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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Report on Competition Policy 2013

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INTRODUCTION - EU COMPETITION POLICY, A TOOL TO REGAIN EUROPEAN COMPETITIVENESS

In 2013, there have been encouraging signs that an economic recovery is underway in Europe. Policy actions undertaken at EU level contributed to start restoring confidence and creating the basis for returning to a growth path. However, efforts should not be relaxed. If the EU wants to leave the legacy of the crisis behind and re-launch the European economy, it needs to go further. What Europe needs are structural adjustments, an efficient allocation of resources, and productivity growth. Smart, sustainable and inclusive growth remains at the core of Europe's policy agenda for the decade. Boosting competitiveness across the EU is paramount for reaching that objective.

Competitiveness is a composite and multi-dimensional concept. The Global Competitiveness Report of the World Economic Forum defines competitiveness as "*the set of institutions, policies, and factors that determine the level of productivity of a country*".[1] According to the European Competitiveness Report of the European Commission, at the roots of competitiveness are the institutional and microeconomic policy arrangements that create conditions under which businesses can emerge and thrive, and individual creativity and effort are rewarded.[2] Competition policy instruments fully fit both descriptions.

Moreover, the European Parliament's 2013 study[3] on competition policy concluded: "*Competition plays a crucial role in promoting productivity and innovation as drivers of economic growth. This means that competition policy, which intensifies competition, will stimulate growth.*"

It applies to all the instruments of competition policy. Antitrust enforcement can thwart dominant companies' attempts to keep new entrants away from the market and prevent them from competing effectively with them. It can also create the conditions for lower input prices for EU industry. Merger control can keep markets open and efficient. State aid policy protects the internal market from distortions and helps to steer public resources towards competitiveness-enhancing objectives.

In addition, competition and competition policy are part and parcel of the general conditions required for innovation to flourish. They provide incentives to innovative enterprises and start-ups, they encourage companies to become more efficient, and they promote subsidies designed to stimulate R&D and innovation.

Competition policy fosters competitiveness in a global context. Healthy competition in the Single Market prepares European companies to do business on global markets and succeed. It also underpins a modern industrial policy, as reflected in the Lisbon Treaty's provisions on

[1] World Economic Forum: The Global Competitiveness Report 2013-2014, available at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

[2] SEC(2011) 1188 final Part 1: Commission Staff Working Paper, European Competitiveness Report 2011.

[3] The Contribution of Competition Policy to Growth and the EU2020 Strategy, IP/A/ECON/ST/2012-25, available at http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/492479/IPOL-ECON_ET(2013)492479_EN.pdf

industry (Article 173 TFEU) which states that action taken by the EU and the Member States shall be “in accordance with a system of open and competitive markets”.

Furthermore, competition policy is the necessary counterpart of Single Market regulation. The impact of the regulatory measures on firms’ strategies and investment can be undermined if Single-Market and competition rules are not properly enforced.

State aid rules and competition enforcement have also a significant role to play in the EU2020 strategy and in the achievement of its Flagship Initiatives. In particular, competition policy actions are contributing to "Innovation Union", "An industrial policy for the globalization era", "Resource-efficient Europe" and "A Digital Agenda for Europe"..

In 2013, all competition-enforcement instruments have contributed to promote growth and competitiveness across the European economy. Antitrust enforcement has deterred and punished the artificial fragmentation of the internal market. State aid Modernisation has been developed to encourage the design of growth-enhancing public spending. Important decisions have been taken in sectors of strategic importance such as financial services, telecoms, the digital economy, and energy. International co-operation in competition policy-making and enforcement helped to tackle the challenges posed by the growing internationalisation of business.

Finally, 2013 saw two important milestones for EU competition policy. Firstly, Regulation 1/2003,[4] when adopted, ushered in a new era in the enforcement of EU antitrust rules and has now, a decade later, led to a stocktaking and reflection for further improvements. Secondly, on 11 June, the Commission adopted a Proposal for a Directive on antitrust damages actions[5] – a long-awaited measure by stakeholders and a policy priority for the current Commission. The debate about those issues – and those that this Report will address – have animated the continuous structured dialogue between the Commission and the European Parliament throughout the year (see section 8 on Competition Dialogue with Other Institutions and, for further detail, the Commission Staff Working Document (SWD) accompanying this Report).

1. PROMOTING COMPETITIVENESS BY FIGHTING AGAINST CARTELS

The success of European companies strongly depends on competitive prices. Input costs that are artificially inflated by anti-competitive conducts and market structures have detrimental effects on Europe’s competiveness on global markets and on its overall growth prospects. Needless to say, higher input costs also translate into higher final prices for European consumers.

Robust cartel enforcement is vital in that context. Cartels often concern input and intermediate goods and the Commission has focused its enforcement efforts on this area. In recent years, several successful investigations have broken up cartels that had inflated input prices and severely harmed EU competitiveness.[6]

The Commission also concluded such a case in 2013. In July, the Commission fined five car part suppliers, Sumitomo, Yazaki, Furukawa, S-Y Systems Technologies (SYS) and Leoni a

[4] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

[5] COM(2013) 404 final: Proposal for a Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, available at http://ec.europa.eu/competition/antitrust/actionsdamages/documents.html.

[6] Notable examples in the past include the fines imposed on producers of car glass, DRAMs (memory chips used in PCs, servers and workstations), and synthetic rubber.

total of € 141 791 000 for their participation in one or more of five cartels for the supply of wire harnesses to Toyota, Honda, Nissan and Renault. The cartels covered the whole European Economic Area (EEA).[7] Wire harnesses represent an assembly of cables transmitting signals or electric power linking computers to various components built in a car and they are often described as the 'central nervous system' of the car.

Cartel enforcement leading to a more transparent financial services sector: the interest rates derivatives cases

Interest rate derivatives are financial products used by banks or companies for managing the risk of interest rate fluctuations. They derive their value from the level of a benchmark interest rate, such as the London Interbank Offered Rate (LIBOR) – used for various currencies including the Japanese yen (JPY) - or the Euro Interbank Offered Rate (EURIBOR), for the euro.

The Euro interest rate derivatives (EIRD) cartel operated between September 2005 and May 2008. The settling parties are Barclays, Deutsche Bank, RBS and Société Générale. The cartel sought to distort the normal course of pricing components for those derivatives. Traders of different banks discussed their bank's submissions for the calculation of the EURIBOR as well as their trading and pricing strategies. Proceedings were also opened against Crédit Agricole, HSBC and JPMorgan and the investigation in relation to the conduct of these three companies will continue under the standard cartel procedure.

