

PaRR Special Report

Trends Monitor 2014

Competition Enforcement in Europe

In a report based on exclusive interviews with heads of competition authorities and data provided by multiple enforcers across Europe, PaRR outlines antitrust enforcement trends in the region



EUROPE

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EUROPE

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Policy Progression

Enforcement trends in the EU antitrust arena this year will center on the key pillars underlying the legacy of outgoing Competition Commissioner Joaquin Almunia – record cartel fines, settlements, and commitment negotiations in several major cases, as well as legislative initiatives on private antitrust damages and merger control.

Similarly, national competition authorities across Europe are expected to remain particularly hard-hitting against cartels, making the most of their leniency programmes and increasingly raiding companies in order to uncover illegal collusion. Businesses will also continue to face growing scrutiny of vertical restraints, especially in the digital markets.



In the first few months of 2014, the European Commission's (EC) Directorate General for Competition (DG Comp) levied cartel fines totaling EUR 1.04bn, of which EUR 953m is being paid by two European and four Japanese companies who participated in an automotive bearings cartel. Last year, Europe's competition watchdog concluded four cartel probes and imposed EUR 1.88bn in fines – including a record EUR 1.7bn fine imposed on eight financial institutions for colluding to manipulate euro and yen interest rate derivatives – which was similar to overall fines in 2012. The figures could have been more breathtaking – UBS, a whistleblower in the case, would have shouldered a whopping EUR 2.5bn fine had it not been waived by the EC as a leniency discount.

The DG Comp has settled more than a third of the cartel investigations concluded since the settlement procedure was introduced in 2008. Four out of five fining decisions this year so far were settlements; out of four last year, three were settlement decisions.

Since 2010, the EC has closed 14 antitrust cases with commitment decisions. Commissioner Almunia has provisionally accepted the third commitments package put forward by Google in an attempt to address allegations that the California-based company abused its dominant position in the online search market. Formally opened in 2010, the probe continues despite the commissioner's articulated intention to find a "quick resolution" in the rapidly changing market. "We are drafting a letter to complainants to

explain why we consider that the last proposal from Google addressed our concerns,” Almunia said recently, adding that he expected the proceedings to be closed “after the summer.”

Before leaving office, Almunia is also expected to announce that the EC will accept Samsung’s commitment to refrain for a period of five years from seeking injunctions against ‘willing licensees’ on the basis of its standard-essential patents (SEPs) related to mobile technologies. The South Korean company has proposed the remedy following allegations that injunctions it sought against Apple in several EU member states constituted an abuse of dominance.

The EC is also finalising formal charges against Gazprom over alleged abuse of dominant position, accusing the Russian gas giant of setting unfair prices, restricting gas sales and diversifying gas supply to customers in Central and Eastern Europe. Almunia, recently said, however, he remained open to commitment proposals from the company.

Private Enforcement

The EC’s draft directive, proposed last June to facilitate private antitrust damage actions, is in the final stage of the legislative process. Having seen delays due to internal disputes at the European Parliament, the directive is now expected to be voted on at the last plenary session in April before elections.

Meanwhile, Europe has seen slow progress in private antitrust enforcement. Damages are currently being sought in roughly a dozen EU member states, with the vast majority of actions filed in the UK, Germany, the Netherlands, Spain and Finland, and half of overall cases pending before the UK courts.

Recent examples include the UK supermarket company Tesco’s action filed at London’s High Court against card companies Visa and MasterCard over their policies on interchange fees, along with Cooper Tire & Rubber Company’s action against Dow Chemical following-on from the EC’s 2006 decision fining a synthetic rubber cartel. Two UK antitrust decisions have led to follow-on actions – a claim against a bus company that was found to have abused its dominance, and another concerning replica football kits, which resulted in a settlement.

The UK is expected to remain an attractive jurisdiction for damage claimants, even after the adoption of the directive on private antitrust enforcement, Marcus Smith QC, chairman of the UK Competition Appeals Tribunal, said in a recent speech, emphasizing the importance of extensive disclosure available in his country.

German courts will also likely see more actions for private damages resulting from antitrust violations, although such claims are often settled between the parties. For instance, steel company ThyssenKrupp and rail operator Deutsche Bahn (DB) reached a settlement last autumn over damages DB incurred as a result of bid-rigging among rail track suppliers in

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Germany. The two companies reportedly settled for approximately EUR 150m in compensation.

According to the data provided to *PaRR* by the Spain's Comisión Nacional de los Mercados y la Competencia (CNMC), at least seven private antitrust cases since 2006 have led to damages actions in that country, including *Antena 3 de Televisión v. LNFP* (2006), *Nestle España et al. v. ACOR S. Cooperativa Gen. Azucarera* (2009), *Eléctrica Caldense v. ENDESA Distribución Eléctrica* (2011), and *Energys VM v. Unión Fenosa Distribucion* (2012).

