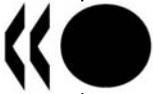


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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN THE EUROPEAN COMMISSION**

-- 2004 --

This report is submitted by the Delegation of the European Commission to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19-20 October 2005.

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Executive Summary¹

1. In the field of EC Treaty rules on restrictive business practices and abuse of monopoly power, 2004 was marked by the entry into force on 1st May of a new set of implementing rules laid down in Council Regulation 1/2003. The new rules created *inter alia* a new enforcement system based on close cooperation between the Commission and the national competition authorities, notably in the framework of the European Competition Network (ECN). This cooperation has already produced tangible benefits in terms of better coordination of enforcement efforts and the promotion of a common competition culture. The Commission also adopted a new block exemption Regulation and guidelines on technology transfer, providing a legal safe harbour for many technology transfer agreements while acknowledging that they can sometimes serve to harm competition and consumers.

2. The Commission also continued its strong commitment to effective enforcement, adopting 3 decisions prohibiting abuse of dominance, including the *Microsoft* decision which imposed a substantial fine (€497 million) and obliged Microsoft to disclose interoperability information and make available a version of its PC operating system without its media player. The Commission also adopted 6 decisions against cartels with fines totalling €390 million. Overall, 158 new cartel and monopoly cases were opened and 391 were closed.

3. A new Merger Regulation was implemented from 1st May 2004 easing the burdens imposed on companies in the context of merger notifications, and introducing a better test for identifying mergers which harm the European economy. The Commission also adopted new horizontal mergers guidelines, providing greater clarity about its analysis. The number of notified transactions increased once again, to 249, up from 212 the previous year, but still lower than the 345 cases in 2000. However the number of cases giving rise to serious doubts remained at 8. In-depth investigations were concluded in 7 cases. One resulted in a prohibition decision (*ENI/EDP/GDP*) and four required commitments by the merging parties (*Lagardère/Natexis/VUP*, *AREVA/Urenco/ETC*, *Continental/Phoenix* and *Sonoco/Ahlstrom*).

4. In the field of state aid, the Commission adopted rules that streamline and simplify notification procedures. It also amended the block exemption for SMEs to include aid for research and development. As regards individual cases, the Commission dealt in particular with a number of important cases involving rescue/restructuring aid as well as various cases relating to the shipbuilding industry.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legislative and interpretative rules

1.1.1 Antitrust modernisation

5. On 1 May, the new enforcement system for Articles 81 and 82 of the EC Treaty, established in the Council Regulation No 1/2003, entered into force. The new antitrust enforcement system is designed to ensure more effective enforcement of the EU competition rules. Regulation 1/2003 abolishes the notification to the Commission of business agreements, a system which had been created in 1962 but had become unnecessarily bureaucratic as companies operating in Europe are now familiar with competition rules. Significantly, the Regulation also enables EU Member States' courts and competition authorities to make a greater contribution to the enforcement of the European competition rules. At the same time, it brings about a more level playing field for businesses as all enforcers will be under an obligation to apply the EU competition rules to cases that affect trade between Member States.

6. In order to complement Regulation 1/2003² and following extensive consultations, the Commission adopted on 30 March the "Modernisation Package" consisting of a new Commission

Regulation on details of its antitrust procedures as well as six new Commission notices aimed at providing guidance on a range of aspects that are of particular significance under the new enforcement system.³ This package, which entered into application simultaneously with Regulation 1/2003, consists of the following elements:

- *Commission Regulation*: This implementing regulation contains detailed rules on a series of important aspects of the Commission's procedures such as hearings, complaints and access to file.
- *Network notice*: This notice establishes the main pillars of cooperation between the Commission and the competition authorities of the Member States within the European Competition Network (ECN).
- *Notice on cooperation with national courts*: *The notice is intended to serve as a practical tool for national judges who apply Articles 81 and 82 in conformity with Regulation 1/2003. It assembles the relevant case law of the Court of Justice, thus clarifying the procedural context in which national judges are operating.*
- *Notice on complaints*: *This notice contains explanations on the Commission's assessment of complaints in the antitrust field and the procedures applicable.*
- *Notice on guidance letters*: *While the Commission focuses its enforcement action on the detection of serious infringements, it also seems reasonable that in a limited number of cases, where genuinely novel questions arise, the Commission may provide guidance to undertakings.*
- *Notice on effect on trade*: *the notice describes the current case law on effect on trades concept, which is a jurisdictional criterion determining the reach of Article 81 and 82.*
- *Guidelines on Article 81(3)*: *The notice develops a framework for the application of Article 81(3) and provides guidance on the application of each of the four cumulative conditions contained in this Treaty provision.*

1.1.2 *Technology transfer block exemption regulation and guidelines*

7. As part of the *fundamental* reform of EU antitrust enforcement rules, the Commission adopted on 7 April new rules in the form of a new Commission block exemption regulation (the TTBER)⁴ and a set of guidelines⁵ concerning the licensing of patents, know-how and software copyright. As of 1 May 2004 licensing agreements benefit from an improved safe harbour, saving many agreements from individual scrutiny. The new rules facilitate licensing and reduce the regulatory burden for companies, while ensuring effective control of licensing between companies holding a significant degree of market power.

1.1.3 *Extension of competition enforcement powers in international air transport*

8. On 26 February, the Council adopted Regulation (EC) No 411/2004⁶ amending two existing Regulations in the air transport sector⁷ and Regulation (EC) No 1/2003. In essence, Regulation 1/2003 will thus apply also to air transport between the European Community and third countries. Furthermore, the scope of the Council Regulation enabling the Commission to issue block exemption Regulations on certain listed air transport activities (affecting also long-haul routes) is broadened. Until the adoption of this Regulation, the Commission lacked effective enforcement powers in this field of air transport between the EU and third countries, although there was no doubt that the competition rules applied also to these routes⁸.

The application of Regulation 1/2003 to all air transport, irrespective of the routes involved, finally brings air transport under the general framework of antitrust enforcement. Regulation 411/2004 entered into force on 1 May, together with the modernisation package.

1.1.4 New merger regulation, new notices and amended implementing regulation

9. *The new Merger Regulation*⁹ was formally adopted on 20 January and became applicable on 1 May. First, the new Regulation clarified the scope of the substantive test in order to ensure that the test would cover effectively all anticompetitive mergers while at the same time sure continued legal certainty. The new test reads as follows: “a concentration which would significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the common market”. The regulation thus clarifies that the Commission has the power to investigate all types of harmful scenarios in a merger, from dominance by a single firm to the effects stemming from a situation of oligopoly that might harm the interests of European consumers.

