

**Directorate General for Competition**  
**Annual Activity Report 2006**

31 March 2006

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## 1. POLICY RESULTS

### 1.1. Level of policy area

DG Competition's mission is to ensure an effective enforcement of EC Competition rules, thereby making an essential contribution to the EU's strategic objectives as expressed in the revised Lisbon agenda. By introducing competition into markets, the conditions are created that promote knowledge and innovation, in turn contributing to the EU's competitiveness and the creation of more and better jobs. By providing transparency and predictability, competition enforcement, guidance and advocacy contribute to making Europe a more attractive place to invest and work.

In 2006, DG COMP's new organisation, prioritisation efforts and working methods showed benefits in terms of delivering results. It is now clear that the new, more effects-based approach introduced in the past three years has significantly improved our enforcement activity, while market monitoring and competition advocacy have proved to be effective ways of making markets work better.

In terms of enforcement activity, 2006 was a very active year. The relevant indicators here are the number of cartel decisions (7, plus 7 statements of objections), of anti-trust non cartel decisions (6, plus 7 statements of objections), of merger notifications (356, an absolute record) and the amount of fines imposed (€2.1 billion, another absolute record). For State Aid, strict control from the Commission kept the overall level of State Aid below 0.6%<sup>1</sup> of the EU-25 GDP, a good result considering the enlargement to 10 new Member States with economies still in transition. The EU is getting closer to meeting the objective of less and better targeted State Aid: in 2006, 84% of the overall amount of aid was directed to actions supported by the Lisbon Strategy (cohesion, employment, environment, training, research and innovation, SMEs).

- **General objective: "To focus enforcement actions on the most harmful anticompetitive practices for the European economy"**

In 2006, the detection and dismantling of cartels was given priority. Certain types of abuses of dominant position (e.g. the Microsoft case) were also vigorously handled in 2006. Finally, DG COMP continued to address the issue of barriers to market entry (special or exclusive rights, State Aid or restrictions to take over of national companies). In State Aid, the enforcement was stepped up towards those aid measures that may lead to the largest misallocation of resources, like aid to ailing firms, investment aid to large enterprises, and aid to companies entrusted with services of general economic interest while having commercial activities at the same time. For aid declared incompatible, DG COMP increased efforts to enforce recovery. Of the €8.7 billion of aid to be recovered under decisions adopted since 2000<sup>2</sup>, some €6.0 billion of aid (and an additional €2.1

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<sup>1</sup> When taking into account State aid under control of DG Competition, i.e. total aid less agriculture, fisheries and transport, this figure stands at 0.42% of EU-25 GDP in 2005.

<sup>2</sup> This refers to the decisions for which the aid amount is known.

billion of recovery interest) had been effectively recovered by 31/12/2006 (compared to € 2.3 billion principal recovered reported in December 2004 and € 6 billion reported in December 2005<sup>3</sup>).

- **General objective: "To enhance competitiveness within the EU by helping to shape the regulatory framework"**

In 2006, DG COMP continued to simplify procedures wherever possible, while providing predictability to business and governments through the preparation of horizontal measures and competition advocacy at both EU and national levels.

- **General objective: "To focus action on key sectors for the internal market and the Lisbon agenda"**

DG COMP's sectoral organisation introduced in 2004 produced obvious results in this respect. We conducted (and finalised in 2007) two ambitious sector inquiries (energy and financial services) which identified serious competition problems and will lead to further enforcement action. Beyond these inquiries, we focussed our activities on areas that are most significant to the EU economy and the consumers (recently liberalised sectors, such as telecommunications or transport, environment or health). As to State Aid control focus on those sectors contributed to safeguarding the benefits of liberalisation and to promoting efficient and effective public services irrespective of whether they are provided by the State or by the market. At the same time, State aid which addressed recognised market failures in areas where aid may contribute to the attainment of the Lisbon objectives and caused limited competition distortion received a speedy treatment. The new rules on R&D and innovation State aid, State aid to risk capital and *de minimis* aid, as well as regional aid bloc exemption regulation have been adopted, making important progress in delivering a framework for "less and better targeted" aid.

*What is the impact of competition policy on EU society?*

The impact of competition policy on the EU competitiveness and consumer welfare is unquestionable. Thanks to a better understanding of how the markets work, a better focus of our enforcement and advocacy activities as well as those of the national competition authorities, competition policy contributed to the Commission's objective to support growth and jobs creation in the EU.

