

THE EUROPEAN COMMISSION

(2002)

Executive Summary¹

In 2002, the Commission pressed ahead with its work on modernising the Community rules in all areas of competition policy. In antitrust, its proposal for recasting Regulation No 17 implementing Articles 81 and 82 of the EC Treaty was adopted by the Council on 16 December, clearing the way for decentralised application of the Community rules in this field by national competition authorities acting in close cooperation with the Commission, as well as direct application by national courts. In addition, a new block exemption regulation in the motor vehicle sector will boost competition considerably in this vital area of the economy, at the level of both sales and after-sales service, and will benefit consumers in terms of prices and opportunities for cross-border purchases. The Commission also continued to give high priority to detecting, prosecuting and punishing unlawful agreements, which were the subject of numerous decisions imposing fines. On the mergers front, the observations made by interested parties in response to the Commission's Green Paper on the review of the merger regulation enabled it to draw conclusions on a whole series of concepts and approaches designed to improve the existing legislation. On 11 December, it adopted a proposal for amending the merger regulation. In the State-aid field, the Barcelona European Council endorsed the Council's appeals for continued efforts to reduce the overall level of aid and redirect resources towards objectives of common interest and to modernise the Community competition rules. For its part, the Commission launched a reform designed to simplify procedures for cases which do not raise major legal concerns so as to free up resources to handle the more important cases, as well as the cases which will arise after enlargement of the EU, in a context of greater transparency and predictability. On 29 April, it adopted the XXXIst Report on Competition Policy², which takes stock of its activity in the field in 2001 and which was the subject of a resolution adopted by the European Parliament on 21 November³.

I. Changes to competition laws and policies, proposed or adopted

General rules⁴

1. *Consequences of expiry of the ECSC Treaty.* Following the expiry of the Treaty establishing the European Coal and Steel Community on 23 July, the sectors previously covered by that Treaty and the procedural rules and secondary legislation derived from it became subject to the EC Treaty, and on 21 June

¹ This report to the OECD mostly follows the competition section of the 2002 European Commission General Report.

² SEC(2002) 462; Bull. 4-2002, point 1.3.32;
Internet http://europa.eu.int/comm/competition/annual_reports/2001/.

³ Bull. 11-2002, point 1.3.43.

⁴ Detailed statistics on the application of Articles 81 and 82 of the EC Treaty are provided in the Report on Competition Policy published in 2003

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the Commission issued a communication ⁵ dealing with certain aspects of the treatment of competition cases resulting from the changeover.

2. *Fines in cartel cases.* Under a notice ⁶ adopted on 13 February, based on experience gained since 1996 ⁷ and aimed at strengthening the capacity to detect and prosecute cartel cases while improving legal certainty, the Commission can grant 'conditional immunity from fines' to the first firm contributing decisively to the identification or banning of a cartel.

3. *New regulation implementing Articles 81 and 82 of the EC Treaty.* On 16 December, following a political agreement reached at the end of November, the Council adopted Regulation (EC) No 1/2003 on the implementation of Articles 81 and 82 of the EC Treaty, which marks the most fundamental overhaul of the antitrust rules since Regulation No 17. One of the key aspects of the reform is the elimination of the practice of notifying agreements to the Commission. This will make procedures less cumbersome and will reduce legal costs for companies. The adoption of the new regulation before the large-scale enlargement of the European Union will also tighten application of the antitrust rules, including by the national courts, and will allow tasks to be shared more effectively between the Commission and the national authorities. The regulation will moreover allow the Commission and the national authorities to concentrate their resources on the task of combating price-fixing agreements and other types of agreement that really harm the market.

Permissible forms of cooperation

Sectoral approach

4. *Motor vehicle distribution.* On 31 July, the Commission adopted a regulation ⁸ amending, from October onwards, the previous arrangements ⁹ in order to put right the competition problems identified in its November 2000 evaluation report ¹⁰. The goal of the new regulation is to boost competition and bring tangible benefits to European consumers as regards vehicle sales and after-sales servicing thanks, in particular, to multi-brand dealerships and easier cross-border purchases of new vehicles. There is a one-year transition period to allow adaptation of existing contracts. At Parliament's request ¹¹, a longer transition period until the end of September 2005 has been specifically allowed for the removal of location clauses. On 30 September, the Commission published an explanatory brochure on the new competition rules on motor car sales and servicing ¹² designed to provide the general public with information on the new rights and obligations of vehicle manufacturers, dealers and repairers and the rights of consumers under the new rules.

5. *Insurance.* Since Regulation (EEC) No 3932/92 exempting certain categories of agreements in the insurance sector ¹³ is due to expire on 31 March 2003, the Commission published a new draft

⁵ OJ C 152, 26.6.2002; Bull. 6-2002, point 1.3.46.