10. The new Regulation also provides for a number of changes that are aimed at increasing the flexibility of the system while retaining the principle of ex-ante control with clear, legally binding deadlines. More flexibility is introduced both for the timing of notifications and investigation timetables.

11. One of the main objectives of the reforms was to optimise the allocation of cases between the Commission and national competition authorities in the light of the principle of subsidiarity, while at same time tackling the persisted incidences of multiple filings, i.e. notifications of the same operation to several competition authorities within the EU. The new Regulation provides for a streamlining of the system for referrals to either the Commission or to the Member States, as the case may be, including a simplification of the criteria for such referral, and it introduces the possibility for notifying parties to request referrals at the pre-notification stage.

12. *Following the adoption* of the new Merger Regulation, related modifications to *the Commission Implementing Regulation* were adopted on 1 May¹⁰. The Commission also took the opportunity to make improvements to the clarity of the Implementing Regulation as well as to the efficiency and fairness of the review process (e.g. by making amendments to the notification forms and clarifying the provisions concerning right to be heard and confidential information). Corresponding changes were also made to the notice on a simplified procedure as well as to the notice on ancillary restraints. To provide guidance on the application and interpretation of the new rules in the Merger Regulation concerning the referral of cases, the Commission also adopted a new *notice on case allocation*.

13. Finally, new merger guidelines were adopted providing *guidance on the assessment of horizontal mergers*. These guidelines, which became applicable together with the new Merger Regulation, set out the analytical approach the Commission takes in assessing the likely competitive impact of horizontal mergers and reflect the re-wording of the substantive test for the competitive assessment of mergers in the new Merger Regulation. The new guidelines explain the circumstances in which the Commission may identify competition concerns, or when the Commission would be unlikely to intervene. The guidelines also specify that the Commission will carefully consider, in its overall assessment of the likely competitive impact of a merger, any substantiated claim that the merger will result in efficiencies.

1.2 Proposals for new legislation and guidance

1.2.1 Maritime transport

14. In 2004 the Commission made considerable progress in its review of two regulations concerning maritime transport. First, concerning the regulation which lays down detailed rules for application of

Articles 81 and 82 of the Treaty to maritime transport, one of the main issues of the review is whether the conditions for exemption under Article 81(3) of the Treaty for price fixing and capacity regulation by liner shipping conferences is still justified. Following a thorough consultation process and discussions with Member States, the Commission adopted on 13 October a White Paper, in which it concluded that there is no conclusive economic evidence that the assumptions on which the block exemption was justified at the time of its adoption in 1986 are, in the present market circumstances and on the basis of the four cumulative conditions of Article 81(3) of the Treaty, still justified. On that basis, the Commission considered proposing to repeal the present block exemption for liner shipping conferences, leaving the door open to possible alternatives to the present liner conference system on routes to and from the EU. Suppliers of liner shipping services, represented by the European Liners Affairs Association (ELAA), have put forward concrete ideas about such a framework. Before adopting its position on those ideas, the Commission has invited interested third parties to submit their comments, as well as to provide alternative options.¹¹

15. Second, the Commission launched in June a public consultation on policy options for revision of the regulation on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).¹² The said regulation provides a block exemption in relation to consortium agreements in maritime transport. The public consultation took place against background of the above discussed review of the block exemption for agreements between liner conferences. On 23 December, the Commission published a preliminary draft Regulation amending the block exemption for consortia and invited interested parties to send their comments¹³. On 20 April 2005, the European Commission renewed until 25th April 2010 the block exemption allowing shipping companies to enter into consortium agreements covering the maritime transport of cargo to or from one or more EU ports.¹⁴

1.2.2 Air transport

16. In 2004 the Commission embarked on the revision of the block exemption regulation concerning passenger tariffs and slot allocations ahead of its expiry in summer 2005. The central element of the Regulation is the exemption it gives for IATA Tariff Conferences in respect of intra-EU routes. The Commission published a consultation paper on 30 June inviting comments and evidence from governments, industry and consumers on essential issues relating to the assessment under Article 81(3) EC of these Tariff Conferences. A total of 52 responses were received and analysed by the Commission. That analysis showed a need for further in-depth exploration of certain issues. To that end, a discussion paper was prepared with a view to ensuring transparent decision making and enabling public authorities and the industry to submit a final round of comments.¹⁵

1.2.3 Review of procedural rules: new access to file notice

17. Access to the Commission investigation file in an individual case is an important procedural step and safeguard for the rights of defence of the parties in all contentious antitrust and merger cases. When the Commission has issued a statement of objection (SO), access to the file enables the addressees to acquaint themselves with the evidence in the Commission's file with a view to effectively expressing their views on the conclusions reached by the Commission in the SO¹⁶. In order to enhance transparency and clarity of the Commission's procedure in processing requests for access to the file, the Commission embarked on a revision of the current access to file notice dating from 1997¹⁷. Following the experience gained in applying the 1997 notice, the revision takes account of developments both in Commission practice and in recent case law. The review also seeks to ensure that the rules on access to file are compatible with the modernised antitrust and merger rules, as well as the current Mandate of the Hearing Officers¹⁸. After discussion with Member States, the Commission published on 21 October a draft notice on the rules for access to the Commission file in antitrust and merger proceedings¹⁹ and launched a public

consultation on the draft. Some 20 contributions were submitted in reply to this consultation, mostly by legal practitioners, but also by consumer and trade union associations.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices

2.1.1 Summary of activities and statistics

18. In 2004 the Commission continued its strong commitment to effective enforcement. It adopted 3 decisions prohibiting abuse of dominance. These cases were: CEWAL, Clearstream and Microsoft. The Commission also maintained its emphasis on anti-cartel activity by issuing 6 decisions against cartels with fines totalling over EUR 390 million and relating to a variety of sectors: *copper plumbing tubes*, *sodium gluconate*, *french beer*, *raw tobacco in Spain*, *hard haberdashery - needles* and *choline chloride*. Furthermore a number of other decisions under Article 81 EC were adopted, including an exemption decision in the transport sector (*Air France/Alitalia*), a prohibition decision concerning a distribution agreement that had the object of restricting parallel imports of Pokémon collectibles (*Topps*), a prohibition decision concerning the recommended minimum fee scale operated by an architects association (*Belgian architects*) and a prohibition decisions concerning territorial restrictions in gas transportation contracts (*Gaz de France*). As regards public undertakings, the Commission adopted a decision (under Article 86 of the Treaty) against Germany regarding certain provisions of Germany's postal regulation containing restrictions on commercial mail preparation. In 2004, the EC Courts also issued a number of judgements mainly concerning cartels or other Article 81 cases (for instance cases *Adalat*, *Cement cartel*, *Graphite electrodes cartel*, *Seamless steel tubes cartel*, *legal privilege issues in a cartel inspection*, *German banks cartel*, *Anti-doping rules and Eurovision*).²⁰

19. During the year 2004 the Commission opened 158 new cases concerning anticompetitive practices and closed 391 cases. In 2003 the respective figures were 262 and 319. The reduction in the number of new cases was mainly due to the abolition of the notifications of agreements for exemptions. The Commission concentrated also more on sector enquiries (see below examples on analysis related to premium content in the media markets and sale of sports rights for use over 3G networks).

