EUROPEAN COMMISSION

# DG Competition
# Management Plan 2011

# PART 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 boosting 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 more closely 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.

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 Single 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 more than 900 staff of DG COMP is committed to adhere to the highest standards of professionalism, intellectual rigour and integrity.

# PART 2. This year's challenges (Personal message by the Director General)

The past year was characterised by a replacement of the entire top management team formed by the Commissioner and his Cabinet, Director General and deputy Directors General. Yet, we have been able to ensure a high degree of continuity while inserting new accents.

Looking back, 2010 has been important in consolidating our strategy to overcome the economic and financial crisis. DG Competition has worked to ensure that competition policy is fully embedded in this strategy: we have not relaxed our antitrust or merger rules and our State aid decisions have contributed to maintaining a level-playing field in the Internal Market. In 2010, we have focused on creating the right conditions for long-term viability of financial institutions and of companies in the real economy. In order to achieve a return to economic growth and increased competitiveness, we have prepared the ground for a gradual phase-out of State support and we have strongly advocated in favour of sound restructuring measures.

In the coming year, our state aid policy will continue to focus on facilitating a successful exit from the crisis. To this end, our decisions in the field of state aid will match the pace of recovery in financial markets and the broader economy. This will entail that the conditions governing access to extraordinary support will be tightened. At the same time, our state aid policy will allow Member States to grant aid to address market failures and to target horizontal objectives that support sustainable growth, job creation, research, innovation and environmental protection.

In the antitrust field, the fight against cartels has been a priority over the last years and it will undoubtedly continue. In 2010 we have taken a strong stand against harmful cartels, be it in the field of consumer appliances, animal feeds or transport. We have also successfully developed our experience with our new cartel settlement tool. In 2011 we will strive to improve our *ex officio* detection of cartels, to reduce the average duration of investigations and to ensure efficiency and uniformity in our cartel settlements.

We will continue to set fines at a level that acts as a real deterrent, our key message being that companies should refrain from engaging in any illegal activities. Over the last two years we have refined our methodology to deal with inability to pay claims. This analysis is always company-specific and aims to be objective and quantifiable to ensure equal treatment and preserve the deterrence aspect of our competition rules. As our experience in 2010 has shown, legitimate inability to pay claims will always be the exception rather than the norm. As we gradually put the crisis behind us, we will continue to assess carefully such inability to pay claims if the financial difficulties invoked by companies are real. However, we foresee that such circumstances will be increasingly exceptional, reflecting the return to a more dynamic economy.

In 2011, we will also continue to enforce Article 102 TFEU so as to ensure that markets remain competitive, in particular in network industries and innovative sectors that play a key role in the Europe 2020 strategy, such as energy, transport, financial services, ICT, electronic communications, media and pharmaceuticals. In doing so we will continue to apply the prioritisation principles set out in 2008.

In terms of our merger control policy, since the beginning of the crisis we have reported a decrease in the number of notifications, reflecting the economic difficulties. However, many of the cases that were notified in 2010 proved to be complex. In a number of such cases the Commission's clearance was conditional on the merging parties taking action to correct distortive effects on competition. Our merger control activity has also contributed to the maintenance of market conditions supportive of innovation, for example in the pharmaceutical sector where a series of mergers were conditionally cleared. There are now signs that merger control activity may pick up in 2011. We will therefore devote particular attention to corporate restructuring in key sectors, such as financial services. Our merger policy will also ensure that cross-border transactions are not blocked by Member States for unjustified reasons.

In terms of our policy work, we have already prepared a comprehensive policy package in which we proposed to extend the crisis regime for financial institutions in 2011, with a tightening of the conditions of access to aid. In this context, from 1 January 2011 every beneficiary of a recapitalisation or impaired asset measure will be required to submit a restructuring plan. We have also suggested a prolongation until end 2011 of the temporary framework measures that facilitate companies' access to finance. Again, we have subjected this prolongation to stricter conditions and insisted that aid measures are targeted to investments which contribute to a long-term sustainable economy by providing support to viable firms.

Going forward, by end 2011, we will issue new guidelines for the rescue and restructuring of financial institutions and we will also start preparing new rescue and restructuring rules for the real economy. DG Competition will also prepare, for adoption by the College in 2011, a revised set of state aid rules applicable to services of general economic interest. Such rules are key to the proper functioning of services of general economic interest and respond to the objective of inclusive growth set out in the Europe 2020 Strategy.

In the area of antitrust, our enforcement will be guided by the revised rules for the assessment of vertical and horizontal agreements between firms, adopted in 2010. These rules deepen and refine the effects-based approach adopted over a decade ago. They allow us to tackle more effectively new challenges such as the increase in on-line commerce, concerns regarding buyers' market power, as well as challenges related to standardization and the exchange of information between competitors.

DG Competition will continue to support the possibility of awarding damages for breaches of antitrust rules, including through the preparation of a corresponding legislative proposal. This would make it easier for consumers and firms who have suffered damage from an infringement of competition law to recover their losses from the infringer. We will also contribute to the Commission reflection in the field of collective redress. We will participate to the public consultation on common legal principles and concrete issues which should guide any future proposals for collective redress in EU legislation.

In the coming year, we will build upon the Best Practices for antitrust proceedings and on the results of our Stakeholder Survey in order to put in place further improved procedural rules. We are committed to continuing to safeguard due process including respect for the rights of defence, and will ensure that our procedures follow the highest standards in terms of rights of the parties, transparency and accountability.

With respect to our cooperation with other competition authorities, in 2011, we will continue to work closely with National Competition Authorities and to cooperate with national courts. The European Competition Network represents an invaluable pool of expertise in the field of competition policy and we will continue to exploit its potential. For example, we will work on improved coherence in the field of merger control.

As markets are increasingly global in scope, it is also important to foster cooperation and convergence between competition authorities across jurisdictions, including on unilateral conduct. DG Competition will continue to promote bilateral and multilateral co-operation with the European Union's main trading partners and with third-country competition agencies, for example through the International Competition Network or the OECD. We will continue to advocate in favour of including competition and state aid clauses in Free Trade Agreements to ensure a level playing field for European and foreign companies.

In the coming year, we will also step-up our communication efforts to accompany all the above mentioned initiatives. DG Competition will strive to effectively communicate on the benefits of competition and the impact of our action to citizens, businesses and policy makers. This will help us foster a competition culture, especially at a time where we need to ensure long-term growth in Europe.

# PART 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 foster competition culture and iii) to support growth, jobs and competitiveness of the EU economy.

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 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 in the financial and economic crisis. Historical evidence suggests that the causal link between effective competition and economic growth is particularly important in times of economic crisis. A weakening of the competition framework may prolong a severe economic downturn by several years.

DG COMP prioritises its actions in order to have the biggest possible impact on the functioning of markets. Therefore, making markets work better requires, in the first place, 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. This increased focus on key sectors such as ICT, energy, transport, pharmaceuticals and financial services maximises the contribution of competition policy to achieving the EU's overall objectives.

### 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.

By distorting incentives in the markets, state aid is in general harmful. For example, state aid granted to remedy a serious disturbance in the economy of a Member State resulting from the global financial crisis could delay the necessary restructuring of certain firms or give undue advantages to some firms over others. By distorting trade and competition such state aid would not only harm consumers' but also the overall public interest in a properly functioning Single Market.

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 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 globalization.

The results achieved in protecting and increasing competition can be assessed by estimating the customer benefits resulting from competition policy. In this Management Plan, DG COMP introduces a new benchmark for such an assessment in two areas of our activities, namely cartels and (horizontal) mergers. This benchmark is more robust than the one used in previous years[1] in the sense that it is more based on facts specific to the underlying enforcement decisions and available economic insights, including the application of sensitivity analysis.

This new benchmark consists in calculating the (observable) customer benefits resulting from the Commission's cartel decisions and the (observable) benefits derived from horizontal merger decisions where the Commission has intervened. These estimates are based on a number of assumptions (see footnotes 21 and 23). In 2010, the estimated (observable) customer benefits from cartel decisions was in the range of €7.2 billion to €10.8 billion, and the estimated (observable) benefits derived from horizontal merger decisions were in the range of €4.2 billion to €6.3 billion.

