU competition policy helps ensure that European consumers, whether businesses or individuals, get a high standard and wide choice of goods and services at affordable prices.
- By protecting the competitive process, EU competition policy improves the competitiveness of European business. Rivalry between firms stimulates technological development and innovation, bringing faster growth in the economy. Moreover, ensuring open markets with possibilities for new entrants can attract more investment, generate employment and accelerate growth.
- By targeting international cartels, mergers, and abusive practices of firms of any nationality which harm competition inside the EU, competition policy helps to protect European business and citizens against the potentially harmful aspects of globalization.
- Finally, competition policy provides an appropriate framework in which Member States can give financial support to R&D, innovation, risk capital facilitation, environmental protection, employment, training, and public services without harming competition and jobs in the rest of the Union, while facilitating structural change in the context of globalization.

In order to better contribute to the attainment of the Commission's strategic objectives as defined in the Lisbon Program, DG Competition has defined the following multi-annual objectives:

a) Focusing enforcement actions on the most harmful anti-competitive practices for the European economy. In all enforcement areas, competition policy has been a tool for structural reform. Protecting competition contributes to ensuring that markets operate as efficiently as possible. Open and competitive markets are an important means to foster economic efficiency and competitiveness, innovation and growth. In the long run, they represent the best guarantee of providing consumers with a wide choice of good quality goods and services at competitive prices. This is why it is crucial that the European Commission is able to use its limited resources to fight those practices that have the higher potential for detrimental effects to the European consumers and to the Competitiveness of the European Industry.

b) Enhancing competitiveness within the EU by helping to shape the regulatory framework. Competition policy can make a significant contribution to creating conditions that are favorable to business. State aid rules play an important role to set the right framework within which less and better targeted State aid can be delivered by the Member States, as requested by the European Council. Also, international competition policy helps develop global coherence and the predictability that business needs. In a context of globalization, it is the only effective way to target practices which, in an increasing number of cases, are designed and implemented at world level. Screening new and existing regulatory frameworks in other important policy areas so as to ensure that regulation does not unnecessarily curb competition is also an effective way of promoting competitiveness.

c) Focusing action on key sectors for the internal market and the Lisbon agenda. Public monopolies established to provide telecommunications, post, energy and transport services have not always proved efficient and able to satisfy consumers' needs in the best possible way. Liberalization of these key input services for businesses can contribute to the competitiveness and growth of the European economy. The gradual opening up of these markets to private enterprise allows consumers to benefit from lower prices and new and more efficient services, as shown by the evolution of the telecommunications and air transport sectors, where in the last 10 years prices have steadily fallen while the number of providers has increased.

DG Competition's accomplishments in 2005.

2005 marked the first full year of the Barroso Commission and, as such, it was both a period of consolidation of the work begun in previous years, and of ground-breaking new achievements.

2005 saw the launching of the **State Aid Action Plan (SAAP)**, a far-reaching reform package designed to deliver more focused State aid rules, in order to promote less and better-targeted aid in the areas of, for example, research and development, innovation and risk capital, but also in the area of social and economic cohesion, environmental protection, culture or services of general economic interest.. The ultimate goal of the SAAP is to offer more predictability in the control of State aid, better economic results and governance. State aid control also saw a significant increase of workload in case-handling activities, with 615 new cases registered in

2005 (13% increase compared to previous year), 390 decisions taken (14% increase) and 279 pending cases (without complaints, 6% increase).

As far as enforcement goes, in 2005 DG COMP gave priority to **detecting, dismantling and sanctioning cartels**, the most pernicious form of anti-competitive behaviour: Cartels artificially raise the price of goods and services, reduce supply and hamper innovation (so that consumers end up paying more for less quality), and can significantly increase the input costs for European businesses. The success of the Commission's leniency program, which has led to an increasing number of cartel investigations, is an encouraging sign of our policy's effectiveness. In 2005 the Commission adopted 5 decisions against cartels; the fines imposed totalled 683,029,000 Euros. In order to re-enforce our cartel-fighting capabilities, in 2005 a dedicated cartels Directorate was created in DG COMP, a measure that was welcomed by the OECD in its peer review report, "Competition Law and Policy in the European Community"¹.

Besides the fight against cartels, DG COMP's antitrust enforcement activity was marked by our increasing focus on addressing cases which involve **practices most harmful to consumers**. By way of example, on the basis of a thorough investigation by DG COMP, the Commission sanctioned Astra-Zeneca for misusing the patent system to delay market entry of generic drugs competing with its block-buster product Losec. Apart from formal infringement proceedings, use was also made of the new possibility offered by Regulation 1/2003 to obtain binding commitments by undertakings with a view to solving competition issues. This was also the case, for example, in relation to Coca-Cola's commercial policy.

A milestone in the implementation of Regulation 1/2003 was the launching of the first two **sector inquiries** pursuant to Article 17: one in the financial services sector and one in the energy sector (gas and electricity), both of them key for the achievement of the Lisbon objectives. With these sector inquiries, the Commission delivered on its commitment to more pro-active and economics-based approach to enforcement. The Commission will use the results of these inquiries to determine if and what actions are necessary in these sectors to ensure the proper functioning of the internal market. Analyzing the results of these sectoral inquiries and giving them the appropriate follow-up will be major tasks for DG COMP in 2006 and beyond.

In the field of **mergers**, the enforcement activity in 2005 increased, due to the current general upward trend in merger and acquisition activity. There were 313 notified merger cases, which represented an increase of 25% compared to 2004. Particular attention was paid to mergers which might impede the achievement of EU liberalization objectives. The Commission has recently had significant successes in cases in the field of competition before the Court, for example with the recent judgment confirming our assessment of the proposed merger of EDP/GDP.

Enhancing the effectiveness of the EC competition rules was a major aim of Regulation 1/2003, one that can only be achieved by ensuring the proper functioning of the **European Competition Network (ECN)**, which brings together the Commission and the National Competition Authorities (NCAs) of the Member States. Its main aim is to ensure the coherent and consistent application of the EC's competition rules in the enlarged EU. In that context, the Commission was informed, pursuant to Article 11(4) of Regulation 1/2003, of almost 80 cases where an NCA envisaged adopting a decision pursuant to Article 81 and/or 82. In

¹ OECD, 2005, p. 44.

addition, DG COMP cooperated with NCAs on a range of other cases (outside the context of Article 11(4)).

DG COMP plays, in coordination with DG INFSO, an important role in the implementation of the **regulatory framework for electronic communications** adopted by the Commission in 2002, which builds on principles of EU competition law. Under that framework, DG COMP is co-responsible for reviewing notifications by national regulatory authorities of regulatory measures for electronic communications markets. In 2005, DG COMP has thus dealt with 181 such notifications (almost twice the corresponding figure for 2004: 95). Decisions adopted by the Commission on such notifications have also nearly doubled in 2005 compared to 2004, going from 64 to 117.

In 2005, special attention was given to ensuring the **effective implementation of Commission decisions** in the competition field, as shown by the opening of formal proceedings for non-compliance in the Microsoft case (December 2005). In the State aid area, too, the amount of illegal and incompatible State aid to be recovered on the basis of decisions adopted between 2000 and mid-2005 has been reduced: of the €9.4 billion total, some €7.9 billion had been effectively recovered by the end of June 2005.

Besides the SAAP, DG COMP made important progress on its ambitious **legislative review** process in competition policy, which aims at extending competition enforcement to both enhance the effectiveness of the EC's competition rules and promote competitiveness. The adoption of the discussion paper on the application of Article 82 to exclusionary abuses and the Green Paper on damages claims will contribute to a strengthened competition culture in the EU. As a further example, the Commission proposed to repeal the block exemption of liner conferences from the EU competition rules' ban on restrictive business practices. Repealing the exemption will benefit EU exporters by lowering transport prices while maintaining reliable services, thus enhancing the competitiveness of the EU industry.

