

Directorate General for Competition
Annual Activity Report 2007

31 March 2008

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1. POLICY RESULTS

1.1. Policy area

The mission of the Directorate General for Competition (DG COMP) is to enable the Commission to make markets work better for the benefit of European consumers and businesses through the development and enforcement of competition rules and competition advocacy, ensuring that competition in the internal market is not distorted and that markets operate as efficiently as possible.

Effective competition contributes to a larger choice of products and services, lower prices and better quality. It stimulates knowledge and innovation and creates incentives for businesses to invest, leading to increased productivity and the creation of more and better jobs. It is a crucial factor for the creation of proper conditions for economic growth and prosperity.

In terms of enforcement, 2007 again saw an increase in DG COMP's activity. The relevant indicators here are the number of cartel decisions (8, plus 11 statements of objections), of anti-trust non cartel decisions (10 plus 4 statements of objections), of merger notifications (402, an absolute record). The amount of fines imposed in cartel cases reached €3.3 billion, another absolute record.¹ For State aid, the overall level of aid was below 0.6%² of the EU-25 GDP, despite the enlargement to 12 new Member States with economies still in transition.

In 2007, DG COMP underwent a major reorganisation to further strengthen its focus on priority tasks, to enable it to employ resources more efficiently and to act where it is likely to have the biggest impact on the functioning of markets. The sectoral departments were rearranged to include State aid units, so that they now contain all the core operational activities of the Directorate General with the exception of anti-cartel law enforcement. The new structure aims at providing both for flexibility, that is indispensable in running a project based organisation such as DG COMP, and for a solid knowledge base required to tackle the growing complexity of markets.

Intensification of enforcement along with a simultaneous rise in complexity of cases led DG COMP to suffer again from a shortage of staff, which is to be only partly alleviated by the new posts foreseen for allocation in 2008. DG COMP will still remain understaffed when compared to other competition authorities, such as the US Department of Justice and Fair Trade Commission or the Japan Fair Trade Commission. The

¹ In 2006, the respective indicators were 7 decisions and 7 statements of objections in cartels, 6 decisions and 7 statements of objections in non-cartel antitrust, 356 merger notifications and €2.1 billion in fines.

² 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 2006.

understaffing is particularly evident if it is viewed in the context of significant differences in the size of the economy and the population of the jurisdictions compared.

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

In 2007, DG COMP finalised two ambitious sector inquiries on energy and on financial services. The inquiries were followed by further action. As a direct consequence of the energy inquiry, three rounds of inspections on energy companies were carried out in 2006 and in five cases so far formal proceedings have been opened against the undertakings concerned. Furthermore, the energy sector enquiry served as a very valuable input into the works on third energy liberalisation package presented by the European Commission on 19 September 2007. In 2007, DG COMP also prepared a major new sector inquiry in the area of pharmaceuticals.

An overview of the decisions adopted in 2007 demonstrates that DG COMP continues to focus its enforcement activities on economic sectors that are crucial to the competitiveness and growth of the EU economy and to consumers. The most prominent decisions concerned among others undertakings active in financial services, telecommunications, energy, transport, and the automotive industry.

With respect to State aid control, the latest Scoreboard (from autumn 2007) shows that Member States have been moving over the past six years towards the European Council objective of less and better targeted aid. In particular, the EU-10 Member States have progressively reoriented their state aid towards horizontal objectives of common interest such as regional development, R&D, SMEs and protecting the environment. The State Aid Action Plan (SAAP) has enhanced such developments.

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

In 2007, the detection and dismantling of cartels continued to be a high priority. Fines on firms involved in cartels hit a record high of €3.3 billion. In addition, DG COMP continued to act against the most harmful forms of unilateral conduct of dominant firms. The year also brought an important confirmation, in the form of a ruling by the Court of First Instance, of DG COMP's 2004 Decision against Microsoft on both tying and interoperability abuses. Finally, DG COMP's took enforcement actions in co-ordination cases which caused profound and tangible harm to millions of European customers, such as the prohibition decision in the MasterCard case, which should bring benefits to users of payment cards (over 23 billion payments, exceeding a value of €1350 billion). In the area of merger control, the Commission safeguarded in the Ryanair / Aer Lingus case the interests of more than 14 million EU passengers using the routes to and from Ireland each year.

In State aid, the enforcement was further stepped up towards aid measures that lead to the largest misallocation of resources, including scrutiny of various tax measures. The volume of "bad" State aid, expressed as percentage of GDP (i.e. aid not granted for horizontal Lisbon Agenda-related objectives or regional objectives) compared to pre-Lisbon average (1996 – 2000) has continued to decrease and stands at 0.06 % of GDP (2006), compared to 0.27 % of GDP (average 1996 – 2000). The State aid rules, in particular, those adopted in the context of the State Aid Action Plan (SAAP), appear to

have had a preventive effect. Furthermore, also the State aid procedure often pushes Member States to amend notifications to comply with State aid rules.

In the second half of 2007, further progress has been made towards the execution of recovery decisions:

- In 2007, over the last six months, the total number of pending recovery cases has further fallen from 60 to 47 (compared to 50 on 30/06/2007, 60 at the end of 2006 and 94 at the end of 2004).
- The amount of illegal and incompatible aid recovered has further increased from €2.3 billion in December 2004 to €8.2 billion at the end of 2007. This means that 92% of the total amount of illegal and incompatible aid to be recovered under decisions adopted by the Commission since 2000 has now been effectively recovered (compared to 25% at the end of 2004). The percentage of illegal and incompatible aid still to be recovered has fallen accordingly (from 75% at the end of 2004 to 8% at the end of 2007).

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

In 2007, 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. In this context, the newly adopted Non-horizontal Merger Guidelines and the Consolidated Merger Jurisdictional Notice are probably the most visible examples of DG COMP's commitment to providing clear and predictable environment for business.

In the field of telecommunications, DG COMP together with DG INFSO prepared a revised Recommendation on markets susceptible to ex ante regulation, which significantly scales down regulation in this sector and alleviates the administrative burden for companies, regulators and the Commission.

In the State aid field, further simplification was achieved through improved notification forms (adopted through an amendment of the implementing regulation), together with simpler rules on notification and reporting. A more market-based approach was taken through the adoption at the end of 2007 of a revised methodology for setting reference and discount rates, which will enter into force in 2008.

2007 was the third full year of the European Competition Network. DG COMP's cooperation with national competition authorities continued to contribute to the efficient and consistent enforcement of EC antitrust law across the EU. The national competition authorities are active enforcers that make a major contribution to the fight against hardcore cartels and are also particularly active in the liberalising sectors. Cooperation in the network is aimed at ensuring consistency of their action with the Commission's practice. In horizontal forums, the ECN addressed a broad range of important subjects, e.g. the power of NCAs to dis-apply anticompetitive state measures and the question of effective remedies in the energy sector.

What is the impact of competition policy on EU society?

Competition policy makes markets work better for the benefit of European consumers and businesses. While competition is not an end in itself, it is the best means of ensuring that markets deliver the goods and services which companies and ordinary people want. On markets where there is more than one supplier, firms compete on price, quality, choice and innovation for the benefit of consumers in general, whether they are individuals or businesses. Competition also spurs competitiveness by encouraging companies to innovate and to become more efficient. This is why a system of ensuring undistorted competition is regarded as an integral part of the Internal Market, as recognised by the Internal Market and Competition Protocol of the Reform Treaty signed in Portugal on 13 December.

General objectives	Results achieved	
	Indicator	Current situation
To focus action on key sectors for the internal market and the Lisbon agenda	- Less and better targeted State Aid	0.42% of EU-25 GDP (2006), compared to 0.59% of GDP (average 1996 – 2000) ³ 85% of the overall amount of aid (2006) targeted at horizontal objectives of common interest
	- Follow up to the sector inquiries ⁴	Energy - final report on inquiry adopted on 10.01.2007 - proceedings have so far been opened in 5 cases - substantial input into communication on prospects for the internal market adopted on 10.01.2007 and into third liberalisation package adopted on 19.09.2007 Financial services Following the publication of the Final Report on Retail Banking, the Commission took enforcement actions in the area of payment cards, and scrutinized developments in the context of SEPA, the Single Euro Payments Area. As regards Business Insurance, the Final Report identified areas where competition should work better.

