European Commission

DIRECTORATE GENERAL FOR COMPETITION

# Management Plan 2013

Competition

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# 1. Mission Statement

The mission of the Directorate General for Competition (DG COMP) is to enable the Commission to make markets deliver more benefits to consumers, businesses and the society as a whole, by protecting competition on the market and fostering a competition culture. We do this through the enforcement of competition rules and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests.

Competition is not an end in itself. It is an indispensable element of a functioning Single Market guaranteeing a level playing field. It contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. Therefore, competition contributes to the wider objectives of promoting strong and sustainable growth, competitiveness, employment creation and tackling climate change. Competition policy therefore contributes directly to the Europe 2020 Strategy for smart, sustainable and inclusive growth.

DG COMP carries out its mission mainly by taking direct enforcement action against companies or governments when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies or attempts by government to distort competition by providing disproportionate support for particular companies. It prevents mergers when they would significantly reduce competition. At the same time it helps direct State support to improving competitiveness and/or reducing regional and social disparities and away from aid which distorts competition on the market without any compensating benefit. Typically this positive kind of state support addresses market failures by public aid to R&D, innovation and risk capital, SME's, environmental protection and training and, more generally, achieving the targets set in the EU 2020 strategy.

DG COMP channels its limited resources on the most harmful practices in key sectors, and works in partnerships with other policies to support the delivery of other policy objectives in a pro-competitive way at EU and national level. It works in partnership with national competition authorities and national courts to ensure an effective and coherent application of EU competition law, thereby contributing to a level playing field in the internal market.

DG COMP provides guidance about the competition rules and their enforcement to improve legal certainty for stakeholders. It also strives to ensure transparency, due process and predictability for its stakeholders and promotes the private enforcement of EU competition law.

In the international context, DG COMP strives to shape global economic governance by strengthening international cooperation in enforcement activities and making steps towards increased convergence of competition policy instruments across different jurisdictions.

The staff of DG COMP is committed to adhere to the highest standards of professionalism, intellectual rigour and integrity.

# 2. This year's challenges: Personal message by Alexander Italianer, Director General, DG Competition

In 2013, DG Competition will continue to be an active contributor to all the Commission's initiatives seeking to foster smart, sustainable and inclusive growth in Europe to the benefit of all consumers.

I believe that the discipline imposed by a fair competition environment in the Single Market is a crucial asset for European companies. It prepares them well to succeed on their home markets and to take on global competition. Protectionist and anti-competitive strategies will harm our entire economy in the long-run. This is why we will continue to stand by these principles which are good for our economy and also give us the moral ground to negotiate fair and equal terms with our commercial partners around the world.

We will therefore continue to use competition policy to leverage the full growth potential of the Single Market and to support the Europe2020 Strategy. All our enforcement actions and policy initiatives will be guided by these overarching objectives.

### Major policy initiatives to be pursued in 2013

In the field of **State Aid**, the modernization initiative launched in 2012 laid out the basis for a broad reform package, to be implemented by the end of 2013 and beyond. This initiative will help Member States achieve the double goal of re-launching the economy and reaching the long-term sustainability of public finances, at a time when they most need it. Broadly speaking, the reform will encourage ‘good aid’, such as support for the environment, research & development, and the Digital Agenda. Conversely, it will discourage the wasteful and counter-productive subsidies that our budgets cannot afford.

In **merger policy**, we have launched a simplification process that also aims to streamline procedures and cut red tape, so that businesses can focus on their core activity.

In the area of **antitrust policy**, DG Competition will continue to work towards the adoption of a legislative proposal on antitrust damages actions, aimed at optimising the balance between public and private enforcement of antitrust rules. Our key goal is to facilitate – across the internal market – the exercise of the EU right to compensation for damages resulting from antitrust violations. We intend to present a specific proposal on antitrust damages actions in 2013. We will also continue our work on the on-going review of the Technology Transfer Block Exemption Regulation (TTBER) and the accompanying guidelines. This initiative aims to improve the framework conditions for licensing of technology for production, and hence to stimulate innovation and growth.

### Cartels

In 2013, we will continue our fight against **cartels**. In 2012, 37 undertakings were subject to our cartel decisions, imposing €1.875 billion fines. All of the five decisions originated from leniency applications, which proves the effectiveness of the leniency system. We will continue to work constructively with other competition enforcement agencies to tackle international cartels.

### Sectoral focus

In 2013, DG Competition will continue to focus on **sectors of the economy** which are particularly significant for growth. As in previous years, we will be particularly active in the **financial services** sector. For example, we will proceed with the antitrust investigations initiated in 2012 and which involve a number of financial institutions which we suspect to have manipulated reference benchmarks. In the area of State aid, we will continue working with a view to restructuring and, if necessary, resolving banks in distress. We will pay particular attention to financial institutions in **countries under economic adjustment programs** – Ireland, Portugal and Greece, as well as to those of Spain and Cyprus. More broadly, we will be vigilant in accompanying the restructuring process taking place in the manufacturing and service sectors.

We will continue our investigations on alleged anticompetitive behavior in **energy markets**. Competition enforcement is proving to be an effective tool to achieve a higher level of integration in the market and to complement the liberalisation process.

Similar objectives will guide our work in relation to **telecoms**. In the **information and communication industries**, we will work to make sure the markets remain open and competitive, addressing issues which are key to these fast-changing industries, such as the use of standard-essential patents, restrictive conditions for the retail sale of e-books, and access to the market for online search.

In the **transport sector**, we will adopt new State aid Guidelines for aviation and will make progress on the Guidelines for maritime transport and railways as well as continue our investigations in the rail and airline sectors.

2013 marks the start of a new era for the **postal sector**, which will operate within a fully liberalised framework across the EU. Ongoing cases will be analysed taking into account the new framework for services of general economic interest (SGEI) which entered into force last year.

We will also be vigilant in the **pharmaceutical sector**, where our cases aim at ensuring fair market access for generic medicines.

### Cooperation

In an increasingly globalized economy, convergence of competition rules is key to success of our policy and the effectiveness of our enforcement. DG Competition will pursue the promotion of international convergence of competition policy both bilaterally and in international venues such as the **International Competition Network**, the **OECD** or **Unctad**. We will continue to closely cooperate with the competition authorities of the Member States, gathered in the **European Competition Network (ECN)**.

# 3. General objectives

The general objectives of DG COMP are i) to protect competition on the market as a means to enhance consumer welfare, ii) to support growth, jobs and competitiveness of the EU economy and iii) to foster a competition culture.

These general objectives are in line with the Europe 2020 Strategy, and in particular with its three mutually reinforcing priorities: smart growth, sustainable growth and inclusive growth. Through pursuing these general objectives, competition policy will help the EU extend the Single Market and deliver on the flagship initiatives set out in the Europe 2020 Strategy, in particular the ones on "Innovation Union", "Digital agenda", "Resource efficient Europe", "Industrial policy" and "Agenda for new skills and jobs".

Importantly, these general objectives remain valid during periods of crisis, as a weakening of the competition framework may prolong a severe economic downturn by several years. In line with this approach, the Annual Growth Survey of the last years has indeed highlighted the need for structural reforms that increase competition to come at the forefront of the EU's policy agenda.

DG COMP prioritises its actions in order to have the biggest possible impact on the functioning of markets. Making markets work better requires, in the first place, a focus on those sectors which are the most important for the competitiveness of the EU economy and the functioning of which has the greatest - direct or indirect – effect on consumers. Hence, tackling anti-competitive practices in key sectors such as financial services, ICT, energy, transport and pharmaceuticals has beneficial spill over effects on many other downstream sectors and aims at maximising the contribution of competition policy to achieving the EU's overall objectives. Moreover, making markets work better for consumers means that priority must be given to the most serious competition infringements such as cartels, in particular in those sectors that are close to consumers, for example the automotive industry. It also implies that the Commission uses its state aid control tool to make sure Member States do not overcompensate incumbents for the net cost of public service missions, such as postal services.

## 3.1. To protect competition on the market as a means to enhance consumer welfare in the EU

A key objective of EU competition policy is to ensure that competition on the market is protected against distortive state aid, mergers that significantly impede effective competition, anti-competitive agreements or exclusionary and exploitative conduct by one or more dominant undertakings.

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

State aid is in general harmful, as it distorts incentives in the markets. However, when it addresses a market failure, State aid can enhance consumer welfare. The State Aid Modernisation package launched in 2012 aims at fostering growth-enhancing policies, with a focus on "good aid", a better prioritised enforcement, streamlined rules and more compliance. Aid to research and development, aid that protects the environment, aid to facilitate access to finance for SMES and aid that attracts investment to weaker regions are all examples of "good aid". On the opposite side, aid that crowds out private investment and keeps inefficient and non-viable companies on the market should be avoided.

The more harmful anti-competitive practices are, the greater the need there is for competition policy to intervene. For example, cartels are clearly very harmful restrictions of competition and therefore high priority continues to be given to the effective detection and prosecution and thereby deterrence of cartels. Similarly, abuses of a dominant position and anti-competitive mergers must also continue to be targeted by enforcement action.

Furthermore, by keeping markets open, EU competition policy ensures that the benefits of globalisation are passed through to European consumers. At the same time, by targeting international cartels, mergers and abusive practices of firms of any nationality which harm European consumers, EU competition policy helps to protect European consumers against the potentially harmful aspects of globalisation.

For the purposes of yearly evaluation and competition advocacy more generally, in 2011 DG COMP devised a general benchmarking methodology to provide for a quantitative assessment of the results achieved by the Commission in protecting and increasing competition, namely one that attempts to estimate the customer benefits resulting from competition policy in two areas of our activities: cartels and (horizontal) mergers[1]. Based on this benchmarking exercise, the observable customer benefits from cartel decisions adopted in 2011 are in the range of €2.8 billion to €4.2 billion[2].As for the benchmarking of the observable customer benefits derived from the Commission’s intervention in the form of a decision prohibiting a horizontal merger or clearing such a merger subject to remedies, the range is of €4.0 billion to €5.8 billion for 2011.[3]

It is important to stress that the above estimates cover only a part of DG COMP's action and therefore underestimate the actual impact of DG COMP's enforcement activities. Significant customer benefits also arise from the Commission's enforcement action against abuses of a dominant position and anti-competitive vertical agreements. However, due to important structural differences among these cases DG COMP does not apply a single, generalised benchmark to these types of practices. It rather carries

[1] The benchmarking exercise is based on a number of assumptions, which are further explained in Sections 4.2 and 4.3 and is therefore just one method (among other potential approaches, none of which can be considered comprehensive or absolute) to arrive at a quantitative estimate.

[2] The approach followed to benchmark the observable customer benefits from stopping a cartel (prevented harm) consists in multiplying the assumed increased price brought about by the cartel (called the “overcharge”) by the value of the affected products or markets and then by the likely duration of the cartel had it remained undetected. This methodology is further explained in Section 4.2, in particular in footnote 54. The figure for the customer benefits relating to cartel decisions adopted in 2012 will be provided in the 2012 AAR.

[3] The methodology for benchmarking the observable customer benefits deriving from the Commission's horizontal merger decisions is explained in Section 4.3, in particular in footnote 59. The figure for the customer benefits relating to horizontal merger decisions adopted in 2012 will be provided in the 2012 AAR.

out selected individual and detailed ex-post case studies. Such a generalised benchmark can also not be applied to DG COMP'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.

Furthermore, it is stressed that the above benchmark cannot account for: (i) customer benefits in terms of better quality or wider choice, as only customer benefits that can be quantified in monetary terms are captured; (ii) other effects of competition policy, such as productivity gains or impact on jobs (see also Section 3.2); or (iii) any possible pass-on to final consumers[4] as this would require a very comprehensive assessment of market dynamics throughout the value chain downstream of the markets concerned by the Commission's decision. Importantly, the figures reported above also do not take account of the considerable deterrent effect of our policy and enforcement activities.

## 3.2. To support growth, jobs and competitiveness

Competition enforcement and advocacy ensure that private and public restrictions do not hold back competition to the detriment of the achievement of the internal market and of the competitiveness of the EU economy, especially in key sectors for the internal market and the Europe 2020 Strategy.

Protecting the competitive process enables an efficient allocation of resources and stimulates technological development and innovation, which in turn bring about higher productivity and faster growth in the economy. Vigorous enforcement of the competition rules stimulates demand and forces markets to deliver the highest possible value for consumers. By breaking up cartels and prohibiting abuses of a dominant position in markets for intermediary products or services, competition policy lowers the input costs of businesses, thereby making them more competitive. By promoting a pro-competitive regulatory framework at EU and national level, competition policy contributes to the better regulation agenda of the Commission and makes Europe a more attractive place to invest.

At the same time, the state aid framework helps Member States spend better targeted aid by allowing "good aid" - i.e. aid that addresses market failures and equity objectives in the interest of growth and jobs, such as regional investment aid, aid for research and development and innovation, training, environmental protection, risk capital or aid to small and medium-sized enterprises (SMEs) - and prohibiting "bad aid", i.e. aid that distorts competition in the internal market and is not aimed at remedying a market failure.

In the context of the financial and economic crisis, state aid control policy serves as a crisis resolution tool. State aid control contributes to a coordinated reaction to threats that have emerged and prevents subsidy races between Member States. It also contributes to the necessary restructuring in the financial sector and ensures that public funds are used efficiently. State aid control thus contributes to budget sustainability and financial stability.

Competition policy contributes to growth as it drives innovation and an efficient use of resources. Importantly, such benefits do not entail a budgetary cost, which is of much

[4] The term "customer" relates to direct purchasers, whether final consumers or intermediary users.

relevance in times of austerity. Through opening markets and keeping them open competition policy contributes to improved economic efficiency, and thereby to increased productivity and economic growth.

However, while being direct, the causal link between competition policy and the economic growth is not exclusive, since the latter is dependent on a number of further factors outside the control of competition policy. The same is true for the contribution that competition policy brings to achieving several EU headline targets, including the ones according to which 75% of the working age population should be employed and 3% of the EU's GDP should be invested in R&D.

Thus whilst not directly measurable, the contribution of competition policy to economic growth can be approached by looking at a series of indicators, in particular total factor productivity, i.e. the part of productivity growth that cannot be assigned to an easily measurable factor such as capital deepening or improved labour quality, but must be attributed to efficiency. Competition policy, alongside other microeconomic policies, is one of the key policies most directly relevant to increase total factor productivity. Total factor productivity has been recognised as the main source of the productivity gap of the EU compared with the US, and a key driver of growth[5]. Several estimates show that competition friendly product market reforms aimed at increasing competition result in the GDP increasing by several percentage points.[6]

According to the autumn 2012 European Economic Forecast[7], the EU domestic demand has continued to contract in the first half of 2012 and the global economy has slowed down, with consumers and firms becoming more pessimistic about the near-term perspectives. However, financial tensions have somewhat decreased after the summer and a return to moderate growth is projected in the first half of 2013, provided that the policy measures agreed at EU and Member State levels are implemented smoothly. This should lead to a gradual restoration of confidence, with GDP in 2013 as a whole projected to grow by only 0.5% in the EU and to remain broadly stable in the euro area.

Opening up weakly performing markets through competition advocacy and sustained enforcement of the competition rules in support of innovation and an efficient use of resources is of utmost importance in these times of economic downturn, when the EU and its Member States focus on unleashing their growth potential. Competition instruments will continue to be fully used to ensure that markets perform better and

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[5] EU Competitiveness Report 2007.

[6] In 2003 already, the IMF estimated that competition-friendly product market reforms reducing the price-mark-up in the Euro area by 10 percentage points would produce a long term increase in the GDP level in the Euro area of 4.3%. According to *Dierx et al. 2004,* product market regulation enhancing competition would lead to a GDP increase (relative to its baseline level) of about 2% in the medium run (acceleration of output growth by almost a quarter of a percentage point annually over a period of 7 to 8 years). *Bayoumi et al. 2004* found that product market reforms reducing the price mark-up in the Euro area to US levels would lead to a GDP level increase in the Euro area of 8.6% (relative to its baseline level) in the long run.
On a more sectoral level, full market opening in network industries for EU-15 was estimated by *Copenhagen Economics* in 2007 *to* result in an increase of between 1.0 and 1.6% in value added (equivalent to €80 to 130 bn) and between 140000 and 360000 additional jobs. As for finance, *London Economics* estimated in 2002 that greater financial market integration producing greater efficiency and competition would produce GDP and employment level increases of 1.1% and 0.5% respectively in the long run. In the same year, *Giannetti et al. 2002* found that greater financial-market integration with efficiency gains and access to a larger and deeper market should lead to a sustained increase in value-added growth in manufacturing increase by 0.8%-0.9%.