In the Yen interest rate derivatives (YIRD) sector, the Commission uncovered 7 distinct bilateral infringements lasting between 1 and 10 months in the period from 2007 to 2010. The collusion included discussions between traders of the participating banks on certain JPY LIBOR submissions. The traders involved also exchanged, on occasion, commercially sensitive information relating either to trading positions or to future JPY LIBOR submissions (once also relating to certain future submissions for the Euroyen TIBOR – Tokyo interbank offered rate). The banks involved in one or more of the infringements are UBS, RBS, Deutsche Bank, Citigroup and JPMorgan. The broker RP Martin facilitated one of the infringements by using its contacts with a number of JPY LIBOR panel banks that did not participate in the infringement, with the aim of influencing their JPY LIBOR submissions. In the context of the same investigation, the Commission has also opened proceedings against the cash broker ICAP. That investigation continues under the standard cartel procedure.

Those decisions send a clear message that the Commission is determined to fight and punish such cartels in the financial sector. Healthy competition and transparency are crucial for financial markets to work properly, at the service of the real economy rather than for the interests of a few.

Another trend in recent years has been the uncovering of cartels in services sectors. The Commission is currently dealing with a number of cases in the area of financial services. On 4 December, the Commission fined 8 banks a total of € 1 712 468 000 for participating in cartels in markets for financial derivatives covering the EEA.[8] Four of them participated in a cartel relating to interest rate derivatives denominated in the euro currency. Six of them participated in one or more bilateral cartels relating to interest rate derivatives denominated in Japanese yen. Those collusions are prohibited by Article 101 of the Treaty on the Functioning of the European Union. Both decisions were adopted under the settlement procedure, and the fines imposed on the parties were reduced by 10% given their agreement to settle.

The Commission also has several ongoing cases in the food sector, an area of direct concern to consumers. In November, the Commission fined four European North Sea shrimps traders - Heiploeg, Klaas Puul, Kok Seafood (all established in the Netherlands) and Stührk (established in Germany) - a total of EUR 28 716 000 for operating a cartel.[9] Between June 2000 and January 2009 Heiploeg and Klaas Puul agreed to fix prices and share sales volumes of North Sea shrimps in Belgium, France, Germany and the Netherlands.

[7] Case AT.39748 – Automotive wire harnesses.

[8] Case 39861 – Yen Interest Rate Derivatives (YIRD) and Case 39914 – Euro Interest Rate Derivatives

[9] Case AT.39633 – Shrimps

In addition to those decisions, in April the Commission sent a Statement of Objections to a number of suppliers of smart-card chips for their alleged participation in a cartel.[10] Smart-card chips have countless applications, such as SIM cards, bank cards, identity cards, and many more devices. It is the Commission's preliminary view that certain suppliers may have co-ordinated their behaviour in the EEA to prop up prices. The Commission initially pursued settlement discussions with certain undertakings regarding their alleged participation. However, it eventually reverted to the normal antitrust procedure due to lack of progress.

Finally, it should be recalled that cartels can fragment the internal market and hamper the adjustment of industry to changes in market conditions. Therefore the harm they cause is not limited to the markets on which the companies involved operate but may affect the competitiveness of the whole economy.

2. ENSURING EFFECTIVE ANTITRUST ENFORCEMENT AND MERGER CONTROL IN THE INTEREST OF BUSINESSES AND CONSUMERS

Regulation 1/2003, the main procedural instrument for the enforcement of Articles 101 and 102 TFEU, entered into force on 1 May 2004. The regulation marked a turning point as it empowered all enforcers in the EU (the Commission, national competition authorities, and national courts) to apply EU antitrust rules to agreements and practices liable of affecting trade between Member States, while at the same time respecting fundamental rights of the stakeholders affected, as protected by the European Charter of Fundamental Rights.

The European Competition Network (ECN) was created and co-operation tools were introduced to ensure the effective and coherent application of the common rules. On that basis, the Commission and the national Competition Authorities (NCAs) jointly have a considerable enforcement record, underpinned by a wide range of policy work. Since May 2004, the Commission has looked into potentially anti-competitive practices in virtually every economic sector, adopting over 120 decisions. NCAs, on their part, have investigated over 1,600 cases in the same period, giving rise to more than 600 enforcement decisions.

In 2013 the Commission started to look back at the experience of those ten years to analyse the work of the EU competition authorities in the different sectors and types of infringement. Taking stock of past priorities and achievements will help to strengthen the already excellent co-ordination between the Commission and the NCAs.

[10] Case 39574 – Smart card chips

Regulation 1/2003 in action

Structures of national competition authorities

EU law relies on the Member States to ensure that there are effective and well-equipped national competition authorities and leaves largely to them the design of the national competition-enforcement regimes. The only explicit requirement is that Member States designate their respective authorities responsible for the application of Article 101 and 102 TFEU in such a way that the provisions of the Regulation are effectively complied with. In recent years, structural reforms have taken place in many Member States. Structures of NCAs in the European Competition Network (ECN) have generally evolved towards greater autonomy and effectiveness. Nevertheless, questions have arisen as to the independence and resources of some NCAs. A roll-back of achievements must be prevented.

Convergence of enforcement powers

The regulation left Member States the freedom to determine their own procedures and sanctions for the application of the EU competition rules in the Member States. Apart from a general obligation on Member States to ensure effective enforcement, in particular through the application of the principles of effectiveness and equivalence, these matters are not regulated or harmonised by EU law. As a result, the Commission and NCAs apply the same substantive rules according to different procedures and sanctions. Convergence of enforcement powers has been a focus of ECN work for several years. The ECN has notably produced detailed comparative reports on investigation and decision-making powers as well as a set of ECN Recommendations on investigation and decision-making powers. As regards sanctions for breaches of competition law, most NCAs can impose deterrent civil/administrative fines and apply a similar basic methodology when setting fines. Reforms leading to the increased convergence of procedures have been encouraged by country-specific recommendations in the framework of the Europe 2020 strategy (European Semester) and in the context of Economic Adjustment Programmes.

Leniency convergence and interface with other areas of law

Leniency programmes are generally recognised as an important tool to detect secret cartels. From the outset, fostering convergence and smooth interaction in that area has been a priority within the ECN. Notably the ECN Model Leniency Programme (MLP), developed in the ECN, provides Member States / NCAs with a cohesive set of model rules and procedures from which they are able to draw inspiration when drafting national measures. As a result, virtually all Member States have introduced leniency programmes and a significant process of alignment with the MLP has taken place. Refinements to the MLP were endorsed in late 2012.

The Commission will continue to pay close attention to the functioning of the overall framework for public enforcement of the EU competition rules.