³ This indicator attributes a positive value to the overall decrease of State aid. Such a general aim has however to be understood as a long term objective, which ought to allow for deviations to cater for Member States different needs and preferences as to the use of state aid to promote growth and jobs, provided the aid fulfils the compatibility conditions set by the Commission. A sudden economic downturn, a need to sustain structural reform, a specific action for cohesion and competitiveness may push MS to allow for more aid in a given moment, as long as it is in the Community interest.

⁴ In 2007, in addition to the follow up on the previously opened sector inquiries, DG COMP completed the preparation to a new sector inquiry into the pharmaceuticals sector.

	- Enforcement actions in the ICT sector	IT sector - 2 statements of objections - 2 openings of proceedings Telecoms sector - 1 prohibition decision
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To focus enforcement actions on the most harmful anticompetitive practices for the European economy	- Number of inspections	9 rounds of inspections
	- Cartels decisions and statement of objections	8 + 11 (statements of objections)
	- Amount of fines in cartels cases	€3.3 billion
	- Decisions and statement of objections in non cartel antitrust cases	10 + 4 (statements of objections)
	- Amount of fines in other cases	€186 million
	- State aid decisions	510 decisions (N + NN + C + E) Apart from that, there were also 240 CP-cases closed; 120 PNs and 657 BER-measures ⁵
To enhance competitiveness within the EU by helping to shape the regulatory framework	- number of regulatory initiatives at EU level screened from a COMP point of view	Replies to 312 inter-service consultations assigned to the case support and the policy units. On top of that, 27 National Allocation Plans under the Emissions Trading Directive and 5 grouped ISCs on applications for tax derogations under Art. 19 Energy Tax Directive were screened. Extensive contribution to all parts of the Energy Package "Greenhouse Gases and Renewables". Substantial contribution to the review of the Regulatory Framework in telecoms, including the revised Recommendation on relevant markets (in force from December 2007) and the Commission proposal for modifications to the Framework Directive 2002/21/EC, Access Directive 2002/19/EC, Authorisation Directive 2002/20/EC, Universal Service Directive 2002/22/EC, Data Protection Directive 2002/58/EC and the Consumer Protection Regulation (EC) 2006/2004 (in November 2007).
	- preparation of documents following consultation on SAAP	Adoption of : - extension of validity of Shipbuilding Framework until 2008 - reference rate communication - extension of validity of environmental aid guidelines (and adoption of new guidelines in 2008)

⁵ N-case – notified aid case
NN-case – non-notified aid case
C-case – (C= contradictoire) closing of a 88(2) proceeding
E-case –existing aid, initiating 88(1) proceedings
CP – cas présumé, is either a complaint or an ex officio where the Commission takes the initiative to look into an non-notified aid
PN – pre-notification, a Member State either submits a draft notification or asks for a pre-notification meeting to discuss and clarify certain issues in the notification
BER - Block Exemption Regulation

1.2. Level of the ABB activities

DG COMP's work is divided into the following activities:

- Cartels, anti-trust and liberalization,
- Merger control,
- Control of State aid,
- Policy, coordination, European Competition Network and international cooperation,
- Administrative support.

1.2.1. Activity "Cartels Antitrust and Liberalisation"

Specific objectives	Results achieved	
	Indicator	Main outputs completed in 2007
Concentrate enforcement actions on the most harmful cartels and increase the efficiency of cartel proceedings	Progress on initiatives to develop direct settlements	- Proposal for a Commission Regulation amending Regulation 773/2004, as regards conduct of settlement procedure in cartel cases - draft Commission Notice on conduct of settlement proceedings in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council regulation in cartel cases Consultation launched (October - December 2007); Deadline set for comments: 21-12-2007
	Number of inspections	9 rounds of inspections
	Number of statements of objections adopted in cartel cases	11
	Number of decisions adopted in cartel cases	8
	Number of undertakings fined	41
	Number of undertakings involved in decisions	45
	Total amount of fines levied against cartels	€3.3 billion
Concentrate enforcement actions on anti-competitive practices other than cartels that have a high impact in terms of safeguarding / restoring effective competition within the EU	Number of inspections (except in cartel cases)	0
	<i>Abuses of dominant position</i>	
	Number of Statements of Objections in Art. 82 cases	3
	Number of prohibition decisions in Art. 82 cases	2
	Number of commitment decisions in Art. 82 cases	0
	<i>Other anti-competitive behaviour in anti-trust, excluding cartels</i>	
Number of Statements of Objection in Art. 81 cases	1	

	Number of prohibition decisions in Art.81 cases	3
	Number of Art. 9 Commitment Decisions in Art. 81 cases	5
	<i>Sector inquiries and market monitoring activities</i>	
	Follow-up to sector inquiries in the gas and electricity markets	Energy - final report on inquiry adopted on 10.01.2007 - proceedings have so far been opened in 5 cases - substantial input into communication on prospects for the internal market adopted on 10.01.2007 and into third liberalisation package adopted on 19.09.2007
	Follow-up to the sector inquiries in financial services	Retail banking The retail banking sector inquiry was finalised on 31 January 2007. In addition to the competition scrutiny of the SEPA process and to the completion of three investigations in the area of payment cards, the sector inquiry contributed to shaping internal market policy, for example as regards the identification of obstacles to customer mobility. Business Insurance In the area of business insurance, the Final Report was published on 25 September 2007.
	Progress on the evaluation of the impact of the block exemption Regulation n°1400/2002 on motor vehicles distribution.	Work on evaluation report as foreseen in Art. 11(2) of BER 1400/2002 started; 185 questionnaires sent to stakeholders
	Market monitoring of a number of basic-industries markets.	Ongoing business
	Preparation of Sector Inquiry in pharmaceuticals	Ongoing
Focus enforcement on anti-competitive State behavior	Number of letters of formal notice	0
	Number of reasoned opinions	2
	Number of referral to the Court of Justice	1
	Percentage of infringement cases where an active decision to close or pursue the case was taken within the one-year deadline	67%
	Number of Art. 86(3) decisions	0
	Resolution of infringements of Article 10/81 in Member States' air services agreements with Third Countries	67
Helping to shape the regulatory framework to promote competition	Completion of the sector inquiry in the energy sector	Final report on 10.01.2007
	Completion of the sector inquiries in the financial services sector	The Final Report of the sector inquiry into retail banking was published on 31 January 2007. In the area of business insurance, the Final Report was published on 25 September 2007
	Advancement of energy liberalization packages	Substantial input into communication on prospects for the internal market adopted on 10.01.2007 and into third liberalisation package adopted on 19.09.2007
	Market monitoring in health, airports, ports and railway sectors	Preparation of new sector inquiry on pharmaceuticals completed
	Competition-related contributions in the context of the legislative process	Replies to 312 inter-service consultations (ISCs) assigned to the case support and the policy units and a substantial number of ISCs attributed to the operational directorates and units.
	Competition-related contributions in the context of the legislative process and	Competition law specific analysis providing guidance to the industry in the context of the

implementation of REACH (advocacy in the context of the IPR review)	"REACH guidelines on data sharing" (RIP 3.4)
Contribution to work undertaken in the securities area (Code of Conduct for Clearing & Settlement)	DG COMP liaised with DG MARKT to ensure that the Code of Conduct would bring about a transparent and competitive market in the area of clearing and settlement.
Contribution to the report of the Commission on the implementation of the First Railway Liberalization Package	Not relevant for 2007, the relevant work was accomplished in 2006
Review of raw-materials markets	Ongoing business
Final report "Legal and economic analysis of Fact finding on tramp maritime services" shipping (Fearnley Consultants, February 2007)	Final report submitted to the Commission at the end of February 2007
Draft Guidelines on the application of Article 81 EC to maritime transport services	Draft Guidelines published for consultation on 14 September 2007
Number of regulatory measures in the telecommunication sector reviewed by the Commission services	170
Number of serious doubts letters (telecoms sector)	5
Number of measures withdrawn by national authorities (telecoms sector)	7
Number of veto decisions (telecoms sector)	1
Adoption of (i) revised Recommendation on relevant markets in the electronic communications sector susceptible to ex ante regulation and (ii) revised Guidelines on market analysis and the assessment of significant market power under the regulatory framework for electronic communications	(i) The revised Recommendation on relevant markets, which reduces the number of markets susceptible to ex ante regulation from 18 to 7, entered into force in December 2007. In addition, the Commission adopted an Explanatory note on the revised Recommendation. (ii) The Guidelines on market analysis were not subject to review.
Adoption of Commission proposal for a revised Regulatory Framework for electronic communications	The Commission proposal to reform the Regulatory Framework was adopted in November 2007. It includes draft amendments to the Framework Directive 2002/21/EC, Access Directive 2002/19/EC, Authorisation Directive 2002/20/EC, Universal Service Directive 2002/22/EC, Data Protection Directive 2002/58/EC and the Consumer Protection Regulation (EC) 2006/2004. It further proposes a new Regulation establishing the European Electronic Communications Market Authority. ⁶
Building the evidence base to promote further pro-competitive reforms in the professional services sector	In December 2007, DG COMP finalised the Study on Conveyancing Services Market (though published only on 29.1.2008)
Contribution to White Paper on Sports	DG COMP drafted Annex 1 to the White Paper: Sport and EU competition rules. Took part in