[7] European Economic Forecast – Autumn 2012.
http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-7_en.pdf

that competition policy underpins the Europe 2020 Strategy and all other initiatives taken by the Commission and the Member States.

## 3.3. To foster a competition culture

Knowledge of the benefits of competition is essential for citizens to exploit their opportunities as consumers, for businesses to compete on the merits and for policy makers to bring initiatives that support smart, sustainable and inclusive growth.

Fostering a competition culture directly contributes to making markets work better for the benefit of consumers and business. A competition culture assists consumers in making informed choices between products and services offered. It encourages businesses to refrain from anti-competitive agreements or behaviour. It makes public administrations realise how competition can contribute to addressing wider economic problems. In times of economic slowdown, it is particularly important that policy makers understand the beneficial effects of competition on growth and the harm that could result from a relaxation of the competition rules.

According to a Eurobarometer survey[8], 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.

According to a survey carried out in 2010, the majority of DG COMP's stakeholders perceive DG COMP's activities to have a beneficial effect, namely that they increase firms' compliance with the law and make the markets more competitive. In 2012 the Commission's effectiveness in achieving its objectives placed it again in the top bracket of enforcement agencies (together with the Competition Authorities of the UK, France and Germany and the US federal authorities) worldwide in the context of the Global Competition Review which evaluates the performance of the world's leading competition authorities[9]. The review found that EU competition policy, and in particular state aid control, had effectively contributed to tackling the financial and economic crisis and laying down the conditions for financial stability in the longer term.

Competition and a policy protecting and promoting the competitive process are also key elements of the Memoranda of Understanding signed between the EC, the ECB and the IMF with Greece, Ireland and Portugal respectively. Alongside to structural reforms, the adjustment programmes for these countries focus on product market reforms in key sectors of the economy. In addition, the programmes also aim at improving the competition law enforcement regime, so as to increase the effectiveness and efficiency of the respective national frameworks.

In the years to come DG COMP will strive to sustain and further increase the level of acceptance of the benefits of competition policy and enforcement. It will continue to advocate for competition enhancing reforms as one factor (among several) to

[8] Flash EB N°264 - EU Citizens' perceptions about competition policy (November 2009)
[9] http://www.globalcompetitionreview.com/surveys/survey/665/rating-enforcement-2012/

contribute to more growth for overcoming the current crisis and facilitating the achievement of the Europe 2020 objectives.

| POLICY AREA: COMPETITION POLICY | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL OBJECTIVES | | Impact indicators | | | | |
| | | Indicator | Target (long-term) | Milestones (if any) | Current situation |
| 1. | To protect competition on the market as a means to enhance consumer welfare in the EU | Benchmark for the observable customer benefits resulting from the application of (selected) competition policy tools | Stable level of the indicator adjusted for growth and inflation[10] | | In the range of €2.8 billion to €4.2 billion for cartels and €4 billion to €5.8 billion for mergers[11]. |
| 2. | To support growth, jobs and competitiveness | Changes in long-term output rooted in a competitive market environment | Optimal long-term outcome of the competitive markets in terms of output expansion | | |
| | | Proxy 1: rate of real GDP growth | Benchmark: return to pre-crisis growth rates (2.4%[12] on average between 2000 and 2007) | | -0.3% (EU-27, 2012; estimate)[13] |
| | | Proxy 2: growth rate of total factor productivity | | | -0.37% (EU-15, 2012)[14] |
| | | Employment rate of the population aged 20-64 | At least 75% | | 68% (Q1 - 2012)[15] |
| | | Percentage of EU GDP invested in R&D | 3% | | 2.01% (EU-27, 2009)[16] |
| 3. | To foster a competition culture | Ratio of positive replies in surveys conducted among citizens, businesses and policy makers on their knowledge of and attitude towards competition | Positive attitude towards competition by at least 80% of those questioned. | | More than 80% of EU citizens consider that competition between companies can lead to better prices and to more choice[17] |

[10] An increase in the level of the indicator could, on the one hand, mean that competition policy is more successful in achieving this objective through a larger number of and/or more substantial cartel, antitrust, liberalisation and merger cases or, on the other hand, that its deterrence function is not effective. In other words, a change in the level of the indicator does not necessarily inform about the success in achieving this objective.
[11] The methodology used for calculating these figures is explained in footnotes 51 and 55.
[12] Eurostat.
[13] European Economic Forecast – Autumn 2012 .
http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-7_en.pdf
[14] European Commission Ameco database, Figure based on the 2012 Autumn European Economic Forecast.
[15] EU Employment and social situation - Quarterly Review, September 2012, page 71. The Draft Joint Employment Report adopted with the AGS 2013 on 28 November 2012 (COM (2012) 750 final) points towards a negative economic and employment outlook for 2013. The EU appears as being the only major region in the world where unemployment is still rising.
[16] Annual Growth Survey (AGS) 2012, COM (2011)815 of 23 November 2011.
[17] Eurobarometer Survey 2009.

# 4. Specific objectives for operational activities

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

- Control of state aid;
- Cartels, antitrust and liberalisation;
- Merger control;
- Policy coordination, European Competition Network and international cooperation.

These operational activities are carried out by eight directorates. Seven of the eight 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. Directorate R is responsible for resources (see Section 5.2).

This sector-focused organisation helps spread best practices and establishes closer links between competition policy and other EU sectoral policies. It also allows DG COMP to apply a flexible project-based management of resources, which is of particular importance where resources have to be swiftly re-deployed when staff needs to be pooled to work on a high priority project, such as in the Task Force Food or as a result of unforeseen changes in the environment, such as the global financial crisis (which has resulted in the setting-up of an additional unit for assessing state aid cases in the financial sector).

## 4.1. Activity "Control of state aid"

Article 107 of the Treaty on the Functioning of the European Union prohibits any aid granted by a Member State and 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 find state aid compatible with the Treaty on the Functioning of the European Union, provided the State aid fulfils clearly defined objectives of common interest and does not distort intra-community competition and trade to an extent contrary to the common interest.

On 8 May 2012 the Commission adopted a Communication on State Aid Modernisation (SAM) setting out the objectives of an ambitious reform package. In the broader context of the EU's agenda to foster growth, state aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest. The Commission also aims at focusing its enforcement activities on cases with the biggest impact on the EU's Single Market, streamlining rules and accelerating decisions. The Communication identifies a number of actions with a view to implementing these objectives. The main elements of the reform shall be in place by the end of 2013.

The objectives of DG COMP's control of state aid activity are to i) ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints and where aid is granted, it does not restrict competition but addresses market failures to the benefit of society as a whole and ii) effectively prevent and recover incompatible state aid.

### 4.1.1. Better targeted growth-enhancing aid

In line with State Aid Modernisation, launched by the Commission in May 2012 the Commission's state aid policy aims at encouraging more focused better quality – i.e. "good" - aid in times of fiscal constraints, in line with the Europe 2020 objectives. State aid does not come for free and distorts competition by giving a firm an undue advantage over another. Therefore, the Commission will apply increased scrutiny in order to tackle cases of "bad" aid. State Aid Modernisation aims at enhancing economic efficiency and the effectiveness of public spending[18] and spurring growth on the Internal Market.

In 2012 the situation in the financial markets remained weak in the wake of the continued sovereign crisis. DG COMP activity in the area of State aid control ensured a consistent policy response to the financial crisis throughout the EU, and significantly contributed to limiting distortions of competition between beneficiary financial institutions within the internal market. Of particular relevance was the thorough restructuring in the Spanish sector (8 restructuring decisions were taken in the fall), the winding down of Dexia, the work on the restructuring of German Landesbanken (final decisions were adopted in July for BayernLB) and the restatement and amendment of the ING restructuring decision. In addition, significant activity was devoted to the on-going Greek, Irish and Portuguese programs and to monitoring the correct implementation of the around 50 restructuring decisions adopted since the beginning of the crisis. In 2013 the levels of activity are likely to remain very high, in countries undergoing an adjustment program and across the Union more broadly.

Where aid is granted, DG COMP seeks to ensure that it addresses market failures or equity objectives that have a beneficial impact on competitiveness, employment and growth, and thus on the welfare of society as a whole. Accordingly, DG COMP aims at ensuring that the aid is targeted at horizontal objectives of Community interest, such as regional development, employment, environmental protection, promotion of research and development and innovation, risk capital and development of SMEs. This is in line with the Europe 2020 Strategy, according to which "state aid policy can … actively contribute to the Europe 2020 objectives leading to a more sustainable, productive and growth oriented economy, by promoting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development."

[18] By means of enhanced efficiency and effectiveness more shall be achieved with less aid, and aid amounts shall be limited to the minimum. The objective of limiting the overall levels of State aid is thus integrated into the objectives of better focused, efficient and effective spending. In previous Management Plans, this objective was split into two and presented as "Less aid granted by Member States" and "Better aid granted by Member States"

State aid to support expenditure in research, development and innovation has steadily increased in the last 10 years to support job creation and increase Europe's competitiveness. The Commission's 2012 update of the State Aid Scoreboard confirmed that Member States have continuously re-oriented public aid measures to regional development, research, innovation, environmental protection and other objectives of general interest.

In particular, in 2012[19], the Commission cleared Member States' support for such objectives in at least 29 cases relating to environmental protection, including energy saving, 37 cases relating to regional development, 18 cases relating to research and development, including innovation, while ensuring that that the measures did not distort competition to an extent contrary to the common interest.[20]

State aid also contributes to the objectives of the Digital Agenda. The Commission clears aid measures, which complement private investments in areas which are not profitable on commercial terms and are necessary to achieve those objectives, when it is satisfied that the measures are pro-competitive The amount of state aid approved by the Commission under the State aid Broadband Guidelines reached €1.8 billion in 2010 as well as in 2011. The amount approved in 2012 reached the record figure of €6.555 billion; this amount is considerably higher than in previous years because more framework schemes with correspondingly higher, multiannual budgets were approved in 2012[21].

In the area of energy and the environment, State aid control remains at the heart of the promotion of environmentally friendly and sustainable energy and of the drive towards the achievement of the ambitious Europe 2020 targets.

In particular, State support to renewable energy continues to be one of the key drivers for its deployment, based on the horizontal rules set out in the Environmental Aid Guidelines.[22] In 2012 the Commission approved several measures in support of renewable energy sources (such as in Ireland,[23] the Netherlands,[24] Austria,[25] the UK[26] and France[27]). A number of other measures to achieve higher environmental standards were also approved, for example to upgrade existing infrastructure or to promote the use of environmentally friendly transport vehicles and waste treatment.

[19] In the period between 1 January to 23 November 2012.

[20] These figures relate to cases where the stated objective was the primary objective of the aid. The figure on support to SMEs also includes aid to risk capital injections in SMEs. The figures refer to decisions where the aid was found compatible with the internal market and also 6 decisions where the Commission found out that the State support concerned did not constitute aid in the first place.

[21] In the period between 1 January to 30 November 2012.

[22] Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p.1-33.

[23] Case SA.31236 – *Renewable feed-in tariff*, decision of 12 January 2012.

[24] Case SA.34411 – *SDE* +, decision of 7 September 2012.

[25] Cases SA.33384 – *Green Electricity Act 2012, Austria*, decision of 8 February 2012; SA.32531 – *Environmental aid in Austria*, decision of 21 March 2012, http://ec.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/111&format=HTML&aged=0&language=EN&guiLanguage=en.

[26] Case SA.34140 – *Renewable Heat Initiative (Northern Ireland)*, decision of 12 June 2012, http://ec.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/594.

[27] Case SA 33915 – *Régime cadre d''aides en faveur de la protection de l''environnement*, decision of 7 June 2012.

The Commission also approved State aid for the modernisation of electricity generation installations in Cyprus[28] and Estonia,[29] through the regime established by Art 10c of the EU Emission Trading Directive.[30] The two Member States will be allowed to grant emission trading allowances free of charge with a view to promoting competition and increasing security of supply. Several other Member States are expected to come forward with similar plans. In 2013, state aid control will continue to help Member States to grant aid addressing market failures and issues of equity in the interest of long term sustainable growth and jobs, notably as regards research, innovation and climate change.

When markets are liberalised, State aid control should prevent that Member States grant aid, effectively reversing the market opening. This is a challenge for example in the postal sector where markets have been gradually liberalised up to complete opening through the 3rd Postal Directive[31]. Like in 2012, the Commission will in 2013 continue to ensure in a number of large scale cases that where postal incumbents receive State compensations for delivering services of general economic interest (SGEI), this does not lead to overcompensation beyond the net costs of this SGEI and that possible relief measures granted by the State to some postal operators in view of their legacy of abnormal pension liabilities do not put the recipients into a better position than their competitors or comparable undertakings in their country.

In 2013, the Commission will also pay a particular attention to state aid in the air transport sector. New State aid guidelines will be adopted (see Section 4.4) and the Commission should adopt a number of decisions concerning state aid to airports and low cost carriers.

### 4.1.2. Prevention and recovery of incompatible aid

DG COMP's state aid control activity also aims at ensuring effective prevention and recovery of incompatible state aid in order to prevent that Member States re-create artificial barriers to intra-community trade.

*Monitoring*

In order to ensure that aid granted under existing aid schemes (without being individually notified and examined by the Commission) effectively complies with State aid rules, the Commission performs a systematic, sample based, ex-post control (so-called "monitoring exercise"). To further improve the effectiveness of this control, DG Competition decided in 2011/2012 to enlarge the scope of this exercise to cover one-third of the aids granted under approved aid schemes or block exempted regulations, all Member States and all main types of aid. In 2013, DG Competition will continue its

[28] Case SA.34250 – *Allocation of free allowances in the electricity sector under the trading scheme for greenhouse gas emissions after 2012*, decision of 27 June 2012, http://ec.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/700.

[29] Case SA.33449 – *Transitional free allocation of greenhouse gas emission allowances for the modernization of electricity generation installations*, decision of 27 June 2012, http://ec.europa.eu/rapid/pressReleasesAction.do?reference=IP/12/700.

[30] Directive 2003/87/EC as amended by Directive 2009/29/EC.

[31] The 3rd Postal Directive (2008/6/EC) had to be implemented by 31.12.2010 but allows the following Member States to postpone that implementation until 31.12.2012: Czech Republic, Greece, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Poland, Romania, and Slovakia.

monitoring efforts and even increase the number of cases reviewed to also cover smaller aid schemes.

*Recovery*

The purpose of recovery is to re-establish the situation that existed on the market prior to the granting of the aid in order to ensure that the level-playing field in the internal market is maintained.

When unlawful aid is declared incompatible, the Commission is entitled to ask for its recovery by the Member State who granted it in order to restore the previous market situation.

In 2012, further progress was made to ensure that these recovery decisions are enforced effectively and immediately. By 30 June 2012, the amount of illegal and incompatible aid recovered had increased to €13.5 billion, from €2.3 billion in December 2004. This means that the percentage of illegal and incompatible aid still to be recovered fell from 75% at the end of 2004 to around 14.4% on 30 June 2012.[32]

By 30 June 2012, the Commission adopted nine decisions regarding recovery and ensured the recovery of over €1.1 billion by the Member States. As of end of June 2012, the Commission had 46 pending active recovery cases[33] (compared to 94 cases at the end of 2004).

A concrete example of aid that is incompatible with the state aid rules and which the Commission decided in 2012 should be recovered is the aid granted by Belgium as a public service compensation to BPost for the period 2006-2010[34].

