

EUROPEAN COMMISSION

2000

Executive Summary

1. In 2000, the total number of new cases was 1 206, comprising 297 antitrust cases (under Articles 81, 82, and 86), 345 merger cases, and 564 state aid cases. Compared to 1999, there were fewer antitrust cases while the number of merger cases continued to increase and that of state aid cases remained stable. Merger activity continued to be intense in Europe for similar reasons to ones witnessed in the previous year: globalisation of markets, introduction of the Euro, completion of the single market, forthcoming enlargement. Overall, 345 new merger cases were notified during 2000 (+18%) and in total, 345 formal decisions were taken during the year, 28% up on 1999. In the field of state aid, the number of notifications remained remarkably stable compared with 1999 (469 in 2000, same number in 1999); this was also true of the number of proceedings initiated (67 against 68 in 1999) and negative final decisions (26 against 33 in 1999). The number of cases pending, however, has increased significantly (564 against 428 in 1999), which can be partly explained by the numerous proceedings initiated since 1997 taking up a large amount of resources. The total number of cases closed was 1 209, comprising 379 antitrust cases, 355 merger cases, and 475 state aid cases. Comparable figures for 1999 were 1 321 cases closed, comprising 582 antitrust cases, 279 merger cases and 460 state aid cases.

2. On the regulatory front, the year was marked by intense activity involving the adoption of new block exemption regulations in the field of horizontal agreements, supplemented by a set of guidelines, while further progress was made towards modernising the rules implementing Articles 81 and 82. New guidelines were issued on vertical restraints to supplement the block exemption regulation adopted in December 1999. More particularly, in the area of car distribution, an evaluation report was issued on the present regulation¹, which will serve as the basis for a review of the car distribution regime in the near future. In the merger field, a simplified procedure for certain categories of cases not giving rise to competition concerns, as well as a notice on remedies, were adopted by the Commission. The Commission also introduced three regulations on the application of the *de minimis* rule to state aid, on aid to small and medium-sized enterprises and on aid to training.

3. The enforcement of competition rules in 2000 reflected the reality of new markets and business practices. The creation of electronic marketplaces and the use by certain industries of voluntary agreements with environmental aims are just two examples of emerging practices, which led to Commission decisions. A large part of the Commission's enforcement activity in 2000 was focused on recently liberalised markets, where a competitive environment is not yet fully established. Two considerations on the international dimension of competition policy are worth noting: first, the fact that the geographical scope of competition cases is widening means that more commercial transactions are falling within the jurisdiction of the growing number of countries that have adopted competition rules. To analyse these cases properly and avoid conflict, the Commission often has to liaise closely and exchange information with other competition authorities. Secondly, the Commission has to pay close attention to the competition aspects of the forthcoming enlargement. Enlargement should not create a major imbalance in terms of state aid or competitiveness. Hence the importance of working with the applicant countries and making sure that the same rules apply with equal effectiveness throughout an enlarged Union.

1 Commission Regulation EEC No 1475/95 of 28.6.1995.

Changes to competition laws and policies

Summary of new legal provisions

The block exemption for liner shipping consortia

4. On 19 April the Commission adopted Regulation (EC) No 823/2000² renewing the block exemption for liner shipping consortia embodied in Commission Regulation (EC) No 870/95,³ the five-year validity of which expired on 25 April. The Commission's favourable view of consortia is due to the advantages of this form of co-operation. In general, by rationalising the activities of the member companies and achieving economies of scale, consortia help improve both the productivity and the quality of liner transport services offered to transport users. The new regulation, which extends the block exemption for a further five years, includes amendments designed to clarify it in line with the Commission's interpretation of Regulation 870/95. Regulation 823/2000 thus provides *inter alia* that the block exemption also applies to consortia operating on more than one trade (Article 1(1)) and that the market share thresholds are required to be met in respect of each market on which such a consortium operates (Articles 6 and 7).

5. The most important change that Regulation 823/2000 makes to the block exemption as compared with Regulation 870/95 is in referring to market share thresholds instead of trade share thresholds (i.e. the share of trade held by the consortium between the pairs of ports that it actually serves). Market share is the usual indication of market power used in competition legislation. The trade share criterion was adopted in the previous regulation because shipping companies had considered that market shares would be difficult to calculate; experience had however shown that shipping companies were able to provide market shares.

Rules in the field of horizontal co-operation agreements

6. On 29 November the Commission adopted Regulation⁴ (EC) No 2658/2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements and Regulation⁵ (EC) No 2659/2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements⁶. The new regulations replace the two existing block exemption regulations on specialisation agreements⁷ and on research and development (R&D) agreements⁸, which expired on 31 December 2000. The new instruments move away from a clause-based approach and give the parties to such agreements greater contractual freedom.

2 OJ L 100, 20.4.2000; press release IP/00/404, 25.4.2000.

3 OJ L 89, 21.4.1995.

4 OJ L 304, 5.12.2000.

5 OJ L 304, 5.12.2000.

6 The two block exemption regulations are available on the Competition DG's website at: <http://europa.eu.int/comm/competition/antitrust/legislation/>.

7 Commission Regulation (EEC) No 417/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of specialisation agreements (OJ L 53, 22.2.1985), as last amended by Regulation (EC) No 2236/97 (OJ L 306, 11.11.1997).

8 Commission Regulation (EEC) No 418/85 of 19 December 1984 on the application of Article 85(3) of the Treaty to categories of research and development agreements (OJ L 53, 22.2.1985), as last amended by Regulation (EC) No 2236/97 (OJ L 306, 11.11.1997).

7. In addition to this increase in flexibility, the following principal changes have been incorporated in the new R&D block exemption regulation:

- - no requirement to draw up a framework programme prior to entering into R&D agreements;
- - increase in the market share threshold for exemption from 20% to 25%;
- - if the agreement provides for joint distribution of products that have been jointly developed, the market share threshold will be increased from 10%, as at present, to 25%;
- - increase in the safety margin for market share fluctuations from 2% to 5%;
- - increase in the period during which joint exploitation of jointly developed products is covered irrespective of market share from five to seven years;
- - deletion of the non-opposition procedure;
- - possibility to withdraw the block exemption in those cases where an agreement would eliminate effective competition in R&D on a particular market (to protect competition in innovation).

8. As regards the new specialisation block exemption regulation, the principal changes are as follows:

- extension of the scope of the regulation to cover unilateral specialisation between competitors. Unilateral specialisation between non-competitors is, subject to certain conditions, covered by the vertical block exemption regulation⁹;
- in the case of reciprocal specialisation, there is a requirement to incorporate a cross-supply obligation so that no party leaves the market downstream of production;
- deletion of the turnover threshold;
- increase in the safety margin for market share fluctuations from 2% to 5%, as in the R&D block exemption regulation;
- possibility of exclusive supply or exclusive purchase obligations.

9. Both regulations provide for a transitional period of 18 months during which agreements which do not satisfy the conditions of the new regulations but which satisfy the conditions for exemption provided for in the old regulations continue to be covered.

Regulations in the area of State aid control

10. On 6 December the Commission agreed in principle to the adoption of three regulations on the basis of the enabling provisions in Regulation (EC) No 994/98,¹⁰ which allows the Commission to target its

9 Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ L 336, 29.12.1999).