⁶ Apart from DG COMP's input into the work on the telecom reform package, DG COMP also contributed to: (a) 13th Implementation Report on telecommunication market, regulatory and consumer developments during 2007, and (b) Communication on market reviews under the EU Regulatory Framework (2nd report), which provides an insight into the experience gained from the market review process and highlights major trends and issues; it contributed to the review of the regulatory framework proposed by the Commission to the Council and the European Parliament in the second half of 2007.

		the ISC of the paper.
	Contribution to regulatory proposals following the CARs 21 initiative	Contributions to Reg. 715/2007 on Euro 5 & 6 with regard to technical information and new framework directive 2007/46/EC on type approval with regard to the definition of spare parts

Clearly, detecting, dismantling and sanctioning anti-competitive practices has a direct impact on 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.

In 2007, the Commission adopted 8 decisions and 11 statements of objections in the field of cartels. As a way of illustration, the economic literature [Connor et Boltova, 2005] suggests that cartels can impose an average overcharge of 20%-34%. The cartel overcharge not only negatively affects consumer welfare (welfare distribution effect) but also leads to a deadweight loss for the entire economy. In 2007, the cumulated value of sales of goods and services by cartels prohibited by the Commission's decisions was estimated at € 19 billion. This figure translates into putting a direct end to the annual consumer welfare loss of minimum €3.8 billion and to the net loss of minimum €1.9 billion suffered by society⁷.

In 2007, the Commission adopted 10 decisions and 4 statements of objections in the non-cartel antitrust proceedings. The most prominent decisions concerned among others undertakings active in financial services, telecommunications, energy and automotives.

The detection and dismantling of cartels and other harmful anti-competitive practices will remain a high priority in the coming years. As expected in the previous report, the trend towards an increasing number and a growing complexity of investigations has continued. In brief, 2007 was another very productive year.

⁷ Deadweight loss calculation assumes a "textbook" linear demand, constant unit costs and unitary elasticity.

1.2.2. Activity "Merger Control"

Specific objectives	Results achieved		
	Indicator	Current situation	Main outputs completed in 2007
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.	- Number of decisions in phase I cases	Adopted by the end of 2007	- 402 merger notifications - 387 phase I decisions - thereof 18 phase I decisions with remedies
	- Number of decisions in phase II cases		- 15 phase II investigations initiated - 10 phase II decisions - thereof 4 phase II decisions with remedies and 1 prohibition

DG COMP faced a historic peak of 402 notifications, an absolute record since the introduction of EU merger control in 1990. Competition concerns were identified in 23 cases, out of which 22 cases were approved subject to remedies. Four of these conditional clearance decisions followed a Phase II investigation, while 18 remedy cases were concluded in Phase I. The remedy cases covered a variety of sectors from the financial services (the ABN AMRO / Fortis case) to the steel sector (the Evraz / Highveld case). In 2007, the Commission also adopted one prohibition decision in the Ryanair / Aer Lingus case. The proposed merger would have harmed more than 14 million EU passengers by removing competition on 35 routes operated by both parties.

DG COMP kept its commitment to providing maximum transparency regarding the analytical framework it employs in assessing the competition impact of mergers. In 2007, the Non-horizontal Merger Guidelines and the Consolidated Jurisdictional Notice were adopted. The former provides a clear analytical framework with a focus on generally accepted theories of harm and with consumer welfare as the benchmark for the assessment of mergers between companies that are in a so-called vertical or conglomerate relationship. The latter provides an up-to-date guidance on the Commission's competence to review a transaction under the EU Merger Regulation. DG COMP's effort to assure maximum transparency regarding its analytical framework not only benefits parties to all concentrations being notified to the Commission, but also has an impact on how mergers and acquisitions are being analysed by the national competition authorities of 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 is likely to continue in 2008. As observed in previous years, 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	Outputs completed in 2007
To ensure effective enforcement of State aid rules in the enlarged EU, with particular focus on the most distortive types of aid and on those sectors that are key to the development of the internal market and the competitiveness of the EU economy	Number of decisions on large investment projects in the assisted areas	11
	Adoption of the remaining regional aid maps for the 25 Member States, plus Romania and Bulgaria	11
	Assessment of new operating aid schemes to support the poorest regions of the EU and the outermost regions	18
	Number of decisions in priority rescue and restructuring cases (to the extent not covered hereafter)	24
	Number of decisions on major cases contributing to Lisbon objectives (R&D and innovation, risk capital, energy and environment)	118
	Number of decisions in the field of telecommunication and broadband development	13
	Number of decisions on cases in the banking sector	7
	Number of decisions in the insurance sector	0
	Number of decisions on cases in the postal sector	9
	Number of decisions in fiscal cases	6
	Number of preliminary or final decisions in cases concerning public service broadcasters	3 (+ 28 decisions in audiovisual / media / cinema cases)
	Number of decisions on cases concerning digital terrestrial television	6
	Number of decisions in: social housing, health and sports sectors	2
	Number of executed recovery decisions	22 recovery decisions were executed in 2007
	Number of monitored BER measures	In 2007, 20 BER measures granted in 2006 were monitored
	Establishment of monitoring system for conditional decisions	Not done because of lack of resources
	Monitoring enlargement (Croatia, Turkey)	Continued monitoring of commitments in particular as regards steel and, for Croatia, shipbuilding)
	Enforcement of Transparency Directive	Closure of the infringement proceedings against Austria, Spain, Slovenia and Poland following the adoption of the required transposition measures of the Transparency Directive into national law. Infringement proceedings initiated against seven Member States for non-communication or non-conformity of the national transposition measures (BE, DK, I, LUX, UK, SK, LV)

Review the EU and national regulatory framework, including in new Member States, to help reduce overall aid levels and promote better targeted aid in the pursuit of the Lisbon objectives	Finalization of General Block exemption and of the environmental guidelines	The new environmental guidelines have been finalised and formally adopted by the Commission on 23/01/2008. The draft GBER has been discussed with Member States and published in the OJ. Formal adoption foreseen in June 2008 following a second consultation of MS.
	Preparation of guarantee communication	Draft communication has been published on the web site and discussed with MS. New meeting with MS in April 2008 and final adoption in May 2008.
	Preparation of the revision of communication on taxation and State aid	Internal reflections ongoing
	Preparation of communication on forms of aid	Not pursued
	Preparation of the revision of restructuring guidelines	A questionnaire has been sent to MS and published on our web site to give third parties the possibility to comment on the existing rules. Comments are currently analysed before deciding on the follow up.
	Preparation of a consultative document on procedural reform	Following a detailed analysis of the room for improvement, it was considered that no consultative document should be issued
	Best practices guidelines	Work on streamlining procedures will continue in period 2008/2009; whether that will result in BP guidelines has not yet been decided
	General methodology for in-depth economic analysis of State aid cases	Internal reflections ongoing
	Implementing regulation review	Done
	Reference rate communication	Adopted (will enter into force on 1.7.2008)
	Further development of scoreboard methodology and benchmarking of the effectiveness of aid	Development of scoreboard methodology postponed to 2008 due to lack of resources. Dialogue with Member States at multilateral meeting on effectiveness of aid
	Further development of communication and information tools and policy for State aid	Further development of the state aid sections on the website and improvements to the publication process for decisions led to greater transparency and more timely information.
	Further enhancement of the cooperation between the Commission and the Member States	The dialogue with Member States on how to improve state aid practices and procedures has been re-initiated during the multilateral meeting of 13-14 November 2007.
	DG COMP contribution to the Internal Market Review	Following several written submissions of and active participation in inter-service working groups by DG Competition, the Commission Communication on "A single market for 21st century Europe" was adopted on 20 November 2007, supported by five staff working papers.
	Finalization of Notice on the execution of recovery decisions	Adopted on 25/10/2007
Preparation of Communication on the co-operation between the national courts and the Commission in the area of State aid	Communication under preparation. Adoption foreseen for the end of 2008.	

