Report on Competition Policy 2006 and 2007

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In annex to the Commission's annual report on competition policy (2007), this Commission staff working document examines the Commission's policy to strengthen the development and the application of competition instruments, for instance rules concerning antitrust, mergers and state aid. The document also concentrates on the way these instruments have been used in certain sectors. Lastly, it deals with aspects such as the cooperation within the European Competition Network (ECN), international activities and interinstitutional cooperation.

On the basis of this detailed analysis, the Commission sets out the following **principal perspectives for 2008**:

Antitrust: during 2008, the Commission will commence a review of the block exemption regulations on vertical restraints and horizontal cooperation which expire in 2010, with a view to either amending or extending them.

Mergers: during 2008, the Commission will undertake a review of the functioning of the jurisdictional provisions of the EC Merger Regulation, including the operation of the system of case referral between the Commission and Member States, with a view to submitting a Report to the Council of Ministers by 1 July 2009.

State Aid: the Commission will continue to implement the State Aid Action Plan. It will adopt, in particular, the new environmental State aid guidelines, the General Block Exemption Regulation and the new Communication on guarantees. The Commission will also ensure the effective implementation of these new texts, including in-depth assessment of major cases. As announced in the State Aid Action Plan, it will pursue the systematic recovery of incompatible aid in cooperation with Member States. In the field of Services of General Economic Interest, the Commission will contribute to improving predictability by responding to questions from stakeholders in the context of the interactive information system announced in the Communication on services of general interest adopted on 20 November 2007.

International activities: DG Competition's work with the candidate countries, the Western Balkan countries and the Neighbourhood Policy countries will continue in 2008. It intends to further strengthen its cooperation with the Korean competition authority by concluding a dedicated intergovernmental cooperation agreement in the field of competition. The focus in 2008 will be on cooperation with emerging economies such as China and India. DG Competition will contribute to the negotiations on the competition provisions of these agreements aimed at guaranteeing a level playing field for European companies.

Sector developments

- **Electronic Communications**: the wide discrepancy of termination rates in the EU demonstrates the need to achieve real cost orientation. The Commission will cooperate with the European Regulators Group to propose a Commission Recommendation on remedies in termination markets. It is planned to adopt such a Recommendation by mid-2008. A Commission Recommendation on the regulation of next generation access networks is scheduled to be adopted towards the end of 2008. In addition the adoption of a new Procedural Recommendation (notifications, time limits and consultations) as provided for in Article 7 of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services is planned for Spring 2008.

While in the area of State aid the Commission expects further cases of broadband support in densely-populated and rural areas to be notified for approval, the move towards “next generation networks” is expected to lead to new patterns of public intervention. In the area of mergers, the Commission will continue to preserve the efficient competitive structure of electronic communications markets.

- **Information Technology**: the Commission will continue to monitor market developments closely and ensure that competition is not hindered, for example through reduced interoperability and compatibility with open standards.Continued attention will also be given to the growing importance of intellectual property rights in standards and the concomitant actions taken by standards-setting organisations to accommodate these rights.

- **Media**: DG Competition will focus on ensuring that scarce premium media content is made available in compliance with EU competition rules, and will monitor the transition from analogue to digital broadcasting and maximise consumer benefits from new forms of distribution by fighting anti-competitive restrictions at both the collective rights management level and the distribution level. The Commission will continue to apply its established policy concerning State aid for the digital switchover. It will pay particular attention to technological neutrality and to the ultimate objective of ensuring wide consumer access to digital broadcasting. The Commission will come forward – where appropriate – with a proposal for a revised Broadcasting Communication, possibly by mid-2008.

- **Health**: in 2008 the work of DG Competition in the area of health-related markets will be largely determined by the inquiry into the pharmaceutical sector that was initiated on 15 January 2008. The scope of the inquiry is defined as "the introduction of innovative and generic medicines for human consumption onto the market". In particular, the inquiry will examine whether agreements between pharmaceutical companies, such as settlements in patent disputes, may infringe the Treaty's prohibition of restrictive business practices. It will also investigate whether companies may have created artificial barriers to entry and whether such practices may infringe the Treaty's prohibition of abuses of dominant positions. An interim report is due in the autumn of 2008 and final results are expected in the spring of 2009.

- **Financial services**: the outlook of the financial services sector for 2008 is to a large extent determined by the entry into force of the Single Euro Payments Area (SEPA).The creation of a Single Euro Payments Area is expected to enhance competition by removing national barriers, thereby increasing competition between banks. However, the design and implementation of the SEPA project is led by the European Payments Council (EPC), which is an association of undertakings. SEPA thus consists of agreements and cooperation between competing undertakings. It therefore merits close competition scrutiny to assess whether the co-operation produces foreclosure effects which might amount to a restriction of competition.

The possibility cannot be excluded that the instability and volatility which affected markets towards the end of 2007 will continue well into 2008. Against this background it is possible that banks may suffer significant losses, for example as a result of mortgage payment defaults or mortgage asset devaluation, in their 2007 accounts. The possibility cannot be ruled out that other banks may need additional capital or State support in order to overcome the ongoing crisis.

- **Postal services**: while the adoption of the Postal Directive is expected to happen swiftly, most EU Member States will still maintain monopoly rights to universal service providers (USPs). In 2008, EU competition rules will thus continue to apply in a context in which most USPs in the EU will still have legal monopolies or positions of unparalleled strength and in which the most dynamic segments of the market are exist alongside such monopolies. Preserving residual or nascent competition in service markets adjacent to the monopoly will thus continue to be a key concern.

From a State aid viewpoint, the Commission will continue to ensure that Member States do not over-compensate postal operators entrusted with Services of General Economic Interest (SGEI) and that commercial activities outside the SGEI are not cross-subsidised. Pending the final vote of the European

Parliament on the new Postal Directive, the Commission will continue to prepare for market opening from 2011.

Interinstitutional cooperation: as is the case each year, the European Parliament issued an own-initiative report on the Commission's Annual Report on Competition Policy of the previous year, following an exchange of views on the issues raised in the report. The Commission also participated in discussions held in the European Parliament on Commission policy initiatives, such as on State aid reform (in particular on the environmental guidelines and on the proposal for a General Block Exemption Regulation) and the inquiry into the financial services sector.

In 2007, there were four exchanges of views were held with the Economic and Monetary Affairs Committee and one meeting with the Parliamentary Committees. Issues of major importance during these 2007 meetings included the energy sector inquiry and its follow-up, implementation of the State Aid Action Plan, the report on the retail banking sector inquiry, the business insurance inquiry and the continued efforts to combat illegal cartels. The Commission also cooperates closely both with the European Ombudsman and Members of the European Parliament by replying to Parliamentary Questions and Petitions. Lastly, the Commission also cooperates closely with the Council, informing it of important policy initiatives in the field of competition, such as on the State aid reform and the energy and financial services sector inquiries.