



European  
Commission

# Annual Activity Report 2022

DG COMPETITION

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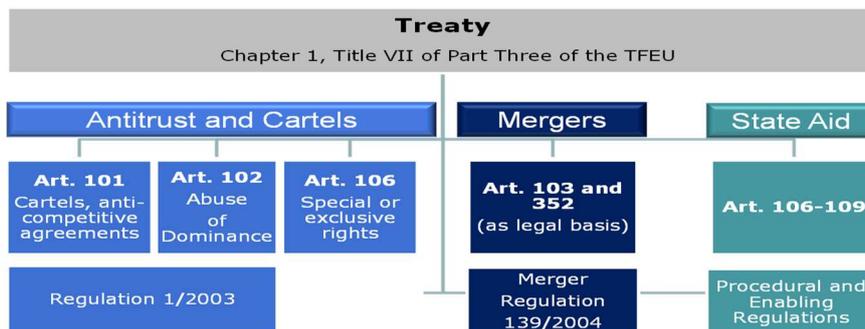
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## DG COMPETITION IN BRIEF

EU competition policy and enforcement protects the EU Single Market, benefiting consumers, businesses and society alike. It also supports the exit from the pandemic and mitigates the major disturbances in the EU economy caused by the Russian's war against Ukraine.

The mission of DG 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 promoting competition culture in the EU and worldwide**. DG Competition does this by enforcing EU competition rules and by ensuring that other regulatory initiatives take competition policy duly into account among other public policy interests. Competition policy is an indispensable element of a well-functioning Single Market ensuring that all companies compete fairly on their merits and on equal and non-discriminatory terms, making markets more competitive and resilient, while generating higher productivity, innovation, growth and lower prices.

The Commission is responsible for defining and implementing EU competition policy. The Commission, together with the national competition authorities (NCAs) and with national courts, enforce EU competition rules based on [Articles 101-109](#) of the Treaty on the Functioning of the European Union (TFEU). Within the Commission, [DG Competition](#) is primarily responsible for implementing these direct enforcement powers.



DG Competition carries out its mission mainly by taking [direct enforcement action](#) <sup>(1)</sup> against companies or Member States when it finds evidence of unlawful behaviour be it (i) anti-competitive agreements between firms, abusive behaviour by dominant companies <sup>(2)</sup>, (ii) governmental action which leads to a distortion of competition in the internal market by

<sup>(1)</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>(2)</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.

giving some companies undue advantages over others <sup>(3)</sup> or (iii) the emergence of market structures, which impede effective competition or result in the deterioration of market structures where competition is already less effective <sup>(4)</sup>. In 2022, the Commission continued its enforcement cooperating with Member States' national competition authorities and under the scrutiny of EU courts.

DG Competition, together with DG CNECT, is also responsible for the enforcement of the Digital Markets Act ('DMA'), which aims to keep digital markets contestable. Moreover, the Foreign Subsidies Regulation ('FSR'), adopted in 2022, closes a regulatory gap in the Single Market, where market distortive subsidies granted by non-EU governments currently go largely unchecked, while subsidies granted by Member States are subject to close scrutiny.

Approximately 70% of the staff of DG Competition (total staff 870 in December 2022) is engaged in enforcement activities. DG Competition channelled its resources, where not bound by legal obligations, to the [most harmful practices](#) in the internal market and worked in partnerships with other Commission services to support, in a pro-competitive way, the delivery of key Commission objectives. DG Competition is organised in a [matrix structure](#) combining enforcement instruments under different economic sectors. Policy and enforcement units are supported in an integrated fashion across the DG by centres of expertise in the domains of communication, information and digital business solutions, registry, financial resource management, internal control and compliance and better regulation to ensure the overall consistency to serve best the DG's priorities. This organisation structure is designed to promote instrument and sector knowledge, as well as the flexible and efficient use of human resources.

The [Single Market Programme](#) (SMP) <sup>(5)</sup> established in the context of the Multiannual Financial Framework 2021-2027 includes a dedicated component for competition policy, the Competition Programme. It provides stable financing of measures enhancing the Commission's competition enforcement capacity, policy initiatives, international cooperation as well as advocacy. In 2022, DG Competition actively pursued a comprehensive plan to implement the Competition Programme.

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<sup>(3)</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 [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html).

<sup>(4)</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>(5)</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (Text with EEA relevance), OJ L 153, 3.5.2021, pp. 1-47.

The Commission continued with its competition policy advocacy and outreach activities at multiple levels to support the effectiveness of EU competition policy. Quality products at fair prices are needed more than ever as Europeans bear the brunt of the cost-of-living and energy crises. The Eurobarometer surveys published in 2022 show strong support among citizens and Small and Medium Enterprises ('SMEs') to the main goals of competition policy, recognising its important contribution to the European economy. <sup>(6)</sup>



In 2022, DG Competition continued the implementation of its five-year digital modernisation plan, established in line with the principles and objectives of the European Commission’s Next Generation Digital Strategy <sup>(7)</sup>, to become a data-driven organisation equipped with state-of-the-art digital tools to support EU competition enforcement. The Chief Technology Officer, a newly created post attached to the Director General, will focus on the increasingly data-driven enforcement and market monitoring tasks, working in close collaboration with operational units across DG Competition. In December 2022, a new Directorate was created for the implementation of the Digital Markets Act. Furthermore, DG Competition reorganised its registry to optimise its support for the document management related to the DMA across the Commission.

<sup>(6)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6374](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6374).

<sup>(7)</sup> Communication to the Commission: European Commission digital strategy Next generation digital Commission, C(2022) 4388, 30.6.2022.

## EXECUTIVE SUMMARY

This annual activity report is a management report of 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 constitute 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>.

### A. Key results

In 2022, EU competition policy continued to play an important role in the EU's efforts to respond to unpredictable challenges, demonstrating its ability to adjust swiftly to sudden changes in economy. It was a challenging year for DG Competition, significantly stretching its capacities and human resources.

EU competition policy and enforcement supported the Commission's general objectives, in particular, 'A European Green Deal', 'A Europe fit for the digital age' and 'An economy that works for people' as well as the pathway to exit the impacts of the pandemic and mitigate the major disturbances in the EU economy caused by the Russian's war against Ukraine.

The Commission used all the policy instruments at its disposal to create and implement a policy mix designed to mitigate the negative effects of the [war in Ukraine](#) on the overall EU economy, its businesses and its population, while at the same time phasing out EU emergency measures implemented to address the [COVID-19 pandemic](#). The Commission's coordinated actions led to provision of adequate and affordable energy supplies, safeguarding economic and financial stability, food security and protection of vulnerable households and companies in EU. While addressing these challenges, the obligation to deliver on the green and digital transitions remained. DG Competition contributed to the operability of the Recovery and Resilience Plans ('RRPs') of most EU countries where the first funds were disbursed to Member States, boosting the recovery of the EU with well-targeted investments.

In March 2022, the Commission adopted a [Temporary Crisis Framework](#) allowing Member States to support companies and sectors severely impacted by the geopolitical developments in compliance with EU State aid rules. In response to the disruptions in global energy markets, the Commission adopted in May 2022 the REPowerEU plan, which sets out ways forward for adjusting the EU's energy sector, tackling high energy prices and reducing dependence on imported fossil fuels. In October 2022, the Commission proposed a new emergency regulation to mitigate the impact of high gas prices in the EU, including through joint purchasing.

In 2022, the Commission continued its extensive evaluation of [the EU competition policy framework](#) to ensure that all enforcement instruments are fit for current and future challenges. Furthermore, new legislative tools which complemented the competition policy tools were adopted.

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

The [Digital Markets Act \('DMA'\)](#) entered into force in November 2022 and will be applicable as of May 2023. Its aim is to keep digital markets contestable and put an end to unfair practices by companies that act as gatekeepers in the online platform economy. Moreover, the [Foreign Subsidies Regulation \('FSR'\)](#) was adopted in November 2022 and entered into force in January 2023. The Regulation closes a regulatory gap in the Single Market, where market distortive subsidies granted by non-EU governments currently go largely unchecked, while subsidies granted by Member States are subject to close scrutiny under EU State aid rules.

A new Directorate has been established within DG Competition<sup>(9)</sup> responsible for the implementation and enforcement of the DMA which took effect in January 2023. DG Competition reorganised its [registry](#) creating two dedicated teams in charge of dealing with the document management related to the Digital Markets Act and Foreign Subsidies Regulation. The DMA registry team of DG Competition also provides services to the colleagues from DG CNECT involved in DMA case handling.

In 2022, the Commission continued to [enforce the EU competition rules](#) in the areas of antitrust, merger control and State aid control to the benefit of citizens and businesses of all sizes. EU competition policy, in particular State aid policy, remained a crucial component of the EU's multifaceted crisis response.

The Commission used the year 2022 as an opportunity to build up a new stream of [cartel cases](#), relying on information from leniency applicants as well as leads obtained from its own ex officio efforts. In addition, the relaxation of the sanitary restrictions enabled the Commission to carry out unannounced inspections in a number of different sectors. The Commission also concluded other important [antitrust](#) investigations, notably with the adoption of three commitment decisions aimed at facilitating entry of new competitors and increasing the level of competition.

The Commission's [merger control](#) activities remained at a high level. The Commission adopted 368 merger decisions and intervened in 14 proposed acquisitions. Four notified transactions were abandoned by the parties and withdrawn, which brings the total number of interventions to 18.

The Commission adopted more than 800 [State aid](#) decisions in 2022. Of these, more than 200 decisions concerned State aid granted to remedy economic distress caused by the COVID-19 pandemic. Moreover, the Commission adopted 195 decisions enabling Member States to support companies and sectors severely impacted by Russia's war against Ukraine.

2022 constituted the third year of DG Competition's implementation of its [five-year digital modernisation plan](#). Significant progress has been made via the rolling out or upgrading of information systems, such as the extension of the new case management system CASE@EC as well as other IT systems to support the Digital Markets Act as well as the Foreign Subsidies Regulation and the roll out of the new market investigation tool eRFI. Moreover, DG Competition on-boarded several DGs to CASE@EC to support their own case management

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<sup>(9)</sup> Directorate J: Markets and cases VI: Digital Platforms

needs, including DG SANTE for Food and Health audits, DG BUDG for Rule of Law cases, DG CNECT for Digital Services Act and Digital Markets Act cases, and DG GROW for public procurement cases under the Foreign Subsidies Regulation.

DG Competition further invested into [investigation digital tools](#) by using corporate intelligence, data and machine learning services. Given the sensitive and confidential nature of the information it handles, DG Competition continued to update IT security plans for new as well as existing digital solutions. Moreover, DG Competition put in place additional safety and monitoring measures to ensure continued cyber security and cyber resilience in 2022 and beyond. The [Chief Technology Officer](#) will contribute to the increasingly data-driven enforcement and market monitoring tasks in DG Competition.

DG Competition [reached out](#) to a variety of stakeholders, including businesses, lawyers and other advisers, policy makers, academics, students and civil society more generally. Various channels were used for this purpose, first and foremost Executive Vice-President Vestager's own participation in events, press conferences and speeches, complemented by press releases, newsletters, conferences, specialised publications and an active social media presence. In October 2022, DG Competition organised the conference 'Making Markets Work for People' <sup>(10)</sup> to discuss the significance of maintaining, nourishing, and developing a European social market economy and the role of competition policy.

Furthermore, in December 2022, DG Competition organised the first of a series of workshops with stakeholders on the implementation of the DMA. These workshops provide for an opportunity for the relevant stakeholders (i.e. potential gatekeepers, business users, academics and other interested parties) to exchange on the practical implications related to the implementation of the obligations set out in the DMA.

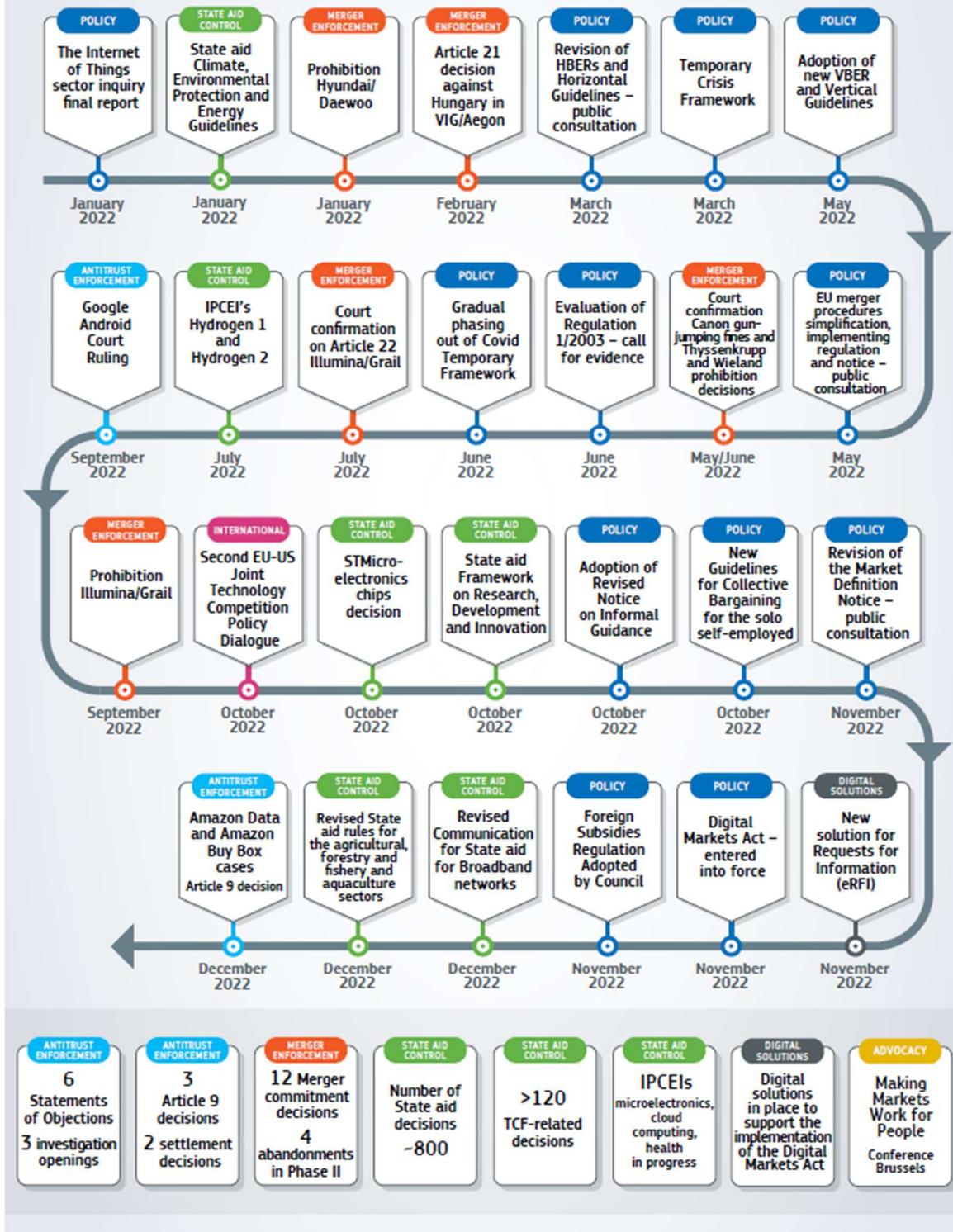
The [Single Market Programme](#) ('SMP') and its competition policy component provided stable funding for increasing policy and enforcement projects, international cooperation and competition policy advocacy.

The illustration below provides an overview of the progress made by DG Competition in 2022 across all its areas of responsibility, that is to say policy files, antitrust and merger enforcement, State aid control and international activities.

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<sup>(10)</sup> See: [https://competition-policy.ec.europa.eu/consumers/reaching-out/making-markets-work-people\\_en#:~:text=On%2027%20October%2C%202022%2C%20Executive,competition%20policy%20on%20people's%20lives.&text=The%20conference%20took%20place%20at%20The%20EUGG%20Brussels%20](https://competition-policy.ec.europa.eu/consumers/reaching-out/making-markets-work-people_en#:~:text=On%2027%20October%2C%202022%2C%20Executive,competition%20policy%20on%20people's%20lives.&text=The%20conference%20took%20place%20at%20The%20EUGG%20Brussels%20).

# 2022 AT A GLANCE



## B. Key performance indicators

The following key performance indicators measure the results of the main competition policy instruments: antitrust, merger control and State aid control. While these indicators do not deliver an exhaustive account of DG Competition's work or its impact on markets, they constitute the core quantifiable result indicators of the activities also contributing to the Commission priorities supporting the green and digital transition of the EU economy and the recovery from the COVID-19 pandemic:

- 1) Estimate of customer benefits resulting from cartel prohibition decisions;
- 2) Estimate of customer benefits resulting from non-cartel prohibition decisions;
- 3) Estimate of customer benefits resulting from merger interventions;
- 4) Total State aid expenditure for environmental protection, renewables and energy savings as a percentage of total State aid in the EU;
- 5) Total State aid expenditure for broadband as a percentage of total State aid in the EU;
- 6) Total State aid expenditure falling under the General Block Exemption Regulation as a percentage of total State aid in the EU;
- 7) Total COVID-19 aid as a percentage of total State aid in the EU.

### KPI 1, KPI 2 and KPI 3

To indicate the level of its activity and output, DG Competition publishes annually the number of adopted enforcement decisions by the Commission (or intervention rate). DG Competition also provides three estimates of the benefits to customers resulting from the Commission's cartel prohibition decisions (KPI 1), non-cartel antitrust interventions (KPI 2) and from merger interventions (KPI 3). However, such estimates underestimate the overall impact of cartel, non-cartel, and merger decisions, as they do not capture the deterrence and non-price effects of such decisions or other effects of competition policy <sup>(11)</sup>.

