The Single Market and EU Competition Law - Two Pillars of the European Union

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Abstract

The interplay between a deeper, broader, well-functioning Single Market and an active and efficient enforcement of EU competition law is at the core of higher productivity and sustainable growth across Europe. This paper focuses on the domains in which competition policy can help to create and consolidate a genuine Single Market and capitalize on the full potential for Europe's competitiveness in a globalised world. In competition matters, the European Commission has more power than in any other policy areas, with its combined roles as initiator of European legislation and as competition enforcer. The modernisation of the competition policy and law enforcement has been the result of the EU political, economic and social agenda. The European Commission is leading this process, which is the main lever the Union has to respond to the multiple challenges ahead – the globalisation of business and the evolution of the financial and economic crisis.

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J.E.L. Classification: *K21; L4; G34.*

1. Introduction

The crucial role of the implementation of EU competition policy and law in correcting the market failures that hamper the accumulation of human and knowledge capital, resource optimum allocation, economic efficiency promotion, encouragement of innovation, economic development and setting up employment in the EU member states was a permanent concern of the economic and political governance system for almost six decades. The maintenance of a normal competition environment allowing the companies to compete „on their own merits" is determined by the prevention and correction of market distortions generated by the non-observance by the companies or the governments of the „game rules" (as) instituted by the EU Treaties. Such prerequisites determine the specificity of the competition rules which are considered the „hard core" of the EU internal market.

The fundamental principles of the EU policy in the competition field were not modified from the beginning of this common policy, but the environment it operated in suffered radical changes due to increasing complex and dynamic changes of the global economy. Competition policy and law enforcement is a common goal of the European Commission and the national competition authorities, and should evolve all the time, especially in times of crisis. Despite the regulatory efforts carried out since the 1980s, competition enforcement is crucial to remove the obstacles that still encumber many key sectors, where regulatory national barriers hinder growth possibilities and EU's competitiveness. The effective enforcement of antitrust rules, the control of mergers and state aid contribute in practice to the establishment of the internal market and to the preservation of open and fair pan-European markets.

2. The role of the effective competition policy and law enforcement for a better and fairly functioning Single Market

The EU is the largest internal market in the world, home to 23 million companies and over 500 million people. The Single Market, that is just over 20 years old, relies chiefly on competition and regulatory authorities to maintain a level playing field for the free movement of goods and services. The Treaties give to the European Commission the exclusive responsibility to enforce EU competition law across the territory of the Union. The competition-enforcement system also includes the network of competition authorities in all EU countries, the European Courts in Luxembourg that review the Commission' decisions, and the national courts of law.

The objective at the heart of EU competition policy is to enhance consumer welfare and efficiently functioning markets within the Union. The protection of the consumers' interests is the standard used for the implementation of the competition policy and law which results in the quality improvement, the wider choice and, frequently, the price decrease, so that the European citizens may obtain as many benefits as possible from the EU internal market.

Exploiting the full potential of the Single Market requires the protection of competition from market distortions whether originating from Member States (distortive State aids) or market players including public undertakings with special or exclusive rights, or mergers that would significantly impede effective competition. European Commission focuses on sectors with the greatest relevance for the competitiveness of EU economy and the greatest – direct or indirect – effect on consumers. Enhancing market efficiency also requires actions to terminate anti-competitive practices and abuses of dominant positions in key sectors such as financial services, ICT, energy, transport and pharmaceuticals, where increased competition will have beneficial spill-over effects on many other downstream sectors. Competition policy and law enforcement thus have an important contribution to the Commission's flagship initiatives in the Europe 2020 strategy.

The implementation of the competition policy is correlated with other public policies for growth, including industrial policy, the digital agenda, and improving the business environment for Europe's companies.

3. The challenges for competition law enforcement in the context of globalization and of the financial and economic crisis

The new realities of the globalization process, the substantial increase of the cross-border economic activities lead to rapid changes of the economic environment. As a result of the progressive integration of world economies, in almost every industry, more and more companies have operations in several continents and make use of supply chains that span the whole world. In this context, the European Commission (DG Competition) faces increasing complex cases to investigate using the tools of economic and legal analysis.

