



Belgium ❖

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 European Union (EU). It is a federal state.

Economy

Belgium possesses a highly developed market economy; the third largest among the Organisation for Economic Cooperation and Development (OECD) industrialised democracies.

Belgium ranked as the fifteenth-largest trading country in the world in 2010, with exports and imports each equivalent to about 89 percent of GDP. 80 percent of Belgium's trade is with other EU members. About five 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. Belgian per capita GDP ranks among the world's highest.

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

PROFILE	
Population:	10.43 million***
GDP (Current US\$):	469 billion*
Per Capita Income: (Current US\$)	45,840 (Atlas method)** 38.290 (at PPP)**
Surface Area:	30,528 sq. km
Life Expectancy:	79.65 years**
Literacy (%):	99 (of ages 15 and above)**
HDI Rank:	18
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (*) For the year 2010 (**) For the year 2011 (***) For the year 2012(est)	

Brussels-Zaventem airport one of the first European hub-and-spoke operations.

Competition Evolution and Environment

In Belgium, the first fully-fledged Competition Act was passed by the Parliament on August 05, 1991 – 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 written (2006-07) & updated (June 2012) internally by CUTS International.

- 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 EU competition legislation (Articles 81 and 82 of the Treaty of Rome).

In the meantime, the merger thresholds have been increased (Royal Decree 3rd July year published in Belgian Official journal) from 40mn EUR to 100mn EUR, and 15mn EUR to 40mn 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 Policy¹

In order to make the enforcement of Competition Law more easy and efficient, the Belgian Ministry of Economy has adopted the Act on the protection of economic competition on June 10, 2006 by the Royal Decree of September 15, 2006. The Act on the protection of economic competition entered into force on October 01, 2006.*

The new Competition Act strengthens the Competition Authority, making it more independent. It gives the authority new instruments to ensure better and more coherent enforcement and bring Belgian Competition Law further in line with the EU. For example, companies doesn't have to notify their agreements, to get an exemption from the prohibition of anti-competitive agreements. With the enactment of new Act, the existing 1999 Competition Law is 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 (EU) 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.

On December 19, 2011, the Competition Council (the Council) announced the adoption of its new fining guidelines, which came into force on January 18, 2012, which was the date of their publication in the Official Gazette. By adopting these guidelines the Council aims at creating transparency for the benefit of undertakings and associations of undertakings who are subject to an investigation of the Belgian competition authority.**

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.

It is the duty of the Competition Authority:

- to safeguard and promote an effective competition on Belgian territory.
- to take part in the implementation of the European competition policy.

The Belgian Competition Authority works together with the other competition authorities and is part of the European Competition Network (ECN), the European Competition Authorities (ECA) and the International Competition Network (ICN).***

* www.vanbaelbellis.com/site/download.cfm?SAVE=1877&LG=1

** http://ec.europa.eu/competition/ecn/brief/01_2012/be.pdf

*** http://economie.fgov.be/en/entreprises/competition/Belgian_Competition_Authority/

Box 1: The Federation of Professional Driving Schools' Case

Following complaints filed by the High Institute for Driving and the Belgian consumers' protection Association Test-Achats, on July 07, 2008 the Competition Council distinct infringements of Article 2CA: (i) according to the Competition Council, from 1997 to 2007 Federal Procurement Data System (FPDS's) Internal Regulations affected the ability of the association's members to freely fix their fees and even prohibited these members from reducing their fees in order to attract more customers which constituted as "serious restriction" of competition; (ii) furthermore, while the Competition Council conceded that professional associations may provide information to their members on the evolution of the market, it may not directly or indirectly influence competition as FPDS tried to do with the publication of studies regarding net costs and containing "fees recommendations" to its members.

According to the competition council, FPDS's intention was to "harmonise the increase of fees through the publication of its studies". For that reason, the Competition Council held that from 1994 to 2005 FPDS's studies and their publications constituted a decision of an association of undertakings, which restricted competition between driving schools.

In view of the absence of fining provisions with respect to associations of undertakings in the former Competition Act (applicable at the second infringement), the Competition Council FPDS only with regard to the first infringement (still ongoing under the new Competition Act) a total of 6,990 Euros and required FPDS to inform all its members of the Council's decision.

(Belgium Official Journal, July 25, 2008, p. 38959)

Anti-competitive Practices²

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.

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).

Box : 2 Cartel Case on BBP (Benzyl Butyl phthalate)

On April 04, 2008, the Competition Council sanctioned a cartel on the market for benzylbutyl phthalate ("BBP"), a chemical product used mainly as a component for PVC products. For the first time, a cartel case was brought before the Competition Council based on leniency applications. According to the Competition Prosecutor, the main producers and distributors of BBP had successively concluded Anti-competitive Agreements from 1983 to mid 2002.

The Competition Prosecutor found that these agreements were aimed at freezing the members' market shares by: (i) fixing sales price; (ii) sharing customers in Europe; (iii) setting sales quotas by region and by customer; (iv) limiting and controlling production and sales; (v) exchanging sensitive information.

The Competition Council found that the members of the cartel had engaged in "one of the most serious violations of Competition Law, both under the Belgian Competition Act as well as on the basis of the applicable rules laid down in the EC Treaty" and fined the members of the cartel a total of 487,755 Euros.

(Belgian official Journal, May 19, 2008, p.26034)

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.

Sectoral Regulation

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 Sector³

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 March 21, 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 Sector⁴

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 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.

The law of July 14th, 1991 on Trade Practices and Consumer Information & Protection concerning commercial practices, consumer protection and information was replaced by the Act of April 6th, 2010 concerning market practices and consumer protection ('Market Practices Act'), as of May 12th, 2010.

This new Act aims to coordinate and modernise the Belgian legislation concerning commercial practices and consumers contracts. The new Market Practices Act deals with the relations between companies and consumers in a general manner and has to main objectives:

- (i) to guarantee the competition in commercial relations; and
- (ii) to reassure the consumer's protection and intends to assure that the consumer receives adequate and appropriate information.

The new Act regulates various matters (extra-contractual as well as contractual issues), e.g. the indication of prices and quantity, distance contracts, contracts agreed outside the selling company, advertising and unfair business practices towards consumers as well as sellers, forced purchases, unlawful clauses, etc.****

Concluding Observations and Future Scenario

Clarifying the definition of the competition authorities in connection with the implementation of a cooperative system or network is deemed necessary because in Belgium, as in many other States, the competition administration system is made up of a number of different bodies.

**** http://www.lexforinews.net/index.php?option=com_content&view=article&id=51:belgique-quelques-changements-recents-dans-la-legislation-belge-concernant-la-protection-des-conso&catid=35:newletter-nd1&Itemid=60&lang=en

Endnotes

- 1 Website of Global Competition Review
- 2 <http://www.vanbaelbellis.com/content/linklist.asp?level2=113&level1=10&level>
- 3 Website of The Belgian Institute for Postal services and Telecommunications (BIPT)
- 4 [www-pub.iaea.org/MTCD/publications/PDF/cnpp2003/ CNPP_Webpage/PDF/2002/Documents/Documents/Belgium%202002.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/cnpp2003/CNPP_Webpage/PDF/2002/Documents/Documents/Belgium%202002.pdf)