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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN BELGIUM

-- 2013 --

18-19 June 2014

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PREFACE BY THE PRESIDENT OF THE BELGIAN COMPETITION AUTHORITY

1. This first annual report of the new authority is not really an annual report because the new authority has only been established in September 2013. The main purpose of this report is to complete the data of 2013 in order to facilitate comparisons in the future.
2. During these four months we have been working hard. Pending cases were restarted, and in one major case concerning the electricity sector an important investigation was closed by submitting a draft decision. In addition we had also two non-simplified decisions regarding concentrations, of which one with commitments. That is nearly as many non-simplified procedures as otherwise in a whole year.
3. Not everything we would have liked to do could be realised in 2013. As expected, appeals regarding previous investigation acts will slow down the closing of a number of cases. Internal developments such as the development of a new statute for our staff, will take time - and usually of the same people who are occupied with various core tasks. Recruiting is a top priority.
4. Periods of major changes are never easy. For that reason I owe much gratitude to all staff members of the BCA for their continued assistance in 2013.

Jacques Steenbergen

1. The key tasks of the Belgian Competition Authority (BCA)

5. The BCA has two strategic objectives:

- i) to contribute to the definition and enforcement of a competition policy that supports a sustainable economic development and enhances the structural competitiveness of the Belgian economy, and
- ii) to enable Belgium to contribute to the EU competition network.

6. The BCA deals with cases and issues in three different contexts:

- 1) Formal cases under the competition rules in Book IV of the Code of Economic Law (CEL)

7. The Board determines the priorities of the enforcement policy. The officers of the college of competition prosecutors are entrusted with the investigations of restrictive practices and concentrations under the direction of the competition prosecutor general.

8. Formal procedures may be dismissed by the College of Competition Prosecutors, closed with a transaction, or submitted for approval to the Competition College composed of the president or assessor-vice-president and two assessors.

- 2) The cooperation within the European network of competition authorities (ECN):

9. The cooperation within the European network is in the first place concerned with the infringement proceedings and concentrations that are discussed in the advisory committees in accordance to the Regulations (EC) 1/2003 and 139/2004 of the Council, and with the Belgian contribution in the different ECN working groups.

10. The BCA has the power to implement the articles 101 and 102 TFEU referred to in article 35 of Regulation (EC) no 1/2003 of the Council of 16 December 2002.

11. The BCA also participates in the activities of the Competition Committee of the OECD (of which the president is also a member of the bureau), of the International Network of Competition authorities (ICN) and of the ECA (Association of European Competition Authorities).

12. The European and international cooperation is within the powers of the president but there are specific forms of cooperation between the chief economists.

- 3) The informal competition policy and “advocacy”:

13. This section refers to a wide range of interventions such as responding to questions asked to the contacts mentioned on the website of the BCA, to the president or to the College of Competition Prosecutors, questions that are send on by the Economic Inspection Directorate General or other departments of the ministry of economic affairs (FPS Economy), the contribution to the preparation of future rules and regulations, etc... Some interventions aim at a better understanding of the rules of competition by market operators, others at a better understanding of markets by the Authorities, and some aim at informal settlements.

14. The informal competition policy and advocacy are powers of the president. But in the matter of informal competition policy there is interaction between the president and the competition prosecutor general and other members of the board who take an active part in the advocacy efforts.

2. Some figures

	Belgium 2013 BCA¹	Belgium² 2012- 2013-APEC	Belgium 2011	EU 2011³	NL 2011⁴	F 2012⁵
Means						
Staff	46 (44,4 FTE)	36(33)+20,5 (15,5)=56,5 ⁶	36(32)+21, 5(16,5)=57,5	556 ⁷	190 ⁸	188
Members of the C.C.P. ⁹ who are inspector	34	30	32			93
Budget (mio euro) ¹⁰	approx.8,9 ¹¹	approx.6,4 ¹²	approx.6,4	93,5 ¹³	25,2 ¹⁴	20
Estimated impact concerning restrictive practices						

¹ 4 months or situation on 31 December.

² 8 months or situation, on 31 August.

³ Source: unless otherwise specified: Annual activity report 2011 and staff working paper 2011 annexed to Annual activity report 2011. Figures in parentheses come from the annual report 2011 of the Directorate General for Competition.