As a guardian of the Treaty, the Commission may use all legal means at its disposal to ensure that Member States implement their recovery obligations, including launching infringement procedures: in the first half of 2012, the Court of Justice has condemned two Member States pursuant to Article 108(2) TFEU and a Member State under Article 260(2) TFEU. In that latter case, the Court imposed a lump sum and a penalty payment on the Member State, which had failed to implement a previous judgment declaring that a recovery decision had not been fully implemented.

In 2013, we aim to make further progress towards effective and rapid enforcement of recovery decisions.

*State aid in the current economic juncture*

The objectives set out above have not been set aside in the context of the financial and economic crisis, but on the contrary have been the driving principles of the Commission's state aid policy. The policy has played an important role in helping to maintain the stability of the financial system as a whole. It has guaranteed a level playing field between financial institutions and between banking communities in

[32] The figures reflect data available on 30 June 2012. Updated information will be available in January 2013.
[33] 5 cases have been transferred from the former unit in charge of State aid in DG MOVE to DG COMP and are included in the present statistics for the first time this year.
[34] , The aid exceeded the net costs related with the delivery of press items (newspapers and magazines) and some other services of general economic interest. In its Decision of 25 January 2012, the Commission then requested Belgium to recover the incompatible aid. The Belgian authorities diligently fulfilled their obligation by the end of May 2012.

different Member States and has secured the return to viability of banks that have been rescued, to facilitate adequate financing for the real economy, in particular SMEs.

In 2012, DG COMP continued to effectively implement the framework for the provision of public guarantees, recapitalisation measures and impaired asset relief by Member States. In parallel, the European Commission prolonged in October the EU guidelines on state aid for the rescue and restructuring of companies in financial difficulty[35]. The Commission is currently reflecting on a review of the guidelines in the context of the state aid modernisation (SAM) initiative, and will launch a public consultation on reform proposals in 2013.

Between 1 October 2008 and 1 October 2012 the Commission took more than 300 decisions on State aid measures to the financial sector aiming to remedy a serious disturbance in Member States economies. The maximum volume of Commission-approved measures amounted to € 5 085.9 billion of which the greatest bulk approved as guarantees (€ 3 646.6 billion or 72% of the maximum approved volume). Not all of the aid approved was actually and effectively used by Member States. In 2011, the aid actually used by Member States constituted € 714.7 billion or 5.7 % of EU-27 GDP, whereas the figures for the previous years were: €1 105.3 (9% of GDP) for 2010, € 1 045 billion (8.9 % of GDP) for 2009 and 724 billion (5.8% of GDP) for 2008.

In those cases, DG COMP requires that certain fundamental principles - like non-discriminatory access to national schemes, subsidies limited to what is necessary, mechanisms to prevent abuse of State support, restructuring measures for certain financial institutions that received large amounts of aid – be respected.

According to the Europe 2020 Strategy, "the pursuit of the Europe 2020 objectives must be based on a credible exit strategy as regards budgetary and monetary policy on the one hand, and the direct support given by governments to economic sectors, in particular the financial sector, on the other." Therefore, in 2013, our state aid control activity will continue to focus on accompanying this process in line with developments in market conditions, just as we did last year.

[35] The current guidelines were adopted in 2004 and prolonged a first time in July 2009. They were due to expire on 9 October 2012. The validity of the guidelines has been extended until the Commission adopts new rules, following the current review process in the context of the SAM initiative.

| ACTIVITY: CONTROL OF STATE AID | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: Better targeted growth-enhancing aid** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Overall level of non-crisis state aid granted by Member States to industry and services; expressed by percentage of GDP | 0.42% of GDP (2011) compared to 0.50% of GDP (2010 and 2009) and 0.62% of GDP (average 1996-2000) | Decrease in the indicator's level[36] |
| Overall level of crisis aid to the financial sector actually used by Member States, expressed as percentage of GDP[37] | 5.7% of GDP in 2011, compared to 9% of GDP in 2010, 8.9% of GDP in 2009 and 5.8% of GDP in 2008 | Phasing out as soon as economic recovery allows |
| Percentage of state aid earmarked by Member States for horizontal objectives of common interest | 89.7 % of non-crisis aid to industry and services (2011), compared to 54% (average 1996-2000) and 85% (2010) | Increase in the indicator's level |
| *Main outputs in 2013* | | |
| Decisions relating to notified and non-notified state aid measures | | |

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

[37] State aid in the context of the economic crisis is defined as aid on which the Commission took a decision based on Article 107 (3) b TFEU and, in 2008 and 2009, a limited number of crisis related cases assessed on the basis of Article 87 (3) c EC (now Article 107 (3) c TFEU) and the rescue and restructuring guidelines.

| SPECIFIC OBJECTIVE 2: Effective prevention and recovery of incompatible state aid | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Percentage of "bad"-type of state aid[38] | 0.04% of GDP (non-crisis aid; 2011) compared to 0.28% of GDP (average 1996-2000) and 0.07% of GDP (2010). | Decrease in the indicator's level [39] |
| Percentage of incompatible aid recovered[40] | 85.6% in June 2012[41] compared to 81% as of June 2011 | Increase in the indicator's level[42] |
| Percentage of cases closed or brought to Court within two years[43] | 65.2%[44] in June 2012 compared to 61.3% as of June 2011 | Increase in the indicator's level |
| *Main outputs in 2013* | | |
| Final decisions and appropriate measures for incompatible state aid cases | | |

## 4.2. Activity "Cartels, antitrust and liberalisation"

This activity involves the application of Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union and derived legislation, and its objective is to detect, sanction, deter and remedy anti-competitive practices by firms and/or Member States

[38] The effectiveness of prevention activities is hard to measure. Member States may already have adjusted their behaviour in line with the state aid rules established by the Commission – it is not easy to find an indicator measuring behaviour which did not take place. Furthermore, certain behaviour (or inaction) can also be attributed to internal considerations (e.g. budgetary constraints). Also, even during the investigation by the Commission of notified aid, certain adjustments may occur in the light of pre-notification meetings or questions asked by the Commission services. Again, no precise indicator exists to measure such corrective actions occurring during the life of the procedure. Finally, it would give a wrong picture if one only looks at the total amount of incompatible aid which is being recovered as indicator, since far from being "prevented", this aid has been granted and is still with the beneficiaries concerned, distorting competition and trade, until full recovery has taken place.

Hence, it seems methodologically sounder to set an objective benchmark against which to track the performance of the Commission, which in particular if tracked over time (to correct for possible temporary fluctuations to take account of the different needs of Member States at some point in time) should give an idea of the impact that the Commission has had in preventing "bad" aid for which sectoral aid is used as a benchmark here. To that effect the average figure of sectoral aid as % of GDP in the 5 year period before the Lisbon agenda is used as absolute benchmark for measuring the impact that State aid control has had in preventing "bad" aid.

[39] This is a planning assumption. As state aid activity is driven partially by notifications, it is not possible to provide a clear target for this indicator.

[40] This indicator is very much a "moving target", because it can be influenced by several factors such as recent decisions not yet implemented, annulment of a decision by the court, and in particular, by the fact that often the aid amount is quantified during the recovery procedure. That is why also an effective indicator based on DG COMP's activity regarding recovery of incompatible aid needs to be added.

[41] Including recovery under the cases of the former DG Transport and Energy, which were not included in last years' statistics.

[42] While more illegal aid was recovered by 30 June 2012, the stock of new cases which await recovery of illegal aid increased as well during the same period. For this reason, the indicator refers to an increase.

[43] Member States are responsible for the immediate and effective implementation of the Commission's recovery decisions. In practice however, this procedure may take some time beyond the four months deadline now laid down in standard recovery decisions, either because the case is complex, or because of a failure by the Member State to implement the decision. In the latter case, the Commission can launch proceedings under Article 108(2) TFEU (ex-Article 88(2) TEC) before the European Court of Justice against the Member State concerned for failure to implement the recovery decision. This indicator therefore reflects that, within two years, either relevant action has been taken by the Member State to implement the recovery decision (i.e. the case is closed) or the Commission is pursuing actively the effective implementation of its decision (i.e. by bringing a case to Court).

[44] The observation period is between June 2005 and June 2012, taking into account recovery decisions adopted between June 2003 - June 2010 (see footnote above). The observation period will be shifted by one year at each revision of the Management Plan.

Antitrust investigations often take many years to conclude. Therefore, cases referred to in this Section for which proceedings were opened and/or subsequent procedural steps were taken in 2012 (and in previous years), which are consistent with the priority sectors identified in the Management Plan for 2012, largely determine the Commission's enforcement agenda for 2013. More generally the sectors referred to in the following subsections will continue to be accorded priority attention in 2013.

### 4.2.1. Cartels

Article 101 prohibits anti-competitive agreements in the internal market and cartels constitute one of the most serious infringements thereof. Cartels are arrangements by which (generally) competing firms limit or eliminate competition between them with a view to raising prices and profits, without producing any objective countervailing benefits. Cartels typically involve agreements to fix prices, limit output, share markets, allocate customers and/or territories among firms, rig bids or a combination of any of these. In so doing they hinder the normal functioning of competition in markets, increase production costs and thereby reduce the competitiveness of the users of the products concerned, reduce the incentives to innovate, hinder the necessary restructuring in certain sectors and ultimately have a negative impact on growth.

The fight against cartels remains a top priority for DG COMP, as is clear from the fines imposed in 42 decisions between 2007 and 2012 which amount to approximately € 12.3 billion. In 2012 five cartel decisions were adopted, imposing fines in excess of € 1.875 billion. The decisions adopted in 2012 sanctioned cartels in the following product/services markets: water management, freight forwarding, mountings for windows and window doors, TV and computer monitor tubes and gas insulated switchgear.

All the five decisions originate from leniency applications. They concerned 37 undertakings, including the immunity applicants and 78 legal entities. The settlement procedure was used for the water management products case, bringing up to six the total number of settlement cases adopted since the procedure was introduced in 2008. The settlement procedure contributes to increasing the deterrent effect of the Commission's action against cartels since it allows it to focus more quickly some of its resources on the detection and fight against other cartel cases.

On the basis of the specific benchmarking exercise developed for these evaluating purposes and explained in Section 3.1, the observable customer benefits from cartel decisions adopted in 2011 are estimated to be in the range of €2.8 billion to €4.2 billion[45].

In 2013, DG COMP will continue to give priority to cartel enforcement activity, actively working on cases for which we have opened procedures. These cover a wide variety of products, from financial services – where the Commission has initiated actions

[45] The approach followed to benchmark the observable customer benefits from stopping a cartel (prevented harm) consists in multiplying the assumed increased price brought about by the cartel (called the “overcharge”) by the value of the affected products or markets and then by the likely duration of the cartel had it remained undetected. This methodology is further explained in footnote 54. The fact that the magnitude of the customer benefits, based on the applied benchmarking, may vary from year to year does not affect the deterrence effects of DG COMP's enforcement activities which are, by far, the main source of benefits for customers. Such deterrence effects are, however, excluded from the benchmarking exercise.

involving a number of financial institutions which we suspect to have manipulated reference benchmarks (LIBOR, EURIBOR and the Tokyo index TIBOR) – to the automotive industry, power cables, optical disc drives, retail food packaging and the food sector[46].

In addition to drawing on the efficiency of the leniency programme, we will also pursue ex officio detection of cartels, aim to reduce the average duration of cartel investigations, ensure efficiency and uniformity when settling cases and continue to set fines at a level that acts as a real deterrent.

#### 4.2.2. Other anti-competitive agreements

In addition to cartels, other agreements between firms can give rise to competition concerns and can also have negative effects on consumers. Anti-competitive agreements in key input sectors, such as ICT and other network industries (i.e. transport and energy) affect the related input costs and hence the competitiveness of various sets of services.

As a way of example, in relation to digital products, the Commission had concerns on the conditions linked to the retail sale of e-books in the EU and had initiated an investigation into whether five international publishing groups (Hachette Livre, Harper Collins, Simon & Schuster, Pearson/Penguin and Georg von Holzbrinck/Macmillan), as well as Apple had engaged in anti-competitive practices[47]. Four of the publishers, as well as Apple offered commitments, which were market-tested and made binding, in December 2012. The fifth publisher, Penguin, initially chose not to offer commitments to the Commission. However, the Commission is currently engaged in constructive discussions with Penguin on commitments that should allow a closure of proceedings against it in 2013. Through these investigations, DG COMP contributes to making the Europe 2020 Strategy become a reality, addressing anticompetitive practices that may unjustifiably prevent, restrict or distort cross border trade and consumer access to digital content.

Network industries will also receive major attention under antitrust tools. In the area of telecoms, in early 2013 DG COMP anticipates finalising its investigation on the alleged non-compete obligation between Spanish Telefónica and Portugal Telecom, for which the Commission had taken the preliminary view that the object of the agreement was to partition markets (resulting in potentially higher prices and less choice for consumers).

In support of the Commission's objective of achieving an Internal Energy Market by 2014 (as explained further below in the section on abuse of dominant position),In 2013,  DG COMP will continue its case work under Article 101 TFEU, for example in relation to alleged market allocation between power exchanges (potentially distorting the European market coupling project).

[46] On 13 July 2012, the Commission sent a statement of Objections to suspected participants in North Sea shrimps cartel.

[47] The carrying out of inspections and the opening of proceedings does not imply that the Commission has a proof of infringement. The opening of proceedings however signals that the Commission will investigate the case as a matter of priority. Therefore, all such activities carried out in 2012 (and in previous years) largely determine DG COMP's enforcement agenda for 2013 and future years.

In the area of transport, DG COMP will follow-up on the assessment of the competitive situation of the transatlantic market. It will follow-up on the commitments offered by Air Canada, United Airlines, Continental Airlines and Lufthansa. The commitments where market-tested in December 2012 and aimed at meeting the Commission's competition concerns regarding the airlines' joint venture agreement for their passenger air transport services on the route Frankfurt-New York. Under the joint venture the parties, which are members of the Star alliance, cooperate on key parameters of competition such as pricing, capacity, schedules and marketing on their transatlantic flights. In a similar case, in January 2012 the Commission also opened proceedings regarding the joint venture between Air France-KLM, Delta and Alitalia in relation to transatlantic flights. Finally, DG COMP will continue monitoring the commitment decision adopted in July 2010 regarding the similar joint venture between British Airways, Iberia and American Airlines.

The Commission undertakes a continuous monitoring of patent settlements in the pharmaceutical sector, as recommended by the Commission in its final report of the sector inquiry,. In July 2012, the Commission published its third patent settlement monitoring report, aiming at identifying potentially problematic settlements from an antitrust perspective, in particular those that limit the entry of generic medicines against payment from an originator company to a generic company. The report showed that the proportion of such potentially problematic settlements has stabilised at a low level of 11% vis-à-vis 21% in the findings of the sector inquiry.

Still, the total annual number of concluded settlements has increased by 500% compared to the findings of the sector inquiry. Although most of the settlements appear to be unproblematic from an antitrust perspective (given that the monitoring exercises may have generally increased stakeholders' awareness of competition law issues) the continuing existence of such settlements shows the need for DG COMP to stay vigilant in this area.

In 2013, DG COMP will therefore continue to monitor settlements in the pharmaceutical sector, whilst continuing investigating a number of individual cases of possible anticompetitive practices, including those for which the Commission issued statements of objections in 2012, namely Servier (Perindopril)[48] and Lundbeck (Citalopram)[49].In addition, DG Comp will carry on with its investigations into two further cases, Cephalon and Fentanyl, which also concern pay for delay agreements. We will also continue to monitor the healthcare sector.

In 2013 also, continued attention will be paid to anti-competitive agreements, whether horizontal or vertical, which cause harm to consumers and undermine the achievement of the internal market.  The financial services sector is likely to be under particular focus for enforcement, as in 2012 the Commission issued a Supplementary Statement of Objections to Visa concerning credit card interchange fees for credit card

[48] According to the Statement of objections in the Perindopril case, Les Laboratoires Servier and several generic competitors had entered into agreements where - in exchange for payments by Servier -  the generic companies agreed not to enter the market with their cheaper generic products and/or not to further challenge the validity of the patents that protected Servier's more expensive medicine. In addition, Servier would have bought technologies that would have enabled generic competitors to come in the market.