10 OJ L 142, 14.5.1998.

activities in the modernisation of state aid control measures. These instruments consist of two regulations creating exemptions for aid to small and medium-sized enterprises¹¹ and training aid¹² and a regulation codifying the application of the *de minimis* rule.¹³ Member States will therefore be able in future to grant aid that meets the conditions fixed by those regulations without the need for giving prior notification to and securing the agreement of the Commission. The positive effects of these regulations are not of benefit to the Commission alone but also extend to the Member States, which can grant aid covered by the regulations much more quickly than before.

Other relevant measures including guidelines

The Notice on a simplified procedure for certain merger cases

11. A simplified procedure was introduced to increase the efficiency with which the Commission deals with certain categories of mergers that do not normally raise competition concerns. The new system was introduced by the adoption of a notice, and it was put into practice on 1 September¹⁴. The Commission notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 identifies three categories of cases which would qualify for a short-form decision adopted by the Commission at the end of the usual one-month review. The notice applies to concentrations where:

- two or more undertakings acquire joint control over a joint venture, provided that the joint venture has no, or negligible, actual or foreseen activities within the EEA territory (turnover of less than EUR 100 million and assets of less than EUR 100 million in the European Economic Area);
- none of the parties is engaged in business activities in the same product and geographic market (horizontal relationships), or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationships);
- two or more of the parties are engaged in business activities in the same product and geographic market or upstream or downstream market, provided that their combined market share is not 15% or more for horizontal and 25% or more for vertical relationships.

12. The short-form decision will contain information about the parties, the nature of the concentration and economic sectors concerned together with a statement to the effect that the concentration is declared compatible with the common market because it falls within one or more of the categories contained in the notice, with the applicable category(ies) being explicitly identified. As with all full clearance decisions, the Commission will publish a public version of the decision.

11 Regulation (EC) No 70/2001 (OJ L 10, 13.1.2001).

12 Regulation (EC) No 68/2001 (OJ L 10, 13.1.2001).

13 Regulation (EC) No 69/2001 (OJ L 10, 13.1.2001).

14 The full text of the notice is available on the Commission's web-site:

http://europa.eu.int/comm/competition/mergers/legislation/simplified_procedure/

The Communication on services of general interest

13. On 20 September, responding to an invitation made by the European Council at its meeting in Lisbon in March, the Commission adopted an updated version of its communication on services of general interest in Europe. According to the Commission, market mechanisms often provide satisfactory services of general economic interest and the application of competition and single market principles does not endanger and often even improves the provision of these services. This does not prevent the State imposing by way of non-discriminatory regulation certain standards of security, quality and regularity on all operators if and as long as they want to provide services of general economic interest. Moreover, the communication confirms Member States' general freedom, subject to checks by the Commission for manifest errors, to define what they regard as services of general economic interest within the meaning of Article 86(2) of the EC Treaty and to entrust the provision of such services to specific undertakings. Finally, the communication explains the full range of reasons why services of general interest can fall outside the scope of the EC competition rules (and the single market rules) or can be deemed compatible with those rules. This is the case where:

- the activities in question are of a non-economic nature, or
- have no effect on trade between Member States (or no cross-border aspects), or
- come under a de minimis rule, or
- qualify for a special exception (such as Article 87(3)(d) for state aid to promote culture and heritage conservation), or
- where under Article 86(2) any conflict with the EC competition rules or the EC single market rules is settled in a way which allows the service of general economic interest to continue in operation.

14. In this context, the new communication highlights the case-law of the Court under which compensation granted by the State to an undertaking for the performance of services of general economic interest constitutes state aid which can be compatible with the EC Treaty if all the requirements of Article 86(2) are met. This means in particular that the compensation must not exceed the net extra costs of the particular task assigned to the recipient undertaking. For the transport sector, this approach is specifically laid down in Article 73 of the Treaty. Moreover, the Commission states in its communication that whenever the compensation is fixed for an appropriate period following an open, transparent and non-discriminatory procedure, it will presume that such aid is compatible with the state aid rules of the Treaty. This approach avoids distortions of competition and ensures that services of general economic interest entrusted to an undertaking function correctly.

The "Horizontal" guidelines

15. On 29 November the Commission adopted guidelines¹⁵ on the applicability of Article 81 of the Treaty to horizontal co-operation agreements¹⁶. The guidelines replace two existing notices (on certain types of

15 OJ C 3, 6.1.2001.

16 The guidelines are available on the Competition DG's website at:
<http://europa.eu.int/comm/competition/antitrust/legislation/>.

co-operation agreements falling outside Article 81¹⁷ and on the assessment of co-operative joint ventures¹⁸) and complement the new block exemption regulations on R&D and specialisation. The guidelines cover a wider range of the most common types of horizontal agreements: R&D, production, purchasing, marketing, standardisation and environmental agreements. They describe the general approach which should be followed when assessing horizontal co-operation agreements and set out a common analytical framework which can be summarised as follows: a horizontal co-operation agreement is only able to restrict competition if it is likely to reduce competition in the market to such an extent that negative market effects as to prices, output, innovation or the variety or quality of goods and services can be expected.

16. Agreements that have the object of restricting competition by means of price fixing, output limitation or sharing of markets, customers or sources of supply (so-called “hardcore” restrictions) are almost always prohibited. In the absence of hardcore restrictions and below a certain level of market power, defined in terms of market share, the guidelines provide so called “safe havens” for purchasing agreements (below 15%) and marketing agreements (below 15%). Similar to coverage by a block exemption regulation, once inside these safe havens, economic operators do not normally have to assess the impact of their agreements on the market. This will help companies to assess with greater certainty whether or not an agreement restricts competition and, if so, whether it would qualify for an exemption.

The Notice on remedies in merger cases

17. In December the Commission adopted a notice on the subject of remedies,¹⁹ thereby becoming the first competition authority to issue any such guidelines or advice on this subject. The notice underlines the general principles that underpin the Commission’s procedures. In particular, it stresses that, while it is for the Commission to show that a concentration creates or strengthens a dominant position, which can impede competition, it is the responsibility of the parties to show that the remedies they offer will eliminate the problems identified by the Commission. The Commission must take into account a variety of factors in reaching a conclusion on whether or not the remedy will restore competition. The type of remedy proposed is one vital factor, but the Commission must also consider the risk that a proposed remedy will not be able to be implemented in full and in a timely fashion.

18. As the experience in dealing with remedial proposals has shown, remedies must not only appear appropriate to restore competition, but they must do so effectively. For example, it is no longer sufficient for the Commission to accept that the divestment of overlapping assets will necessarily solve competitive problems brought about by a particular merger. Even if suitable assets can be identified, a commitment simply to divest those assets – regardless of who buys them – may not be adequate. Not only must the assets to be divested represent an ongoing business, but they must also be sold to someone who has the right incentives to compete in the market.

17 Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ C 75, 29.7.1968).

18 Commission notice concerning the assessment of cooperative joint ventures pursuant to Article 85 of the EEC Treaty (OJ C 43, 16.2.1993).

