

**Minutes of the ECCG Competition Subgroup meeting  
Brussels, 9 July 2009**

*1) Approval of the Terms of Reference of the ECCG Subgroup on Competition*

The ECCG Competition Subgroup (hereinafter "Subgroup") discussed the Terms of Reference ("ToR") as presented by the Commission. In relation to the discussion on the ToR, the Subgroup asked for guidance on collecting prices. The Subgroup expressed the wish to discuss how they could make it more relevant to competition law and also what their use and their legal force would be. ES underlined the particularly high level of proof required by competition authorities. The Subgroup also asked to be alerted on relevant cases and called for the ToR to foresee the faculty for the Sub-group to emit a formal opinion, e.g. on the associations' procedural rights in the handling of competition cases.

The Commission thanked the Subgroup for the fruitful discussion on the proposed ToR. The Commission suggested thinking about a proposal to designate alternate members of the Competition Subgroup who may attend the Subgroup meetings in cases where the full member may not be available. On the latter proposal DE raised the point that some associations may not have the resources to do so, although they all would like to give as much input as they can.

*2) State interventions in the context of the financial crisis: "We must fight the crisis, not each other."*

The Commission (Mr. Medghoul, DG COMP, Financial Crisis Task Force) presented the Commission's action in response to the financial crisis.

ES complained that, although state aid is about taxpayer money, there is little space for consumer associations in the relevant procedures. It also raised the point of the Commission having been too lenient on bank support in an emergency context. ES questioned whether the use of state funds and the subsequent restructuring would be properly monitored.

The Commission replied that it welcomed general remarks as a help in elaborating any of its decisions. The Commission pointed out that the absence of negative decision in the financial sector was not to be misinterpreted: it does not mean that the Commission has accepted everything proposed by the Member States. Quite on the opposite, a number of aid schemes were only cleared after some proposals in them had been abandoned. The real test for the Commission will be in one year's time or so, for then will we see if we actually pushed the banks in the right direction.

DE asked whether some state aid measures had not created even more "too-big-to-fail" banks, while the same banks could actually rip the public by not passing on lower interest rates to consumers. It also estimated at around €bn 20 to 30 the cost of consumers choosing the wrong products compared to their actual needs.

PT voiced some reserves about its Member State having bailed out two little banks that therefore were not likely to endanger the whole banking system.

In its reply the Commission made clear that, while creating even bigger banks post-crisis was mostly a matter of merger law, in the field of state aid the Commission could not go as far as substituting its own judgment for that of a Member State on which banks to objective of contributing to remedy the financial crisis. The Commission's mandate is rather to ensure that the envisaged support measures are in compliance with competition rules.

Concerning small banks, the Commission pointed out that a remedy to the present instability of the financial sector cannot be limited only to a few very big institutions. In addition, it would also be problematic if only big banks could get state support, for this would only have reinforced their market power.

### *3) The European Competition Network ("ECN") – National competition authorities and the European Commission working together*

The Commission (Mr. Musil, Head of Unit, DG COMP) presented an overview of the functioning of the ECN and the main areas of its actions. The Commission briefly explained the background of a proposal to create a network of consumer correspondents from each NCA. Members of the Subgroup expressed their views on the consumer correspondent network emphasizing that in the past the joint meetings with the said NCAs' 'network' could not achieve any concrete results and it would not be useful to organise such joint meetings just for the sake of having a dialogue. Instead, the Subgroup would see a clear added value at EU level if NCAs and consumer organisations could exchange their views about cases and the ECCG Competition Subgroup would serve as a platform for these discussions.

Besides, the Subgroup strongly expressed the wish to move on to the next level of dialogue, and the need to turn consumers from spectators to actors in competition cases. The Subgroup also called for a discussion with NCAs about how consumer organisations could help NCAs in their work. The members of the Subgroup attending the meeting reported a good working relationship with their respective NCAs, but only a few of them mentioned regular meetings with their country's NCA. NL reported that the Netherlands Competition Authority (NMa) introduced a consumer liaison function. Some Subgroup members voiced concerns on the lack of procedural rules when consumer organisations are involved in competition proceedings.

