Report on Competition Policy 2006 and 2007

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This Annex to the Commission's Report on Competition Policy 2006 provides further details concerning the material covered in the main Report.

The first section looks at the various **instruments** at the Commission's disposal in the area of competition and state aids policy.

- The first instruments examined relate to **antitrust** (Articles 81, 82 and 86 of the EC Treaty).

- **Legislative, Interpretative and Procedural Rules:** in December 2006, the Commission adopted a **revised notice on Immunity from Fines and Reduction of Fines in Cartel Cases** (the 'Leniency' Notice) which is an important step towards uncovering and putting an end to hard-core cartels. In June 2006, the Commission adopted **new Guidelines on the method for setting fines imposed on undertakings that have infringed Article 81 or Article 82 of the Treaty**. This is one of the means employed to achieve a general policy in favour of competition and to steer the conduct of undertakings in the light of the principles laid down. In December 2005, the Commission adopted the **Green Paper on damages actions for breach of the EU antitrust rules as contained in Articles 81 and 82 of the EC Treaty**. The Green Paper was met with broad interest in the antitrust community and discussed at conferences in Europe and elsewhere. During the public consultation, the Commission received almost 150 submissions from governments, competition authorities, industry, consumers' organisations, lawyers and academics.
- **Application of Articles 81, 82 and 86 EC:** in 2006, the Commission continued to give a high priority to the **detection and deterrence of cartels**. It focused its actions on significant hard-core cartels of mainly worldwide or European scope and involving a number of economic entities. The Commission issued 7 final decisions in which it fined 41 undertakings a total of EUR 1 846 million (compared with 33 undertakings and a total of EUR 683 million in fines in 2005). The decisions issued show the economic significance of the sectors involved and the duration of the cartels, hence the average fine per undertaking has increased significantly.
- **Sanctioning anti-competitive behaviour: abuse of dominant positions (Article 82 EC).** In December 2005, the Competition DG published a Discussion Paper on the application of Article 82 EC to exclusionary abuses. The Discussion Paper was in public consultation until 31 March and more than 100 submissions were received. The most important topics raised by the submissions were discussed at a public hearing held in June 2006. The event attracted about 350 participants from Europe and beyond.
- **Compelling undertakings to bring infringements to an end: periodic penalty payments.** The Microsoft case marks the first time the Commission used its powers to fix a periodic penalty payment under Article 24(2) of Regulation (EC) No 1/2003 in order to compel an undertaking to bring an infringement of Article 81 or 82 EC to an end, in accordance with a decision previously taken pursuant to Article 7.

- The second set of instruments relates to **merger control**.

- **Legislative, Interpretative and Procedural Rules:** in September, the Commission published a new draft Commission Consolidated Jurisdictional Notice under the Merger Regulation for public consultation. This was to replace the four Jurisdictional Notices, all adopted by the Commission in 1998 under the previous Merger Regulation 4064/89.
- **Application of the Merger Control Rules:** the number of mergers notified to the Commission in 2006 reached record levels, surpassing the previous record number reached during the last merger

wave in 2001. This record level of 356 notifications continued a trend towards increased merger activity already noted in 2005 and is consistent with the widely reported increase in merger activity in Europe and worldwide. In total, the Commission adopted 352 final decisions during the year. Of these final decisions, 323 transactions were cleared without conditions during Phase I. A further 13 transactions were cleared in Phase I subject to conditions. Lastly, 207 decisions (or 64 % of all Phase I clearance decisions) were taken in accordance with the simplified procedure. In 2006, the Commission applied the **new test** introduced in Article 2(2) and (3) of the EU Merger Regulation in 2004, in a number of cases in order to verify whether the concentration would give rise to "non-coordinated" (or "unilateral") effects. In three merger control decisions taken in 2006, the Commission gave careful consideration to substantiated claims that **efficiencies** would be likely to result from the notified transactions. The Commission assessed the extent to which these efficiencies would impact on an overall appraisal of the competitive effects of the transactions in question, in line with the approach set out in the Horizontal Merger Guidelines (paragraphs 76-88).

- The third set of instruments relates to **state aid control**.

- In 2005, the Commission launched its **State Aid Action Plan (SAAP**), a comprehensive reform programme to transform State aid into an effective EU policy tool for growth and jobs. The consultation process showed clear support for these principles and they were at the heart of policy developments in 2006.
- The Commission adopted new **Regional Aid Guidelines (RAG)** for the period 2007- 2013 in December 2005. All Member States accepted the Commission proposals for appropriate measuresto apply the new guidelines, although in the case of Germany only after the opening of the formal investigation procedure.
- In November, the Commission adopted the new **State aid framework for Research, Development and Innovation (R&D&I)**, which entered into force on 1 January 2007. The Commission proposed that Member States adapt their existing aid programmes to the new rules within one year.
- A set of **new risk capital guidelines**, in force since August, cover risk capital measures for investment in SMEs in their early (seed, start-up) and expansion stages. The guidelines replace the 2001 Communication on State aid and risk capital.
- In December, the Commission adopted an evaluation reporton Council Regulation 994/98 (also known as the Enabling Regulation), which has enabled the Commission to adopt **Block Exemption Regulations (BER)for State aid** as well as **de minimis regulations.**
- In December, the Commission adopted a new **de minimis Regulation**exempting small subsidies from the obligation to be notified in advance for clearance by the Commission under EC Treaty State aid rules.
- **Application of the State Aid rules:** State aid control saw a significant increase of workload in case-handling activities, with 921 new cases registered in 2006 (a 36 % increase compared with the previous year). Of these cases, 54 % concern largely the manufacturing and service sectors, 34 % agriculture, 9 % transport and 3 % fisheries. The Commission took 710 final decisions in 2006, a 12 % increase compared with the previous year. In the vast majority of cases, the Commission approved the measures, concluding that the examined aid was compatible with the State aid rules (91 % of all decisions in 2006) or did not constitute State aid (4 % of all decisions).During 2006, the Commission continued its efforts to achieve more effective and immediate **execution of recovery decisions**. In this context, the number of recovery decisions pending completion continues to decrease. At the end of 2006, there were 60 pending recovery decisions, compared to 75 at the end of 2005. During 2006, 21 pending recovery cases were closed, whilst six new recovery decisions were taken. Of the EUR 8.7 billion of aid to be recovered under decisions adopted since 2000, some EUR 7.2 billion (i.e. 83 % of the total amount) had been effectively recovered by the end of 2006.

The second part of the report looks at **developments in specifickey sectors**: energy, financial services, electronic communications, information technology, media, transport and postal services.

The third part of the report provides an overview of **cooperation between the members of the European Competition Network and the national courts**. 2006 was the second full year of implementation of the enforcement system set up by Regulation 1/2003. It saw a further strengthening of cooperation between the members of the ECN, i.e. the EU Member States' NCAs and the Commission. The ECN continues to function well, with the mechanisms provided for by Regulation 1/2003, aiming at ensuring efficient and consistent enforcement of the law, operating smoothly throughout the year.

The fourth and last part of the report looks at **international activities** which cover, firstly, enlargement, the Western Balkans and neighbourhood policy, secondly, bilateral cooperation with countries such as the US, Canada and Japan, and, thirdly, multilateral cooperation, e.g. the International Competition Network.