



2016

Annual Activity Report

DG Competition



Foreword by Johannes Laitenberger, Director-General

EU competition rules and their implementation stand for equity, fairness, openness, inclusivity and efficiency in a social market economy. In 2016 Competition policy actions focused on making EU markets work better and ensuring that all companies compete equally and fairly on their merits. At the same time, EU competition policy supported the Commission's efforts to deliver on key priorities, in particular the Energy Union, the Digital Single Market, the Capital Union, a deeper and fairer internal market and fair tax competition.

Energy is one of the sectors in which completing the Single Market will bring significant benefits to Europe's consumers and businesses. Competition policy plays a key role making sure that the Energy Union functions properly by opening markets, avoiding discrimination and creating a level playing field between all players, regardless of their nationality. In 2016, DG Competition focused its enforcement activities on making sure that gas and electricity flow freely across borders between Member States, promoting interconnectivity and avoiding territorial restrictions or artificial market partitioning within the EU. Following the 2016 State aid sector inquiry into capacity mechanisms, DG Competition continued to assess the compliance of individual existing and planned capacity mechanisms in several Member States in order to reach the interim targets set out in its Strategic Plan of 2016-2020.

In 2016, competition policy and enforcement actions continued to contribute to the implementation of the Digital Single Market Strategy. Taking actions against anti-competitive foreclosure helps to keep markets competitive and therefore to maintain incentives to innovate. In particular, in 2016 DG Competition continued its sector inquiry into e-commerce. DG Competition also carried out substantial enforcement work in the information, communication and media sectors to ensure a fair level-playing field for all companies offering their goods and services on-line and in digital form across the EU and allowing consumers to enjoy a wide range of innovative platforms, online products and mobile services.

In 2016, DG Competition also continued to contribute to the Capital Markets Union. Financial services are an area in which competition policy has made a significant positive contribution over the past years. In 2016, DG Competition remained active in the financial services sector by investigating cartel cases, opening in-depth investigations into mergers as well as focused its State aid control activities in the financial and banking sectors.

Competition policy goes hand in hand with the Commission's efforts towards a Deeper and Fairer Internal Market, ensuring that free movements rules are not undermined by anti-competitive conduct. In 2016, DG Competition continued to contribute to the Single Market Strategy of the Commission, monitor markets and proceed with its investigations in a range of important sectors of the internal market for both EU households and businesses, including financial services, agri-food sector, pharmaceutical sector, transport, and manufacturing.

Fair tax competition is essential for the integrity of the Single Market and for keeping the level playing field for all companies that do business in the EU's Single Market – regardless of size, sector or nationality. For these reasons, the fight against tax evasion and tax avoidance is high on the Commission's agenda. In 2016, competition policy played a key role in the Commission's efforts to tackle these challenges.

Finally, in 2016 DG Competition continued to give priority to its cartel enforcement activity and one of its key policy initiatives "Empowering the National Competition Authorities to become more effective enforcers of EU competition rules". All DG Competition's enforcement and policy work in 2016, contributed decisively to the political priorities of the Commission and converged on meeting the ultimate objective of competition policy: making markets function better for the benefit of the European consumers – both households and businesses – and the society as a whole.

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THE DG IN BRIEF

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

Competition is not an end in itself. It contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. EU competition policy thus contributes to the wider Commission objectives¹, in particular to boosting jobs, growth and investment, a connected Digital Single Market, a resilient Energy Union with a forward looking climate change policy, a deeper and fairer internal market with a strengthened industrial base and a deeper and fairer Economic and Monetary Union. This is also reflected in the Mission Letter² to Margrethe Vestager, the Commissioner for Competition, by Commission President Juncker.

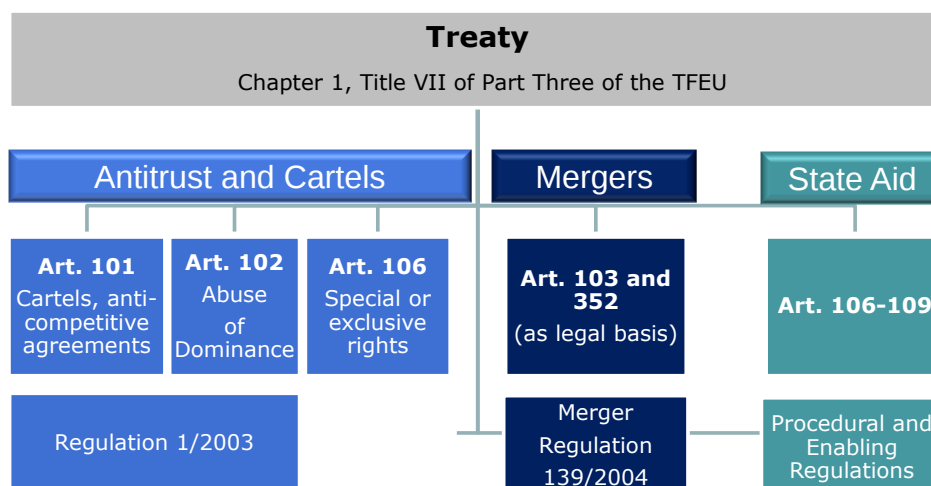


EU competition policy aims to protect the efficient functioning of markets from competition distortions whether originating from Member States (distortive State aid), market players (distortive unilateral or coordinated behaviour), or mergers that would significantly impede effective competition. This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

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

¹ Political Guidelines for the new European Commission as presented by President Juncker of 15 July 2014, http://ec.europa.eu/priorities/docs/pg_en.pdf#page=5

² Mission Letter by President Juncker of 1 November 2014, http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf



The Commission, together with the national competition authorities (NCAs) and with national courts³, enforces EU competition rules based on Articles 101-109 TFEU, to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits in the internal market. This benefits consumers, businesses and the European economy as a whole.

Within the Commission, DG Competition is primarily responsible for implementing these direct enforcement powers. DG Competition performs the following functions to meet these obligations, reflected in the Mission Letter by President Juncker⁴:

- Enforcement of antitrust and cartel policy;
- Merger control;
- State aid control; and
- Promotion of competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission's reputation world-wide.

DG Competition carries out its mission mainly by taking direct enforcement actions⁵ against companies or Member States when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies⁶ or governmental action which leads to a distortion of competition in the internal market by providing some companies undue advantages over others. EU merger control⁷ aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective. Finally, EU competition policy encourages granting of better targeted aid that addresses market failure or equity objectives⁸. Such aid has a

³ Articles 101 and 102 TFEU; national courts play a role also in the application of Articles 107-109 TFEU.

⁴ The Mission Letter asks the Competition Commissioner to focus on: *"Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide"*.

⁵ 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.

⁶ 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.

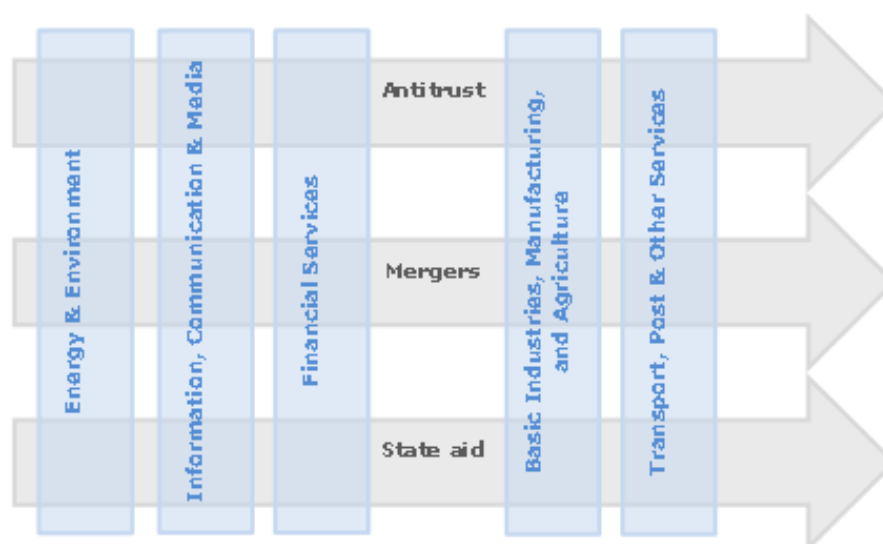
⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1-22.

⁸ 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

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

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

DG Competition has a matrix structure combining enforcements instruments under different sectors designed to promote instrument and sector knowledge, as well as the flexible and efficient use of human resources, both critical factors in ensuring a successful and timely delivery of the objectives.



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

The Chief Economist⁹ and his team provide support in terms of economic analysis for individual competition cases and DG Competition policy developments. The Chief Economist reports directly to the Director-General and provides independent advice to the Commissioner. The Principal Adviser is responsible for the ex-post economic evaluation of competition policy.

DG Competition accomplishes its tasks through the use of its human resources (798 staff members on 31.12.2016) and its legal powers. It has no operational budget.

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

⁹ On 1 September 2016 Tommaso Valletti replaced Massimo Motta as Chief Economist.

EXECUTIVE SUMMARY

The 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 Treaties¹⁰.

The executive summary has four subsections:

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

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

DG Competition's competition policy actions in 2016 focused on making EU markets work better, by ensuring that all companies compete equally and fairly on their merits. This benefits consumers, businesses and the European economy as a whole. At the same time, EU competition policy supported several key EU policies and initiatives, including Energy Union, Digital Single Market, Capital Markets Union, Deeper and Fairer Internal Market, and the fight against tax evasion.

In 2016, DG Competition continued its key enforcement in sectors and areas that are relevant for the Commission's priorities as outlined in the Political Guidelines. DG Competition continued to give priority to addressing the most harmful anti-competitive practices, in particular cartels.

Energy is one of the sectors in which completing the Single Market will bring significant benefits to Europe's consumers and businesses. In 2016, DG Competition continued its on-going cases in the supply of natural gas in Central and Eastern Europe, the gas markets in Bulgaria and the concessions for exploiting hydropower in France. Following the 2016 State aid sector inquiry into capacity mechanisms, DG Competition continued to assess the compliance of individual existing and planned capacity mechanisms in several Member States in order to reach the interim targets as set out in the Strategic Plan of 2016-2020. In support of the Clean Energy For All Europeans Package¹¹, DG Competition continued to assess national support measures to promote renewable energy. This contributed to achievements of the EU 2020 targets and to the further market integration of renewables in the electricity market, as well as, to cost effective support beyond 2020. In mergers, DG Competition focused on keeping EU energy markets open and equipped to face the challenges of climate change and the modernisation of the energy supply translating into better outcomes of for EU businesses and households.

In 2016, competition policy and enforcement actions continued to contribute to the implementation of the *Digital Single Market Strategy*. Taking action against anti-competitive foreclosure helps to keep markets competitive, and therefore to maintain

¹⁰ Article 17(1) of the Treaty on European Union.

¹¹ Communication of 30 November 2016 from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of Regions and the European Investment Bank, *Clean Energy For All Europeans*, COM(2016) 860 final, available at http://ec.europa.eu/energy/sites/ener/files/documents/com_860_final.pdf

incentives to innovate. DG Competition continued in 2016 its investigation of Google's practices in relation to search engines and specialised search services, search advertising and mobile apps and services, its investigations into Qualcomm's practices in the baseband chipset area and into cross-border-access to pay-TV concerning six major US film studios. In the telecommunications sector DG Competition assessed in 2016 the joint venture of Vimpelcom (WIND) and Hutchison (H3G) and the mergers of Liberty Global / BASE Belgium and Hutchison / Telefónica UK. In the IT sector, DG Competition assessed in 2016 the merger of Microsoft / LinkedIn.

DG Competition also continued to contribute to the *Capital Markets Union*. Financial services are an area in which competition policy has made a significant positive contribution over the past years. In 2016, DG Competition continued to remain active in the financial services sector, for example by investigating the cartel case Euro Interest Rate Derivatives, investigations into Credit Default Swaps and MasterCard's multilateral interchange fees. In 2016, DG Competition opened an in-depth investigation into the merger between Deutsche Börse AG and London Stock Exchange Group. DG Competition also focused its State aid control activities in the financial and banking sectors.

Competition policy goes hand in hand with the Commission's efforts towards a *Deeper and Fairer Internal Market*, ensuring that free movement rules are not undermined by anti-competitive conduct. In 2016, DG Competition continued to contribute to the Single Market Strategy of the Commission, monitor markets and proceed with its investigations in a range of important sectors of the internal market for both EU households and businesses, including financial services, agri-food sector, pharmaceutical sector, transport, and manufacturing.

Fair tax competition is essential for the integrity of the Single Market and for keeping the playing field level for all companies that do business in the EU's Single Market – regardless of size, sector or nationality. For these reasons, the fight against tax evasion and tax avoidance is high on the Commission's agenda. DG Competition continued to contribute to this in 2016, by investigating whether Member States have granted selective fiscal advantages to individual undertakings or groups of undertakings, for example, the Belgian excess profit system and selective tax advantages in Luxembourg and Ireland.

In 2016, the Commission adopted six cartel prohibition decisions, imposing fines totalling approximately EUR 3.73 billion as well as four antitrust decisions. The Commission also adopted 16 Commission decisions and preliminary concerns (Statement of Objections and Preliminary Assessments) in the field of antitrust and cartel enforcement in 2016. Further, in 2016, the Commission took 355 final decisions in mergers and concluded 558 State aid cases as well as approved 11 evaluation plans.

In 2016, DG Competition continued one of its key policy initiatives, "*Empowering the National Competition Authorities to be more effective enforcers of the EU competition rules*"¹², creating a truly common competition enforcement area in the EU, building on the current achievements and identifying concrete areas of action to boost the enforcement powers of NCAs further. The Commission is working towards an EU legislative initiative with the aim of adopting a proposal in 2017¹³. In 2016, the Commission also continued its sector inquiry into e-commerce and published its initial findings in a Preliminary Report. In 2016, the Commission continued its review of the Insurance Block Exemption Regulation (IBER) and presented to the European Parliament and the Council a Report accompanied by a Commission Staff Working Document evaluating IBER since its adoption in 2010.

In 2016, the Commission launched an evaluation of selected procedural and jurisdictional aspects of EU merger control focussing in particular on the potential for further

¹² Commission Work Programme 2017, Annex I (New Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_i_en.pdf

¹³ Commission Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, COM(2017) 142 final, 2017/0063 (COD) available at http://ec.europa.eu/competition/antitrust/proposed_directive_en.pdf

simplification of EU merger control procedures and the question of whether the current purely turnover-based thresholds of the Merger Regulation allow capturing all transactions which can potentially have an impact on the internal market.

One of the cornerstones of the State Aid Modernisation reform has been the new General Block Exemption Regulation (GBER), which simplified aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling horizontal common interest objectives. A further extension of the GBER is in preparation¹⁴ in order to cover investments in port and airport infrastructure, as was already announced at the time of adoption of the GBER. In 2016, DG Competition continued to support Member States in implementing the State Aid Modernisation (SAM) by collaborating through the Working Group on SAM implementation (SAM WG), launching the Bilateral Partnerships with certain Member States and facilitating compliance with the transparency requirements of SAM by developing, in cooperation with the Member States, the Transparency Award Module (TAM).

Finally, the Commission's external actions in the field of competition contributed to its three core values in this area, i.e. improving the efficiency of the Commission's enforcement actions and safeguarding the effectiveness of its enforcement decisions, promoting its core values worldwide and promoting greater transparency and basic disciplines on subsidies control internationally to turn international markets into a global level playing field.

b) Key Performance Indicators (KPIs)

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

- 1) Estimate of customer benefits resulting from cartel prohibition decisions;
- 2) Estimate of customer benefits resulting from horizontal merger interventions;
- 3) The share of GBER expenditure over total expenditure on State aid; and
- 4) The implementation of the case management rationalisation measures the progress of the DG-Competition-lead ICT project to develop a new Case Management system for the participating DGs and thus contribute to the modernisation and rationalisation of case and document management in the Commission.