It is important to stress that the above estimates cover only a part of DG COMP's activities and therefore underestimate the actual impact of DG COMP's enforcement activities. While it can be assumed that significant customer benefits also arise from the Commission's enforcement action against abuses of a dominant position and anti-competitive vertical agreements, due to important structural differences among these cases DG COMP has decided not to apply a single, generalised benchmark to these types of practices. It rather plans to carry out selected individual and detailed ex-post case studies in the future. 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 3.3); or (iii) any possible

[1] For the past three years, DG COMP has been using a simplified impact indicator estimating customer savings (in the form of avoided higher prices) resulting from the Commission's antitrust (including cartels), merger and liberalisation decisions. For example, a 10% price increase was assumed in all merger cases in the absence of the Commission’s decision.

pass-on to final consumers[2] as this would require a very comprehensive assessments 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 deterrent effect of our policy and enforcement activities.

### 3.2. To foster 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 in which consumers make informed choices between products and services offered, businesses refrain from anti-competitive agreements or behaviour and public administrations realise how competition can contribute to addressing wider economic problems, directly contributes to making markets work better for the benefit of consumers and business. 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 2009 Eurobarometer survey, more than 80% of EU citizens consider that competition between companies can lead to better prices and to more choice, and 70% agree that "controlling" competition between companies benefits consumers and society. 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.

Although not directly comparable, these latest results are very positive in the light of the findings of a Eurobarometer survey of 2006, according to which 67% of EU citizens considered that increased competition is a good thing. This suggests that despite the economic crisis citizens' awareness and support for competition policy have actually increased.

According to a parallel survey, the majority of DG COMP's stakeholders (companies, law firms, economic consultancies, consumer and business organisations, national competition authorities and Ministries) 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 the years to come DG COMP will strive to sustain the high level of acceptance of the benefits of competition policy and enforcement revealed by these studies, both to resist any anti-competition and protectionist temptations that may undermine the recovery from the crisis and to facilitate the achievement of the Europe 2020 objectives.

[2] The term "customer" relates to direct purchasers.

### 3.3. To support growth, jobs and competitiveness

Competition enforcement and advocacy initiatives 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 EU 2020 strategy. For example, competition in financial services, the IT sector and in network industries in general, influences the input costs and hence the competitiveness of various sets of services. Better functioning financial markets are necessary to reach the goals of offering a more efficient and safer access to finance and insurance for businesses. Similarly, a fully competitive single European energy market is vital for the EU to increase productivity in the future world of relatively high energy prices and significantly greater resource competition.

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.

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. 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.

At the same time, the state aid framework helps Member States spend better targeted aid by allowing “good aid”, i.e. sustainable aid addressing 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. unnecessary and/or disproportionate aid.

In the context of the financial and economic crisis, state aid control policy contributes to a coordinated reaction to threats that have emerged because of the crisis and prevents subsidy races between Member States. It also contributes to the necessary restructuring in the financial sector and to the phasing out of dependence on State support in the context of an overall coordinated exit strategy.

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 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 policies most directly relevant to total factor productivity. The latter has been recognised as the main source of the productivity gap of the EU compared with the US, and a key driver of growth[3]. For example, the potential gains from improving competition and thus efficiency in network industries have been estimated to be 1.5 to 2% of GDP at least.

According to the autumn 2010 European Economic Forecast the economic recovery of the European Union is making progress. However, the overall pace of the recovery remains gradual and rather uneven across Member States, and the level of uncertainty for our outlook continues to be very high. Overall, however, the European economy is now more solidly on the path of recovery than was the case in spring. The health of the European banking sector in autumn 2010 has recovered compared to a year ago, with improved capital ratios of banks, money markets showing signs of normalisation and lending to the private sector having started to pick up. Looking at the year(s) to come, taking into account the significant upward revision of this year's growth (from 1% expected in spring to 1.75% in the autumn) and developments on the market, annual GDP growth should ease somewhat next year, from about 1.75% in 2010 in the EU to about 1.5% in the euro area and more marginally in the EU, before recovering to some 2% in 2012.

In any event the road ahead is a challenging one. Keeping markets open through competition advocacy and enforcement is of utmost importance in times of economic downturn. Indeed, vigorous enforcement of the competition rules stimulates demand and innovation by forcing markets to deliver the highest possible value for customers. Therefore, competition instruments should continue to be fully used to ensure well functioning markets and competition policy should underpin the Europe 2020 Strategy, in particular the Flagship Initiatives on an integrated industrial policy and for an innovative, resource-efficient union, and for giving new momentum to the Single Market.

[3] EU Competitiveness Report 2007.

| 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[4] | | In the range of €7.2 billion to €10.8 billion for cartels and €4.2 billion to €6.3 billion for mergers[5]. | |
| 2. | To foster 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[6] | |
| 3. | 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: growth rate of GDP per capita | Benchmark: return and exceed the pre-crisis growth rates (2.4%[7] on average between 2000 and 2007) | | 1.75% (EU-27, 2010; estimate) | |
| | | Proxy 2: growth rate of total factor productivity | | | 1% (EU-15, 2010)[8] | |
| | | Employment rate of the population aged 20-64 | At least 75% | | 69% | |
| | | Percentage of EU GDP invested in R&D | 3% | | 1.9% (EU-27, 2008) | |

[4] 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.

[5] The methodology used for calculating these figures is explained in footnotes 21 and 23.

[6] Eurobarometer Survey 2009.

[7] Eurostat.

[8] European Commission Ameco database:

# PART 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.

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 the Pharmaceuticals Sector Inquiry or as a result of unforeseen changes in the environment, such as the global financial crisis.

## 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.

The objectives of DG COMP's control of state aid activity are to i) limit overall levels of state aid, ii) ensure that where aid is granted, it does not restrict competition but addresses market failures to the benefit of society as a whole and iii) effectively prevent and recover incompatible state aid.

*Less aid by the Member States*

In line with the Action Plan for less and better targeted state aid launched by the Commission in 2005 and as supported by the European Council, the Commission's state aid policy aims at limiting overall levels of state aid in order to prevent misallocations in the economy. Indeed, state aid does not come for free and distorts competition by giving a firm an undue advantage over another. Also, a subsidy race between Member States would seriously undermine economic efficiency and the Internal Market. For these reasons, the high levels of state aid granted since the beginning of the economic and financial crisis should be reduced to pre-crisis levels and below as soon as possible. The past year already saw a decline in the reliance of financial institutions on emergency support.

*Better aid by the Member States*

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 cohesion, employment, environmental protection, promotion of research and development and innovation, risk capital and development of SMEs.

For example, in 2010, the Commission took more than 15 positive decisions relating primarily to research and development aid and more than 15 positive decisions relating primarily to environmental aid where it was ensured that the measures did not distort competition to an extent contrary to the common interest[9]. As outlined in the Europe 2020 Strategy, "state aid policy can … actively contribute to the Europe 2020 objectives by prompting 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."

*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. 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.

Several important decisions were taken by the Commission in 2010 in this respect. For example, in June 2010, the Commission concluded that an agreement of 2005 between the Hungarian government and the Oil and Gas Company MOL, in combination with an amendment, in 2008, to the Hungarian Mining Act, conferred a financial advantage on the company that could not be exempted under EU state aid rules, which led to the recovery of the aid granted (some € 128 million Euros).

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 which has played an important role in helping to

[9] Situation at 11 November 2010.

maintain the stability of the financial system as a whole while at the same time guaranteeing a level playing field between financial institutions and between banking communities in different Member States and securing the return to viability of banks that have been rescued and to facilitate adequate financing for the real economy, in particular SMEs.

In 2010, DG COMP continued to effectively implement the framework for the provision of public guarantees, recapitalisation measures and impaired asset relief by Member States as well as the Temporary Framework for state aid to support the access to finance of companies in the real economy.