⁶ OJ C 45, 19.2.2002; SEC(2002) 150; Bull. 1/2-2002, point 1.3.87.

⁷ OJ C 207, 18.7.1996; 1996 General Report, point 156.

⁸ Regulation (EC) No 1400/2002 (OJ L 203, 1.8.2002; Bull. 7/8-2002, point 1.3.60).

⁹ Regulation (EC) No 1475/95 (OJ L 145, 29.6.1995; 1995 General Report, point 142).

¹⁰ 2000 General Report, point 193.

¹¹ Bull. 5-2002, point 1.3.49.

¹² http://europa.eu.int/comm/competition/car_sector/#020930.

¹³ OJ L 398, 31.12.1992; Twenty-sixth General Report, point 198.

regulation¹⁴ on 9 July on which it invited interested parties to give their opinion. The draft innovates with regard to indicative risk premiums, standard insurance policy conditions, common coverage of certain categories of risk (pools) and security equipment.

6. *IATA (International Air Transport Association) passenger tariff conferences*. On 25 June, following a wide-ranging consultation of interested parties, the Commission adopted a regulation renewing the block exemption for the IATA passenger tariff conferences until 30 June 2005¹⁵.

II. Enforcement of competition laws and policies¹⁶

Individual cases

7. *FIFA*. By decision of 15 April, the Commission formally rejected a complaint against the rules governing the activities of players' agents laid down by the International Football Federation (FIFA), thereby recognising that FIFA was entitled to regulate the profession with a view to upholding ethical standards provided that access remained open and non-discriminatory. By decision of 30 May, it also rejected two complaints against the rules governing international transfers of football players laid down by FIFA, which had to do mainly with unilateral breaches of contract by players¹⁷.

8. *UEFA*. On 25 June, the Commission formally rejected the complaint lodged in 2000 by ENIC against UEFA, the governing body of European football, concerning the rule whereby two or more clubs participating in a UEFA club competition may not be directly or indirectly controlled by the same entity or managed by the same person¹⁸. The Commission concluded that, although the UEFA rule was a decision taken by an association of undertakings, it could be exempted from the ban in principle set out in Article 81(1) of the EC Treaty provided that it did not exceed what was necessary in order to achieve the legitimate objective of guaranteeing the integrity of competitions and that it was applied in a non-discriminatory manner.

9. *Austrian Airlines/Lufthansa*. On 5 July, the Commission exempted a cooperation agreement between Austrian Airlines and Lufthansa¹⁹ up to 31 December 2005, i.e. six years from the date of notification. The exemption was granted only after the parties had accepted major changes to the agreement: they are required among other things to allocate up to 40 % of the slots available to any new entrants and to apply the same fare reductions they offer on a route on which they face competition to three other routes between Austria and Germany on which there is no competition. The Commission established, on the basis of the obligations imposed, that several competitors were interested in entering the market. *Visa*. On 24 July, the Commission granted conditional exemption for certain multilateral interchange fees

¹⁴ OJ C 163, 9.7.2002; Bull. 5-2002, point 1.3.47.

¹⁵ Regulation (EC) No 1105/2002 (OJ L 167, 26.6.2002).

¹⁶ Only the most significant cases are dealt with in this section. For further information, as well as for detailed statistics on the cases handled by the Commission and on the relevant case-law, see the XXXIInd Report on Competition Policy. In conjunction with the XXXIInd Report (Part I), a report on the application of the competition rules in the European Union in 2002 (Part II), prepared under the sole responsibility of the Directorate-General for Competition, is also available. Both reports can be obtained from the Office for Official Publications of the European Communities or accessed on the Europa server (http://europa.eu.int/comm/competition/index_en.html).

¹⁷ Bull. 5-2002, point 1.3.50.

¹⁸ Bull. 6-2002, point 1.3.56.

¹⁹ Bull. 7/8-2002, point 1.3.61.

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(MIF) for cross-border payments by Visa card²⁰. The exemption, valid until 31 December 2007, was granted only after major changes to the Visa system. The new MIF will be reduced in absolute terms, capped at the level of relevant costs and made transparent for retailers.

10. *International Federation of the Phonographic Industry (IFPI)*. By adopting an exemption decision subject to conditions and obligations on 8 October, the Commission authorised a 'one-stop shop' for issuing broadcasters with licences to broadcast music recordings on the Internet²¹. This is the first Commission decision concerning the collective management and licensing of copyright for the purposes of commercial exploitation of musical works on the Internet. The Commission took the opportunity presented by the notification of an agreement in the field to set out a number of important principles which it will apply in future in order to take account of the global reach of the Internet.