Three of the four key performance indicators measure the performance of the main competition policy instruments: Antitrust and Cartels, 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 indicators of the work.

KPI 1 and KPI 2

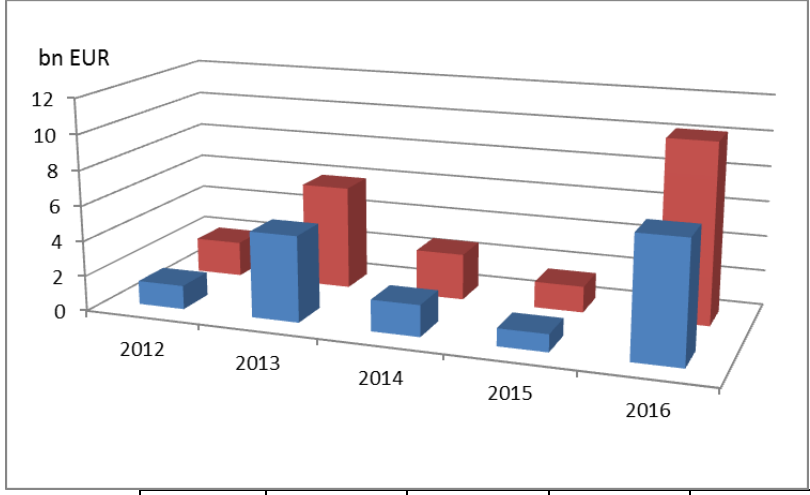
DG Competition, like most competition authorities, provides each year the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. It also provides two estimates of the benefits to customers¹⁵ resulting from the Commission's cartel prohibition decisions (KPI 1) and from horizontal merger interventions (KPI 2). However, such estimates underestimate the overall impact of cartel and merger decisions, as they do not capture the deterrence and non-price effects of such decisions, such as benefits stemming from better quality or wider choice, other effects of competition policy, such as productivity gains or impact on jobs, any possible pass-on to final consumers in the case of intermediary goods or services.

¹⁴ Commission Work Programme 2017, Annex II (Refit Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_ii_en.pdf

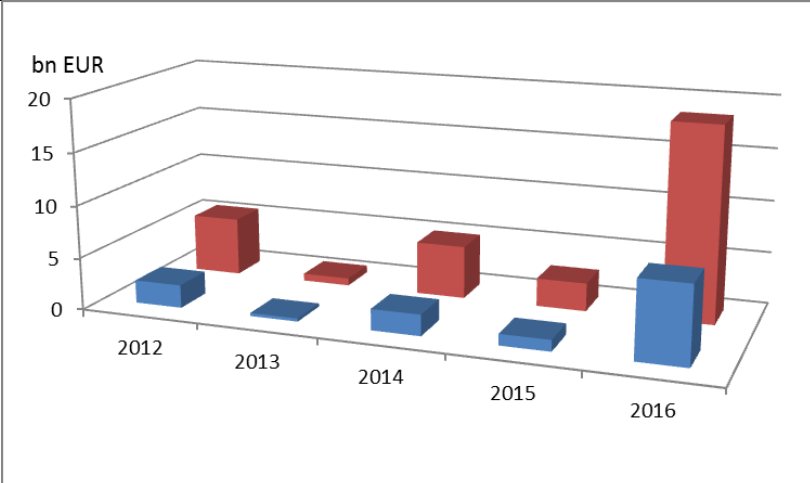
¹⁵ OECD *Guide helping competition authorities assess the expected impact of their activities* (April 2014) <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>

Both key performance indicators estimating the benefits to customers resulting from the Commission's cartel prohibition decisions (KPI 1) and from horizontal merger interventions (KPI 2) show significant increase in 2016 compared to previous years. The high level of estimated customer benefits resulting from cartel prohibition decisions is mainly due to the Commission decision in the truck cartel-case where the cartel affected a sizeable market in the EU and lasted for over ten years (see also p. 16). The high level of estimated customer benefits resulting from horizontal merger interventions is due to the higher number of merger interventions (26 interventions) in 2016 and the particularly large size of the affected markets in some of them (see also p. 25). In 2016 the combined estimated customer benefits amounted to between 0.1 and 0.2% of EU GDP.

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

Impact indicator	Trend	Target (or milestones)	Latest known results				
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions ¹⁶	☺	Stable	EUR 6.8-10.2 bn (2016)				
							
		bn EUR	2012	2013	2014	2015	2016
		Cartel	1.35-2.0	4.89-5.92	1.78-2.64	0.99-1.49	6.8-10.2

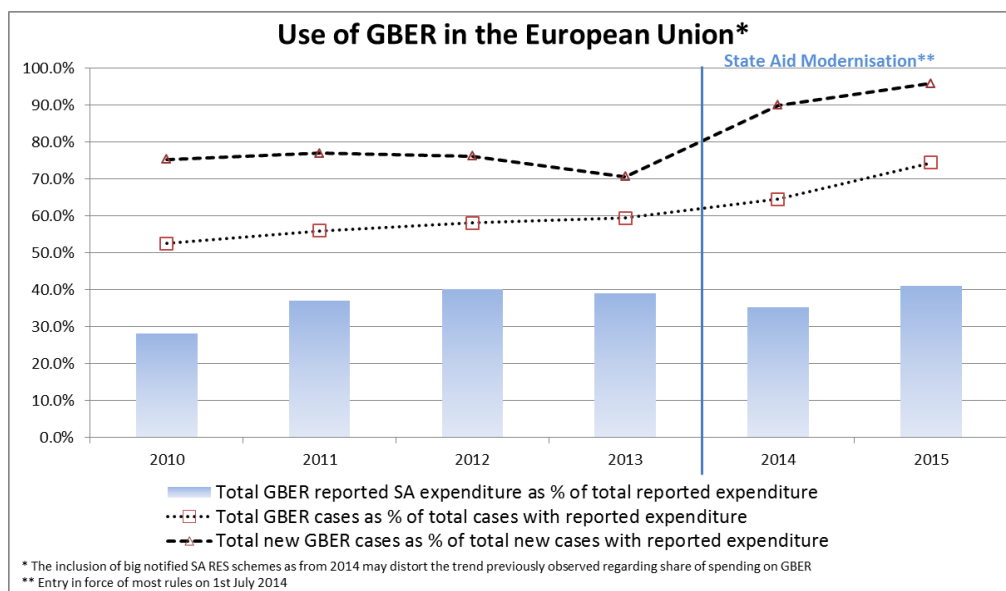
¹⁶ DG Competition calculation. The approach followed to estimate customer benefits from stopping a cartel (prevented harm) consists in multiplying (i) the assumed increased price brought about by the cartel (called the "overcharge") by (ii) the value of sales by cartel members in the market directly affected by the cartel and (iii) the likely duration of the cartel had it remained undetected. A 10% to 15% overcharge is assumed. This is conservative when compared to the findings of recent empirical literature which report considerably higher median price overcharges for cartels. In order to estimate what the likely duration of the cartel would have been if it had continued undetected, a case-by-case analysis was carried out. This analysis focused on the particular circumstances of each case as reflected in indicators of cartel stability, including the number of cartel participants, their market shares, the characteristics of the product concerned, the level of market entry barriers and other market conditions. The cartels are classified into three categories: "unsustainable", "fairly sustainable" and "very sustainable". It is assumed that the cartels in the first category would have lasted one extra year in the absence of the Commission's intervention, the cartels in the second category three years, and the cartels in the third group six years. The assumptions concerning the likely duration of the cartels are made prudently to establish a lower limit rather than to estimate the most likely values. In the above graph, the lower boundary of the estimate is marked in blue and the higher boundary in red. Finally, the estimates obtained are also conservative because other consumer benefits, such as innovation, quality and choice are not taken into account.

Impact indicator	Trend	Target (or milestones)	Latest known results				
KPI 2 The estimate of customer benefits resulting from horizontal merger interventions ¹⁷	☺	Stable	EUR 7.41-18.52 bn (2016)				
							
		bn EUR	2012	2013	2014	2015	2016
Merger			2.2-5.6	0.3-0.7	2.02-5.06	1.08-2.69	7.41-18.52

KPI 3

In the field of State aid control, the key performance indicator (KPI 3) measures the share of GBER expenditure over total expenditure on State aid. Member States have already made extensive use of the possibilities offered by the comprehensive modernisation of State aid rules. On average, total spending on GBER measures in the EU represented about 40% of total expenditure in 2015, i.e. an increase of about 5 percentage points compared to 2014. The trend is thus positive.

¹⁷ DG Competition calculation. The approach followed to estimate customer benefits from Commission's interventions in the form of a merger prohibition or a merger approval subject to conditions consists in multiplying (i) the likely price increase avoided by (ii) the total size (by value) of the product market concerned, and (iii) the length of time that this market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors. The avoided price increase is set at 3%, a value in line with current academic literature, albeit a conservative estimate. The lower boundary of the estimate is based upon a 3% price increase lasting for two years, the higher boundary upon a 3% price increase for a duration of five years. Withdrawals in second phase are not included in the calculation. In the above graph, the lower boundary of the estimate is marked in blue and the higher boundary in red. The prevention of anticompetitive effects such as the negative impacts on innovation and choice are not taken into account, even though some cases are also largely based on non-price effects, especially effects on innovation. The stable target is a planning assumption. As the merger control activity is driven by notifications, it is not meaningful to provide a numerical target for this indicator.



Result indicator	Trend	Target	Latest known results (2015)
KPI 3 The share of GBER expenditure over total expenditure on State aid	☺	Maintain or increase	40.4%

KPI 4

Competition enforcement is a highly digitalised activity. Key business processes as well as exchanges with various stakeholders are supported by dedicated information systems. Therefore, in the area of organisational management of DG Competition, the related key performance indicator (KPI 4) measures the progress of the DG-Competition-lead ICT project to develop a new Case Management system for the participating DGs and thus contributes to the modernisation and rationalisation of case and document management in the Commission. The trend is positive and sustained. Continued investment in information technology remains essential for DG Competition.

Result indicator	Trend	Target (2017)	Latest known results (2016)
KPI 4 Implementation of a common Case Management System for the Commission services participating in the CASE@EC project	☺	Completed implementation of the new common Case Management System	Inception concluded Tender process started Call for tenders launched (15/7/2016). Evaluation of the tenders concluded and Evaluation Report drafted (15/12/2016)

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

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

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

and function as intended. Please refer to AAR section 2.1.3 for further details.

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

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

d) Information to the Commissioner

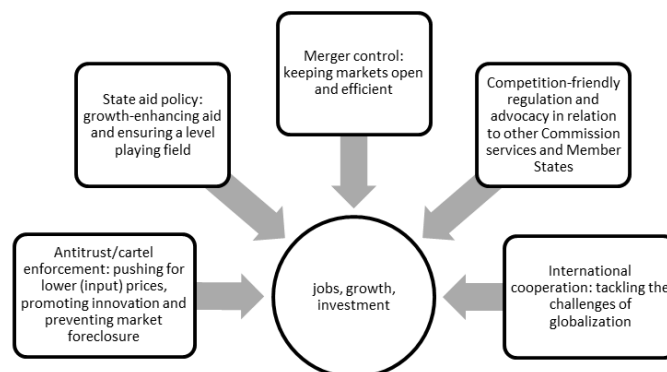
In the context of the regular meetings during the year between the DG and the Commissioner on management matters, also the main elements of this report and assurance declaration have been brought to the attention of Commissioner Vestager, responsible for competition policy on 20 March 2017.

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

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

By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributes to the Commission's general objective "A New Boost for Jobs, Growth and Investment" in the European Union¹⁸. EU competition policy supports several key EU policies and initiatives, including Digital Single Market, Energy Union, Deeper and Fairer Internal Market and fight against tax evasion. DG Competition performs the following functions¹⁹ to meet these obligations:

- Enforcement of antitrust and cartel policy;
- Merger control;
- State aid control; and
- Promoting competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission's reputation world-wide.



As it is not meaningful²⁰ to set numerical targets for competition policy enforcement, most of the indicators used to measure the Commission's performance include trends as targets (stable, increase, decrease, no target). On-going investigation by the Commission is always without prejudice to the final decision to be taken by the Commission in the case.

¹⁸ Political Guidelines of President Juncker, http://ec.europa.eu/priorities/docs/pg_en.pdf State of Union 2015 Speech by President Juncker, http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014, http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf "Competition policy is one of the areas where the Commission has exclusive competence and action in this field will be key to the success of our jobs and growth agenda. It should contribute to steering innovation and making markets deliver clear benefits to consumers, businesses and society as a whole. Every effort should be made to maximise the positive contribution of our competition policy in support of our overall priorities and to explain and demonstrate its benefits to citizens and stakeholders at all levels".

¹⁹ The Mission Letter asks the Commissioner for Competition to focus on: "Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide".

²⁰ As far as merger and State aid enforcement is concerned, DG Competition's activities are largely driven by notifications by companies and Member States, which is a factor beyond the control of the Commission. As regards antitrust and cartel enforcement, a target would also depend on factors beyond the Commission's control (decisions of the parties or other market players to disclose such infringements through the leniency programme, whistleblowing, complaints or the availability of information to the Commission to detect infringements ex officio). In each and every case, the Commission must fully respect the rights of defence of the parties.

However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions and horizontal merger interventions, and considers the impact of competition policy on growth and macroeconomic performance more generally²¹. Fines imposed by the Commission flow into the EU budget, reducing the contributions by Member States and act as deterrence for future infringements²².

It can be difficult to measure the effect of competition law on economic growth, but according to the OECD²³, there is solid evidence in support of each of the relationships shown below.



1.1 Antitrust and cartels

Articles 101, 102 and 106 TFEU

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

Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position or to acquire such a position. Dominant undertakings, the same as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits the abusive behaviour of such dominant undertakings which prevents new entry or squeezes competitors out of the market. These practices hamper competition and negatively affect incentives to innovation and growth, as well as consumer welfare.

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

The aim of the actions by DG Competition in the field of antitrust and cartels is to ensure effective enforcement of antitrust rules with a view to making markets work better protecting consumer welfare. This includes detection, sanctioning, deterrence and

²¹ Model simulations with the QUEST model of DG ECFIN (Dierx A., Ilzkovitz F., Pataracchia B., Ratto M., Thum-Thysen A. and Varga J. (2015)), "Distributional macroeconomic effects of EU competition policy – A general equilibrium analysis", paper to be published in a World Bank-OECD publication on Competition Policy, Shared Prosperity and Inclusive Growth.