19 OJ C 68 of 2.3.2001, p.3. The notice is available on the Internet: <http://europa.eu.int/comm/competition/mergers/legislation/>

The Guidelines on State Aid for environmental protection

19. Environmental protection is a major concern of the European Union. The Commission has long recognised that the grant of state aid for environmental protection may be necessary, in certain circumstances, as an incentive for enterprises to take action in this area. In December the Commission adopted new guidelines on state aid for environmental protection²⁰. They clarify the application of the "polluter pays" principle and aim to provide a greater incentive to protect the environment by means of state aid. Thus, although the new guidelines no longer allow the grant of aid that is designed to facilitate an enterprise's compliance with new Community standards, except for aid for SMEs for a limited period, they expressly allow the grant of aid for firms improving on existing standards. Regarding renewable energy sources, which are given a high priority, Member States will in future be able to grant *inter alia* aid to cover the difference between the cost of producing energy from renewable sources and the market price of that energy up to the amount required for the depreciation on the installations in question. A flexible approach has been adopted regarding tax reductions. Member States' options include the grant of non-degressive exemptions for 10 years for enterprises that have signed voluntary agreements on environmental protection. While enterprises that have not signed voluntary agreements can in fact qualify for reductions, it is a condition that they continue to pay a significant part of the taxes in question.

Proposals for new legislation***Regulation implementing Articles 81 and 82 of the EC Treaty***

20. On 27 September the Commission adopted a proposal for a new regulation implementing Articles 81 and 82 of the EC Treaty.²¹ The new regulation is designed to replace Regulation No 17 of 1962 as well as the procedural rules contained in Regulations (EEC) Nos 1017/68, 4056/86 and 3975/87 regarding transport. The implementation of the competition rules in the agricultural sector is to remain governed by Regulation No 26 of 1962. In drafting the proposal, the Commission took into account the results of the public consultation following the White Paper and, in particular, the views expressed on the White Paper in the resolution adopted by the European Parliament on 18 January 2000 and the opinion delivered by the Economic and Social Committee on 8 December 1999. Both institutions supported the Commission's approach in the White Paper while underlining the importance of ensuring consistent application of Community competition law in a system of parallel powers and maintaining an adequate level of legal certainty.

21. The general thrust of the proposal for a new implementing regulation is based on the White Paper. In particular, the Commission's proposal aims at bringing about the transition from the notification and authorisation system of Regulation No 17, which has become inefficient for the protection of competition in the Community, to an implementing system based on the direct applicability of Article 81 as a whole. The changeover to the new system is provided for in Articles 1 and 6 of the proposal: Article 1 lays down the principle of the direct applicability of Article 81 as a whole, and Article 6 confers on national courts the power also to apply Article 81(3) when Article 81(1) is invoked. In the light of the large-scale debate and taking into account concerns about the risk of "renationalisation" of competition law (voiced in particular by the European Parliament) as well as fears about legal certainty for companies in the new system, the Commission refined its proposals in a number of respects. As a result, the proposed new regulation focuses

20 OJ C 37, 3.2.2001.

21 COM(2000) 582, available at http://europa.eu.int/comm/competition/antitrust/others/modernisation/comm_2000_582/en.pdf

on a more efficient enforcement, a more level playing field in the single market and an appropriate degree of legal certainty for companies.

Enforcement of competition laws and policies

Action against anticompetitive practices

Summary of activities and statistics

22. The continuing (since 1999) reduction in the number of new antitrust cases can be attributed to recent policy developments such as the new block exemption on vertical restraints and the new guidelines on vertical agreements, which have drastically reduced the need for notification (only 101 in 2000 compared to 162 in 1999 and 216 in 1998), as well as to the drop in the number of complaints (only 112 in 2000 compared to 149 in 1999 and 192 in 1998). In parallel, the number of new cases opened *ex officio* has increased from 77 in 1999 to 84 in 2000. Taken together with the reduction in notifications, this development is in line with the policy objective of dealing with standard agreements through legislative action, while using the available resources to pursue a more proactive policy and concentrate on the most dangerous anticompetitive practices. The intense legislative action and some resource-intensive cartel cases had also the effect of slowing down the antitrust activity; nevertheless, the number of cases closed (379) was considerably higher than that of new cases (297), further reducing the backlog.

Description of significant cases

Cartels

23. On 16 May the Commission imposed fines totalling just under EUR 7 million on fifteen liner shipping companies for agreeing not to offer discounts on their published tariffs. The companies were members of the now defunct *Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA)* and comprised the members of the Far Eastern Freight Conference (FEFC) liner shipping conference as well as the FEFC's principal competitors. They included Hapag-Lloyd (Germany), Maersk Sealand (Denmark) and P&O Nedlloyd (UK). The addressees of the decision discussed possible ways of aligning their commercial practices concerning charges and surcharges. This led to an agreement not to discount public tariffs.²² The Commission found that that agreement infringed the cartel prohibition enshrined in Article 81 of the EC Treaty and rejected the companies' contention that FETTCSA was merely a "technical agreement" permitted under the competition rules applicable to shipping services. The Commission calculated the fines with reference to its published guidelines. The agreement not to discount was classified as "serious" (considered less harmful than actually fixing prices).

24. On 7 June the Commission imposed fines totalling EUR 110 million on five companies for operating a global price-fixing cartel for *lysine*, the most important amino acid used in animal foodstuffs for nutritional purposes (amino acids are the building blocks of proteins). The Commission's investigation found that Archer Daniels Midland Co (United States), Ajinomoto Co (Japan), Cheil Jedang (Korea), Kyowa Akko (Japan) and Sewon (Korea) fixed lysine prices worldwide, including in the European Economic Area. In order to maintain the fixed prices, the five companies also fixed sales quotas and

22 OJ L 268, 20.10.2000.

exchanged sensitive information from at least July 1990 to June 1995.²³ The interest of the decision lies primarily in the methodology that the Commission followed to set the fines at the above levels. This is borne out by the fact that the major part of the decision's legal assessment deals with the question of fines and the arguments advanced by the parties concerning this issue. In the decision, the Commission not only applied the principles set out in its 1998 guidelines concerning the method of setting fines (the "methodology guidelines")²⁴, it also applied its 1996 notice on the non-imposition or reduction of fines in cartel cases (the "leniency notice") to take account of co-operation offered by two cartel participants from the very beginning of its investigation, as well as lesser degrees of co-operation later offered by the other participants.²⁵ The conspiracy prohibited by the Commission's decision is a straightforward, hardcore price and sales quota cartel that is *per se* illegal. None of the companies actually contested the facts. Since the adoption of the decision, all the companies involved except Ajinomoto have brought an action for annulment before the Court of First Instance.²⁶

Other horizontal agreements

Distribution agreements

25. The right for consumers to buy products more cheaply in other Member States is one of the main benefits of the single market. The Commission showed its determination to guarantee this right by deciding to impose a fine of EUR 43 million on *Opel Nederland*.²⁷ The Dutch importer of cars of the Opel brand obstructed exports of new cars to final consumers from other Member States, between September 1996 and January 1998. This is the second major Commission decision, following that taken in *Volkswagen*²⁸ in January 1998, where complaints from consumers have prompted the Commission to investigate practices of car manufacturers and their importers and to impose heavy fines. Measures taken by undertakings that undermine the proper functioning of the single market constitute a very serious infringement of European competition rules and are dealt with severely²⁹.