20. Since 1 May 2004 the European Competition Network (ECN) was also in full operation. The ECN, which is composed of the national competition authorities of EU Member States (NCAs) and the Commission for the purpose of close cooperation in applying EC antitrust rules, had a good start in the cooperation measures including information by NCAs on new cases and envisaged decisions in application of Articles 81 and 82, mutual assistance in fact finding and exchange of information, including leniency cases with the consent of the leniency applicant. Cooperation not only covered case-work but also exchange of experience and discussions on sectorial issues, such as in the fields of energy, transport and financial services. Cooperation with national courts equally started to evolve with 9 requests for an opinion from national courts to the Commission and the communication to and web-publication by the Commission of judgments by Member State courts applying Articles 81 and 82.

2.1.2 Summary of significant cases

2.1.2.1 Abuse of dominant position

21. *Microsoft*: On 24 March, the Commission adopted a prohibition decision with fines against Microsoft Corporation ("Microsoft") in pursuance of Article 82 EC²¹. This decision concluded that Microsoft had abused its dominant position in the PC operating system market in two ways (Microsoft held around 95% of this market). First, Microsoft withheld from competitors in the work group server operating system market information necessary for their products to fully interoperate with Microsoft's dominant PC

operating system, Windows. While Microsoft had previously disclosed this type of interoperability information when it entered the work group server operating system market, it then adopted a policy of refusing to make such disclosure to its competitors, thereby disrupting previous levels of supply. In 1998, Microsoft turned down a formal request by Sun for such interoperability information. On the basis of an extensive market enquiry, the Commission concluded that the information in question was indispensable to compete in the work group server operating system market and that, by withholding it, Microsoft had been able to establish a dominant position, and risked eliminating all remaining competition in that market. The Commission further concluded that Microsoft's refusal to supply limited technical development, to the detriment of consumers: if competitors had access to the information withheld, they would be able to provide consumers with new and enhanced products without copying Microsoft's own offering.

22. Second, Microsoft harmed competition in the streaming media player market by tying with its dominant Windows PC operating system a separate product - its Windows Media Player. This tying practice conferred upon Windows Media Player the same ubiquitous presence as Windows, which artificially induced content providers and software developers to rely on Windows Media technology, and did not allow rival streaming media players to compete on the merits of their own products. The Decision shows that Microsoft has achieved a distinct lead over its competitors since it started its tying strategy in mid-1999. The Commission concluded that Microsoft's abusive behaviour constituted a very serious infringement of EU competition rules and imposed on Microsoft a fine of EUR 497.196 million.

23. Microsoft submitted an application for annulment of the decision before the Court of First Instance (CFI)²², as well as an application for interim measures seeking the suspension of the interoperability remedy and the untying remedy pending the outcome of its application for annulment²³. On 22 December, the CFI President dismissed Microsoft's application for interim measure in its entirety.

24. *Clearstream*²⁴: On 2 June, the Commission adopted a decision finding that Clearstream Banking AG and its parent company Clearstream International SA infringed Article 82 EC by refusing to supply cross-border securities clearing and settlement services to Euroclear Bank SA and by applying discriminatory prices to the detriment of this customer. Clearstream Banking AG is Germany's only Wertpapiersammelbank (Central Securities Depository). The Commission considered that Clearstream held a dominant position for providing cross-border clearing and settlement services to intermediaries situated in other Member States. The refusal to supply concerned registered shares issued under German law. In the present case, Clearstream's behaviour qualified as refusal to supply because: (i) Clearstream Banking AG is the only final custodian of German securities kept in collective safe custody, which is the only significant form of custody today for securities traded and new entry into this activity is unrealistic for the foreseeable future; (ii) Euroclear Bank could not duplicate the services that it was requesting; and (iii) Clearstream's behaviour had the effect of impairing Euroclear Bank's ability to provide efficient cross-border clearing and settlement services to clients in the single market. Euroclear Bank obtained the services it was seeking in November 2001, more than two years after it requested them. During the entire period Clearstream Banking AG denied Euroclear Bank clearing and settlement services for registered shares. The dilatory behaviour of Clearstream vis-à-vis Euroclear Bank contrasts with the usual period of not more than four months within which other comparable customers were supplied with clearing and settlement services. The Commission also found that, between January 1997 and January 2002, Clearstream charged, for equivalent services, a higher per transaction price to Euroclear Bank than to other securities depositories outside Germany.

2.1.2.2. Cartels

25. *Copper plumbing tubes*²⁵: On 3 September, the Commission adopted a decision finding that the leading European copper plumbing tubes producers had colluded to fix prices and share markets in the EEA market for copper plumbing tubes. Following an investigation which started in 2001, the Commission

established that the infringement lasted from mid-1988 to early 2001. The total amount of fines imposed on the undertakings in this case was some EUR 222.3 million. With the exception of one company all the addressees of the decision cooperated with the Commission in its investigation under the 1996 leniency notice.

26. *Raw tobacco in Spain*²⁶: On 20 October, the Commission imposed fines totalling EUR 20 million on four Spanish raw tobacco processors (Cetarsa, Agroexpansión, World Wide Tobacco España and Taes) as well as on an Italian processor (Deltafina) for entering into an anticompetitive agreement aimed at fixing the maximum average price they would pay to raw tobacco producers in Spain as well as the quantities of raw tobacco they would buy. The cartel lasted from 1996 to 2001. As of 1998, the processors put in place a sophisticated enforcement and monitoring system. As of 1999, they also agreed between themselves the price ranges for raw tobacco they would then negotiate with the producer representatives for inclusion in the standard cultivation contracts, which provide a framework for the establishment of the final price of raw tobacco at the moment of delivery. In the same decision, the Commission also prohibited a cartel involving the four associations representing the raw tobacco producers (ASAJA, UPA, COAG and CCAE). The Commission found that they colluded during the same period on the price ranges and minimum prices of raw tobacco they would then collectively negotiate with the processors when discussing the standard cultivation contracts and imposed on them a symbolic fine of EUR 1 000 each to take account of the role played by the national regulatory framework on their behaviour. This circumstance was also taken into account as a mitigating circumstance in determining the processors' fines.