The Commission suggested organising the next ECCG Competition Subgroup meeting or at least one part of the meeting together with NCAs representatives and discuss the ways to co-operate in the future. The Commission also expressed its feeling that the proposal to the NCAs should be concrete and cover the issues raised during the discussion.

### *4) The Intel case*

The Commission (Mr. Kaminski, DG COMP) presented the Intel case and BEUC, NL (CB) and ES (OCU) shared their experiences gained during the infringement procedure.

BEUC recalled that it had been considered an interested third party in the case and participated in the case oral hearing where it made a presentation supportive of the

Commission's findings. NL expressed satisfaction at the handling of the case, even if it found the case-team quite reserved as to the amount of information it was ready to share.

The overall point was then raised of the incentives for consumer organisations to devote more effort to competition issues. ES, whose representative association did not take part in the *Intel* case, declared that consumer groups had a very limited access to the file and that confidentiality issues should be considered in a balanced approach, adding that in many countries, including Spain, interested third parties have full access to the file, and that if consumers are to be considered as credible actors in competition cases, they should be allowed to fully participate in formal proceedings. The Sub-group also called for more information sharing, so as to allow consumer organisations to contribute in a more meaningful way.

The Commission explained the procedural constraints related to business secrets in any investigations. It has been further underlined that the support the Commission receives from consumer organisations is always very much welcome and appreciated.

#### *5) Ways of improving the Competition Subgroup's work*

The discussion on the *Intel* case gradually led to a fruitful discussion on the ways of improving the Subgroup's work. ES asked whether consumers are considered as serious partners in competition matters. If the reply were yes, then they should be taken as credible actors of the procedures, according to ES, which suggested allowing the Subgroup to issue an opinion on this question. The Commission voiced some reserves as to the possibility to issue any opinion at Subgroup level. Instead, it suggested including the Subgroup's thoughts about the role of consumers in competition procedures in the annual report to the ECCG.

The discussions also made clear that the Subgroup would welcome an exchange about the level of proof required from consumer organisations in competition cases. A clear need to work on private enforcement issues was also expressed by several members of the Subgroup. Another commonly interesting field of work would be the questions related to procedural rights for consumer organisations, notably access to file. The Subgroup would welcome an "alert-group" on cases and policy initiatives in the field of competition that have implications for consumers. The members of the Subgroup also called for the presentation of good examples of where consumer organisations could provide valuable contributions to competition cases in order to learn about the level of competition authorities' expectation. Case studies and exchanges of information were mentioned as useful several times. Finally, the Subgroup said it would welcome appearing on the Europa web site.

The Commission took note of these proposals and inferred that the Subgroup may wish to consider opening working dossiers on the following topics: procedural rights (access to file); private enforcement; working with NCAs; the standard of proof in competition cases; building an alert-group; exchange of information and best practices; case studies. The Commission informed the Subgroup that it was currently working on a website dedicated to consumers & competition, which will provide an excellent on-line platform for the ECCG Subgroup on Competition.

#### *6) Others*

The Commission informed the Subgroup about its next meeting, to be held on **20 October 2009** in Brussels (in the Borschette building) instead of 9 October 2009. Members were kindly asked **to take good note of the change**. The Chair also drew the Subgroup's attention about a high-level event on "Competition and Consumers in the 21<sup>st</sup> Century", due to be held the next day, 21 October 2009, in Brussels, and informed the members that they would be invited.

Mr. Thorun (DE) informed the Competition Subgroup that he will be leaving his organisation and therefore the Subgroup itself.

The Commission thanked Mr. Thorun for his active contribution and wished him success in his new position. The Chair concluded by thanking the participants for their fruitful participation and the interpreters for their excellent work.

The meeting was closed at 16.40.

*Nota Bene:* the points of contact at the Commission for the Sub-group are:

- for DG COMP, [comp-eccg-secretary@ec.europa.eu](mailto:comp-eccg-secretary@ec.europa.eu);
- for DG SANCO, Mr. Jens THOMMESEN ([Jens.THOMMESEN@ec.europa.eu](mailto:Jens.THOMMESEN@ec.europa.eu)).