Finland's Helsinki District Court has ordered Lemminkäinen, a Finish concrete products maker, to pay EUR 15m in damages in relation to a 2004 decision fining a cartel in the country's asphalt industry. The company was also ordered to pay additional damages as well as legal interest and legal costs jointly with other cartelists.

Other Initiatives

In attempt to trim the red tape for business, the EC has revised its rules on simplified merger review, which entered into force in January. The scope of a simplified procedure has been widened allowing the EC to clear unproblematic mergers and bringing the total ratio of such cases to 60%-70% of notified transactions. The EC now also requires less information from deal parties. The regulator expects the amended rules to lighten the burden of the preparatory work and reduce costs related to filing.

After a consultation last year, the EC is also set to publish a white paper on possible extension of EU merger controls to non-controlling minority shareholdings. The regulator will also put forward options for simplifying the merger case referral process between member states and the EC to make it more business-friendly.

Since Almunia took office in 2010, the EC has rejected three requests for merger review referral from national competition authorities, according to its merger control statistics. With a total of eight refusals since 1990, it's the first time the EC has declined this many requests for a 'downward' referral during the mandate of one competition commissioner.

France has also revised its merger control guidelines, updating them based on the authority's experience gathered since 2009, when they were first published. The authority has adopted new model texts on divestment commitments and trustee mandates, as well as introducing economic analysis tools, such as Upward Pricing Pressure (UPP) and Gross Upward Pricing Pressure Index (GUPPI) tests.

"We feel that we miss important transactions with merger thresholds increased last year,"
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Autorità Garante della
Concorrenza e del Mercato.

The Italian competition authority Autorità Garante della Concorrenza e del Mercato (AGCM) is once again consulting with stakeholders on merger thresholds, which were amended last year. "We feel that we miss important transactions with the thresholds increased last year," head of the AGCM Giovanni Pitruzzella told *PaRR*. "We did not decide on them," he said, noting they were amended by Italian lawmakers. "In a year, the number of filings dropped from 400-500 to less than 60 a year, while merger control is an important

tool to monitor market developments," he stated.

EC Director General for Competition Alexander Italianer said more convergence was necessary among national competition authorities in Europe, echoing Andreas Mundt, Bundeskartellamt (BKartA) president, and France's antitrust chief Bruno Lasserre, who have been advocating for streamlining antitrust enforcement procedures across the board.

To move towards more convergence, a dedicated subgroup has been set up within the European Competition Network, said Italianer. "We analysed the national regulatory framework governing the national competition authorities and made recommendations on the key enforcement powers," he said.

Targeted Sectors

The EC will continue focusing on anticompetitive practices in key sectors, including financial services, ICT, energy, transport and pharmaceuticals, as increased competition in these industries can lead to beneficial spillover effects on other sectors and downstream markets.

Regarding financial services, EU competition commissioner Almunia recently said he was "convinced that the rigorous enforcement of competition rules against financial institutions that infringe them – including the facilitators of such violations – is essential for restoring trust in financial markets."

It remains to be seen whether the EC will open a formal investigation into potential collusion in the foreign exchange (FOREX) markets. The commissioner said the Brussels-based regulator received a "huge" amount of data from undisclosed parties and that the EC was "analysing this information." Almunia also said formal charges against non-settling members of cartels in markets for financial derivatives would be issued in 2014. Meanwhile, the Swiss competition authority Wettbewerbskommission has formally launched an investigation into eight financial institutions over possible manipulation of foreign exchange rates.

Sectors on regulators' radar:

telecommunications
energy
pharmaceuticals
food
digital markets
financial services



The EC also "wants to send a strong signal to food companies that it is important to not distort competition in the sector," according to Eric Van Ginderachter, director for cartels at the EC's DG Comp.

The initial caseload of the UK's new Competition and Markets Authority (CMA), merging the Office of Fair Trade (OFT) and the Competition Commission (CC), will largely be based on probes inherited from the two authorities, including reviews of the UK energy market and banking for small and medium-sized enterprises (SMEs), CMA chief executive Alex Chisholm told *PaRR*. The CMA will also take on ongoing market investigations into payday lending and private healthcare.

As part of an official target agreed with the UK government's Treasury, the CMA will aim, every three years, to deliver ten times more direct financial benefit to consumers than the

authority costs the public purse. However, "the exact number of cases or projects we might expect to start in the coming year cannot be accurately predicted," said Chisholm, "as each case is subject to an individual assessment of evidence and priorities."