Between 1 October 2008 and 1 October 2010 the Commission took approximately 200 decisions on State aid measures to the financial sector aiming to remedy a serious disturbance in Member States economies. These decisions authorised, amended or prolonged 41 schemes and addressed with individual decisions the situation of more than 40 financial institutions. The maximum volume of Commission-approved measures amounts to € 4 588.90 billion of which the greatest bulk approved as guarantees (€ 3 485.25 billion or 76% of the maximum volume). Not all of the aid approved was actually and effectively used by Member States. In 2009, the aid actually used by Member States constituted € 1 106.65 billion or 9.3 % of EU-27 GDP, whereas the figure for 2008 was € 1 236 billion.

In addition to aid to the financial sector, the Commission approved 73 schemes under the Temporary Framework and 4 ad hoc aid measures. The approved volume for these measures amounts to € 82.5 billion.

In all these cases DG COMP required 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 2011, our state aid control activity will, in particular, focus on facilitating a successful exit from the crisis, in line with the pace of recovery in financial markets and the broader economy. This will entail a gradual phasing out of support schemes for banks and companies in the real economy. In particular, the conditions governing access to the extraordinary support will be tightened. At the same time, state aid control will 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.

## ACTIVITY: CONTROL OF STATE AID

### SPECIFIC OBJECTIVE 1: Less aid granted by Member States

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| Overall level of state aid granted by Member States expressed as a percentage of GDP (less agriculture, fisheries and transport; aid related to the financial and economic crisis excluded)) | 0.49% of GDP ( 2009), compared to 0.46% of GDP (2008) and 0.63% of GDP (average 1996-2000) | Decrease in the indicator's level[10] |
| Overall level of crisis aid to the financial sector actually used by Member States, expressed as percentage of GDP[11] | 9.3% of GDP in 2009 compared to 10% of GDP in 2008 | Phasing out as soon as economic recovery allows |

| *Main policy outputs in 2011* |
|---|
| Decisions relating to notified and non-notified state aid measures |

### SPECIFIC OBJECTIVE 2: Better aid granted by Member States

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| Percentage of state aid granted by Member States for horizontal objectives | 84% of the overall amount of aid (crisis aid not taken into account; 2009) [12], compared to 54% (average 1996-2000) and 83% (2008) | Increase in the indicator's level |

| *Main policy outputs in 2011* |
|---|
| Decisions relating to notified and non-notified state aid measures |

[10] 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.

[11] 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.

[12] This "good" aid (aid pursuing horizontal objectives or pursuing regional development) can be also set forth as separate result indicators (breakdown of the overall percentage of state aid granted for horizontal objectives and with the exclusion of state aid to agriculture, fisheries and transport):

| State aid granted for | % of the overall amount of aid (2009) |
|---|---|
| R&D | 17.6% (compared to 14.9% in 2008) |
| Innovation | 0.6% (compared to 0.5% in 2008) |
| Employment | 4.2% (compared to 5.0% in 2008) |
| Regional aid (equity & social cohesion) | 24% (compared to 23.5% in 2008) |
| Training | 1.6% (compared to 1.5% in 2008) |
| SMEs (incl. risk capital) | 7.9% (compared to 10.0% in 2008) |
| Environmental purposes / energy saving | 22.6% (compared to 23% in 2008) |
| Other horizontal objectives | 5.4% (compared to 4.9% in 2008) |

## SPECIFIC OBJECTIVE 3: Effective prevention and recovery of incompatible state aid

| *Result Indicators* | *Latest known result* | *Target (mid-term)* |
|---|---|---|
| Percentage of "bad" state aid[13] | 0.08% of GDP (crisis aid not taken into account; 2009) compared to 0.28% of GDP (average 1996-2000) and 0.08% of GDP (2008) | Decrease in the indicator's level [14] |
| Percentage of incompatible aid recovered[15] | 88.9% in June 2010 compared to 90.9% as of June 2009 | Increase in the indicator's level |
| Percentage of cases closed or brought to Court within two years[16] | 57.4%[17] in June 2010 compared to 44.1% as of June 2009 | Increase in the indicator's level |

| *Main policy outputs in 2011* |
|---|
| Final decisions and appropriate measures for incompatible state aid cases |

[13] 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. To that effect the average figure of 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.

[14] 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.

[15] 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.

[16] 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).

[17] The observation period is between June 2005 and June 2010, taking into account recovery decisions adopted between June 2003 - June 2008 (see footnote above). The observation period will be shifted by one year at each revision of the Management Plan.

## 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

*Cartels*

Article 101 prohibits anti-competitive agreements in the common market. One of the gravest examples of an Article 101 violation having a direct negative effect on customers is a cartel – an illegal arrangement, generally between competing firms, designed to 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 and/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, hinder the necessary restructuring in certain sectors and ultimately thwart growth.

Cartels are a top priority for DG COMP, as evidenced by fines of over 12 billion Euros imposed in 35 decisions between 2006 and 2010. In 2010 seven cartel decisions were adopted[18], imposing fines totalling over 3 billion Euros on 69 undertakings. By offering partial or full immunity from fines to participants reporting cartels, our leniency policy is an effective means to detect cartels, with six out of the seven decisions adopted in 2010 having leniency applications at their origin. Another instrument that has proven its effectiveness is the settlement procedure introduced in 2008, which was used for the first time in 2010 in two of the six decisions adopted.

In 2011, we will continue to give priority to our cartel enforcement activity. Whilst continuing to draw on the efficiency of leniency we will allow more ex officio detection of cartels and aim to reduce the average duration of cartel investigations and to ensure efficiency and uniformity when settling cases. We will continue to set fines at a level that acts as a real deterrent. At the same time, we will continue to take seriously claims by some companies, particularly in today's economic climate, that they are unable to pay the fine where the financial difficulties invoked are real. The analysis will always be company-specific and aim to be objective and quantifiable to ensure equal treatment and preserve the deterrence aspect of EU competition rules.

*Other anti-competitive agreements*

In addition to cartels, other agreements between firms can give rise to competition concerns. In 2010, a decision was adopted making legally binding commitments offered by three members of the Oneworld airline alliance, British Airways (BA), American Airlines (AA) and Iberia (IB). The commitments were offered in response to the Commission's concerns that the planned joint venture between the parties could

[18] One of these consisted in fact in a re-adoption of a former decision.

violate EU antitrust rules and harm consumers on transatlantic routes. The commitments aim primarily at lowering barriers to entry, by enabling competing airlines to start operating or increase their services on the affected routes, and the decision will enable the airlines to put in place the transatlantic alliance, while ensuring that the around 2.5 million passengers using the London-New York and other affected routes continue to benefit from a choice of frequencies and competitive prices.

Another important decision adopted in 2010 made legally binding commitments offered by Visa Europe to reduce to 0.2% its cross-border Multilateral Interchange Fee (MIF) for consumer immediate debit cards and to implement network rules that will increase transparency in the payment cards market. The commitments are in line with the unilateral undertakings given by MasterCard in April 2009.

Other agreements were abandoned or amended without the Commission adopting a formal decision after DG COMP expressed concerns, such as the planned joint production joint venture between BHP Billiton and Rio Tinto in the already extremely concentrated market of iron ore, and Apple's potentially market partitioning warranty scheme, respectively.

In 2011, 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, with particular focus on standard-setting arrangements in order to make sure that they contribute to facilitating rather than holding back innovation, as well as to agreements between pharmaceutical companies, such as restrictive patent settlement agreements with reverse payments[19]. This is in line with the Europe 2020 Strategy, according to which the Commission will "ensure that markets provide the right environment for innovation, for example through ensuring that patents and property rights are not abused".

*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.

A series of Article 102 decisions adopted in 2010 making commitments offered by Svenska Kraftnätet, EDF, EONgas and ENI legally binding are evidence of our resolve to address competition concerns relating to the energy sector. Through its

[19] As announced in the Final Report of the sector inquiry into the pharmaceutical sector, in July 2010 the Commission published a first Report on the monitoring of patent settlements, which showed that the share of the potentially problematic settlements, i.e. those containing a value transfer from the originator to the generic company and a limitation on generic entry went down in the period mid-2008 to end 2009 while the number of settlements overall increased. In 2011, a second Report will be issued.

enforcement of Article 102 DG COMP not only remedies individual instances of anti-competitive behaviour by dominant firms but also delivers more competitive market structures where structural remedies are applied. For example, to remedy DG COMP's concerns, ENI committed to divest its share in the international pipelines that transport gas to Italy.