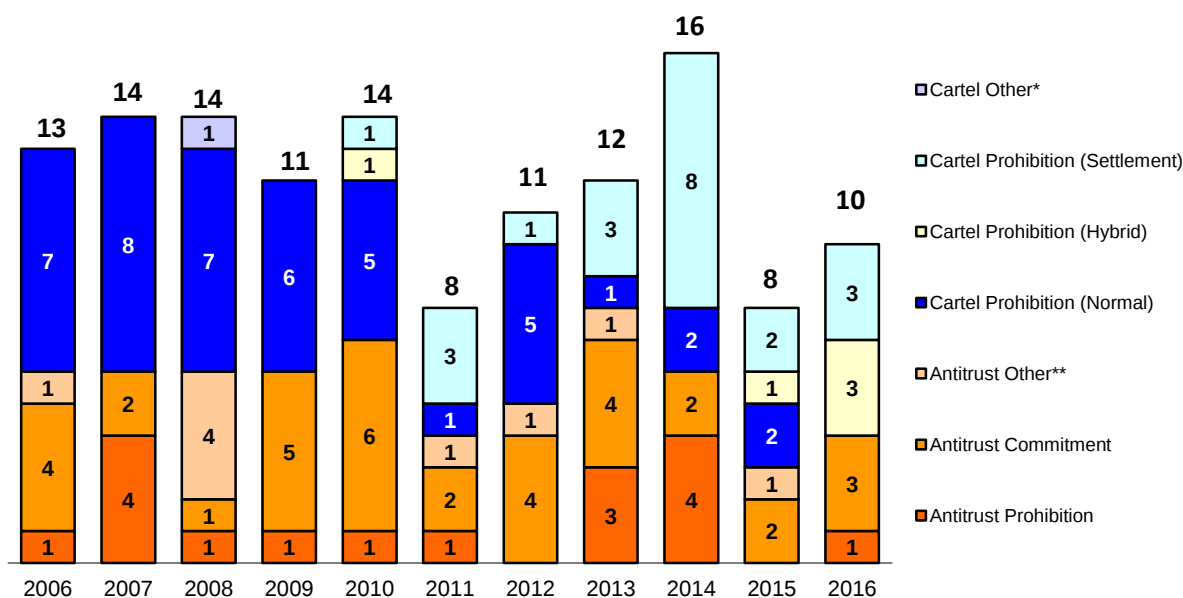
²² Between 2010 and 2015 the total amount of fines imposed by the Commission in cartel cases reached almost EUR 9.3 billion.

²³ OECD Factsheet on how competition policy affects macro-economic outcomes (October 2014), p. 2, <http://www.oecd.org/daf/competition/2014-competition-factsheet-iv-en.pdf>

remedying of the most harmful anti-competitive practices, which hamper competition and negatively affect incentives to innovation and growth, as well as consumer welfare.

In the field of antitrust, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of its enforcement activity and output for the preceding year, also for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions²⁴.

Cartel and antitrust interventions, Commission decision 2006-2016



* Rejection of complaint ** Rejection of complaint, procedural infringement, penalty payment
Source: Directorate-General for Competition

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

Cartels

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

In 2016, the Commission continued to give priority to cartel enforcement activity. The Commission adopted six decisions, imposing fines totalling approximately EUR 3.73 billion.

The road transport sector – the Trucks cartel

In the *Trucks* case²⁵, for the first time since the adoption of the Settlement Notice²⁶, the Commission engaged in settlement talks with the parties after having issued a Statement of Objections under the standard procedural rules. The Commission imposed a total fine of EUR 2.93 billion on five European truck producers for coordinating the gross pricing of heavy and medium trucks in the European Economic Area (EEA) from 1997 to 2011. DAF, Daimler, Iveco, MAN, Volvo/Renault had admitted their involvement in the cartel, which allowed the Commission to settle the case with them. MAN benefited from immunity under the Commission's 2006 Leniency Notice for revealing the existence of the cartel to the Commission. Volvo/Renault, Daimler and Iveco benefitted from fine reductions. Since all five undertakings agreed to settle the case with the Commission, their fines were further reduced by 10%. A sixth undertaking chose not to settle the case and the proceedings continue against it under the normal procedure.

²⁴ See Annexes to the AAR, Annex 12, Specific Objective 1, result indicator 1, p. 30.

²⁵ Case AT.39824 *Trucks*. For further information see IP/16/2582 of 19 July 2016 available at

As an illustration that the settlement instrument, introduced in 2008 by the Settlement Notice, is now fully established, the Commission adopted in 2016 two further settlement decisions against all participants in the cartels concerning *Alternators and Starters*²⁷ and concerning *Rechargeable Batteries*²⁸. This brings the total number of settlement decisions adopted since 2010 to 22 and during the same period, around 57% of the total amount of the fines imposed by the Commission was via settlement decisions.

The Commission also completed its investigation in three "hybrid" cases. In "hybrid" cases, decisions are adopted both under the normal and under the settlement procedure in the same case. First, the Commission fined Riberebro EUR 5.19 million for participating in the canned *Mushrooms* cartel²⁹. Second, the Commission completed its investigation in the *Steel Abrasives* cartel case by adopting a normal decision against Pometon S.p.A and imposing a fine of EUR 6.2 million³⁰. Third, the Commission fined Crédit Agricole, HSBC and JPMorgan Chase a total of EUR 485 million for participating in a cartel in Euro Interest Rate Derivatives (EIRD).

Normal procedures remain significant because not all investigations may be eligible for settlement discussions. Relevant factors include the number of parties, the proportion of leniency applicants in relation to the total number of parties, the degree of contestation, conflicting positions between the parties and the existence of novel features or aggravating circumstances in the investigated practices. When the right circumstances are not met, the Commission will apply the normal procedure.

In 2016, the Commission continued to work together with the national competition authorities (NCAs) and other authorities within Europe and beyond (advocacy in the International Competition Network) to ensure efficient cooperation in the fight against cartels and that the instrument remained successfully used to end international cartels.

With six decisions and fines totalling approximately EUR 3.73 billion, the Commission's cartel enforcement remains strong and effective.

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Rechargeable batteries	12/12/2016	165 841 000	3	Settlement
Euro Interest Rate Derivatives (EIRD)	07/12/2016	484 456 000	3	Hybrid*
Trucks	19/07/2016	2 926 499 000	5	Settlement
Steel abrasives	25/05/2016	6 197 000	1	Hybrid**
Canned mushrooms	06/04/2016	5 194 000	1	Hybrid***
Alternators and Starters	27/01/2016	137 789 000	3	Settlement

normal procedure part of a hybrid case with a settlement decision in: December 2013(), April 2014(**) and June 2014(***).

http://europa.eu/rapid/press-release_IP-16-2582_en.htm

²⁶ Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, OJ C 167, 2.7.2008, p. 1.

²⁷ Case AT.40028 *Alternators and Starters*, Commission decision of 27 January 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40028 For further information see IP/16/173 of 27 January 2016 available at http://europa.eu/rapid/press-release_IP-16-173_en.htm

²⁸ Case AT.39904 *Rechargeable Batteries*. For further information see IP/16/4356 of 12 December 2016 available at http://europa.eu/rapid/press-release_IP-16-4356_en.htm

²⁹ Case AT.39965 *Mushroom*. For further information see IP/16/1261 of 6 April 2016 available at http://europa.eu/rapid/press-release_IP-16-1261_en.htm

³⁰ Case AT.39792 *Steel abrasives*, Commission decision of 25 May 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39792

Other anticompetitive agreements and practices

In addition to cartels, other agreements between companies can give rise to competition concerns and can also have negative effects on consumers. Anti-competitive agreements in key input sectors, such as ICT and other network industries (i.e. transport and energy) affect the related input costs and hence the competitiveness of various other sectors.

Energy Union

In 2016, DG Competition continued its antitrust enforcement activity in relation to anticompetitive behaviour in the energy sector pursuant to Articles 101, 102 and 106 TFEU, supporting the Commission's objective of achieving a European Energy Union. Competition policy plays a key role by making the Energy Union function properly by opening markets, avoiding discrimination and creating a level playing field between all market players, regardless of their nationality. It ultimately promotes fairness and economic growth within the EU.

The ongoing Gazprom case³¹ is a good example of the efforts made by the Commission to facilitate the cross-border flows of energy between Member States. More specifically, the case aims at removing direct and indirect restrictions to re-sell gas cross-border and at allowing the flow of gas to Central and Eastern European gas markets.

Competition enforcement in 2016 also focused on ensuring that all competitors compete on a level playing field and are not subject to the abusive conduct of the incumbent operators. For this reason, the Commission fined the Austrian waste management incumbent ARA for having abused its dominant position by blocking competitors from entering the Austrian market for management of household packaging waste³². The BEH Gas case provides another example of the Commission's fight against incumbent companies' attempts to perpetuate their dominant position³³. State-owned and vertically integrated Bulgarian Energy Holding was being investigated in 2016 for hindering competitors' access to key gas infrastructures in Bulgaria. The ongoing French Hydropower concessions case shows the Commission's strong commitment to tackle interventions by Member States that might lead companies to distort competition³⁴.

The Commission's antitrust enforcement is also contributing to the objective of a low carbon economy. Over the course of 2016, the Commission has continued the investigation on the conduct of ethanol producers, suspected of having colluded to affect ethanol benchmarks published by the price reporting agency Platts³⁵.

Digital Single Market

In 2016, competition policy and enforcement continued to contribute to the implementation of the Digital Single Market Strategy³⁶, one of the priorities of the Commission. In particular the Commission continued its sector inquiry into e-commerce and carried out a number of investigations in the information, communication and media sectors.

³¹ Case AT.39816 *Upstream gas supplies in Central and Eastern Europe*. For further information see IP/15/4828 of 22 April 2015 available at http://europa.eu/rapid/press-release_IP-15-4828_en.htm

³² Case AT.39759 *ARA foreclosure*. For further information see IP/16/3116 of 20 September 2016 available at http://europa.eu/rapid/press-release_IP-16-3116_en.htm

³³ Case AT.39849 *BEH Gas*. For further information see IP/15/4651 of 23 March 2015 available at http://europa.eu/rapid/press-release_IP-15-4651_en.htm

³⁴ Infringement number 2015/2187 *Concessions hydroélectriques en France*.

³⁵ Case AT.40054 *Ethanol benchmarks*. For further information see IP/15/6259 of 7 December 2015 available at http://europa.eu/rapid/press-release_IP-15-6259_en.htm

³⁶ COM(2015) 192 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe* available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX%3A52015DC0192>

E-commerce sector inquiry – Preliminary Report

The ongoing sector inquiry into e-commerce³⁷ aims to gather market information in order to better understand the nature, prevalence and effects of barriers to online trade erected by companies, and to assess them in light of EU competition rules.

In 2016, the Commission published its initial findings on geo-blocking³⁸ and its Preliminary Report setting out its initial findings of the e-commerce sector inquiry. The Preliminary Report³⁹ provides an overview of the main competition-relevant market trends identified in the e-commerce sector inquiry and points to possible competition concerns. It confirms the growing significance of e-commerce. E-commerce is an important driver of price transparency and price competition, increasing consumers' choice and their ability to find the best deals. The Preliminary Report identifies certain business practices that may limit more intense online competition. Further, the Preliminary Report finds that copyright licensing agreements are complex and often exclusive. The agreements provide for the territories, technologies and release windows digital content providers can use. Where appropriate, the Commission will assess whether certain licensing practices restrict competition and whether enforcement of the EU competition rules by the Commission is necessary in order to ensure effective competition. Interested stakeholders commented the findings in the public consultation and expressed their views at the stakeholder conference organised by DG Competition in Brussels⁴⁰. The final Report is due in the first half of 2017.

Search engines are of central importance to a well-functioning Internet. DG Competition continued in 2016, to investigate Google's practices in relation to a range of practices in relation to it: (1) in the mobile space, the Commission sent Google a Statement of Objections⁴¹ outlining its preliminary view that Google was abusing a dominant position; (2) in the comparison shopping case⁴², the Commission sent Google a supplementary Statement of Objections reinforcing its preliminary view that Google was abusing a dominant position and (3) in the search advertising case, the Commission sent Google a Statement of Objections outlining its preliminary view⁴³ that Google was abusing a dominant position.

In 2016, in the broadcasting sector concerning cross-border provision of pay-TV services across Europe, Paramount Pictures, one of the film studios under investigation, offered commitments, which the Commission made binding in 2016⁴⁴. These commitments will remain in force for five years and cover both standard pay-TV services and subscription video-on-demand services. The Commission will closely monitor Paramount's compliance with its commitments. Simultaneously, the Commission's investigation continues regarding the five other studios and Sky UK.

The Commission has also continued in 2016 pursuing the antitrust investigation opened in 2015 against Amazon, the biggest e-book distributor in Europe⁴⁵.

In 2016, DG Competition contributed to one of the key actions of the second pillar of the Digital Single Market strategy, i.e. the review of the telecoms regulatory framework⁴⁶, by

³⁷ For further information see sector inquiry website available at http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html

³⁸ For further information see IP/16/922 of 18 March 2016 available at http://europa.eu/rapid/press-release_IP-16-922_en.htm

³⁹ Commission Staff Working Document, *Preliminary Report on the E-commerce Sector Inquiry*, SWD (2016)312 final available at http://ec.europa.eu/competition/antitrust/sector_inquiry_preliminary_report_en.pdf

⁴⁰ For further information see the webstream of the stakeholder conference available at <https://webcast.ec.europa.eu/conference-on-e-commerce-sector-inquiry> and the summary of the findings of the Preliminary Report available at http://ec.europa.eu/competition/antitrust/summary_presentation_conference_en.pdf

⁴¹ Statement of Objections was sent to the company on 20 April, 2016. For further information see IP/16/1492 of 20 April 2016 available at http://europa.eu/rapid/press-release_IP-16-1492_en.htm

⁴² A supplementary Statement of Objections was sent to the company on 14 July 2016. For further information see IP/16/2532 of 14 July 2016 available at http://europa.eu/rapid/press-release_IP-16-2532_en.htm

⁴³ Statement of Objections was sent to the company on 14 July 2016. For further information see IP/16/2532 of 14 July 2016 available at http://europa.eu/rapid/press-release_IP-16-2532_en.htm

⁴⁴ Case AT.40023 *Cross-border access to pay-TV*. For further information see IP/16/2645 of 26 July 2016 available at http://europa.eu/rapid/press-release_IP-16-2645_en.htm

⁴⁵ Case AT.40153 *E-book MFNs and related matters*, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40153

⁴⁶ The Commission adopted on 14 September 2016 a proposal for a Directive establishing the European Electronic Communications Code, which recasts the existing directives, a proposal for a Regulation

ensuring, together with other Commission services, that the new connectivity (i.e. investment) objective remains at the same level as the objective of safeguarding competition, the core principles of access regulation continue and the new measures aimed at stimulating investments remain pro-competitive.

In the area of baseband chipsets, which process the core communication functions in smartphones, tablets and other mobile broadband devices, the Commission continued the investigations in the Qualcomm cases⁴⁷ as regards payments to a major customer conditional on exclusivity and potential 'predatory pricing' by charging prices below costs with a view to forcing its competition out of the market. In 2016, the Commission also opened proceedings regarding a mobile network sharing agreement between the two largest operators in the Czech Republic⁴⁸.

Deeper and Fairer Internal Market

In 2016, the Commission continued to engage in wide-ranging efforts to support a deeper and fairer internal market. Competition policy goes hand in hand with internal market policy, creating a level playing field and ensuring that free movement rules are not undermined by anti-competitive conducts.

Since the onset of the crisis, competition policy has been playing a key role in achieving a more fair and transparent financial sector. Enhancing transparency in the area of financial derivatives has been a Commission priority. In 2016, the investigation in the Credit Default Swaps (CDS) market came to an end with the adoption of two commitment decisions addressed to the International Swaps and Derivatives Association (ISDA) and data provider IHS Markit⁴⁹. In 2016, all elements of the Interchange Fee Regulation⁵⁰ became fully applicable. The Interchange Fee Regulation capped the fees charged by banks for card payment, thus lowering costs to the benefit of European consumers and retailers. In parallel, the Commission also continued in 2016 its antitrust investigations into MasterCard's rules on cross-border acquiring, which limit the possibility for a merchant to benefit from better conditions offered by banks established elsewhere in the internal market, as well as, MasterCard's, Visa Inc's and Visa International's⁵¹ multilateral interchange fees ("MIFs") for transactions in the EEA made with cards issued outside the EEA ("inter-regional transactions"), which are not part of the Interchange Fee Regulation and are still a burden for European merchants. An oral hearing on the MasterCard case was held in the first half of 2016.

