



# 2018

# **Annual Activity Report**

**DG Competition**

## **Foreword by Johannes Laitenberger, Director-General**

*One of the unique features of the European Union economy and society is its diversity. The European Union places the citizen at the heart of public policy. This balanced and holistic approach is reflected in Article 3 (3) of the Treaty on European Union, which states that the Union "shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment..."*

*Against this background, the year 2018 marked the 60th anniversary of the entry into force of the Treaty on the European Economic Community, a foundation for today's European Union. From the very beginning, the Treaty empowered the Commission to protect fair and undistorted competition in the internal market, based on a clear legal framework for Member States and businesses. Today, the Single Market comprises 24.5 million small, medium and large companies and 500 million customers.*

*While this legal framework has evolved during the past six decades and is constantly kept under review to align it with market realities and contemporary economic and legal thinking in view of future challenges, its fundamental principles remain the same. Not least its strict adherence to the rule of law under the watchful eye of the Union courts. From this follows – among other things - that the Commission rigorously applies the principles non-discrimination, transparency, predictability, the right to be heard and the protection of confidentiality in its daily enforcement practice. The separation between competition and other legitimate policy interests in the enforcement of competition rules has also contributed to the predictability and credibility of the EU's system, making the Commission one of the leading and an influential competition authority in the world.*

*Indeed, to amplify the effects of its enforcement action, the Commission not only works hand in hand with the Member States' national competition authorities and national courts, it actively cooperates with competition agencies across the world – both at bilateral level and in several international fora, such as the OECD, the International Competition Network and UNCTAD - to develop a truly global level playing field and respect for the rule of law.*

*The 2018 was a challenging year for DG Competition and its resources were stretched to the limit. The Commission faced the highest number of merger notifications recorded and continued to give priority to addressing the most harmful anti-competitive practices, including cartels, in markets that matter both for EU citizens and businesses, including the telecommunications and digital sectors, financial services, energy and the environment, agriculture and food, and transport and manufacturing. In addition, the Commission started to evaluate a number of competition policy tools and guidelines, including, inter alia, the State aid rules adopted as part of the State Aid Modernisation package and the vertical and horizontal Block Exemption Regulations and guidelines in the field of antitrust policy.*

*Looking into the future, on 7 June 2018, as part of the proposal for the Multiannual Financial Framework (MFF) for the period 2021-2027, the Commission adopted the proposal for the Single Market Programme. This includes the new Competition Programme, with an indicative budget of EUR 140 million over the programme period. This would be the first such EU programme in the competition area. If adopted by the co-legislators, the Competition Programme will help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and fast-moving developments in an increasingly digital environment, as well as strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the single market. I very much look forward to the successful outcome of the co-legislators' work on the MFF and the Competition Programme, which can guarantee that EU competition policy can continue to be a relevant tool in support of a strong single market benefiting EU citizens and businesses alike and allowing EU competition policy to move on with the rapid developments on the markets.*

*The results detailed in this report are due to the consistent and resilient efforts of DG Competition staff, under the leadership of Commissioner Margrethe Vestager – and to the contributions of many others throughout the Commission and beyond.*

*Many thanks to all!*

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## THE DG IN BRIEF

The mission of the Directorate-General for Competition is to enable the **Commission to make markets deliver more benefits to consumers, businesses and the society as a whole, by protecting competition on the market and fostering a competition culture in the EU and worldwide**. DG Competition does this by enforcing competition rules and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests. Competition policy is an indispensable element of a functioning internal market ensuring that all companies compete equally and fairly on their merits.

Competitive markets play an important role supporting the Commission's efforts to achieve a strong and prosperous European Union. Competition contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. Consequently, EU competition policy contributes to the Commission's wider objectives<sup>1</sup>, in particular to boosting jobs, growth and investment, a connected Digital Single Market, a resilient Energy Union with a forward- looking climate-change policy, a deeper and fairer internal market with a strengthened industrial base and a deeper and fairer Economic and Monetary Union.

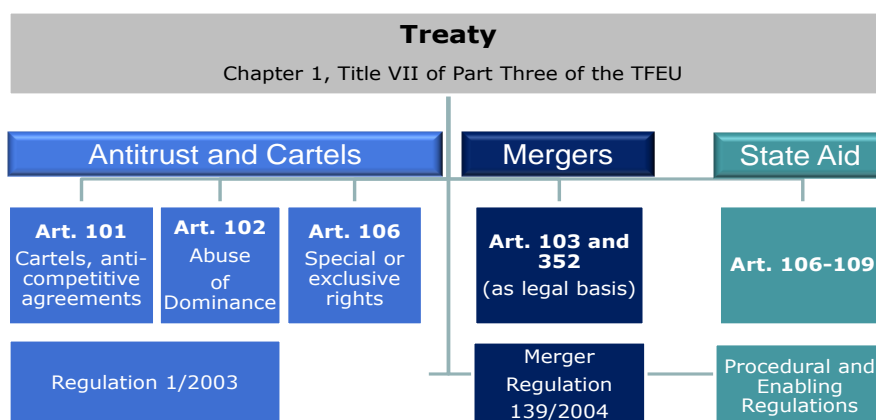
A scrupulous enforcement of the competition rules according to rigorous legal standards and in accordance with state-of-the-art economic analysis ensures fairness in the economy. This is crucial in an economic and political system intended to serve all citizens, as reflected in the Mission Letter from Commission President Juncker to the Commissioner for Competition Margrethe Vestager.<sup>2</sup>



EU competition policy aims to protect the efficient functioning of markets from competition distortions whether originating from Member States (distortive State aid), market players (distortive unilateral or coordinated behaviour), or mergers that would significantly impede effective competition. This is done by enforcing the competition rules (antitrust/cartels, merger control and State aid control) when the Commission finds evidence of unlawful behaviour, and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests.

The Commission is responsible for defining and implementing EU competition policy. The principal competition rules are contained in Chapter 1, Title VII of Part Three of the Treaty on the Functioning of the European Union (TFEU).

<sup>1</sup> Political Guidelines for the new European Commission as presented by President Juncker of 15 July 2014 at [http://ec.europa.eu/priorities/docs/pg\\_en.pdf#page=5](http://ec.europa.eu/priorities/docs/pg_en.pdf#page=5).



The Commission, together with the national competition authorities (NCAs) and with national courts<sup>2</sup>, enforce EU competition rules based on Articles 101-109 TFEU, to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits in the internal market. This benefits consumers, businesses and the European economy as a whole.

Within the Commission, DG Competition is primarily responsible for implementing these direct enforcement powers. DG Competition performs the following functions to meet these obligations, as reflected in the Mission Letter by President Juncker<sup>3</sup>:

- Enforcement of antitrust and cartel policy;
- Merger control;
- State aid control;
- Development of EU competition policy, competition policy instruments and guidance to companies and Member States in all these areas; and
- Promotion of competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission's reputation worldwide.

DG Competition carries out its mission mainly by taking direct enforcement actions<sup>4</sup> against companies or Member States when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies<sup>5</sup> or governmental action which leads to a distortion of competition in the internal market by giving some companies undue advantages over others. EU merger control<sup>6</sup> aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective. Finally, EU competition policy encourages granting of better targeted aid that addresses market failure or equity objectives.<sup>7</sup> Such aid has a

<sup>2</sup> Articles 101 and 102 TFEU; national courts also play a role in the application of Articles 107-109 TFEU.

<sup>3</sup> The Mission Letter asks the Competition Commissioner to focus on: *"Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide"*.

<sup>4</sup> The Commission may adopt a prohibition decision, prohibiting the anti-competitive conduct and impose fines on the company (ies) or prohibit incompatible State aid by a Member State and order recovery of unlawfully granted incompatible aid. It may also adopt a commitment decision rendering commitments offered by the companies to address the Commission's competition concerns legally binding in antitrust proceedings, approve a merger transaction subject to legally binding commitments offered by the companies or impose conditions on the Member State with regard to the aid measure.

<sup>5</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1-25.

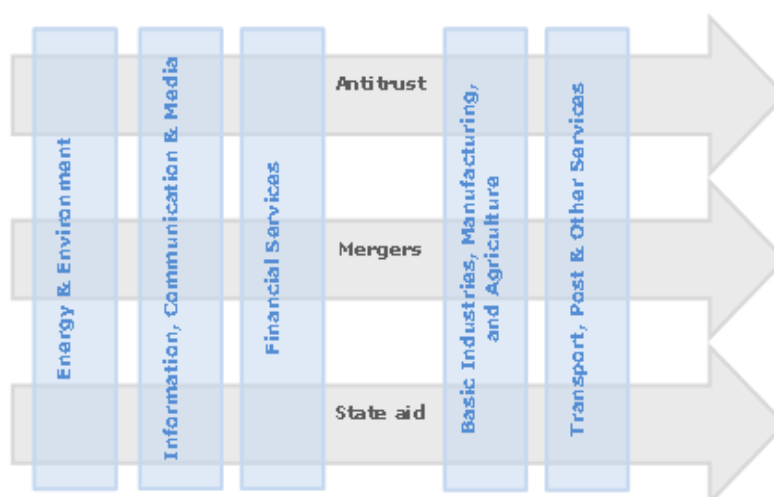
<sup>6</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1-22.

<sup>7</sup> Council Regulation (EU) No 733/2013, of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 204, 31.7.2013, p. 11-14; for the State Aid Modernisation see also

beneficial impact on competitiveness, employment and growth, and thus on the welfare of the society as a whole.

DG Competition channels its limited resources, where not bound by legal obligations, to the most harmful practices in key sectors. It works in partnerships with other Commission services to support the delivery of key Commission policies in a pro-competitive way at EU and national level. In the international context, DG Competition strives to shape global economic governance by strengthening international cooperation in competition enforcement and making steps towards an increased convergence of competition policy instruments across different jurisdictions. DG Competition cooperates with competition authorities bilaterally as well as through international fora, such as Organisation for Economic Cooperation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD) and the International Competition Network (ICN).

DG Competition is organised in a matrix structure combining enforcements instruments under different sectors (Directorates B-F). This organisation structure is designed to promote instrument and sector knowledge, as well as the flexible and efficient use of human resources, both critical factors in ensuring a successful and timely delivery of the objectives.



Directorate A is in charge of policy for all competition enforcement instruments, as well as of the European Competition Network, private enforcement and international relations. Directorate G is dedicated to cartel enforcement. Directorate H is responsible for applying most of the horizontal (i.e. non-sector specific) State aid rules. Directorate R is responsible for document management, finance and internal compliance, IT, and the management of issues related to security, ethics and business continuity.

The Chief Economist and his team provide support in terms of economic analysis for individual competition cases and for DG Competition policy developments. The Chief Economist reports directly to the Director-General and provides independent advice to the Commissioner. The Principal Adviser is responsible for the ex-post economic evaluation of competition policy.

DG Competition accomplishes its tasks primarily through its human resources (799 staff members on 31 December 2018) and its legal powers. It has currently no own operational budget. The financial resources administered by DG Competition come from the administrative budget.

2018 was a challenging year for DG Competition and its resources were stretched to the limit. The Commission faced the highest number of merger notifications recorded combined with strong enforcement actions taken in the field of antitrust and State aid control. In addition, DG Competition worked towards further streamlining the procedures

[http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html),

in competition cases in order to enhance further the timeliness, efficiency and effectiveness of its enforcement actions under the EU competition rules and evaluating the effects of its past decisions.

Markets are evolving in rapid pace and DG Competition with its limited resources and obligatory work streams is looking forward to the work of the co-legislators in the context of the Multiannual Financial Framework (MFF) for the period 2021-2027, in particular, the Single Market Programme and within it the new Competition Programme. The programme can help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and further fast-moving developments in an increasingly digital environment, as well as strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the single market. The indicative operational budget for the Competition Programme is EUR 140 million over the period 2021-2027.



## EXECUTIVE SUMMARY

The Annual Activity Report is a management report by the Director-General of DG Competition to the College of Commissioners. Annual Activity Reports are the main instrument of management accountability within the Commission and constitutes the basis on which the College takes political responsibility for the decisions it takes as well as for the coordinating, executive and management functions it exercises, as laid down in the Treaties.<sup>8</sup>

The executive summary has four subsections:

- a) Key results and progress towards the achievement of general and specific objectives of the DG (executive summary of section 1; *what* we have delivered)
- b) The most relevant Key Performance Indicators (KPIs) for the illustration of policy highlights identified in the DGs 2016-2020 Strategic Plan
- c) Key conclusions on Financial Management and Internal control (executive summary of section 2.1; *how* we have delivered).
- d) Information to the Commissioner.

### **a) Key results and progress towards the achievement of general and specific objectives of the DG (executive summary of section 1)**

Year 2018 was a challenging year for DG Competition and its resources were stretched to the limit. The Commission faced the highest number of merger notifications recorded and continued to give priority to addressing the most harmful anti-competitive practices, including cartels. DG Competition continued making markets work better for EU citizens, companies and the European economy at large in a number of important sectors including areas that are relevant for the Commission's priorities as outlined in the Political Guidelines. In addition, DG Competition worked towards further streamlining the procedures in competition cases in order to enhance further the timeliness, efficiency and effectiveness of its enforcement actions under the EU competition rules and evaluating the effects of its past decisions to maintain the competition law instruments aligned with market realities and contemporary economic and legal thinking.

*Energy* is one of the sectors in which completing the single market will bring significant benefits to Europe's consumers and businesses. In the field of antitrust, the Commission adopted a decision removing obstacles created by Gazprom, which affected the free flow of gas in Central and Eastern Europe, as well as imposing on Gazprom a set of obligations for its future conduct. Moreover, the Commission fined Bulgarian Energy Holding (BEH), its gas supply subsidiary Bulgargaz and its gas infrastructure subsidiary Bulgartransgaz (the BEH group) EUR 77 million for blocking competitors' access to key gas infrastructure in Bulgaria, in breach of EU antitrust rules.

Competition policy and enforcement actions continued to contribute to the implementation of the *Digital Single Market Strategy*. In 2018, the Commission adopted a decision in the Android case finding that Google had abused its dominant position and fined the company EUR 4.34 billion for anticompetitive restrictions the company had imposed, since 2011, on mobile device manufacturers and network operators to cement its dominant position in general internet search. The Commission also fined Qualcomm EUR 997 million for abusing its market dominance in LTE baseband chipsets, in breach of EU antitrust rules. The Commission's decision requires Qualcomm to refrain from any practices that have the same or an equivalent object or effect in the future. In the field of e-commerce the Commission took separate decisions<sup>9</sup> fining Asus, Denon & Marantz,

<sup>8</sup> Article 17(1) of the Treaty on European Union.

<sup>9</sup> Commission decisions of 24 July 2018: cases (vertical restraints) AT.40181 *Philips*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40181](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40181); AT.40182 *Pioneer*,

Pioneer and Philips a total of 111 million euros, for restricting the ability of their online retailers to set their own retail prices for widely used consumer electronics products such as kitchen appliances, notebooks and hi-fi products. The Commission also fined the clothing company Guess for 40 million euros for restrictions imposed on its distributors (online sales and advertisement restrictions, geo-blocking, cross-supply restrictions within the selective distribution and resale price maintenance).

In the State aid field, the Commission found that an integrated project jointly notified by France, Germany, Italy and the United Kingdom for research and innovation in microelectronics was in line with EU State aid rules and contributed to a common European interest. The four Member States will provide up to EUR 1.75 billion in funding for this project. The Commission also approved, under the Broadband Guidelines<sup>10</sup>, a Bavarian project<sup>11</sup> to deploy very high capacity networks in six municipalities. This was the first time the Commission looked at a support measure in the context of the objectives of the Gigabit Communication.

In addition, the Commission started a reflection process about how competition policy can best serve European consumers in a fast-changing world. The Commission appointed three Special Advisers to provide input on the future challenges of digital economy<sup>12</sup> affecting markets and consumers and on their implications for competition policy. The Commission also conducted a public consultation in this context.

DG Competition continued also to contribute to the fulfilment of the *Capital Markets Union*. The general stabilisation of the financial sector and the gradual implementation of the Banking Union regulatory framework have resulted in less interventions from the public budget. The Commission completed the monitoring of a further ten banks with respect to commitment obligations resulting from past State aid decisions, as well as closed a number of legacy cases.

Competition policy goes hand in hand with the Commission's efforts towards a *Deeper and Fairer Internal Market*, ensuring that free movement rules are not undermined by anti-competitive conduct and that State aid to ailing firms does not hamper or slows down the restructuring or necessary adjustments in industrial sectors. In its fight against cartels, the Commission imposed a total of EUR 546 million in fines for cartel participation in three different cartel cases concerning the maritime transport of cars and the supply of car parts<sup>13</sup>. The Commission also dealt with complex State aid and mergers in the steel-chemical and agro-chemical sector. Following an in-depth review, the Commission approved the acquisition of Ilva by ArcelorMittal<sup>14</sup>, the largest producer of flat carbon steel in Europe and worldwide. The Commission concluded that the proposed transaction, as modified by the commitments, ensures that competition is preserved on European steel markets and does not result in higher prices, in the interest of European manufacturing industries and consumers. The decision is conditional on full compliance with the commitments. In parallel, before the closing of the merger, Italy recovered from Ilva illegal State aid granted during its insolvency state through two publicly supported

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[http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40182](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40182); AT.40465 *Asus* available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40465](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40465); and AT.40469 *Denon & Marantz*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40469](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40469).

<sup>10</sup> Communication from the Commission — EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, pp. 1–26.

<sup>11</sup> Case SA.48418 *Bavarian gigabit pilot project – Germany*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_48418](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_48418).

<sup>12</sup> The three special advisers are Heike Schweitzer, a German law professor; Jacques Crémer, a French professor of economics; and Yves-Alexandre de Montjoye, a Belgian assistant professor of data science.

<sup>13</sup> Commission decisions of 21 February 2018: cases AT.40009 *Maritime car carriers*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40009](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40009); AT.40113 *Spark plugs*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_40113](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40113); and AT.39920 *Braking systems*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_39920](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_39920).

<sup>14</sup> Case M.8444 *ArcelorMittal / Ilva*, Commission decision of 7 May 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8444](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8444).

loans totalling EUR 700 million, which the Commission had requested to recover in line with established rules preventing State aid to the restructuring of ailing steel producers<sup>15</sup>. The Commission also conditionally approved Bayer's plans to buy Monsanto<sup>16</sup> under the EU Merger Regulation, following an in-depth review. The merger was conditional on the divestiture of an extensive remedy package worth above EUR 6 billion, which addresses the parties' overlaps in seeds, pesticides and digital agriculture. In the chemical sector, the Commission adopted a decision ordering the recovery of approximately EUR 335 million of aid granted by various Romanian public entities or companies to Oltchim SA, also a State-owned company mainly in the form of debt write-offs. This aid was aiming at supporting the continuation of the company under a Court-driven plan for exiting its insolvency state. The aid was not meeting the strict conditions under which EU State aid rules allow restructuring aid to undertakings in difficulty, notably in the absence of a clear restructuring plan, measures mitigating the distortions of competition and a sufficient contribution of the aided company or market investors to the restructuring costs. Most of the viable plants and assets of Oltchim have now been acquired by private competitors at market conditions<sup>17</sup>.

A competitive and efficient transport sector is essential for a well-functioning single market, a sustainable growth strategy and an open economy integrated into the global markets. As regards airports, the Commission adopted a decision finding that the twenty-year extension of the concession for Athens International Airport Eleftherios Venizelos does not constitute State aid.

*Fair tax competition* is essential for the integrity of the single market and for ensuring that all companies doing business in the single market can compete with each other on fair and equal terms, regardless of the company's size, sector or nationality. In State aid, the Commission concluded that Luxembourg's tax treatment of Engie, a supplier of gas and electricity, was illegal under EU State aid rules. Luxembourg therefore needs to recuperate ca. EUR 120 million.

To enhance further the timeliness, efficiency and effectiveness of its enforcement actions under the EU competition rules, the Commission published updated guidance for companies regarding business secrets and other confidential information during antitrust proceedings, as well as guidance and templates for the use of so-called confidentiality rings for access to file purposes. This guidance complements previous Commission guidance on best practices on data rooms, guidance on confidentiality claims for the process of preparing public versions of its decisions, as well as recommendations for the use of electronic document submissions. The Commission also concluded several non-cartel antitrust cases on the basis of cooperation by the companies under investigation and published informal guidance on how companies can cooperate in antitrust probes in exchange for lower fines.

In the area of State aid control, the Commission launched, in line with the Commission's Better Regulation Guidelines, the evaluation of State aid rules adopted as part of the State Aid Modernisation, of the railways guidelines, and of the short term export credit insurance. The evaluation takes the form of a "fitness check"<sup>18</sup> to verify whether the rules have actually worked in the way intended and are fit for purpose. It will provide a basis

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<sup>15</sup> Case SA.38613-State aid for Ilva in A.S, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_38613](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38613).

<sup>16</sup> Case M.8084 Bayer / Monsanto, Commission decision of 21 March 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8084](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8084).

<sup>17</sup> Case SA.36086-State aid to Oltchim, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_36086](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_36086).

<sup>18</sup> The current fitness check will cover: the General Block Exemption Regulation (GBER); the 'De minimis' Regulation; the Regional aid Guidelines; the Research, Development and Innovation (RDI) Framework; the Communication on State aid for important projects of common European interest (IPCEI Communication); the Risk finance, Airport and aviation Guidelines; the Energy and Environmental Aid Guidelines (EEAG); the Rescue and restructuring Guidelines; the Railways Guidelines; as well as the Short term export credit Communication (the two latter were not included in the 2012 State Aid Modernisation package). See [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en).

for decisions, to be taken by the Commission in the future, about whether to further prolong or possibly update the rules.

In December 2018, the European Parliament and the Council adopted the so-called ECN+ Directive empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust.<sup>19</sup> The Commission will now monitor the transposition process and assist the Member States in transposing the Directive into national law within the two-year implementation period.

DG Competition's external activities in 2018 built on three core values: improving the efficiency of the Commission's enforcement action and safeguarding the effectiveness of its enforcement decisions; promoting these values worldwide, and promoting greater transparency and basic disciplines on subsidies control outside the EU.

Finally, in June 2018, the Commission adopted the proposal, including the impact assessment, for the Competition Programme *An Ambitious Competition policy for a stronger Union in the digital age* within the Single Market Programme<sup>20</sup> in the context of the Multiannual Financial Framework 2021-2027.

## b) Key Performance Indicators (KPIs)

To understand impact on the market and progress in improving our organisational management each year, DG Competition is monitoring the following key performance indicators:

- 1) Estimate of customer benefits resulting from cartel prohibition decisions;
- 2) Estimate of customer benefits resulting from merger interventions;
- 3) The share of General Block Exemption Regulation (GBER) expenditure over total expenditure on State aid; and
- 4) Implementation of a common Case Management System for the Commission services participating in the CASE@EC project (DG Competition is lead DG).

Three of the four key performance indicators relate to the main competition policy instruments: antitrust and cartels, merger control and State aid control and the fourth indicator to organisational management. While these indicators do not deliver an exhaustive account of DG Competition's work or its impact on markets, they constitute the main quantifiable indicators.

### KPI 1 and KPI 2

DG Competition, like most competition authorities, provides each year the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes.

Like three national competition authorities<sup>21</sup>, DG Competition also provides two estimates of the benefits to customers resulting from the Commission's cartel prohibition decisions (KPI 1) and from horizontal merger interventions (KPI 2).<sup>22</sup> However, such estimates underestimate the overall impact of cartel and merger decisions, as they do not capture the deterrence and non-price effects of such decisions, such as benefits stemming from better quality or wider choice, other effects of competition policy, such as productivity

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<sup>19</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.01.2019, pp. 3–33.

<sup>20</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1540389031742&uri=CELEX%3A52018PC0441>.

<sup>21</sup> The Netherlands Authority for Consumers and Markets, the National Commission on Markets and Competition (Spain) and the Competition and Markets Authority (United Kingdom).

<sup>22</sup> Since 2012, DG Competition has systematically calculated the direct benefits of its competition policy interventions using the estimated customer benefits approach. For the methodology, see the below. See also *OECD Guide helping competition authorities assess the expected impact of their activities (April 2014)* <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>.

gains or impact on jobs, any possible pass-on to final consumers in the case of intermediary goods or services.

In 2018, total estimated customer savings from cartel prohibitions and horizontal merger interventions by the European Commission were exceptionally high. This was due to the large size of the markets affected by decisions taken in that year. In 2018, total estimated customer savings amounted to between 16.2 and 26.9 billion euro, which corresponds to 0.10 % - 0.17 % of EU GDP.

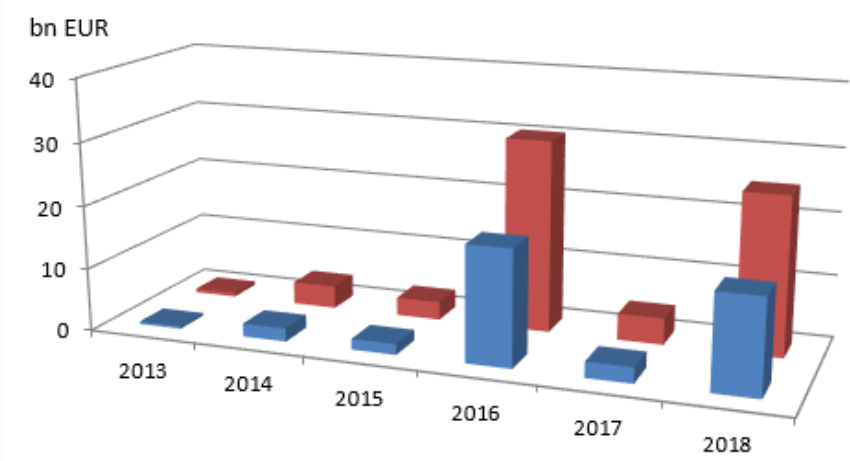
The Commission's strong enforcement record against hard core cartels continued in 2018. As in preceding years, the Commission adopted cartel decisions in important sectors for innovation and investment, such as the electronic components market and the automotive industry. The settlement procedure remains an efficient tool regularly used by the Commission in its fight against cartels as shown by the fact that the procedure accounted for 75% of the decisions adopted in 2018. Total customer savings from cartel decisions (KPI 1) in 2018 varied between EUR 1.3-1.9 billion, depending on the assumption made about the level of the avoided price overcharge. The maritime car carriers' cartel was responsible for 71% of the total customer savings for the year.

In 2018, total customer savings from merger intervention by the Commission (KPI 2) varied between EUR 15.0-25.0 billion, depending on the assumption made on the level of price increase avoided. The number of merger interventions in 2018 (25) is slightly higher than the number of interventions in 2017 (24). Nevertheless, 2018 customer savings increased strongly in comparison to the previous year, reaching an order of magnitude almost similar to that recorded in 2016, which was an exceptional year. In terms of customer savings, the Hutchison/Wind Tre and the Praxair/Linde merger cases are amongst the top-five merger decisions taken since 2012.

Impact indicator	Trend	Target (or milestones)	Latest known results														
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions <sup>23</sup>	Stable (in line with markets affected)	Stable	EUR 1.3-1.9 bn (2018)														
<div>bn EUR</div> <table><tr><th>bn EUR</th><th>2013</th><th>2014</th><th>2015</th><th>2016</th><th>2017</th><th>2018</th></tr><tr><td>Cartel</td><td>4.9-5.9</td><td>1.8-2.6</td><td>1.0-1.5</td><td>6.8-10.2</td><td>1.4-2.1</td><td>1.3-1.9</td></tr></table>				bn EUR	2013	2014	2015	2016	2017	2018	Cartel	4.9-5.9	1.8-2.6	1.0-1.5	6.8-10.2	1.4-2.1	1.3-1.9
bn EUR	2013	2014	2015	2016	2017	2018											
Cartel	4.9-5.9	1.8-2.6	1.0-1.5	6.8-10.2	1.4-2.1	1.3-1.9											

<sup>23</sup> DG Competition calculation. The approach followed to estimate customer benefits from stopping a cartel (prevented harm) consists in multiplying (i) the assumed increased price brought about by the cartel in the past (called the "overcharge") by (ii) the value of sales by cartel members in the market directly affected by the cartel and (iii) the likely duration of the cartel had it remained undetected. A 10% to 15% overcharge is assumed. This is conservative when compared to the findings of recent empirical literature which report considerably higher median price overcharges for cartels. In order to estimate what the likely duration of the cartel would have been if it had continued undetected, a case-by-case analysis was carried out. This analysis focused on the particular circumstances of each case as reflected in indicators of cartel stability, including the number of cartel participants, their market shares, the characteristics of the product concerned, the level of market entry barriers and other market conditions. The cartels are classified into three categories: "unsustainable", "fairly sustainable" and "very sustainable". It is assumed that the cartels in the first category would have lasted one extra year in the absence of the Commission's intervention, the cartels in the second category three years, and the cartels in the third group six years. The assumptions concerning the likely duration of the cartels are made prudently to establish a lower limit rather than to estimate the most likely values. In the above graph, the lower boundary of the estimate is marked in blue and the higher boundary in red. Finally, the estimates obtained are also conservative because other consumer benefits, such as innovation, quality and choice are not taken into account.



Impact indicator	Trend	Target (or milestones)	Latest known results			
KPI 2 The estimate of customer benefits resulting from merger interventions <sup>24</sup>	Stable (in line with markets affected)	Stable	EUR 15.0-25.0 bn (2018)			
						
		bn EUR	2013	2014	2015	2016
Merger	0.4-0.6	2.1-3.6	1.7-2.9	18.3-30.4	2.5-4.2	15.0-25.0

It is evident from the graphs above that the estimate of customer benefits may show considerable variation over time, both as regards cartels and mergers. Because the evolution of the customer benefits is influenced by external factors beyond the control of the Commission (company behaviour and actions taken on the market, leniency applications and merger notifications) it is not meaningful to set a numerical target for these two indicators. DG Competition's target in this regard means that it does not aim for either an increase or a decrease. The indicator is an annual representation of the estimated impact of the Commission intervention decisions in a given year.