[49] In the Citalopram case, Lundbeck and several generic competitors would have concluded agreements where in exchange for value transfers from Lundbeck, the generic companies abstained from entering the market with generic citalopram at a time when generic entry became in principle possible.

transactions and other restrictive practices hindering cross-border competition. Along with such payment card schemes, the market for Credit Default Swaps (CDS)[50] will continue to be under DG COMP's scrutiny.

### 4.2.3. Abuses of a dominant position

In addition to cartels and other anti-competitive agreements, competition law sanctions 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. By abusively preventing new entry 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 102 of the Treaty on the Functioning of the European Union 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.

In 2013, the enforcement of competition rules against abuses of dominance will also build on many on-going investigations in key priority sectors.

In relation to the digital economy, the Commission has expressed concerns that Google may be engaged in an abuse of a dominant position in four areas, namely that Google is: (1) in its horizontal search results, prominently displaying links to its own vertical search services as compared to those of competitors; (2) copying and using in its vertical search services the content of third party web sites without their approval; (3) on websites where Google delivers search advertisements, entering into agreements with partners which result in de facto exclusivity, thereby requiring these partners to obtain all or most of their search advertisement requirements from Google; and (4) limiting the portability and management of online search advertising campaigns across competing search advertising platforms through contractual restrictions on software developers. The Commission is engaged with Google in technical discussions to examine the potential suitability of solutions it has put forward to address these four concerns.

The Commission continues to attach a high priority to standardisation issues. It liaises closely with key stakeholders to facilitate the adoption and promotion of clear rules by standardisation bodies so as to ensure that access to standards is available to all market participants on fair, reasonable and non-discriminatory (FRAND) terms.

In the field of standardisation, work will continue on proceedings opened in three cases in 2012 with regard to potential abuses by holders of standard-essential patents (SEPs): the Samsung case[51] and the Apple/Motorola and Microsoft/Motorola cases. The investigations in particular concern whether by seeking and enforcing injunctions on the basis of SEPs, and where commitments have been given to license those SEPs on FRAND terms, the companies in question have engaged in an abuse of a dominant position.

[50] CDS are financial instruments meant to protect investors in the event a company or State they have invested in default on their payments. They are also used as speculative tools. The investigations involve investment banks, financial market data provider Markit.

[51] Proceedings were opened on 30 January 2012

We will also focus on the on-going investigation on weather software company MathWorks has engaged in an abuse of a dominant position on the market for the design of commercial control systems, by allegedly refusing to provide a competitor with end-user licenses and interoperability information.

An investigation is also ongoing on Microsoft's alleged non-compliance with the browser choice commitments stemming from the Commitment decision addressed to the company in December 2009[52].

It is crucial for European competiveness and growth to protect the competitive process in the telecommunications sector. The Commission is examining the observations made by the Slovak Telekom a.s (ST) and its parent company, Deutsche Telekom AG (DT) in response to the Statement of Objections sent in May 2012[53]. The Commission sent a statement of objections to ST for allegedly abusing its dominant position on several wholesale broadband markets in Slovakia since May 2004. The Commission considered on a preliminary basis that ST may have refused to supply unbundled access to its local loops and wholesale services to competitors, and may have imposed a margin squeeze on alternative operators (ST itself would have operated at a loss if its own wholesale prices had applied to it), in breach of EU antitrust rules.

Energy and transport will also remain high on the enforcement agenda. Throughout 2013, DG COMP will continue its case work in the energy sector, supporting the Commission's objective of achieving an Internal Energy Market by 2014, by ensuring that the removal of regulatory barriers is not frustrated by companies re-establishing barriers by anti-competitive conduct. Following a number of Decisions in recent years relating to Western Europe, enforcement will, in particular, focus on more recently liberalised markets. On-going enforcement actions under Article 102 include the potential abuse by Gazprom of its dominant position in the supply of natural gas in Central and Eastern Europe (where proceedings were opened in 2012), foreclosure of gas markets in Bulgaria, and electricity cases in both Bulgaria and Romania.

DG COMP is also paying attention to the environment sectors such as waste collection, and the supply of water and waste water services.

As regards transport, focus will be put on the proceedings opened in June 2012 against Deutsche Bahn (DB) in order to investigate whether DB group, and in particular DB Energie, the de facto sole supplier of electricity for trains in Germany, would be charging energy prices to competitors that would not allow them to compete with DB's rail freight and passenger services on a lasting basis.

Neither the conduct of inspections nor the launching of proceedings entail that the Commission has proof of an infringement. Often, however, the (mere) fact that the

[52] A Statement of Objections was adopted against Microsoft on 24 October. In December 2009, the Commission had made legally binding on Microsoft commitments it offered to address competition concerns related to the tying of Microsoft's web browser, Internet Explorer, to its dominant client PC operating system, Windows. Microsoft committed to make available for five years (i.e. until 2014) in the European Economic Area a "choice screen" enabling users of Windows to choose in an informed and unbiased manner which web browser(s) they wanted to install in addition to, or instead of, Microsoft's web browser. The Statement of Objections outlines the Commission's preliminary view that Microsoft has failed to roll out the relevant choice screen with its Windows 7 Service Pack 1, which was released in February 2011. From February 2011 until the end of July 2012, millions of Windows users in the EU may not have seen the choice screen

[53] See IP/12/462 at http://europa.eu/rapid/press-release_IP-12-462_en.htm

Commission carries out such activities can make companies cease anticompetitive practices and prevent such practices being implemented in the future.

In 2013, DG COMP will continue to pay particular attention to unilateral practices and, where appropriate, take enforcement action under Article 102 to contribute to ensuring more competitive markets. This will further support the integration of the Single Market, in particular in network industries and innovative sectors that play a key role in achieving the objectives of the Europe 2020 Strategy, for economic growth and jobs.

#### 4.2.4. Anti-competitive practices by Member States

Finally, the Commission also has the power to intervene against Member States' legislative actions which have the effect of removing the effectiveness of the competition rules of the Treaty and which infringe Article 106 of the Treaty on the Functioning of the European Union. This Article also 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.

In line with its prerogatives, the Commission in 2012 investigated an amendment to the Hungarian postal law of July 2011 which would have prevented a provider of so-called integrated postal services to continue providing its services under Hungarian law, thereby protecting the position of the postal incumbent just a few months before full liberalisation of the Hungarian postal market (1st January 2013). As a result of this investigation the provider of integrated postal services was entitled to continue its activities in Hungary.

Building on the work undertaken in previous years, in 2012 DG COMP investigated the criteria and procedures used by Member States for granting digital TV broadcasting frequencies. The transition from analogue to digital broadcasting by the end of 2012 constitutes one of the EU’s policy objectives. In a reasoned opinion sent to Bulgaria in March 2012, the Commission considered that the 2009 criteria and procedures used to assign digital broadcasting spectrum were contrary to European Union law, e.g. because applicants were not allowed to have links with content providers (TV channels operators), including operators active only outside Bulgaria, or with broadcasting network operators. The Commission also closely monitors the spectrum auction announced by Italy in April 2012 and aimed at addressing the Commission's concerns regarding the Italian legislation on digital switchover.

In 2013, we will continue to be particularly vigilant that similar infringements are remedied in sectors that have been recently liberalised or are in the process of liberalisation, such as energy or postal services, as well as in the media sector. This is in line with the Europe 2020 Strategy, according to which "through the implementation of competition policy the Commission will ensure that the internal market remains an open market, preserving equal opportunities for firms and combating national protectionism".

| ACTIVITY: CARTELS, ANTITRUST AND LIBERALISATION | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: Effective detection, sanctioning, deterrence and remedying of the most harmful cartels between undertakings** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Benchmark for the (observable) customer benefits resulting from Commission decisions prohibiting cartels[54] | In the range of €2.8 billion to €4.2 billion for decisions adopted in 2011 (depending on underlying assumption) | Stable level of the indicator adjusted for growth and inflation |
| *Main outputs in 2013* | | |
| Decisions applying the prohibition rules of Article 101 TFEU (cartel decisions) | | |

| SPECIFIC OBJECTIVE 2: Effective detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices by undertakings other than cartels | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Benchmark for the (observable) customer benefits resulting from Commission decisions prohibiting anti-competitive practices other than cartels and from Commission decisions making binding the commitments put forward by undertakings | n.a. (case by case analysis required) | Stable level of the indicator adjusted for growth and inflation |
| *Main outputs in 2013* | | |
| Decisions applying the prohibition rules of Articles 101 and 102 TFEU (restrictive agreements other than cartels and abuses of dominant position) | | |

[54] The approach followed to benchmark the observable customer benefits from stopping a cartel (prevented harm) consists in multiplying the assumed increased price brought about by the cartel (called the "overcharge") by the value of the affected products or markets and then by the likely duration of the cartel had it remained undetected. A 10% to 15% overcharge is assumed. This is conservative when compared to the findings of recent empirical literature which report considerably higher median price overcharges for cartels. In order to estimate what the likely duration of the cartel would have been if it had continued undetected, a case-by-case analysis was carried out. This analysis focussed on the particular circumstances of each case and an assessment of important quantitative indicators, including the specific market conditions, the lifespan of the cartel, the ease of reaching and renewing cartel agreements as well as the potential reactions of outsiders (such as new entrants). The cartels are classified into three categories: "unsustainable", "fairly sustainable" "very sustainable". It is assumed that the cartels in the first category would have lasted one extra year in the absence of the Commission's intervention, the cartels in the second category 3 years, and the cartels in the third group 6 years. The assumptions concerning the likely duration of the cartels are made prudently to establish a lower limit rather than to estimate the most likely values. Moreover, the estimates obtained are also conservative because other consumer benefits, such as innovation, quality and choice are not taken into account.

| SPECIFIC OBJECTIVE 3: Effective detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices by Member States | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Benchmark for the (observable) customer benefits resulting from Commission decisions prohibiting anti-competitive practices under Article 106 TFEU or from Commission challenges of anti-competitive practices under Article 258 TFEU | No final decision in 2012.[55] | Stable level of the indicator adjusted for growth and inflation |
| Referrals to the Court of Justice under Article 260 TFEU | Two in 2012 | Stable level of the indicator adjusted for growth and inflation |
| *Main outputs in 2013* | | |
| Decisions under Article 106 TFEU and referrals to the Court of Justice under Article 258 TFEU dealing with illegal State measures, in particular in the liberalised network industries and financial services.<br><br>Referrals to the Court of Justice under Article 260 TFEU dealing with State aid recovery cases which have already been referred to the Court once under Art. 108(2) | | |

## 4.3. Activity "Merger control"

The EU merger control system plays a key role in adjudicating on mergers that may on the one hand be efficiency enhancing and on the other hand reduce competition to the detriment of consumers. Its objective is to effectively prevent mergers from resulting in anti-competitive effects.

The EU merger control system guarantees that companies can develop in a dynamic way to become competitors on global markets. Whether to meet the challenges resulting from the economic context or to enter new markets, European companies are free to search for the most productive and competitive organizational structures reflecting their current and strategic business needs, to the benefit of consumers.

However, some mergers may reduce competition in the market, in particular by impeding effective competition, including the creation or strengthening of dominant positions in the market. Merger control ensures that competition in the internal market is not distorted through mergers of undertakings. It is primarily aimed at preventing the emergence of market structures which are not conducive to effective competition, or the deterioration of market structures where competition is less than effective. Merger control thus contributes to the long-term efficiency of the economy and to the protection of the consumers' interests.

Merger control by the Commission applies to transactions exceeding the significant turnover thresholds under the Merger Regulation and which are therefore considered to lead to an impact on the market which goes beyond the national borders of any one Member State. Such concentrations are reviewed exclusively at the EU level, in application of a ‘one-stop shop’ system and in compliance with the principle of subsidiarity. Concentrations not covered by the Merger Regulation come, in principle, within the jurisdiction of the Member States. However, the Merger Regulation leaves scope for re-allocating cases from the national competition authorities (NCA) to the Commission and vice versa in order to ensure that the best placed authority deals with

[55] However, work on on-going cases advanced, leading to a closure of proceedings in four cases, and intermediary procedural steps (letter of formal notice, reasoned opinion) being taken in another case .

a case. In 2013, based on upwards referral requests from the Greek and Cypriot Competition Authorities, the Commission will be reviewing a renewed bid by Aegean Airlines to buy Olympic Air.

Merger control by the Commission guarantees efficient control involving a rapid assessment and clearance of non-problematic mergers. The Commission approves the vast majority of cases notified, most of them without the need to open an in-depth investigation. Since the Merger Regulation came into force in 1990, the Commission has cleared more than 4.800 deals. Most concerns about the possible effects of a merger are resolved through remedies[56]. When it is essential to ensure that consolidation does not undermine the benefits of competition and liberalisation for consumers, and when no suitable remedies are on offer, the Commission has no choice but to prohibit a merger. That is the reason why the Commission prohibited, in February 2012, the proposed merger between Deutsche Börse and NYSE Euronext, as it would have resulted in a quasi-monopoly in the area of European financial derivatives traded globally on exchanges. Although the merging parties had offered commitments, the Commission found that these were inadequate to solve the identified competition concerns..

This was the second merger prohibition since the Ryanair/Aer Lingus case in 2007, following the prohibition on the proposed merger between Aegean Airlines and Olympic Air in 2011. Since the entry into force of the EU Merger regulation, in total 22 cases have been prohibited out of a total of more than 4800 mergers reviewed.

2012 has seen a slight decrease in the number of merger notifications (compared to 2011), although the cases prove to be of a more complex nature. Indeed, 279[57] deals were notified in 2012 (compared to 309 in 2011). The Commission opened in-depth proceedings for nine of them (one more than in 2011). In a number of cases the Commission's clearance was conditioned on the merging parties taking action to correct any distortive effects on competition.

The proposed acquisition of EMI's recorded music business by Universal Music Group constitutes a good example of such a case. The merger brings together two of the four so-called global "major" record companies, leaving only three majors. On the basis of the initially notified transaction, the Commission had concerns that Universal would have been able to significantly worsen the licensing terms it offers to digital platforms that sell music to consumers. To meet these concerns, Universal offered commitments relating to a substantial divestiture package. By clearing the deal subject to the conditions that Universal sells a significant number of labels, the Commission has ensured the preservation of choice, cultural diversity and innovation in the music business.

Another case that illustrates how our merger rules contribute to ensuring that competition and incentives to innovate remain strong in high-technology markets is the acquisition of Goodrich Corporation by United Technologies Corporation (UTC). The Commission had concerns that the transaction, as originally notified, would have left the merged entity without a sufficient competitive constraint on the market for power generation. We also had concerns that some competing engine suppliers, which

[56] For example, in 2012, up to 19 December, concentrations were approved subject to remedies in 15 cases, 6 of which in Phase II.

[57] From 1 January to 19 December 2012

depend on Goodrich for certain components such as fuel nozzles and engine controls could be shut out from access to these components as a result of the merger. The commitments offered by the parties adequately address these concerns. This case is also a good example of the close and effective cooperation between DG COMP and the US and Canadian competition authorities, as the transaction affected markets on both sides of the Atlantic.

Overall, based on the specific benchmarking exercise developed for these evaluating purposes, the observable customer benefits derived from the Commission's intervention in the form of a decision prohibiting a horizontal merger or clearing such a merger subject to remedies, are estimated to be in the range of €4.0 billion to €5.8 billion for 2011.

In 2013, continued attention will have to be paid to corporate restructuring in industrial sectors as well as the postal services, transport, IT, media and telecoms sectors where we have seen already in 2012 a number of important and complex cases. In particular, we will be finalising our reviews of both the proposed acquisition of TNT Express by UPS and the proposed takeover of Aer Lingus by Ryanair, for which we opened and in-depth investigation in July and August 2012 respectively. In addition, the economic crisis may further pose challenges in terms of merger control for the sector of financial services. Merger control will also continue to ensure that cross-border mergers are not blocked by Member States on grounds other than competition policy.

Similarly, the Commission will continue to ensure that the commitments made by companies as a condition for obtaining a clearance decision in earlier merger cases[58] are effectively complied with and enforced. Such strict enforcement is critical as, otherwise, the anti-competive effects that these earlier decisions sought to avoid could nonetheless occur.

