



EUROPEAN COMMISSION

Competition DG

Directorate General for Competition

Annual Activity Report 2009

24.03.2010

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

TABLE OF CONTENTS

1.	POLICY ACHIEVEMENTS.....	3
1.1.	Achievements by policy area	3
1.1.1.	Protecting competition on the market as a means to enhance consumer welfare in the EU	4
1.1.2.	Supporting growth, jobs and competitiveness.....	7
1.1.3.	Fostering a competition culture	9
1.2.	Specific objectives of the 2009 Annual Management Plan.....	9
1.2.1.	Control of State aid.....	10
1.2.2.	Merger control.....	11
1.2.3.	Cartels, anti-trust and liberalization.....	12
1.2.4.	Policy, coordination, European Competition Network (ECN) and international cooperation.....	13
2.	MANAGEMENT AND INTERNAL CONTROL SYSTEMS	17
2.1.	Introduction of DG Competition	17
2.1.1.	DG COMP structure.....	17
2.1.2.	Risks	17
2.1.3.	Working arrangements with the Commissioner and change of Director-General.....	18
2.1.4.	Financial circuits	18
2.1.5.	Description of internal control systems	20
2.2.	The functioning and effectiveness of internal control systems.....	21
2.2.1.	Compliance with the requirements of the control standards	21
2.2.2.	Effectiveness of implementation of the prioritised control standards	22
2.2.3.	Conclusion on the functioning and effectiveness of internal control systems.....	25
3.	BUILDING BLOCKS TOWARDS THE DECLARATION OF ASSURANCE.....	26
3.1.	Building blocks towards reasonable assurance	26
3.1.1.	Building block 1: Assessment by management	26
3.1.2.	Building block 2: Results from audits during the reporting year	27
3.1.3.	Building block 3: Follow-up of previous years' reservations and action plans for audits from previous years	28
3.1.4.	Building block 4: Assurance received from other Authorising Officers in cases of crossed sub-delegation	28
3.1.5.	Completeness and reliability of the information reported in the building blocks.....	28
3.2.	Reservations and their impact on the declaration	29
3.3.	Overall conclusions on the combined impact of the reservations on the declaration as a whole.....	29
4.	DECLARATION OF ASSURANCE.....	30
5.	LIST OF ANNEXES.....	31

1. POLICY ACHIEVEMENTS

1.1. Achievements by policy area

The general objectives of DG Competition - as set out in the 2009 Annual Management Plan (2009 AMP) - are i) to protect competition on the market as means of enhancing consumer welfare; ii) to support growth, jobs and competitiveness of the EU economy and iii) to foster a competition culture. As emphasised below these general objectives remain valid in the context of the financial and economic crisis. They build on the five-year strategic objectives set out at the start of the past Commission's mandate: prosperity, solidarity, security and freedom, and a stronger Europe in the world.

The 2009 AMP states that competition policy should prioritise actions with the greatest likely impact on the functioning of markets. Competition policy should therefore focus on sectors with particular relevance for the **competitiveness of the EU economy** as well as sectors with the **greatest impact on consumers**.

Accordingly, in 2009 competition policy continued to contribute towards better functioning and competitive markets in network industries, such as energy, transport, electronic communications and financial services, all of which are vital for the competitiveness of the EU economy. The network industries also make up a sizable portion of citizens' household expenditure. More detail on the nature and impact of achievements in this area is set out below.

The Commission continued to play a leading role in tackling the economic and financial crisis, in particular by using State aid rules as a key coordination instrument. Two key sets of rules for the rescue and recapitalisation of financial institutions were adopted in 2008¹. Further guidance was provided in 2009 to Member States through communications on **impaired assets**² and **restructuring of financial institutions**³. These guidelines were applied in a number of concrete restructuring cases during this year⁴. These achievements served to further underpin **financial stability**.

¹ See Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition (C 10, 15.1.2009, p. 2-10) and the Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p.8).

² Communication from the Commission on the Treatment of Impaired Assets in the Community Banking sector (OJ C 72, 26.03.2009, p. 1).

³ Communication from the Commission "The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules" (OJ C195, 19.8.2009, p. 9).

⁴ Restructuring plans were approved amongst others for Commerzbank, ING, RBS, Lloyds' Banking Group and KBC.

The **restructuring process** of the financial sector is vital to ensure a successful exit from the crisis as well as to lay the foundations for growth, jobs and competitiveness in the longer term. The financial stakes of these policy interventions are worth noting. In 2009, the Commission authorised over 30 rescue schemes in 19 countries and a large number of measures in favour of specific credit institutions. The **overall authorised aid amounts to more than € 3,63 trillion or approximately 29% of the EU's GDP**. The amount of crisis support actually implemented by Member States in 2008 stood at €958 billion. Much of the remainder (i.e. non-implemented authorised aid) took the form of guarantees. (Figures for State aid in 2009 are not yet available: see section 1.2.1 below). Both schemes and individual aids were vetted to avoid spill-over effects and excessive distortions of competition which would harm competition on the internal market.

The State aid area also faced challenges relating to the impact of the crisis on the **real economy**. The **Temporary Framework** - which was specifically adopted in response to the crisis with the aim of facilitating access to finance for firms affected by the crisis - was widely used during 2009, including to support the car industry. Part of the support granted involved green aid by inter alia the largest Member States (such as promotion of low emission vehicles). This illustrates how State aid instruments were deployed to combat the crisis as well as to drive longer term reforms towards a more sustainable economy in line with the European Economic Recovery Plan. It should also be emphasised that the State aid procedures related to crisis aids were speeded up – in some cases – considerably.

In its examination of aid schemes approved on the basis of the Temporary Framework, the Commission monitored in particular **that such aids were not subject – de jure or de facto – to protectionist conditions**, such as conditions concerning the geographic location of investments, for example in the car industry. The Commission carefully examined each case that raised this type of protectionist concerns, in order to ensure that the aid was not biased by non-economic considerations and that that could jeopardize the long term viability of the industry concerned.

It appears from the foregoing that competition policy (in particular State aid control) contributed to respond to the financial and economic crisis, whilst **safeguarding the internal market**. This constitutes the **key achievement of competition policy during 2009**.

For a more detailed and comprehensive account of activities in the field of EU competition policy in 2009 reference is also made to the Annual Competition Report⁵.

1.1.1. Protecting competition on the market as a means to enhance consumer welfare in the EU

According to a rough estimate, customer savings resulting from enforcement action in several of the main branches of competition policy amounted to at least **€11bn in 2008**. **The figure for 2009 was around 9 bn**⁶. The assumptions for the calculations are set out

⁵ It is expected that the Annual Competition Report for 2009 will be published during the second quarter of 2010. As in previous years that Report will be divided into two parts: Part I (adopted by the Commission and including a foreword by the Commissioner) and Part II (a more extensive document, presented in the form of a Commission staff working document).

⁶ It is important to note that DG Competition is currently revising the methodology with a view to making it more robust.

below in respect of each of the three main areas concerned (mergers, cartels and antitrust) in the section dealing with the specific objectives below (sections 1.2.2 and 1.2.3).

This estimate – which itself is based on a number of assumptions and is limited to the presumed impact of a selected group of competition policy actions - **does not take into account the indirect effects of the deterrent effect** of cartel and antitrust cases, of the effects of State aid control and of the effects of the policy, coordination, European Competition Network and international cooperation activities.