In the agri-food sector, working towards preventing market segmentation and parallel

establishing the Body of European Regulators for Electronic Communications (BEREC), which enhances the role of BEREC and of national regulatory authorities and a proposal for a Regulation on the promotion of Internet connectivity in local communities and public spaces (WiFi4EU). They are accompanied by two Communications: Connectivity for a European *Gigabit society: Laying the foundations for a competitive Digital Single Market*, which establishes a set of connectivity objectives for 2025, and *5G for Europe: An Action Plan*, which sets out targeted actions with the aim of fostering 5G deployment in Europe.

⁴⁷ Statements of Objections were sent to the company on 8 December 2015. For further information see IP/16/6271 of 8 December 2015 available at http://europa.eu/rapid/press-release_IP-15-6271_en.htm

⁴⁸ For further information see IP/16/3539 of 25 October 2016 available at http://europa.eu/rapid/press-release_IP-16-3539_en.htm

⁴⁹ Case AT.39745 *CDS – Information market*, Commission decision of 20 July 2016 available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39745/39745_14237_7.pdf For further information see IP/16/2586 of 20 July 2016 available at http://europa.eu/rapid/press-release_IP-16-2586_en.htm

⁵⁰ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2015.123.01.0001.01.ENG

⁵¹ Case AT.40049 *Mastercard II*, available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_40049 and AT.39398 *Visa MIF*, available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_39398 These proceedings were closed as regards Visa Europe following its commitments, Case AT.39398 *VISA MIF*, Commission decision of 26 February 2014 available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9728_3.pdf

trade restrictions by food manufacturers, the Commission opened formal investigations in 2016 into practices of AB InBev restricting imports of its beer from less expensive Member States, such as the Netherlands and France, to the more expensive Belgian market⁵².

In the sports sector, the Commission sent a Statement of Objections to the International Skating Union (ISU) in 2016 to convey its preliminary view that the ISU rules under which athletes face severe penalties for participation in unauthorised speed skating events could be in breach of Article 101 TFEU⁵³.

In the pharma sector, the Commission continued in 2016 to monitor and take further action to prevent anti-competitive practices. In particular, the Commission's enforcement policy continued to promote innovation, R&D and growth while providing access to cheaper medicines for European citizens. Several investigations in the pharma sector concern agreements between basic patent holders and generic competitors which potentially could harm patients and health care systems by keeping generics producers from market entry with much cheaper generic versions⁵⁴. In this context, the Commission welcomed in 2016 the General Court judgment⁵⁵ upholding its decision in the first pharma pay-for-delay case.

In 2016, the Commission used its competition tools to keep the transport and postal markets open and competitive, and to facilitate entry. For example, in 2016 the Commission sent a Statement of Objections to Brussels Airlines and TAP Portugal⁵⁶ and informed both companies of its preliminary view that their codeshare cooperation on passenger services between Brussels and Lisbon restricted competition between the two airlines, in breach of EU antitrust rules. In maritime transport, the Commission adopted in 2016 a decision that renders legally binding the commitments offered by 14 container liner shipping companies⁵⁷.

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

National competition authorities

In 2016, DG Competition continued working with NCAs on individual cases with a view to ensure coherent and effective application of Articles 101 and 102 TFEU, inter alia by scrutinising envisaged decisions submitted to the Commission in accordance with Regulation 1/2003⁵⁸. In 2016, 145 cases and 88 envisaged enforcement decisions were signalled to the European Competition Network⁵⁹. It also further organised and animated

⁵² For further information see IP/16/2361 of 30 June 2016 available at: http://europa.eu/rapid/press-release_IP-16-2361_en.htm

⁵³ Case AT.40208 *International Skating Union's Eligibility rules*. For further information see IP/16/3201 of 27 September 2016 available at http://europa.eu/rapid/press-release_IP-16-3201_en.htm

⁵⁴ Cases AT.39686 *Cephalon*, for further information see IP/11/511 of 28 April 2011 available at http://europa.eu/rapid/press-release_IP-11-511_en.htm and AT.39226 *Lundbeck*, Commission decision of 19 June 2013 available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39226/39226_8310_11.pdf

⁵⁵ Cases T-472/13 *H. Lundbeck A/S and Lundbeck Ltd v Commission*, ECLI:EU:T:2016:449; T-460/13 *Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd and Ranbaxy (United Kingdom) Ltd v Commission*, ECLI:EU:T:2016:453; T-467/13 *Arrow Group ApS and Arrow Generics Ltd v Commission*, ECLI:EU:T:2016:450; T-469/13 *Generics (United Kingdom) Ltd v Commission*, ECLI:EU:T:2016:454; T-470/13 *Merck KGaA v Commission*, ECLI:EU:T:2016:452 and T-471/13 *Xellia Pharmaceuticals ApS and Alpharma, LLC, formerly Zoetis Products LLC v Commission*, ECLI:EU:T:2016:460.

⁵⁶ Case AT.39860 *Brussels Airlines / TAP Air Portugal*. For further information see IP/16/3563 of 27 October 2016 available at http://europa.eu/rapid/press-release_IP-16-3563_en.htm

⁵⁷ Case AT.39850 *Container Shipping*, Commission decision of 7 July 2016 available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39850/39850_3377_3.pdf

⁵⁸ 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 L1/1, 4.1.2003, p. 1-25. Since 2004 the national competition authorities (NCAs) and national courts play a key role in applying the EU competition rules alongside the Commission.

⁵⁹ See Annexes to the AAR, Annex 12, Specific Objective 2, result indicators 1 and 2, p. 31.

multilateral work in the ECN at different levels with a view to contribute to these objectives. In their regular half-year meetings during 2016, the heads of the NCAs together with the Director General of DG Competition strategically steered the work. Technical work was carried out in the ECN Plenary and in a range of ECN working groups and sectorial subgroups.

Support for empowering NCAs to become more effective enforcers

Building on the *Communication on Ten Years of Regulation 1/2003*⁶⁰, the Commission launched a public consultation in November 2015 on empowering the NCAs to be more effective enforcers⁶¹. The public consultation ended on 12 February 2016. 181 replies were submitted by a wide variety of stakeholders. Approximately 75% of stakeholders consider that the effectiveness of the NCAs could be improved and 80% thought that action should be taken to ensure that NCAs have the means and instruments they need. A Public Hearing was co-organised with the European Parliament on 19 April 2016 to gather further views. There was overall support for empowering NCAs to be more effective enforcers. The Commission is working towards an EU legislative initiative to address this, with the aim of adopting a proposal in the first half of 2017⁶².

National courts

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

In addition to its cooperation with NCAs in the context of the ECN, the Commission continued its cooperation with national courts (NCs) under Article 15 of Regulation 1/2003. The Commission helps NCAs to enforce the EU competition rules in an effective and coherent manner by providing case-related information or an opinion on matters of substance or by intervening as *amicus curiae* in proceedings pending before the NCs.

As of 27 December 2016, Member States should have implemented Directive 2014/104/EU on antitrust damages actions⁶³ in their legal systems. In 2016, the Commission continued to support the Member States' implementation efforts by facilitating information exchange and cooperation. DG Competition closely monitored policy, legislative and case-law developments at national level to evaluate the results of the implementation of the new rules for citizens and businesses. A majority of Member States have either already communicated full transposition or are in the final stages of the transposition process⁶⁴.

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

In order to ensure effective enforcement of EU competition law, it is important to maintain EU competition law instruments aligned with market realities and contemporary economic and legal thinking.

In 2016, the Commission concluded its review of the operation of the Insurance Block

⁶⁰ Communication from the Commission of 9 July 2014, *Ten Years Of Antitrust Enforcement Under Regulation 1/2003: Achievements And Future Perspectives*, COM/2014/0453 available at http://ec.europa.eu/competition/antitrust/legislation/antitrust_enforcement_10_years_en.pdf

⁶¹ For further information see IP/15/5998 of 4 November 2015 available at http://europa.eu/rapid/press-release_IP-15-5998_en.htm

⁶² Commission Work Programme 2017 Annex 1: New Initiatives, p.3 item 6 under Implementation of the Single Market Strategy available at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_i_en.pdf

⁶³ Directive of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, 2013/0185 (COD) of 26 November 2014, http://ec.europa.eu/competition/antitrust/actionsdamages/damages_directive_final_en.pdf

⁶⁴ For more information see webpage of Directive on antitrust damages actions available at http://ec.europa.eu/competition/antitrust/actionsdamages/directive_en.html

Exemption Regulation⁶⁵ (IBER) and presented to the European Parliament and Council a Report⁶⁶ accompanied by a Commission Staff Working Document⁶⁷ assessing the functioning of the IBER since its adoption in 2010. The Commission's preliminary conclusion was that (i) with respect to the compilation and distribution of joint calculations, tables and studies, the value added of a specific block exemption is questionable and that (ii) with respect to co(re)insurance pools, there was a need to reassess the usefulness of IBER due to its strict conditions for the creation of an Insurance Block Exemption Regulation no longer seem to be met. In addition, complementary studies on issues identified during the Review were carried out, in particular: (1) the role of asset-switching in the production of insurance products⁶⁸ and (2) the effects of the different forms of co(re)insurance available on the market⁶⁹. The review concluded that the two remaining exemptions were no longer warranted because the Commission's Guidelines on horizontal cooperation published in 2011 already offer guidance on how to assess the conformity of joint compilations, tables and studies with the antitrust rules. The current IBER is in operation until 31 March 2017 as foreseen in a sunset clause in this Regulation. Following the expiry, the Commission will continue to monitor developments in the market.

The right to have access to the Commission's file is a central element of the rights of defence. The preparation of non-confidential versions of all documents on file for the purpose of granting access implies a significant burden on parties, third parties and the Commission. One way to reduce this burden for all involved could be to provide access to file through voluntary "negotiated disclosure" – also known as "confidentiality rings" – as set out in paragraph 96 of the Commission Notice on Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102 TFEU⁷⁰. Confidentiality rings are a form of lawyer-only access to the file, which is meant to protect firms' confidential information from being accessed by other firms. The Commission used confidentiality rings in several cases in 2016, which allowed for more efficient access to file for undertakings subject to investigation, third parties and the Commission.

1.2 Merger control

EU merger control

The purpose of EU merger control⁷¹ is to ensure that market structures remain competitive while facilitating smooth restructuring of the industry, not only as regards EU-based companies, but any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. But, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur⁷².

⁶⁵ Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector, OJ L 83, 30.3.2010, p.1.

⁶⁶ Report from the Commission to the European Parliament and the Council on the functioning of Commission Regulation (EU) No 267/2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector, COM(2016) 153.

⁶⁷ Commission Staff Working Document SWD (2016)62 accompanying the document Report from the Commission to the European Parliament and the Council On the functioning of Commission Regulation (EU) No 267/2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector, COM(2016) 153.

⁶⁸ For further information see http://ec.europa.eu/competition/sectors/financial_services/KD0216917ENN.pdf

⁶⁹ For further information see http://ec.europa.eu/competition/sectors/financial_services/KD0216918ENN.pdf

⁷⁰ Commission notice on *Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102 TFEU* OJ C 308, 20.10.2011, p. 6, paragraph 96.

⁷¹ 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.

⁷² DG Competition exclusively assesses those proposed merger transactions that exceed the thresholds

In the field of merger control, DG Competition's activities are driven by notifications by companies. Therefore it is not meaningful to set numerical targets for merger enforcement actions as this depends on actions beyond the control of the Commission. However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year. It also provides an estimate of the customer benefits resulting from the Commission's interventions in horizontal mergers⁷³.

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

EU merger control⁷⁴ aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective. Thus EU merger control guarantees a rapid assessment and clearance of non-problematic mergers. The vast majority of cases notified are approved in a simplified procedure⁷⁵. In 2016, the simplified procedure was applied in relation to approximately 69% of all final Commission decisions in mergers⁷⁶.

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

The continued substantial growth in merger activity in 2016 is reflected in the significant increase in the number of merger notifications received by the Commission. In 2016, the Commission took 355 final decisions in merger cases⁷⁷. The number of 27 interventions in 2016 was significantly higher compared with the average of the last six years, which amounted to around 16 interventions per year⁷⁸. In 2016, 19 mergers were cleared subject to commitments in first phase and six in the second phase. These cases concerned various industry sectors, including agro-chemicals, telecoms, railway equipment systems, provision of oil exploration services, space and satellites, cement and construction materials, financial services and car components. In one case, the parties abandoned a transaction during the in-depth investigation⁷⁹. In 2016, the Commission adopted a prohibition decision in one case⁸⁰.

of the EU Merger Regulation. Below these thresholds, Member States are competent to assess the transaction under their national legislation, referral rules allowing for some flexibility in the entire control system.

⁷³ See Annexes to the AAR, Annex 12, Specific Objective 5, result indicator 1, p. 33.

⁷⁴ 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.

⁷⁵ 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. 4.

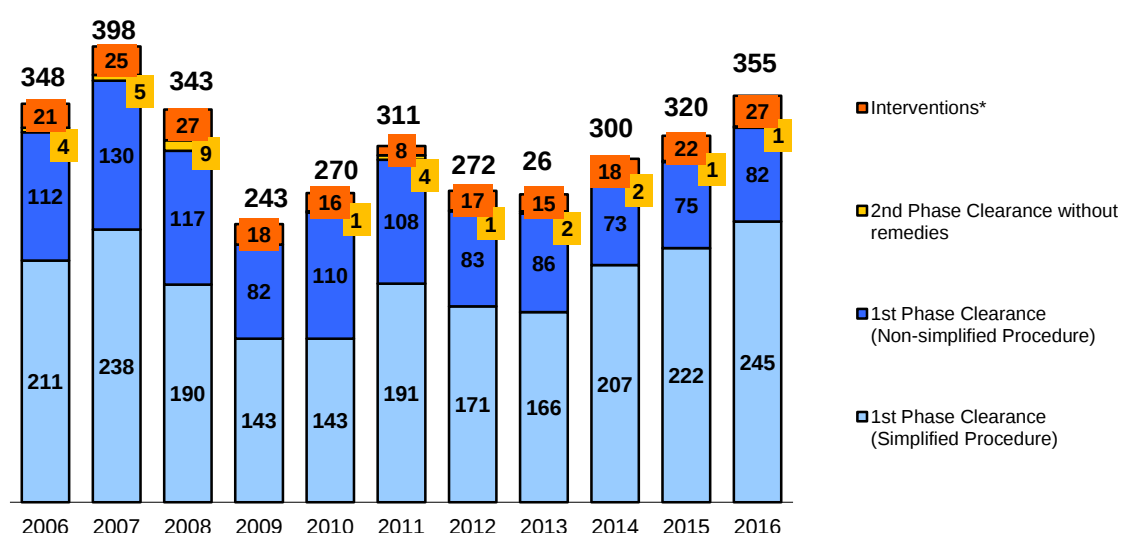
⁷⁶ See Annexes to the AAR, Annex 12, Specific Objective 4, result indicator 1, p. 32.

⁷⁷ For the purposes of this report, decisions based on Articles 6(1)(a), 6(1)b, 6(1)b in combination with 6(2), 8(1), 8(2) and 8(3) of the Merger Regulation are considered as final decisions.

⁷⁸ Commission interventions in merger cases include prohibition decisions and mergers cleared subject to commitments, as well as withdrawals during second phase in-depth investigation.

⁷⁹ Case M.7477 *Halliburton / Baker Hughes*, Statement by Commissioner Vestager on announcement by Halliburton and Baker Hughes to withdraw from proposed merger of 2 May 2016 available at http://europa.eu/rapid/press-release_STATEMENT-16-1642_en.htm

⁸⁰ Case M.7612 *Hutchison 3G UK / Telefonica UK*, Commission decision of 11 May 2016. For further information see IP/16/1704 available at http://europa.eu/rapid/press-release_IP-16-1704_en.htm



* Interventions in merger cases include prohibition decisions and mergers cleared subject to remedies, as well as withdrawals in Phase II; Prohibition decisions: one in 2007, 2011, 2012 and 2016 and two in 2013.

