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REPORT FROM THE COMMISSION

Report on Competition Policy 2007

{SEC(2008)2038}

1. In 2007, competition policy continued to improve the functioning of markets for the **benefit of European consumers and businesses**. This entailed *inter alia* investigating and sanctioning anti-competitive behaviour by market participants as well as addressing anti-competitive market structures and regulation across key sectors of the economy. Competition policy was further embedded in the Commission's overarching economic reform agenda — the Lisbon strategy.
2. The first section of this report provides an overview of how the **instruments of competition policy**, namely the antitrust, merger and State aid rules, were further developed and applied. The second section discusses how these and other instruments were deployed in **selected sectors**. The third section gives an overview of **cooperation within the European Competition Network (ECN)** and with **national courts**. Section four deals with **international activities**. Finally, in section five, a brief description of **interinstitutional cooperation** is given. Further information can be found in a detailed Commission Staff Working Document and on the website of the Competition Directorate-General¹.

1. INSTRUMENTS

1.1. Antitrust — Articles 81 and 82 EC

1.1.1. *Shaping the rules and policy*

3. Apart from sanctions to punish and deter **cartels**, effective action against this most pernicious form of anti-competitive conduct requires incentives for participants to report cartels. The Commission's leniency policy offers incentives to cartelists to report their illegal activities. December 2006 saw the introduction of a **revised leniency Notice** (the 2006 Notice)². This is the third leniency Notice following earlier versions in 1996 and 2002. The Commission received 20 applications for immunity³ and 11 applications for a reduction of fines under the 2006 Notice from the date of its introduction to the end of 2007.
4. The Commission 2005 Green Paper on **damages actions for breach of the EU antitrust rules** received strong support in a European Parliament resolution calling on the Commission to prepare a White Paper with detailed proposals to ensure more effective antitrust damages claims⁴. When preparing the White Paper, the Commission had broad consultations with representatives of Member State governments, judges from national courts, representatives from industry, consumer associations, the legal community and many other stakeholders.

¹ http://ec.europa.eu/comm/competition/index_en.html

² Commission Notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

³ Where several applications for immunity have been received for the same alleged infringement, the first application is regarded as an immunity application and the subsequent ones as applications for a reduction of fines unless the first application is rejected.

⁴ European Parliament Resolution of 25 April 2007 on the Green Paper on damages actions for breach of the EC antitrust rules (2006/2207 (INI)), available at: <http://www.europarl.europa.eu/oeil/file.jsp?id=5378362>

1.1.2. Applying the rules

5. The Commission continued to attach high priority to the detection, investigation and sanctioning of cartels, focusing on **significant hard-core cartels**, in particular those with European or worldwide scope. The Commission issued eight final Decisions⁵ in which it fined 41⁶ undertakings a total of EUR 3 334 million (compared with seven final Decisions, 41⁷ undertakings fined and a total of EUR 1 846 million in 2006). In *Elevators and Escalators* the Commission imposed the highest fine per cartel case to date (EUR 992 million) as well as the highest fine per undertaking for a cartel violation (EUR 477 million⁸).
6. The Commission has been able to detect a number of cartels on its own initiative. The recent cases of *Elevators and Escalators*, *Fasteners*, *Professional Videotape* and *Flat Glass* demonstrate that, although the Commission's leniency policy is an effective tool in detecting cartels, the Commission is not dependant on evidence provided by leniency applicants to uncover cartel behaviour. The Commission continues to place considerable weight on such *ex officio* investigations which may result from market monitoring, sector enquiries, complaints and via national competition authorities in the European Competition Network.
7. The Commission followed up on the sector inquiry into financial services launched in 2005 through prohibition Decisions under Article 81 EC in *Groupement des Cartes Bancaires*, *Morgan Stanley/Visa* and *MasterCard*, with all these cases concerning payment card systems (see 2.2. below).
8. The Commission continued to sanction **abuses of dominance**, not least in network industries which are key for European competitiveness. On 4 July, the Commission adopted a Decision against the Spanish incumbent telecoms operator *Telefónica* for a very serious abuse of its dominant position in the Spanish broadband market. The fine imposed amounted to EUR 151 875 000. The conduct concerned a margin squeeze by Telefónica between the wholesale prices it charged to competitors and the retail prices it charged to its own customers from 2001 to 2006.
9. On 11 October the Commission adopted an Article 9 Decision concerning the long-term gas supply contracts concluded by *Distrigas* in Belgium. Under this Decision, the Commission renders legally binding until 2011 a set of commitments offered by *Distrigas* to address concerns raised by the Commission in the course of an investigation under Article 82. The effect of these commitments is to ensure that *Distrigas* does not tie an excessive proportion of customers for more than one year

⁵ Case COMP/38.899, *Gas Insulated Switchgear*, Commission Decision 24.1.2007; Case COMP/38.823, *Elevators and Escalators*, Commission Decision 21.2.2007; Case COMP/37.766, *Netherlands Beer*, Commission decision 18.4.2007; Case COMP/39.168, *Hard Haberdashery:Fasteners*, Commission Decision 19.9.2007; Case COMP/38.710, *Bitumen Spain*, Commission Decision 3.10.2007; Case COMP/38.432, *Professional Videotapes*, Commission Decision 20.11.2007; Case COMP/39.165, *Flat Glass*, Commission Decision 28.11.2007; Case COMP/38.629, *Chloroprene Rubber*, Commission Decision 5.12.2007.

⁶ This figure does not include the companies that received immunity from fines for cooperating under the Leniency Notice.

⁷ This figure includes two undertakings where Decisions have been readopted.

⁸ Imposed on the ThyssenKrupp group.

ahead, while allowing Distrigas as much flexibility as possible in managing its portfolio of contracts.

1.2. State measures

10. In June the Commission closed an **infringement procedure under Article 226 EC** against the Czech Republic which had limited the power of the Czech Competition Authority (Czech NCA) to apply Articles 81 and 82 EC to anti-competitive behaviour in the electronic communications sector⁹. Following a reasoned opinion in March¹⁰, the contested provision of the Czech Competition Act was repealed and EU competition rules can now be fully applied by the Czech NCA.
11. The acquisition of joint control of Endesa by Enel and Acciona was notified to the Commission on 31 May and cleared unconditionally on 5 July. However, when Enel and Acciona requested the approval of the Spanish Energy Regulator (CNE) for their acquisition, the CNE approved the transaction subject to several obligations. On 5 December, the Commission adopted a **Decision based on Article 21 of the EC Merger Regulation**¹¹ declaring that the CNE decision, as partially modified, breached the said provision.

1.3. Merger control

1.3.1. *Shaping the rules and policy*

12. To provide better guidance on jurisdictional questions in merger control, the Commission on 10 July adopted the Commission Consolidated Jurisdictional Notice under the Merger Regulation (the “Jurisdictional Notice” or the “Notice”)¹². The Jurisdictional Notice replaces the four previous Notices from 1998¹³ dealing with jurisdictional issues from 1998 under the previous Merger Regulation 4064/89. With the exception of referrals, the new Notice therefore covers, in one document, all issues of jurisdiction which are relevant for establishing the Commission’s competence under the Merger Regulation.
13. On 28 November, the Commission adopted Guidelines on the assessment of **non-horizontal mergers** under the Merger Regulation. Non-horizontal mergers include vertical mergers, such as the acquisition of a supplier by a customer (for example, a car manufacturer acquiring a gearbox supplier), and conglomerate mergers, which concern companies whose activities are complementary or otherwise related (for instance, a company producing razors buying a company producing shaving foam). The non-horizontal Merger Guidelines complement the existing Guidelines on

⁹ See Press Release IP/07/956, 28.6.2007.

¹⁰ See Press Release IP/07/400, 23.3.2007.