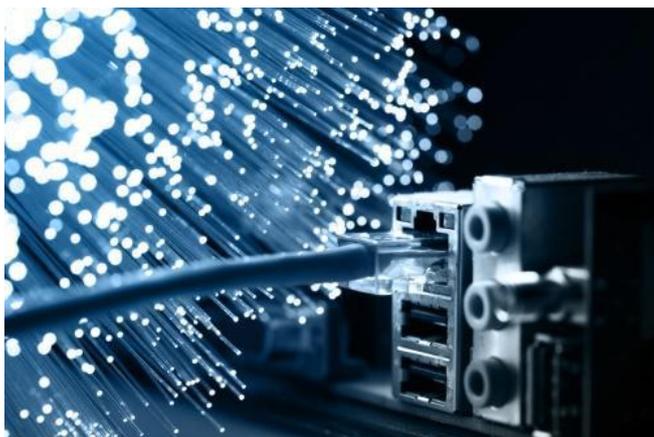
The German competition authority Bundeskartellamt (BKartA) will continue investigating online markets, said authority head Mundt, noting that "last year, the BKartA concluded two major cases in online platform markets; several investigations remain pending." The BKartA is also working on three sector inquiries – into refineries and wholesale oil markets; the ready-mixed concrete market; and food retail markets. An assessment of the highly concentrated retail food sector in Germany, shared among EDEKA, REWE, Aldi and Schwart groups, is expected to be finalised in the first half of this year, Mundt told *PaRR*.

Bruno Lasserre, president of the French Autorité de la Concurrence (l'Autorité), told *PaRR* the authority's enforcement activities in 2014 would focus on the banking, food and transportation sectors. Pharma will also remain a sector closely watched by the authority as well as internet and digital markets, "where significant market power acquired by 'internet giants' and its use warrant further scrutiny."



Similarly, the Italian AGCM will continue scrutinising the pharma sector, Giovanni Pitruzzella, AGCM chairman told *PaRR*. The authority recently slammed Hoffmann-La Roche and Novartis with EUR 90.6m and EUR 92m in fines, respectively, for agreeing to delay the entry of Roche's eye drug Avastin to the Italian market.

The AGCM is also set to take a closer look at telecommunications, together with sector regulator L'Autorità per le garanzie nelle comunicazioni. The two agencies are set to carry out a joint enquiry to assess competition dynamics in Italy's fixed network market. Professional services and local transport are among other sectors of particular interest to the AGCM.



Telecommunications are under the lens of the Austrian competition authority Bundeswettbewerbsbehörde (BWB), which has allocated dedicated resources to monitor competition in the sector, with particular emphasis on rising prices for mobile services, following Hutchison Whampoa's acquisition of Orange Austria two years ago, said Theodor Thanner, BWB director

Telecommunications sector – rising prices for mobile services, in particular – are under the lens of the Austrian BWB, which has allocated dedicated resources to monitor competition in the sector, following Hutchison Whampoa's acquisition of Orange Austria two years ago. – Theodor Thanner, the authority's director general.

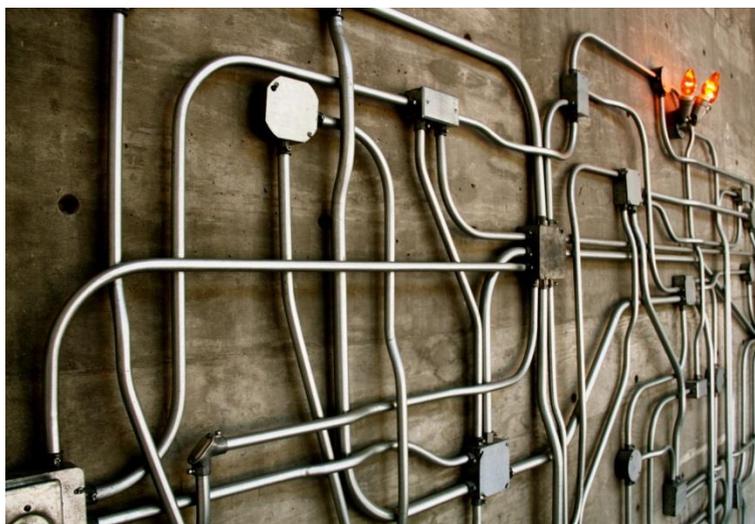
general. The authority will also keep a close eye on the country's retail sector.

With a staff of over 500, Spain's CNMC, which now combines the country's former competition guardian and sector regulators for energy, telecoms, audio-visual, postal, rail and airport services, this year will be busy delineating its enforcement policy in the telecommunications and energy sectors in the framework of the merged institution. The laws creating the CNMC went into force in June of last year.

Consumers are the top priority of Dutch regulator Authority for Consumers and Markets (ACM), which is also focusing on the energy and telecommunications sectors, according to the authority's board chairman Chris Fonteijn.

The former president of the Polish Office for Consumer and Competition Protection (UOKiK) Małgorzata Krasnodebska-Tomkiel said the authority's four-year competition enforcement plan for 2014-2018 targets markets previously dominated by state monopolies, such as telecommunications, energy, railways, air transport, and postal services. Investigators may also "look carefully" at the market for payment services, with public sector procurement a further area which "requires improvement", Krasnodebska-Tomkiel told *PaRR*.

