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Annual Activity Report 2010

DG Competition

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1 POLICY ACHIEVEMENTS

1.1 Introduction

The general objectives of DG Competition - as set out in the 2010 Management Plan - are i) to protect competition on the market as means to enhance consumer welfare ii) to support growth, jobs and competitiveness of the EU economy and iii) to foster a competition culture. They build on the Commission's five-year strategic objectives of making a successful exit from the crisis and, within a longer term vision of EU 2020, of restoring growth that should be smart, sustainable and inclusive.

In 2010 DG Competition consolidated its strategy to contribute to overcoming the economic and financial crisis. From the beginning competition policy has played an important part in the Commission response to the crisis: the EU's antitrust or merger rules have not been relaxed and the Commission's state aid policy and decisions have contributed to maintaining a **level-playing field in the Internal Market** and underpinning **financial stability**.

In particular, in line with the Management Plan of DG Competition, in 2010 measures were taken to facilitate a successful exit from the crisis by strongly advocating in favour of sound restructuring measures to ensure the **long-term viability of financial institutions and of companies in the real economy** and by initiating a **progressive phasing-out of the temporary crisis framework**. As in 2009, this constitutes a **key achievement of competition policy during 2010**.

The sovereign debt crisis which struck in 2010 clearly showed that, although the level of stress in financial markets had fallen significantly from its peak in late 2008, there was still a need for crisis-related support in 2010. Between 1 October 2008 and 1 October 2010 the Commission has taken approximately **200 decisions on state aid measures to the financial sector** aiming to remedy a serious disturbance in Member States economies. These decisions authorised, amended or prolonged 42 schemes and addressed with individual decisions the situation of more than 40 financial institutions. The State aid area also faced challenges relating to the impact of the crisis on the **real economy**. The Commission also approved **73 schemes under the Temporary Framework aimed at facilitating access to finance for firms affected by the crisis** and 4 ad hoc aid measures.

In December 2010, in line with the pace of recovery in the financial markets and the broader economy, the Commission extended the validity of the crisis-related measures for the financial sector until the end of 2011 but under tightened conditions¹. At the same time the Commission also prolonged of the Temporary Framework to support firms' access to finance until the end of 2011 with a limited spectrum of measures, focusing on outstanding market failures². The Temporary Framework measures prolonged during 2011 will also be subject to tighter conditions to reflect a gradual transition into the normal state aid regime.

¹ Communication on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 329, 7.12.2010, p. 7)

² Communication of the Commission - Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 6, 11.1.2011.

DG Competition's Management Plan for 2010 re-asserts the need that for competition policy to be effective, it should prioritise actions with the biggest impact on the functioning of markets, and in particular the sectors with particular relevance for the **competitiveness of the EU economy** and with the **greatest impact on consumers**. Accordingly, in 2010 the Commission's antitrust activities significantly contributed towards better functioning and competitive markets in ICT and network industries, such as **energy, transport, electronic communications and financial services**. These industries are vital for the competitiveness of the EU economy and make up a sizable portion of citizens' household expenditure.

This contribution of competition policy took various forms: not only did the Commission bring **a series of major enforcement cases** (see section 1.2.3 below), **but 2010 was also marked by intense regulatory activity**, with several sets of antitrust rules up for review. Two of these are of cross-sectoral application and therefore particularly relevant to the EU's overall competitiveness, namely the new competition rules for supply and distribution agreements between firms operating at different levels of the supply and distribution chain (vertical agreements)³, and those for agreements between competitors (horizontal agreements)⁴.

The former concern most companies, since each firm has to purchase certain inputs and most firms need to sell their products to producers further downstream or to distributors. They allow **tackling more effectively than in the past vertical restraints led by powerful buyers** (such as for example certain retailers and buying alliances) that can potentially cause prejudice to SMEs and the final consumers. They also contribute to further **enhancing the efficiency of EU supply and distribution by clarifying the rules applicable to on-line sales**, thus contributing to unleash the latter in line with the Single Market Act and the EU's new Digital Agenda. The new rules governing horizontal agreements **promote innovation** by providing legal certainty and predictability for companies willing to work together to achieve synergies and giving them the necessary freedom to co-operate in a globalised market place, while at the same time minimising the risk of harm to consumers. They respond to the many calls made that the Commission clarify its assessment in particular of standardisation agreements by specifying that that for the positive effects of standardisation to fully materialise, the **standard-setting process should be transparent and accessible to all interested market players**, and that **holders of IPRs should commit to license on fair, reasonable and non-discriminatory terms**.

These reviews **constitute another key achievement of competition policy during 2010**.

The achievements presented in this Report were accomplished with a staff of 947⁵. For a more detailed account of activities in the field of EU competition policy in 2010 reference is also made to the Annual Competition Report⁶

³ Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p.1), and their accompanying Guidelines.

⁴ Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of research and development agreements (OJ L 335, 18.12.2010, p. 36) and Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of specialisation agreements (OJ L 335, 18.12.2010, p. 43), and their accompanying Guidelines.

⁵ 790 Establishment Plan posts and 157 estimated external personnel.

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

Undistorted competition on the market enhances consumer welfare by driving both static efficiency, including productive and allocative efficiency, and dynamic efficiency, in particular in the form of innovation.

A series of decisions were adopted in 2011 which result in considerable benefits for consumers. Firstly, in the area of **cartels** – which harm final consumers both directly and indirectly by increasing the prices of intermediary products- seven decisions were adopted⁷, imposing fines totalling €3,06 billion on 69 undertakings, which is close to the record level of fines of €3.3 billion imposed in 2007⁸. Secondly, other antitrust activities also brought about clear benefits, for example in the area of **financial services**, as illustrated by the decision adopted by the Commission in December 2010 which made binding the commitments offered by Visa to cut interbank fees for debit cards⁹. These fees are ultimately paid by the consumers, and the commitments offered cover several hundred million transactions every year worth between €10 and 20 billion. The Commission was also active in the **pharmaceuticals sector** to make sure that consumers' access to lower priced generic medicines is not prevented or harmed by unlawful practices, engaging in detailed monitoring of patent settlements in the EU¹⁰ and initiating proceedings as regards a number of potentially anti-competitive practices¹¹. In the **health services sector**, the Commission adopted the decision in the *ONP* case on 8 December 2010 concerning the French pharmacists' association fixing minimum prices and hindering the development of integrated groups of laboratories¹². This activity is also important in view of **Member States' current and future budgetary situation**.

In terms of **quantitative indicators**, in 2010 DG Competition developed and implemented a new methodology allowing for a more robust¹³ benchmark for assessing the impact of its antitrust and merger policy, which shows that the estimated (observable) customer benefits from its cartel decisions was in the range of **€7.2 billion to €10.8 billion**, and the estimated (observable) benefits derived from horizontal merger decisions were in the range of **€4.2 to €6.3 billion**. It is important to stress that the above estimates cover only a part of the Commission's activities in the field of competition policy, including its enforcement

⁶ See the Annual Competition Report for 2010 that is expected to be published during the second quarter of 2011. 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).

⁷ One of these consisted in fact in a re-adoption of a former decision.

⁸ See <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>

⁹ Case COMP/39398 *Visa MIF* (not yet published). See IP/10/1684, 08.12.2010.

¹⁰ See http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/patent_settlements_report1.pdf

¹¹ See Case COMP/39612 *Servier (perindopril)* and Case COMP/39226 *Lundbeck* (the two not yet published).

¹² See Case COMP/39510 *ONP* (not yet published). See IP/10/1683.

¹³ This benchmark is more robust than the one used in previous years in the sense that it is more based on facts specific to the underlying enforcement decisions and available economic insights, including the application of sensitivity analysis. The methodology is explained in DG Competition's Management Plan for 2011.

activities.¹⁴ Also, they do not take account of the important deterrent effect of all these activities.

1.1.2 Supporting growth, jobs and competitiveness

As has been mentioned, competition policy drives economic efficiency. It thereby also contributes to increased productivity and economic growth.