In 2022, the total estimated customer savings from cartel prohibitions, non-cartel antitrust interventions and merger interventions varied between EUR 21.9 and 38.3 billion. The customer savings from the 2022 cartel decisions (KPI 1) varied between EUR 0.2 and 0.3 billion <sup>(12)</sup>, depending on the assumption made about the level of the avoided price

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<sup>(11)</sup> Since 2012, DG Competition systematically calculates the direct benefits of its competition policy interventions using the estimated customer benefits approach. For the methodology, see footnotes 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> and Competition Policy Brief (2022). Issue 1, October 2022. European Commission <https://data.europa.eu/doi/10.2763/80601>.

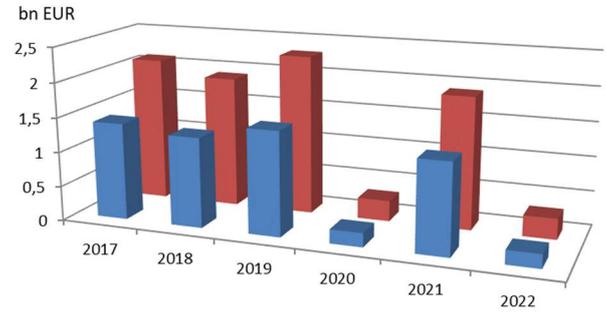
<sup>(12)</sup> DG Competition calculation. The approach followed to estimate customer benefits from stopping a cartel (prevented harm) consists in multiplying (i) the assumed increased price brought about by the cartel in the past (called the "overcharge") by (ii) the value of sales by cartel members 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

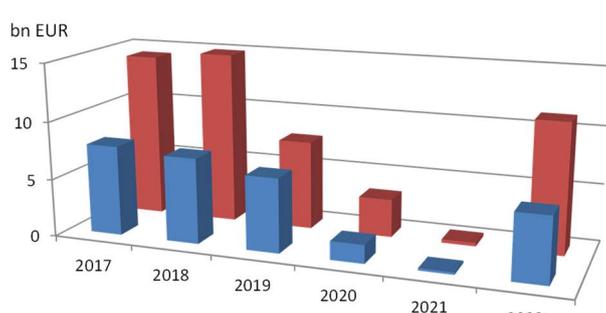
overcharge. The customer savings from cartel prohibitions are in line with the values reported in 2020 and below the average recorded during the previous five years (EUR 1.1-1.7 billion). Customer benefits resulting from non-cartel antitrust interventions varied between EUR 5.6 and 11.2 billion<sup>(13)</sup>. Total customer savings resulting from the 18 merger interventions by the Commission (KPI 3) varied between EUR 16.1-26.8 billion<sup>(14)</sup>, depending on the assumption made on the level of price increase avoided. This range is above the average recorded during the previous five years (EUR 9.2-15.3 billion).

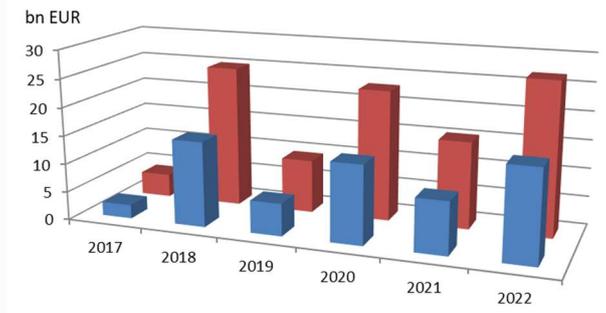
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for cartels. In order to estimate what the likely duration of the cartel would have been if it had continued undetected, a case-by-case analysis was carried out. This analysis focused on the particular circumstances of each case as reflected in indicators 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. Cartels where the period between the end date of the anticompetitive conduct indicated in the prohibition decision and the formal start of the Commission investigation exceeds three years are not taken into account. Finally, the estimates obtained are conservative because other customer benefits, such as innovation, quality and choice are not taken into account.

- <sup>(13)</sup> The approach used to estimate customer benefits resulting from the Commission's non-cartel antitrust interventions (prohibition decisions based on Article 7 of Regulation 1/2003, commitment decisions based on Article 9 of Regulation 1/2003) consists in multiplying 1) the expected price increase avoided (with lower and upper bounds of 5% and 10%, respectively, unless case-specific information is available); 2) the total size of the affected markets, which is measured by the annual turnover of the companies under investigation in the affected markets; 3) the expected duration of the avoided price increase (1, 3 or 6 years), which is obtained through a questionnaire sent to the case teams responsible for the preparation of the relevant Commission decisions. The underlying assumptions are conservative and based on the economic literature and the OECD Guidance.
- <sup>(14)</sup> DG Competition calculation. 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 due to the intervention by the Commission) 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. This 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. The prevention of anticompetitive effects such as the negative impact of the proposed merger on innovation and choice are not taken into account. 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.

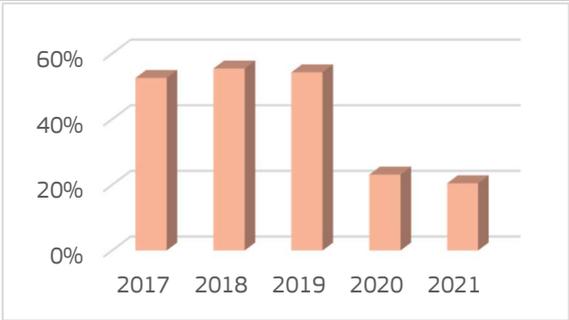
Impact indicator	Trend	Target (or milestones)	Latest known results														
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions	Stable (in line with markets affected)	Stable	EUR 0.2-0.3 bn (2022)														
 <table border="1"> <thead> <tr> <th>bn EUR</th> <th>2017</th> <th>2018</th> <th>2019</th> <th>2020</th> <th>2021</th> <th>2022</th> </tr> </thead> <tbody> <tr> <td><b>Cartel</b></td> <td><b>1.4-2.1</b></td> <td><b>1.3-1.9</b></td> <td><b>1.5-2.3</b></td> <td><b>0.2-0.3</b></td> <td><b>1.3-1.9</b></td> <td><b>0.2-0.3</b></td> </tr> </tbody> </table>				bn EUR	2017	2018	2019	2020	2021	2022	<b>Cartel</b>	<b>1.4-2.1</b>	<b>1.3-1.9</b>	<b>1.5-2.3</b>	<b>0.2-0.3</b>	<b>1.3-1.9</b>	<b>0.2-0.3</b>
bn EUR	2017	2018	2019	2020	2021	2022											
<b>Cartel</b>	<b>1.4-2.1</b>	<b>1.3-1.9</b>	<b>1.5-2.3</b>	<b>0.2-0.3</b>	<b>1.3-1.9</b>	<b>0.2-0.3</b>											

Impact indicator	Trend	Target (or milestones)	Latest known results														
KPI 2 The estimate of customer benefits resulting from non-cartel antitrust interventions	Stable (in line with markets affected)	Stable	EUR 5.6-11.2 bn (2022)														
 <table border="1"> <thead> <tr> <th>bn EUR</th> <th>2017</th> <th>2018</th> <th>2019</th> <th>2020</th> <th>2021</th> <th>2022</th> </tr> </thead> <tbody> <tr> <td><b>Non-cartel antitrust</b></td> <td><b>7.8-14.3</b></td> <td><b>7.4-14.9</b></td> <td><b>6.4-7.7</b></td> <td><b>1.6-3.3</b></td> <td><b>0.2-0.3</b></td> <td><b>5.6-11.2</b></td> </tr> </tbody> </table>				bn EUR	2017	2018	2019	2020	2021	2022	<b>Non-cartel antitrust</b>	<b>7.8-14.3</b>	<b>7.4-14.9</b>	<b>6.4-7.7</b>	<b>1.6-3.3</b>	<b>0.2-0.3</b>	<b>5.6-11.2</b>
bn EUR	2017	2018	2019	2020	2021	2022											
<b>Non-cartel antitrust</b>	<b>7.8-14.3</b>	<b>7.4-14.9</b>	<b>6.4-7.7</b>	<b>1.6-3.3</b>	<b>0.2-0.3</b>	<b>5.6-11.2</b>											

Impact indicator	Trend	Target (or milestones)	Latest known results														
KPI 3 The estimate of customer benefits resulting from merger interventions	Stable (in line with markets affected)	Stable	EUR 16.1-26.8 bn (2022)														
 <table border="1"> <thead> <tr> <th>bn EUR</th> <th>2017</th> <th>2018</th> <th>2019</th> <th>2020</th> <th>2021</th> <th>2022</th> </tr> </thead> <tbody> <tr> <td><b>Merger</b></td> <td><b>2.4-4.1</b></td> <td><b>15.0-25.0</b></td> <td><b>5.7-9.4</b></td> <td><b>13.8-23.0</b></td> <td><b>9.2-15.3</b></td> <td><b>16.1-26.8</b></td> </tr> </tbody> </table>				bn EUR	2017	2018	2019	2020	2021	2022	<b>Merger</b>	<b>2.4-4.1</b>	<b>15.0-25.0</b>	<b>5.7-9.4</b>	<b>13.8-23.0</b>	<b>9.2-15.3</b>	<b>16.1-26.8</b>
bn EUR	2017	2018	2019	2020	2021	2022											
<b>Merger</b>	<b>2.4-4.1</b>	<b>15.0-25.0</b>	<b>5.7-9.4</b>	<b>13.8-23.0</b>	<b>9.2-15.3</b>	<b>16.1-26.8</b>											

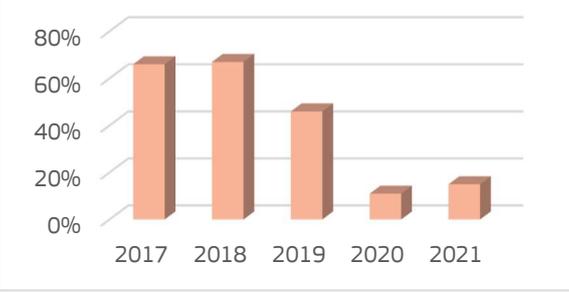
## KPI 4

The key performance indicator for the contribution of competition policy towards the green transition supporting also the recovery from the crisis is measured by total State aid expenditure for environmental protection, renewables and energy savings as a percentage of total State aid in the EU. According to the latest information, this amounted to 21% (2021), similar level to 2020 (23%), but a sharp decrease from 2019 (54%). The abrupt fall in the indicator in 2020 was due to the COVID-19 pandemic and the subsequent State aid response to mitigate its economic effects (see KPI 7).

Impact indicator	Trend	Target (or milestones)	Latest known results		
KPI 4 Total State aid expenditure for environmental protection, renewables and energy savings as a percentage of total State aid in the EU	Stable (mechanical effect connected to the COVID-19 pandemic and the large amount of State aid expenditure to mitigate its economic effects)	Increasing		21% (2021)	
					
		%	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>KPI 4</b>	53%	55%	54%	23%	21%

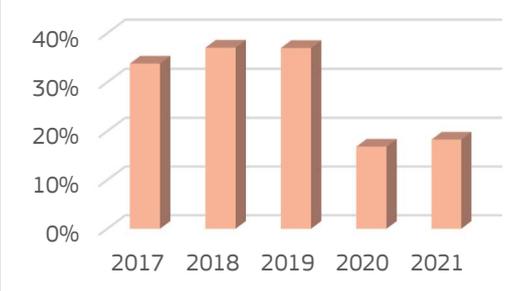
## KPI 5

The key performance indicator for the contribution of competition policy towards the digital transition supporting also the recovery from the crisis is measured by the total State aid expenditure for broadband as a percentage of total State aid in the EU. According to the latest information, this amounted to 0.2% (2021), a similar level to 2020 (0.1%) but a decrease from 2019 (0.5%). This abrupt fall in the indicator was due to the COVID-19 pandemic and the subsequent State aid response to mitigate its economic effects (see KPI 7).

Impact indicator	Trend	Target (or milestones)	Latest known results		
KPI 5 Total State aid expenditure for broadband as a percentage of total State aid in the EU	Decreasing (mechanical effect connected to the COVID-19 pandemic and the large amount of State aid expenditure to mitigate its economic effects)	Increasing		0.2% (2021)	
					
		%	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>KPI 5</b>	0.7%	0.7%	0.5%	0.1%	0.2%

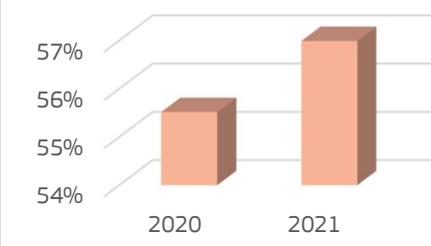
## KPI 6

The key performance indicator for the contribution of competition policy towards the objectives of the economy that works for people supporting also the recovery from the crisis is measured by the total State aid expenditure falling under the General Block Exemption Regulation as a percentage of total State aid in the EU. According to the latest information, this amounted to 18% (2021), a small increase when compared to 2020 (17%). The abrupt fall in 2020 of the indicator was due to the COVID-19 pandemic and the subsequent strong State aid response to mitigate its economic effects (see KPI 7).

Impact indicator	Trend	Target (or milestones)	Latest known results						
KPI 6 Total State aid expenditure falling under the General Block Exemption Regulation as a percentage of total State aid in the EU	Increasing	Increasing			18% (2021)				
									
		%	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>		
<b>KPI 6</b>	34%	37%	37%	17%	18%				

## KPI 7

The key performance indicator for the contribution of competition policy towards the objectives of the economy that works for people supporting the recovery from the pandemic crisis is measured by the total COVID-19 aid as a percentage of total State aid in the EU. According to the latest information, this amounted to 57% in 2021, a similar level to 2020 (56%), reflecting the focus of State aid during the continued pandemic.

Impact indicator	Trend	Target (or milestones)	Latest known results				
KPI 7 Total COVID-19 aid as a percentage of total State aid in the EU.	Stable trend	Decreasing trend. State aid to remedy the serious disturbance to the economy caused by the COVID-19 pandemic is a temporary economic response by nature.		57% (2021)			
							
		%	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2024</b>	
<b>KPI 7</b>	56%	57%		N/A			

### **C. Key conclusions on financial management and internal control**

In line with the Commission's Internal Control Framework DG Competition has assessed its internal control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning well overall, but some improvements are needed. Please refer to AAR section 2.1.3 for further details.

In addition, DG Competition has systematically examined the available control results and indicators, as well as the observations and recommendations issued by the internal auditor and the European Court of Auditors. These elements have been assessed to determine their impact on management's assurance about the achievement of the 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. Further analysis will be made and further actions will be taken to address staff turnover, which exceeded the level of 2021. The Director-General, in his capacity as Authorising Officer by Delegation, has signed the Declaration of Assurance.

### **D. Provision of information to the Commissioner(s)**

In the context of the regular meetings during the year between DG Competition and the Commissioner on management matters, the main elements of this report and assurance declaration, have been brought to the attention of Executive Vice-President Margrethe Vestager, Commissioner for Competition.

# 1. KEY RESULTS AND PROGRESS TOWARDS ACHIEVING THE COMMISSION'S GENERAL OBJECTIVES AND DG-SPECIFIC OBJECTIVES

Throughout 2022, EU competition policy contributed to the Commission's efforts to create and implement a policy mix designed to mitigate the negative effects of Russia's war against Ukraine on the overall EU economy, its businesses and its population, while phasing out EU emergency measures implemented to address the COVID-19 pandemic. The Recovery and Resilience Plans ('RRPs') of most EU countries became operational and the first funds were disbursed to Member States, boosting the recovery of the EU economy with well-targeted investments. In 2022, the Commission continued its extensive evaluation of the EU competition policy framework to ensure that all enforcement instruments are fit for current and future challenges, making markets work better for people. At the same time, the Commission addressed the challenge to act rapidly to boost growth and deliver on the green and digital transitions. DG Competition continued to vigorously enforce the EU competition rules in the areas of antitrust, merger control and State aid control to the benefit of citizens and businesses of all sizes. EU competition policy, in particular State aid policy, remained a crucial component of the EU's multifaceted crisis response.

## General objective 1: A European Green Deal

Competition policy contributes to the EU's environmental objectives and climate targets, for example, the decarbonisation of the economy and the transport sector shift from fossil fuels to alternative fuels. Competition law enforcement contributes to the European Green Deal <sup>(15)</sup> by keeping markets efficient, fair and innovative.

### Updating rules and policy guidance in support of the European Green Deal

In 2022, the Commission continued the revision of the General Block Exemption Regulation ('GBER') for State aid <sup>(16)</sup> facilitating the green transition. The amendments will complement the revisions of the Guidelines on regional aid, on aid for research and development and innovation, on risk finance aid, on aid for the deployment of broadband networks and aid for environmental protection and energy.

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<sup>(15)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - the European Green Deal, COM(2019) 640 final, 11.12.2019.

<sup>(16)</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.

In December 2022, the Council adopted a Regulation<sup>(17)</sup> enabling the Commission to adopt implementing regulations exempting from prior notification aid measures for rail, inland waterway and multimodal transport in line with Article 93 TFEU. The aim is to simplify procedures for State aid supporting green transport modes. The Regulation is in line with the objectives of the European Green Deal and the Sustainable and Smart Mobility Strategy. It goes hand in hand with the review of the Railway Guidelines on which the Commission continued to work in parallel in 2022. Those Guidelines aim at promoting the modal shift from road to rail transport and thus contribute to achieving the climate objectives.