27. *Cement*: By judgment of 7 January²⁷, the European Court of Justice (ECJ), while largely upheld the judgment of the Court of First Instance²⁸, reduced on appeal the fine imposed on one of the appellants by the Commission²⁹ for its involvement in the cement cartel. The ECJ considered that in order to establish the turnover for the purposes of calculating the fine, the turnover of Ciments français SA subsidiaries could not be taken into account, as it took control of the subsidiary in question only after its involvement in the infringement at issue. The ECJ dismissed the remainder of the appeals.

28. *Graphite electrodes*: In a judgment handed down on 29 April³⁰, the Court of First Instance (CFI) reduced the fines imposed by the Commission³¹ on the participants in the graphite electrodes cartel. The CFI found that the Commission had not determined in a coherent way the categories which it used for the calculation of fines under the Commission guidelines on fines³² and the CFI used its full jurisdiction to create a new category and to modify the starting amount of the calculation in respect of some companies. Other reductions related mainly to the question of the degree of cooperation by the companies which the Commission should have acknowledged in the form of reductions in the fine. In the CFI's view certain evidence provided by the parties was covered by privilege against self-incrimination and should thus have been considered a voluntary contribution by the parties. The CFI also confirmed, however, that undertakings which in the course of the administrative procedure explicitly admit the substantive truth of the facts which the Commission alleged against them (in the statement of objections) and are granted a reduced fine by the Commission in return are in principle stopped from disputing these facts before the CFI and have to reckon with an increase in the fines by the CFI. Furthermore, the CFI confirmed that the Commission may sanction a cartel which has given rise to concurrent sanctions in non-EU jurisdictions and the Commission is not obliged to take such sanctions into account in determining the fines it imposes³³.

29. *Seamless steel tubes*: In its judgments of 8 July³⁴, the CFI reduced the fines imposed by the Commission³⁵ on the participants in the seamless steel tubes cartel to take account of the shorter duration of the infringement, finding that the Commission had not established the entire duration on which – amongst other elements – it had based the fines. In this context the CFI held that in the particular circumstances of the case, it was for the Commission to adduce evidence of the exact end of the EU-Japan voluntary restraint agreements which the Commission had taken into account to determine the duration of

the infringement. As regards the Japanese companies involved, the CFI also reduced the fines in view of the lesser gravity of their involvement in the cartel, given that they had not participated in one leg of the infringement. For the remainder, the CFI rejected all applications for annulment of the Commission decision.

30. *Legal privilege- Akzo & Akros*: Following an appeal by the Commission, the President of the Court of Justice annulled by order of 27 September³⁶ the (partial) suspension of the operation of a Commission decision rejecting a claim of legal privilege which had previously been ordered by the President of the Court of First Instance³⁷ in the case. An envelope containing some of the documents seized in the inspection but which the parties claimed to be covered by legal privilege³⁸ and which had been retained in the Registry of the Court of First Instance was returned to the Commission. The ECJ noted the Commission's commitment not to disclose the documents under dispute to third parties until the conclusion of the main proceedings. As the novel approach put forward by the parties in regard to the scope of legal privilege has not been confirmed by the Courts, the Commission continues to handle inspections as before on the basis of the established case law³⁹, which in the Commission's view remains valid and appropriate.

2.1.2.3. *Other agreements and concerted practices*

31. *Air France/Alitalia*⁴⁰: On 7 April, the Commission approved the alliance between Air France and Alitalia, subject to substantive undertakings from the parties. The conditions imposed in the decision aim to reduce entry barriers and offer new entrants a real chance to establish themselves as credible competitors. The Commission identified seven overlap routes where the combination of the forces of Air France and Alitalia would eliminate or significantly reduce competition. On those routes prior to the alliance Air France and Alitalia were the two main competitors. After the companies agreed in particular to surrender a sufficient number of take-off and landing slots at airports and to grant various other remedies to restore effective competition on these routes, the Commission was in a position to clear this transaction⁴¹.

32. *Gaz de France*⁴²: On 26 October, the Commission adopted two decisions concerning two contracts concluded by Gaz de France (GDF) in 1997, one with the Italian gas company ENI, the other with the Italian electricity company ENEL. The subject of the contract between GDF and ENI was the transport by GDF over French territory to the Swiss border of natural gas acquired by ENI in northern Europe. The contract contained a clause requiring ENI to market the gas exclusively "downstream of the redelivery point", that is after leaving France. The GDF-ENEL contract concerned the swap of liquefied natural gas acquired by ENEL in Nigeria and contained a clause requiring ENEL to use the gas in Italy. The Commission concluded that the two clauses restricted the territory in which the parties could use the gas and were designed to partition national markets by preventing consumers of natural gas established in France from obtaining supplies from ENEL and ENI. They therefore constituted a restriction of competition within the meaning of Article 81 EC and a considerable obstacle to the creation of a truly competitive and Europe-wide gas market. These two decisions are all the more important in view of the liberalisation process that has started in the European gas sector in recent years, the benefits of which are only slowly materialising. Territorial restrictions are one of the key elements in a set of practices which perpetuate the partitioning of the European market and contribute to a lack of fluidity in the sector.

33. *Anti-doping rules*: In the doped swimmers case, the CFI decided on 30 September⁴³ that the anti-doping rules of the International Olympic Committee are pure sporting rules without economic considerations. These anti-doping rules are intimately linked to sport as such, and thus do not come within the scope of the Treaty provisions on the economic freedoms and in particular Articles 49, 81 and 82. This is the first judgment where the Court has ruled on whether sporting rules are subject to the Treaty provisions on competition. It confirms the Commission's policy in the field of sports.