In 2007, the Commission adopted 510 decisions in the field of State aid. This number represents a slight decrease as compared to the previous years. However, it should be interpreted in the context of a significant increase of measures falling under the scope of the newly introduced block exemption rules, including the new block exemption Regulation for regional aid. In the first three quarters of 2007, Member States informed the Commission that they implemented an additional number of more than 800 block exempted measures, bringing the total number of block exempted measures to more than 2500 since the adoption of the first state aid exemption regulation in 2001.

DG COMP aimed to provide a framework which encourages the granting of better targeted aids that address market failure or equity objectives that have a beneficial impact on competitiveness, employment and growth, and thus on the welfare of society as a whole. For example, in 2007, the Commission took 60 decisions relating to research and development and innovation (in particular, approval decisions with regard to 48 schemes, of which 28 were pure R&D, 4 were pure innovation and 16 covered R&D and Innovation). In addition, the Commission approved 4 *ad hoc* aid measures below the threshold for detailed assessment and adopted 8 decisions with detailed assessment (6 positive and 2 initiations of the formal investigation procedure). Furthermore, the Commission adopted nearly 40 positive decisions relating to environmental aid, including renewable energy. The Commission also approved under EC Treaty state aid rules, 11 regional aid maps covering the period 2007-2013 for the remaining Member States and thus closed a wider review of regional aid systems in all Member States in accordance with the new Regional Aid Guidelines adopted in December 2005. While facilitating well-targeted aid in support of the Lisbon priorities, the enforcement activity was stepped up and focused on those aid measures that might have led to the largest misallocation of resources. As announced in the AMP 2007, the particular attention was paid to restructuring aid to firms in difficulty– in this respect, in 2007, the Commission took six negative decisions.

In line with the State Aid Action Plan, launched by the Commission in 2005, DG COMP continued to simplify the State aid rules, to refine the economic analysis of subsidies and to allow the Commission to concentrate its enforcement on the most distortive cases. In order to clarify its rules on the notification of state aids and ensure faster procedures, the Commission amended the Regulation which establishes complementary procedural provisions for the application of the EC Treaty state aid rules (the so-called "Implementing Regulation"). The modifications will *inter alia* introduce additional notification forms and require the use of an electronic notification system and a secured e-mail system by 1 July 2008. The Commission also adopted a new method for setting reference and discount rates used in the analysis of state aid cases for calculating the grant equivalent of aid and the aid element resulting from interest subsidy schemes. The new method is more in conformity with market principles as it contains a system to take account of the specific situation of the company or project.

DG COMP contributed to ensure respect of state aid discipline in the implementation of other Community policies. With respect to the implementation of the Emissions Trading Directive, DG COMP analysed the 27 National Allocation Plans (NAP) for CO₂ emission permits. DG COMP also screened national applications for derogations under Article 19 of the Energy Tax Directive to ensure compliance with state aid rules. This led to modifications of some applications and strengthened the case for refusal for others. DG COMP contributed to shaping the regulatory framework with a view to promote competition. DG COMP made substantial contributions to all parts of the Energy Package "Greenhouse Gases and Renewables", i.e. to the review of the Emission Trading Directive to maintain the market based approach and to limit distortions of competition from free allocations to certain companies; it ensured consistency of the proposal for a renewables directive with state aid rules; it supported a liability concept for Carbon Storage respecting Polluter Pays Principle and it clarified the legal grounds for assessing state aid to Carbon Capture and Storage. Last but not least, DG COMP actively contributed to the work of the High Level Group "Energy, Environment, Competitiveness".

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

Specific objectives	Results achieved	
	Indicator	Main outputs completed in 2007
Policy development and communication	White paper on damages actions for breach of EC antitrust rules	<p>European Parliament Resolution on the Commission 2005 Green Paper on damages actions for breach of the EU antitrust rules calling on the Commission to prepare a White Paper with detailed proposals to ensure more effective antitrust damages claims.</p> <p>The issue of applicable law, raised in the Green Paper, was dealt with in the context of the Rome II Regulation.</p> <p>In preparation of the White Paper, broad consultations with representatives of Member State governments, judges from national courts, representatives from industry, consumer associations, the legal community and many other stakeholders.</p> <p>Extensive impact assessment analysing the impact of policy choices in the area of damages actions and the choice of possible solutions.</p>
	Draft guidelines on the application of Article 82	Under review
	Appropriate legal instrument on direct settlement in cartel cases	<p>- Proposal for a Commission Regulation amending Regulation 773/2004, as regards conduct of settlement procedure in cartel cases</p> <p>- draft Commission Notice on conduct of settlement proceedings in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council regulation in cartel cases</p> <p>Consultation launched (October - December 2007)</p> <p>Deadline set for comments: 21-12-2007</p>
	Review of remedies policy in antitrust cases	In progress
	Review of remedies policy in merger cases, including an amended Notice on remedies	Public consultation launched 24 April 2007
	Review of jurisdictional notices in mergers	New consolidated jurisdictional notice adopted 10 July 2007
	Guidelines on non-horizontal mergers	Completed and published in 2007
	Ex-post evaluation of merger decisions (study)	Postponed till mid-2008
	Issues paper on competition issues related to the 'Single Euro Payments Area' (SEPA)	DG COMP prepared a draft paper in close cooperation with national competition authorities. This paper will allow that dialogue with the European Payments Council focuses on the main competition issues.
	Number of replies to Parliamentary Questions and percentage delivered within deadline	DG COMP replied to 175 Parliamentary Questions as a lead DG and to 432 associated Questions. DG Comp's delivery percentage to SG is close to 100%.
	Number of cases referred by the	DG COMP dealt with 7 cases referred by the Ombudsman, of which 100% were dealt within time.

	Ombudsman, and percentage dealt within time	
	Annual competition report	Report published on time; positive opinions received from EESC and EP
	Revised strategy for communication towards citizens and consumers	Information geared to consumers and citizens included in external website, with web links, in all languages. Annual Report produced in shorter, more accessible, format and distributed widely. Communications team reorganised and expanded.
Policy coordination	Involvement in court litigations	In 2007, the Court rendered a number of important judgments in the field of merger and antitrust (e.g. Microsoft, Schneider/Legrand, De Beers, Akzo...). DG Competition contributed in close cooperation with the LS to the preparation of court litigations. Only in the State aid field, DG Competition was involved in approximately 40 cases. In addition, the most important judgments were analysed by the services (12 cases from a total of 29 judgments in the State aid field).
	Number of replies to internal and inter-service consultations and upstream support	1638 inter-service consultations, including 585 avis favorable sous réserve and 18 avis négatif.
Ensure the good functioning of the enforcement system provided by the new regulation, in particular of and through the European Competition Network (ECN)	Number of consultations examined pursuant to Article 11(4) and 11(5) of Regulation 1/2003 as well as upstream requests in accordance with Article 11(1) of Regulation 1/2003 with a view to ensure consistent application of competition rules within the ECN	Approx. 140. The number of formal consultations pursuant to Articles 11(4) and 11(5) was 72. The number of upstream requests concerning national cases is estimated to be of the same amount.
	Number of cases from NCAs provided to the Network pursuant to Article 11(3) of Regulation 1/2003 on the application of EU competition law	140
	Number of projects aimed at training national judges	Follow-up to 28 on-going projects
	Number of observations submitted by the Commission to national courts pursuant to Article 15(3) of Regulation 1/2003	1
Helping to shape the regulatory framework	Number of regulatory initiatives at EU level screened from a competition point of view	Replies to 312 inter-service consultations (ISCs) assigned to the case support and the policy units. On the top of that, 27 National Allocation Plans under the Emissions Trading Directive and 5 grouped ISCs on applications for tax derogations under Art. 19 Energy Tax Directive were screened.
	Preparation of documents following the consultations on the SAAP	Preparatory work for the General block exemption, the guarantee communication, the restructuring guidelines, the notification form for State aid for environment, the private investor communication.
Strengthening international cooperation in enforcement activities	Provide input to discussions at various OECD and ICN Working Groups (on cartels, unilateral conduct and mergers)	ICN cartels working group: DG COMP exercised the function of co-chair of the working group, drafted a report on "co-operation between competition agencies in cartel investigations", took part in the preparations for the 2007 cartel workshop and the workshop itself;

