ISSN 1025-2266

European Commission
Competition

COMPETITION POLICY
NEWSLETTER

2011 > NUMBER 2

Covering
1 January to
30 April 2011

Inside:

And main developments and articles on
merger control — state aid control

Editors: Kevin Coates, Philip Kienapfel, Christof Lessenich

The Competition Policy Newsletter contains information on EU competition policy and cases.
Articles are written by staff of the Competition Directorate-General of the European Commission.
The newsletter is published three times a year. Each issue covers a four-month period:

- Issue 1: from 1 September to 31 December of the previous year
- Issue 2: from 1 January to 30 April.
- Issue 3: from 1 May to 31 August.

The electronic version of this newsletter is available on http://ec.europa.eu/competition/publications/cpn/
More information on the European Union is available on the Internet (http://europa.eu).

Cataloguing data can be found at the end of this publication.

Luxembourg: Publications Office of the European Union, 2012

Printed in Luxembourg

PRINTED ON RECYCLED PAPER

European Commission

Contents

The Consumer detergents cartel

by Elina Laurinen ([1])

Introduction

On 13 April 2011, the Commission adopted a cartel settlement decision prohibition decision against three major detergent manufacturers: Henkel, Unilever and Procter & Gamble. The Decision finds that they had operated a single and continuous cartel on washing powder. The Commission imposed fines of EUR 315,2 million for infringing Article 101 of the TFEU and Article 53 of the EEA Agreement. This was the third cartel case in which the Commission applied the settlement procedure.

The Decision is addressed to the following undertakings: Henkel AG & Co. KGaA ("Henkel"), The Procter & Gamble Company, Procter & Gamble International S.à.r.l ("Procter & Gamble"), Unilever PLC and Unilever NV ("Unilever").

The decision concerns a single and continuous infringement at European level and covering eight Member States: Belgium, France, Germany, Greece, Italy, Portugal, Spain and the Netherlands. The anticompetitive conduct took place from 7 January 2002 through 8 March 2005.

The settlement procedure ([2]) introduced in 2008 has so far been applied in five Commission cartel decisions. The first were in the DRAMS case (19 May 2010) and the Animal Feed case (20 July 2010). As in the Consumer Detergents case, a full settlement was achieved with all parties in the DRAMS case, while the Animal Feed case was a "hybrid" case, where a normal decision was adopted against one party which finally decided not to settle. Another full settlement case was the CRT Glass case, (decision adopted 19 October 2011). The most recent case was the Refrigeration Compressors case, in which the decision was adopted on 7 December 2011. This was also a full cartel settlement decision whereby settlement was achieved with all parties.

([1]) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the author.

([2]) Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases (OJ L 171, 1.7.2008, p. 3) and Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases ("The Settlement Notice", Official Journal C 167, 2.7.2008, p. 1–6).

Products concerned

The single and continuous infringement concerns heavy duty laundry detergent powders intended for machine washing and sold to consumers ("HDD low suds powder"). These are powder detergents designed for the bulk of automatic laundry washing by consumers and they are sold in cartons and bags. At the time of the infringement these products represented the largest category of laundry detergents.

Procedure

The Commission's investigation in this case started following an immunity application lodged by Henkel under the Commission notice on immunity from fines and reduction of fines in cartel cases ([3]) ("Leniency Notice"). The Commission obtained further evidence from inspections that took place in June 2008 at the premises of a number of detergent manufacturers, including Procter & Gamble and Unilever. In April 2009, further inspections were conducted at the premises of Unilever. Following these inspections, the Commission received leniency applications from Procter & Gamble and Unilever.

Settlement discussions started in June 2010 after all the companies had indicated that they were prepared to engage in such discussions. Subsequently, in January 2011, they all introduced formal settlement submissions in which they clearly and unequivocally acknowledged their respective liability for the infringement. Subsequently, on 9 February 2011, the Commission adopted a Statement of Objections reflecting the parties' submissions. All the parties confirmed that the content of the Statement of Objections reflected their submissions and they remained interested in the settlement procedure. The Commission adopted the Decision on 13 April 2011. This decision has not been appealed and has therefore become final.

The cartel

The infringing behaviour aimed to stabilise market positions and coordinate prices and was therefore found to have the object of restricting competition.

The infringement was connected to the implementation of an environmental initiative targeting

([3]) OJ C 298, 8.12.2006, p. 17.

dosage and weight reduction of HDD low suds powder and corresponding packaging material (the "AISE initiative"). Although this initiative neither foresaw nor necessitated price discussions, the industry agreements and discussions on the occasion of the initiative led to anticompetitive conduct among Henkel, Procter & Gamble and Unilever.

Henkel, Procter & Gamble and Unilever sought to achieve market stabilisation by ensuring that none of them would use the environmental initiative to gain competitive advantage over the others, and that market positions would remain at the same level as prior to actions taken within the environmental initiative (in particular the compaction of products).

As regards prices, Henkel, Procter & Gamble and Unilever engaged in the following anticompetitive practices:

- First, they agreed on indirect price increases. In practice, the parties agreed to keep the price unchanged during the implementation of the different phases of the environmental initiative. In particular, the parties agreed not to decrease prices when products were "compacted" (when the weight of the products was reduced), when the product quantity was downsized (when the product volume was reduced) or on some occasions when they collectively reduced the number of scoops (wash loads) per package.

- Second, they agreed to restrict their promotional activity, which is also considered as a form of price collusion. In particular, the parties agreed to exclude specific types of promotions while different phases of the environmental initiative were implemented.

- Third, the parties agreed on a direct price increase towards the end of 2004, which was targeted at specific markets, to be implemented in the order of market leadership; i.e. the market leader would implement first and the others would follow.

- In addition, the parties exchanged sensitive information on prices and trading conditions, thereby facilitating the various forms of price collusion.

Fines

In setting the fines in this case, the Commission applied the 2006 Guidelines on Fines. [4] It also applied the provisions of the 2006 Leniency Notice [5] and the Settlement Notice [6].

The basic amounts of the fine for each party result from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of the undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement. The additional amount is calculated as a percentage between 15% and 25% of the value of the undertaking's relevant sales, irrespective of duration.

In this case the variable amount of the fine was set at 16% of the value of the undertakings' relevant sales. The relevant value of sales is the undertaking's retail sales of HDD low suds powder generated in the eight Member States covered by the infringement: Belgium, France, Germany, Greece, Italy, Portugal, Spain and The Netherlands. This amount was multiplied by the number of years of the duration of the infringement. The percentage to be applied for the purposes of calculating the additional amount was also set at 16%.

No aggravating or mitigating circumstances were found applicable in this case. A specific increase of the basic amount of the fines was applied for one of the undertakings, based on the size of the undertaking concerned. The 10% turnover limit provided in Article 23(2) of Regulation (EC) No 1/2003 was not reached in this case.

Application of the Leniency Notice and the Settlement Notice

The 2002 Leniency Notice was applied in this case. Henkel was granted full immunity from fines, Procter & Gamble was granted a reduction of 50% and Unilever was granted a reduction of 25%.

According to Point 32 of the Settlement Notice, the amount of the fine to be imposed on Procter & Gamble and Unilever was further reduced by 10%. The reduction of the fine granted to them for settlement was added to their leniency reward.

(4) OJ C 210, 1.9.2006, p. 2.
(5) OJ C 298, 8.12.2006, p. 17.
(6) OJ C 167, 2.7.2008, p. 1.

Merger: main developments between 1 January and 30 April 2011

by John Gatti

Introduction

The Commission received 93 notifications between 1 January and 30 April 2010. This is a slight increase over the previous four months and over the corresponding period of 2009. The Commission adopted a total of 84 first phase decisions, of which 82 were unconditional clearances. Decisions adopted under the simplified procedure accounted for 60 of the first phase total, or 70 %. Two first phase transactions were cleared conditionally. One case was withdrawn in Phase I. There was one prohibition decision adopted under Article 8 after an in-depth second phase investigation. Five decisions were taken under Article 4(4) to refer a case with a Union dimension back to a Member State. Of these, four were complete referrals and one was for a partial referral. Member States accepted eight requests from parties for cases to be referred to the Commission and refused none under Article 4(5). Finally, the Commission made one complete referral to a Member State, following a request made under Article 9.

Summaries of decisions taken in the period

Summaries of decisions taken under Article 6(2)

GDF Suez/International Power

The European Commission cleared on 26 January the proposed acquisition of International Power plc of the United Kingdom by GDF Suez S.A. of France, both active in the energy sector. The regulatory clearance is conditional on the divestment of International Power's shareholding in T-Power, the owner of a Belgian power plant due to start production in 2011, and the transfer to third parties of the operation and maintenance agreement of the T-Power plant.

GDF Suez has activities along the entire energy chain all around the world. International Power is an international operator of power generation facilities with activities in North America, Europe, the Middle East, Australia and Asia.

The Commission's investigation showed the absence of competition concerns on most of the relevant markets due to the minor horizontal overlaps between the parties' activities. The only exception was the two firms' operations on the Belgian market for the generation and wholesale of electricity. There, the Commission found that the proposed transaction, as initially notified, would have raised concerns, since it could have enabled GDF Suez to use sensitive information regarding the T-Power plant and its discretion over the operation of the plant to raise electricity prices in the Belgian wholesale market and to put its competitor, RWE Essent, at a competitive disadvantage on this market. Consequently, the proposed transaction would have further strengthened the position of the market leader GDF Suez, reducing the gains of market liberalisation. To resolve these competition concerns, the parties proposed to divest International Power's shareholding of T-Power and to transfer to third parties the operation and maintenance agreement of the T-Power plant.

In view of the remedies proposed, the Commission concluded that the proposed transaction, as modified, would not significantly reduce competition in all or part of the European Economic Area (EEA). This decision is conditional on full compliance with the commitments.

The Commission cooperated closely with the Belgian Competition Authority throughout the investigation. On 20 December 2010, the Belgian Competition Authority requested the Commission to refer to it the examination of the proposed transaction pursuant to Article 9 (2)(a) of the Merger Regulation. However, in the light of the commitments offered by the parties, the Belgian Competition Authority withdrew its referral request on 19 January 2011.

Intel/McAfee

Also on 26 January 2011, the European Commission approved the proposed acquisition of McAfee, a vendor of information technology security, by Intel, both of the US. The approval is conditional on a set of commitments ensuring fair competition between the parties and their competitors in the field of computer security, a growing concern due to the exponential rise in malware such as viruses. The Commission was concerned that rival IT security products could be excluded from the marketplace, given Intel's strong presence in the world markets for computer chips and chipsets. In particular, the Commission was worried about the high likelihood that the merged entity would embed its own security solutions into its chips and chipsets. To alleviate those concerns, Intel committed itself to ensuring the interoperability of the merged entity's products with those of competitors.

Intel is the leading manufacturer of central processing units ('CPUs'), the core chip of a computer, and chipsets, which are used in industries such as computing and communications, and are among the most important components of computers. Intel also develops platforms of digital computing technologies, which combine various types of hardware and software.

McAfee is a security technology company active in the design and development of security products and services focused on ensuring that internet-connected devices are protected from malicious content.

Intel and McAfee are active in neighbouring and complementary product markets. The merger's effects, therefore, were measured not in terms of overlaps of products and services, but rather in terms of conglomerate effects. In addition, security solutions vendors need, *inter alia*, access to specific information regarding CPUs to be able to develop new solutions.

The Commission's investigation identified serious competition concerns regarding the possible bundling of CPUs and chipsets, on the one hand, with McAfee's security solutions, on the other.

In particular, the Commission was concerned that, as a result of the proposed transaction as initially notified, other companies' security solutions might have suffered from a lack of interoperability with Intel CPUs and chipsets or from a technical tying between the latter and McAfee's security solutions. The Commission was also concerned about possible effects on Intel's competitors if McAfee solutions were no longer compatible with non-Intel CPUs and chipsets.

In order to address the Commission's concerns, Intel committed itself, among other things, to ensuring that vendors of rival security solutions would have access to all necessary information to use functionalities of Intel's CPUs and chipsets in the same way as functionalities used by McAfee. Intel also made a commitment not to actively impede competitors' security solutions from running on Intel CPUs or chipsets. Finally, Intel will avoid hampering the operation of McAfee's security solutions when running on personal computers containing CPUs or chipsets sold by Intel's competitors.

The Commission concluded that the commitments were suitable to remove the competition concerns identified while preserving the efficiencies of the merger, because they are designed to maintain interoperability between the merged entity's products and those of their competitors, thereby ensuring competition on an equal footing between the parties and their competitors.

Summaries of cases taken under Article 8

Olympic Air/Aegean Airlines

The European Commission has prohibited on 26 January the proposed merger between Aegean Airlines and Olympic Air, as it would have resulted in a quasi-monopoly on the Greek air transport market. This would have led to higher fares for four out of six million Greek and European consumers travelling on routes to and from Athens each year. Together, the two carriers control more than 90 % of the Greek domestic air transport market and the Commission's investigation showed no realistic prospects that a new airline of a sufficient size would enter the routes and restrain the merged entity's pricing. The companies offered to cede take-off and landing slots at Greek airports, but Greek airports do not suffer from the congestion observed at other European airports in previous mergers or alliances.

Aegean Airlines is a publicly-listed company. Olympic Air is part of the bigger Olympic group of companies, themselves owned by Greece's Marfin Investment Group.

Aegean provides scheduled and charter air passenger transport as well as cargo transport in Greece and on international short-haul routes. It operates from Athens International Airport and serves around 45 short-haul destinations, including the Greek islands. It has been part of the Star Alliance since 2010.