The Commission is responding to the challenges of globalisation by keeping markets open in order to improve the competitiveness of the European economy. EU competition policy protects

European consumers against the potentially harmful aspects of globalisation by targeting international cartels, mergers and abusive practices of firms of any nationality that harm European consumers. Commission‘s practice shows a growing number of international cartels, and many cartelists have an ever more complex set-up, often using artful networks of bilateral arrangements and communication lines. An important strategy adopted by the Commission to fight today’s global cartels is international cooperation.

✓ Opening up distorted markets through the enforcement of the competition rules and better regulation is vital in times of economic downturn. The area in antitrust that has been most affected by the current long crisis is that of cartels. Some cases investigated by the Commission in the past few years that can be defined as defensive cartels, in which companies break the law to shield themselves from the difficulties they face in a crisis environment.

In the context of the financial and economic crisis, state aid control policy was identified as a powerful EU-wide instrument to protect the internal market from potential disintegration. When the financial crisis precipitated in the autumn of 2008, the European Commission was asked to control the massive amounts of public support granted to Europe’s banks and adapt the State aid rules in order to deliver on three basic goals: maintaining financial stability, safeguarding the internal market, and protecting the taxpayer. In this context, the Commission embraced a new approach, very flexible, that materialized in the relaxation of the EU state aid rules. State aid to financial institutions has been crucial for restoring confidence in the financial sector and avoiding a systemic crisis. Over the last five years, the State aid enforcement system has proved to be a cornerstone of the management of the financial crisis in Europe. From a substantive point of view, the crisis has certainly reaffirmed the legitimacy of State aid control as a tool “essential to ensure a well functioning Single Market”. As part of the EU State Aid Modernization Initiative, the Commission has announced its intention to put in place a permanent set of rules for rescuing and restructuring financial institutions in the post-crisis environment, consistent with regulatory proposals for a permanent EU crisis management and resolution system[1].

A deeper and broader Single Market – competition vs. protectionism

The competition is at the core of higher productivity and innovation, creates jobs and drives Europe’s economic growth, thus being crucial for the recovery of European economy after these years of recession. Commission‘s experience shows that despite the regulatory efforts carried out since the 1980s, competition law enforcement is absolutely necessary in order to realise the full growth potential of the internal market. The effective enforcement of antitrust rules by the Commission and the control of mergers and State aid are already contributing in practice to the establishment of the internal market in key sectors that could bring growth to Europe, but where national barriers still persist, such as telecoms, energy, banking and financial sectors.

Even before the crisis, the European Commission faced the pressure put by the negative opinions about the role of competition policy in the EU. Some critics would say that Europe needed to go soft on competition control to help our companies respond to the challenges posed by international competitors old and new. These views are mainly motivated by the perceived threat to our competitiveness posed by the emerging economies and by a resistance to complete the Single Market, especially in certain areas such as energy, the service sector – including financial services – the digital

[1] Communication on EU State Aid Modernisation (SAM) - Brussels, 8.5.2012 COM(2012) 209 final.

industries and telecoms markets. Also, Commission's practice shows the general increase in defensive cartels, where companies take the wrong-headed decision to react to tight business conditions by breaking EU competition law.

During the years of crisis the calls for a laxer competition control have become louder, and now some critics of competition policy are worried about deindustrialisation and the inefficiencies of financial markets. Commission rejects the laxer competition control and protectionism, considering that it would be a tragic mistake to raise barriers around the Single Market or protect national interests at the expense of the common European interests. In the opinion of the Commissioner for competition Joaquín Almunia, "What we need is a pro-active approach, not a defensive one, to reinforce the foundations of a credible and sound EU strategy for growth. A strategy whose goals must include a fully-fledged Single Market and a real Economic and Monetary Union equipped with the instruments that were missing in its original design. A strategy capable of reinforcing competition policy; not as an obsession of dangerous Brussels fundamentalists – as we are sometimes depicted – but as a vital component in the policy mix that can put Europe back on track".[2]

Dr. Vince Cable - UK Secretary of State for Business, Innovation and Skills – opened his keynote address to the third European Competition Forum (Brussels, 11 February 2014) with noting that periods of crisis increase pressure on governments to break or circumvent competition law. For this very reason, robust competition control at EU level is needed more than ever. Over the past few years, we have witnessed a profound crisis of capitalism, and supporting competition policy is one of the many things that could be done to restore trust in capitalism, because it shows that markets can be made to work. Stronger competition rules can rebuild trust in the system.

