



EUROPEAN COMMISSION

# DG Competition Annual Management Plan 2007

22 December 2006

## **Personal message by the Director General.**

Competition policy has at its root a simple idea: When firms compete with one another to attract consumers, they will usually do so by decreasing prices, or by working to increase the quality and variety of their products. In the end, consumers will generally be better off. In addition, competition spurs competitiveness: companies become stronger when they compete. They innovate, they improve their internal processes and management. And competition in intermediary goods translates into competitive advantages for our companies further down the value chain.

Competition between firms is thus a formidable engine for growth and economic prosperity. But, just as fair competition in sport requires clear rules and strict enforcement of the rules by a referee, so does fair competition between companies. Well-functioning markets are, as a rule, the best way to bring to citizens the goods and services they want. But for markets to function well some degree of intervention of the public authority is required. Competition policy is just that: to understand how the market works in terms of competitive interactions between firms, and to make the market work better, by gearing these competitive interactions towards producing more consumer welfare.

European competition policy thus makes markets work better, strengthening the European economy, making it more competitive and benefiting EU consumers. Our continued action is required both to provide a clear regulatory environment for pro-competitive activity, as witnessed by the hundreds of merger and State aid approvals issued each year, and to prohibit anti-competitive activities, as witnessed by the decisions prohibiting incompatible aid or the conditions imposed in numerous merger decisions. A clear indicator of how competition enforcement contributes to making markets more competitive can be seen in the level of fines levied against cartels in 2006: €1.8 billion, a record amount which, even if only indirectly, indicates the anti-competitive effect those cartels were having on the market.

Effective action requires co-ordination within the Commission, within the European Competition Network of national competition authorities, and within the wider world of competition enforcers. Ultimately, however, effective action means substantial direct intervention by the Commission using its competition powers.

In the last three years, DG Competition, the Commission's competition department, have invested a great deal of time and energy into strengthening our world-class merger control system, modernizing antitrust enforcement, reforming the control of State aids through the State Aid Action Plan (SAAP), improving priority setting in all areas, cutting red tape wherever possible, and building into our analysis more economic thinking. We have also focused on fostering a competition culture in the Member States and empowering national competition authorities to deal with the violations of EU law that they are well placed to tackle. According to a poll by the leading international competition journal, in 2006 our stakeholders considered us the best antitrust and merger enforcer in the world.

In 2007, as in 2006, we will focus our activities on those sectors that have the greatest significance for the EU economy and its citizens: financial services, energy, the recently liberalized sectors, such as telecommunications and transport, environmental protection and health. In 2007, we will also continue to simplify procedures while providing predictability to business and governments through horizontal measures, like the State aid general block exemption. We will provide final or draft guidance on antitrust and merger issues, including on the application of Article 82 against abuses of dominant positions by firms, and on non-horizontal mergers.

Enforcement action will continue to focus on the most harmful anti-competitive behavior in State aid, mergers, and antitrust. In mergers, we are likely to deal with over 300 cases, some 20 of which may include remedies and a full third involve detailed second-phase investigations. In State aid rigorous enforcement of the rules in individual cases will continue, complementing the SAAP. The refined economic approach and the improvements to *de minimis* and other State aid rules will allow us to focus resources on those aids that are most likely to harm the European economy. Where aid is declared incompatible, we will continue our efforts to enforce recovery.

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In antitrust we will maintain our focus on cartel enforcement, including prohibition decisions with fines, and make improvements to the leniency regime in order to destabilize cartels yet further. We will seek ways to improve competition enforcement via national courts, strengthening the rights of EU citizens and businesses. We will not falter in our efforts to make Microsoft comply with the Commission's March 2004 decision. We will finish the energy and financial services sector inquiries, make proposals for regulatory and antitrust remedies, and provide a sound empirical base for merger and State aid analysis. We will evaluate the objectives and handling of these sector inquiries, before making a proposal for one or more new inquiries in areas important to the European economy.

In order to better gauge the impact of our decisions and be able to use the results to improve the effectiveness of ongoing and future work, we will extend and deepen the scope of our evaluation activities across instruments. We will continue to look closely at our procedures and enforcement priorities. We will seek ways to improve competition enforcement via national courts, strengthening the rights of EU citizens and businesses, and support the work being done examining ways to enforce citizens' rights through collective legal action.

Competition policy is also an important instrument for the EU to promote international governance. In the international sphere, we will help ensure that trade agreements contain appropriate competition policy measures, including State aid provisions. We will advocate EU policies and competition initiatives in bilateral and multilateral fora and continue to use competition policy and enforcement to help the EU's economy to better respond to the challenges of globalization.

By making markets work better, Community competition policy contributes to the attainment of various other Community policies, such as the better integration of EU energy markets, the opening of national transport sectors across the EU to competition or ensuring a competitive environment for information-society services. In particular, competition and internal market policy will go hand in hand in removing private and public obstacles to trade and competition. In this manner, in 2007 competition policy will continue to play a central role in the attainment of the EU's objectives as laid down in the Lisbon strategy.

## **1. Mission statement**

The mission of the Directorate General for Competition is to enforce the competition rules of the Community Treaties, in order to ensure that competition in the EU market is not distorted and that markets operate as efficiently as possible, thereby contributing to the welfare of consumers and to the competitiveness of the European economy. Competition policy is now broadly recognized as a crucial factor for the creation of proper conditions for economic growth and prosperity, since it influences investment decisions, business acquisitions, pricing policies and economic performance. Competition policy helps promote a better allocation of resources and strengthen the competitiveness of European industry to the benefit of the citizens. It thereby contributes to achieving the strategic objectives adopted at the start of this Commission's mandate, in particular prosperity and solidarity.

The work of DG COMP is essential to the achievement of the EU's key objectives as expressed in the "Community Lisbon Program"<sup>1</sup>, and in particular in the Annual Policy Strategy for 2007, because it makes a significant contribution to the efficient functioning of the internal market and promotes the conditions necessary to **stimulate knowledge and innovation, to make Europe a more attractive place to invest and work, and to create more and better jobs**. The principal instruments available to DG COMP for accomplishing its mission are:

**a) The enforcement of competition rules on anti-trust, mergers, State infringements and State aid control.** Merger control, State aid control, and individual proceedings against undertakings or Member States having infringed the competition rules allow the prevention or remedy of specific competition problems, like cartels or abuses of dominant position. Competition enforcement has a positive effect for consumers, because effective competition contributes to a larger choice of products and services, lower prices and better quality. Moreover, effective competition creates incentives for business to invest in research and development towards innovation, thus stimulating knowledge and contributing to the creation of more and better jobs. Finally, enforcement actions have a further positive impact in that they act as a deterrent to potential infringers.

**b) Sector inquiries and market monitoring.** Informal market monitoring and formal sector inquiries launched under Article 17 of Regulation 1/2003 are indispensable instruments to feed the Commission's enforcement activities, especially in sectors characterized by particular complexities. In such cases, only a deep understanding of the functioning and dynamics of the specific market can reveal the existence of competition problems that call for enforcement actions. Building an in depth knowledge of sectors of the economy will continue to allow DG COMP to set sectoral priorities for its actions.

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

**d) Competition advocacy.** Competition advocacy, as opposed to enforcement, refers to actions aimed at influencing regulatory processes both at EU and national level to ensure better and pro-competitive regulations. Competition advocacy can take different forms, including the participation in the preparation of other DGs' policies, regulatory proposals and cases, review of regulatory decisions (eg. In the telecom sector), public consultations, reports on the state of competition, promotion of best practices, etc. Through competition advocacy, DG COMP contributes to the attainment of the broader Community objective of making the EU the world's most competitive economy, leading to sustainable growth and the creation of jobs.

