Annual report on competition policy

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PURPOSE: Commission report on competition policy in 2011.

CONTENT: the Commission notes in its report that the fragile signs of economic recovery in 2010 and early 2011 were not sustained throughout the year:

- the last few months were marked by increasing instability and difficulties in the public sector;
- Member States continued to assist financial institutions, many of which had to receive liquidity support from central banks;
- public deficits have become a source of concern regarding sovereign risk, which has led to disturbances on financial markets.

In that economic context, the Commission considers that fair competition continues to be an **essential condition** for the full realisation of the internal market and a key component of a common strategy to contribute to the recovery of the European economy and thrive at the global level.

The Communication shows how the Commission used competition policy in 2011, as an instrument in the resolution of the financial and sovereign debt crises and how, generally, competition policy contributed to the wider policy objectives of the Europe 2020 strategy and supported growth, jobs and the competitiveness of the EU economy.

1) Contribution towards maintaining financial stability:

- ***The EU State aid framework***: the worsening of the sovereign debt crisis during the summer led Member States and the Commission to agree on a package of measures to strengthen banks' capital and to provide guarantees on their liabilities (the banking package).

In October, the ECOFIN Council concluded that **the EU State Aid Framework should continue as the sole EU level coordination tool** and that – in the short or medium term – no further framework was required.

On 1 December, the Commission prolonged the State aid crisis measures for the financial sector, clarifying and updating the rules on pricing and other conditions. Once the situation stabilises, a more permanent set of State aid rules will be established for banks.

Responding to a request from the European Parliament the Commission published a Staff Working Document, which explains how the Commission's State aid policy responded to the financial and economic crisis.

The Commission has used the State aid instrument in a manner that has **fostered bank restructuring while maintaining a level playing field in the market.** Conditions for crisis State aid rules for banks were set down with a triple objective: (i) safeguarding financial stability, (ii) preserving the internal market, and (iii) restructuring aid beneficiaries for long-term viability. Banks were required to **move away from unsustainable business models** based on excessive leverage and overreliance on short-term wholesale funding and encouraged to **focus again on their core business**.

In 2011, the Commission continued its approach to failing banks through a number of important State aid decisions.

- ***Countries with economic adjustment programmes (Programme countries):*** the Commission, together with the IMF and the European Central Bank (ECB), has been closely associated with the restructuring of the financial sector in Programme countries (Greece, Ireland and Portugal), to ensure that the massive support necessary to keep those institutions alive in a difficult macro- economic environment does not result in undue distortions of competition. The Commission has authorised the prolongation of the existing bank guarantee and recapitalisation schemes for the three Eurozone countries. It ensures that State aid is limited to the minimum necessary and that moral hazard is properly addressed, not only by requiring that **banks remunerate and eventually repay the aid they received, but also that they share the burden of the restructuring** and take measures to address the competition distortions brought by the aid.

- ***Fight against collusion and abuse of dominant positions:*** the Commission is striving to ensure that financial markets are open and competitive through its antitrust investigations in the over-the-counter (OTC) derivatives market, the payments services sector, and the distribution of trading data and financial information to the market.

Amongst other things, the Commission has proposed:

- to improve the regulation of Credit Default Swaps (CDS) and other OTC derivatives through European market infrastructure regulation (EMIR);
- to revise the Directive on markets in financial instruments (MiFID);
- a new regulation to promote the transition from the current domestic to new, pan-European SEPA credit transfer and direct debit schemes.

Along with these regulatory initiatives, the Commission is seeking to **tackle barriers to new entrants and innovation through antitrust scrutiny** in order to promote efficient pan-European payment systems that will lower the costs of payments, produce innovative payment methods, and ultimately facilitate trade across the EU.

- ***Application of merger rules***: the Commission considers that **trading and post-trading infrastructures, for cash and derivatives, operating in a safe, efficient and competitive manner** are essential components of capital markets which allow companies and investors to remain competitive at a European and global level. Since stock exchanges are crucial actors in capital markets, competition between them is of utmost importance.

On 29 June, Deutsche Börse (the owner inter alia of the Frankfurt Stock exchange) and NYSE Euronext (the owner of the New York, Paris, Brussels, Amsterdam and Lisbon Stock exchanges, amongst others) formally notified their proposed merger to the Commission under the EU Merger Regulation. The Commission concluded that the merger would have led to a near-monopoly in the area of exchange-traded European financial derivatives resulting in fewer possibilities for free competition and less innovation.

2) Competition policy contributing to the Europe 2020 strategy: competition enforcement also serve other wider long-term objectives such as enhancing consumer welfare, supporting the EU's growth, jobs and competitiveness in line with the Europe 2020 Strategy for smart, sustainable and inclusive growth.

- ***Consumer welfare (food sector):*** **rising and volatile food prices** have raised the awareness of policymakers and regulators about potential problems in the food supply chain, and led them to take action on the matter. At EU level, the Commission established in 2010 a **High Level Forum** for a Better

Functioning Food Supply Chain (HLF), with a mandate until the end of 2012. Concerns about **uneven bargaining power in the food supply chain** have also been the subject of discussion in the context of CAP reform.

Furthermore, competition authorities have continued to **monitor the food markets** in order to ensure that they work efficiently: cereals, dairy and a category of multi-products are the most investigated sectors in antitrust cases. The orange juice and sugar industries also were subject to merger review in 2011.

- ***Research, development and innovation***: the Commission considers that competition is a crucial factor in innovation and gives several examples of the action it has taken in this area:

- the investigation of alleged practices by some publishing houses to exert collective control over the development of **e-books**, possibly hurting the prospect of development of a competitive and digital single market in this area;

- investigations against **Google** with regard to its activities in online search, online search advertising and online search advertising intermediation;

- the opening of two cases in the **pharmaceutical** sector on agreements and contractual arrangements to delay market entry for generic products.

- ***Green growth:*** competition policy encourages the most efficient use of existing technologies and resources. The Commission has authorised joint ventures in the solar (both thermal and photo-voltaic) and wind power sectors. Member States have provided funding to measures in support of energy from renewable sources under the horizontal Environmental Aid Guidelines, while at the same time, several Member States aimed to promote environmental friendly cars and green products.

- ***Network industries:*** the Commission's work in the antitrust field has focused on improving the market functioning of key sectors of the economy such as network industries. It also scrutinised almost EUR 2 billion of State funds to finance the rollout of broadband and next generation networks in various European countries.

In the energy sector, competition enforcement can contribute to resolving security of supply issues, by facilitating access to the market and encouraging investment.

- ***Improving the functioning of the air transport sector:*** the process of liberalisation in air transport meant that there has been substantial consolidation amongst airlines. The Commission's merger and antitrust investigations in 2011 have considered both the competitive effects of the **increased concentration of supply on certain routes and the competitive impact of coordination between airlines.**

The Commission increased scrutiny of aid to **regional airports and low cost carriers**, and continues investigating restructuring aid to flag carriers. In December 2011, it adopted a proposal for a new Slot Regulation, which aim to facilitate market entry and encourages more efficient use of airport capacity.

Structured dialogue with the European Parliament: in 2011, the Commissioner for Competition visited the ECON committee three times in order to take part in the structured dialogue, to present the Commission Work Programme for 2011 (in March), the Annual Report on Competition Policy (in July) and the Commission Work Programme for 2012 (in November). He also attended a hearing on collective redress and a meeting with the competition-working group.