⁴ Source: NMa annual report 2010, unless otherwise specified. Figures in parentheses come from the annual report 2010.

⁵ Unless stated otherwise: Annual report 2012

⁶ Available in December 2012, incl. administrative support, excl. secondments to EU Commission; Directorate General (in parenthesis staff members with university or assimilated degrees)+Council (incl. College of Competition Prosecutors and Registry; in parenthesis members of the Council incl. prosecutors). For inspections the BCA can ask the support of the Directorate General for Market Surveillance and the ICT team of the FPS Economy. Part-time members of the Council are taken into account for 0.5 FTE. Other members of the staff, regardless their statute, are taken into account as one unit. There is only a difference of two units between the number of FTE's and the number of persons. The limited absence through illness is 0.32% of the theoretical available working days after deduction of the statutory holidays. The long periods of absence through illness amounts to 2.73% and is caused by the long term absence of 1 staff member.

⁷ In 2011 the Directorate General for Competition disposed of a total staff of 943 persons including the staff for state aid, general policy and administrative support of which 785 permanent staff members and 158 external staff members. Of the 785 permanent staff members 229 members were involved in state aid and 556 in infringement procedures and merger control.

⁸ The number of staff members active in competition. The total number of staff is 372 persons.

⁹ College of Competition Prosecutors

¹⁰ On an annual basis taking into account that the value of the services delivered in kind by the FPS Economy, are estimated by the Government at the value of 1.8 million euro.

¹¹ Annual basis.

¹² Annual basis.

¹³ Including anti-trust, merger control and control of state aid.

¹⁴ The total budget of the NMa amounts to 45.2 million euro including the Directorate of Regulators of Energy and Transport. The budget related to competition is based on the estimation in the annual report 2012 of the General Directorate for Competition.

	Belgium 2013		Belgium 2012	EU 2012	NL 2012	F 2012
Mio euro	52,5		96	1800 to 2700 ¹⁵	251	
Restrictive practices						
	Belgium 2013 BCA ¹⁶	Belgium 2013 APEC ¹⁷	Belgium 2012	EU 2012	NL 2012	F 2012
Investigations	2 [?]	15 (9)	20		14	29
Inspections ¹⁸	0	3	0 ¹⁹	5 ²⁰		
Decisions fines	0	2	2	4 ²¹	6+6 ²²	13 ²³
Amount fines (mio euro)	0	15,7	37,6	1875 ²⁴	36,9	540,5
Cartel procedures						
Cartel decisions, interim relief included		3+1 ²⁵	1+3+3 ²⁶	5 ²⁷	6+8 ²⁸	8

¹⁵ Management plan DGComp 2013

¹⁶ 4 months.

¹⁷ 8months.

¹⁸ Inspections under the Belgian competition rules per site, in parentheses the number of inspections at private residences or equivalent premises.

¹⁹ See text for explanation.

²⁰ In 8 cases dawn raids were carried out (Source: Press releases European Commission). The number of undertakings which has been searched is not known.

²¹ 5 cartel cases and 2 abuse decisions. Fines are imposed on 16 undertakings.(source: Press releases European Commission.

²² 6 to undertakings and 6 to natural persons.

²³ It concerns 57 undertakings.

²⁴ DGComp statistics.

²⁵ 2 decisions of the Council establishing an infringement, one decision of the Council that they could not establish an infringement and one decision of the Council regarding the execution of interim measures. This last decision is not taken into account for the calculation of the average duration of procedures. In one decision the Council decided that there was no reason to establish an infringement. In 2013 we had one decision to dismiss a case.

²⁶ 1 decision of the Council establishing an infringement, one decision of the Council that they could not establish an infringement. Two decisions of the College of Competition Prosecutors rejecting a complaint after investigation. 3 decisions of the College of Competition Prosecutors closing the file in the light of the priorities and available resources.

²⁷ DGComp statistics.

²⁸ The annual report states 6 cases in which a fine or burden is imposed and 8 cases closed in another way. The figures do not distinguish between cartel and abuse of dominance cases.