Olympic consists of three legal entities: (i) Olympic Air, active since 1 October 2009, following the privatisation of the former Olympic Airlines; (ii) Olympic Handling, which offers a full range of ground handling services at 39 Greek airports, serving both Olympic Air and third party airlines; and (iii) Olympic Engineering, which is currently in start-up mode and is active in the provision of maintenance, repair and overhaul services.

Both Aegean and Olympic Air operate on routes covered by public service obligations (PSOs). Aegean has PSOs on four routes. Olympic has PSOs on 13 routes.

As with previous airline mergers, the Commission analysed the combined effects of the proposed merger on the individual routes on which both companies operate. It received views and complaints from a large number of market participants in Greece and internationally, including consumer associations, public authorities, travel agents, airport operators, ferry operators and other airlines.

The proposed merger would have led to a quasi-monopoly between Athens and Thessaloniki, the country's second-biggest city, and between Athens and eight island airports, namely Herakleion and Chania, both in Crete, Rhodes, Santorini, Mytilini, Chios, Kos and Samos. None of these are routes covered by public service obligations.

The investigation showed that generally, ferry services are not a sufficiently close substitute for air services and would not constrain the merged entity's pricing behaviour post-merger. Their travel times are much longer and their frequencies lower. The only domestic route where ferry services were considered a close substitute for air services is Athens-Mykonos, for which the Commission concluded there were no competition problems. The market investigation did not identify any significant competition concerns in relation to the short haul international routes operated by the parties

The market investigation also showed that there was no prospect that a new player would enter the Greek market after the merger and challenge the new entity on a scale sufficient to constrain the combined entity's behaviour on domestic flights to and from Athens.

The companies offered to release slots at Athens and other Greek airports, as well as other remedies, such as access to their frequent flyer programmes and interlining agreements. However, the nature and the scope of these remedies were insufficient to ensure that customers would not be harmed by the transaction. This is notably because the main problem in this case — unlike previous airline cases — was not the availability of slots, which are available at Athens airport and at most Greek airports. The market test also showed that the remedies were unlikely to entice a credible new player to create a base at Athens airport and exert a credible competitive constraint on the affected routes.

The Commission, therefore, concluded that the concentration '*would significantly impede effective competition in the internal market or a substantial part of it*' (Art 2.3 of the Merger Regulation) and prohibited the transaction. The elimination of competition which would have been associated with the merger would have been harmful for Greek customers.

Summaries of cases taken under Article 9

Thomas Cook/Travel Business of Midlands Cooperative Society

On 7 January 2011, following a request by the United Kingdom's Office of Fair Trading (OFT),the European Commission referred the assessment of the proposed acquisition of the travel businesses of Cooperative Group (CGL) and of Midlands Cooperative Society (Midlands) by Thomas Cook to the UK authorities. CGL and Midlands are active in the UK only. After a preliminary investigation, the Commission found that the proposed concentration threatens to give rise to competition concerns in the market for holiday distribution and in particular the distribution of package holidays in the UK.

Thomas Cook is active across Europe as a leisure tour operator and a distributor of travel services via its travel agency network. It is one of the two major integrated leisure travel companies in the UK, the other being TUI Travel.

The travel businesses of CGL and Midlands are focused on the retail distribution of holiday products in the UK. While CGL has high street travel agencies across the country, the agencies of Midlands are mainly located in the Midlands regions.

The OFT requested the Commission to refer the notified concentration for review to the UK authorities under Article 9 of the EU Merger Regulation. It was concerned that the transaction threatened to affect competition significantly in the distribution of holidays via retail travel agency outlets in the UK and a number of affected UK regions.

The Commission's preliminary investigation confirmed that the proposed transaction raised competition concerns in a distinct market which was at most UK-wide. Moreover, the Commission considers that the UK competition authorities are well placed to investigate the effect of the transaction on the national market or parts of this market. As CGL and Midlands are not active in other Member States, any possible competition problems are confined to the UK. The Commission therefore decided to refer the case in its entirety to the UK competition authorities for review.

Intel/McAfee ([1])

by Jocelyn Guitton, Adrian Lübbert, Isabelle Neale-Besson and Jérôme Vidal ([2]) (Unit C5)

1. Introduction

On 26 January 2011 the European Commission approved the proposed acquisition of McAfee by Intel, both of the US. The approval is conditional upon a set of commitments ensuring fair competition in the sector of computer security. Computer security is a growing concern due to the exponential rise in the number of malware ([3]) present on the internet, as well as their possible consequences, in particular for large enterprises and governments.

The case raised technically complex issues and triggered negative reactions from third parties in the IT sector, including competitors and customers of both Intel and McAfee. However, following an extensive investigation into the security software market, a conditional clearance decision was reached at the end of the first phase review.

2. A conglomerate case

Intel is the leading producer of central processing units ("CPU") and chipsets. The CPU is the device within an electronic device (e.g. a computer) that interprets and executes instructions. It is the computer's 'brain'. CPU performance is a key component in the overall performance of a computer. A CPU is also the component which represents the most significant proportion of a computer's cost. A chipset refers to a designated group of integrated circuits. Its main task is to connect the CPU to other components, such as the main memory, graphics controllers and peripheral devices. Chipsets are generally designed to work with a specific family or generation of CPUs.

McAfee is a security technology company active in the design and development of IT security products and services. IT security solutions pursue two main objectives: (1) detection of and defence against incoming threats and (2) control and certification of authorised users and software. McAfee supplies security solutions for servers, desktops and laptop computers, handheld voice and data phones, and other devices that are connected to corporate systems and networks and home PCs.

The products of Intel and McAfee are closely related from both a technical and a commercial point of view. On the technology side, for reasons of security and speed, security software interacts directly with the hardware level (CPU, chipset), perhaps to an even greater extent than other software. Security software vendors ("SSVs") therefore need access to up-to-date, accurate and complete interface information on new CPUs and chipsets in order to be able to develop new security software. Good interface information is also required in order to optimise the software with regard to performance and power consumption, since the running of security processes may significantly increase the workload on the CPU and affect the available performance of the computer. Moreover, certain features of IT security may be more effectively enabled in hardware than in software. For instance, a user's digital signature, required for encryption and authentication, can be stored and generated more securely in hardware.

On the commercial side, every endpoint working on a Windows/x86 ([4]) platform needs in principle some form of security software in order to be protected against incoming threats. Moreover, the same intermediaries, such as Original Equipment Manufacturers ("OEM") or Value Added Resellers in the enterprise market, may be involved in the decisions regarding which CPUs to use and which security solution to install.

Given the technological and commercial context, the merger's effects would be conglomerate, rather than horizontal overlaps of products and services.

In most circumstances, conglomerate mergers do not give rise to competition problems. However, in some cases - particularly where, as in the present case, the merged entity enjoys strong market power in one of the markets concerned - a conglomerate

([1]) Commission Decision n°COMP/M.5984 – *Intel/McAfee*, 26 January 2011.

([2]) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

([3]) Malware, short for malicious software, is a software designed to secretly access a computer system without the owner's informed consent.

([4]) The architecture is about the way to organise the connections between transistors within the CPU. There are two main categories of computer CPUs which are based on two different conceptions of the set of instructions: Complex Instruction Set Computer ("CISC") and Reduced Instruction Set Computer ("RISC"). Intel's x86 instructions architecture, which is built on the basis of a CISC architecture, is the most widely used in today's computer industry.

merger may create possibilities for bundling or tying practices or other exclusionary practices. While companies often engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways, these practices may in certain circumstances lead to a reduction in the ability or incentive of actual or potential rivals' to compete and, consequently, this may reduce the competitive pressure on the merged entity.

3. The Commission's assessment

3.1. The markets

The Commission's phase I market investigation confirmed the existence of a separate market for x86 architecture CPUs as identified in the 2009 Commission Intel antitrust decision ([5]). While it might be appropriate to further segment x86 CPUs according to the type of platforms (servers, desktops and notebooks) or the type of devices (PCs, handheld devices and consumer electronics), the question of further segmentation was left open since the conclusions of the assessment would remain unchanged. The Commission concluded that the relevant x86 CPU market has a worldwide geographic scope.

Chipsets could constitute a distinct product market from other hardware components, in particular CPUs, since they can be bought and sold independently. The market definition was left open since the conclusions of the assessment would remain unchanged. The Commission considered that the market for chipsets was worldwide.

The market investigation largely confirmed that the IDC segmentation of the security solution market, previously used in a decision ([6]), was appropriate and that endpoint security could be regarded as a distinct product market. It also suggested that endpoint security may have to be further segmented according to the type of end-user, that is to say endpoint security for consumers and endpoint security for enterprises. The Commission left open the exact definition of the relevant product markets for endpoint security, as the conclusions of the assessment would be the same. The Commission concluded that the endpoint security markets had a worldwide or at least EEA-wide geographic scope.

3.2. Competitive landscape

While the x86 architecture with Intel and AMD as the main CPU producers remains pervasive for servers, desktops, laptops and netbooks, this architecture faces some competition in netbooks and strong competition in handhelds from ARM, a company that has developed a RISC architecture used in most mobile devices such as smartphones. Currently, the x86 architecture is also facing a limited degree of competition from graphic cards manufacturers (e.g. Nvidia). A GP-GPU (General Purpose Graphic Processing Unit) can to a certain extent perform the same functions as a standard CPU. In particular, a GP-GPU can handle a larger number of (parallel) computing tasks and it may reduce the demand for high-end CPUs as a result. In the competitive landscape in the overall x86 CPU market, Intel occupies a prominent position, with more than 80% of the market share of the volume shipped. AMD holds a much lower share of the market, while Via's position is very limited in terms of volume shipped.

As regards chipsets, a radical shift took place in 2008-2009 as a result of market consolidation and technological developments. Consequently, the number of market participants that are shipping significant volumes of chipsets has decreased from seven in 2005, to three in the current market situation (Intel, AMD and Nvidia). Intel's market share ranges between 70 and 80%.

The market investigation confirmed the findings of the Commission's 2009 Intel antitrust decision, in particular the Commission's analysis of barriers to expansion and entry, which are still high. ([7])

McAfee is the number two player in the security software market behind Symantec and ahead of Trend Micro. These three companies are the only ones active in both endpoint security for consumers and endpoint security for enterprises. Only these three companies are also active to a commercially significant extent in the OEM channel, that is to say they have agreements with OEMs to pre-install security software for a free trial on the computers shipped by the OEMs. Apart from the three big vendors, there is a large number of smaller, often regional, endpoint SSVs such as Kaspersky, F-Secure, AVG, Avast, Avira, or Panda Security. In the consumer space, many of those smaller players operate on the basis of a freemium business model, that is to say they offer basic security software for

([5]) See paragraphs 808 and 813.

([6]) Commission decision n°COMP/M.3697 – Symantec / Veritas, 15 March 2005, paragraph 10. In that decision, the backup and archive software, a sub-category of the overall segment of storage software, has been identified as a relevant product market.

([7]) Barriers to entry and expansion identified are: (i) the significant sunk costs in research and development, (ii) the significant sunk costs in plant production and (iii) the resulting significant economies of scale which mean that the minimum efficient scale is high relative to overall market demand.

free and obtain their revenues from more sophisticated security products.

According to the Commission's market investigation, barriers to entry appear to be lower on the market for security software. In the consumer market, in particular, it appears feasible to become either a specialist niche player or an imitator, employing the freemium model. In contrast, barriers to expansion in the commercially important areas, that is to say both the enterprise and the consumer segment, seem to be significant. Economies of scale are essential in order to support the R&D and infrastructure necessary to detect new malware and update the software accordingly. The three leading SSVs - Symantec, McAfee and Trend Micro - account for a large share of the industry's R&D investments and they operate extensive global threat detection networks.

3.3. Competition problems

The Commission's concerns related to three possible types of practices, namely (i) degradation of interoperability between Intel's hardware and security solutions on the one hand and the products of competitors on the other, (ii) technical bundling/tying ("technical tying") and (iii) commercial bundling ("commercial bundling").

Interoperability can be defined as the possibility for software and hardware to interact ([8]). Degradation can be defined as positive or negative discrimination (1) to the detriment of SSVs competing with McAfee when it comes to achieving interoperability with Intel CPUs or chipsets or (2) to the detriment of CPU or chipset producers competing with Intel when it comes to achieving interoperability with McAfee. It can take several forms, such as non-availability of certain hardware instructions or functions, delayed or incomplete disclosure of support tools and of information on hardware instruction sets and architecture.

Technical tying consists in the technical combination of products of both parties in a persistent form, that is to say in the embedding of security solutions in Intel's CPU and chipsets platforms. In order to prevent any foreclosure on the security solutions market as a result of embedding security software into Intel's hardware, it would not necessarily be sufficient to ensure interoperability between the solutions developed by McAfee competitors and Intel's hardware. Indeed, the persistence of embedded software solutions from McAfee's software into Intel hardware could interfere with the functioning of competitors' security solutions.

Commercial bundling could take two forms. Pure bundling would mean that CPUs and security software are sold exclusively together, while mixed bundling would mean that either the CPUs or the security software would be offered at a discount when customers buy both products from Intel/McAfee.

Such business strategies could aim to leverage Intel's market power in the CPU and chipset markets into the endpoint security markets, leading to significant weakening and possible exit of McAfee's main competitors within the next two to five years. An Intel/McAfee security monoculture could ensue, reducing competition and innovation in the endpoint security markets with significant consequences for the overall security of computing devices in general.

The Commission's assessment was based on submissions made by several complainants, submissions made by third party market observers and internal documents of both Intel and McAfee obtained in the course of the investigation. The Commission found it likely that Intel would have the ability and incentives to hamper interoperability and/or to technically tie, and that the negative effects of such practices on the relevant markets would be significant. In contrast, the Commission concluded that while the investigation had revealed a certain ability on the part of Intel to commercially bundle its hardware solutions with McAfee's security software solutions, the incentives to do so seemed to be limited. Possible antitrust enforcement would also have a certain deterrent effect. Moreover, the foreseeable effects of such a strategy, taken in isolation, would probably remain limited.