¹¹ See IP/07/1858, 5.12.2007 and IP/08/164, 31.1.2008.

¹² Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings. Currently, the Jurisdictional Notice can be found in English, French and German on DG COMP’s website under http://ec.europa.eu/comm/competition/mergers/legislation/draft_jn.html

¹³ These are (i) the Notice on the concept of concentration (OJ C 66, 2.3.1998, p. 5); (ii) the Notice on the concept of full-function joint ventures (OJ C 66, 2.3.1998, p. 1); (iii) the Notice on the concept of undertakings concerned (OJ C 66, 2.3.1998, p. 14); and (iv) the Notice on calculation of turnover (OJ C 66, 2.3.1998, p. 25).

horizontal mergers, which deal with mergers of companies who compete on the same markets.

14. To clarify its policy with regard to **remedies** in merger control, the Commission launched a public consultation on the draft Revised Remedies Notice. Remedies are modifications to a merger proposed by the merging parties to eliminate potential competition concerns identified by the Commission. The Revised Remedies Notice will update and replace the current Notice.

1.3.2. Applying the rules

15. The number of merger cases notified to the Commission reached an **all-time high** of 402, a rise of more than 12% compared to the 356 transactions notified in 2006. In the last quarter of the year the number of notifications fell both in relation to the previous quarters and the last quarter of 2006. In total the Commission adopted 396 final Decisions in 2007, of which 368 were cleared in the first phase without conditions. Of these unconditional first-phase clearances 238 (or 65%) were adopted under the simplified procedure. A further 18 transactions were cleared in Phase I subject to conditions.
16. Ten Decisions were adopted after in depth Phase II investigations. Five of these were cleared without conditions, while in four cases the clearances were subject to conditions. One transaction — a **horizontal merger** involving a proposed takeover by Ryanair of Aer Lingus — was prohibited (see 2.7. below).

1.4. State aid control

1.4.1. Shaping the rules and policy

17. The Commission continued implementation of the **State Aid Action Plan** launched in 2005. The Commission adopted a new method for setting **reference and discount rates**¹⁴ more aligned with market principles as the specific situation of the company or project is taken into account.
18. The Commission launched a consultation on a draft **General Block Exemption Regulation** ("GBER") in the field of State aid¹⁵. This GBER will simplify and consolidate into one text five existing block exemptions for aid to SMEs, research and development aid in favour of SMEs, aid for employment, training aid and regional aid. In addition, the scope of the existing block exemptions will be extended to cover certain categories of new aid. The GBER is envisaged to be adopted by the Commission in June 2008.
19. On 13 June the Commission decided to extend its 2001 **Cinema Communication** until 31 December 2009 at the latest. The Cinema Communication contains rules on State aid to cinematographic and other audiovisual works.
20. In 2007, the Commission also launched the procedure for revision of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to

¹⁴ Not yet published in the OJ.

¹⁵ OJ C 210, 8.9.2007, pp. 14–40.

State aid in the form of guarantees. The draft Notice i) clarifies the conditions relating to the presence or absence of aid in the form of guarantees and ii) quantifies the relevant amount of aid on the basis of market references and risk analysis. The new Notice is expected to be adopted by the Commission by the end of May 2008.

1.4.2. *Applying the rules*

21. Following the exceptionally high level of State aid notifications in 2006 (922), the number of new cases notified by Member States stood at 777 in 2007¹⁶. This figure however remains significantly above the level in 2004 and 2005. Moreover, the decrease is in line with the Commission's commitment to facilitate the granting of aid through block exemptions and to focus policy on the most distortive types of aid. In 2007, Member States were able to introduce more than 1 100 measures without prior notification to the Commission¹⁷. This compares with 410 block-exempted measures in 2006.
22. The Commission took 629 final State aid Decisions¹⁸ in 2007. In the vast majority of cases, the Commission approved the measures without a formal investigation, concluding that the examined aid was compatible with the State aid rules (87% of all Decisions in 2007) or did not constitute State aid (5% of all Decisions).
23. The Commission published two editions of the State Aid Scoreboards¹⁹ in 2007. The autumn 2007 update²⁰ shows that over the past six years Member States have been moving towards the European Council objective of **less and better targeted aid**. In particular, the EU-10 Member States have progressively reoriented their State aid towards horizontal objectives of common interest such as regional development, R&D, SMEs and protecting the environment.
24. During 2007, the Commission approved the **regional aid maps**²¹ of Bulgaria and Romania, as well as for Belgium, Cyprus, Denmark, France, Italy, the Netherlands and Portugal. As a result, regional aid maps covering the period 2007–2013 have now been approved for all Member States. The Commission authorised regional aid for a number of **large investment projects**²².

¹⁶ Of the 777 notifications, 53% mainly concerned the manufacturing and service sectors, 33% agriculture, 8% transport and 6% fisheries.

¹⁷ In the area of agriculture alone, the number of block-exempted measures increased from 119 in 2006 to 496 in 2007. Member States also submitted around 200 measures under the recently introduced block exemption for regional aid.

¹⁸ Included in this figure are: Decisions on the absence of State aid, Decisions not to raise objections, positive Decisions, conditional Decisions and negative Decisions.

¹⁹ http://ec.europa.eu/comm/competition/state_aid/studies_reports/studies_reports.html An online Scoreboard contains electronic versions of all Scoreboards, as well as a set of key indicators and a wide array of statistical tables.

²⁰ COM(2007) 791 final, 13.12.2007, State Aid Scoreboard, autumn 2007 update.

²¹ http://ec.europa.eu/comm/competition/state_aid/regional_aid/regional_aid.cfm

²² These included the establishment of two chemical production plants (Cases N 898/2006, *Repsol Polimeros*; N 899/2006, *Artensa*.); three separate investment projects in the pulp and paper sector in Portugal (Cases N 900/2006, *CELBI*; N 838/2006, *Soporcel*; N 564/2006, *About the future*); the extension of an electricity generation plant in Hungary (Case N 907/2006, *Mátrai Erőmű*.); a production plant for solar energy modules in Germany (Case N 863/2006, *Avancis*); the expansion of a car manufacturing plant in Slovakia (Case N 857/2006, *Kia Motors Slovakia*) and an automotive investment project in the Czech Republic (Case N 661/2006, *Hyundai Motor Manufacturing Czech*).

25. Notifications of aid for **research, development and innovation** pending on 1 January as well as all new notifications received in the reporting year were assessed on the basis of the **new Framework**²³. The Commission approved 48 notified R&D and/or innovation schemes. In addition, it approved four *ad hoc* aid measures below the threshold triggering a detailed assessment under Chapter 7 of the Framework. The Commission took eight Decisions with a detailed assessment of large amounts of aid to projects under Chapter 7. It authorised a number of projects financed by the French Industrial Innovation Agency²⁴. The Commission approved 19 notified schemes under the risk capital guidelines²⁵.
26. Although **training aid** is covered by a block exemption Regulation²⁶, the Commission is required to assess projects exceeding EUR 1 million. In the *GM Antwerp*²⁷ case, the Commission found part of the notified State aid incompatible as it would have served to finance training activities which the beneficiary would have carried out anyway, even without aid. In *Fiat*²⁸ and *Club Med Guadeloupe*²⁹ the Commission found the aid to be necessary and compatible. In the *DHL Leipzig/Halle* case³⁰ the Commission initiated the investigation because it had doubts whether DHL would not anyway have to provide the training to its employees.
27. On 10 October³¹, the Commission opened the formal investigation procedure with respect to a **tax incentive for the acquisition by Spanish companies of significant participations in foreign companies**. The tax measure allows Spanish companies to amortise over a 20-year period the goodwill deriving from the acquisition of significant shareholdings in foreign companies, whereas the goodwill arising from domestic acquisitions does not benefit from a similar measure.
28. **Rescue and restructuring (R&R)** aid to firms in difficulty may be regarded as legitimate only if strict conditions are fulfilled. During 2007 the Commission applied the amended rules, laid down in the 2004 R&R Guidelines.
29. In a number of rescue aid cases the Commission again emphasised that such aid is no more than a temporary measure facilitating the preparation of a restructuring plan or the liquidation of the company. Accordingly, in certain cases, the Commission opened the formal procedure because rescue aid had not been repaid within the

The Commission also authorised German aid to AMD for the conversion and extension of its existing micro-processor wafer plants in Dresden (Case N 810/2006, *AMD Dresden*).