In 2010 the Commission's effective competition law enforcement in sectors with particular relevance for the **competitiveness of the EU economy, in particular ICT and network industries** - which influence the input costs and quality and hence the competitiveness of a wide range of economic activities across the economy – removed anti-competitive hindrances to the development of these markets and thereby contributed to improved economic efficiency.

A competitive **single European energy market** is vital for EU competitiveness, sustainability and security of supply. In 2010 the Commission adopted **four antitrust decisions** making binding the commitments offered by incumbents in France, Sweden, Germany and Italy after the Commission has taken issue that they may have abused their dominant position by foreclosing access to energy markets through various means, such as long-term supply contracts with resale restrictions or limiting available transport or export capacities on energy networks¹⁵. In the area of state aid, the Commission cleared a number of **measures in support of energy saving and renewable energy production** under the Environmental Aid Guidelines¹⁶. The approved schemes mostly concerned aid to renewable energy and to carbon capture and storage projects. Aid was given for example for the implementation of a process recycling the gas emitted in the steelmaking process in Germany¹⁷, the construction of a biomass boiler in France¹⁸ and the construction of a high-efficiency combined heat and power plant in Austria¹⁹. State aid amounting to €90 million was also authorised for the construction or capacity increase of four underground gas storage sites in Poland as a project of common European interest²⁰

As in the energy sector, **competition law enforcement and policy in the electronic communications sector complements and secures the effectiveness of liberalisation and regulation. It also supports the EU's new Digital Agenda objectives** of reaching fast

¹⁴ While it can be assumed that significant customer benefits also arise from the Commission's enforcement action against abuses of a dominant position and anti-competitive vertical agreements, due to important structural differences among these cases DG Competition decided not to apply a single, generalised benchmark to these types of practices. Such a generalised benchmark can also not be applied to DG Competition's activities in the area of state aid, anti-competitive practices by the Member States, or policy coordination, European Competition Network and international cooperation activities.

¹⁵ Case COMP/39386 *Long term electricity contracts in France* (OJ C 133, 22.05.2010, p. 5-6); Case COMP/39351 *Swedish Interconnectors* (OJ C 142, 1.6.2010, p. 28-29; Case COMP/39317 *E.On Gas Foreclosure*. Decision. See IP/10/494, 4.5.2010; . Case COMP/39315 *ENI* . See IP/10/1197, 29.9.2010

¹⁶ Community Guidelines on State Aid for Environmental Protection (OJ C 82, 1.4.2008, p.1)

¹⁷ Case N450/2009 *Top Gas Recycling (TGR) Project - Aid to Arcelor Mittal Eisenhüttenstadt GmbH* (OJ C 94, 14.4.2010)

¹⁸ Case N650/2009 *Aid for the realisation of a biomass (wood) fuelled thermo boiler*.

¹⁹ Case N295/2008 *Investment aid to Mellach power plant* (OJ C 154, 12.6.2010, p.1)

²⁰ Case N660/2009 - *Aid to PGNiG for underground gas storage in Poland* (OJ C 213, 6.8.2010, p. 10)

broadband coverage for all European citizens and ultra-fast broadband subscriptions for at least 50% of European households by 2020. In 2010, the Commission initiated proceedings against a possible abuse of dominant position by the Polish incumbent in the broadband market²¹, and the Commission decision regarding the merger between France Télécom and Deutsche Telecom's UK subsidiaries prevented foreclosure of competitors from the UK market for next-generation mobile data through spectrum shortage²². The Commission pursued the infringement procedure concerning the Italian broadcasting legislation which might have denied newcomers and smaller existing companies the benefits of the "digital dividend". It also sent in November 2010 a letter of formal notice to the French authorities regarding the 2007 French law granting to existing analogue TV broadcasters the possibility to obtain an additional national TV channel in the digital switchover. In the state aid area the Commission assessed and approved the use of state aid and other types of public funding for approximately €1.8 billion that generated total investments in broadband networks of more than €3.5 billion.

Efficient ICT products and services are a key contributor to the smart growth objective of the Europe 2020 Strategy. Preserving opportunities for new firms to enter the market and challenge established players is essential to realise the full potential of the digital economy. Enforcement action was also taken in the ICT sector, against leading companies such as Apple²³, IBM Corporation²⁴ and Google²⁵ regarding respectively mobile platforms applications, mainframe computers and online search, online advertising as well as online advertising intermediation. **These policy measures and investigations reflect the Commission's resolve to ensure that competition in the ICT sector is not distorted to the effect of preventing or holding back innovation.**

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.** Notwithstanding state aid related to the economic and financial crisis, the majority of aid approved in 2010 related to objectives of common interest to the EU, including regional aid, aid in support of environment protection, aid in support of research, development and innovation (see section 1.2.1 below).

The application of state aid rules in the context of the financial crisis, complementing measures taken by central banks and governments, prevented the collapse of the financial system, and subsidy races between Member States and promoted the restructuring of the financial institutions concerned in order to ensure their return to long-term viability. In line with DG Competition's Management Plan for 2010, these actions were undertaken also with a view to ensure a successful exit from the crisis as well as sustainable growth and jobs in the longer term.

²¹ Case COMP/39525 *Telekomunikacja Polska*. See IP/10/213, 1.3.2010

²² Case COMP/M.5650 *T-Mobile/Orange* (OJ C 108, 28.4.2010, p. 4) The clearance decision was thus conditional upon, *inter alia*, divestiture of a quarter of the parties' combined spectrum in the 1800 MHz band.

²³ Cases COMP/39.766 *Apple iPhone* and COMP/39.806 *Apple iPhone OS*. See IP/10/1175, 25.09.2010.

²⁴ Cases COMP/39511 *IBM Corporation*, COMP/39790 *TurboHercules/IBM*, and COMP/39692 *IBM Maintenance Services*. See IP/10/1006, 26.7.2010.

²⁵ Cases COMP/39.740 *Foundem/Google*, COMP/39.775 *Ejustice/Google* and COMP/39.768 *Ciao/Google*. See IP/10/1624, 30.11.2010.

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.

DG Competition actively engaged in competition advocacy both with respect to policy and regulatory initiatives taken forward by the Commission and the national authorities (see section 1.2.4 below). As announced in the Management Plan for 2010, a stakeholder survey on the perception of competition policy and the work of DG Competition was carried out. Its results suggest that **the Commission's competition advocacy has been effective** (see section 2.2.2 below). Indeed, according to a 2009 Eurobarometer survey, more than 80% of EU citizens consider that competition between companies can lead to better prices and to more choice. Also, 70% of EU citizens are of the opinion that companies should not be allowed to make agreements on prices. Finally, two-thirds of EU citizens agree that companies that receive financial aid from governments might have an unfair advantage over their competitors. This shows that **despite the economic crisis citizens' awareness and support for competition policy is strong**.

Moreover, according to a parallel survey, the majority of the stakeholders of DG Competition (companies, law firms, economic consultancies, consumer and business organisations, national competition authorities and Ministries) perceive its activities to have a beneficial effect, namely that they increase firms' compliance with the law and make the markets more competitive.

1.2 Specific objectives of the 2010 Management Plan

The Management Plan of DG Competition for 2010 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; iv) policy coordination, European Competition Network and international cooperation as well as v) administrative support.

1.2.1 Control of state aid

In 2010, state aid control focussed on facilitating a successful exit from the crisis, by vetting schemes and individual aid measures with a view to **maintain a level playing field in the Internal Market**, thereby pushing the necessary **restructuring in the financial sector and the real economy**, and by **reviewing the temporary crisis framework** in line with the pace of recovery in financial markets and the broader economy.

