



Situated in Western Europe, between France and Germany, Luxembourg became a grand duchy in 1815 and an independent state under The Netherlands. It lost more than half of its territory to Belgium in 1839. Full independence was attained in 1867.

Overrun by Germany in both World Wars, it ended its neutrality in 1948 when it entered into the Benelux Customs Union and when it joined NATO the following year. In 1957, Luxembourg became one of the six founding countries of the European Economic Community (later the European Union), and in 1999, it joined the euro currency area.

### Economy

Luxembourg, the second smallest member of the European Union, has the world's highest GDP per capita. During the 20<sup>th</sup> century, it developed from an agrarian society into a manufacturing and services economy.

This stable, high-income economy features solid growth, low inflation, and low unemployment. The industrial sector, initially dominated by steel, has become increasingly diversified to include chemicals, rubber, and other products. Growth in the financial sector, which now accounts for about 22 percent of GDP, has more than compensated for the decline in steel. Most banks are foreign-owned and have extensive foreign dealings. Agriculture is based on small family-owned farms. The economy depends on foreign and cross-border workers for more than 30 percent of its labour force. Although Luxembourg, like all EU members, has suffered from the global economic slump, the country enjoys an extraordinarily high standard of living.

Although Luxembourg, in tourist literature, is aptly called the 'Green Heart of Europe', its pastoral land coexists with a highly industrialised and export-intensive economy. Luxembourg enjoys a degree of economic prosperity almost unique among industrialised democracies.

### PROFILE

Population:	448 thousand***
GDP (Current US\$):	26.5 billion***
Per Capita Income: (Current US\$)	45,740 (Atlas method)*** 61,190 (at PPP)**
Surface Area:	2,586 sq. km
Life Expectancy:	78.3 years**
Literacy (%):	100 (of ages 15 and above)
HDI Rank:	15***
<i>Sources:</i>	
- World Development Indicators Database, World Bank, 2004	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

### Economic Policy Regime

Luxembourg's domestic economic policy is closely tied to developments in the EU because most of the country's trade and investments are with other EU states.

With the decline of the steel industry, the government sought to capitalise on Luxembourg's strengths in developing new and viable industries. The country enjoys a central location and high educational standards. Luxembourg's leaders decided in the 1970s to make a concerted effort to develop a service economy, concentrating upon finance, banking, and insurance. Consequently, Luxembourg has now emerged as a leading financial centre in the world.

As in other EU countries, implementing EU Single Market directives has entailed substantial reforms in major network industries. This has involved separating natural monopoly elements from potentially competitive ones, and opening the latter to competition whilst, at the same time, maintaining universal service obligations. Luxembourg opened all but the local loop of the telecommunications

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industry to competition in 1998 and allows competition in about 50 percent of the electricity market. Legislation has been introduced for opening the gas market to competition.

According to common laws, there is a right of foreign and domestic private entities to establish and own business enterprises and engage in all forms of remunerative activity in Luxembourg. There is also a right of private entities to freely establish, acquire, and dispose of interests in business enterprises. In fact, competitive equality is the standard applied to private enterprises in competition with public ones, with respect to access to markets, credit, and other business operations, such as licences and supplies.

### Competition Law: Evolution and Environment<sup>1</sup>

In Luxembourg, the rules of competition were initially created by the law of June 17, 1970, concerning restrictive commercial practices, as amended. The law of 1970 prohibited anticompetitive agreements as well as the abuse of dominant positions. This law had no provisions concerning national merger control. The Law of 1970 established the Commission of the restrictive commercial practices (CPCR) under the Ministry of the Economy.

The 1970 Act was ineffectual in a number of respects. For example, agreements between undertakings, decisions of associations of undertakings and concerted practices were regarded as breaking the law, only in the event that they had, as both in their object and effect, prevention, restriction or distortion of competition; and they were likely to affect the general interest. Moreover, such agreements, decisions and concerted parties were not automatically void. The minister of the Economy had the discretion to impose a sanction, which could invariably consist of just a warning, a recommendation or a prohibition order.

In September 2002, the Government adopted a draft Bill to reform competition legislation and to establish an independent competition council. This draft Bill was amended in September 2003, on the advice of the professional Chambers and the Council of State, in order to bring it into line with the new provisions of Community regulation 1/2003.

The philosophy behind the new competition legislation has not, however, been altered, but the structure of the authorities has considerably been changed during the legislative procedure. Compared to the Government proposal, the voted law introduced a quite strict separation between the investigation phase and the decision phase and two entities have been created: a Competition Council (decision making independent administrative authority) and a Competition Inspection (investigative authority –

service created within the Ministry of the Economy and Foreign Trade) for carrying out investigations, issue of the statement of objections, information requests etc.

The structural reforms were accompanied by a considerable increase in penalties for anticompetitive behaviour. The procedural rules have been extensively altered.

This reinforcement of competition legislation has been accompanied by a reform of price legislation. The 1983 law on the *Office des Prix* (Price Control Office) has been abolished along with the regulations concerning its application with the exception of three sectors: the petrol sector, the pharmaceutical sector and the taxi sector. .