2.1.2.4. *Developments in specific sectors*

34. *Premium content for media markets:* The Commission continues to give high priority to competition over premium content as a driver for innovation in the media markets with a view to contributing to the knowledge-based society. One important set of cases concerns rights for sport events, where the Commission has taken a balanced line: fighting the concentrative and restrictive effects of a marketing policy relying on broad and exclusive deals by a single seller on the one hand while taking into account possible efficiencies associated with the aggregation of content on the other. In the *Bundesliga* case, which concerns joint marketing of the media exploitation rights in respect of matches in the German first and second national football divisions for men, the Commission considered that the exclusive selling of the commercial broadcasting rights by the league association could restrict competition between the clubs and companies in the first and second divisions. Following notification of a preliminary assessment earlier in 2004, the league association offered commitments which were market-tested⁴⁴ in September⁴⁵. The Commission also further pursued its procedure with regard to the *English Premier League* (FAPL)⁴⁶ by publishing a communication on the commitments offered by FAPL⁴⁷. The ongoing proceedings concerning the *Eurovision system* continued with a fact-finding investigation concerning several aspects of the joint purchasing and sharing of sport programmes, including the rights for the 2010/2012 Olympic Games, by public broadcasters – members of EBU.

35. *Sector inquiry into the sale of sports rights for use over 3G networks:* Third generation mobile technology (3G) is now being rapidly deployed around the world, with customer growth at a rate faster than that experienced by GSM at the same point in its development. The Commission stepped up its efforts to prevent anticompetitive behaviour that could hamper the development of this key emerging market. The Commission has identified several types of behaviour by established players that could restrict access to key sports content by new media operators, such as refusals to supply, the bundling of TV rights with new media/UMTS rights, embargoes favouring TV coverage over new types of coverage or the purchase of new media/UMTS rights on an exclusive basis by established players. To fully appraise the specifics of the market, and tackle the existing and potential problems relating to content access for 3G, the Commission initiated on 30 January a sector inquiry into the sale of sports rights for use over 3G networks, jointly with the EFTA Surveillance Authority. The first, exploratory, phase was completed in August. It allowed for information gathering on the status of 3G deployment, including the sale of 3G rights to mobile operators, and provided an overview of the type of restrictions imposed on 3G sports rights. The second phase launched in September extends the inquiry to a wider range of players in the market, but also includes follow-up questionnaires to players addressed in the first phase.

2.2 *Mergers and acquisitions*

2.2.1. *Summary of activities and statistics*

36. The year was marked by an increase in the number of mergers and acquisitions notified to the Commission compared with 2003. This was the first such increase since 1999. In total 249 notifications were made, representing an increase of 17% over the previous year. The number of final decisions also increased slightly from 231 in 2003 to 242 in 2004. Of the final decisions adopted in the period, 64% were adopted under the new Regulation which came into force on 1 May and 57% were adopted under the simplified procedure. Of the 232 final decisions adopted at the end of Phase I investigations, 220 were clearance decisions without undertakings. In the remaining 12 cases the parties submitted undertakings that removed the Commission's serious doubts regarding competition.

37. There was no change as compared with 2003 in the number of cases giving rise to serious doubts as to their effect on competition and hence requiring an in-depth (Phase II) investigation, with 8 such investigations being opened in 2004. Of the 7 Phase II investigations completed in 2004, 6 transactions

were finally approved and one resulted in a prohibition. In 4 cases approval was granted on the basis of undertakings that removed the original competition problems and in 2 cases the transaction was approved unconditionally.

38. The Commission also adopted 3 referral decisions during the year. Two of these cases were referred in their entirety to a Member State and one partially. In 2004, the Commission received 19 reasoned submissions requesting that a concentration without a Community dimension should be examined by the Commission instead of Member States (pursuant to Article 4(5)). The Commission also received two reasoned requests that a concentration with a Community dimension should be referred - in whole or in part - to a Member State (pursuant to Article 4(4)).

2.2.2 *Summary of significant cases*

39. *Lagardère/Natexis/VUP*⁴⁸: On 7 January, the Commission authorized the proposed acquisition of Editis (formerly called Vivendi Universal Publishing, or VUP) by the Lagardère group subject to the divestment of around 60% of its assets. Before the transaction, Editis was the leader in the publishing, marketing and distribution of French-language books and Hachette Livre, the publishing arm of Lagardère, was the second player in the sector. The Commission's investigation and analysis revealed that the acquisition of the entire Editis publishing business, as planned in the transaction initially notified to the Commission, would have produced a heavily dominant group with a turnover at least seven times that of its nearest rival in the French-speaking countries of the European Union; this would have been a combination of two leading players with the highest level of vertical integration. In reply to the Commission's objections, Lagardère agreed to divest almost all of Editis with the exception of certain assets (Larousse, Dunod, Dalloz and the Anaya group) accounting for around 40% of the worldwide turnover of the company, while only less than 25% of Editis in the French-speaking regions of the EU (i.e. the relevant markets) was retained. The remedies not only had to provide solutions for markets (publishing rights, marketing and distribution services, sale of books) in which the merger would bring together the two leading players, but they also had to address the numerous vertical and conglomerate links between these markets.

40. *Sony/BMG*⁴⁹: The SonyBMG joint venture combines Sony and Bertelsmann's recorded music businesses worldwide, except for Japan. It comprises only so-called "artist and repertoire" activities, i.e. the discovery and development of performing artists (singers), and the marketing and sale of records. The Commission's investigation focused on the question whether the concentration would strengthen or create a position of collective dominance in the national markets for recorded music. The Commission found some indications for the possible use of wholesale prices ("published prices to dealers") as focal points and a certain parallelism in the price development of the five majors. However, these findings were not sufficient to establish by themselves price coordination. The Commission therefore also analysed the development of the majors' discounts and found that certain discounts were not fully transparent and were difficult to monitor. In addition, market transparency was reduced by the largely differentiated music content, in spite of certain homogeneity in the format, pricing and marketing of records. On balance, the Commission therefore concluded that there was not sufficiently strong evidence to establish an existing collective dominant position of the five majors in the markets for recorded music. The Commission also looked at the vertical relationships between the joint venture and its parent companies but concluded that the proposed transaction would not lead to a dominant position, either in the retail market for online music distribution where Sony is active or in the recorded music markets in those countries where Bertelsmann is a broadcaster. On the basis of these findings, the Commission approved the merger on 19 July.

41. *AREVA/Urenco/ETC JV*⁵⁰: AREVA, the French nuclear group, and Urenco, a company set up by the governments of the UK, the Netherlands and Germany, are the main European providers of uranium enrichment services which are needed to produce fuel for nuclear power plants. By this transaction,

AREVA acquires joint control over Enrichment Technology Company (ETC), Urenco's subsidiary active in the development and manufacturing of centrifuges used to enrich uranium. Centrifuge technology offers significant advantages over the older gas diffusion technology currently used by AREVA. ETC is to supply both its parents and third parties with centrifuge equipment. The operation was jointly referred to the Commission by France, Sweden and Germany in April. The Commission's investigation identified competition concerns in the downstream market for enriched uranium. The Commission was concerned that the proposed concentration could lead to the creation of a joint dominant position in the European Union, in particular given that ETC could be used by AREVA and Urenco to coordinate, through the exercise of their respective veto rights, their capacity developments. The Commission's concerns were removed by the commitments proposed by the parties. AREVA and Urenco first undertook to remove their respective veto rights in relation to future capacity expansions. Secondly, the flow of commercially sensitive information between ETC and its parents will be prevented by a series of measures which will be closely monitored. Thirdly, the parties have committed themselves to supplying the European Supply Agency (ESA) with additional information, which will enable ESA to more closely monitor the provision and pricing of enriched uranium and to respond, if necessary.