As in 2009, when assessing achievements during 2010, 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 conditions²⁶. In 2009, the nominal amount of aid to the financial sector used by Member States constituted EUR 1 107 billion (9.3 % of EU GDP), whereas the figure for 2008 was EUR 1 236 billion.²⁷

²⁶ The Treaty rules on State aid makes special provision for exceptional conditions resulting in serious disturbances of Member State economies (Article 107(3)(b)).

²⁷ For the data quoted in this Section, see the Autumn 2010 Scoreboard at: http://ec.europa.eu/competition/state_aid/studies_reports/2010_autumn_en.pdf

In 2010, the Commission approved 14 banks' restructuring or liquidation. The main cases concerned Aegon, Dexia, Ethias, Parex and Sparkasse Köln/Bonn²⁸; they were all approved by the Commission and included binding behavioural and structural measures. The Commission adopted a negative decision in the case of Banco Privado Português, and the bank is currently in liquidation²⁹.

Save for crisis measures, 'traditional' aid remained stable at €73.2 billion or 0.62% of GDP. Aid to industry and services amounted to €58.1 billion (or 0.49% of EU GDP, a level similar to 2008, 84%), of which Member States earmarked for horizontal objectives of common interest such as regional investment aid, research and development and environmental aid which help address market failures and issues of equity in the interest of long term sustainable growth and jobs, benefiting society as a whole. The fact that whilst vital state aid to the financial sector has been permitted under specially adapted, crisis-specific rules, **state aid to the non financial sector has remained broadly stable and Member States have continued to re-orient state aid to horizontal objectives** is very good news, and in line with the objectives of "less and better aid" set in DG Competition's Management Plan for 2010.

Significant improvements were also achieved as regards the objective relating to the effective prevention and recovery of aid: by the end of June 2010 89% of the total amount of illegal and incompatible aid had been repaid to the State, whereas at the end of 2004 only 25% had been recovered.

1.2.2 Merger control

Since the beginning of the crisis there has been a decrease of the number of merger notifications compared with previous years, reflecting the prevailing uncertain economic situation, and this trend continued in 2010. In total, 274 transactions were notified to the Commission. 16 decisions were submitted to conditions and no prohibition was decided. The Commission took three decisions following an in-depth analysis in second phase investigation for the *Oracle / Sun Microsystems*³⁰ (see section 2.4. *infra*), *Monsanto / Syngenta*³¹ and *Unilever / Sara Lee Body*³² mergers. In addition, a number of cases that were notified in 2010 proved to be complex, for example where they concerned relatively new markets, requiring the assessment of competition issues relating to market foreclosure, standardisation and open source products for example. The merger between UK subsidiaries of T-Mobile and Orange³³ led the Commission to analyse whether the important share of combined radio spectrum of the two entities would not block future access of competitors to 4th generation telephony markets. The acquisition by Microsoft of Yahoo's internet search and search advertising businesses led the Commission to analyse the dynamic online search market³⁴.

²⁸ Cases N372/2009 *Viability plan for Aegon*, C9/2009 *Restructuring of Dexia*, N256/2009 *Restructuring aid for Ethias*, C26/2009 *Restructuring aid for Parex* and C32/29 *Restructuring of Sparkasse Köln/Bonn*.

²⁹ Case C33/2009 *Restructuring of BPP*.

³⁰ Case COMP/M.5529 *Oracle / Sun Microsystems* (OJ C 91, 9.4.2010, p. 7)

³¹ Case COMP/M.5675 *Syngenta / Monsanto's sunflower seed business* (not yet published). See IP/10/1515, 17.11.2010.

³² Case COMP/M.5658 *Unilever / Sara Lee Bodycare* (not yet published). See IP/10/1514, 17.11.2010.

³³ Case COMP/M.5650 *T-Mobile/Orange* (OJ C 108, 28.4.2010, p. 4)

³⁴ Case COMP/M.5727 *Microsoft/Yahoo! Search Business*. See IP/10/167, 18.5.2010.

In some sectors, such as airlines, the crisis has accelerated the restructuring process, and in a number of cases the Commission's clearance was conditioned on the merging parties taking action to correct any distortive effects on competition³⁵. The Commission was also active in the pharmaceuticals sector; in the *Teva/Ratiopharm*³⁶ case (involving biosimilars) and in the *Abbott/Solvay case*³⁷ (involving molecular testing products, in particular genetic testing), the Commission paid particular attention to markets for biotech products.

The economic significance for consumer welfare of addressing competition concerns through appropriate merger remedies³⁸ is worth noting. **Estimated customer benefits resulting from corrective horizontal merger decisions adopted by the Commission in 2010 were between €4.2 billion and €6.3 billion.**

1.2.3 Cartels, anti-trust and liberalization

Cartels remained a top priority for DG Competition in 2010, with seven cartel decisions were adopted, imposing fines totalling over €3 billion on 69 undertakings. By offering partial or full immunity from fines to participants reporting cartels, the Commission's leniency policy was again effective means to detect cartels, with six out of the seven decisions adopted in 2010 having leniency applications at their origin. Another instrument that proved its effectiveness is the settlement procedure introduced in 2008, which was used for the first time in 2010 in two of the six decisions adopted. **The customer benefits derived from these decisions were between €7.2 billion to €10.8 billion.**³⁹

The Commission's achievements in meeting the objective of effectively detecting, sanctioning, deterring and remedying other anti-competitive practices by firms other than cartels have already been referred to above as regards **financial services, pharmaceuticals, health services, energy, electronic communications and ICT**, noting their contribution to consumer welfare as well as for incentivising innovation and improving the competitiveness of the EU economy.

An exhaustive account of all the outputs and results in this area goes beyond this reporting exercise⁴⁰. Among the achievements in 2010 reference is also made to the Commission's enforcement action in the field of **air transport**. In July 2010, a decision was adopted making binding commitments offered by three members of the Oneworld alliance, British Airways, American Airlines and Iberia, paving the way for the establishment of a transatlantic alliance,

³⁵ See for example Case COMP/M.5747 *British Airways/Iberia* (OJ C 241, 8.9.2010, p. 2), Case COMP/M.5889 *United Airlines/Continental Airlines* (OJ C 225, 20.8.2010, p. 2) and the in-depth investigation opened on 30 July 2010 regarding COMP/M.5830 *Olympic Air/Aegean Airlines*, (OJ C 174, 1.7.2010, p. 8).

³⁶ Case COMP/M.5865 *Teva/Ratiopharm* (OJ C 7, 12.1.2011, p. 5)

³⁷ Cases COMP/M.5661 *Abbott/Solvay Pharmaceuticals* (OJ C 89, 7.4.2010, p. 1).

³⁸ For the purposes of this document, by corrective merger decisions are meant prohibition decisions and clearance decisions with remedies.

³⁹ This benchmark does not account for customer benefits in terms of better quality or wider choice, as only customer benefits that can be quantified in monetary terms are captured, or any possible pass-on to final consumers (the word "customer" refers to direct purchasers).

⁴⁰ For a detailed overview of the Commission's activities in the area of competition policy, reference is made to the above-mentioned Annual Competition Report.

while ensuring that the around 2.5 million passengers using the London-New York and other affected routes continue to benefit from a choice of frequencies and competitive prices⁴¹.

Predictable and resolute competition policy can also achieve important results in terms of deterring and remedying anti-competitive practices without there ultimately being a need to adopt any formal decision. For example the planned joint production joint venture between BHP Billiton and Rio Tinto was abandoned after the Commission expressed concerns regarding its potential anti-competitive effects in the already very concentrated market of iron ore. This case also shows that the Commission, while necessarily focussing its limited resources on network industries and sectors whose innovativeness spurs growth, is also vigilant when it comes to ensuring the competitive provision of raw material inputs. The same is true for basic commodities such as food: in July 2010 the Commission set up a **High Level Forum for a Better Functioning Food Supply Chain**, which looked in detail into the competition challenges arising in this sector⁴².