[58] Such as the remedies accepted in M.5224 EDF / BE, M.5549 *EDF / Segebel* and M.5978 *GDF Suez / International Power such* and defending related cases before the courts e.g. in T-389/12 and T-389/12 R, EDF v European Commission

| **ACTIVITY: MERGER CONTROL** | | |
|---|---|---|
| **SPECIFIC OBJECTIVE: Effective prevention of the anticompetitive effects of mergers** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Benchmark for (observable) customer benefits resulting from corrective horizontal merger decisions[59] | In the range of €4 billion to €5.8 billion for decisions adopted in 2011 (depending on underlying assumption) | Stable level of the indicator adjusted for growth and inflation[60] |
| *Main outputs in 2013* | | |
| Decisions applying the rules of the Merger Regulation | | |

[59] The approach followed to benchmark the observable customer benefits from the Commission's intervention in the form of a prohibition of a horizontal merger or a clearance of such a merger subject to remedies consisted in predicting the change in consumer surplus. The prevention of anticompetitive effects such as the negative impacts on innovation and choice, even though some cases are also largely based on non-price effects, especially effects on innovation, are not taken into account.

In practical terms, the calculation of the predicted change in consumer surplus arising from the Commission's intervention in each product market is based on three factors: (i) the total size (by value) of the product market concerned, (ii) the likely price increase avoided and (iii) the length of time that this market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors.

[60] This is a planning assumption. As the merger control activity is driven by notifications, it is not possible to provide a clear target for this indicator.

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

The objectives that DG COMP pursue under this activity comprise i) the development of competition law and policy, ii) ensuring effective and coherent application of EU competition law by national competition authorities and courts, as well as promoting effective and coherent private enforcement of EU law, and iii) increased cooperation and convergence of competition policy at the international level.

### 4.4.1. Competition policy

In order to meet the above-mentioned general and specific objectives, it is important to constantly adapt competition policy to new market developments and improved knowledge on industrial economics. Consequently, DG COMP regularly reviews the competition rules on substance and procedures, notably through Commission Regulations and "soft law" such as Guidelines, Communications and Notices.

In addition to providing legal certainty and transparency for all stakeholders, these instruments play an important role in preventing and deterring restrictions of competition that harm consumers by informing firms and governments about the criteria the Commission uses in assessing anti-competitive agreements, abuses of dominant positions, mergers and state aid. Throughout the last decade these instruments have also led to a considerable reduction of regulatory burden, especially for companies lacking market power like SMEs.

*State aid*

Effective State aid control enhances not only the growth potential of the internal market but contributes also to the competitiveness of the European industry and economy as a whole. In line with the overall objectives of the State aid modernisation package launched in May 2012, DG COMP is reviewing guidelines in the field of research, development and innovation, risk capital, regional aid and environmental aid. These should provide examples of "good aid" contributing to the competitiveness of the European industry and the EU economy as a whole, in line with the Europe2020 strategy. The revised consolidated and review guidelines will be adopted throughout 2013, along with the revision of the Reference Rate Communication and of the Guarantee Notice.

Following the revision in 2012 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules of State aid procedure (hereinafter referred to as "the Procedural Regulation") the State aid Modernisation Initiative in the field of substantive state aid rules will be completed to increase efficiency and simplify state aid control by focusing enforcement on the most important distortions of competition and thus improve market functioning. While reforming the State aid procedures should primarily allow the Commission to reach faster decision-making, it will also help the Commission focus its enforcement on cases with the highest impact at the EU level. Also, the objective to promote growth can only be achieved if the Commission has the ability to prioritise its work. The reform of the State aid procedure mainly focuses on two areas: improving the handling of complaints and ensuring that the Commission obtains complete and correct information from the market (market information tools and sector inquiries).

Also, In the course of 2013 DG COMP will continue working on the development of new guidelines for the rescue and restructuring of financial institutions in a post-crisis regime, i.e. when the economic situation comes back to normal. In the meantime, the State aid crisis rules which were updated and extended on 1 December 2011 continue to apply.

On a more sectoral approach, at the end of 2012 the Commission adopted revised SA guidelines for broadband, with the Cinema Communication and the transport sector also undergoing review.

The revised Cinema Communication will replace the State aid assessment criteria of the Cinema Communication of 2001 and will provide guidance on how the Commission assesses State aid for audiovisual production. The review process was launched in June 2011 by the first of two rounds of public consultations. Based on the comments received, the Commission services published a draft of the new Cinema Communication on 14 March 2012. This draft revision attracted a lot of interest and, by beginning of October 2012, the Commission had received 100 contributions from Member States, film funding bodies, producers and other stakeholders. The main principles of the Cinema Communication of 2001 are expected to be maintained. However, the new text should extend the scope of the rules to State aid for film distribution and cinemas and set more proportionate limits for the possibility of Member States to impose, with the aid grant, territorial spending obligations. This measure is therefore intended to enhance the internal market principles in line with the State aid modernisation initiative.

Work on the revision of the Environmental Aid Guidelines started in 2012, aiming both at taking stock of the experience of subsidising a range of technologies and at taking account of market developments. As the revision of Guidelines in several other sectors, this project is part of the broader State aid modernisation initiative, which has the objective of devising a more focused State aid framework to better contribute to both the implementation of the Europe 2020 strategy as well as budgetary consolidation. In particular, the revision aims at ensuring that modernised State aid control facilitates the granting of aid which is well-designed, targeted at identified market failures and objectives of common interest, and least distortive, in accordance with the common principles of compatibility with the internal market. The work on the revised Guidelines is expected to be completed in 2013.

The new aviation guidelines should notably ensure the financing of regional airports which are necessary for local development or accessibility, whilst avoiding the duplication of non profitable airports and a waste of public resources. Certain aid to the airlines using these airports could be declared compatible under certain conditions but should not unduly distort competition.

Finally, the current Maritime Guidelines cover aid for "maritime transport" activities, i.e. the transport of goods and persons by sea.  By exception, they also apply to towage and dredging activities. The Guidelines provide for some fiscal measures, the most important being the "tonnage tax system", which consists of replacing corporate tax with a favourable tax, based on the tonnage of the ships (tonnage tax), without any link with the actual profit of the company. Other measures concern the reduction or exemption of labour-related costs (reduced rates of social protection contributions and of income tax for EU seafarers), crew relief (payment or reimbursement of the costs of repatriation of Community seafarers working on board EU ships) and training. In addition, they contain provisions on State financing of short sea shipping routes, Public Service Obligations (PSO) and Public Service Contracts (PSCs), investment aid (for example, incentives to upgrade EU registered ships to standards which exceed the mandatory safety and environmental standards), regional aid and restructuring aid. A public consultation on the existing guidelines took place in Spring 2012; the analysis of the results is ongoing.

*Antitrust and mergers*

In 2013, our policy review in relation to anti-competitive agreements will focus on the Block Exemption Regulation regarding technology transfer agreements (TTBR) adopted by the Commission in 2004 and which will expire on 30 April 2014, as well as on the accompanying Guidelines. The review aims at improving the framework conditions for the licensing of technology for production. Licensing is an important part of the innovation process as it facilitates dissemination of new technologies and products and allows companies to integrate and use complementary technologies. In some circumstances, technology transfer agreements can however have a stifling effect on competition. The revised framework aims at achieving the right balance between stimulating innovation and preserving a level playing field in the internal market. This initiative constitutes an important contribution to the Europe2020 Agenda, which identifies innovation as an important driver for growth and as one of its major pillars.

In the area of mergers, we have reflected on the way to further simplify certain procedures and information requirements under the current EU Merger Regulation. We have identified room for improvement and will consult our stakeholders on a proposal to streamline procedures, easing the administrative burden and cutting red tape for businesses (i.e. extension of the simplified procedure and overhaul of the notification forms). At the same time, this would allow us to focus our resources even more on problematic merger cases.

DG COMP will also proceed with the first preparatory steps for a possible review of the EU Merger Regulation. Such a revision could in particular concern: (i) a possible enforcement gap regarding the acquisition of non-controlling minority shareholdings – these do not currently fall under the EU Merger Regulation but can cause significant harm to competition and consumers; (ii) the process for case referrals between the Commission and Member States. DG COMP will reflect on the need and the possibilities to improve these aspects of the EU Merger Regulation. DG COMP will consult our stakeholders on these issues and the conceivable solutions.

**4.4.2. Effective and coherent public and private enforcement in the EU**

This activity also comprises DG COMP's contribution to the effective and coherent application of European competition law in the EU, via the European Competition

Network (ECN) and through cooperation with national courts. Effective and coherent enforcement action by the Member States' competition authorities and courts has an important role to play in achieving the general objectives of increased consumer welfare and improved competitiveness. It also contributes to ensuring a level playing field in the internal market.

In 2013 DG COMP will further the work in the antitrust field to contribute to more coherence and coordination in the ECN. The future membership of Croatia, as of 1 July 2013, will mean that it will have to be integrated into the workings of the ECN and that DG Competition will be required to review its envisaged decisions.

In 2012, DG COMP has been active in fostering convergence through 'soft harmonisation in a number of areas, e.g. in the area of leniency where the ECN strengthened the Model Leniency Programme, around which competition authorities align their leniency procedures. The ECN is also looking into possibilities of fostering convergence in other areas. This work will continue in 2013.

In order to enhance convergence, strategic impetus to the combined enforcement work of the NCAs and the Commission is given by heads of agency through their meetings which now occur twice a year. The working groups (such as on cartels and mergers) and subgroups that focus on enforcement in certain sectors (e.g. food, energy, telecoms, financial services) show an increasing level of activity resulting in more convergent outcomes in cases. This work is intended to continue in 2013.

In order to strengthen the effectiveness of the enforcement of competition law DG COMP will also step up its efforts of facilitating damages claims for breaches of the antitrust rules, and make it easier for consumers and firms who have suffered damage from an infringement of competition law rules to recover their losses from the infringer.

DG COMP intends to present a specific proposal on antitrust damage actions. The objective of this legislative initiative would be to ensure effective damages actions before national courts for breaches of EU antitrust rules in a coherent manner across the EU and to clarify the interrelation of such private actions with public enforcement by the Commission and the national competition authorities, notably as regards the protection of leniency programmes, in order to preserve the central role of public enforcement in the EU. The Commission also intends to publish non-binding guidance for national courts on the difficult issue of quantification of anti-trust harm. The final document will take due account of the results of the public consultation held in 2011 on a draft that was highly appreciated by both the legal and the economic community.

In 2013, the Commission will also continue its Training for Consumer Empowerment (TRACE) project, which focuses on the training of national consumer organisations in competition topics, this year with emphasis on procedural aspects and case management.

In the State aid field as well, DG Competition will continue its advocacy efforts in 2013, as a follow-up to the 2009 Notice on the Enforcement of State Aid Law by National Courts, by being actively involved in financing national judges' training programs, sending trainers to teach in workshops/conferences, organizing events etc.

### 4.4.3. International cooperation and convergence

Furthermore, DG COMP aims at promoting international convergence of competition policy and contributes actively towards this objective, in particular by creating effective tools for bilateral and multilateral co-operation with the Union's main trading partners and with third-country competition agencies, for example, in international venues such as the International Competition Network or the OECD. Another aim of competition policy is to include competition and state aid clauses in Free Trade Agreements ensuring a level playing field for European and foreign companies.

At the bilateral level, DG COMP invested in 2012 in a further strengthening of cooperation with competition authorities in a wide range of third countries, focusing its efforts on the EU's main trading partners (both traditional trading partners and major emerging economies). In 2012, high-level dialogues were held with representatives of the competition agencies of all agencies with which the EU has concluded a cooperation agreement or a Memorandum of Understanding. DG COMP engaged for example in fruitful discussions with the US federal competition authorities to further improve cooperation in the area of unilateral conduct and mergers. A second example is the conclusion of a Memorandum of Understanding between DG COMP and NDRC and SAIC, the Chinese authorities responsible for the enforcement of antitrust provisions of the Anti-Monopoly Law in the margin of the EU-China Summit in September 2012. In 2013, the Second Generation cooperation agreement between the EU and Switzerland is scheduled for signature. In addition, DG COMP expects to conclude negotiations on a similar agreement with Canada. In the course of 2013, we hope to be able to sign a MoU with the Competition Commission of India. Technical cooperation activities with the Chinese competition authorities will continue under the on-going trade cooperation programme (EUCTP II); a similar programme for technical cooperation with the Indian competition authorities will come on stream in 2013. Finally, DG COMP will continue its dialogue on Unilateral Conduct with the US agencies.

In the specific context of enlargement, significant progress was made in 2012 with the opening and the provisional closure of the competition chapter for Iceland. In 2012 DG COMP was actively engaged in the monitoring of the steel and shipbuilding protocol included in the Accession Treaty for Croatia. These activities will continue until July 2013 when Croatia is scheduled to join the EU. In 2013, the main policy objective, in addition to fostering a competition culture, is to further assist the candidate countries and potential 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 field. DG COMP will put a particular emphasis on achieving tangible results in relation to Turkey, Serbia, Montenegro and Macedonia.

DG COMP will also continue to participate actively in international fora such as the Competition Committee of OECD, International Competition Network and Unctad in the years ahead. In 2012, it took up responsibility as a co-chair of the Mergers Working Group of ICN and moved to a co-chair position of one of the Sub-Groups of the Cartel Working Group. In that same year, DG COMP was also given responsibility as project leader (together with US FTC) for the Steering Group projects on investigative processes in competition enforcement activities. In 2013, DG COMP will continue to play a prominent role in these multilateral competition policy fora, as well as in the discussions on the reform of the global financial system.

| ACTIVITY: POLICY COORDINATION, ECN AND INTERNATIONAL COOPERATION | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: The development and/or revision of EC competition law and policy to reflect market realities and contemporary economic and legal thinking and to give clear guidance to courts, national authorities, and economic operators** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| EC competition law and policy which reflects market realities and contemporary economic and legal thinking | More than 12 legislative and non-legislative policy documents delivered from November 2009 to 31 December 2012 | Delivery of at least 12 additional key legislative and non-legislative policy documents until end of 2014. |
| *Main policy outputs in 2013* | | |
| Legislative and non-legislative policy documents developing EC competition law and policy such as reviews of the existing secondary legislation, policy guidance documents and guidelines<br>- Actions for damages for breaches of antitrust law<br>- Commission Communication on quantification of harm in antitrust damage actions<br>- Within the framework of the SA Modernisation (SAM) initiative:<br>- Guidelines on rescue and restructuring aid to ailing financial institutions<br>- Revision of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<br>- Revision of the Communication on the reference rate<br>- Revision of the Guarantees notice<br>- Revision of the Cinema Communication<br>- Revision of the Guidelines on national regional aid<br>- Revision of the Environmental aid guidelines<br>- Revision of the Risk capital guidelines<br>- Revision of the Community Framework for State aid for Research and Development and Innovation<br>- Revision of the General Block Exemption Regulation<br>- Revision of the *de minimis* Regulation<br>- Communication on the notion of Aid<br>- Guidelines on state aid to maritime transport<br>- Revision on the Guidelines for the assessment of SA to airports and airlines<br><br>- Review of the Block Exemption Regulation and Guidelines on technology transfer agreements<br>- Simplification of certain procedures and information requirements under the EU Merger Regulation: Revision of the Merger Implementing Regulation and revision of the Commission Notice on a simplified procedure<br>- Preparatory steps for a possible revision of the Merger Regulation, in particular in relation to the acquisition of non-controlling minority shareholdings and the process for case referral | | |
| **SPECIFIC OBJECTIVE 2: Effective and coherent application of public enforcement of EU competition law** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of cases signalled to the ECN | Ca. 120[61] ) | Stable indicator |
| Number of envisaged enforcement decisions and similar case consultations in the ECN | Ca. 90[62] | Stable indicator |
| Number of proceedings initiated under Article 11(6) of Regulation 1/2003 with a view to ensuring consistent application of competition rules | 0[63] | Level of the indicator to remain zero[64] |
| *Main policy outputs in 2013* | | |
| Advise to national competition authorities concerning the application of the EU competition rules. Opinions, written observations and oral observations to national courts on questions concerning the application of the EU competition rules. | | |
| *Main expenditure-related outputs in 2013* | | |
| Organisation of a dozen seminars of training of judges in order to contribute to effective and coherent public enforcement of EU competition rules by national courts. | | |

[61] Based on data from 2012.