11. *Transatlantic Conference (TACA)*. On 14 November, the Commission exempted the revised agreement of the TACA, a grouping of shipping companies which provide regular container transport for freight between ports in northern Europe and the United States²². The new agreement (the 'Revised TACA') brings the activities of the TACA into line with the main guidelines for conference behaviour laid down by the Commission in a previous decision adopted in 1998²³. The substantial increase in the extent and intensity of competition faced by the members of the conference was a crucial factor in the Commission's decision to grant exemption to the Revised TACA.

12. *Austrian banks*. On 11 June, the Commission imposed fines totalling EUR 124.26 million on eight Austrian banks for their participation in a wide-ranging price cartel covering the entire territory of Austria²⁴. In a highly institutionalised price-fixing scheme (the 'Lombard Club'), the CEOs of the banks met regularly with a view to fixing deposit, lending and other rates to the detriment of businesses and consumers.

13. *Methionine producers*. On 2 July, the Commission, finding that the agreement was a very serious infringement, imposed substantial fines totalling EUR 127.12 million on two producers of methionine, one of the main amino acids used in compound feeds for all animal species, for taking part in a cartel with the basic aim of fixing price targets on the market in methionine²⁵. A third producer, to which the prohibition decision was also addressed, was granted full immunity from fines under the 1996 leniency notice.

14. *GFU*. On 17 July, the Commission decided to close the GFU case relating to the joint sale of Norwegian natural gas²⁶ following the commitments offered by certain Norwegian gas producers - most prominently Statoil and Norsk Hydro. These two producers confirmed in particular that they would market their gas individually and undertook to offer 13 billion and 2.2 billion cubic metres respectively for sale to new customers over a period of approximately four years. These commitments will contribute to the creation of a single gas market in Europe since European purchasers will have a wider choice from among the Norwegian suppliers.

²⁰ Bull. 7/8-2002, point [1.3.62](#).

²¹ Bull. 10-2002, point [1.3.37](#).

²² Bull. 11-2002, point [1.3.48](#).

²³ 1998 General Report, point [208](#).

²⁴ Bull. 6-2002, point [1.3.57](#).

²⁵ Bull. 7/8-2002, point [1.3.65](#).

²⁶ Bull. 7/8-2002, point [1.3.66](#).

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15. *Dutch industrial gas cartel.* On 24 July, the Commission imposed fines totalling EUR 25.72 million on seven Dutch industrial and medical gas companies²⁷. The companies concerned were involved in agreements or concerted practices with the aim of fixing price increases for industrial cylinder and bulk gases, agreeing on the implementation of these increases and fixing other trading conditions related to the delivery of the products.

16. *Nintendo.* On 30 October, the Commission imposed a fine totalling EUR 167.8 million on the Japanese video games maker Nintendo and seven of its official European distributors for colluding to prevent low-priced exports to high-priced countries²⁸. The fine on Nintendo alone was calculated at EUR 149 million to reflect its size in the market concerned, the fact that it was the driving force behind the illicit behaviour and also because it continued with the infringement even after it had been informed that the investigation was going on. Although the leniency notice does not apply to this kind of infringement, the decision stresses the importance that the Commission attaches to cooperation by companies which have infringed the Community competition rules, in that it takes account both of Nintendo's decision to offer significant financial compensation to third parties which suffered material harm and of the general cooperation afforded by the companies during the administrative procedure.

17. *Fine arts auction houses.* On 30 October, the Commission found against the world's two leading fine arts auction houses, Christie's and Sotheby's, for having fixed vendors' commissions and other trading terms between 1993 and early 2000²⁹. Christie's was exempted from a fine under the 1996 notice on the non-imposition or reduction of fines for companies which provide decisive information on the existence of a cartel. Sotheby's, which was granted a 40 % reduction for its cooperation, was fined EUR 20.4 million. The case was investigated in close cooperation with the relevant US authorities, which looked at it from the point of view of its impact in the United States.

18. *Plasterboard.* On 27 November, the Commission imposed fines totalling EUR 478 million on Lafarge SA, BPB plc, Gebrüder Knauf Westdeutsche Gipswerke KG and Gyproc Benelux SA/NV³⁰. These four firms were involved, between 1992 and 1998, in a secret agreement covering the four main EU markets (Benelux, France, Germany and the United Kingdom) in plasterboard, a product widely used in the building industry. The market concerned is the largest in terms of value to have been covered by a Commission cartel decision in the last 10 years or so. In the case of Lafarge and BPB, the Commission viewed as an aggravating circumstance the fact that this was their second infringement of Article 81. Only BPB and Gyproc cooperated with the Commission.