Table 1: Comparison of estimated customer savings figures for 2008 and 2009

Activity	2008		2009	
	Estimated size of the market concerned (million EUR)	Estimated customer savings (million EUR)	Estimated size of the market concerned (million EUR)	Estimated customer savings (million EUR)
Commission decisions prohibiting cartels	2 600	1 200 ⁷	3 700	1 700 ⁸
Commission decisions prohibiting anti-competitive practices other than cartels	3 000	300 ⁹	20 000	2 000
Commission decisions making commitments binding	40 000	4 000 ¹⁰		
Corrective merger decisions ¹¹	55 000	5 500	56 000	5 600
Commission decisions prohibiting anti-competitive practices under Article 86 EC	5 000	500 ¹²	0	0

⁷ The estimation assumes that: (a) the average expected life span of a cartel at the time of its discovery is 5 years, (b) the average cartel gain from setting a cartel price equals to 10% of the estimated size of the market concerned and (c) the annual discount rate of 3.5% for year n+1 to n+4 is applicable.

⁸ The estimation assumes that: (a) the average expected life span of a cartel at the time of its discovery is 5 years, (b) the average cartel gain from setting a cartel price equals to 10% of the estimated size of the market concerned and (c) the annual discount rate of 3.5% for year n+1 to n+4 is applicable.

⁹ The estimation assumes that the customer saving corresponds to 10% of the size of the relevant market(s) to which the anti-competitive practice relates. The 10% value is based on an analogy to the SSNIP (Small but Significant and Non-transitory Increase in Price) test.

¹⁰ The estimation assumes that the customer saving corresponds to 10% of the size of the relevant market(s) to which the commitments made binding relate. The 10% value is based on an analogy to the SSNIP (Small but Significant and Non-transitory Increase in Price) test.

¹¹ For the purposes of this document, corrective merger decisions are prohibition decisions and clearance decisions with remedies. The estimation assumes that the future customer savings resulting from corrective merger decisions corresponds to 10% of the size of the relevant market(s) on which the concentration would have significantly impeded effective competition. The 10% value is based on an analogy to the SSNIP (Small but Significant and Non-transitory Increase in Price) test.

¹² The estimation assumes that the customer saving corresponds to 10% of the size of the relevant market(s) to which the anti-competitive practice relates. The 10% value is based on an analogy to the SSNIP (Small but Significant and Non-transitory Increase in Price) test. Indicated value is based on decisions adopted by the Commission in 2008. Figure does not include the size of electronic communications markets analysed by national regulatory authorities under Article 7 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services.

TOTAL (rounded figure)	105 000	11 000	80 000	9 000
---	----------------	---------------	---------------	--------------

1.1.2. Supporting growth, jobs and competitiveness

As mentioned above competition policy should focus on sectors with particular relevance for the competitiveness of the EU economy, thereby supporting sustainable growth and jobs. For example, competition in the IT sector and in network industries influences the input costs and quality and hence the competitiveness of a wide range of economic activities across the economy. Some of the achievements in this area and their relevance are referred to below. Action in this area is particularly relevant to ensure a successful exit from the crisis as well as sustainable growth and jobs in the longer term.

Effective enforcement action was undertaken against dominant companies in key areas of the **IT sector**, ensuring among other things that **incentives for innovation** are maintained (see in particular the prohibition decision imposing the highest fine on an individual company in the *Intel*¹³ case concerning microprocessors and the decision making commitments binding on Microsoft¹⁴ as regards internet browsers). Enforcement action in the IT sector also provided guidance as regards conduct by dominant companies in the area of **standard-setting** (see the Commission's decision making commitments binding on Rambus¹⁵). Standards are becoming increasingly important in facilitating innovation (in particular in the IT sector). In the field of standard-setting, the Commission aims at providing more guidance through the review of the regime for the assessment of horizontal cooperation agreements (on this review see 1.2.4 below).

The **pharmaceutical sector** is also essential in the context of innovation. In 2009 the Commission concluded its sector inquiry into competition into pharmaceuticals markets. The inquiry examines the reasons for observed delays in the entry of generic medicines to the market and the apparent decline in innovation as measured by the number of new medicines coming to market. Among other things the inquiry also confirmed the relevance of the recent initiatives by the European Patent Office to ensure a high quality standard of patents granted and to accelerate patenting procedures

A competitive **single European energy market** is vital for EU competitiveness, sustainability and security of supply. In pursuit of this objective enforcement action was taken against major incumbents in the gas and electricity sectors, aimed among other things at increasing the **incentives to compete and invest in infrastructure**¹⁶. DG COMP also contributed significantly to the Third Energy Package which enhanced

¹³ Case COMP/37990 *Intel* (OJ C 227, 22.9.2009, p. 13).

¹⁴ The commitments are published on the website of the Directorate-General for Competition under "Antitrust cases".

¹⁵ The decision and the commitments are published on the website of the Directorate-General for Competition under "Antitrust cases".

¹⁶ See e.g. decision of 8 July imposing fines both on E.ON and GDF Suez for market sharing (Case COMP/39401 - See IP/09/1099, 8.7.2009.) and the Statement of Objections sent to SO to ENI S.p.A. on 19 March in relation to the company's management and operation of natural gas transmission pipelines (Case COMP/39317. See MEMO/09/120, 19.3.2009).

regulatory mechanisms and effectively separated production and supply activities, as well as to efforts in combating climate change.

Competition and market mechanisms sometimes do not suffice to achieve competitiveness, growth and jobs. **Public intervention (such as public financial support) may in particular be needed to address market failures or equity objectives that have a positive impact on competitiveness, growth and employment.** During 2009 State aid control continued to contribute towards effectively addressing such market failures; for example, by applying well-designed rules for aid for research & development and innovation; training; environmental protection; risk capital or aid to small and medium-sized enterprises (SMEs) (see 1.2.1 below as regards trends towards such 'better aid'). Regional aid measures in particular seek to address equity objectives.

Market failures exist in certain regions of the EU as regards **investment in broadband infrastructure**. Broadband infrastructure is crucial to economic and social development. In total around € 300 billion in investment in broadband and Next Generation Access networks are expected over the next decade or so. To facilitate this investment and ensure that investments are shifted into the field of very high speed new-generation networks the Commission adopted new **Broadband Guidelines** in September 2009¹⁷. The guidelines provide certainty for market investors and clarify how Member States can best make use of funds made available under the European Economic Recovery plan.

A well-functioning, well regulated and competitive financial sector is essential for the economy as a whole, not least by ensuring stability and access to credit on reasonable terms. The application of State aid rules in the context of the financial crisis contributed towards these objectives (see section 1 above). Achievements in this area included the prevention of a collapse of the financial system, prevention of subsidy races between Member States¹⁸ as well the start of restructuring of the financial institutions concerned in order to ensure their return to long-term viability. These actions were undertaken also with a view to ensure a coordinated strategy of existing from financial support. These measures complemented measures taken by central banks and governments.

As mentioned, well functioning competitive markets are necessary to boost economic growth. The devastating effects of the crisis have led to a severe economic downturn¹⁹, high national public debts²⁰ and unemployment²¹. Keeping markets open and making them work better through competition enforcement and pro-competitive regulatory reform is of the utmost importance in the current economic conditions. **Historical experience suggests that a weakening of the competition framework may prolong a severe economic downturn by several years.**

¹⁷ Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, OJ C 235, 30.9.2009, p. 7.