²³ OJ C 323, 30.12.2006, p. 1.

²⁴ Two of the projects concerned R&D aid ("*NanoSmart*" and "*HOMES*") totalling EUR 119 million (Cases N185/2007, OJ C 284, 27.11.2007, p. 3, and N89/2007, OJ C 275, 16.11.2007, p. 3). Other projects approved included: EUR 26.5 million in aid for the NeoVal R&D programme (Case N 674/2006, OJ C 120, 31.5.2007, p. 2); EUR 37.6 million in aid for the "*Télévision Mobile Sans Limite*" R&D project (Case N 854/2006, OJ C 182, 4.8.2007, p. 5); EUR 31 million aid for the OSIRIS R&D programme (Case N 349/2007, OJ C 304, 15.12.2007, p. 5).

²⁵ OJ C 194, 18.8.2006, pp. 2–22.

²⁶ Commission Regulation (EC) No 68/2001 on the application of Articles 87 and 88 of the EC Treaty to training aid (OJ L 10, 13.1.2001, p. 20).

²⁷ Case C 14/2006, *Training aid to General Motors Antwerp* (OJ L 243, 18.9.2007, p. 71).

²⁸ Case N 541/2006, *Fiat Auto S.p.A.* (OJ C 220, 20.9.2007, p. 2).

²⁹ Case N 206/2007, *Training aid for Club Med Guadeloupe* (OJ C 284, 27.11.2007, p. 5).

³⁰ Case C 18/2007, *Training aid for DHL Leipzig* (OJ C 213, 12.9.2007, p. 28).

³¹ OJ C 311/2007, 21.12.2007, p. 21.

statutory six months deadline and no serious restructuring plan had been submitted³². The Commission approved a number of restructuring aid cases³³. In other cases the Commission found the aid to be incompatible³⁴ or opened a formal investigation because of doubts regarding compatibility³⁵.

30. The Commission made significant progress in achieving **more effective and immediate execution of recovery Decisions**. The number of recovery Decisions awaiting implementation was reduced from 60 at the end of 2006 to 47 at the end of 2007. All of 23 recovery cases were closed, whilst 9 new recovery Decisions were adopted in 2007. Of the EUR 8.9 billion of illegal and incompatible aid to be recovered under Decisions adopted since 2000, some EUR 8.2 billion (i.e. 91.2% of the total amount) had been effectively recovered by the end of 2007. In addition, a further EUR 2.4 billion in recovery interests had been recovered. The case law and policy in this area were also summarised in a Notice³⁶.

1.5. The role of competition policy in the wider policy framework

31. On 11 December the Commission reviewed the Lisbon strategy³⁷ and made proposals with a view to the next three-year cycle (2008–2010)³⁸. The review proposes to **further embed competition in the wider Lisbon strategy framework**. A particular focus is placed on the need to enhance sectoral market monitoring, and improve regulation where necessary, notably focussed on key services and network industries³⁹. These proposals are in line with the Single Market Review carried out by the Commission during 2007. The importance of reforms in the area of competition is reflected by the large number — both in relative and absolute terms

³² See *Ottana* (Case C 11/2007, *Aiuto alla ristrutturazione di Ottana Energia Srl* (OJ C 122, 2.6.2007, p. 22)); *Ixfin* (Case C 59/2007, *Aiuto al salvataggio alla Ixfin SpA* (Decision of 11.12.2007, not yet published)) and *New Interline* (Case C 13/2007, *Aiuto al salvataggio della New Interline SpA* (OJ C 120, 31.5.2007, p. 12)).

³³ See e.g. *Javor Pivka* (Case C 19/2006, *Restructuring aid for Javor Pivka*, Commission Decision of 10.7.2007 (not yet published)) and *Novoles Straza* (Case C 20/2006, *Restructuring aid to Novoles Straza* Commission Decision of 10.7.2007 (not yet published)) (both approved under the 1999 rescue & restructuring guidelines), *Techmatrans* (Case C 6/2007, *Restructuring aid for Techmatrans*, Commission Decision of 28.11.2007 (not yet published)) and *Bison-Bial* (Case C 54/2006, *Restructuring aid for Bison-Bial*, Commission Decision of 12.9.2007 (not yet published)).

³⁴ See e.g. *Nuova Mineraria Silius* (Case C 16/2006, *Restructuring aid to Nuova Mineraria Silius* (OJ L 185, 17.7.2007, p. 18)) and *Biria* (Case C 38/2005, *Biria Gruppe* (OJ L 183, 13.7.2007, p. 27)).

³⁵ See e.g. *Legler* (Case C 39/2007, *Aiuto di stato per la ristrutturazione del gruppo Legler* (OJ C 289, 1.12.2007, p. 22)), *FagorBrandt* (Case C 44/2007, *Restructuring aid to FagorBrandt* (OJ C 275, 16.11.2007, p. 18)) or *Fluorite di Silus* (Case C 60/2007, *Aid to Fluorite di Silius S.p.A.*, Commission Decision of 11.12.2007 (not yet published)).

³⁶ Towards an effective implementation of Commission Decisions ordering Member States to recovery unlawful and incompatible State aid (OJ C 272, 15.11.2007).

³⁷ The Commission's Communication on the 'Strategic Objectives 2005–2009' states that "[t]he top priority today is to restore sustainable dynamic growth in Europe in accordance with the Lisbon strategy". COM(2005) 12 final, p. 3.

³⁸ Communication from the Commission to the European Council: Strategic report on the renewed Lisbon strategy for growth and jobs: launching the new cycle (2008–2010) Keeping up the pace of change PART I (COM(2007) 803 final).

³⁹ Proposal for a Community Lisbon Programme 2008–2010 (COM(2007) 804 final). See in particular Objective 5: The Community will strengthen the single market, increase competition in services, and take further steps to integrate the financial services market.

— of recommendations proposed for endorsement by the Council under Article 99 EC⁴⁰.

32. For example, the review proposes that **competition policy contribute to the Lisbon strategy objectives** in the gas, electricity and financial services sector through the follow-up of sector inquiries launched in 2005⁴¹. Competition policy is also considered to be a complementary instrument in connection with efforts to enhance efforts to ensure interoperability and standardisation in a timely manner. The review also mentions ‘competition rules’ among the policies where the EU can contribute specific expertise which could be beneficial to its key partners. This is strongly linked to the need to ensure fair competition and a level playing field internationally⁴².

2. SECTOR DEVELOPMENTS

2.1. Energy

33. The **final report on the sector inquiry** into the European gas and electricity markets which was adopted on 10 January⁴³ concluded that many energy markets (i) remain too highly concentrated; (ii) are characterised by a high degree of vertical integration (in particular in the form of insufficient unbundling of network and supply activities) as well as a lack of (iii) cross-border integration and cross-border competition and (iv) transparency.
34. Drawing on these findings, the Commission put forward, on 19 September, a **proposal for a third liberalisation package** regarding the European electricity and gas markets⁴⁴. It focuses in particular on (i) effective unbundling of transmission networks; (ii) strengthening the powers and independence of regulators; (iii) cooperation between regulators and (iv) cooperation among transmission system operators.