Moreover, with the focus on aligning the State aid rules with current EU strategic priorities, in particular the Common Agricultural Policy Strategic Plans<sup>(18)</sup>, the Commission has adopted a new set of State aid rules for the agriculture and forestry sectors and rural areas: the State aid Guidelines in the agricultural and forestry sectors and in rural areas and the Agricultural Block Exemption Regulation ('ABER')<sup>(19)</sup>. The revised rules make it easier and faster for Member States to provide funding, without causing undue distortions of competition in the Single Market.

Finally, the Commission adopted a new block exemption regulation for the fishery and aquaculture sectors and issued new Guidelines for State aid in the fishery and aquaculture sectors<sup>(20)</sup>. The revised Guidelines aim to introduce a fair balance between economic development in fisheries and aquaculture and protection of fish stocks and the environment.

To ensure that also the antitrust rules on horizontal cooperation agreements remain fit for purpose, in particular to also address the challenges of the green transition, the Commission launched, in March 2022, a stakeholder consultation on draft revised Horizontal Block Exemption Regulations on Research & Development and Specialisation agreements and on the draft revised Horizontal Guidelines<sup>(21)</sup>. The proposed rules include new guidance aimed to make it easier for companies to cooperate to pursue sustainability objectives.

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(17) Council Regulation (EU) 2022/2586 on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of State aid in the rail, inland waterway and multimodal transport sector, OJ L 338, 20.12.2022, p.35.

(18) Regulation (EU) 2021/2115 of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans).

(19) Commission Regulation (EU) 2022/2472 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p.1.

(20) Communication from the Commission — Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

(21) Public consultation on the draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines, from 1.3.2022 to 26.4.2022. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-hbers\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en).

## Strengthening competition enforcement in support of the European Green Deal

### State aid control

State aid control contributes to the EU's environmental objectives and climate targets, for example, by enabling support schemes for the decarbonisation of the economy and the transport sector shift from fossil to alternative fuels.

The Climate, Environmental protection and Energy aid Guidelines ('CEEAG')<sup>(22)</sup> became applicable from January 2022. They brought the environmental and energy State aid framework in line with the EU objectives set out in the European Green Deal and with the climate and energy targets for 2030 and 2050. Among other things, the CEEAG allow Member States to support efforts towards decarbonisation, a circular economy, biodiversity, clean or zero-emission mobility and energy efficiency.

In 2022, the Commission continued to assess State aid granted by the Member States and approved several schemes for the deployment of [electric charging stations](#) and other [alternative refuelling infrastructure](#), for the acquisition of [zero- or low-emission vehicles](#) (in particular electric or hydrogen buses for public transport) as well as for the [retrofitting of vessels](#) <sup>(23)</sup>.

Moreover, the Commission approved two Important Projects of Common European Interest ('IPCEIs') in the [hydrogen technology chain](#). The first IPCEI was approved in July 2022 and supports research, innovation and industrial deployment in the hydrogen technology value chain <sup>(24)</sup>. The second project was approved in September 2022 and will boost the supply of renewable and low-carbon hydrogen and the development and initial industrial deployment of clean and innovative hydrogen technologies in other industrial sectors, such as cement, steel and glass <sup>(25)</sup>.

The Commission also reacted to fast developments in 2022 by adjusting the State aid framework and putting in place [energy crisis measures](#) intended to relieve the pressure on energy bill payers.

To promote green district heating based on renewable energy and waste heat, the Commission approved, in August 2022, a EUR 2.98 billion German scheme. This scheme will support the construction of more efficient district heating systems and the decarbonisation

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<sup>(22)</sup> Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, OJ C 80, 18.2.2022, p. 1.

<sup>(23)</sup> See for instance: Case SA.62131, *Luxembourg - Aid scheme for the deployment of charging infrastructures*; Case SA.64763, *Italy - State aid scheme for the modernisation of inland waterway freight transport vessels*; Case SA.101781, *Italy - Aid to Poste Italiane for the deployment of recharging stations in Italian small municipalities*; Case SA.10479, *Germany - Aid scheme for the roll out of high power charging ('HPC') infrastructure for electric vehicles*.

<sup>(24)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4544](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4544).

<sup>(25)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_5677](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_5677).

of existing ones, increasing the share of renewable energy and waste heat in the heating sector <sup>(26)</sup>. Furthermore, the Commission approved a modification of a German scheme to support electricity production from renewable energy sources. The scheme reflects a recent amendment by Germany to its Renewable Energy Act. The Act has an overall budget of EUR 28 billion and aims at achieving a share of 80% of electricity produced from renewable energy sources by 2030, with a view to reaching climate neutrality by 2045 <sup>(27)</sup>.

### *Antitrust enforcement*

The Commission supports EU energy objectives and the European Green Deal through its antitrust work. In 2022, the Commission continued its investigation of firms suspected of colluding to influence the price benchmarks for *ethanol biofuel* <sup>(28)</sup>.

The Commission initiated an ex officio investigation into the natural gas markets in Europe to assess whether commercial conduct by market participants may have contributed to the disruptions of the energy markets and gas prices in Europe. As part of its investigation, in March 2022, the Commission carried out unannounced inspections at the premises of several companies in Germany active in the supply, transmission and storage of natural gas <sup>(29)</sup>.

Encouraging travellers to shift from road to rail transport represents an important contribution to the European Green Deal's objectives <sup>(30)</sup>. In June 2022, the Commission informed *České dráhy* and *Österreichische Bundesbahnen* ('ÖBB'), the Czech and Austrian rail incumbents, of its preliminary view that the two companies had breached EU antitrust rules by colluding in the market for used passenger railway wagons with the aim of distorting competition in the rail passenger transport market <sup>(31)</sup>.

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<sup>(26)</sup> Case SA.63177, *Germany - Federal support for efficient heat networks*, OJ C 366, 23.9.2022, p. 2.

<sup>(27)</sup> Case SA.102084, *Germany – EEG 2023*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7794](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7794).

<sup>(28)</sup> Case AT.40054, *Ethanol benchmarks*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6769](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6769).

<sup>(29)</sup> See the press release of 31.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_2202](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2202).

<sup>(30)</sup> See for example: Report published by the European Union Agency for Railways – Fostering the railway sector through the European Green Deal, 16.7.2020 (updated 12.10.2022). [https://www.era.europa.eu/content/report-fostering-railway-sector-through-european-green-deal\\_en](https://www.era.europa.eu/content/report-fostering-railway-sector-through-european-green-deal_en).

<sup>(31)</sup> Case AT.40401, *České dráhy and Österreichische Bundesbahnen*.

## Merger enforcement

In the field of merger control, the Commission, in July 2022, approved with conditions the acquisition of *Equans* by *Bouygues* <sup>(32)</sup>. The Commission's investigation revealed that the merged entity would have large market shares and only face competition from very few participants. This could give rise to higher prices for electrical engineering services for railway contact lines in Belgium. To address the Commission's competition concerns, Bouygues offered to divest *Colas Rail Belgium* in its entirety, including all assets, personnel and ongoing and future contracts of both its railway contact lines and track installation businesses. The Commission's intervention ensured that a player would remain in the market continuing to exert competitive pressure in the relevant Belgian market while customers would preserve choice of suppliers and competitive prices.

## Supporting major initiatives and objectives forming part of the European Green Deal

In 2022, the Commission approved two Important Projects of Common European Interest ('IPCEIs') in the hydrogen technology chain. These IPCEIs support the development of key strategic value and technology chains, as well as the objectives of the European Green Deal, the EU Hydrogen Strategy <sup>(33)</sup> and the REPowerEU initiative <sup>(34)</sup>, which sets out ways forward for adjusting the EU's energy sector, tackling high energy prices and reducing dependence on imported fossil fuels. Moreover, DG Competition continued to promote pro-competitive rules and outcomes across a range of legislative initiatives, for example the Ecodesign for Sustainable Products Regulation <sup>(35)</sup> or the proposal for a new emergency regulation to mitigate the impact of high gas prices in the EU, including through joint purchasing <sup>(36)</sup>.

## General objective 2: A Europe fit for the digital age

An effective enforcement of the EU competition rules and regulatory reforms is of vital importance for the digital transformation of the EU economy and for strengthening the

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<sup>(32)</sup> Case M.10575, Bouygues / Equans. See:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_4603](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4603).

<sup>(33)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A hydrogen strategy for a climate-neutral Europe, COM(2022) 301 final, 18.7.2020.

<sup>(34)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM(2022) 230, 18.5.2022.

<sup>(35)</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM (2022) 142 final, 30.3.2022.

<sup>(36)</sup> Proposal for a Council Regulation Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks, COM(2022) 549 final.

resilience of the Single Market. By enforcing the EU competition rules, the Commission continued in 2022 to protect the competition on the Single Market and bringing wider choice and better prices for consumers.

### **Updating rules and policy guidance in support of A Europe fit for the digital age, including tackling systemic competition in the platform economy and beyond**

In 2022, the Commission continued its extensive evaluation of the EU competition policy framework to ensure that all enforcement instruments are fit for current and future challenges <sup>(37)</sup>. New legislative tools will complement competition policy tools, to ensure that the digital transition and recent market developments is duly taken into account, providing a further contribution to the EU ambition for a Europe fit for the Digital Age.

#### *Policy instruments adopted to strengthen the single market and the digital economy*

Digital Markets Act ('DMA') <sup>(38)</sup>, which entered into force in November 2022, represents an unprecedented step forward to fair, open and contestable digital markets and complements the competition policy toolbox. The Commission proposed the DMA in December 2020 to address the negative consequences arising from certain behaviours by online platforms acting as digital 'gatekeepers' to the Single Market. Companies designated as gatekeepers will have to comply with a pre-defined set of obligations and prohibitions. Enforcement of the DMA combined with the ex-post enforcement of the EU competition rules will result in fairer and more competitive market conditions for businesses and for consumers of digital services in the Single Market. As the central enforcer of the DMA, the Commission will work in close cooperation with authorities in EU Member States. DG Competition launched the CASE@EC programme focused on supporting the DMA enforcement and efficient case-related data management. The first version of CASE@EC supporting the DMA was released in October 2022.

In November 2022, the European Parliament and Council adopted the Regulation on foreign subsidies distorting the internal market <sup>(39)</sup>. The Regulation closes a regulatory gap, tackling foreign subsidies that distort competition in the Single Market. The Commission will be able to investigate and redress, when appropriate, the distortive effects caused by such foreign State support. DG Competition continued its extensive work on the IT solution for internal case management for FSR cases with the first release scheduled for 2023.

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<sup>(37)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - A competition policy fit for new challenges, COM(2021) 713 final, 18.11.2021.

<sup>(38)</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1.

<sup>(39)</sup> Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022, p. 1.

### *Proposal to fight high energy prices and ensure security of supply*

In October 2022, the Commission proposed a new [emergency regulation](#) to mitigate the impact of high gas prices in the EU. The Regulation was adopted in December 2022 <sup>(40)</sup>. It includes, among other elements, a joint purchasing mechanism for gas to help gas companies and gas consumers negotiate better prices, reduce the risk of Member States outbidding each other, and ensure security of supply across the entire European Union during a possible supply shortage.

Joint gas purchasing under the regulation shall be compliant with the EU competition rules. The Commission announced that it stands ready to assist companies in the design of a possible joint gas purchasing consortium participating in the planned demand aggregation mechanism and to issue a decision, pursuant to Article 10 of Regulation 1/2003, on the inapplicability of Articles 101 and/or 102 TFEU, if relevant safeguards are incorporated and respected. The Commission also announced that it stands ready to provide informal guidance to the extent that undertakings participating in any other joint purchasing consortia face uncertainty with regard to the assessment of one or more elements of their joint purchasing arrangement under the EU competition rules <sup>(41)</sup>.

### *Review of antitrust rules and guidance*

In May 2022, the Commission adopted the revised [Vertical Block Exemption Regulation](#) ('VBER') <sup>(42)</sup>, accompanied by the new Vertical Guidelines <sup>(43)</sup>, which will help businesses to assess the compatibility of their supply and distribution agreements with EU competition rules. The new rules take into account market developments such as the increase in online sales and emergence of new actors such as platforms. Increased clarity and greater transparency can help businesses achieve compliance at lower cost - this is especially beneficial to small and medium-sized enterprises (SMEs).

Vehicle-generated data is becoming an increasingly important factor of competition for repair and maintenance operators. The Commission has a specific regime for vertical agreements in the sector <sup>(44)</sup>, which is currently under review. In July 2022, the Commission

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<sup>(40)</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, OJ L 335, 29.12.2022, p. 1.

<sup>(41)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Energy Emergency – preparing, purchasing and protecting the EU together, COM(2022) 533 final, 18.10.2022.

<sup>(42)</sup> Commission Regulation (EU) No 2022/720 of 10 May 2022 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 (VBER), OJ L 134, 11.5.2022, p. 4.

<sup>(43)</sup> Commission Notice: Guidelines on vertical restraints, OJ C 248, 30.6.2022, p. 1.

<sup>(44)</sup> The Motor Vehicle Block Exemption Regulation ('MVBER') regime consists of: (i) the Vertical Block Exemption Regulation ('VBER') and the Guidelines on Vertical Restraints ('VGL'); and (ii) the

consulted stakeholders on a draft Regulation extending the period of validity of Regulation 461/2010 ('Motor Vehicle Block Exemption Regulation')<sup>(45)</sup>, together with a draft Communication amending the Commission Notice containing the Supplementary Guidelines<sup>(46)</sup> to address the data issue. The proposed changes will provide clarity for companies concerning the way the Commission views issues related to access to data generated by the cars' sensors when assessing vertical agreements between vehicle manufacturers and their authorised networks under EU competition rules.

To ensure that the antitrust rules on horizontal cooperation agreements remain fit for purpose, in particular to address also the challenges of digitalisation, the Commission launched, in March 2022, a stakeholder consultation on draft revised Horizontal Block Exemption Regulations on Research & Development and Specialisation agreements and on the draft revised Horizontal Guidelines<sup>(47)</sup>.

Further, in September 2022, the Commission adopted Guidelines on the application of EU competition law to collective agreements regarding the working conditions of the solo self-employed people<sup>(48)</sup>. The purpose of the Guidelines is to explain in which circumstances EU competition law does not stand in the way of collective agreements to improve working conditions.

The Commission announced in June 2022 the launch of a public consultation seeking feedback on how the Regulation 1/2003<sup>(49)</sup> and its implementing act, Regulation

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sector-specific block exemption provisions, as provided for in the MVBBER and the Supplementary Guidelines ('SGL'), applicable to the distribution of spare parts and repair and maintenance services for motor vehicles.

<sup>(45)</sup> Commission Regulation (EU) No 461/2010 of 27 May 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.

<sup>(46)</sup> Commission Notice: Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, OJ C 138, 28.5.2010, p. 16.

<sup>(47)</sup> Public consultation on the draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines, from 1.3.2022 to 26.4.2022. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-hbers\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en).

<sup>(48)</sup> Communication from the Commission: Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons, OJ C 374, 30.9.2022, p. 2.

<sup>(49)</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 (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1.

773/2004<sup>(50)</sup> have performed since their entry into force<sup>(51)</sup>. The aim of the consultation is to collect evidence and views on the procedures applied in the antitrust investigations and to reflect on the new challenges for the enforcement of competition rules, for example the digitalisation of the economy and the increasing complexity of antitrust investigations.

### *Review of EU merger control rules and guidance*

The Commission launched a public consultation<sup>(52)</sup> on a revised Notice on Simplified Procedure (the Notice)<sup>(53)</sup> and Merger Implementing Regulation<sup>(54)</sup> in May 2022. The Commission's Regulatory Scrutiny Board adopted in October 2022 a positive opinion on the impact assessment report. Once adopted, the revised Implementing Regulation and Notice will allow for further simplification through the introduction of new categories of simplified cases, the streamlining of the Commission's merger procedures, as well as the introduction of electronic notification as the default way of notifying merger transactions.

### *Market Definition Notice published*

In November 2022, the Commission published a draft revised Market Definition Notice for public consultation<sup>(55)</sup>. The draft revised Market Definition Notice takes into account the significant developments of the intervening years, in particular digitalisation and new ways of offering goods and services, and also reflects the interconnected and globalised nature of commercial exchanges.

### *Review of State aid control rules and guidance*

The Commission supported the swift development and deployment of cutting edge and breakthrough technologies, facilitating the green and digital transitions of the EU economy.

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<sup>(50)</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18.

<sup>(51)</sup> Public consultation on the EU antitrust procedural rules - evaluation, from 30.6.2022 to 6.10.2022. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation_en).

<sup>(52)</sup> Public consultation on the Merger control in the EU – further simplification of procedures, from 6.5.2022 to 3.6.2022. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification_en).

<sup>(53)</sup> Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14.12.2013, p. 5.

<sup>(54)</sup> Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 336, 14.12.2013, p.1.

<sup>(55)</sup> European Commission Communication from the Commission, draft Commission Notice on the definition of the relevant market for the purposes of union competition law. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-market-definition-notice\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-market-definition-notice_en).

In October 2022, the Commission adopted a revised [Communication on State aid rules for research, development and innovation](#) <sup>(56)</sup>, which sets out the rules under which Member States can grant State aid to companies for research, development and innovation activities.