[62] Based on data from 2012.

[63] Based on data from 2012.

[64] Zero level of this indicator implies that the coherent application of EC competition law through the ECN network will allow the Commission to abstain from using Article 11(6) of Regulation 1/2003; i.e. from taking over cases on which a competition authority of a Member State is already acting.

| SPECIFIC OBJECTIVE 3: Effective and coherent private enforcement of EU competition law | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of cases of injunctive relief and compensation of harm suffered as a result of breaches of EU competition rules[65] | N/A | Stable indicator |
| *Main policy outputs in 2013* | | |
| Legislative and non-legislative policy documents ensuring a more effective and coherent private enforcement of EU competition law.<br>Opinions, written observations and oral observations to national courts on questions concerning the application of EU competition law | | |
| *Main expenditure-related outputs in 2013* | | |
| Organisation of a dozen seminars of training of judges in order to contribute to effective and coherent private enforcement of EU competition rules by national courts.. | | |

| SPECIFIC OBJECTIVE 4: Strengthened international cooperation in enforcement activities and increased convergence of competition policy instruments across different jurisdictions; establishment of well-functioning competition regimes in candidate countries and potential candidate countries | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of third countries with whom the EU has 1st generation competition agreements | 4 | 4 |
| Number of third countries with whom the EU has 2nd generation competition agreements | 0 | 2 |
| Number of memorandum of Understanding with competition authorities in third countries | 4 | 5 |
| Number of third countries with whom the EU has free trade agreements containing competition/state aid clauses | 31 | 50 |
| Number of contributions to OECD ,ICN and UNCTAD | In 2012, 14 submissions for OECD, 4 contributions for UNCTAD | 10 -12 submissions to OECD, ICN and UNCTAD |
| Number of candidate countries with whom accession negotiations on the competition chapter have been opened | 0 | 3 (Serbia, Macedonia and Montenegro) |
| *Main policy outputs in 2013* | | |
| Inclusion of effective competition and state aid provisions in bilateral trade agreements in two cases (Singapore and Canada).<br>Signing of Second Generation Agreements with Switzerland and Canada.<br>Singing of MoU with India. | | |

[65] The success of a particular case of compensation – whether in front of courts or through non-judicial means - depends on a number of factors outside the control of competition policy. Therefore, the causal link between competition policy actions and the result indicator is non-exclusive.

# 5. Specific objectives for horizontal activities

## 5.1. Policy Strategy and Coordination

DG COMP is committed to devise and implement a strategy aimed at ensuring that i) its above-mentioned operational activities have the biggest effect on the functioning of the markets and ii) through its competition advocacy, regulatory and other initiatives undertaken at the EU level and Member State level contribute to a more competitive market environment in Europe.

### 5.1.1. Strategy: delivering results

DG COMP prioritises its actions in order to have the biggest possible impact on the functioning of markets. Prioritisation entails a careful selection of sectors which are the most important for the competitiveness of the EU economy and the functioning of which has the greatest - direct or indirect – effect on consumers, and of the most appropriate tools (enforcement, soft law, (sectoral) regulation, competition advocacy) to achieve such an impact.

In order to ensure timely and effective resolution of opened proceedings, DG COMP follows progress in each enforcement case, monitors workload and outputs, and allocates resources accordingly. Also, DG COMP constantly assesses its performance, structures and processes to make sure that it is effectively delivering its objectives.

Strategic planning within DG COMP, in accordance with the Commission Strategic Planning and Programming cycle, ensures that its policy proposals and enforcement acts pass smoothly and efficiently through the Commission decision making system.

In accordance with the Commission's commitment to better regulation, all reviews of substantive competition rules are impact assessed. Ongoing and planned impact assessments for the rest of the mandate relate to the Transfer of Technology Block Exemption and several guideline reviews in the field of state aid control: Rescue and Restructuring for the real economy; financing of airports and start-up aid to airlines departing from regional airports; national regional aid; aid for research, development and innovation; risk capital; environmental aid and *de minimis* aid.

Also, as follow up to the Green Paper on card internet and mobile payments drafted under the joint responsibility of Commissioner Barnier and Vice President Almunia and published at the beginning of 2012, the Commission is planning to publish a proposal for directive and a proposal for regulation, with their respective Impact Assessments by April 2013. The proposal for directive will cover the issues raised in the Green Paper and which pertain to the review of the Payment Services Directive. The proposal for Regulation will cover Interchange Fees for Payment Card Transactions and related aspects.

In the last years DG COMP has undertaken ex post evaluations of some of its cases, and worked on defining indicators that would best reflect the impact of its activities.

The customer benefits methodology introduced for the first time for the Management Plan for 2011 and also used in this Plan is a result of these efforts.

Also, all reviews of substantive rules obviously entail a careful evaluation, including consultation of stakeholders, on how the existing rules have been applied, of any issues that have arisen in the application and of the resulting actions to be undertaken. In 2013 DG COMP will further enhance, as regards its own enforcement and policy activities, impact assessment and ex post evaluation so that lessons from past experiences are fed into EU legislation and that the added value of EU action can be demonstrated on the basis of solid evidence. Public consultations will also be held throughout 2013 on the various draft texts contained within the State aid modernisation initiative.

#### 5.1.2. Competition advocacy and transparency

Competition law enforcement is not always the most efficient tool for remedying market failures, in particular in situations where the root of the problem does not lie in individual company behaviours as such, but where the market failures are structural and generalised.

In such a situation the extensive market knowledge that DG COMP has through its enforcement activities and/or sector inquiries can inform regulatory initiatives taken at EU level. By framing the problem in competition terms DG COMP often contributes to finding more far-reaching and durable regulatory solutions. In this way, DG COMP has brought a substantial contribution to the gradual opening up of the EU energy markets for example, and its enforcement activities complement regulatory action under the 3rd liberalisation package.

By engaging in competition advocacy DG COMP also ensures that regulatory and other initiatives at the EU level and Member State level do not contain or lead to unnecessary restrictions of competition and that they promote competition to the benefit of consumers.

In particular, regarding EU level regulation, the most important legislative proposals and policy initiatives proposed under the lead of other Commission departments have to undergo an assessment of their likely impacts on competition. DG COMP has developed specific guidance to this effect.

DG COMP also contributes to the Commission's wider economic policy and economic governance agenda[66]; for example, by providing input with a view to Country Specific Recommendations in the context of Europe 2020. Likewise, DG COMP provides input in the wider context of conditionality and structural reform, such as in the case of reforms aimed at strengthening the competition enforcement systems and competition enhancing structural reforms in specific sectors and regarding certain services as part of the conditionality relating to the adjustment programmes agreed in respect of Greece, Ireland and Portugal. It also contributes extensively to the work in the context of these Memoranda that concern the functioning and reform of the financial sector as well as to Spain's financial stability support package agreed in 2012.

[66] See provisions on economic policy in Title VIII, Part Three of the TFEU, on economic policy.

In 2013 DG COMP will continue to work together with other services of the Commission and with other institutions, in particular the European Parliament, the Council and the ECB. In particular, DG COMP will continue to provide input to future legislation concerning the financial services sector and will closely work together with other Commission services, in order to help improve regulatory frameworks affecting the pharmaceutical and other health sectors. DG COMP will also actively participate in the implementation of the Europe 2020 Flagship initiatives and support the work undertaken under the Single Market Act II, in particular any monitoring exercises aimed at identifying potential malfunctioning in key sectors of the EU economy.

As for regulation at the national level, in 2013 DG COMP will where appropriate continue to contribute to promoting pro-competitive reforms at the national level, not least by contributing to the assessment of the competition aspects of Member States' national reform programmes under the Europe 2020 Strategy and progress made under the Country Specific Recommendations in the wider context of economic governance under the European semester.

Competition advocacy also entails communicating effectively the benefits of competition and the scope and impact of our activities to citizens, businesses and policy makers in order to foster a competition culture, to facilitate compliance and to legitimise public resources spent.

DG COMP produces a detailed report on its activities in its Annual Competition Report to the European Parliament (and to European Economic and Social Committee), and engages in a structured dialogue around this and the presentation of the Commission Work Programme. More generally, DG COMP engages with the European Parliament at various levels, in particular the Economic and Monetary Affairs Committee (ECON), on a multitude of topics and strives to provide timely and effective replies to parliamentary questions.

Early in 2013 the Parliament will adopt a Resolution on the 2011 Competition Report. The Report features a "new look" to better meet the needs of Parliament, as expressed in its Resolution on the 2010 Competition Report. DG COMP will engage with Parliament to ensure the adequate follow-up to the forthcoming resolution.

DG COMP engages with the Council on various issues and in various fora. For example, the Vice President attended ECOFIN Council and DG COMP Director General participated to Economic and Financial Committee meetings on banking issues in 2012.

Still on transparency, DG COMP strives to handle all requests for access to documents efficiently and within the time-limits set by Regulation 1049/2001. In 2012 DG COMP managed fewer but more complex requests (315 (until mid-October) compared to 451 in 2011) while ensuring an increasing transparency through explanations provided by the refusals letters.

Also in 2012, an important advocacy action was performed to actively support the General Secretariat in the recast of Regulation 1049/2001. The action was successful and allowed the Commission to convince the Council to take a position very close to its own, in particular as regards documents in Competition files. The process is now on hold after the failure of the DK presidency to reach a compromise.

In 2013 DG COMP expects to further increase the quality (by adapting the templates following some recent judgments from the European Courts[67]), the horizontal guidance and the sharing of experience for the handling of requests. Specific training on access to documents is provided in the framework of the Training cycles in each instrument and adapted to the latest case law.

DG COMP will also continue to ensure timely and effective management of confirmatory requests.

| **SPECIFIC OBJECTIVE 1 : Implementing Strategic Planning and Programming so that DG COMP delivers its policy objectives, contributing to the overall Commission strategy in an effective, timely, efficient and accountable manner** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Timely preparation and delivery of the various elements of the Strategic Planning and Programming cycle (CWP, MP and AAR) | All documents delivered within the deadline in 2012 | All documents within the Deadline |
| Delivery rate (adoption by the College) of initiatives included in the Commission Work Programme and in the Catalogue | 33% | 100% for the Commission Work Programme |
| Opinion of the Impact Assessment Board | 1 request for resubmission, all other draft impact assessments received a positive opinion | 100% positive opinions, resubmission rate below Commission average |
| *Main policy outputs in 2013* | | |
| Preparation and delivery of the various elements of the Strategic Planning and Programming cycle (CWP, MP and AAR)<br>Evaluation Plan (see Annex 4).<br>Impact Assessment reports supporting initiatives to be adopted in 2012 and later | | |

| **SPECIFIC OBJECTIVE 2: Competition advocacy contributing to a pro-competitive regulatory framework at EU and national level (AGS + European Semester)** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Review of competition aspects of initiatives adopted and implemented at EU level | N.A. | 100% |
| Number of country specific recommendations promoted and co-monitored by DG COMP | 22[68] | Increase in the indicator's level[69]. |
| *Main policy outputs in 2013* | | |
| Pro-competitive modification proposals to legislative and policy initiatives at EU level,<br>Proposals for country specific recommendations in the context of the EU2020 strategy | | |

[67] See in particular the Court judgments of 28 June 2012 in Odile Jacob and Agrofert cases, Case C-404/10 P and C-477/10

[68] In the framework of the 2012 European Semester, 17 Member States have received recommendations regarding pro-competitive reforms in a wide variety of sectors, including banking, services and network industries, which entail liberalisation / improvements in efficiency. In addition, a general recommendation was also addressed to the Euro-area member States, calling for bank balance deleveraging, integration in supervisory structures and practices and structural reforms. DG COMP's competition law enforcement and competition activities contribute to these objectives.

[69] Whilst a decrease in the indicator's level would signal that the Recommendation has been met and would be a positive development, in view of the importance of competition enforcing structural reforms for growth and overcoming the current crisis, this indicator refers to an increase in the mid-term.

| SPECIFIC OBJECTIVE 3: Timely response to questions from Members of the European Parliament | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Timely preparation of the replies to EP questions | All documents delivered within the deadline in 2012 | All documents within the Deadline |
| Delivery rate | 98% | 100% |
| *Main outputs in 2013* | | |
| Responses according to target. | | |

| SPECIFIC OBJECTIVE 4: Timely and effective handling of requests for information under Regulation 1049/2001 | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Respect of the time-limits for replies | 85% of the replies were in time | DG COMP will aim at a full respect of time limits |
| *Main outputs in 2013* | | |
| Revising the templates for State aids, antitrust and merger requests. Consistent approach to refusal letters using high quality reasoning which is likely to reduce the confirmatory requests. Closer monitoring of the compliance with deadlines. Providing training as part of the training cycles provided in each instrument. | | |

## 5.2. Administrative Support

Under this heading come a number of horizontal activities in DG COMP. These include the following:

- **Document management:** this activity consists of putting in place and maintaining an effective document management system so that any document connected with the DG's official functions can be electronically filed, stored and retrieved in any moment irrespective of its original form and document management system in place.
- **IT:** this activity consists of defining, planning, setting up, maintaining and developing high quality Information and Communication Technology (ICT) infrastructures, tools and services that staff is adequately supported in their operation.
- **Human resources management:** this activity consists of recruiting, training, assessing, motivating and retaining highly qualified staff so that effective and efficient operation of the DG, as well as promotion of equal opportunities within the DG are ensured.
- **Financial resources management:** this activity consists of planning, performing, executing, monitoring and reporting on the spending of financial resources so that sound financial management is ensured throughout the DG's activities.
- **Internal control and audit:** this activity consists of assessing the compliance, efficiency and effectiveness of the control system in place by assisting the Director General and management in controlling risks and monitoring compliance, providing an independent and objective opinion on the quality of management and internal control system and making recommendations in order to improve the efficiency and effectiveness of operations and to ensure economy in the use of resources.
- **Ethics, security, business continuity and EMAS:** this activity consists of ensuring within the DG that staff and premises meet the highest possible ethical and security standards, that business continuity is effectively ensured and that environmental performance is improved.

Most of the objectives under e-document management and IT hereunder are dependent on the enhancement (evolutive maintenance) of existing information systems or on the launch of new systems. It must be noted in this respect that:

- o The DIT[70] reviews proposals for new information systems and for evolutive maintenance on existing systems; the DIT prioritises between IT projects based inter alia on their contribution to the new IT governance of the Commission and on budgetary resources for IT systems development;
- o In addition, information systems development is subject to the new IT governance of the Commission.

For budgetary reasons, IT expenditure in the existing document management and case management systems of DG COMP had to be kept to an absolute minimum in

[70] DIT stands for Document and IT Systems Group. The DIT is the IT Steering Committee of DG COMP.