4. European Commission' practice in applying the instruments of competition policy

4.1. Antitrust policy

The Commission fights against anticompetitive agreements between two or more independent market operators which restrict competition (Article 101 of the Treaty on the Functioning of the European Union - TFEU), and prohibits abusive practices so that new entrants can challenge dominant incumbents (Article 102 of the Treaty). The main rules on procedures are set out in Council Regulation (EC) 1/2003 (Antitrust regulation).

Firms are prevented from fixing prices or carving up markets among them by the EU's strong antitrust enforcement. Commission takes a corrective and deterrent action with its decisions. This area of work is "corrective" because the Commission can intervene only after companies adopt anti-competitive and illegal practices. The deterrent effect is ensured by the fines and commitments imposed by the Commission and also by the guidance that encourages other companies to take all the measures needed to stay within the law.

The detection, prosecution and deterrence of cartels

The most flagrant example of illegal conduct infringing Article 101 of the Treaty is the creation of a cartel between competitors (which may involve price-fixing and/or market sharing). The

[2] Joaquín Almunia, Competition policy for the post-crisis world: A perspective, Celebrating ten years of the GCLC, Bruges, 17 January 2014.

setting up of cartels is the most damaging type of infringement because it causes the most harmful restrictions of competition, not only to the economy as a whole but also to particular businesses and citizens: they force consumers and client companies to pay above-market prices, they limit competition among rivals and negatively affect incentives to invest and innovate, and they often raise barriers to shield the cartel members from the entry of more innovative and efficient rivals. Illegal agreements thus hinder the necessary restructuring in certain sectors, increase production costs and ultimately thwart growth. Fighting cartels has been a core task for the European Commission for the past 15 years at least, and its work has kept pace with the evolution of these illegal business practices, in the globalization context. Even during a crisis such as this one, deterrence is the key. But the Commission takes into consideration the fact that some companies are in financial difficulties and may be driven into bankruptcy as a consequence of the fines – with the corresponding social costs. The goal is to strike the right balance between maintaining a deterrent level of fines and avoiding unwanted side-effects, such us pushing companies out of business.

Driven particularly by the concern about the damage caused by large scale cross-border cartels, many competition authorities have made tougher anti-cartel law and its enforcement a top priority over the last two decades. As part of this “get tough” approach, it is possible to discern a contemporary movement in support of criminal sanctions for serious or so-called “hard core” cartel conduct. More than thirty countries have criminalised cartel conduct in some form. All but five have done so since 1995 and over 20 since 2000, and the list is growing.[3] The campaign for criminal sanctions has been led by the United States authorities, based primarily on the view that individual accountability through incarceration is the most effective means of deterring and punishing cartel conduct.

The prohibition of abuses of dominant position

The enforcement of competition law against other illegal practices **-** the abuses of dominant position **-** has a particular significance for ensuring the benefits of the liberalization process in the sectors recently opened to competition or which are under liberalization**.** In some cases a dominant company in a market may try to exclude rivals through unfair practices so as to extract monopolistic rents. The ability and incentives of firms to become larger push them to invest and innovate and these are key drivers of economic growth. This is why getting a dominant position through internal growth does not represent a threat to competition environment in itself. What EU competition law forbids is the abuse of a dominant position. The Commission sanctions such illegal practices of dominant firms that distort the competitive process and hamper the prospects for economic growth. The Commission's view is that the higher the market share, and the longer the period of time over which it is held, the more likely it is to be a preliminary indication of dominance. If a company has a market share of less than 40%**,** it is unlikely to be dominant, but it is not totally excluded.