The recent changes in antitrust legislation and our internal working methods increased the effectiveness of the Commission as the European competition enforcement authority. According to a poll by the leading international competition journal, in 2006 our stakeholders considered for the first time the European Commission the best antitrust and merger enforcement authority in the world.

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<sup>3</sup> Total amount recovered (including interest and aid lost in bankruptcy reported in December 2004 was €3.1 billion , and €8.2 billion in December 2005)

General objectives	Results achieved	
	Indicator	Current situation
<b>To focus enforcement actions on the most harmful anticompetitive practices for the European economy</b>	- number of inspections	12 inspection (3 under Art. 20(3) and 9 under Art. 20(4))
	- Cartels decisions and statement of objections	7 +7(statements of objections)
	- Amount of fines in cartels cases	€1.846 billion
	- Decisions and statement of objections in non cartel antitrust cases	6+7 (statements of objections)
	- Amount of fines in other cases	€307.668.000
	- State aid decisions	436
<b>To enhance competitiveness within the EU by helping to shape the regulatory framework</b>	- number of regulatory initiatives at EU level screened from a COMP point of view	some 12 initiatives were screened
	- preparation of documents following consultation on SAAP	Adoption of : - risk capital guidelines - R&D&I guidelines - Regional aid block exemption - De minimis Regulation - Extension of validity of Shipbuilding Framework until 2008
<b>To focus action on key sectors for the internal market and the Lisbon agenda</b>	- Sector enquiries	2 (energy and financial services) sector enquiries almost completed by end of 2006.
	- Less and better targeted State Aid	Below 0,6 % of the EU-25 GDP 84 % of overall aid targeted at horizontal objectives of common interests

## 1.2. Level of the ABB activities

The reader's attention is raised on the fact that DG COMP's ABB structure changed in 2006. The current report uses the current structure. The specific objectives have been redistributed among the new ABB activities accordingly.

1.2.1. Activity "Cartels Antitrust and Liberalisation"

Specific objectives	Results achieved	
	Indicator	Main outputs completed in 2006
<b>Enforcement actions against cartels</b>	- Cartels decisions and statement of objections	7+7 (statement of objections)
	- Amount of fines in cartels cases	€1,846 billion
<b>Enforcement actions against non cartels anticompetitive practices</b>	- Decisions and statement of objections in non cartel antitrust cases	6+7 (statement of objections)
	- Amount of fines in other cases	€307.668.000
<b>Enforcement actions against anticompetitive State behaviour</b>	- Letter of formal notice (LFN)	LFN: 7
		LFN compl: 1
		LFN 228: 1
		LFN 228 compl: 1
	- Reasoned opinions (RO)	RO: 6
		RO 228: 1
		RO compl. 228: 1
- Art 86(3) decisions		
- Saisine	Saisine: 3	
<b>Shaping of regulatory framework</b>	- Completion sector inquiry in the energy sector	financial services sector inquiry completed by the end of 2006
	- Completion sector inquiry in the financial services sector	energy sector inquiry almost completed

In 2006 the Commission adopted 13 decisions and 14 statements of objections based on articles 81 and 82 of the Treaty. DG COMP continued to handle major antitrust cases, like the Microsoft one, imposing a further fine on this company to make it comply with the Commission decision of 2004. Since 2004, DG COMP's action has been complemented by that of the national competition authorities. A common competition culture is now emerging within the European Competition Network, which also works as a catalyst for convergence beyond the coherent application of the EC antitrust rules in particular cases. The most striking example of what could be referred to as the new era of ECN cooperation is the ECN Model Leniency Programme that was unanimously endorsed by the heads of all the EU competition authorities in September 2006.

Clearly, detecting, dismantling and sanctioning anti-competitive practices has a direct **impact** on the markets, consumers welfare, and more generally, the European economy. Effective competition contributes to a larger choice of products and services, lower prices and better quality. As a way of illustration, according to data collected by the OECD, the

"mark up" above the competitive price that cartels cause may be typically be 15 to 20%, but can be as much as 50% or more. Moreover, effective competition creates incentives for business to innovate, thus stimulating knowledge and contributing to the creation of more and better jobs, in accordance with the Lisbon objectives.

The detection and dismantling of cartels and other harmful anti-competitive practices will remain a high priority in the coming years. The trend of an increasing number of investigations is expected to continue. Furthermore, the complexity of the investigations, given the more effects-based approach is likely to increase.