The Commission adopted in 2013 an additional key initiative for the antitrust regulatory environment: the proposal for a Directive on how citizens and companies can claim damages when they are victims of infringements of the EU antitrust rules, such as cartels and abuses of a dominant market position.[11] The proposal is set to remove a number of practical difficulties which victims frequently face when they try to obtain fair compensation for the damage they have suffered as a consequence of infringements of EU competition law.

[11] COM(2013) 404 final: Proposal for a Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Removing obstacles to effective compensation for victims of antitrust infringements

The legislative proposal

On 11 June, the Commission adopted a Proposal for a Directive on antitrust damages actions for breaches of EU competition law. Under EU law, any person or company who suffered harm because of an infringement of EU competition law has a right to full compensation. The proposal has two complementary goals. First, to make that EU right to compensation a reality in all Member States by removing key practical difficulties which consumers and companies frequently face when they seek redress. Second, the proposal aims at optimising the interplay of such private damages claims with the public enforcement by the Commission and national competition authorities, to safeguard strong public enforcement and to achieve a more effective enforcement overall.

To achieve those goals, the proposal includes substantive and procedural rules on crucial aspects of antitrust damages actions, such as access to evidence, limitation periods for bringing an action, standing, and the burden of proof with regard to compensation for overcharges passed on along the distribution chain. The proposal seeks to create or provide legal certainty as to the admissibility/disclosure of evidence produced for the purposes of public enforcement. For instance, in order to safeguard the attractiveness of leniency programmes, it provides that corporate leniency statements should never be disclosed in private damages litigation. The proposal facilitates follow-on damages claims by stipulating that final infringement decisions by national competition authorities have probative effect.

Flanking measures

In parallel to the proposal, the Commission adopted a Communication on quantifying antitrust harm in actions for damages based on breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union to provide guidance to courts and the parties in damages actions. The Communication is accompanied by a more comprehensive Practical Guide drawn up by the Commission's services and translated in all official EU languages. Finally, the proposal is complemented by the Commission Recommendation on collective redress, which recommends that all Member States introduce collective redress mechanisms to facilitate the enforcement of the rights that all Union citizens have under Union law, including the right to compensation for antitrust harm.

Furthermore, on 5 December the Commission adopted the 'merger simplification initiative' package. The package includes the amendment of the Merger Implementing Regulation[12] and the adoption of a new Notice on Simplified Procedure.[13] As a result, it is expected that the ratio of cases dealt with in simplified procedure will be substantially increased.

The simplification initiative is a concrete example of the Commission's commitment towards the goals of the Regulatory Fitness and Performance (REFIT) programme,[14] which aims at promoting growth and competitiveness by reducing regulatory burdens for EU businesses and citizens.

3. STATE AID MODERNIZATION TO STEER PUBLIC RESOURCES TOWARDS COMPETITIVENESS-ENHANCING OBJECTIVES

Like anti-competitive business practices such as cartels, unlawful government subsidies can tilt the level playing field, erect unnecessary barriers and squander the growth potential of the internal market. However, government support can also have a positive impact when it is well-targeted, tackles market failures, and creates incentives for investments and ventures that would not take place otherwise. 'Good' State aid can stimulate innovation and human-capital

[12] Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

[13] Notice on a simplified procedure for treatment of certain mergers under the Merger Regulation.

[14] COM(2013) 685 final: Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions, Regulatory Fitness and Performance (REFIT): Results and Next Steps, available at http://ec.europa.eu/refit.

development. EU State aid policy can also help national authorities make the most of dwindling resources in times of budget constraints. Promoting public spending on growth-oriented policies is a key priority for the EU in this economic context and the main rationale of the State aid Modernisation strategy.[15] The strategy's reform process is being completed; below are the main elements the Commission worked on in 2013.

Tackling competitiveness gaps across the EU with targeted regional aid

In June 2013 the Commission adopted the new Regional Aid Guidelines for the period 2014-2020.[16] The adoption followed extensive consultations with stakeholders (Member States, regional and local authorities, business associations, interest groups, individual companies and citizens), the European Parliament, the Committee of the Regions, and the European Economic and Social Committee. The Regional Aid Guidelines help reduce competitiveness gaps across the EU by supporting productive investments in value-added projects, especially in Europe's most disadvantaged regions.

Adapting to the challenges of broadband infrastructure development: new Broadband State Aid guidelines

In January, the revised guidelines for the application of EU State aid rules to the broadband sector[17] entered into force. The guidelines help Member States achieve the objectives of the Digital Agenda for Europe, reinforce open access obligations, improve transparency and facilitate well-targeted aid, while simplifying the rules to allow for faster decisions.

In addition, the adoption of a revised Enabling Regulation[18] introduces certain broadband infrastructure among the new categories of aid that the Commission may decide to exempt from the obligation of prior notification, contributing to facilitate the implementation of broadband projects.

Promoting a sound and stable financing framework: New State aid rules for access to finance

Small and medium-sized enterprises (SMEs) are the back-bone of Europe's economy: two out of three jobs in the private sector as well as more than half of the total value added created by businesses in the EU come from SMEs. They are also an engine of European competitiveness with a key role in innovation. But those firms often find it difficult to gain access to finance.

Against that background, the Commission reviewed the State aid guidelines devoted to the promotion of risk-capital investments in SMEs. The Risk Finance Guidelines set out the conditions that Member States must meet when they grant support to promote access to risk capital of SMEs in their early development stages, particularly to ensure that such aid targets a proven equity gap and does not crowd out financial operators. The new Risk Finance Guidelines were adopted in January 2014, following two public consultations, a workshop and a multilateral meeting with Member States.

Rescue and restructuring State aid guidelines to support firms in temporary difficulties

In November, the Commission launched a public consultation in view of the revision of the State aid guidelines for the support of troubled non-financial firms. The new rules on rescue

[15] COM(2012)209 final: Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM).

[16] Guidelines on regional State aid for 2014-2020, (2013/C 209/01).

[17] EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)

[18] Council Regulation (EU) No 733/2013 of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid.

and restructuring will be adopted in 2014 and will preserve the delicate balance between limiting the capacity reduction caused by the difficulties and minimising the economic damage caused by keeping unviable firms on the market. Keeping inefficient companies on life support has a negative impact on public budgets and can severely hinder competitiveness and economic growth. The principles inspiring the new guidelines aim to protect the jobs and know-how of companies that are viable once restructured and to provide them with the support they need to wind down non-viable operations.

Stimulating innovative growth: New State aid guidelines for R&D&I

The Commission is also in the process of revising the State aid guidelines for research, development and innovation (R&D&I), with a view to adopting new rules in 2014. R&D investment is crucial for competitiveness and is one of the headline targets of the Europe 2020 strategy.

