

The Office of the Chief Competition Economist at the European Commission

by

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1. Introduction

This paper provides an overview of the role of economists at the Directorate-General of Competition (DG Comp) of the European Commission. In particular, we report on the institutional role of the newly-created office of the Chief Competition Economist ("CCE"), which has been in place since September 1st, 2003. We further provide an overview of the various activities that the CCE and his Team have been involved in during the first 16 month.

It is important to stress that this paper does not provide a full account of all the activities that the CCE has been involved in. In particular detailed economic analysis in the context of cases or guidelines is not discussed here. Accordingly, this paper is not an attempt to do for Europe what other economists at the FTC and DoJ have reported on for the U.S.² By contrast, we focus on the institutional set-up of the office of the CCE at DG Comp and provide a general overview of activities undertaken during the period of September 2003 – December 2004.

The purpose of this paper is to report on these new developments to interested researchers in industrial organization as well as policy makers. It is hoped that these developments demonstrate that there is considerable scope and relevance for research in industrial organization in the application of EU competition policy law.

2. The Role of Economics in EU Competition Policy

In his final speech in office³, former Commissioner Mario Monti reviewed what he considered to be his main achievements of his mandate as Competition Commissioner over the past 5 years. In this speech he states

“ ... a major trend of this mandate has been to ensure that competition policy is fully compatible with economic learning. Furthermore, competition policy is an instrument to foster economic growth, promote a good allocation of resources and to strengthen the competitiveness of European industry for the benefit of the citizens.”⁴

The emphasis on the compatibility of competition policy with economic learning has been a steady process at DG Comp, which has been reinforced in the last few years. There has also been important leadership by Director-General Philip Lowe, who is an economist committed to apply economic principles to competition policy and state aid. The introduction of the non-horizontal merger guidelines has been a recent indication of this process. Other examples include guidelines on horizontal and vertical agreements.

Moreover this trend is continuing today. As far as future developments are concerned, Commissioner Neelie Kroes has made it very clear that economic reforms, and the contribution of competition policy towards these goals, are at the top of her agenda⁵. For instance, there is an internal review process on the policy towards the abuse of a dominant position, where recent advances in economics play an important factor⁶. There are plans for guidelines in the area of non-horizontal mergers, pending the outcome of some recent cases in court. Finally, there is the area of state aid control, where a reform process is being planned for the coming years. One of the guiding principles is going to be the desire to align state aid control with sound economic thinking, i.e. the consistent analysis of the distortions of competition, as well as market failures.

Given these developments, it is interesting to reflect upon the determinants of this process. There seem to be several main drivers behind these developments.⁷

First, there is an increased need to justify the economic benefits of competition policy. Political stakeholders are insisting on benefits of competition policy enforcement. The recent emphasis on competitiveness in the context of the so-called Lisbon agenda will continue to exert pressure on DG Comp to demonstrate the economic benefits. Without going into the debate surrounding the goals set out in the Lisbon agenda, we believe that a firm grounding of competition policy and state aid control in sound economics not only makes sense for European citizens, but it will also be needed in order to preserve its significant role. A primarily legal defence of competition decisions is unlikely to leave the enforcement powers intact.⁸

Second, the courts have forcefully addressed the need to increase economic evidence. A good example of this can be found in the European Court of Justice ("ECJ") judgement on *Airtours* (case T-342/99 *Airtours vs. Commission* 2002). The Court concluded that the decision of the Commission was "far from basing its prospective analysis on cogent evidence, is vitiated by a series of errors of assessment as to factors fundamental to any assessment of whether a collective dominant position might be created".

The Court then provides three conditions that are necessary for a finding of collective dominance, which are very much aligned with modern economic thinking. It should be noted that the courts emphasis on economic analysis in support of competition policy cases has so far been most prominently made in the field of merger control.

Finally, the use of economics has been facilitating (and facilitated) by the increased benefits from working closely and on a consistent basis with other jurisdictions. This is certainly true for DG COMP and their U.S. counterparts, i.e. the FTC and DoJ. More generally, the strengthening of the relationship between the United States and the Europe in the field of antitrust and merger control has promoted greater convergence in the enforcement of competition law. In addition, the reliance on economics has the potential to reduce conflict between jurisdictions⁹. However, relying on economics will

not lead to complete convergence, in the sense of one-to-one decision making.

As argued by William J. Kolasky¹⁰ "abuse of dominance, or monopolization as it is called in the United States, is now the area of greatest divergence between competition policies of the United States and Europe". He further argues that in Europe there is the perception that the competition policy has to protect the competitive process and competitors, while in the United States the purpose of antitrust law is to protect competition.