Finally, DG COMP also invested considerable resources in 2005 in support of **better regulation** initiatives. This included in particular the screening of new initiatives by the Commission to assess their impact on competition as well as competition advocacy *vis à vis* Member States. Together with our own policy development work, these actions contributed to improving the effectiveness of competition rules and to provide transparency and predictability to the business community and consumers.

All in all, 2005 was a year of important progress both in terms of **consolidation** of the reformed competition regime for anti-trust and mergers, and in the **far-reaching reform** of the State aid area. 2005 also brought important advances in the implementation of a more **impact-oriented, economics-based approach** to competition problems across existing instruments. Finally, in 2005 DG COMP launched important new projects – most notably the sector inquiries – whose results will lead to new initiatives and/or enforcement actions in the years to come. These will benefit EU consumers, whether individuals or businesses, and contribute to the competitiveness of the EU.

1.2 The year 2005 in figures and significant achievements.

In 2005, the Commission adopted important decisions in the anti-trust field, decisions which had a direct positive impact on European businesses and consumers. Apart from the AstraZeneca case (see 1.1 above), the Commission adopted a decision imposing a fine of 49.5 million Euros on Peugeot Automobile SA for having obstructed exports of new cars from The Netherlands to consumers living in other Member States. This decision confirmed the Commission's determination to prevent market segmentation and to ensure that consumers enjoy the freedom to buy the car of their choice anywhere in the EU, thus enhancing consumer welfare. As shown by recent Car Price Reports published by DG Competition every semester, pre-tax retail prices of cars are steadily converging across the EU.

In another major case, in December 2005 the Commission issued a Statement of Objections against Microsoft for its failure to comply with certain of its obligations under a previous Commission decision of March 2004 which had found Microsoft to have infringed the EC Treaty rules on abuse of a dominant position (Article 82) by leveraging its near-monopoly in the market for PC-operating systems onto the markets for work-group-server operating systems and for media players. This latest decision aims at making Microsoft comply with the commitments it had made to disclose complete and accurate interface documentation to allow non-Microsoft work-group servers to achieve full interoperability with Windows PCs and servers. By enforcing its decision, the Commission contributes to a larger choice of products for businesses and consumers in the EU, and thus to consumer welfare.

In the area of cartel enforcement, the level of fines imposed reached an amount of more than **680 million Euros** in 2005. These fines reflect the Commission policy of deterrence, taking into account several elements amongst which the impact on the market. The fines reflect to some extent the cost to consumers of a cartel going unsanctioned. In 2005, DG COMP created a dedicated cartels Directorate in order to re-enforce its cartel-fighting capabilities.

Merger control activity, which is a powerful tool to prevent the appearance of anti-competitive structures or behaviour, was also up in 2005: there were **313** notified cases, an increase of 25% compared to 2004. The number of cases notified is also an indicator of the effectiveness of the new de-centralized system, as more firms choose to have a planned merger reviewed by the Commission instead of notifying it to three or more national authorities. In this way, the Commission's action contributes to a better business climate and enhances the effectiveness of measures at EU level.

In the field of State aid control, the number of new cases has continued to increase, with **615** registered in 2005 (a 13% increase compared to the previous year), **390** decisions taken (up 14%) and **279** pending cases (without complaints, 6% increase). These numbers are an indicator of the administrative burden on the Commission in the area of State aid control, and confirm the priority given to the reform of the Community's State aid rules, as foreseen in the State Aid Action Plan (SAAP) adopted by the Commission in 2005.

As regards illegal and incompatible State aid to be recovered, which is a reflection of the extent of competition distortion, the total amount of aid to be recovered on the basis of decisions adopted between 2000 and mid-2005 is **€9.4 billion**. Of this amount, some **€7.9 billion** had been effectively recovered by the end of June 2005, which indicates the effectiveness of the Commission's enforcement action.

After the considerable fall in the level of aid at the end of the 1990s, the underlying trend over the last five years has been stable rather than downward, at around 0.6% of EU-25 GDP². The vast majority of Member States do, however, appear to be shifting the emphasis from supporting individual companies or sectors towards tackling horizontal objectives. It has to be stressed that, while the Commission defines the frames for aid compatibility, it is the Member States who decide about the size of their State aid budgets.

Member States have continued to re-direct aid towards horizontal objectives. Over the period 2000-2002 and 2002-2004, the share of total aid for horizontal objectives increased by 4 percentage points, largely as the result of significant increases in aid for the environment and energy saving (+6 points), as well as a reduction in sectoral aid for some Member States. By 2004, the share of horizontal aid had risen to **76%** of the total amount of aid (excluding agriculture, fisheries and transport). The four main horizontal objectives were environment and energy saving (25% of total aid), regional economic development (18%), research and development (12%) and small and medium-sized enterprises (12%). The remaining 24% was aid directed at specific sectors (mainly coal), including aid to rescue and restructure ailing firms.

The number of notifications of regulatory measures for electronic communications markets, which national regulatory authorities are obliged to notify to the Commission under Article 7 of the framework Directive, has almost doubled between 2004 and 2005: from **95** to **181**. Decisions in this sector have also nearly doubled in the same period, going from **64** to **117**. These numbers are an indicator of the importance of competition cases in recently liberalized sectors like telecommunications, and confirm the importance of competition enforcement for the achievement of the Lisbon objectives.

DG COMP also streamlined its internal tools and rules and defined how best to allocate appropriate resources to investigating well substantiated complaints that concern serious competition problems on the one hand, while limiting resource investment for the handling of complaints that are not an enforcement priority on the other hand. The priority-setting goes hand in hand with the policy of rejecting non-priority complaints for lack of Community interest.

Requests for access to documents have increased by more than **90%** in the last three years: from 212 in 2003 to 414 in 2004 and **402** in 2005. These increases indicate greater interest in ongoing cases from third parties, as well as a growing tendency to use Regulation 1049 in order to obtain access to the file. As a consequence of the CFI's case law, the administrative burden of dealing with these requests, which in many cases requires a document-per-document analysis, has increased. Each such request implies complex operations in order for DG COMP staff to adequately handle documents, in order to ensure compliance with data protection rules and respect of parties' right of defense.

Approximately 40 new cases have been brought before the European Courts in 2005. The Commission has recently had significant successes in CFI/ECJ cases in the field of competition, for example with recent judgments confirming our assessment of the proposed merger of EDP/GDP and the GE/Honeywell merger, upholding our cartel decisions in the Belgian Brewers and SAS/Maersk cases, or rejecting an appeal against a Commission decision concerning a large fiscal State aid scheme favoring Italian banks. These decisions

² For details on methodology used for establishing this indicator, please refer to the "State aid scoreboard. Autumn 2005 update", COM(2005) 624 final.

confirm the quality of the legal and economic assessment underlying our work, and bolster the Commission's credibility.

DG COMP also made great efforts to provide the European Parliament (in particular the Economic and Monetary Affairs Committee) with regularly updated information on pending competition cases in the public domain, as well as on important policy initiatives of a non-legislative nature, such as the State Aid Action Plan or the Regional Aid Guidelines. These two initiatives were, together with the Annual Report on Competition Policy 2004, the subject of Parliamentary resolutions in 2005. These documents have been subsequently discussed with the responsible Committees and, to the extent possible, Parliament's comments have been taken into account.

DG COMP also prepared and supported regular appearances of Commissioner Kroes and the Director General before the European Parliament during 2005 (mainly before the Economic and Monetary Affairs Committee, but also before the Regional Development Committee and the Legal Affairs Committee).

DG COMP has also been processing an increasing number of Parliamentary Questions: In 2005, we replied to 383 written questions (up from 300 in 2004, an increase of 28%), of which 107 as the leading DG, and to 54 oral questions (negligible change from 2004), of which 18 as the leading DG. Petitions were up from 28 in 2004 to 56 in 2005, a 100% increase.

Finally, it should also be mentioned that DG COMP is an active member of the Competitiveness Group of Commissioners and the Lisbon Group of Commissioners.