¹⁸ For example through the Commission's interventions as regards the guarantee scheme by Ireland.

¹⁹ GDP Growth: -4% in 2009, less than 1% in 2010

²⁰ 80% of EU GDP in 2011 vs. 61,5% in 2008

²¹ 7,5% in Nov. 2008, 9,5% in Jan. 2010, and possibly 11% in 2011

1.1.3. *Fostering a competition culture*

The objective of fostering a competition culture aims at enabling consumers making informed choices between products and services offered, persuading businesses refrain from anti-competitive agreements or behaviour and making public administrations aware of the potential contribution of competition in tackling wider economic problems.

As regards specific activities to foster a competition culture among others it may be mentioned that 2009 was the first full year of operation of the **Consumer Liaison Unit**. The unit's objective is to deepen DG COMP engagement with consumer representatives and develop new ways of communicating directly with the broader public. Related actions included the hosting by DG COMP of a public event focused on consumers²². With a view to improving communication, the consumer pages of the competition website were revamped to include more user-friendly information. The site now acts as a stand-alone information gateway for European consumers, talking to them in straightforward language and through many interactive elements available in all EU languages.

Senior staff and the Competition Commissioner also gave around 1 000 presentations or speeches to external groups each year, in addition to the vast DG COMP website and extensive list of niche publications produced by DG COMP each year.

One example of active efforts to build a competition culture, rather than wait for necessary enforcement action is the **Online Music Roundtable** started in 2008. In 2009, a report on opportunities and barriers to online retailing was published and meetings under the aegis of Commissioner of Competition were held. Following the Roundtable, some participants made specific announcements aimed at moving towards concrete solutions to increase the efficiency of online music licensing for the benefit of consumers.

Likewise, competition authorities can help nurture pro-competitive self-regulation. The issue of standard-setting is a case in point. Standards play an increasingly important role in today's rapidly changing information society. **Standard-setting organisations** must establish rules which ensure fair, transparent procedures and early disclosure of relevant intellectual property. This has not always been the case. Action in this area included work on revision by the Commission of the rules for horizontal cooperation agreements under EU antitrust rules, which among other things focused on standards (see 1.2.4 below). To this end, DG COMP conducted panel events on open standards, and contributed to wider Commission documents such as the White Paper on Modernising ICT Standardisation in the EU²³ in July 2009, and a Commission Communications on Standardisation and Innovation in 2008.

1.2. **Specific objectives of the 2009 Annual Management Plan**

The Annual Management Plan encompasses a number of specific objectives falling within the following areas: i) control of State aid; ii) merger control; iii) cartels, anti-trust and liberalization; policy, iv) coordination, European Competition Network and international cooperation as well as v) administrative support.

²² Competition and Consumers in the 21st Century (held on 21 October).

²³ The Commission's questionnaire and related documents can be found on the website of the Directorate-General for Enterprise and Industry under "Public consultations" (<http://ec.europa.eu/enterprise/newsroom/cf/newsbytheme.cfm?lang=en&displayType=consultation&oT=pa>).

In 2009 DG COMP **flexible project-based management structure supported the achievement of the specific objectives** in that it enabled resources to be swiftly re-deployed when staff needed to be pooled to work on high priority projects; for example, as a result of unforeseen changes in the environment, such as the financial and economic crisis. Indeed, throughout 2008 and 2009 this organisational set-up withstood a severe test when politically sensitive financial aid schemes and cases had to be decided on within extremely tight deadlines (sometimes within 24 hours). The project-based organisational structure enabled the rapid creation of a large number of project teams, pooling staff possessing the requisite expertise of the relevant sectors or competition tools.

1.2.1. Control of State aid

State aid control may be used to encourage the granting of better targeted aids to address market failures or equity objectives that have a positive impact on competitiveness, employment and growth, benefiting society as a whole. For example, in 2009, the Commission took close to 30 positive decisions relating to research and development aid. Having simplified and streamlined the state aid rules through the General Block Exemption Regulation (GBER) adopted in 2008, the granting of aid by Member States with minimal administrative burden was greatly facilitated. Almost 1 000 cases²⁴ of aid were covered by the GBER in 2009. The exempted aid measures included aid in the fields of research and development, risk capital for SMEs, employment, training as well as aid for environmental purposes and regional investment aid.

The GBER formed a key part of the comprehensive reform programme launched through the State Aid Action Plan in 2005. Aid covered by block exemptions, in particular the GBER, rose significantly during 2009 in terms of the aid volume and represented € 10 billion or 19% of total aid in 2008, compared to 2007 (€6.3 billion or 13%) and 2006 (€ 3 billion or 6% of total aid). Another 76% of total aid was granted through schemes and only 5% represented individual aid.

While a specific 2009 AMP objective is to reduce the overall level of State aid in the EU ("less aid"), in assessing achievements in this area during 2009 account needs to be taken of the need for expansionist fiscal and other support measures by public authorities necessitated by the exceptional financial and economic conditions²⁵.

While data for State aid in 2009 are not yet available, figures published in the autumn of 2009²⁶ showed that **the overall aid²⁷ volume rose in 2008 from around 0.5% of GDP to 2.2% of GDP** (equivalent to € 279.6 billion) **due to the financial and economic crisis**. Crisis-related aid represented roughly 1.7% of GDP (equivalent to €212.2 billion), being attributable to aid to financial institutions only. Aid to the real economy under the Temporary Framework started to be implemented by Member States only in 2009. Save for **crisis measures, total aid amounted in 2008 to 0.5% of GDP or €67.4 billion**, a level similar to 2007 and the years before. Aid was **mainly directed towards horizontal**

²⁴ 972

²⁵ The Treaty rules on State aid makes special provision for exceptional conditions resulting in serious disturbances of Member State economies (Article 107(3)(b)).

²⁶ COM(2009) 661 final, 7.12.2009.

²⁷ Overall level of State aid granted by Member States expressed as a percentage of GDP (less agriculture, fisheries and transport).

objectives of common interest (on average 88%), of which regional investment aid, research and development and environmental aid represented around two third whereas rescue and restructuring aid fell. Although figures for 2009 are not yet available, the volume and share of non-financial aid in 2009 is not expected to change dramatically.

1.2.2. Merger control

While **merger activity declined in 2009** as a result of the financial crisis, cases notified during the year as well as the implementation of remedies from earlier cases **often raised difficult jurisdictional and procedural questions**.

In 2009 the number of mergers notified fell below the record levels of previous years. In total, 259 transactions were notified to the Commission and 243 final decisions were adopted. Of these final decisions, 225 transactions were approved without conditions during Phase I, 82 decisions were approved without conditions under the normal procedure and 143 (or 63.6%) were cleared using the simplified procedure. 13 transactions were cleared in Phase I subject to conditions. Furthermore, the Commission initiated five Phase II proceedings, with three Article 8 decisions adopted which were all cleared subject to conditions. Six cases were withdrawn in Phase I and two in Phase II. No prohibition decisions were taken during the year.

In the wake of the financial crisis, the Commission was confronted with complex jurisdictional issues under the Merger Regulation. Indeed, questions arose as to **whether nationalisations of financial institutions needed to be notified to the Commission under the Merger Regulation**. This depends on whether or not the nationalised entity would remain an economic unit with an independent power of decision, or whether such nationalised entity could be considered to form part of a single economic entity with other state controlled undertakings. In most cases, the Commission was satisfied that the holding arrangements ensured independence and thus that no concentration was taking place. However, in one case²⁸ a concentration had to be notified.