Whether one agrees with the above view or not, there are important historical differences between the two jurisdictions. Europe more recently comes from a situation (or still is) in which governments traditionally owned national monopolies, protected from trans-border competition in their national markets. Consequently, dominant positions have been the result of government restrictions, and perhaps less so due to market selection. As a result, competition agencies in Europe might tend to put greater emphasis on market access and openness to assure that the competitive process is to work properly, and to the benefit of the consumer.

3. The Mandate of the Chief Competition Economist

In October 2002, Commissioner Mario Monti at the Fordham Annual Conference on International Antitrust Law and Policy announced that there was a need for an increased economic approach in the interpretation of competition rules. He stated:

"We are increasingly confronted with the need to investigate complex cases, which require in-depth fact-finding and rigorous economic and/or econometric analysis. The CFI Judgements confirm this need. We are therefore discussing measures aimed at further strengthening the economic expertise capabilities of

the Competition DG. We are, in particular, envisaging the creation of a new position of Chief Competition Economist within the DG.....Obviously this new role will have to be defined carefully. I believe it needs to be closely associated with the day-to-day work of our case teams, giving guidance on analytical methodology, advice on the direction of investigations and direct assistance in the most complex cases. At the same time, it will provide to the Competition Commissioner with an independent opinion on the economic aspects of a case before he proposes a final decision to the Commission.”¹¹

In July 2003, the European Commission announced the appointment of a Chief Competition Economist (“CCE”), and on September 1st 2003, less than one year after the original announcement at the Fordham Annual Conference, the CCE took up his work at DG Comp.

The role, function and resources of the Chief Competition Economist and his office have been laid out in a mandate (see Appendix B). As can be seen, the office of the CCE consists of 10 specialized economist, all of which hold a Ph.D. in Industrial Organization. Approximately, half of the members are permanent EU officials, while the others are temporary agents.

There are two fundamental functions that the Chief Competition Economist (CCE) performs¹²:

- (i) the CCE (supported by a team) is closely involved with the day-to-day work of case teams, getting involved early on in the investigation, giving economic guidance and methodological assistance (“*support function*”).
- (ii) the CCE provides the Commissioner with an independent opinion, in particular before a final decision to the College of Commissioners is proposed (“*check-and-balances*” function).

In general, these dual functions broadly correspond to a strengthening and support of the economic analysis in cases (through working closely with the case team) as well as to provide some further “checks-and-balances” vis-à-vis the Director General and the Commissioner. Given this dual function, it was decided to keep the position of the Chief Economist separate from the other Directorates and attach it directly to the *Director General* (see the Organigramme in Appendix A)¹³.

(i) the support function

In terms of the “support function”, the CCE gets actively involved in a carefully selected number of cases and general policy issue¹⁴. For most of these cases, the CCE gets involved at an early stage. All cases that the CCE and his Team are involved in are put on a so-called *rolling plan*, which is approved by the Director-General in a weekly meeting between the Director General and the CCE.

When the CCE gets involved, a member of the Chief Economist Team (“CET”) is assigned to the case team and contributes in the same way as any other case team member, yet reporting back to the CCE. In particular, he/she would have access to all the information gathered during the investigation. In addition, he/she can request the case team to obtain specific data or other information necessary for quantitative analysis. Contacts with the parties or with third parties will normally take place in the context of the meetings held by the case team and/or by the hierarchy of DG COMP with such parties. The CET also attends the oral hearing and participate in the internal review panel hearings.

The mandate also specifies the process by which the CCE gets involved in a case or policy issue. There are two possibilities for a case to be added to the Rolling Plan. First, there may be a request from one of the directorates to involve the CCE, usually in the form of a written note, stating the reasons for the request. In this case, the CCE will examine the case in light of the request,

which may involve further contacts between member of the CET and the case team. Secondly, the CCE may request to get involved in a case. In this case, the relevant directorate is informed. In either case, it is the Director General who decides during the weekly meeting with the CCE on whether a case is put on the Rolling Plan or not. The Director General (or the Commissioner) might also directly request that the CCE gets involved in a case.

The above process is intended to assure that the support function can be achieved effectively. The separation between the CCE and the member of his team is appropriate, given that the CCE has to also perform the second function of the mandate, to which we now turn.

(ii) check-and-balances function

The second function - checks-and-balances - depends crucially on the independent status of the CCE. In terms of communicating his views on cases or policy issues, there are essentially three instruments available. First, the CCE may provide an internal *Opinion*. An Opinion is a written note on any case or any other issue addressed to the Director-General or the relevant Director. Any Opinion by the CCE is part of the internal deliberation process within the Competition DG¹⁵.

Secondly, the CCE attends the *weekly meeting with the Commissioner*. This is a meeting where DG Comp, the Legal Service, the Hearing Officer and the CCE present their views on cases and policy issue to the Commissioner for decision making. It is worth noting that although the CCE is formally part of DG Comp, the advice given to the Commissioner is independent of the views expressed by DG Comp.