1.3. Policy Results per ABB activity.

Given the nature of the present report and in order to avoid unnecessary duplications, for detailed information on specific cases or instruments, please see the annual “Report on Competition Policy”.

1.3.1 “Anti-trust, mergers, liberalization and cartels.”

As regards the objective to “**Concentrate on enforcement actions that have a high impact in terms of safeguarding/restoring effective competition within the EU**”, DG COMP was able to achieve important successes:

a) Review of the leniency notice, including an Annex on procedures for handling corporate statements.

The procedure for handling corporate statements was prepared in 2005 and went into Inter-service Consultation. The document is now on our web-site; a public consultation is being conducted until 13 March 2006.

b) Methodology to launch *ex officio* cartel investigations.

A working group was set up to develop criteria enabling DG COMP to detect and investigate cartels independently from immunity applications. The first step was industrial analysis, focusing on catching all potential collusive situations, to which a scoring system was given. The methodology was then applied to a closed cartel case. The critical event analysis was then built up to test the hypothesis of collusive behaviour against the presumption of functioning competition. Two progress reports were presented to senior management in 2005, one in July and the other in November. The final report will be prepared for end March 2006.

c) Statements of objections and decisions in cartel cases.

The Commission issued five final decisions relating to cartels in chemical products (monochloroacetic acid and rubber chemicals), agricultural products (Italian raw tobacco), haberdashery (thread) and packaging products (industrial bags), and fined 37 undertakings for a total amount of EUR 683 million (compared to 21 undertakings for a total amount of EUR 390 million in 2004). Statements of Objections were issued in eight cartel cases.

d) Investigation in the pharmaceutical sector.

On 15 June 2005, the Commission adopted a decision (the “Decision”, also mentioned under 1.2 above) fining AstraZeneca AB and AstraZeneca Plc (“AZ”) EUR 60 million for having infringed Article 82 EC and Article 54 EEA, by misusing public procedures and regulations in a number of EEA states with a view to excluding generic firms and parallel traders from competing against AZ’s anti-ulcer product Losec. The fine took into account the fact that some features of the abuses – i.e. misuses of government procedures – could be considered as novel.

e) Investigation in the information industries.

The Commission adopted a new decision against Microsoft in November 2005, concluding that Microsoft had not complied with its obligations in relation to the interoperability remedy of the Commission's March 2004 Decision because it had not supplied complete and accurate inter-operability information to competitors. This Article 24(1) Decision warned that, should Microsoft not comply by 15 December 2005, it would face a daily fine of up to €2 million. Subsequently, on 21 December 2005, the Commission issued a Statement of Objections against Microsoft for its continued failure to supply complete and accurate interoperability information.

The Commission closed its investigation in the optical disc sector (CD-R) after a settlement, favourable to EU consumers, was agreed between the complaint, FIPCOM, and Philips in December 2005 avoiding to engage into formal proceedings as originally expected. The Commission also closed its ex-officio investigation against the European Telecommunication Standardisation Institute (ETSI) in December after the Institute had agreed to change its standard setting rules and make them more transparent in order to avoid the risk of "patent ambushes" by ETSI's members.

The Commission services conducted extensive unannounced inspections at the premises of a number of undertakings in the context of the on-going investigation in the markets of central processing units (CPUs).

f) Investigation in the chemical sector.

During 2005, DG COMP carried out "competition screening" exercises in relation to a number of draft legislative texts in the chemicals sector, such as the planned revision of the Plant Protection Directive 91/414/EEC², which regulates the placement of plant protection products on the market, and the Commission's proposal for a Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals³ ("REACH"), which will provide for registration of some 30,000 already existing chemicals, as well for any future ones.

g) Investigation of restrictive practices and market monitoring activities in the pharmaceutical sector.

In the framework of the *AstraZeneca* (see 1.2 above) and in parallel to it, DG COMP became aware of potentially anticompetitive behavior aimed at excluding or delaying generic competition. These indications resulted in intensified monitoring of competition within the sector of generic medicines. Also, in 2005 the Commission assessed a number of complaints against quota supply systems under Article 82.

h) Investigation of international mobile telecommunications services (voice, SMS, MMS).

The Commission sent in 2005 a statement of objections against restrictive practices in the field of mobile telephony in Germany. On the basis of the hearing results in this case and in another similar case (relating to UK) for which the statement of objections was sent in 2004, the Commission's services started to prepare two draft decisions. The decisions initially

² OJ L 230, 19.8.1991, p. 1.

³ COM(2003) 644 final

expected for the end of the year were delayed because of the complexity of the cases required additional investigation after the hearings.

During 2005, the Commission's services monitored the SMS market in the EU, and also the broadband markets in Germany. The Commission's services initiated also a case on potential horizontal and vertical restrictions in the international mobile voice telecommunications sector.

i) Investigation in the media markets.

The sector inquiry into the sale of sports-content rights to 3G mobile operators, involving more than 300 stakeholders, was accomplished in September 2005. The result of the inquiry was valuable in terms of its impact on the behaviour of market players and of improving our understanding of the way in which markets operate. As a follow-up, it is foreseen to consult with National Competition Authorities during 2006 on specific cases of national dimension where potentially harmful behaviours have been identified. Furthermore, the investigation into joint buying of sports media rights via the European Broadcasting Union continues into 2006 in view of concluding the assessment of any anti-competitive effects derived from the practice concerned.

j) Investigation into impediments to EU wide on-line licensing by competing collecting societies.

The Commission is pursuing two major investigations into impediments to EU-wide licensing of public performance rights for on-line use in two cases where the collecting societies attempt to transpose their traditional national monopolies into the on-line digital world. The Commission will seek to adopt a formal decision in 2006 in one case to establish a precedent prohibiting the use of territorial restrictions in agreements between collecting societies.

k) Investigation into obstacles to parallel trade in the car sector.

In October 2005, the Commission imposed a €49.5 million fine on Peugeot for obstructing, between 1997 and 2003, new car exports from the Netherlands to consumers living in other Member States. By preventing these exports of new cars, the companies committed a very serious violation of the EC Treaty's ban on restrictive business practices (Article 81). This decision, which demonstrated the Commission's determination to use the EC Treaty's competition rules to prevent companies from depriving consumers of the benefits of the Single Market, is also an example of how competition enforcement can have a direct positive impact on consumer welfare, since the car represents the second most expensive item in the household budget.

l) Investigations regarding multi-branding in the car sector as well as artificial entry barriers to the authorized repair network.

The Commission also completed in-depth investigations in two leading cases (BMW and General Motors) addressing new policy issues under the Block Exemption Regulation applicable to the motor vehicles sector (Regulation n° 1400/2002). Remedies were offered by the manufacturers concerned, in the form of changes to their distribution and repair contracts in all Member States with a view to eliminating all obstacles to multi-branding and entry barriers to their after-sale service networks. These cases will provide guidance to industry as regards the interpretation of these sector-specific rules and will help several thousands of

small and medium-sized enterprises involved in car distribution and servicing to improve their competitiveness by creating better opportunities for innovative operations and better return on their investments.

m) Investigation into restrictive agreements in the rough-diamond sector.

On 3 June, the Commission published a notice⁴ pursuant to Article 27(4) of Regulation (EC) No 1/2003 in order to market-test commitments⁵ submitted by *ALROSA* and *De Beers* within the meaning of Article 9(1) of the Regulation. The subject matter of the Commission's investigation pursuant to Articles 81 and 82 EC and to Articles 53 and 54 EEA is a trade agreement between these two companies, which are both active in the mining and supply of rough diamonds. In February 2006, the Commission proceeded to the adoption of a decision pursuant to Article 9(1) of the Regulation, making the commitments binding on *ALROSA* and *De Beers*.

n) Market monitoring activities in the new media markets.

The Commission accomplished a sector inquiry into the sale of sports-content rights to 3G mobile operators in 2005. See the section "Investigation in the media markets".

o) Other output indicators not included in the AMP 2005: consumer goods.