⁴⁰ See the Commission Recommendation of 11 December for a Council Recommendation on the 2008 update of the broad guidelines for the economic policies of the Member States and the Community (COM(2007) 803 final).

⁴¹ See the previously mentioned Objective 5 as well as Objective 8 concerning energy and climate change. See also the annex listing the EC-level measures concerning these objectives.

⁴² See section 3.4 of the Strategic Report mentioned above.

⁴³ Communication from the Commission: Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report), COM(2006) 851 final, and DG Competition report on energy sector inquiry, SEC(2006) 1724.

⁴⁴ This package includes the following proposals: proposal for a Directive amending Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, COM(2007) 528; proposal for a Directive amending Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, COM(2007) 529; proposal for a Regulation establishing an Agency for the Cooperation of Energy Regulators, COM(2007) 530; proposal for a Regulation amending Regulation (EC) No 1228/2003 (electricity), COM(2007) 531; proposal for a Regulation amending Regulation (EC) No 1775/2005 (gas), COM(2007) 532.

35. In the **antitrust area** the Commission has — in close cooperation with National Competition Authorities (NCA)⁴⁵ focused on **foreclosure and collusion** (market sharing) cases in the electricity and gas sectors that address the main areas of market malfunctioning. The foreclosure cases cover practices along the value chain, including foreclosure of downstream markets by long-term contracts with energy consumers; abusive practices to foreclose competitors from accessing networks (e.g. hoarding of network capacity and failure to invest); foreclosure of electricity retail markets by raising rivals' costs through the balancing system⁴⁶; foreclosure of downstream markets through the control of gas import infrastructure and long-term gas procurement agreements. Other issues investigated include, for example, allegations of price manipulations on electricity markets through withdrawal of capacity by generators. In Italy⁴⁷, Spain⁴⁸ and France, the Commission has found indications that **regulated electricity tariffs could amount to State aid** to large and medium-sized electricity consuming companies.

2.2. Financial services

36. On 10 January the European Commission published the **Final Report of its sector inquiry into European retail banking markets**⁴⁹ covering payment cards and (non-card) payment systems and current accounts and related services. The findings confirmed that markets remain fragmented along national lines, limiting consumer choice and leading to higher costs for current accounts, loans or payments. High degrees of variation of prices, profit margins and selling patterns between Member States and high degrees of homogeneity within Member States were found to be indicative of persisting regulatory or behavioural barriers to competition.
37. The European payment card industry channels flows of EUR 1 350 billion per year, generating an estimated EUR 25 billion in fees for banks. The payment card industry is highly concentrated, entailing high fees and profitability. The rules governing the networks (including the Visa/MasterCard duopoly and national card schemes run by the main domestic banks) raise competition problems
38. On 3 October the Commission fined *Visa International and Visa Europe (Visa)* EUR 10.2 million for refusing to admit Morgan Stanley as a member from March 2000 to September 2006⁵⁰.
39. In a Decision of 17 October the Commission concluded that the *Groupement des Cartes Bancaires (CB)* infringed Article 81 of the Treaty⁵¹. The Commission found that the Groupement had adopted price measures hindering the issuing of cards in

⁴⁵ A dedicated subgroup for energy has been set up as part of the cooperation within the European Competition Network (ECN). During 2007 this subgroup addressed national experiences in relation to competition case remedies.

⁴⁶ The balancing system serves to ensure that injections and withdrawals on the network are identical, in order to keep the system in equilibrium.

⁴⁷ Decision of 20 November in State aid case C36/A/2006, not yet published in OJ, but available on the Internet site http://ec.europa.eu/comm/competition/state_aid/register/

⁴⁸ Concerning France, see Decision of 13.6.2007 in State aid case C17/2007, OJ C 164 of 18.7.2007, p. 9 and concerning Spain, see Decision of 24.1.2007 in State aid case C3/2007, OJ C 43, 27.2.2007, p. 9.

⁴⁹ [IP/07/114](#), 31.1.2007 and [MEMO/07/40](#), 31.1.2007.

⁵⁰ Case COMP/37.860.

⁵¹ http://ec.europa.eu/comm/competition/antitrust/cases/decisions/38606/dec_en.pdf

France at competitive rates by certain member banks, thereby keeping the price of payment cards artificially high and thus favouring the major French banks.

40. On 19 December the Commission adopted a Decision prohibiting *MasterCard's* multilateral interchange fees (MIFs) for cross-border card payments with MasterCard and Maestro consumer credit and debit cards between Member States of the European Economic Area (intra-EEA MIFs)⁵².
41. On 25 September the Commission adopted the **Final Report on the business insurance sector inquiry**⁵³, which was released together with a comprehensive working document of the Commission's services containing the full findings. In the **State aid area** the Commission cleared the two remaining recapitalisation cases in the German Landesbank sector (WestLB and Nord/LB) on 18 July as complying with the **private market economy investor test**⁵⁴. During the summer the **US subprime crisis** began to impact seriously on several European banks, requiring considerable public support measures to keep the banks afloat. The Commission launched investigations into two cases concerning the German banks IKB and Sachsen LB. For the UK bank Northern Rock a Decision was taken on 5 December declaring rescue aid to be compatible with State aid rules⁵⁵. Subsequent additional measures in support of Northern Rock are also under assessment.
42. On 9 October the Ecofin Council adopted Conclusions suggesting a series of **actions to enhance the arrangements for financial stability** which *inter alia* invited the Commission and Member States to work together towards clarifying when a banking crisis could be considered by the Commission to be "a serious disturbance of the economy" under the Treaty and State aid rules. It also invited the Commission to consider streamlining procedures focusing on how State aid enquiries under critical circumstances can be treated rapidly.
43. As far as **fiscal aid** is concerned, the Commission opened the formal investigation procedure on 7 February against the 'group interest box' (Groepsrentebox) notified by the Dutch authorities⁵⁶. On 21 March the Commission also opened proceedings against a similar scheme which was already in force in Hungary⁵⁷. Both schemes reduce the tax burdens on companies in respect of the net balance of interest received from and paid to affiliated companies. The Commission assessed and authorised a number of **concentrations** in the financial services sector. In the *ABN AMRO* cases⁵⁸, the Commission analysed the proposed acquisition of the Dutch bank ABN AMRO by a consortium formed by RBS, Fortis and Santander.

⁵² IP/07/1959, 19.12.2007 and MEMO/07/590, 19.12.2007.

⁵³ IP/07/1390, 25.9.2007.

⁵⁴ OJ C 4, 9.1.2008, p. 1. This test assesses whether, in similar circumstances, a private investor operating in normal conditions of a market economy would have entered into the transaction in question (e.g. providing loans or funds to the bank) and whether it would have done so on similar terms.

⁵⁵ IP/07/1859, 5.12.2007.

⁵⁶ IP/07/154, 7.2.2007.

⁵⁷ IP/07/375, 21.3.2007.

⁵⁸ Case COMP/M.4843, *RBS/ABN AMRO assets*, Commission Decision, 19.9.2007; Case COMP/M.4845, *Santander/ABN AMRO assets*, Commission Decision, 19.9.2007 and Case COMP/M.4844, *Fortis/ABN AMRO assets*, Commission Decision, 3.10.2007.