2006 was a very productive year. However, DG COMP suffers from a serious shortage of staff. As a result e.g. cartel investigations still take much longer than we would desire (41 months compared to 22 months for the Bundeskartellamt). It is clear that if the current resource constraints continue this will have implications for the number of investigations that can be carried out.

### 1.2.2. Activity "Merger Control"

Specific objectives	Results achieved		
	Indicator	Current situation	Main outputs completed in 2006
Prevention of anticompetitive mergers	- Number of notifications	Done by the end of 2006	- 356 merger notifications - 336 phase I decisions - 19 decisions with remedies
	- Number of decisions in phase II cases		- 13 phase II investigations initiated and 10 phase II decisions

DG COMP faced a significant merger wave, which resulted in 356 notifications, an absolute record since the introduction of EU merger control in 1990. Competition concerns were identified in 21 cases but the merger was normally authorized after the parties proposed remedies to remove the concerns (divestitures of the overlapping business or similar solutions). Indeed, 13 cases were authorized with remedies after a short investigation ("first phase") and 6 after an in-depth one ("second phase"). A further 4 cases were cleared without remedies in second phase. In two cases, however, the parties abandoned the planned merger after the Commission had raised preliminary concerns. All these interventions have a common objective: to ensure that the necessary restructuring of companies operating in Europe takes place without unduly harming the consumers.

In 2006, the Commission was also confronted with a few instances of protectionism by Member States regarding the attempted takeover of companies based in their Member States. In several of these cases the Commission intervened to remove national obstacles to cross-border mergers.

The Commission's enforcement activity in the field of merger control has a direct beneficial **impact** on the conditions of competition in the markets where the restructuring would be taking place, thereby ensuring that the opportunities for suppliers and service providers to compete is not undermined. Ultimately, the maintenance of effective competition in product and service markets via merger control guarantees that consumers will enjoy the benefits of lower prices, wider choice and technological developments. At the same time, the Commission is committed to providing maximum transparency regarding the analytical framework it employs in assessing the competition impact of mergers; extensive enforcement guidelines have been published to that end and these will shortly be complemented by further guidance. Moreover, the Commission's merger control system provides for merging firms a "one-stop-shop" approval system which spares them the burden of having to seek regulatory clearance in as many as 27 Member States.

Intervention to prevent the creation of anti-competitive mergers will remain a high priority in the coming years. There are strong indications that the current wave of merger activity will continue for some time, and the Commission expects to be at least as busy in the merger control field in 2007 as it was in 2006. Indeed, it is likely that the complexity of the competition problems which these mergers will involve is likely to grow, particularly in liberalised or liberalising markets, as well as in industrial sectors which are becoming highly concentrated or are in the process of rapid technological development.

Despite staffing constraints, the Commission's merger control remains very effective in ensuring the maintenance of competitive product and service markets in Europe. At the same time, the Commission is making important progress in ensuring that its policy and law enforcement is more consistent, transparent and based on sound economic reasoning.

### 1.2.3. Activity "Control of State Aid"

Specific objectives	Results achieved	
	Indicator	main outputs completed in 2006
<b>Enforcement of State Aid control in enlarged EU with a focus on the most distortive forms of aid</b>	- number of notifications (495)	436 decisions
	- recovery cases	21 recovery cases closed (for aid amount of €1.29 billion), and 6 new recovery decisions adopted (additional €32.6 million to be recovered)
	- number of complaints received (227)	252 complaints closed
<b>Review of regulatory framework</b>	- Implementation of State Aid Action Plan	Adoption of: - R&D&I guidelines - Risk capital - Block exemption regulation on regional aid - De minimis regulation - Extension of validity of Shipbuilding Framework until 2008

Apart from a continuous flow of notifications (493) and corresponding decisions (436) and a more vigorous effort to force Member States to recover illegal State Aid (7 recovery decisions adopted in 2006 for an additional amount of € 132.6 million to be recovered), the major policy output in 2006 was the continuation of the implementation of the ambitious State Aid Action Plan approved by the Commission in 2005. As planned in our 2006 AMP, the Commission adopted guidelines on Research, Development and Innovation aid, aid to risk capital, and a block exemption regulation on regional aid and *de minimis* aid regulation. We have started preparatory work on the revision of the environmental aid guidelines and on the notice on co-operation with national courts, so as to increase their involvement in the fight against unlawful aid. In order to improve procedures to better administer State aid control, we undertook internal work on best practices guidelines and held a first exchange of views with Member States on this as well as on the new reference rates. We also launched reflection on the horizontal paper on economic analysis in State aid. State aid network of contact points for the informal exchange of information between the Commission and Member States' authorities in the State aid field has been successfully established. Despite staffing constraints, we continued to respond to a record increase in complaints (227 new complaints received in 2006 and 252 closed during that period).