26. On 21 December the Commission adopted a decision finding that the company *JCB Service*, the parent company of the UK-based JC Bamford Group, had infringed Article 81 of the EC Treaty.³⁰ The distribution agreements for JCB construction and earthmoving equipment concluded between the JCB Group and its network of exclusive distributors were aimed at walling off the French, UK, Irish and Italian markets within the Community. The agreements included a number of measures designed to restrict sales by distributors outside their exclusive territories. The Commission decision requires JCB Service to put an end to the infringement and to pay a fine of EUR 39.6 million.

23 Commission press release IP/00/589, 7.6.2000.

24 OJ C 9, 14.1.1998.

25 OJ C 207, 18.7.1996.

26 Cases T-224/00 *ADM*, T-220/00 *Cheil*, T-223/00 *Kyowa* and T-230/00 *Sewon*.

27 Decision of 20 September (OJ L 59, 28.2.2001); IP/00/1028, 20.9.2000. On 1 December Opel brought an action for annulment of the Commission's decision before the Court of First Instance (Case T-368/00).

28 Decision of 28 January 1998 (OJ L 124, 25.4.1998); press release IP/98/94, 28.1.1998.

29 In its judgment of 6 July in *Volkswagen* the Court of First Instance confirmed the seriousness of infringements of this kind, Case T-98/273 (press release IP/00/725, 6.7.2000). On 14 September Volkswagen submitted an appeal against the CFI's decision to the Court of Justice (Case C-338/00).

30 Press release IP/00/1526, 21.12.2000.

Environmental agreements

27. Article 6 of the EC Treaty stipulates that Community policy on the environment must be integrated into the other Community policies. Environmental concerns are in no way incompatible with competition policy, provided that restrictions of competition are proportionate and necessary for achieving the environmental objectives pursued. This principle is clearly illustrated by the *CECED* decision,³¹ in which the Commission approved for the first time an agreement to stop production with a view to improving the environmental performance of products. The participants in the agreement, nearly all the European producers and importers of domestic washing machines, will stop producing or importing into the EU the least energy-efficient machines in order to reduce the energy consumption of such appliances and thereby reduce pollutant emissions from power generation. Although participants restrict their freedom to manufacture and market certain types of washing machine, thereby restricting competition within the meaning of Article 81(1) of the EC Treaty, the agreement fulfils the conditions for exemption under Article 81(3): it will bring advantages and considerable savings for consumers, in particular by reducing pollutant emissions from electricity generation. The Commission decision to exempt the agreement takes account of this positive contribution to the EU's environmental objectives, for the benefit of present and future generations.

Undertakings in a dominant position

28. The Commission investigated a number of complaints alleging that *Deutsche Post AG* is contravening Article 82 by intercepting, delaying and surcharging ordinary, incoming cross-border mail. Following a complaint filed by the UK Post Office, the Commission initiated formal proceedings against Deutsche Post on 25 May.³² The Commission considered that a number of mailings – intercepted and then charged as domestic mail by Deutsche Post AG on the basis of the inclusion of a German reply address in the contents of the mailings – were normal cross-border mailings posted in the UK. The Commission therefore came to the preliminary conclusion that Deutsche Post had abused its dominant position in the market for incoming cross-border mail by charging the full domestic tariff for these mailings. The Commission also considered that significant delays resulting from the interception of such mailings might be regarded as infringements of Article 82.

29. In July the Commission took a decision under Articles 86 and 82³³ finding that a system of discounts and different *landing fees* according to the origin of the flight, as prescribed by the Spanish Government, discriminated in favour of national airlines. For all categories of aircraft, the Spanish system provided for higher fees for intra-Community flights than for domestic ones; it also provided for discounts that increased with the number of landings per month. The discounts went from 9% up to 35%. De facto, this system favoured national carriers, in particular Iberia, Binter Canarias and Spanair, which received average discounts of 20-25%. There was no objective justification for such discriminatory treatment. The Spanish authorities subsequently informed the Commission that their system of landing fees had been brought into line with Community law.

31 F-1/36.718; OJ L 187, 26.7.2000; press release IP/00/148, 11.2.2000.

32 Case COMP/36.915 – *Deutsche Post AG – Interception of cross-border mail* (press release IP/00/562, 31.5.2000).

33 Press release IP/00/874, 27.7.2000.

30. At the same time a letter of formal notice was sent to the Italian authorities as a first step in the Commission's procedure possibly leading to a formal decision. As in the Spanish case, the Commission found that the Italian system discriminated against foreign carriers and in favour of Italian airlines, in particular Alitalia. *Landing fees in Italy* are set by law. Under a decree of 27 October 1998 domestic flights benefited from rebates of between 57% and 64% on the standard landing fees applying to international flights, depending on the type of aircraft. Following the letter of formal notice the Italian authorities informed the Commission that their system of landing fees had been brought into line with Community law. By asking the Spanish and Italian Governments to abolish their systems, the Commission has taken the final steps to eliminate discriminatory landing fees throughout the European Economic Area.

31. In July the Commission closed an Article 82 investigation into Air France's alleged discrimination against *Sabre*, an American computerised reservation system (CRS), after the French airline agreed to a code of conduct offering Sabre terms equivalent to those offered to its partly-owned CRS Amadeus, as well as to other CRSs. This investigation was the first to have been initiated by a "positive comity" request from the United States Department of Justice made in accordance with the bilateral co-operation agreement between the European Union and the United States.

32. Further, on 8 August the Commission opened formal proceedings against *Deutsche Post AG* in a case concerning the latter's pricing policy for the delivery of mail order parcels.³⁴ In its statements of objections, the Commission considered that Deutsche Post was abusing its dominant position by employing a combination of fidelity and target rebates that foreclosed competition.³⁵ The Commission also examined the high letter tariffs applicable in Germany. International comparisons, taking into account factors such as population density and quality of service, indicate that standard letter tariffs in Germany are by far the highest in the European Union. In order to examine whether these tariffs are excessive, i.e. if the prices charged by Deutsche Post bear a reasonable relationship to the actual costs or the value of the service provided, the Commission has requested additional cost information from Deutsche Post. On 19 October Deutsche Post announced that it had annulled all clauses in its agreements with mail order companies which contain target and fidelity rebates objected to by the Commission and stated that alternative arrangements were being negotiated.

33. On 21 December the Commission adopted a decision on the provision of *new postal services in Italy* offering specific added value elements, in particular a guarantee that items created electronically will arrive at a predetermined date or time.³⁶ The decision follows a complaint lodged against Italy on the ground that the delivery phase of hybrid mail (in which postal items are generated electronically) had been reserved in all cases for the incumbent operator. The Commission took the view that Italian Legislative Decree No 261 of 22 July establishing those arrangements, which prevents private suppliers from offering new hybrid mail services with distinctive features, is incompatible with Article 86(1), read in conjunction with Article 82 of the Treaty.

Developments in specific sectors

Air transport alliances

34. Joined cases COMP/35.141 *UPS/Deutsche Post AG* and COMP/37.121 *DVPT/Deutsche Post AG* (press release IP/00/919, 8.8.2000).