19. *Methylglucamine.* Also on 27 November, the Commission adopted a decision imposing a fine of EUR 2.85 million on two companies in the Aventis group, Aventis Pharma and Rhône-Poulenc Biochimie³¹. The Commission considered the two firms to be jointly and severally liable. Merck KGaA, to which the decision was also addressed, received full immunity under the 1996 leniency notice. The Commission found that between 1990 and 1999 these companies held annual meetings with a view to fixing prices and market shares for methylglucamine, a chemical substance used in X-ray analyses.

20. *Graphite.* On 17 December, the Commission imposed fines totalling EUR 51.8 million on SGL Carbon, Carbone-Lorraine, Ividen, Tokai Carbon, Toyo Tanso, NSCC Techno Carbon, Nippon Steel

²⁷ Bull. 7/8-2002, point [1.3.67](#).

²⁸ Bull. 10-2002, point [1.3.40](#).

²⁹ Bull. 10-2002, point [1.3.41](#).

³⁰ Bull. 11-2002, point [1.3.49](#).

³¹ Bull. 11-2002, point [1.3.50](#).

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Chemical, Intech EDM BV and Intech EDM AG for taking part in a price-fixing cartel on the market in isostatic graphite products, a group of products used to make tools for the aerospace, electronics and other industries³². SGL Carbon was also fined a further EUR 8.81 million for its involvement in another cartel on a parallel market. Graf Tech International (formerly UCAR), on the other hand, which was also involved in the two cartels, was granted full immunity under the 1996 leniency notice.

21. *Reinforcing bars.* Likewise, on 17 December, the Commission adopted a decision imposing fines totalling EUR 85 million on nine undertakings, corresponding to 11 firms (Alfa Acciai, Feralpi Siderurgica, Ferriere Nord, IRO Industrie Riunite Odolesi, Leali and Acciaierie e Ferriere Leali Luigi, Lucchini and Siderpotenza, Riva Acciaio, Valsabbia Investimenti and Ferriera Valsabbia) and one trade association (Federacciai)³³. They had taken part in a cartel to fix prices for 'size extras' and base prices, to fix payment times and to restrict or control production and/or sales on the market in reinforcing bars in Italy, in flagrant violation of Article 65(1) of the ECSC Treaty.

22. *Nucleotides.* Also on 17 December, the Commission imposed fines totalling EUR 20.56 million on three nucleotide manufacturers, Ajinomoto (Japan), Daesang (South Korea) and Cheil Jedang (South Korea) for taking part in a cartel to set target prices and share out customers on the market in nucleotides (food flavour enhancers)³⁴. A fourth firm, Takeda Chemical Industries (Japan), to which the decision was also addressed, was granted full immunity from fines under the 1996 leniency notice.

Dominant positions

23. *Liberalisation of postal services.* The gradual opening-up of the postal sector to competition was confirmed by the adoption of a Parliament and Council directive on 10 June.

24. *Electronic communication networks and services.* On 9 July, the Commission adopted guidelines on market analysis and the assessment of significant market power (SMP)³⁵, as required by Directive 2002/21/EC on a new common regulatory framework for electronic communications services. As the directive gives a new definition of a company with SMP, based on the concept of 'dominant position' within the meaning of Article 82 of the EC Treaty, the guidelines set out the principles that national regulatory authorities will apply in defining the relevant markets and assessing the existence of a dominant position on those markets. On 16 September, the Commission adopted Directive 2002/77/EC³⁶ repealing Directive 90/388/EEC on competition in the markets for telecommunications services³⁷ and the five directives amending it. Under this new directive, which brings together in a single text the six earlier liberalisation directives, Member States may no longer grant or maintain in force exclusive or special rights for the establishment and/or operation of electronic communications networks, or for the provision of publicly available electronic communications services.

³² Bull. 12-2002, point [1.3.72](#).

³³ Bull. 12-2002, point [1.3.74](#).

³⁴ Bull. 12-2002, point [1.3.73](#).

³⁵ [OJ C 165, 11.7.2002](#); Bull. 7/8-2002, point [1.3.64](#).

³⁶ [OJ L 249, 17.9.2002](#); Bull. 9-2002, point [1.3.59](#).

³⁷ [OJ L 192, 24.7.1990](#); Twenty-fourth General Report, point 209.