The economic significance for consumer welfare of addressing competition concerns through appropriate merger remedies is worth noting. **Estimated customer savings resulting from corrective merger decisions adopted by the Commission in 2009 were around €5-6 billion**. For the purposes of this document, by corrective merger decisions are meant prohibition decisions and clearance decisions with remedies (see Table 1 above for more details).

In 2009 the Commission presented a **report to the Council on the application of the Merger Regulation**²⁹, five years after its entry into force. The Report was to a large extent positive as regards the functioning of the Merger Regulation so far. Nevertheless, some shortcomings were identified which merit further reflection. Notably, while the right kind of cases are reviewed under the Merger Regulation, a significant number of cross border mergers fall under national jurisdiction. Due to diverging national rules this could affect the degree of level playing field in the EU.

²⁸ In the case of German Hypo Real Estate bank. (Case COMP/M.5528 SOFFIN/Hypo Real Estate.).

²⁹ Communication from the Commission to the Council, Report on the functioning of Regulation No 139/2004, and the accompanying Commission staff working paper, 18 June 2009 (COM(2009)281 final).

1.2.3. Cartels, anti-trust and liberalization

Cartels are the most serious infringements of the Treaty provision prohibiting anti-competitive agreements³⁰. A cartel is an arrangement, generally entered into between competing firms, designed to limit or eliminate competition between them with a view to raising prices and profits, without producing any objective countervailing benefits. Cartels typically involve agreements to fix prices, limit output, share markets, allocate customers and/or territories among firms, rig bids and/or a combination of any of these.

The level of fines - **nearly €10 billion** - imposed by the Commission in 39 cases between 2004 and 2009, against well over 200 individual companies, testifies to the top priority attached to the fight against cartels. By offering partial or full immunity from fines to participants reporting cartels, the Commission's leniency policy is an effective means to detect cartels. Around three quarters of cartel decisions originate from leniency applications.

In 2009 the Commission adopted six cartel decisions, imposing fines amounting to €1.62 billion (imposed on 43 companies). The fight against cartels with an international dimension proved particularly successful³¹. Moreover, these cartel cases illustrate the wide range of consumer items affected by cartel behaviour and therefore how the Commission's enforcement action assists the daily lives of Europeans. Recent cases include plastics additives or heat stabilisers. A strict approach was adopted in relation to repeat offenders.

Overall, cartel enforcement is estimated to have resulted **in customer savings of around €1700 million** (see Table 1 above for more details).

There were also considerable achievements as regards effective enforcement in relation to **harmful antitrust violations other than cartels, in particular abuses of dominant situation**. Sanctions and commitments were imposed not least on dominant firms operating in the IT, gas and electricity sectors (see 1.1.2 above as regards some of the more high-profile cases such as Intel or Microsoft).

Decisions adopted by the Commission prohibiting anticompetitive practices other than cartels or imposing commitments on firms in 2009 corresponded to an estimated **€2000 million in terms of customer savings** (see Table 1 above for more details).

The crisis also had some impact in the antitrust area as the Commission was called upon to consider **arguments relating to difficulties faced by companies in paying fines** imposed by the Commission under the antitrust rules. The Commission carefully assesses inability to pay requests by companies on a case-by-case basis under point 35 of the 2006 Fining Guidelines, also taking into account the current economic crisis. An inability to pay claim was accepted in one case³², which led to a substantial reduction of the fine. The Commission also took into account the difficult financial situation of a company in another case³³ and reduced the fine.

³⁰ Article 101 TFEU.

³¹ See e.g. the decision in *E.ON/GDF-Suez* (IP/09/1099) or *Power Transformers* involving a market sharing agreement between European and Japanese producers (IP/09/1432).

³² Heat Stabilizers

³³ Calcium Carbide

1.2.4. Policy, coordination, European Competition Network (ECN) and international cooperation

In the **antitrust area** DG COMP is presently in the process of reviewing a number of Block Exemption Regulations (BERs) as well as accompanying guidelines aimed at facilitating the assessment of different types of agreements under EU competition rules. Several BERs are set to expire in 2010. Two of these initiatives are mentioned below.

First, in 2009, the Commission renewed the exemption granted to maritime consortia since 1995³⁴. A maritime consortium is a form of operational cooperation between liner carriers to provide a joint service. In addition, the Commission continued its review of the current BER applicable to **vertical agreements**³⁵ and the accompanying guidelines³⁶. The Commission proposed to maintain, in essence, the current rules, while at the same time adapting and refining them to take account of developments in the marketplace, in particular the **market power of buyers** and the continuous increase of **on-line sales**. When originally introduced in 1999 this set of rules was the first of a new generation of exemption regulations and guidelines inspired by a more economic and effects-based approach. Both the Commission and the national competition authorities have found that the rules on vertical agreements have worked well in practice.

Another important policy review in the field of vertical restraints concern the motor vehicle distribution sector which is currently covered by a specific block exemption, i.e. Commission Regulation no. 1400/2002, which will expire on the 31 May 2010. The review of this block exemption came to fruition in 2009, with the adoption in July of a Communication setting out the future policy framework, which was followed in October by the adoption of a new draft block exemption regulation and guidelines for the sector.

Likewise, as the BERs for Specialisation agreements³⁷ and for Research and Development agreements³⁸ expire in 2010, the Commission launched work on the revision of these two BERs concerning **horizontal agreements** and the accompanying guidelines³⁹. The horizontal guidelines cover not only specialisation and R&D agreements but also other types of agreements such as production, commercialisation and joint purchasing agreements. The Guidelines give guidance on how to assess horizontal agreements under EU competition law.

³⁴ Regulation No 906/2009

³⁵ Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the EC Treaty to categories of vertical agreements and concerted practices (OJ L 336, 29.12.1999, p. 21-25).

³⁶ Guidelines on Vertical Restraints (OJ C 291, 13.10.2000, p. 1-44).

³⁷ Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the application of Article 81(3) of the EC Treaty to categories of specialisation agreements, OJ L 304, 5.12.2000, p. 3.

³⁸ Commission Regulation (EC) No 2659/2000 of 29 November 2000 on the application of Article 81(3) of the EC Treaty to categories of research and development agreements, OJ L 304, 5.12.2000, p. 7.

³⁹ Commission Notice – Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, OJ C 3, 6.1.2001, p. 2.

As regards **policy guidance in the State aid area** the Commission adopted a Simplification Package, comprising a Best Practice Code⁴⁰ and a Notice on a Simplified Procedure⁴¹. Both policy initiatives aim at improving the effectiveness, transparency and predictability of State aid procedures, within the existing legal framework.

Given the potential of **private State aid enforcement at national level** the Commission issued a new Notice on State aid Enforcement by National Courts in 2009⁴². Among other things, the new Notice offers national courts more practical and user friendly guidance and Commission support in their daily work.

As to the specific 2009 AMP objective relating to effective and coherent application of EU competition law, reference is made to the Commission's report⁴³ taking stock of how the **EU antitrust enforcement rules** have worked since the entry into force of the modernisation of these rules in 2004 (based on Regulation 1/2003). The report found that **the EU antitrust regime** – by and large – has functioned well at both EU and national level. The report describes the experience in all major areas covered by the Regulation and evaluates the progress made by introducing new instruments and working methods. It highlights a number of aspects which merit further evaluation.