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

The main political priority for 2010 was a successful exit from the crisis and the return to normal market functioning. The Commission responded to this by initiating, in December 2010, a gradual, controlled phasing out of exceptional support measures for banks and the real economy. The Commission also prolonged the Communication allowing for short term export credit insurance until 31 December 2012.

In 2010, the Commission also started the review other key legal instruments of state aid control with a view to ensuring that they will best support the Europe 2020 strategy for smart, sustainable and inclusive growth. The Commission carried out a review to promote risk capital investments in SMEs and launched public consultations on **state aid for services of general economic interest** and on **the review of the rescue and restructuring guidelines**. In 2010 work was also undertaken to review the guidelines on **state aid for environmental protection to take into account the effects of the Emissions Trading Directive** and the **framework on state aid to shipbuilding**, which are both due for adoption by the Commission in 2011. Finally, in July 2010 the Commission submitted a proposal, which led the Council to adopt a Decision on state aid to facilitate the closure of uncompetitive coal mines⁴³ on 10 December 2010.

As already mentioned, the reviews of the competition rules applicable to vertical and horizontal agreements carried out in 2010 are of particular for the competitiveness of the EU economy. In addition to these cross-sectoral rules, two sets of sectoral rules were also reviewed. A new **Insurance Block Exemption Regulation**⁴⁴ was adopted in March 2010, and a **competition rules for agreements between vehicle manufacturers and their**

⁴¹ Case COMP/39596 BA/AA/IB). See IP/10/936 and MEMO/10/330, 14.7.2010.

⁴² A similar exercise was undertaken as regards the dairy sector.

⁴³ Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24-29)

⁴⁴ Commission Regulation (EC) of 24 March 2010 on the application of Article 101(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L83, 30.03.2010, p.1).

authorised dealers, repairers and spare parts distributors⁴⁵ were also adopted in May 2010. Broadly speaking the latter represent a flexible and proportionate response to the differing intensities of competition on the primary and aftermarkets by applying the above-mentioned general regime for vertical agreements⁴⁶ from 2010 as regards the aftermarkets, and 2013 as regards the markets for the sale of new vehicles, and provide for a detailed set of supplementary guidelines for assessing vertical agreements in the sector⁴⁷.

Alongside the many reviews of the substantive antitrust and state aid rules in 2010 the Commission also brought forward its **process-related projects aimed at making competition policy more transparent and effective** by, on the one hand, improving the transparency and predictability of its proceedings in the field of antitrust and, on the other hand, facilitating damages claims for breaches of the antitrust rules so that consumers and firms who have suffered damage from an infringement of competition law rules recover their losses from the infringer.

As regards the first issue, the Commission published **Best Practices on the conduct of antitrust proceedings**, which provided detailed explanations as to how its improved antitrust procedures work in practice. Whilst the Commission consulted stakeholders on these practices, it also committed to apply them immediately from the date of publication⁴⁸.

As regards private enforcement, in 2010 the Commission agreed to launch a public consultation which should contribute to identify a set of **common principles**, which should guide any future proposals for collective redress in EU legislation. DG Competition has also prepared non-binding **guidance on quantification of damages**, which should be adopted by the Commission in 2011.

The effectiveness of competition policy also requires **consistency of approaches between the Commission and the national competition authorities of the European Competition Network (ECN)**. In 2010 the cooperation within this network was intense: DG Competition reviewed and provided input on more than 90 decisions envisaged by national competition authorities⁴⁹, as well as advised on informal requests and queries from these authorities. Cooperation at head of agency level was reinforced and the respective working groups and sectoral subgroups continued to have frequent exchanges. The ECN Food Subgroup was particularly active and served as a useful operational framework of coordination, given that a significant number of authorities have undertaken inquiries in the sector. Also, in line with DG Competition's Management Plan for 2010, a new **working group on mergers was set up to contribute to more coherence and coordination** among the Commission and the national competition authorities.

⁴⁵ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L129, 28.05.2010, p.52)

⁴⁶ But specify three supplementary hardcore clauses relating to spare parts' distribution.

⁴⁷ Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (OJ C 138, 28.5.2010, p.16).

⁴⁸ These Best Practices were complemented by a Guidance Paper by the Competition hearing Officer and Best Practices on the submission of economic evidence in antitrust proceedings.

⁴⁹ Under Article 11(4) of Regulation 1/2003.

Contributing to a pro-competitive regulatory framework at EU and national level constitute two significant specific objectives of the Management Plan for 2010. **Competition advocacy** constitutes a key activity to this end. 2010 saw the putting into place of new instruments, in particular the **Europe 2020 Strategy and a wider economic policy and economic governance agenda**. Competition policy supports the Flagship Initiatives under this Strategy, and DG Competition contributed to the adjustment programme agreed in respect of Greece in May 2010, in particular on the conditionality related to the structural reforms in the competition area⁵⁰.

In 2010, DG Competition also continued to work together with other services of the Commission and with other institutions, in particular the European Parliament, the Council and the European Central Bank, in particular by providing input to future legislation concerning the financial services sector, such as the Single European Payments Area.

As mentioned above, a **stakeholder survey** was carried out in 2010, showing large support for competition policy and acknowledging the integrity and analytical capability of DG Competition. **Impact assessment**, which is a central feature of the Commission's smart regulation agenda, became firmly rooted in the administrative culture of DG Competition⁵¹, and should allow further supporting stakeholders' perception of the legitimacy of competition policy. The **ex post evaluation** of competition enforcement activities was also enhanced in 2010, as reflected by the design and implementation of a new methodology for estimating the customer benefits arising from the Commission's cartel and merger decisions.

The Management Plan for 2010 also sets out the objective to **strengthen international cooperation in enforcement activities and increased convergence** jurisdictions. In this context, the Commission continued to play a leading role in the International Competition Network (ICN), notably by being closely involved in the Steering Group's "Second Decade Project" reflecting on the ICN future in the increasingly globalised economy and by organising a Workshop on unilateral conduct in December 2010.

Cooperation with US authorities was intensive. A number of important antitrust and merger cases investigated in 2010 affected both the EU and US markets. EU-US Best Practices on cooperation in reviewing mergers proved to be a useful framework for example in the *Cisco/Tandberg* and *Novartis/Alcon* cases. The Commission also cooperated closely with the US Department of Transportation in identifying remedies in the *Oneworld* case.

Cooperation with China and India was also intensive.

This objective also includes the **establishment of well-functioning competition regimes** in candidate countries and potential candidate countries. In June 2010, the Council decided to open the accession negotiations on the competition chapter with Croatia, and the Turkish Parliament adopted a state aid law in October 2010.

⁵⁰ See http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/pdf/ocp61_en.pdf In particular, the aspects relevant to competition concern the reforms of professional services, the strengthening of the Greek competition authority and the restructuring of the financial and rail sectors.

⁵¹ Four impact assessments were successfully completed in 2010.

2 MANAGEMENT AND INTERNAL CONTROL SYSTEMS

2.1 Introduction of DG Competition

2.1.1 *DG COMPETITION 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, ethics, security and IT. 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 Competition 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. This internal organisation enabled DG Competition to successfully deal with the surge of rescue and restructuring State aid cases in the financial sector and the real economy in 2008 and 2009. In the light of these positive results, 2010 was a year of consolidation for DG Competition organisation that was reinforced by the creation of two units: an antitrust unit in the field of health sector, most prominently pharmaceuticals, medical devices and health services, following the end of the Pharma Task Force and a unit responsible for State-aid control in the field of transport and transport infrastructure⁵². In addition the Ethics, Security and Procedures Task Force ended its mandate and its activities were fully integrated in Directorate R.

2.1.2 *Risks*

DG Competition is not a large spending DG and financial management does not represent a critical challenge for operations. No major event potentially harming the financial interest of the European Union could be reported in 2010. A recovery order not related to fines is still pending and the recovery procedure is managed in accordance with Commission procedures.

⁵² This unit has been transferred from the former DG Energy-Transport in February 2010 and a proper handover between the two Directors-Generals was ensured. Consequently, the present report covers the activities and management achievements of the transferred unit.