4. The commitments

It should be recalled that divestitures or the removal of links with competitors are the preferred remedy to eliminate competition concerns. In the conglomerate case at stake, however, non-structural remedies appeared to be best suited to address the concerns raised. Indeed, this was a case where one of the main concerns was that control of key technology and possibly related IP rights may have led to foreclosure of competitors whose products need

([8]) A more general definition is given in the software copyright directive: *"The function of a computer program is to communicate and work together with other components of a computer system and with users and, for this purpose, a logical and, where appropriate, physical interconnection and interaction is required to permit all elements of software and hardware to work with other software and hardware and with users in all the ways in which they are intended to function. The parts of the program which provide for such interconnection and interaction between elements of software and hardware are generally known as "interfaces". This functional interconnection and interaction is generally known as "interoperability"; such interoperability can be defined as the ability to exchange information and mutually to use the information which has been exchanged*": http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:111:0016:01:EN:HTML to interoperate with this technology on an equal footing. In these circumstances, commitments to grant competitors access to the necessary information may eliminate the competition concerns around interoperability. In addition, as regards technical tying, SSVs need protection from practices by which Intel would leverage its dominant position into the security solutions market and hinder SSVs from offering their products.

Commercial bundling did not – in isolation – give rise to competition concerns. As Intel proposed adequate remedies to address the competition concerns around interoperability and technical tying, the Commission considered that it was not necessary for Intel to propose remedies for commercial bundling.

In order to address the Commission's competition concerns (interoperability degradation and technical tying), Intel undertook, among other things, to ensure on an ongoing basis and in a timely manner that instructions and interoperability information for new functionalities in Intel CPUs and chipsets would be documented and available for use by independent SSVs on a royalty-free basis.

Intel also committed not to actively impede competitors' security solutions from running on Intel's CPUs or chipsets. In particular, Intel committed to a mechanism to ensure that tied security could be disabled by OEMs and would not interfere with the performance of solutions provided by McAfee competitors. This means that – as opposed to a full or partial prohibition to technically tie or an obligation to effectively replace tied security – OEMs would have at least the option to replace tied security with security solutions provided by independent SSVs instead. The Commission considered that this commitment was proportionate insofar as it did not prevent Intel/McAfee from offering new combined and innovative products on the market, but nevertheless contributed to avoiding the risk of monoculture and ensuring continued competition and innovation amongst SSVs.

These 5-year commitments will be enforced via a monitoring trustee ([9]) and a dispute settlement mechanism, including fast-track arbitration.

Lastly, while parts of these commitments will need to be implemented in practice via agreements, the terms and conditions of which have not yet formed an integral part of the text of the commitments, Intel committed to a structured process for the Commission's approval of the standard texts for license and warranty agreements.

The Commission concluded that the commitments were suitable to remove the competition concerns identified while preserving the efficiencies of the merger. The commitments were designed to maintain interoperability between the merged entity's products and those of their rivals, thereby ensuring competition on an equal footing between the parties and their competitors.

5. The cooperation with the U.S. Federal Trade Commission ("FTC")

The US FTC also reviewed the Intel/McAfee merger and cleared it without remedies at the end of the phase I investigation on 20 December 2010. The Commission and the FTC cooperated during the respective reviews. The cooperation was close and conducted in an atmosphere of trust and mutual assistance. While the procedures and processes are different in the two jurisdictions, the Commission and the FTC essentially reached a similar outcome, namely an early approval of the transaction.

([9]) Mr. Olli-Pekka Kallasvuo, former CEO of Nokia, has been appointed as Monitoring Trustee.

State aid: main developments between 1 January and 30 April 2011

by Alessandra Forzano and Erika Lofquist [1]

Policy developments

On 28 January the Commission published a guide to help public authorities understand how Member States may finance services of general interest in compliance with State aid rules. 'The Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest', states clearly that the rules are not about imposing a particular model for organising public services, but about ensuring that the funding provided does not go beyond what is necessary.

The guide addresses questions raised by recent Court judgments, the work of Member States and the Commission within the Social Protection Committee and the Commission services' on-going dialogue with public authorities, organisations representing service users and providers, the European Parliament and other stakeholders.

On 23 March the Commission also adopted a Communication on the revision of European Union State aid rules on Services of General Economic Interest (SGEI) and a report on their application. These rules, also known as the 2005 post-Altmark package, have improved legal certainty for Member States and for service providers [2]. The revision of the SGEI package shows, nevertheless, that certain aspects would gain from further clarification and the rules from further simplification for small amounts of aid as well as for compensation for social services.

The Commission proposes:

- to clarify a number of key concepts, for instance, regarding the distinction the Treaty and the jurisprudence of the Court apply between economic and non-economic activities or the limits Member States have to respect when defining an activity as a service of general economic interest;
- to offer a more diversified and proportionate approach to different types of public services: one element of this strategy could be to simplify the application of the rules for certain types of small-scale public services of a local nature with a limited impact on trade between Member States and for certain social services. At the same time, the Commission could take more account of efficiency and competition considerations for large-scale commercial services, with a clear EU-wide dimension.

In the first quarter of 2011, the Commission also launched public consultations on the EU Emission Trading Scheme (ETS), on regional airports and on public funding to broadband networks.

Cases adopted [3]

Decisions taken under Article 106 TFEU: services of general economic interest

Post Office Limited: Continuation of network subsidy payment and working capital facility

On 23 March, the Commission authorised £180 million (€212 million) of public assistance to the UK Post Office Limited (POL) for the funding of its network of post offices during one year starting 1 April 2011 [4]. The Commission also authorised the continuation, over the same period, of existing loan facilities funding the provision of cash services at post office counters, necessary for POL to continue carrying out services of general economic interest entrusted to it by the UK Government.

POL is a company incorporated under UK private commercial law in 2001 and a subsidiary company of Royal Mail Group plc, and it operates a nationwide network of around 11.500 post office counter outlets. These outlets provide over-the-counter access to social benefit payments, basic banking services and other services in the UK, and act as focal points for the communities they serve.

The UK authorities notified the terms of the Post Office Card Account (POCA) contract signed between POL and the Department of Work and Pensions (DWP) on 5 March 2009. The POCA is a basic current account run by POL on behalf of DWP,

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors

(2) Communication of the Commission- Reform of the EU State Aid Rules on Services of General Economic Interest

(3) This is only a selection of the cases adopted in the period under review.

(4) N 508/2010

used for paying social benefits to people who do not have any other bank account.

The Commission assessed all the measures under its framework on public service compensation and under Annex I of the Postal Directive as amended in 2008 and concluded that the aid is compatible with Article 106(2) of the Treaty on the Functioning of the European Union (TFEU) rules because it does not overcompensate the net costs of the important public service tasks entrusted to POL, and so it does not give rise to any unfair competitive advantage.

Broadcasting

Danish radio channel FM4

On 23 March the Commission authorised Denmark's plans to establish a new public service radio, channel FM4, to increase competition on the country's radio market for public service programming by supporting the creation of a new channel. (5) The Danish public service radio market is currently dominated by DR, with an audience share of almost 80%.

The Commission assessed the project under its Communication on the application of the State aid rules to public service broadcasting and found that the public service remit of the future broadcaster was well defined and that adequate mechanisms were in place to ensure that the provider of the service would not receive overcompensation. Moreover, the operator of the new channel will be appointed by an open tender. The contract will run for eight years, from November 2011 to October 2019. The annual budget, funded by the Government, is up to DKK 100 million (around € 13.4 million). The contract award criteria will be the quality of the proposed business plan, the programme profile and the amount of funding requested. The Commission therefore concluded that the providers' public service remit is clearly defined, that the selection process is conducted through an open tender procedure, and that there are sufficient safeguards to avoid overcompensation. The measure is therefore compatible in accordance with Article 106 (2) TFEU.

State funding and restructuring of TV2/Denmark

On 20 April the Commission adopted two decisions approving the funding mechanism that was in place for the Danish broadcaster TV2 between 1995 and 2002. (6)

The first decision concluded that state financing received during the period 1995-2002 to compensate for public service obligations was necessary and proportionate, according to the EU rules on State funding for public broadcasters in force at that time. The decision replaces a previous decision of the Commission (2004) declaring the aid illegal and ordering recovery of DKK 628 million (around € 84 million), which was annulled by the Court in 2008, as well as a Commission decision authorising a recapitalisation of TV2, which was set aside by the Court in 2009.

The second decision authorises restructuring aid for TV2, which was notified to the Commission and into which it opened an in-depth investigation in July 2009. The Commission considered that the notified restructuring plan would restore the broadcaster's long-term viability, in particular through a new business model enabling the company to levy subscription payments for its main public service channel as of 2012. To compensate for distortions of competition, the government proposed that TV2 would not open new channels. This should be valid either until the end of the restructuring period on 31.12.2012, or at the very least until the start of subscription payments. Denmark has also undertaken to ensure that the capital structure of TV2 is benchmarked to that of comparable media companies, once the new business model is in place. As the restructuring is bearing fruit, all existing aid measures must be repealed with effect from the date of this decision and further aid that had been notified to the Commission must not be implemented. On the basis of these conditions, the Commission considers that the restructuring plan complies with the rescue and restructuring aid guidelines.

Decisions taken under Article 107(1)

Amortisation of financial goodwill for acquisitions of foreign targets – Spain

On 3 March the Commission requested Spain to abolish a 2002 provision in its corporate tax law that allows Spanish companies to amortise 'financial goodwill' deriving from acquisitions of shareholdings in companies in third countries (7).

Amortising goodwill is generally allowed in full mergers and cannot discriminate between national and foreign firms. It consists in the write off, over a period of time, of the 'excess' price paid for the acquisition of a business compared with the market value of the assets composing it.

The Spanish provision allowed for the amortisation of the financial goodwill (difference between the cost of the shares and the market value of the target company's assets) in the acquisition of

(5) SA.32019

(6) C 2/2003 and C 19/2009

(7) SA.22309

shareholdings in foreign companies. This is a clear exception from the general Spanish tax system in that it allows the amortisation of goodwill even where the acquiring and the acquired companies are not combined into a single business entity. The provision was the subject of complaints and questions from Members of the European Parliament. This follows and closes an investigation which had already resulted in a decision, in 2009, concluding that the scheme amounted to illegal aid as regards acquisitions of shareholdings in other EU countries [8].

The Commission asked Spain to repeal the provision concerning acquisitions outside the EU and to recover any aid granted since the start of the investigation, in 2007, with the exception of acquisitions in India and China, Countries where such obstacles (e.g. ban on cross-border legal combinations) can be demonstrated.

German law on easing of fiscal carry-forward of losses

The Commission decided on 15 March that a so-called reorganisation clause, or "Sanierungsklausel", under German corporate tax law amounts to State aid. The provision enables an ailing company to offset losses in a given year against profits in future years (carry forward of losses) despite changes in its shareholder structure [9]. This is because corporate tax law does not generally allow offsetting of losses when there has been a significant change in the ownership structure, to prevent companies avoiding taxes by taking over failed companies for the sole purpose of using their fiscal carry-forward value.

The Sanierungsklausel was adopted in July 2009 with retroactive effect from January 2008. The provision was initially supposed to apply only during the financial crisis, but at the end of 2009 it was rendered permanent. However, it was not notified to the Commission. The German authorities' view that the clause was merely a new technical feature of the German tax system, and could therefore escape being defined as State aid, did not convince the Commission.

The Commission concluded that the Sanierungsklausel favours ailing companies over financially-sound ones, which can also suffer losses in a given year, in particular during the crisis, but cannot offset them if there has been a significant change in their shareholder structure. The clause therefore distorts competition.

The Commission's decision in no way challenges the mechanism of carrying forward losses in the tax system which applies to all tax payers in a non-discriminatory way. The Commission has ordered Germany to recover any aid granted this way since 1 January 2008, when the clause came into force.

Alleged aid to mining company Ellenikos Xrysos

This investigation procedure was opened in December 2008, following a complaint, and was closed on 23 February by a Commission decision finding that the Greek State's 2003 sale of the Greek Cassandra mines to Ellinikos Xrysos for €11 million was carried out below their real value [10].

The sale was carried out without an open tender, nor was there a valuation of the mines' assets by an independent valuer. The sale contract also provided for the waiver of transaction taxes.

The Commission based its decision on the findings of a report commissioned for Ellinikos Xrysos shortly after the sale that put the value of the mines at €25 million. The taxes that should have been levied on the sale amount to €1.34 million.

The Commission has, therefore, concluded that Ellinikos Xrysos benefited from illegal State aid, which Greece needs to recover, including interest.

Decisions taken under Article 107(2)(a) TFEU

Social support for individual consumers

Fiscal aid for supplementary sickness insurance policies and aid for collective supplementary insurance

The Commission decided in two cases [11] on 26 January and 23 February that a French scheme to support supplementary welfare cover for local government staff is compatible with Article 107(2)(a) of the TFEU, which permits aid of a social character.

Under these measures, local government institutions and local government-managed bodies will be able to pay staff and retired staff members an allowance if they take out insurance contracts and packages which have been approved by the Oversight Authority or if they sign up to supplementary welfare arrangements established between the local government body and an insurance undertaking after a competitive tender procedure. Both selection processes will be open to any type of insurance undertaking with which staff will be able to take out a contract or join an arrangement for

(8) C 45/2007
(9) C 7/2010
(10) C 48/2008
(11) C 50/2007 and N 495/2010

supplementary welfare cover. The allowance is provided in the form of a single annual payment per staff member and can either be paid directly to staff or to the insurance undertaking, which will have to deduct the amount in full from the fee or premium payable by the staff members covered by them.