Effective and coherent enforcement EU antitrust rules also requires a well functioning system of **private enforcement**. In particular, as the European Court of Justice has pronounced, the full effectiveness of the EU antitrust rules would be put at risk if it were not open to any individual to claim damages for harm caused by infringements of these rules. Yet, in practice the victims, often consumers and SMEs, only rarely obtain compensation before national courts. . Against this background, the Commission launched a policy project **aimed at ensuring the effectiveness of antitrust damages actions across the Union** and in 2008 adopted a White Paper⁴⁴ setting out suggestions for reform.

In 2009 both the European Parliament and the European Economic and Social Committee adopted opinions supporting the approach of the White Paper. The Commission services thereafter **launched work on the technical instruments designed to achieve the objectives of the White Paper**, while taking due account of the opinions and comments received in the course of the public consultation. The Commission services have also started work on a non-binding **guidance on quantification of damages**.

The **food sector** raises competition issues of enforcement of competition rules and regulatory reform at both EU and – in particular – national level. In 2009 the Commission undertook a focused **fact-finding exercise so as to identify potential competition-related concerns** that may affect the functioning of this sector. The results of this fact

⁴⁰ Code of Best Practice for the conduct of State aid control procedures (OJ C 136, 16.6.2009, pp. 13-20).

⁴¹ Notice from the Commission on a simplified procedure for treatment of certain types of State Aid (OJ C 136, 16.6.2009, pp. 3-12).

⁴² OJ C 85, 9.4.2009, p. 1.

⁴³ Report on the functioning of Regulation 1/2003. COM(2009)206 final, accompanied by a Staff Working Paper, SEC(2009)574 final.

⁴⁴ COM(2008) 165 final, see <http://ec.europa.eu/competition/antitrust/actionsdamages/index.html>

finding exercise were shared with the national competition authorities within the European Competition Network (ECN). The findings were also included in the Commission Communication on "A better functioning of the food supply chain"⁴⁵. This work goes in the direction of a more coherent and coordinated approach in addressing potential malfunctioning within the food supply chain. To this end, in 2009, the ECN served as a forum for discussion and exchange of best practice on issues related to food markets. In particular, further to the Commission Communication on the dairy market situation of July 2009 a common approach regarding the interface between EU competition and agriculture rules in the dairy sector was developed within a newly created ECN Joint Working Team on Milk.

As regards the **day to day operation of the ECN** the Commission was informed⁴⁶ of 129 new case investigations launched by NCAs in 2009. Likewise, the Commission services reviewed 69 decisions envisaged by national competition authorities⁴⁷, as well as advised on informal requests and queries from these authorities. This is an increase by 15% compared with 2008. The envisaged decisions submitted to the Commission related to a broad range of infringements in different sectors of the economy.

Contributing to a pro-competitive regulatory framework at EU level constitutes another significant specific objective of the 2009 AMP. **Competition advocacy** (in particular in relation to other Commission services) constitute a key activity to this end. Examples of where advocacy efforts bore fruit in 2009 include the adoption of the **legislative frameworks on the internal market for the gas and electricity sector as well as climate change**. As regards the internal market for gas and electricity, DG COMP provided input throughout the legislative process (2007-2009)⁴⁸. Likewise by also providing input throughout the legislative process relating to the climate change package, DG COMP helped to ensure that the emissions trading mechanism⁴⁹ will be based on market-based principles.

Advocacy was also generally undertaken in relation to the **liberalised sectors** such as telecoms, transport and postal services. For example, in the context of the recent review of the regulatory framework for electronic communications, DG COMP advocated that regulation in the sector should continue to be based on competition policy principles.

Examples of advocacy where DG COMP **interacted directly with the industry concerned** include its **guidance to the European banking industry** on the competition aspects of the creation of a Single Euro Payment Area (SEPA). SEPA is a self regulatory initiative launched by the European Banking Industry and led by the European Payments Council (EPC) aimed at creating an integrated Euro payments area, thereby ensuring that cross border payments become as easy and efficient as domestic payments. An informal

⁴⁵ Communication adopted on 28 October at http://ec.europa.eu/economy_finance/publications/publication16061_en.pdf

⁴⁶ Under Article 11(3) of the Regulation 1/2003.

⁴⁷ Under Article 11(4) of Regulation 1/2003.

⁴⁸ OJ L 211, 14.8.2009.

⁴⁹ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

dialogue with the EPC to address a number of competition concerns started in 2007. In the course of 2009, informal discussions were held with potential new entrants.

The renewed Lisbon Strategy (2005-2010) has served as a main vehicle for pursuing a pro-competitive regulatory framework at national level (another specific objective of the 2009 AMP). The number of Council recommendations⁵⁰ to Member States to undertake various reforms in the area of competition as well as the number of potential recommendations (points-to-watch) remained largely stable (down to 23 from 24 in 2008). **Competition (together with research and development) is one of the areas with the highest overall number of recommendations/points to watch.** This state of affairs reflects the Commission's and Council's findings that further competition reforms – not least in services and network industries – are considered necessary to raise EU productivity and thereby growth. It remains to be seen under what governance structures these and related reforms will be pursued under the envisaged EU2020 Strategy.

One specific 2009 AMP objective relates to **international activities**; more specifically, the objective is to strengthen international cooperation in enforcement activities and increased convergence of competition policy instruments across different jurisdictions. This objective also includes the establishment of well-functioning competition regimes in candidate countries and potential candidate countries

Achievements in this area included the hosting by DG COMP of an **International Competition Network (ICN)** seminar on "Competition Agency Effectiveness", the first such event of its type⁵¹. DG COMP intends to continue to play a leading role within ICN.

The European Community and South Korea signed a bilateral cooperation agreement⁵² in the field of competition, which entered into force in 2009. The Free Trade Agreement (FTA) with South Korea was initialled in 2009. It is expected to be signed and enter into force in the course of 2010. From the point of view of projecting EU competition rules internationally the FTA constitutes a key achievement given that this was the **first such agreements which contain a prohibition on certain types of subsidies.**

There were also achievements in the area of **cooperation with strategic non-EU competition authorities.** The Commissioner for Competition signed a Memorandum of Understanding (MoU) with the Brazilian Ministry of Justice and the heads of the Brazilian Competition Authorities in order to ensure a **closer cooperation between DG COMP and its Brazilian counterparts.** **Cooperation with China** under the EU-China competition policy dialogue remained a priority in 2009 with the annual competition dialogue being held in Brussels. **Cooperation with India** intensified during 2009 as India has appointed the seven Commissioners which will make up the Competition Commission of India (CCI). The CCI is entrusted with the enforcement of the 2002 Competition Act.

⁵⁰ Article 121 TFEU.

⁵¹ Held on 22-23 January.

⁵² Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anti-competitive activities (OJ L 202, 4.8.2009, p. 36).

2. MANAGEMENT AND INTERNAL CONTROL SYSTEMS

2.1. Introduction of DG Competition

2.1.1. DG COMP structure

The principal activities of the DG are:

- Control of State aid,
- Merger control,
- Cartels, anti-trust and liberalization
- Advocacy, and coordination/co-operation functions (e.g. ECN).