Romania's Competition Council will focus its enforcement activity this year on the electricity, brewing, and primary wood product sectors. Last year, the regulator carried out sector inquiries into card payment fees, highways and roads construction, brewing and movie theatre markets, according to data the authority has provided to *PaRR*.



The energy sector is at the top of the Lithuanian competition authority's "to-do" list, its chairman Šarūnas Keserauskas told *PaRR*. This year, the authority will aim to wrap-up probes into alleged collusion in the power cogeneration and biofuels sectors. The authority also expects to conclude antitrust proceedings against Gazprom for alleged failure to comply with commitments the Russian gas supplier had provided to secure clearance for its acquisition of a 34% stake in a Lithuanian gas distributor Lietuvos dujos several years ago.

In 2013, much of the Norwegian competition authority's (NCA) resources were dedicated to cases in the retail food markets – the regulator expects to continue focusing on the sector this year as well. The NCA will also continue working on inquiries into fuel, housing development and digital markets.

The Russian Federal Antimonopoly Service of Russia (FAS) is poised to concentrate on food, energy, telecommunications, pharmaceuticals and utilities markets, Andrey Tsyganov, FAS deputy head, told *PaRR*.

Antitrust enforcement centers on cartels, growing focus on vertical restraints

With vertical restraints increasingly attracting more scrutiny from Europe's competition watchdogs, cartels remain firmly in regulators' sights, as collusive behavior has shown no sign of abating.

Frédéric Jenny, the chairman of the OECD's Competition Law and Policy Committee, told *PaRR* that there is no indication increased antitrust enforcement has deterred anticompetitive price-fixing. "There is no evidence whatsoever that cartel activity has decreased," said Jenny. Despite heavier antitrust fines, "we have observed more cartel cases in recent years – not less."

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"Fight against cartels is a priority for the present and for the future," commissioner Almunia said recently. "In fairness, fighting cartels has been a core task for the EC for the past 15 years at least; since Competition Commissioner Karel van Miert set up the first team of enforcers entirely devoted to cartels, the first leniency programme, and the first guidelines on fines," he noted.

The EC has some 50 cartel investigations pending at various stages – a number which has not changed substantially in recent years, according to data the authority provided to *PaRR*.

In 2014, cartel prosecution will remain one of the BKartA's top priorities, noted the authority's president. "We had a very good start to the year by completing two complex cartel cases in the breweries and sugar sectors." Investigations against two major brewery groups and four regional breweries are ongoing. "We are confident that we can bring them to an end in a short course of time," said Mundt.

The number of cartels uncovered by the BKartA has steadily increased in the last ten years. This does not mean that cartel activity in Germany has increased, but rather that the authority has developed better tools to detect anticompetitive practices, Mundt said.

Austria's BWB has 60 cartel cases pending. At the end of 2013, France's l'Autorité had 108 pending antitrust investigations, and, last year, the French authority fined four cartels. Four criminal and two civil cartel inquiries were ongoing in the UK as of February 2014. The Lithuanian Competition Council is currently investigating four cartels.

The fight against cartels will also continue to be the Italian competition authority's main preoccupation, said Pitruzzella. In 2013, the AGCM opened 12 new cartel investigations,

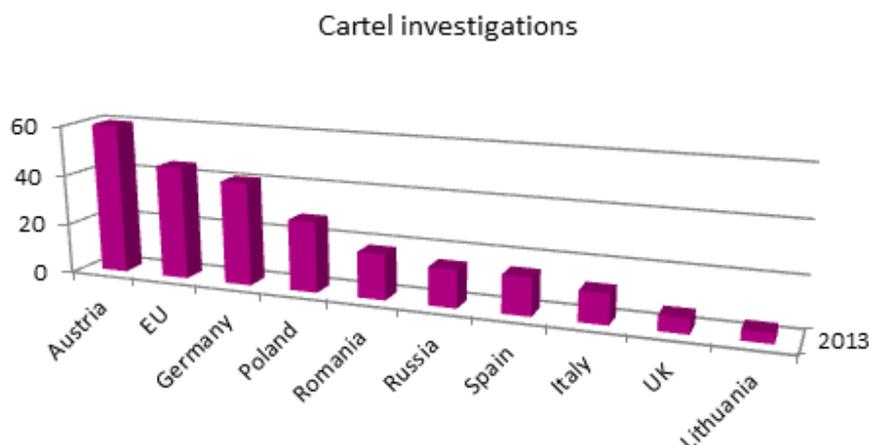
nine of which are horizontal agreement cases, while others concern vertical restraints, according to data provided by the authority to *PaRR*.

In Spain, the CNMC currently has 15 cartel cases in an investigation phase, with two cases in resolution phase. Most of the CNMC proceedings against anticompetitive practices concern commercial distribution, new technologies and media, manufacturing industries, energy and professional associations, according to data provided to *PaRR* by the authority. There has been a progressive increase in the number of the CNMC's antitrust decisions in recent years: five in 2011, eight in 2012 and ten in 2013.