Draft decisions ²⁹	(3)	1 ³⁰ (3)	5 ³¹ (5)	5 ³²	6 ³³	
Average duration of procedures: infringements decisions, rejection of complaints		49 ³⁴	42/16m ³⁵	44 ³⁶	³⁷	
Of which average duration of investigation		25 ³⁸	31+11m ³⁹			
Leniency applications	(1)	(1)	1			3
Abuse of dominance						
Abuse decisions (incl interim relief)		1 ⁴⁰	0(2)+1+2 ⁴¹	0 ⁴²	⁴³	2
Average duration		8m ⁴⁴	(6)+24m ⁴⁵		⁴⁶	

²⁹ Reports which were deposited during this year (in EU terminology: Statement of Objections). In parentheses cases in which the Council did not yet take a decision.

³⁰ In a case regarding interim measures.

³¹ One report was related to 3 files.

³² Press releases DG Comp. This figure makes no difference between cartel and abuse cases.

³³ The annual report states 10 cases in which a report is deposited. The figures do not distinguish between cartel and abuse of dominance cases.

³⁴ The average duration is influenced by one case of which the investigation lasted 52 months because we waited for a decision of the Commission. Per case the duration was 6 months (interim measures), 17, 26 and 52 months.

³⁵ The duration of the investigation varies between 3 and 36 months.

³⁶ Concerns the only case for which a public version of the decision is available.

³⁷ The standard which has been used by the NMa as lead time for cartel and abuse of dominance cases (from the start from the investigation till the enforcement product) was 336 days. They complied with this standard in 55.2% of the cases. The annual report states that on the basis of an average of all types of decisions regarding infringements in 2011 the standard was 588 days which was met in 11% of the cases.

³⁸ This average duration is influenced by one case with a duration of more than 90 months. Per case was the duration 8 months for interim measures, 38, 59, 5 and 91, 5 months.

³⁹ The duration of procedures varied between 3 and 21 months.

⁴⁰ The decision of the president of the Council rejecting the request for interim measures.

⁴¹ 0 decisions of infringement of the council, 2 decisions of the council in which a dismissal decision was annulled, 1 decision of the College of Competition Prosecutors rejecting a complaint after investigation, 2 decisions of the College of Competition Prosecutors closing a case in the light of the priorities and available resources.

⁴² DGComp Press releases

⁴³ See the figures for cartel cases.

⁴⁴ Decision of the president of the Council rejecting a request for interim measures.

of infringement decisions/rejection of complaint						
Of which average duration of investigation	47m ⁴⁷	6m ⁴⁸	-+3m			
Draft decisions	1	1 ⁴⁹		2 ⁵⁰	51	
Merger control						
Notifications	9	15	20	309	91	173 ⁵²
Decisions with remedies	2	0	1	8	6 ⁵³	10

3. Cases and issues handled by the BCA

3.1. Enforcement priorities and the handling of formal cases under the Belgian Competition Act

15. The BCA had to give priority to restart files in which a report was laid down under the APEC⁵⁴. By application of the transitional provisions in article 22 §3 of the act of 3 April 2013 (introducing the present competition rules contained in Book IV of the new Code of Economic Law), the reports filed under the APEC were to be considered as a communication of grievances within the meaning of article IV.42§4 CEL, triggering the deadlines of the new administrative procedure.

16. The Competition College took two decisions in non-simplified merger control procedures

- In its merger control decision of 24 October 2013 in the *Touring* case⁵⁵, the Competition College of the BCA decided that it could authorise the merger in the light of the regulations applicable to the organisation of the target's activities (driving licence exams and the technical control of cars) and the enforcement powers of the relevant regulatory authority. However, in order to avoid ambiguity in respect of the exact scope of the obligations of the purchaser and the target under the relevant regulations, the decision has copied the engagements of the notifying parties towards the

⁴⁵ An average of 6 months to reform a dismissal decision and 24 months for an investigation that did not lead to the establishment of an infringement.

⁴⁶ See the figures for cartel cases

⁴⁷ Concerns deposited draft decision end 2013.

⁴⁸ Decision of the president of the Council rejecting a request for interim measures

⁴⁹ A case in which a draft decision is deposited

⁵⁰ DGComp Press releases.

⁵¹ See the figures for cartel cases.

⁵² Decisions instead of notifications.

⁵³ Second phase decisions.

⁵⁴ The 2006 competition act.