The new Law on Competition of May 17, 2004 completely changed the legal framework compared to the old regime. The new law is designed to:

- Modernise the competition law in Luxembourg so that it complies with EU regulations.
- Promote decentralisation and cooperation between the EC and the authorities of the member states, in connection with the implementation of Articles 81 and 82 of the EC Treaty (*Council Regulation (EC) no. 1/2003 of December 16, 2002*).
- Create two new competition authorities: the Competition Council, responsible for taking decisions based on the investigations done by the Competition Inspection.

The 2004 Act has introduced two main modifications:

- ♦ introduced the system of legal exception into Luxembourg law; and
- ♦ created two competition agencies;

Both modifications have significant implications for the business of economic players in Luxembourg. The new law prohibits agreements and abusive practices relating solely to the local market (that is to say, without effect on trade between Member States) in the same conditions as Articles 81 and 82 of the EC Treaty. Indeed, Articles 3 to 5 of the 2004 Act literally mimic the provisions of the EC Treaty, except for the reference to the effect on trade between Member States. In case trade between Member States is likely to be effected, the Competition Council has to apply Articles 81 or 82 of the EC Treaty on an exclusive basis.

The Act does not provide for a specific *prior* merger control unlike the relevant rules in most other EU countries, but may, however, apply to mergers in the context of an *a posteriori* control by the competition authorities referred to above or by the competent courts. Luxembourg is the only Member State without a national merger control regime.

<sup>1</sup> Comments on the competition law section received from Gabriel Bleser, Rapporteur General, *Inspection de la concurrence*

Be that as it may, the Competition Act applies to a merger between two (or more) foreign undertakings in the event this merger has anticompetitive effects on the Luxembourg market, even in the absence of any local presence i.e. the application of the effects doctrine. Both Luxembourg competition authorities are the competent national authorities referred to in Council Regulation (EC) No 139/2004 of January 24, 2004 on the control of concentrations between undertakings, for Luxembourg.

The Competition Council is an administrative authority and not a judicial court. Therefore, even if it is responsible for the application of Articles 81 and 82 of the EC Treaty and of Articles 3 to 5 of the 2004 Act, it is not entitled to rule on disputes between economic operators and, for example, to pronounce the nullity of an agreement or to award damages. It does not have to protect individual rights, contrary to the judicial courts, which have exclusive jurisdiction for such purposes. Its task is to safeguard the economic and legal order by assessing whether practices affect competition, and by prohibiting and penalising them.

### Institutions and its Competencies

The May 17, 2004 Law on Competition<sup>2</sup> created the two Luxembourg competition authorities. The two authorities are: the Competition Council (independent administrative authority), decision maker; and the Competition Inspection, in charge of the investigations. Both the authorities were set up in October 2004 and are operational since November 2004.

The Competition Council is an independent administrative body that is primarily competent to enforce Luxembourg competition law and EU competition law in cases brought before it, either by individuals or by the Competition Inspection, a department within the Ministry of Economic Affairs that receives competition law related complaints, establishes and investigates competition law infringements.

The Competition Act foresees a cooperation relationship between the Luxembourg competition authorities referred to above and the EC. Moreover, these authorities are the competent national competition authorities for Luxembourg to assist the EC in the context of Council Regulation (EC) No 1/2003 of December 16, 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and Council Regulation (EC) No 139/2004 of January 24, 2004 on the control of concentrations between undertakings. The Competition Act also provides for a cooperation relationship between the Luxembourg competition authorities and the national competition authorities in the other EU countries.

The Competition Council and the Competition Inspection are currently working on a specific website concerning competition, on which one will find all the practical information concerning the new law on competition, as well as the most important documents from the Director General (DG) of Competition of the EC.

The Competition Council is composed of three members and five deputy members. Only the President is a full time member, while the other two members are part time.

The staff of the Competition Inspection is currently composed of: one *rapporteur général*, head of the Competition Inspection, one *rapporteur* and one *inspecteur*. The independence of the instruction is guaranteed by the legal provision that the staff of the Competition Inspection have to take an oath to maintain secrecy of the facts of an investigation before the Competition Council. The Minister of the Economy and of Foreign Trade cannot interfere in the investigations or give any instructions to the staff of the Competition Inspection.

#### Box 83.1: Commission Fines Luxembourg Brewers in Market Sharing Cartel

The European Commission fined three Luxembourg brewers: *Brasserie Nationale-Bofferding*, *Brasserie de Wiltz* and *Brasserie Battin* a total of •448,000 for their participation in a market sharing cartel affecting the Luxembourg “on-trade” or “horeca” sector (hotels, cafés and restaurants).

A fourth company, *Brasserie de Luxembourg* (a subsidiary of Interbrew), escaped any fine because it disclosed the cartel to the Commission. The cartel lasted from October 1985 to February 2000, when the investigation into the case began.

The cartel consisted of a written agreement signed in 1985 by which the parties agreed not to supply beer to any horeca customer (hotels, cafés, restaurants and beer wholesalers), which was tied to another party by an exclusive purchasing agreement or “beer tie”. The cartel agreement also contained provisions intended to keep foreign brewers out of the Luxembourg horeca sector.