“Fight against cartels is a priority for the present and for the future. In fairness, fighting cartels has been a core task for the European Commission for the past 15 years at least.”

– EU Competition Commissioner Joaquin Almunia.

The Norwegian authority is continuously focusing on cartel enforcement, having imposed a record NOK 360m fine in an asphalt cartel case last year. In light of recent case law and further harmonisation of Norwegian competition rules with EU law, the level of fines is expected to increase, or at least not decline from today's level. The Authority is currently investigating several cartel cases, and, compared with recent years, the number of cartel investigations is fairly stable, according to data provided by the authority to *PaRR*.



In 2013, Romania's Competition Council had 18 open cartel investigations and 29 vertical restraint cases. Last year, the regulator concluded 34 probes, 35% of which concerned vertical agreements, according to data the authority provided to *PaRR*.

Last year, Poland's UOKiK doubled its probes into horizontal agreements from 12 in 2012 to 28; the authority pursued 32 probes into vertical agreements. The UOKiK currently has some 20 cartel investigations pending, according to data provided by the authority to *PaRR*.

The Russian competition authority is currently conducting 15 investigations into possible cartels and other anticompetitive agreements. The FAS has opened five formal proceedings, Andrey Tenishev, the head of the authority's cartels division, told *PaRR*. The

FAS expects to close at least five cases in 2014, he noted. In 2013, FAS probed 14 cartels, whilst in 2012 and 2011 there were 27 and 42 probes, respectively.

“I really think that the ICN would be very well advised to do some work on vertical restraints, especially in the internet world, as many agencies are struggling with this.”

– Andreas Mundt, the ICN chairman.

In light of ever-increasing numbers of investigations into vertical arrangements, Andreas Mundt, the chairman of the International Competition Network (ICN), is keen to add this antitrust enforcement area to the ICN’s agenda. “Vertical restraints, especially in the internet world, are an issue that we want to tackle in the ICN,” Mundt told *PaRR*. “Personally I really think that the ICN would be very well advised to do some work in this area as many agencies are struggling with this.”

In Germany, the BKartA has spearheaded investigations into novel online markets and new forms of vertical restrictions. Last year, the BKartA ordered hotel booking portal Hotel Reservation Service Robert Ragge GmbH (HRS) to remove restrictive ‘most favoured nation’ (MFN) clauses from contracts with hotels featured on the booking portal. The contracts obliged hotels to offer lowest room price, maximum room capacity and most favorable booking and cancellation terms online through HRS. The booking portal then prohibited hotels from offering guests better conditions if they booked directly at the hotel’s reception desk. The authority subsequently opened a probe into online hotel portals Booking.com and Expedia over similar best price clauses.

The German authority also probed Amazon over a price parity clause in its contracts with Amazon Marketplace retailers. Following the investigation, the company abandoned the clause, which precluded marketplaces such as eBay and Rakuten, as well as sellers’ online shops, from offering the products they were selling on Amazon at lower prices elsewhere online.

The BKartA has several pending investigations into so-called “dual pricing” schemes for products sold in online and offline markets, and which might restrict online trade. Investigations into selective distribution and online distribution policies of sports apparel makers ASICS and Adidas are also still ongoing.

Last year, UK OFT accepted commitments from InterContinental Hotels Group (IHG) and online travel agents (OTAs) Booking.com and Expedia in antitrust proceedings into vertical agreements limiting the OTAs’ discounting of IHG’s rooms. Under the commitments, the OTAs would be allowed to offer discounts to so-called “closed groups” of consumers; hotels would be entitled to discount in the same way.

The OFT has recently condemned mobility scooter manufacturer Pride for having entered into arrangements with some of its retailers preventing them from advertising online prices below Pride’s Recommended Retail Price for certain models of mobility scooter. The authority considered this to be a straightforward resale price maintenance (RPM) scheme. The OFT has also issued a statement of objections over alleged anticompetitive agreements between a sports bra supplier and three retailers.

Several complaints have been lodged with the French l'Autorité regarding MFN conditions in the online hotel booking sector, authority head Lasserre told *PaRR*. Having carried out a sector inquiry into e-commerce markets in 2012, the regulator is poised to continue surveying the sector.

The Portuguese competition authority has indicated vertical restraints as one of its key enforcement priorities for 2014. Similarly, vertical restrictions have attracted increased scrutiny from the Danish competition authority. Out of seven antitrust cases the antitrust regulator wrapped up in 2013, six involved resale price maintenance schemes, leading to almost EUR 1m in fines imposed on companies active in fashion, jewelry, ice cream, and white goods.

The Spanish regulator is currently examining potential vertical restrictions in the car and fuel sectors. The probes are expected to require considerable resources, according to the authority.