Following a public consultation <sup>(57)</sup>, the Commission adopted a revised [Communication on State aid for broadband networks](#) <sup>(58)</sup> ('Broadband Guidelines') in December 2022. The revised Broadband Guidelines describe how the Commission will assess State aid measures notified by Member States to support the deployment and take-up of broadband networks in the EU. The new rules contribute to the EU's strategic objectives of ensuring gigabit connectivity for everyone and next-generation wireless high-speed coverage in all populated areas by the end of the decade <sup>(59)</sup>, which is essential to achieve the digital transition of the EU.

### **Strengthening competition enforcement in support of a Europe fit for the digital age**

Preserving market discipline to secure the functioning of the Single Market is essential especially in times of crisis. Effective enforcement of the EU competition rules is of vital importance to the digital transformation of the EU economy.

During 2022, DG Competition continued improving its range of digital solutions to enhance and fully digitise communication and collaboration processes with its external stakeholders, in particular Member State administrations, NCAs, citizens as well as businesses and their legal representatives. This included the launch of a new digital solution, eRFI, to support DG Competition's requests for information to investigate markets. Moreover, the tool enabling collaboration and communication within the European Competition Network, ECN2, was adapted to support the DMA. Furthermore, significant upgrades were made on the tools supporting the EC leniency programme (eLeniency <sup>(60)</sup>) and the negotiation on confidentiality claims in the context of the access to file procedure (eConfidentiality <sup>(61)</sup>). Finally, DG Competition progressed with a project to revamp the publication of competition cases' data

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<sup>(56)</sup> Communication from the Commission: Framework for State aid for research and development and innovation, OJ C 7388, 19.10.2022, p. 1.

<sup>(57)</sup> Draft Communication from the Commission Guidelines on State aid for broadband networks, of 19.11.2021.

<sup>(58)</sup> Communication from the Commission: Guidelines on State aid for broadband networks, OJ 36, 31.1.2023, p. 1.

<sup>(59)</sup> Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030, OJ L 323, 19.12.2022, p. 4.

<sup>(60)</sup> See the press release of 30.9.2022:  
[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5845](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5845).

<sup>(61)</sup> See: [https://competition-policy.ec.europa.eu/antitrust/econfidentiality\\_en](https://competition-policy.ec.europa.eu/antitrust/econfidentiality_en).

on the EUROPA website <sup>(62)</sup> and help citizens and external stakeholders to better access, search and export public data on competition cases.

As DG Competition continues facing an exponential increase in the volume of electronic communications with parties as well as in electronic evidence, projects are ongoing to improve the handling of large volumes of case related submissions and the on premise access to files by parties. Additionally, investigative case teams received support with advanced data and machine learning services, to assist processing and exploiting non-standard submissions of large volumes of documents. A content search tool was made available to State Aid case handlers. Finally, a new data warehouse and data visualisation infrastructure was put in place to integrate with *CASE@EC* and enable advanced visual and interactive dashboards based on a data analytics solution.

### *Antitrust enforcement*

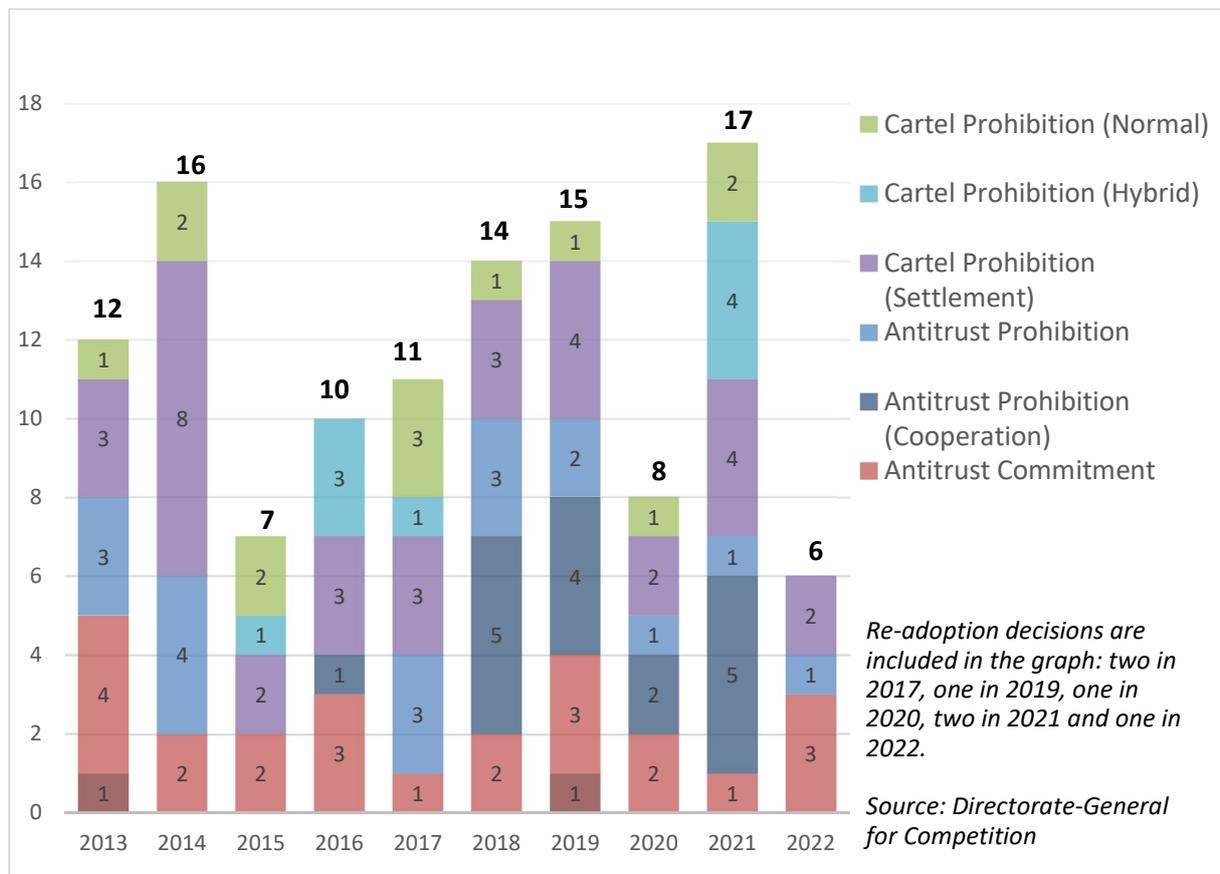
In 2022, the Commission continued to enforce the EU competition rules across all economic sectors and markets, including digital ones.

Following the strong enforcement record of 2021, the Commission used the year 2022 as an opportunity to build up a new stream of cartel cases, relying on information from leniency applicants as well as leads obtained from its own *ex officio* efforts. In addition, the relaxation of the sanitary restrictions towards the end of 2021 enabled the Commission to carry out unannounced inspections in a number of different sectors.

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<sup>(62)</sup> See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3).

## Antitrust and cartel decisions 2013-2022



The Commission also continued to invest in the strengthening of its leniency policy. In October 2022, the Commission published a Frequently Asked Questions document to provide guidance on its leniency policy and practice<sup>(63)</sup>. Moreover, the *eLeniency* tool, introduced in 2019, was key to an effective continuation of the leniency programme throughout the pandemic, since it allowed leniency applicants to file submissions online 24/7 with the same safeguards as if the statements had been dictated at the Commission’s premises. The Commission further built on this success and upgraded the tool in 2022 to increase its functionality<sup>(64)</sup>. The *eLeniency* tool now enables an efficient two-way interaction with parties, including in the settlement procedure, while safeguarding the confidentiality of the documents submitted or displayed in the system.

<sup>(63)</sup> See the press release of 25.10.2022:  
[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6373](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6373).

<sup>(64)</sup> See the press release of 30.9.2022:  
[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5845](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5845).

## Cartel decisions 2022

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition procedure
Metal packaging	12/07/2022	31.522.000	2	Settlement
Styrene monomer	29/11/2022	157.072.000	5	Settlement
<b>Total</b>		<b>188.594.000</b>		

In the telecommunications sector, the Commission accepted in July 2022 a set of commitments offered by *T-Mobile CZ*, *CETIN* and *O2 CZ* in Czechia <sup>(65)</sup>. These commitments set the framework for the beneficial effects of network sharing, limit the exchange of commercially sensitive information between the network sharers and preserve for each party the technical and financial incentives to deploy additional network capacity on their own.

E-commerce has boosted retail competition and brought wider choice and better prices for consumers. The Commission needs to ensure that large online platforms do not eliminate these benefits through anticompetitive behaviour. In this context, the Commission decided to examine *Amazon's* business practices and its dual role as marketplace and retailer. In July 2022, the Commission invited comments <sup>(66)</sup> on commitments offered by Amazon to address competition concerns over its use of non-public marketplace seller data and over a possible bias in granting sellers' access to its Buy Box and its Prime programme. In December 2022, the Commission concluded that the final commitments offered by Amazon addressed the Commission's competition concerns and made them legally binding under EU antitrust rules <sup>(67)</sup>.

In December 2022, the Commission informed *Meta* of its preliminary view that the company breached EU antitrust rules by distorting competition in the markets for online classified ads <sup>(68)</sup>. The Commission is concerned about Meta tying its online classified ads service, Facebook Marketplace, to its personal social network, Facebook and about Meta imposing unfair trading conditions on Facebook Marketplace's competitors for its own benefit.

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<sup>(65)</sup> The commitments are available at

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40305](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40305).

<sup>(66)</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commitment proposal. See:

[https://ec.europa.eu/competition/antitrust/cases1/202229/AT\\_40462\\_8414012\\_7971\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases1/202229/AT_40462_8414012_7971_3.pdf).

<sup>(67)</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commission decision of 20 December 2022. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7777](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777).

<sup>(68)</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7728](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728).

Also in December 2022, the Commission closed an investigation <sup>(69)</sup> opened in March 2022 concerning an agreement known as the ‘Jedi Blue’ agreement between Google and Meta for online display advertising services.

Mobile payments play a rapidly growing role in our digital economy and consumers should benefit from competitive and innovative payment solutions. In 2022, the Commission continued its investigation <sup>(70)</sup> to assess whether *Apple’s* conduct in connection with Apple Pay violates EU competition rules. In the Statement of Objections <sup>(71)</sup>, issued in May 2022, the Commission preliminarily found that Apple may have restricted competition to the benefit of its own solution, Apple Pay.

In the financial services sector the Commission completed in 2022 its investigation into the access conditions to the Insurance Link data sharing system administered by *Insurance Ireland* in the Irish motor insurance market. Following the Commission’s intervention, access to Insurance Link is now available on a fair, transparent, objective and non-discriminatory basis.

The Commission continued its yearly monitoring of parallel 10-year commitments, which the *International Swaps and Derivatives Association* and the provider of commodity and financial data, *IHS Markit* (now part of S&P Global) have entered into <sup>(72)</sup>. These commitments cover both organisational changes to reduce the influence of CDS dealers (the member banks of advisory committees) over licensing decisions and licensing changes such as the granting of licenses on fair reasonable and non-discriminatory terms.

Finally, following the acceptance by the Commission of commitments offered by *Visa* and *MasterCard* in 2019 <sup>(73)</sup> to significantly reduce their multilateral interchange fees for payments in the EEA with consumer cards issued elsewhere, the Commission has continued its monitoring in 2022 of *Visa’s* and *MasterCard’s* compliance with the terms of these commitments.

Concerning pharmaceuticals, the Commission continued to vigorously enforce EU competition rules in 2022, in an effort to foster both competition in innovation and on price, leading to more innovative, affordable and accessible medicines. The Commission has been developing a number of new cases, and issued a Statement of Objections to *Teva* in October 2022

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<sup>(69)</sup> Case AT.40774, *Google-Facebook (Open Bidding) agreement*; see also the press release of 11.3.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1703](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1703).

<sup>(70)</sup> Case AT.40452, *Apple – Mobile payments*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40452](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40452).

<sup>(71)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2764](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2764).

<sup>(72)</sup> Case M.10108, S&P Global / IHS Markit.

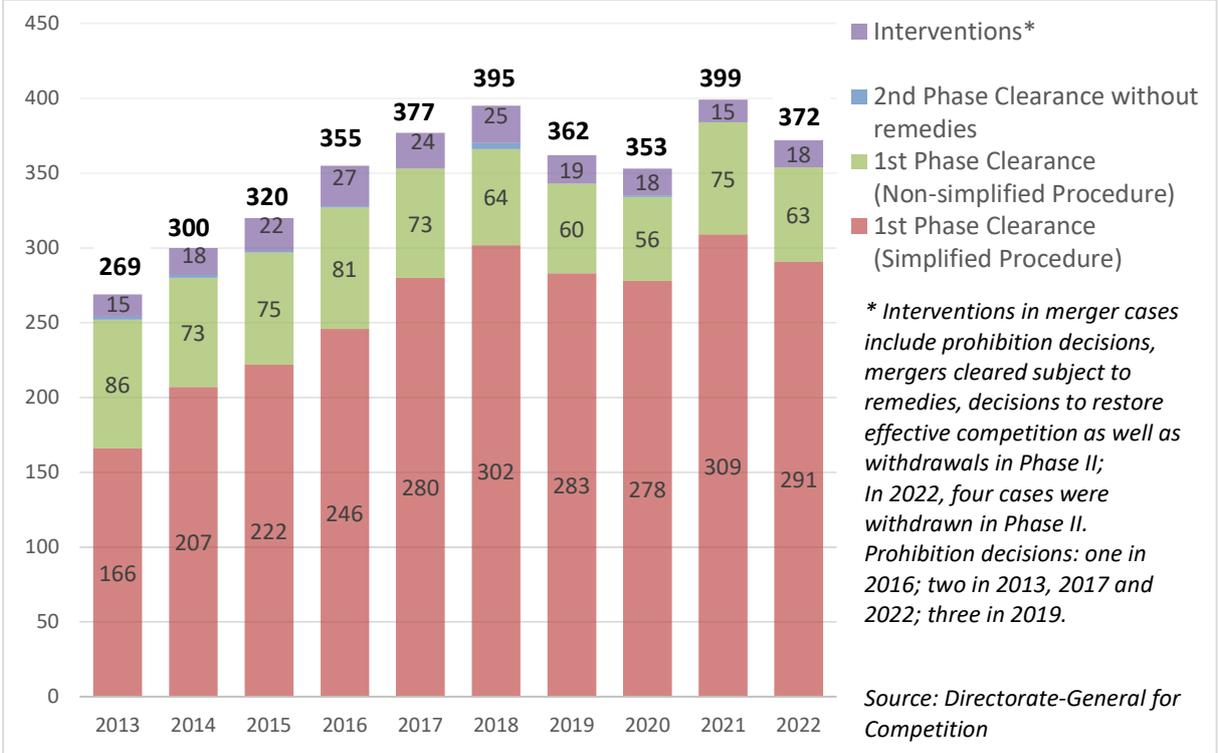
<sup>(73)</sup> Decisions C(2019) 3033 final and C(2019) 3034 final of 29.4.2019.

concerning alleged misuse of the patent system and disparagement of competing medicines (74).

*Merger control*

In 2022, the Commission’s merger control activities remained at a high level. The Commission adopted 368 merger decisions in various sectors of which 291 were approved following a simplified procedure. The Commission intervened in 14 proposed acquisitions, of which 12 transactions were approved subject to conditions and two were prohibited. Four notified transactions were abandoned by the parties and withdrawn in Phase II. Moreover, the Commission received 26 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a national competition authority (‘NCA’) or vice versa. The Commission accepted to examine two transactions following a referral pursuant to Article 22 of Council Regulation (EC) No 139/2004 and referred one transaction pursuant to Article 9 of the EU Merger Regulation to be examined by NCAs.

*Merger outcomes 2013-2022*



In January 2022, the Commission prohibited the acquisition of *Daewoo Shipbuilding & Marine Engineering CO., Ltd* by *Hyundai Heavy Industries Holdings* (75). According to the Commission, the merger between the two shipbuilders would have created a dominant position by the newly merged company and reduced competition in the worldwide market for the

(74) Case AT. 40588, *Teva Copaxone*. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6062](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6062).

(75) Case M.9343, *Hyundai Heavy Industries Holdings / Daewoo Shipbuilding & Marine Engineering*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9343](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9343).

construction of large liquefied gas carriers. Given that no remedies were submitted, the merger would have led to fewer suppliers and higher prices.

Also in January 2022, following an in-depth investigation and subject to conditions, the Commission approved the acquisition of *Kustomer* by *Meta* <sup>(76)</sup>. To address the competition concerns identified by the Commission, Meta offered comprehensive access commitments to the application programming interfaces for Meta's messaging channels with a ten-year duration <sup>(77)</sup>. The Commission carefully reviewed the acquisition because transactions such as this one could further strengthen large players that increasingly dominate the digital economy, irrespective of the target company's size. The commitments offered by Meta ensure that its rivals will continue to have free and comparable access to Meta's important messaging channels.

In June 2022, the Commission approved the acquisition of *Welbilt* by *Ali Group* subject to conditions <sup>(78)</sup>. *Ali Group* and *Welbilt* are global suppliers of professional kitchen equipment, including ice-making machines used in the hospitality and industrial sectors. The commitments offered in this case include the divestment of *Welbilt*'s entire ice-making machines business. This will ensure that a new player on the market will continue to exert competitive pressure on the merged entity, while customers will retain a choice of suppliers.