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<sup>1</sup> COM(2005) 330 final, of 20 July 2005

**e) International cooperation.** The increasing integration of the world economy makes it essential for the Commission to cooperate with competition authorities outside the EU, in particular to address the rise in multi-jurisdictional mergers and anti-competitive conduct across borders. A necessary complement to maintaining a competitive and integrated internal market is achieving competitive markets abroad, protecting European citizens and businesses against cartels, abuses of dominant positions, anti-competitive mergers and unfair subsidies to competitors abroad. The Commission works to promote international convergence of competition policy in general, to ensure effective enforcement of EU competition rules in an international environment, to avoid conflicts with the competition authorities of other countries, and to create an international level playing field in the area of State aid. In the framework of enlargement, the main objective is to assist the candidate countries to meet the conditions for EU accession in the competition and especially in the State aid policy area. The result of this activity can be seen in the fact that, by the time of their accession to the EU, the ten new Member States, Bulgaria and Romania had established competition regimes on a level with those of the EU-15.

## 2. DG COMP's general objectives in a multi-annual perspective.

The work of DG Competition is characterized by a great deal of continuity from one year to the next. 2005 marked the first full year of the Barroso Commission and of EU 25. It also marked the first anniversary of the entry into force of the modernization package in anti-trust and the launching of a project of major significance for the Lisbon agenda, the State Aid Action Plan (SAAP). 2006 was a period of consolidation of these and other important projects, on whose foundation DG COMP's work program for 2007 is built.

In 2006, DG COMP defined its multi-annual general objectives in line with the political priorities of the Commission. The key objective in the political agenda of the Commission has been to reinvigorate the Lisbon process, whose overall aim is to make the EU the most dynamic and competitive knowledge-based economy in the world. The Commission's Annual Policy Strategy Decision (APS) for 2006 had already highlighted an upturn in growth as the central policy objective, striving to restore dynamic and sustainable growth in Europe and provide for more and better jobs to citizens.

Looking forward to 2007 and beyond, it is clear that the role played by competition policy will continue to be particularly important in the context of the economic and social challenges currently facing the EU. The speed and intensity of globalization and technological change in the world economy create both opportunities and challenges. There is wide consensus and compelling evidence that, subject to some essential ground rules to ensure fair as well as free trade, exposure to international trade stimulates productivity and growth. However, facing global competition requires EU and national policies aimed at greater flexibility for firms to meet the challenges of rapid change, as well as public support to research and development (R&D), education and infrastructure investment – all of this while ensuring that individuals have the skills and training to retain employment in a world where specific jobs may rapidly appear and disappear.

Extending and deepening of the internal market and ensuring open and competitive markets inside and outside Europe are key policy objectives of the renewed Lisbon strategy for growth and jobs. Specific actions are foreseen to complete the internal market and support or complement national measures, including in particular in the field of State aid policy, in three major areas of activity: **promoting knowledge and innovation for growth, making Europe a more attractive place to invest and work**, and promoting the creation of **more and better jobs**.

The objectives of the Community Lisbon Program are in line with the strategic objectives defined in the Commission's Annual Policy Strategy 2007, which proposed to continue to concentrate on the most urgent priority, namely, **restoring dynamic and sustainable growth in Europe and providing for more and better jobs to citizens**. One fundamental operational goal for the Commission in 2007 is to continue ensuring the proper functioning of the enlarged Europe, the continuity of ongoing activities and the full application of the policies and rules within all the Member States.

EU competition policy has an essential contribution to make to the achievement of both the EU's strategic objectives as set out in the Lisbon Program and of the Commission's objectives as expressed in the APS 2007 decision. In particular, competition policy contributes to Europe's ability to meet the economic and social challenges of rapid change in today's global economy in the following ways:

- By protecting competition in markets, EU competition policy helps ensure that European consumers, whether businesses or individuals, get a high standard and wide choice of goods and services at affordable prices.
- By protecting the competitive process, EU competition policy improves the competitiveness of European business. Rivalry between firms stimulates technological development and innovation, bringing faster growth in the economy. Moreover, ensuring open markets with possibilities for new entrants can attract more investment, generate employment and accelerate growth.

- Thirdly, by targeting international cartels, mergers, and abusive practices of firms of any nationality which harm competition inside the EU, competition policy helps to protect European business and citizens against the potentially harmful aspects of globalization.
- Finally, competition policy provides an appropriate framework in which Member States can give financial support to R&D, innovation, risk capital facilitation, environmental protection, employment, training, and public services without harming competition and jobs in the rest of the Union, while facilitating structural change in the context of globalization.

DG COMP has defined **three multi-annual general objectives** that will allow it to continue making a significant contribution to the achievement of the Commission's strategic objectives as defined in the Commission's APS decision 2007 and the Community Lisbon Program. The expected impact of these three general objectives is to contribute to:

- Increased competition in the common market.
- Increased consumer welfare.
- Enhanced competitiveness of European industry.

### **2.1. To focus action on key sectors for the internal market and the Lisbon agenda.**

Making markets work better requires, in the first place, carefully selected priority sectors. A selection of priority sectors allows better interaction between various Community policies and facilitates the contribution of competition policy to achieving the Community's overall objectives.

For example, public monopolies established to provide telecommunications, post, energy and transport services have not always proved efficient and able to satisfy consumers' needs in the best possible way. Liberalization of these key input services for businesses can contribute to the competitiveness and growth of the European economy. Gradually opening up these markets to competition and making sure that they remain open allows consumers to benefit from lower prices and new and more efficient services. The evolution of the telecommunications and air transport sectors, where in the last 10 years prices have steadily fallen while the number of providers has increased, is a good example of the positive effect that competition policy can have on consumer welfare<sup>2</sup> in those sectors. Similarly, competition in financial services ensures that companies, in particular SMEs have access to finance which help realize Europe's business potential.

State aid control in some of these sectors further contributes to these goals by promoting efficient and effective public services irrespective of whether they are provided by the State or by the market. It also provides a framework in which Member States can give financial support to address recognized market failures, promote structural change and ensure the availability of public services. For example, state aid targeted to "knowledge" sectors may improve Europe's education, research and innovation framework as drivers for growth. On the other hand, where the distortive effects of State aid are not outweighed by the expected contributions to objectives of common interest, the aid will be prohibited.

### **2.2 To focus enforcement actions on the most harmful anti-competitive practices for the European economy.**

In all enforcement areas, competition policy has been a tool for structural reform. Protecting competition contributes to making markets work better. Open and competitive markets are an important means to foster economic efficiency and competitiveness, innovation and growth. In the long run, they represent the best guarantee of providing consumers with a wide choice of good quality goods and services at competitive prices.

It follows that the more harmful anti-competitive practices for the European economy and consumers are, the greater need there is for competition policy to intervene. For example:

- Cartels are clearly the most harmful restrictions of competition and therefore high priority is given to the prevention and deterrence of cartels

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<sup>2</sup> See SGEI horizontal evaluation report available at [http://europa.eu.int/comm/internal\\_market/en/update/economicreform/index.htm](http://europa.eu.int/comm/internal_market/en/update/economicreform/index.htm)

- Certain types of abuses of dominant position may also have significant market-distorting effects. They must be identified and enforcement priorities should focus on these.
- Erecting barriers to market entry through special/exclusive rights, granting State aid or restricting take over of national companies can also result in serious restrictions of the competitive process.

**2. 3 To enhance competitiveness within the EU by helping to shape the regulatory framework.**

The dismantling of unnecessary regulatory barriers to competition contributes to enhancing the competitiveness of the European economy. Competition enforcement and advocacy initiatives can ensure that EU and national public policy do not hold back competition to the detriment of businesses and final consumers, and that those restrictions to competition which are deemed necessary for the achievement of other legitimate policy objectives remain proportionate to that aim.

In this way, competition policy plays a key role in improving the competitiveness of European business. Protecting the competitive process stimulates technological development and innovation, which in turn bring about higher productivity and faster growth in the economy. Moreover, ensuring open markets with possibilities for new entrants can attract more investment, generate employment and accelerate growth.