The Commission was of the opinion that the measures under consideration are compatible with the internal market in view of the social character of the aid measure concerned, which will be paid to staff in full. The conditions laid down for the selection of the undertakings are objective, transparent, non-discriminatory and allow for competition among the players in the market concerned.

Training aid

Training aid to De Tomaso Automobili SpA- Italy

By its decision of 23 March the Commission authorised a grant of €19.2 million to the Italian sports car producer De Tomaso SpA for a project to train its workforce at its two production sites in Grugliasco (Piedmont) and Guasticce (Tuscany) ([12]).

De Tomaso SpA plans to launch the production of two new luxury sports car models and one new luxury car model. The company designed a comprehensive training programme to offer in-depth general training on upholstery, welding, painting and parts assembly to 1.038 workers at the two sites. A large proportion of the workers who will take part in the training are disadvantaged or disabled.

The proposed aid will allow the company to offer this in-depth training to its entire workforce, not just the workers who need to be trained to produce the new models. The aid will therefore enable the workers to receive in-depth general training on issues that will improve their professional knowledge and increase their potential on the jobs market. Moreover, the acquisition of these skills will be certified by the Italian regional authorities. The company itself will make a significant contribution to this extensive training programme.

The Commission therefore concluded that the proposed aid measure, which is one of the first applications assessed under the 2009 Training Aid Communication, is compatible with Article 107(3)(c) TFEU.

Transport

Aid for air transport between Martinique and Metropolitan France

The Commission decided on 18 February to authorise air transport aid of a social character for certain residents in the French overseas department of Martinique ([13]). The aid will increase the aid applicable to air transport between Martinique and Metropolitan France, as well as to other EU and EEA Member States.

The Commission found that the aid was compatible with the three criteria of Article 107(2)(a) TFEU, as well as with point 24 of the Communication on Air Transport and previous case practice.

Decisions taken under Article 107(3)(b) TFEU

Banking

Schemes

The Commission has extended certain bank guarantee schemes for credit institutions in Lithuania, Portugal and Greece ([14]). The extended schemes comply with the 2010 Communication on support measures for banks during the financial crisis. The Commission has furthermore extended a recapitalisation scheme in Portugal. ([15])

Ad hoc aid

Recapitalisation of NLB

On 7 March the Commission authorised an emergency recapitalisation of up to €250 million for the Slovenian bank Nova Ljubljanska Banka (NLB) ([16]).

NLB passed the stress tests conducted in mid-2010 by the European Banking Authority (formerly CEBS), though only by a small margin, leading the Central Bank of Slovenia to decide that the bank must raise its capital levels to preserve an adequate level of Core Tier 1 capital.

NLB needs to raise €250 million of equity capital, equivalent to 1.6% of its risk-weighted assets. It will try to raise money through a public offering of its shares, in two tranches. In the first tranche, existing shareholders will be offered the opportunity to subscribe to the entire €250 million new shares, pro rata to their existing shareholdings. In the second tranche, any new shares not taken up by existing shareholders will be offered to the general public. The Slovenian State will participate in the emergency recapitalisation by purchasing new shares at least in proportion to its current shareholding (approximately 49%). The capital injection will help NLB to preserve an adequate level of Core Tier 1 capital.

([12]) N 344/2010

([13]) SA.32069

([14]) Lithuania: SA.32188, Portugal: SA.32158, Greece: SA.32767

([15]) SA.32157

([16]) SA.32261

The Commission found the recapitalisation plan to be well-targeted, limited to the minimum necessary, and proportional. Therefore, the Commission temporarily authorised the measure as emergency aid until it reaches a final decision on NLB's restructuring plan, which the Slovenian authorities must submit within six months of the date of the decision.

Restructuring of Kommunalkredit

On 31 March the Commission approved several measures in favour of Kommunalkredit Austria AG [17]. Before the crisis Kommunalkredit was the seventh largest Austrian bank with a balance sheet of €37 billion. Its business consisted of granting public and project finance loans, and investing and managing a sizeable portfolio of bonds and credit default swaps (CDS). The securities and CDS portfolios were particularly hard hit by the financial crisis, leading to considerable impairments and losses.

The measures consist of state guarantees of more than €10 billion, a capital injection of €250 million in the form of ordinary shares, and a split of the bank through the separation of strategic activities and non-strategic activities, with a €1 billion non-refundable loan to Kommunalkredit Finanz, the entity winding down the non-strategic assets.

The Commission found, in particular, that the restructuring plan appeared suitable to ensure the long-term viability of Kommunalkredit through re-focusing on its core strategic activities. The Commission further found that nationalisation and a coupon and acquisition ban in particular contributed to an appropriate contribution by the bank's shareholders to the cost of restructuring. The considerable downsizing of the bank, by 60%, the annual growth cap and the behavioural commitments the Austrian authorities provided sufficiently limit distortions of competition brought about by the aid. The Commission concluded that the restructuring plan was appropriate to restore the bank's viability, while adequately addressing competition distortions brought about by state support.

Restructuring aid to Fortis Bank Nederland ABN Amro

On 5 April the Commission approved a support package and restructuring plan for the ABN AMRO Group, subject to certain conditions [18]. The restructuring package has been under implementation since October 2008, when the Dutch State purchased Fortis Bank Nederland and the Dutch activities of the then ABN AMRO Bank, which subsequently merged to form ABN AMRO Group.

To ensure the state funding is used solely to consolidate the viability of the merged entity and not, for instance, for financing aggressive growth at the expense of competing banks, the Commission subordinated its approval of the aid package to a set of conditions, including a ban on acquisitions and a requirement to achieve certain margin profit levels in the private banking sector, where the bank has a strong position, to avoid it using the aid to undercut competitors.

The Commission found that the need for state support did not stem primarily from excessive risk-taking or unsustainable business models of the two aided entities (as seen in other cases), but from the separation from their respective mother company, which left them as undercapitalised stand-alone entities, unable to finance the upfront costs related to the merger. In this specific context and taking into account the limited amount of recapitalisation aid received, the Commission concluded that no divestment was required.

Real economy cases adopted under the Temporary framework

Schemes

The Commission has authorised prolongations of certain schemes allowing for limited amounts of aid in Estonia, Portugal, the United Kingdom, France, Hungary, the Netherlands, Greece, Austria, and the Czech Republic [19]. Prolongations of French, Hungarian and Romanian subsidised guarantees [20] have also been approved, as well as a prolongation of a subsidised interest rate in the Czech Republic [21].

Furthermore, the Commission decided to extend the authorisation of the Slovenian, Danish and French Short-term export credit insurance schemes. [22]

Decisions adopted on the basis of Article 107(3)(c) TFEU

Regional aid

Preferential electricity tariff for energy intensive industry in Sardinia

On 23 February, the Commission found that operating aid granted by Italy to Portovesme, ILA and

(17) SA.32745
(18) C 11/2009

(19) Estonia: SA.32104, Portugal SA.32122, United Kingdom: SA.32110, France: SA.32140, SA.32173 Hungary: SA.32061, the Netherlands: SA.32506, Greece: SA.32512, Austria: SA.32171 and the Czech Republic: SA.32664
(20) France: SA.32183, 32118, Hungary: SA.32215, SA.32216, Romania: SA.32551
(21) SA.32665
(22) Slovenia: SA.32066, Denmark: SA.32513, France: SA.32090

Eurallumina in the form of subsidised electricity prices is incompatible with EU State aid rules and needs to be recovered [23].

The Commission concluded that two preferential electricity tariff schemes introduced in the Italian Region of Sardinia to three energy-intensive companies constituted incompatible operating aid. Italy had argued that it had to subsidise the energy-intensive companies because electricity was more expensive in Sardinia. The scheme was financed by all electricity users in Italy, both companies and end-consumers.

However, compensating a company for higher energy or other costs distorts competition in the marketplace and would ultimately start a subsidy race in the European Union that would not be in the common interest.

Italy implemented the first scheme in 2004 without prior notification to the Commission. Following competitors' complaints, the Commission opened an in-depth investigation on both measures. As a consequence, Italy discontinued the scheme that year. However, the following year, Italy notified virtually identical subsidies for the same three beneficiaries, plus Syndial, a chlorine producer also based in Sardinia. The Commission opened an in-depth investigation in April 2006. Italy did not implement the second scheme. The amount of aid paid in 2004 is estimated by Italy at around €12 million for Portovesme, €5 million for Eurallumina and € 300,000 for ILA.

After an in-depth investigation, the Commission concluded that the preferential tariffs offered to these companies merely reduced the operating costs of the beneficiaries and improved their competitive position without furthering any goal of common interest. The Commission also prohibited the project from granting identical tariffs as of 2005 to the same beneficiaries plus chlorine producer Syndial.

This decision is in line with the Commission's practice regarding energy price subsidies for selected companies. In November 2009 the Commission found an identical tariff enjoyed by Alcoa to be incompatible with EU State aid rules and ordered the recovery of the aid [24]. The same line was taken in 2007 in the similar "Terni" case [25].

Aid for Glunz AG

On 11 March the Commission decided that investment aid for Glunz and OSB Deutschland, two interlinked plants, constituted State aid that was compatible with the internal market under Article 107(3) TFEU [26]. The measure was originally notified in 2000 and concerned an investment to set up an integrated centre for wood processing in the region of Saxony- Anhalt, Germany.

In 2001, the Commission adopted a decision not to raise objections to the notified aid, which it considered was compatible with the 1998 Multisectoral Framework on regional aid for large investment projects [27] .

The decision was annulled by the CFI in 2004 [28] and that judgment was upheld by the ECJ in 2008 [29]. The Court found that the Commission had not adequately assessed the relevant market and whether that market was in decline pursuant to the 1998 Multisectoral Framework, this assessment having an effect on the maximum allowable aid intensity.

Following the judgment, the Commission re-assessed the case, this time as unlawful aid, as the measure had already been implemented by Germany. The Commission concluded that the investment project constituted State aid, that it concerned two different products, one of which was found to be in a declining market. The aid measure was found to comply with the maximum allowed aid intensity, in accordance with the Multisectoral Framework and Article 107(3)(a) TFEU.

R&D&I

Individual aid to Aernnova

On 26 January, the Commission authorised Spain to grant an interest-free reimbursable loan of €129 million to Aernnova for the development of the next-generation horizontal tail plane (HTP) for the future Airbus A350 XWB [30].

When assessing the project under the EU framework for State aid for research, development and innovation, the Commission found that the R&D project could not attract sufficient financing from the market, because of the high technological, market and commercial risk it entails. On the positive side, it will contribute to raising the level of R&D activities in Europe and it is limited to the amount necessary to enable the project to go ahead. The Commission found that distortion of competition will be limited, given the particular structure of the aeronautical market, the expected growth in the market and the very small market share held by the beneficiary. The subsidy in the form of the foregone interest rate is estimated at €37.4 million The

(23) C 13/2006
(24) CR 36/2010
(25) C36a/2006

(26) C 28/2005
(27) N517/2000
(28) T-27/02
(29) Joined cases C-75/05 P and C-80/05 p
(30) N 3/2010

Commission found the State loan compatible with EU State aid rules, since the positive effects of the research and development aid outweigh any distortion of competition that the aid may bring about.

R&D aid to Volvo Aero for Trent XWB

On 23 February the Commission authorised a repayable advance of 120 million Swedish crowns (around €12 million) that Sweden intends to grant to Volvo Aero Corporation for the development of the Intermediate Compressor Case (ICC) for the Trent XWB engine ([31]). The engine is being developed by Rolls-Royce and will equip the new Airbus A350 XWB aircraft family.

The Swedish authorities submitted evidence showing that without the risk-sharing loan the project would not get finance because of its capital-intensive nature, the risks involved and delayed return, if any, on the investment.

The Commission verified that the aid would be limited to the minimum necessary for Volvo Aero to carry out the project. If the project is successful, the aid will be fully repaid, including reasonable interest. The Commission considered the potential impact on competition to be limited, as Volvo Aero has a relatively small share of the engine components market, which has good growth prospects.

Finally, the fabricated titanium ICC Volvo Aero envisages will offer a lower weight alternative to a conventional casted component, potentially contributing to reducing the aircraft's fuel consumption and its impact on the environment.

Energy & environment

Geothermal energy production in Beinheim

On 12 January the Commission authorised France to provide a €25.3 million grant for the construction of a heat boiler using a renewable energy source (geothermal energy) in Beinheim, the Alsace region ([32]). The project also involves the construction of a 15-kilometre pipeline to bring the heat from the underground geothermal source to the Beinheim site.

The aid will be granted to a joint venture between Roquette Frères, Electricité de Strasbourg and Caisse des Dépôts et Consignations. The joint venture will sell the produced geothermal heat to the industrial site operated by Roquette Frères in Beinheim, enabling the company to partly replace its existing gas-fired heating boilers.

The use of geothermal energy, a renewable energy source, will cut CO_2 emissions by 39,000 tonnes a year compared to the same volume of heat produced from natural gas, while contributing to achieving renewable production objectives.

The project will ultimately reduce the company's operating costs, since geothermal energy is a free primary energy source, but requires a significant initial investment of €45.3 million in the boiler and network.

The T3 East Paris district heating project

On 26 January the Commission authorised France to provide a €26 million direct grant for the construction of a district heating network in the North-East of Paris. The aid beneficiary is CPCU, a subsidiary of GDF Suez and the current holder of the district heating concession in Paris ([33]).