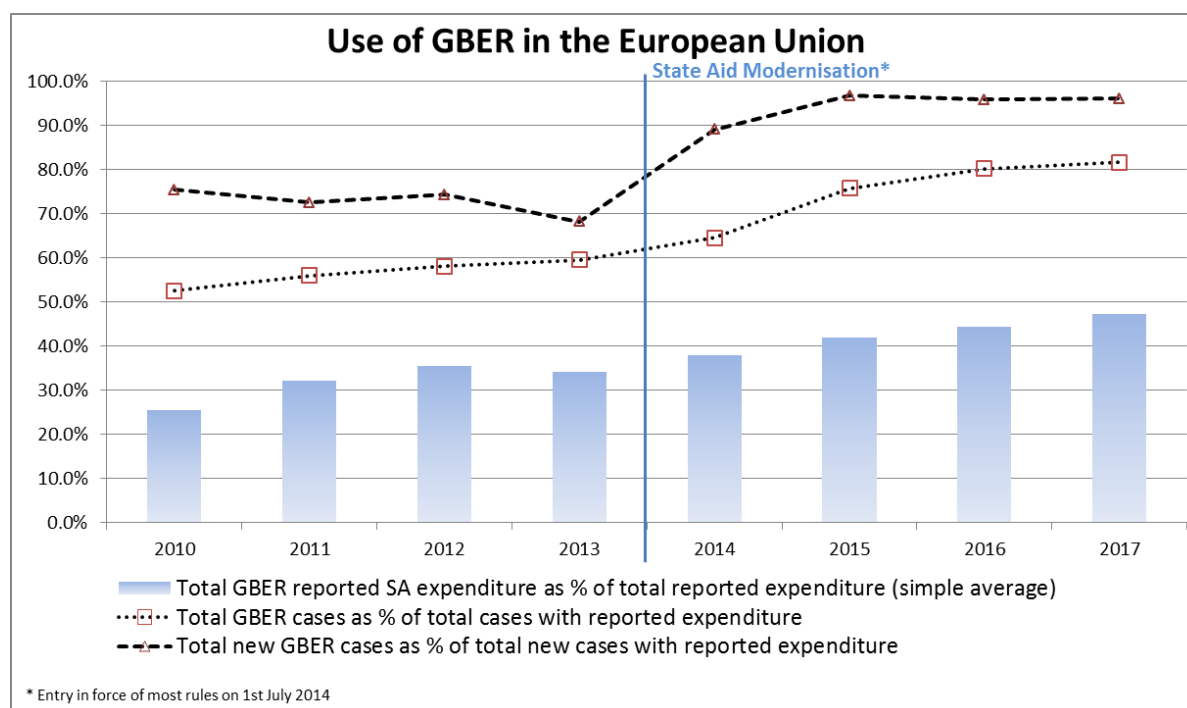
### KPI 3

In the field of State aid control, the key performance indicator (KPI 3) measures the share of General Block Exemption Regulation (GBER) expenditure over total expenditure on State aid. Member States have already made extensive use of the possibilities offered by the comprehensive modernisation of State aid rules.

Expenditure on GBER measures in the EU was approximately EUR 41.7 billion in 2017, which corresponds to about 38% of total expenditure. However, when considering the average of individual Member States' expenditure, in 2017 Member States spent some

<sup>24</sup> DG Competition calculation. In 2017, DG Competition introduced three changes in the method used to calculate customer savings from merger interventions: (1) use of case-specific information on barriers to entry and expansion to determine the expected duration of the price increases avoided; (2) use of two scenarios for the avoided price increase, i.e. 3% and 5%; and (3) inclusion of Phase II withdrawals in the list of merger cases. These changes are reflected in the calculations above. The approach followed to estimate customer benefits from Commission's interventions (a merger prohibition, a merger approval subject to conditions or a withdrawal of a merger notification in Phase II) takes into account (i) the likely price increase avoided (3% and 5 % for the lower and upper boundary of the estimated customer benefits, respectively); (ii) the total size (by value) of the product market affected and (iii) the expected duration of the price increase avoided. The customer savings calculations reported in the AARs of 2016 and earlier years applied two scenarios for the expected duration of the price increase avoided (two and five years). In the revised methodology, the duration reflects the expected length of time that the affected product market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors. In the above graph, the lower boundary of the estimate is marked in blue and the upper boundary in red. The prevention of anticompetitive effects such as the negative impacts on innovation and choice are not taken into account, even though some cases are largely based on non-price effects, especially effects on innovation. The stable target is a planning assumption. Since the merger control activity is driven by notifications, it is not meaningful to provide a numerical target for this indicator."

48% of their total spending on GBER measures, an increase of approximately 14 percentage points compared to 2013.



Result indicator	Trend	Target	Latest known results (2018)
KPI 3 The share of GBER expenditure over total expenditure on State aid	On track	Maintain or increase	48%

#### KPI 4

Competition law enforcement is a highly digitalised activity. Key business processes as well as exchanges with various stakeholders are supported by dedicated information systems. Therefore, in the area of organisational management of DG Competition, the related key performance indicator (KPI 4) measures the progress of the DG-Competition-lead ICT project CASE@EC to develop a new Case Management system for the participating Commission Services. CASE@EC contributes to the modernisation and rationalisation of case and document management in the Commission.

The configuration and customisation of the purchased Case Management framework as well as its integration with other IT systems is on-going and the first version covering Horizontal Projects has been completed and tested. A technical issue to correctly install the software in DG DIGIT's secure hosting service has been resolved by the end of 2018. Consequently, the first version of the new Case Management system will be released by March 2019.



<b>Result indicator</b>	<b>Trend</b>	<b>Target (2018)</b>	<b>Latest known results (2018)</b>
KPI 4 Implementation of a common Case Management System for the Commission services participating in the CASE@EC project	On track	Completed implementation of the first version of the new common Case Management System.	User acceptance testing of the first version, in view of its release into production by March 2019.

### **c) Key conclusions on Financial management and Internal control (executive summary of section 2.1)**

In accordance with the governance arrangements of the European Commission, DG Competition staff conducts its operations in compliance with the applicable laws and regulations, working in an open and transparent manner and meeting the expected high level of professional and ethical standards.

The Commission has adopted a set of internal control principles, based on international good practice, aimed to ensure the achievement of policy and operational objectives. The financial regulation requires that the organisational structure and the internal control systems used for the implementation of the budget are set up in accordance with these principles. DG Competition has assessed the internal control systems during the reporting year and has concluded that the internal control principles are implemented and function as intended. Please refer to AAR section 2.1.3 for further details.

In addition, DG Competition has systematically examined the available control results and indicators, including those aimed to supervise entities to which it has entrusted budget implementation tasks, as well as the observations and recommendations issued by internal auditors and the European Court of Auditors. These elements have been assessed to determine their impact on the management's assurance as regards the achievement of control objectives. Please refer to Section 2.1 for further details.

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated; and necessary improvements and reinforcements are being implemented. The Director General, in his capacity as Authorising Officer by Delegation has signed the Declaration of Assurance.

### **d) Information to the Commissioner**

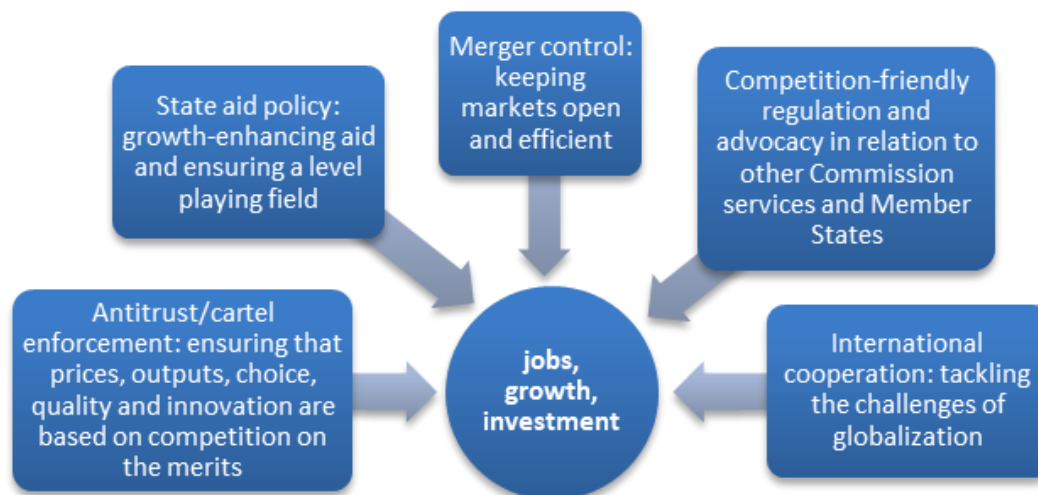
In the context of the regular meetings during the year between the DG and the Commissioner on management matters, the main elements of this report and assurance declaration have also been brought to the attention of Commissioner Vestager, responsible for competition policy on 19 March 2019.

# 1. KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF GENERAL AND SPECIFIC OBJECTIVES OF THE DG

## General objective: A New Boost for Jobs, Growth and Investment

By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributes to the Commission's general objective "A New Boost for Jobs, Growth and Investment" in the EU.<sup>25</sup> Competition policy supports several key EU policies and initiatives, including Digital Single Market, Energy Union, Deeper and Fairer Internal Market and the fight against tax evasion. DG Competition performs the following functions<sup>26</sup> to meet these obligations:

- Enforcement of antitrust and cartel policy;
- Merger control;
- State aid control;
- Development of EU competition policy, competition policy instruments and guidance to companies and Member States in all these areas; and
- Promotion of competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission's reputation worldwide Enforcement of antitrust and cartel policy.



<sup>25</sup> Political Guidelines of President Juncker at [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf) State of Union 2015 Speech by President Juncker at [http://europa.eu/rapid/press-release\\_SPEECH-15-5614\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm) Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014 at [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/vestager\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf):

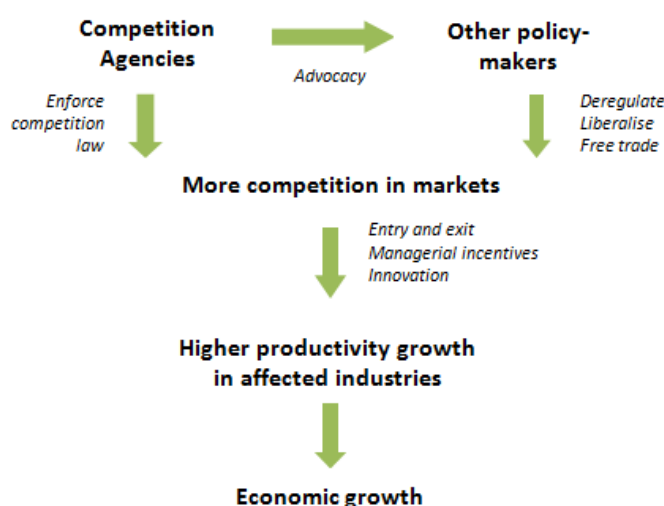
"Competition policy is one of the areas where the Commission has exclusive competence and action in this field will be key to the success of our jobs and growth agenda. It should contribute to steering innovation and making markets deliver clear benefits to consumers, businesses and society as a whole. Every effort should be made to maximise the positive contribution of our competition policy in support of our overall priorities and to explain and demonstrate its benefits to citizens and stakeholders at all levels".

<sup>26</sup> The Mission Letter asks the Commissioner for Competition to focus on: "Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide".

Since it is not meaningful<sup>27</sup> to set numerical targets for competition policy enforcement, most of the indicators used to measure the Commission's performance include trends as targets (stable, increase, decrease, no target). On-going investigations by the Commission are always without prejudice to the final decision in the case at hand.

However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions and horizontal merger interventions, and considers the impact of competition policy on growth and macroeconomic performance more generally.<sup>28</sup> Fines imposed by the Commission reduce the contributions by Member States to the EU budget and act as deterrence for future infringements.<sup>29</sup>

It is difficult to measure reliably the effect of competition law on economic growth, but according to the OECD<sup>30</sup>, there is solid evidence in support of each of the relationships shown below, and their combined effect boosting economic growth.



<sup>27</sup> As far as merger and State aid enforcement is concerned, DG Competition's activities are largely driven by notifications by companies and Member States, which is a factor beyond the control of the Commission. As regards antitrust and cartel enforcement, a target would also depend on factors beyond the Commission's control (decisions of the parties or other market players to disclose such infringements through the leniency programme, whistleblowing, complaints or the availability of information to the Commission to detect infringements ex officio). In each and every case, the Commission must fully respect the rights of defence of the parties.

<sup>28</sup> Dierx, A., Ilzkovitz F., Pataracchia B., Ratto M., Thum-Thysen A. et Varga J.(2017), "Does EU competition policy support inclusive growth?", Journal of Competition Law & Economics, Volume. 13(2), pp. 225-260. <https://academic.oup.com/jcle/article/13/2/225/3920779> or Dierx, A., Ilzkovitz F., Pataracchia B., Ratto M., Thum-Thysen A. et Varga (2017), "Distributional macroeconomic effects of EU competition policy – A general equilibrium analysis", in A Step Ahead - Competition Policy for Shared Prosperity and Inclusive Growth, World Bank and OECD Publication.

<sup>29</sup> Between 2010 and 2015 the total amount of fines imposed by the Commission in cartel cases reached almost EUR 9.3 billion.

<sup>30</sup> OECD Factsheet on how competition policy affects macro-economic outcomes (October 2014), p. 2, <http://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>.

## 1.1 Antitrust and cartels

### Articles 101, 102 and 106 TFEU

According to Article 101 TFEU, anti-competitive agreements are “prohibited as incompatible with the internal market”. Article 101 TFEU prohibits agreements with anti-competitive object or effects whereby companies coordinate their behaviour instead of competing independently. Even if a horizontal or a vertical agreement could be viewed as restrictive (for example by combining the production of two competing companies) it might be allowed under Article 101(3) TFEU if it ultimately fosters competition (for example by promoting technical progress or by improving distribution).

Article 102 TFEU prohibits abuses of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position in a market or to acquire such a position. Just as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits abusive behaviour by dominant undertakings, for example preventing/hindering market entry or forcing competitors out of the market. Such practices hamper competition and negatively affect incentives to innovation and growth. Moreover, such practices reduce consumer welfare.

Finally, Article 106 TFEU prevents Member States from enacting or maintaining in force any measures contrary to the Treaty rules regarding public undertakings and undertakings to which Member States grant special or exclusive rights (privileged undertakings).

DG Competition's activities in the field of antitrust and cartels aim at ensuring an effective enforcement of the antitrust rules with a view to making markets work better and protecting consumer welfare. These activities include detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices, which hamper competition and negatively affect incentives for innovation and growth, as well as consumer welfare.<sup>31</sup>

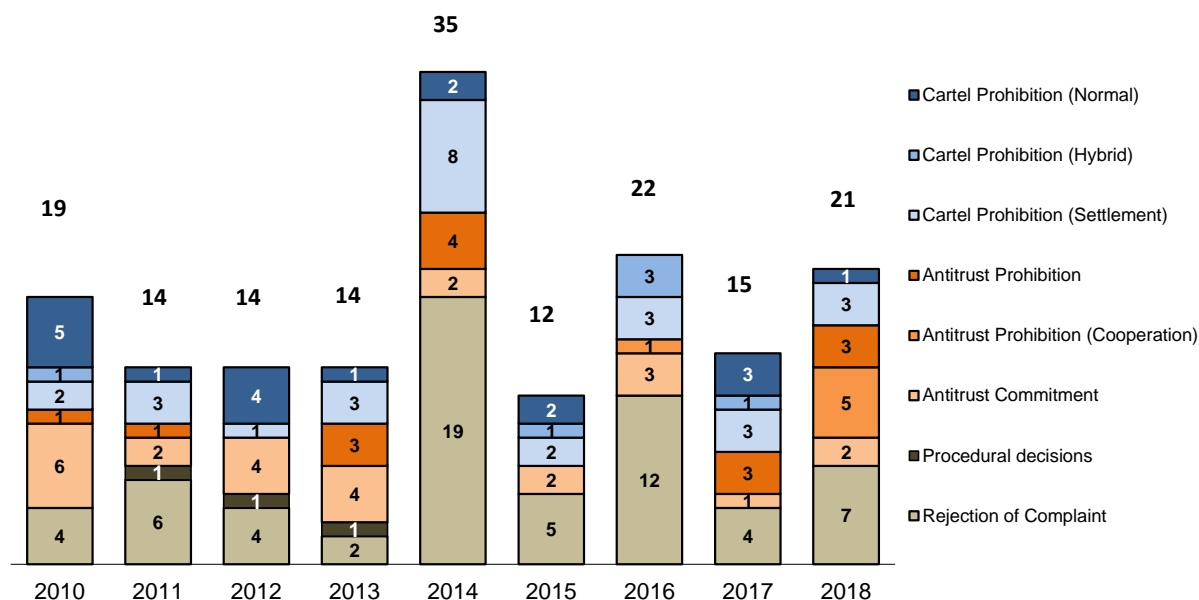
In the field of antitrust, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of its enforcement activity and output for the preceding year, including for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions<sup>32</sup>.

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<sup>31</sup> In its Intel judgement the European Court of Justice set aside the General Court's ruling that had found that Intel's exclusivity based rebates were anticompetitive in nature, and referred the case back to the General Court for further examination. C-413/14 P *Intel v Commission*, judgment of the European Court of Justice of 6 September 2017, ECLI:EU:C:2017:632.

<sup>32</sup> See Annexes to the AAR, Annex 12, Specific Objective 1, result indicator 1.

## Antitrust and cartel decisions 2010-2018



Re-adoption decisions are included in the graph: one in 2010, one in 2012 and two in 2017.

Source: Directorate-General for Competition

## Specific objective 1: Effective enforcement of antitrust rules with a view to protect consumer welfare

### Cartels

Cartels are the gravest of anti-competitive agreements prohibited by Article 101 TFEU and a high priority for DG Competition. Cartels typically reduce or eliminate competition between undertakings taking part in them with a view to raising prices and profits, without any objective countervailing benefits.

The Commission's strong enforcement record against hard core cartels continued in 2018. As in preceding years, the Commission adopted cartel decisions in important sectors for innovation and investment, such as in the electronic components market and the automotive industry. The settlement procedure remained an efficient tool regularly used by the Commission in its fight against cartels. The procedure accounted for 75% of the decisions adopted this year.

#### The Commission fined eight producers of capacitors for participating in a cartel

The Commission fined eight producers of capacitors - *Elna*, *Hitachi Chemical*, *Holy Stone*, *Matsuo*, *NEC Tokin*, *Nichicon*, *Nippon Chemi-Con*, *Rubycon* (*Sanyo* received immunity) - €254 million for participating in a cartel between 1998 and 2012. Capacitors are electrical components that store energy electrostatically in an electric field and are used in a wide variety of electronic products. As these products included smart phones, appliances in homes and electronic systems in cars it operated at the expense of both manufacturers and European consumers. Although the meetings and contacts took place outside Europe, the cartel was implemented on a global scale including in the European Economic Area. This decision, in contrast to the other cartel infringements in 2018, was conducted under the ordinary procedure.

#### The Commission fined four maritime carriers for participating in a cartel

In 2018, the Commission fined four maritime car carriers - CSAV, "K" Line, NYK and WWL-EUKOR (MOL received immunity) 33 - €395 million for taking part in a cartel. For almost six years, from October 2006 to September 2012, the five carriers formed a cartel in the market for deep sea transport of new cars, trucks and other large vehicles such as combine harvesters and tractors, on various routes between Europe and other continents. The cartel affected both European car importers and final customers.

<sup>33</sup> [ec.europa.eu/competition/cartels/cases/cases.htm](http://ec.europa.eu/competition/cartels/cases/cases.htm).

The Commission's cartel enforcement encompassed four decisions in 2018, imposing fines in excess of EUR 800 million EUR.

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Maritime Car Carriers	21/02/2018	395 288 000	4	Settlement
Braking systems	21/02/2018	75 426 000	3	Settlement
Spark plugs	21/02/2018	76 099 000	3	Settlement
Capacitors	21/03/2018	253 935 000	9	Prohibition

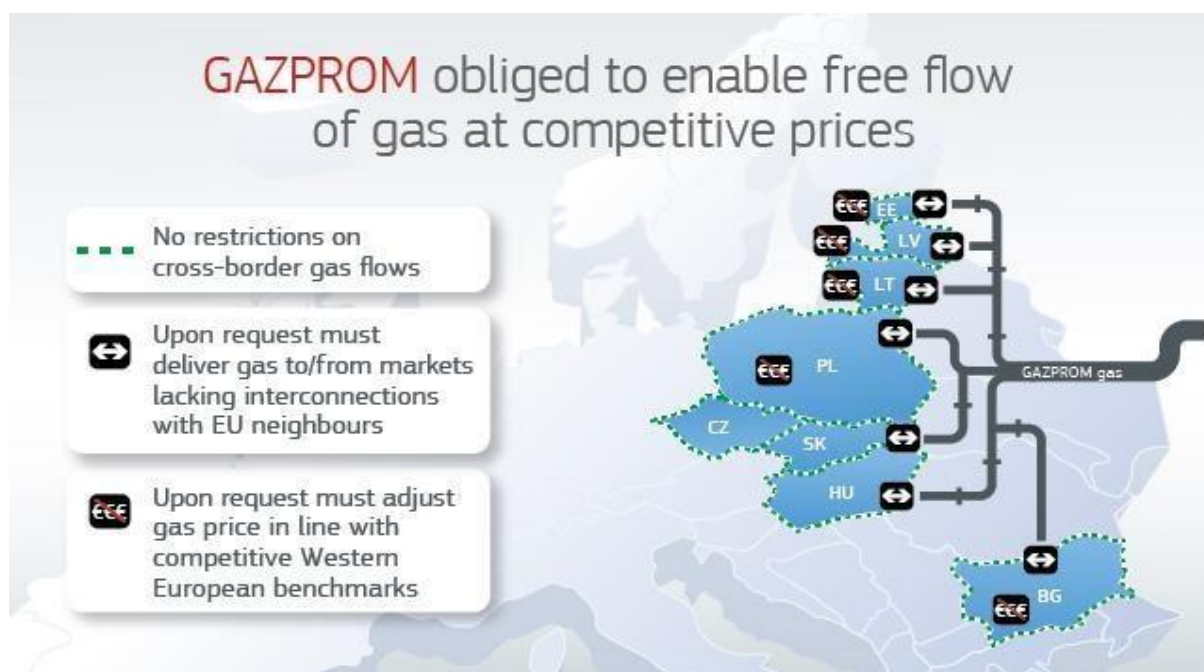
## Other anticompetitive agreements and practices

### *Energy Union*

In 2018, DG Competition continued its antitrust enforcement activities in the energy sector, supporting the Commission's objective of achieving a European Energy Union. Competition law enforcement in the energy sector plays a key role in removing obstacles to the free flow of gas and electricity across Member States, promoting interconnectivity and avoiding artificial market partitioning.

The Gazprom case – which concerned gas transmission networks across Central and Eastern European Member States – is an excellent example how competition policy enforcement facilitates energy cross-border flows between Member States. In 2018, the Commission adopted a decision rendering legally binding on Gazprom commitments that address the Commission's competition concerns and achieve its objectives of enabling the free flow of gas in Central and Eastern Europe at competitive prices. The decision removes the obstacles created by Gazprom, which stand in the way of the internal gas market, obliges Gazprom to take positive steps to further integrate gas markets and gives Gazprom customers in Central and Eastern Europe an effective tool to make sure the price they pay is competitive and reflects competitive Continental Western European price benchmarks, including prices at liquid hubs. If Gazprom breaks any of these obligations, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to prove an infringement of EU antitrust rules.<sup>34</sup>

<sup>34</sup> [http://europa.eu/rapid/press-release\\_IP-18-3921\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3921_en.htm).



The Commission also fined Bulgarian Energy Holding (BEH)<sup>35</sup>, its gas supply subsidiary Bulgargaz and its gas infrastructure subsidiary Bulgartransgaz (the BEH group) EUR 77 million for blocking potential competitors' access to key gas infrastructure in Bulgaria and thereby preventing them to develop competition in the wholesale gas supply markets in Bulgaria. To address concerns that Transgaz<sup>36</sup>, the gas incumbent network operator in Romania, might be impeding the free flows of gas from Romania, the Commission launched a market test on draft commitments submitted by Transgaz. The commitments are intended to make possible natural gas exports from Romania to other Member States, in particular Hungary and Bulgaria.

To address concerns about impediments to the free flow of electricity between Germany and Denmark, the Commission adopted a decision rendering legally binding commitments offered by German grid operator TenneT.<sup>37</sup> The Commitments are intended to increase cross-border flows of electricity between the two countries. The Commission was concerned that TenneT may have infringed EU antitrust rules by systematically limiting southward capacity – that is to say Danish electricity exports to Germany - at the electricity interconnector between Southern Denmark and Germany.

To tackle anticompetitive behaviour created or facilitated by State legislation, the Commission made legally binding measures submitted by Greece that Public Power Corporation (PPC)<sup>38</sup>, the incumbent electricity operator, will divest lignite-fired power plants. This will ensure fair access to lignite-fired power generation for the competitors of PPC and increase competition in the Greek electricity market.

### *Digital Single Market*

Digital technology has become an integral part of EU citizens' life at home, at work, while studying or when travelling. 360 million Europeans use the internet every day, with almost 60% of them having mobile internet connection using their smartphones.<sup>39</sup> To make the most of the new opportunities digital technology brings, the European Union must continue its efforts to improve the Digital Single Market. Competition policy is an

<sup>35</sup> [http://europa.eu/rapid/press-release\\_IP-18-6846\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6846_en.htm).

<sup>36</sup> Case AT.40335 Romanian gas interconnectors.

<sup>37</sup> Case AT.40461 –TenneT; [http://europa.eu/rapid/press-release\\_IP-18-6722\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6722_en.htm).

<sup>38</sup> [http://europa.eu/rapid/press-release\\_IP-18-3401\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3401_en.htm).

<sup>39</sup> Management Plan 2018 Directorate General for Communications Networks, Content and Technology, p. 3. Ref. Ares(2017)6324384 - 21/12/2017



integral part of the Commission's strategy to strengthen the Digital Single Market by removing cross-border impediments between Member States in electronic communications markets. It is crucial, among other things, that companies dominating markets are prevented from abusing their market power to conserve existing market partitioning between Member States, erect new ones, or even shut down competition completely, thereby severely harming innovation.

In 2018, competition policy and enforcement continued to contribute to the implementation of the Digital Single Market Strategy.<sup>40</sup>

As announced in the Final Report of the e-commerce sector inquiry adopted in May 2017<sup>41</sup>, the Commission targets enforcement of the EU competition rules at the most widespread business practices that have emerged or evolved as a result of the growth of e-commerce. Anti-competitive business practices in this rapidly expanding sector have a negative impact on competition as well as on cross-border trade. Without forceful competition policy intervention when called for, the very functioning of the Digital Single Market is threatened.

In four separate decisions, the Commission fined consumer electronics manufacturers Asus, Denon & Marantz, Philips and Pioneer<sup>42</sup> for imposing fixed or minimum resale prices (so-called resale price maintenance) on their online retailers for widely used consumer electronics products such as kitchen appliances, notebooks and hi-fi products. The Commission fined the clothing company Guess<sup>43</sup> close to EUR 40 million for anticompetitive agreements to block cross-border sales. Guess' distribution agreements tried to prevent EU consumers from shopping in other Member States by blocking retailers from advertising and selling cross-border. This allowed the company to maintain artificially high retail prices, in particular in Central and Eastern European countries.

Moreover, the pay-TV investigation opened in 2014 continued in 2018. The investigation relates to certain contractual clauses in licensing agreements concluded between Sky UK and six major film studios (Disney, Fox, Paramount, NBCUniversal, Sony and Warner Bros). The commitments offered by Disney (which is to acquire Fox), NBCUniversal, Sony Pictures, Warner Bros and Sky were published for the purposes of a market test in November and December 2018<sup>44</sup>. The proposed commitments are similar to Paramount's commitments made binding by the Commission in July 2016<sup>45</sup>, and apply to pay-TV services and complementary SVOD (subscription video-on-demand) services transmitted via satellite and online within the entire European Economic Area for 5 years.

In 2018, the Commission continued its efforts to keep technology markets competitive, and to maximise firms' incentives to innovate.

The Commission fined Qualcomm<sup>46</sup> EUR 997 million for abusing its market dominance in LTE baseband chipsets. In its decision, the Commission concluded that Qualcomm

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<sup>40</sup> Communication of 6 May 2015 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe*, COM(2015)192 final available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX%3A52015DC0192>.

<sup>41</sup> Report of 10 May 2017 from the Commission to the Council and the European Parliament on the Final report on the E-commerce Sector Inquiry (SWD(2017) 154 final), COM(2017) 229 final available at [http://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_final\\_report\\_en.pdf](http://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf).

<sup>42</sup> Cases AT.40465 *Asus*, AT.40469 *Denon & Marantz*, AT.40181 *Philips* and AT.40182 *Pioneer*. For further information see [http://europa.eu/rapid/press-release\\_IP-18-4601\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4601_en.htm).

<sup>43</sup> Case AT.40428 *Guess*, for further information see [http://europa.eu/rapid/press-release\\_IP-18-6844\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6844_en.htm).

<sup>44</sup> Case AT.40023 Cross-border access to Pay-TV. For further information see [http://europa.eu/rapid/press-release\\_IP-18-6346\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6346_en.htm) and [http://europa.eu/rapid/press-release\\_IP-18-6894\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6894_en.htm).