### 3. Resources

Since 2005, DG COMP has experienced a moderate increase in staff levels. Especially in view of the increased workload necessarily caused by enlargement, optimizing the use of human resources has become a constant and major concern for the DG.

In 2005, DG COMP responded by further enhancing use of the workforce scheduling tool created in 2004 (CHOPIN) in order to better identify and respond to changing and often competing priorities. Also, in 2006 the DG once again reviewed its working methods with a view to streamlining them as much as possible. Besides this review, the completion of the DG's internal reorganization in 2005 has increased our possibilities to reallocate tasks and redeploy resources internally. Thanks to these measures, at any given time some 10% of the DG's staff is being redeployed internally. However, this improved capacity to redeploy has its limitations.

In 2006, a number of measures have been undertaken in order to achieve productivity gains with a view to efficiently facing the increased workload. Besides *décloisonnement* (within and across Directorates), best practices regarding DG-internal procedures have been introduced and there has been a broad reflection exercise on the treatment of complaints, the improvement of IT tools and the revision of training needs. The implementation and development of these measures will continue in 2007. However, the effect of productivity gains to be achieved through such measures should not be overestimated, especially in view of the trend towards more and more complex cases involving a substantial increase in workload relating to fact finding and economic analysis.

The trend in 2007-2008 is clearly towards an increase in the DG's workload. The main demands on our human resources will come from our priority areas of work: cartel fighting, the implementation of the State Aid Action Plan, the continued increase in the number of mergers notified to the Commission and the conclusion and follow-up of the sector inquiries launched in 2005. The need to take account of the external dimension of State aid control is also going to absorb significant resources for negotiations and advocacy with other DGs and external institutions. Accession of Bulgaria and Romania will also impact workload, especially in the State aid and mergers fields.

In general, as recognized by the OECD<sup>3</sup>, the demands of our case work on DG COMP's resources will continue to rise as cases become more complex and the trend to appeal decisions by the Commission continues. Also, the revision of a large number of legislative texts, the adoption and implementation of initiatives announced in the State Aid Action Plan, and the application of the refined economic analysis in enforcement activities will have a significant impact on our resources, especially as the beneficial effects of the increased use of block exemption regulations in the State aid area will not be felt until after 2008. The main changes are expected in case handling, scrutiny, judicial review and training.

Even taking into account the constraints the Commission faces, for DG COMP the *status quo* in terms of human resources cannot be an option. With an incremental approach to resource allocations, we will be unable to absorb the workload at the level of performance that our stakeholders expect from us. Unless we experience a significant increase in resources, we will fail to deliver on the expectations of businesses and Member States, generating more frustration about "Brussels".

In 2007, the total human resources allocation for DG COMP foreseen in the Commission's Annual Policy Strategy decision is **27 new posts: 16 AD, 9 AST and 2 contractual agents** (Function Group IV, one from each the two acceding countries). Also, we will review the allocation of our paralegal staff, a total of 19 contractual agents.

The internal allocation of these human resources in 2007 will focus on those areas dealing with the DG's priorities as defined by senior management. Consequently, in 2007, a significant proportion of posts will be assigned to the Chief Economist's Team (CET), with the aim of doubling its size. Resources will also be attributed as a priority to cartels and/or other anti-trust enforcement actions following the sector inquiries in the energy and financial sectors, and to the State aid area with a view to ensuring the next phase of implementation of the State Aid Action Plan (SAAP), including its external dimension, and strengthening recovery capabilities. Finally, resources will also be allocated to the merger network, in order to respond to the growing workload and the increased need for support staff.

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<sup>3</sup> Ibid, p. 42.

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The salient features of the allocation of posts in 2007 are:

- The CET will receive 9 AD posts and credits for 1 Contractual Agent (Function Group IV)
- The State aid area will receive 3 AD and 1 AST posts.
- The cartels area will receive 3 AD and 1 AST posts.
- The merger network will receive 4 AST posts. It may be strengthened further depending on levels of merger activity in 2007.
- The new communications and institutional affairs unit will receive 1 AD and 1 AST post.
- There will be 2 AST posts in the reserve, as well credits for 1 contractual agent (Function Group IV), to allow us certain flexibility in case of need.

The rest of the credits for paralegal staff will be re-allocated to better reflect the purpose of this category of staff, namely providing legal support functions for case teams. We will use all the instruments at our disposal to ensure the most efficient and effective use of human resources: *décloisonnement*, re-deployment, and secondments.

As to financial resources, in 2007 DG COMP's administrative budget will amount to approximately 8.29 million Euros (+ 1.3% compared to 2006), broken down as follows:

- |                                      |   |
|--------------------------------------|---|
| -- External staff: 3.8 million Euros | -- Missions, meetings, representation: 1.85 million Euros |
| -- Studies: 1.75 million Euros       | -- Training & professional development: 232,000 Euros     |
| -- IT systems: 635,000 Euros         |   |

Although this budget can be considered sufficient to support DG COMP's operations in 2007, it does not take into account the fact that human resources constraints make it necessary for the DG to outsource a number of important tasks, such as studies to support our market-monitoring activities. It also does not adequately reflect the necessary expansion of our capabilities in the near future, for example as regards ICT. In the framework of the general budget constraints, budget execution at DG COMP has traditionally been close to 100%. New needs can only be met through strict financial management and constant redeployment of resources towards priorities. But again, redeployment and prioritization have their limits and an important increase in financial resources will be necessary as of 2008.

The 2007 budget will be concentrated on our traditional priorities. External staff (approximately 50% of total administrative expenditure) will be used according to the following priorities: replacement of officials on maternity leave, in accordance with the DG's action plan for equal opportunities, and a pool of paralegals assisting case handlers with a view to ensuring the highest possible quality of our decisions. The mission budget (approximately 8% of total) will be shared among Directorates, with an emphasis on inspections (in particular aiming at detecting cartels) and international activities. A significant studies budget (approximately 20% of total in 2006) will be dedicated to sector inquiries, policy studies, market monitoring activities as well as enforcement activities.

Also, in support of our enforcement activities, more resources will be devoted to enhancing our IT-forensics capabilities. Finally, the DG will continue to support the training of national judges in Competition Law through the subsidy program which, for the first year, will run on a budget line under DG JLS's responsibility.

The tables below summarize the resources, human and financial, that DG COMP will dispose of in order to fulfill its tasks in 2007. It should be underlined that, although it is not its primary objective, through the imposition of fines on companies having infringed competition rules, DG COMP generates resources that contribute to the Community's budget and which amounted to some 1,8 billion Euros in 2006.

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### Human Resources (person / year)

ABB Activity	Officials and temporary staff	Auxiliaries and Contractual agents	Interim personnel	Seconded national experts	Other	Total
Cartels, anti-trust, and liberalization	239	15	7	23	-	284
Merger Control	64	3	2	8	-	77
Control of State aid	116	8	-	8	-	132
Policy, coordination, ECN and international cooperation	162	13	3	3	-	181
Administrative support	65	6	2	-	15	88
<b>Total</b>	<b>646</b>	<b>45</b>	<b>14</b>	<b>42</b>	<b>15</b>	<b>762</b>

### Financial Resources (million €)

ABB Activity	Operational expenditure	Administrative expenditure (DG managed)	Total
Anti-trust, mergers, liberalization and cartels			
Control of State aid			
International cooperation			
Policy, strategy and coordination			
Administrative support			
		<b>8.289.651</b>	<b>8.289.651</b>

## **4. Activity-Based Budgeting (ABB) Activities**

According to the structure used for Activity Based Management (ABM), DG Competition's work is divided into the following activities<sup>4</sup>:

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

These activities are carried out by ten directorates. Directorate A is the horizontal directorate dealing with competition policy, coordination, the European Competition Network, international affairs and relations with other Institutions. Directorates B to E deal with anti-trust and merger cases. Directorate F was created in 2005 for the purpose of enhancing DG COMP's cartel-fighting capabilities and is dedicated to this task. Directorates G, H and I deal with State aid: the first two with cases, Directorate I with policy and strategy. Directorate R is in charge of strategic planning, resources, IT and information/communication. In 2007, a unit in charge of communication and institutional relations will be created under the direct responsibility of the Director General.

