



Belgium is situated in the West of Europe, bordered in the North by the Netherlands, to the east by Germany and the Grand Duchy of Luxembourg and to the south and the West by France. Although its surface area makes it a small country, its location has made it the economic and political nerve centre of Europe.

Belgium is a small, highly developed and densely populated country at the cross-roads of Western Europe. Belgium is one of the founding members of the European Community, and its capital, Brussels, is also the capital of the EU. It is a federal state.

Economy

Belgium possesses a highly developed market economy; the tenth largest among the OECD industrialised democracies.

Belgium ranked as the eleventh-largest trading country in the world in 1999, with exports and imports each equivalent to about 70 percent of GDP. 80 percent of Belgium's trade is with other EU members. About seven percent is with the US.

In 1993, Belgium completed its process of regionalisation and became a federal state consisting of three regions: Brussels, Flanders and Wallonia. Each region was given substantial economic powers, including trade promotion, investment, industrial development, research and environmental regulation.

On May 01, 1998 Belgium became a first-tier member of the European Monetary Union, and shifted to the use of the euro as its currency on January 01, 2002.

Belgium has an excellent transportation network of ports, railroads and highways, including Europe's second-largest port, Antwerp. Major US cargo carriers have created at Brussels-Zaventem airport one of the first European hub-and-spoke operations.

PROFILE	
Population:	10.4 million***
GDP (Current US\$):	301.9 billion***
Per Capita Income: (Current US\$)	25,760 (Atlas method)*** 27,570 (at PPP)**
Surface Area:	30,510 sq. km
Life Expectancy:	78.7 years***
Literacy (%):	98 (of ages 15 and above)**
HDI Rank:	6
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Competition Evolution and Environment

In Belgium, substantive competition rules are embodied in the Act of August 05, 1991 on the Protection of Economic Competition (the Act). The Act entered into force on April 01, 1993 and was amended by two later Acts of April 26, 1999. These two amendments dealt respectively with institutional and substantive issues.

The Act was subsequently consolidated by the Royal Decree of July 01, 1999. The Act prohibits restrictive practices, the object or effect of which is to prevent, restrict or materially distort competition. It also regulates business concentrations for which a system of prior notification and control has been established.

The objective of the Act is two-fold:

- guaranteeing the right for individual enterprises to do business in the market of their choice within clear and well-defined limits; and

* Original paper done by Vikas Batham of CUTS in November 2004. Revised in August 2005 & April 2006

¹ Comments received from Jeanne Mutamba, Attaché, FPS Economy, SMEs, Self-employed and Energy Price and Competition Division, Ministry of Economy, Brussels, Belgium

- creating a framework in which enterprises as well as private individuals benefit from the favourable effects of competition on prices and product quality.

To achieve these goals and in order to make companies legally secure, the act was deliberately based on European Union competition legislation (Articles 81 and 82 of the Treaty of Rome).

Recently, the merger thresholds have been increased (Royal Decree 3rd July year published in Belgian Official journal) from 40 millions EUR to 100 million EUR, and 15 million EUR to 40 million EUR to allow for a larger non-merger enforcement programme. Finally, it clarifies the relationship between sector regulators and competition enforcers, and introduces a single avenue of appeal against decisions of sector regulators. These will go to the Competition Council.

Competition Law and Policy²

In order to make the enforcement of Competition Law more easy and efficient, the Belgian Ministry of Economy has suggested certain amendments in the Act on the Protection of Economic Competition. Subsequently, the Belgian Council of Ministers agreed on a draft of a new national Competition Law.

The new law has been approved by Belgium's Chamber of Representatives in April 2006 and just needs a second reading in the Senate before becoming law. The new Competition Act seeks to strengthen the Competition Authority, making it more independent. It will give the authority new instruments to ensure better and more coherent enforcement and will bring Belgian competition law further in line with the EU. For example, companies will no longer be able to notify their agreements, to get an exemption from the prohibition of anti-competitive agreements. Once the new Act is adopted, the existing 1999 Competition Law will be repealed.

Institutions and its Competencies

The act confers responsibility for overseeing competition to four bodies:

The Competition Service: The Competition Service is a unit of the Ministry of Economic Affairs and is entrusted with investigating anticompetitive practices. It investigates matters that have been brought to its attention and it oversees the implementation of any rulings. The Competition Service and the rapporteurs assist European competition authorities with the enforcement of EU rules on competition.

The Corps of Rapporteurs: A Corps of Rapporteurs has been added to the Service in 1999. Its main tasks are to lead, organise and report on the investigations to the Competition Council (the 'Council'). The Rapporteurs are

authorised to search for violations of the Act. They may request all necessary information, take copies of documents, and take deposition and/or witness statements.

Under certain circumstances, they are authorised to conduct on-the-spot investigations at the premises of companies and at the private dwellings of its Directors and employees. Both the Service and the Rapporteurs may cooperate and coordinate with enforcement by the European Commission and other competition authorities within the EU and outside the EU.

The Competition Council: The Competition Council is principally an administrative court. It takes decisions with regard to restrictive competition practices and may grant individual exemptions from the prohibitions of the Act against vertical price fixing, collusive bidding and horizontal agreements that prevent, restrict or distort competition. The Council may impose fines in the event of established anticompetitive practices, of failure to comply with its decisions or where information provided is incomplete, inaccurate or distorted.

Competition Commission: The Competition Commission, set up under the auspices of the Central Economic Council, is an advisory body representing the viewpoints of labour, industry, agriculture, commerce, crafts and consumers. One of its tasks is to issue opinions, on its own initiative if it so chooses, on any matter concerning general competition policy. It informs the relevant parties when the rapporteur has filed a report with the Council, enabling them to react thereto.