Thirdly, there is the so-called *Final Advice*. In agreement with the Director-General, or on his request, the Chief Competition Economist will provide a written opinion on a formal proposal which is to be submitted for decision to

the Commissioner and which relates to a case (or policy issue) which he has followed up to the final stages. In such cases his *Final Advice* on proposals to be submitted to the Commission will be made available to other Commissioners.

4. Comparison to the Federal Trade Commission (FTC)

The Bureau of Economics of the FTC employs more than 55 non-managerial career staff economists, most of them with a PhD, all based in the same organizational department. The Bureau of economics of the FTC is divided into two antitrust divisions, one consumer protection division and a division of economic policy analysis. The Bureau of Economics is headed by the Bureau Director, who is appointed by the Chairman of the FTC. The Bureau Director has two Deputy Directors who manage the antitrust and consumer protection groups, respectively.

At least one economist is assigned by the Director to each antitrust or merger case and works on the case from the start of the investigation. The economist participates in all the different phases of the investigation and reports only to the Director. Economists have organizational independence from the lawyers, report to their “economic hierarchy” and focus on the economic reasoning of the case. The advantages of such a system have been summarized as follows:

- quality control : the process of working directly under economists ensure an overall quality control by exerting an important intellectual discipline force on staff's work;
- enhancing incentives to invest in human quality : it is difficult for non economists to distinguish between high quality and low quality analysis and this reporting to non economists reduces return to investing in the human capital;

- flexibility and efficiency : employing a pool of economists permits flexibility in assigning staff to various tasks and cases. Having an economist make those decisions allows for a better allocation of scarce economic resources, as detailed knowledge of the relative strengths and weaknesses of individual economists is necessary to assign staff accordingly.
- Finally, as economists are physically located in the same place, they interact with one another on a daily basis, which improves quality and efficiency.

The integration of economists at DG Comp is different from the FTC. There are in principle a large number of economists¹⁶ at DG COMP. Nevertheless, the EU model is fundamentally different in the sense that case teams are put together in a more “interdisciplinary” way. In other words, case teams are put together with economists and lawyers from the beginning. This model may have advantages, as it facilitates the coordination between legal and economic lines, yet it may also have potential disadvantages, as it may make a high-quality economic assessment more difficult.

The creation of the CCE office is designed to address these possible disadvantages. The CCE office is a small Bureau of Economics. By placing a member of the CET directly into the case team, who reports back directly to the CCE, economic quality control is exercised. Moreover, the CET provides for further scrutiny, as individual CET members need to present their case to other members of the CET.

Overall, the model of the CCE office (with the CET members) is possibly best described as a hybrid model, where the CET members are part of the case team hierarchy, but also responsible to the economic hierarchy represented by the CCE.

5. *Economic expertise and capacity building*

The mandate of the CCE states that he shall act as a focus for economic debate within DG COMP, in liaison with other Commission services and in association with the academic world. In particular, he shall contribute to the training plan of DG Comp through courses and seminars, propose or give advice on studies of a general economic nature and on market monitoring, as well as contribute towards conferences and studies of a general economic nature launched by other Commission services. Furthermore, the Chief Competition Economist is responsible for maintaining contacts with the academic world.

As a result the CET has been involved in the creation of a number of activities, which are briefly described in this section.

(a) *The Economic Advisory Group on Competition Policy* ***("EAGCP")***

In December 2003¹⁷, the inaugural meeting of the Economic Advisory Group for Competition Policy took place. The EAGCP is a group of approximately 20 leading academics working in the area of industrial organisation with a keen interest on Competition policy (a list of the members of the EAGCP is provided in Appendix C). The mandate of the EAGCP is to provide input from leading academics into important policy issues facing EU competition policy. There are two types of activities that the EAGCP engages in.

First, the EAGCP may issue an Opinion on important policy issues. An Opinion can be commissioned by the Commissioner, the Director-General or the CCE. The Opinion – which may also be published – is directed to provide an input into the internal debate and is presented to the Commissioner and to DG COMP. The role of the CCE is to identify important policy issues and to liaison between the EAGCP and the rest of DG COMP.

The work of the EAGCP is structured around three subgroups, which are organized around the three main enforcement activities of DG Comp: (i) state aid control, (ii) antitrust, i.e. Art. 81 and 82, and (iii) mergers. Each subgroup is producing separate Opinions on specific policy issues. The current work program is as follows.

EAGCP Antitrust subgroup: An Opinion on Art. 82 Guidelines is to be expected in the summer. The Opinion will be presented to the Commissioner and DG Comp and will subsequently be published on the DG Comp website.

EAGCP Merger subgroup: An Opinion on non-horizontal Merger Guidelines is to be expected later in 2005. The Opinion will be presented to the Commissioner and DG Comp.