### **4.1 ABB Activity " Cartels, anti-trust and liberalization."**

This activity involves the application of Articles 81, 82 and 86 of the Treaty establishing the European Community (TEC) and derived legislation. The aim of anti-trust law enforcement under Articles 81 and 82 is to ensure that companies compete on their merits rather than engaging in anti-competitive conduct. Article 81 prohibits anti-competitive agreements in the common market. One of DG COMP's priorities in this area will be to identify, investigate, dismantle and impose fines on firms participating in anti-competitive arrangements prohibited by Article 81 and especially in cartels.

Cartels are illegal arrangements, generally between competing firms, designed to limit or eliminate competition between them with the objective of 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, and as such represent the most pernicious form of violation to Article 81, since they have a direct negative effect on consumers.

Another important area of competition law enforcement is sanctioning abuses of dominant position, in particular situations where a company uses its power in a market to hinder potential competitors from offering new products or services to consumers under more attractive conditions. Such conduct is forbidden by Article 82 of the EC Treaty. By abusively preventing new entries or squeezing competitors out of the market, dominant companies can hamper competition on the market and negatively affect incentives to innovation and growth, as well as consumer welfare. The application of Article 82 allows the Commission to put an end to abuses of dominance, while respecting dominant companies' right to compete aggressively on the merits of their products or services.

Liberalization involves the application of Article 86 TEC, which establishes the applicability of competition rules to public undertakings and those to which Member States grant special or exclusive rights, including undertakings entrusted with the operation of services of general public interest. The application of the competition rules plays an important role in sectors which have recently been liberalized by complementing the regulatory reforms. In particular competition policy prevents incumbents from raising new barriers or protecting themselves against emerging competition after State barriers have been removed.

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<sup>4</sup> This ABB structure is being used for the first time in 2007.

## **Specific objectives for this ABB activity.**

*Expected impact of the ABB Activity in 2007:*

- Increased competition in the common market.
- Increased consumer welfare
- Enhanced competitiveness of European industry
- Enhanced effectiveness of action at EU level

*Result indicators:*

- Turnover of product markets affected by cartel decisions: indicates scope of enforcement action.
- Turnover of markets affected by anti-trust decisions: indicates the scope of the enforcement action.
- Turnover of markets affected by regulatory initiatives. Idem.
- Evolution of number of providers or of consumers changing suppliers in the recently liberalized sectors: indicates positive effect of enhanced competition for consumers. Monitored on a multi-annual basis.

### **4.1.1 Objective “Concentrate enforcement actions on the most harmful cartels and increase the efficiency of cartel proceedings.”**

Besides ensuring effective enforcement against the most harmful cartels, in 2007 work will concentrate on improving the DG's investigatory capabilities and speeding up cartel proceedings.

*Major actions contributing to the objective:*

- Investigating, as a priority, those cartels that are likely to have a clear impact on consumer welfare or that are in areas where there has not been significant previous enforcement action.
- Contributing to the cartel work within the ECN.
- Contributing to the cartel work within the International Competition Network (ICN).
- Ensuring communication with all stakeholders.
- Monitoring of selected markets

*Output indicator(s):*

- Progress on revisions to further enhance the effectiveness of the Leniency Program.
- Progress on initiatives to develop direct settlements.
- Number of inspections (p.m. 3 in 2006).
- Number of statements of objections adopted in cartel cases (p.m. 7 in 2006)
- Number of decisions adopted in cartel cases (p.m. 7 in 2006)
- Number of undertakings fined (p.m. 33 in 2006)
- Number of undertakings involved in decisions (p.m. 46)
- Total amount of fines levied against cartels (p.m. 2,1 billion Euro in 2006)

### **4.1.2 Objective “Concentrate enforcement actions on anti-competitive practices other than cartels that have a high impact in terms of safeguarding/restoring effective competition within the EU”.**

Anti-competitive agreements (other than cartels) between companies and abusive behaviour by dominant firms may be used to restrict market access and to limit competition by other firms. Sometimes the conduct leads directly to the exploitation of consumers. Anti-competitive practices that hinder effective competition and keep prices artificially high inflict a direct damage on consumers as well as industries purchasing the overpriced products as inputs, which in turn endangers their

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competitiveness. Restoring effective competition to the markets is essential in order to prevent companies from keeping prices at artificially high levels, to provide an incentive for innovation, better quality and service.

Work in this area in 2007 will focus on exclusionary practices with a view to providing a broader long-term protection for consumers, taking due account of efficiencies generated by undertakings' conduct. Enforcement against exploitative practices should be pursued where barriers to the market exist that cannot be overcome by potential competitors. Parallel trade-cases will be prioritized according to their effect on the market.

Priorities will also be defined according to sectors. In line with the priority areas defined in the APS for 2007, enforcement actions will target, in particular, the key areas of energy, transport and services (including financial services). Maintaining and promoting competition in markets for innovative goods and services also remains in the focus of attention, in accordance with the Lisbon Strategy.

*Major actions contributing to the objective:*

- Investigating, as a priority, abuses of dominant positions and other anticompetitive practices that have a clear impact on consumer welfare.
- Completing ongoing sector inquiries and ensuring their appropriate follow-up.
- Contributing to the good functioning of the European Competition Network (ECN), ensuring that the Community competition rules are applied consistently throughout the internal market.

*Output indicator(s):*

- Number of inspections (except in cartel cases) (p.m. 5 in 2006).

*(Abuses of dominant position)*

- Number of Statements of Objections in Art. 82 cases (p.m. 2 in 2006)
- Number of prohibition decisions in Art. 82 cases (p.m. 1 in 2006)
- Number of commitment decisions in Art. 82 cases (p.m. 1 in 2006)

*(Other anti-competitive behavior in anti-trust, excluding cartels)*

- Number of Statements of Objection in Art. 81 cases (p.m. 5 in 2006)
- Number of prohibition decisions in Art.81 cases (p.m. 2 in 2006)
- Number of Art. 9 Commitment Decisions in Art. 81 cases (p.m. 2 in 2006)

*(Sectoral inquiries and market monitoring activities)*

- Follow-up to sector inquiries in the gas and electricity markets. New cases are being investigated. Inspections were carried out in a number of Member States.
- Follow-up to the sector inquiries in financial services.
- Progress on the evaluation of the impact of the block exemption Regulation n°1400/2002 on motor vehicles distribution.
- Market monitoring of a number of basic-industries markets.

The specific output indicators concerning the recently liberalized sectors and financial services are listed under specific objective 4.1.3 below.

### **4.1.3 Objective "Focus enforcement on anti-competitive State behavior."**

Under certain circumstances measures by Member States may be harmful to competition in the EU and therefore contrary to the Treaty. These can be addressed by the Commission through specific case-related enforcement action. In the field of competition this is in particular the case where (i) Member States require or favor the adoption of anti-competitive agreements by companies, or (ii) Member States take measures contrary to *inter alia* the Community competition rules in the case of public undertakings and undertakings that have been granted special or exclusive rights. Furthermore, DG

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Competition monitors the correct implementation of Community Directives (the competition directive in the field of telecommunication and the transparency directive in the field of state aid).

The liberalization of markets where competition is restricted or even excluded by exclusive or special rights granted to undertakings has become an important priority in the last decade. The aim of liberalization is to turn these into competition-driven markets that will enhance competitiveness and innovation in the EU to the benefit of consumers and the European economy as a whole.

At the same time, universal public services, to which all citizens should have equal access at affordable prices, must be safeguarded, especially in areas where market forces are inadequate.

*Major action(s) contributing to the objective:*

- Address key issues to improve competition in the liberalized network industries and financial services, in particular non-discriminatory access to infrastructure, and full and proper transposition of legislation.
- Cooperation with National Regulatory and Competition Authorities to deal with regulatory and other competition issues.