The network is to be built along the T3 tramway line, currently under construction. The introduction of district heating will cut CO_2 emissions by a total of 65,000 tonnes between 2011 and 2024, compared to heating from conventional sources. More generally, it will encourage future investments in renewable heating boilers to be connected to this network, and will lead to the closing of a conventional boiler using fossil fuel. Thanks to this and other projects under way, by 2020 nearly 20% of the energy used for heating in Paris would come from renewable sources (biomass, biogas, geothermal) as opposed to none at the moment. The French authorities also extended the district heating concession to GDF Suez by seven years until 2024, to allow the beneficiary to recoup network investment costs without undermining the commercial operation of the concession contract. The French authorities have made a commitment to tender the concession anew in 2024 or to operate it directly as of then.

Pilot scheme for purchase of electric vehicles

On 8 March the Commission authorised DKK15 million (approximately €2 million) of public funding for a pilot programme incentivising the purchase of electric cars until 31 December 2012 ([34]). The scheme supports projects designed to test and test-run electric vehicles under realistic conditions and is expected to increase the number of wholly electrically propelled cars in Denmark, thereby decreasing dependency on fossil fuel and reducing CO_2 emissions.

The aid will cover the necessary additional expenditure incurred when purchasing electric vehicles

([31]) N 204/2010
([32]) N 715/2009
([33]) N 630/2009
([34]) N 386/2010

rather than their conventional petrol- or diesel-driven equivalents, as well as the necessary expenditure on trials and equipment for charging the vehicles. The scheme is open to all fleet owners, public institutions and private enterprises alike. The Beneficiaries selected by the Danish Energy Agency are responsible for making the results of the vehicle trials available to the public.

Aid applications are assessed independently of the make or model of car concerned, which ensures there is no discrimination between car manufacturers. Considering the scheme's total budget of €2 million and its limited duration, it is unlikely that car manufacturers or dealers could derive significant indirect benefits from its operation and possible distortions of competition will therefore be very limited.

Aid to energy-intensive businesses, Green Electricity Act (Ökostromgesetznovelle 2008)

After an in-depth investigation opened in 2009, on 8 March the Commission rejected a specific provision of the revised Green Electricity Act of Austria (Ökostromgesetznovelle 2008) that would have provided energy-intensive businesses with a partial exemption from buying green electricity, which is more expensive than normal 'grey' electricity [35]. Companies whose incremental costs from the consumption of green electricity exceed 0.5 % of their net production value could have applied to the State-controlled Austrian energy regulator for a derogation from the obligation to purchase green electricity. If the derogation had been granted, energy-intensive businesses could have been partly exempted from their share of extra costs for green electricity. Instead, remaining enterprises and private households would have had to buy more of the more expensive green electricity. If the measure had been authorised, smaller electricity consumers would have had to pay higher energy bills to compensate for subsidies granted to a number of large energy consumers.

Such aid would merely have covered the normal operating costs of a company and might have considerably distorted competition for tradeable goods in the internal market. Moreover, it would not have triggered any environmental benefits and could therefore not be found compatible under EU environmental aid guidelines. At the same time, the Commission decision addresses the concerns of a complainant regarding unbalanced burden-sharing between large energy consumers on the one hand and SMEs and private households on the other had the Austrian measure been implemented.

The Commission concluded that the new provision would have resulted in imposing extra costs on enterprises not qualifying for the exemption.

Risk capital

French venture capital funds

On 20 April the Commission concluded that the national venture capital fund, which aims to encourage the raising of risk capital for young innovative SMEs, is compatible with the guidelines on risk capital [36].

The French national venture capital fund (FNA) is a fund that will invest in other risk capital funds, which will in turn invest in innovative new businesses. The FNA will be allocated €400 million and will be managed by CDC Entreprises, a management company authorised by the French financial markets authority and wholly-owned subsidiary of the French Deposit and Consignment Office (CDC). CDC Entreprises will be responsible for selecting the funds on the basis of public selection criteria that correspond to market best practice. The chosen funds will invest in innovative SMEs not listed on a stock market and in business for less than eight years at the time of the initial funding. Each investment will include private participation of at least 50% (or at least 30% in areas eligible for regional aid) and funding of at least 10% from investors that are independent of the company in addition to the contribution from the business itself.

The initial funding will only be for small businesses in the seed or start-up phase, but it will be possible to refinance the business even if it has become medium-sized meantime. The ceiling for the tranches of funding will be set at a maximum of € 2.5 million per business per 12-month period.

The Commission has made sure that the measure fulfils all the conditions of the guidelines on risk capital and has also obtained a guarantee that the fund will intervene only to overcome the failures of the risk capital market so as to minimise any risk of distorting competition.

No aid decisions

Alleged aid to Componenta

Following the Court annulment [37] of a Commission decision of 2005, on 20 April the Commission adopted a decision stating that the purchase price paid by the Finnish municipality Karkkila to

(35) C 24/2009

(36) SA.31730

(37) T-455/05

Componenta does not constitute State aid under Article 107(1) TFEU [38].

In December 2003 Componenta sold its 50% stake in a real estate company to the city of Karkkila for € 2.4 million. The Commission concluded in a 2005 decision that Karkkila had paid a sum higher than a private investor would have paid, that the purchase price constituted aid and that the aid distorted competition because it provided Componenta with funds it would not have received under normal market terms. Recovery was therefore ordered.

An appeal went to the General Court and the decision was annulled in 2008 for lack of motivation. Following the Court's decision, the Commission reassessed the case and concluded that the price paid was actually a market price and that the transaction did not involve state aid.

Système de couverture dollar – Aero 2008 guarantee

On 8 March the Commission closed a formal investigation procedure opened in 2009 and found that a state guarantee put in place by France to cover the exchange rate risk for aeronautic suppliers (Aero 2008) does not constitute State aid [39].

The 'Aero 2008' guarantee enables aeronautic suppliers at Tier 2 and below [40], which normally conclude supply contracts in US dollars, to benefit from a state-guaranteed US dollar forward rate for a specified amount of turnover and for a maximum period of five years. The guarantee enables the undertakings concerned to cover themselves against risks of fluctuation in the dollar-euro exchange rate for supplies of up to €500 million. The measure is administered by Coface, one of the leading French credit insurance companies, and operates on behalf of the French authorities. So far, the amounts covered represent approximately €10 million, and only four undertakings have taken out the guarantee.

The Commission verified that the premium charged by Coface covered not only the market value of the guarantee (including a profit margin), but also the insured's default risk and administrative costs. With regard to the staggering of the premium, the French authorities confirmed that any possible difference between the rates of interest applicable and the reference rates specified by the Commission will always be lower than the *de minimis* threshold.

The Commission therefore concluded that the Aero 2008 guarantee can be considered as operating in line with the market economy investor principle.

Trèves

Following an in-depth investigation, on 20 April the Commission decided that financial support of €55 million to automotive supplier Trèves from the Fonds de Modernisation des Equipementiers Automobiles (FMEA) does not constitute State aid. [41]

Trèves is a car component supplier specialising in car interiors and noise insulation. In response to the crisis affecting the car sector, the French authorities created the FMEA at the beginning of 2009, with funding from the 'Fonds Stratégique d'Investissement' (French public fund) and two French car manufacturers, Renault and Peugeot. The FMEA was set up to make risk capital investments in companies belonging to the French car parts sector. The French authorities did not notify the investment of €55 million in Trèves as they considered that the FMEA was primarily run by two car manufacturers who are private investors.

The Commission found that the measures did not constitute State aid, since both the investment of €55 million, as well as a plan for debt rescheduling, complied with the market economy investor principle and did not confer an advantage on Trèves.

[38] C 37/2004
[39] C 18/2010
[40] While Tier 1 and Super Tier 1 suppliers are partners sharing the risks with the aircraft manufacturers, Tier 2 and below merely work for a risk-sharing partner.

[41] C 4/2010

The ABN AMRO restructuring decision

by Bruno Zanghellini, Koen Dierckx, Christophe Galand and Michele Lanotte

On 5 April 2011, the Commission took a final conditional decision (2) approving the State aid package of the ABN AMRO Group and the restructuring of the company. This conditional decision followed the opening of a formal investigation on 8 April 2009 (3), which, - in view of additional measures announced by the Dutch State - was extended on 5 February 2010. (4), (5) In this article, we briefly describe the situation of the bank (1), the measures involved (2), and the assessment of the restructuring measures (3) before drawing some summary conclusions (4).

1. ABN AMRO and the need for State aid.

As it is currently structured, ABN AMRO Group combines the activities of Fortis Bank Nederland ("FBN", i.e. the Dutch banking subsidiary of the financial holding company Fortis Group) and the Dutch assets of ABN AMRO Group ("ABN AMRO N"), the latter having been acquired by Fortis Group in 2007 – as part of the break-up bid made by a consortium which also included the Royal Bank of Scotland and Banco Santander. In October 2007, the Commission approved the merger of FBN and ABN AMRO N subject to implementation of a remedy (i.e. the sale of New HBU) (6). The combined entity had pro forma total assets of EUR 360 bn in 2008 and ranks third in the Dutch banking market, with a leading position in private banking (with a share of nearly 40 % of the market).

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information of views expressed lies entirely with the authors.

(2) Commission decision of 5 April 2011 on the measures n° C11/2009 (ex NN 53b/2008, NN 2/2010 and N 19/2010) implemented by the Dutch State for ABN Amro Group NV (not yet published).

(3) OJ C 124, 4 June 2009, p.19 sq

(4) OJ C 95, 15 April 2010, p 10 sq.

(5) The Decision of 5 February 2010 also approved a number of measures as rescue aid until 30 July 2010. Upon request of the Dutch State, the Commission prolonged the rescue aid approval by decision of 30 July 2010 (OJ C 250, 17 September 2010, p.5)

(6) OJ C 273, 28 October 2008, p 5 sq.

2. Description of the State aid measures.

2.1. Measures linked to the State purchase of FBN from Fortis Group.

On 3 October 2008, the difficulties of Fortis Group led the Dutch State to acquire the Dutch banking activities of Fortis Group (i.e. FBN) including ABN AMRO N for a consideration of EUR 12.8 bn. Since FBN relied heavily on Fortis Bank for its funding, the Dutch State – in order to fully separate FBN and insulate it from the funding problems of Fortis Bank – had to provide substantial liquidity support to FBN comprising a short-term credit-line of EUR 45 bn (which was repaid by FBN over the next nine months, partly by the issuance of EUR 18.8 bn of State guaranteed debt) and the purchase from Fortis Bank of outstanding medium- and long-term loans of EUR 16.1 bn (7) granted to FBN. In addition, the Dutch State, in taking over ABN AMRO N from its parent company, also agreed to indemnify Fortis Group for all the separation obligations resulting from the consortium shareholders agreement (CSA) signed in 2007 with Royal Bank of Scotland and Banco Santander, as in October 2008 ABN Amro N had not yet been separated from the ABN Amro Group.

In December 2008, since FBN was again running the risk of falling below its regulatory capital requirement ratios, the Dutch State decided to acquire ABN AMRO N from FBN for a price of EUR 6.5 bn. The Commission decision concluded that this price was above market value and therefore involved State aid to FBN. In the course of 2010, as the DNB had requested an improvement in the Tier 1 capital position of FBN, the Dutch State helped to implement this requirement by converting EUR 1.35 bn of Tier 2 loans of FBN into Tier 1 capital.

2.2. Measures aimed at covering separation costs of ABN AMRO N.

Under the CSA, the separation of ABN AMRO N from its parent company was a contractual obligation of Fortis Group, which the Dutch State took over in October 2008, as indicated above. This separation proved to be a complex, lengthy and costly process. The State granted support measures aimed at covering direct and indirect separation costs.

(7) For comparison, at the end of 2008, FBN's total liabilities amounted to EUR 184 bn.

2.3. Measures aimed at covering integration costs.

As a result of the decision of the Dutch State to restore viability of FBN and ABN AMRO N by merging the two companies, a significant amount of upfront integration costs had to be incurred. First, the merger remedy had to be implemented, which resulted in a sale below book value, and therefore a loss. Second, a significant amount of cost cutting (e.g. a broad lay off scheme) and infrastructure expenses were incurred. FBN and ABN AMRO N did not have enough capital to absorb these upfront costs, and therefore the State recapitalised the banks to cover these costs. The Dutch State argued that these measures were not State aid, invoking the market economy investor principle and arguing that the merger and the associated cost savings would improve the profitability of the companies concerned.

2.4. Presence of State aid in the State measures:

Given the number of State measures and their complexity, this case raised particular challenges when it came to assessing the presence and quantity of aid.

The Commission decision concluded that the State financing to FBN associated with the purchase of FBN constituted State aid, as the State did not act as a market economy investor and the same resources could not have been found on the market. It should be noted, however, that the payment of the EUR 12.8 billion purchase price to Fortis Group itself was not considered separately as being State aid, since it did not provide an advantage to FBN as such. As a result, the amount of aid calculated by the Commission is significantly lower than the cost of rescuing FBN for the Dutch taxpayer.

As regards the State financing of the integration costs, the Commission – which refused to assess these measures under the market economy investor test, since they were part of a single restructuring which had already included State aid (BP Chemical case law) - also concluded that they constituted State aid.

Conversely, the Commission considered that the State measures financing the separation costs did not constitute State aid. Indeed, strictly speaking, the separation costs resulted from the obligation of the Dutch State under the CSA to separate ABN AMRO N from its parent company. The Dutch State had taken over these obligations from Fortis Bank and they never constituted obligations of ABN AMRO N. The State intervention therefore did not relieve ABN AMRO N of costs it should normally have borne. Therefore, these measures did not involve State aid for ABN AMRO N.

Adding up the aid measures, the total recapitalisation aid amounts to between EUR 4.2 and 5.45 bn, representing between 2.75 and 3.5 % of risk-weighted assets of the merged entity. In addition, the company benefited from EUR 71.7 bn of funding and liquidity aid.