<sup>45</sup> Case AT.40023 Cross-border access to Pay-TV. For further information see [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40023/40023\\_5273\\_5.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/40023/40023_5273_5.pdf). In December 2018, the General Court of the European Union fully upheld the Commission's decision to accept commitments from Paramount (judgment of the General Court in Case T-873/16 *Groupe Canal+* available at <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-873/16>).

<sup>46</sup> Case AT.40220 *Qualcomm* (exclusivity payments). For further information see IP/18/421 of 24 January 2018, available at [http://europa.eu/rapid/press-release\\_IP-18-421\\_en.htm](http://europa.eu/rapid/press-release_IP-18-421_en.htm).



prevented rivals from competing in the market by making payments to major customer Apple, on condition that Apple refrains from purchasing such chipsets from Qualcomm's rivals. In addition, the Commission continued its investigations into Qualcomm's business activities. As regards Qualcomm's alleged practice to price its products below costs with a view to forcing competitors out of the market (so-called predatory pricing), the Commission issued a Supplementary Statement of Objections.<sup>47</sup>

The Commission fined Google EUR 4.34 billion for breaching EU antitrust rules.<sup>48</sup> The Commission found that Google had imposed illegal restrictions on Android device manufacturers and mobile network operators with a view to cement its dominant position in the market for the provision of general internet search services.

#### The Google Android case

The Commission found that Google abused its market dominance by engaging in three separate types of practices, which all had the aim of cementing Google's dominant position in general internet search:

**First, illegal tying of the Google Search app and Google Chrome browser.** Google offered its mobile apps and services to device manufacturers as a bundle, which included the Google Play Store, the Google Search app and the Google Chrome browser. In this way, Google ensured that its Google Search app and its mobile browser were pre-installed on practically all Android devices sold in the EEA. The Decision outlined a range of evidence that for search and browser, pre-installation constitutes a significant commercial advantage that cannot be offset through other means.

**Second, illegal payments conditional on exclusive pre-installation of Google Search.** Google granted significant financial incentives to some of the largest device manufacturers as well as mobile network operators on condition that they exclusively pre-installed Google Search across their entire portfolio of Android devices. The Decision outlined a range of evidence on how this significantly reduced the commercial possibilities for the pre-installation or rival search providers.

**Third, illegal obstruction of development and distribution of competing Android operating systems.** Google prevented device manufacturers from using any alternative version of Android that was not approved by Google (Android forks). In order to be able to pre-install on their devices Google's proprietary apps, manufacturers had to have prior agreement from Google to run a device on an Android fork. This significantly reduced the commercial opportunity for devices running on Android forks to be developed and sold.



In telecoms, the Commission continued its investigation into a mobile network-sharing

<sup>47</sup> AT. 39711 *Qualcomm* (predation).

<sup>48</sup> Case AT.40099 *Google Android*. For further information see IP/18/4581 of 18 July 2018 available at [http://europa.eu/rapid/press-release\\_IP-18-4581\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4581_en.htm).

agreement concluded by the two largest operators in Czechia, O2 CZ /CETIN and T-Mobile CZ.<sup>49</sup> The Commission investigates in particular whether the cooperation between O2 CZ/CETIN and T-Mobile CZ risks slowing down quality improvements in existing infrastructure, and/or delaying or impeding the deployment of new and innovative electronic communication technologies, such as 4G/LTE and new services based on them, in particular in densely populated areas.

#### *A deeper and fairer internal market*

Following the adoption of a Statement of Objections in November 2017, the Commission continued in 2018 its investigation of AB InBev's alleged strategy to prevent Belgian supermarkets and wholesalers from buying AB InBev's most popular beers at lower prices in the Netherlands and France and then importing them into Belgium.

In April 2018, the Commission raised concerns with the Cypriot authorities that certain legislative provisions in Advocates Law encouraged behaviour that could prevent, restrict or distort competition within the EU's single market. In response to the concerns raised, Cyprus has amended its law and in November 2018 the Commission closed infringement proceedings against Cyprus. In parallel, the Commission also closed an antitrust investigation into the minimum fee scale adopted by the Cyprus Bar Association, following the decision of the latter to abrogate this minimum fee scale after the Commission raised concerns that these rules were not compatible with EU competition rules.<sup>50</sup>

#### *The financial sector*

In 2018, the Commission closely monitored from an antitrust perspective developments in the financial sector, including the rapidly evolving technological changes transforming the industry in the payments area, in particular the emergence of new providers of innovative payment and other financial services. In addition, the Commission continued monitoring competition in capital and insurance markets.

In the regulatory field, the Commission continues to monitor the implementation of the *Interchange Fee Regulation*<sup>51</sup> (IFR). In that connection, the Commission contracted a study which was launched in September 2018. The purpose of the study is to collect and analyse key qualitative and quantitative market information from all Member States on application of the Interchange Fee Regulation. The study is intended to inform the European Commission when preparing a Report to the European Parliament and to the Council on the application of the IFR.

On 18 January 2018, the Commission published the *Regulatory Technical Standards* (RTS) under the Interchange Fee Regulation, which establish the requirements for payment card schemes and processing entities to ensure independence in terms of accounting, organisation and decision making processes. The RTS became applicable from 7 February 2018. The RTS relate to the implementation of the IFR requirement on independence of card schemes and processing entities.

The Commission continued its investigations of allegations of breaches of Articles 101 and 102 TFEU in the financial sector, such as its investigation of the Irish market for

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<sup>49</sup> AT. 40305 - *Network sharing - Czech Republic*. For further information see IP/16/3539 of 25 October 2016 available at [http://europa.eu/rapid/press-release\\_IP-16-3539\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3539_en.htm).

<sup>50</sup> For further information see MEMO/18/6247 available at [http://europa.eu/rapid/press-release\\_MEMO-18-6247\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-6247_en.htm).

<sup>51</sup> European Parliament and Council Regulation (EU) No 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p.1 available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015R0751>. See also Art. 17 of the Regulation (Review clause), which stipulates that by 9 June 2019, the Commission shall submit a report on the application of this Regulation to the European Parliament and to the Council. The Commission's report shall look in particular at the appropriateness of the levels of interchange fees and at steering mechanisms such as charges, taking into account the use and cost of the various means of payments and the level of entry of new players, new technology and innovative business models on the market.

motor insurance. Substantial progress was made with a view to finalising, in early 2019, the Commission investigation into *MasterCard's* cross-border acquiring rules, which allegedly prevent merchants located in countries with high interchange fees to seek lower-priced services from acquirers established in Member States where interchange fees are lower. In addition, significant progress was also made in the antitrust investigations into *MasterCard's and Visa's*<sup>52</sup> multilateral interchange fees ("MIFs") for transactions in the EEA made with cards issued outside the EEA ("inter-regional MIFs"). In November 2018 Mastercard and Visa offered commitments to address the Commission's competition concerns. Both card-schemes offered to reduce the current level of inter-regional MIFs to or below binding caps. Moreover, Mastercard and Visa agreed to publish all inter-regional MIFs covered by the commitments in a clearly visible manner on their respective websites. To verify the appropriateness of the proposed commitments, the Commission consulted market participants on 5 December 2018.<sup>53</sup>

Finally, the Commission continued its antitrust investigation concerning allegations that online access to bank account information by competing non-bank owned service providers may be prevented, impeded or delayed by the incumbent banks. Such non-bank owned service providers may thus be excluded from the market.<sup>54</sup>

### *The pharmaceutical sector*

Over past decades, overall public spending on healthcare has increased to between 5.7% and 11.3% of GDP in the different Member States.<sup>55</sup> This increase is expected to continue. Of total healthcare spending, pharmaceuticals account for a substantial and increasing share.<sup>56</sup>

In 2018, the Commission initiated proceedings in two cases where the Commission is investigating firms suspected of preventing or reducing consumers' access to effective, innovative and affordable medicines.

The first case concerns the Commission's formal antitrust proceedings against Aspen Pharma<sup>57</sup> for a suspected abuse of a dominant position under Article 102 TFEU. The Commission investigates allegations that Aspen may have imposed unfair and excessive prices in the form of significant price increases for a range of medicinal cancer products in all countries of the EEA, except Italy.<sup>58</sup>

The second case concerns the Commission's investigation into so-called pay-for-delay practices for the market entry of generic modafinil (a sleeping disorder medicine). A Statement of Objections was sent to Teva, expressing the Commission's concerns about an agreement concluded between Teva and Cephalon. According to the agreement, Teva undertook not to sell its generic modafinil products in the EEA.<sup>59</sup> The Commission is in the process of concluding its investigation in the course of 2019.

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<sup>52</sup> These proceedings were closed as regards Visa Europe following its commitments, Case AT.39398 *VISA MIF*, Commission decision of 26 February 2014 available at [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39398/39398\\_9728\\_3.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9728_3.pdf).

<sup>53</sup> See: [http://europa.eu/rapid/press-release\\_IP-18-6655\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6655_en.htm).

<sup>54</sup> For further information see MEMO/17/3761 available at [http://europa.eu/rapid/press-release\\_MEMO-17-3761\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-3761_en.htm).

<sup>55</sup> 5.7% in Latvia and 11.3% in Germany in 2016. Source: OECD (2017), *Health at a Glance 2017: OECD Indicators*, OECD Publishing, Paris, pp. 134-135 ([http://dx.doi.org/10.1787/health\\_glance-2017-en](http://dx.doi.org/10.1787/health_glance-2017-en)).

<sup>56</sup> Pharmaceuticals sold in retail represented 16% of health expenditure on average across OECD countries in 2015 (or the nearest year); this figure does not yet include expenditure on pharmaceuticals in hospitals. Source: OECD (footnote 3), pp. 186-187.

<sup>57</sup> Case AT.40394 *Aspen*. See IP/17/1323 of 15 May 2017 available at [http://europa.eu/rapid/press-release\\_IP-17-1323\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1323_en.htm) and the opening of proceedings at: [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40394/40394\\_235\\_3.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/40394/40394_235_3.pdf).

<sup>58</sup> The Italian competition authority already adopted an infringement decision against Aspen on 29 September 2016.

<sup>59</sup> Case AT.39686 *Cephalon*. See: IP/17/2063 of 17 July 2017 available at [http://europa.eu/rapid/press-release\\_IP-17-2063\\_en.htm](http://europa.eu/rapid/press-release_IP-17-2063_en.htm).

## *Transport sector*

A competitive and efficient transport sector is essential for a well-functioning single market, a sustainable growth strategy and an open economy integrated into the global markets. The Commission is actively promoting competition and addressing competition distortions across all transport modes.

In November 2018, the Commission opened proceedings under Article 101 TFEU against Amadeus and Sabre, leading worldwide suppliers of computerised reservation systems<sup>60</sup>. The Commission suspects that certain terms in Amadeus' and Sabre's agreements with airlines and travel agents may restrict competition for the provision of ticket distribution services, by limiting the ability of airlines and travel agents to use alternative suppliers of these services.

In addition, the Commission adopted in September 2018 a Statement of Objections against the Slovak rail company ZSSK for obstruction of a Commission inspection.<sup>61</sup> The Commission carried out inspections at the ZSSK premises in June 2016. The inspection focussed on whether ZSSK had entered into anti-competitive agreements aimed at excluding its competitors from the rail passenger market, in breach of EU antitrust rules.

## **Specific objective 2: Effective and coherent application of EU competition law by national competition authorities and national courts**

### **Enhancing the effectiveness of competition enforcement**

Effective competition enforcement enables EU consumers to have access to better products and wider choice. Tackling anticompetitive practices also ensures that open markets work for the benefit of all. But for that to happen, it is essential to make sure that every European benefits from equal protection.

For more than ten years, the Commission and Member States' national competition authorities have been working closely on enforcing the EU antitrust rules in the framework of the European Competition Network (ECN). This network underpins the coherent application of the EU antitrust rules by all enforcers: It should not matter where a company is based within the single market when it comes to competition enforcement.

In 2017, the Commission proposed a Directive to empower NCAs to be more effective enforcers.<sup>62</sup> The co-legislators adopted the Directive on 11 December 2018, and it was published in the OJ on 14 January 2019.<sup>63</sup> Member States must transpose the Directive into national law by 4 February 2021.

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<sup>60</sup> Computerised Reservation Systems ("CRS"), also known as Global Distribution Systems ("GDS") provide a technical interface between, on one side, airlines and other travel service providers, such as rail operators, and, on the other side, travel agents (both online and brick-and-mortar). The CRSs aggregate fare, schedule and availability information provided by the airlines and supply it to the travel agents, enabling them to search for, compare, reserve and book flights. The CRSs give travel agents access to the services of hundreds of airlines worldwide and provide airlines with a distribution channel to thousands of travel agents worldwide. For more information see IP/18/6538 available at [http://europa.eu/rapid/press-release\\_IP-18-6538\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6538_en.htm).

<sup>61</sup> For more information see IP/18/5905 available at [http://europa.eu/rapid/press-release\\_IP-18-5905\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5905_en.htm).

<sup>62</sup> For further information see <http://ec.europa.eu/competition/antitrust/nca.html>.

<sup>63</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (Text with EEA relevance.) OJ L 11, 14.1.2019, p. 3–33.

#### ECN+: How the Directive strengthens EU national competition authorities

Once the Directive is transposed by Member States into national law, NCAs will:

- benefit from the **guarantees of independence** when applying EU competition rules;
- have **the basic guarantee of the human and financial resources** they need to perform their tasks;
- have an **effective investigative and decision-making toolbox**, including to gather digital evidence stored on mobile devices;
- be able to impose **deterrent fines**, e.g. companies can no longer escape fines by restructuring;
- have **effective leniency programmes** in place which encourage companies to report cartels throughout the EU;
- provide each other with **mutual assistance** so that, e.g. companies with assets in other Member States cannot escape from paying fines.

The importance of companies' fundamental rights is underlined: appropriate **safeguards** will be in place for the exercise of NCAs' powers, in accordance with the EU Charter of Fundamental Rights and general principles of EU law.

### National courts

EU antitrust rules are enforced not only by the European Commission and NCAs (public enforcement), but also by national courts when they enforce in national civil proceedings the rights individuals derive from Articles 101 and/or 102 TFEU, for example by awarding damages to consumers and companies harmed by infringements of these rules (private enforcement). This is because Articles 101 and 102 TFEU have direct effect and confer rights on individuals which can be enforced before national courts.

In addition to its cooperation with NCAs in the context of the ECN, the Commission continued its cooperation with national courts under Article 15 of Regulation 1/2003. The Commission helps national courts to ensure a consistent application of competition rules by providing case-related information or an opinion on matters of substance or by providing information and opinions and intervening as *amicus curiae* in proceedings pending before the national courts.

Directive 2014/104/EU on antitrust damages actions (Damages Directive) aims at ensuring that anyone harmed by infringements of the EU competition rules can effectively avail itself of the right to compensation before national courts. The deadline to implement the Damages Directive in Member States' legal systems expired on 27 December 2016. Bulgaria, Greece and Portugal were the last Member States to implement the Directive and they adopted transposing measures in the first half of 2018. The Commission has finalised the completeness checks of all the 28 national transposing measures and, based on the positive results of these checks, it closed all the related infringement proceedings. The Commission is also finalising the conformity checks of all the 28 national transposing measures.

Furthermore, following the publication of a "Study on quantifying passing-on effects in antitrust damages actions"<sup>64</sup> in October 2016, the Commission launched a targeted public consultation on draft guidelines to estimate the share of the overcharge passed-on to indirect customers in July 2018.<sup>65</sup> The consultation ended in October 2018 and the Commission intends to adopt a final version in 2019.

<sup>64</sup> See e.g. the study "*Study on Passing On of Overcharges*" (2016) prepared by RBB Economics and Cuatrecasas, Gonçalves Pereira, available at <http://ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf>.

<sup>65</sup> As foreseen in Article 16 of the Antitrust Damages Directive.



### **Specific objective 3: EU competition law instruments aligned with market realities and contemporary economic and legal thinking (antitrust)**

In 2018, the Commission continued to streamline the procedures in competition cases to enhance the timeliness and effectiveness of EU competition rules.

The Commission published, for example, updated guidelines on confidentiality claims in access to file and the use of voluntary confidentiality rings.<sup>66</sup> The guidance explains how companies involved in antitrust investigations should identify business secrets and other confidential information in documents submitted to the Commission.

In parallel, the Commission started a reflection process about how competition policy can best serve European consumers in a fast-changing world. In March 2018, the Commission appointed Professors Heike Schweitzer, Jacques Crémer and Assistant Professor Yves-Alexandre de Montjoye as Special Advisers on the future challenges of digitisation for competition policy.<sup>67</sup> The Special Advisers' report is due in March 2019, following the public consultation of summer 2018 and the conference on digitisation and competition policy of 17 January 2019<sup>68</sup>. The Special Advisers' report, together with the outcome of the public consultation and the conference, will contribute to identifying key challenges stemming from the increasing digitisation across all sectors and their implications for competition policy.

In 2018, DG Competition Director-General Johannes Laitenberger gave a speech which addressed current challenges for competition policy and enforcement, including digital platforms, algorithms and the relevance of data.<sup>69</sup>

The Commission also launched the evaluation of the Vertical Block Exemption Regulation (VBER) which will expire in May 2022.<sup>70</sup> The evaluation is carried out in line with the Commission's Better Regulation requirements. The purpose of the evaluation exercise is to allow the Commission to decide whether to let the VBER rules lapse, prolong their duration or revise them.

The Commission also launched the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER), which will expire on 31 May 2023.<sup>71</sup> The MVBER declares Article 101(1) of the Treaty inapplicable to certain categories of vertical agreements and concerted practices in the motor vehicle sector. The aim of the evaluation is to provide evidence on the functioning of the Regulation, in terms of its effectiveness, efficiency, relevance, coherence and EU added value.

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<sup>66</sup> See: [http://ec.europa.eu/competition/antitrust/conf\\_rings.pdf](http://ec.europa.eu/competition/antitrust/conf_rings.pdf).

<sup>67</sup> See <https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/commission-appoints-professors-heike-schweitzer-jacques-cremer-and-assistant-professor-yves-en> and <http://ec.europa.eu/competition/scp19/>.

<sup>68</sup> See [http://ec.europa.eu/competition/scp19/index\\_en.html](http://ec.europa.eu/competition/scp19/index_en.html).

<sup>69</sup> Helsinki, Competition Law 2018 at [http://ec.europa.eu/competition/speeches/text/sp2018\\_14\\_en.pdf](http://ec.europa.eu/competition/speeches/text/sp2018_14_en.pdf).

<sup>70</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

<sup>71</sup> Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

Finally, in 2018 the Commission began its evaluation of Commission Regulation 906/2009 - the so-called Consortia Block Exemption Regulation (CBER).<sup>72</sup> The purpose of the evaluation is to prepare for the Commission's coming decision on the future of the CBER, in view of its statutory expiration on 25 April 2020.<sup>73</sup>

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<sup>72</sup> Council Regulation 246/2009 provides that, in accordance with the provisions of Article 101(3) TFEU, the Commission may, by way of Regulation, exempt consortia agreements from the application of Article 101(1) TFEU for a period limited to five years with the possibility of prolongation. Accordingly, in 2009 the Commission adopted the Consortia Block Exemption Regulation which sets the specific conditions for the exemption of consortia agreements. These conditions notably aim at ensuring that customers enjoy a fair share of the resulting benefits.

<sup>73</sup> Liner shipping services consist of the provision of regular, scheduled maritime cargo transport on a specific route. They require significant levels of investment and therefore are regularly provided by several shipping companies cooperating in "consortia" agreements. Consortia can lead to economies of scale and better utilisation of the space of the vessels.

## 1.2 Merger control

### EU merger control

The purpose of EU merger control is to ensure that market structures remain competitive while enabling smooth restructuring of industrial sectors. This applies not only to EU-based companies, but also to any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur.

EU merger control seeks to maintain open and competitive markets, which is the best way to ensure that businesses and final consumers obtain fair outcomes. It strives to protect all aspects of competition. As a result, merger control helps to protect market structures, in which companies compete not only on price, but also on other competitive parameters such as innovation.

EU merger control ensures that all companies active in EU markets can compete on fair and equal terms. Proposed transactions which may distort competition are subject to close scrutiny by the Commission. If necessary to protect competition, the merging companies may offer commitments to dispel competition concerns. If not sufficient to alleviate the competition concerns, the Commission may prohibit the transaction, which is very rare (less than 1% of cases). In its assessments, the Commission takes into account efficiencies possibly brought about by mergers. Efficiencies may have positive effects on costs and innovation, for example, provided that they are verifiable, merger-specific and likely to be passed on to consumers.

The year required intensive work by the Commission, due to the large number of notified transactions as well as the complexity of a large number of the cases. An increasing number of notified transactions concerned industries which were already concentrated, such as the agri-chemical and steel sectors. This development required the Commission to carefully assess the proposed mergers' potential impact on competition, employing sophisticated quantitative techniques and carrying out comprehensive qualitative investigations. The Commission's merger enforcement practice in 2018, in the agri-chemical<sup>74</sup>, pharmaceutical<sup>75</sup> and oxygen systems<sup>76</sup> sectors, shows that the Commission considers innovation and investments as important aspects of competition.

In the field of merger control, DG Competition's activities are driven by notifications by companies. Therefore it is not meaningful to set numerical targets for merger enforcement actions as this depends on actions beyond the control of the Commission. However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year. Moreover, DG Competition provides an estimate of the customer benefits resulting from the Commission's merger interventions<sup>77</sup>.

### **Specific objective 4: Facilitating smooth market restructuring by assessing non-harmful mergers in a streamlined manner**

EU merger control aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective.

<sup>74</sup> Case M.8084 *Bayer/Monsanto*, Commission decision of 21 March 2018. For further information see IP/18/2282 available at [http://europa.eu/rapid/press-release\\_IP-17-772\\_en.htm](http://europa.eu/rapid/press-release_IP-17-772_en.htm). See also Case M.8851 *BASF / Bayer divestment business*, Commission decision of 30 April 2018. For further information see IP/18/3622, available at [http://europa.eu/rapid/press-release\\_IP-18-3622\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3622_en.htm).

<sup>75</sup> Case M.8955 *Takeda/Shire*, [http://europa.eu/rapid/press-release\\_IP-18-6497\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6497_en.htm).

<sup>76</sup> Case M.8658 *UTC/Rockwell*, [http://europa.eu/rapid/press-release\\_IP-18-3682\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3682_en.htm).

<sup>77</sup> See Annexes to the AAR, Annex 12, Specific Objective 5, result indicator 1, p. 17.



Like previous years, most notified mergers did not raise competition concerns and could be processed speedily. The simplified procedure was used in 75% of all notified transactions in 2018, demonstrating the impact of the simplification package adopted by the Commission in December 2013. The proportion of simplified cases in the period 2004-2013 was substantially lower, at 59%.

## **Specific objective 5: Prevention of anti-competitive effects of mergers**

In 2018, 414 mergers were notified to the Commission, the highest number in the history of EU merger control. This number represents a substantial increase compared with preceding years. The total number of notifications received in 2018 was 9% higher than in 2017 and almost 50% higher than in 2013. Moreover, the Commission received 23 reasoned pre-notification submissions by notifying parties, requesting referral of a proposed merger from the Commission to a national competition authority or *vice versa*.

The Commission adopted 393 merger decisions in 2018,<sup>78</sup> and intervened in 25 cases. The number of interventions was somewhat higher compared to the average of the last seven years, which approximately 20 interventions per year.<sup>79</sup> In 2018, 17 mergers were cleared subject to commitments in the first phase, four were cleared without remedies after second phase investigations, and six were cleared with remedies after second phase investigations. In two cases, the parties abandoned the transaction during the in-depth investigation.<sup>80</sup> These cases concerned a wide variety of sectors such as telecommunications, steel, industrial gases and railway transport. The Commission did not prohibit any transactions in 2018.

When reviewing proposed concentrations, the Commission assesses their impact on all aspects of competition. In 2018, the Commission intervened in several proposed concentrations, which, in addition to price, quality and choice concerns, risked impeding innovation. In Bayer/Monsanto<sup>81</sup> and BASF/Bayer divestment business<sup>82</sup> the Commission identified concerns related to innovation. The Commission approved the Bayer/Monsanto transaction after the parties submitted an extensive divestiture package comprising in particular Bayer's global vegetable seed business and broadacre crop seed and trait business (including R&D), its glufosinate business and its digital agriculture activities. These divestitures addressed all competition concerns identified by the Commission, including those related to innovation. The divestiture businesses were sold to BASF. The acquisitions would allow the company to compete and innovate as actively and effectively against the merged firms, for the benefit of European farmers and consumers.

Most remedies accepted by the Commission in 2018 were divestitures of tangible or intangible assets.<sup>83</sup> This is in line with the Commission's general preference for structural remedies in merger cases. In a few cases in 2018, the Commission accepted non-divestiture remedies,<sup>84</sup> where they were considered to solve the underlying competition concerns.

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<sup>78</sup> For the purposes of this report, decisions based on Articles 6(1)(a), 6(1)b, 6(1)b in combination with 6(2), 8(1), 8(2) and 8(3) of the Merger Regulation are considered as final decisions.

<sup>79</sup> Commission interventions in merger cases include prohibition decisions and mergers cleared subject to commitments, as well as withdrawals during second phase in-depth investigation.

<sup>80</sup> Case M.8547 Celanese/Blackstone/JV, notified to the Commission on 12 September 2017 and the notification withdrawn on 19 March 2018 and case M.8907 APERAM / VDM, notified to the Commission on 23 October 2018 and the notification withdrawn on 21 December 2018.

<sup>81</sup> Case M.8084 Bayer/Monsanto, [http://europa.eu/rapid/press-release\\_IP-17-772\\_en.htm](http://europa.eu/rapid/press-release_IP-17-772_en.htm).

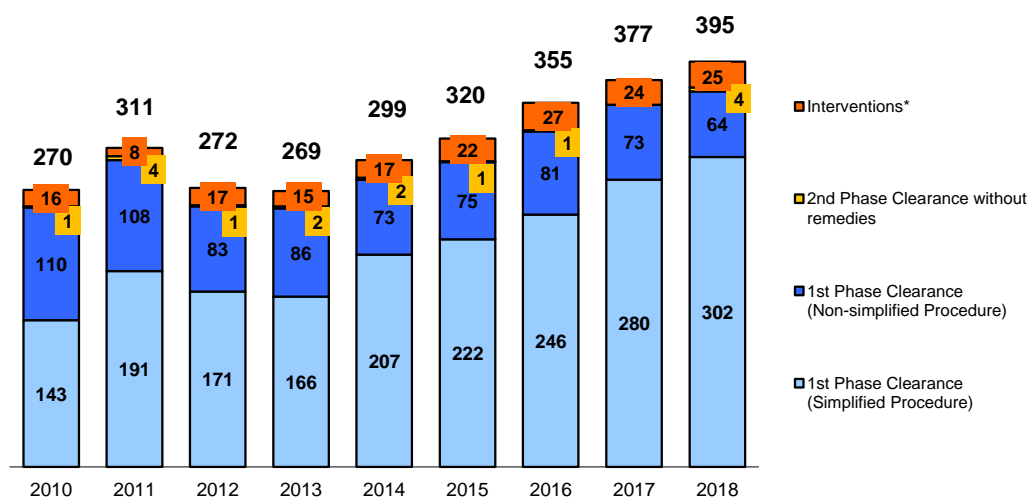
<sup>82</sup> Case M.8851 BASF/Bayer divestment business, [http://europa.eu/rapid/press-release\\_IP-18-3622\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3622_en.htm).

<sup>83</sup> See, for example, Case M.8084 Bayer/Monsanto, Commission decision of 21 March 2018; Case M.8444 ArcelorMittal/Ilva, Commission decision of 7 May 2018; Case M.8480 Praxair/Linde, Commission decision of 20 August 2018.

<sup>84</sup> See, for example, Case M.8306 Qualcomm/NXP semiconductors, Commission decision of 18 January 2018; Case M.7000 Liberty Global/Ziggo, Commission decision of 30 May 2018.

Moreover, in 2018 the Commission continued to make significant efforts to enforce procedural obligations under the EU Merger Regulation.<sup>85</sup> Following the fine of EUR 110 million imposed on Facebook in 2017 for providing misleading information during the review of its acquisition of WhatsApp<sup>86</sup>, in 2018 the Commission imposed a fine of EUR 124.5 million on Altice<sup>87</sup> for implementing its acquisition of the Portuguese telecommunications operator PT Portugal before notification or approval by the Commission (so-called gun jumping). Three other procedural infringement cases were under investigation in 2018: two against General Electric and Merck GmbH (including Sigma-Aldrich) concerning their alleged provision of incorrect and/or misleading information during the Commission's merger review.

### Merger decisions 2010-2018



\* Interventions in merger cases include prohibition decisions and mergers cleared subject to remedies, as well as withdrawals in Phase II;  
 Prohibition decisions: one in 2011, 2012 and 2016; two in 2013 and 2017.  
 Source: Directorate-General for Competition

### Energy Union

In 2018 the Commission analysed several mergers in the electricity sector. For example, it approved the Fortum/Uniper merger.<sup>88</sup> The Transaction mainly concerned the generation and wholesale of electricity in the Nordic countries, in particular through hydropower. The Commission also assessed various energy-related activities, such as the financial trading, retail supply of electricity and district heating, as well as energy production-related services. In this case, the analysis carried out by the Commission revealed that competition in those countries is healthy, also as a result of the high level of interconnectivity between different countries in the Nordic area.