Anticompetitive Practices³

The Act on the Protection of Economic Competition covers two forms of competitive practices:

1. Restrictive practices:

For this the principle of prohibition is adopted, include:

- agreements between undertakings, decisions taken by associations of undertakings and concerted practices, the object or effect of which is to significantly prevent, restrict or distort competition in the Belgian market concerned or in a substantial part of it (Art. 2); and
- the abuse of a dominant position in the relevant Belgian market or in a substantial part of it by one or more undertakings (Art. 3).

As in the European system, such agreements or decisions may be exempt from prohibition if companies give notice thereof. Exemptions may be granted, among others, if those agreements help to improve the production, the distribution or the position of small or medium-sized enterprises. These exemptions may be granted individually or collectively.

² Website of Global Competition Review

³ <http://www.vanbaelbellis.com/content/linklist.asp?level2=113&level1=10&level>

In the case of abuse of dominant position, the prohibition is absolute: there is no possibility of obtaining an exemption.

2. Business Concentrations:

As to business concentrations (mergers, take-overs and creation of joint ventures), the legislation provides for presumption of control (Art. 12) if the firms have an aggregate consolidated turnover of more than •40mn and if at least two of the firms in question have a turnover in Belgium of •15mn each (Art. 11). These two conditions are cumulative.

When the enterprises concerned control together less than 25 percent of the market in question, the concentration is declared permissible (Art. 33, §2, a). The only permissible concentrations are those, which do not create or reinforce a dominant position that significantly impedes effective competition in the Belgian market or in a substantial part of it (Art. 10).

In making its decision, the Council considers in particular the need of safeguarding and developing effective competition in the national market, the market position of the enterprises involved, the interests of intermediary and final consumers as well as technical and economic progress.

Box 64.1: Belgium Allows 3-year Soccer Rights

Belgium's Competition Council is allowing one company to control all rights to the national TV soccer for three years. But the agency says it might take a tougher stance next time around.

The council opened an investigation soon after a deal between the national soccer league and Belgacom was announced in May. Two rival bidders for the rights also lodged complaints. Belgacom is the incumbent telecoms operator. It paid 36 million euros for the package of rights.

Although the council looked at cases such as the 'Champions League', 'the Bundesliga' and the 'FA Premier League' conducted by DG Comp, it said the Belgian sale could stand. The process, it said, had been transparent and non-discriminatory. It mentioned concerns that Belgacom could in the future use its strength in telecoms to gain unfair leverage in the broadcasting market. It also said that the law on soccer broadcasting rights was "evolving rapidly" and might necessitate a stricter approach the next time rights were sold.

Source: *Global Competition Review*, September 2005

Other Market Regulatory Laws

Other regulatory bodies such as the Commission for the Regulation of Electricity and Gas, the Institute for Post and Telecommunication Services, the Bank and Finance Commission and the Insurance Control Office supervise their specific sectors and may collaborate with the Brussels Court of Appeal (the BCA)

Telecommunications Sector⁴

Telecom plays an extremely important role in the Belgian economy. It is an integral part of Belgium's industrial history. For several years now, far-reaching regulatory reforms have been carried out in the telecommunications sector. Liberalisation of the markets has dramatically changed the economic and social balance in Belgium.

Belgium's current telecommunications law came into force on December 30, 1997, consisting more of a series of amendments to existing laws.

The Belgian Institute for Postal services and Telecommunications (BIPT) was established by the Act of 21 March 1991. BIPT is the regulatory body of the postal and telecommunications sector in Belgium. The Institute started its activities in 1993 and these have become increasingly important as the market has opened up to competition. The Institute is responsible for strategic, regulatory and operational tasks, dispute settlement between operators, and regulation of the whole sector.

In addition to its regulatory and control tasks, BIPT is also tasked with preparing the Belgian legislation applicable to the postal and the telecommunications sectors.

Energy Sector⁵

The legal and administrative context of the distribution of electrical power in Belgium is determined by the law of March 10, 1925, which stipulates:

- that the distribution of electricity is the exclusive right of the local municipalities for all supplies that do not exceed 1000 kWe (increased to 10,000 kWe in one region); and,
- that for larger customers, there is no monopoly right for the municipality and the power can be supplied by the local municipality or by any private or public electric utility.

There is no law governing production and transmission of electricity and as a consequence these activities can be considered to be free, although in the course of time these activities have been subject to subsequent conventions.

The new Belgian electricity law was passed on April 29, 1999 and published on May 11, 1999 for organisation of

4 Website of The Belgian Institute for Postal services and Telecommunications (BIPT)

5 www-pub.iaea.org/MTCD/publications/PDF/cnpp2003/CNPP_Webpage/PDF/2002/Documents/Documents/Belgium%202002.pdf

electricity market in Belgium. It is in line with the European Union's Directive 96/92 of December 19, 1996.

CREG (Commission for the Regulation of Electricity and Gas) is the federal regulator for the liberalised segments of the electricity and gas markets. The CREG monitors compliance with the Gas Act and acts in an advisory capacity to the government on matters regarding the operation and organisation of the market.

Consumer Protection

Conseil de la Consommation (Consumers' Council) is a consultative body, which delivers opinions on consumer-related issues and on consumer protection to the federal Ministry of Economy and the Ministry of Consumer Protection.

Concluding Observations and Future Scenario

The following areas need assistance for an effective implementation of the Competition Law:

- Clarifying the definition of the competition authorities in connection with the implementation of a co-operative system or network. Such clarification is deemed necessary because in Belgium, as in many other States, the competition administration system is made up of a number of different bodies; and
- At the stage at which, under Community law, cases are being assigned, the Competition Council should also determine whether it is the most appropriate competition authority to examine and judge a case.