DG COMP also investigated several cases of possibly anti-competitive unilateral conduct by dominant firms in the IT sector, while the decisions taken in the preceding year deployed their positive effects. For example, following the adoption in December 2009 of a commitment decision concerning the tying of Microsoft's web browser to its client PC operating system Windows, in February 2010 Microsoft started distributing a Choice Screen that offers users an unbiased choice between the most widely used web browsers in Europe.[20] By the end of May, the Choice Screen had been viewed more than 150 million times and more than 40 million web browsers had been downloaded from it. But most importantly, the Choice Screen has raised consumer awareness that they could choose their web browser, and there is now more choice and intense competition in the browser market.

In the last year, particular attention has also been paid to abuses of patents rights, for example by making binding commitments offered by Rambus to cap its royalty rates for patents for DRAMs after the Commission had expressed concerns that it may have claimed abusive royalties for the use of these patents.

In 2011, DG COMP will continue to pay particular attention to unilateral practices and, where appropriate, take further enforcement action under Article 102 to contribute to ensuring more competitive markets in particular in network industries and innovative sectors that play a key role in the Europe 2020 strategy, such as energy, transport, financial services, ICT, electronic communications, media, and pharmaceuticals.

*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. For example, in 2009 and 2010 DG COMP has taken measures regarding the extension, by the Slovak Republic, of the monopoly of the postal incumbent for the delivery of hybrid mail items which was previously open to competition.

In 2011, 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 "[t]hrough the implementation of competition policy the Commission will ensure that the single

[20] Microsoft also committed to enable users and computer manufacturers to install competing web browsers in addition to or instead of Internet Explorer and set those as default.

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[21] | In the range of €7.2 billion to €10.8 billion (depending on underlying assumption) | Stable level of the indicator adjusted for growth and inflation |

| *Main policy outputs in 2011* |
|---|
| 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 policy outputs in 2011* |
|---|
| Decisions applying the prohibition rules of Articles 101 and 102 TFEU (restrictive agreements other than cartels and abuses of dominant position) |

[21] The calculation of the (observable) customer benefits arising from the Commission's intervention in each individual cartel case for which the Commission adopted a decision in 2010 is based on three factors: (i) the total size (by value) of the market concerned; (ii) the likely price increase avoided (based on recent economic literature, a 10% average overcharge is assumed, with a sensitivity analysis of 5% to 15%); and (iii) the length of time that the cartel would have lasted without the Commission's intervention: 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 classification of cartels is established by combining insights from economic theory and evidence on the file. The (observable) customer benefits are the product of the multiplication of these three factors. In previous Management Plans the customer benefits resulting from our cartel decisions were calculated by applying a 10% overcharge to the value of the concerned market and assigning an extra-duration of five years to all cartels (an annual discount rate of 3.5% for year n+1 to n+4 was also applied).

**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 2010. | Stable level of the indicator adjusted for growth and inflation |

| *Main policy outputs in 2011* |
|---|
| 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>Assessment of notifications from national regulatory authorities under Article 7 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services. |

## 4.3. Activity "Merger control"

The EU merger control system plays a key role in adjudicating on mergers that may one 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 financial and economic crisis 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 which are already less than effectively competitive. Merger control thus contributes to the long-term efficiency of the economy and allows protecting the consumers' interests.

Merger control by the Commission applies to transactions exceeding the turnover thresholds under the Merger Regulation and therefore considered to lead to significant structural changes, the impact of which on the market goes beyond the national borders of any one Member State. Such concentrations are reviewed exclusively at Community 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.

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 examined, most of them without the need to open a 2$^{nd}$ phase investigation. Most concerns about the possible effects of a merger are resolved through remedies.[22] A prohibition decision is the last resort. But 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 2007, the merger between the airlines Ryanair and Aer Lingus, which would have otherwise reduced choice and, most likely, led to higher prices for more than 14 million EU passengers using 35 routes to and from Ireland each year. The General Court upheld the Commission's decision in July 2010.

[22] For example, in 2010, concentrations were approved subject to remedies in 16 cases, 14 of which in Phase I.

Since the beginning of the crisis there has been a decrease of the number of merger notifications compared with previous years, reflecting the prevailing uncertain economic situation, but a significant number of cases that were notified in 2010 proved to be complex. In some sectors, such as airlines, the crisis may have accelerated the restructuring process, and in a number of cases the Commission's clearance was conditioned on the merging parties taking action to correct any distortive effects on competition.

DG COMP's merger control activity also continued to contribute to the maintenance of market conditions supportive of innovation, for example in the pharmaceutical sector where a series of mergers were conditionally cleared.

There are signs that merger control activity may pick up in 2011. Particular attention will have to be paid to corporate restructuring in the financial services, as a result of the direct and indirect effects of the financial crisis, but also to restructuring in industrial sectors in which the economic crisis has triggered consolidation. Merger control will also continue to ensure that cross-border mergers are not blocked by Member States for unjustified reasons.

| 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[23] | In the range of €4.2 billion to €6.3 billion (depending on underlying assumption) | Stable level of the indicator adjusted for growth and inflation[24] |

| *Main policy outputs in 2011* |
|---|
| Decisions applying the rules of the Merger Regulation |

[23] The calculation of the (observable) customer benefits derived from the Commission's (horizontal) merger decisions adopted in 2010 is based on three factors: (i) the total size (by value) of the product market concerned; (ii) the likely price increase avoided (the estimation of the avoided likely price increase is mainly based on an ex-ante merger simulation methodology, which predicts post-merger prices using information about pre-merger market conditions, while building on assumptions about the behaviour of firms and consumers); and (iii) the length of time that the market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors: This estimation is based on an assessment of the likelihood of either new entry or the expansion of existing competitors in these markets. The merger decisions are classified into three categories representing durations of two, three or five years. In previous Management Plans the customer benefits resulting from our merger decisions were calculated by applying a 10% overcharge to the value of the sales of goods or services concerned by the merger decision.

[24] 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, iii) promoting effective and coherent private enforcement of EU law and iv) increased cooperation and convergence of competition policy at the international level.

*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; and simplification

2010 was marked by intense policy making activity by DG COMP, in particular in the field of state aid and anti-competitive agreements. For state aid this relates to the need to take measures to prepare for a successful exit from the crisis and the return to normal market functioning, starting with the setting out, in April 2010, of the conditions for the phasing out of bank guarantees. Also, a comprehensive policy package was prepared, in which it was proposed to extend the crisis regime for financial institutions in 2011, but with a tightening of the conditions of access to aid. In this context, from 1 January 2011 every beneficiary of a recapitalisation or impaired asset measure will be required to submit a restructuring plan.

DG COMP also suggested that a prolongation until the end of 2011 of the temporary framework measures targeted to facilitate companies' access to finance is justified by market circumstances, but again subjected this prolongation to stricter conditions. In particular, aid measures should be targeted to investments which contribute to a long term sustainable economy by providing support to viable firms. Indeed, even in crisis periods necessary restructuring of ailing firms should take place in order to put them on a sound footing in the long term. This is essential in order not to delay the necessary restructuring of the economy and thus deepen the recession and its long term effects. Therefore, from 1 January 2011, firms in economic difficulty should no longer benefit from the temporary framework measures.

Building on this work, by the end of 2011 the Commission will issue new guidelines for the rescue and restructuring of financial institutions. It will also start preparing new rescue and restructuring rules for the real economy, in view of the expiry of the current rules in October 2012. It will review the framework of state aid to shipbuilding and the Guidelines on state aid to maritime transport.

Other instruments will also be adopted in 2011 whereby DG COMP's state aid control activity will contribute directly to the Europe 2020 Strategy. In particular, to support its objective of sustainable growth, DG COMP will issue guidelines to establish rules for the treatment of state aid connected to the Emissions Trading System. This will contribute to achieving the 20/20/20 climate/energy target.