Progress in the revision of the legislative framework, coupled with internal priority-setting and enhanced case review allowed us to start focussing on the most distortive types of State aid and to go deeper in our analysis of its **impact** on the market. By way of example, we took 6 decisions on aid to large investment project in assisted areas and 17 decisions on priority rescue and restructuring aid cases. We started investigations into possible aid in financial and postal markets, and took decisions related to State aid in media. At the same time, cases of State aids targeting clearly identified market failures or equity objectives received speedy treatment, contributing to the achievement of Lisbon goals (165 decisions relating to aid to R&D & innovation, risk capital and energy and environment, and several approvals of aid for broadband roll-out). Year 2006 was also important in terms of ensuring continuity in regional policies and Structural Funds programming, as the Commission approved regional aid maps for the period 2007-2013. The external dimension of State aid policy has also been addressed, with a number of contributions notably in the context of the renewed trade policy.

2006 has been a landmark year in terms of flow of notified aid, which totalled 493. Despite this important increase of workload, coupled with an increasing number of complaints, DG COMP has succeeded in continuing to implement the State aid action plan, as foreseen. Work on new environmental guidelines and best practices also started.

#### *1.2.4. Activity "Policy, Coordination, European Competition Network and International Cooperation"*

Specific objectives	Results achieved	
	Indicator	Main outputs completed in 2006
<b>Policy development and communication</b>	<ul style="list-style-type: none"> <li>- White Paper on damages actions</li> <li>- Guidance on the application of Article 82</li> <li>- Revised leniency notice</li> <li>- New notice on fines</li> <li>- Annual competition report</li> </ul>	<ul style="list-style-type: none"> <li>- Completion of public consultation to Green paper on damages actions for breach of EC antitrust rules and commencement of work on its follow-up with a White Paper</li> <li>- Adoption of the revised Leniency Notice</li> <li>- Working document on guidance on the application of Article 82</li> <li>- New Notice on fines</li> <li>- Completion of public consultation on draft Consolidated Notice on merger control jurisdiction</li> <li>- Annual competition report</li> </ul>
<b>Good functioning of the European Competition Network</b>	<p>Number of consultation examined</p> <p>Training of judges programme</p>	<ul style="list-style-type: none"> <li>- In 2006, DG COMP has reviewed or advised on, either on the basis of the formal cooperation provisions or on an informal basis, some 125 cases from national authorities</li> <li>- Adoption of the ECN Leniency Model Programme</li> <li>- 31 ECN meetings (Plenary, sectoral subgroups and working groups)</li> <li>- 931 judges trained in 2006 (including from projects initiated in 2005)</li> </ul>
<p><b>Shaping the regulatory framework</b></p> <p><b>Strengthening internal cooperation in enforcement activities</b></p>	<ul style="list-style-type: none"> <li>- Number of regulatory initiatives at EU level screened from a competition point of view.</li> <li>- Support and coordination of court litigations</li> <li>- Increased cooperation with other DG</li> </ul>	<ul style="list-style-type: none"> <li>- in 2006 DG COMP screened some 12 initiatives</li> <li>- DG COMP was involved in at least 75 consultations from the Legal Service on Court cases. For State aid, assistance was provided to litigations related to 160 cases.</li> <li>- 401 replies to ISCs regarding State aid under control of other DGs (AGRI, FISH, TREN)</li> <li>- 715 replies to other inter-service consultations</li> </ul>

Specific objectives	Results achieved	
	Indicator	Main outputs completed in 2006
<b>Promote convergence of competition instruments</b>	Reports of these round tables/groups	<ul style="list-style-type: none"> <li>- input to discussions at various OECD and ICN Working Groups.</li> <li>- Inclusion of competition/state aid provisions in action plans with Neighbourhood Policy countries and between the EU and third countries or groups of countries.</li> </ul>
<b>Contribute to the enlargement process</b>		<ul style="list-style-type: none"> <li>- 69 consultations on State aid cases</li> <li>- Input to the spring and autumn monitoring reports for Bulgaria and Romania.</li> <li>- Input to the screening reports on the competition chapter for Croatia and Turkey</li> <li>.</li> <li>- Input to the Progress and Regular Reports with Croatia, Turkey, Macedonia, Albania, Serbia and Montenegro and Bosnia and Herzegovina</li> <li>.</li> <li>- Organization of TAIEX seminars on competition policy</li> <li>.</li> <li>- Technical meetings on Competition and State aid issues</li> <li>.</li> <li>Participation in Sub-Committee meetings on Internal Market with the relevant countries involved</li> </ul>