EAGCP State Aid subgroup: There are two Opinions currently being prepared by the EAGCP. The first one addresses the issue on how economic principles can be better incorporated into the control of state aid. Second, with regard to services of general economic interests, an Opinion is being prepared on the implications of the Altmark Judgement. Both Opinions are expected before the summer of 2005 and will be presented to the Commissioner and DG Comp.

The second activity of the EAGCP is the *Annual FORUM*, which is an all-day event at DG Comp. Participation is restricted to members of the EAGCP and DG Comp staff. The objective is to discuss policy issues and economic methodology in the context of particular cases. At the Forum, DG Comp presents past case work, in particular the economic approach and analysis. Members of the EAGCP are then invited to comment on these issues. The Forum would give EAGCP members an opportunity to learn about concrete case work at DG COMP, while DG COMP case handlers would benefit from feedback by leading academic economists. The first Annual Forum will take place on June 8th, 2005.

(b) *The Economic Seminar Series on competition policy ("ESS")*

In February 2004, the CET launched an Economic Seminar Series on competition policy, which takes place once per month. The invited external speaker is typically a leading academic economist that will present the latest research relevant for DG Comp. A list of seminar speaker is provided in Appendix D.

The distinguishing feature from other seminar series is the exchange of views between current policy makers (typically economists and interested lawyers from DG Comp and other EC services) and outside academic economists and other interested parties, such as consultants. The seminars are open to the public.

The objectives of ESS at DG COMP are twofold. Firstly, the seminar directly disseminates recent economic developments related to Competition policy within DG COMP. To facilitate this process, two discussants from DG Comp are assigned to lead the discussion and to relate the research to policy issues currently of relevance to DG Comp. Second, the seminar is designed to help identify promising new research questions that are relevant from a policy point of view. As a result the academic speaker is gaining insights into current policy issues that are in need of further research. In this way, the ESS is a two-way affair, where DG Comp benefits from the latest research results, while researcher are confronted with real policy issues.

In 2005, the CET launched a *Brown Bag Luncheon* ("BBL"). The BBL is designed for case handlers – often more junior officials – to discuss the economics of a prominent case in an informal setting. The BBL meets at irregular intervals and is restricted to DG Comp staff.

(c) Economic studies

The CET has been involved in a number of studies of relevance to DG Comp (see Appendix E for a list of studies that the CET has been following up to now). As can be seen, several of these studies are done under the control of other services, such as DG Ecfm and DG Ent, but there are also studies that are done by DG Comp (some of them are led by the CET, others by other Directorates). Given the size and mission of the CET, the input by the CET is however somewhat limited due to the considerable time needed to provide comprehensive input to the consultant (often a leading academic).

The involvement of the CET varies across these studies, ranging from identifying relevant topics of research, helping with the terms of references, and giving comments at various stages of the study, attending the kick-off, mid-term and final report meetings. Producing an academically sound and at the same time policy-relevant study is a challenge, which needs certain expertise in order to ensure that the study provides real value added for the operation of DG Comp and the Commission as a whole. Quality control is a very important issue here.

Perhaps more importantly, the CET is keen on seeing a follow-up of these studies. The reason for doing these studies is to a large extent to have an impact on policy. A study is not only done for the benefit of the academic world, or to keep parts of the European Commission at work. It is supposed to have an impact on policies.

To facilitate this link between studies (or new research) and practical policies, as well as to ensure quality, it is important to have expertise on both sides of the equation – research and policy. Given the design of the office of the CCE, members of the CET are ideally placed to make sure that studies do in fact have an impact on DG Comp's policies.

(d) External activities

There are a number of external links and activities that the CET has developed. As the mandate of the CCE states "The Chief Competition Economist is responsible for maintaining contacts with the academic world." As a result there are significant contacts between the CCE and the CET with universities, academic organizations and networks (such as the Centre for Economic Policy Research).

The CET also maintains strong links with professional organizations, such as the recently created Association of Competition Economists ("ACE") by participating in their annual event, as well as helping to organize conferences and events.

An important part of economic capacity building is the link with other antitrust agencies. Given Modernization of Antitrust, a strong network between the national antitrust agencies exists and is further being developed by the Commissioner and the Director-General. Moreover, more formal Chief Economists offices are being set up by a number of member states. Given these developments, interaction on economic analysis and methodology within the ECN is an important part of achieving a consistent policy. As a result – and building on a conference organized by the Dutch NMA in November 2004 – a working Group for Economists within the ECN is currently being set-up. This will provide a regular forum for ECN enforcers to discuss how economic analysis – in particular empirical methodologies – are used. The objective is to learn from one another, as well as to ensure a consistent approach as far as economic evidence is concerned.