Source: Directorate-General for Competition

Energy Union

In the field of merger control, the trend for investments in European energy infrastructure by investment companies persisted⁸¹. In 2016, as in the previous years, a number of companies invested in development and production from renewable sources, in particular in wind parks⁸².

Digital Single Market

Overall, the Information and Communication Technologies (ICT) and media sector saw an increased merger activity in 2016 compared to 2015. The Commission intervened at several occasions in the planned takeovers.

In the telecommunications sector in 2016, the Commission conditionally cleared the acquisition of the mobile-only operator BASE by the Belgian subsidiary of Liberty Global, cable operator and Mobile Virtual Network Operator (MVNO) Telenet (with a fixed infrastructure of regional coverage)⁸³. In 2016, the Commission prohibited the acquisition

⁸¹ Cases M.8116 *Macquarie / SLFL GIO II / SGI Italia*, Commission decision of 26 July 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8116; M.8119 *DIF / Electricité de France / Thyssengas*, Commission decision of 12 September 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8119 and M.8211 *Marubeni / Toho Gas / Galp Energia / GGND*, Commission decision of 13 October 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8211

⁸² Cases M.8075 *Partners Group / Infrared Capital Partners / Merkur Offshore*, Commission decision of 8 July 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8075; M.8092 *PSP / OTP / Cubico / Renewable Energy Power Generation Companies*, Commission decision of 23 August 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8092; M.8165 *Eneco / Elicio / Norther JV*, Commission decision of 5 October 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8165 and M.8232 *Diamond Offshore Wind Holdings II / Eneco Wind Belgium / Elnu / Norther*, Commission decision of 9 November 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_8232

⁸³ Case M.7637 *Liberty Global / Base Belgium*, Commission decision of 4 February 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_7637

of Telefónica UK, operating under the brand "O2", by the market challenger Hutchison, operating under the brand "Three", combining the first and the fourth players in the market⁸⁴. Further, the Commission approved, subject to conditions, the creation of a joint-venture combining the Dutch telecommunication business of Liberty Global (cable operator and MVNO) and Vodafone (Mobile Network Operator (MNO)) and recent entrant in fixed services⁸⁵. The Commission conditionally cleared in 2016 the proposed creation of a joint venture combining the Italian operations of Vimpelcom (WIND) and Hutchison (H3G), the market challenger, respectively the third and the fourth players in the retail mobile market⁸⁶.

In the IT sector, the Commission approved two multi-billion mergers in the data storage sector in February: the Commission cleared the acquisition of data storage manufacturer SanDisk by rival Western Digital⁸⁷ as well as the acquisition of data storage and software provider EMC by computer technology company Dell⁸⁸, after concluding in both cases that there would be no adverse effects on customers. In 2016, the Commission also approved, subject to conditions, the acquisition by Microsoft, a global technology company, of LinkedIn⁸⁹, a provider of professional social networking services.

Deeper and Fairer Internal Market

In 2016, the consolidation trend in a number of financial services sectors continued, including in the payments area and the financial infrastructure space. The Commission remained vigilant in 2016 to ensure that these developments did not come at the cost of the consumer. For example, in 2016 the Commission authorised the acquisition of Equens / Paysquare by Worldline⁹⁰, two large payment systems operators active across the full value chain in both payment processing and card processing services, only after the parties submitted remedies, and opened an in-depth investigation into the merger between Deutsche Börse AG (DB) and London Stock Exchange Group (LSE) to assess whether the proposed merger combining the activities of DB and LSE would reduce competition in several financial market infrastructure areas⁹¹.

Over the past year, there have been several important merger investigations in the basic industries and manufacturing sectors. In 2016, the Commission cleared the acquisition of the Italian building materials group Italcementi by German-based HeidelbergCement, subject to the divestment of Italcementi's integrated building materials business in Belgium⁹². The Commission also opened an in-depth investigation into the joint acquisition of the Croatian assets of Cemex by cement manufacturers HeidelbergCement and Schwenk⁹³.

In the agri-food sector, 2016 also saw the acquisition by the number one global brewer AB InBev of its largest global competitor SAB Miller. After a preliminary investigation, the acquisition was approved subject to the divestiture of the whole of SAB Miller's business

⁸⁴ Case M.7612 *Hutchison 3G UK / Telefónica UK*, Commission decision of 11 May 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7612

⁸⁵ Case M.7978 *Vodafone / Liberty Global / Dutch JV*, Commission decision of 3 August 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7978

⁸⁶ Case M.7758 *Hutchison 3G Italy / Wind / JV*, Commission decision of 1 September 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7758

⁸⁷ Case M.7772 *Western Digital / SanDisk*, Commission decision of 4 February 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7772

⁸⁸ Case M.7861 *Dell / EMC*, Commission decision of 29 February 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7861

⁸⁹ Case M.8124 *Microsoft / LinkedIn*, Commission decision of 6 December 2016, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8124

⁹⁰ Case M.7873 *Worldline / Equens / Paysquare* available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result

⁹¹ Case M.7995 *Deutsche Börse / London Stock Exchange* available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result

⁹² Case M.7744 *HeidelbergCement / Italcementi*. For further information see IP/16/1929 of 26 May 2016 available at http://europa.eu/rapid/press-release_IP-16-1929_en.htm

⁹³ Case M.7878 *HeidelbergCement / Schwenk / Cemex Hungary / Cemex Croatia*. For further information see IP/16/3362 of 10 October 2016 available at http://europa.eu/rapid/press-release_IP-16-3362_en.htm

in a number of Member States (France, Italy, the Netherlands, the United Kingdom, Czech Republic, Hungary, Poland, Romania and Slovakia)⁹⁴. In 2016, the Commission opened in-depth investigations in both the ChemChina / Syngenta case⁹⁵ and the Dow / DuPont case⁹⁶. In the latter, in addition to investigating concerns in crop protection markets, the Commission also announced an investigation into preliminary concerns that the merger may lead to a reduction of innovation in crop protection as a whole. In 2016, the Commission cleared the acquisition of WhiteWave, a US manufacturer of packaged foods and beverages, by the French Danone group⁹⁷.

In the pharmaceutical and health service sector, the main transactions concerned the acquisition by Teva of Allergan's generics business⁹⁸, the acquisition by Mylan of Meda⁹⁹, as well as the asset swap between Boehringer Ingelheim and Sanofi¹⁰⁰. In 2016, the Commission continued to ensure that consolidation of the industry did not lead to market distortions and cleared the cases subject to certain conditions.

In 2016, in the framework of the commitments attached to the decision approving the acquisition of British Midlands Limited (bmi) by IAG in 2012, the Commission approved Aeroflot as potential entrant on the London Heathrow – Moscow route¹⁰¹ as well as Flybe as potential entrant on two routes connecting London Heathrow to Aberdeen and Edinburgh¹⁰².

In the maritime transport sector, the Commission cleared in 2016, the acquisition of Neptun Oriental Lines of Singapore (NOL) by CMA CGM, a French shipping company with worldwide activities¹⁰³, as well as the acquisition of the Middle-Eastern UASC, world's number eleven, by the German Hapag-Lloyd¹⁰⁴. Clearance in both cases was subject to conditions. In the postal sector, the Commission cleared FedEx's takeover of TNT Express¹⁰⁵ in 2016.

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

In light of the views expressed by stakeholders during the public consultation on the

⁹⁴ Case M.7881 *AB InBev / SAB Miller*. For further information see IP/16/1900 of 24 May 2016 available at http://europa.eu/rapid/press-release_IP-16-1900_en.htm

⁹⁵ Case M.7962 *ChemChina / Syngenta*. For further information see IP/16/3579 of 28 October 2016 available at http://europa.eu/rapid/press-release_IP-16-3579_en.htm

⁹⁶ Case M.7932 *Dow / DuPont*. For further information see IP/16/2784 of 11 August 2016 available at http://europa.eu/rapid/press-release_IP-16-2784_en.htm

⁹⁷ Case M.8150 *Danone / The WhiteWave Foods company*. For further information see IP/16/4438 of 16 December 2016 available at http://europa.eu/rapid/press-release_IP-16-4438_en.htm

⁹⁸ Case M.7746 *Teva / Allergan Generic*. For further information see IP/2016/727 of 10 March 2016 available at http://europa.eu/rapid/press-release_IP-16-727_en.htm

⁹⁹ Case M.7975 *Mylan / Meda*. For further information see IP/16/2956 of 20 July 2016 available at http://europa.eu/rapid/press-release_IP-16-2596_en.htm

¹⁰⁰ Case M.7917 *Boehringer Ingelheim / Sanofi animal health business*. For further information see IP/16/3641 of 9 November 2016 available at http://europa.eu/rapid/press-release_IP-16-3641_en.htm

¹⁰¹ Case M.6447 *IAG / bmi*, Commission decision of 17 June 2016 concerning the Assessment of the viability of Applicants and evaluation of their formal bids pursuant to Clause 1.4.9 of the commitments attached to the Commission decision of 30 March 2012 in case M.6447 *IAG/bmi* available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_6447

¹⁰² Case M.6447 *IAG / bmi*, Commission decision of 4 November 2016 concerning the Assessment of the viability of the Flybe Group Plc and evaluation of its formal bid pursuant to Clauses 1.4.4 and 1.4.9 of the commitments attached to the decision in the above-mentioned case following the Monitoring Trustee's opinion of 24 October 2016 – Summer 2017 IATA Season, not yet published.

¹⁰³ Case M.7908 *CMA CGM / NOL*, Commission decision of 29 April 2016 available at http://ec.europa.eu/competition/mergers/cases/decisions/m7908_1366_3.pdf

¹⁰⁴ Case M.8120 *Hapag-Lloyd / United Arab Shipping Company (UASC)*. For further information see IP/16/2942 of 23 November 2016 available at http://europa.eu/rapid/press-release_IP-16-3942_en.htm

¹⁰⁵ Case M.7630 *FedEx / TNT*, Commission decision of 8 January 2016 available at http://ec.europa.eu/competition/mergers/cases/decisions/m7630_4582_4.pdf

White Paper "*Towards more effective EU merger control*" adopted in July 2014¹⁰⁶, the Commission conducted an external support study to obtain additional information on the topic of minority shareholdings from the point of view of both competition and corporate law and practice in different jurisdictions. The results of this study were published on DG Competition's website in 2016¹⁰⁷.

On-going evaluation of selected procedural and jurisdictional aspects of EU merger control

In 2016, a debate emerged on the effectiveness of the turnover-based jurisdictional thresholds in EU merger control when it comes to some high-valued transactions involving target companies with limited or no turnover, which may have significant competitive effects in the EEA but fall outside the scope of application of the EU Merger Regulation. This debate concerned in particular the digital economy. However, this concern may also be relevant in other sectors, such as pharmaceuticals. Against this background, the ongoing evaluation of selected procedural and jurisdictional aspects of EU merger control, launched in 2016, focusses on whether the current purely turnover-based thresholds of the Merger Regulation allow capturing all transactions which can potentially have an impact on the internal market and, if not, on the possibility to introduce complementary jurisdictional thresholds, based for instance on the transaction value.

In addition, the evaluation seeks to explore the potential for further simplification of EU merger control, going beyond the suggestions made in the White Paper. Moreover, the evaluation covers a possible streamlining of the referral system, building on the proposals put forward in the 2014 White Paper. Finally, a number of technical aspects of merger procedures will also be reviewed. The public consultation closed in January 2017. The outcome of the planned evaluation will inform the type of follow-up and, in particular, any decision concerning possible subsequent proposals for legislative changes.

1.3 State aid control

State aid control

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

The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, State aid, which contributes to well-defined objectives of common European interest without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the internal market (under Article 107(3) TFEU). Moreover, aid with a social character granted to individual consumers and aid to make good damage caused by natural disasters and other exceptional occurrences are compatible (under Article 107(2) TFEU).

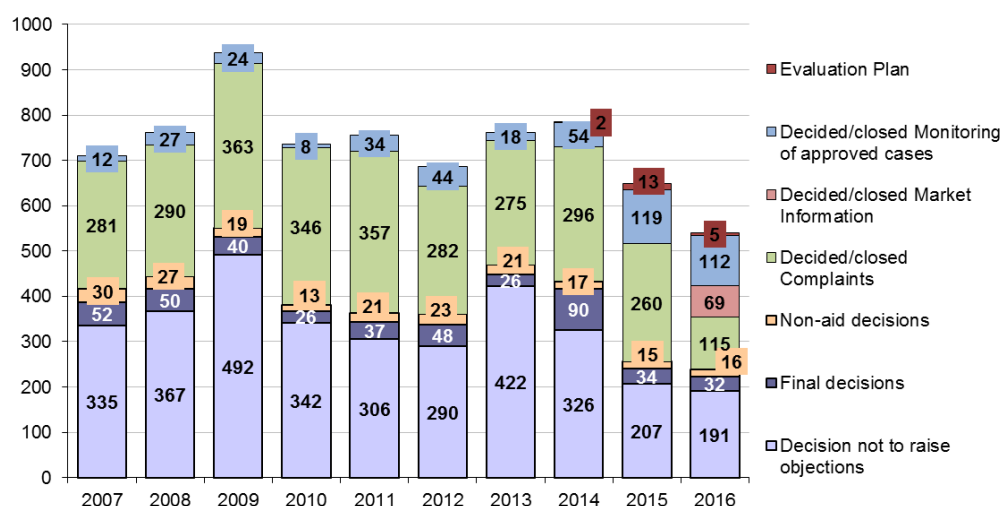
The objectives of the Commission's control of State aid activity are to ensure that aid is growth-enhancing, efficient and effective and where aid is granted, that it does not restrict competition but addresses market failures to the benefit of society as a whole. In addition to this, the Commission is effectively engaged in preventing and recovering incompatible State aid.

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

¹⁰⁶ White Paper *Towards more effective EU merger control*, COM(2014) 449 final available at http://ec.europa.eu/competition/consultations/2014_merger_control/mergers_white_paper_en.pdf

¹⁰⁷ See the Report *Support study for impact assessment concerning the review of Merger Regulation regarding minority shareholdings*, prepared by Spark Legal Network and Queen Mary University of London, 2016 available at <http://ec.europa.eu/competition/publications/reports/KD0416839ENN.pdf>

State aid enforcement (Commission decisions, monitoring and Member States' Evaluation Plans) 2007-2016



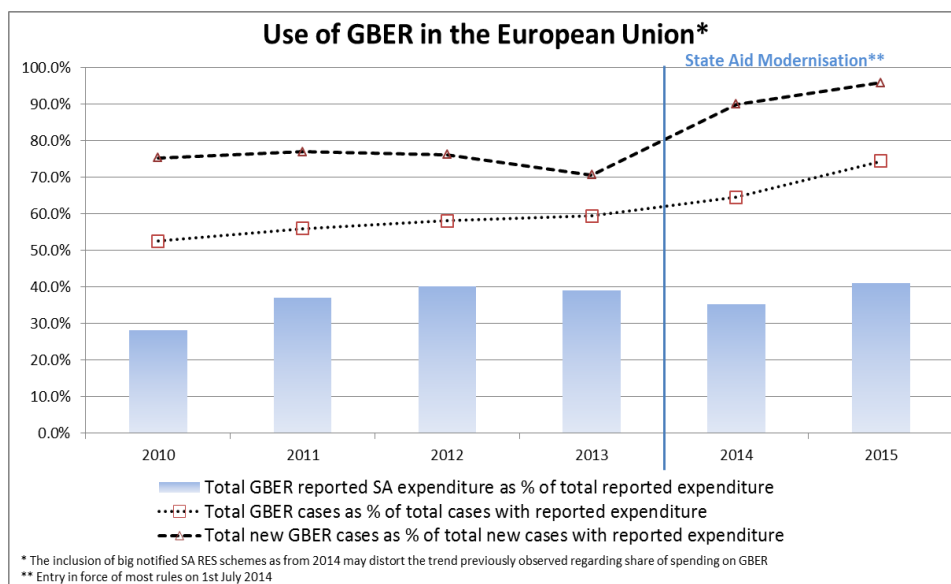
Specific objective 7: Overall effectiveness of State Aid Modernisation, increasing the share of better targeted growth-enhancing aid

One of the cornerstones of the State Aid Modernisation reform is the new General Block Exemption Regulation (GBER)¹⁰⁸, which simplifies aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling EU objectives in the common interest. Only cases with the biggest potential to distort competition in the single market will still face ex ante assessment (notification). As a result of the reform, a significantly larger number of smaller and unproblematic measures are exempted from prior notification, notably aid granted to tackle local needs.