Finally, concerning mergers in the gas sector, following the abandonment of the proposed acquisition of the Greek gas transmission system operator DESFA by the State Oil Company of Azerbaijan Republic (SOCAR)<sup>89</sup> by the Parties to that transaction, the Greek authorities issued a new tender which included an unbundling requirement, thus addressing the concerns raised by the Commission when opening the in depth investigation in *SOCAR/DESFA*. The tender was won by Italian company SNAM and the

<sup>85</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, pp. 1-22.

<sup>86</sup> Case M.8228 Facebook/ WhatsApp, [http://europa.eu/rapid/press-release\\_IP-17-1369\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1369_en.htm).

<sup>87</sup> [http://europa.eu/rapid/press-release\\_IP-18-3522\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3522_en.htm).

<sup>88</sup> [http://ec.europa.eu/competition/mergers/cases/decisions/m8660\\_525\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8660_525_3.pdf).

<sup>89</sup> Case M.7095 – Socar /Desfa (notification withdrawn).

Commission reviewed and approved the acquisition of *DESFA* by *SNAM*.<sup>90</sup>

### *Digital Single Market*

In the telecommunications sector, the Commission reapproved in May, following a new investigation, the acquisition of *Ziggo* by *Liberty Global*, subject to conditions.<sup>91</sup> Before the transaction, *Ziggo* and *Liberty Global* were separate cable TV operators providing mainly fixed telecommunications services, operating in different parts of the Netherlands. The Commission first approved this merger in 2014, subject to conditions, but the General Court annulled the approval in October 2017 on the ground that the Commission did not fully explain why the merger would not lead to vertical anti-competitive effects on the potential market for premium pay TV sports channels. The Commission reassessed the merger and its investigation confirmed the concern it had in 2014 that the merger would have increased *Liberty Global*'s negotiating power vis-à-vis TV channel broadcasters, hindering innovation in the delivery of audio-visual content over the internet (the so-called over-the-top or "OTT" services). The renewed approval is again conditional upon the implementation of a commitments package. The reassessment also confirmed that there were no concerns for premium pay TV sports channels and this is fully motivated in the decision.

Furthermore, the Commission unconditionally approved two mergers between a fixed and a mobile telecommunications services operator in Austria (*T-Mobile Austria* / *UPC Austria*)<sup>92</sup> and Sweden (*Tele2* / *Com Hem Holding*).<sup>93</sup> The impact of these transactions on the fixed and mobile telecommunications markets in Austria and Sweden was found to be very limited.

After an in-depth investigation<sup>94</sup>, the Commission authorised on 27 November 2018 the merger between mobile network operators *T-Mobile NL* and *Tele2 NL* in the Netherlands.<sup>95</sup> On 11 December 2018, the European Commission opened an in-depth investigation to assess *Vodafone*'s proposed acquisition of *Liberty Global*'s business in Czechia, Germany, Hungary and Romania under the EU Merger Regulation. The Commission is concerned the takeover may reduce competition in Germany and Czechia.<sup>96</sup>

In the IT sector, in 2018 the Commission cleared *Apple*'s acquisition of *Shazam*.<sup>97</sup> The merging firms offer mainly complementary services, with *Apple* operating "Apple Music", the second largest music streaming service in Europe and *Shazam* offering a leading music recognition application. The Commission opened an in-depth investigation in April based on the concern that *Apple* would obtain access to commercially sensitive data about customers of *Apple Music*'s competitors and to investigate whether those competitors would be harmed if *Apple* were to discontinue referrals from the *Shazam* app to them. The investigation showed that the merged entity would not be able to shut out competing providers of digital music streaming services.

Moreover, the Commission approved, subject to conditions, the proposed acquisition of *Gemalto* by *Thales*<sup>98</sup>, which combines the two largest suppliers of general purpose hardware security modules (GP HSM) used for enterprise key management solutions,

<sup>90</sup> [http://ec.europa.eu/competition/mergers/cases/decisions/m8953\\_141\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8953_141_3.pdf).

<sup>91</sup> Case M.7000 *Liberty Global* / *Ziggo*, Commission decision of 30 May 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_7000](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_7000).

<sup>92</sup> Case M. 8808 *T-Mobile Austria* / *UPC Austria*, Commission decision of 9 July 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8808](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8808).

<sup>93</sup> Case M. 8842 *Tele2* / *Com Hem*, Commission decision of 8 October 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8842](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8842).

<sup>94</sup> [http://europa.eu/rapid/press-release\\_IP-18-4141\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4141_en.htm).

<sup>95</sup> [http://europa.eu/rapid/press-release\\_IP-18-6588\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6588_en.htm).

<sup>96</sup> [http://europa.eu/rapid/press-release\\_IP-18-6772\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6772_en.htm).

<sup>97</sup> Case M. 8788 *Apple* / *Shazam*, Commission decision of 6 September 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8788](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8788).

<sup>98</sup> Case M. 8797 *Thales* / *Gemalto*, Commission decision of 11 December 2018, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_8797](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8797).

both in the European Economic Area (EEA) and at global level. HSM is a dedicated hardware appliance running on encryption software to generate, protect, and manage encryption keys used to protect data in a secure tamper-resistant module. In July, the Commission opened an in-depth investigation based on concerns that the merger could lead to higher prices and reduce choice and innovation for customers of hardware security modules. The Commission found that the proposed merger would lead to very high combined market shares in the GP HSM market and would eliminate the competitive constraints that Thales and Gemalto exercised on each other. The Commission also found that cloud service providers offering cloud-based HSMs did not provide a strong competitive constraint and were not expected to do so in the near future. The approval is conditional on the divestment of Thales' GP HSM business.

The Commission also unconditionally approved the acquisition by Microsoft of GitHub<sup>99</sup> a company active in the supply of tools used for developing and releasing software ("DevOps tools"). The Commission assessed among others whether there would be a risk of weakened competition, if Microsoft were to leverage the popularity of GitHub's software development platform to boost its own sales of DevOps tools and cloud services, but found that Microsoft would not have the incentive to undermine the open nature of GitHub to the detriment of competing DevOps tools and cloud services as this would reduce the value of GitHub for developers, who are willing and able to switch to other platforms.

The Commission unconditionally cleared the proposed acquisition by Sony of sole control and ownership over EMI Music Publishing ("EMI MP")<sup>100</sup>. Sony already had joint control (together with Mubadala) of EMI MP since 2012 and therefore the transaction would not lead to any increase in market share in any of the markets where Sony and EMI MP are active.

#### *Deeper and Fairer Internal Market*

Over the past year, there have been several merger investigations in the basic industries and manufacturing sectors. The Commission intervened in some of those cases in order to avoid a significant loss of competition to the detriment of customers.

When reviewing proposed concentrations, the Commission assesses their impact on all aspects of competition. In 2018, the Commission intervened in several proposed concentrations, which, in addition to price, quality and choice concerns, risked impeding innovation. In Bayer/Monsanto<sup>101</sup> and BASF/Bayer divestment business<sup>102</sup> the Commission identified concerns related to innovation. The Commission approved the Bayer/Monsanto transaction after the parties submitted an extensive divestiture package comprising in particular Bayer's global vegetable seed business and broadacre crop seed and trait business (including R&D), its glufosinate business, and its digital agriculture activities. These divestitures addressed all competition concerns identified by the Commission, including those related to innovation. The divestiture businesses were sold to BASF. The acquisitions would allow the company to compete and innovate as actively and effectively against the merged firms, for the benefit of European farmers and consumers.

In 2018, the Commission continued its careful review of mergers in the pharmaceutical sector, to ensure availability of affordable medicines to patients across Europe, and to protect innovation and choice for consumers. On 20 November 2018, the Commission approved the acquisition of Shire by Takeda Pharmaceutical Company<sup>103</sup>, subject to the divestment of a biologic treatment product under development by Shire to treat

<sup>99</sup> Case M. 8994 *Microsoft / Github*, Commission decision of 19 October 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8994](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8994).

<sup>100</sup> Case M. 8989 *Sony / EMI Music Publishing*, Commission decision of 26 October 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8989](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8989).

<sup>101</sup> Case M.8084 *Bayer/Monsanto*, [http://europa.eu/rapid/press-release\\_IP-17-772\\_en.htm](http://europa.eu/rapid/press-release_IP-17-772_en.htm).

<sup>102</sup> Case M.8851 *BASF / Bayer divestment business*, [http://europa.eu/rapid/press-release\\_IP-18-3622\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3622_en.htm).

<sup>103</sup> M. 8955 *Takeda/Shire*, See: [http://europa.eu/rapid/press-release\\_IP-18-6497\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6497_en.htm).

inflammatory bowel disease. The Commission had identified the risk that that Takeda would be unlikely to continue developing Shire's new drug, causing a serious loss of innovation on a market where patients currently have few treatment options available to them.

#### **Review of the proposed acquisition of Alstom by Siemens**

In 2018 the Commission reviewed the proposed acquisition of Alstom by Siemens, under the EU Merger Regulation.<sup>104</sup> The Siemens/Alstom transaction was announced in September 2017, and notified to the Commission in June 2018. After an in-depth investigation, the Commission prohibited Siemens' proposed acquisition of Alstom on 6 February 2019.

The Commission's final decision focused on two main areas: very high-speed trains and mainline signalling. The investigation showed that the merger would significantly reduce competition in several signalling markets and for very high-speed trains. The merged company would have become, by far, the largest player in Europe and in some signalling markets there would be no competition left. Competition from other suppliers would have been insufficient to replace the considerable loss of competition due to the merger. Customers, including train operators and rail infrastructure managers, would have been deprived of a choice of suppliers and products.

### **Specific objective 6: EU competition law instruments aligned with market realities and contemporary economic and legal thinking (merger control)**

The Commission continuously evaluates the substantive and procedural rules that make up the legal framework for merger control. Such reflections are conducted both internally, based on experience, and by using external input. In doing so, the Commission regularly assesses concerns and suggestions for further improvements expressed by stakeholders. It evaluates the need for reform and policy changes in specific areas, and checks that its policies and enforcement practices do not create unduly high compliance costs for merging companies, thereby hampering investment and innovation.

In 2016, the Commission launched a public consultation concerning the evaluation of selected procedural and jurisdictional aspects of EU merger control. The evaluation built on the results of the 2014 public consultation on the White Paper "*Towards more effective EU merger control*"<sup>105</sup>. The evaluation focussed on four topics, namely (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects.

The public consultation was open until mid-February 2017 and attracted wide interest. A summary of the submissions received during the public consultation, together with their non-confidential versions, were published on the Commission's Competition website on 28 July 2017.<sup>106</sup> The Commission is carrying out further research on the topics covered by the evaluation and will reflect on whether further action is required.

<sup>104</sup> Case M.8677 - Siemens /Alstom. See: [http://europa.eu/rapid/press-release\\_IP-18-4527\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4527_en.htm).

<sup>105</sup> For further information on the 2014 public consultation on the White Paper, see [http://ec.europa.eu/competition/consultations/2014\\_merger\\_control/index\\_en.html](http://ec.europa.eu/competition/consultations/2014_merger_control/index_en.html).

<sup>106</sup> The summary of the submissions and their non-confidential versions are available at [http://ec.europa.eu/competition/consultations/2016\\_merger\\_control/index\\_en.html](http://ec.europa.eu/competition/consultations/2016_merger_control/index_en.html).



## 1.3 State aid control

### State Aid Control

State aid control is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the internal market.

The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, State aid, which contributes to well-defined objectives of common European interest without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the internal market (under Article 107(3) TFEU).

The objectives of the Commission's control of State aid are to ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints that aid does not restrict competition but addresses market failures for the benefit of society as a whole. In addition to this, the Commission acts to prevent and recover State aid which is incompatible with the single market.

State aid rules help Member States target subsidies to areas where they are most needed, i.e. where the market by itself will not undertake investments needed to make the EU economy stronger or more competitive. In the broader context of the EU's agenda to foster growth, State aid policy facilitates well-designed aid targeted at market failures and objectives of common interest.

### **Specific objective 7: Overall effectiveness of State Aid Modernisation, increasing the share of better targeted growth-enhancing aid**

One of the cornerstones of the State Aid Modernisation reform (SAM) is the General Block Exemption Regulation (GBER) adopted in 2014.<sup>107</sup> GBER simplifies aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling EU objectives in the common interest. Only cases with the biggest potential to distort competition in the single market will still face ex ante assessment (notification). As a result of the reform, a significantly larger number of smaller and unproblematic measures are exempted from prior notification, notably aid granted to tackle local needs.

Since 2014, as part of the State Aid Modernisation (SAM), there has been a surge in State aid granted without prior notification to the Commission, testifying to an important reduction in red tape. The 2018 State Aid Scoreboard<sup>108</sup> confirms that modernisation has led to quicker implementation of public support by Member States. This is possible due to the General Block Exemption Regulation (GBER)<sup>109</sup>, adopted in the context of the State aid reform, which simplifies the aid-granting procedure for Member States by authorising - without prior notification - a wide range of measures fulfilling certain criteria and specific EU objectives in the common interest. For the aid categories covered by the GBER, only cases with the largest potential to distort competition in the single market have to be notified.

As shown in the graph below<sup>110</sup>, since 2015 about 96% of new measures for which expenditure was reported for the first time were covered by the GBER, entailing an

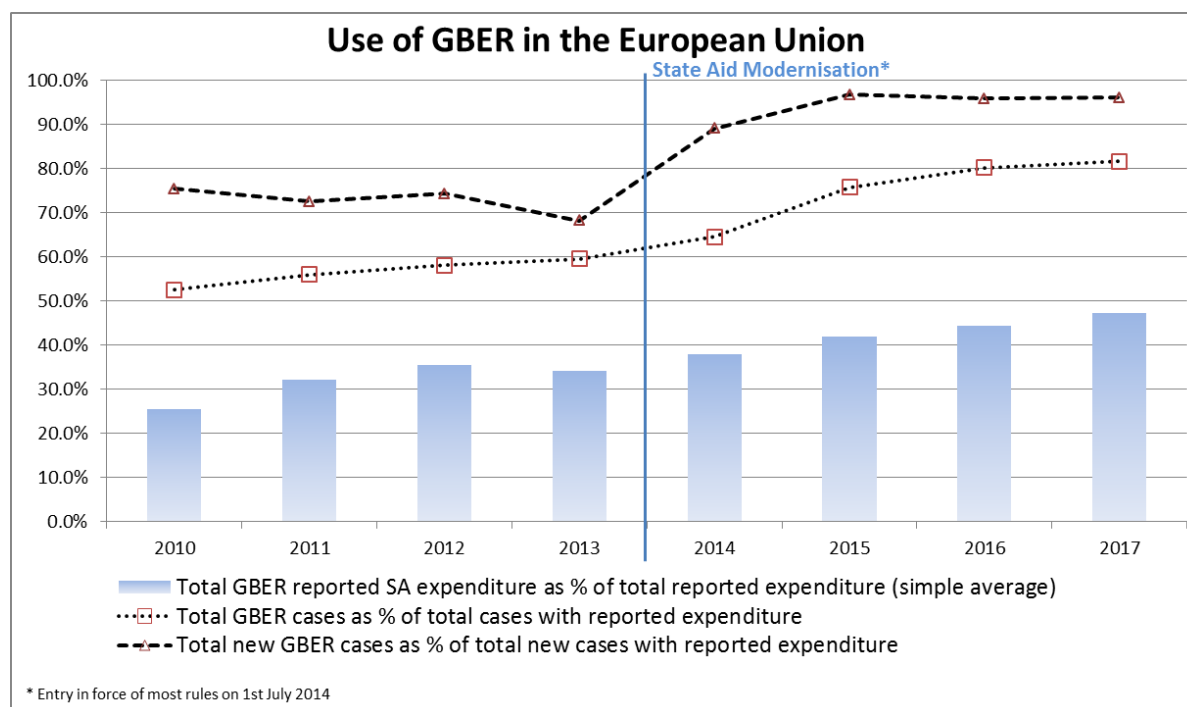
<sup>107</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L 187, 26.6.2014, p. 1.

<sup>108</sup> The 2018 State Aid Scoreboard comprises aid expenditure made by Member States before 31 December 2017 and which falls under the scope of Article 107(1) TFEU. The data is based on the annual reporting by Member States pursuant to Article 6(1) of Commission Regulation (EC) 794/2004 available at [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

<sup>109</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L 187, 26.6.2014, p.1.

<sup>110</sup> Figures from the 2018 State Aid Scoreboard. For further information, see [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

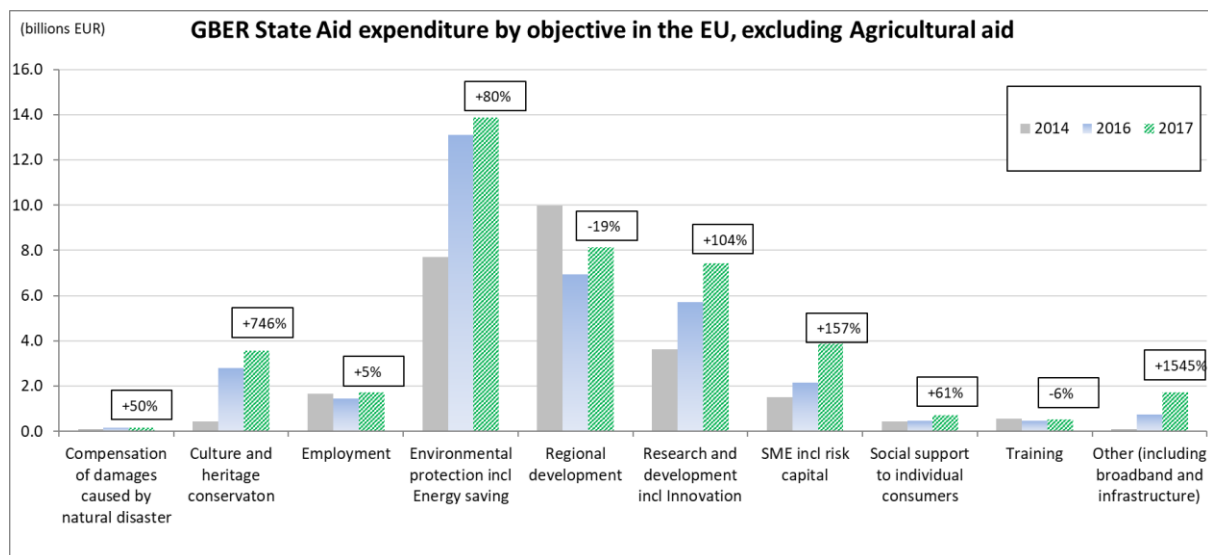
increase of some 28 percentage points compared to 2013. Approximately 82% of all measures with reported expenditure (that is to say not only new measures), fell under the block exemption in 2017. Expenditure on GBER measures in the EU was approximately EUR 41.7 billion in 2017, which corresponds to about 38% of total expenditure. However, when considering the average of individual Member States' expenditure, in 2017 Member States spent some 48% of their total spending on GBER measures, an increase of approximately 14 percentage points compared to 2013.



The 2014 GBER introduced new aid categories<sup>111</sup> and to a large extent, the reported increase in expenditure of GBER measures reflects the impact of the new Regulation. In 2017, as compared to 2014, total GBER spending for aid to culture and heritage conservation, for broadband and for local infrastructure has increased dramatically, while it more than doubled for SMEs, including risk finance (see graph below). Large increases were also recorded for environmental protection and energy savings (+80%), for research, development and innovation (+104%) and for aid to compensate damages caused by natural disasters (+50%). The GBER was further extended in 2017, especially as regards aid to ports and airports.<sup>112</sup> It is therefore to be expected that block-exempted aid as a share of total aid granted by Member States will increase even further in the coming years.

<sup>111</sup> Aid to innovation clusters and aid to process and organisational innovation, aid schemes to make good the damage caused by natural disasters, social aid for transport residents of remote regions, aid for broadband infrastructure, aid for culture and heritage conservation, including aid schemes for audio-visual works, aid for sport multifunctional recreational infrastructures, as well as investment aid for local infrastructure; the new GBER also broadened categories of aid already covered by the previous (2008) GBER.

<sup>112</sup> In 2017, Member States reported more than 50 million EUR of State aid spending under Articles 56a and 56b of the GBER of which respectively 7 million EUR for inland ports, 39 million EUR for maritime ports and 6 million EUR for regional airports.



The growing share of spending falling under the General Block Exemption Regulation (GBER) implies that on average State aid measures registered by the Commission are implemented much more quickly than in the past by Member States. Compared to 2013, the average time to implement State aid measures decreased by 20%. However, notified measures that are still subject to scrutiny tend to cover bigger budgets and spending than in the past, in line with the Commission's approach to be 'big on big things and small on small things'.<sup>113</sup> In 2017, the average annual budget of implemented notified measures was about €230 million, an absolute increase of about 126% compared to 2013.

#### *Cooperation with Member States*

To facilitate the implementation of SAM, the Commission supports Member States in various ways in the framework of a multilateral partnership. The Working Group on SAM implementation (SAM WG) is a forum for Member States to exchange best practices on their systems for State aid control, creating an effective network for the informal discussion of issues concerning the implementation of State aid rules among Member States and with the Commission. Other dedicated working groups or workshops deal with specific aspects of SAM implementation, in particular the requirements for transparency and evaluation or issues related to international subsidy policy and State aid to infrastructure. Once a year, all these working groups report to a High Level Forum (HLF), which takes place in Brussels. The HLF provides guidance on the future work of the SAM WG and is also the occasion for the Commission and Member States to discuss State aid policy more generally.

Under the Chairmanship of France, the SAM WG met three times in 2018, addressing several policy and compliance topics related to SAM implementation, such as specific aspects of the notion of aid and the interplay between State aid rules and Structural Funds implementation. It reported on the main topics discussed during the past year and on the follow-up to recommendations from past Chairs (Finland, Sweden and the United Kingdom) to the HLF held on 19 June, in Brussels. On this occasion the HLF also endorsed the work plan submitted by the Chair for the period 2018-2019.

In 2018, the Commission also continued its bilateral cooperation with Member States. Launched in 2015, the overall objective of this process is to achieve both good State aid policy and effective State aid control at the national level. Tailored to each Member State's specific needs, bilateral cooperations have taken a variety of dimensions, from

<sup>113</sup> Speech by European Commission President-elect on 10 September 2014, [Europa.eu/rapid/press-release\\_SPEECH-14-585\\_en.htm](http://Europa.eu/rapid/press-release_SPEECH-14-585_en.htm).



structured cooperation processes (with Italy, Bulgaria and Romania), to more bespoke informal bilateral interactions (with Belgium, Croatia, Greece, Hungary, the Netherlands, Poland, Portugal, Slovenia and Spain). These various cooperation processes generally deal with horizontal cross-cutting State aid issues, such as country-specific compliance and implementation issues, governance issues and issues concerning State-owned enterprises, as well as cases in problematic sectors. Each Member State also has a dedicated State Aid Country Coordinator at the Commission, who acts as a first entry point for this Member State's horizontal State Aid questions. After several years of operation, work is on-going towards refining the various bilateral cooperation processes with all Member States.

### *Transparency Award Module*

The transparency provisions introduced through State Aid Modernisation (SAM) have been in force since 1 July 2016 and require Member States to publish information on beneficiaries of aid awards above EUR 500 000<sup>114</sup>. Member States have six months starting from the date of granting to provide the required aid awards' data, with the exception of awards in the form of fiscal aid for which the information needs to be provided within one year from the date of granting. The Commission services facilitated compliance with this requirement by developing, in cooperation with Member States, the Transparency Award Module (TAM) – an informatics tool for submission and publication of data required under the transparency provisions.<sup>115</sup>

As of end November 2018, twenty-five Member States had joined the TAM and more than 35000 aid grantings have been published. The Commission services support the implementation of the TAM by facilitating, together with Member States' representatives, the Transparency Steering Group (one meeting in 2018) and by organising dedicated training courses upon request. In addition, the Commission conducted the first compliance checks in early 2018 to verify the completeness and accuracy of the information published by Member States under the transparency requirements through either the TAM or National State Aid Registries. This first round of compliance checks proved to be very effective in improving compliance with the transparency obligations. The scope of the compliance checks will be substantially extended in 2019.

### *Evaluation*

Evaluation of aid schemes is another requirement introduced by SAM. The aim is to gather the necessary evidence to better identify impacts, both positive and negative, of the aid and to provide input for future policy-making by the Member States and the Commission.

Since 1 July 2014, evaluation is required for large General Block Exemption Regulation (GBER) schemes in certain aid categories<sup>116</sup> as well as for a selection of notified schemes under the new generation of State aid guidelines<sup>117</sup>.

By the end of 2018, the Commission had approved evaluation plans covering 40 State aid schemes. Five additional schemes are currently under analysis, covering a total of 15 Member States<sup>118</sup>. Most of these decisions concerned either large regional aid projects or R&D&I aid schemes under the GBER or notified energy and broadband schemes. These

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<sup>114</sup> For further information see the Competition Policy Brief 4/2016 available at [http://ec.europa.eu/competition/publications/cpb/2016/2016\\_004\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2016/2016_004_en.pdf).

<sup>115</sup> For further information see the Transparency Award Module (TAM) available at <https://webgate.ec.europa.eu/competition/transparency/public/search/chooseLanguage>.

<sup>116</sup> Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

<sup>117</sup> Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

<sup>118</sup> Czechia, Germany, Greece, Spain, France, Hungary, Ireland, Italy, Lithuania, Austria, Poland, Portugal, Finland, Sweden and the United Kingdom.

schemes account, in total, for over EUR 50 billion of annual State aid budget. The first evaluation report was submitted in January 2018.

The Commission services have continued to accompany the implementation of the evaluation requirement by publishing policy briefs<sup>119</sup> and by organising dedicated workshops with Member States' representatives and evaluation experts. The current priorities of the Commission services are: (i) to enlarge the scope of the evaluation initiative to additional Member States, including through bilateral contacts; and (ii) to prepare the ground for a comprehensive assessment of evaluation reports, both intermediate and final, in order to provide appropriate feedback to Member States and make sure that results are effectively used for better policy-making.

#### *Cooperation with national courts to ensure the effectiveness of State aid rules*

The Commission continued its cooperation with national courts and tribunals under Article 29 of the Procedural Regulation<sup>120</sup>. This cooperation includes direct case-related assistance to national courts when they apply EU State aid law. The courts and tribunals can ask the Commission to provide case related information, or to provide an opinion on the application of State aid rules. The Commission may also submit *amicus curiae* observations at its own initiative.

In 2018, the Commission responded to two requests for information. In one instance, a district court in the Netherlands enquired on the state of play in an investigation; the other request forwarded by a French administrative appeal court enquired on certain information which the Commission might have in the case file of a closed investigation.

The possibility for the Commission to submit *amicus curiae* observations before national courts on its own initiative was introduced in the 2013 amendment to the Procedural Regulation. In that respect, Article 29 of the Procedural Regulation mirrors Article 15(3) of Regulation 1/2003 in the field of antitrust. In 2018, the Commission submitted written observations in four court cases<sup>121</sup> and submitted oral observations in one case<sup>122</sup>. Two of these observations concern the *Micula* decision.<sup>123</sup> To make its views publicly known, the Commission publishes its opinions and *amicus curiae* observations, as well as observations to others, on its website<sup>124</sup>.

In 2018, the Commission also continued its advocacy efforts. It was actively involved in evaluating the financing of training programmes for national judges and in assessing their needs. The Commission staff also provided training during workshops and conferences.

Finally, the Commission has commissioned a study in 2018 on the application of the cooperation tools by national courts and to analyse more indepth the State aid rulings of courts in the 28 EU Member States. Its aim is to assess the situation with a view to

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<sup>119</sup> For further information see the Competition Policy Briefs 7/2014 available at [http://ec.europa.eu/competition/publications/cpb/2014/007\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2014/007_en.pdf) and 3/2016 available at [http://ec.europa.eu/competition/publications/cpb/2016/2016\\_003\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2016/2016_003_en.pdf).

<sup>120</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248 of 24.9.2015, pp. 9-29.

<sup>121</sup> These concerned two Italian cases and one Polish case. Furthermore, the Commission participated as a non-disputing party before the ICSID Arbitral Tribunal and submitted its written observations in case ARB/16/20 Iskandar and Akram Safa against Hellenic Republic on 5 October 2018.

<sup>122</sup> This concerned the *Micula* case. The Commission participated to the hearing of 1-3 May 2018 before the Court of Appeal (Civil Division) of England and Wales, after having submitted its written observations in 2017 for the appeals of Viorel Micula and others (Court of Appeal refs A3/2017/1855 and A3/2017/1853) and of Ioan Micula and others (Court of Appeal refs: A3/2017/1856 and A3/2017/1903) against the orders of Mr Justice Blair of 20 January 2017 and of 15 June 2017 staying the enforcement of the arbitral award (case ARB/05/20) in the United Kingdom pending the judgement of the General Court of the European Union.

<sup>123</sup> Case SA.38517 (2014/NN; 2014/C), *Micula v Romania* (ICSID arbitration award), Commission decisions of 26 May and 1 October 2014, and 30 March and 24 July 2015 respectively, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38517](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38517).

<sup>124</sup> For further information see [http://ec.europa.eu/competition/court/overview\\_en.html](http://ec.europa.eu/competition/court/overview_en.html).

possibly consider a review of the Commission's enforcement notice<sup>125</sup> at a later stage.

#### *Aid for research, development and innovation*

While one of the headline targets of the Europe 2020 Strategy<sup>126</sup> is for Research, Development and Innovation (R&D&I) investments in the EU to reach 3% of EU GDP, R&D&I spending in the EU has been lagging behind major global competitors, mainly due to lower levels of private investment. To achieve the greatest possible impact with the available budgets R&D&I aid measures should not replace or crowd out private financing. On the contrary, efforts should be directed at encouraging more private investments. The very purpose of R&D&I aid is that it should bring added value where markets and companies do not deliver the investments for promising but highly risky innovative projects.