35. The statement of objections issued on 8 August 2000 was followed by a supplementary statement of objections on 4 October 2000 (press release IP/00/1108, 4.10.2000).

36. Press release IP/00/1522, 21.12.2000.

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34. On 28 February the Commission sent a warning letter to Swissair, Sabena, TAP, AOM and Corsair, members of the Qualiflyer alliance, regarding an agreement that allowed them to co-ordinate fare prices. The warning letter gave the parties three weeks to confirm to the Commission that the agreement had been terminated. Otherwise, the airlines faced the initiation of formal infringement proceedings possibly leading to the adoption of a decision finding that an infringement had been committed and imposing fines. Following this warning letter, the parties terminated the pricing agreement as regards the routes between Portugal and Belgium, between Portugal and Switzerland and between Paris (Orly) and Brussels, which are operated only by Qualiflyer group members. The Commission therefore decided not to open formal infringement proceedings.

35. In October the Commission sent letters to Lufthansa and SAS setting out serious doubts concerning their co-operation with Austrian Airlines, which was notified to the Commission in December 1999. The Commission believes that, as they currently stand, the co-operation agreements would eliminate competition on a large number of routes between Austria and Germany and between Austria and Scandinavia. The issue of these letters was the first formal step in the Commission's investigation, which is ongoing. It could lead to a prohibition decision unless the companies address the Commission's concerns.

Liner shipping consortia

36. In March the Commission granted an exemption to the *Grand Alliance Consortium*, an agreement between Hapag-Lloyd Container Linie, Malaysia International Shipping Corporation, Nippon Yusen Kaisha, Orient Overseas Container Line Limited and P&O Nedlloyd. The consortium provides a joint liner shipping service between ports in northern and southern Europe and ports in the Far East. Having examined conditions on the markets covered by the consortium service, the Commission concluded that the consortium met the criteria for exemption under Regulation 870/95. It noted in particular that the parties had made considerable investments in the consortium service and that there was evidence that the consortium would remain subject to effective competition from other shipping lines.

Web-based B2B trading and B2B electronic marketplaces

37. The Commission is increasingly called upon to assess the competitive impact of B2B electronic marketplaces that allow buyers and sellers of similar goods to carry out procurement activities using common computer systems. The Commission has already assessed and cleared a number of such marketplaces in a wide variety of industries. Examples include electronic markets for aircraft components (*MyAircraft.com* – *UTC/Honeywell/i2*), services to the chemical industry (*Chemplorer.com* – *Bayer/DT/Infraserv Hoechst*), office equipment (*emaro.com* – *Deutsche Bank/SAP*), public administration services (*Governet.com* – *SAP/Siemens*), foreign currency options (*Volbroker.com* – *Deutsche Bank/UBS/Goldman Sachs/Citibank/JP Morgan/Natwest*), and mutual funds (*Cofunds.com* – *Newhouse/Jupiter/Scudder/M&G*).

38. There are four general market types, all with numerous variations: buyer-managed exchanges are set up by large buyers, often in conjunction with technology partners. Supplier-managed exchanges are set up by suppliers. Marketmakers are independent exchanges not controlled by buyers or sellers. They tend to be backed by venture capital and were often early innovators. Content aggregators are sites that go beyond setting up a mere exchange. Instead they build and maintain multi-vendor catalogues, which allow customers to access the offerings of several suppliers using a common search structure.

39. B2B electronic markets can have major procompetitive effects. Their main effect will be to increase market transparency. This will not only exert downward pressure on prices, it will also contribute to further

integration of separate geographic markets, as the Internet removes the geographic barriers to buyers and sellers efficiently discovering each other. Online exchanges that allow buyers to aggregate their demand may be of particular benefit to small and medium-sized enterprises. In addition, B2B electronic marketplaces are expected to be a source of substantial efficiencies, as they allow transaction costs to be reduced and inventory management to be improved.

40. These positive effects could, however, in certain cases be offset by possible competition concerns. They are in fact not new; the question is to what extent these concerns stemming from the old economy are valid in the new economy. The following non-exhaustive list of possible competition problems can be drawn up:

- network dominance: Network effects and potential problems of network dominance are present when the value of a system to the individual user increases with the number of users. They can lead to market ‘tipping’ and the creation of a dominant position if the network effects are strong enough to induce all market participants to use the same network;
- exchange of information: This concern relates to the ability of the buyers or sellers to exchange or discover sensitive information on prices and quantities;
- joint purchasing/joint selling: This concern relates to the question whether the participants in an electronic market can effectively bundle purchasing or selling volumes;
- discrimination/foreclosure: This concern relates to the ownership of B2B electronic marketplaces and the rules governing them. These rules could be used, for instance, to exclude certain participants from the most efficient marketplace, thus putting them at a competitive disadvantage. An issue of discrimination could arise if certain market participants (e.g. the founders) received privileged information about transactions in the market. This issue arose in the *Volbroker* case, the first B2B exchange cleared under Article 81. In this case, six major banks set up a joint venture offering an electronic brokerage service for trading foreign currency options. The case raised concerns regarding the access to confidential information by the parent companies. To deal with this concern, the owners of the Volbroker.com exchange gave the Commission the assurance that they would set up “Chinese walls” to impede any information flows between the parent companies and the joint venture.

Mergers and acquisitions

Summary of activities and statistics

41. Many of the features highlighted in last year’s Annual Report remain as relevant now as they did then. The number of cases is high and continues to grow; the cases have involved a wide range of different products and services, and the increasingly global effects of the mergers have meant that more of the cases required co-operation with competition authorities in other countries. Out of a total of 345 final decisions that were taken during the year, 321 involved cases cleared in phase I (+26%), 28 of which were cases cleared conditionally (+47%), in other words cleared but with undertakings attached (Article 6(2) decisions), and 293 were cases cleared unconditionally (Article 6(1)(b) decisions). In addition 1 case was deemed outside the scope of the Merger Regulation and six cases were referred to Member States. During the year, the Commission took 17 decisions following a phase II in-depth investigation, up from 10 in

1999. Three of these cases were cleared unconditionally, 12 cleared with conditions attached, and two were prohibited. Finally, six phase II cases were withdrawn before a final decision was taken.

42. Technological development and the commercial developments that accompany it have continued to impact on the nature of the Commission's work. For example, this year has seen the first cases involving business-to-business, or B2B, electronic marketplaces on the Internet.³⁷ These exchanges can lead to substantial efficiencies and have procompetitive impact, but can also have negative implications for competition, such as enabling incumbents to exclude individual companies or to impose joint selling or purchasing conditions on others. Assessment of these factors will therefore continue to be an important part of the Commission's analysis in future cases.

43. In order to celebrate the Merger Regulation's tenth anniversary, a conference was held in Brussels in September. It provided an excellent opportunity not just to take a retrospective look at the first ten years of EC merger control, but also to look to the future. The conference was organised jointly by the Commission and the International Bar Association. The conference also provided a further opportunity to discuss a wide range of issues, many of which are now being explored in the context of the merger review.