The level of research and development in Europe remains constrained by market failures: the revised R&D&I framework will help translate State aid measures into higher levels of research and innovation, bringing more flexibility and less red tape for Member States when implementing R&D&I aid. In particular, more emphasis will be put on close-to-the-market activities, such as experimental development (including pilots and demonstrators), research infrastructure and innovation (including non-technological innovation). Since 2007, the Commission has approved over 200 national schemes in research, development and innovation.

The future State aid guidelines for energy and environment

State aid policy contributes to the EU long-term strategy for energy and climate change based on security of supply, sustainability and competitiveness. It does so by opening energy markets, keeping a level playing field, and creating incentives and an appropriate framework for the significant investments that are needed over the coming decades. The Commission's current review of the State aid guidelines on energy and environment looks at adopting new rules in 2014. The new guidelines will complement the ETS State aid guidelines of May 2012.

While traditional elements of environmental aid will be maintained in the new guidelines, the State Aid Modernisation process is seeking to ensure close synergy with the Europe 2020 strategy and its flagship initiatives.

The overall strategic goal of the review is to help EU countries invest better to meet the goals of EU energy policy and to facilitate efficient support to attain a higher level of environmental protection. It entails promoting investments in energy efficiency, better targeting public support to renewable energy sources, and promoting the use of subsidies to improve interconnections and develop cross-border networks. Those last two points are among the main innovations of the new guidelines.

The new guidelines will aim at minimising the competition distortions of environmental and energy state aid measures, in particular by limiting the aid to the minimum and incentivising market friendly instruments. The new guidelines will be fully consistent with the EU climate-change and energy objectives in line with the Europe 2020 Strategy and will support Member States in their efforts to reach them.

4. FOSTERING FAIR AND STABLE FINANCIAL SECTOR TO SUPPORT THE REAL ECONOMY

The economic crisis originating from the financial sector has dented confidence in financial markets. However, financial markets that are stable, safe, open, competitive and fair are absolutely necessary to maintain a balanced and sustainable phase of economic expansion. The Commission has engaged in wide-ranging regulatory efforts to reduce systemic risks and to increase the transparency of financial markets. The root causes of the crisis and the challenges posed by the current economic juncture cannot be addressed without combining different policy instruments. In that context, antitrust enforcement to promote a fair and competitive financial sector operates in conjunction with State aid control on bank restructuring. Besides competition enforcement, there are legislative proposals which have the objective of improving the regulatory environment.

Commission's competition policy efforts for a more transparent financial sector: Focus on derivatives and benchmark rates

A great deal of effort has been directed towards the derivatives market, given its size and its role in hedging the risk exposure for institutions such as banks, pension funds, and industrial firms. The European Market Infrastructure Regulation (EMIR), which entered into force last year, requires the standardised derivative contracts to be centrally cleared.[19] In the review of the Markets in Financial Instruments Directive (MIFID) the Commission proposed that those derivatives should be traded on transparent and organised trading platforms.[20] The Commission's antitrust tools are complementary to those regulatory measures. This means, in particular, that companies that plan to provide exchange trading should not be prevented to do so by the anti-competitive behaviour of others. It is particularly important for credit default swaps (CDS), given the role that those products play in the financial sector: in 2013, the gross notional value of the almost 2 million active CDS contracts exceeded € 10 trillion.

The Commission began an investigation on the CDS market in 2011, which resulted in a Statement of Objections being issued on 1 July 2013. The Statement of Objections was addressed to Bank of America Merrill Lynch, Barclays, Bear Stearns, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, Royal Bank of Scotland, UBS as well as to the International Swaps and Derivatives Association (ISDA) and data service provider Markit.[21] Following the investigation, the Commission reached the preliminary conclusion that those companies and associations may have co-ordinated their behaviour to jointly prevent exchanges from entering the CDS market between 2006 and 2009, thereby breaching EU antitrust rules that prohibit anti-competitive agreements, concerted practices and decisions of associations of undertakings.

In parallel, in December, the Commission concluded the investigation of the antitrust cases relating to the Libor, Euribor and Tibor benchmark rates as regards the settling parties (see above on page 4). The investigations started in 2011 and were treated as a top priority by the Commission.[22]

Those antitrust cases highlight both the importance and the vulnerability of benchmarks. Benchmarks affect the value of many financial instruments, such as interest-rate swaps and forward rate agreements as well as of commercial and non-commercial contracts such as supply agreements, loans and mortgages. They also play an important role in risk

[19] http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm

[20] http://ec.europa.eu/internal_market/securities/isd/mifid/index_en.htm

[21] Case AT.39745 – CDS – Information market

[22] Case 39861 – Yen Interest Rate Derivatives (YIRD) and Case 39914 – Euro Interest Rate Derivatives

management. In September, the Commission proposed a draft Regulation to restore confidence in those benchmarks.[23] The ultimate goal of the proposal is to ensure the integrity of benchmarks by guaranteeing that they are not subject to conflicts of interest, that they reflect the economic reality they are intended to measure, and that they are used appropriately.

State aid policy shaping disciplined restructuring and balance-sheet adjustments in the banking sector

In the absence of the EU recovery and resolution rules, which are now set out in the Bank Recovery and Resolution Directive,[24] State aid rules for the banking sector effectively determined the conditions for the resolution of banks at EU level. Since the onset of the crisis, EU governments responded to threats to financial stability by providing massive public support to their respective banking institutions. For the past five years, State aid policy has been used to co-ordinate the response of Member States, preserve the level playing field in the banking sector, and make sure that bail-outs were carried out according to similar conditions across the Union. The main elements of the restructuring decisions were to return beneficiary banks to long-term viability, ensure burden-sharing, and eliminate competition distortions.

The Banking Communication revamped these State aid rules as of 1 August.[25] Until further notice, the new rules will continue to ensure a consistent policy response to the financial crisis throughout the EU and limit competition distortions in the internal market.

In the course of the year, the Commission adopted several decisions on bank restructuring under the new rules. On 6 September, the Commission temporarily approved as rescue aid, under new State aid rules, State guarantees on newly issued liabilities of the two Slovenian banks Factor banka d.d. and Probanka d.d. On 18 December, the Commission approved decisions on State aid measures in favour of five Slovenian banks. The Commission approved the restructuring plans of Nova Ljubljanska banka d.d. (NLB) and of Nova Kreditna Banka Maribor d. d. (NKBM), in particular because they enable the banks to become viable in the long term without unduly distorting competition. The Commission also approved aid for the orderly winding down of Factor Banka d.d. and Probanka d.d., in particular because the distortions of competition created by the aid will be minimised by the complete market exit of the two banks. Finally, the Commission temporarily approved rescue aid in favour of Abanka Vipa d.d., for reasons of financial stability. In the context of the Macroeconomic Imbalances Procedure, Slovenia had to carry out an asset quality review and a stress test of the Slovenian banking sector (AQR/ST). The assessment of the results of the AQR/ST, published by Slovenia on 12 December, was incorporated in the Commission's five decisions adopted on 18 December.