On July 27, 2005, the Court of First Instance (CFI) rejected appeals by three Luxembourg brewers who had been fined by the EC for entering into market-sharing agreements which also had the aim of keeping non-Luxembourg brewers out of the market, contrary to Article 81(1) of the EC Treaty.

Source: [www.europa.eu.int](http://www.europa.eu.int)

2 [http://www.eco.public.lu/actualites/conferences/2005/05/03\\_journee\\_conc/index.html#en](http://www.eco.public.lu/actualites/conferences/2005/05/03_journee_conc/index.html#en)

Contrary to the Competition Council, the Competition Inspection can start a case on its own initiative. Currently, seven cases are pending before the Competition Inspection.

The objective of the Competition Law is to promote effective competition in the market, to encourage the companies to seek competitiveness and economic efficiency.

## Sectoral Regulation

### *Telecommunication Sector*

Luxembourg has a small but advanced telecom market. Mobile penetration is the highest in Europe, while broadband take-up is on par with the EU average. The market was liberalised in 1998, although the implementation of regulatory reform has been slow. The incumbent, P&T Luxembourg, still dominates all market sectors. Growth continued in both the mobile and fixed line environment during 2005, albeit slower. 3G was launched in 2003, and the first appreciable broadband take-up occurred with growth in DSL services and the launch of the first digitised cable modem services.

Primary legislation governing the sector is the Telecommunications Act (1997) and the main body in charge of regulation is the Luxembourg Institute of Regulation, which in the past was called Luxembourg Institute of Telecommunications.

The Luxembourg Electronic Communication Networks and Services Act of May 2005 has an impact on mergers in the electronic communication services sector. According to this piece of legislation, the Luxembourg Institute of Regulation ("*Institut Luxembourgeois de Régulation*" or "ILR"), can after analysis of a specific market in the electronic communication services sector (as the case may be, in cooperation with the competition authorities mentioned above) action the undertakings that have (either by themselves or jointly) a significant market power and impose on them so called *ex ante* obligations if necessary.

### *Electricity Sector*

Since the *Law of 24 July 2000*, relating to the organisation of the electricity market, came into effect, the ILR, which until then had been in charge only of regulating the telecommunications market, has also been in charge of supervising the electricity market.

The surveillance missions consist of:

- checking tariffs for transporting electrical energy throughout the networks;
- checking network access conditions; and
- preventing misuse of dominant positions, notably to the detriment of the consumers, and all predatory behaviour.

The amended law of July 24, 2000, relating to the organisation of the electricity market, opened up the electrical energy market to competition. This is progressing gradually and, during its initial phase, has allowed big consumers to purchase electrical energy freely. The gradual opening up of the market will take place over a period of time.

The tariffs for the use of the networks are subject to authorisation by the Minister on the advice of the ILR. Access to the network is granted according to the regulated access procedure.

### **Consumer Protection**

Since August 1999, the Minister for the Economy oversees the policy on consumer protection. The Ministry, having the executive power, is responsible for preparing and introducing legislation, considered necessary, in the field of consumer protection. In addition, the Ministry is also entrusted with the responsibility of maintaining a relationship with the Luxembourg Union of Consumers and European Centre of the Consumers.

The only consumer association in Luxembourg, the "*Union luxembourgeoise des consommateurs – ULC*" represents consumers' interests in many committees and councils at national level. The Minister for Economic Affairs officially seeks the opinion of the ULC on proposed legislation relevant to consumer protection. Since it does not itself have adequate human resources, the state, under an annual agreement with the ULC, tasks the association with informing and educating consumers, and making a free information centre available to them.

In addition, the following agencies also take necessary action to protect consumer interests in various fields:

- National Council for Accreditation, Certification, Standardisation and Quality Promotion: One member of the National Council represents consumers. Council established by Grand-Ducal Regulation of May 10, 2001
- Electronic Commerce Committee: One full member of this advisory committee represents consumer interests. The committee's main function is to ensure that all interested parties are involved in the work on electronic commerce. Committee established by Grand-Ducal Regulation of June 01, 2001
- National Energy Council: One member of this committee represents consumers. The committee assists the minister with responsibility for energy. Council established by Grand-Ducal Regulation of August 11, 1996
- Council of the Luxembourg Regulatory Institute (*Institut Luxembourgeois de Régulation – ILR*): One member of the Council of the ILR is appointed from among the

users of telecommunications services in Luxembourg. The Council delivers opinions on the general thrust of the ILR's terms and tariff policy. The Council was established by the Telecommunications Act of March 21, 1997

### **Concluding Observations and Future Scenario**

Being a small country, and as a member of the EU, Luxembourg's main agenda is to build a competition culture in the country. That is happening, slowly and steadily.

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### **Suggested Readings**

Economic Reform in the Grand-Duchy of Luxembourg 2003

National activities of Luxembourg in support of the objectives of the consumer policy strategy (2002-2006), *Ministry of Economic Affairs, July 2003*

Merger Control 2006: Luxembourg, Global Legal Group ([www.iclg.co.uk](http://www.iclg.co.uk))