and promoting convergence of competition policy instruments across different jurisdictions		Other ICN working groups: DG COMP participated actively and influentially in all ICN working groups and the Steering Group, including the Unilateral conduct working group, and drafted part of a report on Assessment of Dominance/Significant Market Power OECD: DG COMP participated actively in the 3 OECD weeks and submitted in total 13 papers for the various sessions.
	Annual Bilateral Meetings with major jurisdictions (USA, Japan, Canada, China, Korea)	Annual bilateral meetings are high level meetings between the European Commission, usually represented by Commissioner Kroes, and her counterparts in foreign jurisdictions. The purpose is to foster convergence and to promote exchanges and cooperation in the area of competition policy and legislation. In 2007, the following bilateral meetings were held: USA on 30 October in Washington, Canada on 26 February in Brussels, Japan on 14 September in Brussels, China on 3 September in Beijing.
	Inclusion of competition and state aid provisions in trade agreements with major partners	Preparatory work, drafting State aid provisions and taking part in negotiations of Free Trade Agreements with Korea, India and ASEAN. Inclusion of a possibility to address State aid in the PCA with China.
	Propose negotiation mandate for new or enhanced bilateral co-operation agreements to Council	The Commission Proposal for a negotiation mandate for an agreement with Canada was adopted on 12 October.
	Adoption by the EEA Joint Committee of the amended Protocol 23 to the EEA Agreement	Protocol 23 to the EEA Agreement was amended in order to allow the EFTA Surveillance Authority and the competition authorities of the EFTA States to participate in policy discussions of the European Competition Network. The Joint Committee Decision was taken on 26 October.
	Inclusion and monitoring of competition/state aid provisions in action plans with Neighbourhood Policy countries	DG COMP monitored progress in the ENP countries on the basis of informal bilateral contacts, through a TAIEX state aid seminar and through bilateral meetings (e.g. with Jordan). In addition, preparatory work, including analysis of opportunity, regarding implementing rules for State aid provisions in the agreement with Jordan and Israel.
Contribute to the creation of international level playing field by addressing the external dimension of State aid control policy	Preparation of state aid provisions for the forthcoming Free Trade Agreements (planned/ mandates: Korea, India, ASEAN, Central America, Andean Community, Ukraine, Russia)	Preparatory work, analysis of state aid practices of partner countries, drafting position papers, defining negotiating objectives, and drafting text of State aid Free Trade Agreements with several international partners. DG COMP's work is the basis for negotiations with the partner countries.
	Taking part in the negotiations of competition and state aid chapters of these Free Trade Agreements	DG COMP participated in negotiations with the following countries: Korea – four rounds of negotiations were held in 2007, in Brussels and Seoul respectively; India – two rounds of negotiations were held in 2007, in Brussels and Delhi respectively; Andean Community – two rounds were held in 2007; DG COMP was present at the second round in Brussels.
	Input to DG Trade on the revision of EU trade defense instruments	This initiative was postponed by DG TRADE
	Input to DG Trade on the revision of Market Access Strategy	Provided input focussed i.a. on explicit recognition of subsidies as a category of a market access barrier and inclusion of subsidies as a category of possible market access barriers in the complaint form.
	Development of a State aid advocacy strategy towards the international community	Inclusion of State aid provisions in Free Trade Agreements and other types of agreements (see above).

	Co-operation with DG Trade on individual cases of alleged unfair foreign State aid	Contacts with DG Trade have been established but no concrete case occurred.
Contribute to the enlargement process as regards competition policy	Competition chapter of the progress reports on candidate countries (Croatia, Turkey, former Yugoslav Republic of Macedonia) and potential candidate countries (Albania, Serbia, Montenegro, Kosovo and Bosnia and Herzegovina)	DG COMP drafted the competition chapters of the 2007 Progress Reports (adopted on 6 November 2007).
	TAIEX seminars on competition policy and State aid with the candidate countries and potential candidate countries	Merger seminar for participants from the candidate countries (30 January); State aid seminar for participants from the candidate countries and Western Balkans (30-31 May); State aid seminar for European Neighbourhood Policy countries and Russia (29-30 March).
	Technical meetings with the candidate countries on competition and State aid issues	Several technical meetings were held in 2007. With Croatia on restructuring of the shipbuilding and steel industries, with Turkey on the restructuring of the steel industry, with the Former Yugoslav Republic of Macedonia on the law on Technological-Industrial Development Zones.
	Participation in Sub-Committee meetings on Internal Market with the relevant countries involved.	Representatives of DG COMP participated in the Sub-Committees on Internal Market and Competition with Croatia, Turkey and the Former Yugoslav Republic of Macedonia. Moreover, the DG was represented at various other meetings with the Western Balkan countries.
	Competition and State aid provisions, based on the EU Treaty rules, in the Stabilisation and Association Agreements	DG COMP contributed to the negotiation of the competition chapters of the Stabilisation and Association Agreements with Serbia, Montenegro and Bosnia and Herzegovina.

Effective competition policy instruments are a prerequisite to a sound enforcement and advocacy policy. In particular, competition legislation and guidance must be kept under constant review in order to adapt the rules to new market developments, including changes in the market place driven by globalisation, the pace of technological progress and the generally dynamic of markets. In 2007, DG COMP continued a number of major policy projects. Apart from the initiatives mentioned in sections 1.2.2 and 1.2.3 above, the most prominent examples of progress made in the course of the year are the launch of public consultations on revised Remedies Notice and on a draft legislative package to introduce settlement procedure for cartels, and the publication of a working document concerning Commission Regulation amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty.

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 smooth functioning of the European Competition Network (ECN) is illustrated by the absence of use by the Commission of proceedings initiated under Article 11(6) of Regulation 1/2003, which allow the Commission to take over cases being brought by national competition authorities. In 2007, DG COMP reviewed, on the basis of the formal cooperation provisions, 72 envisaged decisions from national competition authorities. It also provided up-stream cooperation in a similar number of cases. In addition, 22 meetings at various levels within the ECN took place to exchange and coordinate on issues of horizontal cooperation (e.g. in cartel investigations, sector inquiries) as well as on sector-specific topics (e.g. energy, electronic communications, financial services and other sectors).

In 2007, DG COMP continued to actively participate in the screening of national progress reports and of the regulatory framework at the national level. In this process, DG COMP made more than 20 proposals for country-specific recommendations and "points-to-watch" relating to Guidelines 13 in annual progress reports under the Lisbon strategy.

Finally, DG COMP continued to be very active in international fora such as the International Competition Network and the OECD, to develop bi-lateral cooperation with other competition agencies, 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.