[23] The proposal covers a broad variety of benchmarks, not just interest rate benchmarks such as LIBOR, but also commodity benchmarks, benchmarks used to reference financial instruments such as energy and currency derivatives, benchmark used in financial contracts, and benchmarks used to measure the performance of investment funds.

[24] http://ec.europa.eu/internal_market/bank/crisis_management/#maincontentSec2

[25] http://europa.eu/rapid/press-release_IP-13-672_en.htm

Decisions on bank restructuring notified before 1 August 2013

In the case of Hypo Alpe Adria Group (HGAA) the Commission approved in August 2013 a plan according to which the operative parts of the bank in Austria and South-Eastern Europe will be sold by mid-2015, at the latest, while the non-viable remainder is put into an orderly wind-down process. Until the sales process is complete, Austria commits to a number of restrictions for new business, in particular relating to risk control, thus ensuring that the marketability of the subsidiaries is enhanced and that competition distortions are kept to a minimum.

In the case of Banca Monte dei Paschi di Siena (MPS), the Italian government provided €2 billion to cover a capital shortfall coming from the December 2011 European Banking Authority stress test. After ensuring that the bank's business model is less risky and provides for long-term viability, the Commission approved MPS' restructuring plan in November 2013.

In addition, State aid control is an important tool to help to ensure that banks revert to their core economic function as lenders to the real economy, through conditionality in restructuring decisions.

In Spain, 2013 was the first full year of implementation of the various restructuring plans approved for the banks that received State aid under the eighteen-month financial-assistance programme granted in July 2012. The restructuring plans aimed at refocusing banks from riskier activities towards SME and other corporate lending. During the first half of 2013, the so-called subordinated liability exercises for the banks that received State aid were completed, generating almost €13 billion of capital in those banks and reducing the need for additional public funds.

In 2013 the Commission, together with the ECB and the IMF, also kept providing financial assistance to Member States that had requested it. State aid control contributed to the economic adjustment programmes in Ireland, Greece, Portugal, and Cyprus. The restructuring of the banking sectors, including extensive financial-sector conditionality, was one of the main policy requirements addressed to those countries.

An open, efficient and secure Single Market for payments

The Commission also focused its enforcement and regulatory efforts in the payments area. An example is the antitrust investigation opened in September 2011 to examine the standardisation process for payments over the internet carried out by the European Payments Council (EPC) and closed in June 2013.[26]

Taking action to ensure that standardisation processes do not affect market entry and innovation

The EPC is the decision-making and coordination body of the European banking industry in relation to payments. The Commission had concerns that through its work on standards for e-payments, and in particular the e-Payments Framework, the EPC could exclude non-bank internet providers from the e-payments market. Internet payments are vital for the development of e-commerce and the good functioning of the EU internal market.

In the course of the investigation, the EPC announced its decision to stop the development of the e-Payments Framework and any other standardisation initiatives that would have the same object or effect. As a result, the complainant in that case, Sofort AG, withdrew its complaint. Under those circumstances the Commission decided to close its investigation.

[26] Case AT.39876 – EPC online payments

The revised Payment Services Directive[27] would explicitly allow non-bank players to operate in competition with banks in internet and card payments. In that instance, regulation effectively complemented antitrust enforcement.

Another example of synergy between ex-ante regulation and ex-post competition enforcement is the Proposal for a Regulation on interchange fees for card-based payments,[28] which takes account of two decades of competition proceedings involving card companies. Interchange fees have often been under the scrutiny of competition authorities and regulators. The Commission has adopted several decisions under EU antitrust rules, including the MasterCard decision of December 2007.[29] There have also been a number of national proceedings, including in Poland, Hungary, Italy, Latvia, the UK, Germany and France. Nevertheless, the European card-payments market remains rather fragmented and interchange fees vary widely. To address that issue, the Commission proposed the adoption of the interchange-fees Regulation. The proposal aims at developing an EU-wide market for payments, which will enable consumers, retailers and other businesses to enjoy the full benefits of the EU internal market, including in e-commerce, in line with Europe 2020's Digital Agenda.

The ban foreseen by the revised Payments Services Directive on the collection of payment card surcharges for the interchange fee-regulated cards complements the provisions of the Consumer Rights Directive,[30] which should become applicable across the EU from 13 June 2014. The new rules will prevent traders from applying payment surcharges for any means of payment that exceed the cost borne by the trader for the use of such means.

5. ENERGY: THE SECTOR WHERE "MORE EUROPE" IS MOST NEEDED

Energy is one of the sectors in which completing the Single Market will bring the greatest benefits to Europe's businesses and citizens. However, reform efforts designed to complete an internal market for energy, including the third Energy Package launched in 2007[31] are taking longer than expected to have an impact on the ground. Three key challenges identified in 2013 are the EU's increasing dependence on imported energy, increasing energy prices and lack of investment.[32] Renewable energy will play a key role in the transition towards a competitive, secure and sustainable energy system.

Energy markets play a crucial role in Europe's economy. Energy is a key input for industry and touches upon almost every aspect of consumers' daily life. Energy costs have a considerable impact on economic activity. The price of energy is a major source of concern for European competitiveness, especially in energy-intensive industries, and threatens Europe's ten-year lead in decarbonisation.

There is, however, a broad consensus as to what is required to tackle those challenges: providing the EU with a common framework for energy, investing in infrastructure, increasing energy efficiency, and encouraging more efficient and better market-integrated aid to renewables.

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[27] COM(2013) 547 final: Proposal for a Directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC.

[28] COM(2013) 550 final: Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions.

[29] Case AT.34579 – MasterCard I

[30] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

[31] The third energy package adopted in 2007 identified specific anti-competitive behaviours to be addressed under the EU competition rules.

[32] See *Commission contribution to the European Council of 22 May 2013*, available at http://ec.europa.eu/europe2020/pdf/energy2_en.pdf

Competition is part of the policy mix that can address those challenges. EU energy legislation has contributed to the dismantling of legal monopolies, the harmonisation of rules, and has introduced measures to support market integration and liberalisation. Competition policy, for its part, seeks to ensure that companies do not maintain or reinstate barriers to competition. Hence competition enforcement, regulation and liberalisation measures all contribute to the three pillars of EU energy policy: sustainability, competitiveness and security of supply.