On 22 June, the Commission adopted a commitment decision pursuant to Article 9 of Regulation (EC) No 1/2003, based on Article 82 of the EC Treaty and 54 of the EEA Agreement and addressed to The Coca-Cola Company and its three anchor bottlers, regarding certain business practices in the supply of carbonated soft drinks ("CSDs") in the EU, Norway and Iceland. In response to the preliminary assessment, Coca-Cola submitted commitments which took the identified competition issues into account; in particular, Coca-Cola would refrain from concluding exclusivity agreements save in specific circumstances and from granting growth and target rebates, practices which the Commission considered would make it difficult for third parties to compete on the merits. The Commission decision stated that the commitments offered by Coca-Cola were sufficient to address the competition concerns identified, and made them binding on Coca-Cola until December 31, 2010.

As regards the objective "Use the instruments provided by the new Merger Regulation in order to prevent the anti-competitive effects of mergers and further increase the effectiveness and efficiency of merger control", the following were achieved:

In 2005, there were 313 notified merger cases, which represented an increase of 25% compared to 2004. There were 295 Article 6.1 decisions, of which 15 required commitments, 10 decisions to begin phase-II investigations, and 5 decisions pursuant Article 8. At the close of 2005, there were 17 merger cases pending before the Court.

As to the objective "Focus action on the liberalized network industries and financial services", important progress was achieved in several areas:

a) Energy markets.

⁴ OJ C 136, 3.6.2005, p. 32

⁵ Published on Europa Competition web site:

http://europa.eu.int/comm/competition/antitrust/cases/index/by_nr_76.html#i38_381

In 2005, as part of the Commission's efforts to re-launch the Lisbon Agenda, a **sector inquiry** pursuant to Article 17 of Regulation 1/2003 was launched in the **energy** sector (gas and electricity). Preliminary findings were published in late 2005 and the inquiry will be formally concluded in 2006. Its findings will allow the Commission to decide on the right type of policy mix to solve the competition problems identified, and may lead to specific enforcement actions in 2007.

A particular problem that arose following the opening up of the gas sector to competition in 2005 is foreclosure of the downstream market through long-term gas supply contracts between the traditional suppliers, on the one hand, and distribution companies and industrial and commercial users, on the other hand. Long-term contracts – which may well have been reasonable prior to liberalization – prevent customers from exercising their right to switch to alternative suppliers if they offer better value for money. The Commission and the NCAs and NRAs discussed this issue in the European Competition Network and the Commission is pursuing a case concerning long-term gas supply contracts in the Belgian gas market.

b) Telecommunications and postal markets -- investigations into high-speed internet access.

The Commission's services pursued the investigation in a highly important sector of activity in the electronic communications field: the conditions of access to broadband internet by new entrants. The expected objective of adopting a statement of objections by the end of the year was achieved in practice (adoption envisaged in January 2006) not with standing the high complexity of the case from an economic point of view.

c) Investigations into the conduct of incumbent postal operators in non-reserved markets.

The Commission's services initiated the investigation in the non-reserved markets of incumbent postal operators in 9 Member States. These investigations are still at a preliminary stage. DG COMP follows actively and contributes to DG MARKT's preparatory work in view of the extension of liberalisation in the postal markets after 2009.

d) Examine approximately 120 notifications pursuant to article 7 of Directive 2002/21 EC in the electronic communications industries.

In the electronic communications sector, the Commission received in 2005 181 new notifications by National Regulatory Authorities (NRAs), and closed 117 cases. In 69 cases the Commission made significant comments to the NRA draft measures concerned. The Commission sent three serious-doubts letters in three cases. It withdrew two of them, while in the third case the Commission vetoed the NRA draft measure. DG COMP continued actively contributing to the work of the European Regulators Group (ERG), comprising all EU National Regulatory Authorities, as well as those of the EFTA and the candidate countries in order to promote competition from an ex-ante perspective.

During 2005, 7 Member States infringement cases of non-compliance with the competition Directive in the field of electronic communications markets were closed upon eventual compliance of the Member States concerned. The Commission opened 5 new cases of non-transposition, non-conformity or wrong application of the competition Directive in the field of

electronic communications markets. These infringement procedures are of the utmost importance with regard to the Lisbon Strategy agenda.

e) Investigations into passenger air-travel alliances.

The Commission has progressed significantly in its investigations of two airline alliance cases. In the AuA/SAS case, on 22 September 2005 the Commission published a notice pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 with a concise summary of this case and the main content of the commitments proposed by the parties. In the global Skyteam alliance case, a draft Statement of Objections was finalized at the end of the year.

f) An amended regulation to replace Regulation 1617/93 concerning agreements and concerted practices in the air transport sector.

The Commission continued its work on the revision of the Block Exemption Regulation 1617/93. A further consultation document was published on 2 March 2005. On the basis of responses thereto and further consultation with the industry, the Commission adopted a preliminary draft Block Exemption Regulation on 15 November 2005.

g) Best practices between NCA and Regulators.

Apart from the regular co-operation and exchange of information with National Competition Authorities (NCAs) in the framework of the Rail Transport Competition Network, a meeting was organized by DG COMP in March 2005 with the NCAs; information about cases was exchanged and best practices in competition enforcement were discussed.

h) Sector inquiry into consumer banking and insurance.

The Commission adopted two decisions on 13th June 2005 which launched the sector enquiries into retail banking and business insurance. In line with the agreed plan, the consumer banking enquiries contain several phases covering payment cards, core retail banking services to private individuals and very small companies as well as payments. The final report will be made at the end of 2006.

i) Investigation in the payment cards sector.

During 2005 DG COMP advanced its investigations in three complex cases concerning possible anti-competitive behaviour of card payment networks.

j) Article 82 investigations on cross-border competition in securities trading.

Following an inspection in 2004, after examining the material gathered the Commission decided to close this case without further action. A summary of the findings was published in the Competition Policy Newsletter to inform market participants. Notwithstanding the decision to close the case, some elements of the investigation were useful in allowing DG Competition to set out some preliminary views on market definition and competition issues in the sector.

As regards the objective, “**Helping to shape the regulatory framework to promote competition**”, the following was achieved:

a) Adoption of a Commission Services' Working Paper reviewing the application of the competition and internal market rules to the water sector.

The importance attached to the energy sector inquiry (see above) and the magnitude of this exercise meant that other priorities had to be adjusted. The envisaged Commission Services' Working Paper reviewing the application of the competition and internal market rules to the water sector was therefore postponed.

b) A Commission proposal to the Council for abolishing the block exemption Council Regulation 4056/86 laying down detailed rules for the application of Articles 81 and 82 to the maritime sector.

On 14 December 2005, the Commission adopted a proposal for a Council Regulation repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services. A Commission staff working paper assessing the economic, social and environmental impact of the repeal of Council Regulation 4056/86 is annexed to the legislative proposal.

c) DG Competition will report on progress as regards removing unjustified restrictions governing professional services in the EU, both within Member States' legislation and in the professions' own rules, on the basis of the exercise launched in 2004.

The target was fully accomplished with the adoption of document COM(2005)405 final of 5 September 2005, "Commission communication 'Professional Services - scope for more reform'", and a Commission staff working document entitled, "Progress by Member States in reviewing and eliminating restrictions to competition in the area of professional services". This report brings added value for the Commission's work, especially for the attainment of the Lisbon Strategy's objectives: the initiative aims at modernizing the rules governing professional services with a view to achieving State regulation and self regulation that ensures the attainment of clearly defined public interest objectives with means that are least restrictive of open and competitive markets. This will provide better value for money and wider choice not only for consumers but also for business users, for whom professional services are a major input to their activities.

d) Commission Regulation 823/2000 – Consortia block exemption regulation.

On 20 April 2005, the Commission adopted Regulation (EC) No 611/2005 amending the block exemption regulation for liner shipping consortia (Regulation 823/2000). The amending regulation prolongs the block exemption until 2010 and introduces some minor changes.

e) Rules incorporating competition-oriented principles in the upcoming reforms of several agricultural Common Market Organizations.