These activities are carried out by nine directorates. Seven of the nine Directorates are dedicated to enforcement. In line with the need to define sectoral priorities, the core operational activities are grouped into five sectoral departments. These are directorates B to F and each of them deals with antitrust, State aid and merger cases. Directorate G is focused on one priority task, which is cartel-fighting. Directorate H is dedicated to non-sector specific State aid enforcement. Directorate A is the horizontal directorate dealing with competition policy and strategy. Horizontal Directorate R is in charge of human and financial resources, document management and IT. In addition a Task Force has been set up to develop policies and manage activities relating to ethics, security and procedures (in particular access to documents under the Transparency Regulation, data protection and ombudsman complaints). Management constantly supervises the good functioning of the organisation and ensures that it delivers high quality outcomes in a timely manner.

This sector-focused organisation helps spread best practices across instruments and establishes closer links between competition policy and other EU sectoral policies. It also allows DG COMP to apply a flexible project-based management of resources, which is of particular importance where resources have to be swiftly re-deployed when staff needs to be pooled to work on a high priority project, such as the Pharmaceuticals Sector Inquiry or as a result of unforeseen changes in the environment, such as the global financial crisis. As mentioned above, its internal organisation allowed DG COMP to rapidly create some 30 project teams, pooling staff with sectoral and/or instrumental expertise, dealing with the surge of rescue and restructuring State aid cases in the financial sector in the autumn of 2008.

2.1.2. Risks

DG COMP is not a large spending DG and financial management does not represent a critical challenge for operations. No critical risks related to administrative and financial management were reported for 2009. Two main developments on risk management occurred in 2009: more favourable case-law on DG COMP financial liability and the upgrading of DG COMP security measures.

Financial liability

After the My Travel Judgement, the Court of Justice confirmed in 2009 in the Schneider judgement⁵³ that, as a matter of principle, the Commission could only be held financially

⁵³ C440/07

liable for damages caused by an annulled decision under very limited circumstances "*For the non-contractual liability of the Community to arise, a number of conditions must be met, including, where the unlawfulness of a legal measure is at issue, the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals. As regards that condition, the decisive criterion for establishing that a breach of Community law is sufficiently serious is whether the Community institution concerned manifestly and gravely disregarded the limits on its discretion*" (par. 160).

Measures taken to enhance security in DG COMP

DG COMP handles important volumes of sensitive information (covering both business secrets and other confidential information from companies or sensitive information on the decision making process). In 2008/2009 DG COMP carried out a risk assessment in this regard and implemented an action plan with concrete measures to further enhance security of information, buildings, personnel and IT. An important measure was to set up a specific DG COMP marking system. Together with the Security Directorate DG COMP is now looking for a sustainable solution for the protection of non classified sensitive information.

2.1.3. Working arrangements with the Commissioner and change of Director-General

The working arrangements between the Commissioner for competition and DG COMP are traditionally based on the principles of timely mutual information and of full transparency. In concrete terms, this means that DG COMP informs the Commissioner and/or his cabinet not only about important developments in the DG's own work but equally about important events in other Commission departments, in the Member States or in international bodies as well as about any contacts with the outside world which might have an impact on the management of his portfolio.

The Commissioner and the Director-General meet face-to-face on a regular basis to discuss general policy and organisational questions, while case teams and horizontal teams will meet as needed with Commissioner and Cabinet to ensure smooth progress towards key objectives and decisions.

The Director-General, Directorate R, IAC and the Commissioner have had two meetings to specifically discuss the budget and financial expenditure, security, ethics, business continuity and audit.

Alexander Italianer has become Director-General of DG COMP on 18 February 2010 in replacement of Philip Lowe.

2.1.4. Financial circuits

- General description

In 2009, DG COMP continued to operate centralised financial circuits (implemented since 2005) as this is found to be the most efficient way of managing its global envelope (12,5 million euro in 2009 with the following breakdown : 7,6 million for administrative expenditures and 4,9 million for external staff). In line with the principles of the

Commission 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 COMP R (Registry and Resources), the Head of Unit COMP R2 (Resources) and one official of this unit are authorising officers by subdelegation. Operational directorates are responsible for the operational initiation and verification and for the quality control of the operations they undertake. For example, for studies, operational directors must give their agreement on each final report before the invoice is checked by Directorate COMP R, in order to take responsibility for the quality of the study before payment. This system applies to most financial operations, including transactions made in the framework of budget lines received from other DGs by cross sub-delegation (from DG COMM +/-120.000 euro, this concerns general publications and subscriptions for online databases). Missions, however, are approved by the DG COMP Directors for staff in their Directorate.

The issuing of recovery orders related to fines also falls under the responsibility of each Market and Cases director where the fine originates (decentralised circuit with counterweight), although the actual recovery is centralised at the level of the Commission in DG Budget.

The management of the "Training of judges" grant programme (+/- 800.000 euro) (cross-subdelegation from JLS) and the IT budget (1.3 million euro in 2009) is decentralised to respectively units A4 and R3 for the operational verification and authorisation procedures (partially decentralised financial circuit). The system and controls in place led to the detection of wrongdoing following controls performed by DG COMP and a NCA. As a result, a grant file was submitted to OLAF, which resulted in prosecution of the recipient of the grant. DG COMP is in the process of recovering the amount paid (23 565 €).

These arrangements allow for a more responsive organisation without jeopardising the effectiveness of internal controls.

- 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, the operational initiation and verification is performed by the operational directorate, whereas the financial initiation and verification is performed by the financial cell in Unit COMP R2. The ex-ante verification is a separated duty from the initiation – officials in charge of verification are distinct from initiators and cannot be subordinated to the initiator of the transaction.

- Documentation and support

A manual of financial procedures is available on DG COMP Intranet to all officers who might intervene in the financial circuit, either as operational or financial initiator or operational or financial verifying agent. The financial circuits are well documented and checklists for financial operations are used. The checklists are separated for financial and operational initiation and verification, which produces clear benefits in terms of control of transactions from the operational units.

- Internal Advisory Committee for Procurements and Contracts (ACPC)

DG COMP internal ACPC chaired by the DDG Operations gives its opinion on the selection and evaluation procedure of proposed contracts to ensure that they comply with the Financial Regulation and Community Directives. During the year each file with a contract value exceeding 60.000 euro was checked by the Committee. The responsible Directorate submits the complete file to the Head of Unit COMP R2 for further distribution to the in-house ACPC. In 2009, the ACPC reviewed 4 calls for tenders and gave a positive advice on all four.

2.1.5. Description of internal control systems

Besides the control performed on budget implementation (see section 3.1.1), **ex-ante controls** for non-financial operations are integrated into the working arrangements and decision making procedures set out in the internal manuals of procedures. Supervision is a structured and integral part of DG COMP core business activities. In addition unit 04 - Strategy & Delivery (10 officials) serves as the Internal Control Coordinator (ICC) within DG COMP. For ex ante controls it is in addition responsible for the strategic planning and programming, risk assessment and risk management under the responsibility of the DDG Operations.

Ex-post controls for operational activities are assured by IAC (4 officials) and Unit 04 – Strategy & Delivery bearing in mind that Commission decisions in competition are subject to judicial review for process and substance and that systematic audit follow-up and self-assessment of the performance of the service are ongoing task for DG COMP management and staff.