Mergers³⁸

*General approach*³⁹

25. 230. *Legislative review.* The Green Paper⁴⁰ on the review of the merger regulation⁴¹, which the Commission adopted in December 2001, was the subject of a Parliament resolution⁴² adopted on 4 July and a European Economic and Social Committee opinion⁴³ delivered on 17 July. On 11 December, the Commission proposed a recasting of Regulation (EC) No 4064/89, which will be the most major reform of the Community merger control system since that regulation entered into force in 1990. The amendments proposed in the new regulation clarify its application in oligopoly situations, do away with the unnecessarily rigid rules on notifying mergers and simplify the rules for referring cases between the Commission and the national competition authorities. Provision is also made for introducing more flexibility into the time-frame for complex investigations in relation to assessing remedies and for strengthening the Commission's investigative powers. Also on 11 December, the Commission adopted a draft notice on the appraisal of mergers between competitors, for the information of firms and the legal community⁴⁴. Internal organisational measures within the Commission are also planned to improve decision-making procedures in merger cases⁴⁵.

Individual cases

26. 231. *SEB/Moulinex.* On 8 January, the Commission adopted two decisions on SEB's acquisition of Moulinex⁴⁶. Both companies are French manufacturers of small household electrical appliances. In the first decision, the Commission referred the matter of the impact of the acquisition on the French market to the French competition authorities; in the second one, it concluded that the part of the transaction not referred to the French authorities was compatible with the common market provided that the parties complied with the undertakings given and, in particular, that SEB granted third parties exclusive licences to use the Moulinex brand name for a period of five years in nine European countries. Third parties (Philips and Babylic) lodged an appeal against these decisions with the Court of First Instance.

27. *Tetra Laval/Sidel and Schneider Electric/Legrand.* On 30 January, following the decisions it adopted in 2001 prohibiting these mergers⁴⁷, which had gone ahead, the Commission took two decisions requiring the companies to demerge. The first decision set out measures for the divestiture of the stake held by the Swiss-based Tetra Laval in the French company Sidel, while allowing Tetra flexibility in choosing an appropriate buyer or buyers and a suitable method of divestiture within a fixed time limit; the second one laid down the arrangements for demerging Schneider Electric and Legrand, two French electrical

³⁸ http://europa.eu.int/comm/competition/mergers/legislation/simplified_procedure/

³⁹ Statistical data on merger control will be included in the Report on Competition Policy to be published in 2003.

⁴⁰ COM(2001) 745; 2001 General Report, point 233.

⁴¹ OJ L 395, 30.12.1989; Twenty-third General Report, point 376; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997; 1997 General Report, point 242).

⁴² Bull. 7/8-2002, point 1.3.40.

⁴³ OJ C 241, 7.10.2002; Bull. 7/8-2002, point 1.3.40.

⁴⁴ SEC(2002) 1337; Bull. 12-2002, point 1.3.56.

⁴⁵ http://europa.eu.int/comm/competition/index_en.html

⁴⁶ Bull. 1/2-2002, point 1.3.74.

⁴⁷ 2001 General Report, points 265 and 267.

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equipment manufacturers, while leaving Schneider free to choose the legal form that the demerger would take although requiring it to divest all its shares in Legrand in a single transaction and to reduce its stake in Legrand to less than 5 %. In both cases, the companies concerned appealed to the Court of First Instance against both the initial prohibition decisions and the decisions requiring the demergers. Using the accelerated procedure for the first time, the Court annulled all the decisions by judgments of 22 and 25 October.

28. *Hidroeléctrica del Cantábrico*. On 19 March, the Commission authorised the acquisition of joint control of Spain's fourth-largest utility company Hidroeléctrica del Cantábrico by Energie Baden-Württemberg (EnBW), Electricidade de Portugal SA (EDP) and Caja de Ahorros de Asturias (Cajastur), subject to compliance with certain undertakings given by the parties⁴⁸. As in the recent bid for the Spanish company by EnBW and Grupo Villar Mir, the transaction would have led to the strengthening of the existing collective dominant position on the Spanish wholesale market for electricity. To allay these competition concerns, Électricité de France (EDF), which jointly controls EnBW, and EDF-RTE, the operator of the French electricity grid, undertook to increase to around 4 000 MW the commercial capacity of the interconnector between France and Spain.

29. *Bayer/Aventis*. On 17 April, the Commission decided to clear Bayer's acquisition of Aventis Crop Science, subject to compliance with the undertakings by the parties⁴⁹. As initially notified, the transaction would have led to the creation or strengthening of dominant positions on some 130 markets for crop protection, professional pest control and animal health products. But Bayer offered a comprehensive set of commitments, including the sale, in one single package, of Aventis Crop Science's entire European seed treatment business, which included the best-selling insecticide.

30. *Sulzer/Promatech*. On 24 July, the Commission authorised the acquisition of Sulzer Textil, the textile machinery division of the Swiss company Sulzer Ltd, by the Italian company Promatech SpA, another maker of weaving machinery, subject to compliance with the undertakings given by the parties⁵⁰. The Commission's in-depth investigation having shown that the deal could lead to the creation of a dominant position on the west European market for rapier weaving machines, Promatech offered to divest some of Sulzer Textil's operations in Italy and Switzerland.