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

Vice-President Almunia took up his duties as Commissioner for Competition on 10 February 2010. Alexander Italianer has become Director-General of DG Competition on 18 February 2010 in replacement of Philip Lowe.

The working arrangements between the Commissioner for competition and DG Competition⁵³ are traditionally based on the principles of timely mutual information and of full transparency. In concrete terms, this means that DG Competition 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 Commissioner, the Director-General, Directorate R and IAC met on 21 January⁵⁴ and on 8 July⁵⁵ to specifically discuss the budget and financial expenditure, human resources, security, ethics, business continuity and audit (See also Section 2.3. on the Information to the Commissioner).

2.1.4 Financial circuits

- General description

To optimise the use of its human resources and manage its budget in the most efficient manner, DG Competition has defined three different financial circuits: 1) a centralised circuit for the global envelope, 2) a partially decentralised circuit for fines and 3) a decentralised circuit with counterweight for grants.

The principles concerning the segregation of duties are applied as follows: the ex-ante verification is a separated duty from the initiation. Officials in charge of verification are distinct from initiators, and they cannot be subordinated to them. Moreover, operational initiation and verification are separated from financial initiation and verification.

In all three financial circuits, the role of the operational units/Directorates is important, in particular with respect to operational initiation and verification. A close and constant liaison and consultation with members of the financial team of Unit Competition R2 (Resources, Ethics and Security) is however essential throughout the expenditure life cycle. These arrangements allow for a more responsive organisation without jeopardising the effectiveness of internal controls.

⁵³ Updated on 9 October 2010

⁵⁴ Commissioner Neelie Kroes and Director General Philip Lowe

⁵⁵ Vice-President Joaquín Almunia and Director-General Alexander Italianer

Centralised circuit for the global envelope (2010, 6,6 million euro for administrative expenditures & 5 million euro for external staff)

The Director of Directorate Competition R (Registry and Resources), the Head of Unit Competition R2 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. The financial initiation and verification functions are executed by members of the financial team in the Unit Competition R2.

This system applies to most financial operations, including transactions made in the framework of budget lines received from DG COMM and DG MOVE by cross sub-delegation. However, IT expenditures are authorised by the Head of the IT Unit Competition R3 (cf. decentralised circuit) and missions are approved by the DG Competition Directors for staff in their Directorate.

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.

Partially decentralised circuit for fines (2010, 3,06 billion euro)

The issuing of recovery orders related to fines falls under the responsibility of each Market and Cases Director (Directorates B, C, D, E, F and G) where the fine originates, although the actual recovery is centralised at the level of the Commission in DG Budget.

The operational initiation and ex-ante verification functions, as well as the financial initiation, are executed within the service of the operational Directorate. A member of the financial team of the Unit Competition R2 assumes the financial verification.

Decentralised circuit with counterweight for grants (2010, 800.000 euro) and IT (2010, 3 million euro)

The management of the "Training of judges" grant programme (cross-subdelegation from DG JUST) and the IT budget (global envelope and cross subdelegation from DG DIGIT) is decentralised respectively to Unit Competition A1 (Private Enforcement) and Unit Competition R3 (IT) for the operational verification and authorisation procedures, whereas members of the financial team of Unit Competition R2 assume the financial initiation and ex-ante verification for each operation.

- Documentation and support

Information and documentation on financial procedures is available on DG Competition 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. The FINCOR (financial correspondents' network) meets at regular instances to

discuss planning, monitor implementation, as well as exchange information and best practices.

- Internal Advisory Committee for Procurements and Contracts (ACPC)

DG Competition internal ACPC gives its opinion on the selection and evaluation procedure of proposed contracts to ensure that they comply with the Financial Regulation and Community Directives. Each file with a contract value exceeding 60.000 euro is checked by the Committee. The responsible Directorate submits the complete file to the Head of Unit Competition R2 for further distribution to the in-house ACPC. In 2010, the ACPC reviewed 1 call for tenders to which it gave a positive opinion.

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 Competition core business activities. In addition unit 04 -Strategy & Delivery (10 officials) serves as the Internal Control Coordinator (ICC) within DG Competition. For ex ante controls it is in addition responsible for the strategic planning and programming, impact assessment, risk assessment and risk management under the responsibility of the Director-General.

Ex-post controls for operational activities are assured by IAC 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 Competition management and staff.

The IAC (4 officials) assesses the effectiveness of internal control standards selected as part of its annual audit work and as approved 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 on the answers to be provided to auditors' observations and recommendations and reports on actions implemented;
- the monitoring of the implementation of DG Competition activities. This supervision task has been again overhauled in 2010 through further improvement of performance and workload indicators made available to managers and the evaluation of the experience gained from the 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 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 of the entire internal control system

2.2.1 Compliance with the requirements of the control standards

- **Requirements with which DG Competition fully complied on 31 December 2010:**

Apart from ICS 10 – Business Continuity, DG Competition 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 12 – Information and communication, ICS 13 - Accounting and financial reporting, ICS 14 - Evaluation of activities, ICS 15 - Assessment of internal control systems, and ICS 16 - Internal Audit Capability.

In addition, for the following five Internal Control standards; which are already fully compliant, the following conclusive results were achieved in 2010

- ICS 2 – Ethical and organisational values: given the nature of DG Competition activities, compliance with ethical standards (such as avoidance of conflicts of interest, outside activities, publications, etc.) is of particular importance. DG Competition was the first DG to set up its own Code on Ethics and the DG has reviewed its Code in 2010 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. The updated version of the Code was sent to all staff and presentations made in Directorate and unit meetings.
 - ICS 3 and 4 - Staff allocation, mobility, evaluation and development: DG Competition continued to invest in processes and procedures aimed at ensuring that personnel is recruited, developed and deployed in the most efficient manner. In 2010, DG Competition adopted an HR Strategy and a Rolling Action Plan 2010-2014, outlining measures to further improve effectiveness. Some specific actions undertaken in 2010 include: the adoption of a new Learning and Development Framework 2010-2011 based on questionnaires on training needs completed by Directorates, AST job analysis and proposal of template job descriptions, a reviewed policy on mentoring and coaching, and a new policy on multi-instrument learning for newcomers.
 - 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 2010. As mentioned in Part I, DG Competition introduced a new methodology for a more robust benchmark for the assessment of the impact of cartels and (horizontal) mergers policy.
 - ICS 7 – Operational structure: An updated list of sensitive functions was adopted by senior management and no derogation needed to be granted in 2010 to the mandatory staff mobility requirement for jobholders with one or more sensitive functions.
 - ICS 8 - see section 2.2.2.
- Requirements with which DG Competition did not yet fully comply on 31 December 2010:
 - ICS 10: see 2.2.2

2.2.2 Effectiveness of implementation of the prioritised control standards

Throughout the reporting year, it is the *raison d'être* of the Internal Control coordinator to ensure that the internal control system works as intended so that the Authorising officer by Delegation (i.e. the Director General) can provide a reasonable assurance of the effectiveness thereof. During the audits performed in 2010, the IAC found no situation where the reviewed ICS were not implemented to the base line standard or were manifestly ineffective⁵⁶.

In 2010 DG Competition assessed the effectiveness of the two following internal control standards: ICS 8. Processes and procedures, and ICS 10 - Business Continuity.

ICS 8 - Processes and procedures

In addition to its policy initiatives, DG Competition activities primarily rely on the preparation of legally-binding decisions in the field of competition law that can be subject to a judicial review before the Court of Justice of the European Union (CJEU).

As the "Guardian of the Treaty", the Commission has to enforce competition law as rigorously as possible and therefore must ensure a timely delivery of legal decisions of the highest quality. This entails the strict respect of procedural rules and the soundness of the legal and economic analysis, which can only result from robust internal procedures and processes. The risk of not having efficient procedures and processes would expose DG Competition as well as the Commission to take incorrect decisions, which would result in unfavorable rulings from the European Courts and potential claim for damages.