In 2018, the Commission ensured that aid schemes and individual measures notified or pre-notified under the R&D&I rules were well targeted to projects enabling ground-breaking research and innovation activities. Its State aid control activities covered a variety of sectors including automated/connected driving, e-mobility, aeronautics, space, microelectronics as well as virtual research infrastructures and innovation clusters.

The first case in the area of R&D&I of an Important Project of Common European Interest (IPCEI) was concluded in the area of microelectronics on 18 December 2018. This case demonstrates that - despite certain coordination challenges between the participating Member States - the instrument can deliver intra-EU R&D&I cooperation and coordination for Key Enabling Technologies, including investment into first industrial deployment.

Moreover, in a significant number of cases the Commission cooperated with Member States with a view to enabling them to adjust certain envisaged R&D&I measures and bring them in line with the General Block Exemption Regulation (GBER). This way, aid measures could be granted swiftly without having to be notified to the Commission, thereby speeding up public support for R&D&I. It is noteworthy that following the State Aid Modernisation in 2014, 95% of all R&D&I measures (70% in value terms) in the Union have been implemented under the GBER.

During 2018, in line with the Commission's battery alliance initiative, discussions with a group of Member States and companies for a possible IPCEI in the area of batteries for e-mobility and energy storage intensified. This is in line with the Commission's policy for a shift from the use of environmentally harmful fossil fuels to alternative fuel technologies. A number of important, ambitious and risky R&D&I activities aiming beyond the state of the art will be necessary to innovate in this sector.

#### *Aid to risk finance*

SMEs across the EU remain heavily dependent on traditional bank lending, which is still limited by banks' refinancing capacity, risk appetite and capital adequacy. The financial crisis has exacerbated the problem with a large number of SMEs still being unable to receive the necessary finance in recent years. Given the pivotal importance of SMEs and midcaps for the whole EU economy, the situation has a significant negative impact on growth and job creation. The current Risk Finance rules aim to offer better incentives for private sector investors - including institutional ones - to increase their funding activities in the critical area of SME and midcaps financing. The rules also mirror other EU initiatives designed to promote wider use of financial instruments in the context of new support programmes such as Horizon 2020 or COSME (the Programme for the Competitiveness of Enterprise and SMEs)<sup>127</sup>.

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<sup>125</sup> Commission notice on the enforcement of State aid law by national courts; OJ C 85, 9.4.2009, p. 1.

<sup>126</sup> Communication of 3 March 2010 from the Commission, *Europe 2020 A Strategy For Smart, Sustainable And Inclusive Growth*, COM(2010) 2020 final available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427303331326&uri=CELEX:52010DC2020>.

<sup>127</sup> An overview on the EU programme for the Competitiveness of Enterprises and Small and Medium-sized

The current Risk Finance Guidelines<sup>128</sup> and the corresponding parts of the General Block Exemption Regulation (GBER), provide the framework for seamless support for new ventures from their creation to their development into global players. The aim is to help new ventures to get past the critical stages where private financing is either unavailable or not available in the necessary amount or form.

#### **Aid measures encouraging investment and innovation in SMEs**

In 2018, under the Risk Finance Guidelines, the Commission dealt with notified schemes aimed at encouraging investment in innovative SMEs and midcaps. In particular, it approved the prolongation of an amended scheme in Italy granting fiscal incentives for investments in innovative start-ups.

Moreover, the Commission cooperated with a number of Member States with a view to enable them to adjust certain envisaged risk finance measures and bring them in line with the current GBER. This way, aid measures could be granted swiftly without having to be notified to the Commission, thereby speeding up public support to innovative SMEs.

In all these cases, the Commission took the view that the measures at issue covered a real gap in the market, and worked together with the Member States on solutions to limit the impact on competition in the single market. In particular, the Commission considered that the risks inherent to the activities of these young firms and innovative companies (i.e. products/technologies not yet proven to be economically viable) and the lack of financial guarantees limited their capacity to access funding and that the aid was necessary to stimulate investment that, if unprompted, would not have been provided by the market.

#### *Regional aid*

Regional aid is an important instrument in the EU toolbox to promote greater economic and social cohesion. The 2014-2020 regional aid framework has been in place since July 2014.

In 2018, the Commission continued advising Member States' authorities on how to interpret and implement the regional aid provisions of the GBER, thus helping them to make a success of the reforms introduced under SAM to the benefit of both consumers and businesses.

The Commission adopted a positive decision on regional investment aid to *Jaguar Land Rover*<sup>129</sup> in Slovakia (car manufacturing). The Commission's formal investigation established that without the investment aid, the project would not have been carried out in Europe. It also showed that the aid was limited to the minimum necessary to trigger the decision by Jaguar Land Rover to carry out the investment in Slovakia. The Commission found that the investment aid contributes to job creation as well as to the economic development and to the competitiveness of a disadvantaged region. Finally, the Commission established, after a careful examination of all facts, that there was no causal link between the aid granted by Slovakia and the closure of activities elsewhere in Europe.

The Commission also adopted two decisions approving evaluation plans relating to regional aid schemes for Hungary (*'Investment incentives'*<sup>130</sup>) and for Greece (*'General Entrepreneurship' scheme*<sup>131</sup>). The first decision concerned the evaluation plan of an investment aid scheme intended to address the low level of employment and investment in Central Hungary's "c" areas and in the less developed regions of Hungary ("a"

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Enterprises is available at [http://ec.europa.eu/growth/smes/cosme\\_en](http://ec.europa.eu/growth/smes/cosme_en).

<sup>128</sup> Communication from the Commission, *Guidelines on State aid to promote risk finance investments*, OJ C 19, 22.01.2014, p. 4 available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04)).

<sup>129</sup> Case SA.45359 (2017/C), Regional aid investment to Jaguar Land Rover – Large Investment Project – Slovakia, Commission decision of 4 October 2018  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_45359](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45359).

<sup>130</sup> Case SA.48680 (2017/EV), Evaluation plan regarding the Government decree 210/2014 (VIII.27.) concerning the use of investment incentives, Commission decision of 1 June 2018  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48680](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48680).

<sup>131</sup> Case SA.47412 (2017/EV), Evaluation plan of the aid scheme 'General Entrepreneurship' of Development Law 4399/2016, Commission decision of 6 July 2018,  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_47412](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47412).

regions). The scheme also aims to facilitate the development of new technical and technological solutions, facilitate the development of exports and increase the competitiveness of products manufactured and services provided in compliance with the General Block Exemption Regulation (GBER). The second Commission decision concerned the evaluation plan of a regional aid scheme aiming to boost the economy and increase of employment in Greece. The aid is directed towards enterprises of all sizes in all regions and to manufacturing and internationally traded services and products allowed by the GBER.

The Commission also approved under Article 107(3)(c) TFEU an Italian aid scheme to support investments in regions affected by earthquakes in 2016 and 2017<sup>132</sup>. The notified aid scheme aims at mitigating the economic and social damages in central Italy which have been affected by abnormal seismic activity. The aid takes the form of a tax credit for all companies making initial investments in the area. The Commission found that the aid scheme contributes in a proportionate manner to the promotion of economic development and recovery in areas affected by a natural disaster of an exceptional nature.

### *Infrastructure*

In 2018, the Commission continued providing guidance to the Member States' authorities by using analytical grids on the application of State aid rules to the public financing of infrastructure projects. These rules were revised in the light of the adoption of the Commission Notice on the notion of State aid in 2016,<sup>133</sup> and the adoption of the revised GBER in 2017.<sup>134</sup> The Commission continued advising Member States' authorities on how to interpret and implement the State aid provisions of the GBER on infrastructure projects, thus helping them to ensure legal certainty regarding the public funding of infrastructure.

The Commission also adopted three decisions on State aid for the development of motorways, notably by the approval of an investment plan for *Italian motorways*<sup>135</sup>, the approval of the prolongation of the existing concession agreement for the *Istrian Y motorway in Croatia*<sup>136</sup>, and the construction of the southern section of the *Central Greece Motorway*<sup>137</sup>.

### *Digital Single Market*

Public spending alongside private investment continues to be the key to achieving the longer-term objectives set by the Digital Agenda for Europe up to and beyond 2025. Most of the financing for the upgrade and deployment of next-generation networks in the broadband sector comes from private companies. State aid control seeks to ensure that where a market failure arises and publicly funded networks are needed, these do not crowd out private investments.

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<sup>132</sup> Case SA.48571 (2018/N), Italy - Tax credit for productive investments in the regions of Lazio, Umbria, Marche and Abruzzo affected by the 2016-2017 earthquakes, Commission decision of 6 April 2018, available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_48571](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_48571).

<sup>133</sup> OJ C 262, 19.7.2016 p. 1.

<sup>134</sup> OJ L 156, 20.6.2017, p. 1.

<sup>135</sup> Case SA.49335 (2017/N), Motorways investment plan for Società Asti Cuneo and Satap A4 and case SA. 49336 (2017/N), Motorways investment plan for Autostrade per l'Italia Spa, Commission decision of 27 April 2018, available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_49335](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_49335) and [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_49336](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_49336).

<sup>136</sup> Case SA.48472 (2018/N), Amended Concession Agreement relating to the Istrian Y motorway, Commission decision of 14 June 2018, available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_48472](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_48472).

<sup>137</sup> Case SA.50233 (2018/N), E65 Motorway Concession (Lamia- Xiniada Section), Commission decision of 24 January 2018, available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_50233](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_50233).



### 1) Broadband deployment

The achievement of the *European broadband targets*<sup>138</sup>, despite substantial progress, represents a significant challenge, in particular for the deployment of ultrafast networks<sup>139</sup>. Reaching the Digital Single Market connectivity objectives for 2020 and 2025 is estimated to require an overall investment of around EUR 500 billion over the coming decade, representing an additional EUR 155 billion over and above a simple continuation of the trend of current network investment and modernisation efforts of the connectivity providers<sup>140</sup>.

Most of the financing for the upgrade and deployment of next-generation networks in the broadband sector comes from private companies. These tend to invest mostly in urban, highly populated areas which can assure rapid return on investment. As a result, in certain underserved, mostly rural areas public funds support the deployment of broadband networks, within the broader objectives of inclusion and economic development.

#### **Pro-competitive principles for public funding to support the deployment of broadband networks**

Where Member States provide funding or have discretion in the spending of European funds, a number of pro-competitive principles apply, based on the State aid rules:

- i) Public support must be based on an **identified need of investment**, resulting from an **appropriate mapping** of infrastructure and **public consultation**, to avoid a crowding out of private initiatives (definition of the market failure);
- ii) different technologies should be allowed to bid for the objective connectivity targets set (**technological neutrality principle**);
- iii) a **competitive selection** process has to take place to ensure the best offer for the best price; and
- iv) to **avoid a 'subsidy to monopoly'**, publicly funded projects have to be open to all users at fair, reasonable and appropriate conditions.

These principles are also embedded in the **General Block Exemption Regulation**<sup>141</sup> (GBER) which is intended particularly for fully underserved areas ('white' areas) and allows Member States to deploy broadband networks without State aid notification. In assessing measures which do require notification, Member States and selected operators must fulfil a number of conditions as specified in the Broadband State Aid Guidelines<sup>142</sup>.

<sup>138</sup> In its Communication "*Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society*" of 14 September 2016 (COM/2016/587, available at <https://ec.europa.eu/digital-single-market/en/news/communication-connectivity-competitive-digital-single-market-towards-european-gigabit-society>), the Commission confirmed the importance of Internet connectivity for the Digital Single Market and, building on the Digital Agenda for Europe goals for 2020, set out a strategy for a European Gigabit society operationalized through three strategic objectives for 2025:

- Gigabit connectivity for all main socio-economic drivers such as schools, transport hubs and main providers of public services as well as digitally intensive enterprises.
- All urban areas and all major terrestrial transport paths to have uninterrupted 5G coverage.
- All European households, rural or urban, will have access to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to Gigabit speed.

As indicated in the Communication, the Commission will reflect the foreseeable evolution of long-term demand when applying the "step change" approach of the Broadband State Aid Guidelines in conjunction with the strategic objectives set in this Communication, and will consider favourably efficient blended financing that contributes to lower the aid intensity and to reduce risks of distorting competition, as part of its assessment of State aid interventions.

<sup>139</sup> According to Europe's digital progress report 2017, available at <https://ec.europa.eu/digital-single-market/en/news/europes-digital-progress-report-2017>, Next Generation Access (NGA) networks coverage continues to improve. At the end of 2016, NGA networks were available to 76 % of EU homes. Despite a persistent gap with urban areas, NGA networks rollout is catching up in rural areas, covering 40% of homes in 2016 compared with just 30% a year before.

<sup>140</sup> Based on the study by Analysys Mason "Costing the new potential connectivity needs" (SMART 2015/0068, available at <https://publications.europa.eu/en/publication-detail/-/publication/e81ae17f-9d27-4b68-8560-7cd45dbe21d8>) and the Commission's estimates.

<sup>141</sup> The *General Block Exemption Regulation* (GBER) frees categories of State aid, deemed to bring benefits to society, that outweigh the possible distortions of competition in the Single Market triggered by public funding from the requirement of prior notification to the Commission. Consequently, Member States may implement measures which fulfil the condition of the GBER without prior scrutiny by the Commission.

<sup>142</sup> Communication from the Commission, *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ C 25, 26.1.2013, p.1; available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013C0025>

All Member States have adopted and/or updated their national and/or regional broadband strategies<sup>143</sup>. As proposed in the Commission Communication of 14 September 2016<sup>144</sup>, Member States have initiated a process to adapt their National Broadband Strategies to the new 2025 connectivity strategic objectives proposed by the Commission. Extensive national and regional broadband schemes have been approved by the Commission during 2018, in particular for Lithuania<sup>145</sup>, the Netherlands<sup>146</sup> and Austria<sup>147</sup>. Some Member States completed or modified former broadband schemes with additional investment in the roll out of Next Generation Access networks, in particular in Germany<sup>148</sup> and the UK<sup>149</sup>.

#### **State aid for gigabit infrastructure – the Bavarian gigabit pilot project<sup>150</sup>**

Building on the EU's existing 2020 broadband targets, the Commission identified in its Gigabit Communication of 2016 the connectivity needs to build a European Gigabit society, where very high capacity networks enable the widespread use and development of products, services and applications in the Digital Single Market.

In this context, in 2018, the European Commission approved under EU State aid rules a Bavarian project to deploy very high capacity networks in six municipalities. This was the first time the Commission looked at a support measure in the context of the objectives of the Gigabit Communication. The aid aims to bring very fast broadband to customers in areas where the market has not provided them, in line with the EU broadband connectivity goals. The project represented a first step towards a future larger roll-out of such infrastructure in Germany.

The new network will be capable of offering speeds of 200 megabits per second (Mbps) for households and 1 gigabit per second (Gbps) for companies and public institutions. These broadband speeds are far above those that users have had so far in the target areas. The new networks will therefore bring about a significant improvement – a 'step change' – in connectivity in line with the strategic objectives of the Gigabit Communication.

During the period 2009-2018, the Commission approved State aid for broadband amounting to EUR 39 billion. The Member states effectively spent 30% of this amount, often with a co-financing from European funds<sup>151</sup> amounting to roughly EUR 3 billion. During the same period, Member States adopted 126 broadband State aid measures benefitting from the General Block Exemption Regulation (GBER).

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF.

<sup>143</sup> Even though a few Member States do not yet have a single document that can be regarded as a national broadband plan, all of them have at least an overall strategic approach for the deployment of next generation access networks that is implemented in practice.

<sup>144</sup> Commission Communication COM/2016/587 "Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society" of 14 September 2016, available at <https://ec.europa.eu/digital-single-market/en/news/communication-connectivity-competitive-digital-single-market-towards-european-gigabit-society>.

<sup>145</sup> State aid case SA.49614 – Lithuania – *Development of Next Generation Access Infrastructure – RAIN 3*, Commission decision of 12 October 2018 available at [http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>146</sup> State aid case SA.46613 – The Netherlands – *Broadband Rivierenland Region*, Commission decision of 10 April 2018, available at [http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>147</sup> State aid case SA.50844 – Austria – *Broadband Styria*, Commission decision of 8 November 2018, not published yet and State aid case SA.48325 – Austria – *NGA-Broadband project in Upper Austria*, Commission decision of 26 July 2018, available at [http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>148</sup> State aid case SA.50847 – Germany – *Prolongation of NGA Bayern Abänderung (SA.38690)*, Commission decision of 4 June 2018 available at [http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>149</sup> State aid case SA.49445 – UK – *Modification of the National Broadband Scheme for the UK for 2016-2020 (BDUK – SA 40720)*, Commission decision of 15 January 2018 available at [http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>150</sup> State aid case SA.48418 – Germany – *Bayerisches Gigabit Pilotprojekt (Bavarian gigabit pilot project)*, Commission decision of 18 December 2018 available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_48418](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_48418).

<sup>151</sup> See State aid case SA.46805 – Germany – *Follow up German NGA/Vula product*. For further information see [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_46805](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_46805).



## 2) Media, culture and broadcasting

In the media and broadcasting markets State aid support measures may also be justified to overcome market failures and fulfil public service missions. In this area, the Commission relies on the guidance of the Cinema Communication<sup>152</sup> and the Broadcasting Communication<sup>153</sup> to ensure that support is well designed in order to meet the underlying objectives of common interest while limiting negative effects on competition.

In 2018, the Commission adopted nine decisions concerning media and cultural activities. The Commission notably approved an aid scheme designed by Sweden<sup>154</sup> to support its media sector and aid schemes for Belgium,<sup>155</sup> France<sup>156</sup> and Germany<sup>157</sup> to favour the development and the promotion of educational and culturally valuable video games which would have not existed under normal market conditions. Video games have become a vibrant and successful commercial product. In that sector, the presence of market failure has to be strictly assessed, as the potential to distort competition in a well-functioning market is higher. As aid for video games is approved as cultural aid, the Commission undertakes a more particular assessment of the cultural characteristics of the games than for feature films.

The Commission approved two aid schemes supporting the development and the promotion of educational and culturally valuable digital video games in Germany<sup>158</sup> and Denmark<sup>159</sup>.

Since the inclusion of projects promoting culture and heritage conservation in the General Block Exemption Regulation (GBER) in 2014, Member States have greatly taken the opportunity offered by the Exemption Regulation. In 2018, 466 schemes were covered by Article 53 GBER related to aid for culture and heritage conservation and 77 schemes by Article 54 GBER related to aid schemes for audio-visual works.<sup>160</sup>

## 3) Spectrum migration of broadcasters

In 2018, the Commission approved, under EU State aid rules, German plans to compensate the direct costs incurred by operators of terrestrial television services to migrate from the 694-790 MHz frequency band (the "700 MHz band") to lower frequencies. This migration follows a Decision<sup>161</sup> of the European Parliament and the

<sup>152</sup> Communication from the Commission on State aid for films and other audio-visual works (2013/C 332/01), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:332:0001:0011:EN:PDF>.

<sup>153</sup> Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 257 of 27.10.2009, p.1 to 14, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC1027\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC1027(01)&from=EN).

<sup>154</sup> State aid case SA.49405 – Sweden – *Media Aid*, Commission decision of 22 October 2018, not published yet.

<sup>155</sup> State aid case SA.49947 – Belgium – *Funds for videogames – Flanders*, Commission decision of 28 May 2018 available at [http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>156</sup> State aid case SA.50512 – France – *Fonds d'aide aux jeux video*, Commission decision of 21 August 2018 available at [http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>157</sup> State Aid case A.51820 – Germany- Video games support – North Rhine Westphalia, Commission decision of 10 December 2018, available at: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_51820](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51820).

<sup>158</sup> State aid cases SA.46572 – Germany – *Bavarian games support measure*, Commission decision of 4 September 2017 available at [http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>159</sup> SA.45735 – Denmark – *Scheme for the development, production and promotion of cultural and educational digital games*, Commission decision of 12 May 2017 available at [http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3).

<sup>160</sup> There might be some overlap between the figures as schemes could be informed both under article 53 and article 54 (and potentially other articles of the GBER as well).

<sup>161</sup> Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32017D0899>.

Council in 2017 that imposed the availability of the 700 MHz band for the deployment of wireless broadband services by June 2020, thus forcing the current users, amongst which the terrestrial television service providers, to liberate the band. However, the Decision provides that Member States should ensure the availability of the sub-700 MHz band for terrestrial television services until 2030. It also allows for the possibility to compensate certain direct costs incurred by terrestrial television operators for the spectrum migration. The Commission assessed the aid measure directly on the basis of the Treaty and found that the aid is limited to the costs that are strictly necessary for the migration, and has no significant impact on trade and competition. Furthermore, the measure will contribute to the EU's objective of introducing 5G mobile services, while keeping terrestrial television services available for consumers.

#### *Selective tax advantages*

Confidence in the EU single market depends on creating a level playing field for companies to compete on the merit, also when it comes to taxation. For example, a Member State cannot give tax benefits to multinational groups which are not available to local businesses, since that would severely distort competition.

In 2018, the Commission adopted a decision requiring Luxembourg to recover a selective tax advantage granted to Engie<sup>162</sup> by way of several tax rulings amounting up to EUR 120 million.

#### **Luxembourg – The Engie decision**

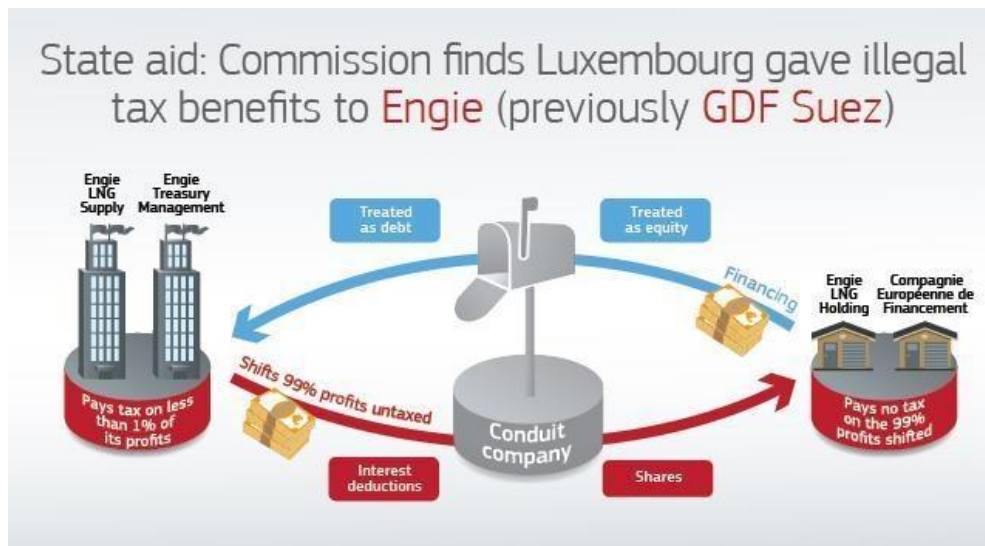
In 2008 and 2010, respectively, Engie implemented two complex intra-group financing structures in Luxembourg. These involved triangular financing transactions where two holdings of the Engie group would provide financing via intermediary companies to two subsidiaries, Engie LNG Supply and Engie Treasury Management, in the form of highly complex convertible loans.

Subsequent tax rulings issued by the Luxembourg tax administration from 2008 endorsed a tax treatment where the same financing transaction was treated as debt at the level of Engie LNG Supply and Engie Treasury Management and equity at the level of the holdings. According to the tax rulings, Engie LNG Supply and Engie Treasury Management are allowed to deduct annually from their tax base the interest related to the convertible loans, which in practice amounted to more than 99% of their profit. That interest is however paid only at conversion and in the form of shares to the intermediaries, that would pass on the shares to the holdings. The holdings would then cancel the shares to cash in the profit made by Engie LNG Supply and Engie Treasury Management, which would remain tax-exempt in application of the participation exemption. The result is that Engie did not pay any tax on more than 99% of the profit generated by Engie LNG Supply and Engie Treasury Management in Luxembourg.

The Commission concluded that the tax rulings endorsed an inconsistent tax treatment of the same financing transaction leading to non-taxation at all levels. This is a more favourable treatment than under the standard Luxembourg tax rules, which exempt from taxation income received by a shareholder from its subsidiary, provided that income is in general taxed at the level of the subsidiary. Luxembourg did not provide any valid justification for this derogation. Therefore, the tax treatment granted to Engie constitutes a selective advantage.

The Commission estimates that this unfair tax advantage amounted to up to EUR 120 million corresponding to the profit generated by Engie LNG Supply in the period between 2009 and 2014 and exempted at the level of the holding after the partial conversion of the convertible loan in 2014. As regards Engie Treasury Management, its profits will have to be taxed in line with standard Luxembourg tax rules, as soon as the loan is converted.

<sup>162</sup> Case SA.44888 – Luxembourg – Aid implemented by Luxembourg in favour of ENGIE, Commission decision of 20 June 2018 available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_44888](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_44888).



In 2018, the Commission also decided that based on the doubts expressed in the opening decision, the non-taxation of certain *McDonald's*<sup>163</sup> profits in Luxembourg did not lead to illegal State aid, as it was in line with national tax laws and the Luxembourg-United States Double Taxation Treaty.

Additionally, on 19 December 2018, the Commission concluded that Gibraltar<sup>164</sup> gave illegal tax advantages to multinational companies through a corporate tax exemption regime for interest and royalties from 2011 to 2013, as well as five individual tax rulings that provided selective tax benefits on certain income generated by Dutch limited partnerships. The beneficiaries must return unpaid taxes of around EUR 100 million to Gibraltar.

#### *Aid in transport*

In 2018, the Commission continued to apply the aviation guidelines adopted in 2014.<sup>165</sup> For example, it adopted several decisions approving operating aid to airports and approving the operation of an airport as a service of general economic interest<sup>166</sup>; and it opened formal investigation relating to marketing agreements at Montpellier airport and marketing agreements and potential aid to the airport at Frankfurt-Hahn airport.<sup>167</sup>

The Commission also adopted a decision finding that the twenty-year extension of the concession for Athens International Airport does not constitute State aid.<sup>168</sup> The Commission's investigation focussed on determining an adequate market value for the fee to be paid to Greece for the concession extension, leading to a significant increase in the fee to €1,115 million. The initial value of €484 million proposed by AIA, the airport operator, was indeed found to be based on financial and business parameters that were

<sup>163</sup> Case SA.38945 – Alleged aid to McDonald's, Commission Decision of 19 September 2018, see [http://europa.eu/rapid/press-release\\_IP-18-5831\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5831_en.htm).

<sup>164</sup> Case SA.34914 UK – Gibraltar Corporate Tax regime (ITA 2010), Commission decision of 19 December 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_34914](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_34914).

<sup>165</sup> Communication from the Commission, Guidelines on State aid to airports and airlines available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.099.01.0003.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.099.01.0003.01.ENG).

<sup>166</sup> Case SA.49482 Highlands and Island Airports Limited – Sumburgh Airport, Case SA.49331 SGEI compensation for Bornholm Airport and Case SA.49203 SGEI Compensation for Bacau Airport, available at: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_49482](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49482), [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_49331](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49331), [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_49203](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49203).

<sup>167</sup> Case SA.47867 Aide présumée en faveur de Ryanair à l'aéroport de Montpellier, and Case SA.43260 Alleged aid to Frankfurt Hahn Airport and Ryanair, available at: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_47867](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47867) [http://europa.eu/rapid/press-release\\_IP-18-6222\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6222_en.htm).

<sup>168</sup> Not yet published.

not in line with market conditions.

In December 2018, the Commission adopted a communication prolonging until 2024 the specific regime for operating aid for airports with up to 700 000 passengers per year in the Aviation Guidelines adopted in 2014.<sup>169</sup>

In the rail and intermodal transport sector, the Commission approved a number of schemes, which aim to support the transfer of cargo from the road to the safer and more environmentally friendly rail transport mode.<sup>170</sup>

In the maritime transport sector the Commission continued to ensure compliance with the Maritime State aid Guidelines<sup>171</sup>. The aim of those Guidelines is to maintain the European maritime sector's competitiveness and to avoid flagging out to "flags of convenience" for which environmental and security standards might be low.

The Commission is determined to ensure consistency and equal treatment throughout the EU whilst at the same time making sure that the beneficial tonnage tax regimes do not contravene internal market rules. The Commission adopted a number of decisions under the maritime Guidelines in 2018. Notably, in April, the Commission approved the first tonnage tax and seafarer scheme put in place by Portugal.<sup>172</sup> In October, the Commission also approved the extension of an existing Danish tonnage tax scheme to new types of vessels<sup>173</sup> (guard vessels, vessels servicing off-shore installations, vessels for raising, repairing and dismantling windmills...).

#### *State aid review in the postal services sector*

The postal sector continues to evolve and traditional letter delivery, against the backdrop of electronic substitution, remains on a declining trajectory. Nevertheless, postal services have retained a very significant economic and social value. In a shrinking market of traditional letter delivery, many postal incumbents are being forced to diversify the portfolio of their activities and innovate in order to stay competitive. At the same time, the explosive growth of e-commerce necessitates a well-functioning parcel delivery market linking buyers and sellers. Efficient postal services are thus a key factor in allowing e-commerce to realise its potential in propelling growth and creating jobs.

Through State aid control in the postal sector, the Commission pursues multiple related goals. State aid control ensures that where a postal service provider – typically a postal incumbent – is entrusted with a costly public service obligation, any compensation paid to the provider does not undermine a level playing field between postal incumbents and new entrants. State aid should not shield the recipients from competitive pressures and market developments, but should incentivise efficiency, innovation and investment.

In February 2018, the Commission approved in two decisions two sets of compensations in favour of Czech Post: the first one amounting to CZK2.6 billion (approx. €97 million) for the delivery of the universal postal service over 2013-2017<sup>174</sup> and the second one amounting to CZK2.3 billion (approx. €86 million) for the provision of a Data Boxes

<sup>169</sup> [http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=3&documentType=COMMUNICATION\\_FROM\\_COMMISSION&version=ALL](http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=3&documentType=COMMUNICATION_FROM_COMMISSION&version=ALL).