In 2006, DG COMP contributed to the successful accession of Romania and Bulgaria by carefully monitoring their path towards the best standards in competition enforcement and state aid control. 69 (64 for Romania and 5 for Bulgaria) state aid cases have been reviewed and advice and support has been given to the national authorities of these two countries. DG COMP also started or continued major projects aiming at ensuring an effective remedy for those who suffer financial loss as a result of antitrust infringements or providing more predictability to our partners. These are, among others, follow up to the Antitrust Damage Actions green paper of 2005, the preparation of guidance on the application of Article 82 TEC, on non horizontal mergers and a number of other notices. In 2006, DG COMP has reviewed, either on the basis of the formal cooperation provisions or on an informal basis, some 125 cases from national authorities. In addition, some 150 new cases have been reported in the ECN case management system by national authorities, meaning that 150 new cases are being actively pursued by them on the basis of Community competition rules. Another major project was the ECN Model Leniency Programme which was prepared by DG COMP in cooperation with the Member States and was unanimously endorsed by the heads of all the EU competition authorities in September 2006. Finally, DG COMP continued to be very active in international fora such as the International Competition Network, to develop bi-lateral cooperation with major agencies in the world, to contribute to preparation of the Free Trade Agreements with our major trading partners, and to contribute to the enlargement process for all candidate countries.

There is a strong interest from stakeholders for guidance on various important competition policy issues, which has a clear **impact** on the implementation of competition policy at EU level and even beyond. Guidance on Article 82, following an effect based approach, will provide legal certainty for enforcers and business, to the ultimate benefit of consumers. Private enforcement is an important tool for business and citizen to be compensated for the harmful effects of anti-competitive practices and the Commission's initiative aims at stimulating the use of this tool. There is general agreement amongst stakeholders that victims of competition law infringements are entitled to damages, and that national procedural rules should be such that this right can be exercised effectively. Furthermore, it goes without saying that an active enforcement of EC competition law by national authorities, with specific knowledge of national markets, is crucial for the success of an effective EC competition policy to the benefit of consumers.

1.2.5. Activity "Administrative Support"

Specific objectives	Results achieved	
	Indicators	Main outputs completed in 2006
<b>Optimisation of resources</b>	- Management of registries	- Study done
	- Allocation of resources	- Done
	- Equal opportunity action plan	- Implemented
	- Payment delays	- 22 days on average
	- Training days	- 10 days per staff member
	- IT migration	- Successfully carried out
	- SANI IT system	- Rolled out as planned
	- ISIS IT system	- Rolled out as planned
	- IT methodology	- Introduced as planned
	- IT forensics project	- Further developed with DIGIT support
<b>Internal management tools</b>	- 3 internal audit reports	- 1 report, 1 review and 2 follow-up reports
	- Review of 6 ICS	- 4 ICS reviewed
	- SECEM	- Partially introduced
	- Seminar on internal control	- Done
	- Security policy	- Developed as planned
	- Semi-automated access to file	- Introduced as planned
	- Complete electronic filing	
	- Archives action plan	- Introduced as planned
	- New DG COMP website	- Carried out as planned
		- Launched in September

In 2006, DG COMP continued to improve resources management in most areas. It continued to ensure legality and transparency of all staff-related matters as well as financial management. It developed a comprehensive Human Resources strategy aiming at ensuring that the DG will continue to recruit and retain the best possible staff. The DG continued to ensure sound efficient management of our small administrative budget as well as our small grant programme on "Training of Judges on Competition Law". The IT strategy was more clearly brought in line with the DG's overall strategy, with a focus on further developments of our case management and workforce scheduling internal applications. Considerable efforts were dedicated to improving document management, in line with the eDomec project, and leading to a complete reorganisation of the three registries, to take effect in early 2007. Finally, DG COMP reviewed its ethical rules and designed an ambitious new security policy, in order to protect better sensitive information, considered as a serious risk for its reputation and operations.