42. *Sonoco/Ahlstrom/JV*⁵¹: In May, the Commission received a notification of a proposed concentration by which two major players of the coreboard and cores industry, Sonoco (USA) and Ahlstrom (Finland), intend to create a joint venture which will group together their European activities. The Commission's in-depth investigation identified concerns in the markets for high-end paper-mill cores in the whole of Scandinavia and for low-value cores in Norway and Sweden, where the joint venture would have high market shares and where the significant competitive pressure exerted by Sonoco on the market leader Ahlstrom would be lost. To remedy these concerns, the parties proposed to divest Ahlstrom's sole Norwegian cores manufacturing facility in Sveberg. They also offered not to implement the merger before a buyer is found. The Commission approved the concentration on this basis, since it considered that this divestiture will allow for the entry of a new supplier in Scandinavia and will also remove the main part of the parties' overlap in the affected Scandinavian countries. In late October, the Commission approved the acquisition of Sveberg by Abzac, a French core manufacturer which has significant activities in Continental Europe, but which was absent from the Scandinavian markets.

43. *Continental/Phoenix*⁵²: The acquisition of Phoenix AG, Hamburg, by the German undertaking Continental AG concerned a transaction between two rubber companies which mainly serve the automotive industry. It was approved by the Commission subject to divestiture commitments. In view of the parties' dominant position in the markets for air springs for commercial vehicles and for heavy steel cord conveyor belts, the approval was only possible after the Commission had received commitments which could eliminate the identified competition problems. The acquisition would have led to significant overlaps in various markets for technical rubber products, in particular in the markets for air springs for commercial vehicles and for heavy steel cord conveyor belts. Indeed, the acquisition combined the two leading players in these two markets and would have led to a combined market share in both markets of well above 60%, with only a few smaller remaining competitors. Furthermore, the Commission has found evidence of significant barriers to enter both markets, mainly because the production and distribution of air springs and conveyor belts involves specific production and customer know-how. Accordingly, new suppliers have to undergo a lengthy qualification procedure before they can even be considered potential suppliers. In order to eliminate the Commission's competition concerns, Continental committed itself to divesting Phoenix's 50% co-controlling stake in the joint venture Vibracoustic to the only other shareholder, Freudenberg (Germany). In addition, Continental committed itself to causing Phoenix to completely divest its production of air springs for commercial vehicles (OEM/OES), located in a plant in Hungary. These two commitments remove entirely the overlap of the parties' activities in the field of air springs for commercial vehicles (OEM/OES). Continental also committed itself to selling a production line for wide steel cord conveyor belts to its competitor Sempertans. This divestiture will enable Sempertans to

compete over the full range of steel cord conveyor belts with the merged entity, thereby eliminating the competition concerns in the field of steel cord conveyor belts.

44. *ENI/EDP/GDP*⁵³: On 9 December, the Commission decided to prohibit the proposed acquisition of joint control over Gás de Portugal (GDP), the incumbent gas company in Portugal, by Energias de Portugal (EDP), the incumbent electricity company in Portugal, and ENI, an Italian energy company. Since mid-2004, all electricity markets have been fully open to competition. As for the gas markets, owing to its status of emerging market, Portugal will continue to benefit from a derogation from the liberalisation calendar established by the second gas Directive (2003/55/EC). Therefore, the opening to competition of Portuguese gas markets will start at the latest by 2007 and be completed by 2010. The Portuguese Government indicated that it may start the liberalisation process earlier. The Commission came to the conclusion that all relevant markets were at most national in scope and that EDP holds a dominant position in all the relevant Portuguese electricity markets and GDP, owing its position of legal monopolist, in most of the relevant gas markets in this case. After an in-depth investigation, the Commission concluded that the deal would strengthen EDP's dominant position in the electricity wholesale and retail markets in Portugal and GDP's dominant position in Portuguese gas markets. The concentration would thus significantly reduce or pre-empt the effects of liberalisation of the electricity and gas markets in Portugal, and increase prices for domestic and industrial customers. Remedies proposed by EDP and ENI were insufficient to eliminate the competition concerns.

2.3 *State aid control*

45. In the state aid field, the Commission continued the reform of state aid control with a view to significantly streamlining working methods and accelerating decision-making procedures. On 21 April, the Commission adopted a set of rules implementing and clarifying the procedural regulation for state aid control.⁵⁴ These rules streamline and simplify notification procedures and reporting and enhance transparency and legal certainty. Comprehensive notification forms give better guidance on the information required for proper assessment of notified state aid.

46. On 25 February, the Commission amended the scope of the block exemption for SMEs to include aid for research and development.⁵⁵ The Community framework for state aid for research and development⁵⁶ still applies to this type of state aid as regards both the question whether certain measures constitute state aid within the meaning of Article 87(1) of the Treaty and the ceiling below which aid may be exempted.

47. On 7 July, the Commission adopted new guidelines on state aid for rescuing and restructuring firms in difficulty.⁵⁷ The exit of inefficient firms is a normal part of the operation of the market. It should not be the norm that a company which gets into difficulties is rescued by the State. Such aid is among the most distortive forms of state aid and has given rise to highly controversial state aid cases in the past. The new guidelines therefore introduce stricter rules as regards rescue and restructuring aid, since this category is considered the most critical one. The Commission is well aware, though, of the social implications of situations where companies, whether through their own fault or not, get into difficulties which might result in this kind of aid. Therefore, the new Guidelines allow in admissible cases of aid, for instance, first urgent structural measures which are clearly limited in time.