1.2.5. Activity "Administrative Support"

Specific objectives	Results achieved	
	Indicators	Main outputs completed in 2006
Optimisation of resource and internal management tools	- Implementation of HR strategy	-Partially implemented – to be continued in 2008
	- Implementation of ethical and security policy	-Done, (ongoing task)
	Single management and increase synergies for the three registries	-Done
	- Implementation of Regulation 45/2001	-Almost all the required notifications to the DPO had been finalised by the end of 2007.
	Implementation of the archives action plan	-An assessment of what needs to be done in order to have a centralised and comprehensive archiving system compliant with the E-Domec rules has been performed. Work has started on the reorganisation and the inventory of the archives from the operational units.
	Launch work on common registration tool compliant with eDomec(COMPREG)	-The specific requirements of the future system have been defined and the feasibility study has been finalised at the end of 2007. The new name of the project is EDMA.
	- Payment delays	-Procurement:29 days on average -Grants: 41 days on average
	- Training days	- 10 days per staff member
	- Second phase of IT forensics project	- assistance to inspections and following work - consolidation of IT Forensic infrastructure - training of IT Forensics inspectors
	Business Continuity Plan and IT DRP	First validated BCP done, IT DRP in progress
	Improvement of existing IT applications (line up CMS with Natacha, new languages version of SANI etc).	Line up CMS with Natacha in progress (Access to File has been considered the first priority in 2007) and new languages version of SANI done.

In 2007, DG COMP further improved its resources management by undertaking the following action:

- Following an internal review the DG was re-organised in September 2007 to better align organisational structure with operational objectives;
- The DG continued to ensure sound efficient management of its small administrative budget as well as our small grant programme on "Training of Judges on Competition Law";
- Three internal working groups were set up to further develop the Human Resources strategy aiming to ensure that the DG will continue to recruit and retain the best possible staff. Their reports on recruitment, career development and training were delivered on time and implementation got underway towards the end of the year;
- The IT strategy was more clearly brought in line with the DG's operational strategy, with a focus on further developing priority issues related to our case management, electronic document management systems and the e-Commission approach;

- Considerable efforts were dedicated to improving document management, in line with the eDomec project, leading to a complete reorganisation of the three registries (mergers, antitrust and State aid);
- Finally, DG COMP reviewed its internal vade-mecums on ethics and integrity and security, in order to better protect sensitive information and improve procedures in the area of access to file.

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

Part 2 Management and internal control systems

Section 2.1 - Inherent nature and characteristics of the DG's risk and control environment

The principal activities of the DG are: enforcement of competition rules (roughly 57% of activities), sector inquiries and market monitoring, policy development, competition advocacy and international cooperation.

DG COMP is not a large spending DG. Conventional financial management does not represent a critical challenge for DG COMP's operations. However, developments in the case-law in 2007 introduced a new dimension. The Court of First Instance in July 2007 accepted for the first time that, as a matter of principle, the Commission could be held financially liable for damages caused by a Commission decision in the area of competition that was annulled by the Court (see below).

DG COMP contributes to the EU budget through the imposition of fines (+/- 3.5 billion euros in 2007 - an all time record).

Main stakeholders

DG COMP's stakeholders are all European consumers, who should ultimately benefit from our activities. Companies and Member States are subject to our enforcement or monitoring activities, other stakeholders also include the National Competition Authorities now connected within the European Competition Network and third country partners within the framework of international cooperation. DG COMP also aims to provide intellectual leadership on competition issues, through continued participation to conferences and seminars involving, beyond the business community, the academic world.

Management mode

DG COMP has operated a centralised financial circuit since 2005, 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 2007 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 DG COMP's reputation and/or causing harm to third parties. Given the characteristics of the DG risks and control environment outlined above, DG COMP has elaborated a specific methodology to assess the materiality of the third risk. Although, none of the identified risks impacts on the reasonable assurance, the following issues should be noted:

- By judgment of 11 July 2007 in case T-351/03 Schneider v/ Commission, the Court of First Instance (CFI), for the first time, held the Commission liable for extra-contractual damages caused to a third party as a result of a Commission decision in the field of competition which had been annulled by the Court. Whilst

most of Schneider claims were rejected, the CFI held that Schneider had a right to compensation for two losses: the expenses incurred for the resumed merger proceedings following the annulment and the reduction in the divestiture price that Schneider may have had to concede to Wendel/KKR to obtain the postponement of the "closing" of the sale pending the outcome of the legal proceedings. Originally in its application, Schneider claimed € 1664 million corresponding to the difference between the purchase price and sale price. Since 2003, the Commission has included such amount in its annual account as contingent liability. The CFI's judgement does not take any position on the actual amount of the damages; Schneider will have to present its claims, which will then have to be assessed by an external expert to be appointed together by the Commission and Schneider or by the CFI itself. DG COMP considers that there are reasonable grounds to believe that the experts will evaluate the damage substantially lower than the claim originally introduced by Schneider. Meanwhile, the Commission has introduced an appeal against the CFI judgement, which is currently pending before the European Court of Justice (ECJ).

- DG COMP has since the adoption of the decision in *Schneider/Legrand* taken measures to strengthen its economic and legal analysis of cases, including the further reinforcement of the Chief Economist Team (which was created in 2003) and the establishment of peer review panels where appropriate so as to reduce the risk that decisions are annulled. Furthermore DG COMP carried out a reorganisation in September 2007 with the aim (amongst others) of ensuring more effective management supervision. It cannot be excluded that, if the CFI's judgment is upheld on appeal, this precedent may give rise to further damage claims against the Commission in the future. The Commission has therefore asked for and obtained a specific budget line ("*Damage requests resulting from legal procedures against the Commission's decisions in the field of competition*"); created, with a p.m. in the 2008 budget. In its judgment of 17 September 2007, whilst upholding the Commission's 2004 decision against Microsoft in all other respects, including the fine of 497,196,304 € imposed on Microsoft, the Court of First Instance ruled that the Commission should not have imposed on Microsoft the cost of the Trustee that was appointed to monitor Microsoft's compliance with the 2004 decision. As a result of this judgment, the Commission considers that it should reimburse Microsoft for the Trustee costs up to the date of the judgment, which costs are estimated in the range of 10-15 million €. It is foreseen that this amount will be made available via the newly created budget line mentioned above.
- Finally, in the course of 2007, an incident occurred in which confidential information was inadvertently disclosed to a party in a competition case. The full risk assessment that DG COMP carried out on this disclosure, concluded that contrary to other recorded incidents of this kind, a liability claim against the Commission cannot be excluded. However, no such claim has been filed to date and DG COMP has not identified any damage that has resulted or may result from the inadvertent disclosure. DG COMP has in the case at issue, without delay, taken the necessary remedial action, including the recovery of the information concerned. The newly established Task Force on Ethics, Security and Procedures has moreover established a detailed Action Plan to improve the management of

access to file procedures in order to avoid reoccurrence. This Action Plan was in all material aspects fully implemented by the end of 2007.

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

Not applicable to DG COMP

Section 2.2 Management and control systems

In 2007, DG COMP continued to operate centralised financial circuits (implemented in 2005) as this is found to be a more efficient way of managing its financial resources (€4.8M in 2007). In line with the principles of the Reform, centralised financial circuits facilitate a more efficient sharing of responsibilities between the operational directorates 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. This system applies to all financial operations, except for the management of the "Training of judges" grant programme (+/-€600.000), 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 cross sub-delegation. 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. The issuing of recovery orders related to fines also remain under the responsibility of each antitrust director, although the financial transaction is centralised at the level of the Commission in DG Budget.

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. This "four-eyes" principle is applied for all transactions. The financial cell in Unit R2 is involved in all of them as financial initiator and vericator. 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 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. Continued use of the check list for financial operations was made in 2007, which produced clear benefits in terms of control of transactions from the operational units. (see section 2.4 below).

Internal ACPC

DG COMP's 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. The composition of the committee was revised in 2007 to reflect changes in the organisation and new staff. During the year each file with a contract value exceeding €50.000 was checked by the Committee (This threshold was increased to €60.000 at the end of the year, to bring it in line with the new provisions introduced in the Implementing Rules). The responsible Directorate submits a note to the Head of Unit COMP R2, together with a complete report asking for approval to submit the file to the DG COMP in-house ACPC. In 2007, the ACPC reviewed 4 calls for tenders, and cleared them all.