As already discussed earlier, the U.S authorities are important for the EU, and vice versa. In particular, it is of value to both jurisdictions to understand and discuss economic approaches and methodologies that are used on both sides of the Atlantic. To facilitate this, the first EU/US annual bilateral meeting of economists has taken place in Brussels on October 18th 2004. This one day

meeting between economists from the FTC/DoJ and DG Comp was a forum to discuss economic analysis in the context of cases.

Finally, there is advocacy. The CCE and the CET have participated in numerous public events, conferences, symposia and panels. As such, the CCE has given some 35 speeches in 2004.

6. Operational contributions by the CET: cases, guidelines and block exemptions

As mentioned above, the mandate of the CCE extends to all areas of DG Comp, that is antitrust, merger and state aid control. In particular, the CET is to contribute towards complex cases, contribute towards guidelines and block exemptions, as well as the development of general policy instruments with an economic content.

Appendix F lists the cases that the CET has been involved in over the period September 2003 through December 2004. Note that these are all finished cases. Cases that are in the Courts are not listed.

Moreover, there has been much involvement in guidelines, block-exemptions, and working groups. Examples include the Horizontal Merger Guidelines, the Transfer Technology Block Exemption Regulation, and the Rescue and Restructuring Guidelines in the field of state aid. Currently, there are a number of important guidelines that are being discussed internally. Most, importantly there is the work surrounding the Article 82 Guidelines. As Director-General Philip Lowe has announced, he is currently planning to issue a DG Comp discussion paper this summer, outlining our current thinking on Article 82. At the same time the EAGCP antitrust subgroup will issue its Opinion on the same issue, which will also be published by DG Comp. A period of public consultation will then take place during the fall of 2005.

Another important policy issue, where the CET will need to provide substantial input on the economic side, are Non-horizontal Merger Guidelines. Vertical and conglomerate mergers have been an increasing area of activity at DG Comp, where economic analysis and empirical evidence have played a very crucial role. In order to increase transparency and legal certainty, it is therefore reasonable to explore possible guidelines in this area. As some important judgements are likely to be issued soon by the European Court, we have started an internal process to reflect upon the issues in this area. This is still rather preliminary, but it will in principle follow a similar process as the one for the Article 82 Guidelines, including an Opinion by the EAGCP merger subgroup.

As recently announced by Commissioner Kroes, the area of state aid is also undergoing a significant re-assessment process. In particular, Commissioner Kroes intends "to put the Lisbon target of 'less and better aid' right at the top of the agenda" and "will invite the College to endorse a communication setting out a strategy for delivering less and better aid. That means focussing on measures which will boost innovation, improve access to risk capital and promote research and development"¹⁸.

Finally, the CET has been involved in several DG Comp working groups. An incomplete list includes working groups on fines, on network industries, on impact indicators, and on priority setting.

7. Conclusion

This paper aims to provide a better understanding of the different contributions of economists, in particular the CET, at DG COMP. It shows that economic analysis, and thus industrial organization economists, is an important part of the practice of competition policy in Europe. This has been a trend, and is likely to continue, for a number of reasons. The new office of

the Chief Competition Economist reinforces the economic expertise in EU competition policy.

However, there are also potential drawbacks to this development. When employing economic analysis to antitrust issues, practitioners “are often faced with real world fact patterns for which the economics literature provides only limited guidance and no clear or definitive road map for obtaining the correct answers”¹⁹. As a result of this fact, economic analysis can be abused. It must be realized that indeed a sufficient amount of economic expertise is necessary, in order to assess economic arguments and methodology. Without it, abuse of economics is the likely outcome. Therefore, it is essential that sufficient capacity building in economic analysis and methodologies is undertaken, such that the value added of economic analysis is positive.

Appendix A: Organigram of DG COMP

(as of July 2004)

Appendix B

Excerpts from the Mandate of the Chief Competition Economist

Appointment and position in the organigramme of the DG

The Chief Competition Economist is appointed by the Commission at grade A2. Before the end of his mandate, he may only be removed from his post by a reasoned decision of the College.

The Chief Competition Economist reports directly to the Director General.

Tasks and role

He will have the following tasks:

- guidance on methodological issues of economics and econometrics in the application of EU competition rules,
- general guidance in individual competition cases from their early stages,
- detailed guidance in the most important competition cases involving complex economic issues, in particular those requiring sophisticated quantitative analysis. This could include the secondment of a member of his staff to work in the case team.
- contribution to the development of general policy instruments with an economic content.

When does the Chief Competition Economist (and his team) get involved in the assessment of cases?