The Competition Law not only prohibits the abuse of dominance by a single firm, but also the collective abuse of dominance by several different firms. In order for such a collective dominant position to exist, the independent undertakings in the group must be linked through “economic links”, in such a way that they adopt the same conduct on the market. This could be the case, for example, where two or more independent undertakings jointly have, through agreements or licences, a technological lead affording them the power to behave to an appreciable extent independently of their competitors, their customers and ultimately of their consumers. Collective dominance generally exists in narrow oligopolistic markets, where the conduct of the market leader is copied by the other

[3] Gregory C Shaffer and Nathaniel H Nesbitt, *Criminalising Cartels: A Global Trend?* (2011) 12 Sedona Conference Journal 313.

competitors. For example, the parties to a tight oligopoly in a market with the appropriate characteristics, in particular in terms of market concentration, transparency and product homogeneity, are in a position to anticipate one another's behaviour and are therefore strongly encouraged to align their conduct in the market, in particular in such a way as to maximise their joint profits by restricting production with a view to increase prices

Some prominent cases investigated by the Commission in the abuse of dominance domain involve global companies and have also been scrutinised by other competition authorities. Also, a typical case of companies abusing their dominance is that of old incumbents in liberalised markets trying to protect themselves from the pressure of new competitors. In recent years, Commission's investigations related to more cases in the energy markets coming from Central and Eastern Europe, such as with the suspected abuse of dominant position involving the Czech electricity-supply incumbent ČEZ, the Bulgarian Energy Holding, and the company managing Romania's electricity exchange - OPCOM. The Commission also look out for companies whose behaviour risks to fragment the internal market (this is one of the issues investigated in the Gazprom case; the company is suspected of preventing market integration of gas supply and of practicing unfair prices in Central and Eastern Europe).

The deterrent effect of fines imposed by the Commission in antitrust cases

Fines imposed by a competition authority after an investigation in the public interest (public enforcement) are a means of sanctioning infringers (companies whose market behaviour fails to comply with EU competition rules) for their illegal conduct, and discouraging them, and other potential infringers, from engaging in further infringements. When the Commission finds an infringement of EU antitrust rules, it may take a decision under Article 7 of the EU's Antitrust Regulation prohibiting such behaviour and imposing sanctions. The Commission may impose a fine up to 10% of the undertaking's total turnover in the preceding business year. Commission fining policy is based on the principles that some breaches cause more harm to the economy than others, that breaches affecting a high value of sales cause more harm than infringements affecting a low value of sales, and that long-running breaches cause more harm than short ones.

The decisive position of the Commission as regards the power of deterrence of the fines in preventing the creation of new cartels is exemplified by the decisions that imposed the highest fines in the last ten years which generally addressed companies involved in cartels – except for the record fine inflicted in the case of dominant position abuse of the American company Intel Corporation (2009). The total amount of the fines inflicted in cartel situations spectacularly increased during the period 2000-2009 (around €12.9 billion) as compared to the years 1990–1999 (€832.5 million)

According to Joaquín Almunia, Vice President of the European Commission responsible for Competition Policy, in the current mandate (since February 2010), the Commission has adopted 25 cartel decisions involving 167 groups and 389 entities, and these decisions have produced fines for a total of €8.6 billion[4]. These include €1.47 billion for two cartels in the market for TV and computer monitor tubes that had lasted for nearly a decade and almost €1 billion in the recent automotive ball bearings settlement. The main cartel decision involving financial institutions is from December 2013, when seven international banks and a broker received fines for a total of €1.7 billion for creating cartels in the markets for interest rate derivatives. In similar cases, the Commission is looking into

[4] Joaquín Almunia, Fighting against cartels: A priority for the present and for the future, SV Kartellrecht, Brussels, 3 April 2014.

possible collusions to manipulate other financial benchmarks for oil products and derivatives and in the foreign exchange markets.

Table 1: Fines imposed (adjusted for Court judgments) - period 1990 – 2014

Last change: ++02 April 2014++

Period	Amount in €*
1990 - 1994	344 282 550,00
1995 - 1999	270 963 500,00
2000 - 2004	3 157 348 710,00
2005 – 2009	8 182 251 662,50
++2010 – 2014++	8 416 555 579,00
Total	**20 371 402 001,50**

*Amounts corrected for changes following judgments of the Courts (General Court and European Court of Justice) and only considering cartel infringements under Article 101 TFEU.