State aid

*General policy*⁵¹

31. *Reduction and redirection of State aid*. On 16 October, the Commission presented a progress report concerning reduction and reorientation of State aid⁵². This initiative responds to the calls made by the European Council at Stockholm⁵³ and Barcelona⁵⁴ for the overall level of State aid as a percentage of GDP to be reduced and for such aid to be redirected towards horizontal objectives of common interest.

⁴⁸ Bull. 3-2002, point 1.3.51.

⁴⁹ Bull. 4-2002, point 1.3.36.

⁵⁰ Bull. 7/8-2002, point 1.3.50.

⁵¹ For general statistical data and a discussion of the most significant individual cases, see the *XXXIInd Report on Competition Policy*, which will be published in the course of 2003.

⁵² COM(2002) 555; Bull. 10-2002, point 1.3.43.

⁵³ Bull. 3-2001, point I.12.

⁵⁴ Bull. 3-2002, point I.58.

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32. *Reactions to Commission reports.* In a resolution ⁵⁵ adopted on 6 February, Parliament commented on the Commission's ninth survey on State aid in the European Union ⁵⁶.

33. *State aid scoreboard.* On 22 May ⁵⁷ and 27 November ⁵⁸, the Commission published updated versions of the scoreboard, which is intended to increase transparency in the monitoring of State aid. In a resolution ⁵⁹ adopted on 21 November on the spring update, Parliament stressed its interest in the scoreboard, while calling for additional information that would allow it to carry out more effective comparative analysis of the impact of such aid.

34. *Multisectoral framework.* On 13 February, the Commission approved the recasting of the rules applicable to regional aid for large investment projects, including in the motor vehicle and synthetic fibres sectors ⁶⁰. The new framework will make for greater transparency and reduce the overall level of aid granted in the European Union; it also includes the restrictions on State aid to the steel industry which continue to apply after expiry of the ECSC Treaty in July.

35. *Steel and coal industry.* On 18 March, the Commission presented its report ⁶¹ on the implementation in 2001 of the steel aid code ⁶². On 27 May, it adopted its 17th report on the monitoring of Article 95 ECSC steel aid cases ⁶³.

36. On 10 April, the Commission adopted a report on the application of the Community rules for State aid to the coal industry ⁶⁴, which focused on the results of restructuring, rationalisation and modernisation in the five Member States that still produce coal. Pointing out that enlargement will bring in two large producers, the Commission stressed the need to keep up these efforts. On 23 July, the Council adopted Regulation (EC) No 1407/2002 on State aid for modernising and restructuring the coal industry. The aim of the regulation is to ensure that some coal-producing capabilities are maintained, in particular following the expiry of the ECSC Treaty. On 17 October, the Commission established a joint framework for communication of the information necessary for the application of the regulation ⁶⁵.

37. *Agriculture and fisheries.* On 27 November, the Commission adopted guidelines clarifying the conditions in which State aid may be granted for tests for transmissible spongiform encephalopathies (TSE), fallen stock and slaughterhouse waste ⁶⁶.

⁵⁵ OJ C 284 E, 21.11.2002; Bull. 1/2-2002, point 1.3.89.

⁵⁶ COM(2001) 403; 2001 General Report, point 269.

⁵⁷ Bull. 5-2002, point 1.3.53;
Internet http://europa.eu.int/comm/competition/state_aid/scoreboard/index_en.html.

⁵⁸ COM(2002) 638; Bull. 11-2002, point 1.3.54.

⁵⁹ Bull. 11-2002, point 1.3.52.

⁶⁰ Bull. 1/2-2002, point 1.3.90.

⁶¹ COM(2002) 145; Bull. 3-2002, point 1.3.54.

⁶² Decision No 2496/96/ECSC (OJ L 338, 28.12.1996; 1996 General Report, point 178).

⁶³ COM(2002) 248; Bull. 5-2002, point 1.3.54.

⁶⁴ COM(2002) 176; Bull. 4-2002, point 1.4.58.

⁶⁵ Decision 2002/871/EC (OJ L 300, 5.11.2002; Bull. 10-2002, point 1.3.42).

⁶⁶ OJ C 324, 24.12.2002. For a discussion of the most significant individual cases concerning State aid to agriculture and fisheries, see the *XXXII Ind Report on Competition Policy*, to be published in 2003.