The Common Agricultural Policy (CAP) has been in a process of ongoing reform since the early 1990s, with a view to increasing the competitiveness of agriculture by reducing support prices and compensating farmers through direct aid payments. DG COMP has played an active advocacy role in critical reforms of specific agricultural markets. Our participation may be expected to increase in the future, drawing policy conclusions from close monitoring of the

structure of agricultural markets as global competition between exporters of certain products (such as wheat, rice, oilseeds, sugar and livestock) intensifies. Enhanced competition, combined with productivity increases, will generate a further drop in real prices and lead to more efficiencies.

f) Contribution to the revision of the “Crop protection” Directive 91/414 EEC and to the Reach Programme. (See page 10 above.)

1.3.2 Control of State aid.

Regarding the objective, “**Effective enforcement actions in the enlarged EU, with particular focus on the most distortive types of aid**”, the following was achieved:

a) Six decisions applying the new rescue and restructuring guidelines were adopted, as well as 9 applying the old ones.

b) As regards the multi-sectoral framework for regional aid to large investment projects 2002 (MSF 2002), no decision on MSF 2002 notifications was taken in 2005. Only two cases were notified in the first eleven months of 2005, and the only case transferred from 2004 was withdrawn by the Member States shortly before the Commission opened the formal investigation. The decisions on the two 2005 cases were somewhat delayed, in one case since the Member State requested to suspend its examination to allow for more time for discussions, in the other case because the Member State concerned failed to provide relevant and consistent information within appropriate time limits. However, both cases were approved in January 2006. Pre-notification meetings were held for 5 cases in the last three months of 2005, and several notifications for MSF 2002 cases were formally received in December.

As to the multi-sectoral framework for regional aid to large investment projects 1998 (MSF 1998), the Commission took a final negative decision on one case notified under the MSF 1998, for which the formal investigation procedure had been opened in 2003. In two other cases which had already been approved by the Commission in 2000 and 2003, the Commission opened formal proceedings in 2005, in one case, since the initial decision had been annulled by the Court of First Instance, in the other, since the initial decision had been based on erroneous information transmitted by the Member States. The monitoring of decisions taken under the MSF 1998 was continued: from 67 cases notified in 1998 – 2003, 37 are still under monitoring.

c) Investigations into off-shore and inter-group fiscal aid cases.

Most of the cases have now been closed (Gibraltar Exempt Companies, Sociétés à portefeuille Belgique, Hungary Fiscal Aid Scheme in Accession Treaty, Intérêts notionnels Belgique, Capital informel Belgique, Centres de Service Belgique, Centres de Distribution Belgique). Appropriate measures have been launched on Sociétés Holdings et Milliardaires Luxembourg.

d) Finalization by end of 2005 of all the cases relating to transitional measures in the steel and ship building sectors in the new Member States.

Five cases concerning the transitional measures for the steel and shipbuilding sectors in the new Member States have been closed. Monitoring of these transitional measures continues in line with the provisions of the Accession Treaty.

As regards the objective “**Focus State aid control on sectors that are key to the development of the internal market and the competitiveness of the EU economy**”, the following was achieved:

a) Closing all pending stranded-cost cases in the energy sector in the EU by end of 2005.

All pending stranded costs cases (EU 25) were addressed by the end 2005. Result: one closed case and two openings of formal procedure. To support transition to sustainable economic growth, 21 renewable energy and 9 bio-fuels decisions were taken.

b) Adoption of at least three decisions on the financing of postal public service operations.

3 Commission decisions were adopted in this domain, namely: Final decision in the French Banque Postale case (N531/05) and opening of procedure in two Polish cases Poczta Polska, Compensation for SGEI (C21/2005) and Poczta Polska, Aid to investment (C22/2005).

c) Various cases in the field of broadband.

Six final decisions (Broadband aggregated procurement in Scotland, UK; Broadband for Kaernten, AUT; Rural Broadband Access Project, UK; Haut débit en Limousin, FR; Regional Innovative Broadband Support, UK; Broadband in rural and ultra-remote areas, ES) and one decision to open the formal procedure (Broadband development Appingedam, NL) were adopted in 2005 as regards public support to broadband.

d) Adoption of 2 final decisions on other cases of aid to telecommunications companies by end of 2005.

The two envisaged decisions concerned the cases Rescue aid in favour of MobilCom AG, D and Property tax on telecommunication infrastructure, UK. In the former case, following extensive contacts with DG COMP, the authorities modified their position and a final decision was no longer needed. In the latter case, a decision to open procedure was adopted.

e) Preliminary or final decisions in 8 of the open broadcasting cases.

Four final decisions were adopted in 2005 (Redevance radiodiffusion, FR; Spanish national public broadcaster RTVE; RAI Capital increase and other measures, IT; Chaîne française d'information internationale) and three cooperation procedures launched (Article 17: Aid to the German public broadcasters; State aid financing of RTE and TNAG, IRL; Yearly financing of Dutch public broadcasters). The 8th decision (Financing of Portuguese public television, RTP) had to be postponed, but it was adopted in March 2006.

f) Activity on cases not accounted for by the output indicators.

3 decision in the field of Digital terrestrial TV. A final negative decision (DVB-T Berlin-Brandenburg), an opening of procedure (Digital Decoders, IT) and a no objection decision (Digitalisation fund, AUT) were adopted in the year. These cases had been given priority. There were also 24 decisions in the field of aid to audiovisual works. Also, in support of the Lisbon objectives, 20 decisions to approve risk capital schemes were taken in 2005, 59 decisions on aid schemes for Research & Development and 5 decisions on individual cases of Research & Development aid.

As regards the objective, “**Review of EU and national regulatory framework, including in new Member States, to reduce overall aid levels and promoter better targeted aid in the pursuit of the Lisbon objectives**”, the objectives were achieved as planned:

a) Communication on the future of State aid control.

This fundamental document, entitled: “State Aid Action Plan. Less and better targeted state aid: a roadmap for state aid reform 2005-2009” was adopted by the Commission in June 2005 and serves as basis for the revision of state aid rules and practices in the years to come.

b) Review of Regional Aid Guidelines.

On 21 December 2005, the Commission adopted the Regional Aid Guidelines for the period 2007-2013, successfully bringing to end a review exercise started by the Commission decision of April 2003. The new Guidelines include and amend the rules applicable to aid to large investment projects up to the present, laid down in the multi-sectoral framework for regional aid to large investment projects 2002. They also include a set of new rules defining a new type of operating aid for newly created small enterprises within assisted areas.

Simultaneously, the Commission adopted a proposal of appropriate measures pursuant to Article 88(1) of the EC Treaty, aimed at bringing all regional aid systems in Member States in line with the new Guidelines by 1st January 2007. At the same time, the Commission adopted a draft Commission Block Exemption Regulation for transparent regional investment aid. This Regulation is to be formally adopted in 2006, following the consultation procedure established by the Council Enabling Regulation. It will apply until 2013, or the adoption of the envisaged Consolidated Block Exemption Regulation

c) Communication on State aid and Innovation, to review the system of State aid control and identify the need for changes to make it more innovation-friendly.

This communication, which was the first concrete realization of the actions announced in the State Aid Action Plan, was adopted in September 2005. It resulted in a wide public consultation with the stakeholders on the subject.

d) Review of the Communication on risk capital.

The work on the review of this communication started in 2005, but it was necessary to conduct a large consultation of Member States and third parties, notably in the context of the State Aid Action Plan, which did not allow its adoption in 2005. The new communication will be finalized in July 2006.

e) Adoption of a framework on SGEI and an exemption for small-scale services of general interest.

A package of measures providing greater legal certainty to the financing of services of general economic interest was adopted on 13 July 2005, in the form of a Commission Decision on the application of Article 86(2) of the Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, a Community Framework for State Aid in the form of public service compensation and an amendment to the Commission’s Transparency Directive.

f) A draft single consolidated block exemption Regulation.