Source: European Commission, *Cartel statistics*, 2 April 2014.

Table 2: Ten highest cartel fines per case (since 1969)

Last change: ++31 March 2014++

Year	Case name	Amount in €*
2012	TV and computer monitor tubes	1 470 515 000
++2008++	Car glass	1 189 896 000
2013	Euro interest rate derivatives (EIRD)	1 042 749 000
2014	Automotive bearings	953 306 000
2007	Elevators and escalators	832 422 250
2010	Airfreight	799 445 000
2001	Vitamins	790 515 000
2008	Candle waxes	676 011 400
2007/2012	Gas insulated switchgear (incl. re-adoption)	675 445 000
2013	Yen interest rate derivatives (YIRD)	669 719 000

*Amounts adjusted for changes following judgments of the Courts (General Court and European Court of Justice) and/or amendment decisions.

Source: European Commission, *Cartel statistics*, 2 April 2014.

Since 2010 companies have the option to settle cartel cases with the Commission, and 13 settlement decisions have been taken to date, with fines totalling almost €4 billion. Settlements offer quicker finality, a 10% reduction in the amount of the fines, and shorter decisions.

The severe effects that the dominant position abuse have upon the competition are exemplified by the Commission's decisions related to record fines inflicted upon certain firms charged with such illegal actions – the cases of Intel Corporation (2009) – €1.06 billion - and Microsoft Corporation (2004) – €497.196 million.

✓ **The Europe's telecoms industry -** a recently liberalized sector and a particular one in terms of competition law - is abundant in cases of abuse of a dominant position. Telecoms and online markets are one of the sectors where growth prospects are in theory very high but these markets remain fragmented, and cross-border barriers in this market are of a regulatory nature. In the meantime, such barriers should not be an alibi for operators to seek monopolistic rents and impede innovation.[5] Considering the size of former monopolists, together with the seriousness of the types of conduct investigated, fines are usually very high. An interesting point regarding the fines concerns the recidivism in this sector where incumbent operators have been found to have committed abuse

[5] Cani Fernández and Irene Moreno-Tapia, Dominance in the telecommunications sector: An overview of EU and national case law, 4 September 2013, e-Competitions Bulletin Telecom & Dominance, Art. N° 42836.

repeatedly. Since 1998, the Commission has imposed fines in only four cases concerning abuse of dominant position in the telecoms industry: *Deutsche Telekom* (€12.6 million), *FT/Wanadoo* (€10.35 million), *Telefónica* (€151.88 million) and *Telekomunikacja Polska* (€127.6 million). The three first decisions concern pricing practices (margin squeeze and predatory pricing), whereas the latter covers access issues.

✓ **Commissions' practice shows that not all antitrust decisions end with the imposition of fines.** Under Article 9 of the Antitrust Regulation, the Commission may also conclude an antitrust investigation by making legally binding the commitments offered by the companies concerned, when these can restore good competitive conditions in a market. Prohibition decisions and fines in antitrust look back at the past, whereas commitment decisions look ahead towards the future. The commitments decision is sometimes a good option, especially in fast-moving markets). Commission took such decisions in several cases related to the energy sector, but also in the field of financial services or even in basic industries. For example, since the *energy sector* inquiry closed by DG Competition in 2007, a dozen antitrust decisions have been taken involving old incumbents in energy markets of several countries including Italy, Belgium, France and Germany. In these cases, seeking commitments that would open up the markets has been Commission's preferred policy. Another example is an important on-going investigation of online search service provider *Google* for suspected abuse of dominant position, which will probably be concluded with a commitment decision if the third package of commitments offered by the company could finally allay the four competition concerns identified in the company's business practices.

4.2. Merger control policy

This area of activity implies a preventive work for reviewing proposed mergers. The European Commission promotes mergers and acquisitions that raise no competition concerns and may bring benefits to the economy. Combining the activities of different companies may allow the companies, for example, to develop new products more efficiently or to reduce production or distribution costs. Through their increased efficiency, the market becomes more competitive and consumers benefit from higher-quality goods at fairer prices.