In September 2022, the Commission prohibited *Illumina*'s prematurely implemented acquisition of *GRAIL* following an in-depth investigation <sup>(79)</sup>. *Illumina* is the dominant supplier of NGS systems for genetic and genomic analysis. *GRAIL* is a customer of *Illumina*, using its NGS systems to develop cancer detection tests. The Commission found that with the transaction, *Illumina* would have an incentive to cut off *GRAIL*'s rivals from accessing its technology, or otherwise disadvantage them and thereby stifle innovation competition in the nascent market for NGS-based cancer detection tests. Despite the Commission's pending investigation, the companies implemented the transaction in August 2021. In reaction to the premature closing, the Commission adopted interim measures to restore and maintain the conditions of effective competition following *Illumina*'s acquisition of *GRAIL* <sup>(80)</sup>. In December

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<sup>(76)</sup> Case M.10262, *Meta (Formerly Facebook) / Kustomer*. See:

[https://ec.europa.eu/competition/mergers/cases1/202242/M\\_10262\\_8559915\\_3054\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202242/M_10262_8559915_3054_3.pdf).

<sup>(77)</sup> A public API access commitment: Meta commits to guarantee non-discriminatory access, without charge to its publicly available APIs for its messaging channels to competing customer service CRM software providers and new entrants. A core API access-parity commitment: To the extent any features or functionalities of Messenger, Instagram messaging or WhatsApp that are used by *Kustomer*'s customers today may be improved or updated, Meta commits to also make available equivalent improvements to *Kustomer*'s rivals and new entrants. This would also hold for any new features or functionalities of Meta messaging channels in the future if used by a sizeable proportion of *Kustomer*'s customers.

<sup>(78)</sup> Case M.10431, *Ali Group / Welbilt*, OJ C 469, 9.12.2022, p.16.

<sup>(79)</sup> Case M.10188, *Illumina / GRAIL*. See:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5364](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5364).

<sup>(80)</sup> Case M.10493, *Illumina / GRAIL (Interim measures under Art. 8(5)a)*. See:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5661](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5661). Following the prohibition of the *Illumina/GRAIL* transaction, the initial interim measures were replaced by interim measures

2022, the Commission sent a Statement of Objections to Illumina and GRAIL informing them of the restorative measures it intends to adopt under the EU Merger Regulation, following the Commission's decision to prohibit the implemented acquisition of GRAIL by Illumina<sup>(81)</sup>. Given that Illumina had already completed its acquisition of GRAIL, Illumina has to unwind the acquisition to give the Commission's prohibition decision its full effect.

In July 2022, the Commission opened an in-depth investigation to assess the proposed acquisition of *VOO* and *Brutélé* by *Orange*<sup>(82)</sup>. Orange has been a successful challenger to Voo/Brutele's telecommunication services in parts of Belgium. The Commission is concerned that the proposed transaction may reduce competition in the retail markets for the supply of fixed internet services, audio-visual services and multiple-play bundles in parts of Belgium.

In November 2022, the Commission opened an in-depth investigation to assess the proposed acquisition of *Activision Blizzard* by *Microsoft*<sup>(83)</sup>. The Commission is concerned that the proposed acquisition may reduce competition in the markets for the distribution of console and personal computers ('PCs') video games and for PC operating systems.

In November 2022, the European Commission opened an in-depth investigation to assess the proposed acquisition of *Lagardère* by *Vivendi*<sup>(84)</sup>. The parties are the first and second largest companies on most markets in the books value chain in France. The Commission is concerned that the transaction may reduce competition on the markets for (i) the purchasing of authors' rights for French-language books, (ii) the distribution and marketing of French-language books, and (iii) the sales of French-language books and celebrity magazines to retailers.

In December 2022, the Commission opened an in-depth investigation to assess the proposed acquisition of *VMware* by *Broadcom*<sup>(85)</sup>. Broadcom is a supplier of hardware, primarily network interface cards and adapters, whereas VMware offers virtualization software. The Commission is concerned that the transaction may allow Broadcom to reduce the ability of rival hardware suppliers to compete, primarily by degrading interoperability of VMware's virtualization software with competitors' hardware products.

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under Article (5)(c) EU Merger Regulation, case M.10938 Illumina/GRAIL (Interim measures under Art. 8(5)a). See [https://ec.europa.eu/commission/presscorner/detail/en/MEX\\_22\\_6467](https://ec.europa.eu/commission/presscorner/detail/en/MEX_22_6467).

<sup>(81)</sup> Case M.10939, *Illumina / GRAIL*. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_7403](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7403).

<sup>(82)</sup> Case M.10663, *Orange / VOO / Brutele*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4762](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4762).

<sup>(83)</sup> Case M.10646, *Microsoft / Activision Blizzard*. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_6578](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6578).

<sup>(84)</sup> Case M.10433, *Vivendi/Lagardere*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7243](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7243).

<sup>(85)</sup> Case M.10806, *Broadcom / VMware*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7835](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7835).

## State aid control

State aid projects contribute, among other things, to the roll-out of high performance broadband networks in the EU in areas where there is no or little incentive for commercial operators to provide sufficient broadband coverage. The Commission has also worked in close cooperation with Member States to ensure that national support measures to kick-start private investment can be put in place as quickly and effectively as possible.

For example, in January 2022, the Commission approved a EUR 3.8 billion Italian scheme under the Recovery and Resilience Facility ('RRF') to deploy high performance gigabit networks in areas of the country where there is no current or planned network able to provide download speeds of at least 300 megabits per second. The measure is a part of Italy's national digitalisation plan <sup>(86)</sup>.

In November 2022, the Commission approved a EUR 500 million Spanish scheme under the RRF to help consumers and business in rural areas access high quality mobile services, contributing to Spain's economic and the EU's overall digital objectives <sup>(87)</sup>.

In addition, in October 2022, the Commission approved a EUR 292.5 million Italian measure under the RRF to support STMicroelectronics constructing a plant in the semiconductor value chain <sup>(88)</sup>. The assessment was made in line with the principles announced by the Commission in the communication adopted in February 2022 and accompanying the Commission's proposal for a Chips Act regulation <sup>(89)</sup>.

In 2022, the Commission also dealt with a large number of State aid cases in the news media sector, with a view to help the sector recover from the crisis and maintain a healthy competitive environment. Particular attention was paid to the fact that media play a key role for democracy, where support is provided in a way that respects and promotes quality independent journalism, media freedom and pluralism <sup>(90)</sup>. In this context, the Commission approved schemes aimed at fostering the digital transformation and technological innovation of the media industry <sup>(91)</sup>. In addition, the Commission approved aid to film production <sup>(92)</sup>

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<sup>(86)</sup> Case SA.63170, *RRF- Italy - Plan 1 Gbps*, OJ C 116, 11.03.2022, p. 3.

<sup>(87)</sup> Case SA.103451, *RRF- ES - Deployment of backhaul networks for mobile connectivity*, OJ C 449, 25.11.2022, p. 2.

<sup>(88)</sup> Case SA.103083, *RRF - STMICROELECTRONICS S.R.L. (ST) – New SIC substrates plant in Catania*.

<sup>(89)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Chips Act for Europe*, 8.2.2022, COM/2022/45 final.

<sup>(90)</sup> See, *inter alia*, Case SA.101274, *Italy - Tax credit for the expenses incurred in 2020 by publishers for the distribution of newspapers and periodicals*; Case SA.102752, *France - Amended tax reduction on news media subscriptions*.

<sup>(91)</sup> Case SA.101182, *Belgium - Digital transformation of media*.

<sup>(92)</sup> See, *inter alia*, Case SA.100474, *Germany/German Motion Picture Fund*; Case SA.102040, *Spain - Tax deduction for audiovisual productions and live shows of performance and music arts in Biscay – modification*.

and videogames production <sup>(93)</sup> where appropriate to sustain the cultural diversity of the EU in the audio-visual sector.

### *Co-operation with the partners in the ECN Network*

In 2022, the Commission continued to ensure the coherent application of Articles 101 and 102 through the European Competition Network ('ECN') <sup>(94)</sup>. Two of the key cooperation and support mechanisms in Regulation 1/2003 are first, the national competition authorities' (NCAs) obligation to inform the Commission about new investigations already at the moment of the first formal investigative measure and, second, their obligation to consult the Commission on envisaged decisions. In 2022, 148 new investigations were launched within the network and 78 envisaged decisions were submitted. These figures include Commission investigations and decisions, respectively.

In addition to the cooperation set out in Regulation 1/2003, other ECN cooperation mechanisms ensure a coherent enforcement of the EU competition rules across jurisdictions. ECN members meet regularly to discuss recently opened cases, policy issues and matters of strategic importance. In 2022, horizontal working groups and sector-specific sub-groups held 45 meetings where NCA officials exchanged views and experience.

## **Promoting a competition culture and international cooperation in the area of competition policy**

### *Multilateral relations*

In 2022, the Commission continued its active engagement in international competition fora such as the OECD Competition Committee, the International Competition Network ('ICN'), where the Commission took up a three-year co-chair role in the Merger Working Group, and the United Nations Conference on Trade and Development ('UNCTAD'). The Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules.

### *Bilateral relations*

In October 2022, the Commission and the US Competition Authorities held the second meeting of the Joint Technology Competition Policy Dialogue, discussing cooperation efforts to ensure and promote fair competition in the digital sector <sup>(95)</sup>. Two ministerial meetings took place in May and December 2022 in the EU-U.S. Trade and Technology Council. The meetings led to an administrative arrangement on a common mechanism for reciprocal

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<sup>(93)</sup> See, *inter alia*, Case SA.103066, *France - Crédit d'impôt en faveur de la création de jeux vidéo*.

<sup>(94)</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43 and OJ C 374, 13.10.2016, p. 10.

<sup>(95)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6167](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6167).

information sharing about public support provided by the EU and the US to the semiconductor industry <sup>(96)</sup>.

In 2022, the Commission continued its cooperation in competition policy with third countries, including technical cooperation programmes with several Asian <sup>(97)</sup> and African <sup>(98)</sup> countries. In 2022, the Commission continued negotiations to conclude Free Trade Agreements ('FTA') with Australia, India, Indonesia, and concluded the FTA negotiations with New Zealand and Uzbekistan. As regards candidate countries <sup>(99)</sup> and potential candidates <sup>(100)</sup>, the Commission's main policy objective is to assist these countries to create legislative frameworks with well-functioning and operationally independent competition authorities.

## **Supporting major initiatives and objectives forming part of A Europe fit for the digital age**

In 2022, competition policy contributed to several major EU initiatives that are part of the Europe fit for the digital age. These contributions build on DG Competition's understanding of how markets work, based on its enforcement experience. DG Competition ensured that major legislative and non-legislative initiatives of the Commission have been fully aligned with the EU competition rules. In January 2022, the Commission published the final report <sup>(101)</sup> in its sector inquiry on the consumer Internet of Things. The report presents the findings, including a number of potential competition concerns, raised by stakeholders, in particular in relation to voice assistants and smart device operating systems, the access to and accumulation of large amounts of data and a lack of interoperability.

DG Competition cooperated with other services and contributed to the work on [the European Data Act](#) <sup>(102)</sup>, [the European Cyber Resilience Act](#) <sup>(103)</sup>, [the European Chips Act](#), [the Declaration on Digital Rights and Principles](#), and [the Digital Partnerships with South Korea, Japan and](#)

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<sup>(96)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7433](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7433).

<sup>(97)</sup> See: <https://asia.competitioncooperation.eu>.

<sup>(98)</sup> See: <https://africa.competitioncooperation.eu>.

<sup>(99)</sup> Countries granted candidate country status by the European Council on the basis of a recommendation by the European Commission: Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

<sup>(100)</sup> Potential candidates for EU membership: Georgia and Kosovo.

<sup>(101)</sup> Report from the Commission to the Council and the European Parliament - Sector inquiry into consumer Internet of Things COM(2022) 19 final, 20.1.2022, available at: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf).

<sup>(102)</sup> Proposal for a Regulation of the European Parliament and of the Council on harmonised rules on fair access to and use of data (Data Act), COM/2022/68 final, 23.2.2022.

<sup>(103)</sup> Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020, COM(2022) 454 final, 15.9.2022.

Singapore. In addition, and as announced in the Chips Act Communication of February 2022 <sup>(104)</sup>, the Commission assessed State aid proposed by Member States to support new advanced production facilities that will strengthen the semiconductor value chain in Europe directly under Article 107(3)c TFEU <sup>(105)</sup>. Moreover, DG Competition ensured that pro-competitive perspective and the importance of an open EU economy were duly highlighted in the Single Market Emergency Instrument <sup>(106)</sup> and the European Media Freedom Act <sup>(107)</sup>.

### **General objective 3: An economy that works for people**

In 2022, the Commission supported this headline ambition by enforcing the competition rules and protecting competition on fair and equal terms. The Commission also **phased out the State Aid Covid Temporary Framework** supporting the economy in the context of the coronavirus outbreak and adopted the **Temporary Crisis Framework** to support the economy following Russia's invasion of Ukraine. DG Competition and other DGs assisted Member States when implementing their Recovery and Resilience Plans (RRPs) under the **Recovery and Resilience Facility (RRF)**.

### **Updating rules and policy guidance in support of An Economy that works for people**

In December 2022, the Commission published the results of the **evaluation of SGEI rules for health and social services of general economic interest** <sup>(108)</sup>. The evaluation has shown that, overall, the 2012 SGEI rules for health and social services and the SGEI de minimis Regulation are fit for purpose, and that they have had a positive impact on the reduction of the administrative burden for the authorities entrusting the SGEIs. The evaluation also shows that certain adaptations may be needed to further simplify the existing rules and to further reduce the administrative burden of Member States when compensating companies entrusted with SGEIs.

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<sup>(104)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Chips Act for Europe, COM(2022) 45 final of 8.2.2022.

<sup>(105)</sup> Case SA.103083, RRF - STMICROELECTRONICS S.R.L. (ST) – NEW SIC SUBSTRATES PLANT IN CATANIA, See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5970](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5970).

<sup>(106)</sup> Proposal for a regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98, COM(2022) 459, 19.9.2022.

<sup>(107)</sup> Proposal for a regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, COM(2022) 457, 16.9.2022.

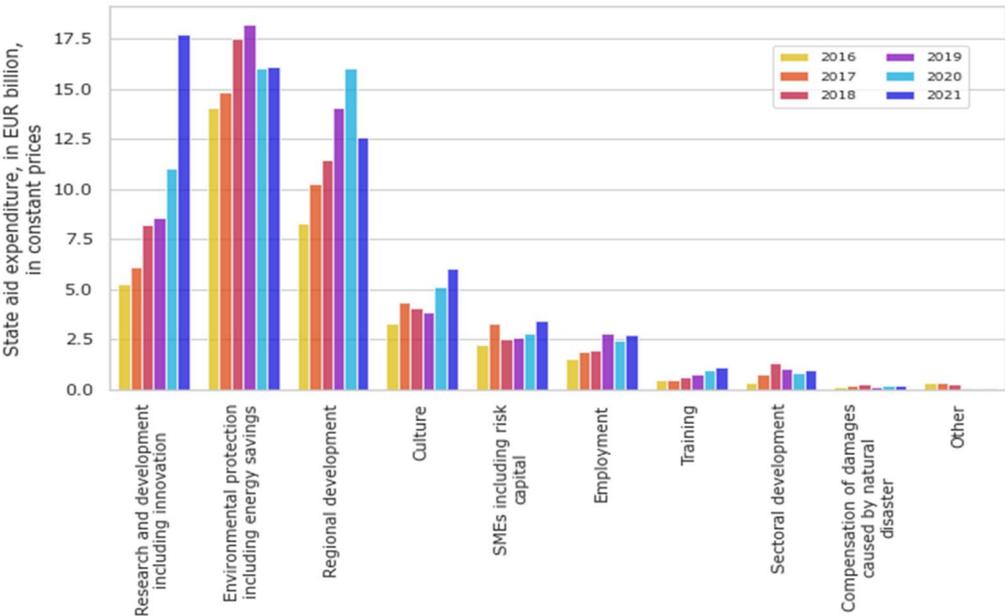
<sup>(108)</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11835-State-subsidy-rules-for-health-and-social-services-of-general-economic-interest-evaluation- en>.

# Strengthening competition enforcement in support of An Economy that works for people

## State aid control facilitated aid for horizontal objectives

State aid for horizontal objectives accounted for the overwhelming majority of all aid. Much of horizontal aid fell under the General Block Exemption Regulation (GBER) <sup>(109)</sup>. The GBER allows Member States to implement a wide range of public support measures in areas such as research and development, environmental protection or support to SMEs, without prior notification if certain conditions are fulfilled. The Commission continued to verify that Member States apply State aid schemes correctly and that they only grant aid when all required conditions are met.

GBER State aid expenditure by objective in the EU, excluding aid for agriculture, fisheries and railways <sup>(110)</sup>



## Banking aid necessary to safeguard financial stability, while protecting competition

State aid enforcement played a crucial role in protecting the Single Market and supporting EU economic policies in 2022. The Commission authorised aid to support the resolution of *Getin Noble Bank* <sup>(111)</sup>, one of the ten largest Polish banks. The size of this bank and the resulting aid amount explain why the result indicator concerning liquidation aid exceeds the

<sup>(109)</sup> Commission Regulation (EU) No 651/2014 of 17.6.2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>(110)</sup> See the 2022 State Aid Scoreboard (forthcoming).

<sup>(111)</sup> SA.100687 – Poland - Liquidation aid to Getin Noble Bank S.A. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5922](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5922).