Two procurement procedures, carried out in 2007 and both linked to court cases, are worth of specific mention:

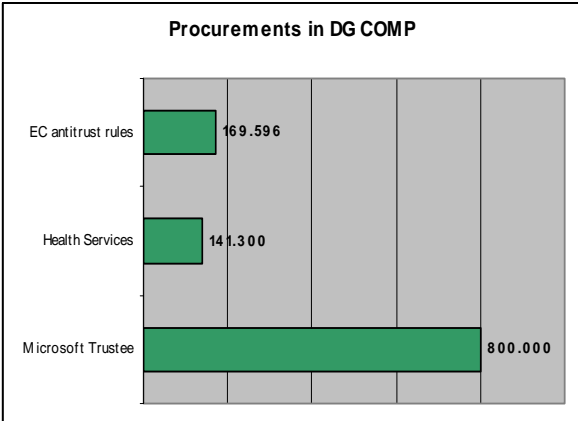
- Following the CFI's ruling of 17 September 2007 in the Microsoft case (see above) DG COMP concluded an interim contract for the period from mid December 2007 to mid March 2008 for procuring services from the Monitoring Trustee in the Microsoft case. For reasons of urgency and continuity an exceptional negotiated procedure on the basis of article 126 (b and c) of the Financial Regulation was used to award the contract. This negotiated procedure was discussed in depth by DG COMP's Operations Committee (DG COMP's most senior management forum) which validated the general approach. The contract was signed on 13/12/2007.
- The second procurement procedure concerns a service contract with an accounting firm which has assisted the Commission in its defence in Court in the My Travel case for the past four years. The Commission does not control the duration of the court proceedings and as this procedure is in its final stages, continuity is highly important. A negotiated procedure was therefore used. The local ACPC and the OCM validated this approach in general. In order to ensure value for money, the OCM asked for detailed clarifications on the proposed fees, which clarifications were provided to the satisfaction of the OCM. The contract was concluded at the beginning of 2008.

Characteristics of DG policy environment:

Summary : DG COMP manages a relatively small administrative budget (€4.8M) the bulk of which is used for external service contracts. In 2007 it also managed a small grant programme "Training of judges" (€600,000).

Key inherent risks in this environment :

Whilst a significant source of income for the EU budget, DG COMP is not a large spending DG. Financial management is therefore not a critical challenge for our operations. The major risk for DG COMP is reputational. There is, however, also a potential financial exposure notably created by claims resulting from action for damages following (partially) annulment actions against Commission decisions in the field of competition.

<p>Management mode: Direct centralised (Information relating to management of the grant programme has not been included as it does not exceed the threshold).</p> <p>Key figures: Volume of contracts per year: Service contracts: 3 of which: Open procedures: 2 Negotiated procedures: 1</p>	 <table border="1"> <caption>Procurements in DG COMP</caption> <thead> <tr> <th>Category</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>EC antitrust rules</td> <td>169.596</td> </tr> <tr> <td>Health Services</td> <td>141.300</td> </tr> <tr> <td>Microsoft Trustee</td> <td>800.000</td> </tr> </tbody> </table>	Category	Value	EC antitrust rules	169.596	Health Services	141.300	Microsoft Trustee	800.000
Category	Value								
EC antitrust rules	169.596								
Health Services	141.300								
Microsoft Trustee	800.000								
<p>Management and control systems : stages and main actors</p>									
<p>Selection process (of beneficiaries, intermediaries, agencies, contractors etc.), including preventive measures</p>	<ul style="list-style-type: none"> • <i>Procurement contracts are reviewed by the local ACPC;</i> • <i>An inter-service committee exists to review grant applications for the Judges programme.</i> 								
<p>Communication and information measures to improve the quality of financial management and provision of supporting data by beneficiaries, contractors and intermediaries</p>	<ul style="list-style-type: none"> • <i>Grant beneficiaries have been provided with guidelines on the implementing rules;</i> • <i>Documented procedures for financial circuits for grants was revised in 2007 following IAC audit recommendations;</i> • <i>Manual of procedures and internal manual on financial procedures posted on the intra-net.</i> 								
<p>Detective and corrective controls: Checks and monitoring during the initial phases of the programme/contract Checks and monitoring during the final/ closure phases of the programme/contract</p>	<ul style="list-style-type: none"> • <i>Checklists have been introduced for all financial circuits;</i> • <i>Contracts with external consultants (eg.: accountants, legal advisors, etc) must be approved by senior management.</i> • <i>New standards to keep the time necessary for payments below the legal ceilings.</i> 								
<p>Preventive and corrective controls and audit: Desk reviews, on-the-spot audits carried out either <i>ex ante</i> or <i>ex post</i>.</p>	<ul style="list-style-type: none"> • <i>Roughly 50% of all 2007 transactions will be subject to ex post audit;</i> • <i>Separation of functions for initiation and verification (different individuals for ex-ante and ex-post) and split between the operational and resources units.</i> • <i>financial circuit check list</i> • <i>Procedures manual;</i> • <i>Compulsory induction courses for all new COMP recruits.</i> 								

Feedback which enables control activities to be optimised	
Verification that processes are working as designed	<ul style="list-style-type: none"> • <i>The audit plan covers core business processes;</i> • <i>Follow-up audits part of standard IAC approach;</i> • <i>Weekly management meetings to review progress on cases and other projects</i>
Monitoring of performance of independent bodies, 3 rd party auditors, externally contracted auditors	<ul style="list-style-type: none"> • <i>For studies, directors must sign to confirm that work carried out is adequate and in accordance with the terms of the contract before final payments can be made.</i>
High level management reporting e.g. to the Director General) and its role in monitoring problem issues	<ul style="list-style-type: none"> • <i>Priority/problem issues are reviewed systematically during the weekly Operational Committee Meetings.</i>

Section 2.3 Follow up of audit work and previous year's reservations

Audits carried out in 2007 focussed on the core business processes of DG COMP (enforcement of competition law in antitrust, mergers and state-aid) as this is where the risk is considered to be greatest. Additionally an audit of 2006 financial transactions and a follow-up audit on Human Resources were also carried out. The audit results did not reveal any issues which would require DG COMP to make a reservation in 2007. However, as the audits identified areas where improvements in efficiency and effectiveness of controls can be made, notably in the areas of document management and documentation of procedures, management has responded with action plans for recommendations issued in audit reports.

The IAS conducted one follow up audit on IT security which concluded that, with the exception of 2 recommendations which are currently being implemented, all the recommendations had been implemented.

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.

Section 2.4 Key indicators supporting reasonable assurance

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

Financial resources: €72M for the administrative budget (8.6 M€ without salaries and other centrally managed expenditures, and 4.8 M€ after deducting costs for temporary staff). As of 2008, DG COMP has no operational budget for the judges programme, we are, however, due to receive a sub-delegation from DG JLS for an amount of €800.000. Owing to the late adoption of the basic act and subsequently the work programme, this has yet to be done.

Number of transactions: 55 commitments, 230 payments.

Payment delays: 33 days on average.

Budget execution: 99.50 % for the administrative budget (global envelope).

Volume of recovery orders: 3 billion € issued in 2007 for fines.

Number of procurement procedures: 22

Number of open calls for tender: 5

Number of low value tender: 15

Number of negotiated procedures: 2

Number of files rejected by the local ACPC: none.

Number of instances of overriding of controls or deviations from established policies: 7.

All of these deviations relate to small amounts ranging between 35 and 1500 € and all involve external private persons. None of them is of a systemic nature. Our position has been that for such cases a strict interpretation of the rules and established policies would be detrimental to the image of the Commission, without clear financial benefits. Some of those exceptions are justified by the fact that the PMO's internal procedures do not cater for normal transaction variations. Others are due to the fact that actual expenditure incurred by experts or laureates of external competitions turn out to be higher than foreseen in the original offer, but by very small amounts (below 150€). Finally, we had to make an *a posteriori* commitment relating to the invitation sent in 2005 by a unit to a laureate of an external competition without any budget commitment.

Identification of residual risks or weaknesses after remedial action

Close attention was paid to the time necessary to process payments, which showed a certain trends upwards, and required corrective action at the end of the year. Although the median time was 22 days altogether (in line with the Directorate R's objectives), a more careful analysis of the situation showed a significant number of exceptions. There has been an increase in the average payment period of payments with a legal deadline of 30 days (33.56 days on average). Part of this situation was due to a shortage of staff in R2 at the beginning of the year, but the rest of it was due to significant delays in operational units (often due to insufficient understanding of the new methods on suspension of payment delays introduced in the ABAC invoice system). Directorate R therefore set new performance objectives in this area:

- The average time to finalise a payment after reception of the invoice should be less than 25 days whatever the legal deadlines are (30, 45 or 60 days),
- At least 97% of the payments must be made within the legal deadlines,
- No payment must be made beyond 90 days. If such a situation occurs, the relevant Authorizing Officer must send the Director General an exception note explaining the reasons for the delay.