48. As regards services of general economic interest (SGEIs), the Commission dealt with the question of how far compensation for such services could distort competition from a state aid perspective. Following the *Altmark* judgment⁵⁸ concerning the description of compensation as state aid, the Commission drew up a set of three proposals with a view to putting the criteria set out by the ECJ into practice: (1) a Community framework for state aid in the form of public service compensation clarifies the criteria according to which the Commission intends to assess public service compensation by Member

States under the state aid rules; (2) a decision exempting certain compensatory measures from notification requirements and (3) an amendment to the Transparency Directive to ensure separate accounts of the undertakings involved in SGEIs where necessary to avoid overcompensation

49. Concerning individual cases, the Commission dealt in particular with a number of important cases involving rescue/restructuring aid (such as *Alstom*, *MobilCom*, *Bankgesellschaft Berlin*, *France Telecom*, *Bull*, *German Landesbanken*, as well as different cases relating to the shipbuilding industry) and regional aid. The regional aid cases concerned notably the Commission's assessment and prolongation of regional aid maps for new Member States and the first Commission decision under the 2002 multisectoral framework for regional aid to large investment projects. As regards environmental aid, the Commission assessed for example the state aid aspects of national allocation plans in the context of the EU emission-trading scheme geared at achieving the aims of the Kyoto protocol.⁵⁹

50. In 2004, the Commission also stepped up its efforts to monitor the implementation of state aid decisions. To that end, DG Competition had created in the second half of 2003 a new unit which was given the mandate "to develop a coherent and systematic approach to the monitoring and enforcement of state aid decisions that fall within the remit of DG Competition". During the first full year of its existence, the new unit concentrated its resources on the effective implementation of recovery decisions.

3. Contribution to the formulation and implementation of other policies

51. The Directorate General for Competition contributes to the elaboration of all major policies within the scope of activity of the European Commission. Examples of such areas covered are energy, electronic communications, transport, financial services and liberal professions.

52. As regards the *energy sector*, in 2004 the Commission continued to work in cooperation with national competition authorities and energy regulators in order to improve the conditions for competition and for new market entry. In particular, the Commission established an ECN Energy Subgroup (see section 2.1 above) and liaised regularly with Energy Regulators.

53. In the field of *electronic communication services* one of the fundamental changes introduced by the new regulatory framework is that national regulatory authorities (NRAs) are obliged to define relevant electronic communication markets in accordance with the principles of competition law. They must carry out an analysis of the relevant markets and determine whether those markets are effectively competitive, meaning that there is no undertaking with significant market power (SMP, equivalent to the competition concept of dominance) on that market. Following the market analysis procedure, NRAs must notify to the Commission (i.e. the DG Competition and the DG Information Society) draft regulatory measures concerning the definition of the relevant markets, the finding or non-finding of SMP and the regulatory remedies proposed, if any. The Commission may either issue comments, which NRAs must take utmost account of, or request the NRA to withdraw the draft measure if the market definition and/or the determination of SMP is incompatible with Community law. In 2004, the Commission's departments received 89 such notifications and closed 90 cases. In three cases, the Commission requested the NRA to withdraw the draft measure concerned.

54. *Liberal profession sectors* (i.e. occupations requiring special training in the liberal arts or sciences) are usually characterised by a high level of regulation, in the form of either state regulation or self-regulation by professional bodies. On 9 February, the Commission adopted a report on competition in professional services⁶⁰. The main purpose of this report is to set out the Commission's thinking on the scope for reforming or modernising specific professional rules. While the Commission acknowledges that some regulation in this sector is justified, it believes that in some cases more pro-competitive mechanisms can and should be used instead of certain traditional restrictive rules. The Commission's report invites all

involved to make a joint effort to reform or eliminate those rules which are unjustified. Following the report, the Commission has invited the European professional bodies of lawyers, notaries, accountants, tax consultants, architects, and pharmacists to bilateral meetings to discuss the justification for the existing professional rules. DG Competition has also embarked on a dissemination process by keeping an open door for professional organisations that want to discuss directly with the Commission's departments. National competition authorities are encouraged to do the same. The Commission will prepare in 2005 a report on progress in eliminating restrictive and unjustified rules.

4. Resources

4.1 Resources overall (current numbers and change over previous year)

55. Annual budget 2004: € 83 million⁶¹

56. Number of employees (person-years) 2004:

⇒ A grade	380 ⁶²
⇒ B grade	112 ⁶³
⇒ support staff (C and D grades together)	185
⇒ TOTAL	677

57. Training

⇒ economists	173
⇒ lawyers	202
⇒ other professionals	See footnote 63

4.2 Human resources in 2004 (person-years) applied to

a) Enforcement against anticompetitive practices:	302
b) Merger review and enforcement:	100
c) International cooperation:	12
d) Control of State aid:	163
e) General operational support and co-ordination:	48
f) Administrative support:	52

5. Reports and studies on competition policy issues

58. European Commission carries out or commissions studies on competition policy issues both relating to policy development and in context of individual cases. For example in August 2004 a Study on the Conditions of Claims for Damages in Case of Infringement of EC Competition Rules was published. The study was undertaken by the law firm Ashurst, pursuant to a tender carried out by the Commission⁶⁴. Purpose of the study was to identify and analyse the obstacles to successful action for damages existing in the Member States of European Union. The study found that levels of private enforcement in Europe are currently very low. The study has found that not only is there "total underdevelopment" of actions for damages for breach of EC competition law, but there is also "astonishing diversity" in the approaches taken

by the Member States. The Commission is currently working on a Green Paper on Private Enforcement of the EC Competition Rules, which it plans to adopt in 2005. The purpose of the Green Paper, which will set out a number of possible options to facilitate private enforcement, will be to stimulate debate and facilitate feedback from stakeholders.

NOTES

1. This report to the OECD mostly follows the European Commission's 2004 Annual Report on Competition Policy. The full text of the report is available at: http://europa.eu.int/comm/competition/annual_reports/
2. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty (OJ L 1, 4.1.2003), Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004).
3. Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.04.2004). The notices and guidelines in the "Modernisation Package" have been published in Official Journal C 101, 27.04.2004. The complete "Modernisation Package" can also be viewed at the internet site of the European Commission Directorate General for Competition: <http://europa.eu.int>
4. Commission Regulation (EC) No 772/2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.4.2004).
5. Guidelines on the application of Article 81 of the EC Treaty to technology transfer agreements (OJ C 101, 27.4.2004). The TTBER and guidelines are also available at: http://europa.eu.int/comm/competition/antitrust/legislation/entente3_en.html#technology
6. OJ L 68, 6.3.2004. See also press release IP/04/272.
7. Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the EC competition rules in the air transport sector and Council Regulation (EEC) No 3976/87 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.
8. See Joined Cases 209-213/84 *Nouvelles Frontières* [1986] ECR 1425. Previously, the assessment of international airline alliances obliged the Commission to procedurally separate intra-Community from third-country routes, which led to an unsatisfactory patchwork scenario.
9. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004).
10. Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004).
11. Council Regulation (EC) No 4056/86. For the White Paper and replies received by the Commission, see: <http://europa.eu.int/comm/competition/antitrust/legislation/maritime/>
12. Commission Regulation (EC) No 823/2000. For the consultation document and replies received by the Commission, see: http://europa.eu.int/comm/competition/antitrust/others/#consult_823
13. OJ C 319, 23.12.2004.
14. The block exemption automatically covers liner shipping consortia which have a market share of below 30% (or 35% if operated outside a so-called liner conference). The Commission has also introduced some