44. The review followed the Report that the Commission made to the Council in June, providing an initial examination of the turnover thresholds incorporated in the Regulation. The report fulfilled the legal obligation introduced when the Merger Regulation was last amended in June 1997. During the process of preparing the report, it became clear that there were a number of fundamental issues, which warranted further review. As a result, the Commission launched a wide-ranging review exercise with the aim of ensuring that the Merger Regulation is as relevant and adequate a tool as it can possibly be. The following questions are examples of the types of issue that are being examined: are the turnover thresholds that are established in the Merger Regulation set at the most appropriate level? How can the potential benefits of the work-sharing arrangements incorporated in the referral systems (Articles 9 and 22) be maximised? Is the concept of a "concentration" as established in the Merger Regulation still adequate in a world of strategic alliances, minority shareholdings and production joint ventures?

Summary of significant cases

Application of the dominance test

Single dominance

45. The creation of single dominance was analysed in *Volvo/Scania*,³⁸ one of the year's most prominent cases. Having established that, for a number of reasons (different technical requirements and purchasing habits as well as significant price discrimination even in neighbouring countries), markets for heavy trucks and buses are still national in scope, the Commission's investigation revealed that the new entity would reach a market share of 90% in Sweden and of between 50% and 70% in Ireland, Norway and Finland. In this straightforward case of classical horizontal overlaps and large market shares, the unilateral effects of the concentration were also carefully investigated on the basis of sophisticated econometric tools. The proposed concentration would have brought together two companies with stable and largely symmetrical market positions in the past. Besides leading to the creation of a company several times stronger than its closest competitor, the operation would have eliminated competition between two particularly close

37 Case M.1969 – *UTC/Honeywell/i2/MyAircraft.com*; Case M.2027 – *Deutsche Bank/SAP/JV*.

38 Case M.1672, 14.3.2000.

competitors. In this decision the Commission also made it clear that the consistent application of the dominance test to any relevant geographic market independently of its size, besides being within the letter and the spirit of the Merger Regulation, guarantees consumers protection from the effects of dominance, in small and large markets alike. As regards the commitments proposed by Volvo, the Commission's investigation showed that they would not resolve the competition concerns raised by the concentration in question. The Commission finally prohibited the operation. Following the prohibition both companies have successfully found alternative partners (Renault and Volkswagen respectively).

46. The Commission authorised this year an important merger between the agrochemical businesses of *AstraZeneca and Novartis* into a newly incorporated company, Syngenta. Against the background of a rapidly concentrating industry, the Commission found it necessary to open a phase II investigation into the creation of Syngenta, the world's largest company in the sector. In close co-operation with the FTC, authorisation was given after substantial commitments had been offered. As initially notified, the operation would have led to the creation or strengthening of dominant positions on 39 markets for crop protection products, the most important ones being the markets for cereal fungicides and maize herbicides. In reaching this conclusion, the Commission did not rely exclusively on the existing market position of the parties, but focused also on the projected future developments of their product portfolios. The determination of the relevant product markets proved particularly difficult in this case (as in related Case No M.1932 – *BASF/American Cyanamid*), as it involved the determination of 'chains of substitution', issues of 'one-sided substitution' and the competitive position of multi-purpose products.

47. Further, the Commission decided on 28 June to prohibit the proposed merger between the two US telecommunications companies *MCI WorldCom* and *Sprint* because it would have created a dominant position for the merged entity on the market for the provision of top-level or universal Internet connectivity. The proposed merger raised similar issues to the 1998 merger between WorldCom and MCI³⁹ where the Commission found that the merger between WorldCom and MCI would have created a dominant position on the market for the provision of top-level or universal (Internet) connectivity. In particular, the Commission's investigation showed that MCI WorldCom had kept its leading position as a provider of top-level Internet connectivity, with Sprint being one of its main competitors. The investigation also showed that the merger would, through the combination of the merging parties' extensive networks and large customer base, have led to the creation of a company of such absolute and relative size compared to its competitors that both competitors and customers would have been dependent on the new company for universal Internet connectivity. This would have allowed the merged company to behave independently of both its competitors and customers and given it the ability to control technical developments, raise prices and discipline the market by selective degradation of its interconnections with competitors. The Commission therefore concluded that the merger, as originally notified, would have raised serious competition concerns by creating a dominant position or strengthening the dominant position of WorldCom in the global market for the provision of top-level Internet connectivity. Given the hierarchical structure of the Internet and the global nature of the market, this would have affected consumers everywhere in the world. The Commission considered that undertakings offered by the parties were insufficient to resolve the competition concerns resulting from the merger. The day before the Commission was scheduled to take its decision on the proposed merger, the parties withdrew their proposed undertaking and their notification to the Commission. However, given that the parties only withdrew the notification but did not abandon the underlying agreement, which triggered the obligation to notify the proposed transaction, the Commission felt compelled nevertheless to adopt its decision. On 27 September MCI WorldCom (now WorldCom) filed an application under Articles 230 and 231 of the EC Treaty for the annulment of the Commission's decision.

39 Case M.1069 – *WorldCom/MCI* (8.7.1998).

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48. Another case that is also in this category is *Vodafone/Mannesman*, which raised competition concerns on the emerging market for pan-European seamless mobile telephony services. The provision of these services is heavily dependent on the ability of operators to precisely locate their customers when the latter are outside reach of their own network. The Commission investigation showed that there is an emerging demand for such services from internationally mobile customers, in particular large corporations with substantial amounts of European cross-border business. The merger would give the new entity a unique footprint in the common market, with sole control of mobile operators in eight Member States and joint control in three. The concentration was finally cleared following undertakings given by the parties. The remedy accepted consisted in other mobile operators being given the possibility of providing pan-European advanced seamless services to their customers by using the integrated network of the merged entity. Due, however, to the fast developments in the sector, especially the award of UMTS licences and the fact that competitors will in all likelihood try to build up alternative infrastructure, this undertaking has been limited to a period of three years.

49. In cases of vertical integration, it is important to recognise that foreclosure effects may arise, especially where one of the merging parties enjoys significant market power in an upstream or downstream market. In the *America Online Inc (AOL)/Time Warner* case the Commission was concerned that AOL, because of the merger with Time Warner (which in turn had planned to merge its music recording and publishing activities with EMI), and because of its European joint ventures with Bertelsmann, would have controlled the leading source of music publishing rights in Europe. AOL is the leading Internet access provider in the US and the only such provider with a pan-European presence. Time Warner is one of the world's biggest media and entertainment companies with interests in television networks magazines and book publishing, music, filmed entertainment and cable networks. The concentration created the first Internet vertically integrated content provider, distributing Time Warner's branded content (music, news, films, etc.) through AOL's Internet distribution network. Because of AOL's structural and contractual links with Bertelsmann, the new entity would also have preferred access to Bertelsmann's content and, in particular, to its large music library. As a result, the new company would have controlled the leading source of music publishing rights in Europe, a market of which one third is held by Time Warner and Bertelsmann together. In these circumstances it was likely that the new entity would have become dominant in the emerging market for Internet music delivery on-line by becoming a "gate-keeper" and thus being able to dictate the conditions for the distribution of audio files over the Internet. It would also have been possible for the new entity to format Time Warner's and Bertelsmann's music in such a way as to be compatible only with AOL's music player (Winamp), but not with competing music players. On the other hand Winamp would have been able to play the music of competing record companies which generally use non-proprietary formats. Thus, because of the technical limitations of other players, the new entity would also have been able to impose Winamp as the dominant music player. The Commission was able to approve the transaction thanks to a package of commitments aiming principally at severing the links between Bertelsmann and AOL. This will be done gradually, under the supervision of an appointed independent compliance monitor. A series of interim measures will ensure that the relationships between the two companies will be kept at arm's length until Bertelsmann's exit has been completed.