Section 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 2008 in accordance with ICS 24, DG COMP has achieved a very high level of compliance with all baseline requirements. The assessment is that internal control is implemented in an effective way in DG COMP, which has made significant progress. Audits of core business procedures have confirmed that key internal controls relating to its operations are in place. In 2007, several issues relating to internal control were addressed to further improve the situation (e.g. implementation of human resources strategy, reorganisation of registries, access to file action plan, new code of ethics, 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 Codes on Ethics and Integrity and on Security, (which summarize and explain all the relevant rules applicable to DG COMP staff and members of the Cabinet), have been updated. In early 2007, the updated versions were 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 and which is regularly updated as appropriate. The information package for officials and experts joining DG COMP for the first time also include these rules and all newcomers are given a special presentation on them during their induction. Furthermore, trainees must sign a declaration that they abide by the required ethics rules. A dedicated Task Force on Ethics, Security and Procedures was created in September to review and improve all rules in those areas. Its work in 2007 focussed mainly on the preparation of the access to file action plan and the finalisation of the revised ethical code of DG COMP.

DG COMP has a designated training coordinator (a new COFO has been appointed in 2007) and a Local Career Guidance Officer. The DG did not produce a Strategic Training Framework for 2007 but set up a working group on training in the framework of our HR strategy, which completely reassessed our training priorities. This report will be the basis for the 2008 Strategic Training Framework. Training maps have been agreed with all staff as a matter of course during the 2007 CDR exercise. Staff are 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 constantly achieved in the past years its stated target of approximately 10 training days per official (real average number of days of training per person was 7.5, with 2.5 on-the-job training).

Job descriptions and individual objectives are up to date and used as a management tool and in 2007 the DG has started to use job requirements. The CDR is conducted in a quick and efficient manner, but to avoid unnecessary bureaucracy, DG COMP does not make interim reports for staff moving within the DG.

The list of sensitive posts is kept up to date. The situation in 2007 was fully in line with the Commission guidelines on sensitive functions.

The groundwork for a comprehensive mobility policy was completed in 2007, within the framework of DG COMP's Human Resources strategy. For 2007 the data on internal and

external mobility are as follows: 28 administrators and 20 assistants have changed function within DG COMP, 36 administrators and 39 assistants have moved to other DGs, while 64 administrators and 61 assistants have joined DG COMP in the course of 2007.

Performance and risk management (ICS 7 to 11)

The DG complies with requirements from central services on AMP and objective setting. New workload and performance indicators were developed in 2007, which are monitored on a monthly basis. (ICS 7 and 10)

Additionally, during 2007 an IT Planner has been adopted by senior management. This new planner aligns IT priorities with the general strategy as defined in the AMP.

In the context of the incident reported in section 2.1, a critical risk has been identified. However, as described in section 2.1 all necessary remedial actions to mitigate financial and reputational risks for the Commission have been taken. Hence the risk has been adequately managed. In addition to the actions taken to improve access to file procedures, the new structure which DG COMP implemented as off 1 September (including the creation of Strategy and Delivery unit, functions of O2 and O3 in case support, etc...) further reduces the risk of errors.

The implementation of one of the critical recommendations of the IAS, the establishment of a Business Continuity Plan in the IT area (ICS 11.4), is in progress. DG COMP is currently reviewing whether it would be more appropriate to house its main IT systems centrally with DG DIGIT, rather than locally. This matter will be taken forward in 2008.

Information and Communication (ICS 12 to 14)

DG COMP produces a quarterly report on resources (ICS 12) and developed in 2007 monthly 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. Senior Management also regularly reviews state-of-play of AMP actions to ensure that implementation is progressing according to plan. Mail registration was a major issue before 2007, which led to the implementation of a complete reorganisation of the three registries of DG COMP, now under a single management. In addition, as part of the Action Plan on access to file, new procedures for reporting security incidents, such as the inadvertent disclosure of confidential information, to the Director General and the Commissioner have been introduced. The procedure for reporting improprieties, as referred to in the Commission Communication on "how to enhance effective application of the whistleblowing rules and protection of whistleblowers"⁸ is in place. No improprieties were reported in 2007.

Control activities (ICS 15 to 19)

⁸ Commission Communication of 6 February 2004 on "how to enhance effective application of the whistleblowing rules and protection of whistleblowers" (SEC(2004) 151/2)

Documentation of procedures is subject to constant improvements. Since 2006, DG COMP has worked on the incorporation of the "need to know" principle in its management of documents, implementation of which began in 2007. All notifications of personal data were made in 2007, in cooperation with the Commission's DPO. All significant processes in DG COMP have now been notified to the DPO in accordance with Regulation 45/2001. These procedures were reviewed again in the context of the action plan on access to file.

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 Continuity Plan was formally adopted in the first quarter of 2007 and is currently in the process of being fine-tuned following the identification of some gaps during the TOCSIN 07 business continuity exercise. The full IT BCP could not be finalised in 2007 and will be ready in 2008.

Audit and evaluation (ICS 20 to 24)

ICS 20 has been effectively applied since 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.

Internal audits did not encounter any incident where the ICS was not in place or was manifestly ineffective. No critical recommendations were issued. Action plans were drawn up for the 8 *very important* and 9 *important* recommendations issued. The follow up of audit reports is constantly monitored and action plans are systematically adopted by senior management.

The evaluation activities were further developed in 2007 and better incorporated into the work of the DG. A new dedicated unit was created in September 2007 to build on the work done by the task force created in 2006 and conduct ex-ante and ex-post evaluations of our enforcement activities, in terms of productivity, efficiency and impact.

Finally, the annual review of internal control arrangements was conducted in accordance with the guidelines provided by DG BUDG.

Section 3.1 Materiality criteria used

3.1 Materiality criteria

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, notably the work of families of DGs.

[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:

Qualitative criteria

Significant weaknesses are determined on the basis of the following parameters:

- **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 (see Quantitative criteria below) 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 do not report errors but indicate potential problems for detecting errors.
- **Situations where the DG knows that it does not have sufficient evidence from internal control systems or audit coverage** (for example, ex-post control work) to be confident of providing the necessary assurances. Similarly, in situations where the DG may not be aware of specific control weaknesses, simply because it has not performed the expected levels of controls in that area. In this regard, particular care needs to be exercised to ensure that the DG does not make "umbrella" type reservations. Reservations should not automatically be made simply because an area has not been audited, and evidence from other areas of the internal control system should be evaluated. The DG needs to consider very carefully the basis on which assurances are built, for example the extent to which it is dependent on audit and/or ex-post controls work, in order to determine whether there are material omissions, either in the coverage and/or nature of that work.
- Situations where a major issue has been outlined by the **European Court of Auditors or the Internal Audit Service.**
- Situations where the DG has evidence, possibly through its own control work or through audit, that **significant risks remain unmitigated.**
- **A significant reputational risk.** 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.

Quantitative criteria:

Once significant weaknesses have been identified, quantitative criteria should be applied when possible for assessing the materiality level which will indicate whether the weakness merits to be reported as a reservation or not.]

DG COMP manages a very small budget and the number of transactions is limited. Therefore, materiality should rather be assessed in the framework of a system-based approach:

- First the seriousness (key control at stake? Preventive or detective control? Probability and impact of a real deficiency? Risk of errors or loss of efficiency?) and scope (which programme? which Member state or

third country affected?) of the weakness identified should be assessed, together with mitigating controls and remedial measures in place.

- Then its maximum potential financial impact should be determined as precisely as possible, based either on results of actual ex post controls (sampling method, with a certain level of confidence) or on realistic default assumptions (financial corrections, 10 to 20 % of transactions within the system actually at risk, depending on the cause of error and the potential for timely discovery and recovery, for example).

3.2 *Assessment*

The results of audit reports, internal control reviews, and risk assessments as described here-above indicate that DG COMP's system of internal control has functioned as intended during 2007 and has not identified any material deficiencies. DG COMP therefore makes no reservations .

Part 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,

(signed)
Philip LOWE