- Director(s) may ask the Chief Competition Economist to examine a case or a specific economic issue arising in a case or in a policy issue by submitting a request to him in writing which sets out the perceived economic problems and the priority of the case. The Director-General, will decide the cases the Chief Competition Economist will examine, on the basis of a proposal from him, and having consulted the Directors concerned.
- With the agreement of the Director-General, the Chief Competition Economist may also follow a case or a policy issue at his own initiative. He will inform the Director concerned but does not need his approval.
- He may also be requested by the Director-General to give assistance in the defence of cases pending before the Community Courts.

On the above basis, the Chief Competition Economist will submit a rolling work plan to the Director-General, which will be approved by him after

consultation of Directors concerned. The rolling work plan will be reviewed every month.

Interaction with DG COMP services

The Chief Competition Economist and his staff will interact as appropriate with the other staff of the Directorate-General, in particular with those with economic expertise.

He may assign one or more members of his staff to follow a case. The tasks of his staff will be to act as a member of the case team and, where the case team and the Chief Competition Economist are in agreement, to contribute on request actively to investigations and the preparation of intermediate and final decisions. The staff of the Chief Competition Economist will focus on economic issues, in particular quantitative analysis. Within the case team the members seconded from the Chief Competition Economist's team have a specific and independent status and report directly to the Chief Competition Economist on the line they take.

When the Chief Competition Economist's team is asked to examine a case, it will have access to all information gathered by the case team. In addition, it can request the case team to obtain specific data or other information necessary for quantitative analysis. Contacts with the parties or with third parties will normally take place in the context of the meetings held by the case team and/or by the hierarchy of DG COMP with such parties. The Chief Competition Economist team will also attend the oral hearing and participate in the internal review panel debates.

Participation in the internal deliberation process

From the beginning of the case, the Chief Competition Economist may report his opinion on any case or any other issue at any time to the Director-General after having consulted the Director concerned. Where divergences arise, he must do so at the earliest possible stage.

Any opinion of the Chief Competition Economist is part of the internal deliberation process within the Competition DG. However, the Director-General for Competition may decide to make his opinion available to other Commission services. In any event, it shall not be communicated to the parties or third parties and no access shall be granted under the rules for access to file or access to documents.

The Chief Competition Economist shall attend the weekly meeting with the Commissioner in order to present his views on a case or a policy issue that he has been following. He or a member of his team may attend the weekly meeting for all other agenda points.

Interaction with other Commission services

The Chief Competition Economist's team will be invited to participate in inter-service meetings on cases in which the team has been involved taking due account of the agreed DG COMP position at that time.

Final advice of the Chief Competition Economist

In agreement with the Director-General, or at the Director-General's request, the Chief Competition Economist will provide a written opinion on a formal proposal which is to be submitted for decision to the Commissioner and which relates to a case [or policy issue] which he has followed up to the final stages.

In such cases his final advice on proposals to be submitted to the Commission will be made available to Commissioners.

Contribution to the development of economic expertise in the DG

The Chief Competition Economist is responsible for maintaining contacts with the academic world. He will organise and chair meetings of the Academic Advisory Group. He shall act as a focus for economic debate within DG COMP, in liaison with other Commission services and in association with the academic world. He shall also:

- contribute to the training plan of the DG by organising training sessions and seminars on economic issues;
- propose or give advice on studies of a general economic nature and on market monitoring.
- give his contribution to conferences, seminars and studies of a general economic nature launched by other Commission services.

Appendix C

Economic Advisory Group for Competition Policy (“EAGCP”)

| Name | University | Subgroup |
|----------------------|---|-----------|
| Clemenz, Gerhard | University of Vienna | State aid |
| Dewatripont, Mathias | Université Libre de Bruxelles | State aid |
| Gual, Jordi | University of Navarra, Barcelona | Antitrust |
| Hellwig, Martin | Max-Planck-Institut, Bonn | Antitrust |
| Ivaldi, Marc | Institut d'Economie Industrielle, Toulouse | Merger |
| Lyons, Bruce | University of East Anglia, Norwich | Merger |
| Motta, Massimo | European University Institute, Florence | State aid |
| Neven, Damien | Graduate Institute of International Studies, Lausanne | State aid |
| Polo, Michele | Bocconi University, Milano | Antitrust |
| Perrot, Anne | Conseil de la Concurrence, Paris | Antitrust |
| Rey, Patrick | Institut d'Economie Industrielle, Toulouse | Antitrust |
| Seabright, Paul | Institut d'Economie Industrielle, Toulouse | State aid |
| Schmidt, Klaus | University of Munich | Antitrust |
| Schnitzer, Monika | University of Munich | Merger |
| Stenbacka, Rune | Swedish School of Economics, Helsinki | Antitrust |
| Van Reenen, John | London School of Economics | Merger |
| Verboven, Frank | University of Louvain | Merger |
| Vettas, Nikolaos | University of Athens | Merger |
| Vives, Xavier | INSEAD, Paris | Merger |
| Zemplinerova, Alena | University of Prague | State aid |
| Buigues, Pierre | Ex-Officio Member | - |