DG COMP will also start the process of preparing new regional aid guidelines, as well as new guidelines for the assessment of aid for risk capital investments in SMEs and for research and development. Regarding risk capital, the mid-term reviews carried out in 2010 show that the financial crisis has left an impact on venture capital markets and that the upper boundary of the SME equity gap has grown; consequently DG COMP has proposed that the increased maximum permitted tranches of finance per SME over a period of twelve months could be applied also outside the context of the financial crisis.

Last, but not least, having carried out a stakeholder evaluation in 2010, in 2011 DG COMP will prepare, for adoption by the College in 2011, a report on the application of the state aid rules applicable to services of general economic interest and a revision of them. These rules are key to the proper functioning of services of general economic interest and therefore also to the objective of inclusive growth set out in the Europe 2020 Strategy.

Regarding anti-competitive agreements, in 2010 new rules were adopted for the assessment of vertical and horizontal agreements, as well as agreements concerning motor vehicle distribution and insurance, all of which support various strands of the Europe 2020 Strategy.

The review of the competition rules applicable to vertical agreements (i.e. supply and distribution agreements between firms operating at different levels of the supply chain) resulted in particular in a clarification of the restrictions that manufacturers may and may not impose on distributors regarding the sale of their products over the internet. By setting out a clear framework the new rules contribute to the achievement of the digital internal market, because they provide legal certainty that incentivises distributors to develop their on-line activities.

As for horizontal agreements (i.e. agreements between competitors), the review further refines the rules allowing to adjudicate between on the one hand efficiency enhancing cooperation agreements that drive innovation and competitiveness, and on the other hand agreements that harm consumer through their detrimental effect on competition. A key issue addressed by the review was standard-setting arrangements where the Commission provided guidance for an efficient, open and transparent standard-setting process, which works for the benefit of European consumers. This is in line with the Commission's "Industrial policy for the globalisation era", according to which the Commission will work "[to] develop a horizontal approach to industrial policy combining different policy instruments (e.g. "smart" regulation, modernised public procurement, competition rules and standard-setting)."

A new insurance block exemption regulation was adopted in 2010, covering two categories of agreements out of the four previously exempted, namely agreements in relation to (i) joint compilations, tables and studies and (ii) pools. Agreements in relation to standard policy conditions and security devices have not been renewed, but are now included in the standardisation chapter of the horizontal guidelines.

With these central pieces of regulation in place, in 2011 competition policy will be focussing on procedural rules, in particular the improvement of due process, following the publication of draft Best Practices in anti-trust proceedings in 2010.

*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 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. In 2011 DG COMP will also further the work started in 2010 to use its experiences gained in the antitrust field to contribute to more coherence and coordination among itself and national competition authorities (NCAs) and in between NCAs with regard to merger control.

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. In line with the Commission's Work Programme for 2011, a Commission Communication on the quantification of harm in antitrust damages actions will be adopted. DG COMP will also contribute to the in depth analysis of the issue of policy coherence in the field of collective redress. It will help the Commission carry out a public consultation on the common legal principles and concrete issues which should guide any future proposals for collective redress in EU legislation. Once the Commission has agreed on the common principles, DG COMP intends to present a specific proposal on antitrust damage actions. This initiative will set common standards and minimum requirements for national systems of antitrust damages actions to ensure that rights are enforceable in a coherent manner across the EU.

*International cooperation and convergence*

Furthermore, DG COMP aims at contributing to and promoting international convergence of competition policy, in particular by creating effective tools for bilateral and multilateral co-operation with the 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.

For example, in 2011, DG COMP will further its cooperation with the US federal competition authorities in specific working groups set up for unilateral conduct and mergers, and continue to participate actively in ongoing debates in international fora (e.g. OECD, ICN) as well as in the discussions on the reform of the global financial system. In the specific context of enlargement, the main policy objective, in addition to fostering a competition culture, is to 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

| **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 a dozen legislative and non-legislative policy documents delivered from November 2009 to 31 December 2010[25] | Delivery of at least 10 additional key legislative and non-legislative policy documents until end of 2014. |

| *Main policy outputs in 2011* |
|---|
| 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>- Guidelines on rescue and restructuring aid to ailing financial institutions<br>- Guidelines for state aid related to the introduction of the Emission Trading Directive<br>- Revision of the state aid rules concerning Services of General Economic Interest (Community framework for state aid in the form of public service compensation and Commission Decision on the application of Article 86(2) of the EC Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest)<br>- Review of the framework of state aid to shipbuilding<br>- Guidelines on state aid to maritime transport<br>- Communication on the quantification of harm in antitrust damages actions |

[25]Including Commission Regulation 330/2010 of 20 April 2010 on the application of Article 101(3) TFEU to categories of vertical agreements and concerned practices, Guidelines on vertical restraints, Best practices in proceedings concerning Articles 101 and 102 TFEU, Commission Regulation (EU) 461/2010 on the application of Article 101(3) TFEU of the European Union to vertical agreements and concerted practices in the motor vehicle sector, Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, Commission Regulation (EU) of 24 March 2010 on the application of Article 101(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector, Explanatory Communication from the Commission on the application of Article 101(3) TFEU to certain categories of agreements, decisions and concerted practices in the insurance sector, Commission Regulation on the application of Article 101(3) TFEU to categories of research and development agreements, Commission Regulation XXX on the application of Article 101(3) TFEU to categories of specialisation agreements, Guidelines on the applicability of Article 101(3) to horizontal co-operation agreements, Follow up regime to Regulation 1407/2002 (coal industry), Amendment to the Temporary Community framework for state aid measures to support access to finance in the current financial and economic crisis of 8 December 2009 (OJ C303/6 of 15.12.2009, Communication from the Commission amending the Community guidelines on state aid to promote risk capital investments in SMEs, Prolongation of the Communication on the application of state aid rules to short-term export credit insurance, Communication on the extension of state aid rules to support measures in favour of banks in the context of the financial crisis, Amendment to the Temporary Community framework for state aid measures to support access to finance in the current financial and economic crisis.

## 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 | 150[26] ) | Stable indicator |
| Number of envisaged enforcement decisions and similar case consultations in the ECN | > 80[27] | 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[28] | Level of the indicator to remain zero[29] |

| *Main policy outputs in 2011* |
|---|
| 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 2011* |
| 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. |

## 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[30] | N/A | Stable indicator |
| *Main policy outputs in 2011* | | |
| 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 2011* | | |
| 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.. | | |

[26] Based on data from 2010.

[27] Based on data from 2010.

[28] Based on data from 2010.

[29] 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.

[30] 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.

**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 withy competition authorities in third countries | 2 | 4 |
| 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 2010, 13 submissions for OECD, several contributions for ICN, including the hosting of the ICN UC workshop, 1 contribution for UNCTAD | 12 - 15 submissions to OECD, ICN and UNCTAD<br>Organisation of an ICN Cartels Workshop |
| Number of candidate countries with whom accession negotiations on the competition chapter have been opened | 1 | 3 |

| *Main policy outputs in 2011* |
|---|
| Inclusion of effective competition and state aid provisions in international agreements.<br>Concluding of competition specific agreements. |

# PART 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.

*Strategy: delivering results*

DG COMP constantly assesses its performance, structures and processes to make sure that it is effectively delivering its objectives. DG COMP prioritises its actions in order to have the biggest possible impact on the functioning of markets. For example, in December 2008 the Commission issued a Communication setting out its enforcement priorities in applying Article 102 of the Treaty.

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.

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 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 in this Management Plan is a result of these efforts.

In accordance with the Commission's commitment to better regulation, in 2011 DG COMP will further enhance impact assessment and the ex post evaluation of competition enforcement activities so that lessons from past experiences are fed into EU legislation and demonstration of added value of EU action is based on solid evidence.

*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, and 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.

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. In particular, regarding EU level regulation, the most important legislative proposals and policy initiatives proposed by the Commission each year have to undergo a so-called Impact Assessment involving a comprehensive assessment of likely impacts, including of their 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[31]; for example, by providing input with a view to country-specific recommendations in the context of Europe 2020. Likewise, DG COMP provides input when necessary in the wider context of conditionality and structural reform, such as in the case of structural reforms in the competition area as part of the conditionality relating to the adjustment programme agreed in respect of Greece in May 2010.[32]

In 2011 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. DG COMP will also actively participate in the implementation of the Europe 2020 Flagship initiatives and support the work undertaken under the Internal Market Act, 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 2011 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.