3. Assessment of the restructuring plan.

3.1. Viability considerations

The Commission observes that, after all the interventions by the State, the banks do constitute a viable entity. The decision of the Dutch State to merge FBN and ABN AMRO N helped restore viability. The deposit-rich profile of ABN AMRO N (resulting from its focus on retail and private banking) has made up for FBN's weak funding position, while FBN provided a number of international activities which ABN AMRO N lacked. Moreover, the combination of the two entities avoided the duplication of the IT-platforms and other support functions. Projections underline that the combined entity should be able to cover its costs and reach an appropriate return on equity. Even under a stress scenario, ABN AMRO Group should continue to post profits and maintain its capital adequacy ratios over and above the regulatory thresholds.

The Commission observed, however, that the projections depended to a large extent on full implementation of cost cutting measures (including synergies from the merger) and improved net interest margins. In this respect, it should be noted that, when the Commission opened proceedings, Van Lanschot Bank, a competitor of ABN AMRO Group in the Netherlands focusing on private banking, submitted a formal complaint claiming that ABN AMRO Group was using State aid to price its competitors out of the market. To ensure that ABN AMRO Group would indeed reach the projected margins and would not offer unsustainably low prices, the Commission imposed the condition that ABN AMRO Group should realise the net interest margins projected by the company in its restructuring plan. In the event of deviations, ABN AMRO Group should immediately take appropriate action to return to the margin level set out in the plan.

3.2. Burden sharing, own contribution and limiting the aid to the minimum necessary.

As compatible State aid has to remain strictly limited to the minimum necessary, restructuring aid should cover only the costs necessary to restore viability. Measures may be requested to prevent abuse of restructuring aid, in particular the implementation of market-distorting strategies not linked to the restructuring process. Against this background, the Commission imposed an acquisition ban designed as a safeguard to prevent the abuse of the aid for "nice-to-have" acquisitions that were not justified by the need to restore viability. In this regard, the Commission also noted that ABN AMRO's financial projections in the restructuring plan proved that the company was viable without needing extra acquisitions, such that the acquisition ban does not prevent the implementation of the plan and the consolidation of viability.

In addition, the Commission has imposed a ban on serving any coupons on and calling any hybrid instruments (hybrid coupon and call bans) since State aid should not be used to remunerate capital providers; available funds should be kept in the firm until it has completed its restructuring plan and restored its viability, after which the remuneration of capital providers can resume.

3.3. Measures to limit distortions of competition.

Under the terms of the Commission's Communication on the restructuring of banks, the depth of a restructuring should be adjusted according to the aid amount received and to the presence on the market after the restructuring. As regards the aid amount, the Commission usually requests deeper restructuring if it exceeds 2% of the risk weighted assets of the aided bank, which is the case here, as indicated above. In this case, the Commission observed that the circumstances were somewhat unusual. The need for capital and funding of FBN and ABN AMRO N did actually stem to a large extent from their separation from the Fortis Group and their consecutive merger. The need for capital did not stem primarily from risky behaviour or unsustainable strategy at the level of these two entities. Therefore, the Commission decided not to request them to divest part of their activities. In this regard, it should also be noted that the former parent company, Fortis Group, had already been dismantled into four entities and that the disappearance of that group had already largely addressed the moral hazard problems at that level (see Commission decision of 3 December 2008 (8)).

It can also be noted that, in addition to the implementation of the merger remedy, which represented the sale of significant business to Deutsche Bank, the ABN AMRO Group divested a few smaller entities (Prime Fund Solutions and Intertrust).

In order to ensure that the aid was strictly being used to restore viability and not used to finance a growth strategy beyond the plan at the expense of competitors, the Commission made its approval conditional on the aid package to implement a complete set of measures ,including a ban on acquisitions, a price leadership ban and a ban on advertising State support. Behavioural measures were tailored to the specific context and focused on areas where the merged entity ABN AMRO Group - partly thanks to the merger - has built up a strong market presence. Because the bank had just implemented the merger remedy in the Dutch SME banking market, allowing a strong competitor to enter that market with a significant market share, the Commission's measures focused mainly on Dutch retail and private banking (where the combined entity has a market share of almost 40 %). Therefore, to avoid mispricing, ABN AMRO Group first had to accept a price leadership ban in standardised savings and mortgage products that were representative of the market. Second, to address potential risks of distortions in the private banking segment where many products are priced on a one-to-one basis, the price leadership ban has been complemented by additional measures. First, ABN AMRO must aim to achieve the net interest revenue projections presented in the restructuring plan and take appropriate action as soon as it observes any deviation. Second, a measure has been devised which is aimed to increase awareness of account switching possibilities and to facilitate switching.

These measures should prevent the aid being used to undercut prices, as the banks did in 2009 according to Van Lanschot.

4. Conclusion

The ABN AMRO decision underlines the fact that the Commission does not adopt a "one size fits all" approach, but is constantly striving to adjust its requirements as precisely as possible not only to the amount of aid granted but also to the specific qualitative features of the case as shown by its assessment.

In view of its specific separation context of this case, the Commission did not focus its restructuring requirements on divestments. However, the Commission had to ensure, by means of a complete set of behavioural measures, that the aid would not endanger effective competition and that it would not be detrimental to non-aided competitors.

In particular, a strict acquisition ban was necessary to ensure that the aid remained limited to the strict minimum. It would indeed be a blatant misuse of aid if ABN AMRO Group were to take advantage of the situation and divert the aid received in order to make unnecessary aggressive acquisitions for viability reasons.

(8) OJ C 80, 3 April 2009, p 8 sq

Services of general economic interest: UK Post Office Ltd

by Jorge Villanueva and Michal Struk (1)

Decision taken under Article 106 TFEU (ex Article 86(2) EC)

On 23 March 2011 the European Commission authorised public assistance to the UK Post Office Ltd (POL), for a period of one year starting on 1 April 2011, for the funding of its network of post offices and the continuation of existing loan facilities funding the provision of cash services at post office counters. (2) The Commission concluded that the aid is compatible with EU rules because it does not overcompensate the net costs of the important public service tasks entrusted to POL and thus does not give POL any unfair competitive advantage.

POL is a limited company incorporated under UK private commercial law in 2001 and a subsidiary company of the Royal Mail Group plc. It operates a nationwide network of around 11 500 post office counter outlets. These outlets provide over-the-counter access to social benefit payments, basic banking services and other services in the UK, and therefore act as focal points for the communities they serve. The proposed measures would prolong by one year a 'Network Subsidy Payment' of £ 180 m (€ 211 m) to keep open unprofitable offices, in rural areas for example, and a 'Working Capital Facility' up to a ceiling of £ 1 150 million (€ 1 348 million), which enables POL to hold enough cash to carry out its public service obligations. The current authorisation for these measures expires on 31 March 2011. The one-year extension is necessary for POL to continue carrying out the services of general economic interest entrusted to it by the UK Government.

The UK authorities also notified the terms of the Post Office Card Account (POCA) contract signed between POL and the Department of Work and Pensions (DWP) on 5 March 2009. The POCA is a basic current account run by POL on behalf of DWP which is used for paying social benefits to people who do not have any other bank account.

In line with the jurisprudence of the European Court of Justice, in particular the Altmark ruling, (3) the Commission concluded that the measure constitutes State aid. However, such aid can be compatible with the Single Market provided it satisfies the conditions laid down in the EU Framework on State aid in the form of public service compensation. (4) In particular, the public service must be clearly defined and entrusted by the public authorities, and public support may not overcompensate the service providers.

In addition, in view of the arrangements between Royal Mail and POL the Commission was not able to exclude the possibility that the measures in question (and in particular the network subsidy payment) fall within the scope of Directive 97/67/EC of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended in 2008. (5) Therefore, in order to cover all eventualities and take into account the de facto role of POL, and without taking a position on whether POL should be classified as a postal service provider, the Commission also carried out the assessment of the aid measures under the Postal Directive and, in particular, under its Annex I.

According to Annex I the net cost of universal postal service obligations has to be calculated as the difference between the net cost for a designated universal service provider of operating with the universal service obligations and the same postal service provider operating without the universal service obligations. Moreover, recital 26 in the preamble to Directive 2008/6/EC establishes that an unfair burden must be found to exist before any compensation is paid. An unfair burden is a burden which is excessive in relation to the undertaking's ability to bear it, account being taken of all the undertaking's own characteristics, in particular the quality of its equipment, its economic and financial situation and its market share. (6)

The Commission concluded that the continuation of the Network Subsidy Payment and the Working Capital Facility, as well as any aid contained in the terms of the POCA contract is, until 31 March 2012, compatible with the EU's Internal Market (Article 106(2) of the Treaty on the Functioning of the European Union (TFEU). The aid did not

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the views expressed lies entirely with the authors.
(2) SA.31156 (N508/2010).
(3) C 280/00.
(4) see IP/05/937 and MEMO/05/258.
(5) IP/08/323.
(6) Case C-389/08, Base NV and Others, judgment of 6 October 2010, paragraph 42.

exceed the cost of fulfilling the services liable to be compensated under the framework and, in view of POL's overall precarious financial situation and, in particular, POL's cumulated losses originating in the provision of universal services and other services of general economic interest (SGEIs), the net cost for providing access to universal postal services for Royal Mail did constitute an 'unfair financial burden' for POL within the meaning of Annex I of the Postal Directive.

Services of general economic interest: Crédit Mutuel decision - not overcompensated

by Guillaume Schwall [1]

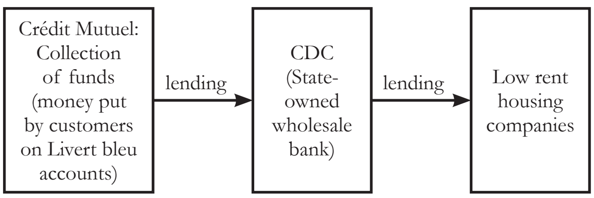
This article concerns the Commission's assessment of a service of general economic interest (SGEI) in the banking sector, namely the decision closing the formal investigation of Crédit Mutuel's *Livrets Bleu* savings accounts.

Introduction

In its decision of 24 May 2011 (hereinafter "the closing decision"), the Commission ruled that the bank Crédit Mutuel was not overcompensated for collecting funds to finance social housing. The collection of deposits was made through distribution of the Livret Bleu account in France.

Description of the Livret Bleu and the Commission investigation

In 1975, the French Government created the Livret Bleu savings account and entrusted Crédit Mutuel with its distribution. At that time, Crédit Mutuel had a lot of discretion in determining the use of funds collected. Following a Government Order ("*arrêté*" of the Minister of Economy and Finance) of 1991, Crédit Mutuel gradually had to transfer funds collected through the Livret Bleu accounts to the Caisse des Dépots et Consignations (CDC), which, in return, paid Crédit Mutuel an annual fee (initially set at 1.3% of the amounts transferred to CDC, subsequently cut to 1.1% in 2005). CDC used these funds to finance the social housing sector.



Competitors complained to the Commission that thanks to the State-subsidised Livret Bleu, Crédit Mutuel was able to attract customers and increase its market share in the French retail market. In 1998, the Commission opened an in-depth investigation under State aid rules.

In 2002, the Commission adopted a decision [2] ruling that Crédit Mutuel had benefited from overcompensation for costs incurred in distributing Livret Bleu accounts and this overcompensation constituted incompatible State aid which had to be recovered. This decision was annulled by the EU Court of First Instance in 2005 [3].

While reopening the assessment of the case under State aid rules (extension decision of 2006) [4], the Commission tackled the exclusive distribution rights entrusted to Crédit Mutuel for Livret Bleu under internal market rules. In 2007, the Commission adopted a decision [5] calling on France to withdraw Crédit Mutuel's exclusive rights to distribute Livret Bleu accounts, as these constituted a restriction on freedom of establishment and freedom to provide services. As the restriction remained in place, the Commission opened an infringement procedure provided for under Article 226 of the EC Treaty (now Article 256 TFEU) with a letter of formal notice addressed to the French Government in 2008.

France eventually introduced a reform on 1 January 2009, granting all banking institutions the right to distribute Livret A accounts and ending the distinction between Livret A and Livret Bleu accounts. As a result, Crédit Mutuel's Livret Bleu in effect ceased to exist, and although a product with that name is still marketed, this is now merely a Livret A account.

In October 2009, the Commission closed the infringement procedure under internal market rules [6] while continuing to assess the compensation paid for distribution of the Livret Bleu with reference to State aid rules.

Final State aid decision, 24 May 2011

Existence of aid

In the closing decision, the Commission confirmed that the annual fee CDC paid to Crédit Mutuel for funds transferred to the latter constituted State aid.

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

(2) OJ L 88/2003 of 4.4.2003, p. 39; see IP/02/67.
(3) Case T-93/02, *Confédération nationale du Crédit mutuel v. Commission* [2005], ECR II-143.
(4) OJ C 210/2006 of 1.9.2006, p. 12; see IP/06/746.
(5) C(2007) 2110 of 10 May 2007; see IP/07/641.
(6) See IP/09/1482.

Indeed, while not contesting that Crédit Mutuel performed a service of general economic interest (SGEI), i.e. the collection of retail savings for the financing of social housing, the Commission concluded that the fourth condition of the Altmark jurisprudence (7) was not fulfilled as the French authorities did not determine the yearly fee on the basis of the costs of a well-run undertaking.

Compatibilty of aid with internal market

In the annulled 2002 final decision, the Commission had concluded that Crédit Mutuel had been overcompensated and that this overcompensation was incompatible aid that had to be recovered. In the decision to extend the procedure, adopted in 2006, the preliminary conclusion was also that Crédit Mutuel had been overcompensated and that the aid had to be recovered. Departing from these preliminary conclusions, the final decision concludes that the bank was not overcompensated for performing the public service.

This change stems from the fact that in its final decision, the Commission corrected its calculations regarding potential overcompensation on three points, explained below.