In Austria, the BWB is finalizing its non-binding guidelines on vertical restraints and expects to publish them before the summer.

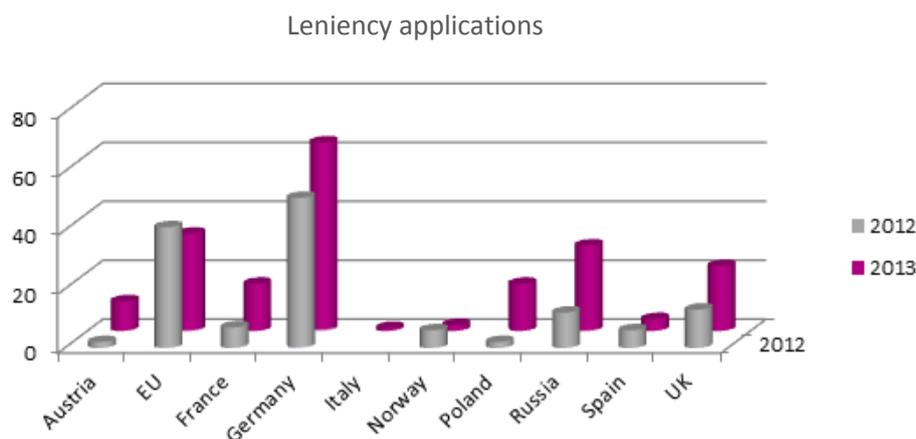
Leniency in full swing; increasing use of 'dawn raids'

The EC, as do most competition authorities in Europe, continues to rely on whistleblowers to detect cartels. All cartel investigations concluded last year were initiated on the basis of leniency applications.

In his speech announcing the fines in the automobile bearings cartel case in March, commissioner Almunia noted that "again, leniency has proved to be an indispensable tool in the fight against cartels."

In 2012, Europe's competition watchdog received 41 leniency applications; last year there were 33, according to data provided by the authority to *PaRR*.

Before the first leniency programme was introduced in the EU in 1996, the EC used to adopt one cartel decision a year on average. In 1996–2013 the authority adopted five decisions per year, on average. This increase is not only due to leniency, as the number of EC's ex officio investigations has also increased, according to data provided by the authority to *PaRR*. The vast majority of currently pending EC cartel proceedings, however, were prompted by whistleblowers.



The leniency programme remains the key instrument the BKartA uses to tackle cartels in Germany. Roughly half of all cartel investigations in the country are initiated as the result of a cartel member confessing to the authority in attempt to secure a reduction in fines.

In 2012, the BKartA received 51 leniency applications in 37 proceedings. In 2013, 64 leniency applications were filed as part of 41 proceedings.

The number of leniency applications filed with the UK competition authority increased substantively: from 13 in 2012 to 22 in 2013. At the same time, considerable efforts have been made by officials in recent years to start cases on their own initiative, the CMA told *PaRR*. Nearly half of new cartel cases in the past three years originated as a result of intelligence-gathering efforts by the OFT, predecessor to the CMA, rather than leniency applications, although the latter remains a key tool.

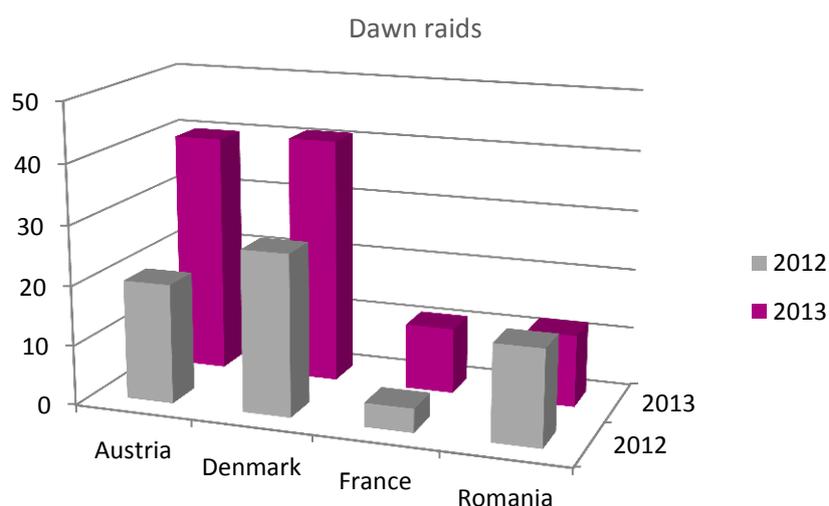
Antitrust enforcement in France last year was characterised by a significantly increased number of dawn raids.

– the French competition authority’s president Bruno Lasserre

Similarly, the French l’Autorité has sought to launch more investigations on its own initiative, as increasing numbers of dawn raids carried out by the authority demonstrate. Meanwhile, the number of leniency applications filed with the regulator has also grown – in 2013, 16 leniency applications were received, compared to seven in 2012, and nine in 2011.