The Commission has the responsibility to prevent the mergers that can lead to anti-competitive dominant positions. The legal basis for EU Merger Control is Council Regulation (EC) No 139/2004, the current Merger Regulation. The regulation prohibits mergers and acquisitions which would significantly impede competition in the Single Market. If the resulting entity from a merger has too much market power it could raise prices substantially for consumers, stifle innovation, and generally distort competition. Mergers going beyond the national borders of any one Member State are examined at European level and the Commission must be notified of any merger with an EU dimension (meaning that the merging firms reach certain turnover thresholds) prior to its implementation (ex-ante control). Mergers below the jurisdictional thresholds remain within the exclusive competence of national competition authorities, in line with the principle of subsidiarity.

Commission clears the vast majority of the mergers that are submitted to it either unconditionally or with "remedies"- normally divestitures - that preserve a competitive market structure. Only occasionally Commission is forced to block a deal when the remedies proposed by the companies are not good enough to allay competition concerns. In the latest prohibition of the end of February 2013, the Commission did not allow the low-cost airline Ryanair to go on with its plans to acquire the control of Aer Lingus – Ireland's flag carrier. Another example is the proposed acquisition of TNT Express by UPS in the market for the express delivery of small packages; in January 2013, the

Commission prohibited the take-over that would have restricted competition in 15 EU countries. Also, in February 2012, the Commission prohibited the proposed merger between Deutsche Börse and NYSE Euronext - a deal that would have led to a near-monopoly in exchange-traded European financial derivatives worldwide.

✓ After more than 20 years in force, the basic features of the EU merger control system are well proven. The Merger Regulation1 has been regularly reviewed in the past to improve the system and to take into account evolving practice. The review of the merger control system answered the requirements of the business environment facing the changes brought by the globalization – higher complexity, size and geographic area of the concentration operations – and the requirement of ensuring the appropriate legal framework for the EU enlargement as well. The Commission's activity in the field of merger control is, generally speaking, considered successful and in keeping with the directions recommended by the European Council in order to facilitate through this kind of operations the restructuring process and the orientation to a higher competition as imposed by the globalization process.

Nearly 10 years after the most recent reform, and in line with the Commission's goal of ensuring better regulation, possible further improvements of the EU merger control in certain areas are now under debate.

4.3. State aid control policy

Under the state aid control the Commission closely monitors public subsidies, including those granted by means of taxation, to ensure that such measures do not give certain companies an unfair advantage over their competitors. The general provisions on state aid are established in Article 107 of the Treaty. European Commission – using state aid control instruments – can promote a better allocation of resources by preventing measures that distort intra-community competition and trade while allowing support measures that actually target market failures and promote policy objectives of common interest (regional development, employment, research and development, innovation, risk capital, environment protection, and effective support of SME), and has a real incentive effect. Within the approach of the EU authorities, a robust state aid control is the best guarantee to preserve a level playing field and at the same time to make the best possible use of scarce public resources. The state aid can foster growth, promote social development, and strengthen the internal market when it is designed well.

✓ In 2008-2009, the Commission adopted the "*Temporary Framework for state aid measures to support access to finance in the current financial and economic crisis"* to enable Member States to deal with financial problems in systemic banks, as well as to provide assistance to the real economy, seeking to alleviate the impacts of the financial and economic crisis. The temporary state aid framework, which expired in December 2011, helped the EU member states to counter the negative effects on the real economy of the lack of loans without excessive distortion of the competition on the EU internal market. State aid control by the Commission ensured the coordinated national responses to threats that have emerged from the financial crisis in Europe and prevented costly and damaging subsidy races between Member States.

The member states took unprecedented support measures for the financial sector which included not only higher guarantees (and even unlimited) to the banks' deposits, guarantees to the inter-banking loans, direct capital injections and partial nationalization, but also packages of individual rescue measures. The effects of the crisis on the financial markets weakened during 2012 but Member

States continued to provide critical support to financial institutions through a number of state aid measures.