Commission's target for this indicator. Also in 2022, the Commission authorised the prolongation of several existing State aid schemes allowing Member States to continue strengthening the resilience of the financial sector, without having to grant new State aid to individual financial institutions. In particular, it concerns the prolongation of schemes for the restructuring or orderly market exit of banks in distress in Poland<sup>(112)</sup>, Ireland<sup>(113)</sup> and Italy<sup>(114)</sup>.

In addition, the Commission continued to authorise Member States' support of recently founded SMEs and start-ups frequently held back by limited access to finance. To this end, the Commission approved a second modification of the existing risk finance scheme in France<sup>(115)</sup>.

### *State aid enforcement in the area of taxation*

The Commission also continued to use all the tools at its disposal to ensure that free and fair competition is not distorted in the Single Market by Member States granting illegal tax breaks or implementing aggressive tax planning measures favouring international firms. This includes using EU State aid rules, while fully taking into account the case law of the CJEU.

### *Phasing out the State Aid Covid Temporary Framework supporting the economy in the context of the coronavirus outbreak*

The Commission continued to assess aid measures directly under Article 107(3)(b) TFEU, Article 107(3)(c) TFEU as well as under the Temporary Framework supporting the economy in the context of the coronavirus outbreak ('Temporary Framework for State aid measures')<sup>(116)</sup>. By the end of 2022, the Commission had adopted 217 decisions in all Member States, including those under the Temporary Framework for State aid measures<sup>(117)</sup>.

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<sup>(112)</sup> Case SA.103437, *Poland - Twelfth prolongation of the Credit Unions Orderly Liquidation Scheme*, OJ C 348, 9.9.2022, p.8.

<sup>(113)</sup> Case SA.102499, *Ireland- 15th prolongation of the restructuring and stabilisation scheme for the Credit Union sector*, OJ C 220, 3.6.2022, p.1; Case SA.104441, *Ireland - 16th prolongation of the restructuring and stabilisation scheme for the Credit Union sector*, OJ C 422, 4.11.2022, p. 2.

<sup>(114)</sup> Case SA.100262, *Italy - COVID-19 – Prolongation of the Italian orderly liquidation scheme for small banks*, OJ C 1235, 25.3.2022, p. 2.

<sup>(115)</sup> Case SA.100943, *France - 2e modification du dispositif IR-PME pour les investissements dans les FCPI et FIP*, OJ C 135, 25.3.2022, p.4.

<sup>(116)</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 911, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 1121, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 3401, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

<sup>(117)</sup> See Staff Working Document, Annex 1 and Annex 2 for a complete list of COVID-related Commission decisions.

This is a significant decrease compared to 2021, when 1 180 COVID-related decisions were adopted.

As the public health measures taken in light of Covid-19 health crisis situation were eased, the Commission decided not to prolong the Temporary Framework for State aid measures beyond 30 June 2022 except for investment support and solvency support measures, which are allowed until 31 December 2023 <sup>(118)</sup>. The Temporary Framework for State aid measures allows until 30 June 2023 a flexible transition under clear safeguards for converting and restructuring debt instruments such as loans and guarantees into other forms of aid, for example direct grants.

### *Adoption of the Temporary Crisis Framework to support the economy following Russia's invasion of Ukraine*

To reduce the negative social and economic impact on the EU caused by Russia's aggression against Ukraine, the Commission made renewed use of the flexibility of the State aid rules to minimise the negative economic effects of the war, in a way that minimised distortions to competition. The Commission adopted the Temporary Crisis Framework <sup>(119)</sup> making it possible for Member States to compensate companies for economic damages directly suffered due to the exceptional circumstances caused by the attack on Ukraine, beyond the existing State aid rules.

The EU needs to expedite the rollout of renewable energy sources and speed up the decarbonisation of its energy supply in line with the REPowerEU objectives <sup>(120)</sup>. This is why the Commission amended the Temporary Crisis Framework in July 2022 to facilitate for Member States to set up schemes for renewable energy and the decarbonisation of industry. In October 2022, the Commission prolonged the Framework <sup>(121)</sup> until 31 December 2023, and amended it to address the evolving needs of Member States to support the economy following Russia's continued aggression against Ukraine. From 7 April 2022 to 31 December 2022 the Commission adopted 187 decisions under the Temporary Crisis Framework.

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<sup>(118)</sup> Communication from the Commission: Amendment to the Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 423, 7.11.2022, p. 9.

<sup>(119)</sup> Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ, C 131 I, 24.3.2022, p.1, as amended by Commission Communications C(2022) 5342 (OJ C 280, 21.7.2022, p.1) and C(2022) 7945 (OJ C 426, 9.11.2022, p.1).

<sup>(120)</sup> REPowerEU is the Commission's plan to make Europe independent from Russian fossil fuels before 2030, in light of Russia's invasion of Ukraine. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM(2022) 230, 18.5.2022.

<sup>(121)</sup> Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ, C 426, 9.11.2022, p. 1.

## Supporting major initiatives and objectives forming part of An Economy that works for people

DG Competition contributed proactively to several major initiatives and objectives forming part of An Economy that works for people. Building on its extensive enforcement and policy experience DG Competition understands well how competitive markets work. The Commission continued to tackle the problem that companies, particularly SMEs, do not consider listing in the EU as an easy and affordable means of financing and may find it difficult to stay listed due to listing requirements and costs. In 2022, the Commission published proposal amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for SMEs. Moreover, the Commission continued to work on a proposal of a minimum effective tax rate for the global activities of large multinational groups. The proposal delivers on the EU's pledge to move extremely swiftly and be among the first to implement the recent historic global tax reform agreement<sup>(122)</sup>, which aims to bring fairness, transparency and stability to the international corporate tax framework.

### Examples of EU added value

The activities of DG Competition create EU added value. When DG Competition prioritises its enforcement measures and decides whether or not to initiate investigations on its own initiative, one of the main decision criteria is the impact on the Single Market. By pursuing high-impact cases, DG Competition maximises the added value of its interventions. However, DG Competition also pursues cases for their precedent value, providing clarifications to market participants. EU added value is also an important factor when deciding whether a case should be investigated by DG Competition or by one or several national competition authorities (NCAs). DG Competition concentrates on cases where intervention at EU level generates added value. The objective of EU State aid policy is to create EU added value by stimulating better targeted and more effective State aid while minimising its market-distorting effects in the Single Market.

EU competition policy enforcement provides substantial benefits for consumers and customers. DG Competition estimates<sup>(123)</sup> that direct customer savings generated by the Commission's antitrust and merger enforcement over the period 2012-2021 range between EUR 120 billion and EUR 210 billion. In 2022, the total estimated customer savings from cartel prohibitions and merger interventions varied between EUR 16.3 and 27.1 billion. Customer benefits resulting from non-cartel antitrust interventions varied between EUR 5.6 and 11.2 billion. In addition to these estimates, overall customer benefits considered to be

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<sup>(122)</sup> OECD/G20 Inclusive Framework on BEPS agreement on a Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

<sup>(123)</sup> See Competition Policy Brief 2022/1 Customer savings generated by the Commission's antitrust and merger enforcement: A ten years perspective, See: <https://op.europa.eu/en/publication-detail/-/publication/dbfa0d39-5350-11ed-92ed-01aa75ed71a1/language-en/format-PDF/source-273802603>.

generated by competition policy enforcement also include indirect or deterrent effects generated by enforcement, for example when firms refrain from engaging in anti-competitive conduct or concluding anti-competitive merger agreements; and positive effects on innovation and product or service quality.

The European Commission has used a macroeconomic model of the EU economy<sup>(124)</sup> to assess the effects of competition policy enforcement on economy-wide indicators. The findings suggest that the European Commission's competition policy interventions can lead to a medium to long-term increase in real GDP ranging from 0.6% to 1.1% (corresponding to EUR 90 – 160 billion per year). The results also indicate an increase in consumption (0.5%), investment (1.1%), labour productivity (0.2%) and employment (0.4%) after five years, despite the decline in profits resulting from the negative markup shock.

In October 2022, the Commission published the 2022 Eurobarometer survey dedicated to EU competition policy<sup>(125)</sup>. The results clearly indicate that well-functioning competitive markets improve people's daily lives and that they have a positive impact on SMEs. Competitive markets bring lower prices, more choice and more innovative products and services.

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<sup>(124)</sup> European Commission (forthcoming in 2023, not yet published), "*Modelling the macroeconomic impact of competition policy: 2022 update and further development*", report prepared by the Directorate-General for Competition, the Joint Research Centre and the Directorate General for Economic and Financial Affairs, Publications Office of the European Union.

<sup>(125)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6374](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6374).

## 2. MODERN AND EFFICIENT ADMINISTRATION AND INTERNAL CONTROL

In DG Competition, effective [human resource management](#), [digital transformation](#), and [information management](#) are crucial functions supporting the enforcement of competition policy and development of competition tools. The Digital Solutions Modernisation Plan, including the replacement of obsolete case management systems and digital tools, backed up by the Competition Programme, remained priorities for DG Competition in 2022.



In 2022, the [Competition Programme](#), under the Single Market Programme, enabled the Commission to modernise EU competition policy enforcement with state-of-the-art IT tools (including AI) to better deter and detect infringements of competition rules. Moreover, the Competition Programme allowed investing in knowledge and expertise, for example through funding market analysis in niche, emerging and innovative markets, as well as important evaluation work.

It also helped to strengthen the cooperation between the Commission and the Member States' competition authorities, and raise [stakeholder awareness](#) of EU competition policy.

### 2.1. Financial management and internal control

Assurance is provided on the basis of an objective examination of evidence 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. The results are explicitly documented and reported to the Director-General. The following reports / documentation have been considered:

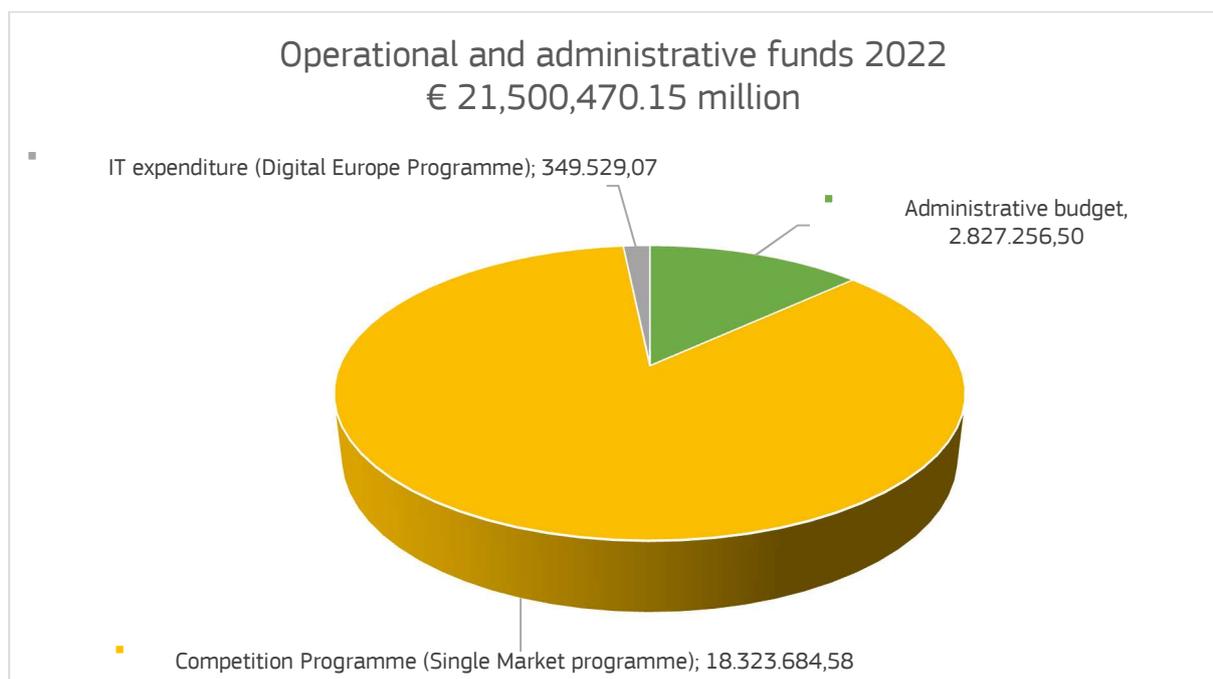
- Contribution of the Internal Control Coordinator, including the opinion and the observations of the ex-post controls of financial transaction; and the results of internal control monitoring at the DG level;
- Register of exceptions and non-compliance events;

- Risk assessment and risk register presented to and approved by the Senior Management, and the IT risk register decided by DG Competition's IT Steering Committee (DIT);
- Note on the results of ex-post review of financial transactions;
- Notes on inadvertent disclosures of sensitive information;
- 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;
- Litigation note of the Commission's Legal Service.

The systematic analysis of the available evidence provides sufficient guarantees as to the completeness and reliability of the information reported and results in the full coverage of the budget delegated to the Director-General of Directorate-General for Competition.

This section covers the control results and other relevant elements that support management's assurance. It is structured into 2.1.1 Control results, 2.1.2 Audit observations and recommendations, 2.1.3 Effectiveness of internal control systems, and resulting in 2.1.4 Conclusions on the assurance.

The financial resources managed by DG Competition derive mainly from an operational budget under the new Single Market Programme's (SMP) dedicated component for competition policy (established under the 2021-2027 MFF), a moderate administrative budget, and other resources such as co-delegated budget line from Digital Europe Programme:



### 2.1.1. Control results

This section reports and assesses the elements identified by management which support the assurance on the achievement of the internal control objectives (ICO) <sup>(126)</sup>. DG Competition's assurance building and materiality criteria are outlined in annual activity report annex 5. The annual activity report annex 6 outlines the main risks together with the control processes to mitigate them and the indicators used to measure the performance of the relevant control systems.

The Internal Control Framework of DG Competition governs the internal controls related to the main inherent risks in DG Competition, which concern procedures leading to Commission enforcement action (that is to say Commission decisions) and policy initiatives in the field of EU competition policy, handling of confidential information as well as the implementation and operation of modern IT solutions to support these policy initiatives and attracting and maintaining highly qualified staff.

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.

In May 2021, DG Competition started implementing a dedicated operational budget. In the Multiannual Financial Framework 2021-2027, the new Single Market Programme (SMP) includes a dedicated component for competition policy, which provides stable financing of measures enhancing the Commission's competition enforcement capacity, policy initiatives, international cooperation as well as advocacy. Since then DG Competition is able to implement measures under the SMP.

In 2022, the implementation of EU competition policy involved management of funds under an operational budget (18.32 million ) that is supporting enforcement and development of competition policy including the development and operation of modern IT solutions and the necessary support and infrastructure in support of competition enforcement activities; an administrative budget (2.83 million) supporting organisational management and functioning of the DG and other resources such as co-delegated budget from the Digital Europe Programme.

The main conclusions on the internal control system are summarised in the following table:

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<sup>(126)</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). The 2nd and/or 3rd Internal Control Objective(s) (ICO) only when applicable, given the DG's activities.

Activity/ Indicator	Legality & regularity	Cost- Effectiveness of controls	Anti-Fraud Strategy	Reliability of information and reporting	Safeguard of Assets	Reputational risk	Reserva- tions
<b>Management operational and administrative expenditure</b>	Error rate below 2%	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	n/a	No
<b>Prevention, detection and correction of fraud and irregularities</b>		Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	Positive conclusion	No
<b>Safeguard of information and IT systems</b>	n/a	Positive conclusion	Area covered by the AFS	Positive conclusion	Positive conclusion	Positive conclusion	No
<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	No
<b>Fines imposed in the area of competition</b>	Positive conclusion	Positive conclusion		Positive conclusion	Positive conclusion	Positive conclusion	No

### *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 DG Competition. These consist, among others, of 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 Director of the General Affairs Directorate is nominated the Director in charge of risk management and internal control taking responsibility for the completeness and reliability of management reporting on the results and on the achievement of objectives. (See Annex 1 for the Statement of the Director in charge of Risk Management and Internal Control).

In line with the 2018 Financial Regulation, DG Competition's assessment for the new reporting requirement is as follows:

- Cases of "confirmation of instructions" (new FR art 92.3) - no such cases for the DG
- Cases of financing not linked to costs (new FR art 125.3) - no such cases for the DG
- Financial Framework Partnerships >4 years (new FR art 130.4) - no such cases for the DG
- Cases of flat-rates >7% for indirect costs (new FR art 181.6) - no such cases for the DG

- Cases of "Derogations from the principle of non-retroactivity [of grants] pursuant to Article 193 FR" (new Financial Regulation Article 193.2) - no such cases for the DG.

**Overview table (amounts in EUR million)**

Risk-type / Activities	Grants (e.g. actual costs based, or lump sums, or entitlements)	Procurement (e.g. minor or major values)	Recovery orders from Commission services (e.g. chargeback and Administrative Arrangements)	Total Expenditure	NEI, e.g. Revenues, Assets, OBS ((in)tangible or financial assets & liabilities)
Operational budget	0.89	13,5	0.13	14.57 <sup>1)</sup>	
Administrative budget		1.37	2.1	3.49 <sup>2)</sup>	
Corporate case management solutions					23.05
<b>Totals (coverage)</b>	<b>0.89</b>	<b>14.87</b>	<b>2.23</b>	<b>18.06 <sup>1)+2)</sup></b>	<b>23.05</b>

1) including 0,05 for training & study visit of AMCU, Ukraine.  
2) including 0.02 representation costs

## 1. Effectiveness of controls

### a) Legality and regularity of the transactions

DG Competition uses internal control processes to ensure sound management of risks relating to the legality and regularity of the underlying transactions it is responsible for, taking into account the multiannual character of programmes and the nature of the payments concerned.