Antitrust enforcement in France last year was characterised by a significantly increased number of dawn raids, said Lasserre. The authority carried out 11 inspections in 47 companies; in 2012, l’Autorité inspected 14 companies in four raids.

Austria’s BWB last year received ten leniency applications. Since 2010, the Austrian BWB conducted 80 inspections, almost a half of which were performed in 2013 alone.



The Norwegian competition authority accepted two requests for leniency last year and six in 2012. The CNMC saw three whistleblowers in 2010, four in 2011, six in 2012, and four last year.

At the end of 2013, the AGCM received its first leniency application in several years, the authority told PaRR. Companies have been reluctant to seek leniency in Italy because of insufficient clarity in the law as to whether their submissions could lead to personal criminal liability for company managers. The AGCM is set to request that the country's lawmakers clarify this "grey area" in legislation.

The Danish Konkurrencestyrelsen carried out 41 dawn raids last year in the context of eight antitrust investigations. In 2012, the authority carried out 27 raids in seven cases.

In Romania, the competition authority inspected 80 company headquarters as part of 12 dawn raids last year. The authority used forensic analysis in five cases.

The Polish authority's leniency scheme is "one of the most effective tools in its arsenal," said Krasnodebska-Tomkiel. The UOKiK's 2012 publicity campaign discouraging companies from colluding led to a "record" 16 leniency applications that year.

Settlements and commitments

The heads of the German and Austrian competition authorities told *PaRR* they have observed an increasing willingness of antitrust infringers to settle.

Similarly, l'Autorité president Bruno Lasserre said parties have been willing to settle antitrust probes with the regulator. "The publication of our settlement guidelines in 2012, which consolidates our practice and sets out a clear and stable framework, has probably helped in this respect," said Lasserre. Overall, 39 cases were solved with settlements since the procedure was first applied in 2003.

In 2013, l'Autorité issued four decisions with settlements (non contestation des griefs), out of eight antitrust fining decisions, according to data authority provided to *PaRR*. Currently, there are several cases in l'Autorité's pipeline in which the parties have proposed to settle.

Last year, the authority closed two investigations with commitments; six in 2012, and four in 2011. Lasserre said l'Autorité opts to accept commitments in cases "where a swift resolution and restoration of a competitive level-playing field appear, on balance, preferable to a lengthier proceeding leading to fines."

The CNMC in Spain, which closed five cases with commitments last year, tends to accept commitments in cases where there is uncertainty in the facts or the law and there has not been clear damage to competition in the relevant market, the authority told *PaRR*.

Compared to five commitment proposals from parties in the period of 2002-2007, the CNMC received 20 requests to accept commitments in 2010, and 26 in 2013.

The UK's OFT adopted nine settlements in seven cases concerning anticompetitive agreements. A settlement was also reached in one abuse of dominance probe. In response to demand from businesses and competition lawyers, the CMA has committed to publish guidance on when it will adopt settlements in investigations under the UK's competition law.

The Polish UOKiK last year issued 23 commitment decisions – all of them in proceedings concerning abuses of dominant position. The “most interesting” case involved PGNiG, the country’s state-owned oil and gas company, in which UOKiK market-tested proposed commitments for the first time in its history, canvassing the views of third parties, said Krasnodebska-Tomkiel.

The recently revised Norwegian competition law opens up the possibility for defendants in antitrust cases to offer commitments.

Agencies

In 2014, a new College of EU Commissioners will be appointed, and Europe’s competition watchdog will get a new antitrust chief replacing Joaquin Almunia. No other major organisational changes at the DG Comp are foreseen otherwise, the EC told *PaRR*.

This year, the CNMC is set to consolidate and redefine the structure of the newly merged agency, which combined Spain’s competition authority and sector regulators for energy, telecoms, audio-visual and transport services, although no substantial changes are planned at the authority’s competition directorate.

In the UK, the creation of the CMA, merging former competition authorities the OFT and the CC, has involved a number of structural and manpower changes, including a new board and senior appointments drawn from its predecessor bodies and from the private sector.

In the UK, there is now “an expectation that there will be a step-up in the promotion of competition, and application of general competition law, in the areas covered by sector regulation.”

– Alex Chisholm, the Chief Executive of the Competition and Markets Authority

The Enterprise and Regulatory Reform Act, which created the CMA, also boosted powers available to the new organisation. Additions to its toolkit include the ability to require individuals to answer questions, and greater powers to impose fines for non-compliance with investigations. It will be easier for the CMA to impose interim measures while investigations are ongoing, and the UK’s criminal cartel offence has been reformed to remove the requirement to prove defendants behaved ‘dishonestly’. The CMA will also gain stronger powers to reverse the integration of firms that have merged.