<sup>170</sup> For example Case SA.49153 - Czechia - Aid for intermodal transport units, Case SA.49749 - Sweden - Environmental compensation for rail freight transport, Case SA.50217 - Sweden - Swedish Eco-bonus scheme for short sea shipping and inland waterway transport and Case SA.50165 - Germany - Support for the promotion of energy efficiency in rail transport available at: [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_49153](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_49153), [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_49749](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_49749), [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_50217](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_50217).

<sup>171</sup> Communication from the Commission, Community guidelines on State aid to maritime transport, OJ C 13, 17.01.2004, p. 3, available at [http://eur-lex.europa.eu/legalcontent/EN/ALL/?uri=CELEX:52004XC0117\(01\)](http://eur-lex.europa.eu/legalcontent/EN/ALL/?uri=CELEX:52004XC0117(01)).

<sup>172</sup> Case SA.48929 (2018/N)- Portugal - Tonnage Tax and Seafarer Scheme. For further information see IP/18/2842 of 6 April 2018 available at [http://europa.eu/rapid/press-release\\_IP-18-2842\\_en.htm](http://europa.eu/rapid/press-release_IP-18-2842_en.htm).

<sup>173</sup> Case SA.45300 - Denmark - Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels).

<sup>174</sup> SA.45281 (2017/N) and State Aid SA.44859 (2016/FC) – Czech Republic - State compensations granted to Czech Post for the provision of the universal postal service over the period 2013-2017.

Information System over the period 2018-2022<sup>175</sup>.

In May 2018, the Commission also approved compensations in favour of Post Danmark amounting to DKK 1.2 billion (approx. €160 million) for the delivery of the universal postal service over 2017-2019<sup>176</sup>.

Finally, in July 2018, the Commission concluded its investigation in the Correos case with a negative decision with recovery<sup>177</sup>. Indeed, the Commission found that Correos, the publicly-owned Spanish postal operator, was overcompensated for the delivery of its universal postal service obligation between 2004 and 2010, and also benefited from incompatible tax exemptions. The recovery amounted to €167 million.

In these three cases, the Commission found that the measures were necessary to fund the respective public services (universal postal service or Data Boxes Information System) and well in line with the SGEI Framework.

### **Specific objective 8: Compliance of renewable support schemes and capacity remuneration mechanisms with State aid rules (Energy Union)**

State aid control in the areas of energy and environment contributes to reaching the EU's ambitious energy and climate targets without undue distortions of competition while minimising cost for taxpayers.

In 2018, the enforcement of State aid rules in the renewable energy field remained very high. An increasing number of Member States grant support for the production of renewable energy through competitive tenders and ensure that renewable installations are integrated in the electricity market. This has resulted in lower cost for consumers in the electricity system as a whole.

In 2018, the Commission approved seven capacity mechanisms. For all of them, State aid control has ensured that Member States grant support only when it is truly necessary and through competitive tender procedures. In parallel Member States must implement market reforms to address regulatory failures that undermine the incentive for energy operators to invest in electricity capacity.

### **Specific objective 9: Stability and promotion of competition in the banking sector (Financial services)**

Consumers and businesses alike use the financial services provided by the banking sector. The EU needs a robust banking system that can support growth for the long term, where banks with sound business models are able to lend to companies so that they can grow and create jobs. In addition to the Banking Union rules, the Commission applies State aid rules in the financial sector. When assessing public support to financial services, the Commission carries out a thorough analysis of the impact of the State aid ensuring that taxpayers do not have to contribute more than strictly necessary, while also addressing undue competition resulting from the aid.

The current legislative framework of the Banking Union, notably the Bank Recovery and Resolution Directive (BRRD)<sup>178</sup>, has been fully in force for two years. Although State

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<sup>175</sup> Case SA.47293 (2017/N) – Czech Republic - State compensations granted to Czech Post for the provision of the Data Boxes Information System over the period 2018-2022.

<sup>176</sup> Case SA.47707 SA.47707(2018/N) – Denmark - State compensations granted to PostNord for the provision of the universal postal service. For further information see IP/18/3965 of 28 May 2018 available at [http://europa.eu/rapid/press-release\\_IP-18-3965\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3965_en.htm).

<sup>177</sup> Case SA.37977 Complaint regarding unlawful State aid in favour of Sociedad Estatal Correos y Telégrafos, S.A. For further information see IP/18/4444 of 10 July 2018 available at [http://europa.eu/rapid/press-release\\_IP-18-4444\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4444_en.htm).

<sup>178</sup> European Parliament and Council Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU,



support for banks and, consequently, the number of State aid cases have been reduced, there are still some legacy situations where support from the public budget for banks to exit the market or as a temporary buffer is necessary.

In 2018, further six banks could be discharged from the commitment obligations resulting from previous State aid decisions. Despite this overall positive development, the EU banking sector still faced some challenges, with some banks asking for public support in 2018.

The Commission approved State aid for the sale of Cyprus' second largest bank, the Cyprus Cooperative Bank, and the winding down of the residual entity as liquidation aid.<sup>179</sup> This allowed for the orderly market exit of the bank that had already received State support twice in the past.

Further progress was made regarding guarantee schemes of some Member States. For example, the *Italian guarantee scheme to facilitate the securitisation of non-performing loans* (GACS), initially approved in February 2016, was prolonged for a second time on 31 August 2018<sup>180</sup>.

### **Specific objective 10: Prevention and recovery of incompatible aid**

It is essential for the Commission to verify that Member States apply State aid rules correctly and that they only grant aid when all required conditions are met. DG Competition's State aid control activities aim at ensuring effective prevention and recovery of incompatible State aid to prevent Member States from re-creating artificial barriers to intra-community trade.

To ensure the integrity of the single market, the Commission has the power and the duty to request that Member States recover unlawful and incompatible aid which has unduly distorted competition and trade between Member States. In 2018, further progress was made to ensure that recovery decisions are enforced effectively and immediately.

By 31 December 2018, the sum of illegal and incompatible aid recovered from beneficiaries amounted to EUR 27.2 billion<sup>181</sup>. At the same point in time, the outstanding amount pending recovery was EUR 5.2 billion.

In 2018, the Commission adopted seven new recovery decisions and an amount of EUR 13.5 billion was recovered by the Member States. As of the end of December, the Commission had 43 pending recovery cases.

Recovery decisions adopted in 2018	7
Amount recovered in 2018 (EUR billion)	13.5
Pending recovery cases on 31 December 2017	43

As a guardian of the Treaty, the Commission may use all legal means at its disposal to ensure that Member States implement their recovery obligations, including launching infringement procedures. In 2018, the Commission decided to file one infringement action to the European Courts under Article 108(2) TFEU<sup>182</sup>.

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2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance, OJ L 173, 12.6.2014 p. 190–348.

<sup>179</sup> Case SA.35334 – Cyprus, Commission decisions of 19 June 2018 and 28 August 2018 available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_35334](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_35334).

<sup>180</sup> Case SA.51026(2018/N) – Italy, Commission decision of 31 August 2018 available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_51026](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_51026).

<sup>181</sup> The reference period is 1 January 1999 to 31 December 2018.

<sup>182</sup> Consolidated version of the TFEU, OJ C 115, 9.5.2008, p.47.

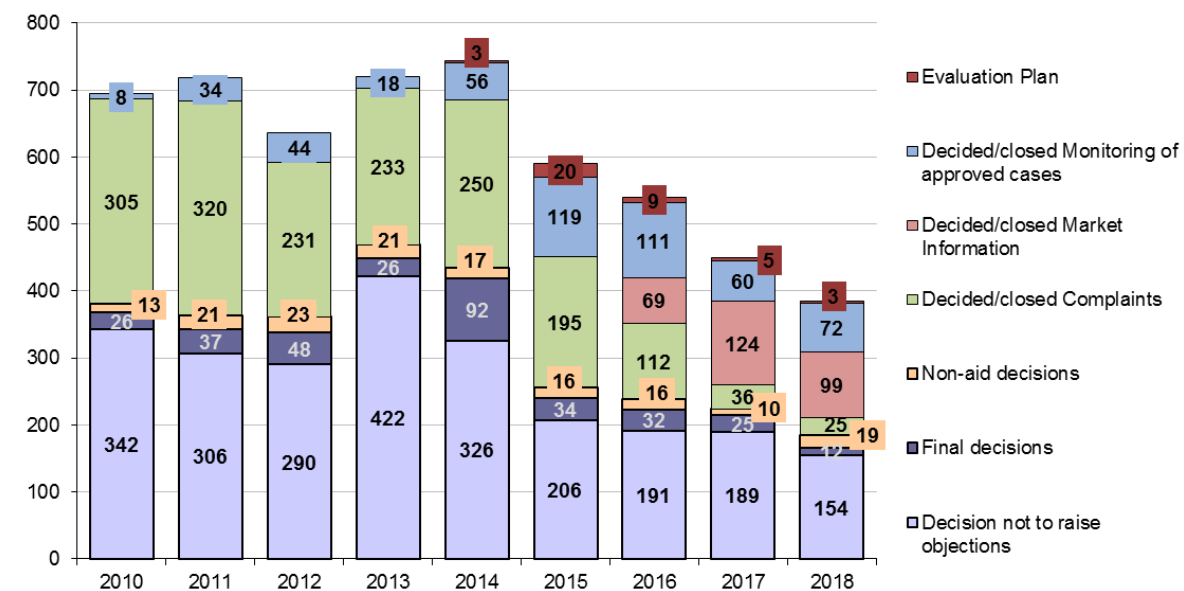
An in-depth review of the 2007 Commission's recovery notice<sup>183</sup> was initiated in 2018 with the aim to integrate case law developments since the notice's adoption. The new notice will also include more information on infringement procedures, under both Articles 108(2) TFEU and 260 TFEU, as well as established new practices in the cooperation between the Commission and the Member State concerned by a recovery decision.

## Specific objective 11: Monitoring of aid measures

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is granted under block-exempted schemes which are not examined by the Commission before entering into force. Overall, roughly 80% of aid is granted on the basis of previously approved aid schemes or block exemption regulations<sup>184</sup>. In that context, it is essential for the Commission to verify that Member States apply State aid rules for the schemes correctly and that they only grant aid when all required conditions are met.

To that end, the Commission introduced in 2006 a regular, *ex post*, sample-based control of existing aid schemes ("monitoring"). After a modest start covering about 20 schemes and ten Member States in each monitoring cycle, the Commission has considerably stepped up monitoring since 2011. Building on the Court of Auditors recommendations<sup>185</sup>, the Commission has substantially increased the size of the monitoring sample and is monitoring approximately 50 schemes per year (see graph below).

### State aid enforcement (Commission decisions, monitoring and Member States' Evaluation Plans) 2010-2018



Source: Directorate-General for Competition

The 2018 cycle covered most Member States<sup>186</sup> and all main types of aid approved as well as block-exempted schemes. Since the reporting of individual aid exceeding EUR 500 000 has to be encoded by Member States and is subsequently published in the

<sup>183</sup> Notice from the Commission: Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid; C 272, 15.11.2007, p. 1.

<sup>184</sup> State Aid Scoreboard 2017, [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

<sup>185</sup> In its 2011 report on the efficiency of State aid procedures, the Court of Auditors considered that, in view of the importance of aids granted under existing aid schemes, the Commission's monitoring activity should be reinforced. For further information see the recommendation No 1 of the Court of Auditors Report recital 96, p. 41 available at <http://eca.europa.eu/portal/pls/portal/docs/1/10952771.PDF>.

<sup>186</sup> Except Bulgaria, Cyprus, Denmark, Estonia and Slovakia.



TAM<sup>187</sup>, the Commission verified the reporting for the schemes monitored.

The Commission follows up on irregularities and uses the means at its disposal, as appropriate, to address the competition distortions that these may have caused. In some cases, Member States offer to voluntarily redress the problems detected, for example to amend national legislation or to recover the excess aid granted. In other cases, the Commission may need to take formal action.

## **Specific objective 12: EU competition law instruments aligned with market realities and contemporary economic and legal thinking (State aid control)**

State aid modernisation started in 2012, culminating in a comprehensive review of the main State aid guidelines as well as the adoption of the General Block Exemption Regulation in 2014. The General Block Exemption Regulation enables Member States to implement a wide range of State aid measures without prior Commission approval because they are unlikely to distort competition. As a result, about 95% of state aid measures implemented by Member States are now exempted. In 2017, the Commission extended the scope of this Regulation to ports and airports.

The efforts to focus and modernise EU State aid rules and improve the Commission's working methods are continuing. In the context of the Multiannual Financial Framework 2021-2027, the Commission has proposed to simplify co-investment involving both EU funding and Member State investment, through a revision of the EU State aid Enabling Regulation. In 2018 the Commission has proposed a further expansion of the Enabling Regulation, which is the legal basis for the adoption of the General Block Exemption Regulation. On 26 November 2018, the Council adopted the revision of the Enabling Regulation. This gives the Commission the opportunity to targeted simplifications for funding of European Territorial Cooperation (ETC) programmes (Interreg), in particular to cover large undertakings. That would complement the broad exemption which already applies in this area.

In addition, a future General Block Exemption Regulation could also cover national financing combined with the InvestEU Fund. The InvestEU Fund is a single set of rules for all financial instruments and budgetary guarantees proposed to form part the next Multiannual Financial Framework (2021-2027) – where the Commission will have a strong role in the selection of the supported projects and schemes in accordance with a common EU interest and that public support will be additional to private investment, will be transparent and will be evaluated. Only limited additional State aid requirements are therefore needed to ensure that there are no competition concerns when Member States' money is combined with EU money within InvestEU. Member States' money channelled through InvestEU could then in future be exempted from prior notification to the Commission under State aid rules.

Apart from those areas, the Commission has also announced that it envisages a future exemption for R&D projects by SMEs awarded with the 'Seal of Excellence' label under the EU's future Horizon Europe fund. This would be possible because the rules for projects to qualify for the 'Seal of Excellence', as assessed by the Commission before awarding the Seal of Excellence, and the relatively limited size of financial support would remove competition concerns.

*Launch of the Fitness check of the 2012 State Aid Modernisation package, railways guidelines and short term export credit insurance*

In 2018, the Commission launched in line with Commission's Better Regulation Guidelines, the evaluation of State aid rules, which were adopted as part of the State Aid

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<sup>187</sup> <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>.

Modernisation, the railways guidelines and the short term export credit insurance.<sup>188</sup> The evaluation takes the form of a “fitness check” to verify whether the rules have actually worked in the way intended and are fit for purpose. It will provide a basis for decisions, to be taken by the Commission in the future, about whether to further prolong or possibly update the rules.

#### *Launch of the review of the Emissions trading scheme State aid guidelines (ETS Guidelines)*

In line with Commission’s Better Regulation Guidelines, the review of the ETS Guidelines has been launched. Under the ETS Guidelines the Member States can compensate some electro-intensive users, for part of the higher electricity costs resulting from the EU Emissions Trading Scheme. The objective of such compensation is to minimise carbon leakage risk, which materialises when emission costs cause relocation from the EU to third countries without comparable constraints. The existing rules allowing for compensation will be revised to ensure that they are adapted to the new Emissions Trading Scheme for the period 2021-2030.

#### *Prolongation of the Export Credit Insurance State aid rules until 2020*

On 17 December 2018, the Commission adopted a Communication prolonging the State aid rules for export credit insurance until 2020.<sup>189</sup> The Export Credit Insurance State aid rules set criteria under which EU governments can provide financial support to buyers of exports from their country, in the form of short-term credit insurance. If there is a viable private market for insuring the risk that buyers will not pay, public export credit agencies may only provide insurance at market rates.

#### *Prolongation of the Regulation on de minimis aid to undertakings providing services of general economic interest (SGEI) until 31 December 2020*

On 7 December 2018, the Commission adopted the prolongation of the Commission Regulation on de minimis aid to undertakings providing services of general economic interest until 31 December 2020.<sup>190</sup> The prolongation will reduce the administrative burden and provide legal certainty for compensation measures which do not exceed EUR 500 000 over any period of three fiscal years granted to undertakings providing such a service and therefore shall be deemed not to affect trade between Member States and/or not to distort competition.

#### *Prolongation of the specific regime for operating aid to airports up to 700 000 passengers per year until 2024*

On 10 December 2018, the Commission adopted a communication prolonging until 2024 the specific regime for operating aid for airports with up to 700 000 passengers per year in the Aviation Guidelines adopted in 2014. The prolongation will provide legal certainty to airports with less than 700 000 passengers per year, and will align the period concerning operating aid for all airports.<sup>191</sup>

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<sup>188</sup> The current fitness check will cover the General Block Exemption Regulation (GBER), De minimis Regulation, Regional aid Guidelines, Research, Development and Innovation (RDI) Framework, Communication on State aid for important projects of common European interest (IPCEI Communication), Risk finance, Airport and aviation Guidelines, Energy and Environmental Aid Guidelines (EEAG), Rescue and restructuring Guidelines but also the Railways Guidelines as well as the Short term export credit Communication (the two latter that have not been included in the 2012 SAM package).

<sup>189</sup> Communication from the Commission concerning the prolongation of the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, Official Journal C457, 19.12.2018, p. 9. See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1219\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1219(01)&from=EN).

<sup>190</sup> Commission Regulation (EU) 2018/1923 of 7 December 2018 amending Regulation (EU) No 360/2012 as regards its period of application, Official Journal L 313 of 10.12.2018, p. 2–3. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1923&from=EN>.

<sup>191</sup> See: <http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=3&documentType>

### *Revision of the Simplified Procedure Notice and Best Practices Code*

In 2018, a new Best Practices Code was adopted, replacing and combining the previous Simplified Procedure Notice and Best Practices Code. The Best Practices Code for State aid control gives guidance on how the Commission, Member States and other stakeholders work together in State aid procedures. This covers, for example, how to ensure that complex State aid cases are handled most effectively, how complaints about State aid are followed up, and monitoring of how Member States implement State aid measures in practice. The Best Practices Code explains how State aid procedures are carried out, and sets out the steps the Commission is taking to increase the speed, transparency and predictability of these procedures.

## 1.4 Promoting competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission's reputation world-wide

The Commission engages in advocacy activities and promotes competition culture in the EU and worldwide. Maintaining and strengthening the Commission's reputation worldwide and promoting international cooperation in the area of competition policy is defined as a Commission priority.<sup>192</sup>

### **Specific objective 13: Competition advocacy contributing to a pro-competitive regulatory framework at EU and national level**

In 2018, DG Competition continued to work in close cooperation with other Commission services on the Commission's wider economic policy and economic governance agenda, including participating in horizontal policy coordination exercises such as the European Semester and the support to structural reforms, as well as contributing to other policy initiatives of the Commission. Such cooperation is aimed at:

- (i) Ensuring a consistent approach to competition-related issues across the Commission;
- (ii) Ensuring that competition policy is as a key contributor in achieving long-term Commission objectives such as growth and competitiveness; and
- (iii) Complementing other Commission policy areas with specific competition-related knowledge and input.

In 2018, DG Competition also continued to work together with other services of the Commission and with other institutions, in particular the European Parliament. As in previous years, the Parliament adopted a resolution on the Commission's annual Report on competition policy. The Parliament endorsed a robust competition policy that preserves the integrity of the internal market and empowers citizens with affordable prices, choice and innovations in the market place. This was welcomed support for the Commission's efforts to tackle illegal cartels and abuses of a dominant position of companies, and to review mergers and State aid given in the single market.

On 19 December 2018, a political agreement was reached between the Parliament and Council on a Directive to ensure protection of EU farmers and a majority of EU agri-food companies against practices contrary to good faith and fair dealing. DG Competition worked throughout the legislative process to ensure that the definition of unfair trading practices should not prevent trading partners from engaging in such efficiency-enhancing agreements or trading conditions which can bring benefits for suppliers, buyers and consumers.

In 2018, the Parliament welcomed that State aid control has proven effective in tackling selective tax advantages for multinationals. In 2018, the Commission continued to take important actions in this area. The Commission took a systematic approach to analysing the evidence on tax rulings from all Member States.

The Parliament urged the Commission to continue playing its key role in controlling State aid in the financial sector, ensuring that aid to banks be kept to the minimum necessary and that adequate measures be taken to return the banks to viability and to minimise distortions of competition in the internal market. The Commission shared Parliament's goal of reducing State aid in the sector over time. The Commission continued to explain its actions in this field in the other institutions.

The Parliament also organised a hearing on the digital economy. Parliament called upon the Commission to reflect on the way that competition enforcement can remain up-to-date in an online society.

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<sup>192</sup> Mission Letter by President Juncker to Commissioner Vestager.

## **Specific objective 14: Explaining competition policy and its benefits**

Knowledge of the benefits of competition policy is essential for citizens, allowing them to exploit their opportunities as consumers, for businesses to compete on the merits and for policy makers to bring initiatives that support smart, sustainable and inclusive growth, allowing businesses to be efficient and non-distortive market operators. Explaining competition policy and demonstrating its benefits to citizens and stakeholders at all levels is defined as a priority for the European Commission.

In 2018, DG Competition continued its advocacy efforts aimed at demonstrating the benefits of competition to citizens as well as stakeholders and explaining to businesses and Member States the economic and legal approach used by DG Competition when taking decisions.

As every year<sup>193</sup>, DG Competition presented its 2017 Report on Competition Policy to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, and engaged in a structured dialogue with the institutions. DG Competition engaged with the European Parliament, in particular the Economic and Monetary Affairs Committee (ECON), on a multitude of topics and strived to provide timely and effective replies to parliamentary questions.

In October 2018 DG Competition jointly with DG Agriculture and Rural Development published the Report on the application of competition rules in the agricultural sector.<sup>194</sup> In particular, it showed that competition law enforcement is safeguarding the internal market – also to the benefit of farmers and that it can also help farmers obtain better prices and conditions when selling their products to large buyers or cooperatives.

DG Competition's external communication is focused on the use of mass media to reach a variety of audiences, including businesses, lawyers, researchers, academics, students and the general public. This is achieved principally via the Commissioner's press conferences, press releases and speeches, as well as social media. In addition, the Directorate-General issues newsletters and other publications aimed at stakeholders and the general public, as well as participation by staff in stakeholder conferences.

The mass media are by far the most cost-effective channel to reach a wide audience. According to Eurobarometer Flash 476 Survey on "Citizens' Perception about Competition Policy", launched in 2018, people's two main sources of information about competition policies were television (58%) and newspapers or magazines, including online (58%). These were followed by internet-based media (33%) and radio (33%). The percentage of positive replies by EU citizens agreeing that effective competition has a positive impact on them as consumers increased to 78% from 74% in 2014. The results will be published in spring 2019.<sup>195</sup>

DG Competition produced 560 press releases related to competition cases during 2018. Of these, 140 were longer, multilingual, press releases while a further 420 were shorter and monolingual. Media coverage of some of the cases was worldwide, reaching tens of millions of people, for example, on the Google Android and Qualcomm antitrust decisions. All of these cases were covered by TV, radio, print and internet media around the globe.

Throughout 2018, Commissioner Vestager delivered 102 speeches to a variety of audiences. The Director-General delivered 16 speeches<sup>196</sup> at a number of international events.

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<sup>193</sup> Since 1971.

<sup>194</sup> Report from the Commission to the European Parliament and the Council on the application of the Union competition rules to the agricultural sector, available at [http://ec.europa.eu/competition/sectors/agriculture/report\\_on\\_competition\\_rules\\_application.pdf](http://ec.europa.eu/competition/sectors/agriculture/report_on_competition_rules_application.pdf).

<sup>195</sup> See [http://ec.europa.eu/competition/publications/reports/surveys\\_en.html](http://ec.europa.eu/competition/publications/reports/surveys_en.html)

<sup>196</sup> The number of speeches published on the DG Competition web site. See: [ec.europa.eu/competition/speeches/index\\_2018.html](http://ec.europa.eu/competition/speeches/index_2018.html).

On social media, the Directorate General for Competition was active on Twitter during 2018. Throughout the year, more than 1,200 tweets from the Directorate-General's account generated more than 3.6 million impressions.<sup>197</sup> The most popular tweets related to the Google Android and Qualcomm decisions, the consumer electronics cartel decisions as well as the tweets concerning the investigation into possible collusion between car manufacturers about clean emission technology. Followers of the Directorate General's Twitter account rose to nearly 12 000 during the year.

The number of subscribers to DG Competition's electronic newsletters rose to over 21 000 in 2018, while its paper publications in the EU Bookshop were viewed or downloaded 6 000 times.

## **Specific objective 15: Promoting international cooperation and convergence in the area of competition policy and greater transparency and basic disciplines on subsidies control**

In 2018, the Commission continued its endeavours to improve multilateral rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO<sup>198</sup> trade rules. Moreover, in 2018 the Commission was engaged in several sectoral initiatives addressing subsidies in the international context, for example the G20 Global Forum on steel excess capacity, the development of regional support guidelines for the semiconductor industry and for shipbuilding (within the OECD). DG Competition, in cooperation with DG Trade, also worked with EU Member States in the International Subsidy Policy Group, gathering information on subsidies granted by countries outside the EU and exchanging views on international subsidy policies at multilateral and bilateral level.

In 2018, the Commission continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), the World Bank and the United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meeting in June 2018, the Commission contributed to the discussions on leniency programmes<sup>199</sup>, non-price effects of mergers<sup>200</sup>, implications of e-commerce for competition policy<sup>201</sup> and market concentration<sup>202</sup>. In December 2018, the Commission contributed to the Competition Committee's deliberations on the treatment of legally privileged information in competition proceedings<sup>203</sup>, gun jumping and suspensory effects of merger notifications<sup>204</sup>, excessive pricing in pharmaceuticals<sup>205</sup>, personalised pricing in the digital era<sup>206</sup>, quality considerations in the zero-price economy<sup>207</sup>, benefits and challenges of regional competition agreements<sup>208</sup>, and investigative powers in practice<sup>209</sup>.

In March 2018, the Commission participated in the Annual Conference of the ICN in New Delhi. Throughout the year, the Commission co-chaired the ICN Cartel Working Group

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<sup>197</sup> The number of impressions means the number of times a tweet appears in Instagram users' feed.

<sup>198</sup> See [http://europa.eu/rapid/press-release\\_IP-18-5786\\_en.htm](http://europa.eu/rapid/press-release_IP-18-5786_en.htm)

<sup>199</sup> See <http://www.oecd.org/daf/competition/rethinking-antitrust-enforcement-tools-in-multi-sided-markets.htm>.

<sup>200</sup> See <http://www.oecd.org/daf/competition/non-price-effects-of-mergers.htm>.

<sup>201</sup> See <http://www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm>.

<sup>202</sup> See <http://www.oecd.org/daf/competition/market-concentration.htm>.

<sup>203</sup> See <http://www.oecd.org/daf/competition/treatment-of-legally-privileged-information-in-competition-proceedings.htm>.

<sup>204</sup> See <http://www.oecd.org/daf/competition/gun-jumping-and-suspensory-effects-of-merger-notifications.htm>.

<sup>205</sup> See <http://www.oecd.org/daf/competition/excessive-pricing-in-pharmaceuticals.htm>.

<sup>206</sup> See <http://www.oecd.org/daf/competition/personalised-pricing-in-the-digital-era.htm>.

<sup>207</sup> See <http://www.oecd.org/daf/competition/quality-considerations-in-the-zero-price-economy.htm>.

<sup>208</sup> See <http://www.oecd.org/daf/competition/benefits-and-challenges-of-regional-competition-agreements.htm>.

<sup>209</sup> See <http://www.oecd.org/competition/globalforum/investigative-powers-in-practice.htm>.



and contributed to several projects such as the survey on the “Key elements for efficient and effective leniency programme and its application” and the new chapter of the ICN Anti-Cartel Enforcement Manual on Private Enforcement. The Commission is also an active member in the other ICN Working Groups; the Merger Working Group, the Unilateral Conduct Working Group, the Advocacy Working Group and the Agency Effectiveness Working Group.

The Commission participated in the 17th meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, held in Geneva in July 2018. The conference included discussions on policy challenges faced by developing countries in competition and regulation in the maritime transport sector, capacity building in competition law and policy and competition issues in the sale of audio-visual rights for major sporting events. Moreover, throughout the year the Commission contributed to a proposal for a Toolkit on International Cooperation within the Discussion Group on International Cooperation.<sup>210</sup>

At bilateral level, the Commission aims at including provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2018, the Commission continued FTA negotiations with Chile, Mexico, Mercosur, Azerbaijan, Tunisia and Indonesia, and opened negotiations with Australia, New Zealand, Kyrgyzstan and Uzbekistan. At the end of 2018, the European Union and Swiss negotiators agreed on the text of an Institutional Framework Agreement, which also includes State aid rules. The draft agreement is currently in consultation with various Swiss stakeholders.

Furthermore, in 2018 the Commission's negotiations on an Investment Agreement with the People's Republic of China were still ongoing.

As regards the draft Second Generation Agreement between the Commission and the Competition Bureau Canada, the Commission is analysing the impact which the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement<sup>211</sup> would have on the Second Generation Agreement. Moreover, the Commission continued the negotiations with Japan on a Second Generation Agreement with a view to updating the existing cooperation agreement from 2003.<sup>212</sup>

Another key area of Commission activity is technical cooperation with the European Union's main trading partners, developing their competition policy and enforcement regimes. To this effect, the Commission has signed a number of Memoranda of Understanding (MoUs). The Commission has signed MoUs with all the BRICS<sup>213</sup> countries, and it has engaged in technical cooperation with these countries to varying degrees. In the same vein, the Commission signed in June 2018 an Administrative Arrangement with Mexico.<sup>214</sup>

The Commission also assists neighbouring countries when they implement the competition provisions included in FTAs. For example, in 2018 the Commission was involved in negotiating the FTA implementing rules with Tunisia and in monitoring the implementation of the EU competition acquis in countries such as Ukraine.