First correction: starting point for calculation (27 September 1991)

The Commission first identified a time inconsistency in its calculation. Following the annulment by the Court, the Commission had clarified in the extension decision of 2006 that the only measure which constituted State aid was compensation CDC paid to Crédit Mutuel. But in that calculation of potential overcompensation, the decision continued to take into account some revenues which Crédit Mutuel had earned in the first three quarters of 1991. The aid measure being investigated did not exist at that time. The SGEI of collecting funds for CDC and the compensation CDC paid Crédit Mutuel were introduced by the Order of 27 September 1991. In other words, neither the SGEI nor the associated State existed before that Order.

In its closing decision, the Commission explained that it could not reasonably be claimed that the net revenues from Livret Bleu investment before 27 September 1991 constituted revenues related to the operation of an SGEI (8) which did not exist at that time. Those revenues were manifestly not related to the aid measure being investigated and were therefore excluded from the calculation of potential overcompensation.

It should be recalled that because the Commission initially considered that the aid was related to the exclusive right of collecting Livret Bleu deposits, which had existed since 1975 (but for which data were available only from 1 January 1991), it was rational and coherent to take revenues from 1 January 1991 into account in the calculation of potential overcompensation. However, when the Commission clarified in its extension decision of 2006 that only the yearly fee paid by CDC (the SGEI's remuneration for collecting funds for CDC) was being investigated, not the exclusive right that dated from 1975, it forgot to take into account that only Livret Bleu revenues generated from the date the SGEI was created should be taken into account in calculating potential overcompensation for SGEI costs.

Second correction: Use of 'global' method until end-2005

According to the Community framework for State aid in the form of public service compensation (9) (hereinafter "the 2005 SGEI Framework"), any overcompensation at the end of a given year must be recovered, though overcompensation not exceeding 10 % of total annual compensation can be carried over to the next year (10). Under this annual approach, overcompensation is controlled each year with the recovery of aid in excess of the 10% margin.

In the 2006 extension decision, the Commission was in favour of applying an annual approach for the entire period under assessment. This meant that under-compensation in certain years could not offset years where the aid exceeded the net loss of the system (1991, 1992 and 1993). The excess aid in the latter years should therefore be recovered.

The final decision considers that this preliminary conclusion laid down in the 2006 extension decision was not appropriate. According to point 26 of the 2005 SGEI Framework, "*In the case of non notified aid, the Commission will apply a) the provisions of* [the] *framework if the aid was granted after publication of the framework in the Official Journal b) the provisions in force at the time the aid was granted in all other cases.*"

Before the adoption of the 2005 SGEI Framework, there were no explicit rules regarding assessment of potential overcompensation over several years. As regards case practice, the final decision observes that when the Commission assessed whether an undertaking entrusted with a SGEI had been

(7) Judgment in Case C-280/00 (*Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747).

(8) According to point 17 of the Community framework for State aid in the form of public service compensation (OJ C 297, 29.11.2005, p.4.) "The revenue to be taken into account must include at least the entire revenue earned from the service of general economic interest".)

(9) OJ C 297, 29.11.2005, p. 4.

(10) See point 21 of the 2005 SGEI Framework.

overcompensated, it followed a "global" approach, whereby the amount of aid received in years of overcompensation could, without limitation, be offset by undercompensation in other years ([11]). In other words, over the entire period under consideration, the total amount of aid received was compared with the total net costs incurred.

In the Crédit Mutuel case, the aid was granted annually and had not been notified. The 2005 SGEI Framework was published in the Official Journal on 29 November 2005.

Therefore, in the closing decision, the Commission applied the global approach for the period until end-2005 (i.e. from 27.09.1991 to 31.12.2005) and the annual approach for the period from 01.01.2006 to 31.12.2008. In other words, it checked for overcompensation cumulatively over the entire period for the former period , and year by year for the latter.

Third correction: Allowing a limited profit margin for the SGEI for collecting funds

When assessing whether a company entrusted with a SGEI was overcompensated, a reasonable profit should be taken into account ([12]). The 2005 SGEI Framework specifies that "*'Reasonable profit' should be taken to mean a rate of return on own capital that takes account of the risk, or absence of risk, incurred by the undertaking* […]. *This rate must normally not exceed the average rate for the sector concerned in recent years*".

In the annulled 2002 decision and in the 2006 extension decision, the Commission considered that a reasonable profit was allowed on the regulatory capital which Crédit Mutuel had to hold for the assets (loans) financed with Livret Bleu deposits. But Livret Bleu deposits are liabilities and therefore under prudential rules, do not require regulatory capital. Only the assets financed by these resources consume regulatory capital.

Following the logic based on regulatory capital, the 2006 extension decision found that no reasonable profit should be allowed for the activity of collecting funds for CDC, as Crédit Mutuel is not required to hold any regulatory capital against funds transferred to CDC. Indeed, from a prudential point of view, the exposure towards CDC is considered as equal to Crédit Mutuel's risk exposure vis-à-vis the French state, i.e. a risk-weighting of zero, which does not call for the holding of any corresponding own capital.

Given that funds collected thanks to Livret Bleu deposits and transferred to CDC rose steadily, from zero in 1991 to 100% in 1999, the amount of regulatory capital used by assets financed by Livret Bleu deposits dropped steadily between 1991 and 1998 and was zero thereafter.

Therefore, calculating the 'reasonable profit' that Crédit Mutuel was allowed by using the cost of regulatory capital employed would have meant that Crédit Mutuel was in fact not allowed any profit at all for collecting funds on behalf of CDC. This would have meant that Crédit Mutuel would not have been allowed any profit on this SGEI from 1999 onwards.

In the closing decision, the Commission considered that at least some profit should be allowed. An economic operator should not have to accept carrying out an activity without any profit, even if the activity does not consume any regulatory capital. The absence of a regulatory capital requirement only reflects the absence of credit loss risk. It is true that, on top of the absence of credit risk, the activity of collecting funds for CDC does not present liquidity and maturity transformation risks and that operating the SGEI at issue therefore meant a low level of risk for Crédit Mutuel.

However, there were still risks involved, such as operational risks, economic risks (that the fee earned might be insufficient to cover costs), as well as legal and reputation risks. Moreover, other banking activities such as distributing mutual funds, managing customers' wealth or selling bonds and shares, do not consume regulatory capital (and do not present liquidity and maturity transformation risks) but are nevertheless highly profitable, showing that there is no direct link between the consumption of regulatory capital (on the basis of the rules existing at the time) and profitability.

Determining what would constitute a reasonable profit for Crédit Mutuel's activity of collecting funds on behalf of CDC is not easy. The original version of the Livret Bleu was quite an unusual product that could not be directly compared with others, notably because it was a mix of a current account and a savings account and because all the funds collected were deposited with the State.

To determine the reasonable profit margin and return on assets for Crédit Mutuel, the Commission followed a reverse approach. It calculated the minimum profit on the activity of collecting funds for

([11]) It for instance concerned cases in which the undertaking entrusted with a SGEI was acting in the audiovisual sector (see for instance the Commission Decision of 10 December 2003 on State aid implemented by France for France 2 and France 3 (notified under document number C(2003) 4497) , OJ L 361, 8.12.04, p. 21).

([12]) According to point 14 of the Community framework for State aid in the form of public service compensation: "The amount of compensation may not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging those obligations." (emphasis added).

CDC that would result in no overcompensation on the overall Livret Bleu system over the whole 1991-2008 period, with no overcompensation carried over at the end of 2005 (taking into account the possibility opened by the 2005 SGEI Framework [13]) to carry over up to 10% of the aid received in one year to the next year).

The Commission found that a profit margin of 4.2% on all funds centralised at CDC and a return on assets of 5 bps on the activity of collecting funds for CDC (i.e. a pre-tax profit equal to 0.05% of the amount of funds collected for CDC) would eliminate any overcompensation.

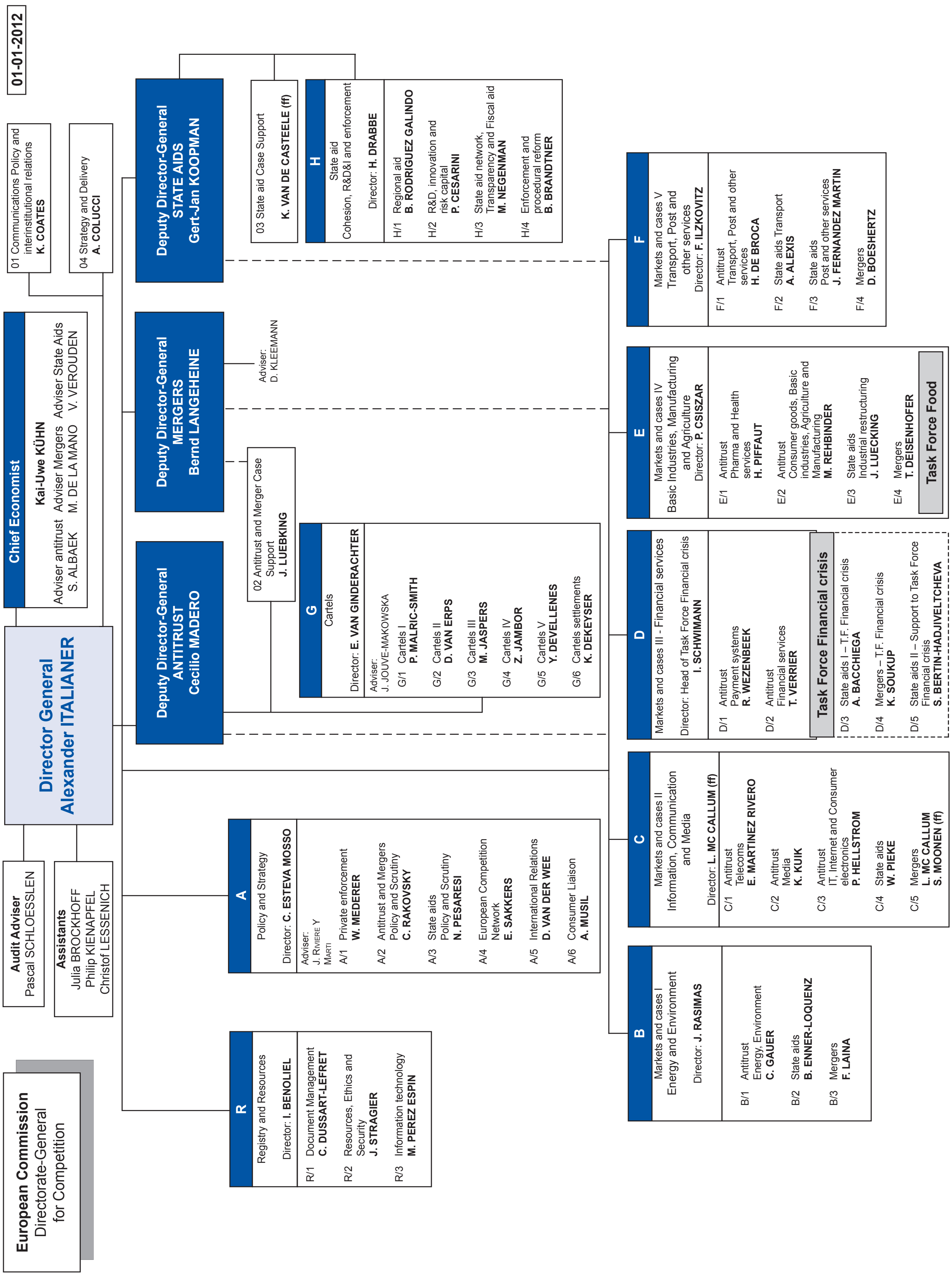
In the final decision, the Commission considered that such a low level of profit was reasonable when compared to the profit margin and return on assets of the French banking system and that such a level of profit appropriately reflected the low level of risk incurred by Crédit Mutuel when collecting funds on behalf of CDC.

Conclusion

On the basis of the three amendments described above, the Commission came to the conclusion that Crédit Mutuel had not been overcompensated for providing the SGEI of collecting funds to finance social housing through CDC. It therefore concluded that the aid was compatible with the internal market.

[13] See footnote 8 above.

Organigram of the Competition Directorate-General (1 January 2012)



If you want to retrieve phone numbers or the e-mail adresse of a member of staff, please consult the official EU phone book: http://ec.europa.eu/staffdir/plsql/gsys_tel.display_search?pLang=EN

Speeches

From 1 January 2011 to 30 April 2011

This section lists recent speeches by the Commissioner for Competition and Commission officials.

Full texts can be found on http://ec.europa.eu/competition/speeches.