minor amendments, following consultations with Member States and interested parties. Under the Regulation, all agreements (except those on price-fixing) whose objective is the joint operation of liner shipping services are exempted from the EC Treaty's ban on restrictive business practices (Article 81) provided they fulfil the conditions and obligations set out in the Regulation. The exemption does not cover the transport of passengers. See Commission Regulation (EC) No 611/2005 of 20 April 2005 amending Regulation (EC) No 823/2000 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) (OJ L 101, 20.04.2005).

15. Commission Regulation (EEC) No 1617/93. For the discussion paper and the comments received by the Commission, see: <http://europa.eu.int/comm/competition/antitrust/others/>
16. Regulation No 1/2003 (antitrust), Regulation No 139/2004 (mergers) and the respective implementing Regulations (Regulations No 773/2004 and No 802/2004) provide that access to the file must be arranged in all cases involving decisions on the basis of Articles 7, 8, 23 and 24(2) of Regulation No 1/2003 and Articles 6(3), 7(3), 8(2) to (6), 14 and 15 of the Merger Regulation.
17. Commission notice on the internal rules of procedure for processing requests for access to the file in cases under Articles 85 and 86 [now 81 and 82] of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C 23, 23.1.1997).
18. Commission Decision of 23 May 2001 on the terms of reference of the Hearing Officer (OJ L 162, 19.6.2001).
19. Draft Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty and Council Regulation (EC) No 139/2004 (OJ C 259, 21.10.2004). Available at: http://europa.eu.int/comm/competition/general_info/access_to_documents.html
20. For more details on individual cases, see the European Commission's 2004 Annual Report on Competition Policy.
21. Case COMP/37.792 available at: <http://europa.eu.int/comm/competition/antitrust/cases/decisions/37792/en.pdf>.
22. Case T-201/04.
23. Case T-201/04R.
24. Case COMP/38.096.
25. Case COMP/38.069.
26. Case COMP/38.238.
27. Joined Cases C-204/00 P Aalborg Portland A/S, C-205/00 P Irish Cement Ltd, C-211/00 P Ciments français SA, C-213/00 P Italcementi - Fabbriche Riunite Cemento SpA, C-217/00 P Buzzi Unicem SpA and C-219/00 Cementir - Cementerie del Tirreno SpA, not yet reported.
28. Judgment in Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 Cimenteries CBR and Others [2000] ECR II-491.
29. Decision of 30 November 1994 in Cases COMP/33.126 and COMP/33.322 - Cement.

30. Joined Cases T-236/01 Tokai Carbon Co. Ltd, T-239/01 SGL Carbon AG, T-244/01 Nippon Carbon Co. Ltd, T-245/01 Showa Denko KK, T-246/01 GrafTech International Ltd, T-251/01 SEC Corp and T-252/01 The Carbide/Graphite Group, Inc., not yet reported.
31. Decision of 18 July 2001 in Case COMP/36.490 - Graphite electrodes.
32. 1998 guidelines on the method of setting fines (OJ C 9, 14.1.1998).
33. The judgment has been appealed by the Commission (Case C-301/04 P) and several other parties, namely SGL (Case C-308/04 P), Showa Denko (Case 289/04 P) and SEC Corporation (Case C-307/04 P), decided by order of 24/11/2004).
34. Cases T-44/00 Mannesmannröhren-Werke AG, T-48/00 Corus UK Ltd, T-50/00 Dalmine SpA and Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 JFE Engineering Corp., Nippon Steel Corp., JFE Steel Corp. and Sumitomo Metal Industries Ltd, not yet reported.
35. Decision of 8 December 1999 in Case COMP/35.860 B - Seamless steel tubes.
36. Case C-7/04 P (R)
37. Joined Cases T-125/03 R and T-253/03 R Akzo Nobel Chemicals Ltd and Akcros.
38. The main case on this question was pending before the Court at the end of the year.
39. See Case 155/79 AM & S v Commission [1982] ECR 1575.
40. Case COMP/38.284.
41. This decision has been challenged before the Court of First Instance by a third party (Case T-300/04).
42. Case COMP/38.662 - GDF-ENEL, GDF-ENI.
43. Case T-313/02 Meca Medina and Majcen v Commission.
44. See Article 27(4) publication in OJ C 299, 14.9.2004.
45. A decision under Article 9 of Regulation 1/2003 was adopted in January 2005.
46. Cases COMP/38.173 and 38.453 (OJ C 115, 30.4.2004).
47. OJ C 115, 30.4.2004.
48. Case COMP/M.2978.
49. Case COMP/M.3333.
50. Case COMP/M.3099.
51. Case COMP/M.3431.
52. Case COMP/M.3436.
53. Case COMP/M.3440.

54. Commission Regulation (EC) No 794/2004 (OJ L 140, 30.4.2004).
55. Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004).
56. OJ C 45, 17.2.1996.
57. Communication from the Commission – Community guidelines on state aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004).
58. Case C-280/00. See points 621 et seq. of the 2003 Competition Report.
59. For more details on individual cases, see the European Commission's 2004 Annual Report on Competition Policy. The report gives also a sectoral view on state aid control in the agriculture, fisheries and transport sectors.
60. Communication COM(2004) 83 final of the Commission of 9.2.2004, "Report on Competition in Professional Services".
61. Estimate including a share in overheads of central Commission services.
62. Case-handlers, policy development and management. Including seconded national experts from EU Member States.
63. This classification refers to that used until the entry into force of the new Staff Regulations on 01 May 2004. "A" officials should have a university degree, while "B" officials must have a level of post-secondary education attested by a diploma or secondary education and 2-year professional experience. They may also fall under the category "economics", "law" or "other professional". Also, it should be noted that people with double majors (i.e. people having more than one university degrees or diplomas) are included in our statistics, so that the numbers provided are only indicative.
64. The study report, with national reports on legal systems in each of the 25 member States, is available at DG Competition internet site:
http://europa.eu.int/comm/competition/antitrust/others/private_enforcement/index_en.html