Appendix D

Economic Seminar Series for competition policy ("ESS")

| Date | Name of speaker | Title of presentation |
|----------|---|---|
| 27/02/04 | Patrick Rey, Professor at the IDEI Toulouse | A Primer on Foreclosure |
| 23/03/04 | Luke Froeb, Director of the Bureau of Economics at the FTC | A Daubert Discipline for Merger Simulation |
| 29/04/04 | Frank Verboven, Professor at the University of Leuven | Liberalizing a distribution system: the European car market |
| 19/05/04 | Steve Salop, Professor at the Georgetown University, Washington | Competitive effects of partial ownership interests |
| 28/05/04 | Anne Perrot, Conseil de la Concurrence, Paris | Universal Service and competition |
| 16/06/04 | Damien Neven, Professor at the Graduate Institute of International Studies, Geneva | Identification of sensitive sectors in which state aids may have significant distorting effects |
| 27/07/04 | Jeffrey Church, Professor department of economics at the University of Calgary | The impact of vertical and conglomerate mergers on competition |
| 16/09/04 | Jean Tirole, Professor at the IDEI Toulouse | The analysis of tying cases: a primer |
| 05/10/04 | Bruce Lyons, Professor at the University of East Anglia (Norwich) | EC merger remedies: consequences for competition |
| 10/11/04 | William Kovacic, Professor of law at George Washington University School of Law | The uncoordinated evolution of merger control in the US and EU |
| 25/11/04 | Gregory Werden, Senior Economic Counsel at the Antitrust Division of the US Department of Justice | Recent developments in US monopoly law |

Appendix E

Economic studies that the CET has been involved in (September 2003-December 2004)

Mergers

- Synergies and dynamic efficiencies in mergers (ECFIN)
- Effects in mergers involving differentiated products (COMP)
- A critical appraisal of the simulation approach to assess the pro- and anti-competitive aspects of horizontal mergers (ENT)

Antitrust

- The strategic use of intellectual property rights and its implications for enterprise and competition policies (ENT)
- Study on a methodology for selection of criteria for priority setting and impact assessment in the antitrust field (COMP)

State Aid

- Study on methods of analysis of the impact of state aid on competition in particular on the assessment of announcements on the values of the firms (COMP)
- Ex-post analysis of the effect of rescue and restructuring aid (ENT)
- Study on methods of analysis of the impact of state aid on the conditions of competition (ECFIN)

Appendix F
Closed cases that the CET has been involved
(September 2003-December 2004)

| Case n° | | Decision |
|----------------|--|--|
| M.3191 | Philip Morris/Papastratos | Art. 6 1(b) |
| M.3248 | BAT/ETI | Referral |
| M.2978 | Lagardère/Natexis/VUP | Art. 8.2. |
| M.3280 | Air France/KLM | Art. 6.2 |
| M.3093 | INA/AIG/SNFA | No decision, case has been abandoned |
| M.3396 | Group4Falck/Securior | Art. 6(2)decision |
| M.3333 | Sony/BMG | Clearance decision |
| M.3461 | Telenor/Orange | Art. 6.1(b) |
| M.3099 | Areva/Urenco/ETC JV | Clearance decision with commitments phase II |
| M.3216 | Oracle/Peoplesoft | Art. 8.2 |
| M.3268 | Sydskraft/Graninge (Nordic Electricity) | Art. 6.1(b) |
| COMP/E/37355 | Impress/CarnaudMetalBox | Complaint withdrawn |
| COMP/E/38069 | Copper Plumbing Tubes | Art. 81 infringement, appealed |
| COMP/E/38381 | Alrosa/De Beers | (not yet finished) |
| COMP/F/39116 | Coca Cola | Art. 9 (settlement) |
| C60/1999 | French TV Case | Compatible State aid |
| C58/03 | Alstom | Compatible State aid under conditions |
| C5/2003 | MobilCom | Compatible State aid under conditions |
| C2/2003/DK | State financing of Danish public broadcaster TV2 | Compatible State aid |
| C-1303 | France Telecom | Incompatible State aid |
| CP81/2003 | West LB | Incompatible State aid |

Endnotes

¹ Lars-Hendrik Röller is Chief Competition Economist at the European Commission. Pierre A. Buigues was Advisor to the Chief Competition Economist until October 2004, and is now Professor at the Université Libre de Bruxelles in the Solvay/MBA program, at the Toulouse Business School and expert with LECG. He has been succeeded at DG COMP as of February 2004 by Oliver Stehmann. We like to thank Luke Froeb for his comments regarding the FTC. The views set forth in this paper are those of the authors and do not necessarily represent the views of the European Commission.