The work has started and progressed. However, the procedural regulation requires notably two meetings with Member States to whom the drafts must be sent two months in advance, and a publication of the draft to the OJ. Consequently, a final adoption is not possible before mid-2007.

g) Amendment of the Commission Regulation on *de minimis* State aid to take account of inflation.

Work is well-advanced. A first Commission proposal was adopted in March 2006. Final adoption is envisaged for the end of 2006.

h) A review summarising the experience with environmental State aid.

A review summarising the experience with environmental State aid has been done, and will serve as background for the work on the forthcoming revision of the environmental aid guidelines.

i) Establishment of criteria for the treatment of recovery cases .

In 2005, criteria were established for the treatment of recovery decisions regarding insolvent companies and the application of the Deggendorf case-law to recovery cases decided. Further work on recovery is planned for 2006.

j) Finalization by end of 2005 of all cases initially submitted under the *interim* mechanism in the new Member States.

Under the interim procedure, the ten new Member States had the possibility to submit measures between the beginning of 2003 and the date of accession. Aid measures to which the Commission did not raise objections are to be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty from the date of accession. By the end of 2005, the Commission had finalised its preliminary assessment of all measures submitted, thereby bringing to an end the interim procedure for the 10 new Member States. Overall, 559 measures were submitted. From this, the Commission took a preliminary decision on 344 measures (62%) and the remaining 215 measures (38%) were either withdrawn by the new Member States, considered as not applicable after or not entering into effect before accession. From the 344 measures for which there was a preliminary decision, 335 measures (97%) were accepted as existing aid. The Commission decided to open the formal investigation procedure on the remaining 9 measures (3%).

k) Further development of benchmarking of the effectiveness of aid in co-operation with Member States and other services, including the State-aid scoreboard.

The conclusions of various European Councils have invited Member States to consider ways in which the effectiveness of aid measures can be improved, thereby contributing to a reduction of overall aid levels and a redirection to horizontal objectives. Based on a questionnaire addressed to Member States by the Commission, State aid experts from Member States discussed questions and exchanged best practices at the annual multilateral meeting in July 2005. The submissions show that Member States are increasing their efforts to (a) explore alternative instruments before resorting to State aid, (b) assess whether a state aid measure is necessary and appropriate, and (c) establish procedures and practices supporting a

policy of “less and better targeted aid”. The results of this benchmarking exercise have been summarized in the autumn 2005 edition of the scoreboard.

Furthermore, the national reform programmes submitted by Member States to the Commission in the context of re-launching the Lisbon Programme with a particular focus on competitiveness, growth and jobs confirm largely that Member States consider the implications and possible contributions of their national state aid policies to the attainment of the Lisbon objectives. The Commission will continue its efforts of benchmarking the effectiveness of aid in co-operation with the Member States in the context of the State Aid Network.

1.3.3 International cooperation.

Progress was made towards a mandate to start negotiations with the United States on a “Second Generation Agreement” to allow exchanging confidential information necessary to detect and prove serious competition infringements. Further exploratory contacts with the US competition authorities served to identify the problems both sides face in exchanging such information and to explore potential solutions.

A comprehensive report on “effective institutions” for the fight against cartels was completed, published (ISBN 92-894-6737) and submitted to the ICN Annual Conference in Bonn in June 2005.

DG COMP took a leading role in the debates at the OECD Competition Committee, presented 8 written submissions to the competition-related OECD roundtables and participated actively in the peer reviews of the competition policies in Turkey and Switzerland.

As to the objective to “Promote convergence of competition policy instruments across different jurisdictions”, DG COMP chaired the ICN Cartels Working Group throughout the year and produced a draft Mandate of the new ICN Working Group on Unilateral Conduct which was formally adopted at the Steering Group Committee in December. The Mandate will be presented to the Fifth Annual Conference in Capetown in May 2006.

In 2005, the OECD Competition Committee held, for the first time, a peer-review examination of the competition law and policy in the European Community. DG COMP cooperated actively with the OECD Secretariat in this. DG COMP also reviewed the factual accuracy of the review report, which was published in the OECD publications series in January 2006.

In 2005 DG COMP undertook various actions to help China in their process of development of a first comprehensive competition law and a competition authority. Also, contacts between DG COMP and the Russian Competition Agency have been intense after the Action Plan for and EU-Russia CES was agreed in May 2005.

DG COMP was closely involved in the drafting of the competition chapter of the Accession Treaty, including the transitional arrangements for Romania. The Accession Treaty was signed on 25 April 2005. Since then, DG COMP monitors the implementation of the competition *acquis* in both acceding countries. DG COMP also contributed to the autumn progress reports on these countries. It furthermore drafted a monitoring report on progress made by Romania in the field of competition, which was adopted by the Commission in October 2005.

The explanatory screening with both Croatia and Turkey took place on 8 and 9 November 2005. The bilateral screening of the competition *acquis* with Turkey took place on 1 and 2 December 2005; the screening with Croatia took place on 5 and 6 December 2005. DG COMP also contributed to autumn progress reports on these countries. DG COMP provided the competition part of the Commission's Opinion which was presented to the Council in autumn 2005. Based on this opinion, the Former Yugoslav Republic of Macedonia (FYROM) was granted the status of Candidate Country.

1.3.4 Policy, strategy and coordination.

As regards the objective **“Policy development and communication”**, DG COMP continuously shapes and revises its policy so that it corresponds to market realities and contemporary economic and legal thinking. This relates in particular to actions concerning the development of legal instruments and the relationship with important interlocutors for DG COMP. It also includes actions concerning the communication of the Commission's competition policy to the other European institutions and to the broader public in order to increase transparency.

In this context, in 2005 the Commission adopted a Green Paper on Damages Actions for breach of EC antitrust rules, which sets out a number of possible options to facilitate private damages actions. Apart from directly compensating the victims for the damage caused by the illegal activity, damages actions in case of an infringement of Community competition law can also increase deterrence against such infringements and further develop a culture of competition amongst market participants. The Green Paper serves as a consultation document to stimulate debate and facilitate feedback from stakeholders. The Commission is inviting comments on the Green Paper by 21 April 2006.

DG COMP also published a Staff Discussion Paper on the application of Article 82. This document is designed to promote a debate as to how EU markets are best protected from dominant companies' exclusionary conduct, conduct which risks weakening competition on a market. The paper suggests a framework for the continued rigorous enforcement of Article 82, building on the economic analysis carried out in recent cases, and setting out one possible methodology for the assessment of some of the most common abusive practices. The Commission is inviting comments on the present discussion paper by 31 March 2006.

Regarding merger remedies, in 2005, a comprehensive study of the Commission's remedies policy in merger cases was completed and published. The study examines a total of 96 individual remedies in 40 cases spanning a 5-year period. The results of the study will be central to an upcoming review of the Merger Remedies Notice and of the Model Divestiture Commitments and Trustee Mandate.

In December, the Commission adopted a new Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004. This Notice clarifies and updates the existing rules, in order to increase the transparency and efficiency of antitrust and merger procedures. It reflects the Commission's long-standing commitment to guarantee full respect for the rights of defence of companies to whom a Statement of Objections has been notified.

As regards the objective to **“Ensure the good functioning of the enforcement system provided by the new regulation, in particular of and through the European Competition Network (ECN)”**, 2005 was an important year of consolidation.

In 2005, the Commission was informed of some 180 new cases by National Competition Authorities (NCAs). It is on the basis of this information that, if need be, re-allocation discussions take place with a view to ensure the most efficient work-sharing arrangement for a particular case within the ECN. The experiences of the work-sharing within the Network have confirmed that the flexible and pragmatic approach which has been introduced by the Regulation and the Network Notice functions very well in practice.