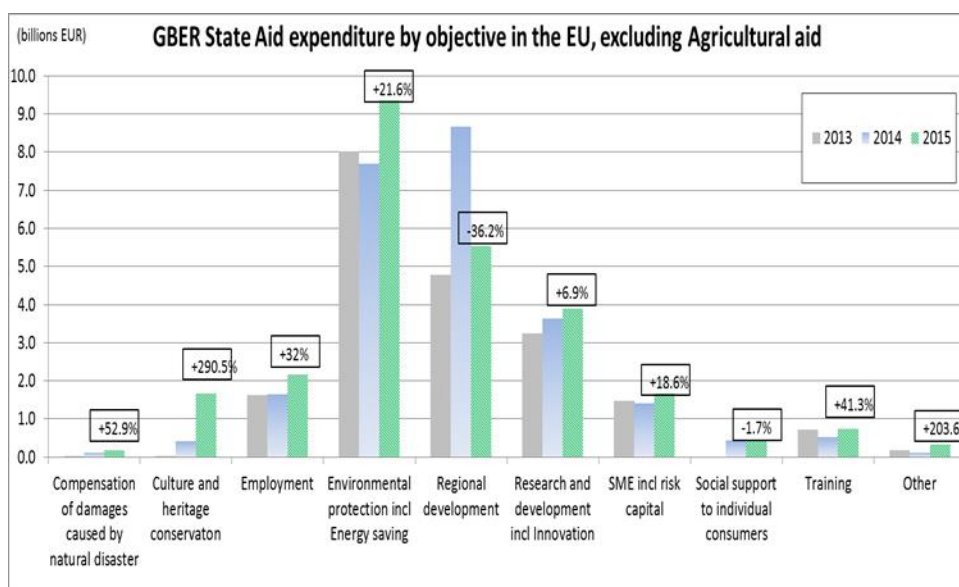
Member States have already made extensive use of the possibilities offered by the comprehensive modernisation of State aid rules. Notably, a surge in aid excluded from prior Commission scrutiny indicates an important reduction of red tape. Based on the State Aid Scoreboard¹⁰⁹, more than 96% of new measures for which expenditure was reported for the first time in 2015, were covered by the GBER, which entails an increase of about 24 percentage points compared to 2013. Three quarters of all measures for which expenditure was reported (i.e. not only new measures), took the form of block exempted measures in 2015. On average, total spending on GBER measures in the EU represented about 40% of total expenditure in 2015, i.e. an increase of about 5 percentage points compared to 2014.

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

¹⁰⁹ The 2016 State Aid Scoreboard comprises aid expenditure made by Member States before 31 December 2015 and which falls under the scope of Article 107(1) TFEU. The data is based on the annual reporting by Member States pursuant to Article 6(1) of Commission Regulation (EC) 794/2004 available at http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html



On top of a broadening of categories already covered by the previous GBER, the new rules introduced new categories of aid into the GBER, namely aid to innovation clusters and aid to process and organisational innovation, aid schemes to make good the damage caused by natural disasters, social aid for transport residents of remote regions, aid for broadband infrastructure, aid for culture and heritage conservation, including aid schemes for audio-visual works, aid for sport and multifunctional recreational infrastructures, as well as investment aid for local infrastructure.



Evaluation of aid schemes

Evaluation of aid schemes is a new requirement for Member States, introduced by the State Aid Modernisation reform. The aim is to gather the necessary evidence to better identify impacts, both positive and negative, of the aid and inform future policy-making by Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain aid categories¹¹⁰ as well as for a selection of notified schemes under the new generation of State aid guidelines¹¹¹. By the end of 2016, the

¹¹⁰ Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

¹¹¹ Evaluation might apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

Commission approved evaluation plans covering 28 State aid schemes submitted by 12 Member States¹¹². Most of these decisions concerned either large regional or R&D&I aid schemes under the GBER or notified broadband schemes. These schemes account, in total, for about EUR 36 billion of annual State aid budget.

Aid to research, development and innovation ("RDI")

The State aid rules for R&D&I help to ensure that public funding goes to research projects that would not have happened otherwise due to market failures, i.e. projects that truly go beyond the state of the art and which bring innovative products and services to the market and ultimately to consumers. In 2016, the Commission ensured that aid schemes and individual measures notified under the R&D&I rules were well targeted to projects enabling ground-breaking research and innovation activities. Its State aid control activities covered a variety of sectors including the automotive, aeronautic, railways and microelectronic sectors.

Aid to risk finance

The new rules aim to offer better incentives for private sector investors – including institutional ones – to increase their funding activities in the critical area of SME and midcaps financing. The rules also mirror other EU initiatives designed to promote wider use of financial instruments in the context of new support programmes such as Horizon 2020 or COSME (the Programme for the Competitiveness of Enterprise and SMEs)¹¹³.

The current Risk Finance Guidelines¹¹⁴ and the corresponding parts of the GBER, provide the framework for seamless support for new ventures from their creation to their development into global players. The aim is to help new ventures to get past the critical stages where private financing is either unavailable or not available in the necessary amount or form. In 2016, under the new Risk Finance Guidelines, the Commission dealt with several notified schemes aimed at encouraging investment in innovative SMEs and midcaps. In particular, it approved one scheme in Italy granting fiscal incentives for investments in innovative start-ups, a German scheme providing grants for risk capital investments as well as the evaluation plan presented by France in connection with a risk finance scheme providing for fiscal advantages to physical persons investing in early stage SMEs.

Regional aid

Regional aid is an important instrument in the EU's toolbox to promote greater economic and social cohesion. The 2014-2020 regional aid framework has been in place since July 2014. The GBER has extended the range of regional aid measures, enabling Member States to put in place aid schemes and individual aid measures without having to notify them to the Commission. Examples of these are ad hoc regional investment aid measures below the notification thresholds, transport aid schemes and operating aid schemes for outermost regions. In 2016 the Commission continued its advocacy towards Member States' authorities on how to interpret and implement the regional aid provisions of GBER, thus helping them to make a success of the reforms introduced under SAM. The Commission adopted decisions both under the former and under the current regional aid rules in 2016, for example it endorsed two regional aid measures to support large investment projects under the Guidelines on National Regional Aid for 2007-2013 – the aid for Euroglas Polska¹¹⁵ and the aid for AUDI Hungaria Motor Ltd¹¹⁶.

¹¹² The Czech Republic, Germany, Spain, France, Hungary, Italy, Lithuania, Austria, Poland, Portugal, Finland and the United Kingdom.

¹¹³ For an overview on the EU programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises available at http://ec.europa.eu/enterprise/initiatives/cosme/index_en.htm

¹¹⁴ Communication from the Commission, *Guidelines on State aid to promote risk finance investments*, OJ C 19, 22.1.2014, p. 4 available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04))

¹¹⁵ Case SA.36510 Poland - LIP - Euroglas Polska Sp. z o.o., Commission decision of 29 March 2016 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result

European Fund for Strategic Investments

In 2015, the Commission created the European Fund for Strategic Investments (EFSI), with the objective to generate EUR 315 billion in investment in Europe. In that context the Commission has put in place an accelerated procedure for Member States wishing to co-finance EFSI measures. The accelerated procedure was applied in some cases and ensures that public and private financing can reach concrete infrastructure and innovation projects as quickly as possible.

Digital Single Market

Public spending alongside private investment continues to be the key to achieving the longer term objectives set by the Digital Agenda for Europe up to and beyond 2025¹¹⁷. State aid control seeks to ensure that where a market failure arises and publicly funded networks are needed, these do not crowd out private investments. Most Member States have gradually adopted broadband plans of national scope and this trend is likely to continue. Extensive national broadband schemes have been approved by the Commission during 2016, in particular for the United Kingdom, Italy and France. Over a longer period 2009-2016, the Commission approved State aid for broadband totalling EUR 34.9 billion. During the same period, Member States adopted 69 broadband State aid measures benefitting from the GBER¹¹⁸.

Taking actions against selective tax advantages

The focus the Commission has put on fighting tax evasion and tax avoidance echoes the priorities set by President Juncker in his Political Guidelines and which are also reflected in his Mission Letter to Commissioner Vestager. Throughout 2014-2016, the Commission has continued to gather information on tax planning practices, enquiring into the tax rulings practice and possible fiscal aid schemes of all Member States. The enquiry is aimed at clarifying allegations that tax rulings may constitute State aid and to allow the Commission to take an informed view of the practices of all Member States. Overall the Commission services have looked into more than 1 000 rulings.

In 2016, the Commission adopted a negative decision with recovery concerning Belgium¹¹⁹ and opened an in-depth investigation into Luxembourg's tax treatment of Engie (formerly known as GDF Suez)¹²⁰. Further, in 2016, the Commission decided to require Ireland to recover a selective tax advantage granted to Apple by way of two tax rulings¹²¹. Beyond the cases involving tax rulings, in 2016, the Commission also adopted final negative decisions in respect of the Hungarian turnover tax¹²² and opened a formal

¹¹⁶ Case SA.36754-2014/C (ex 2014/NN and 2013/N) which Hungary has partly implemented and is planning to implement in favour of *AUDI Hungaria Motor Ltd*, Commission decision of 1 February 2016, OJ L 310, 17.11.2016, p. 24.

¹¹⁷ As defined in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society*, 14.9.2016, COM(2016) 587 final:

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

¹¹⁸ The General Block Exemption Regulation (GBER) frees categories of State aid, deemed to bring benefits to society, that outweigh the possible distortions of competition in the Single Market triggered by public funding from the requirement of prior notification to the Commission. Consequently, Member States may implement measures which fulfil the condition of the GBER without prior scrutiny by the Commission.

¹¹⁹ For further information see IP/16/42 of 11 January 2016 available at http://europa.eu/rapid/press-release_IP-16-42_en.htm

¹²⁰ For further information see IP/16/3085 of 19 September 2016 available at http://europa.eu/rapid/press-release_IP-16-3085_en.htm

¹²¹ For further information see IP/16/2923 of 30 August 2016 available at http://europa.eu/rapid/press-release_IP-16-2923_en.htm

¹²² Cases SA.39235 *Hungarian advertisement tax*, Commission decision of 4 November 2016 available at

investigation procedure in respect of a Polish retail tax¹²³. Further in 2016, the Commission adopted a negative decision as regards the corporate tax exemption for Dutch public seaports¹²⁴ and opened a formal investigation procedure as regards the corporate tax exemptions for ports in Belgium¹²⁵ and France¹²⁶.

Deeper and fairer internal market in the real economy

A competitive level playing field for business in the real economy is key to ensuring a deeper and fairer internal market contributing to increased productivity and long term growth, also reducing input costs for other business and services.

Aid to manufacturing and undertakings in difficulty

In 2016, State aid control in manufacturing industries continued to be geared at enforcing the State aid rules for rescue and restructuring of firms in difficulty in the "real" economy. For instance, in the steel sector, the Commission adopted a decision¹²⁷ finding that a EUR 211 million funding granted by the Walloon authorities in Belgium to several steel companies within the Duferco group between 2006 and 2011 distorted competition in breach of EU State aid rules and opened an in-depth investigation¹²⁸ to assess whether Italian State support for the steel producer Ilva granted in 2014 and 2015 was in line with the EU State aid rules. Further in 2016, the Commission opened an in-depth investigation to determine whether the French State's contribution to the financing of the Areva group's restructuring gave the company a selective advantage not available to its competitors¹²⁹, an in-depth investigation into whether public measures in favour of the Spanish mining company Iberpotash gave it a selective advantage over its competitors¹³⁰ and an in-depth investigation into State support for the insolvent Romanian petrochemical company Oltchim¹³¹. Finally, the Commission is continuing its investigation into possible restructuring aid to the Greek railway company TRAINOSE¹³² and the cancellation of debts incurred prior to Bulgaria's accession to the EU by the Bulgarian rail incumbent BDZ¹³³.

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- http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39235; SA.40018 Amendment to the Hungarian food chain inspection fee, Commission decision of 4 July 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40018 and SA.41187 Hungarian health contribution of tobacco industry businesses, Commission decision of 4 July 2016 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result
- ¹²³ Case SA.44361 Polish tax on retail sector with progressive rates, Commission decision of 19 September 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44351
- ¹²⁴ Case SA.25398 Corporate tax exemption of Dutch public enterprises, Commission decision of 21 January 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_25338
- ¹²⁵ Case SA.38393 Ports taxation in Belgium, Commission decision of 8 July 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38393
- ¹²⁶ Case SA.38398 Ports taxation in France, Commission decision of 8 July 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38398
- ¹²⁷ Cases SA.33926 Interventions de la région wallonne en faveur de Duferco, Commission decision of 20 January 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33926, decision under appeal and T-254/16 Steel Invest & Finance (Luxembourg) v Commission, OJ C 251, 11.7.2016.
- ¹²⁸ Case SA.38613 Alleged Aid for Ilva in A.S., Commission decision of 20 January 2016, OJ C 142, 22.4.2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38613
- ¹²⁹ Case SA.44727 Restructuring aid to Areva, Commission decision of 19 July 2016, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44727
- ¹³⁰ Case SA.35818 Iberpotash, Commission decision of 26 January 2016, OJ C 14, 22.4.2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35818
- ¹³¹ Case SA.36086 Potential aid to Oltchim, Commission decision of 8 April 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36086
- ¹³² Case SA.32544 Restructuring of the Greek Railway Group – TRAINOSE S.A., Commission decision of 13 July 2011 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32544
- ¹³³ Case SA.31250 Restructuring aid to BDZ, Commission decision of 9 November 2011 available at

Aid in transport

In 2016, the Commission continued to apply the aviation guidelines adopted in 2014¹³⁴. Several decisions in the air transport sector were adopted by the Commission in 2016, for example, regarding (1) the Berlin-Brandenburg airport, a major public funding package granted for the completion of the new single Berlin airport and the upgrade of its capacity compared to the initial design was found to be aid free on the basis of an in-depth assessment of the market economy investor principle¹³⁵, (2) Romanian regional airports partially closed a formal investigation opened in 2011 into operating aid for eleven small airports¹³⁶ and (3) the Sardinian airports¹³⁷ and (4) Klagenfurt airport¹³⁸. The Commission also adopted decisions in cases involving aid to airports and start-up aid to airlines¹³⁹.

In the maritime sector in 2016, the Commission continued to ensure compliance with the Maritime State aid Guidelines¹⁴⁰. In 2016, for example, the Commission adopted decisions concerning the Swedish tonnage tax scheme and a prolongation of the German scheme for the reduction of social security contributions for seafarers¹⁴¹.