Collective dominance

50. The Commission considered the *Veba/Viag* case in parallel with the Bundeskartellamt's investigation of RWE/VEW. Following these two operations the two new entities would have controlled well over 80% of the German market for electricity delivered from the interconnected grid. A series of factors would have established a market structure conducive to co-ordinated effects, notably the total homogeneity of the product, the market transparency, similar cost structures owing to a similarly composed stock of power stations and a number of jointly operated large power stations, numerous interrelationships between Veba/Viag and RWE, expected slight growth in demand and low price elasticity of electricity as a product.

Both operations were cleared due to commitments given by the parties to the respective authorities. The undertakings given consisted mainly in divestments affecting numerous holdings especially in the eastern part of Germany, thus severing important links between the two new groups, and transforming VEAG, a major electricity producer jointly controlled by the duopolists, into an independent competitor. The undertakings also provided for improvements to the basic rules governing transmission through the network operated by the two leading interconnected entities.

51. A series of mergers in the aluminium sector which came under scrutiny this year, although raising mainly problems of single dominance, allowed the Commission to refine its thinking in relation to co-ordinated effects in the market and collusion issues. In *Alcan/Pechiney*, the Commission's assessment was essentially based on the idea that the merging parties could use an existing structural link, in this case a joint venture, with a competitor, as a retaliation mechanism to dissuade this competitor from engaging in a price war. The three-way merger between Alcan, Pechiney and Alusuisse would have brought together companies involved in all aspects of the aluminium industry and would have created the second largest aluminium producer world-wide. Due to Alcan's share-exchange offers towards the two other companies, one merger could happen without the other and the Commission was able to investigate in depth the two cases separately and on their own merits. The Alcan/Pechiney operation did not go through and was abandoned by the parties in view of a prohibition decision, which the Commission was considering adopting. On the other hand, the Commission approved, subject to divestment undertakings, the Alcan/Alusuisse operation. In another case involving single dominance (*Alcoa/Reynolds*) valuable experience was acquired in the functioning of bidding markets. This experience, as applied in *Rexam/American National Can*, enabled the Commission to conclude that a collective dominance situation could be created and sustained in markets where business is done by way of frequent tenders.

Potential competition

52. Finally, it should be mentioned that the Commission has had the opportunity to analyse a so-called indirect effect of a merger, i.e. its impact upon potential competition in the *Air Liquide/BOC* case. Timely, likely and sufficient potential competition is put forward as a defence argument which could militate in favour of the approval of a merger. It was found that the proposed merger would have strengthened BOC's dominant position in the United Kingdom and Ireland by removing the threat of entry from the most likely challenger and by reducing the likelihood of entry by other suppliers. BOC's dominance was extremely strong, since in some product markets it almost reached a 100% market share. Both parties were found to hold a number of additional advantages in their home market, not least through vertical integration. Another effect of the merger was that the new entity would have created an unparalleled distribution network in Europe, which would have given it additional power to deter others from market entry. Against this background, the removal of Air Liquide as the most credible potential entrant to the UK market was found to strengthen the dominant position held by BOC. The deal was eventually abandoned by the parties following unsuccessful negotiations on remedies with the Federal Trade Commission in the US.

Remedies

53. One case from this year (*TotalFina/Elf Aquitaine*⁴⁰) demonstrates that remedies must not only appear appropriate to restore competition; they must do so effectively. Firstly, the Commission rejected a group of buyers proposed by TotalFina Elf because they did not have the incentives to bring competition effectively to the market for French motorway petrol sales. Secondly, the parties had proposed to sell several assets to eliminate competition concerns in the LPG industry. However, on account of negative feedback from the

40 Case M.1628, 9.2.2000.

Commission's market test about the viability of the proposed remedies, they had to undertake to divest a full subsidiary, a remedy which went clearly beyond the elimination of the overlap.

54. There are cases where the viability of the divestiture package is, according to the assets concerned, to a large extent dependent on the identity of the purchaser. In such circumstances, the Commission may not clear the merger unless the parties agree not to complete the notified operation until they have entered into a binding agreement with a purchaser for the divested business (known as the "upfront buyer"), approved by the Commission. The first and, so far only case in which the Commission imposed this condition was *Bosch/Rexroth*.⁴¹ To address the Commission's concerns about potential pre-sale weakening of the business, as well as concerns about the very existence of a strong buyer, Bosch agreed to find an "upfront buyer".

55. An example of a case where the remedies package also addressed competitive problems other than ones which can be solved by divestment of overlapping assets was *Astra Zeneca/Novartis*,⁴² a concentration which led to the world's leading crop protection business. In order to obtain clearance, the parties to that case submitted an extensive package of remedies. This consisted not only of divestitures of products, representing total sales worldwide in excess of EUR 250 million this year, but also of out-licensing of products and the termination of distribution agreements for third-party products.

56. Another example of a case where a solution was found to a problem which could not have been solved by divestiture but by lowering entry barriers occurred in *Vodafone Airtouch/Mannesmann*.⁴³ In this case, the remedy was aimed at solving the problems with the emerging seamless pan-European mobile telecommunications service market for corporate customers and the markets for pan-European wholesale roaming. These concerns were addressed by undertakings aimed at giving other mobile operators the possibility of providing these services to their customers by using the integrated network of Vodafone Airtouch/Mannesmann. Owing to rapid developments in the sector, the award of third generation UMTS licences and the fact that competitors will try to build up alternative infrastructures, the commitments have been limited to a period of three years.

57. An additional feature of some of the remedies accepted this year is that the Commission has insisted on eliminating minority shareholdings or links among competitors that could prevent effective competition in certain markets. This was done in *Vivendi/Canal+/Seagram*⁴⁴ by eliminating the shareholding in BSkyB, and in *AOL/Time Warner*⁴⁵ by severing the link with Bertelsmann. This is an issue that also arose in *Generali/INA*,⁴⁶ where approval was contingent on the elimination of minority shareholdings in competing insurance undertakings, and in *Volvo/Renault VI*,⁴⁷ which was cleared only after Volvo agreed to sell the minority stake that it had bought in Scania, its major competitor in the Nordic countries.

41 Case M.2060, 13.12.2000.

42 Case M.1806, 26.7.2000.

43 Case M.1795, 12.4.2000.

44 Case M.2050, 13.10.2000.

45 Case M.1825, 11.10.2000.

46 Case M.1712, 12.1.2000.

47 Case M.1980, 1.9.2000.

Contribution to the formulation of other policies

58. The Directorate General for Competition contributes to the elaboration of all major policies within the scope of activity of the European Commission. Issues on which it has been consulted in 2000 include the functioning of EU product and capital markets, consumer complaints in respect of distant selling and comparative advertisement, abusive clauses in commercial contracts, the role of the distribution sector in the single market, the disclosure of information on financial instruments, the local dimension of the European employment strategy, the improved coherence between European development policy and other policies, the unbundled access to the local telecom loop, the Communication "Towards Enterprise Europe", the benchmarking of enterprise policy, the public services in inland transport, the innovation in a knowledge-driven economy, etc.