*Output indicator(s):*

- Number of letters of formal notice.
- Number of reasoned opinions
- Number of referral to the Court of Justice
- Percentage of infringement cases where an active decision to close or pursue the case was taken within the one-year deadline.
- Number of Art. 86(3) decisions.
- Resolution of infringements of Article 10/81 in Member States' air services agreements with Third Countries (cooperation with DG TREN – over 100 cases since 2004)

### **4.1.4 Objective “Helping to shape the regulatory framework to promote competition.”**

Regulatory measures in various domains (e.g. industrial policy, consumer and environmental protection or intellectual property rights) pursue mostly positive policy aims. They can even be complementary to anti-trust law enforcement where they help to open up previous monopoly markets, as the telecommunications industry. However, they may also bring about unnecessary hindrances to competition, which could harm businesses' ability to innovate. Ultimately, of course, such a development negatively affects both the EU economy and individual consumers. The dismantling of unnecessary regulatory barriers to competition is therefore an important contribution to enhancing the competitiveness of the European economy: it helps to ensure that EU and national public policy do not hold back competition to the detriment of businesses and final consumers. Ensuring better regulation in line with the Annual Policy Strategy for 2007 continues to be one of DG COMP's priorities.

Providing guidance in the course of the legislative/regulatory process also helps to ensure that those restrictions to competition that are deemed necessary for the achievement of other legitimate policy objectives remain proportionate to those aims. DG COMP will therefore continue to be actively engaged in competition advocacy in 2007, in order to ensure that regulatory measures do not unduly and disproportionately interfere with the competitive process of markets.

As regards EU legislation, the Commission has strengthened the assessment of the economic impact of proposed measures and has included a competition test. The new Impact Assessment will allow the Commission to evaluate whether restrictions on competition might arise as a result of the proposal and, if so, whether the policy objective sought can be achieved without such restrictions or, at least, through less restrictive means. It is proposed that Member States carry out a similar screening exercise with respect to domestic rules, so as to remove unnecessary regulatory or other barriers that hinder competition.

The outcomes of the sector inquiries begun in 2005 allow DG COMP to provide authoritative input to shape the regulatory agenda. They also provide useful in-depth knowledge on competition conditions

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and concerns in the sectors involved. DG COMP will ensure that no new barriers to entry and expansion are created and that effective competition is promoted in liberalized sectors through – inter alia – shaping a competition friendly regulatory regime.

Under the regulatory framework for electronic communications services, the national regulatory authorities may, in certain markets, impose specific obligations on companies with significant market power in order to promote a smooth transition towards fully competitive markets. The Commission plays an essential role, under the notification system set up by the mentioned framework (Article 7 of Directive 2002/21), in assuring that national regulators operate according to a harmonized set of competition-based objectives and principles. The Commission (joint Task Force DG INFSO/DG COMP) assesses notifications from national regulatory authorities within strict deadlines and may issue comments letters or even veto decisions.

In the postal sector, in 2007, subsequent to the Commission having tabled its proposals as to full liberalization in the Internal market (DG MARKT), DG COMP will be a major contributor to provide effective competition in European postal markets, while preserving an effective universal postal service in Member States.

*Major action(s) contributing to the objective within particular sectors:*

- Contributing to the drafting of legislative proposals, Commission notices and guidelines, and general publications originating from other services of the Commission.
- Cooperation with different DGs and Services in the Commission, in particular DG MARKT, DG TREN, DG ENTR and DG INFSO and DG AGRI.
- Contributing to shaping national regulatory frameworks.
- Stimulating national screening initiatives in key sectors.
- Screening selected EU legislative proposals having a major impact on the functioning of competition. Preference is to be given to domains where there is scope for a more competition-oriented outcome and where competition advocacy can have more impact than individual enforcement actions.
- Advocating the importance of sound and transparent rules in the Standards bodies to promote competition and innovation.

*Output Indicator(s):*

- Completion of the sector inquiry in the energy sector.
- Completion of the sector inquiries in the financial services sector.
- Advancement of energy liberalization packages.
- Market monitoring in health, airports, ports and railway sectors.
- Competition-related contributions in the context of the legislative process.
- Competition-related contributions in the context of the legislative process and implementation of REACH (advocacy in the context of the IPR review)
- Contribution to work undertaken in the securities area (Code of Conduct for Clearing & Settlement).
- Contribution to the report of the Commission on the implementation of the First Railway Liberalization Package.
- Review of raw-materials markets.
- Fact finding on tramp shipping
- Issues paper on information exchange in liner shipping sector, following repeal of block exemption for liner shipping conferences (Reg 4056/86) promoting competitiveness of the European maritime transport sector.
- Number of regulatory measures in the telecommunication sector reviewed by the Commission services (around 200 notifications are expected for 2007).
- Number of serious doubts letters (3 were issued in 2006).
- Number of measures withdrawn by national authorities (6 cases in 2006);
- Number of veto decisions (0 in 2006).
- Adoption of (i) revised Recommendation on relevant markets in the electronic communications sector susceptible to ex ante regulation and (ii) revised Guidelines on market analysis and the

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assessment of significant market power under the regulatory framework for electronic communications

- Adoption of revised Regulatory Framework for electronic communications.
- Building the evidence base to promote further pro-competitive reforms in the professional services sector.
- Contribution to White Paper on Sports.
- Contribution to regulatory proposals following the CARs 21 initiative.

## **4.2 ABB Activity "Merger control"**

Merger control is another important instrument of competition law enforcement. Companies may combine their activities to develop new products or to lower costs. However, some mergers may reduce competition in the market, in particular by creating or strengthening dominant positions in the market. Merger control is therefore primarily aimed at preventing the emergence of market structures which are not conducive to effective competition, or the deterioration of market structures which are already less than effectively competitive.

In terms of procedure the EC Merger Regulation guarantees efficient enforcement by providing a "one-stop-shop" service for merging companies, which involves a rapid assessment and clearance of non-problematic mergers. Mergers that do not have Community dimension are in principle dealt with at Member State level. However, recent changes to the Merger Regulation have improved the scope for re-allocating cases from the national competition authorities (NCA) to the Commission and vice versa.

The pre-notification referral system for mergers, which has been praised as an improvement by the OECD<sup>5</sup>, has been a considerable success. An average of 10 per cent of cases notified to the Commission are now the result of the referral arrangements. As an example of how this system helps European business, the 56 referrals to the Commission between May 2004 and May 2006 would, under the previous regime, have resulted in close to 400 separate national reviews. The Commission has approved around 90 per cent of the more than 290 cases examined in the first ten months of 2006, most of them within one month. In more than 5 per cent of cases, it has resolved any concerns about the possible effects of a merger through remedies. Prohibition is the last resort. But when it is essential to ensure that consolidation does not undermine the benefits of liberalization for consumers, and when no suitable remedies are on offer, the Commission has no choice but to prohibit a merger.

In terms of organization, DG COMP will continue to operate according to a matrix structure: instead of a Directorate dedicated to mergers, there is a mergers unit in each sectoral Directorate, allowing a better use of sectoral expertise in the assessment of merger cases.

### **Specific objectives for this ABB activity.**

*Expected impact of the ABB Activity in 2007:*

- Increased competition in the common market.
- Increased consumer welfare
- Enhanced competitiveness of European industry
- Enhanced effectiveness of action at EU level

*Result indicators:*

- Turnover of markets affected by corrective merger decisions (remedies or prohibitions). Indicates scope of the enforcement action.

#### **4.2.1 Objective "Use the instruments provided by the new Merger Regulation in order to prevent the anti-competitive effects of mergers and further increase the effectiveness and efficiency of merger control."**

Besides the core assessment function, DG COMP's activities in the field of mergers will continue to focus on providing guidance for the legal and business community and on enhancing the transparency and predictability of merger control as essential factors for business in Europe. Particular attention will be given to developing the assessment of both coordinated and unilateral effects, ensuring effective design of remedies and appropriate implementation process in the light of the lessons provided by the recent remedies study.