“The new regime also provides for more effective partnership with sector regulators and other enforcement agencies,” chief executive Chisholm said. UK sectors, including telecommunications, railways, and healthcare, are policed by regulators which share competition enforcement powers with the CMA.

Chisholm added there was now “an expectation that there will be a step-up in the promotion of competition, and application of general competition law, in the areas covered by sector regulation.”

The German competition authority has strengthened its competition economics team, having officially appointed Christian Ewald one of the BKartA's chief economists.

Ewald will coordinate the work of two economic units, one of which focuses on conceptual issues related to the proper integration of economic analysis in competition law enforcement, Mundt told *PaRR*. The second unit, which has been set-up recently, will specialise in empirical analysis and is intended to support the BKartA's decision making.

The BKartA president told *PaRR* he expects an "even more prominent role for empirical and quantitative analysis, in the field of merger control in particular."

Several Dutch regulators – including the country's competition watchdog, the consumer authority, and the postal and telecommunications regulator – have been merged, forming the Authority for Consumers and Markets (ACM). A "streamlining law," which is expected to harmonise the authority's procedures, has yet to be adopted by the Dutch parliament.

Having undergone some structural changes previously, the Finnish competition authority was merged with the country's consumer agency last year. In 2012, a new cartels unit was created at the authority, strengthening its fight against price-fixing, bid-rigging and other anticompetitive collusion. Forensic search and IT staff have been added to this team, which handles leniency applications, as well.

At the Italian competition authority, one of the three board members, commissioner Piero Barucci, has retired and will be replaced.

Bruno Lasserre, who has served as the president of France's l'Autorité for a decade, has been reappointed for the role this year. Meanwhile, half of the authority's college has been renewed, with eight new members coming on board.

Cross-border cooperation

The EC typically cooperates on global cartel enforcement with authorities in other jurisdictions beyond the European Economic Area. In recent years, the EC cooperated with regulators in the US, Canada, Japan, Korea, Australia, Brazil and Mexico, as well as in the EU member states, according to data provided by the authority to *PaRR*.

The EC has worked with other agencies principally to coordinate dawn raids. But competition enforcers worldwide have also increasingly discussed other aspects of investigations, such as criteria for establishing the relevant value of sales, an EC spokesperson told *PaRR*.

The Brussels-based regulator also extensively cooperates with other authorities on merger reviews. For instance, when reviewing the Thermo Fisher/Life Technologies transaction, the EU authority cooperated with the US Federal Trade Commission (FTC) and "achieved a good result: although different market definitions were adopted resulting in a remedy on an additional market the EC identified, this was mainly due to the dynamic nature of fast evolving life sciences markets," the EC spokesperson said. The EC also held numerous calls with the Ministry of Commerce of the People's Republic of China (MOFCOM), even after EC

clearance and prior to the Chinese regular reaching its decision, according to information the authority provided to *PaRR*.

Last year, the EC also worked closely together with the FTC on the General Electric/Avio deal, which was conditionally cleared after an extensive dialogue with its US counterpart. "In general, we were aligned with the FTC on competition concerns," the EC spokesperson told *PaRR*. But the EC focused on defence aspects of the military engine manufacturer Eurojet consortium, to which Avio is an essential contributor. Eurojet is a direct competitor to GE in the military aircraft engines export market. No similar defence issues were raised in the US. The transaction was cleared after GE offered a series of commitments to ensure that the Eurojet consortium's strategic information is properly protected and that Eurojet and Eurofighter can continue to participate in future campaigns for export sales.

The EC extensively cooperates with other authorities on merger reviews. In a recent case, the EC held numerous calls with China's MOFCOM, even after clearing the deal and prior to the Chinese regular reaching its decision.

In the acquisition of the Swedish medical technology company Gambro by a US rival Baxter, which was approved subject to conditions, the EC worked with the Australian Competition & Consumer Commission and the New Zealand Commerce Commission on the assessment of the deal and on remedies to avoid conflicting outcomes on the divestiture of a global business, according to data the authority provided to *PaRR*.

The Spanish CNMC cooperated with Italian and Portuguese competition authorities in two recent cartel cases initiated by leniency applicants, according to data provided to *PaRR* by the authority. The CNMC has also made inquiries on behalf of other national competition authorities and has informal contacts with the Dutch ACM. The CNMC also frequently assists the EC when the regulator carries out dawn raids on Spanish companies.

Since 2006, the French l'Autorité has received 14 requests for assistance from other members of the European Competition Network (ECN), which led to dawn raids and proceedings, according to data provided by the authority to *PaRR*. The l'Autorité sought support from antitrust agencies in other EU countries four times. The authority cooperated in conducting dawn raids with the UK OFT and Austrian BWB.

The BWB has cooperated with the German BKartA as well as competition authorities in the Netherlands, Slovakia, Romania and other EU countries. On several instances, such cross-border cooperation extended beyond the inspections phase, according to data provided by the authority to *PaRR*.



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