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.

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 a limited number of recorded exception, which had no impact on the legality and regularity of the transaction. The DG's grants programmes are very small and ex-post controls and audits are not obligatory.

In 2022, 8 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 (64.99% of the individual commitments value (provisional commitments excluded), 39,27% of the total value of payments and 73,12% of the total value of the recovery orders) sample of the financial transactions of DG Competition was subject to an ex-post control. The error rate observed was 0,11%. 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 2022 was EUR 18.06 million and the average error rate was 0.11%. 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.

DG Competition's portfolio consists of segments with a relatively low error rate, i.e. <2%, mainly in the area of procurement (95%) and grants (5%) with strong ex-ante and ex-post controls.

This is, respectively, thanks to the inherent risk profile of the DG and the performance of the related control systems. Therefore the risk at payment, estimated future correction and risk at closure remain stable.

In addition, DG Competition has in place an effective mechanism for correcting errors, through ex-ante and ex-post controls, resulting in preventive and corrective measures, respectively.

Based on all the above, DG Competition presents in the following Table X an estimation of the risk at payment and risk at closure for the expenditure managed during the reporting year:

**Table X: Estimated risk at payment and at closure (amounts in EUR million)**

The full detailed version of the table is provided in Annex 9.

DG Competition	Payments made	Relevant expenditure	Estimated risk (error rate %) at payment		Estimated future corrections and deductions		Estimated risk (error rate %) at closure	
	m EUR	m EUR	m EUR	%	m EUR	%	m EUR	%
Operational and administrative expenditure	18,06	17,88	0.09	0.5	0	0	0.09	0.5
<b>DG Competition total</b>	<b>18.06m EUR</b>	<b>17.88m EUR</b>	<b>0.09m EUR</b>	<b>%</b>	<b>0m EUR</b>	<b>0%</b>	<b>0.09m EUR</b>	<b>0.5%</b>

The estimated overall risk at payment for 2022 expenditure amounts to EUR 0.09 million, representing 0.5% of the DG's total relevant expenditure for 2022 (EUR 17.88 million). This is the AOD's best conservative estimate of the amount of relevant expenditure during the year, not in conformity with the contractual and regulatory provisions applicable at the time the payment was made.

This expenditure has been subject to ex-post controls and the average error rate was 0.11%. The conservatively estimated future corrections for 2022 expenditure are close to 0.

For an overview at Commission level, the DGs' estimated overall risk at payment, estimated future corrections and risk at closure are consolidated in the AMPR.

#### b) Fraud prevention, detection and correction

DG Competition has developed and implemented its own anti-fraud strategy since 2013, on the basis of the methodology provided by OLAF. It is updated every three years, and was last updated on 18 December 2020. Its implementation is being monitored and reported to the management annually through the internal control monitoring process. All necessary actions were taken except the organisation of a specific training on anti-fraud for staff, which is scheduled to take place in the first quarter 2023. DG Competition also contributed to the Commission anti-fraud strategy and did not receive any *financial* recommendations from OLAF.

The results achieved during the year thanks to the anti-fraud measures in place can be summarised as follows: the fraud risks and controls have been assessed and the risk of fraud remains low; thanks to the revised ethics guidance and the several corporate and local specific ethics trainings available, staff has a good level of awareness of the Commission ethics rules and how they apply to DG Competition's work.

On the basis of the available information, DG Competition has reasonable assurance that the anti-fraud measures in place are effective.

### c) Other control objectives: safeguarding of information and 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.

As regards IT systems, the controls in place include the yearly review of the IT Risk Register and the requirement for new information systems to have a security plan.

IT Risk Management ensures visibility, accountability and regular monitoring of IT risks, in order to address them in the best possible ways. IT security plans ensure that new information systems comply with the Commission standards for cybersecurity.

The benefit with these controls is to reduce the risks both of sensitive information being disclosed or the integrity of sensitive information being breached, thus avoiding events that could potentially harm the reputation of the Commission.

As regards information processes the controls in place include the implementation of procedures to protect information, awareness raising of staff on the importance of information security and a reporting/risk assessment mechanism for disclosures.

The benefits of these controls include constant awareness of staff, and a reporting system that triggers follow-up action to prevent similar events from happening in the future.

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

### d) Other control objectives: enforcement and policy actions taken in the area of EU competition policy

Competition law enforcement is carried out in the public interest assessing evidence objectively and other pieces of information under the rule of law principle. 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 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 implementation of the internal controls in DG Competition during 2022 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 control objective is to ensure that the Commission's competition policy enforcement is of sufficiently high quality to withstand the scrutiny of the EU courts. 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.

Ex-ante controls include management structures and procedures for enforcement and policy initiatives, involving the highest political level, expert economic advice of the Chief Economist Team, peer review panels, consultations with other Commission services, opinions by the Legal Service, independent Hearing Officers, Principal Adviser, a tailored governance structure, comprehensive knowledge sharing tools and IT systems and support. (See annex 6 for details). The ex-post controls of the effectiveness as regards enforcement in the area of the EU competition policy include the Commission's Legal Service yearly analysis and assessment notes on the litigation of the Union and EFTA Courts, including cases lodged, pending and concluded. The analysis of the external audit results has unveiled some weaknesses. A comprehensive set of recommendations has been agreed with the European Court of Auditors to be implemented until 2024. The implementation of these recommendations continued in 2022. These weaknesses however could not have a material impact on the performance of the Directorate General in terms of the effectiveness of the controls. DG Competition therefore concludes that the effectiveness of the internal control objectives has been achieved.

#### e) Other control objectives: fines imposed in the area of competition

The control objective is to ensure that the Commission establishes its legal rights in terms of revenue entitlements in Commission decisions and that EU accounting rules are respected and reflect the reality.

The amount of fines and penalties issued in 2022 was EUR 379 million, of which related to antitrust 272 million and State aid 107 million, which is 1 billion less than in 2021. Fines amounting to EUR 1.160 million were cancelled due to Court judgements. There were 2 waiver decisions adopted for the total amount of EUR 8 million. 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 BUDG and the Legal Service was performed 3 times during the year.

The analysis of the available control results has not unveiled any weakness that 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.

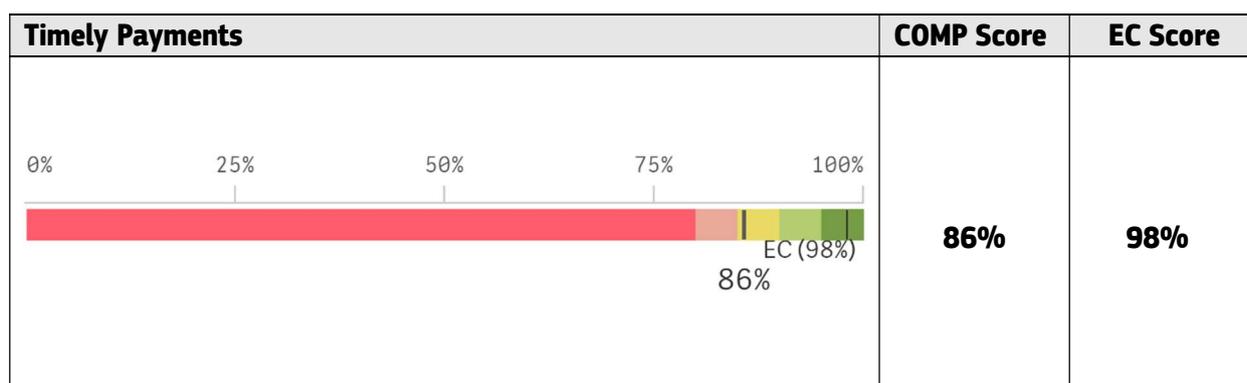
## Conclusion

Considering 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 regarding the achievement of the other internal control objectives.

### 2. Efficiency of controls

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 <sup>(127)</sup> to ensure the cost-effectiveness of controls.

#### a) Control efficiency as regards legality and regularity in financial management



The average net payment time in 2022 was 16 days <sup>(128)</sup>, which is slightly more than the average net payment time in 2021 (15.2 days). Furthermore, 96% of all payments were executed within the contractual limit, which is slightly lower than in 2021 (98%).

The 86% rate is mainly the result of two payments of interests on provisionally paid competition fines to Deutsche Telekom of €1,76 million end of February 2022 after court judgement mid of January (T-610/19), formally in average 26 days late (due to budgetary rules and constraints).

The time to inform beneficiaries in 2022 was 162 days (cf. 152 days in 2021) and the average time to grant slightly increased to 276 days from the deadline to submit proposals (272 days in 2021).

<sup>(127)</sup> DG Competition Internal Control Strategy adopted on 28 June 2021.

<sup>(128)</sup> Cf. table 6 in Annex 3.

#### b) Control efficiency as regards prevention, detection and correction of fraud and irregularities

The controls in place for ethics processes provide an added value and are efficient in the use of resources. For instance, the annual declaration of awareness of conflicts of interest rules, the compulsory half-day course on ethics for new and returning staff, and the automatic conflict of interest declaration when staff is appointed to a case. With few resources, all these specific tools provide with full coverage of the intended audience.

Regarding the efficiency of its policy and enforcement action, DG Competition also relied on the external audits performed by the European Court of Auditors.

#### c) Other control objectives: Control efficiency as regards safeguard of information and IT-systems

Many of the guidance and controls on information flows are embedded in the Manuals of Procedures and other existing guidance, to ensure they are routinely implemented in the course of competition investigations. When information security incidents were detected, staff take action swiftly, and procedures were adapted in line with lessons learned.

DG Competition's IT governance body (Document and IT management committee) reviews the IT Risk Register on a yearly basis, evaluating the likelihood and impact of IT risks and discussing mitigation measures.

Moreover, each IT project is subject to risk management throughout the project cycle in accordance with the Commission's PM2 methodology. IT projects' risk logs are regularly updated and project status reports are submitted to the EC IT governance at the required intervals.

Regarding security plans for new information systems, DG Competition is implementing, with the support of DG DIGIT, the application of the EC IT Security Risk Management Methodology (ITSRM2) for new information systems. Existing security plans based on the previous Commission Decision and methodology will be gradually updated to align with the new ITSRM2.

#### d) Other control objectives: Control efficiency as regards enforcement and policy action taken in the area of EU competition policy

Considering the impact the enforcement action 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. 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.

Ex-ante controls include enforcement structures and procedures, arrangements with the Commissioner, expert economic advice of the Chief Economist Team, peer review panel, review by the Legal Service, independent Hearing Officers, Principal Adviser, a tailored governance structure, comprehensive knowledge sharing tools and IT systems and support. (See annex 6 for details).

The ex-post controls of the effectiveness as regards enforcement in the area of the EU competition policy include the Commission's Legal Service yearly analysis and assessment notes on the litigation of the Union and EFTA Courts, including cases lodged, pending and concluded.

#### e) Other control objectives: 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. An automatically generated monthly list of competition decisions with fines is circulated to ensure a timely encoding in ABAC.

In 2022, fines imposed were introduced into the accounting system in correct and timely manner and the accounts therefore reflects the value of the assets concerned.

### **3. Economy 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 (EUR 18.06 million) and budget (EUR 21.50 million), the financial stakes affected by the quality of decisions prepared by DG Competition are significantly higher:

Funds managed	
Payments (Expenditure) 2022	EUR 18.06 M
Total budget (Operational, administrative and co-delegated)	EUR 21.50 M
Decisions with fines adopted in 2022	EUR 379 M
Total amount of pending fines	EUR 13.709 M
Number of pending fines on 31 December 2022	109

The 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 budget) 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.

These considerations need to be taken while reading this sub-chapter and related information in annex 7.

#### a) Cost of control as regards legality and regularity in financial management

As regards financial management, it is estimated that 8.77 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 0.91 of one full time post.

The ex-post review of procurements, grants, financial transactions and reported exceptions performed by Unit I4 is estimated to be equivalent to 0.65 of one full time staff.

In total, the cost of controls represents 9.74 full time staff e.g. approximately EUR 1 218 233 (EUR 1 105 484 for ex-ante controls and EUR 112 749 for ex-post controls) or equivalent to 6.74% of total expenditure. This is almost at the same level as in 2021 when the total costs of controls represented 6.69% of total expenditure.

#### b) Cost of control as regards prevention, detection and correction of fraud and irregularities

The cost of prevention is estimated at 0.28 (compared to 0.51 in 2021) of a full time equivalent (EUR 65 701), which includes the tasks related to anti-fraud and ethics by the local ethics/anti-fraud contact point and the HR Correspondent.

c) Other control objectives: Cost of control as regards safeguard of information and IT-systems

The controls in this area include the follow-up of the IT Risk Register, the preparation of IT security risk assessments and IT security plans for new information systems, as well as the time dedicated to IT security tasks by staff working on local systems administration, project management and operations management, and the functions of Local Informatics Security Officer and Local Security officer. The cost is calculated as the FTEs of the statutory staff involved in these security controls (a total of 2.16 FTEs or EUR 346 852), and the costs incurred on contracts for External Service Providers (EUR 270 000). The overall cost of these controls is therefore EUR 616 852. This figure is a significant increase compared to last year (2.12 FTEs or EUR 305 886). It is explained by the fact that the calculation method now includes an estimation of the IT security tasks carried out by 18 other staff in the informatics unit, and by the progressive increase in resources dedicated to IT Security in line with the IT and Cybersecurity Board recommendations and the current cyber-threat landscape.

d) Other control objectives: Cost of control as regards enforcement and policy action 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 DG Competition estimates of the costs of controls: DG Competition estimates that 51 full time equivalents (same as in 2021) (EUR 9 802 200) from these units can be allocated to the quality control of the enforcement and policy action taken in the area of EU competition policy.

e) Other control objectives: Cost of control as regards fines imposed in the area of competition

The controls of a fine decision before it is adopted ensure that the decision does not include weaknesses that would undermine the Commission's legal rights in terms of revenue entitlements. The cost of these controls are intrinsically linked to controls in the area of enforcement and policy action taken in the area of EU competition policy and therefore difficult to extract and measure (cf. 3.d).

Once the decision is adopted, the cost of controls to ensure a correct registration of a fine decision corresponds to less than 10% of a full time equivalent (same as in 2021) as the number of fines decisions in a year is limited.

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

Based on the most relevant key indicators and control results, DG Competition has assessed the effectiveness, efficiency and economy of its control system and reached a positive conclusion on the cost-effectiveness of the controls for which it is responsible.

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

This section sets out the observations, opinions and conclusions reported by auditors – including the limited conclusion of the Internal Auditor on the state of internal control. Summaries of the management measures taken in response to the audit recommendations are also included, together with an assessment of the likely material impact of the findings on the achievement of the internal control objectives, and therefore on management's assurance.

DG Competition is audited by both external and internal independent auditors: the European Court of Auditors (ECA) and the Commission internal audit service (IAS).

##### **A. European Court of Auditors (ECA)**

In 2022, DG Competition has not been subject to ECA audits as a lead Commission service but has contributed to a number of ECA audits. DG Competition also took action to further implement recommendations in ECA's 2020 performance audits in State aid to financial institutions and antitrust and merger proceedings.

##### **B. Internal Audit Service (IAS)**

Following the implementation of the audit recommendations, IAS issued a closure letter on 20 January 2023 for its 2021 audit on the preparedness of the Competition Programme (CP). IAS audits involving DG Competition are ongoing but not yet finalised.

As regards the state of internal control, IAS concluded that the internal control systems in place are effective for the audited processes.

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

The Commission has adopted an Internal Control Framework based on international good practice, to ensure the achievement of its policy and management objectives. Compliance with the internal control framework is a compulsory requirement.

DG Competition uses the organisational structure and the internal control systems suited to achieving its policy and internal control objectives in accordance with the internal control principles and has due regard to the risks associated with the environment in which it operates.

DG Competition has assessed in a structured review process its internal control system during the reporting year. To this end, DG Competition used existing procedures (DG Competition IC

strategy and DG Competition IC Framework) and structures (senior management, DG Competition IC Coordinator, DG Competition IC Network) established and operating according to the Communication on the Revision of the Control Framework and the Implementation Guide of the Internal Control Framework of the Commission.

In this process DG Competition analysed numerous sources of information including: self-assessments, ex-post review of financial transactions, register of non-compliance and exceptions, analysis of internal control weaknesses (including observations and recommendations provided by the IAS), risk assessment, assessment of the implementation of recommendations of the European Court of Auditors, results of the corporate indicators reported in the AAR Annex 4, review of inadvertent disclosures of sensitive information, and the review of sensitive posts.

DG Competition has assessed its control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning well overall, but some improvements are needed. In total, 15 out of 17 IC principles were rated as present and functioning well. One IC principle, principle 1 was rated as present and functioning but requiring minor improvements and principle 4 was rated as present and functioning but some improvement is needed due to staff turnover exceeding the level of 2021. Further analysis will be made and further actions will be taken to address the matter.

Directorate-General Competition has assessed its internal control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning well overall, but some improvements are needed as minor deficiencies were identified related, inter alia, to staff turnover.

#### 2.1.4. Conclusions on the assurance

Firstly, the internal controls have been exercised on the activities of DG Competition. Their effectiveness has been assured in the IC assessment process and validated by the Director in Charge of the Risk Management and Internal Control (RMIC).

Secondly, the controls have been exercised on the management of resources, based on the central guidance provided by the relevant Commission services (DG BUDG, IAS, OLAF) and, in specific audit contexts, by the ECA. These controls included the ex-post review of financial transactions, and anti-fraud.