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.

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

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

In particular, DG COMP produces every year a detailed report on its activities and engages in a structured dialogue with the European Parliament around this Annual Competition Report. More generally, DG COMP engages with the European Parliament at various levels, in particular the Economic and Monetary Affairs Committee (ECON), and on a multitude of topics and strives to provide timely and effective replies to parliamentary questions[33]. For example, in 2010 the ¨Parliament adopted Resolutions on the 2008 Competition Report, the Motor Vehicle Block Exemption Regulation, horizontal agreements and the Regulation concerning state aid for the closure of uncompetitive coal mines. There was also a plenary debate on an oral question on fines. The European Economic and Social Committee also adopted an opinion on the 2008 Competition Report.

In 2010 DG COMP conducted a stakeholder survey on the perception of competition policy and the work of DG COMP. Feedback was asked from companies, law firms, economic consultants, business and consumer associations, national competition authorities and Ministries on the following four quality categories of DG COMP's activities: (i) the soundness of its legal and economic analysis, (ii) the integrity and transparency in its interrelations with stakeholders, (iii) the economic effectiveness of its activities, and (iv) the quality of its external communication. The overall feedback from the professional stakeholders was positive, fully acknowledging the integrity and analytical capability of DG COMP's staff. Stakeholders also provided a large number of valuable constructive suggestions on possible further improvement.

In 2011 the results of this survey will be used to further improve its policies, in particular its working methods and processes as well as its communications strategy. The latter is described in more detail in Annex 6.

Finally, DG COMP strives to handle all requests for access to documents efficiently and within the time-limits set by Regulation 1049/2001. In 2010 DG COMP managed an increasing amount of requests (549 compared to 373 in 2009) while ensuring an increasing transparency through explanations provided by the refusals letters. In 2011 DG COMP expects to further increase the quality by improving the templates, the horizontal guidance and the sharing of experience for the handling of requests. In 2011 DG COMP envisages including training on access to documents in the framework of the Training cycles in each instrument.

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

[33] DG COMP, as a lead service, answered 180 written questions, 17 oral questions and 10 petitions (situation at 30 November 2010, and was associated to 258 written and 27 oral questions and to 26 petitions (situation at 31 October 2010).

**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 2010 | All documents within the deadline |
| Delivery rate (adoption by the College) of initiatives included in the Commission Work Programme and in the Catalogue | 76%[34] | 100% for the Commission Work Programme |
| Opinion of the Impact Assessment Board | 100% positive | 100% positive opinions, resubmission rate below Commission average |

| *Main policy outputs in 2011* |
|---|
| Preparation and delivery of the various elements of the Strategic Planning and Programming cycle (CWP, MP and AAR)<br>Evaluation Plan (see Annex 3).<br>Impact Assessment reports supporting initiatives to be adopted in 2011 and later |

**SPECIFIC OBJECTIVE 2: Competition advocacy contributing to a pro-competitive regulatory framework at EU and national level**

| *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 national reforms (e.g. as part of member States' national Europe 2020 programmes aimed at open and competitive markets | 51 measures[35] | Increase in the indicator's level. |
| *Main policy outputs in 2011* | | |
| 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 | | |

**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 2010 | All documents within the deadline |
| Delivery rate | 100% | . 100% |
| *Main policy outputs in 2011* | | |
| Responses according to target. | | |

[34] Five initiatives initially foreseen for adoption in 2010 were postponed to 2011.
[35] See reforms under "Product markets: open and competitive markets" at http://ec.europa.eu/economy_finance/indicators/economic_reforms/micref/

**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 | 10% of the replies were out of time[36] | DG COMP will aim at a full respect of time limits |
| Number of confirmatory requests | 21[37] | Reduce the % of confirmatory requests. |
| | | |
| *Main policy outputs in 2011* | | |
| Revising the templates for 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. | | |

[36] This figure is approximate. Such data has not been recorded in 2010, however DG COMP will put in place a system for registering this information.

[37] For the period 1 January 2010 – 5 December 2010 there have been 21 confirmative requests. This amounts to 3.82 % of all request filed with DG COMP in 2010.

# Annex 3: Evaluation plan

| N° | Title of evaluation (possibly working title) | Intended use of evaluation, and Activity concerned | | | Type of evaluation | | Timing | |
|---|---|---|---|---|---|---|---|---|
| | | Commission Work Programme initiative that the evaluation will support | Other purpose | ABB Heading | Prospective ("P"); retrospective ("R"); | external ("E"); internal ("I"); internal with external support ("I&E") | Start (month/year) | End (month/year) |

## I. On-going 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 | Community framework for state aid for research and development and innovation | | Mid-term review of the effectiveness of the Commission rules | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P&R | I | 1/9/2010 | 1/7/2011 |
| 3 | Community guidelines on state aid to promote risk capital investments in SMEs | | Mid-term review effectiveness of the Commission rules | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P&R | I | 1/7/2010 | [31/12/2010] |
| 4 | Follow up to the Report on the Functioning of Regulation 1/2003 (COM(2009)206 of 29 April 2009 | | Examination of the areas identified in the Report, notably procedural and substantive convergence of competitions laws in the EU | | | I&E | 1/1/2010 | 30/9/2010 |
| 5 | Evaluation of the application of the state aid rules concerning Services of General Economic Interest (Community framework for state aid in the form of public service compensation and | Strategic Initiative no. 20 of the CWP for 2011: Revision of the state aid rules applicable to services of general economic interest | | Policy coordination, European Competition Network an International Cooperation 03 AWBL 02 | P&R | I | 1/1/2010 | 11/2011 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Commission Decision on the application of Article 86(2) of the EC Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest) | | | | | | | |
| 6 | Evaluation of the application of the Community Guidelines on state Aid for Rescuing and Restructuring Firms in Difficulty | Review of the state aid rescue and restructuring Guidelines<br><br>Initiative foreseen in the CWP to be delivered in the period 2012-2014 | | | | | 1/7/2010 | 12/2011 |

## II. Evaluations planned to start in 2011 or later

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | Evaluation of the application of the General Block Exemption Regulation | | Review application of the General Block Exemption Regulation with a view to possibly revise the rules | | | P&R | I&E | 1/9/2011 | |
| 2' | Commission Communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short term export credit insurance | | Review effectiveness of Commission rules with a view to possibly revise rules | | | P&R | I&E | 1/1/2011 | |

## III. Other planned studies / reports with evaluative information

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | | |

# ANNEX 6: Communication strategy

In accordance with Internal Control Standard n°12, DG COMP has adopted, after discussion with the responsible Cabinet and after coordination with DG COMM, the following

**COMMUNICATION STRATEGY**

## I. Policy context

2010 saw the start of exit strategies from the financial and economic crisis. 2010 events such as the sovereign debt threat in certain Member States, as well as difficulties on the internal market prevented a complete recovery from the crisis. In this context, on the state aid front the year was characterized by the extension of state aid temporary rules as a response to the crisis and a number of state aid restructuring cases in the banking sector. Merger control activity remained relatively low this year, at about two-thirds the level of the Commission's all-time busiest year of 2007. This is another consequence of the global slow-down. In cartels, the very specific economic and social context resulted in a limited number of cases where reductions in fines due to some companies' inability to pay were granted. . More generally, issues regarding fining policy and due process remain high on the agenda of our critics.

In the light of this policy context, in 2010 DG COMP's policy messages can be grouped into three categories:

1. **Way out of the crisis and financial stability:** messages included "we are not out of the woods", " recapitalization / rescuing goes with restructuring, irrespective of whether the institution is considered to be sound or distressed", "a well-functioning single market is the key condition to reach a self-sustainable recovery" ; "no sustainable growth without effective competition in the internal market".

2. **Delivering for consumers, ensuring EU competitiveness:** messages included "make sure that consumers can benefit from the effects of a healthy competition", "making markets work better for consumers and businesses"; "finding a balance between protecting consumer welfare and creating the right conditions for business in Europe to grow to the scale needed to take on global competitors" ; "compete on the basis of ideas, creativity, efficiencies and innovation to succeed globally."