2012. Investment in these critical tools will have to resume in 2013 to ensure business continuity and to cater for their evolution in line with user needs.

| E-DOCUMENT MANAGEMENT | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: An effective and comprehensive document management tool integrated with DG COMP case-management applications and offering the specific functionalities required by competition case-handling.** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Integration of Edma (DG COMP's document management system) with DG COMP's case management applications including integration with Hermes/ARES | Integration of EDMA with the applications eQuestionnaire, ECN-FollowUp, National Courts implemented<br><br>Implementation of a secure access in ARES taking into account the sensitivity of documents bearing the COMP OPERATIONS marking<br><br>Performance improvement patch implemented mid-2012 | Implementation of the archiving module of HAN (HERMES-ARES-NOMCOM) for DG COMP files according to SG schedule |
| Good satisfaction level of the users on the new functionalities implemented in the recent releases of the case management applications in the yearly satisfaction surveys on the services of Directorate R, among others for Optical Character Recognition processes as will be necessary for the e-Discovery project (See IT specific objective N°2). | 48% for 2010 (no survey concerning 2011) | 80% satisfaction in annual staff survey |
| *Main outputs in 2013* | | |
| Successful integration of new versions of ARES in the specific DG COMP IT and document management environment. | | |

| **SPECIFIC OBJECTIVE 2: Support of paperless document exchanges (e-Commission) with 3rd parties** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Incrementing the paperless document exchanges with ECN using the ECN-ET system | - ECN-ET operational for Antitrust case related documents<br>- More than 80% of document exchange between DG COMP and the ECN for Antitrust cases<br>- 0% of document exchange between DG COMP and the ECN for Merger cases | - 50% of document exchange between DG COMP and the ECN for Merger cases to be covered by End 2013 |
| Incrementing the paperless document exchanges with 3rd parties by using eTrustEx | 0 documents exchanged. Development finalised, testing ongoing | Operational in 2013 - 30% of document exchange with 3rd parties to use eTrustEx by End 2013 |
| *Main outputs in 2013* | | |
| Improved communication with the European Competition Network (ECN) by further improving (basically in terms of capacity and bandwidth) the information system ECN-ET specific for the exchange of documents with ECN (handling of sensitive documents) for merger cases. A pilot project as to extend ECN-ET with document repository and filing functionalities has been submitted to the ISA programme (awaiting approval).<br>By End 2012, the EtrustEx.project (trusted document exchange platform) will enter in operation in beta testing, to be fully operational in 2013. EtrustEx is an ISA project jointly carried out with DIGIT.B4. The benefits of using EtrustEx will be: secure platform; equal treatment of parties by providing a standard means of exchange; ability to handle large amount and volumes of documents; significant reduction of sendings of paper and/or data storage media; reduction of parcel costs; increasing registration efficiency by interoperating with DG COMP document management system (metadata automatically transferred, no need to manually encode descriptive metadata). | | |

| **SPECIFIC OBJECTIVE 3: Well functioning case management applications that correspond to the needs expressed by the users (Natacha, ISIS, CMS, CHOPIN)** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of training/coaching sessions/year | 26 (2012 until October) | 30 |
| Number of information and feedback gathering sessions in units | 15 (2012 until October) | 15 |
| Good satisfaction level of the users on the case management applications in the Dir R yearly satisfaction surveys | 61% for 2010 (last survey conducted early 2011) | 80% satisfaction in annual staff survey |
| *Main outputs in 2013* | | |
| Continued and improved case management applications (Natacha, ISIS, CMS, CHOPIN) and effective maintenance. | | |

| **SPECIFIC OBJECTIVE 4: Effective provision of access to file support services** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| User satisfaction | 63% for 2010 (last survey conducted early 2011) | 80% satisfaction in annual staff survey |
| *Main outputs in 2013* | | |
| Efficient production of access to file versions in full cooperation with case-teams in Mergers, Antitrust and cartels. | | |

| **SPECIFIC OBJECTIVE 5: Full compliance of DG COMP's archiving system with E-Domec rules** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Implementation status of E-Domec archiving rules | Compliance<br>31 major Sendings to the Historical Archives in 2012 (more than 21 000 binders) | Timely transmissions to the Historical Archives of all files at the end of their DUA (durée d'utilité administrative) |
| *Main outputs in 2013* | | |
| Elimination of the backlog of files to be transferred to the HA completed in 2012)<br>Further cleaned storage spaces (elimination of unfiled documents or documents which do not have to be kept according to the retention policy of the Commission).<br>Successful transfer of DG COMP active files to our new building during the move taking place in 2012/2013 (already started). | | |

## IT

Further to resuming work on DG COMP's critical systems in the field of Document and Case Management, IT efforts in the year 2013 (and beyond) will focus on systems which allow the realisation of savings. This will include not only the active participation of DG COMP in on-going IT rationalisation efforts in the Commission, but also ring-fencing resources to invest in IT systems allowing to increase efficiency in order to compensate for the foreseen decrease in human resources.

| **SPECIFIC OBJECTIVE 1: IT rationalisation in the Commission – Sub domain for Case Management Systems** | | |
|---|---|---|
| *Result Indicators (project milestones)* | *Latest known result* | *Target (mid-term)* |
| Assessment of existing Information Systems within the scope of the subdomain | Not applicable | Q1-2013 |
| Survey & Assessment of solutions implemented by other international organisations with similar needs | Not applicable | Q2-2013 |
| High-level analysis of business processes in Case Management | Not applicable | Q3-2013 |
| Definition of core common requirements and features | Not applicable | Q4-2013 |
| *Main outputs in 2013* | | |
| During the year 2013, the inception phase of the project will be started and carried out.<br>The project remains subject to significant risks, however, arising in particular from uncertainty in the funding and governance structure across several DGs. | | |

| **SPECIFIC OBJECTIVE 2: Deploy Sinequa (e-Discovery solution) across DG COMP** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of cases that benefited from the use of Sinequa (indexed and made searchable) | 0 | 40 (2013)<br>Roll out of Sinequa progressively across the DG (dozens of cases in 2013). |
| *Main outputs in 2013* | | |
| On the technical side, the deployment of Sinequa will require IT integration work with the existing Document Management System of DG COMP. In particular, new processes will be implemented in the field of document management to ensure the timely and reliable Optical Character Recognition of non-machine readable documents.<br>On the user side, Sinequa carries the potential for appreciable changes in working methods in daily case management. This follows from the advanced search functionalities and document tagging and annotation functionalities offered by Sinequa. The latter's deployment will therefore have to be accompanied by change management activities with a view to users appropriating this new tool.<br>Ultimately, the successful deployment of Sinequa is to yield substantial productivity gains allowing to maintain the level of DG COMP's output in spite of the expected increase in volume and complexity of case files as well as the decrease in terms of human resources. | | |

| **SPECIFIC OBJECTIVE 3: Efficient support to competition investigations by providing a collaborative platform, *i.e.* a software solution facilitating collaboration between the members of a case team** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Integrate Sinequa into the collaborative platform solution | Not applicable | Q1-2013 |
| Number of competition cases benefiting from a collaborative workspace | 5 (end 2012) beta testing with real cases | 2013: deploy across the merger and cartel networks<br>2014 and beyond: deploy across the antitrust and State aid networks |
| *Main outputs in 2013* | | |
| The purpose of a collaborative platform is to provide actual support for collaboration within case teams through a dedicated software solution. Further to comprising a document repository that is shared at case team level, collaborative functionalities would for example allow case team members to annotate, tag and highlight documents, to share and disseminate the results of case handling work across the team and to co-author, that is to say draft concurrently a document, whilst being able to rely on functionalities for automatic versioning and document history.<br>The main output in 2013 will be to integrate Sinequa in MS-Sharepoint workspaces and to deploy the resulting solution across the merger and cartels networks. A key benefit expected from the project is to further reinforce productivity and efficiency in daily case handling work in DG COMP. | | |

| **SPECIFIC OBJECTIVE 4: Efficient exchange of information with Member States in the State Aid (SA) policy area.** | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Number of languages supported by SARI application for Member States to report their SA expenditures | 1 (EN) in use by all Member States in 2012 | Most Member States linguistic versions to be available in 2013 |
| New Genis Information System to support State Aid notifications by Member States | 0% completed | Completed (Q4-2013) |
| *Main outputs in 2013* | | |

State Aid Reporting Interactive (SARI) is a web based application allowing Member States to provide their annual report on State aid expenditure to the Commission. Following the full operational deployment of SARI in 2012 (user interface in English), it is planned to provide a multilingual version of SARI to most Member States in the first half of 2013, in time for the report concerning the year 2012.
The objectives of the project Generic Interoperable Notification Service (GENIS), submitted to the Interoperable Solutions for Administrations (ISA) Commission programme, is to modernise the data and information exchange processes between Commission (COMP, AGRI, MARE, SG) and the Member States concerning the State Aid Notification process. Following the successful business process analysis of State aid processes, the development of common reusable software components required to build the GENIS Information System started in Q3 2012. The GENIS Information System will be developed in 2 phases:

- GENIS IS Version 1, planned to be ready for Q4/2013 will substitute the ageing SA notification application developed, maintained and managed at DG COMP.
- GENIS IS Version 2, planned to be ready for Q4/2014, will provide a shared State Aid case file to eliminate manual interactions (via email, phone, fax, etc.) between the Commission and Member States and will allow tracking exchanges between them once the notification is completed.

| **HUMAN RESOURCES MANAGEMENT** | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: Recruit, train, assess, motivate and retain highly qualified staff so that effective and efficient operation of the DG, as well as promotion of equal opportunities within the DG are ensured** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Representation of women among administrators and at management positions | - 45% for non-management administrators<br><br>- 31% for middle management<br><br>- 23% for senior management<br><br>(source: DG COMP HR Midterm Report 2012) | - Maintain a level equal to or higher than 43% for non-management administrators<br>- Maintain a level equal to or higher than 30% for middle management<br>Reach 25% for senior management<br><br>(source:Commission targets) |
| % of permanent staff leaving the DG before two years of employment in the DG | 0% (result for first semester 2012 based on DG COMP HR Midterm Report 2012) | Target: < 7 % |
| Average duration of vacancy | < 2.2 months (DG COMP 2012 midterm HR report) | < 2 months |
| Average number of training days per staff member | 5 (result for 2011 based on HR scorecards) | > 7 days/year, including 2,5 days of on-the-job training |
| Staff satisfaction in general with HR internal services | 83% for 2010 (last survey conducted early 2011) | 90% satisfaction in annual staff survey |
| *Main outputs in 2013* | | |

Implementation and monitoring of the HR Strategy and Action Plan
Implementation of a Learning and Development Framework for 2012-2013
Development of a career management system for AD staff

## ETHICS, SECURITY, BUSINESS CONTINUITY AND EMAS

### SPECIFIC OBJECTIVE 1: Knowledge and respect by staff of rules on ethics based on DG COMP's up-to-date Code of Ethics

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| % of attendance at newcomers' trainings | 73% for newcomers' training | 90% for newcomers' training |
| Number of ethical incidents (sanctions by IDOC or OLAF) | One ethical incident (1/11/2011-31/10/2012) | No ethical incident |
| Staff satisfaction with the handling of ethical issues within DG COMP | 87% for 2010 (last survey conducted early 2011) | 90% |

*Main outputs in 2013*

Adoption and implementation of anti-fraud strategy. Trainings and awareness raising events on ethics.

### SPECIFIC OBJECTIVE 2: Knowledge and respect by staff of DG COMP's up-to-date security rules

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| % of attendance at newcomers' trainings | 85% for newcomers' training | 95% for newcomers' training |
| Number of inadvertent disclosures of confidential information by staff | 14 reported incidents (01/11/2011-31/10/2012) | Elimination of inadvertent disclosures of confidential information |
| Staff satisfaction with the handling of security issues within DG COMP | 87% for 2010 (last survey conducted early 2011) | 90% |

*Main outputs in 2013*

Review of DG COMP's Security Guidance following move to new building. Trainings and awareness raising events on security.

### SPECIFIC OBJECTIVE 3: Effective management of business continuity based on a fully implemented and tested Business Continuity Plan

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| % of critical staff and their back-up having attended business continuity training | 80 % | 85 % |
| % of correct contact details in the NOAH IT Business Continuity Application | 93 % | 95 % |

*Main outputs in 2013*

Business continuity exercise. Trainings for critical staff and their back-ups.

### SPECIFIC OBJECTIVE 4: Improvement of DG COMP's environmental performance

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| % reduction in electricity consumption | 4% reduction (between 2010 and 2011) | 2 % reduction |
| % reduction in paper consumption | 14% reduction (between 2010 and 2011) | 5 % reduction |
| % of green office supplies | 40% for 2010 (last survey conducted early 2011) | 55 % of ecological material |

*Main outputs in 2013*

Awareness raising actions. Implementation of selected actions by EMAS Working Group.

| SPECIFIC OBJECTIVE 5: Successful organisation of DG COMP's move to the Madou building– | | |
|---|---|---|
| *Result Indicators* | *Latest known result* | *Target (2013)* |
| Proper installation of DG COMP's staff in the Madou Plaza | About one third of DG COMP staff will be installed in the Madou Plaza by the end of 2012 | The entirety of DG COMP staff installed in the Madou Plaza |
| *Main outputs in 2013* | | |
| Complete installation of DG COMP in the Madou Plaza | | |

| FINANCIAL RESOURCES MANAGEMENT | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: Implement and maintain an effective internal control system so that reasonable assurance can be given that resources assigned to the activities are used 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** | | |
| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
| Budget execution (commitments) | 99.5% (2011) | Close to 100% |
| All transactions made in accordance with financial circuits | 100% | 100% |
| Payments executed within contractual limits | 97.7% (2011) | Close to 100% |
| Budget coverage of first-level ex-ante control 100% (commitment and payments) | 100% | 100% |
| Error rate on financial transactions | 0 (2011) | Close to 0 |
| Cases received by the Ombudsman related to procurement procedures | 0 | 0 |
| Legal cases following complaints in procurement procedures | 0 | 0 |
| Number of instances of overriding controls or deviations from established procedure | 2 (2011) | Close to 0 |
| *Main outputs in 2013* | | |
| Regular reporting on budget execution.<br>Regular reporting on state of play for tender procedures and contract management.<br>Weekly report on open invoices to all Directorates.<br>Development of a COMP anti-fraud strategy. | | |

| INTERNAL CONTROL AND AUDIT | | |
|---|---|---|
| **SPECIFIC OBJECTIVE 1: Effective assessment of the compliance, efficiency and effectiveness of the control system in place** | | |
| *Result Indicators* | *Latest known result* | *Target* |
| Time to address pending critical / very important recommendations after acceptance | Updated status of outstanding recommendations in issue-track | No critical / very important recommendations left pending without an action plan for more than 1 month after acceptance. All recommendations from reports before 2011 fully implemented |
| *Main outputs in 2013* | | |
| Adequate follow-up of all pending audit reports.<br>Annual review on the implementation of the effectiveness of the internal control standards. | | |

# ANNEX 1: Planning of evaluations and other studies (sent in a separate file in excel format)

## Annex 4 – Planning of evaluations and other studies

| N° | Title of evaluation or study (possibly working title) | Intended use of the evaluation or study | | | Type of evaluation or study | | Timing | | Associated services |
|---|---|---|---|---|---|---|---|---|---|
| | | CWP initiative/expenditure instrument that the evaluation or study will support | Other purpose* | ABB Heading | Prospective** (P) or retrospective (R) | External (E), internal (I), internal with external support (I&E) | Start (month/ year) | End (month/ year) | |
| **I. Ongoing evaluations (work having started in previous years)** | | | | | | | | | |
| 1 | Evaluation of customer benefits from antitrust (cartels) and merger enforcement | . | To estimate the impact of antitrust action on consumers. Results allow for more effective competition advocacy | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | R | I | Continuous activity | Continuous activity | |
| 2 | Evaluation of the application of the Commission Communication on the application of the state aid rules to short term export credit insurance | Revision of the Communication on short term export credit insurance No. 14 of the CWP for 2012 | Examine experience with the application of the Communication with a view to possibly revising the rules by end of 2012 | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P&R | E & I | 01/01/2011 | 12/2012 | |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 3 | Evaluation of the application of the state aid Block Exemption Regulation | | Review the application of the general Block Exemption regulation with a view to possibly revising the rules | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P&R | I & E | 01/09/2011 | 2013 | |
| 4 | Evaluation of the application of the Regional Aid Guidelines | Review of the Regional Aid Guidelines. No. 15 of CWP for 2012 * | To identify the determinants of investment or location decisions of the firms in question, including the incentive effect of regional aid in these decisions. To assess the consequences of the investments in terms of regional and employment benefits and externalities. To analyse the distortive effects of aid for competitors and/or other regions. | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P & R | E & I | 01/03/2011 | 12/2012* | |
| 5 | Evaluation of the Community Guidelines on State aid for environmental protection | | Review application of the Guidelines with a view to possibly revising the rules | | P & R | E & I | 01/2012 | 2013 | |
| 6 | Evaluation of the Community guidelines on aid to the maritime industry | | Review application of the Guidelines with a view to possibly revising the rules | | | | 01/01/2012 | | |
| 7 | Survey of merchants' costs of processing cash and card payments (COMP/2012/003) | To provide benchmarks in the assessment of any future claims for an exemption under Article 101(3) in competition cases concerning interchange fees for card transactions. | To provide information that will allow the Commission to compare the costs incurred by merchants in processing face-to-face transactions with different payment instruments. | | R | I & E | 12/2012 | 06/2013 | |