The IAC assesses the effectiveness of selected internal control standards and the implementation of the instructions set out by the DG.

The Strategy & Delivery Unit's activities relevant for ex-post controls include:

- the follow-up to audits from IAC, IAS or the European Court of Auditors. The ICC coordinates with auditees and reports on actions implemented;
- the monitoring of the implementation of DG COMP activities. This supervision task has been overhauled in 2009 through further improvement of performance and workload indicators made available to managers and the introduction of a pilot time reporting application (see section 2.2.1 for more details).

As a result, the choice of having a unique structure for programming and control coordination allows for more effective management supervision. As noted by the IAC, the new arrangement for audit follow up has contributed to reducing the time between implementation of actions and reporting to IAC (and to the DG) for review which can now be a smoother process.

2.2. The functioning and effectiveness of internal control systems

2.2.1. Compliance with the requirements of the control standards

- Requirements with which DG COMP fully complied on 31 December 2009:

Apart from ICS 10 – Business Continuity, DG COMP is compliant with all internal standards requirements, namely ICS 1 - Mission, ICS 2 - Ethical and organisational values, ICS 3 - Staff Allocation and Mobility, ICS 4 - Staff evaluation and development, ICS 5 - Objectives and performance indicators, ICS 6 - Risk management process, ICS 7 - Operational structure, ICS 8 Processes and Procedures, ICS 9 - Management supervision, ICS 11 – Document management, ICS 13 - Accounting and financial reporting, ICS 14 - Evaluation of activities, ICS 15 - Assessment of internal control systems, and ICS 16 - Internal Audit Capability.

For the following four Internal Control standards being fully compliant, the following conclusive *results were achieved in 2009*:

- ICS 2 – Ethical and organisational values: given the nature of DG COMP activities, compliance of ethical standards (avoidance of perceived conflict of interests when dealing with cases etc) is of particular importance. DG COMP was the first DG to set up its own Code on Ethics. DG COMP is currently reviewing its Code to take account of its experiences so far, changes in the Commission rules and comments made by the IAS in its 2008/2009 audit on ethics.
- ICS 5 – Objectives and performance indicators. Quarterly workload indicators and bi-annual performance indicators are discussed by Senior Management. Data feeding into the indicators and analysis of results has continued to be refined in 2009. In addition, other relevant reporting tools such as Quarterly HR and Financial reports have been considerably reviewed and additional information added. Although there is still scope for further development, these tools are part of a pertinent management tool kit. In addition, DG COMP has launched in 2009 a pilot time reporting application in 9 of its 48 units, which is designed to provide an overview on how human resources are allocated on projects, which is a key source of information in a project-based organisation like DG COMP.
- As regards ICS 8 – Processes and procedures, DG COMP has continued to improve the documentation of its procedures in financial and operational areas particularly to take account of project based working.
- For what pertains to ICS 12 – Information and Communication. A 2009 overhaul of the Intranet is improving internal communications and relationships, though it should also be noted that the physical separation of DG staff through several buildings at times re-creates inefficiencies that Information and Communication Technologies have helped to overcome.

- Requirements with which DG COMP did not yet fully comply on 31 December 2009:

Concerning ICS 10 – Business continuity, DG COMP has updated and upgraded its Business Continuity Plan in 2009, which **now offers a high coverage against business disruption**. However, the IT infrastructure has not been yet adapted to implement the new requirements imposed by the updated Business Continuity Plan. A project to implement an IT mirror solution in the DG DIGIT Data Centre has been initiated to be

able to restore critical IT systems in 48h and essential ones in 7 days. A solution has been identified in collaboration with SG, DG BUDG, DG DIGIT and ADMIN-DS but the necessary budget is not available yet. When this constraint will be definitively solved, the project will be continued to implement the IT mirror solution in the first quarter of 2011.

No derogation has been granted to the mandatory staff mobility requirement for sensitive functions during the reporting year (requirements of ICS 7).

2.2.2. *Effectiveness of implementation of the prioritised control standards*

During the audits performed in 2009, the IAC found no situation where the ICS was not implemented to the base line standard or was manifestly ineffective.

In 2009 DG COMP focused on 2 internal control standards: ICS 3. Staff allocation and mobility, and ICS 4. Staff evaluation and development. The two selected Internal Control Standards relate to the management of human resources which are DG COMP main asset to fulfil its mission. Therefore, they were deemed very relevant for prioritisation in the 2009 Annual Management Plan.

• **ICS 3 - Staff Allocation and Mobility**

DG COMP implemented some relevant measures before 2009:

- development of matrix organization and project-based approach
- development of workload indicators to measure effective workload in the area of the different competition policy instruments
- creation of an HR database to keep track of the pool of in-house skills
- delivery of HR Quarterly reports
- analysis of lists of seniority in order to promote staff mobility within the DG.

In 2009 DG COMP undertook the following additional actions in order to increase management effectiveness in relation to the ICS 3:

Data collection

- The DG has established entry and exit interviews with staff entering or leaving the DG;
- improvement of the HR database used to keep track of the pool of in-house skills: Your Training your skills (YTYS) (also pertinent for the ICS 4);

Data analysis

- review of the HR management reporting and development of a search tool and statistical reporting tool linked to the database;

Work organization

- development of an action plan to improve knowledge management in the DG and prevent knowledge loss in case of mobility;
- delivery of tailor-made project management training course in order to promote efficient working methods;

Recruitment and Mobility

- review of the selection procedure for non-management ADs;
- activation and promotion of the Local Career Guidance function;
- enhancement of the newcomers' induction process by 1) review of the general induction training; 2) introduction of a new induction training for secretaries;

Table 2: Criteria to assess the effectiveness of ICS 3

Assessment criteria			
Level of control	Experience of the operation of the control system	Capacity (staff)	Capacity (systems and procedures)
Major improvement needed	N/A	N/A	N/A
Improvement needed	N/A	As pointed out by IAC audit there is a need to consolidate criteria for staff allocation and to improve quality of job descriptions.	N/A
Minor/no improvement needed	No previous instances of inadequate /ineffective controls that exposed the DG to its key risks	N/A	System controls /procedures are designed, implemented to manage the key risks

• **ICS 4 - Staff Evaluation and Development**

DG COMP implemented some relevant measures before 2009:

- 2007 Working Group on Training
- Annual Learning and Development frameworks

- Monitoring of objective setting
- Guidance for reporting officers on the objective-based management and the appraisal system

In 2009 DG COMP undertook the following additional actions in order to increase management effectiveness in relation to the ICS 4:

Training

- annual Learning and Development Framework for 2009 taking into account recommendations of the internal WG on training;
- establishment of Training Correspondents across the DG;
- launch of a training needs questionnaires to analyse collective training needs pertinent for the work programme of the Directorates and Units;
- improvement of the HR database used to keep track of the pool of in-house skills (also pertinent for the ICS 3);
- development of training statistics and preparation of a qualitative report on the delivery of the 2008 L&D programme.

Staff Evaluation

- Effective implementation of the new appraisal and promotion system;
- development of a training programme for new managers (including a module on objective setting and appraisal procedure).