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<sup>5</sup> OECD, "Peer review of the competition law and policy in the European Community". To be published in January 2006, p. 45.

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Current business climate leads the Commission to believe that the wave of concentrations experienced in 2006 will continue in 2007, particularly in markets such as network industries, especially in the energy and the telecommunications sector, and financial sectors. DG COMP will continue to use its merger control instruments – in combination and coordination with its other enforcement and advocacy activities – to ensure that competition is not distorted in these priority sectors.

More generally, the Commission has opened procedures in 3 cases in 2006 on the basis of Article 21 of the Merger Regulation against measures of Member States trying to block or interfere with cross-border mergers, having been approved by the Commission under the Merger Regulation. In 2007 the Commission will continue to apply this instrument in order to allow cross-border mergers to take place, once they have been approved, thereby improving the conditions of cross-border activities in the internal market.

### *Major action(s) contributing to the objective:*

- Focus enforcement action on concentrations that are likely to impede effective competition and provide rapid assessment of remaining cases, using simplified procedures when appropriate.
- Make appropriate use of the new referral mechanisms of merger cases between the Commission and Member States to reduce the number of multiple notifications and ensure that the Commission enforcement action focuses on cases with cross-border effects.
- Ensure effective remedial action of anti-competitive mergers and monitor effective compliance with remedies submitted
- Co-operate with NCAs to ensure coherent approaches between EU and national merger procedures, both within the EU and at international level.

### *Output Indicator(s):*

- Based on the activity in 2006, over 340 first-phase (Article 6.1) decisions in 2007, of which about 21 may require corrective intervention (“remedies”) by the Commission.
- Based on the activity in 2006 up to 10 (Article 8) decisions in phase II cases.

### **4.3 ABB Activity “Control of State aid”.**

Article 87 of the EC Treaty prohibits any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods in so far as it affects trade between Member States. The Commission has the exclusive power to declare State aid compatible with the Treaty, provided it fulfils clearly defined objectives of common interest and does not distort intra-community competition and trade to an extent contrary to the common interest.

State aid control is a particularly valuable tool for the achievement of the EU's strategic objectives. Faced with free trade between Member States and opening of public services to competition, national authorities sometimes use public resources to protect national industries. State aid control aims at guaranteeing that firms can compete fairly, without public funds being used to give a firm an undue advantage over another. At the same time, it also has an incentive effect to encourage the granting of aids that address market failure or equity objectives that have a beneficial impact on competitiveness, employment and growth, and thus on the welfare of society as a whole. State aid control has a key place in the achievement of both the Community Lisbon Program, Cohesion Policy and the Commission's Social Agenda.

In line with the policy objectives of the European Council, the Commission seeks to ensure that the overall level of State aid is reduced, in particular with regard to those aids that most distort competition in the internal market, and that where aid is granted it targets market failures or equity objectives, focussing on horizontal objectives of Community interest, in particular those contributing to the Lisbon Program, such as cohesion, employment, environmental protection, promotion of research and development and innovation, risk capital and development of small and medium-sized enterprises (SMEs). Particular attention is given to ensuring that the beneficial effects of market opening are not undermined by State-aid measures.

Control of State aid involves case-handling activity, the elaboration of regulatory instruments such as Council or Commission Regulations and other legal texts, and competition advocacy.

#### **Specific objectives for this ABB activity.**

*Expected impact of ABB activity (impact indicator/s):*

Although the overall level of aid and the percentage of State aid granted for horizontal objectives are determined by a variety of factors like economic and budgetary policies in Member States, both indicators can, to a certain degree, also serve as a broad impact indicator of the results of the Commission's State aid policy.

- Less and better-focused State aid in an enlarged Union: the target is to progressively reduce the overall level of State aid expressed as percentage of GDP (in 2005 its level was 0,59% of EU-25 GDP, relatively stable since 2000), with a view to making state intervention in the form of state aid the clear exception.
- Achieve a larger proportion of State aid that can be accepted despite its distortive effects on competition and intra-community trade because it enhances cohesion, employment, environmental protection, promotion of training, research and development, and development of small and medium-sized enterprises. Target: to sustain the current trend toward increasing the percentage of State aid granted for horizontal objectives above the levels achieved in 2005 (84% of the overall amount of aid).

**4.3.1 Objective “To ensure effective enforcement of State aid rules in the enlarged EU, with particular focus on the most distortive types of aid and on those sectors that are key to the development of the internal market and the competitiveness of the EU economy.”**

An efficient enforcement of State aid policy requires a correct assessment of priorities, taking into account the legal obligation on the Commission to take up a large number of the cases which are notified to it. In 2007, particular attention will continue to be devoted to State intervention in recently liberalized sectors and network industries that largely contribute to the effective working of the internal market and the overall competitiveness of the EU economy, such as energy, postal services and telecommunications, with special regard to those that involve public-service obligations.

While facilitating well-targeted aid in support of the Lisbon priorities, the enforcement activity in the field of State aid will be stepped up and focus on those aid measures that may lead to the largest misallocation of resources. Particular attention will be paid to aid to ailing firms, investment aid to large enterprises under the multi-sectoral framework (MSF), and aid to companies entrusted with Services of General Economic Interest (SGEI) while having commercial activities at the same time. In order to maintain the credibility of the Commission’s State aid policy DG COMP will strengthen its ex-post monitoring of the Commission’s State aid decisions and its actions to ensure an effective execution of recovery decisions.

*Major action(s) contributing to the objective:*

- Applying a more integrated approach to the assessment of cases and scrutiny of proposals, including organization of panels, along the lines described above.
- Encouraging the respect of notification obligation by Member States. Ensuring systematic recovery of unlawful and incompatible aid.
- Focus enforcement action on cases that are most likely to distort competition and intra-Community trade.
- Focus enforcement action on key cases for the Lisbon program.
- Give practical guidance on the compatibility criteria set out in the SGEI package of July 2005 by adopting benchmark decisions related to cases in the postal and health sectors.
- Establishing an ex-post monitoring system for Block Exemption Regulation (BER) and conditional decisions.

*Output indicator(s):*

- Decisions on large investment projects in the assisted areas (p.m. 6 in 2006)
- Adoption of the remaining regional aid maps for the 25 Member States, plus Romania and Bulgaria.
- Assessment of new operating aid schemes to support the poorest regions of the EU and the outermost regions
- Decisions in priority rescue and restructuring cases (p.m.17 in 2006).
- Decisions on major cases contributing to Lisbon objectives (R&D and innovation, risk capital, energy and environment) (p.m. 103 in 2005; 165 in 2006).
- At least 4 decisions in the field of telecommunication and broadband development.
- At least 4 decisions on cases in the banking sector.
- At least 3 decisions in the banking and insurance sector.
- Postal market: at least 3 decisions.
- Preliminary or final decisions in 3 cases concerning public service broadcasters.
- At least 2 decisions on cases concerning digital terrestrial television.
- At least 1 decision each in: social housing, health and sports sectors.
- Execution of 10 recovery decisions.
- Monitoring of 20 BER measures
- Establishment of monitoring system for conditional decisions.
- Monitoring enlargement (Croatia, Turkey).
- Enforcement of Transparency Directive.

**4.3.2 Objective “Review the EU and national regulatory framework, including in new Member States, to help reduce overall aid levels and promote better targeted aid in the pursuit of the Lisbon objectives.”**

In accordance with the priority actions set out in the Annual Policy Strategy for 2007, the implementation of the State Aid Action Plan (SAAP) will continue. In line with the proposals made in the SAAP, work will continue towards a simplified and consistent legislative framework based on the principles of less and better targeted State aid, a refined economic approach, more effective procedures, better enforcement, higher predictability and enhanced transparency. The main objective of the reform is to facilitate well-targeted aid measures aimed at increasing cohesion in the EU and at correcting market failures – particularly in the field of innovation, R&D, and access to risk capital for SMEs – while at the same time responding to sound economic principles. An effective contribution of competition policy to shaping the regulatory framework must place particular emphasis on the new Member States, enhanced transparency in State interventions and vigorous competition advocacy.