* Adoption of RAG has been rescheduled to 2013

| II. Evaluations planned to start in 2013 or later | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | Framework contract for economic advice in the assessment of aid for postal and aviation services | | The framework contract will cover economic studies in the field of postal services. DG COMP is seeking the provision of economic advice to help it develop a coherent and consistent practice in the appraisal under State aid rules. | Policy | P | | 06/2013 | 2017 | MARKT, MOVE |
| 2 | Framework contract for economic advice in the assessment of aid for postal and aviation services as well as the assessment of restructuring aid for the industrial and transport sector | | The framework contract will also cover economic studies in the field of airports and airlines services. DG COMP is seeking assistance and advice on the calculation of possible State aid to the airports and the airlines as well as on the calculation to assess possible compatibility of such aid.<br>Finally, the framework contract will also cover economic studies in the field of restructuring aid, in particular for the industrial and transport sector. Here, DG COMP is seeking economic advice in the economic appraisal of both restructuring plans and the provision of public funds under the MEIP. | Policy | P | E | 06/2013 | 2017 | MARKT, MOVE |
| 3 | Broad merchant payment acceptance survey (COMP/2012/004) | To provide benchmarks in the assessment of any future claims for an exemption under Article 101(3) in competition cases concerning interchange fees for card transactions. | This is an auxiliary survey, which will give the Commission the possibility to compare the results of the "Survey of merchants' costs of processing cash and card payments" (ref: COMP/2012/003) with more general data concerning merchants that were not targeted under the first survey. | | R | I & E | 01/2013 (expected) | 08/2013 (expected) | |

| III. Other ongoing or planned studies *** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | The impact of modern retail on choice and innovation | | The study intends to look at the impact of changes in the retail sector on consumer welfare; in particular, it will aim to identify the drivers of choice and innovation. Apart from retail concentration (which appears to be high in some local markets in the EU), the study will also assess other factors (such as shop type, concentration of suppliers, consumer income etc.) to correct for structural differences that may influence choice and innovation. | | R | E | 05/2012 | 02/2014 | AGRI, ENTR, MARKT, SANCO |
| 2 | Study on the application of Articles 101 and 102 TFEU by national courts in all Member States in the 2009-2013 timeframe | | Examination of national courts' decision-making practice with a view to further improve the coherent application of EU antitrust rules | Policy | R | E | 12/2013 | 06/2014 | |

*For example: as required in the specific legal acts, for use in Fitness checks or for accountability purpose

** Please note that impact assessments should not be included

*** Study understood as *'a document resulting from intellectual services necessary to support the institution's own policies or activities' [ARES(2012)247073]*

# ANNEX 2: Communication plan 2013

## I. Policy context

Europe has been fighting the economic and financial crisis for over four years. Our competition policy actively contributes to finding solutions to the present difficulties **by setting the best conditions to exit the crisis**, by stimulating growth and deepening the Single Market. Action towards restructuring financial institutions continued this year and more initiatives supporting growth were launched, such as the modernisation of state aid rules including revised sector guidelines for state aid (on broadband, the environment, Airport and Aviation, regional aid, etc.).

In the context of the political priorities, the Competition DG's main message for 2013 is that **competition policy and control are all the more important in times of crisis**. Therefore, our communication actions will concentrate on showing our target audience exactly how competition policy can help to overcome the crisis, return to growth at a sustainable pace, boost EU competitiveness and keep European markets open and fair.

## II. Target audience

**European citizens (general audience) via our main stakeholders (target audience)**

Considering the current resources, the size of the audience (500 million European citizens) and the different language regimes, the Competition DG does not target citizens directly in its communication activities. However, it reaches out to citizens via its main stakeholders, i.e. those subject to EU competition legislation, in particular businesses, **public** authorities (dealing with State aid), other enforcement agencies, opinion leaders and law-makers (EP, other enforcement agencies, press, academics, think tanks, the legal community in general).

The dialogue with citizens is considered by the Competition DG as critically important and is being achieved mainly by regular interaction with their representatives in the European Parliament and the Committees (CoR, EESC). In 2013, the Competition DG will aim to communicate better its initiatives and decisions in line with the communication strategy for the European Year of Citizens.

## III Communication objective

The Competition DG's main priorities for 2013 in the field of external communications are:

- **Reaching a wider audience** through use of simpler language while explaining our policies and decisions through multipliers like the European Parliament, the EU Committees and other primary stakeholders.
- **Enhancing our presence on national and regional levels** by prioritizing **active communication on cases** that have a direct impact on consumers and citizens in particular Member States. It is crucially important to work together with the Commission Representations and the National Competition authorities (both cooperating directly with national and regional media).
- Prioritizing **active communication on sectors** that are perceived to be less competitive and to cause the most problems for consumers as mentioned in Eurobarometer 264 from 2010 (for instance the energy or the pharmaceutical sector).
- Developing **communication materials for non-specialized audiences,** including examples of the benefits competition policy and enforcement bring to the EU economy and the everyday life of EU citizens. Identifying cases and success stories to be disseminated in different ways (website, events, speeches, press communications, internal communication etc.)
- Putting our actions and their impact in a larger European context (Economic recovery/Europe2020/Growth etc.)
- Cooperating with other DG's involved in the Year of Citizens and getting our messages across in their materials, thus reaching a larger audience.
- Rationalise our web presence in line with the Commission's web rationalisation strategy.

For internal communications the Competition DG will focus on:

- Ensuring **staff awareness of policy and case priorities and outcomes including the wider political context in which we operate.** Brief staff on issues and cases of interest throughout the year (intranet, lunch talks, messages from the Director General, etc.)
- Supporting **staff efficiency and engagement:** equip staff with relevant messages relating to our main policy and cases, increase their communication skills, provide them with support material for their outside presentations, and support their social and charity initiatives.
- Empower staff to share knowledge and best practices within our Knowledge Management project including the COMPwiki.

## IV Communication plans

All activities are on-going unless otherwise specified. There is no budget allocated for communication activities on competition policy. All communication activities (including briefings and speeches) are carried out by a team of nine full time equivalents (FTE), supported by a team of three FTE in institutional relations and four FTE in the Research and Information Service, guided by two managers with the help of one unit assistant.

| EXTERNAL COMMUNICATION PLAN | | | | |
|---|---|---|---|---|
| **Communication objective** | **Messages** | **Audience** | **Proposed actions** | **DG COMM services** |
| **SECTION 1 : "Getting the foundations right" : competition to foster the way out of the crisis and ensure the economic and financial viability in the long term** | | | | |
| Raise awareness and ensure understanding of **role of competition policy in the economic and financial recovery** | **Competition is part of the solution** (not of the problem). Fostering **viability** in the longer term. | • Public and media in the Member States<br>• Business community<br>• Consumers<br>• Company staff | Media relations: providing simplified material for national and local dissemination (via Representations) on specific cases<br>Speeches, briefings for Commission President, Vice President and senior management<br>Websites E-Newsletters<br>Staff articles in business/academic publications<br><br>Audio and video broadcasting<br>Information seminars (journalists, partner European institutions)<br>Event: European Competition Forum (28 Feb 2013) | Use of DG COMM facilities and services, framework contracts, and contacts with Representations |
| Ensure support for shaping **industrial and financial restructuring** in pro-competitive terms | Rescue and recapitalization entail **restructuring** of financial institutions or industries. **Lowering the incentive to take more risks** (moral hazard)<br>Adequate **burden sharing** | Idem, special focus on businesses and financial institutions | Idem | Promotion on Europa, AV services if important press conference are set up on topic |

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| **SECTION 2 : Competition policy: boosting competitiveness through the internal? market** | | | | |
| Ensure understanding of competition rules. Increase legal certainty Increase compliance with competition rules | Keep the markets open and competitive; ensure a level playing field in the Internal Market against any protectionist attempts | Brussels based media, local media (via representations) competition specialists, lawyers, business consultants | Fact sheets on procedures in antitrust, mergers and state aid;<br>Distribution of the compliance brochure to businesses;<br>Interviews and articles supporting our messages in the business press ;<br>Event: European competition Forum;<br>Presence in professional publications;<br>Staff participation in professional conferences<br>Brochure on vertical agreements;<br>Glossaries on competition terms. | Distribution of communication material in representations. New general brochure on competition policy. |
| Maintain support for merger policy and enforcement | Approve pro-competitive mergers, prohibit mergers that undermine consumer and business choice on the market | Idem, with special focus on our multipliers (i.e. national competition authorities, ECN, ICN) | Idem+<br>- communications packages on high profile cases (press relations, speeches, Competition Newsletter articles, press conference)<br>- identify newsworthy items well in advance for promotion via DG COMM's partners and services | Share newsworthy cases and success stories with DG COMM as early as possible, for better promotion on general communication platforms (Europa, Euronews). |
| Maintain support for antitrust and cartel policy and enforcement | Maintain effective detection, fining, remedies and deterrence of anti-competitive practices | Idem, with special focus on our multipliers (i.e. national competition authorities, ECN, ICN) | Idem+<br>- dissemination of communication tools: Cartel video, Leniency video, Leniency business card<br>- communications packages on high profile cases (PR, speeches, Competition Newsletter articles, press conference) | Idem |
| Ensure understanding and support for the state aid modernisation initiative including the revision of the guidelines.<br>Ensure stakeholders | Re-launch the sluggish economy and make public budgets sustainable in a context of fiscal consolidation; minimise the administrative burden<br><br>Guidelines: | Commission, ECN, Member States,<br>EP, Council, CoR and EESC<br>Public and media in the Member States, | Media relations<br>Institutional relations (EP, Council, EESC, CoR)<br>Speeches, briefings for President, Vice President and senior management<br>Websites<br>E-Newsletters<br>Staff articles in business/academic | Idem |

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|---|---|---|---|---|
| discuss and support the state aid reform in key sectors (R&D&I, risk capital, regional, environmental, industrial rescue and restructuring, airports and airlines) | Ensure level playing field, avoid subsidy races between member states, support growth and jobs and competitiveness (specific messages for each sector) | businesses (in particular SMEs) | publications<br>Information seminars (journalists, European Institutions)<br>Event: European Competition Forum (28 Feb 2013) | |
| Ensure understanding and support for the review of the Technology Transfer Block Exemption Regulation and its guidelines (Antitrust) | tbd | ECN (national competition authorities), business organisations, public and media in the Member States, Consumers (BEUC) | Idem.<br>Specific activities related to business professionals in the area of Intellectual property rights | Idem |
| Increase support for the Commission's proposal to set up an antitrust private damages system | Ensure that firms and citizens across Europe can effectively exercise their right to claim compensation for the harm caused by breaches of EU antitrust rules | Commission, consumer organisations (e.g. BEUC), business organisations, National Competition Authorities, MEPs, Member States (competition attachés), NGOs, general public and media | - Institutional relations (EP, Council, EESC,CoR)<br>- Briefings and speeches<br>- Contacts with BEUC (continue seminar programme)<br>- Press relations<br>- Stakeholder relations (businesses and their representatives) | Idem |

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| **SECTION 3 : Competition policy for growth and jobs** | | | | |
| Ensure understanding of the role of competition in supporting growth and job | Setting the best conditions to stimulate growth | Commission, EP, Council, public and media in the Member States, businesses, consumers, | Idem +<br>A myth-buster on competition policy to be distributed to staff, chosen stakeholders and published on website.<br>Promoting staff as ambassadors, factsheets on competition policy procedures (in antitrust, mergers and state aid) | |
| Ensure support for decisions and enforcement in general | Vigorous enforcement protects consumers from being ripped off, stimulates demand and innovation by forcing markets to deliver the highest possible value for consumers.<br>Competition can give companies – especially SMEs – new business opportunities in a global world | Idem, with special focus on multipliers (i.e. NCAs) | Idem +<br>- Event: European Competition Forum, 28 Feb 2013<br>- General publications: glossary on competition policy, introduction to competition policy, car price report<br>- Professional publications: Compliance Matters (for businesses), brochure on vertical regulation, leniency business card<br>- Communications packages on high profile cases (PR, speeches, Competition Newsletter articles, press conference) | Idem |

**Evaluation of external communication activities**

The table below gives possible indicators for evaluating communications activities in 2013 by type of audience.

| Objective | Output indicator | Impact indicator | Target |
|---|---|---|---|
| **Understanding and support of business community** and specialized public (incl. academia) | Number of references to Commission decisions on competition policy in academic journals<br>Numbers of blog posts and discussions from professional community on competition policy<br>Number of professional targeted publications ordered via bookshop | Press coverage (see above):<br>Satisfactory level rating of feedback received during professional conferences<br>Level of support for competition policy and for communication activities<br>(main indicator: stakeholder survey 2010) | Maintain same level of support among business community and professional stakeholders.<br>Improve audience spread of conferences attended by senior DG staff or Commissioner |
| **Awareness and understanding of media** | Number of press releases<br>Number of press conferences<br>Number of journalist seminars<br>Number of press briefings on competition in Member states<br>Number of articles on competition policy and/or on Commissioner<br>Number of editorials by Commissioners | Press coverage: analysis of dissemination, tone and messages<br>Satisfaction and understanding level rating during journalist seminar | Qualitative and positive coverage, reaching out to media targets outside traditional scope, improved geographic spread of coverage |
| **Awareness and understanding by larger public** | Number of Europe Direct requests<br>Number of consumer targeted publications ordered via bookshop<br>Number of opinions related to competition policy in partner institutions | Press coverage (see above)<br>Level of awareness and understanding by general public (see Eurobarometer survey 2010)<br>Level of awareness and understanding among members of the partner institutions (MEPs, members of EESC and CoR, Member States and their governments) | Maintain a good level of awareness and understanding among the general public on competition policy<br>Communicate on cases that are relevant to consumers (in priority)<br>Improve audience spread of conferences attended by senior DG staff or Commissioner<br>Create a user-friendly statistics report for website analysis |

| INTERNAL COMMUNICATION PLAN | | | | |
|---|---|---|---|---|
| **Communication objective** | **Messages** | **Proposed actions** | **DG COMM services** | **Evaluation** |
| Raise awareness and ensure understanding of decisions on cases and policy initiatives | On a case-by-case basis | Intranet (news), intranet (calendar of professional conferences), DG emails to staff, Hot topics, Top talks, expert lectures (lunchtime conferences), internal videos, newsletters (COMP weekly summary, State aid weekly e-news, ECN news, etc.)<br><br>Messages to other DGs' communication units about newsworthy cases and success stories to be shared on Intranet. | Support for internal video service would be appreciated, support for finding speakers internal to the Institutions, budget or framework contract to enhance training possibilities in the Competition DG | Intranet statistics, training evaluations, informal feedback, newcomers' feedback |
| Provide opportunities for interaction and feedback, expand conversation opportunities internally | Internal discussions guarantee sound external output | Lunchtime Q&A sessions, improvements in cascade systems (downwards, upwards), improvements in training processes, discussion forums and Q&As | Budget or framework contract to have external experts speak to internal audience | Training evaluation, raise level of internal discussion to improve quality of output |
| Coach on communication skills | Staff are ambassadors of their own policy initiative or case, | Communication training cycle for staff in 2013, (press, briefings, speeches, publication, websites, internal communications, communications tools | Provide external communication expert to speak to internal audience | Training evaluation, increase number of speakers to external conferences and back to school participants, raise level of impact in their external |

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|---|---|---|---|---|
| | staff are responsible for communicating their output | and objectives) with a special focus on promoting staff responsibility and engagement for communicating their work. (staff as ambassador) | | communications |
| Ensure staff efficiency via the knowledge management initiative and involve staff in the wiki project | In times of scarce resources, we need to improve our efficiency and cut red tape internally | Knowledge management project, improvements in newcomer induction and promotion of internal networks and knowledge centres, COMP wiki (contribution to wiki, training, etc.) | Support in providing guidance on knowledge management and internal communication (already on-going via ICN) | Successful implementation of knowledge management project, involve staff in internal discussions, usefulness of provided tools (online evaluations) |