² See in particular, Scheffman, David T. and Mary T. Coleman (2002) "Current economic issues at the FTC" *Review of Industrial organization*, 21, 357-371, May T. Coleman, David W. Meyer and David T. Scheffman (2003) "Economic analysis of mergers at the FTC : The cruise ships mergers investigations", *Review of Industrial Organisation* 23 : 121-155, and Michael L. Katz (2002) "Recent antitrust enforcement actions by the US Department of Justice : A selective survey of economic issues" *Review of industrial organization*, 21, 373-397.

³ It turned out that Commissioner Mario Monti's stay in office was unexpectedly prolonged, as the Barroso Commission took office only on November 22, 2004.

⁴ Speech by Commissioner Mario Monti: A reformed competition policy: achievements and challenges for the future, Center for European Reform, Brussels 28 October 2004.

⁵ See, for instance, the Speeches by Commissioner Kroes "Effective Competition Policy – a key Tool for Delivering the Lisbon Strategy", Brussels, 3rd February 2005, and "Building a Competitive Europe – Competition Policy and the Relaunch of the Lisbon Strategy", Milan, 7th February, 2005.

⁶ In a speech at the Fordham Antitrust Conference in Washington on 23 October 2003, Philip Lowe stated that "... the review of Article 82, as far as we are concerned, is linked to the broader efforts we are making to improve the quality of our decisions. Our major 82 cases are good candidates in all situations for thorough internal debate and review. And, naturally, through strengthening the economic function in our own department, we will be able to enhance the review".

⁷ See also Lars-Hendrik Röller (2005) "Using economic analysis to strengthen competition policy enforcement in Europe" in European Mergers: Theory, Competition Policy and Case, Edward Elgar, forthcoming in 2005.

⁸ A defining moment for the role and effectiveness of competition policy had come with the emergence of a European Constitution, which later on has been described by Commissioner Monti as perhaps his most important achievement (see the Speech by Commissioner Mario Monti: A reformed competition policy: achievements and challenges for the future, Center for European Reform, Brussels 28 October 2004). Not only has the relative strong role of competition policy been maintained in the Draft Constitution, but one could argue that the principle of competition has gained in significance. For instance, the Draft Constitution states that "the Union shall offer its citizen an internal market where competition is free and undistorted". Competition is portrayed as the "fifth freedom". Perhaps most importantly, the direct enforcement powers of the Commission have been confirmed.

⁹ See Neven, Damien J. and Lars-Hendrik Röller, "On the Scope of Conflict in International, Merger Control," *Journal of Industry, Competition and Trade*, December 2003, Volume 3, Issue 4, pp. 235-249.

¹⁰ William J. Kolansky, "What is competition? A comparison of US and EU perspectives" *The Antitrust Bulletin*, Spring/Summer 2004, p. 29-53.

¹¹ Speech by Commissioner Mario Monti "EU Competition Policy" Fordham Annual Conference on International Antitrust Law and Policy, New York, 31 October 2002.

¹² An alternative that was also considered is an "arbitration function", where the Chief Economist's main objective would be to provide an economic view on issues where there

were diverging views between the operational Directorate and the horizontal Directorate. Therefore, the Chief Economist would have become only involved at the final stage, after the operational Directorate had finalised a draft decision and had discussed with the horizontal Directorate without reaching a consensus. The number of cases would have been limited to the most contentious ones.

¹³ Alternatively, one could have attached the CCE to directly to the Commissioner, as a member of the cabinet. Even though this would have perhaps facilitated the objective of independence, in this situation the CCE would have not been able to be closely involved in case work.

¹⁴ If the CCE was to be involved in all cases in possibly all areas (antitrust, mergers and state aid), it would have been necessary to create an economic directorate along the lines of the US model (see section 4 on comparison to the F.T.C. and DoJ).

¹⁵ However, the Director-General for Competition may decide to make his opinion available to other Commission services.

¹⁶ Approximately 200 out of the over 700 officials working at DG COMP have an economics background, where "economics" relates to all areas of economics (such as macroeconomics), as well as other related business disciplines (such as accounting). Less than 20 officials hold a PH.D. in economics, with 10 of those currently working in the CET.

¹⁷ Before September 2003, DG COMP also had an academic advisory group that met approximately three times per year, attended by three or four academics. In parallel, a "Wise Men Group" on state aid was constituted to provide external academic input. However, this "Wise Men Group" met only on an ad hoc basis and not very often.

¹⁸ Speech by Commissioner Neelie Kroes "Effective Competition Policy. A key Tool for delivering the Lisbon Strategy" EMAC open meeting of coordinators" Brussels, 3rd February 2005.

¹⁹ David S. Sibley and Ken Heyer (2003) "Selected Economic Analysis at the Antitrust Division: the year in Review", Review of Industrial Organization 23 : 95-119.