Still, in some Member States competition in the gas and electricity markets remains limited not only due to the slow implementation of the legislation, but also due to the nature of those sectors which are characterized by high entry-level investment and by limited physical-infrastructure capacity. Although EU energy markets remain largely national or regional in nature, their integration has increased. Further integration could mitigate price fluctuations and improve overall efficiency and competition.

In that sense, the robust enforcement of antitrust rules underpins the effectiveness of ex-ante regulation and State intervention should be well-designed in order to limit the impact on energy prices.

Since 1 January, the new State aid guidelines on the Emissions Trading Schemes (ETS) are applicable. The new framework allows Member States to relieve energy-intensive industries from indirect costs of CO_2 in their electricity price and addresses the risk of relocation to countries outside the EU where environmental regulation is less strict.[33] In 2013 the Commission approved such schemes in five Member States: Belgium, Germany, the Netherlands, Spain and the UK.[34] On the other hand, plans of the German authorities to grant such support to certain non-ferrous metals producers have been declared incompatible, as it would have implied serious distortions of competition to the detriment of producers in other Member States.[35]

Promoting open and competitive energy markets by ensuring non-discriminatory access and a level playing field

In 2013, antitrust enforcement actions have contributed or will contribute in the future to curbing energy prices by combatting abusive or collusive behaviour leading to segmentation of markets and inefficient allocation of energy. Cases currently under investigation by the Commission have examined the behaviour of companies active in the crude oil, refined oil products and biofuel sectors;[36] Gazprom, in relation to the supply of gas to Central and Eastern Europe;[37] BEH, in relation to the supply of electricity in Bulgaria;[38] and power exchanges.[39]

In April, the Commission accepted and adopted a decision that renders legally binding commitments from ČEZ, the Czech electric incumbent.[40] An in-depth investigation into the Czech electricity sector was opened in June 2011, following unannounced inspections in 2009. After ČEZ offered commitments to address the Commission's concerns, a market test was carried out in July 2012 and its outcome was considered satisfactory. ČEZ will divest

[33] Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012, OJ C158, 5.6.2012, p. 4.

[34] Case numbers SA.37017, SA.36103, SA.37084, SA.36650 and SA.35543.

[35] Case SA.30068 – Aid to non-ferrous metals producers for CO_2 costs of electricity.

[36] Case AT.40054 – Oil and Biofuel Markets, see MEMO/13/435 of 14 May 2013 [NB: case number and name not yet public on website]

[37] Case AT.39816 – Upstream Gas Supplies in Central and Eastern Europe, see MEMO/12/937 of 4 September 2012

[38] Case AT.39767 – BEH electricity, see IP/121307 of 3 December 2012.

[39] Case AT.39952 – Power Exchanges, see MEMO12/78 of 7 February 2012.

[40] Case AT.39727 – ČEZ

from about 800 to 1,000 MW of its generation capacity. That divestiture will allow a new player to enter the Czech electricity market and compete with the incumbent.

The Commission also initiated formal proceedings against the Romanian power exchange OPCOM,[41] which, together with its parent company CNTEE Transelectrica, received a Statement of Objections in May. The Commission found on a preliminary basis that OPCOM, the operator of the only power exchange in Romania, is discriminating against companies on the basis of their place of establishment. Power exchanges have an important role in providing public price information: restrictive business practices, by increasing foreign traders' costs to do business, limit the liquidity and efficiency of electricity markets. Access to energy markets is crucial to achieving transparent and reliable electricity prices on the wholesale and retail markets.

As to State aid control, the Commission opened an in-depth inquiry into water-resources concessions to Electricidade de Portugal (EDP) for electricity generation, to verify whether the price paid by the Portuguese electricity incumbent EDP in 2007 for the extension of its right to use public water resources for electricity generation was in line with EU State aid rules.[42] The Commission has started inquires about the rules and practices governing the granting or extension of similar concessions in other Member States too.

6. COMPETITION ENFORCEMENT IN THE DIGITAL ECONOMY TO UNDERPIN THE DIGITAL AGENDA FOR EUROPE

The digital revolution has taken almost every sector of the economy by storm, shaping the way individuals and companies live and do business, bringing a large variety of digital goods and services, and offering other sectors essential inputs, prospective savings, novel information and distribution channels. The digital sectors are major drivers of creativity and innovation, boosting competitiveness across the economy. Although it is extremely difficult to identify reliable measures to capture the size of the digital economy, its contribution to GDP growth in recent years has become more and more significant. With this in mind, the Commission launched in 2010 its Flagship Initiative "A Digital Agenda for Europe",[43] which was reviewed with an updated set of priorities in December 2012.

Although the basic principles and objectives of competition policy remain the same across all sectors, a number of features are quite specific to the digital economy. A faster churning process is one of them. Another feature of digital markets is the rapid pace of technological change, which constantly brings new devices and immaterial goods, such as services, applications, and ecosystems to the market. Finally, business models and sources of revenue change faster in digital markets than elsewhere.

Combining competition-policy instruments to address the challenges of fast-moving market

In fast-moving markets such as ICT and e-communication, the joint application of ex-ante regulation and ex-post competition enforcement is necessary to safeguard the proper functioning of the sector and help it deploy its growth potential in full. Effective scrutiny of the behaviour of dominant firms, as well as quick reaction in case of abuses, is particularly important, since illegal practices may cause the early exit from the market of small and innovative competitors.

[41] Case AT.39984 – OPCOM / Romanian Power Exchange

[42] Case SA.35429 – Extension of use of public water resources for hydro electricity generation

[43] COM(2010) 245 final/2: Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions, A Digital Agenda for Europe.

Facilitating the dissemination of intellectual property and knowledge is also important in the digital industries. To that end, the Commission is reviewing its antitrust-policy framework on technology-transfer agreements. Efficiency-enhancing technology-transfer agreements between competitors or non-competitors promote innovation and competitiveness. Dissemination of technology can favour competition and increase follow-on innovation. A public consultation on the revision of the existing guidelines and the block exemption regulation for technology transfer agreements (TTBER) took place between February and May, in view of adopting final texts in the spring of 2014.