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38. *Shipbuilding*. On 27 June, the Council adopted a regulation on a temporary defensive mechanism for the Community industry

39. *Employment*. On 12 December, the Commission adopted Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment⁶⁷. The regulation exempts from the notification obligation certain types of aid aimed for example at the reintegration of disadvantaged or disabled workers into the labour market. As part of the consultation process⁶⁸ prior to its adoption, the European Economic and Social Committee delivered an opinion⁶⁹ on 18 July and Parliament adopted a resolution⁷⁰ on 4 September.

40. *R & D*. On 24 April, the Commission decided⁷¹ to extend unchanged until the end of 2005 the existing Community framework for State aid for research and development⁷².

41. *Services of general interest*. On 5 June, as part of the follow-up to its October 2001 report to the Laeken European Council on services of general interest⁷³, the Commission adopted a report⁷⁴ on the status of work on the guidelines for State aid linked to services of this type. It supplemented this document by a further report adopted on 27 November⁷⁵.

42. *Japan*. On 8 May, the Commission proposed to establish a negotiated framework for cooperation with the Japanese competition authority with a view to enabling the antitrust rules to be applied more effectively and reducing the number of cases in which the EU and Japanese competition authorities are liable to take conflicting or incompatible decisions.

43. *United States and Canada*. On 29 January, the Commission presented a report on implementation of the agreements on the application of competition rules with both countries in 2000⁷⁶ and, on 17 September, a report on 2001⁷⁷. It noted that the agreements continued to provide a framework for constructive cooperation between the parties which benefited both the competition authorities and the companies involved in cases which they helped effectively to resolve. On 30 October, the Commission and the US authorities published a set of best practices concerning bilateral cooperation in merger cases with a view to minimising the risk of divergent outcomes on either side of the Atlantic and reducing induced costs for the parties.

⁶⁷ OJ L 337, 13.12.2002; Bull. 12-2002, point 1.3.75; corrigendum: OJ L 349, 31.12.2002.

⁶⁸ OJ C 88, 12.4.2002.

⁶⁹ OJ C 241, 7.10.2002; Bull. 7/8-2002, point 1.3.68.

⁷⁰ Bull. 9-2002, point 1.3.60.

⁷¹ Bull. 4-2002, point 1.3.46.

⁷² OJ C 45, 17.2.1996; 1995 General Report, point 163.

⁷³ COM(2001) 598; 2001 General Report, point 164.

⁷⁴ COM(2002) 280; Bull. 6-2002, point 1.3.58.

⁷⁵ COM(2002) 636; Bull. 11-2002, point 1.3.55.

⁷⁶ COM(2002) 45; Bull. 1/2-2002, point 1.3.118.

⁷⁷ COM(2002) 505; Bull. 9-2002, point 1.3.66.

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44. *Enlargement.* Under the pre-accession strategy, the Commission and the Lithuanian Competition Council jointly organised the eighth annual competition conference between the Commission and the competition authorities of the candidate countries in Vilnius on 18 and 19 June⁷⁸.

45. *Promoting international cooperation.* The Commission continues to act as one of the driving forces behind the international competition network (ICN), which since its inception in 2001⁷⁹ has been joined by more than 70 competition authorities from all five continents. The first tangible results of ICN projects were presented at its inaugural conference, held in Naples from 27 to 29 September. The Commission also played an active part in the International Cartel Workshop which took place in Rio (Brazil) in September.

III. Resources of competition authorities

1. **2002 Budget⁸⁰:** 74 Mio euro

2. **Human Resources**

a) DG COMP Personnel 2002

A grade ⁸¹	344
Support Staff	264
Total	608

b) BASIC TRAINING of A grade Staff 2002

Law	184
Economy	83
Others	77
Total	344

c) STAFF per activity area 2002

Anti-trust	129
Cartel investigation	48
Liberalisation	32
Merger control	116
State aid	136
International cooperation	23
General policy, strategy and coordination	70
General administrative support	54
Total	608

⁷⁸ Previous conference: 2001 General Report, point 280.

⁷⁹ 2001 General Report, point 282.

⁸⁰ Estimation, including a share in overheads of central Commission services.

⁸¹ Case handlers, policy development and management

IV. References to new reports or studies on competition policy issues⁸²

46. In 2002, the Directorate-General for Competition commissioned 23 Studies. Four of these studies have been completed, of which one is confidential.

47. In addition, 12 studies commissioned in 2001 were completed in 2002, of which 10 are confidential.

48. While the 11 confidential studies are not covered in this report, the other five completed studies are summarised below:

- ***Novartis: Study on broadband Internet access***

The aim of this study was to gain a better idea of the borders between the market in broadband Internet access and that in narrowband Internet access for residential customers and to provide a quantitative basis on which to refine knowledge of the substitutability, in the eyes of the consumer, between these two means of accessing the Internet through the elasticity of demand in the presence of a moderate price variation (10 and 5%) and the resulting demand transfer phenomena.