In 2010 the following DG Competition control arrangements to mitigate these reputational and financial risks have been assessed.

- Decision-making and quality review circuits: case-handling (and policy-making) in DG Competition are governed by very precise and well-defined decision-making procedures. Controls in place indicate who performs the control, how the control is performed and at what stage of the procedure (ensuring an appropriate segregation of duties). In particular intervention of the case support unit and organisation of scrutiny panels⁵⁷ is determined by clearly defined and explained criteria in the Manuals of Procedure.
 - As to the former, manuals of procedure include checklists summarising the key controls to be performed and the checks and balances to be organised. The supervisory activities of the case support unit ensure that these controls are effective and that the risks involved have been reduced to an acceptable level.
 - As to the scrutiny panels, Management is well informed about and supportive of the 'fresh pair of eyes' principle that is applied by the Merger & Antitrust policy scrutiny and evaluation unit, as well as by the State aid unit. The necessary measures are taken to ensure that scrutiny panels can express an unbiased and well-prepared view on the case at hand. The conclusion of the scrutiny exercise can identify risks and what should be done to mitigate these risks. The outcome of that exercise may influence the decision that management will take.

⁵⁶ The Internal Control Standards (ICS) reviewed in 2010 at the occasion of IAC's audits were: ICS 2 – Ethical and organisational value, ICS 8 – Processes and procedures, ICS 9 – Management supervision, ICS 11 – Document management and ICS 12 – Information and communication.

⁵⁷ A panel is a particular form of scrutiny which can be organised for cases, covering all or certain aspects of the case (factual basis, legal reasoning and economic analysis). It is therefore meant to be part of an effective system of checks and balances within DG COMP.

- Deviation from established processes and procedures, notably concerning rules indicated in the manual of procedure are discussed and approved ex-ante with case support unit (02/03). If the deviations are justified and have a lessons learned factor, they are recorded as such in the manual of procedure or in other lessons learned documents. Otherwise, the deviation is discussed and documented in notes to the case file, note to the Commissioner...
- Finally, these procedures are complemented on a daily basis by the scrutiny exercised by other Commission services such as the Legal Service or the Hearing officers
- Financial circuits: as described above, DG Competition must not only manage its own administrative and operational budget, but also two other financial circuits in relation to fines and grants. An audit carried out by IAC in 2008 had underlined some weaknesses of the financial circuits (related to the documentation of procedures, the definition of training and information requirements for financial actors, and the procedures to review and monitor financial circuits). A dedicated action plan was completed in 2010, which resulted in a positive follow-up assessment by IAC at the end of 2010. It results *inter alia* that the roles and responsibilities of the financial actors have been defined and documented in DG Competition intranet; financial procedures have been documented in a comprehensible and user friendly way; a financial correspondent network (or FINCOR) has been set up in order to ensure a coherent financial management throughout the DG.
- Ethics: Effective procedures to monitor the implementation of professional and ethical standards enhance DG Competition's reputation and credibility *vis-à-vis* National Competition Authorities, national administrations, the legal and business communities as well as the general public. As a response to a 2008 IAS audit, DG Competition has successfully completed the implementation of a dedicated action Plan in 2010, which included *inter alia* the update of DG Competition own Code of Ethics and Integrity, the integration in all Case management applications ("CMAs") of an automatically generated "Conflict of Interest Declaration Form" to be signed by case-handlers, the review of the list of sensitive functions and strengthened training requirements for newcomers.
- Convergence of procedures and processes: one of the key assets of DG Competition internal control system and organisation is the alignment of DG Competition case-management IT applications ("CMAs") with operational processes to handle cases and legal procedures to respect (which are updated and formalised in dedicated manual of procedures). These IT platforms exploit the potential of Information technologies to ensure a systematic and reliable document management and the strict respect of the various procedural steps in each instrument. The benefits of this integrated approach are multiple: comparability and consistency of decisions, systemic segregation of duties between the different actors involved in the handling of cases, facilitated traceability of procedural steps followed in each case, reliable storing of relevant documents (which ensures an efficient access to file to interested parties⁵⁸), confidentiality of sensitive information (based on the "need to know" principle), etc... In 2010, DG Competition has continued to improve the IT architecture by further embedding document management in the CMAs (including the successful implementation of ARES), adding ethics-related modules (see above), or by further developing communication tools with ECN or Member States.

58 See also Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004

Besides the exploitation internal performance indicators, DG also assesses the effectiveness of these arrangements by monitoring the outcomes of legal proceedings before the European Courts. The records suggest that overall DG Competition procedures and processes are adequate to support the Commission's position in judicial review as far procedural aspects are concerned.

Finally, as mentioned in Part I, DG Competition carried out for the first time a comprehensive stakeholder survey which was published in October 2010⁵⁹. The survey was carried out in two parts by two independent market research organisations among professional stakeholders and citizens in all EU Member States⁶⁰. This qualitative survey targeted professional stakeholders who were requested to provide feedback about their perceived quality of DG Competition's activities. Stakeholders generally believe that DG Competition is observing *procedural rules* and they were particularly positive about the handling and protection of sensitive and confidential information. DG Competition will use the results of this survey as an input into its antitrust best practices discussions, as well as a basis for internal discussions and for follow-up consultations with stakeholders on improving cooperation.

ICS 10 – Business Continuity

DG Competition is expected at all times to be able to respect its legal obligations and deadlines. However, as any organisation, it is subject to a possible disruption of its work that could hamper its ability to fulfil its mission.

As ICS 10 is fundamental for the efficient and effective management of DG Competition activities, preventive actions were already put in place and some key improvements are foreseen. DG COMP is implementing an action plan which foresees to put in place an IT mirror infrastructure.

Indeed, a first Business Impact Analysis (BIA) was conducted in 2006 to determine and document the impact of a disruption to the functions that support the delivery of its key objectives. Also, a first Business Continuity Plan (BCP) was drafted in 2007. The BIA was then updated in 2009 and a new BCP drafted the same year. On 6 September 2010, Senior Management adopted a new BIA that reassessed the DG's critical and essential functions, as well as their requirements in case of a crisis. This will lead to a new version of the BCP in 2011.

The following actions were taken in 2010:

- Implementation of an Action Plan;
- Appointment of 2 back-ups for each critical function;
- Update of the BCP throughout the year;
- Organisation of training sessions for critical staff (including for Senior Management);
- Distribution of a leaflet on Business Continuity to raise staff awareness;

⁵⁹ Available at http://ec.europa.eu/competition/publications/reports/surveys_en.html

⁶⁰ Flash Eurobarometer Survey "EU citizens' perceptions about competition policy" by Gallup Hungary and Eurobarometer Qualitative Study "DG Competition stakeholder Study" by TNS qual+.

- Launch of a request to staff to introduce their personal data in the Sysper2 HR application in view to an efficient and optimal use of the new Business Continuity IT tool, NOAH, created by DG DIGIT/SG to facilitate communication during a crisis;
- Test of the telephone cascade for the whole DG (mid-September);
- Participation of DG Competition in the Commission-wide exercise PEST10 (October);
- DG Competition has upgraded its mitigating measures in 2010 by doubling the frequency of the full tapes backups, with storage in a safe located in another building than the machine room. DG Competition has also started the implementation of the mitigating action plan, which foresees the installation of an IT mirror solution at the earliest possible. The agreement reached with DG BUDG and DG DIGIT in 2010 should allow having a fully operational infrastructure by early 2012.