In the rail and intermodal transport sector, the Commission approved a number of schemes, which aim to support the transfer of cargo from the road to the safer and more environmentally friendly rail transport mode¹⁴². In 2016, the Commission continued to enforce Regulation (EC) No 1370/2007 on public passenger transport services¹⁴³ and adopted, for example, a negative decision with recovery on retroactive public service compensation granted by the Region of Piedmont (Italy) to Arfea¹⁴⁴.

http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_31250

¹³⁴ Communication from the Commission, *Guidelines on State aid to airports and airlines* available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.099.01.0003.01_ENG

¹³⁵ Case SA.41342 *Flughafen Berlin-Brandenburg*, Commission decision of 3 August 2016 available at http://ec.europa.eu/competition/state_aid/cases/262544/262544_1846884_138_2.pdf

¹³⁶ Case SA.30931 *Romanian regional airports*, Commission decision of 27 September 2016 available at http://ec.europa.eu/competition/state_aid/cases/240754/240754_1283768_107_3.pdf

¹³⁷ Case SA.33983 *Sardinian airports*, Commission decision of 29 July 2016 available at http://ec.europa.eu/competition/state_aid/cases/247487/247487_1426436_82_2.pdf

¹³⁸ Case SA.24221 *Klagenfurt airport*, Commission decision of 11 November 2016 available at http://ec.europa.eu/competition/state_aid/cases/243805/243805_1580487_960_2.pdf

¹³⁹ Cases SA.43023 *Lamezia Terme airport*, Commission decision of 28 July 2016 available at http://ec.europa.eu/competition/state_aid/cases/260316/260316_1834868_112_2.pdf and SA.41635 *Flughafen Heringsdorf* Commission decision of 5 July 2016 available at http://ec.europa.eu/competition/state_aid/cases/258231/258231_1777940_193_5.pdf (first decision on individual operating aid to an airport since the entry into force of the Aviation Guidelines).

¹⁴⁰ Communication from the Commission, *Community guidelines on State aid to maritime transport*, OJ C 13, 17.1.2004, p. 3.

¹⁴¹ Cases SA.43642 *Tonnage Tax scheme*, Commission decision of 18 August 2016 available at http://ec.europa.eu/competition/state_aid/cases/261398/261398_1830463_166_2.pdf and SA.45258 *Prolongation and amendment of the scheme on the reduction of nonwage labour costs in maritime shipping*, Commission decision of 14 November 2016 available at http://ec.europa.eu/competition/state_aid/cases/264071/264071_1847335_61_2.pdf

¹⁴² Cases SA.41033 *Integrated transport scheme in the Province of Trento*, Commission decision of 29 April 2016 available at http://ec.europa.eu/competition/state_aid/cases/263023/263023_1753823_116_2.pdf, SA.45606 *Measures for the development of intermodality in the Friuli-Venezia Giulia region*, Commission decision of 19 July 2016 available at http://ec.europa.eu/competition/state_aid/cases/264659/264659_1855847_97_2.pdf, SA.44627 *Ferrobonus – Incentive for rail transport*, Commission decision of 24 November 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_44627 and SA.45482 *Rail freight transport support scheme*, Commission decision of 19 December 2016 available at http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_45482

¹⁴³ Regulation (EC) No 1370/2007 of the European Parliament and the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

¹⁴⁴ Case SA.38132 *PSO compensation to ARFEA*, Commission decision of 10 June 2016 available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:321:FULL&from=EN>

Extension of GBER to ports and airports

In 2016, the Commission also proposed an extension of the State aid General Block Exemption Regulation (GBER) to ports and airports¹⁴⁵. The GBER enables Member States to implement State aid measures without prior Commission approval because they are unlikely to distort competition. The Commission proposed to widen the scope of GBER to include investments in port infrastructure, provided the aid amount does not exceed a certain threshold (sea ports: EUR 100 million (for core TEN-T ports: EUR 120 million); inland ports: EUR 20 million). As a result of the first public consultation¹⁴⁶, the Commission included further simplifications for small investments in ports.

The revised proposal also provides for more flexibility as regards the duration of concessions in ports, allowing the time needed for the concessionaire to recoup its investments. Furthermore, the Commission enlarged the scope of the provisions for very small airports. These are allowed to receive investment aid based on more flexible criteria because support to those airports is less likely to distort competition. The Commission proposes to cover airports with up to 150 000 passengers per year. It also proposes to facilitate public investment in such airports by further simplifying the criteria that have to be complied with, for example as regards the maximum amount of State aid that can be granted. The Commission also plans to address some technical issues encountered in the current GBER in order to further facilitate its uptake.

Aid to the postal sector

In 2016, State aid control in the postal sector continued to ensure a level playing field between postal incumbents and competitors based on the SGEI package¹⁴⁷ adopted by the Commission in 2012. For example, in 2016, the Commission opened a formal investigation procedure in order to examine whether State measures since 2004 in favour of Correos, the publicly-owned Spanish postal operator, were in line with EU State aid rules¹⁴⁸ and it adopted a decision finding a compensation of EUR 1.3 billion granted to the Belgian postal provider Bpost to be compliant with State aid rules¹⁴⁹.

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

State aid control in the areas of energy and environment contributes to reaching the EU ambitious energy and climate targets at the least possible cost for taxpayers and without undue distortions of competition. DG Competition continued in 2016 to ensure that renewable support schemes favoured market integration of new electricity generation from renewable sources and that support was granted through competitive bidding processes¹⁵⁰.

In 2016, the Commission adopted a number of decisions on forward looking renewable support schemes, which grant support on the basis of a competitive bidding process¹⁵¹ and 15 decisions on new support schemes to renewable energy producers.

¹⁴⁵ For further information see IP/16/3398 available at http://europa.eu/rapid/press-release_IP-16-3398_en.htm

¹⁴⁶ For further information see IP/16/622 available at http://europa.eu/rapid/press-release_IP-16-622_en.htm

¹⁴⁷ For further information see IP/11/1571, http://europa.eu/rapid/press-release_IP-11-1571_en.htm

¹⁴⁸ Case SA.37977 *Complaint regarding unlawful State aid in favour of Sociedad Estatal Correos y Telégrafos, S.A.* For further information see IP/16/284 of 11 February 2016 available at http://europa.eu/rapid/press-release_IP-16-284_en.htm

¹⁴⁹ Case SA.42366 *Compensations accordées par l'État à Bpost pour la fourniture de services publics au cours de la période 2016-2020.* For further information see IP/16/2034 of 3 June 2016 available at http://europa.eu/rapid/press-release_IP-16-2034_en.htm

¹⁵⁰ 2016 was the last year of the transitional phase when Member States had to tender at least 5% of the planned new electricity capacity unless relevant exemptions applied.

¹⁵¹ Cases SA.45461 *EEG 2017 – Reform of the Renewable Energy Law*; SA.41998 *A) Support to electricity from renewable energy sources and combined heat and power installations and B) Support for electro-intensive users in the form of reductions in electricity support scheme contributions.* For further information see IP/16/3361 of 10 October 2016 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/16/3361>; SA.44626 *Pilot tender for solar energy.* For further information see http://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result and SA.43995 *Competitive bidding process for RES in Malta.* For further information see IP/16/2906 of 26 August 2016 available at http://europa.eu/rapid/press-release_IP-16-2906_en.htm

Capacity mechanism sector inquiry - Final Report

Together with the adoption of the legislative Clean Energy Package, the Commission published on 30 November 2016 the final Report of its capacity mechanism sector inquiry¹⁵². The Report concludes that Member States need to better assess the need for such mechanisms and indicates how to improve their design to ensure security of supply while minimising competition distortions. The Report also concludes that many Member States have yet to implement market reforms that are indispensable to address security of supply issues. In those cases where a capacity mechanism is truly necessary, the Report indicates which types of capacity mechanisms may be most suitable to solve the identified problem. In particular, the Report concludes that the price paid for capacity must be determined by means of a competitive process, to which all types of capacities that can help address the security of supply problem (not only existing power plants, but also demand response providers, new capacities, storage facilities, interconnectors and foreign capacities) should be allowed to participate.

The Commission will continue to work with the Member States to bring their schemes in line with State aid rules. In addition, any new plans of Member States to introduce capacity mechanisms will be assessed in light of the insight gained from the sector inquiry.

In 2016, the Commission also adopted major capacity mechanism decisions in relation to the market-wide French de-centralised capacity mechanism¹⁵³, the German Network Reserve¹⁵⁴ and Interruptibility Scheme¹⁵⁵.

In addition, in 2016, the Commission approved a number of previously non-notified support schemes for energy from renewable sources, among them being the Polish green certificates scheme¹⁵⁶, the Czech renewable support scheme for RES-electricity¹⁵⁷ and the Bulgarian feed-in tariff scheme for RES small installations¹⁵⁸.

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

Coping with the deep impact the financial and sovereign crisis had on European banks continued to be the focus of State aid control also in 2016. Although the crisis years seem to be over in some Member States and the overall improvement of the sector at aggregated level is obvious, State support is still sought by some banks in difficulty.

The EU has introduced tools (legislation and institutions) to deal with banks' failure, and a clear cost distribution between the creditors and the rest of the banking system for the protection of the taxpayer. The bail-in provisions of the Bank Recovery and Resolution Directive (BRRD) entered into force on 1 January 2016. The BRRD is shifting the cost of bank failures to shareholders and creditors, and has the objective to minimise State aid. However, also under this new resolution framework, State aid is still possible, both outside resolution and in resolution cases. State intervention remains a tool used by

¹⁵² For further information see IP/16/4021 of 30 November 2016 available at http://europa.eu/rapid/press-release_IP-16-4021_en.htm

¹⁵³ The mechanism implements a national market-wide capacity mechanism where capacity obligations are traded between electricity capacity providers (e.g. power plants or demand side operators) and electricity suppliers. Case SA.39621 *French country-wide capacity mechanism*. For further information see IP/16/3620 of 8 November 2016 available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/16/3620>

¹⁵⁴ A draft legislation aimed *inter alia* at the establishment of a new Capacity Reserve and the revision of an existing Network Reserve. Case SA.42955 *German Network Reserve*, Commission decision of 20 December 2016 available at http://ec.europa.eu/competition/state_aid/cases/265043/265043_1872192_91_2.pdf

¹⁵⁵ A draft Ordinance contracting interruptible loads enabling German transmission system operators (TSO) to enter into contracts with electricity consumers, which receive payments in exchange for committing to reducing their consumption in accordance with instructions of the TSO. Case SA.43735 *German Interruptibility Scheme ABLAV*, Commission decision of 24 October 2016 available at http://ec.europa.eu/competition/state_aid/cases/264060/264060_1841480_86_2.pdf

¹⁵⁶ Case SA.36499 *Prolongation of environmental and renewable investment aid schemes*, Commission decision of 16 June 2016 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result

¹⁵⁷ Case SA.40171 *2006 RES Support*. For further information see IP/16/4083 of 28 November 2016 available at http://europa.eu/rapid/press-release_IP-16-4083_en.htm

¹⁵⁸ Case SA.44840 *Bulgarian RES support scheme*, Commission decision of 4 August 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44840

national authorities to avoid triggering bail-in in case they are structured at no aid terms, i.e. precautionary recapitalisation or under national insolvency regimes. For example, in 2016, the Commission approved as aid-free measures, a Hungarian bad bank purchasing Non Performing Loans (NPLs) at market price and an Italian scheme for State guarantee on senior debt instruments issued by vehicles purchasing NPLs where the guarantee was offered at a market conform fee.

Specific objective 10: Prevention and recovery of incompatible aid

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is granted under block-exempted schemes which are not examined by the Commission before entering into force. Overall, roughly four-fifths of aid is granted on the basis of previously approved aid schemes or Block Exemption Regulations. In that context, it is essential for the Commission to verify that Member States apply State aid rules for the schemes correctly and that they only grant aid when all required conditions are met. DG Competition's State aid control activity also aims at ensuring effective prevention and recovery of incompatible State aid in order to prevent that Member States re-create artificial barriers to intra-community trade.

When unlawful aid is declared incompatible, the Commission is obliged to ask for its recovery by the Member State who granted it in order to restore the situation in the market prior to the granting of the aid. The purpose is to re-establish the situation that existed on the market prior to the granting of the aid in order to ensure that the level-playing field in the internal market is maintained.

In 2016, further progress was made to ensure that recovery decisions are enforced effectively and immediately. By 31 December 2016, the sum of illegal and incompatible aid recovered from beneficiaries amounted to EUR 12.3 billion¹⁵⁹. At the same time, the outstanding amount pending recovery was EUR 19.8 billion. In 2016, the Commission adopted eleven new recovery decisions and EUR 18.4 million was recovered by the Member States. As of the end of December, the Commission had 52 pending recovery cases¹⁶⁰.

Recovery decisions adopted in 2016	11
Amount recovered in 2016 (EUR million)	18.4
Pending recovery cases on 31 December 2016	52

Specific objective 11: Monitoring of aid measures

In order to ensure that aid granted under existing aid schemes (without being individually notified and examined by the Commission) effectively complies with State aid rules, DG Competition performs a systematic, sample based, ex-post control (so-called "monitoring exercise"). Building on the Court of Auditors recommendations¹⁶¹, DG Competition has substantially increased the size of the monitoring sample in the last three annual cycles to 78 schemes in 2016 review.

The 2016 cycle covered all Member States and all main types of aid approved as well as block-exempted schemes. Furthermore, the sample contained some block-exempted schemes implemented under the new GBER¹⁶². Also, DG Competition continued targeted monitoring where it examined whether Member States correctly applied the criterion on

¹⁵⁹ The reference period is 1 January 1999 to 31 December 2016.

¹⁶⁰ See Annexes to the AAR, Annex 12, Specific Objective 10, Result indicator 1, p. 36.

¹⁶¹ In its 2011 report on the efficiency of State aid procedures, the Court of Auditors considered that, in view of the importance of aids granted under existing aid schemes, the Commission's monitoring activity should be reinforced. For further information see the recommendation n° 1 of the Court of Auditors Report recital 96, p. 41 available at <http://eca.europa.eu/portal/pls/portal/docs/1/10952771.PDF>

¹⁶² 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 TFEU; OJ L 187, 26.6.2014, p. 1.

aid granted to companies in difficulty. Further, DG Competition monitored some schemes in which the granting of illegal aid could be involved. In monitoring, the examination of aid schemes comprises whether (i) the State aid rules are correctly and completely, where applicable, contained in the national legal basis and (ii) the individual aid awards, on the basis of a sample, were also compliant with the State aid rules for selected beneficiaries. When irregularities are found, it is verified *inter alia* whether the incompatible aid could be considered compatible under the State aid rules and/or Member States are invited to rectify the legal basis and/or to recover voluntarily the excess aid granted. Where the infringement is found serious, the Commission has the option to launch a formal investigation procedure.

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

To facilitate the implementation of the State Aid Modernisation (SAM), the Commission supported in 2016 Member States in various ways and started a closer cooperation with them.

Collaboration with Member States takes multiple forms. The Working Group on SAM implementation (SAM WG) is a forum for Member States to exchange best practices on their systems for State aid control, creating an effective network for the informal discussion of State aid issues among Member States and with the Commission. Other dedicated working groups or workshops have dealt with specific aspects of SAM implementation, in particular the new requirements for transparency and evaluation or the implementation of the energy and environment guidelines. Once a year, the SAM WG reports to a High Level Forum (HLF) which in turn provides guidance on the future work of the Partnership. The SAM WG met three times in 2016, under a United Kingdom Chair, and addressed several policy and compliance issues related to SAM implementation. It reported on its conclusions and recommendations to the HLF held on 3 June 2016, in Brussels.

In 2016, the Commission also launched Bilateral Partnerships with certain Member States in order to address existing compliance problems and challenges in these Member States. The Bilateral Partnerships aim to build a structured bilateral dialogue between the Commission and the Member State concerned to allow identifying and addressing the obstacles that still hinder compliance with the State aid rules. In 2016, the Commission has agreed on practical work programmes on State aid with Italy, Bulgaria and Romania and work is on-going with a view to deepening cooperation with other Member States that could, in time, also lead to structured Bilateral Partnerships with these Member States.