Aid to the financial sector in the period 2008 - 2012

Between 1 October 2008 and 1 October 2013 the Commission took more than 400 decisions authorising state aid measures to the financial sector. In the period 2008-2012, the overall volume of aid used for capital support (recapitalization and asset relief measures) amounted to € 591.9 billion (4.6 % of EU 2012 GDP).[6] Member States have granted an overall amount of € 413.2 billion (3.2 % of EU 2012 GDP) in recapitalization measures (the second most used instrument to support the financial sector after the guarantees on liabilities). The four countries that supported their banks mostly with capital measures during these years were the UK (€ 82 billion), Germany (€ 64 billion), Ireland (€ 63 billion), and Spain (€ 60 billion). In the period 2008-2012, Member States provided asset relief measures for a total of € 178.7 billion (1.4 % of EU 2012 GDP).

The guarantees and other form of liquidity supports reached its peak in 2009 with an outstanding amount of € 906 billion (7.7 % of EU 2012 GDP). The crisis intensity has gradually weakened in many EU countries since then, and the outstanding amount of liquidity support has dropped to € 534.5 billion (4.14 % of EU 2012 GDP) in 2012.

Since the introduction of the special state aid regime for banks in distress, the Commission has analysed the restructuring or liquidation of around one quarter of Europe's banking sector in terms of assets. Financial markets will remain a top enforcement priority for the Commission, having in view that competition policy can greatly help to re-open normal capital flows to the real economy. One of the lessons that the Commission have learnt during this crisis is the need for more stringent regulation and new ethical standards in the financial services sector. The European Commissioner for competition, Joaquín Almunia, stressed that ”*financial institutions cannot think of themselves as being above the law. They must be subject to the same standards as non-financial companies and they should respond to the same calls for social responsibility”*.[7]

✓ According to the Europe 2020 Strategy, **“***state aid policy can …actively contribute to the Europe 2020 objectives leading to a more sustainable, productive and growth oriented economy, by promoting and supporting initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development.”*

In 2012, the Commission adopted a *State aid modernisation strategy* setting out the objectives of an ambitious reform process. The three pillars of the reform package are:

- better quality aid measures, fostering sustainable, smart and inclusive growth in a competitive internal market, and contributing to the quality of public finance;
- streamlining rules and providing for faster decisions;
- shifting the focus of the control on the aid that can really distort competition in the EU.

The core reforms of the state aid modernisation initiative are gradually introduced through the review of a number of sectoral guidelines to bring them in line with the objectives of the Europe 2020 strategy for growth and link them with the new Multilateral Financial Framework that would come into force in 2014.

[6] European Commission, State Aid Scoreboard 2013, Aid in the context of the financial and economic crisis.
[7] Joaquín Almunia, Speech at Bruegel workshop, Brussels, 18 February 2014.

In the course of 2012 - 2013, a series of instruments were adopted, such as Regional Aid Guidelines, Rescue and Restructuring Guidelines for financial institutions and the De Minimis Notice. The State aid modernisation will be completed in 2014, when will be adopted, notably the *Risk Finance Guidelines, the R&DI guidelines, the Environmental and Energy Aid Guidelines, the Rescue and Restructuring Guidelines, the revised General Block Exemption Regulation*. The updated *Procedural Regulation* will allow the Commission to handle the complaints that it receives – about 300 a year – in a way that is more consistent with the established priorities.

5. Conclusions

The EU has to complete its ambitious project – the establishment of a genuine pan-European market that could bring sustainable growth to Europe. A strong enforcement of competition policy and law is the basic ingredient of better-functioning markets, that enhance investments and innovation, increase productivity levels and raise the competitiveness of the European economy.

As the EU's competition authority the Commission takes executive decisions over business practices and government measures that can harm competition in the internal market and undermine its integrity. The Commission also have the responsibility to improve the EU competition law and the governance in the field.

The implementation of the competition policy, strongly correlated with the requirements of other policies – horizontal and sectorial – is an efficient tool that contributes to the achievement of EU's strategic objectives.

Competition policy and law have been periodically reviewed to adapt to the complex new challenges generated by the globalization, the process of integration of the EU and the economic developments.

Preserving a level-playing field for every company that does business in the European Union is an important task of the European Commission and the national competition authorities in the Member States. In the difficult context of the financial and economic crisis, this task has been more important than ever, and now the robust enforcement of EU competition law is a prerequisite for a rapid and sustainable recovery in Europe.

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