Thirdly, a comprehensive risk based DG COMP Internal Control Framework has been used to assess the effectiveness of internal controls, identify deficiencies and measure their impact on the Internal Control principles as defined in the European Commission Internal Control Framework. This process has been further aligned with the recommendations of the IAS following its DG COMP ICF implementation review in 2021. Also a set of tools and means was used in line with the central guidelines and the best professional practices.

Finally, the functioning of the internal control systems was monitored throughout the year by the senior management of DG Competition and was reported on by the Director in charge of RMIC. Corrective and alternative mitigating controls were implemented when necessary.

Results from audits during the reporting year did not include any critical findings. Very important recommendations and actions agreed in 2021 with the IAS on the audit on the implementation of the competition programme, were implemented and closed in 2022.

The residual risk from audit recommendations remaining open from previous years and being implemented by DG Competition is not considered to have an impact on the declaration of assurance.

In conclusion, based on the elements reported above, 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.

## 2.1.5. Declaration of Assurance

### Declaration of Assurance

***I, the undersigned, Olivier Guersent***

***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>(129)</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, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.***

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

***Brussels, 30 March 2023***

***(signed)***

***Olivier Guersent***

***p.p. Linsey McCallum***

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<sup>(129)</sup> True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG.

## 2.2. Modern and efficient administration – other aspects

### 2.2.1. Human resource management

During 2022, DG Competition continued to improve its human resource management. DG Competition ensured that its resources were effectively allocated to its priorities, in particular the new work streams the Digital Market Act and the Foreign Subsidies Regulation. Moreover, DG Competition continued to implement the rules of the Recovery and Resilience Facility (RRF) by assessing Member States' Recovery and Resilience Plans (RRPs). Significant resources were also allocated to Important Projects of Common European Interest (IPCEI), COVID-19 related State aid control, State aid control in the context of the Russian war against Ukraine as well as numerous competition policy initiatives. In 2022, DG Competition requested that a new Directorate should be created to deal with the Digital Market Act. The new Directorate J, Markets and cases VI: Digital Platforms became operational on 16 January 2023.

DG Competition continued to implement its local HR strategy action plan in line with the overall Commission HR strategy and taking into account the results of the 2021 staff survey. The main actions implemented in 2022 focused on "Talent", "Leadership & Management", "Workplace & Wellbeing" and "Organisation & Culture". The implementation was further validated in 2022 through 62 entry, 90 exit and 36 career development interviews with staff members.

#### *DG Competition's 10 DOs – the charter for good people management*

In September 2022, all senior and middle managers as well as deputy heads of unit signed up again to the '10 DOs for people management', originally signed in 2018.

#### *180° feedback development exercise for DG Competition's managers*

As an integral part of its staff motivation, engagement, and retention strategy, DG Competition continued conducting 180° feedback exercises for DG Competition's senior management. At the end of the exercise, each participating senior manager received individual feedback. Moreover, targeted development courses will be offered to senior managers.

#### *Staff engagement index*

DG Competition's staff engagement index increased to 77% in the 2021 staff survey (one percentage point more than in the 2018 staff survey), which is higher than the overall Commission staff engagement index of 72%. There was no Commission Staff Survey in 2022.

### *Other initiatives for a better workplace*

As regards career development and guidance, in 2022 DG Competition boosted staff integration by giving every newcomer dedicated coaching and mentoring. Reflections on alternative career paths (for example senior experts) continued in 2022.

In April 2020, the Commission adopted measures to reach gender equality at all levels of management by the end of 2024 (Decision SEC (2020)146). The Commission Decision sets quantitative targets for first female appointments at middle management level per Directorate-General and service. DG Competition should make two first female appointments by 2022 and reach a female representation of 50%. On 31 December 2022, DG Competition exceeded its target of two first female appointments by 5. At middle management level, DG Competition had a female representation of 45.65% (women occupied 21 of the 46 Head of Unit posts).

In addition to the Female Talent Development Programme organised at overall Commission level, DG Competition launched together with DG ECFIN, DG FISMA and DG GROW a cross-DG talent development programme for female staff who aspire to become managers. In 2022, 24 colleagues participated (six from each participating DG).

DG Competition is committed to giving all staff equal opportunities independent of their background and to respect the principle of non-discrimination in all its forms at all stages of HR management. In June 2022, DG Competition adopted the COMP Equality Action Plan. It included an internal component (that is to say within DG Competition) and an external component covering the policies of DG Competition. In 2022, DG Competition created the Equality Network chaired by a senior manager with representatives from across the DG. The Equality Network meets regularly each 4-6 weeks. The first meetings analysed the situation in DG Competition and designed concrete actions for both the internal and external components.

### *Internal Communication*

The **main goal** of internal communication (IC) at DG Competition is to ensure clear, timely, transparent and targeted internal communication, connecting staff with DG Competition's and the Commission's priorities, positively contributing to the development of a sense of "belonging" to the organisation and, ultimately, to **staff engagement**.

In 2022, The Director General of DG Competition shared corporate and HR messages through **All staff e-mail messages. Video messages** were prepared immediately after each senior management meeting, in order to share across the DG timely information about HR, organisational, corporate and COMP specific main developments and challenges. The Directors give a more elaborated debrief of the weekly senior management discussion to the heads of unit, who will pass on this information to staff at their unit meetings. Detailed and specific HR information was published on the dedicated Wiki space, as well as on the Intranet page and the internal newsletter.

In all these messages, particular attention was paid to **DG COMP local HR Strategy and Action Plan** and the new **Commission Decision on the implementation of working time and flexible working arrangements**.

Two **All Staff events** chaired by the Executive Vice-President took place in 2022, as well as gatherings and away days at directorate and unit level and social events for newcomers (monthly Newcomer's Coffee). In addition, the AST network was very active in organising social, solidarity and sports events that create excellent opportunities for colleagues to come together.

In 2022, **knowledge management** was actively promoted through COMPWiki, and Wiki blogs were used to draw colleagues' attention to new developments.

## 2.2.2. Digital transformation and information management

### Digital transformation

2022 constitutes the third year of DG Competition's implementation of its five-year digital modernisation plan to become a data-driven organisation equipped with state-of-the-art digital tools to support EU competition enforcement, in line with the principles and objectives of the European Commission Digital Strategy. In 2022, DG Competition has made significant progress in its digital transformation by rolling out or upgrading modern information systems that support DG Competition's business domains and activities, including the new domains of the Digital Markets Act and Foreign Subsidies Regulation, digitalise and rationalise business processes and replace obsolete technologies.

First, as domain leader in the Commission for modern case management solutions, DG Competition has made numerous upgrades to the common case management platform (CASE@EC) – rolled out in September 2021 for all of DG Competition's document registration and management processes and for State aid case management. CASE@EC will be progressively rolled-out for all of DG Competition's instruments as well as use by other Commission services. In October 2022, DG Competition released a version of CASE@EC supporting the implementation of the new Digital Markets Act. Work has continued to prepare the implementation of other business domains in CASE@EC, notably Horizontal Projects (released in February 2023) and Antitrust/Cartels cases. Moreover, work has been carried out to add support for Foreign Subsidies Regulation cases in time for the entry into force of this new instrument. Several other DGs have on-boarded CASE@EC to support their case management needs, including DG SANTE for Food and Health audits, DG BUDG for Rule of Law cases, DG CONNECT for Digital Services Act and Digital Markets Act cases, and DG GROW for public procurement cases under the Foreign Subsidies Regulation.

Second, as regards digital solutions facilitating digital exchanges with Member States' administrations, companies and citizens, DG Competition achieved significant progress in 2022 in modernizing digital solutions, including by:

- Improving the State aid digital solutions (GENIS) to align with changes in State aid legislation and the Temporary Frameworks;

- Improving the platform to communicate securely with the European Competition network in the context of antitrust and mergers proceedings (ECN2) and the digital solution for leniency applications (eLeniency);
- Improving the digital solution supporting negotiations on confidentiality claims with external parties (eConfidentiality) in the context of Access to File and preparation of decisions;
- Rolling out a new digital solution supporting Requests for Information in the context of market investigations (eRFI) to replace the ageing IT system currently supporting market investigations;
- Undertaking work to enable sharing the code of the eLeniency and eConfidentiality solutions with interested National Competition Authorities to increase reusability and support collaboration with Member States and assist them in their own journey of digital transformation;
- Progressing in the implementation of the new Open Data and Case Search (ODSE) solution, which will revamp the publication of competition cases' data on the EUROPA website to help citizens and external stakeholders to access, search and export public competition data;

Third, with respect to the area of data analytics and artificial intelligence tools, in 2022, DG Competition continued to invest and consolidate its initiatives with a strategic view to providing a coherent and robust ecosystem for investigation tools and the management, analysis and use of data, including by:

- Completing the development of the redesigned in-house eDiscovery tool supporting the search of large amounts of documents and the management of evidence;
- Launching an in-depth market analysis of eDiscovery solutions with technology-assisted review capabilities;
- Providing customized support, including machine learning capabilities, for processing and reviewing non-standard large volume submissions in a number of merger and antitrust cases;
- Preparing, together with DG DIGIT, a proof of concept for a secure platform supporting the processing of very large volumes of data;
- Kick-starting the transformation of DG Competition's internal management reports to dashboards based on the Commission's new corporate tool, thereby improving their usability and allowing for intuitive and visual data discovery; and further adapting the data warehouse and business intelligence infrastructure to the case management system CASE@EC.

Moreover, DG Competition keeps investing into state-of-the-art, non-standard hardware and software solutions operated by specialised staff in the context of investigative and forensic IT activities, performed to detect and effectively prosecute anticompetitive conduct. A dedicated team in the registry operates specific tools (hardware and software) for processing

large or complex collections of documents so that they can be exploited by the case teams with eDiscovery tools.

Fourth, given its sensitive and confidential nature, DG Competition's information has specific security requirements. In 2022, DG Competition approved IT Security Plans for 12 new and existing digital solutions and started the analysis for several more. The necessary monitoring and control measures are being implemented. At the same time, DG Competition started several initiatives to improve the IT security of information systems in compliance with the corporate IT security policy.

The registry of DG Competition continued to play a key role in serving the DG, in particular providing services to case teams and stakeholders. In 2022, DG Competition reorganised its registry creating two dedicated teams in charge of dealing with the document management related to the Digital Markets Act and the Foreign Subsidies Regulation. The DMA registry team of DG Competition also provides services to the colleagues from DG CONNECT involved in DMA case handling.

### **Data protection**

As regards Data Protection, DG Competition continued to follow up on the implementation of the Commission's Data Protection Action Plan (C(2018) 7432 final) by reviewing its data processing operations in order to ensure their conformity with the legal framework, notably with the general principles laid down in the regulation. A full review of the processing operations was completed in October 2022. In addition, Data Protection Coordinators (DPC) team raised awareness on data protection through centrally organised courses and specific action: advertising of training sessions at corporate level, presentations in internal meetings, internal blog posts. The DPC team maintains regular contacts with colleagues involved in processing operations and regularly updates the dedicated intranet section. Information about data protection principles is also systematically included in the training sessions for newcomers in view of ensuing full embedding of data protection rules in the daily work of all staff. In 2022, the DPC team also organised regular exchanges with national competition authorities on data protection issues occurring during competition investigations and a meeting of the European Competition Network group on procedural issues was devoted to this topic.

### **2.2.3. Sound environmental management**

DG Competition takes full account of the environmental impact of all its actions and actively promotes measures to reduce the related day-to-day impact of the administration and its work. Having its offices in one of the Commission buildings participating in the Eco-Management and Audit Scheme (EMAS), DG Competition's activities conform with the EMAS and contributed to the reduction of the building's energy consumption, CO<sub>2</sub> emissions, waste generation, water use and office paper consumption.

DG Competition worked towards a more efficient waste management with the help of the waste sorting stations installed and internal communication on their better usage. The recovery from the pandemic followed by the regular going to the office has increased the

prints per person in comparison to 2021. DG Competition has successfully maintained its low CO<sub>2</sub> footprint, based on fewer missions and internal and external meetings that were predominantly held via various video-conferencing tools. A collection of old electrical items was organised in Q1 2022. Building the EMAS and volunteers' teams continued in 2022 and two more co-correspondents were nominated. EMAS was incorporated into the Internal Control Network of the DG. Corporate level EMAS campaigns were timely promoted locally via My IntraComm, COMP Newsletter and/ or via emails to all staff members.

#### 2.2.4. Examples of economy and efficiency

The Commission recognises digital transformation as one of the key political priorities both in terms of driving change in markets and enabling public sector modernisation, where the Commission itself needs to lead by example. In 2022, DG Competition therefore concluded a Memorandum of Understanding with ESTAT, which sets out a framework for future, targeted cooperation concerning European statistics needed for the programming and implementation of EU competition policy, as well as other statistics in a number of technical areas. The main objective is to identify European statistics, e.g. structural business statistics, price statistics and energy statistics that are needed for the programming and implementation of EU competition policy. This is also in line with the Commission DataStrategy@EC to harness data-related or data-dependent capability, including access to new data sources.

#### 2.2.5. External communication and advocacy

DG Competition reaches out to a variety of stakeholders, including businesses, lawyers and other advisers, policy makers, academics, students and civil society more generally. Various channels are being used for this purpose, first and foremost Executive Vice-President Vestager's own participation in events, press conferences and speeches, complemented by press releases, newsletters, conferences, specialised publications and an active social media presence.

In 2022, Executive Vice-President Vestager delivered 53 speeches to a variety of audiences, both within and outside Europe. Executive Vice-President Vestager also addressed representatives of the European Parliament and of Member States in the Council on several occasions as part of a regular dialogue with other EU institutions. The Director-General participated in more than 24 international events and, together with other senior managers, actively engaged in outreach efforts towards EU institutions and Member States on the benefits of a strong and effective competition policy and enforcement.

As the peak of DG Competition's external-communication action in 2022, DG Competition organised a *Making Markets Work for People* conference in October 2022 <sup>(130)</sup> to discuss the significance of maintaining, nourishing, and developing a European social market economy and the role of competition policy.

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<sup>(130)</sup> See: [https://competition-policy.ec.europa.eu/policy/making-markets-work-people\\_en](https://competition-policy.ec.europa.eu/policy/making-markets-work-people_en).

In her keynote speech, Executive Vice-President Vestager highlighted the main aspects of an economy that truly works for people and how competition policy is playing a vital role in this respect<sup>(131)</sup>. This includes a fairer distribution of new opportunities, while at the same time keeping prices low, maintaining choice and fostering innovative products and services. This is even more important in today's volatile world, in which new challenges emerge, requiring new solutions. Competition policy should ensure the best possible conditions for consumers, but should not stand in the way of other policies pursuing other policy goals. The interplay between regulation and competition policy should therefore be seen as complementary.

Ms Kristalina Georgieva, Managing director of the International Monetary Fund and Ms Nadia Calviño, First Deputy Prime Minister of Spain and Minister of Economic Affairs and Digital Transformation were among the speakers. The conference attracted participants from 62 countries; 280 were in the audience and over 200 attended online. Apart from coverage from specialised media such as Politico, MLex and Global Competition Review, the conference was covered by Euronews, Agence France Press and Reuters.



Three special projects that are vital to make DG Competition discourse persuasive were featured during the conference: two Eurobarometer flash surveys<sup>(132)</sup> of SMEs' and households' sentiments towards competition; a major study on the benefits of competition enforcement and the state of competition in the EU; and figures on DG Competition monitoring of the use of the State aid Temporary Frameworks for the pandemic and the war.

In 2022, DG Competition posted 1.050 tweets from its account and expanded its presence on social media with the launch of a new LinkedIn account. The target of the Tweeter account is the general public, whereas the target of DG Competition LinkedIn account is the professional audience. In 2022, DG Competition reached close to 10.750 subscribers with 190 posts using this new channel.

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<sup>(131)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_22\\_6445](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_6445).

<sup>(132)</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6374](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6374).

DG Competition also released 45 issues of its external electronic newsletter, four Competition Policy Briefs and four expert reports. These publications were viewed, downloaded or ordered as paper copies some 73.000 times.

DG Competition issued more than 1.000 press materials, of which 250 were press releases, and prepared eight press conferences. Some of the cases and policy initiatives generated broad media coverage, for example the prohibition under the EU Merger Regulation of the implemented acquisition of GRAIL by Illumina or the Statement of Objections sent to Teva over misuse of the patent system and disparagement of rival multiple sclerosis medicine, the entry into force of the Digital Markets Act and the Regulation to address distortions caused by foreign subsidies in the Single Market.

In order to illustrate the press and social media announcements, DG Competition produced animations and infographics on major cases and key policy developments, such as the Digital Markets Act, Important Projects of Common European Interest (IPCEIs) and the Foreign Subsidies Regulation.

DG Competition displayed all press materials, publications, infographics and animations on its dedicated Audiovisual Webpage on the external website. In addition, following the adoption of the Temporary Crisis Framework (TCF), DG Competition established a dedicated webpage that includes a factsheet listing all the Decisions adopted under the TCF, with links to all related press material. This page follows the approach of the already existing dedicated page concerning the Covid Temporary Framework, that continued to be updated in 2022.

Other major advocacy and outreach initiatives in 2022 included the following:

- 3 February – "Taking Competition Policy into the Future" conference. This was DG Competition's contribution to the Conference on the Future of Europe initiative;
- 18 February – "Advocating for Competition in a Time of Transitions", virtual meeting with NCAs' and EFTA's advocacy and communication officials;
- 29 September – "What we talk about when we talk about advocacy", virtual meeting with NCAs' and EFTA's advocacy and communication officials.