Table 3: Criteria to assess the effectiveness of ICS 4

Assessment criteria			
Level of control	Experience of the operation of the control system	Capacity (staff)	Capacity (systems and procedures)
Major improvement needed	N/A	N/A	N/A
Improvement needed	N/A	The training strategy should be reviewed taking into account different forms of training and targeting in particular coaching for newcomers.	N/A

Minor/no improvement needed	No previous instances of inadequate /ineffective controls that exposed the DG to its key risks	N/A	System controls /procedures are designed, implemented to manage the key risks
-----------------------------	--	-----	---

- **Conclusions on the effectiveness of selected Internal Control Standards:**

In 2009 DG COMP continued to invest in processes and procedures aimed at ensuring that personnel is recruited, developed and deployed in the most efficient manner. A particular attention was paid to developing tools to collect and analyze data necessary to improve staff planning. As pointed out by the IAC, the efficiency could be further improved by consolidating criteria for staff allocation, improvement of job descriptions and review of the training strategy to include different forms of training and targeting in particular coaching for newcomers.

In the area of training the IAC audit report found that majority of staff is satisfied with the internal training programme. Review of the training strategy taking into account different forms of training and targeting in particular coaching for newcomers could however further enhance effectiveness.

2.2.3. *Conclusion on the functioning and effectiveness of internal control systems*

DG COMP has put in place monitoring measures which ensure that the internal control systems are effective. DG COMP has also considered the risks and focuses the control resources on those areas where risks are the greatest, while ensuring adequate control over all activities. Based on all information and the above analysis, it can be stated that DG COMP has an effective, robust and reliable internal control system at its disposal.

3. BUILDING BLOCKS TOWARDS THE DECLARATION OF ASSURANCE

3.1. Building blocks towards reasonable assurance

3.1.1. *Building block 1: Assessment by management*

DG COMP is compliant with regulations and guidelines on budget management and ensures strict monitoring of budget implementation and payment delays. Generally, 2009 has been a year of consolidation of DG COMP internal control organisation.

As regards the 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. Further details can be found in annex 4.

- Input devoted to financial ex ante and ex post controls

Ex-ante controls are carried out by Unit R2. Staff involved in financial management: 1 AOD, 3 AOs with general sub-delegations and 9 AOS with limited sub-delegations.

There are 5 financial officers in the financial sector performing financial ex-ante controls, each with both general and specific responsibilities for the correct application of the financial regulation in their field. This enables a high degree of specialised expertise as well as an excellent general knowledge in all financial areas.

Ex-post controls for financial transactions take the form of an annual review and other financial audits carried out by the IAC. In 2009 one transaction was selected by ECA for substantive review. (see also section 3.1.2 "Results from independent audits during the reporting year").

- Output: Level and nature of controls carried out
 - Budget coverage of first level ex-ante controls is 100% (commitments and payments).
 - All transactions are made in accordance with our financial circuits. The ex-ante controls are both operational and financial.
 - Ex-ante operational verification controls are performed by the operational director in charge.
 - Specific attention is made to budget execution and payment delays through means such as daily follow-up, monthly reporting and intra-DG financial meetings.
- Result: What the controls allowed to discover/remedy

Ex-ante operational and financial controls allow the DG to discover mistakes and rectify these immediately during the transaction process. The errors mainly consist of omissions such as joining the adequate supporting documents to the file. Furthermore, since DG COMP operates under the centralised financial circuit all transactions are reviewed ex-ante by the financial sector and allows the required corrections to be easily made.

– As mentioned in Annex 5, around 50% of the total value of commitments and payments are audited. Our target error rate is maximum 2% of the overall amount (stratified sampling). Of the audited payment transactions in the years 2007-2009 the error rate can be estimated as follows:

§ 2009: Payments 0.01%
§ 2008: Payments 0,01%
§ 2007: Payments 0,53%

– With regards to payment delays and our target of 25 days for all payments, the controls have allowed us to reduce the average payment delay to 20,44 in 2009 as opposed to 23,03 days in 2008 and 33.56 days in 2007.

Instances of overriding controls or deviations from established policies:

– Exceptions from standard procedures are approved and recorded centrally. None of the exceptions registered in 2009 is deemed to be of nature or extent to lead neither to a reservation nor to the identification of material weakness in the internal control system.

Other indicator supporting legality and regularity: Target 0

– No complaints received from unsuccessful contractors in 2009, 2008 and 2007.
– No cases received by the Ombudsman in 2009, 2008 and 2007 related to procurement procedures.
– No legal proceedings initiated by contractors or other economic provider of the DG against the Commission in 2009, 2008 and 2007.

• Impact of controls

– The level of control performed, supported by the conclusions of the annual financial review carried out by the IAC, provides reasonable assurance as to the legality and regularity of operations conducted within the DG.

3.1.2. Building block 2: Results from audits during the reporting year

• IAC reports

The focus of audit work in 2009 was to complete the review of competition enforcement processes (State Aid Procedures Phase II, Procedures of Chief Economist Team, Tasks of support staff in core business activities). In addition, DG COMP financial activities, although relatively limited, were audited. In 2009 this covered a sample of financial transactions for 2008 and financial transaction for 2009, the audit was completed in January 2010. The annual audit of financial transactions also reviewed the implementation of the previous year's recommendations. In accordance with an IAS audit objective, DG COMP business continuity Plan (Phase I – Documentation) was audited. Two follow up audits were conducted (Mergers Phase I, Judges Grant training program).

Based on the results of audits the IAC believes that the internal control system in place provides reasonable assurance regarding the achievement of the business objectives set up for the activities audited

- IAS audit

One audit report was finalised by IAS in 2009 (Audit of the Handling of Sensitive Information, conflicts of Interest/Insider Trading). None of the recommendations made by IAS were considered critical.

- ECA annual report

Targets for legality and regularity indicators have been made explicit as requested by the ECA recommendations during the 2008 DAS audit (see 3.1.1).

3.1.3. Building block 3: Follow-up of previous years' reservations and action plans for audits from previous years

The review of the implementation of recommendations of the IAC audits of the:

- State Aid procedures in Phase I
- Judges Grant Training program and the
- Mergers Procedures in phase I
- Financial Transactions 2008

concluded that all recommendations (except 1 which is still in progress⁵⁴) have been implemented and can be closed.

3.1.4. Building block 4: Assurance received from other Authorising Officers in cases of crossed sub-delegation

N/A – DG COMP did not give any cross subdelegation to other DGs in 2009.

3.1.5. Completeness and reliability of the information reported in the building blocks

To its best knowledge, DG COMP states that the information reported in the building blocks (sections 3.1.1 – 3.1.4) are complete (as regards the coverage of the budget delegated to the AOD) and reliable.

⁵⁴ Clarified procedure for exception reporting

3.2. Reservations and their impact on the declaration

The results of audit reports, internal control reviews and risk assessments as described here-above indicate that DG COMP system of internal control has functioned as intended during 2009 and has not identified any material deficiencies. DG COMP therefore makes no reservation.

3.3. Overall conclusions on the combined impact of the reservations on the declaration as a whole

Not applicable to DG COMP in 2009.

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)

Alexander Italianer

5. LIST OF ANNEXES

ANNEX 1: Statement of the Resources Director	32
ANNEX 2: Human and Financial resources by ABB activity	33
ANNEX 3: Draft annual accounts and financial reports	35
ANNEX 4: Materiality Criteria	35
ANNEX 5: Internal Control Template(s) for budget implementation (ICT)	36
ANNEX 6: Implementation through national or international public-sector bodies	38
ANNEX 7: AAR of Executive Agency	38