⁵⁵ Decision nr BMA-2013-02. See: http://economie.fgov.be/en/entreprises/competition/competition_case_law/belgian_competition_authority/decisions_concentrations/2013.jsp

sector regulator into its clearance decision as the explicitation of the conditions on which the clearance was based. The decision adds that these conditions remain in principle valid as long as they are required under the sector rules.

- In its merger control decision of 25 October 2013 in the Mediahuis case, the College cleared the creation of the joint venture in view of remedies aimed at maintaining the diversity of offers on the newspaper market. The College declined to open a second phase investigation deciding that the serious doubt referred to in article IV.61 §2 (3°) CEL must be assessed in the light of the probability of a negative impact on competition, the gravity of such negative impact in case it occurs, and the probability that such negative impact will be caused by the concentration. The College declined the suggestion to open a 2nd phase investigation.

3.2 *The European network (ECN) and the international cooperation.*

17. The contribution of the Directorate General and the BCA in the ECN and in various other forms of international cooperation in 2013 can be summarized as follows (comparison with 2012 and 2011):

ECN	2013	2012	2011
Advisory committees			
Infringements (Reg.1/2003)	16	16	8 meetings (reporter in 1 case)
Concentrations(Reg.139/2004)	4, reporter in 1	8	6 meetings
Discussions with parties	4	10	5
Working groups			
Plenary ECN meetings	5	4	4
Meetings of sub groups ⁽⁵⁶⁾	29meetings, 2 written contributions	31 meetings,8 written contributions	25 meetings,9 written contributions
Assisting inspections of the European commission			
Inspections at the request of national authorities	2	2	4
Inspections at the request of national authorities	0	0	2
Answering questions of national authorities	49	48 ⁽⁵⁷⁾	52 ⁽⁵⁸⁾
Questions asked to national authorities	9	3	2
Bilateral meetings			
With the European Commission	(tnt4,fin.1div.3)	7	4
With national authorities	11	12	5
OECD			
Competition committee meetings	6, president re-elected as member of the	6 , dg re-elected as member of the bureau	6, dg re-elected as member of the bureau

⁵⁶ The figures include the number of meetings on future regulations including meetings that are technically organized under the Regulation 139/2004.

⁵⁷ 48 answers to 71 questions (we did not dispose of relevant information regarding other questions)

⁵⁸ 52 answers to 73 questions (we did not dispose of relevant information regarding other questions)

	bureau		
Working groups	6 meetings, 1 written contribution	6 meetings, 4 written contributions	6 meetings, 3 written contributions
ICN			
Annual meeting	1	1	1
Working groups	0	1	1
ECA			
Annual meeting	1	1	1

18. The Directorate General and the BCA have e.g. submitted written reports concerning the following subjects:

- Car distribution
- Leniency regulations
- Experience with former regulations regarding merger control
- Forensic IT and cross border investigation teams
- Cooperation with competition authorities outside the EU
- Sports rights
- Telecom sector
- Unilateral information to competitors
- Food.

3.3. *The informal antitrust policy and “advocacy”*

3.3.1 *The informal antitrust policy*

19. Within the framework of the informal antitrust policy and advocacy, the Directorate General and the BCA aimed at improving the leverage of the interventions of the competition authority.

20. Quantitatively the interventions of the Directorate General and BCA in 2013 regarding the informal competition policy can be summarized as follows:

	2013	2012	2011
Parliamentary questions	14	32	23
Parliamentary hearings and interventions of parliamentary commissions	5	1	0
Preparation of the intervention of the minister in procedures⁵⁹	1	2	1
Preparation of regulatory initiatives	1	1 ⁽⁶⁰⁾	1
Assistance in external enquiries	1	1	2
Meetings of the Commission for Competition	2	3	2
Questions asked to the contact persons and other questions to the General directorate and the BCA.			
Total	148	134	118
Questions about the Belgian Competition Act	58	33	38
Questions about EU competition rules	7	5	6

⁵⁹ Of the State, the Government or the Minister before the Court of Justice or other Courts.

⁶⁰ Please take into account the assistance rendered to prepare the act and ten royal decrees or other documents concerning the starting up of the new authority.