In negotiations with candidate countries and potential candidate countries, the Commission's main policy objective - in addition to fostering a competition culture - is to help these countries to create legislative frameworks with well-functioning competition authorities and to build up an efficient enforcement record. To meet the conditions for EU accession in the competition policy field, these requirements must be fulfilled. In 2018 the Commission continued to monitor candidate countries' compliance with their commitments under the Stabilisation and Association agreements.

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<sup>210</sup> See: <https://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1675>.

<sup>211</sup> See: <http://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=C-1/15>

<sup>212</sup> See: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722(01))

<sup>213</sup> BRICS is an acronym commonly used to denote the countries Brazil, Russia, India, China and South Africa.

<sup>214</sup> See: [http://ec.europa.eu/competition/international/bilateral/mexico\\_mou\\_2018\\_en.pdf](http://ec.europa.eu/competition/international/bilateral/mexico_mou_2018_en.pdf).



## Specific objective 16: Ensuring the highest standards in the enforcement of competition policy

Competition policy enforcement of the highest standard is necessary to fulfil the above-mentioned general and operational objectives. Fair, impartial, efficient and transparent enforcement of the competition rules strengthens the EU's ability to deliver results with respect to stronger single market and consumer welfare. DG Competition adheres to the highest standards of professionalism, intellectual rigour and integrity to ensure the highest standards in the enforcement of competition policy.

In 2018, DG Competition launched a review of its Smarter Working Initiative Action Plan by the Sounding Board consisting of a large number of staff members reviewing and identifying additional efficiencies and synergies in working methods currently applied and making DG Competition a better workplace. The Sounding Board will report its findings and recommendations to the Senior Management in the course of the spring 2019.

In terms of ensuring the continued efficiency of enforcement, DG Competition continually needs to adapt an increasingly digital environment. New sophisticated IT tools and algorithms used by economic operators combined with an exponential increase in electronic communications, quantity of data and the number of documents on case files make many competition investigations extremely complex and burdensome.

The Commission's proposals for the next Multiannual Financial Framework (2021-2027) adopted in June 2018 included – for the first time – a Single Market Programme and within it the Competition Programme, *An Ambitious Competition policy for a stronger Union in the digital age*.<sup>215</sup> When adopted by the co-legislators, the Competition Programme will help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and further fast-moving developments in an increasingly digital environment, as well as strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the single market. Single Market Programme would enable the Commission to directly support the development of EU competition policy with a dedicated indicative budget of EUR 140 million over the programming period.

According to an earlier Eurobarometer Standard Qualitative survey related to DG Competition's work<sup>216</sup>, conducted among professional stakeholders on certain key quality parameters<sup>217</sup>, there was widespread agreement that DG Competition's impact on the

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<sup>215</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the Programme for single market, competitiveness of enterprises, including small and medium-sized enterprises, and European statistics and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014, (EU) No 258/2014, (EU) No 652/2014 and (EU) 2017/826, COM/2018/441 final - 2018/0231 (COD); *An Ambitious Competition policy for a stronger Union in the digital age*:

See [https://eur-lex.europa.eu/resource.html?uri=cellar:8a43c8d3-6a31-11e8-9483-01aa75ed71a1.0002.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:8a43c8d3-6a31-11e8-9483-01aa75ed71a1.0002.03/DOC_1&format=PDF); See [http://europa.eu/rapid/press-release\\_IP-18-4049\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4049_en.htm).

<sup>216</sup> Eurobarometer Standard Qualitative Study – Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2014) published in March 2015, [http://ec.europa.eu/competition/publications/reports/surveys\\_en.html](http://ec.europa.eu/competition/publications/reports/surveys_en.html); see also Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2010), [http://ec.europa.eu/competition/publications/reports/surveys\\_en.html](http://ec.europa.eu/competition/publications/reports/surveys_en.html); see also annual ranking of competition authorities around the world by Global Competition Review (GCR), the latest June 2015, <http://globalcompetitionreview.com/surveys/article/38830/european-commissions-directorate-general-competition>.

<sup>217</sup> These parameters include: i) Soundness of legal and economic analysis (clarity and comprehensibility of decisions, predictability of decisions, predictability of fines imposed, understanding the markets and quality of economic analysis); ii) Transparency and procedural fairness (level of transparency of DG Competition's work, listening and informing in a timely manner, publication of non-confidential versions of decisions, stakeholder consultations on new rules, observance of procedural rules and burden on businesses and organisations); iii) Economic effectiveness (effectiveness of detection policy, deterrent effect of fines, impact of existing antitrust rules on planned business transactions, timeliness of decisions, focus on the right sectors, adaptation to the technological changes and globalisation, impact on the markets, use of settlements in cartel cases and commitment decisions in antitrust cases, enforcement of decisions and contribution to the EU's economic growth) and iv) Communication and promotion of competition culture

market is significant by promoting competition, raising awareness for competition rules and acting as deterrent. Due to unavailability in 2018 of the respective Commission Framework Contract, it was not possible to repeat the survey in 2018.




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(clarity and comprehensibility of external communication, choice of communication and media channels and promotion of competition culture and policy convergence at the international level).

## 2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL

This section explains *how* the DG delivered the achievements described in the previous section. It is divided into two subsections.

The first subsection reports the control results and all other relevant information that support management's assurance on the achievement of the internal control objectives<sup>218</sup> and reflects specific characteristics and circumstances of the DG. It includes any additional information necessary to establish that the available evidence is reliable, complete and comprehensive; appropriately covering all activities relevant to the DG.

The second subsection deals with the other components of organisational management: human resources, better regulation principles, information management and external communication.

### 2.1 Financial management and internal control

Assurance is an objective examination of evidence for the purpose of providing an assessment of the effectiveness of risk management, control and governance processes.

This examination is carried out by management, who monitors the functioning of the internal control systems on a continuous basis, and by internal and external auditors. Its results are explicitly documented and reported to the Director-General. The reports produced are:

- Contribution of the Internal Control Coordinator, including the opinion and the observations of the ex-post controls of financial transaction; and the results of internal control monitoring at the DG level;
- Risk assessment and risk register presented to and approved by the Senior Management;
- Note on the results of ex-post review of financial transactions;
- Notes on fraud-prevention and inadvertent disclosure of documents;
- Observations, recommendations and limited conclusions issued by the Internal Audit Service (IAS) and recommendations by the European Court of Auditors;
- Financial reports on budget execution, expenditures, payment delays, procurement and contract management;
- Observations and the recommendations issued by the Accounting Officer.

These reports result from a systematic analysis of the evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a complete coverage of the budget delegated to the Director-General of DG Competition.

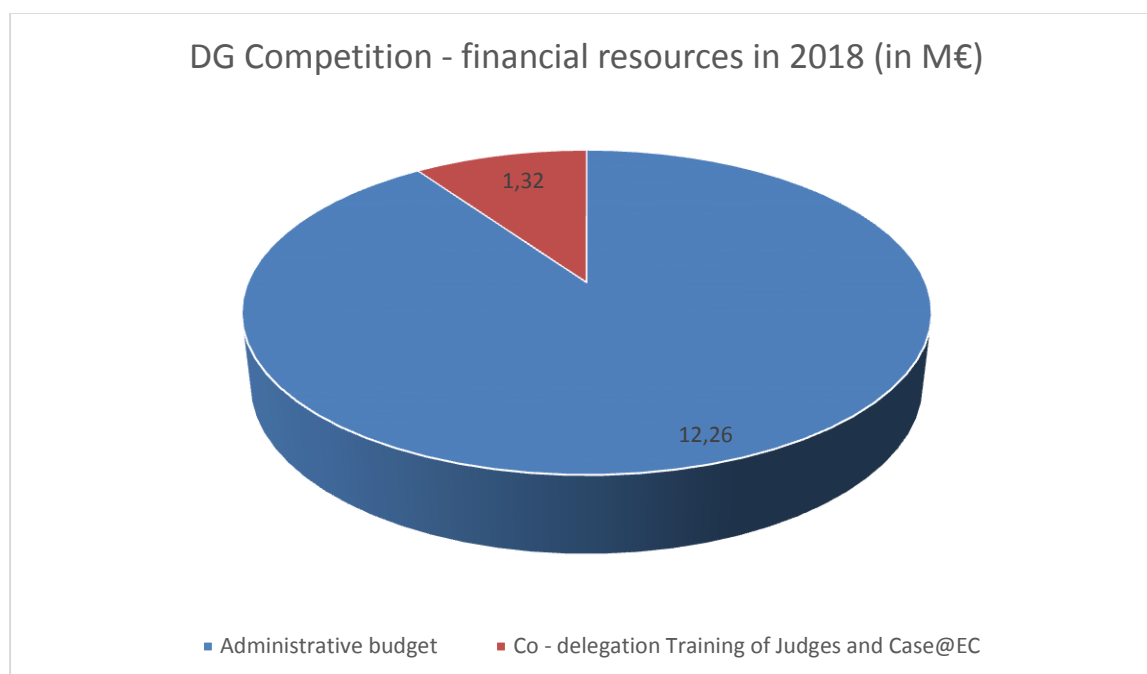
This section reports the control results and other relevant elements that support management's assurance. It is structured into (a) Control results, (b) Audit observations and recommendations, (c) Effectiveness of the internal control system, and resulting in (d) Conclusions on the impact as regards assurance.

The financial resources of DG Competition derive from its moderate administrative

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<sup>218</sup> Art 36.2 FR: a) effectiveness, efficiency and economy of operations; b) reliability of reporting; c) safeguarding of assets and information; d) prevention, detection, correction and follow-up of fraud and irregularities; and e) adequate management of risks relating to the legality and regularity of underlying transactions. Moreover, the internal control framework is a principle-based system with the aim of ensuring robust internal control, by providing the necessary flexibility to allow departments to adapt to their specific characteristics and circumstances.

budget and other resources:



### 2.1.1 Control results

This section reports and assesses the elements identified by management that support the assurance on the achievement of the internal control objectives<sup>219</sup>. The DG's assurance building and materiality criteria are outlined in the AAR Annex 4. Annex 5 outlines the main risks together with the control processes aimed to mitigate them and the indicators used to measure the performance of the relevant control systems.

#### *Focus of internal controls on EU competition policy enforcement and policy*

DG Competition is committed to ensuring EU competition policy enforcement of the highest standards. Enforcement actions are taken in the public interest assessing evidence and other elements of information objectively pursuant to the principle of rule of law. The process is characterised by impartiality vis-à-vis the parties at all stages of the process and respecting their rights of defence governed by the respective regulations, guidelines and best practices issued for competition proceedings, which are maintained aligned with market realities and contemporary economic and legal thinking and advocacy activities.

The Internal Control Framework of DG Competition (1 December 2017) takes into account the revised Internal Control Framework of the Commission that came into force 1 January 2018 (Communication on the Revision of Internal Control Framework (C(2017) 2373)). It governs the internal controls related to the main inherent risks in DG Competition, which concern procedures leading to Commission enforcement actions (Commission decisions) and policy initiatives in the field of EU competition policy, handling of confidential information as well as attracting and maintaining highly qualified staff and the necessary IT support and tools.

<sup>219</sup> 1) Effectiveness, efficiency and economy of operations; 2) reliability of reporting; 3) safeguarding of assets and information; 4) prevention, detection, correction and follow-up of fraud and irregularities; and 5) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments (FR Art 36.2). Moreover, the internal control framework is a principle-based system with the aim of ensuring robust internal control, by providing the necessary flexibility to allow departments to adapt to their specific characteristics and circumstances.

Considering the impact that competition enforcement decisions can have on EU citizens, companies and the Member States, DG Competition cannot focus any less on its non-financial than its financial controls. The internal guidance, management supervision and effective controls in this area help DG Competition to achieve its objectives and provide the additional benefit of internal knowledge building and sharing. The controls demonstrate themselves, *inter alia*, as follows:

- A cascade of steering meetings (weekly meeting with the Commissioner and the Cabinet, Senior Management Meeting, Operational Committee Meeting, competition instruments management meetings);
- Competition instrument specific Manuals of Procedures (ManProc) providing guidance to the staff of DG Competition about the different roles, procedures, templates, required consultations and procedural steps to be followed in competition policy enforcement;
- Document Management and Case Management Applications support and guide the key business processes and exchanges with stakeholders;
- The coordination units of each competition instrument strongly contribute to ensuring policy consistency and high quality of draft decisions in terms of substance and clarity
- Chief Economist Team (CET), the Principal Advisor, and the Hearing Officer oversee their dedicated specialist areas and thereby mitigate risks;
- Peer review panels can be organised in major cases;
- The Legal Service and DG Competition collaborate intensively on competition enforcement cases.

Financial management plays a more minor part in DG Competition's overall activity, and this is reflected in the Internal Control Framework and the controls in place. The implementation of EU competition policy involves a modest administrative budget (12,26 million in 2018<sup>220</sup>) supporting organisational management and functioning of DG. The budget covers the administrative costs in support of DG Competition's operations such as missions, expert groups, advisory committees, conferences, studies, consultations, expert advice, IT and training. In addition, DG Competition manages another EUR 1,32 million received by co-delegation<sup>221</sup> (Training of judges programme and contribution to the corporate IT-project CASE@EC).

#### *Governance structures*

The internal control processes in DG Competition are based on the Commission Internal Control Framework, guidance, best practices and materials distributed via the Internal Control Correspondents Network and the adopted Internal Control Framework of the DG Competition. These consist, among others, internal control effectiveness review, internal control criteria and indicators, review templates, and ad-hoc advice of the coordinating unit.

The Communication C(2017) 2373 on the Revision of the Internal Control Framework prompted the Directors General and the Directors of the Executive Agencies to formally appoint a Director in charge of Risk Management and Internal Control. For DG Competition the responsibility is split in two: The Director of the Horizontal Management Directorate is nominated the Director in charge of risk management and internal control, while the Head of Unit COMP.04 (Strategy, Delivery and Evaluation) is nominated the Head of Unit taking responsibility for the completeness and reliability of management reporting on the results and on the achievement of objectives in Part 1. They together take the responsibility for the continuous monitoring of the internal control system (see Annex 1).

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<sup>220</sup> This amount reflects DG COMP's administrative expenditures (see annex 3).

<sup>221</sup> Appropriations cross sub-delegated are reported directly to the Directorate-Generals concerned.

The internal control governance consists of the DG Competition Network of Internal Control Correspondents, Internal control and risk review meetings and specific responsibilities of the units and individuals related to internal controls.

- Internal Control Management Group Meeting (ICMM) assembling mainly coordinating units<sup>222</sup> assesses and reports on the functioning of the specific internal controls, which serves as the basis for the overall assessment of the functioning of the internal controls in DG Competition. This contributes to the declaration of assurance in the Annual Activity Report.
- Internal control framework at the DG level is implemented through effective use of control procedures and internal control structures relating to enforcement activities, horizontal activities - including human resources planning, ethics, business continuity, advocacy and communication activities - and the financial management.
- The monitoring and assessment of the presence and functioning of the control system is conducted with the help of monitoring indicators, which fall into two categories:
  1. Impact and output indicators measuring the achievement of objectives defined in the Strategic and Management Plan of the DG. These indicators are reported in the Annual Activity Report; and
  2. Internal Control Monitoring Criteria measuring the functioning of internal control principles and components in the context of the Internal Control Framework. The results of the assessment are reported in the Annual Activity Report.

As regards the management of administrative expenditures, DG Competition operates a centralised circuit for its administrative expenditures, partially decentralised for the Training of judges' programme and a decentralised circuit with counterweight for issuing recovery orders in relation to fines. The role of the operational units/directorates is important, in particular with respect to operational initiation and verification. A close and constant liaison with members of the DG's Finance Team is essential throughout the implementation of the Budget. These arrangements allow for a more responsive organisation without endangering the effectiveness of internal controls.

In financial management, DG Competition relies both on ex-ante and ex-post controls; for efficiency purposes, the latter takes the form of a year-end review performed by the Internal Control Coordinator. It is designed to review procurements, financial transactions and the effectiveness of the internal control system for financial management.

### **2.1.3.3. Effectiveness = the control results and benefits**

In order to be considered effective, controls are expected to meet the internal control objectives detailed hereafter and result in benefits. DG Competition has set up internal control processes aimed to ensure the adequate management to mitigate the various risks encountered in its operations.

#### ***a. Control effectiveness as regards security of IT-systems***

The control objective is to ensure that confidential and/or sensitive information is not disclosed or its integrity breached (data altered) due to security of IT systems and/or information processes not being fully effective.

The controls in place include the yearly review of the IT Risk Register and the setup of formal procedures to add, manage and remove user access rights to IT applications.

The IT related risks of DG Competition are documented in its IT Risk Register. The most prominent of these risks are integrated into the DG's risk register. IT Risk Management

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<sup>222</sup> Units A1, A2, A3, 03, Dir. G, CPI, 04, R1, R2, R3 and the HR Business Correspondent Team.

ensures visibility, accountability and regular monitoring of IT risks so they can be best addressed.

DG Competition maintains a number of IT applications that support the enforcement work of the DG and the handling of documents. The access to these applications is administrated by DG Competition in order to ensure that there is a constant control over the access rights. This control ensures that each user only has access to the information that is necessary to perform his tasks.

The benefit with these controls is a reduced risk of sensitive information being disclosed thus avoiding events that could potentially harm the reputation of the Commission.

The analysis of the available control results has not unveiled any weakness which could have a material impact on the security of IT-systems. DG Competition therefore concludes that it reaches full assurance that the effectiveness of the internal control objective has been achieved.

***b. Control effectiveness as regards enforcement and policy actions taken in the area of EU competition policy***

Enforcement actions in the field of EU competition law are taken in the public interest assessing objectively evidence and other factual elements of information pursuant to the principle of rule of law. The process is characterised by impartiality vis-à-vis the parties at all stages of the process and respecting their rights of defence governed by the respective regulations, guidelines and best practices issued for competition proceedings, which are maintained aligned with market realities and contemporary economic and legal thinking. Commission decisions can also be subject to appeals or claims for damages, which could lead to substantial financial or reputational loss for the Commission.

The control objective is to ensure that the Commission's enforcement actions in the area of EU competition policy are of high quality and also withstand the scrutiny of the EU courts, if appealed on procedural or substantive grounds. This contributes to deterrent effect of competition policy enforcement and avoids undermining the Commission as an enforcer of EU competition policy, by avoiding reputational damage or claims for damages.

The implementation of the internal controls in DG Competition during 2018 contributed to the high quality of enforcement decisions taken by the Commission in the various instruments of competition policy (antitrust, merger control and State aid control). The risk management process has helped to identify and address the main risks that can prevent the achievement of the objectives. Potential weaknesses or errors have been mitigated and corrected through ex-ante controls involving among other things step-by-step procedures and consultations to be followed in the daily operations. A dedicated team in DG Competition continuously updates internal instrument specific Manuals of Procedures to take account of developments and recent jurisprudence.

The analysis of the available control results has not unveiled any weakness which could have a material impact on the performance of the Directorate General in terms of supervision of the cost-effectiveness of the controls. DG Competition therefore concludes that it reaches full assurance that the effectiveness of the internal control objective has been achieved.

***c. Control effectiveness as regards fines imposed in the area of competition***

The control objective is to ensure that Commission decision ensures the Commission's legal rights in terms of revenue entitlements and that EU accounting rules are respected and reflect the reality.

In 2018, a total amount of EUR 6,53 billion was imposed. The controls in place ensured that the related decisions were free of errors, that the amounts have been correctly registered and that the reporting at the year-end is true and fair. Follow-up of



outstanding amounts in cooperation with DG Budget and the Legal Service was performed 4 times during the year.

The analysis of the available control results has not unveiled any weakness, which could have a material impact on the legal rights in terms of revenue. DG Competition therefore concludes that it reaches full assurance that the effectiveness of the internal control objective has been achieved.

#### ***d. Control effectiveness as regards security of information***

The control objective is to ensure that confidential information is not disclosed in the course of proceedings.

In 2018, DG Competition had 20 cases of inadvertent disclosures of confidential information, of which only 13 were attributable to DG COMP. All incidents were considered to be non-critical to its operations and thereby having no impact on the assurance. One incident is still being investigated. All incidents triggered immediate mitigating measures and recommendations to prevent further disclosures.

#### ***e. Control effectiveness as regards fraud, insider trading, conflict of interests***

The control objective is to ensure that fraud is prevented and detected. The Anti-Fraud Strategy complements the DG's Code on Ethics and Integrity, and the Security Guidelines. It takes into account the DG's relatively limited administrative budget and absence of operational budget. In this context, possible fraudulent activities would mostly be linked to ethical concerns (conflicts of interest, undue influence by stakeholders) and insider trading.

The questions and declarations on possible conflicts of interest demonstrate the existence of ethical awareness among staff.

During the reporting year, no case of fraud was transmitted to OLAF for investigation, nor did OLAF initiate any case concerning the activities of DG Competition based on other sources of information.

The revision of the DG's Anti-Fraud Strategy will be concluded once the new Updated Commission's Anti-Fraud Strategy is adopted. The revision of the DG Competition Code on Ethics and integrity is also underway. Throughout the year, the DG continued its participation in OLAF's Fraud Prevention and Detection Network, as well as its training and awareness raising activities on ethical matters (6 sessions for newcomers, trainees and visiting officials from national competition authorities).

The degree of implementation of the ethics code and the anti-fraud strategy, internal control results and the evaluation of the yearly risk analysis exercise covering also fraud-related risks, give the management assurance that the risk of fraud is sufficiently managed and mitigated.

#### ***f. Control effectiveness as regards legality and regularity in financial management***

The control objective is to ensure that the Director-General has reasonable assurance that the total amount of any financial operation authorised during the reporting year, which would not be in conformity with the applicable contractual or regulatory provisions, does not exceed 2% of the total expenditure.

As regards the legality and regularity of the underlying transactions, the objective is to ensure that the estimated annual risk of errors in commitments and payments at the time of authorisation of the transaction is less than EUR 172 000. All corrections take place before the actual payment is made (ex-ante), and there are no errors left at the moment of payment. As regards the error rate, DG Competition applied the approach recommended by DG BUDG and assumed the average error rate of 0.5%, which is the

most conservative estimate.

During the reporting year, there were six recorded deviations, which had no impact on the legality and regularity of the transaction.

In 2018, three procurement procedures were subject to a supervisory desk review by the local Advisory Committee for Procurements and Contracts, prior to the signature of the contract.

Furthermore, a representative (48,04% of the commitments, 39,38% of the payments) sample of the financial transactions of DG Competition was subject to an ex-post control. Overall, during the reporting year the controls carried out by DG Competition for the management of the budget appropriations were efficient and cost effective.

The total amount of payments in 2018 was EUR 8,6 million and the observed error rate was 0%. The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance of sound financial management, in particular, as the prevention of potential errors in procurement procedures is less expensive than costs of potential litigations and/or legal proceedings.

In addition, there are a number of non-quantifiable benefits resulting from the controls aimed to ensure that the financed projects contributed to the achievement of the policy objectives. The benefits of controls in non-financial terms cover: better value for money, deterrence, efficiency gains, system improvements and compliance with regulatory provisions.

The analysis of the available control results has not unveiled any weakness which could have a material impact as regards the legality and regularity of financial operations. DG Competition therefore concludes that it reaches full assurance that the effectiveness of the internal control objective has been achieved.

## Conclusion

Taking into account the conclusions of the review of the elements supporting assurance, it is possible to conclude that the internal controls systems implemented by DG Competition provide sufficient assurance to adequately manage the risks related to its operations as well as to the legality and regularity of the transactions. Furthermore, it is also possible to conclude that the internal control systems provide sufficient assurance with regards to the achievement of the other internal control objectives.

In the context of the protection of the EU budget, at the Commission's corporate level, the DGs' estimated overall amounts at risk and their estimated future corrections are consolidated. For DG Competition, the estimated overall amount at risk at payment<sup>223</sup> for 2018 expenditure is EUR 42 000. This is the AOD's best, conservative estimation of the amount of relevant expenditure<sup>224</sup> (EUR 8,4 million) during the year not in conformity with the applicable contractual and regulatory provisions at the time the payment is made.

This expenditures have been subject to ex-post controls. The error rate is equal to 0%. Thus, the conservatively estimated future corrections<sup>225</sup> for those 2018 payments are

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<sup>223</sup> In order to calculate the weighted average error rate (AER) for the total *relevant expenditure* in the reporting year, the *detected*, estimated or other equivalent error rates have been used; cf. note 6 in the table.

<sup>224</sup> "*Relevant expenditure*" during the year = payments made, minus new pre-financing paid out, plus previously paid pre-financing which was cleared in the reporting year; cf. note 5 in the table.

<sup>225</sup> Even though to some extent based on the 7 years historic Average of Recoveries and financial Corrections (ARC), which is the best available indication of the corrective capacity of the ex-post control systems implemented by the DG over the past years, the AOD has not adjusted this historic average. Any ex-ante elements, one-off events, (partially) cancelled or waived ROs, and other factors from the past years that would no longer be relevant for current expenditures have been adjusted in order to come to the best but conservative estimate of the ex-post future corrections to be applied to the reporting year's relevant expenditure; cf. note 8 in the table.

close to zero (see table "Estimated overall amount at risk at closure 2018"). The difference between those two amounts leads to the estimated overall amount at risk at closure for the 2018 expenditure of EUR 42 000.

#### **Estimated overall amount at risk at closure**

DG COMP	Pay-ments made (m€)	minus new pre-financing (m€)	plus cleared pre-financing (m€)	relevant expenditure (m€)  = (2) – (3) + (4)	Average Error Rate (%)	estimated overall amount at risk at payment (€)  = (5) x (6)	Average Recoveries and Corrections (adjusted ARC; %)	estimated future corrections (€)  = (5) x (8)	estimated overall amount at risk at closure (€)  = (7) – (9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Administrative expenditures	8,1	N/A	N/A	8,1	0.5%	40 500	0	0	40 500
Grant program – Training of Judges	0,5	0.3	0.1	0.3	0,5%	1 500	0	0	1 500
Overall, total	8,6	0.3	0.1	8,4	0,5%	42 000	0	0	42 000

## **2. Efficiency = the Time-to-... indicators and other efficiency indicators**

The principle of efficiency concerns the best relationship between resources employed and results achieved. This section outlines the indicators used to monitor the efficiency of the control systems. DG Competition continuously reviews its control strategy to ensure the cost-effectiveness of controls.

### **a. Control efficiency as regards security of IT-systems**

DG Competition's IT governance body, the Document and IT management committee, evaluates the probability and impact of IT risks at least once per year in light of the evolution of previous risks and the potential appearance of new risks. It also discusses mitigation actions.

In addition, DG Competition's IT projects entail risk management according to the Commission's PM<sup>2</sup> methodology, in which risk management is a continuous, proactive and systematic process for identifying, assessing and managing risks in line with the accepted risk levels, carried out throughout the project to provide reasonable assurance as regards the achievement of project objectives. IT projects' risk logs are continuously updated in order to identify and document each risk, responsible, mitigation actions, and the remaining risk and its acceptance. For each IT project, Project Status Reports (PSR) summarising, amongst others, the current risk status are produced at the relevant intervals required by the Commission's IT portfolio management governance.

As regards the access rights management of the case management applications and related applications, four levels need to be distinguished:

- network access control,
- identity control,
- application access management (user administration and authorisation),
- user authentication.

While most processes are automated, the application access management is done manually by users having the appropriate role in one central application and cascaded to the related applications.

***b. Control efficiency as regards enforcement and policy actions taken in the area of EU competition policy***

Considering the impact the enforcement actions of the Commission can have on companies, Member States and finally on consumers, it is essential that DG Competition invests considerable effort to ensure correct application of EU competition law in full respect of rights of defence and the principle of the rule of law. This necessarily entails effective management supervision and controls as well as providing sufficient internal guidance. Due to the complexity of competition policy enforcement, some of the controls supporting this area are relatively labour-intensive. On the other hand, for example templates are a control element that, besides built-in guidance and alignment, provide time savings.

Much of the delivery of the strategic objectives depends on the staff of DG Competition. DG Competition continuously reviews its resource allocation within its matrix structure to promote the flexible and efficient use of human resources to ensure delivery of its priorities and therefore closely monitors workload and time management indicators in this context. It also takes action to find further efficiencies in its working methods across the instruments, most recently in the context of its *Smarter Working Initiative*. DG Competition thus constantly reviews its working arrangement, workload and tools to ensure that the resources are allocated where they are mostly needed and that the controls in place are efficient.

***c. Control efficiency as regards fines imposed in the area of competition***

Fines imposed in the field of EU competition law can have a high monetary value. However, the stable regulatory environment relating to their processing and collection reduces the risk of encoding errors significantly. Controls have thus been reduced while at the same time taking the high value into account. An automatically generated monthly list of fine decision is circulated to ensure a timely encoding in ABAC.

In 2018, fines imposed were introduced into the accounting system in a correctly and timely manner and the accounts therefore reflects the value of the rights concerned.

***d. Control efficiency as regards security of information***

Many controls are embedded in the Manuals of Procedures, so that they are routinely implemented in the course of investigations. When information security incidents are detected, staff proactively takes swift remedial and mitigation measures.

***e. Control efficiency as regards fraud, insider trading, conflict of interests***

Staff awareness actions start shortly after staff takes up employment, with an information session on ethics for newcomers. In addition, all new and returning staff has to follow a compulsory half-day course on ethics and integrity within six months of their arrival.