2.3. Electronic communications

44. The Regulatory Framework put in place in 2002 is helping to make communications markets increasingly competitive. Against this background the Commission in December recommended⁵⁹ that the number of markets susceptible to *ex ante* regulation be more than halved from 18 to 7. *Ex ante* regulation is now likely to be lifted in many areas and a greater part of the industry will be subject only to EU competition rules.
45. In general, **mobile telephony** markets tend to be effectively competitive at retail level. However, wholesale markets for mobile call termination and, under the previous Recommendation on relevant markets⁶⁰, for mobile access and call origination were recommended for *ex ante* regulation.
46. Throughout the year the Commission assessed 170 notifications from National Regulatory Authorities and adopted 66 comments letters and 49 no-comments letters under the consultation mechanism laid down in Article 7 of the Framework Directive⁶¹ (FD). In five cases, the Commission raised serious doubts as to the compatibility of the notified measures with EU law and opened second phase investigations under Article 7(4) FD. In one case the Commission adopted a veto Decision.
47. As far as the application of EU competition law in the electronic communications sector was concerned, the most significant Decision adopted by the Commission in 2007 was the Decision of 4 July against *Telefónica* (see 1.1.2. above).
48. The review of the Regulatory Framework during 2007 led the Commission to propose a **regulatory package** (covering two Directives, a Regulation establishing a European Electronic Communications Market Authority (EECMA) and the Recommendation on relevant markets) in November⁶². With the exception of the new Recommendation on relevant markets, which entered into force in December,

⁵⁹ Commission Recommendation of 17.12.2007 on relevant product and service markets within the electronic communications sector, OJ L 344, 28.12.2007, p. 65. The Recommendation on relevant markets is an important part of the Regulatory Framework. It lists those markets where in the view of the Commission *ex ante* regulation is the appropriate tool to promote competition, investment and consumer choice. From a competition policy perspective the main objective of the review has been to assess where *ex ante* regulation is still needed and where it can be lifted.

⁶⁰ Commission Recommendation C(2003) 497 of 11.2.2003, OJ L 114 of 8.5.2003, p. 45.

⁶¹ Directive 2002/21/EC of 7.3.2002 of the European Parliament and of the Council, OJ L 108, 24.4.2002, p. 33.

⁶² Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007) 697), Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007) 698) and Proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007) 699); for an overview, see website of DG Information Society: http://www.ec.europa.eu/information_society/policy/ecomms/library/proposals/index_en.htm

the legislative parts of the proposed regulatory package will only enter into force after their adoption by the Council and the European Parliament, expected during 2010–2011.

49. The consistently **high international roaming charges** led the Commission to propose, on the basis of Article 95 EC, a Roaming Regulation⁶³, which entered into force on 30 June and will be applicable for three years. As a result, in all Member States mobile operators were obliged to offer to all their customers by 30 July a Eurotariff, which applied automatically from 30 September unless a customer chose to opt out. The Eurotariff sets a retail price cap for calls made or received abroad⁶⁴. The Commission is required to report to Council and the European Parliament in 2008 on the functioning of the Regulation and in particular whether it should be extended in duration and/or scope to include other services such as roaming SMS or data.
50. The Commission adopted several Decisions concerning **public funding schemes for broadband** in rural or remote areas with no or only limited broadband coverage⁶⁵. The Commission also accepted, in well-defined circumstances, State intervention in favour of advanced broadband services in areas where the incumbent operators were only partly offering basic broadband services⁶⁶.
51. The Commission conducted a preliminary investigation into the “Wireless Prague” project, the **first municipal wireless network case assessed by the Commission** under the State aid rules⁶⁷. Following modifications to the project the Commission concluded that no State aid was involved.
52. In the area of **merger control** the Commission relied on a dynamic approach in respect of fast-moving markets such as those considered in *Syniverse/BSG*⁶⁸, where the Commission assessed the market for GSM roaming data clearing services. The market characteristics (such as the availability of the technology needed by competitors to enter the market) identified during an in-depth investigation led the Commission to a straight clearance Decision even though the merger entailed a reduction of market players currently active in Europe.

⁶³ Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27/6/2007 on roaming on public mobile telephone networks (OJ L 171, 29.6.2007, p. 32).

⁶⁴ At EUR 0.49 excl. VAT for calls made and EUR 0.24 excl. VAT for calls received; these price caps will be further reduced in 2008 and 2009.

⁶⁵ Cases N 475/2007, *National Broadband Scheme Ireland*, Commission Decision of 25.9.2007; N 473/2007, *Broadband connections for Alto Adige*, Commission Decision of 11.10.2007; N 570/2007, *Broadband in rural areas of Baden-Württemberg*, Commission Decision of 23.10.2007; N 442/2007, *Aid in favour of broadband in remote areas of Veneto*, Commission Decision of 23.10.2007.

⁶⁶ Cases N 746/2006, *North Yorkshire NYNET Project United Kingdom*, Commission Decision of 21.2.2007; N 890/2006, *Aide du Sicoval pour un réseau de très haut débit*, Commission Decision of 10.7.2007.

⁶⁷ Case NN 24/2007, *Prague Municipal Wireless Network*, Commission Decision of 30.5.2007.

⁶⁸ Case COMP/M.4662, *Syniverse/BSG*, Commission Decision of 4.12.2007.

2.4. Information technology

53. The Commission pursued its proceedings against *Microsoft* to ensure compliance with the 2004 Decision⁶⁹ with regard to pricing and licensing terms for the interoperability information relating to the first abuse concerning refusal to supply. Article 5 of the 2004 Decision requires that these terms be reasonable and non-discriminatory. In 2006 the Commission had already imposed on Microsoft a definitive penalty payment of EUR 280.5 million for not providing complete and accurate interoperability information⁷⁰. Consequently, on 1 March the Commission issued a statement of objections addressed to Microsoft which set out the Commission's preliminary assessment that Microsoft had not complied with its obligation to offer the complete and accurate interoperability information on reasonable and non-discriminatory terms⁷¹.
54. Following the judgment by the Court of First Instance of 17 September dismissing the substantive elements of Microsoft's application for annulment of the 2004 Decision on 22 October Microsoft announced a significant reduction in its licence fees. It also offered an updated version of its relevant licence agreements. As of that date the Commission has no further objections concerning Microsoft's compliance with the 2004 Decision⁷².
55. A statement of objections was sent to *Intel* on 26 July indicating the Commission's preliminary conclusion that Intel had engaged in three types of abusive practices aimed at excluding AMD, Intel's main rival, from the x86 Computer Processing Units (CPU) market.
56. The Commission sent a statement of objections to *Rambus* on 30 July outlining its preliminary view that Rambus had abused a dominant position by claiming unreasonable royalties for the use of certain patents for Dynamic Random Access Memory chips (DRAMS)⁷³. The Commission's preliminary view is that Rambus engaged in intentional deceptive conduct in the context of the standard-setting process in the form of what is known as a patent ambush⁷⁴.
57. On 30 August the Commission opened proceedings⁷⁵ against *Qualcomm Inc.*, a US chipset manufacturer and holder of IP rights in the CDMA and WCDMA standards for mobile telephony. Complaints allege that Qualcomm's licensing practices are not

⁶⁹ Commission Decision of 24 May 2004 relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement against Microsoft Corporation, Case COMP/37.792, *Microsoft* (OJ L 32, 6.2.2007, p. 23).

⁷⁰ http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37792/art24_2_decision.pdf

⁷¹ http://ec.europa.eu/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/07/90|0|RAPID&lg=EN

⁷² http://ec.europa.eu/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/07/1567|0|RAPID&lg=EN
On 27 February 2008 the Commission imposed a penalty payment of EUR 899 million on Microsoft for non-compliance with the 2004 Decision prior to 22 October 2007. This Decision adopted under Article 24(2) of Regulation 1/2003, finds that, prior to 22 October 2007, Microsoft had charged unreasonable prices for access to interface documentation for work group servers (see IP/08/318, 27.2.2008).

⁷³ DRAMS are the computer's "working" memory.

⁷⁴ See http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_77.html#i38_636

⁷⁵ See <http://ec.europa.eu/comm/competition/antitrust/cases/decisions/39247/proceedings.pdf>

Fair, Reasonable and Non-Discriminatory (“FRAND”) and therefore may breach EC competition rules (Article 82 EC).