The study concludes that, if faced with a price variation of 10%, 80% of subscribers would stick to broadband access, with only 7% returning to narrowband. This finding tends to confirm that the two markets are separate.

- ***European Economics Research: Market Definition in the Media Sector - Economic Issues***

This study analyses the methodological problems of market definition in the media sector. It seeks to identify whether, and how, the economic characteristics of media industries give rise to specific problems for market definition. The economic characteristics analysed in the study are price discrimination, bundling, advertising and free content, gateways, rapid change and convergence.

The study considers how these characteristics manifest themselves in practice and provides an economic critique of approaches to market definition that have been adopted in the past in certain competition cases. Starting from the Commission's Notice on Market Definition, it tries to develop practical approaches to market definition in the sector, leading to a proposal for a framework and for key steps of market definition in media cases. Supported by a number of appendices underpinning the study's approach, the analysis provides a detailed economic overview of the concept of market definition and reviews critically the allegation that a market definition approach is not appropriate for competitive analysis of "new economy" media cases. Finally the study proposes a categorisation of traditional market definition tests and techniques.

- ***Frank Verboven: Quantitative Study to Define the Relevant Market in the Passenger Car Sector***

⁸² Further information at <http://europa.eu.int/comm/competition/publications/>

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This study focuses on the analysis of competitive constraints arising from demand substitution between different categories of cars and geographic areas within the EU. The definition of the relevant geographic market is based on evidence of international price differentials and trade barriers as documented in previously published studies or reports, some of which were produced or commissioned by the Commission. The definition of the relevant product market is based on an econometric analysis of the demand for new cars, using a database for five EU countries over the period 1970-1999.

The study concludes that, in each geographic market analysed, that is a Member State, five distinct product markets are to be distinguished: subcompact (corresponding to Commission segments A and B), compact (segment C), intermediate (segment D), standard/luxury (corresponding to Commission segments E and F), sports (part of the Commission segment G). Each of these product markets in each of the Member States analysed thus constitute relevant markets. The extent to which this conclusion would also apply to other Member States, or whether the same analysis would yield slightly different results for other Member States was not dealt with in the study. The general message, however, is that a meaningful competitive assessment of the passenger car sector cannot rely on the assumption that there is a sole relevant market in which all cars compete throughout the EU on an equal basis. The level of competition in car retailing has to be assessed at a lower and more detailed level of aggregation.

- ***Deloitte & Touche: Assistance to analyse the currency hedging practices of a company***

The contractor of this study provided expert assessment concerning the analysis of the currency hedging practices of a specific company, in particular in relation to the typical hedging methods for such a company, the cost of hedging and the possibility of using provisions as a substitute for currency hedging. A written report on the subject was submitted by the contractor.

- ***Institut d'Economie Industrielle: Collective dominance***

This study was provided by the Institut d'Economie Industrielle at Toulouse University, and more particularly by a team consisting of Professors Marc Ivaldi, Bruno Julien, Patrick Rey, Paul Seabright and Jean Tirole.

The study provides a unified framework for the economic analysis of tacit collusion. It contains a general survey of the economics of tacit collusion and deals thoroughly with each aspect of a particular market that affects the analysis of whether tacit collusion is likely to emerge. Furthermore, the study provides an analysis of other forms of tacit collusion than on prices and makes recommendations as to the impact of this analysis on enforcement in the field of merger control.

The main part of the study deals with the different factors characterising a particular market that can be used for an economic analysis of tacit collusion. These factors include: the number of competitors, the distribution of market shares, entry barriers, the frequency of interaction between competitors, the degree of transparency, demand growth, the importance of business cycles, cost asymmetries, product differentiation and multimarket contact. The report explains both the economic intuition and provides simple mathematical illustrations of how the different factors impact on the analysis.

Although the standard economic model for tacit collusion is based on an assumption of jointly coordinated prices, there are other ways in which collusion could take place. The report therefore describes how the analysis would be affected if collusion were to be based on quantities, capacity

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or investment activities. Furthermore, certain issues specific to bidding markets and R&D-intensive sectors are elaborated on.

Concerning the implications of this analysis for merger control, the study attempts to provide a hierarchy of factors which help to identify those issues in a particular case which are critical for determining whether a merger may lead to an increased risk of coordination.

Due to its clear and comprehensive structure, this study constitutes an important input for the draft Notice on the appraisal of horizontal mergers, and more particularly its section on tacit collusion. It allows the Commission to base its policy choices on up-to-date economic theory.