The annual reminder of the conflict of interest rules is automatically sent to all staff on the first working day of the year. Once a staff member is appointed to a case, prior to being able to access the case file, the staff member confirms the presence or absence of conflicts of interest through an automatic notification in the case management application.

***f. Control efficiency as regards legality and regularity in financial management***

The average payment delay in 2018 was less than 20 days<sup>226</sup>, which is in line with the average payment delay in 2017. Furthermore, more than 97,6 % of all payments were

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<sup>226</sup> Cf. table 6 in Annex 3.

executed within the contractual limit, which is higher than in 2017 (95%). The average registration delay for an invoice was 1.33 days, which is below the Commission's target of five days and much lower than the average registration delay in 2017 (4.5 days). The time to inform beneficiaries in 2018 was 95 days (227 days in 2017), and the average time to grant was also reduced to 211 days (314 days in 2017).

In 2017, DG Competition started to use electronic invoicing. Consequently, in 2018, DG Competition made an effort to simplify the financial circuit for the validation of Information Technology invoices and to increase the efficiency. During its trial period, DG Competition has successfully reduced the involved actors from five to three (Financial Initiating Agent, Payment Verification and Authorising Officer) and has in particular reduced registration delay and the time needed to pay the invoices.

### **3. Economy = the cost of controls**

The principle of economy requires that the resources used by the institution in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The activities of DG Competition are specific, so are the risks. Despite the relatively limited volume of payments (8,6 M€) and budget (13,6 M€), financial stakes affected by the quality of decisions prepared by DG Competition are significantly higher:

Funds managed	
Payments (Expenditure) 2018	8,6 M€
Total budget (Administrative and co-delegation)	13,6 M€
Decisions with fines adopted in 2018	6,5 B€
Amount of pending fines due to appeal to the European Court of Justice	13 B€
Number of pending fines on 31 December 2018	137

That risk exposure is also coupled with risks associated with:

- ***potential claims for damages of significant value, and***
- ***high reputational risk related to Commission's enforcement decisions challenged before courts and annulled by courts.***

The exposure related to those risks cannot be monetarised but is considered high - significantly higher than the payments and the total budget. In this situation, the cost of controls cannot be measured against the payments (or budgets) and needs to be commensurate with the combined exposures related to risks affecting recovery decisions, amounts recovered and on-going efforts on pending recovery cases. The Commission's current rules and guidance don't specify the methodology for the assessment of cost-efficiency of controls dominated by risks related to:

- ***non- monetary exposures (reputational) and***
- ***monetary exposures exceeding significantly payments and budgets***

These considerations need to be taken while reading this sub-chapter and related information in the annexes.

***a. Cost of control security of IT-systems***

The cost of controls as regards the IT risk register and its regular follow up as described in the section on control efficiency as regards security of IT-systems (section 2a above) can be estimated at about 0.7 of a full time equivalent (EUR 117 530).

As regards the access rights management of the case management applications and related applications, largely automated tasks are in place to add/remove users arriving or leaving DG Competition so that manual intervention accounts for less than 10% of a full time equivalent. Manual intervention is always necessary to implement the need to know principle and authorise access of staff to each case. This type of manual intervention can be estimated at an additional 0.5 of a full time equivalent.

***b. Cost of control as regards enforcement and policy actions taken in the area of EU competition policy***

Enforcement of EU competition policy is the core activity of DG Competition and an obligation for the Commission laid down by the Treaty. The cost of controls as regards Commission decisions taken in the area of competition policy (non-spending activity) are difficult to estimate but need to be at sufficient level to ensure the correct application of EU competition law and a comprehensive and impartial review of the cases, as well as to counterweigh the potentially high reputational or monetary impact of a Commission decision potentially overturned by the EU courts and in view of any resulting successful damages claim.

The coordination units of each competition instrument serve as centres of expertise that apply quality controls. Their unique role is recognised in our estimate of the costs of controls: we estimate that 48 full time equivalents (EUR 7 940 400) from these units can be allocated to the quality control of the enforcement and policy actions taken in the area of EU competition policy.

***c. Cost of control as regards fines imposed in the area of competition***

The cost of controls as regards fines imposed is closely linked to those as regards decisions taken in the area of competition, as the decision is the triggering event for the fine.

The costs of the individual transactions are minimal and correspond to less than 10% of a full time equivalent.

***d. Cost of control as regards security of information***

The costs of control regarding security of information correspond to 33 % of a full time equivalent (EUR 55 407), which includes the tasks of local security officer and local informatics security officer.

***e. Cost of control as regards fraud, insider trading, conflict of interests***

The cost of control corresponds to 23 % of a full time equivalent (EUR 38 617), which includes the tasks related to anti-fraud and ethics by the local ethics correspondent/anti-fraud contact point and the HR Business correspondent.

***f. Cost of control as regards legality and regularity in financial management***

As regards financial management, it is estimated that 2 full time staff are attributed to ex-ante controls of procurement and grants procedures, in addition to the base line controls as required by the Financial Regulation such as the "four eyes" principle. Ex-post controls accounts for 10% of one full time post.

The ex-post review of procurements, grants, financial transactions and reported



exceptions performed by the Internal Control Coordinator is estimated to be equivalent to 40.54% of one full time staff.

In total, the cost of controls represents 2,5 full time post e.g. approximately EUR 295 010 (EUR 217 000 for ex-ante controls and EUR 78 010 € for ex-post controls) or equivalent to 3,42% of total expenditure. This is at the same level as in 2017 when the total costs of controls represented 3,44% of total expenditure.

#### **4. Conclusion on the cost-effectiveness of controls**

Based on the most relevant key indicators and control results, DG Competition has assessed the cost-effectiveness and the efficiency of the control system and reached a positive conclusion on the cost-effectiveness of controls.

The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance, in particular, as the prevention of potential errors is less expensive than costs of potential litigations and/or legal proceedings. The Commission decisions in the area of competition policy are complex and, consequently, some of their controls labour-intensive. DG Competition has a stable control environment and its control strategy is consistent with previous years. Overall, during the reporting year the controls carried out by DG Competition for the management of its operations were efficient and cost effective.

Taking into account the obligations resulting from the regulatory framework, the total costs of controls and both the quantifiable and non-quantifiable benefits, DG Competition considers that the controls performed today are efficient and necessary. DG Competition continues to reflect on its control model and examines whether it is possible to make it even more cost-effective and efficient.

### **2.1.2 Audit observations and recommendations**

This section reports and assesses the observations, opinions and conclusions reported by auditors in their reports as well as the limited conclusion of the Internal Auditor on the state of internal control, which could have a material impact on the achievement of the internal control objectives, and therefore on assurance, together with any management measures taken in response to the audit recommendations.

#### ***IAS audit on enforcement of the EU antitrust policy: cooperation with EU national competition authorities and national courts (2017)***

In 2017, IAS concluded an audit on Enforcement of the EU antitrust policy: cooperation with EU national competition authorities and national courts. The audit covered DG COMP's activities contributing to the consistent application of the EU antitrust policy, including the operational procedures underlying the cooperation with the EU national competition authorities and the national courts, and the Commission's initiative to foster cooperation. IAS assessed the arrangements put in place by DG Competition to ensure an effective cooperation with the EU national competition authorities and national courts in order and to enable a consistent enforcement of the antitrust policy at EU level.

IAS underlined a number of strengths in the system: DG Competition effectively and proactively manages relations with the key actors in the Member States and facilitates networks aimed at sharing knowledge beyond the formal obligations under Regulation 1/2003, which the main stakeholders have viewed positively.

The agreed action plan foresaw four recommendations: one very important and three important ones.

The very important recommendation concerned an analysis of the causes of the limited transmission from the Member States to the Commission of judgments of national courts deciding on the application of Article 81 or Article 82 of the Treaty. DG Competition

completed the implementation of the recommendation according to the agreed action plan and IAS closed the recommendation in July 2018.

In October 2018, IAS closed two important recommendations assessed as successfully implemented by DG Competition, concerning inter alia the periodic reconciling by the national competition authorities of their database with the ECN case information system.

The only outstanding recommendation concerns the measurement and reporting of DG COMP's performance. The implementation is on-going but the final step of the implementation in the agreed action plan is scheduled for AAR 2019.

### ***Follow-up to IAS audit on management of local IT in DG COMP (2015)***

IAS performed a second follow-up of the audit on the Management of Local IT (2015) that had resulted in an agreed action plan. Based on the results of this second follow-up, IAS closed the two remaining recommendations addressed to DG Competition, given that they had been implemented adequately and effectively.

### ***The conclusion of the Internal Auditor on the state of internal control in DG Competition***

The Internal Auditor concludes that the internal control systems in place for the audited processes are effective.

### ***European Court of Auditors (ECA) Audits***

In April 2018, the European Court of Auditors (ECA) launched a performance audit in the field of antitrust and merger control. The ECA examines in particular whether the Commission has been effective in enforcing the EU competition rules and how it has identified anticompetitive behaviour, conducted its investigations, and assessed as well as communicated the effectiveness and impact of its work on competition and the resulting benefits for citizens in the Single Market. The ECA will publish a Special Report in 2019 on its findings, which will contribute to DG Competition's constant efforts to improve its performance.

## **2.1.3 Assessment of the effectiveness of the internal control systems**

The Commission has adopted an Internal Control Framework based on international good practice, aimed to ensure the achievement of policy and operational objectives. In addition, as regards financial management, compliance with the internal control framework is a compulsory requirement.

DG Competition has put in place the organisational structure and the internal control systems suited to the achievement of the policy and internal control objectives, in accordance with the standards and having due regard to the risks associated with the environment in which it operates.

### **2.1.3.3. Source and methodology for the internal control systems.**

In 2018, DG Competition applied for the first time its Internal Control Framework (adopted on 1/12/2017) following the defined by the "Communication to the Commission from the Commissioner Oettinger – Revision of the Internal Control Framework" of 19/4/2017 was adopted for DG Competition with the effective date of 2018. Its effectiveness was evaluated consequently, at the end of the first year of implementation, i. e. between October 2018 and February 2019. The assessment comprised the following steps:

1. The Internal Control Framework was presented to the Senior Management Meeting together with the risk review meeting.
2. Lunch seminar was conducted, attended by the risk correspondents, managers and involved staff.
3. A Top Talk (a periodic meeting with staff, video-recorded and distributed speech of the DG) dedicated one of its main chapters to the Internal Control Framework and its key concepts and principles.
4. Desk review of the DG Competition Internal Control Framework, benchmarking with best practices of other DGs, review of the DG BUDG guidance.
5. The Internal Control Management Meeting on 24 November 2018 was briefed about the Internal Control Framework and discussed issues relevant to its application in DG Competition (timing, resources, and links to risk management system, business continuity and ethics).
6. Attribution of the Internal Control Coordination activities to dedicated staff members.
7. Matching of the DG Competition Internal Control Framework with the existing Risk Register, the register of exceptions and past and current IAS recommendations.
8. Internal Control Monitoring Criteria for the year 2018 were assessed; internal control failures were analysed by the relevant staff of DG Competition in January and February 2019. They were accompanied by several internal communications and individual interviews.

Those steps were conducted with respect to the Framework itself, the Guidance of DG BUDG and other best practices.

### 2.1.3.3. Internal controls self-assessment for 2018

The self-assessment of the DG Competition internal controls was conducted based on the pre-set DG Competition Internal Control Framework and respective criteria. All Principles and all criteria, covering all actionable risks, were evaluated.

All the principles were found to be respected.

Two principles were found present but minor improvements were identified for action following the acceptance of the AAR, concerning the following principles:

- *Principle 3 (Control environment area) Management establishes, with political oversight, structures, reporting lines, and appropriate authorities and responsibilities with the pursuit of objectives.*
- *Principle 5 (Control environment area) The Commission holds individuals accountable for their internal control responsibilities in the pursuit of objectives, and*

According to the DG Competition approved Framework, those principles were, among others, to be monitored and assessed using the monitoring indicator:

*Instrument and horizontal ManProcs (manuals of procedures for respectively Competition policy instruments – State Aid, Anti-trust and Mergers and for horizontal activities): roles and tasks are clearly defined, regularly updated and the reported changes are assessed twice per year by the responsible Senior Manager.*

As a result of the assessment, the Instrument ManProcs were evaluated positively. However, the reviewers found the Horizontal ManProcs term imprecise, access to the relevant documents dispersed and responsibilities split among different staff and services without sufficient central coordination. Whereas this situation was not immediately identified as problematic and leading to excessive risk requiring immediate actions, the

management has been proposed to, following the acceptance of the AAR, reassess the risk and take corrective actions if necessary.

### 2.1.3.3. Conclusions on the internal control system.

The conclusions are summarised in the following table:

Activity/ Indicator	Legality & regularity	Cost- Effectiveness of controls	Anti-Fraud Strategy	Reliability of information and reporting	Safeguard of Assets	Reputational
<b>Security of IT-systems</b>	n/a	Positive conclusion	Area covered by the AFS	Positive conclusion	Positive conclusion	Positive conclusion
<b>Enforcement and policy action taken in the area of EU competition policy</b>	Positive conclusion	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	Positive conclusion
<b>Fines imposed in the area of competition</b>	Positive conclusion	Positive conclusion	Area covered by the AFS	Positive conclusion	Positive conclusion	Positive conclusion
<b>Security of information</b>		Positive conclusion		Positive conclusion	Positive conclusion	Positive conclusion
<b>Fraud, Insider trading, Conflict of interests</b>		Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	Positive conclusion
<b>Management administrative expenditure</b>	Error rate below 2%	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	n/a

Based on the methodology, criteria and sources of information described above, DG Competition has assessed its internal control system during the reporting year 2018 and concluded that it is effective and that the components and principles are present and functioning as intended.

In addition, on the principles 3 and 5, even though they are present and functioning overall, some improvements are needed as some minor deficiencies were identified related to attribution of roles and tasks in the manual of procedures.

### 2.1.4 Conclusions on the impact as regards assurance

This section reviews the assessment of the elements reported above (in Sections 2.1.1, 2.1.2 and 2.1.3), the sub-conclusions above, and draws the overall conclusion supporting the declaration of assurance and whether it should be qualified with reservations.

The information reported in section 2 stems from the results of the management and auditors monitoring. The reports result from a systematic analysis of the evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a complete coverage of the budget delegated to the Director-General of DG Competition.

The intrinsic risk for administrative expenditure managed by DG Competition, including procurement and grants, is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place. The Authorising Officer by Delegation's best estimation

of the risks relating to the legality and regularity for the expenditure authorised during the reporting year (EUR 5.39 million) is below 0.5%.

Further assurance is obtained by the risk management process put in place, and the very limited number of significant exceptions and non-compliance events reported in 2018. Management has obtained satisfactory evidence that the internal control system in its entirety is implemented effectively in the DG.

Results from audits during the reporting year give an overall positive feedback and did not include any critical findings. The residual risk from audit recommendations remaining open from previous years is not considered to have an impact on the declaration of assurance.

DG Competition has put in place suitable control measures to limit risks of errors and guarantee that assets and information are safeguarded, and to prevent, detect and correct fraud and irregularities. Comprehensive ex-ante controls were put in place within the financial circuits. Their effectiveness has been positively assessed in an independent quarterly ex-post review and received an independent assurance in an independent yearly review and report. Where necessary, improvements of the overall control strategy and processes were made in the course of the year.

### **Overall Conclusion**

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated; and necessary improvements and reinforcements are being implemented. The Director General, in his capacity as Authorising Officer by Delegation has signed the Declaration of Assurance.

## DECLARATION OF ASSURANCE

*I, the undersigned, Johannes Laitenberger*

*Director-General of DG Competition*

*In my capacity as authorising officer by delegation*

*Declare that the information contained in this report gives a true and fair view<sup>227</sup>.*

*State that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.*

*This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, ex-post controls and the work of the Internal Audit Service.*

*Confirm that I am not aware of anything not reported here which could harm the interests of the Commission.*

*Brussels, 26 March 2019*

*(e-signed)*

*Johannes Laitenberger*

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<sup>227</sup> True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG.



## 2.2 Other organisational management dimensions

### 2.2.1 Human resource management

In a human resource management (HRM) environment characterised by a reform of the HR service delivery model in the Commission, DG Competition continued in 2018 its effort to build a sustainable and balanced workforce. The main HRM outputs linked to specific indicators are listed in Annex 2.

In line with the Strategic HR Plan, the Management Plan and the annual Risk Register of DG Competition, the main HRM challenges were related to: (1) attracting and retaining high-quality staff, (2) developing a balanced workplace, (3) ensuring a solid learning and development agenda for executive and non-executive staff, and (4) strengthening internal communication on HRM. The HRM policies and processes to meet all four of these challenges were incorporated into the Action Plan drawn up in the framework of the Smarter Working Initiative of DG Competition. In the second half of 2018 up to until early 2019, a 'Sounding Board' of around 60 staff members reviewed the on-going and completed actions in the context of the 'Smarter Working Initiative'. New action points will be added to the action plan in 2019.

The e-survey on the 10 DOs for people management, launched in spring 2017, revealed that staff members are convinced that the 10 DOs are relevant for their working environment, but even more important, the majority of staff members are of the opinion that the 10 DOs are well implemented. All senior and middle managers, as well as Deputy Heads of Unit, signed a renewed version of the 10 DOs on 28 May 2018. It was decided to further monitor compliance with the 10 DOs in 2018 and beyond, amongst others in the context of the work of the Sounding Board and through different interviews with staff members. Based on the combined experiences from the previous rounds with middle and senior managers, a new round of the 180° feedback development exercise was launched for 40 Heads of Unit in autumn 2018.

To reinforce the already strong career guidance offer in DG Competition, a pool of experienced managers (senior and middle managers) was created in 2016. In 2018, 5 Directors, 10 Heads of Unit and 1 Advisor were available to provide career guidance to all categories of staff upon request. For this purpose, a guide on 'Tips & Tricks for Managers' was elaborated and made available to all managers. A brochure on careers and mobility in DG Competition is distributed as part of the welcome pack to every newcomer.

When comparing staff movements from and to other DGs and institutions at the end of 2018, DG Competition's external mobility deficit is at -34 with 75 officials leaving and 41 officials joining. When also taking into account temporary agents, external recruitments and staff leaving the EU institutions, the external mobility deficit decreases to -8, with 91 staff members leaving and 83 persons joining the DG, of which 52 through external recruitments.

In terms of work profile, the percentage of staff that belong to the "Law monitoring and enforcement" profile increased further to 79%, in line with DG Competition's core business and mandate. This underscores the strong link between the DG's capacity to operate successfully and the availability of staff with this profile. Meanwhile, the share of staff in the "Administrative support" profile declined further to a total of 1.7%.

DG Competition has been among the most advanced Commission DGs in the field of equal opportunities. Hence, following the 2015 Commission Decision on female representation in management, which set a 40% female representation target for the entire organisation by 2019, the DG was given a binding target of four first appointments of female heads of unit for the period 2015 to 2019 and an indicative target of 45% female heads of unit. In order to meet the Commission targets by the end of the mandate, new measures were adopted in July 2017, which set the quantitative target of first female heads of unit appointments in DG Competition at two by 1 November 2019.

Thanks to the DG's comprehensive approach, one first appointment of a female head of unit was made in July 2017 and a second in January 2019. Hence, DG Competition has reached its target of first female middle management appointments and female representation in middle management rose to 43.18% on 1 January 2019 (compared to 38.6% at the end of 2017/beginning of 2018).

The Internal Communication Strategy and Action plan for 2017-2019 continues to guide our work on internal communications, with a view to motivating the Directorate General's staff by informing them about the many aspects of the DG's work (and how it fits into the Commission's policy objectives) and steps taken to improve their working environment. In addition to the IntraComm page (MyCOMP), we have a weekly email newsletter for all staff, "COMP This Week", which contains links to all important news, including speeches and notices about internal training and "Hot Topics". We produced a number of "One Minute Flash" videos of colleagues explaining important decisions, and worked with the Commission en Direct team to raise awareness among staff in the Commission as a whole about the relevance of competition policy to overall Commission objectives. Internal communications was one of the themes covered by the Directorate General's Smarter Working Initiative Sounding Board, launched towards the end of 2018.

## 2.2.2 Better Regulation

In 2018, DG Competition adopted or launched the review of a number of its regulatory acquis pursuant to the Commission's Better Regulation Guidelines.

The Commission adopted: (1) a Communication prolonging the State aid rules for export credit insurance until 2020<sup>228</sup>; (2) a prolongation of the Commission Regulation on de minimis aid to undertakings providing services of general economic interest until 31 December 2020.<sup>229</sup>; (3) a prolongation of the specific regime for operating aid to airports up to 700 000 passengers per year until 2024<sup>230</sup> and (4) the revision of the Simplified Procedure Notice and Best Practices Code in the field of State aid.

The Commission launched: (1) the evaluation of State aid rules, which were adopted as part of the State Aid Modernisation, the railways guidelines and the short term export credit insurance ("Fitness check")<sup>231</sup>; (2) the review of the Emissions trading scheme State aid guidelines (ETS Guidelines) to ensure that they are adapted to the new Emissions Trading Scheme for the period 2021-2030; (3) the evaluation of the Vertical Block Exemption Regulation (VBER)<sup>232</sup>; (4) the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER)<sup>233</sup>; (4) a public consultation of Commission Regulation 906/2009 ("the Consortia Block Exemption Regulation")<sup>234</sup>; (4) a targeted public consultation on draft guidelines in order to estimate the share of the overcharge passed

<sup>228</sup> Communication from the Commission concerning the prolongation of the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, Official Journal C457, 19.12.2018, p.9. See: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1219\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC1219(01)&from=EN).

<sup>229</sup> Commission Regulation (EU) 2018/1923 of 7 December 2018 amending Regulation (EU) No 360/2012 as regards its period of application, Official Journal L 313 of 10.12.2018, p. 2–3. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1923&from=EN>.

<sup>230</sup> See: [http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=3&documentType=COMMUNICATION\\_FROM\\_COMMISSION&version=ALL](http://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=list&coteId=3&documentType=COMMUNICATION_FROM_COMMISSION&version=ALL).

<sup>231</sup> The current fitness check will cover the General Block Exemption Regulation (GBER), De minimis Regulation, Regional aid Guidelines, Research, Development and Innovation (RDI) Framework, Communication on State aid for important projects of common European interest (IPCEI Communication), Risk finance, Airport and aviation Guidelines, Energy and Environmental Aid Guidelines (EEAG), Rescue and restructuring Guidelines but also the Railways Guidelines as well as the Short term export credit Communication (the two latter that have not been included in the 2012 SAM package).

<sup>232</sup> Available at [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981\\_en#plan-2018-4003](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981_en#plan-2018-4003).

<sup>233</sup> Available at [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6188380\\_en#plan-2018-4817](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6188380_en#plan-2018-4817).

<sup>234</sup> The replies to the public consultation are available at [http://ec.europa.eu/competition/consultations/2018\\_consortia/index\\_en.html](http://ec.europa.eu/competition/consultations/2018_consortia/index_en.html).

on to indirect customers in the field of antitrust damages<sup>235</sup>; and (5) a targeted public consultation on the draft prolongation of the Regulation on de minimis State aid to undertakings providing services of general economic interest<sup>236</sup>. In addition, the evaluation of procedural and jurisdictional aspects of EU merger control were continued in 2018.

Finally, the Commission adopted the proposal, including the impact assessment, for the Competition Programme within the Single Market Programme<sup>237</sup> in the context of the Multiannual Financial Framework 2021-2027 and commissioned a study on the application of the cooperation tools by national courts and to analyse more in depth the State aid rulings of courts in the 28 EU Member States. Its aim is to assess the situation with a view to possibly consider a review of the Commission's enforcement notice.<sup>238</sup>

### 2.2.3 Information management aspects

At its meeting of 7 November 2018, the Commission adopted an action plan on data protection to make sure that the Regulation on the protection of natural persons with regard to the processing of personal data by the EU institutions is fully and thoroughly implemented across the different DGs of the Commission. In this context, DG Competition reviewed its processing operations in order to assess their compliance notably with the general principles laid down in the regulation. The focus was put on DG Competition's processing operations related to its core activities investigations. New privacy statements have been drafted and the description of the processing operations in the context of competition investigations to be published in the new Records register of the Commission was thoroughly reviewed and adapted to the requirements of the new rules. DG Competition has completed the inventory of all its data processing operations and is currently reviewing them in order to introduce them as records in the new IT system.

As regards the lawfulness of processing, the new data protection rules did also affect the power of the Commission to collect information, including personal data, in the context of its investigations. The adoption of a restriction decision was therefore required, so as to protect the confidentiality and efficiency of competition investigations in situations where a data subject would want to exercise his rights under the new regulation (in particular, the right to access his data, the right of erasure or the right to restrict the processing). In accordance with Article 25 of the new regulation, such a decision was prepared and adopted on 5 December 2018 and published in time before the entry into force of regulation 2018/1725 on 11 December 2018.

Competition enforcement is evidence-based and electronic documents have become one of the most important sources of evidence. Information systems contribute to a secure, efficient and integrated management of competition cases and constitute essential support functions for the daily operations of DG Competition. DG Competition is the domain leader for developing a common case management system (CASE@EC) for the six Commission services currently participating in the project. At DG Competition, CASE@EC will replace the ageing case and document management systems.

The year 2018 has witnessed intense work to configure and customise the purchased Case Management software, and to integrate it with DG-specific and corporate information systems. The first release candidate covering Horizontal Projects has been completed and tested. A technical issue to install correctly the purchased software in DG DIGIT's secure hosting service has been resolved by the end of 2018. Consequently, the first release of the new Case Management system is scheduled for February 2019.

<sup>235</sup> European Commission Study on the Passing-On of Overcharges, [ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf](http://ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf).

<sup>236</sup> Replies to the consultation are available at [http://ec.europa.eu/competition/consultations/2018\\_deminimis/index\\_en.html](http://ec.europa.eu/competition/consultations/2018_deminimis/index_en.html).

<sup>237</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1540389031742&uri=CELEX%3A52018PC0441>.

<sup>238</sup> Commission notice on the enforcement of State aid law by national courts; OJ C 85, 9.4.2009, p. 1.

As regards Artificial Intelligence (AI), DG Competition commissioned a report to research the potential of AI for competition enforcement. The report concluded that AI is sufficiently mature in some areas, notably as regards technology-assisted document review and data analytics. Therefore, DG Competition opted to take advantage of existing solutions and launched a pilot project on document review.

In addition, DG Competition launched the 'Knowledge Base' to improve further the DG's knowledge management capabilities by enabling powerful search from a single interface across various information sources. Moreover, to support the immunity and leniency programme in cartel investigations and antitrust cooperation cases, DG Competition has finalised the development of the eLeniency tool, which will be made accessible to the public in 2019.

In 2018, DG Competition's data centre infrastructure was successfully consolidated into, and is now hosted/housed by, the corporate IT infrastructure managed by DG DIGIT. DG Competition's data centres have therefore been decommissioned while DG Competition will continue to administer certain business solutions and servers located in the new IT infrastructure.

Finally, all units continued to use regularly DG Competition's improved collaborative tools such as the COMP Collaborative Platform and eDiscovery.

## **2.2.4 External communication activities**

DG Competition's external communications strategy aims to use mass-media (audio-visual, internet and print media) to highlight the benefits and relevance of our competition policy decisions and initiatives to citizens, businesses and other stakeholders, as well as to Member States. This not only helps to build political support for our work, and that of the EU in general, but also contributes to increased legal certainty and compliance in the areas of antitrust and cartels, mergers and State aid. DG Competition closely supported the work of the Commission Spokesperson's Service with mass media.

In 2018, DG Competition participated in the European Commission Open Doors event at the Berlaymont, with a total budget of EUR 20,000. Approximately 15,000 visitors visited the Open Doors event in total. DG Competition continued its outreach activity with 15 speaking events to new audiences, explaining how competition policy benefits society as a whole, and how competition policy can help stakeholders. DG Competition staff also spoke to 50 groups in the Commission Visitors' Centre. DG Competition also increased its social media activity in 2018, via Twitter, where we now have 12,000 followers.

## **2.2.5 Examples of initiatives to improve economy and efficiency of financial and non-financial activities**

### *State aid modernisation - Transparency*

The State aid modernisation (SAM) adopted by the Commission in 2014 entailed an important shift of responsibility for State aid control to the Member States, with more possibilities for Member States to grant aid under the General Block Exemption Regulation (GBER). This shift continued to show important efficiency gains, with an increasing number of measures that did not require notification to and approval by the Commission (more than 96% of new implemented aid measures fall under the new GBER, i.e. +28p.p. compared to pre-SAM according to the Commission's 2018 State Aid Scoreboard.<sup>239</sup>

The Commission also pursued its dialogue with Member States in the context of the multilateral partnership that has been created to foster closer working relationships with and between Member States and to ensure a uniform application of the rules. Several

<sup>239</sup> [http://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf).

meetings were held in this context to discuss important issues of implementation of the State aid modernisation and the Commission continued to provide targeted trainings when requested by individual Member States.

As regards the Transparency Award Module (TAM) that was created as part of SAM, in April 2018, the Commission finalised and made publicly available the Commission's staff paper "Encoding information in the Transparency Award Module for State aid" which facilitates and encourages the interoperability between registry systems existing in certain Member States and the TAM. The Commission's staff paper includes information on the scope and applicability of the transparency requirements, definitions of key concepts and elements to be published along with a series of concrete examples (cumulation of granting acts/aid paid in instalments/gross grant equivalent). To date, more than 50 000 awards have been recorded in TAM.

#### *Analysis of financial circuits*

In 2017, DG Competition started to use electronic invoicing. Consequently, in 2018, DG Competition made an effort to simplify the financial circuit for the validation of Information Technology invoices and to increase the efficiency. During its trial DG Competition period has successfully reduced the involved actors from five to three (Financial Initiating Agent, Payment Verification and Authorising Officer) and reduced the time needed to pay the invoices.