Documents marked with the reference "SPEECH/11/…" can also be found on http://europa.eu/rapid

Joaquín Almunia, Vice-President European Commission responsible for Competition policy

SPEECH/11/17 - 14 January

How competition policy contributes to competitiveness and social cohesion

Lisbon, Portugal - Europa 2011 - Regulação e Competitividade

SPEECH/11/47 - 26 January

Prohibition of the proposed merger of Olympic Air and Aegean Airlines (en)

European Commission, Brussels

SPEECH/11/62 - 02 February

Landesbanken and the EU competition rules (en)

9th Handelsblatt annual conference, Berlin, Germany

SPEECH/11/96 - 11 February

Taking stock and looking forward: a year at the helm of EU competition (en)

Conference: "New Frontiers of Antitrust 2011", Paris, France

SPEECH/11/166- 10 March

Merger Regulation in the EU after 20 years (en)

IBA Antitrust Committee and the European Commission, Brussels

22 March

SGEI reform and the application of competition rules to the financial sector: themes for dialogue with the European Parliament

European Parliament, Brussels

SPEECH/11/243 - 08 April

Recent developments and future priorities in EU competition policy (en)

International Competition Law Forum, St. Gallen, Switzerland

SPEECH 11/264 - 13 April

Statement by Commissioner Almunia on the detergent powder cartel settlement (en)

European Commission, Brussels

SPEECH 11/268 - 14 April

Cartels: the priority in competition enforcement (en)

15th International Conference on Competition: A Spotlight on Cartel Prosecution, Berlin, Germany

SPEECH 11/291 - 19 April

Staying ahead of the curve in EU competition policy (en)

Global Competition Law Centre, Brussels

By the Competition Directorate-General staff

11 February

Rüdiger Dohms: General Court confirms the comprehensive effectiveness of the Commission's inspection powers vis-a`-vis professional associations and their governing bodies (en)

Journal of European Competition Law & Practice

01 March

Alexander Italianer: Doing business in Europe: the review of the rules on co-operation agreements between competitors (en)

Studienvereinigung Kartellrecht Conference, Brussels

03 March

*Cecilio Madero Villarejo:*The future of European competition law in high-tech industries (en)

Annual Conference on European Antitrust Law, Academy of European Law (ERA), Brussels

25 March

Alexander Italianer: EU priorities and competition enforcement (en)

Institute for European and International Affairs, Dublin, Ireland

28 April

Cecilio Madero Villarejo: Introductory remarks for panel session on "Enforcement of competition law: the global and local perspective", Competition Law Conference, Seoul (en)

International Bar Association/ Korean Bar Association, Seoul, South Korea

28 April

Cecilio Madero Villarejo: Introductory speech at the Competition Law Conference, International Bar Association/ Korean Bar Association, Seoul (en)

International Bar Association/ Korean Bar Association, Seoul, South Korea

Press releases and memos

From 1 January 2011 to 30 April 2011

All texts are available from the Commission's press release database RAPID http://europa.eu/rapid

Enter the code (e.g. IP/11/14) in the 'reference' input box on the research form to retrieve the text of a press release. Languages available vary for different press releases.

Antitrust

IP/11/34 - 14/01/2011

Commission market tests measures proposed by Greece concerning the Greek electricity market

IP/11/40 - 17/01/2011

Commission launches second monitoring exercise of patent settlements in pharma sector

MEMO/11/29 - 18/01/2011

Commission confirms unannounced inspections in the truck sector

IP/11/58 - 24/01/2011

Commission probes co-operation between Telefónica and Portugal Telecom on Iberian markets

IP/11/147 - 11/02/2011

Commission probes certain co-operation agreements between Lufthansa and Turkish Airlines and between Brussels Airlines and TAP Air Portugal

MEMO/11/126 - 02/03/2011

Commission confirms unannounced inspections in the e-book publishing sector

IP/11/257 - 04/03/2011

Commission closes probe into Hollywood studios after they change terms of contracts for digitisation of European cinemas

MEMO/11/152 - 10/03/2011

Commission confirms unannounced inspections in rail freight sector

IP/11/284 - 11/03/2011

Commission welcomes steps taken by collective rights management bodies in Hungary and Romania to improve competition

MEMO/11/208 - 31/03/2011

Commission confirms it is investigating Deustche Bahn

IP/11/403 - 04/04/2011

Commission fines prestressing steel producers € 269 million for two-decades long price-fixing and market-sharing cartel

IP/11/473 - 13/04/2011

Commission fines producers of washing powder € 315.2 million in cartel settlement case

MEMO/11/245 - 14/04/2011

Commission welcomes Court judgment on Visa's appeal against decision in Morgan Stanley case

IP/11/511 - 28/04/2011

Commission opens investigation against pharmaceutical companies Cephalon and Teva

IP/11/509 - 29/04/2011

Commission probes Credit Default Swaps market

Merger control

IP/11/5 - 04/01/2011

Commission approves acquisition of US energy company Dresser by General Electric

IP/11/16 - 07/01/2011

Commission opens in-depth investigation into proposed merger of Votorantim's Citrovita and Fischer's Citrosuco in orange juice sector

IP/11/13 - 07/01/2011

Commission refers Thomas Cook's acquisition of CGL's and Midlands' travel businesses to UK competition authorities

IP/11/31 - 12/01/2011

Commission clears proposed acquisition of Genzyme by Sanofi-Aventis

IP/11/38 - 14/01/2011

Commission approves acquisition of automotive seat structure manufacturer CRH by automotive supplier Johnson Controls

IP/11/37 - 14/01/2011

Commission clears proposed takeover of German construction company Hochtief by ACS of Spain

IP/11/71 - 26/01/2011

Commission approves proposed acquisition of International Power by GDF Suez, subject to conditions

IP/11/70 - 26/01/2011

Commission clears Intel's proposed acquisition of McAfee subject to conditions

IP/11/68 - 26/01/2011

Commission blocks proposed merger between Aegean Airlines and Olympic Air

IP/11/141 - 09/02/2011

Commission clears Prysmian's proposed acquisition of rival cable maker Draka Holding

IP/11/193 - 16/02/2011

Commission clears proposed acquisition of Arriva Deutschland by Ferrovie dello Stato and Cube

IP/11/208 - 21/02/2011

Commission approves proposed acquisition of the décor and abrasive paper business of Arjowiggins by Swedish paper manufacturer Munksjö

IP/11/205 - 21/02/2011

Commission clears acquisition of joint control over Actamax by DSM and DuPont

IP/11/258 - 04/03/2011

Commission opens in-depth investigation into proposed merger between UPM-Kymmene and Myllykoski

IP/11/277 - 10/03/2011

Commission clears proposed takeover of Swedish automated door supplier Cardo by rival Assa Abloy

IP/11/334 - 21/03/2011

Commission clears acquisition of logistics company TDG by rival Norbert Dentressangle

IP/11/366 - 25/03/2011

Commission approves acquisition of Siemens IT Services by Atos Origin

IP/11/367 - 25/03/2011

Commission clears proposed takeover of Spanish metal food can manufacturer Mivisa by Blackstone

IP/11/385 - 31/03/2011

Commission clears acquisition of the solid rocket propulsion business of SNPE by French aeronautical company SAFRAN

IP/11/394 - 01/04/2011

Commission clears acquisition of Norwegian company Elkem by China National Bluestar

IP/11/463 - 11/04/2011

Commission approves proposed acquisition of certain assets of Italian energy company IRIS by rivals Eni and AcegasAps

IP/11/491 - 18/04/2011

Commission clears acquisition of certain assets of UK financial firm Egg by Barclays Bank

IP/11/507 - 28/04/2011

Consultation on best practices for cooperation among EU national competition authorities

State aid control

IP/11/26 - 12/01/2011

Commission requires Spain to abolish tax scheme favouring acquisitions in non EU countries

IP/11/25 - 12/01/2011

The Commission approves Swedish €10 million aid for R&D project «LignoBoost»

IP/11/24 - 12/01/2011

Commission approves € 25.3 million French aid for the construction of a geothermal boiler

IP/11/27 - 12/01/2011

Commission agrees with Italy amount of subsidies Agusta Westland needs to reimburse for projects that have civilian uses

IP/11/54 - 20/01/2011

Commission approves record amount of state aid for the deployment of broadband networks in 2010

IP/11/69 - 26/01/2011

Commission rules against the unequal treatment resulting from certain insurance policies ("contrats solidaires" and "contrats responsables")

IP/11/67 - 26/01/2011

Commission approves Swedish €55 million aid for «Domsjö» R&D project

IP/11/66 - 26/01/2011

Commission approves €26 million French aid for district heating network in Paris

IP/11/65 - 26/01/2011

Commission finds German rule on carry forward of losses for fiscal purposes ("Sanierungsklausel") by ailing companies is incompatible under EU State aid rules

IP/11/64 - 26/01/2011

Commission clears Spanish €37.4 million R&D support to AERNNOVA S.A.

MEMO/11/68 - 03/02/2011

Overview of national measures adopted as a response to the financial/economic crisis

IP/11/139 - 09/02/2011

Commission opens formal investigation into proposed Polish aid to Fiat Powertrain

IP/11/201 - 18/02/2011

recovery of illegal State aid gets faster as Commission tightens procedures

IP/11/212 - 23/02/2011

Commission approves a repayable advance of €12 million to Volvo Aero Corporation for the development of a novel aero engine component

IP/11/214 - 23/02/2011

Commission opens in-depth investigation into restructuring aid for Czech Airlines

IP/11/213 - 23/02/2011

Commission opens in-depth investigations into support for short-term export-credit companies Ducroire and SACE BT

IP/11/217 - 23/02/2011

the Commission approves France's scheme to support supplementary social welfare cover for local government staff

IP/11/216 - 23/02/2011

Greek mining company Ellinikos Xrysos needs to repay around €15 million in illegal subsidies.

IP/11/215 - 23/02/2011

Commission requires Italy to recover around €18 million incompatible state aid from metal producers Portovesme, ILA and Eurallumina

MEMO/11/122 - 01/03/2011

Overview of national measures adopted as a response to the financial/economic crisis

IP/11/264 - 07/03/2011

Commission temporarily clears support for Nova Ljubljanska Banka

IP/11/267 - 08/03/2011

The Commission concludes that the Aero 2008 guarantee granted by France to aeronautic suppliers does not constitute state aid.

IP/11/266 - 08/03/2011

Commission approves Danish subsidy for purchase and operation of electric cars

IP/11/265 - 08/03/2011

Commission prohibits Austrian subsidies for energy intensive businesses

MEMO/11/191 - 23/03/2011

Commission welcomes Court judgment in the Leipzig-Halle airport case

IP/11/352 - 23/03/2011

Commission refers Italy to Court for failure to recover incompatible aid from Alcoa

IP/11/351 - 23/03/2011

Commission approves €19.2 million training aid for Italian car producer De Tomaso SpA

IP/11/350 - 23/03/2011

Commission approves Danish Government financing for new public radio channel FM4

IP/11/349 - 23/03/2011

Commission opens in-depth investigation into grants for new oil-shale fuelled power plants in Estonia

IP/11/348 - 23/03/2011

Commission clears €18.75 million aid for Solar Factory's third solar modules plant in Freiberg, Germany

IP/11/347 - 23/03/2011

Commission moves towards reform of State aid rules on Services of general economic interest

IP/11/346 - 23/03/2011

Commission endorses public service compensation for UK Post Office Ltd

IP/11/389 - 31/03/2011

Commission approves Austrian State support for the restructuring of Kommunalkredit

IP/11/406 - 05/04/2011

Commission approves restructuring of ABN AMRO Group, subject to conditions

IP/11/405 - 05/04/2011

Commission clears €49.06 million aid for 3Sun's photovoltaic modules plant in Catania, Italy

MEMO/11/219 - 05/04/2011

Overview of decisions and on-going in-depth investigations in the context of the financial crisis

IP/11/445 - 07/04/2011

Commission consults stakeholders on state aid rules for the aviation sector

IP/11/493 - 19/04/2011

Commission launches public consultation on the revision of the Broadband Guidelines

IP/11/492 - 19/04/2011

Commission authorises temporary Portuguese scheme to grant limited amounts of aid of up to €15,000 to farmers

IP/11/500 - 20/04/2011

Commission authorises temporary Romanian scheme to grant limited amounts of aid of up to €15,000 to farmers

IP/11/497 - 20/04/2011

Commission approves aid for Danish public service broadcaster TV2

IP/11/496 - 20/04/2011

The Commission approves a French risk capital scheme to help innovative new businesses

IP/11/495 - 20/04/2011

investment by the French fund FMEA in the Trèves group does not constitute state aid

Publications

Electronic subscription service

It is possible to receive an email message when the electronic version of the Competition Policy Newsletter is available, and also to be notified about the availability of **forthcoming articles** before the Newsletter is published.

Readers looking for information on cases and latest updates in the competition policy area will also be able to subscribe to:

- the **Competition weekly news summary,** including short summaries and links to press releases on key developments on antitrust (including cartels), merger control and State aid control, selected speeches by the Commissioner for competition and judgements from the European Court of Justice,
- the **State Aid Weekly e-News,** which features information on new legislative texts and proposals, decisions of the European Commission and the Courts of the European Union, information on block exempted measures introduced by Member States and other State aid-related documents and events
- the **Annual report on competition policy,** published in 22 languages
- and other **publications and announcements,** such as the report on car prices within the European Union, studies, reports and public consultations on draft legislation

How to subscribe to the competition e-newsletters

Access the service on
http://ec.europa.eu/competition/publications

Electronic versions, order details for print versions (when available) and a list of key publications can be found on
http://ec.europa.eu/competition/publications/

INFORMATION SECTION

Competition cases covered in this issue

Luxembourg: Publications Office of the European Union
2012 —37 pp. — 21 × 29.7 cm
ISSN: 1025-2266

How to obtain EU publications

Free publications:

- via EU Bookshop (http://bookshop.europa.eu);
- at the European Commission's representations or delegations. You can obtain their contact details by linking http://ec.europa.eu or by sending a fax to +352 2929-42758.

Publications for sale:

- via EU Bookshop (http://bookshop.europa.eu);
- priced subscriptions (Official Journal of the EU, Legal cases of the Court of Justice as well as certain periodicals edited by the European Commission) can be ordered from one of our sales agents. You can obtain their contact details by linking http://bookshop.europa.eu, or by sending a fax to +352 2929-42758.

KD-AB-11-002-EN-C

Competition Policy Newsletter
Published three times a year by the
Competition Directorate-General of the European Commission
Editors: Kevin Coates, Philip Kienapfel, Christof Lessenich

Address:
European Commission
Competition Directorate-General
Communications Policy and Inter-Institutional Relations
1049 Bruxelles/Brussel
BELGIQUE / BELGIË

E-mail: comp-publications@ec.europa.eu

Subscriptions and previous issues:
http://ec.europa.eu/competiton/publications/cpn

Publications Office

http://ec.europa.eu/competition/publications/