With a view to ensuring a coherent and consistent application of Articles 81/82 within the ECN, DG COMP dedicated important resources in 2005 to examining envisaged enforcement decisions submitted by NCAs pursuant to Article 11(4) of Regulation 1/2003 in almost 80 cases (some of which involved several successive drafts to be scrutinised). In addition, DG COMP cooperated with NCAs on a range of other cases (outside the context of Article 11(4)). . Again, our experience would clearly indicate that the legal mechanisms foreseen in Regulation 1/2003 as well as the voluntary cooperation mechanisms within the ECN have functioned well in this respect.

During 2005, the ECN also further served as a forum to discuss general policy issues. Four regular ECN Plenary meetings as well as one *ad hoc* ECN meeting on the IATA Block exemption regulation took place in 2005. In addition, thirteen meetings of ECN Working Groups as well as nine meetings of ECN sectoral subgroups were organized. Furthermore, the Directors General of the 25 competition authorities came together for a meeting in 2005.

Cooperation in the ECN relies heavily on IT support; this has been further developed and improved in 2005. Notably, a second version of the common case management system ECN-interactive was operational as of May 2005 and the CIRCA website structures were streamlined and improved.

As regards the application of Articles 81/82 by national courts, the Commission received 57 judgments in 2005 pursuant to Article 15(2), while we issued 6 opinions to national courts and provided information in reply to 3 requests from national judges. 3 requests received in 2005 are still being processed (2 requests for opinion, 1 request for information). Also continuing training and education of national judges in Community competition law is very important so as to ensure the effective and coherent application of those rules. In 2005, the Commission co-financed 12 training projects committing almost EUR 600,000 for the training of national judges from all 25 EU Member States.

In March 2005, DG COMP organized, together with the International Bar Association, a very successful conference on the experiences so far with the new enforcement system. This major event, in which more than 500 delegates participated, was highly appreciated and very beneficial for the image of the Commission and the ECN.

In 2005, DG COMP also continued managing a program for the training of national judges in EU competition law. This program, which has an annual budget of 800,000 Euros, is an important element in the promotion of a common competition culture in the EU. In 2005, DG

COMP co-financed some 12 projects for a total amount of 600,000 Euros. DG COMP currently manages some 20 grant agreements under this program.

As to the objective **“Helping to shape the regulatory framework”**, in 2005, we identified the main discrepancies between national leniency programmes and highlighted their possible negative impact on cartel enforcement. We have reached a consensus with the NCAs on the need to develop a model leniency programme as a basis for soft harmonization. The discussions on the content of the programme have already started within the ECN leniency working group. They are progressing well and should be completed in 2006.

As far as national procedural laws are concerned, 2005 saw a substantial convergence process towards EC rules. DG COMP is stimulating that process by providing support and advice to the Member States engaged in the revision of their laws. DG COMP also provided input to the national reform programmes submitted during the autumn under the Lisbon strategy and to the Commission's Annual Progress Report (APR) evaluating these. The APR, which was adopted on 25 January 2006, strongly emphasizes the need for national reform in the area of competition. DG COMP's contributions in particular focused on the network industries, services and State aid.

Part 2: Management and Internal Control Systems

2.1. Characteristics and nature of the activities.

The mission of the Directorate General for Competition is to enforce the competition rules of the Community Treaties, in order to ensure that competition in the EU market is not distorted, thereby contributing to the welfare of consumers and to the competitiveness of the European economy. The principal instruments available to DG COMP for accomplishing its mission are the enforcement of the competition rules on anti-trust, merger control and control of State aid, as well as developing competition legislation and guidance. The work of DG COMP is essential to the achievement of the EU's strategic objectives as expressed in the "Community Lisbon Program"⁶, because it makes a significant contribution to the efficient functioning of the internal market and promotes the conditions necessary to **stimulate knowledge and innovation**, to **make Europe a more attractive place to invest and work**, and to **create more and better jobs**. The principal instruments available to DG COMP for accomplishing its mission are:

a) The enforcement of competition rules on anti-trust, mergers, State infringements and State aid control. Enforcement of competition rules is the core task of DG COMP, so that case work makes up more than two thirds of our activity. Merger control and individual proceedings against undertakings or Member States having infringed the competition rules allow the prevention or remedy of specific competition problems and have a positive effect for consumers, because effective competition contributes to a larger choice of products and services, lower prices and better quality. Moreover, effective competition creates incentives for business to invest in research and development towards innovation, thus stimulating knowledge and contributing to the creation of more and better jobs. Finally, enforcement actions have a further positive impact in that they act as a deterrent to potential infringers.

b) Sector inquiries and market monitoring. Informal market monitoring and formal sector inquiries launched under Article 17 of Regulation 1/2003 are indispensable instruments to feed the Commission's enforcement activities, especially in sectors characterized by particular complexities. In such cases, only a deep understanding of the functioning and dynamics of the specific market can reveal the existence of competition problems that call for enforcement actions.

c) Policy development. The area of policy development encompasses a range of activities, including in particular the design and review of procedural and substantive competition rules; the provision of internal guidance for the Commission's enforcement activities; the coordination of the actions of competent Member States' authorities; and the external communication of EU competition policy. This activity involves designing competition rules that are based on a sound legal and economic assessment of market realities and practices. It thus allows the Commission to focus on major obstacles to competition at the EU level and reduces the risk that firms or Member States are prevented from engaging in legitimate or efficiency-enhancing behavior. The comprehensive reform of State aid rules begun in 2005 or the review of enforcement practices towards abuses of dominant position, for example, aim to ensure a more sophisticated economic approach, as well as better regulation and more effective enforcement.

⁶ COM(2005) 330 final, of 20 July 2005

d) Competition advocacy. Competition advocacy, as opposed to enforcement, refers to actions aimed at influencing regulatory processes both at EU and national level to ensure better and pro-competitive regulations. Competition advocacy within the European institutions can take different forms, including the participation in the preparation of other DGs' regulatory proposals and cases, public consultations, reports on the state of competition, promotion of best practices, etc.

e) International cooperation. In the framework of enlargement, the main objective of international cooperation is to assist the candidate countries to meet the conditions for EU accession in the competition and especially in the State aid policy area. The result of this activity can be seen in the fact that, by the time of their accession to the EU on 01 May 2004, the ten new Member States had established competition regimes on a level with those of the EU-15. Beyond enlargement, the increasing integration of the world economy makes it essential for the Commission to cooperate with competition authorities outside the EU, in particular to address the rise in multi-jurisdictional mergers and anti-competitive conduct across borders and promote international convergence of competition policy in general. Such convergence is also beneficial to businesses that operate in several jurisdictions.

DG COMP manages a small budget, which in 2005 amounted to 800,000 Euros, dedicated to the training of national judges in EU competition law. The management of this program is concentrated in one Directorate, assisted by the financial cell in the Resources Directorate. DG COMP also manages a studies budget which in 2005 amounted to approximately 2 million Euros. The procedures for calls for tender are carried out by the individual Directorates, assisted by the financial cell. Following the DG's re-organization, and as part of the follow-up to recommendations of the IAC, as of 01 May 2005, the DG re-centralized its financial circuits.

2.2. Management and control systems.

DG COMP has fully incorporated the internal control framework of the Commission into its day-to-day management. Issues relating to financial management and audit reports are discussed twice a year between the Commissioner and the Director General, in application of ICS 21, and the result of these meetings is documented in a report signed by both. Also, an "issues coordinator" function was created in the Directorate for Strategic Planning and Resources, to improve monitoring implementation of audit recommendations and ease reporting.

Moreover, there is a culture of open communication in DG COMP which promotes and facilitates individual responsibility and internal control. Management systematically discusses developments at all levels, in weekly meetings of Directors, house meetings, unit meetings and meetings of Heads of Unit with the Director General, who also regularly addresses staff in notes and/or e-mails on issues of general concern.