Enforcing antitrust rules in the fast moving digital market: the Google case

The Commission had concerns that Google may be abusing its dominant position in the markets for web search, online search advertising and online search advertising intermediation in the EEA. The Commission considered that such practices could harm consumers by reducing choice and stifling innovation in the fields of specialised search services and online search advertising. To address Commission's competition concerns, Google submitted a first set of commitments in April and a revised set of commitments in October. The Commission sought feedback on Google's revised commitments through formal requests for information. In light of the feedback it received, the Commission came to the conclusion that the revised commitments still fell short of adequately addressing the competition concerns the Commission expressed in its Preliminary Assessment. The Commission informed Google that if it wished to submit a further revised set of commitments that adequately addressed the Commission's concerns, it had only a very limited amount of time to do so, failing which the Commission would revert to the procedure under Article 7 of Regulation 1/2003.

Promoting connectivity and tackling Single Market fragmentation in the telecoms sector

The absence of a real Single Market for electronic communications hinders the development of new services accessible throughout the internal market to the disadvantage of European consumers.

Completing the Single Market for electronic communications would bring significant benefits to Europe's businesses and citizens. On 11 September, the Commission adopted a legislative package for a "Connected Continent: Building a Telecoms Single Market". This package comprises a Communication on the Telecoms Single Market, a proposal for a Regulation laying down measures concerning the European single market for electronic communications as well as measures to achieve a Connected Continent; it also includes a Commission Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment. [44]

In 2013 competition enforcement has been quite active in the telecoms sector, preventing incumbents from protecting their business through illegal practices and ensuring that mergers would not lead to higher prices, poorer quality and lower levels of innovation.

Under the Merger Regulation, the Commission is in the process of reviewing a number of major deals, including two proposed transactions that would consolidate Mobile Network Operators in Ireland and Germany respectively. On 1 October, Hutchison 3G UK notified to the Commission its intention to acquire sole control over Telefónica Ireland and on 6 November the Commission opened an in-depth investigation into that merger.[45] Similarly on 31 October, Telefónica Deutschland notified to the Commission its intention to acquire sole control over KPN's mobile operations in Germany known as E Plus and on 20 December the Commission opened an in-depth investigation in to the transaction.[46] As both those

[44] https://ec.europa.eu/digital-agenda/en/connected-continent-single-telecom-market-growth-jobs

[45] Case number M.6992 – Hutchison 3G UK / Telefónica Ireland.

[46] Case M.7018 – Telefónica Deutschland / E-Plus.

transactions would result in fewer players on wholesale and retail markets that are already very concentrated, they will have to be reviewed in-depth in the course of 2014.

The Commission also analysed and cleared unconditionally in Phase I Liberty Global's US$ 23.3 billion acquisition of Virgin Media[47] – the largest cable operator in the UK – and Vodafone's €8 billion acquisition of Kabel Deutschland, the largest cable operator in Germany.[48]

On the antitrust side, on 23 January the Commission imposed a fine of €66.894.000 on Telefónica and of €12.290.000 on Portugal Telecom, for agreeing not to compete with each other on the Iberian telecommunications markets.[49] By preserving the status quo in Spain and Portugal, the agreement contributed to maintaining partitioning in the EU telecoms sector. Non-compete agreements are one of the most serious violations of EU competition rules, as they potentially result in higher prices and less choice for consumers. That specific decision is especially relevant, since it concerned a cross-border market-sharing agreement.

Removing obstacles to innovation in the knowledge economy

In 2013, the Commission has been active in relation to standard-essential patents (SEPs). SEPs are patents protecting a technology which is essential for the implementation of an industry standard developed by a standard-setting organisation. It is technically impossible to make a standard-compliant product without using the technology protected by the SEPs.

In May, the Commission sent a Statement of Objections to Motorola Mobility on potential misuse of SEPs for mobile phones.[50] The seeking of an injunction before a national court is generally a legitimate remedy for a SEP holder in case of patent infringements. However, where a successful standard comprises patented technologies, access to the corresponding SEPs is a precondition for any company to sell standard-compliant products on the market. The Commission has therefore reached the preliminary conclusion that the seeking of an injunction may constitute an abuse of a dominant position, where SEPs are concerned and the potential licensee is willing to enter into a licence on FRAND (Fair, Reasonable and Non-Discriminatory) terms. In such a situation, the Commission considers that SEP holders should not have recourse to injunctions, which generally involve a prohibition to sell the product infringing the patent. SEPs holders retain the right to seek injunctions where potential licensees refuse licenses that have been deemed to be FRAND.

Efforts in the SEPs area have also involved Samsung.[51] In September, Samsung offered commitments to address the competition concerns identified by the Commission in its Statement of Objections of December 2012. Under the proposed commitments, Samsung proposes for a period of five years not to seek injunctions on the basis of any of its SEPs, present and future, that relate to technologies implemented in smartphones and tablets against any company that agrees to comply with a specified process for determining appropriate FRAND royalty rates by either a court or arbitral tribunal.

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[47] Case M.6880 – Liberty Global / Virgin Media.

[48] Case M.6990 – Vodafone / Kabel Deutschland.

[49] Case AT.39839 Telefónica and Portugal Telecom.

[50] Case AT.39985 – Motorola - Enforcement of GPRS standard essential patents.

[51] Case AT.39939 – Samsung - Enforcement of UMTS standards essential patents.

7. INTERNATIONAL CO-OPERATION IN COMPETITION POLICY TO TACKLE THE CHALLENGES OF GLOBALIZATION

The increasing interdependence of world economies is an irreversible trend: foreign direct investment had risen to over 30% of world GDP before the crisis, while world trade has grown on average by 5.3% a year for the past two decades. New economic giants have appeared while the major players in the global environment have made significant investments in each other's economies.

The globalisation of the economy calls for closer co-operation among competition authorities not only in Europe, but also across the globe. International co-operation between competition agencies assists with the effective management of the challenges of globalisation and promotes convergence on competition-policy principles and practices implemented throughout the world. It is essential to ensure co-operation among different authorities and consistency in the outcome of their enforcement activities. As encouraged by the European Parliament, the Commission continued to engage in multilateral and bilateral policy dialogues with the authorities in a number of other jurisdictions so as to promote convergence on both substantive and procedural competition rules. The Commission also continued to co-operate closely with many competition agencies in day-to-day enforcement activities.

Bilateral and multilateral co-operation for more effective competition enforcement

The EU launched negotiations with the US on a Transatlantic Trade and Investment Partnership Agreement (TTIP) on 8 July and with Japan on a Free Trade Agreement on 25 March. Both negotiations include provisions related to competition that the Commission follows closely.

As to bilateral relations with non-EU competition-enforcement bodies, in 2013 the Commission focused its efforts mainly on the EU's main trading partners – both traditional trading partners and major emerging economies. In that respect, high-level dialogues were held in 2013 with representatives of some competition agencies with which the EU has concluded a cooperation agreement or a Memorandum of Understanding.