3. **Smart regulation : Effective deterrence, due process, transparency:** messages included "the fight against cartels is one of the most important priorities "; "No sympathy for cartelists" " Deterrence is the primary objective of our enforcement", "prevention is better than cure"; "strike the right balance between maintaining a deterrent level of fines and avoiding unwanted side-effects, such as pushing companies out of business", "Our decision-making process must be open and respectful of the rights of defence of the parties"

## II. Communication objectives

### II.1- External communication objectives

Our external communication activities pursue two main objectives for two main targets:

- ***Maintain support from regular and effective communication on cases directed at business stakeholders:*** this objective consists of 1) maintaining regular communication on cases (transparency), 2) providing policy and legal certainty for stakeholders, 3) maintaining effective communications at the technical, policy and legal level with competition professionals and 4) continuing to "listen" our main stakeholders, reporting on national and European concerns and sensitivities

- ***Build awareness and understanding of the importance of competitive markets*** *for European prosperity* ***(vis-à-vis general public):*** this implies 1) reaching a wider audience through explaining our decisions with simple language and messages in as many languages as possible within available resources, 2) explaining how competition policy contributes to the EU's economic recovery, 3) prioritizing active communication on cases that have a direct impact on consumers and 4) developing special communication for non-specialized audiences.

### II.2- Internal communication objectives

- **Ensure awareness of COMP staff of policy and case priorities** for the year to come. Brief staff on issues and cases of interest throughout the year.

- **Support staff efficiency and engagement**: equip staff with relevant messages relating to our main policy and cases, increase their communication skills, empower staff to share knowledge and best practices.

## III. Overall resources

### III.1. Budget

**Currently, DG COMP does not have a specific budget dedicated to communication.**

### III. 2. Human resources

8 staff members work currently on communications issues within the **Communication Policy and Inter-Institutional Relations** Unit (CPI)[38]. The CPI unit is responsible for many different tasks, apart from communication only. However, resources outside

[38] The CPI unit counts 2 managers, 2 assistants, **8 staff members on communications issues**, 3 staff members on Inter-Institutional relations and 5 staff members on Research and Information Services.

communication and management allocate part of their time to communication activities.

| **COMP Communications Policy and Interinstitutional Relations Unit** | AD | AST | Total |
|---|---|---|---|
| Management | 2 | | 2 |
| Secretariat | | 2 | 2 |
| **Communication** | **3** | **5** | **8** |
| Inter-Institutional relations | 2 | 1 | 3 |
| Research and Information Service | | 5 | 5 |

**More generally, staff of DG COMP participates actively in communication** activities by drafting press releases, briefings used in speeches, articles for the Competition Policy Newsletter and other publications, participating in conferences and giving lectures and presentations on competition policy to the general public and specialized audiences.

## IV. Communications activities

### IV.1. DG COMP's communications priorities and its contribution to the Commission's communication priorities

Whilst DG COMP contributes, through its competition advocacy, to shape the Commission's policy initiatives and it also prepares regulations and in particular soft law in the field of competition law, it nonetheless has a particular place in the Commission in the sense that its main operational objective is to deliver decisions on cases in antitrust, merger or state aid.

Communication efforts are thus largely focused on cases and on decisions related to these cases. Whenever a newsworthy decision is taken, DG COMP strives to deliver at the same time relevant policy messages which go beyond the case interest and reflect our more general priorities.

In **2011** DG COMP will prepare and facilitate  continued steps towards EU stability and recovery, and a number of policy initiatives supporting our main objective of making markets work better for consumer and businesses.

Its 2011 communications messages will accordingly be centered around the communications priorities and messages outlined in the table below, which sets out DG COMP's communications priorities in the context of the Commission's overall communications priorities, and identifies the key policy messages to deliver and the target audiences of these messages.

| Commission's communication priority (2011) | DG COMP's policy and communication priority | Policy messages | Target audiences |
|---|---|---|---|
| *Exiting the economic crisis and restoring growth for jobs ([Europe 2020 Strategy](Europe 2020 Strategy))* | • Explain the role of state aid control in the context of the financial and economic crisis<br>• Explain grounds for restructuring companies (Revision of **Rescue & Restructuring guidelines – 2011 policy initative**, shaping industrial and financial restructuring in pro-competitive terms)<br>• Explain how competition policy contributes to the achievement of the **Single Market** and how citizens can directly benefit from that<br>• Explain the role of **enforcement** in cartels and antitrust (via communication on major case decisions);<br>• Explain the role of merger to ensure consumer protection and competitiveness (via communication on major case decisions);<br>• Provide legal certainty for all stakeholders<br>• Explain competition policy's contribution to the EU 2020 objectives (less and better targeted aid towards horizontal objectives, such as R&D&I,<br>• training, etc…)<br>• Explain the state aid policy contribution to more environmental-friendly activities (Guidelines on certain State Aid Measures in the context of the **Greenhouse Gas Emission Allowance Trading Scheme** – 2011 policy initiative) | • Fostering **viability** in the longer term,<br>• Promoting a self-sustainable recovery;<br>• Rescue and recapitalization entail **restructuring** of financial institutions<br>• maintaining **level playing field** in the Single market;<br>• **Vigorous enforcement** of the competition rules stimulates demand and innovation by forcing markets to deliver the highest possible value for customers<br>• **Boosting new sources of growth** through stepping up support to horizontal objectives (innovation, R&D, SMEs, etc…) in state aid<br>• Contributing to the EU 2020 strategy with **less and better targeted aid**<br>• Responding to **climate change** and contributing to energy security | • Public and media in the Member States concerned by a particular state aid case.<br>• Business community (Rescue & restructuring, antitrust and merger policy enforcement)<br>• Consumers<br>• Company staff |
| *Pursuing the citizen's agenda* | • Listening to our stakeholders<br>• Communicating on the creation of a balanced **private enforcement system** (2011 policy initiative)<br>• Communicating and promoting our **policy to consumers** via all our available tools.<br>• Communicate on the **revision of state aid rules for services of general economic interest (2011 policy initiative)** | • Europe's citizens and businesses should have the **effective right to obtain compensation for the losses** incurred as a consequence of competition infringements<br>• Ensuring the **provision of services in the public interest** for the benefit of citizens | • General public and media<br>• Consumers (via consumer associations)<br>• National Competition Authorities (via European Competition Network)<br>• Business community (with special emphasis on SMEs)<br>• MEPs |

## IV.2 Internal communication activities in the Commission's context

DG COMP's internal communications activities consist in:

- Informing staff: this is done through several vehicles such as intranet news, messages to all staff, constant improvements to DG COMP intranet, issuing a weekly newsletter on the main developments on cases and competition policy, regular video messages on the intranet featuring case decision as well as senior management internal messages;
- Providing opportunities for interactions and feedback through: lunchtime Q&A sessions with staff (Hot topics on major cases or policy projects and Top talks with senior management), meetings and feedback cascading upwards;
- Coaching: this includes communication training for all staff on press, briefings, speeches, publication, websites, with a special focus on enhancing staff communication skills (staff as ambassador);
- Empowering and engaging staff : knowledge management project, including calendar of conferences attended by staff on the intranet, repository of staff articles and publications, setting up collaborative working tools, upgrading of our briefing management tool, improvements of newcomers induction and promotion of internal networks and knowledge centres.