In 2005, several actions were undertaken, targeting concrete issues relating to internal control. In January/February 2005, the DG's senior management carried out a self-assessment exercise, which confirmed that we complied with all baseline requirements. In the financial area, as part of the follow-up given to recommendations made by the IAC, the DG's management decided to return to a system of centralized financial circuits, which is more effective in a DG that manages a rather small operational budget (see section 2.1 above). It

was also decided that reports be submitted regularly by authorizing officers by sub-delegation to the Director General. The Director "A" prepares a report on the functions of AOS in the framework of the program for the training of judges, and all concerned Directors report on recovery orders in their area.

Other steps have been taken to minimize risks in this area. In the process of its re-organization, DG COMP revised its system of sub-delegations, reducing the number of Authorizing Officers by Sub-delegation (AOS) significantly. All AOS have followed the necessary courses and signed the respective charters. The list of AOS is updated regularly and the IAC reviews, on an annual basis, a sample of twenty financial transactions selected at random. Segregation-of-duty arrangements are regularly reviewed by the Internal Control Coordinator (ICC).

DG COMP has established a list of sensitive posts and ensured the mobility of staff having occupied management posts in financial areas or having exercised competence as Appointing Authority for over 7 years, as well as for staff having occupied sensitive posts for 5 years. Whenever a derogation to this rule has been requested – as was the case of a senior manager who was close to retirement --, mitigating measures are taken and the case is duly documented.

Given the nature of its work, issues such as ethics and integrity or security of information are quite sensitive and therefore accorded high importance in DG COMP. Special attention is given to promoting a culture of ethics and integrity, and to raising awareness among staff of their obligations with regard to potential conflicts of interest, the adequate handling of information, their dealings with outside entities and former staff members, and their own possible external activities.

As a way of re-enforcing the implementation of both ICS 1 and ICS 14, the DG's ethical code, which summarizes and explains all the relevant rules on ethics and integrity applicable to DG COMP's staff (and members of the Cabinet), was updated in 2005 to more clearly explain the procedure to be followed when dealing with alleged improprieties. In October 2005, the updated version of the ethical code was sent per e-mail to all staff. Acknowledgement of receipt was done by clicking on a button on the screen, and approximately 90% of staff acknowledged reception of the note. DG COMP's Intranet includes a page on ethics and integrity, where all texts are available. The information package for newcomers also includes these rules and a special presentation is made by the resources unit, including both ethics and integrity and security of information. Furthermore, trainees must sign a separate declaration on ethics.

Regarding security of information, an issue which was a critical recommendation of the IAC, in the last months of 2005 work was stepped up so that the DG's security policy could finally be adopted in February 2006. The document, which is still being examined by the Commissioner as this AAR goes out, contains measures to address all the concerns expressed by the IAC in its audit report. DG COMP is therefore in a position to request that the IAS not flag this issue as critical in its future bi-annual reports.

The implementation of the other critical recommendation of the IAC, the establishment of a Business Continuity Plan in the IT area, has not yet been possible due to problems to find the funds necessary to finance such a project. DG COMP is in negotiations with DIGIT and will continue trying to find a solution to this problem in 2006.

Training is an important tool to ensure that staff will know how to properly react in situations of potential conflict of interest, how to handle the sensitive information involved in most cases, or how to follow procedures adequately. DG COMP has a designated training coordinator and has adopted, in 2004 and 2005, its training framework. Staff are constantly encouraged to participate in both in-house and centrally organized training courses. DG COMP has an above-average level of participation of staff in training activities, and in 2005 achieved its stated goal of keeping the level of training at approximately 10 days per official (real average number of days of training per person was 9.9, without including on-the-job training).

As part of the efforts to increase awareness of internal control among managers, and following the self-assessment exercise of early 2005, in July a special information session on internal control in DG COMP was organized for senior and middle managers. Other sessions for all staff were organized during the year.

One of the most important challenges faced by DG COMP is to ensure the quality of the Commission's decisions in its area of competence, especially in view of the growing complexity of cases and the increasing tendency for firms to challenge the Commission's decisions in court. The introduction of scrutiny and peer-review panels for complex cases, a strengthened policy, strategy and coordination function, as well as the recruitment of a Chief Economist and team have all contributed to enhancing the quality of decisions, thus reducing the risks associated with the overturning of a Commission decision. Recent successes in Court (see section 1.2 above) show the effectiveness of these measures. DG COMP has also ensured the allocation of sufficient resources to a pool of 19 paralegals, whose main task is to carry out research and legal assistance tasks in order to allow highly qualified officials to concentrate on the essential aspects of their casework.

In view of the changing nature of our work after the modernization of the Community anti-trust rules, in March 2005 an *ad hoc* group was created to review the working methods in this field, and make recommendations on how to improve them. The work of this group, which included representatives from all areas of the DG and the assistants to the Director General, touched on several issues directly linked to internal control, namely: staff competence and training, supervision, documentation of procedures, mail registration and filing systems, and management information. The resulting report, which was adopted and implemented by the end of 2005, effectively applied ICS 20, as it recorded and corrected several internal control weaknesses in a key area of the DG's work.

As part of the implementation of ICS 11, in 2005 DG COMP carried out a formal risk-assessment exercise in order to identify and properly manage the key risks it is confronted with. The exercise consisted of two parts: risk-identification and definition of risk responses. Based on the assessments made by each Director for his/her area, risks were identified as affecting the whole DG. The risks identified were classified into three categories: risks affecting our enforcement activity, risks affecting the functioning of the DG, and risks affecting our reputation and/or causing harm to third parties. The result of the exercise was a series of recommendations for concrete actions that were included, wherever relevant, in our Annual Management Plan 2006 (the table summarizing the findings of the risk assessment are annexed to the AMP 2006).

Part 3: Reservations and their impact on the declaration.

3.1 Materiality criteria used

DG COMP applies the guidelines provided in the communication COM(2003)28 final, completed by the discussions with the European Court of Auditors and the work done since in the framework of the gap assessment. A deficiency may be presumed to be material (and therefore highlighted in the form of a reservation) if either the following quantitative or qualitative criteria are met:

Quantitative criteria:

The threshold normally retained (COM(2003)28 above mentioned) is 2%, i.e. when the amount of the transaction (in the broad sense) affected by the deficiency represents more than 2% of the budget allocated to the ABB activity of the service concerned. DG COMP manages a very small budget and the number of transactions is limited (see section 2). Therefore, this criterion is not relevant to assess the regularity of its activities.

Qualitative criteria:

- Significant (repetitive) errors detected during the controls or supervision exercises. Different parameters can be considered, such as the frequency of the error in different controls, the financial impact of these errors, etc. Often eligibility errors are handled in this context.
- A significant weakness in one of the control systems: Controls can also detect major system weaknesses for which the financial impact as such is not easy to calculate but which can weaken the supervision procedures of the Commission so that these procedures do not guarantee the reasonable assurance to be provided. These weaknesses indicate potential problems for detecting errors and could concern the non-implementation of one or more internal control standards. The iCAT results can be used to assess this risk. In particular, a failure to identify a risk and or define a mitigating action plan associated with it would constitute an element to be reported.
- A significant reputational risk for the Commission: Here the aspects related to the “context and nature” of an item and matters such as legislative concern or public interest should be dealt with. A deficiency of the DG that affects the reputation of the Commission *vis à vis* its stakeholders and/or the general public should be mentioned.
- An issue which is relevant for the reporting period and is raised by the European Court of Auditors in its published annual reports, specific reports and opinions, or a critical or important issue identified by the Internal Audit Service in its finalized audit reports.

3.2 2005 reservations

In view of the above, no reservations need to be made.

Part 4: Declaration of the Authorizing Officer by Delegation

I, the undersigned, Director General of DG Competition, in my capacity as authorizing officer by delegation:

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, ex-post controls, the work of the internal audit capability, the observations of the Internal Audit Service and the lessons learned from the reports of the Court of Auditors for years prior to the year of this declaration.

Confirm that I am not aware of anything not reported here which could harm the interests of the institution.

Brussels, 30 March 2006.

[signed]
Philip LOWE