Resources***Resources overall (current numbers and change over previous year):***

Annual budget 2000: 6.05 mio €

Number of employees (person-years):

	6/2000	7/2001
⇒ economists:	67	70
⇒ lawyers:	139	145
⇒ [lawyer AND economist]	7	9
⇒ other professionals	34	36
⇒ support staff	290	310
⇒ all staff combined	537	570

Human resources (person-years) applied to:

- enforcement against anticompetitive practices: 203
- merger review and enforcement : 91
- control of State aid : 110
- general operational support and co-ordination : 66
- administrative support : 65

Period covered by the above information: 2000 (except where otherwise specified)

Reports and studies on competition policy issues

59. Under Regulation (EC) No 1475/95⁴⁸ motor vehicle distribution agreements between manufacturers and dealers for vehicle sales and servicing are exempted from the ban enshrined in Article 81. Article 11 of the regulation requires the Commission to draw up a report on the evaluation of the regulation before the end of 2000. The Commission carried out its evaluation of the block exemption regulation, adopting its report on 15 November.⁴⁹ The aim of the evaluation is to determine whether the assumptions which prompted the Commission to adopt the regulation are still valid and to assess the impact of the exempted system of distribution on the evolution of price differentials, on the quality of service offered to consumers and, more generally, on the functioning of the single market for the sale and servicing of new cars. The evaluation report was drafted on the basis of replies to questionnaires that the Commission sent to vehicle manufacturers, consumer associations, associations representing dealers, independent repairers, independent importers and intermediaries, producers of spare parts and certain businesses operating on the Internet. It also drew on recent studies of the motor industry and motor vehicle distribution, on its twice-yearly report on price differentials between EU Member States and on its experience in dealing with the competition problems it has encountered while monitoring the application of Articles 81 and 82 of the Treaty.⁵⁰ The evaluation report finds that the block exemption regulation has only partly achieved the expected results. Some of the assumptions which led the Commission to adopt the regulation are furthermore open to debate. The report also sees the exempted system as liable to considerably impede the emergence of new methods of distribution, in particular via the Internet. Following the adoption of the report, all interested parties were invited to give their views; in particular at a hearing held on 13-14 February 2001. The Commission also invited all interested parties to comment on two studies of motor vehicle distribution carried out by consultants.⁵¹

60. On 7 December the Commission adopted its sixth report on the implementation of the telecommunications regulatory package,⁵² which takes stock of the situation with regard to application of the liberalisation and harmonisation directives in all the Member States. After three years of full liberalisation of telecommunications services, the report confirms that competition has fostered increased penetration of GSM mobile telephony, which is now as high as 70% in one Member State and is over 39% in all others. The market situation shows how tariffs for residential and business users are continuing on a downward path. On the wholesale market, overall prices for leased lines are still falling, particularly where there is competitive pressure. While leased line prices have decreased significantly since 1997, annual rentals for both national and international lines vary greatly from one Member State to another. Since liberalisation, interconnection charges have decreased by 6.5% for single transit and by 20.2% for double

48 Commission Regulation of 28 June 1995 on the application of Article 81(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ L 145, 29.6.1995).

49 Report on the evaluation of Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (COM(2000) 743 final, 15.11.2000). Also available on the car sector page on the Competition DG's website: http://europa.eu.int/comm/competition/car_sector/.

50 See also 1999 Competition Report, points 145 and 146.

51 Available on the car sector page on the Competition DG's website: http://europa.eu.int/comm/competition/car_sector/. The study entitled 'The natural link between sales and service' was carried out by Autopolis and the study 'Car price differentials in the European Union: An economic analysis' by Hans Degryse and Frank Verboven (K.U. Leuven and CEPR).

52 COM(2000) 814 final.

transit and have remained stable for interconnection at local level. In the report, the Commission highlights a number of problems that still need to be overcome. Licensing procedures are still lengthy and bureaucratic in several Member States and licence fees often remain high. This creates a barrier to market entry. As regards interconnection, new entrants complain that regulators do not always have the powers to check that charges applied by incumbent operators are cost-oriented. Very few Member States have ensured that appropriate accounting tools are in place. Lastly, there are still serious problems in some Member States where line rental charges have not been rebalanced, resulting in a price squeeze as regards charges for access to the local loop.

61. As it had undertaken, on 21 December the Commission adopted a report on the application of the guidelines on aid for employment.⁵³ It pointed out that, although the application of the guidelines had not given rise to particular difficulties, many grants of state aid directly or indirectly aimed at promoting employment had been considered in another context, that of aid for investment. This provided some explanation for the relatively low numbers of schemes notified since 1995, on average 10-12 per year. In addition to the relation between aid for employment and aid for investment, which can have the same objective, the report identifies three areas calling for clarification in future. These are the quantification of the terms for and the levels of permissible grants of aid, the definition of the specific categories of workers (long-term unemployed, young workers, etc.) eligible for more favourable conditions and the application of aid schemes applicable to employment in sensitive sectors (steel, motor vehicles, shipbuilding, etc.). The Commission will have to take account of all those aspects in drawing up new provisions, which will consist either of new guidelines for notified cases of aid or of a regulation exempting Member States from notifying aid that meets certain criteria.

62. In its third report on the situation in world shipbuilding, adopted on 15 November, the Commission noted that the industry was facing persistent difficulties and that price levels remained low despite the fact that orders had picked up. The report found that this was due mainly to the very low prices offered by South Korean shipyards. The Commission decided that, if an agreement could not be negotiated with South Korea by 1 May 2001, it would take the matter to the World Trade Organisation. With that in mind, it would also propose putting in place a defensive system of temporary support designed to counter unfair behaviour by South Korea, pending the outcome of the WTO procedure. On 29 November the Commission reiterated its opposition to any extension of operating aid linked to shipbuilding contracts beyond 31 December 2000, the elimination of which is provided for by Council Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding.⁵⁴

63. The Commission reports regularly on progress made by each of the applicant countries towards accession. The third regular reports for the ten associated countries of central and eastern Europe (CEECs), Cyprus, Malta and Turkey adopted by the Commission in November assess progress made since the previous reports delivered by the Commission in 1999. The achievements in the area of antitrust and mergers are generally satisfactory, both on the legislative side and with regard to the creation of the necessary administrative capacity. All the applicant countries have adopted basic competition laws, taking over the core elements of Articles 81 and 82 of the EC Treaty and most of them have also established merger control. The establishment of competition authorities has also taken place relatively quickly and without too much controversy. The main challenge facing antitrust authorities in the applicant countries is now to allocate their resources so as to give priority to antitrust enforcement regarding the anticompetitive conduct that most seriously obstructs the proper working of the markets, such as cartels, monopolistic acquisitions, and exclusionary practices by dominant firms. In contrast to the progress made in the field of

53 OJ C 334, 12.12.1995.

54 OJ L 202, 18.7.1998.

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antitrust policy, the introduction of state aid control in the applicant countries has proved much more controversial, slower and politically sensitive.