## IV.3. DG COMP communication channels and tools

**General objectives in our use of communication channels and tools**

- Targeting consumer audiences, mostly through web content (goodies such as quiz or comic strip) and broadcasting media (video documentary on competition policy, use of EbS services), in as many languages as possible.
- Exploring partnerships for external communication actions within the Commission (COMM, SANCO, economic portfolios such as ECFIN and MARKT, Representations and delegations) and other institutions within Members states, with the objective of reaching out to local audiences
- Planning and organising external communications actions, including integration into the EU calendar.
- Increased use of existing tools (including COMM resources and contracts) and promotion of existing media (including the consumer website)

## Available tools and channels, current situation and output

| Communication tools and channels | Current output (2010) as at 15/12/2010 |
|---|---|
| **Press and media** : Brussels-based (press releases, Memo (Q&A), press conferences, press briefings) and in the MS (targeting regional journalists through Representations, and DG COMM seminars) | **Around 17 %** of all Commission's press releases and memos (about 360 IPs and MEMO out of 2200 produced by the Commission in 2010) are issued by DG Comp - mostly for transparency reason and the need to explain our decisions.<br>**9 press conferences in 2010** |
| **Speeches, presentations, lectures** (briefings) of President Barroso, Vice President Almunia, DG A. Italianer and Senior management | Since 1 January 2010, CPI prepared **22 speeches for the Director-General and 58 speeches for the Commissioner** and coordinated 161 briefing packages for both of them. The whole of DG COMP prepared **644 briefing packages** in the same period for President Barroso, VP Almunia, members of the competition cabinet and DG A. Italianer.<br><br>2010 speeches (Commissioner and DG): approx. 46 % towards technical audiences and 54 % towards non-technical audiences. |
| **Websites** (Competition website, Commissioner website, consumers website) | **Daily updates** on the competition website and the Commissioner website. |
| **E-Newsletters and electronic publications** | State aid weekly e-news : over 5500 subscribers<br>COMP Weekly news summary : over 3900 subscribers<br>Annual report on competition policy : 3300 subscribers<br>Competition Policy Newsletter : over 4000 subscribers<br>Publications and announcements : over 3000 subscribers<br>European Competition Network brief : over 1600 subscribers |
| **Citizen summaries** | **Prepared only for major case or policy initiative** which is relevant to the consumer |
| **Publications of DG COMP** | Competition policy newsletter (5 issues produced in 2010), Annual Report on Competition Policy, Car Price Report, Specific material for internal use (Merger), compilations for judges (State Aid), professionals & stakeholders, State aid Scoreboard |
| **Articles from staff in business/academia publications** | No statistics available |
| **Training** (notably of consumer organizations via TRACE programme) | 1 training programme in 2010, involving 21 consumer organizations from 18 countries |
| **Events** (conferences and seminars where Commissioner, DG, senior or middle management spoke) | About 240 conferences or events in 2010, attended by staff of DG COMP or VP Almunia |
| **Information services for the public** (information mailboxes such as InfoCOMP, use of the Europe Direct contact centre) | Messages from the public replied to through our InfoCOMP mailbox and through the Europe Direct service, message replied by our consumer unit (stats N/A) |
| **Video and audio broadcasting** | 3 to 5 video clip (EBS support needed in 2011) on competition policy issues and special cases. Coverage of |

| | |
|---|---|
| | press conferences and of large events/announcements (9 in 2010) |
| **Internal communication** : intranet, lunchtime sessions, internal consultations and road shows with key internal stakeholders, training, coaching | Intranet : daily updates<br>7 training sessions on communications tools given to staff.<br>2 Internal videos with DG (EBS services used)<br>7 lunchtime sessions on case/policy initiatives and Q&As with senior management.<br>An internal consultation of all directorates on knowledge management, HR and internal communication (brainstorming, survey and face to face interviews, discussion on report) |

## 5. Evaluation

DG COMP pursues the objective of providing the right communication means and products to the right people through the right channel at the right moment. It does so mainly via **communication on decisions related to competition policy enforcement**. It strives to focus its communication efforts on cases and policy initiatives that are relevant to the European citizen.

So far there has not been any consistent evaluation of the communication activities run by DG COMP. **Support from DG COMM is expected** on this matter, to establish common standards of evaluation and common indicators. Also, the forthcoming corporate media monitoring tool should help in evaluating our press activities and their impact, especially on an ad hoc basis for major cases.

**The stakeholder survey** published in 2010 (Eurobarometer for the general public and analysis of feedback from professional stakeholders) enables us to **draw positive conclusions on the impact of our communication actions** and on our level of transparency.

The following is an indicative and non-exhaustive list of the possible indicators that could be used in an evaluation exercise.

| | | | |
|---|---|---|---|
| **Awareness and understan dingof media** | Partly available (number of competition references in national press cuttings, tools like Factiva and Lexis Nexis) – **Full report expected from DG COMM's monitoring media tool by 2011** | **Coverage :** - Around 113 000 articles and wires on competition issues in Europe over the past year (source: Factiva-from November 2009 to November 2010)<br>- Around 12 000 articles and wires (excluding FT) in all languages, quoting Joaquin Almunia over the past year (source : Factiva - from November 2009 to November 2010) | Qualitative and positive coverage, reaching out media targets outside traditional scope, improved geographic spread of coverage |
| **Awareness of business community** and specialised public (incl. academia) | Press coverage : Partly available ;number of references to Commission decisions in academic journals; satisfactory levels rating of feedback received during professional conferences | Coverage : see above.<br>Other statistics : NA | Qualitative coverage, reaching out media targets outside traditional scope, improved audience spread of conferences attended by COMP senior staff or Commissioner |
| **Support of business community** and specialized public (incl. academia) | Support for competition policy and support for communication activities (Result analysis of stakeholder survey (professional audience) | The majority of respondents from each stakeholder group view the clarity and comprehensibility of DG Competition's external communications favourably and considered that DG Competition's communication is delivered within an appropriate time frame (Stakeholders survey 2010) | Maintain same level of support among business community and professional stakeholders. |
| **Awareness of large public** | Eurobarometer survey and forecasted use of DG COMM's monitoring media tool by 2011 | Awareness of public in Member states:<br>In a majority of EU Member States (22 out of 27), at least half of the interviewees had heard about competition between companies in the media in the last year (2009). (Eurobarometer | Maintain the same level |

| | | | |
|---|---|---|---|
| | | 2010) | of public awareness on competition policy |
| **Interest/ understanding of large public** | Number of InfoCOMP or Europe Direct requests that have been answered in set deadline<br>Number of visits, visitors and navigation follow-up on DG COMP's website | 100% of COMP requests answered in set deadline<br><br>Statistics on website NA | 100% of COMP requests answered in set deadline<br><br>Create a user-friendly statistics report for website analysis |
| **Support from the general public** | Eurobarometer survey (citizen) | 82% of EU citizens agreed that competition between companies could lead to better prices for consumers and thought that such competition would give more choice to consumers (Eurobarometer 2010) | Maintain the same level of support from citizens about competition policy |

### *List of publications expected for 2011 (table)*

| Date | Publication | Audience | Message | Goal | Priority |
|---|---|---|---|---|---|
| January | Management Plan 2010 | All | To set out the general and specific objectives and the activities of DG COMP for 2011 | Transparency | A |
| June | Annual Report 2010 (small) | All | Report on competition policy 2010 | Transparency | A |
| June | Annual Report 2010 (including staff working document) | All | Report on competition policy 2010 | Transparency | A |
| 3 times/2011 | Competition Policy Newsletter (3 issues) | Stake holder/Prof. Interest | To report on high profile cases/outcome | Transparency | A |
| tbd* | Consumer brochure (about COMP policy), 2 issues (basic, current cases) | Citizens | Explain Competition Policy to citizens (new edition) | Make it easier to understand what competition policy is for - "Delivering results" | A |
| tbd | Glossary of state aid Terms | All | Reference to terms of state aid Competition Policy | Explain acronyms and terms | B |
| tbd | Glossary of Merger and Antitrust Terms | All | Reference to Merger and Antitrust Terms | Explain acronyms and terms | B |
| June | Car Price Report 2011 | Citizens | Comprehensive overview about the differences in retail car prices within the EU | Consumer reference | B |
| tbd | Brochure on vertical regulations | All | Overview about the vertical regulations 2010 (new) | Transparency | B |
| tbd | CPN special edition: The financial crisis – the way to an exit strategy | All | Report current efforts and project the way ahead | Transpacency | B |
| tbd | DG COMPETITION business card | All | Explain Competition Policy and the work of DG COMPETITION | Transparency | A |
| tbd | State Aid Compilation | All | Comprehensive overview about legislation in State Aid | Reference/Transparency | B |
| tbd | Merger Compilation | All | Comprehensive overview about legislation in Mergers | Reference/Transparency | B |
| tbd | Antitrust Compilation | All | Comprehensive overview about legislation in Antitrust | Reference/Transparency | B |

Tbd - To be determined