Questions about specific cases	29	45	34
Questions about the act on trade practices	32	33	26
Referring to other departments	22	18	14
Number of informal cases	23	31	28

21. These interventions were e.g. dealing with the following markets or issues: car distribution, corporate lawyers, payment systems, beer sector, book market, cosmetics, money transport, vegetables, fruit trade, internet services, newspaper distribution, mobile phones, optics, pipelines ,revisers , football, etc.

3.3.2 *Informal settlements and informal guidance (comfort letters)*

22. We continued in 2013 the development, in consultation with the College of Competition Prosecutors, of the informal competition policy.

23. This policy can result in informal settlements. Before we decide to opt for an informal settlement, we look at the following issues or conditions:

- It must be clear that the College of Competition Prosecutors does not intend to open a formal investigation but that the impact of the market behaviour might be too harmful to be ignored – or that a formal procedure cannot produce results in time;
- It seems not advisable to aim at an informal settlement if third parties already suffered significant damage,
- We hesitate to propose an informal settlement procedure if the College of Competition Prosecutors is not prepared to start a formal procedure when the informal approach does not succeed.

24. An informal settlement is not a contract. After discussions with the president of the BCA, parties may indicate that they will stop the litigious practice and propose additional remedies where relevant. After an examination of the remedies, the president may indicate that he sees no reason to pursue the case any further in the light of the remedies offered by the undertakings concerned.

25. The BCA may indicate that it will only envisage an informal settlement if some degree of publicity can be given to the settlement.

26. Informal guidance or comfort letters are letters in which is stated that a certain practice or agreement is considered not to be conflicting with competition rules insofar that the hypotheses stated in the letter are correct. The BCA can specify that it will only take into consideration the writing of such a letter if they can bring the letter to public notice.

3.3.3 “Advocacy”

27. The following advocacy initiatives can be mentioned for 2013 (in comparison with 2011):

	2013 (BCA)	2012-2013 (APEC)	2011
The organisation of debates		3 The continuation of lunch meetings about the reform of the authority and about merger control	4 The continuation of lunch meetings and stakeholders working groups with debates about proposed amendments.
Lectures, participation in debates and interviews	19 Organized by e.g. the BSC, the Competition Summit, the institute for corporate lawyers, the Polish and Lithuanian competition authorities, a consortium of the universities of Utrecht and Lubljana with the European Commission, The Federation of Belgian enterprises, the VSMR; and interviews with the Financial Times Group, RTL, De Standaard, Trends.	(29+9) ⁶¹ Organized by e.g. the Association of Competition Economics (Paris), the Bar of Brussels, The British Institute of International and Comparative Law, The director General of DG Comp, ECN (Chief Competition Economists), The Competition Forum, The Conference Board, Eurostat (The Hague), GCR (London), IBC, The Jevons Institute (in London and in Washington DC), The Lions’ district of Antwerp and Limburg, The platform for Competition (Amsterdam), the Cypriot, German, Dutch, Polish, Romanian, Czech and Swiss competition authorities, Merger market group (Amsterdam), the Oxford Rev. for Antitrust Enforcement, the TBM, the universities of Amsterdam (ACELG, Centre for Energy problems and IIR), Bucharest, Brno, Ghent, Leiden, Liege, and Tilburg, Oxford, Sankt Gallen, Federation of Belgian Enterprises.	(29) Organized by e.g. the American Bar Association, the Centre for Parliamentary Studies, Chatham House, The Chinese mission at the EU, the Chinese, German, Hellenic, Hungarian, Polish, Slovak and Czech competition authorities, the universities of Amsterdam, Antwerp, Fordham, Ghent, London, Oxford, Rotterdam and Utrecht; The Federation of Belgian Enterprises, the association for the Study of competition law

⁶¹ 29 in 2012 and 9 in 2012

Contributions to journals and compilations	4	8	15
Membership of editorial boards of specialized journals and advisory committees.	3	3	2

3.3.4 Regulation

28. In a press release of 29 November the BCA opened a public consultation on its intention to revoke the Notice of the Competition Council on the calculation of fines (Notice of the Competition Council concerning the method of calculating fines of 19 December 2011) and to replace it by a communication that the authority will follow the guidelines of the European Commission (Guidelines on the method of setting fines, imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ, 2006/C 210/02)). The BCA.