58. In the field of **State aid** the Commission adopted a final Decision approving the French tax credit in favour of the creation of video games⁷⁶. This measure had been notified under Article 87(3)(d) EC⁷⁷. It enables video games producers that are subject to taxation in France to deduct 20% of the eligible costs of production of certain video games. This is the first time that the cultural exception laid down in Article 87(3) (d) has been applied to video games.

2.5. Media

59. The Commission continued to monitor the **switchover from analogue to digital broadcasting**. In July it issued a reasoned opinion⁷⁸ to Italy following a complaint by the Italian consumer association Altroconsumo⁷⁹. The Commission considers that the Italian legislation is contrary to the EU Regulatory Framework for Electronic Communications⁸⁰.
60. In the field of State aid the Commission continued to apply the approach adopted in earlier Decisions concerning State funding to support the digital switchover. The Commission approved three support schemes (two Italian⁸¹ and one Spanish⁸²) for the acquisition of digital decoders with open API⁸³ and for covering the costs of adapting existing collective analogue terrestrial antennas. The Commission adopted two negative Decisions regarding subsidy schemes in Italy⁸⁴ and in the German Land of North Rhine-Westphalia⁸⁵.
61. While the Commission recognises, in line with the Amsterdam Protocol on the system of public service broadcasting, that it is the prerogative of Member States to organise and fund public service broadcasting, it considers that the **financing of public service broadcasters** by means of budgetary contributions or licence fee financing constitutes State aid⁸⁶. State aid to public service broadcasters may,

⁷⁶ Case C 47/2006, *Crédit d’impôt mis en place par la France pour la création de jeux vidéo*, Commission Decision of 11.12.2007.

⁷⁷ This provision states that “aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest” may be declared compatible with the common market.

⁷⁸ The second stage of the infringement procedure under Article 226 of the EC.

⁷⁹ IP/07/1114, 18.7.2007.

⁸⁰ Notably, Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ L 249, 17.9.2002, p. 21).

⁸¹ Cases N 270/2006 *Subsidy to digital decoders with open API* (OJ C 80, 13.4.2007) and N 107/2007 *Subsidies to idTV — Italy* (OJ C 246, 20.10.2007).

⁸² Case N 103/2007, *Support for the acquisition of digital decoders and for the adaptation of antennas in Soria*, Commission decision of 25.9.2007 (OJ C 262, 1.11.2007).

⁸³ Open API is a term used to describe advanced program interfaces (API) that facilitate interoperability, i.e. portability of interactive content between delivery mechanisms with full functionality of the content intact.

⁸⁴ Case C 52/2005 (ex NN 88/2005), *Subsidy to digital decoders in Italy* (OJ L 147 8.6.2007).

⁸⁵ Case C 34/2006 (ex N 29/2005), *Introduction of digital terrestrial television (DVB-T) in North Rhine-Westphalia*, Commission decision of 23.10.2007, not yet published.

⁸⁶ Under the conditions set out in the *Altmark* judgment: Case C-280/00 (Reference for a preliminary ruling from the Bundesverwaltungsgericht): *Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

however, be declared compatible where the requirements of Article 86(2) are fulfilled (as further specified in the Broadcasting Communication⁸⁷).

62. The Commission adopted two Decisions concerning the financing of public service broadcasters pursuant to Article 86(2) EC in combination with the Broadcasting Communication. The first concerned the approval of the financing by the Spanish Government of workforce reduction measures taken by the Spanish public service broadcaster RTVE⁸⁸. Second, the Commission closed its investigation into the general financing regime in favour of public service broadcasters in Germany (ARD and ZDF)⁸⁹.
63. In April the Commission sent a statement of objections to major record companies and *Apple* in relation to agreements between each record company and Apple deemed to restrict online music sales, in contravention to Article 81. During the proceedings Apple announced that it would equalise its prices for downloads of songs from its iTunes online store in Europe before mid-2008, which puts an end to the different treatment of UK consumers. On this basis, and following further clarifications, the Commission closed the case.
64. The Commission continues to give high priority to **ensuring that premium content is made available under open and transparent conditions** allowing a maximum number of operators to bid for the rights. In 2007, the Commission closed its investigation under Article 81 EC concerning the joint buying of TV rights of sports events by the European Broadcasting Union (EBU) and its members.
65. As regards **merger control** in the media sector the *SFR/Tele2* merger may be highlighted⁹⁰. This concentration was approved subject to conditions to ensure effective competition in the French pay-TV market. As regards the music industry, in the case of *Sony/BMG-II*⁹¹, the European Commission granted regulatory approval to a joint venture combining the recorded music businesses of Sony and Bertelsmann, after the Court of First instance had annulled the previous Commission Decision of 2004. The Commission also cleared subject to remedies the concentration between Universal and BMG in music publishing.

2.6. Automotive industry

66. The Commission continued to monitor developments in the sector on an ongoing basis *inter alia* through its car price reports⁹². The **motor vehicle block exemption**

⁸⁷ Communication from the Commission on the application of State aid rules to public service broadcasting (OJ C 320, 15.11.2001, p. 5).

⁸⁸ The full text of the Decision is published in English:
http://ec.europa.eu/comm/competition/state_aid/register/ii/doc/NN-8-2007-WLWL-07.03.2007.pdf

⁸⁹ The full text of the Decision is published in English:
http://ec.europa.eu/comm/competition/state_aid/register/ii/doc/E-3-2005-WLWL-en-24.04.2007.pdf

⁹⁰ Case COMP/M.4504, *SFR/Tele2*, Commission Decision, 18.7.2007.

⁹¹ Case COMP/M.3333, *Sony/BMG-II*, Commission Decision, 3.10.2007.

⁹² Latest car price report published on 27 July 2007:
http://ec.europa.eu/comm/competition/sectors/motor_vehicles/prices/2007_05_full.pdf

Regulation⁹³ lays down a regime specific to the automotive sector aimed at strengthening intra-brand competition.

67. In order to increase competition in the aftermarket, the Commission on 13 September adopted **four commitment Decisions**⁹⁴ under Article 9(1) of Regulation (EC) No 1/2003 binding until May 2010 four car manufacturers (DaimlerChrysler, Toyota, General Motors and Fiat) to provide technical information about car repairs to all independent garages in the EU. Thereafter the vehicle emissions Regulation⁹⁵ will place an obligation upon vehicle manufacturers to provide independent repairers with standardised access to all technical repair information.
68. After 2005 and 2006, 2007 was another year in which merger activity within the automotive industry to a large extent concerned the automotive supplier segment. One major merger involved the two German companies Continental AG and Siemens VDO Automotive AG. It was cleared by the Commission on 29 November⁹⁶.
69. A number of **State aids** were addressed in 2007 under certain general State aid frameworks, such as the rules on regional and restructuring aid⁹⁷. The Commission also examined the terms of privatisation of State-owned car manufacturers. In the case of Automobile Craiova, a Romanian car plant (formerly Daewoo Craiova), the Commission opened the formal investigation procedure under Article 88(2) EC as the conditions attached to the privatisation appeared liable to confer an advantage on the undertaking undergoing privatisation⁹⁸.

2.7. Transport

70. Competition policy in the transport sector aims to ensure the efficient functioning of markets which have been recently or which are in the process of liberalisation.
71. In the area of **road transport** international markets are largely liberalised for both passenger and freight. National road haulage is also liberalised through a Council Regulation on cabotage⁹⁹ while national passenger markets are still largely protected. In applying State aid rules to this segment the Commission maintained its policy of approving aid in order to favour the uptake of cleaner technology, in particular on old vehicles¹⁰⁰. With regard to the application of public procurement and State aid rules to public service contracts and public service concessions, a revised Regulation for

⁹³ Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector (OJ L 203/30, 1.8.2002).