In most areas, planned actions for this ABB activity were carried out in time, or with limited delays due to internal consultations processes.

## **2. MANAGEMENT AND INTERNAL CONTROL SYSTEMS**

### **2.1. Inherent nature and characteristics of policy environment and beneficiaries**

DG COMP is not a large spending DG. Financial management is therefore not a critical challenge for our operations. The principal activities of the DG are: enforcement of competition rules (60% of our activities), sector inquiries and market monitoring, policy development, competition advocacy and international cooperation.

#### **Main stakeholders**

DG COMP's main stakeholders are companies and Member States subject to our enforcement or monitoring activities, but also the National Competition Authorities now connected within the European Competition Network and Third Countries partners of our international cooperation. DG COMP also wants to keep intellectual leadership on competition issues, through constant participation to conferences and seminars involving, beyond the business community, the academic world. Ultimately, of course, our stakeholders are all European consumers, who directly benefit from our activities.

#### **Management mode**

DG COMP operates a centralised financial circuit, with exceptions for areas where there is a strong link between operations and financial management (see below section 2.2)

#### **Difficulties, problems, risks and their potential impact on the reasonable assurance given by the DG**

DG COMP's 2006 risk assessment identified three categories of risks for activities and internal management: risks affecting our enforcement activity, risks affecting the functioning of the DG and risks affecting reputation and/or causing harm to third parties. None of them impacts on the reasonable assurance, but we found that a significant part of the risks DG COMP faces lie in insufficient or inadequate resources. This specific resources risk was further developed during an internal reflection exercise, called "COMP 2010", which resulted in a report sent by Commissioner Kroes to President Barroso in January 2007. It identifies a "resources gap" between what DG COMP should and could do for European citizens and what it is able to do on the basis of current resources allocation. This scissors effect might lead, if not corrected, to a situation where the Commission's position as the European competition enforcer would be jeopardized, with detrimental effects on the economy and consumer welfare.

#### **Limits of the DG's responsibilities compared to that of stakeholders**

*Not applicable to DG COMP*

## **2.2. Management and control systems**

Decentralised financial circuits are not suited to a DG which manages a small operational budget like DG COMP (€ 816.480). Therefore, DG COMP returned in 2005 to a centralised financial circuit. It applies to all financial operations, except for the management of the "Training of judges" grant programme, which remains under the responsibility of Directorate A, as well as all transactions made in the framework of budget lines received from other DG's by crossed sub-delegation. Recovery orders related to fines also remain under the responsibility of each antitrust director. The centralised financial circuit allows a more efficient sharing of responsibilities between the operational directorate and the resources directorate, without de-responsibilising directors. The director of Directorate R and the three heads of unit of the Directorate are authorising officers for commitments and payments. Operational directorates remain responsible for the operational part (initiation and verification) and for the quality control of the operations they undertake. For studies, operational directors must give their agreement on each final report before the invoice is checked by Directorate R, in order to take responsibility for the quality of the study before payment.

### **Separation of functions (Fin R Art. 60 § 4 - IR Art. 47)**

The principles concerning the segregation of duties are applied as follows: before a transaction is authorised, its operational and financial aspects are verified by a desk officer distinct from the desk officer who initiated the operation. The ex-ante and ex-post verification are separated duties from the operational initiation – officials or other desk officers in charge of verification are distinct from initiators and cannot be subordinated to the initiator of the transaction.

### **Documentation and support**

A succinct manual of procedures is available on the Intranet. It describes the responsibilities of each financial actor, the corresponding financial workflow, in a clear and simple way, accessible for all officers who might intervene in the financial circuit, either as initiator or in the operational verification. The manual evolves according to the relevant elements that might arise in the financial circuit. In 2006, following a recommendation from the IAC, a check list for all actors intervening in the financial workflow was introduced in order to harmonise the level of controls performed at all stages of the workflow (see section 2.4 below).

### **Internal ACPC**

DG COMP internal ACPC gives its opinion on the selection and evaluation procedure of proposed contracts to ensure that they comply with the Financial Regulation and Community Directives. Each file exceeding a contract with a value above 50.000 € must be checked by the Committee. The responsible Directorate submits a note to the Head of Unit COMP R1, together with a complete report asking for approval to submit the file to the DG COMP in-house ACPC. In 2006, ACPC reviewed 4 calls for tenders, and cleared them all.