4. The economic effects of the Belgian competition law enforcement.

4.1. Introduction

29. In the annual report for 2007 we made a first conservative estimate of the economic effect of competition law enforcement in Belgium with the emphasis on the direct effect of enforcement on consumer welfare (which is the global benefit in favour of the customers due to the action of the authorities).

30. The direct effect of public intervention consists in the first place of a price-and allocation effect.⁶²

31. The outcome analysis focuses on the positive effects of cartel and abuse cases.⁶³

32. The assessment of merger control is a more hypothetical exercise. It implies the assumption that the parties would have changed the price or other parameters if the competition authority had not forbidden or required an adjustment of the merger or the acquisition. That's why the quantitative effect of merger control is not evaluated in this report.

⁶² The price effect is the positive difference in price that has occurred because of competition law enforcement, multiplied by the sales; the allocation effect is the change of the sold quantities as a result of price adjustment. The negative allocation effect as a result of sub-optimal prices, innovation, etc. is called "the dead weight loss".

⁶³ The impact of competition law enforcement on the policy of pricing policies of undertakings can be measured by the price-cost margins (PCM); according to an analysis of the PCM's for the processing industry in the US made for the time period 1960-1996, the PCM's were lower when competition law enforcement was stronger. The same study showed that PCM's are higher in countries where competition law enforcement is weaker. See Frederic Warzynski, *The dynamic effect of competition on price cost margins and innovation*, KULeuven, 2003.

33. We should add that the effectiveness of the interventions is not limited to the quantifiable effect of the cases in which an infringement has been sanctioned:

- Because of the deterrent effect of these decisions, it is generally assumed that the indirect effect of a decision is more important than the direct effect. According to a paper of the Office of Fair Trading (OFT) the deterrent effect is at least as significant and may well be three times more important than the direct effect of the competition law enforcement.⁶⁴
- The informal competition law enforcement contributes also to a better competition climate, and the impact of its different aspects including advocacy may be as significant as that of the formal competition law enforcement; the formal competition law enforcement is nevertheless the cornerstone on which the effectiveness of the informal approach depends.
- The Belgian Competition Authority makes a modest but not insignificant contribution to the effectiveness of the competition law enforcement of the European Commission.
- Competition also stimulates innovation and the quality of products and processes; because these effects are difficult to measure, they have not been taken into account in this assessment, etc.

4.2. *Method*

34. The European Commission estimates the effectiveness of its decisions on the basis of the assumption that the economic effect of the policy on cartels amounts to 10% of the total value of the goods and services that are affected by the infringements.⁶⁵

35. This method is also used for the assessment of abuse of dominance cases. In particular in a price squeeze case it is assumed that the abuse is to restrict access to the market for newcomers. We can expect that these newcomers would exert pressure on prices which justifies the use of the method used for the assessment of the effect of cartel decisions.

36. We assume that the positive effect of decisions is noticeable during a period of at least 2 years after the decision.

37. The same reasoning is applied to decisions of interim relief valid for the duration of the measures.

38. The assessments were made on the basis of confidential information received from the parties. Therefore it is not possible to publish the results for individual cases. We can only give an aggregated figure.

⁶⁴ *The deterrent effect of competition enforcement by the OFT*, NMA conference on measuring the effects of competition law enforcement, October 2007, discussion paper OFT March 2008. The same study of the OFT demonstrated that in the period 2000-2006 for each cartel where the authority has established an infringement the undertakings concerned did not carry out 5 planned cartel agreements or have changed to comply with British competition law (ratio 5/1).

⁶⁵ See management plan of the DG Comp Page 19-21: the 10% margin is based on the analogy with the SSNIP-test (Small but significant and non-transitory increase in price). See also "...objective assessment based on hard evidence is not possible for deterrence effects or for the effects of enforcement against single competitor exclusionary conduct. For cartels, the available evidence suggests that price effects are substantial: at least 10% on average assessing the effects of antitrust enforcement in the US, Gregory J. Werden, antitrust division US department of justice, workshop on measuring the effects of competition law enforcement, NMA conference, October 2007.

4.3 *Cartel cases*

39. The following cases are taken into consideration:

4.3.1 *The case “Nationale Kamer van Gerechtsdeurwaarders” (National Chamber of Bailiffs)*⁶⁶

40. This case was dealing with the setting of tariffs for services that were not part of their task as public officials, by the national Chamber which acted as an association of undertakings.