⁹⁴ See e.g. Commission Decision of 13.9.2007 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/39.140, *DaimlerChrysler*) (OJ L 317, 5.12.2007, p. 76).

⁹⁵ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

⁹⁶ Case COMP/M.4878, *Continental/Siemens VDO*, Commission Decision, 29.11.2007.

⁹⁷ See 1.4.2. above.

⁹⁸ Case C 46/2007, *Privatisation of Automobile Craiova, Romania* (OJ C 248, 23.10.2007, p. 25).

⁹⁹ Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, OJ L 279, 12.11.1993, pp. 1–16.

¹⁰⁰ Commission Decision N 649/06, OJ C 139, 23.6.2007, p. 13.

public services in the field of land transport, was adopted and will enter into force in December 2009¹⁰¹.

72. The opening of **rail freight transport** market was completed. However, one of several remaining structural problems concerns unbundling/independence of essential functions for non-discriminatory access to the network and a lack of administrative capacity and independence of rail regulatory bodies¹⁰².
73. As regards **passenger transport by rail**, the Council and the Parliament finally adopted on 23 October the third railway package, ending a long legislative process¹⁰³. The third railway legislative package will open international passenger transport including cabotage.

The Commission also prepared draft guidelines on **State aid to railway undertakings**¹⁰⁴ to increase legal certainty and transparency in connection with ongoing market opening.

74. **Maritime transport** accounts for about 50% of the external trade in goods in terms of weight and about 20% of trade between Member States. In 2007 the Commission promoted tight convergence of aid schemes in maritime transport to achieve as far as possible a level playing field within Europe, including towage and dredging activities¹⁰⁵. On 13 September 2007, the Commission adopted draft Guidelines on the application of Article 81 of the EC Treaty to maritime transport services, for public consultation¹⁰⁶.
75. In the area of **air transport**, on 19 October the Commission invited interested parties to comment upon the commitments proposed by eight members of the SkyTeam airline alliance, namely Aeromexico, Alitalia, CSA Czech Airlines, Delta Air Lines, KLM, Korean Air, Northwest Airlines and Air France¹⁰⁷. These commitments are designed to meet concerns under Article 81 EC raised by the Commission in its statement of objections of 15 June 2006¹⁰⁸.

¹⁰¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

¹⁰² See the Commission Report on the implementation of the 1st railway package (COM(2006) 189 final of 3 May 2006). See the Commission Recommendation of 11 December for a Council Recommendation on the 2008 update of the broad guidelines for the economic policies of the Member States and the Community (COM(2007) 803 final). See in particular the Recommendation in respect of France and Germany.

¹⁰³ Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways, and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 315, 3.12.2007, p. 44; Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community, OJ L 315, 3.12.2007, p. 51; Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

¹⁰⁴ http://ec.europa.eu/dgs/energy_transport/state_aid/consultation_ms_en.htm

¹⁰⁵ N 93/06, OJ C 300, 12.12.2007, p. 22.

¹⁰⁶ OJ C 215, 14.9.2007, p. 3; see also Press release IP/07/1325, 13.9.2007.

¹⁰⁷ IP 07/1558, 19.10.2007.

¹⁰⁸ MEMO/06/243, 19.6.2006.

76. On 27 June the Commission adopted a Decision to prohibit the **proposed takeover by Ryanair of Aer Lingus**. The acquisition would have combined the two leading airlines operating from Ireland which competed vigorously against each other. Both Ryanair and Aer Lingus were by far the largest airlines offering short-haul flights to and from Ireland. Their position was particularly strong on routes to and from Dublin, where the merged entity would have accounted for around 80% of all intra-European traffic.
77. During 2007 the Commission completed its investigation into government assistance to a carrier in difficulty (*Cyprus Airways*¹⁰⁹), concluding that the restructuring plan submitted by the Cypriot authorities was compatible with the common market. In relation to the long-running case of Olympic Airways/Airlines the Commission opened a further investigative procedure into alleged State aid granted to this company since 2005¹¹⁰.
78. On 30 April the European Union and the United States of America signed a treaty establishing an **open aviation area between the EU and US**¹¹¹. This agreement, which enters into force on 30 March 2008, allows for the consolidation of the EU aviation sector by recognising all European airlines as “Community air carriers” and allowing any such Community air carrier to fly between any point in the EU and any point in the US, without any restriction on pricing or capacity. It also includes provisions for strengthening cooperation between the Commission and the US Department of Transportation (DoT) in the competition field.

2.8. Postal services

79. The Commission actively negotiated its proposal according to the co-decision procedure (Article 251 EC)¹¹². Following the first reading by Parliament, the Council reached a political agreement during the Telecommunications and Energy Council in Luxembourg on 1 October. On the basis of this agreement, the Common Position was formally adopted by the Council on 8 November. However, the Common Position sets 2011 and for certain Member States 2013 as the starting date for market opening.
80. In the **State aid area** the Commission in particular examined compensations for public service obligations granted to postal operators to ensure that these compensations do not exceed the actual costs of discharging the public service obligations and do not cross-subsidise commercial activities.
81. Where a compensation for a service of general economic interest (SGEI) does not fulfil the conditions set out in the *Altmark*¹¹³ case law and therefore cannot escape qualification as State aid, it can however be declared compatible with the Treaty

¹⁰⁹ C 10/06, not yet reported.

¹¹⁰ C 61/07, not yet reported.

¹¹¹ OJ L 134, 25.5.2007, p. 4.

¹¹² On 18 October 2006, the Commission put forward a proposal to open up EU postal markets fully to competition by 2009, in line with the indicative target date set out in the current Postal Directive.

¹¹³ Case C-280/00, *Altmark Trans GmbH* [2003] ECR I-7747.

under Article 86(2)¹¹⁴. The conditions under which a compensation for SGEI can be declared compatible were clarified by the 2005 Community Framework¹¹⁵. The Framework requires, in particular, that the compensation does not exceed the costs incurred in discharging the public service obligations.

82. Among the State aid decisions two authorisations in favour of the UK Post Office (on 7 March¹¹⁶ and 29 November¹¹⁷) may be mentioned. The Commission also decided to open a formal investigation against Germany to assess whether Deutsche Post AG was overcompensated for carrying out its universal service obligations¹¹⁸.

83. The Commission paid particular attention to **State aid in the form of unlimited guarantees**. On 25 April, the Commission formally took note of the agreement by Poland to end the unlimited State guarantee enjoyed by the Polish Post Office¹¹⁹. On 29 November the Commission decided to launch an in-depth investigation to examine whether the French La Poste, as a public law entity, enjoys an unlimited State guarantee¹²⁰. In another case concerning La Poste the Commission gave conditional authorisation for aid to finance pensions¹²¹.

3. THE EUROPEAN COMPETITION NETWORK AND NATIONAL COURTS — OVERVIEW OF COOPERATION

84. 2007 was the third full year of implementation of the enforcement system set up by Regulation 1/2003. It saw a further strengthening of cooperation between the members of the European Competition Network (ECN), i.e. the EU Member States' National Competition Authorities (NCAs) and the Commission. **The actual intensity, scope and potential of cooperation within the ECN go beyond the legal obligations** set out in Regulation 1/2003.

¹¹⁴ Under Article 86(2), undertakings entrusted with a SGEI can avoid application of the rules on competition if the application of these rules obstructs the performance, in law or in fact, of the particular tasks assigned to them.

¹¹⁵ Community Framework for State aid in the form of public service compensation (OJ C 297, 29.11.2005, p. 4)

¹¹⁶ Case N 822/2006, *Debt payment funding to Post Office Limited* (OJ C 80, 13.4.2007, p. 5).

¹¹⁷ Case N 388/2007, *Post Office Ltd: Transformation*. The Decision is available on DG Competition's website http://ec.europa.eu/comm/competition/state_aid/register/ii/ not yet published in the OJ.