In 2007 while priority will continue to be on the completion of new legislative programme; the entry into force of the recently adopted texts will require a particular attention to their implementation through training, help desks and scrutiny. Finally, the reform of the procedural regulation will enter a critical phase in 2007.

*Major actions contributing to the objective:*

- Undertake a review of the legislative and regulatory framework in a number of areas, including administrative rules and practices to enhance the economic analysis of cases.
- Further development of procedural tools.
- Contribute to environmental policy development in the post-Kyoto process, in particular by screening proposals on emission trading and energy taxation.
- Continued monitoring of compliance with the *acquis* and the enforcement record of candidate countries.
- Contribute to enhancing the transparency of State interventions.
- Improving communication with stakeholders.

*Output Indicator(s):*

- Finalization of General Block exemption and of the environmental guidelines.
- Preparation of guarantee communication.
- Preparation of the revision of communication on taxation and State aid.
- Preparation of communication on forms of aid.
- Preparation of the revision of restructuring guidelines.
- Preparation of a consultative document on procedural reform.
- Best practices guidelines.
- General methodology for in-depth economic analysis of State aid cases.
- Implementing regulation review.
- Reference rate communication.
- Further development of scoreboard methodology and benchmarking of the effectiveness of aid.
- Further development of communication and information tools and policy for State aid.
- Further enhancement of the cooperation between the Commission and the Member States.
- DG COMP contribution to the Internal Market Review.
- Finalization of Notice on the execution of recovery decisions.
- Preparation of Communication on the co-operation between the national courts and the Commission in the area of State aid.

#### **4.4 Activity "Policy, coordination, European Competition Network (ECN) and international cooperation."**

This activity relates to giving the necessary impulse to policy definition, preparation and implementation in order to achieve the overall mission of DG COMP as well as to contribute to the coherent application of European competition law in the enlarged EU, via the ECN and through cooperation with National Courts. It also aims at ensuring coherency of the different activities within DG COMP, while promoting a good management culture in line with the systems adopted as a consequence of the reform of the Commission. It also aims at establishing consensus regarding the direction of EC competition policy, by ensuring that relations with the other institutions, in particular the European Parliament, are engaged and constructive in light of DG COMP's mission.

Furthermore, this activity aims at contributing to and promoting international convergence of competition policy, in particular by creating effective tools for bilateral and multilateral co-operation with the Community's main trading partners and with third-country competition agencies. In the specific context of enlargement, the main policy objective, in addition to fostering a competition culture, is to assist the acceding and candidate countries to build up a proper legislative framework, well-functioning competition authorities and an efficient enforcement practice in order for them to meet the conditions for EU accession in the competition policy.

This ABB activity involves:

- General policy issues including devising a clear legislative framework for the application of EC competition law
- Institutional relations
- Annual and ongoing reporting, reporting systems and public information.
- Overall management of the DG, strategy, planning and monitoring (including evaluation).
- Economic analysis and economic policy (Chief Economist functional area).
- Close and constant relations with the Member States' competition authorities in the ECN
- Cooperation with National Courts for the application of EC competition law
- Relations with candidate and third countries, and participation in international fora.
- Relations with interest and consumer groups and the work of the Consumer Liaison Officer.
- Inter-departmental relations and consultations on general issues.
- Library and staff information services and internal communication.

*Expected impact of ABB activity (impact indicator/s):*

- More effective enforcement of competition rules for the benefit of consumers.
- An efficient division of work within the DG and contribution by DG COMP to the work of other DGs and Services.
- Consistent application of EU competition rules by DG COMP and within the ECN and by National Courts.
- Facilitated self-assessment by business of the compliance of agreements and practices with EC competition law.
- More effective enforcement of merger control and anti-trust rules through international cooperation.
- Easier international transactions and cooperation to the benefit of European business.
- Building up of a competition legislative framework, well-functioning competition authorities and an efficient enforcement practice compatible with EU rules in the candidate countries.

##### **4.4.1 Objective "Policy development and communication"**

It is essential to continuously shape and revise policy so that it corresponds to market realities and contemporary economic and legal thinking. Also, in an advanced system, it is important that public action be complemented by private action against anti-trust infringements. The present objective relates in particular to actions concerning the development of legal instruments and the relationship with

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important interlocutors for DG COMP. The objective also includes actions concerning the communication of the Commission's competition policy to the other European institutions and to the broader public in order to increase transparency.

*Major actions contributing to the objective:*

- Reviewing and updating policies and technical guidelines\*\*
- Setting up networks with other DGs to improve cooperation on policies\*\*.
- Contributing to the development of general policy instruments on legal and economic issues in the application of EU competition rules\*\*.
- Communicating with the other Institutions, in particular the European Parliament.
- Communicating competition policy to the broader public.

*Output Indicator(s):*

- White paper on damages actions for breach of EC antitrust rules.
- Draft guidelines on the application of Article 82.
- Appropriate legal instrument on direct settlement in cartel cases.
- Review of remedies policy in antitrust cases
- Review of remedies policy in merger cases, including an amended Notice on remedies.
- Review of jurisdictional notices in mergers.
- Guidelines on non-horizontal mergers.
- Ex-post evaluation of merger decisions (study)
- Issues paper on competition issues related to the 'Single Euro Payments Area' (SEPA)
- Number of replies to Parliamentary Questions and percentage delivered within deadline.
- Number of cases referred by the Ombudsman, and percentage dealt with in time.
- Annual competition report.
- Revised strategy for communication towards citizens and consumers.

*\*\* Other actions and output indicators for the cartel area have been listed under 4.1.1 above. Also, major actions and output indicators for the field of State aid are listed under 4.3 above.*

### **4.4.2 Objective "Policy coordination"**

This objective involves the coordination of enforcement activities in anti-trust including cartels, mergers, liberalization and State aid, in order to ensure a consistent approach to cases across legal instruments and sectors. Priority setting in the field of anti-trust is an issue of growing importance, as the abolition of the notification system has increased the Commission's scope for setting priorities when dealing with individual cases. In the field of State aid, DG COMP must ensure the coherence with policy objectives of investigations carried out by other DGs. In the field of State aid, DG COMP must ensure both coherence in its investigations with the policy objectives of the SAAP, as well as a consistent application of state aid rules across the Commission. This activity also involves providing input to cases pending before the Community Courts. The policy coordination activity is supported by the Chief Economist function, the scrutiny panels in particularly difficult cases, and by the Consumer Liaison Officer.

*Major action(s) contributing to the objective:*

- Priority setting and input into Annual Planning Tools.
- Coordination and scrutiny of enforcement actions, including organization of Peer Review Panels.
- Support and coordination of court litigations.

*Output Indicator(s):*

- Involvement in court litigations.
- Number of replies to internal and inter-service consultations and upstream support.

#### **4.4.3 Objective “Ensure the good functioning of the enforcement system provided by the new regulation, in particular of and through the European Competition Network (ECN).”**

Under the new Anti-trust Regulation 1/2003 both Member States and the Commission are competent to apply EU competition law. Functional since 01 May 2004, the ECN has been established to ensure the consistent application of EU competition law, an appropriate work sharing between Member States and the Commission, and an enhanced cooperation between authorities in the Network for fact-finding purposes (information exchange and assistance). Beyond this backbone of legal network mechanisms, the ECN pursues the objective of promoting a common competition culture in the EU, ensuring coherence and promoting convergence.

The reform of the antitrust enforcement regime introduced by Regulation 1/2003 leads also to an increased application of the Community competition rules by national courts. Under the cooperation mechanisms foreseen in the Regulation, the Commission provides assistance to national judges and, by subsidizing appropriate projects, it encourages judicial cooperation between judges and their training with a view to ensure both an effective and coherent application of Articles 81 and 82 throughout the EU.