## **2.3. Supervision and monitoring of internal control systems and audit follow up**

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. During 2006 DG COMP organised a awareness-raising workshop for management on ICS. 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 2006, audit activities contributed to this objective. The Court of Auditors performed a desk review of the implementation of the ICS in DG COMP and found it compliant with all standards but one (ICS 20 on reporting internal control weaknesses, where DG COMP did not have a procedure in place, something which was immediately corrected). The IAS carried out an audit on the ABM/SPP cycle, and acknowledged DG COMP's achievements, while making recommendations for improving further the use of SPP tools in the future. The IAC finalised an audit report on human resources management, an ex-post review of a significant sample of financial transactions and conducted a review of the implementation of recommendations of 2 previous audits. An audit of the Judges training grant programme was conducted in 2006 and the report finalised early in 2007.

<p><b>Verification</b> that processes are working as designed</p>	<p>Coordination of internal control issues and follow up of audit recommendations concentrated in the resources directorate, follow up of audits reviewed in parallel by the IAC, annual review of a random sample of financial transactions by the IAC. Integration of ICS testing in audit programmes.</p>
<p><b>Monitoring of performance</b> of independent bodies, 3<sup>rd</sup> party auditors, externally contracted auditors</p>	<p>Not applicable to DG COMP.</p>

<p><b>IAC, IAS, ECA recommendations</b> on the functioning of the system and their <b>follow-up</b></p>	<p>ECA recommendations on the implementation of ICS in DG COMP: implemented</p> <p>IAS recommendations on the ABM/SPP cycle: action plan being implemented over 2006/2007</p> <p>IAC recommendations on human resources management and on ex-post review of financial transactions: in progress of implementation.</p> <p>Review of past audits found a high percentage of implementation of recommendations</p>
<p><b>High level management reporting</b> (e.g. to the Director General) and its role in monitoring problem issues</p>	<p>Constant supervision at senior management level of the way our systems are operated, biannual meetings with the Commissioner on financial management and resources issues.</p>

#### 2.4. Key indicators supporting reasonable assurance

Number of staff involved in financial management: 1 AOD, 2 AOS with general subdelegations, 8 AOS with limited subdelegations, 4 financial officers in the financial cell, 2 in the Directorate in charge of the judges training grant programme.

Financial resources: 67M€ for the administrative budget, 816.480 € for the operational budget

Payment delays: 22 days on average

Budget execution: 99.69 % for the administrative budget, 70 % for the operational budget

Volume of recovery orders: 2.1 billion € issued in 2006 for fines, and € 6808.59 for grants.

Number of files rejected by the local ACPC: none

Number of instances of overriding of controls or deviations from established policies: 2. Both concerns commitments made "a posteriori" for a total of approximately 20.000€ An oversight was made during the procedure, which concerned two training actions<sup>4</sup>, detecting that the purchase order had been signed before the validation of the budgetary commitment. As a result, the internal circuit for resource unit's commitments has been reinforced to make sure that the transactions can only reach the Authorising officer after having been checked by the financial initiating agent and the financial verifying agent.

#### Identification of residual risks or weaknesses after remedial action

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<sup>4</sup> Commitment Si2.437623 "Writing efficient documents" and Commitment SI2.437640 "The proactive assistant."

The review of financial transactions carried out by the IAC identified some weaknesses in the controls performed by some operational agents, due to insufficient knowledge and understanding of the very nature of these controls among staff mostly performing case handling tasks. This was addressed, following an IAC's recommendation, by the introduction of check lists for all agents involved in the workflow, with the objective to harmonise and document the controls performed at all stages. Additional training for operational initiating and validating agents will be organised in 2007.

## **2.5. Conclusion on the effectiveness of the internal control system**

In its internal self assessment of internal control carried out at the beginning of 2007 in accordance with ICS 24, DG COMP has, with very few exceptions (mobility, job requirements, IT and data protection security plan, business continuity plan), complied with all baseline requirements. The assessment is that internal control is implemented in an effective way in DG COMP, which has made significant progress. In 2007, several issues relating to internal control will be addressed to further improve the situation (e.g. implementation of human resources strategy, reorganisation of registries, and updating of manuals of procedures).