41. This case was decided in 2011 and produced, according to our method still, its effects in 2012 and 2013.

4.3.2 *The flour case*⁶⁷

42. The Competition Council has condemned 5 undertakings for a cartel on the market for the sale and delivery of flour in Belgium. The Council came to the conclusion that five mills Werhahn, Meneba, Ceres, Dossche and Brabomills infringed the Belgian and EU competition rules. It involves a number of large mills active on the Belgian Market.

43. The case was decided in 2013.

4.3.3 *The cement case*

44. The Competition Council has decided that CBR, CCB, Holcim, Febelcem and the National Centre for scientific and technical research for the cement industry (CRIC/OCCN) have infringed on the prohibition of agreements and concerted practices, restricting competition, with the intention to hinder the commercialisation of a product on the Belgian market.

45. The case was decided in 2013.

4.4 *Abuse of dominance cases*

4.4.1 *The case bpost*⁶⁸

46. The Council decided that bpost abused its dominant position by adopting a so-called discount scheme “per sender” from January 2010 till July 2011. The scheme applies to agreements with important customers, as well as with intermediaries. In such agreements bpost granted discounts partly based on the postal volume (quantum discounts) and partly on the extent the mail was prepared for further handling.

47. The Council came to the conclusion that the difference in treatment between the large customers who worked directly with bpost on the one hand, and the intermediaries on the other hand, created a distortion of competition on the market of postal services where bpost has an important position. Such a system of discounts allowed that intermediaries or undertakings for preparation were hindered to offer favourable rates to big customers.

48. The case was decided in 2012 and therefore continued to produce its effect in 2013.

⁶⁶ Decision of the Competition Council: no 2010-p/k-47 of 8th December 2011

⁶⁷ Decision of the Competition Council: no 2013-i/o-06 of 28th February 2013.

⁶⁸ Decision of the Competition Council: no 2012-p/k-32 of 10th December 2012

4.4.2 *The case Tondeur Diffusion N.V./Presstalis S.A.R.L.*⁶⁹

49. The Council has condemned the French undertaking Presstalis for abuse of dominant position because of a system of discounts that rewarded French publishers who left the complete export of their magazines, for the Belgian, the Swiss as well as the Canadian market, to Presstalis. There were complaints against the discount policy, called BSC, and in general against the commercial conditions applied by Presstalis for the export from France, filed with the with competition authorities at the EU level and in Belgium and France. The complaints at the BCA were lodged by Belgian distributors.

50. A system of discounts which are offered in exchange for the obligation of the customers to leave their complete or the largest part of their publications to an undertaking with a dominant position can be considered as an abuse. Such discounts create loyalty and commit customers, which is the case of the French publishers.

51. Besides, the discount system of BSC resulted in the reinforcement of the market position of AMP as the most important distributor in Belgium. The ground for all this were the bonds which existed between Presstalis and AMP.

52. The case was decided in 2012 and therefore continued to produce its effect in 2013.

4.4.3 *The case De Beers*⁷⁰

53. The President of the Council has imposed on the Beers, by interim relief, to continue the supply of a distributor, because there are prima facie indications that if the distributor is not allowed in the supplier of choice net it must be considered as an abuse of dominant position that can cause severe, immediate and irreparable loss. The Court of Commerce of Antwerp took regarding the same parties the same decision in a similar case.

54. The in 2010⁷¹ imposed interim measures were three times extended in 2012.

55. The interim measures were extended in 2012 and therefore continued to produce its effect in 2013.

4.5. Conclusion

56. If we apply the method as mentioned above, which the European Commission considers to be conservative, to infringement decisions of the Council taken in 2010, 2011 and 2012, the positive effect for 2012 can be estimated at 88 million euro.

57. Judging by the infringements established in 2011, 2012 and 2013 we can estimate the positive effect in 2013 at 52.5 million euro.

⁶⁹ Decision of the Competition Council: no 2012-P/K-20 of 30th July 2012.

⁷⁰ Decision of the Competition Council :no 2012-V/M-11 of 27 April 2012,2012-V/M-19 van 13 July 2012 and 2012-V/M-34 of 31 December 2012.

⁷¹ Decision of the Competition Council no 2010-V/M-47 of 25 November 2010.