In the margin of the BRICS Conference on 22 November in Delhi, DG Competition signed a Memorandum of Understanding for Co-operation in the area of competition law with the Competition Commission of India. On 17 May, the Co-operation Agreement between the EU and Switzerland was signed. An innovative feature of the latter and the reason why it is called a second-generation agreement is that it will enable both competition agencies to exchange information they have obtained in their respective investigations. The agreement will enter into force once it has been approved by the European Parliament and the Swiss Parliament.

Negotiations on a similar agreement between the EU and Canada have been progressing well. In addition, the Commission continued to engage in technical co-operation activities with other non-EU competition authorities, in particular of China and India.

The Commission continued to monitor closely the implementation of the provisions of the steel and shipbuilding annexes included in the Act of Accession for Croatia[52] – and on 1 July Croatia became a member of the EU. As to accession negotiations with candidate countries, significant progress was made in 2013 with the screening of Montenegro legislation and the identification of opening benchmarks for negotiations of the competition chapter.

The Commission also continued its active engagement with international competition-related fora such as the Competition Committee of the OECD, the International Competition Network

[52] Act of Acession to the Accession Treaty for Croatia.

(ICN), and Unctad. In 2013, it continued to co-chair the Mergers Working Group of the International Competition Network and one of the Sub-Groups of the Cartel Working Group. In 2013 the Commission was also the project leader (together with US Federal Trade Commission) for the ICN Steering Group projects on investigative processes in competition enforcement activities.

8. COMPETITION DIALOGUE WITH THE OTHER INSTITUTIONS

Structured dialogue with the European Parliament

DG Competition engages in a continuous structured dialogue on competition issues with the European Parliament, and its Economic and Monetary Affairs (ECON) Committee in particular.

Vice-President Almunia visited ECON twice in 2013 in the context of the structured dialogue: on 28 May for the presentation of the Annual Report on Competition 2012, and on 26 November for an update on key decisions and policy developments in 2013, looking ahead to the results of the Parliament's work in the area of competition in 2014.

The Vice-President also attended the Regional Policy committee on 30 May to talk about the Regional Aid guidelines, which the committee was examining.

Two Resolutions on the Annual Reports on Competition were adopted in 2013. In June, Parliament adopted its Resolution on the Sanchez Presedo report, covering the 2011 ACR. The 2012 Annual Report on Competition was sent to the ECON committee on 14 May, to enable MEPs to prepare for the dialogue with the Commissioner. The Resolution on the Tremosa i Balcells report was adopted on 10 December.

In recent years, Parliament has raised concerns about the subject of fines for competition infringements: the Commission holds the view that the Fining Guidelines provide sufficient legal certainty for companies and flexibility for the Commission if modification is required; this structure has been upheld on many occasions by the European Courts.

Structured dialogue with the European Parliament on State Aid Modernisation

The Parliament was formally consulted by the Council in the process of adopting the Enabling and Procedural Regulations, cornerstones of the State Aid Modernisation, which was a priority for DG Competition throughout 2013. The Parliament adopted its two Resolutions in July, following in-depth work on the two proposals. As well as the ECON committee, the TRAN committee contributed an opinion on the Enabling Regulation. As well as its formal role in the legislative process, the key messages made by the Parliament were taken into account by the Commission in its revision of the guidelines in the State aid area. As Vice-President Almunia informed MEPs during the 26 November structured dialogue, the SAM process shall be completed in 2014 with the adoption of the rest of the State aid guidelines.

In parallel to and following the adoption of the Enabling and Procedural Regulations in July, work to revise and update the raft of State aid legislation continued. There was a third public consultation on the draft Cinema Communication on 6 May, followed by the final text of the Communication on 14 November. ECON was informed of that initiative, as well as the launch of the public consultation on the guidelines on State aid to airports and airlines (Aviation Guidelines) on 3 July, the De Minimis consultation on 17 July, the public consultation on the General Block Exemption Regulation on 29 July, the Rescue & Restructuring guidelines on 14 November.

A background paper on the Regional Aid Guidelines was sent to ECON on 16 May.

It was another area for which COMP staff briefed MEP and Parliamentary staff. The REGI committee tabled an Oral Question with debate on the RAG, in the context of parallel debates on the new Regional aid maps and next programming period for the Structural Funds.

Damages actions[53]

Vice-President Almunia chose to first present the Commission proposal on Damages to ECON MEPs at an open coordinators' meeting in Strasbourg on 11 June, immediately following adoption by the College. The Commission adopted the proposal on the basis of both Articles 103 and 114 TFEU that led the Commission to transmit the proposal to the European Parliament and the Council under the ordinary legislative procedure. The services of the Commission attended the workshop on the proposal on 18 September hosted by the ECON rapporteur, and the first exchange of views held on 17 October to answer questions.

Swiss Agreement

The services of DG Competition first informed the European Parliament about the negotiations with the Swiss competition authority on a second-generation agreement in November 2010. In June 2013, the Council formally requested the Parliament to give its consent to that agreement. DG Competition has worked with the rapporteur, participating in a workshop for assistants, a public hearing, and a meeting with representatives of the parliamentary groups.

Continuing to strengthen DG Competition's communication with the ECON Committee

As in previous years, DG Competition organised a seminar for ECON assistants and political advisers covering the main themes in the 2012 Annual Report on Competition and which was held on 17 May at DG Competition's premises. It was followed by an in-depth briefing for the rapporteurs' assistants on antitrust and State aid enforcement in the transport sector and on State aid to banks, and by a high level briefing for the ECON competition working group MEPs on the main policy themes.

In July, the Commission adopted a new Banking Communication to update the guidelines published in 2008 at the start of the financial crisis and to reflect the experience gained in the interim period. The Commission also prepared an issues paper for the Economic and Financial Committee (EFC), which was sent to the ECON Chair.

DG Competition continued the practice of regularly informing the relevant Parliamentary committees of public consultations and the adoption of new guidelines and policy documents.

DG Competition staff met many MEPs on a bilateral basis in 2013, relating to Parliament's work on the various competition files. The Commission services prepared replies to 366 written Parliamentary questions, and to 21 petitions in respect of which DG Competition was chef de file.

DG Competition and the ECON committee continued their exchange of information with regard to studies; DG Competition services informed the ECON secretariat in July of the studies commissioned by the DG in 2013.

DG Competition's engagement with the EESC and the CoR

The Commission also informed the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) about major policy initiatives. It also participated in study group and section meetings. On 1 February, Vice-President Almunia attended the plenary meeting of the CoR on State Aid reform and the revision of the Regional Aid Guidelines 2014-2020.

[53] COM(2013) 404 final: Proposal for a Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.