¹¹⁸ Case C 36/2007, *Complaint against the German State for unlawful State aid to Deutsche Post* (OJ C 245, 19.10.2007 p. 21). This aid was in addition to the aid already found to be incompatible in the Commission Decision of 19 June 2002 on measures implemented by Germany for Deutsche Post AG (OJ L 247, 14.9.2002, p. 27).

¹¹⁹ Case E12/2005, *Unlimited State guarantee in favour of Poczta Polska* (OJ C 284, 27.11.2007).

¹²⁰ Case C 56/2007 (ex E15/2005), *Garantie illimitée de l'Etat en faveur de La Poste*. The Decision is available on DG Competition's website http://ec.europa.eu/comm/competition/state_aid/register/ii/ not yet published in the OJ.

¹²¹ Case C 43/2006, *Projet de réforme du financement des retraites des fonctionnaires de La Poste française*. The Decision is available on DG Competition's website (http://ec.europa.eu/comm/competition/state_aid/register/ii/) not yet published in the OJ.

85. Key policy areas addressed within the ECN included the ability of NCAs, in their application of Articles 81 and 82 EC, to disapply anti-competitive State measures (following the *CIF* ruling¹²² by the European Court of Justice).
86. 2007 saw the continuation of the convergence process observed in the context of Regulation 1/2003. Over and above legal obligations arising from implementation of the Regulation, there is a trend towards greater approximation of national procedural laws and policies.
87. A prime example of this trend towards further convergence is the **ECN Model Leniency Programme**¹²³. The Programme, which was developed within the ECN working group on leniency during 2006, has already achieved very encouraging results in the first year following its endorsement.
88. Another example is that a large number of NCAs now have the power to adopt **commitment decisions** in line with Article 9 of Regulation 1/2003. As a consequence, a significant increase in such decisions could be observed in 2007 among the decisions communicated to the Commission on the basis of Article 11(4) of Regulation 1/2003 (29 commitment decisions in 2007 as compared to 7 in 2006).
89. The Commission was **informed under Article 11(3) of Regulation 1/2003 of around 140 new case investigations** launched by NCAs¹²⁴. Clusters of cases could be observed *inter alia* in the energy, food and media sectors. The Commission services reviewed or advised on a very significant number of cases originating from NCAs, following up on information provided under Article 11(4) or upon informal request. To date, the Commission has not made use of the possibility of relieving an NCA of its competence in a given case by initiating proceedings under Article 11(6).
90. By virtue of Article 15(1) of Regulation 1/2003 which allows national judges to ask the Commission for information in its possession or for an opinion on questions concerning the application of the EU competition rules, the Commission issued three **Opinions to national judges**: two in reply to requests from Swedish courts and one to a Spanish court.
91. Article 15(2) of Regulation 1/2003 requires the EU Member States to forward to the Commission a copy of any written judgment issued by national courts deciding on the application of Articles 81 or 82 EC. The Commission received copies of some 50 judgments handed down in 2007, which were posted on DG Competition's website¹²⁵.
92. Article 15(3) of Regulation 1/2003 provides that where the coherent application of Articles 81 or 82 EC so requires, the Commission, acting on its own initiative, may submit **written observations to courts** of the Member States, and may also make

¹²² Case C-198/01, *Consortio Industrie Fiammiferi (CIF) and Autorità Garante della Concorrenza e del Mercato* [2003] ECR I-8055.

¹²³ The ECN Model Programme is available at http://ec.europa.eu/comm/competition/ecn/index_en.html together with a list of frequently asked questions (MEMO/06/356).

¹²⁴ Approximately 45% concerned application of Article 81 EC, 31.5% concerned application of Article 82 EC and 23.5% concerned application of both Articles 81 and 82 EC.

¹²⁵ <http://ec.europa.eu/comm/competition/elojade/antitrust/nationalcourts/>

oral observations with the permission of the court in question. The Commission decided to intervene as *amicus curiae* pursuant to Article 15(3) of Regulation 1/2003 in a case in the Netherlands concerning the tax deductibility of Commission competition fines.

93. Continuous **training and education of national judges** in EU competition law is very important in order to ensure both effective and coherent application of those rules. Since 2002, the Commission has co-financed 35 training projects, which have provided for the training of approximately 3 500 judges by the end of 2007. A new legal base was adopted on 25 September¹²⁶. On the basis of the corresponding Work Programme 2007, a call for proposals for training national judges in EC competition law was launched at the end of 2007¹²⁷.

4. INTERNATIONAL ACTIVITIES

94. In the context of **Enlargement**, candidate countries must fulfil a number of requirements in the competition field as a condition for acceding to the European Union, including the adoption of national legislation compatible with the EU acquis. They must also put in place the necessary administrative capacity and demonstrate a credible enforcement record. DG Competition provides technical assistance and support to help the candidate countries fulfil these requirements, and it continuously monitors the extent to which the candidate countries are prepared for accession.
95. During 2007 cooperation was particularly close with Croatia and Turkey. These two candidate countries must fulfil “opening benchmarks” before accession negotiations on the competition chapter can start. DG Competition assisted the Western Balkan countries in further aligning their competition rules with EU law.
96. The Commission **cooperates with numerous competition authorities on a bilateral basis**, in particular with the authorities of the European Union’s major trading partners. The European Union has entered into dedicated cooperation agreements in competition matters with the United States, Canada and Japan.
97. In the course of the year, DG Competition and the **Korean Fair Trade Commission** (KFTC) met on several occasions to negotiate a bilateral cooperation agreement in the competition field.
98. Moreover, DG Competition played an active role in the ongoing negotiations on **Free Trade Agreements** with India and South Korea, and on the trade part of the **Association Agreements** with the Andean Community with a view to ensuring that anti-competitive practices (including State aid) do not erode the trade and other economic benefits sought through those agreements.
99. DG Competition continued to play a leading role in the International Competition Network (ICN).

¹²⁶ Decision of the European Parliament and the Council No. 1149/2007/EC of 25 September 2007, establishing for the period 2007-2013 the specific programme “Civil Justice” (OJ L 257 of 3.10.2007, p. 16).

¹²⁷ The budget foreseen for these action grants in 2007 is EUR 800 000.

5. INTERINSTITUTIONAL COOPERATION

100. The Commission continued its cooperation with the other Community institutions in accordance with the respective agreement or protocols entered into by the relevant institutions¹²⁸.
101. As is the case each year, the **European Parliament** issued an own-initiative report on the Commission's annual Report on Competition Policy of the previous year, after an exchange of views was held on the issues raised in the Report.
102. The Commission also participated in discussions held in the European Parliament on Commission policy initiatives, such as on State aid reform (in particular on the environmental guidelines and on the proposal for a General Block Exemption Regulation) and the financial services sector inquiry. The Commissioner and/or the Director-General responsible for Competition hold regular exchanges of views with the responsible Parliamentary Committees to discuss competition policy matters.
103. The Commission also closely cooperates with the Council, by informing the Council of important policy initiatives in the competition field, such as on the State aid reform and the energy and financial services sector inquiries; by participating in Council working groups dealing with competition policy matters, and by maintaining close links with the respective Presidencies.
104. The Commission further informs the European Economic and Social Committee and the Committee of the Regions on major policy initiatives and participates in debates that may be held at the respective Committee, such as for instance for the adoption of the yearly report by the European Economic and Social Committee on the Commission's annual Report on Competition Policy.

¹²⁸ Framework Agreement of 26 May 2005 on relations between the European Parliament and the Commission; Protocol of Cooperation between the European Commission and the European Economic and Social Committee of 7 November 2005; Protocol on the Cooperation Arrangements between the European Commission and the Committee of the Regions of 17 November 2005.