Results of the actions undertaken:

- About 80 % of critical staff attended the trainings and 90 % of Senior Management attended the workshop;
 - About 85 % of staff introduced their personal data in the Sysper2 HR Application;
 - During the telephone cascade test, 85 % of the staff was reached within 1 ½ hrs, 10% was reached within 3 hrs;
 - PEST10 exercise : the external observer (from DG EMPL) rated his experience as being very successful underlining the excellent performance of DG Competition on aspects such as motivation, teamwork, atmosphere and coping with stress;
 - After an electricity failure in March 2010 that forced DG Competition servers to shut down, the system administrators tested the procedure to come back to a normal situation: they were able to restart all the applications in 15 minutes, with a global interruption of less than one hour. As a result, the interruption of IT applications and, consequently, the disturbance caused to users were then kept to a strict minimum;
 - 445 tokens were allocated to staff (for a total staff number of around 1000) which allow colleagues to work easily from home during any crisis not affecting the infrastructure supporting this service.
- **Conclusions on the effectiveness of selected Internal Control Standards:**

In 2010, the procedures and processes of DG Competition worked as intended. Internal operational procedures continued to ensure that sound decisions are prepared and that legal deadlines are constantly met, while the growing convergence of different functional processes contributed to an increased efficiency and reliability of the organisation. In coming years, DG Competition will continue to streamline its processes and procedures in view to further improve its efficiency and effectiveness.

In 2010 DG Competition further progressed in ensuring the continuity of its critical functions in case of a crisis situation affecting its capacity at managing competition cases. The IT infrastructure having become a key element of its decision-making process, the DG will be able to provide complete assurance of the effectiveness of its business continuity measures only once its new IT mirror infrastructure has become operational, which is planned for early 2012. This is why ICS 10 was also selected in the 2011 Management Plan.

2.2.3 Conclusion on the functioning of the entire internal control system

DG Competition has put in place monitoring measures which ensure that the internal control systems are effective. DG Competition 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 Competition has an effective, robust and reliable internal control system at its disposal.

2.3 Information to the Commissioner

The main elements of this report and assurance declaration, have been brought to the attention of Vice-president Almunia during a meeting with DG Competition services on 18 March 2011.

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 Competition is compliant with regulations and guidelines on budget management and ensures strict monitoring of budget implementation and payment delays. Generally, 2010 has been a year of consolidation of DG Competition internal control organisation.

As regards the materiality criteria DG Competition 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
 - In DG Competition, there are 1 AOD, 3 AOSDs with general sub-delegations and 12 AOSDs with limited sub-delegations involved in financial management.
 - There are 5 financial officers in the financial sector of Unit Competition R2 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 2010, the ECA did not select any transaction for substantive review (see also section 3.1.2).
- 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, weekly list of outstanding payments, regular financial management reporting and intra-DG financial meetings (FINCOR).
- 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 Competition 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 34% of the total value of commitments

and 52% of total value of payments were audited by IAC in 2010. Our target error rate is maximum 2% of the overall amount. Of the audited payment transactions in the years 2008-2010 the error rate can be estimated as follows:

- § 2010: Payments: 0,09%
- § 2009: Payments 0.01%
- § 2008: Payments 0,01%

- 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 17,84 in 2010 as opposed to 20,44 in 2009 and 23,03 days in 2008.

Instances of overriding controls or deviations from established policies:

- Exceptions from standard procedures are approved and recorded centrally. None of the exceptions registered in 2010 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 2010, 2009 and 2008.
- No cases received by the Ombudsman in 2010, 2009 and 2008 related to procurement procedures.
- No legal proceedings initiated by contractors or other economic provider of the DG against the Commission in 2010, 2009 and 2008.

- **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**

In 2010 one audit report relating to competition enforcement process has been completed (Mergers phase II). In addition, DG Competition financial activities, although relatively limited, were audited. In 2010 this field of activity was significant: the usual financial transactions audit was performed with the final sample of financial transactions for 2009 (Quarter 4) and for 9 months of 2010⁶¹; the complete cycle of procurement and contracts including the involvement of the operational units in the purchase process was also audited. As such it must be emphasized that this audit is not only of a financial nature but

⁶¹ Q4 2010 financial transactions were audited in January 2011.

also looked at support services used for DG Competition's decisional processes such as studies contracted from third parties.

Based on the results of audits the IAC opinion confirms that the internal control system in place provides reasonable assurance regarding the achievement of the business objectives set up for the activities audited, except for specific issues (filing methods in the mergers area, procurement procedures and the monitoring of the execution of contracts⁶²). No critical recommendations were issued in IAC audits in 2010.

- The IAC also states that no information has come to his attention that would warrant making a reservation in the Annual Activity Report. IAS audit

IAS has not conducted a new audit report relating to DG COMP in 2010

- ECA annual report

Documentation of all major events potentially leading to a reservation has been submitted to the DG following ECA observations in its 2009 Annual report.

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

Nine follow up audits were conducted in 2010 and for six of them a report has been issued in 2010 (Antitrust, ECN, Access to file, State Aid phase II, Financial circuits, Review of 2008 financial transactions)⁶³.

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

- Merger procedures phase I
- Antitrust procedures
- ECN
- Access to file
- State Aid Phase II
- Financial circuits
- Financial transactions 2007
- Financial Transactions 2008
- DG COMP Business Continuity plan – phase I – (in progress)

concluded that a large number of recommendations (i.e. 26) have been implemented and can be closed with the exception of 3 Very Important with expired deadlines and which are still in process of implementation.

⁶² These points are all linked to Very Important issues arising out of IAC assurance work. The IAC notes that underlying audit recommendations have all been accepted by the auditees; action plans have been issued and are in the process of implementation.

⁶³ The three follow-up for which no reports were yet issued are either still at an early stage (Financial transactions 2009 and BCP phase I) or had their recommendations transferred to another audit (from Financial transactions 2007 to 2008).

Notably DG COMP BCP is in progress of further improvement but a number of issues still need to be resolved before its implementation can be fully tested. In addition, the implementation of an IT mirror site is not yet achieved. For State aid priority setting and resource allocation, DG COMP has implemented new priority setting tools; the resource allocation/ workload monitoring processes are currently under review by management.

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

N/A – DG Competition did not give any cross subdelegation to other DGs in 2010.

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

To its best knowledge, DG Competition 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. In particular, due attention has been paid to the hand-over file from the former DG TREN, which concluded that "the resources [allocated to the transferred unit] were used for the intended purposes (financial and human resources) and there are no elements which may lead to consider an improper application of the internal control standards and therefore to a reservation".

3.2 Reservations

The results of audit reports, internal control reviews and risk assessments as described here-above indicate that DG Competition's system of internal control has functioned as intended during 2010 and has not identified any material deficiencies. DG Competition 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 Competition in 2010.

4 DECLARATION OF ASSURANCE

I, the undersigned,

Director-General of DG Competition

In my capacity as authorising officer by delegation

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

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

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

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

Brussels, 30 March 2011

(signed)

Alexander Italianer

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ANNEX 1: Statement of the Resources Director

I declare that in accordance with the Commission's communication on clarification of the responsibilities of the key actors in the domain of internal audit and internal control in the Commission⁶⁴, I have reported my advice and recommendations to the Director-General on the overall state of internal control in the DG.

I hereby certify that the information provided in Part 2 and Point 3.1 of the present AAR and in its annexes 2 to 7 is, to the best of my knowledge, accurate and exhaustive.

Brussels, 30 March 2011

(signed)
Isabelle Bénoliel

⁶⁴ [SEC\(2003\)59 of 21.01.2003](#)

ANNEX 2: Human and Financial resources by ABB activity

Human Resources by ABB activity

Human Resources by ABB activity (based on figures 31/12/2010)				
Code ABB Activity	ABB Activity	Establishment Plan posts⁶⁵	Estimates of External Personnel	Total
03/01	Cartels, anti-trust and liberalization	255	42	297
03/02	Control and State aid	216	42	258
03/03	Merger control	108	17	125
03/04	Policy Strategy and coordination ⁶⁶	125	13	138
03/05	Administrative support	86	43	129
Total		790	157	947

General remark: the above data rely on the snapshot of Commission personnel actually employed in each DG/ service as of 31/12/2010. These data do not constitute full-time-equivalent units throughout the year. Where relevant, DGs/services put remarks on substantial differences between original planning and actual occupation as of 31/12/2010.