### **Control environment (ICS 1 to 6)**

As a way of re-enforcing the implementation of both ICS 1 (and ICS 14), the DG's ethical and security of information vade-mecum, which summarizes and explains all the relevant rules on ethics and integrity applicable to DG COMP's staff (and members of the Cabinet), has been updated in. Early 2007, the updated version of the vade-mecum will be sent by e-mail to all staff. DG COMP's Intranet already includes a page on ethics and integrity, where all relevant 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 declaration that they abide by the required ethics rules.

DG COMP has a designated training coordinator (a new COFO has been appointed in 2006) and a Local Career Guidance Officer. The Strategic Training Framework was adopted early 2006. Training maps are agreed for all staff. Staff is constantly encouraged to participate in both in-house and centrally organized training courses. Training is also 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 achieved in the past three years its stated target of approximately 10 training days per official (real average number of days of training per person was 9.9, without on-the-job training).

Staff's job descriptions and individual objectives are up to date, and used as a management tool. The DG will in 2007 systematically use job requirements. CDR is operated in a quick and efficient manner, but the DG does not make interim reports for staff moving inside DG COMP, to avoid unnecessary bureaucracy.

The list of sensitive posts is kept up to date. In 2006, two managers who had benefited from a derogation to the normal rules left DG COMP. The situation is now fully in line with the Commission guidelines on sensitive functions.

Reflections on a comprehensive mobility policy started in 2006, within the framework of its human resources strategy. In 2006, the data on internal and external mobility are the following: 39 administrators and 12 assistants have used the possibility to change post within DG COMP, 22 administrators and 38 assistants have moved to other DGs, while 22 administrators and 26 assistants have joined DG COMP in the course of 2006.

### **Performance and risk management (ICS 7 to 11)**

The DG complies with requirements from central services on AMP and objective setting, although the development of impact indicator proved difficult in 2006. An IT annual masterplan has been designed in 2006 aligned on a strategic document adopted by the ITSC and the senior management, which endeavours to align the IT priorities with the general strategy as defined in the AMP. This document is being further refined at the beginning of 2007.

In order to identify the most relevant workload, performance and impact indicators, a working group has been set-up in 2006. (ICS 7 and 10)

The implementation of one of the critical recommendation of the IAS, the establishment of a Business Continuity Plan in the IT area (ICS 11.4), has not yet been possible due to problems to find the funds necessary to finance such a project. The Business Continuity Plan exercise for 2007 will include this IT component.

### **Information and Communication (ICS 12 to 14)**

DG COMP produces a quarterly report on resources (ICS 12) and is developing HR Metrics. There is constant supervision at senior management level of the way our systems are operated; biannual meetings are held with the Commissioner on financial management and resources issues. Mail registration was a major issue in 2006, which led to the implementation of a complete reorganisation of the three registries of DG COMP, now under a single management. The procedure for reporting improprieties is in place, but was not used in 2006.

### **Control activities (ICS 15 to 19)**

Documentation of procedures is constantly improved in DG COMP. In 2006, DG COMP worked on the incorporation of the "need to know" principle in its management of documents. Some notifications in the area of personal data remain to be undertaken, but a comprehensive analysis of the issue and the way to implement Regulation 45/2001 in our enforcement activities was conducted in cooperation with the Commission's DPO.

As indicated above, segregation of duties is well in place, and supervision arrangements are established for all main processes. An ex-post review of a sample of financial transactions was conducted by the IAC. Exceptions are duly recorded and brought to the supervisor of the official or manager normally empowered to take the decision. The Business Impact Analysis of DG COMP has been sent to SG at the end of 2006. In that

framework critical and essential functions were identified and drawn up. However the Business Continuity Plan will only be ready in the first quarter of 2007.

### **Audit and evaluation (ICS 20 to 24)**

ICS 20 was effectively applied by September 2006, when an operational procedure for the proper reporting of internal control weaknesses was adopted. The follow up of audit reports is constantly monitored and action plans are systematically adopted by senior management. A new head of the audit capability was appointed in 2006. The evaluation activities were further developed in 2006 (give some examples) and better incorporated in the work of the DG. A task force was created at the end of 2006 to conduct ex-post evaluation of mergers decision. Finally, the annual review of internal control arrangements was conducted in accordance with the guidelines provided by DG BUDG.

### **3. RESERVATIONS AND THEIR IMPACT ON THE DECLARATION**

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.

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

#### **4. DECLARATION OF ASSURANCE**

I, the undersigned,

Director-General of DG COMP

In my capacity as authorising 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 learnt 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 2007

*(signed)*  
Philip LOWE