##### *Major action(s) contributing to the objective*

- Contribute to the effective allocation of cases within the ECN.
- Contributing to the maintenance of a coherent application of EU competition law by the 27 NCAs and by national courts.
- Organization of the ECN plenary meetings and related working groups and meetings with the Directors General of the 27 Member States.

##### *Output indicator(s):*

- Number of consultations examined pursuant to Article 11(4) and 11(5) of Regulation 1/2003 as well as upstream requests in accordance with Article 11(1) of Regulation 1/2003 with a view to ensure consistent application of competition rules within the ECN (p.m. approx. 130 in 2006).
- Number of cases from NCAs provided to the Network pursuant to Article 11(3) of Regulation 1/2003 on the application of EU competition law (p.m. approx. 150 in 2006).
- Number of projects aimed at training national judges (p.m. 15 in 2006).
- Number of observations submitted by the Commission to national courts pursuant to Article 15(3) of Regulation 1/2003.

#### **4.4.4 Objective “Helping to shape the regulatory framework”**

This objective relates to the need to ensure that regulation does not contain unnecessary competition restrictions. A key action within the re-launched Lisbon strategy is to improve the regulatory environment both at EU and national level in order to enhance competitiveness (Guideline No 14). This initiative takes aim at measures pending before the Community legislator, existing rules (simplification) and new legislative and policy proposals. New proposals are subject to the revised Impact Assessment Guidelines adopted by the Commission in June 2005<sup>6</sup>. All legislative and policy initiatives included in the Commission’s annual work program are subject to impact assessment. Such assessments explore alternative options to solve a defined problem and evaluate their economic, environmental and social impacts.

The basic “competition test” applied in the context of competition policy screening involves asking two fundamental questions at the outset. First: what restrictions of competition may directly or indirectly result from the proposal (does it place restrictions on market entry, does it affect business conduct etc.)? Second: are less restrictive means available to achieve the policy objective in question? Competition screening may result in the choice of less restrictive regulatory or in market-based methods to achieve certain policy objectives, thereby avoiding unnecessary or disproportionate restrictions of competition. This is in the interests of both consumers and industry.

##### *Major action(s) contributing to the objective*

<sup>6</sup> [http://europa.eu.int/comm/secretariat\\_general/impact/docs/SEC2005\\_791\\_IA%20guidelines-main.pdf](http://europa.eu.int/comm/secretariat_general/impact/docs/SEC2005_791_IA%20guidelines-main.pdf)

- Increased cooperation with other DGs to achieve a more integrated policy approach
- Competition screening of legislative proposals.

*Output indicator(s):*

- Number of regulatory initiatives at EU level screened from a competition point of view.
- Preparation of documents following the consultations on the SAAP.

\*\* Sector specific projects are dealt with under 4.1.4 above.

**4.4.5 Objective “Strengthening international cooperation in enforcement activities and promoting convergence of competition policy instruments across different jurisdictions.”**

International cooperation in the field of competition is an essential tool to achieve effective enforcement inside the EU, since in a global market, cartels and other anticompetitive practices often have an international dimension and affect consumers in different countries. European firms active outside the EU need to be able to benefit from effective competition in foreign markets. Promoting greater convergence of competition policy instruments across different jurisdictions is therefore important and contributes to ensuring a level playing field for European companies in the international arena.

*Major action(s) contributing to the objective:*

- Playing a leading role in international fora such as the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), and the United National Conference on Trade and Development (UNCTAD).
- Bilateral co-operation with major jurisdictions with a view to achieving as much convergence as possible (in particular the USA, Canada, Japan, Switzerland, Australia, South Korea, China and Russia).
- Contributing to trade negotiations between the EU and other jurisdictions (Ukraine, South Korea, India and ASEAN, Gulf Co-operation Council, Mercosur, Economic Partnership Agreements with ACP countries, others).
- Preparing new or enhanced bilateral co-operation agreements with third countries.
- Reviewing EEA Protocol 23.
- Participating in the follow-up to the European Neighbourhood Policy Action plans with ENP countries.

*Output Indicator(s):*

- Provide input to discussions at various OECD and ICN Working Groups (on cartels, unilateral conduct and mergers).
- Annual Bilateral Meetings with major jurisdictions (USA, Japan, Canada, China, Korea).
- Inclusion of competition and state aid provisions in trade agreements with major partners.
- Propose negotiation mandate for new or enhanced bilateral co-operation agreements to Council.
- Adoption by the EEA Joint Committee of the amended Protocol 23 to the EEA Agreement.
- Inclusion and monitoring of competition/state aid provisions in action plans with Neighbourhood Policy countries.

**4.4.6 Objective “Contribute to the creation of international level playing field by addressing the external dimension of State aid control policy.”**

Undistorted competition is the main driver to achieve the efficient use of resources, stimulate innovation and ultimately promote competitiveness also in a globalised context. State aid control, together with other competition policy instruments, ensures a healthy competitive environment within the EU. It contributes to creating an optimal regulatory environment that makes the EU an attractive investment location.

A necessary complement to maintaining a competitive and integrated internal market is achieving competitive markets abroad and international level playing field. This objective needs to be pursued in a

world where behind the borders non-tariff trade barriers like unfair State aid gain in importance, and call for a competition law enforcement system with a global reach. Convergence of substantive rules will help to ensure fair and open access of European companies to global and foreign markets. It will also limit the scope for disruptive disputes with our major trading partners.

*Major actions contributing to the objective:*

- Co-operation with DG Trade in order to contribute to increasing the effectiveness of EU trade defence and market opening instruments
- Contribution to negotiations of Free Trade Agreements with other jurisdiction in order for them to address the State aid issues
- State aid advocacy in international fora (WTO, OECD)

*Output Indicator(s):*

- Preparation of state aid provisions for the forthcoming Free Trade Agreements (planned/ mandates: Korea, India, ASEAN, Central America, Andean Community, Ukraine, Russia)
- Taking part in the negotiations of competition and state aid chapters of these Free Trade Agreements
- Input to DG Trade on the revision of EU trade defense instruments
- Input to DG Trade on the revision of Market Access Strategy
- Development of a State aid advocacy strategy towards the international community
- Co-operation with DG Trade on individual cases of alleged unfair foreign State aid

#### **4.4.7 Objective “Contribute to the enlargement process as regards competition policy.”**

DG COMP plays a major role in the competition policy aspects of accession negotiations with candidate countries, also helping them to achieve the necessary conditions in the field of competition to prepare for further integration and ultimately full accession to the EU. In 2007, this work will focus on the accession and candidate countries and the countries with which we are negotiating in the context of Stabilization and Association Agreements.

*Major action(s) contributing to the objective:*

- Monitoring Croatia's and Turkey's efforts to comply with the benchmarks defined in the screening reports.
- Conducting negotiations, in cooperation with DG ELARG, in relation to competition issues with Croatia and Turkey.
- Assisting the candidate and potential candidate countries in strengthening their competition regimes.
- Conducting negotiations with Serbia, Montenegro and Bosnia and Herzegovina in the context of the SAA's competition provisions.

*Output Indicator(s):*

- Competition chapter of the progress reports on candidate countries (Croatia, Turkey, former Yugoslav Republic of Macedonia) and potential candidate countries (Albania, Serbia, Montenegro, Kosovo and Bosnia and Herzegovina)
- TAIEX seminars on competition policy and State aid with the candidate countries and potential candidate countries.
- Technical meetings with the candidate countries on competition and State aid issues.
- Participation in Sub-Committee meetings on Internal Market with the relevant countries involved.
- Competition and State aid provisions, based on the EU Treaty rules, in the Stabilisation and Association Agreements.

**Annex 1: List of outputs and related actions for the ABB activity “Administrative Support”.**

**Annex 2: DG COMP’s Evaluation Plan.**

**Annex 3: 2005 Synthesis’ report multiannual objectives of relevance to DG COMP**