⁶⁵ DG COMP did transfer 3 posts (2AD + 1AST) to DG INFSO on 1/12/2010 (transfer of competencies Telecom art.7). DG COMP has 5 AD staff from other DGs (financial crisis) until end 2011. This brings the total of the establishment plan posts to 790 posts instead of 785 posts

⁶⁶ This activity comprises a number of specific activities, of which several are directly linked to case work: Antitrust and Mergers Policy and Scrutiny (17 staff), State Aid Policy and Scrutiny (15 staff), the Hearing Officers' Team (8 staff), the European Competition Network (9 staff), International Relations (11 staff), Private Enforcement (9 staff), Consumer Liaison (5 staff), Strategy and Delivery (10 staff), Communications Policy and Interinstitutional Relations (21 staff), the Internal Audit Capability (4 staff) and others, including senior management and their support staff (16 staff).

Financial resources by ABB activity

IMPLEMENTATION OF THE GLOBAL ENVELOPE
 BUDGET LINES CONCERNED: 03 01 02 11 00 01 TO 03 01 02 11 00 06
 (based on information received from BUDG services following the 2011 Budget circular)

(IN EUROS)		APPROPRIATIONS 2010 (C1)			APPROPRIATIONS carried over (C8)	
BUDGET LINE	BUDGET LINE DESCRIPTION	AVAILABLE APPROPRIATIONS 2010	COMMITMENTS 2010	PAYMENTS 2010	AMOUNTS OF APPROPRIATIONS CARRIED OVER FROM 2009	% IMPLEMENTATION ON APPROPRIATIONS CARRIED OVER FROM 2009
03.010211.00		6 592 231				82%
03.010211.00.01.10	Mission expenses		1 001 500	865 538	70 690	N/A
03.010211.00.01.30	Representation expenses		15 000	7 716	0	100%
03.010211.00.02.20	Meeting costs		396 984	319 334	81 345	92%
03.010211.00.02.40	Conference costs		146 000	66 916	17 367	22%
03.010211.00.03	Meetings of committees		150 000	86 877	128 062	69%
03.010211.00.04	Studies and consultations		2 424 698	1 577 072	1 483 420	99%
03.010211.00.05	Development of management and information systems		2 088 237	495 774	1 270 653	88%
03.010211.00.06	Further training and management training		262 222	91 539	124 023	
03.010211.99	Reserve	602 580				
	TOTAL	7 194 811	6 484 641	3 510 766	3 175 560	79%

ANNEX 3: Draft annual accounts and financial reports

See document attached to this report.

ANNEX 4: Materiality Criteria

DG Competition 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.

Qualitative assessment

For assessing the significance of the weakness, the following factors are analysed:

- nature and scope of the deficiency,
- duration of the deficiency,
- existence of compensatory measures (mitigating controls which reduces the impact of deficiency),
- existence of effective remedial actions to correct the deficiencies (action plans and financial corrections) which have had a measurable effect.

Quantitative assessment:

In order to quantify the deficiency, DG Competition applies the recommended 2% as threshold for material deficiency i.e. when the value of the transactions affected represents more than 2% of the overall budget of DG Competition.

Reputational assessment

For weaknesses, which are considered significant in qualitative terms but not in quantitative terms, DG Competition takes into account the possible reputational impact they may entail. They will be assessed according to the following factors:

- context and nature of the impact
- awareness
- duration.

ANNEX 5: Internal Control Template(s) for budget implementation (ICT)

Characteristics of DG policy environment:

Summary: DG Competition manages a relatively small administrative budget. The budget is devoted to cover the costs of experts groups and advisory committees. It also covers expenditures such as mission costs and conferences. Furthermore, DG Competition acquires services such as studies and IT support.

Key inherent risks in this environment:

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

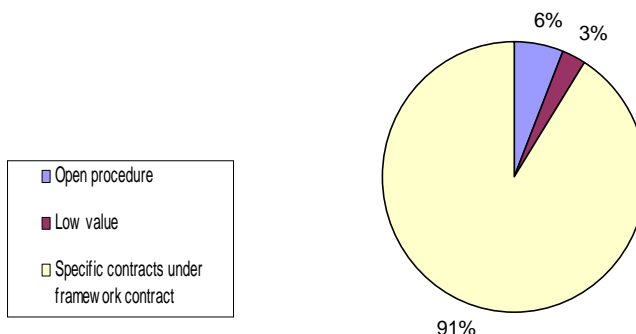
Management mode:

- Direct centralised

Key figures in 2010:

- Budget 6,60 million €
- Budget execution: 98,2 %
- Number of transactions: 166 commitments, 352 payments.
- Payment delays: 17,84 days on average.
- Value procurement procedures – studies, training and IT: 4,67 million €
- Volume of recovery orders: 3,06 billion € issued in 2010 for fines and penalty payments

Procurement procedures 2010



6% of the procurement procedures (in value) were implemented via open procedures and 3% via low value (<60.000€) procedures. Specific contracts concluded under existing framework contracts amounted to 91% of the total value of procurement procedures.

Management and control systems : stages and main actors	
Selection process	<ul style="list-style-type: none"> • Procurement needs for the following year are proposed by the different services via an ex-ante planning table. The table contains a description of the action and relation to on-going cases, the estimated cost and time-frame. It also defines the operational agents. The financial team further verifies the coherence with the Management Plan and the priorities of the DG for the following year. The proposed planning is presented in the weekly Senior Management meeting where the authorising officer by delegation (AOD) gives his final approval. Hence, future procurements are clearly defined and justified from an economic and operational point of view. • All procurement procedures are done with guidance and ex-ante support from the financial team. • The financial team reviews the procurement documentation before it is sent for publication or before the invitation is sent out. • One member of the financial team takes part in opening committees as observer for procurement procedures above 60.000 € • Procurement contracts above 60.000 € are reviewed by the local Advisory Committee for Procurements and Contracts (ACPC). • The financial team reviews the final documentation before the signing of the award decision, the budgetary and legal commitment.
Communication and information	<ul style="list-style-type: none"> • Open calls for tender are published in the Official Journal as well as on the Europa web-site. Updated information and Questions and Answers (Q&A) are posted on the web-site. • Adequate communication is made to unsuccessful tenderers. • Manual of procedures and internal manual on financial procedures are posted on the intranet. • A network of financial correspondents is in place.
Preventive, detective and corrective controls:	<ul style="list-style-type: none"> • Separation of functions for initiation and verification and split between the operational units and the financial team. • Operational and financial ex-ante verification is made for all transactions. • Directors must sign to confirm that the work carried out is adequate and in accordance with the terms of the contract before final payments can be made. • The segregation of duties is described in the procedures manual. • Checklists are included in the financial circuit. • Reporting is made on weekly basis to management on outstanding invoices in order to keep the time necessary for payments below the legal ceilings and internal targets. • Around 50% of all transactions are subject to an ex post

	audit by the Internal Audit Capability (IAC).
Feedback which enables control activities to be optimised	
Verification that processes are working as designed	<ul style="list-style-type: none"> • The audit plan covers core business processes. • Follow-up audits are part of the standard IAC approach. • Weekly management meetings as well as regular financial correspondence meetings take place to review progress on cases and other projects.
Monitoring of performance of independent bodies, 3rd party auditors, externally contracted auditors	N/A
High level management reporting	<ul style="list-style-type: none"> • Financial reports on budget execution, expenditures, payment delays, procurement and contract management are submitted regularly to the management. • Priority/problem issues are reviewed systematically during the weekly Senior Management Meetings.

ANNEX 6: Implementation through national or international public-sector bodies and bodies governed by private law with a public sector mission

Not applicable to DG Competition in 2010

ANNEX 7: AAR of Executive Agency

Not applicable to DG Competition in 2010