In 2016, the Commission services facilitated compliance with the transparency requirements of SAM by developing, in cooperation with Member States, the Transparency Award Module (TAM) – a new informatics tool for submission and publication of data required under the transparency provisions. The TAM is operational since 1 July 2016 and the submitted data is automatically available online¹⁶³. In addition, since the beginning of 2016, the annual expenditure figures at scheme level as reported by Member States are published in the online case register of DG Competition (ISEF¹⁶⁴), hence increasing overall transparency of State aid. Further in 2016, a Eurobarometer Survey about citizens' perceptions of transparency and awareness of State aid¹⁶⁵ was carried out. It benchmarked the citizens' perceptions about transparency in State aid before the new SAM provisions entered into force.

¹⁶³ For further information see the Transparency Award Module (TAM) available at <https://webgate.ec.europa.eu/competition/transparency/public/search/chooseLanguage>

¹⁶⁴ <http://ec.europa.eu/competition/elojade/isef/>

¹⁶⁵ For further information see the Special Eurobarometer 448 on the European Union Open Data Portal available at https://data.europa.eu/euodp/en/data/dataset/S2135_85_3_448_ENG

Further, in 2016 the Commission launched a review of the Simplified Procedure Notice¹⁶⁶ and of the Best Practices Code¹⁶⁷ in order to reflect, on the one hand, the amendments brought to the State aid framework within the State aid Modernisation initiative and, on the other hand, to take account of the experience gained by the Commission with its implementation.

The Simplified Procedure Notice sets out the conditions under which the Commission usually adopts short-form decisions declaring certain types of State support measures compatible with the internal market, and provides guidance in respect of the procedure to be followed. The Commission launched a public consultation on this notice from January to April 2016.

The Best Practices Code provides guidance on the day-to-day conduct of State aid procedures and exchange of information between the Commission and Member States. In that respect, it encourages Member States to engage in informal discussions with Commission services and use pre-notification contacts. The Commission launched a public consultation in the end of 2016 in order to gather the views of the Member States and stakeholders on the implementation of the Best Practices Code over the past seven years. In the light of the comments received from the public consultations, the Commission will review these texts with the objective to ensure coherence and consistency in the application of the various instruments of the State aid framework.

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

DG Competition engages in advocacy activities and promotes competition culture in the EU and world-wide. Maintaining and strengthening the Commission's reputation world-wide and promoting international cooperation in this area is also defined as a priority for the new Commission in the area of competition policy¹⁶⁸.

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

In 2016, DG Competition continued to work in close cooperation with other Commission services on the Commission's wider economic policy and economic governance agenda, including participating to horizontal policy coordination exercises such as the European Semester and the support to structural reforms, as well as contributing to other policy initiatives of the Commission. Such cooperation is aimed at:

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

In 2016, DG Competition also continued to work together with other services of the Commission and with other institutions, in particular the European Parliament in connection with the Parliament's resolution on the Commission's Report on Competition Policy 2015 and its second Special Committee on Taxes, the European Economic and Social Committee in connection with its Report on the Commission's Report on

¹⁶⁶ Commission notice on a Simplified procedure for the treatment of certain types of State aid, OJ C 136, 16.6.2009, p. 3-12 available at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009XC0616\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52009XC0616(01))

¹⁶⁷ Commission notice on a Best Practices Code on the conduct of State aid control proceedings available at http://ec.europa.eu/competition/state_aid/legislation/best_practices_code_en.pdf

¹⁶⁸ Mission Letter by President Juncker to Commissioner Vestager.

Competition Policy 2015 and the European Central Bank taking part in conferences and workshops.

Specific objective 14: Explaining competition policy and its benefits

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

In 2016, DG Competition continued its advocacy efforts aimed at demonstrating the benefits of competition to citizens as well as stakeholders and explaining to businesses and Member States the economic and legal approach used by DG Competition when taking decisions¹⁶⁹. In this context, DG Competition published for the first time *EU competition policy in action – COMP in Action*¹⁷⁰. It presents DG Competition's work in an innovative and visually attractive way and serves as "a visit card" for DG Competition. It was highly appreciated by many stakeholders and was selected by the Publications Office of the European Union (OPOCE) as the key publication for DG Competition in 2016. A new edition is planned for 2017.

DG Competition conducted in 2014, for the second time, *Flash Eurobarometer 403 survey – Citizens' Perception about Competition Policy*¹⁷¹. The results of the survey benefit competition advocacy efforts by the Commission and the national competition authorities. In 2016, DG Competition continued to work together with the NCAs in this context and plans to conduct the survey again in 2019.

As in every year¹⁷², DG Competition produced in 2016 its Report on Competition Policy to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, and engaged in a structured dialogue with other institutions. DG Competition engaged with the European Parliament, in particular the Economic and Monetary Affairs Committee (ECON), on a multitude of topics and strived to provide timely and effective replies to parliamentary questions.

In 2016, DG Competition followed up on the study that focused on the energy sector¹⁷³ by presenting its findings in meetings of the ECN Network and Competition Committee of the Organisation for Economic Co-operation and Development (OECD)¹⁷⁴, as well as in several academic conferences. This study showed that EU merger policy enforcement is consistently and significantly related to better market outcomes in terms of consumer prices levels and productivity. A telecoms study¹⁷⁵, focusing on a best-practice example

¹⁶⁹ Furthermore, DG Competition's printed publications were sent to 6452 subscribers/readers and the digital publications to 34880 in 2015.

¹⁷⁰ EU competition policy in action, *COMP in Action* (2016), available at <http://ec.europa.eu/competition/publications/kd0216250enn.pdf>

¹⁷¹ Eurobarometer Flash 403 on Citizens' Perception about Competition Policy (2014) published in March 2015, http://ec.europa.eu/competition/publications/reports/surveys_en.html See also Flash EB 264 EU citizens' perceptions about competition policy (2009), http://ec.europa.eu/competition/publications/reports/surveys_en.html According to the results of the survey, more than 80% of EU citizens believe that competition between companies can lead to better prices, more choice, innovation and economic growth. On the question used as an indicator, 74% of EU citizens respond that effective competition has a positive impact on them as a consumer. EU citizens identify competition concerns in sectors which largely correspond also to the priority sectors that DG Competition focuses on.

¹⁷² Since 1971.

¹⁷³ ICF Consultancy Services in association with DIW Berlin (2105), *The economic impact of enforcement of competition policies on the functioning of EU energy markets*, a study report prepared for DG Competition, Publications Office of the European Union.

¹⁷⁴ OECD workshop of 19 April 2016, Paris called *Second capacity-building workshop on the ex-post evaluation of competition authorities' activities*.

¹⁷⁵ See the report *Economic impact of competition policy enforcement on the functioning of telecoms markets in the EU* (2016), final report is not yet available.

on how to evaluate a State aid scheme, was concluded in 2016. Further, the results of a merger retrospective study¹⁷⁶ have been published on DG Competition's website in 2016 and been the focus of discussions and presentations on a number of conferences and workshops. In 2016, the macroeconomic study *Distributional macroeconomic effects of EU competition policy – a general equilibrium analysis*¹⁷⁷ was used to illustrate the wider benefits of DG Competition's policy interventions at both academic and institutional workshops as well as conferences, for example, the Competition and Regulation European Summer School (CRESSE), ECN Network, OECD and World Bank.

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

In 2016, DG Competition continued to actively engage in the international negotiations on Free Trade Agreements (FTAs) with the aim to include competition and State aid provisions in such agreements. The Commission's international priorities in 2016 included the negotiations with the United States on a Transatlantic Trade and Investment Partnership Agreement (TTIP), launched in 2013. In addition, significant progress was made on another important agreement currently being negotiated, namely the Free Trade Agreement with Japan. During 2016, the Commission also started FTA negotiations with Armenia, Mexico, Indonesia and Philippines, and re-opened negotiations with Mercosur. DG Competition also continued to actively engage in the Commission's negotiations with the People's Republic of China regarding an Investment Agreement which includes provisions on procedural fairness in competition proceedings and on transparency in subsidies.

Another key area of Commission activity at the international level is strengthening international cooperation in enforcement activities and promoting convergence of competition policy instruments across different jurisdictions. In 2016, negotiations between the Commission and its Canadian counterparts to include provisions on the exchange of evidence into the existing EU-Canada Cooperation agreement were completed at working level and the Commission submitted a draft agreement to Council proposing to adopt decisions to sign and to conclude the agreement. Further, at the bilateral level, Commissioner Vestager agreed with Chairman Sugimoto, the Head of the Japan Fair Trade Commission in 2016, to initiate the respective internal procedures which would allow the start of negotiations to upgrade the Cooperation agreement with Japan, which dates from 2003, with provisions for the exchange of evidence. In 2016, DG Competition also signed a Memorandum of Understanding on competition cooperation with the Competition Commission of South Africa.

DG Competition's technical cooperation activities with the Chinese competition authorities continued throughout 2016 under the management and financing of the Service for Foreign Policy Instruments (FPI) as well as with the Indian competition authorities under the CITD¹⁷⁸ programme. In 2016, DG Competition also assisted in the implementation of the competition provisions included in recent FTAs with neighbouring countries, for example Tunisia and Morocco and monitored implementation of the EU competition acquis, including the State aid rules, in countries such as Ukraine and Moldova.

In 2016, DG Competition continued its active engagement in competition-related international fora such as the Competition Committee of OECD, the International Competition Network (ICN), the World Bank and United Nations Conference on Trade and Development (UNCTAD). DG Competition is a member of the ICN Steering Group and of

¹⁷⁶ See the report by Peter Ormosi, Franco Mariuzzo, and Richard Havell with Amelia Fletcher, Bruce Lyons (2015) Centre for Competition Policy, University of East Anglia *A review of merger decisions in the EU: What can we learn from ex-post evaluations?* available at <http://ec.europa.eu/competition/publications/reports/kd0115715enn.pdf>

¹⁷⁷ See the study of Adriaan Dierx, Jukka Heikkonen, Fabienne Ilzkovitz, Beatrice Pataracchia, Anna Thum-Thysen and Janos Varga, *Distributional macroeconomic effects of EU competition policy – a general equilibrium analysis* available at http://www.cresse.info/uploadfiles/2015_pa14_p1.pdf

¹⁷⁸ Capacity building Initiative for Trade Development programme, launched in 2014.

the Bureau of the OECD Competition Committee.

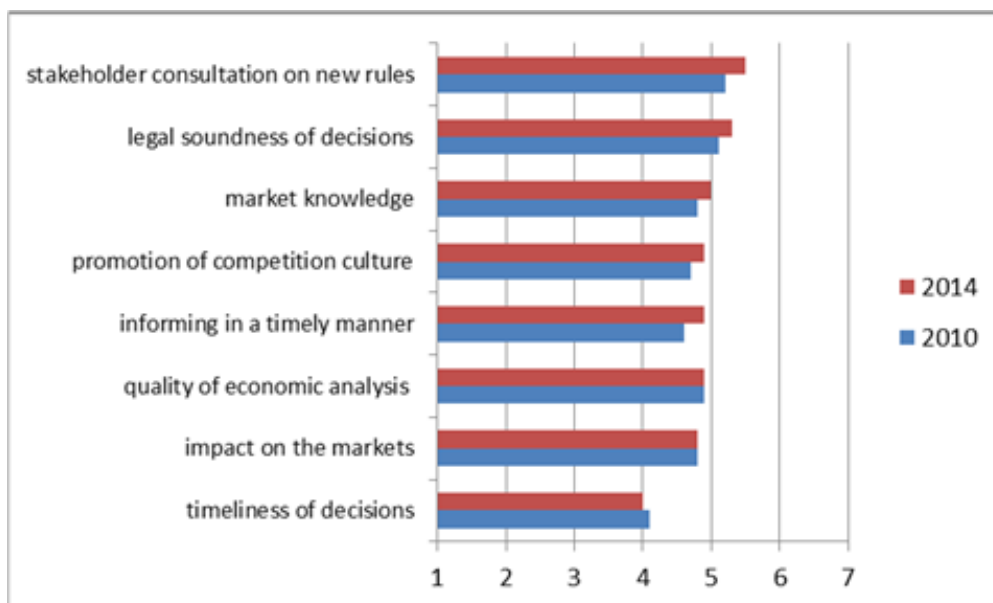
Specific objective 16: Ensuring the highest standards in the enforcement of competition policy

Finally, the above general and operational objectives are all served by ensuring competition policy enforcement of the highest of standards. A fair, impartial, efficient and transparent enforcement of competition policy strengthens the ability to deliver results with respect to consumer welfare, efficient markets, growth and advocacy.

DG Competition is committed to adhere to the highest standards of professionalism, intellectual rigour and integrity so as to ensure the highest standards in the enforcement of competition policy. In 2016, DG Competition continued to implement its action plan on Smarter Working Initiatives, following its E-survey of 2015, to identify further sources of efficiency and synergies as well as making DG Competition a better workplace. In 2016, DG Competition obtained the Commission internal communication award for this ongoing initiative. According to an earlier Eurobarometer Standard Qualitative survey conducted among its professional stakeholders on some key quality parameters¹⁷⁹ related to DG Competition's work¹⁸⁰, there was widespread agreement that DG Competition's impact on the market is significant by promoting competition, raising awareness for competition rules and acting as deterrent. DG Competition envisages repeating the survey in 2019.

¹⁷⁹ These parameters include i) Soundness of legal and economic analysis (clarity and comprehensibility of decisions, predictability of decisions, predictability of fines imposed, understanding the markets and quality of economic analysis), ii) Transparency and procedural fairness (level of transparency of DG Competition's work, listening and informing in a timely manner, publication of non-confidential versions of decisions, stakeholder consultations on new rules, observance of procedural rules and burden on businesses and organisations), iii) Economic effectiveness (effectiveness of detection policy, deterrent effect of fines, impact of existing antitrust rules on planned business transactions, timeliness of decisions, focus on the right sectors, adaptation to the technological changes and globalisation, impact on the markets, use of settlements in cartel cases and commitment decisions in antitrust cases, enforcement of decisions and contribution to the EU's economic growth) and iv) Communication and promotion of competition culture (clarity and comprehensibility of external communication, choice of communication and media channels and promotion of competition culture and policy convergence at the international level).

¹⁸⁰ Eurobarometer Standard Qualitative Study – Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2014) published in March 2015, http://ec.europa.eu/competition/publications/reports/surveys_en.html; see also Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2010), http://ec.europa.eu/competition/publications/reports/surveys_en.html; see also annual ranking of competition authorities around the world by Global Competition Review (GCR), the latest June 2015, <http://globalcompetitionreview.com/surveys/article/38830/european-commissions-directorate-general-competition>



2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL

This section answers to the question *how* the achievements described in the previous section were delivered by the DG. This section is divided in two subsections.

The first subsection reports the control results and all other relevant information that support management's assurance on the achievement of the financial management and internal control objectives. It includes any additional information necessary to establish that the available evidence is reliable, complete and comprehensive; appropriately covering all activities, programmes and management modes relevant for the DG.

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

2.1 Financial management and internal control

Assurance is an objective examination of evidence for the purpose of providing an assessment of the effectiveness of risk management, control and governance processes. This examination is carried out by management, who monitors the functioning of the internal control systems on a continuous basis, and by internal and external auditors. Its results are explicitly documented and reported to the Director-General. The reports produced are:

- financial reports on budget execution, expenditures, payment delays, procurement and contract management;
- contribution of the Internal Control Coordinator, including the opinion and the observations of the ex-post controls; and the results of internal control monitoring at the DG level;
- the observations and the recommendations reported by the Accounting Officer;
- the observations and recommendations reported by the Internal Audit Service (IAS).

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

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

2.1.1 Control results

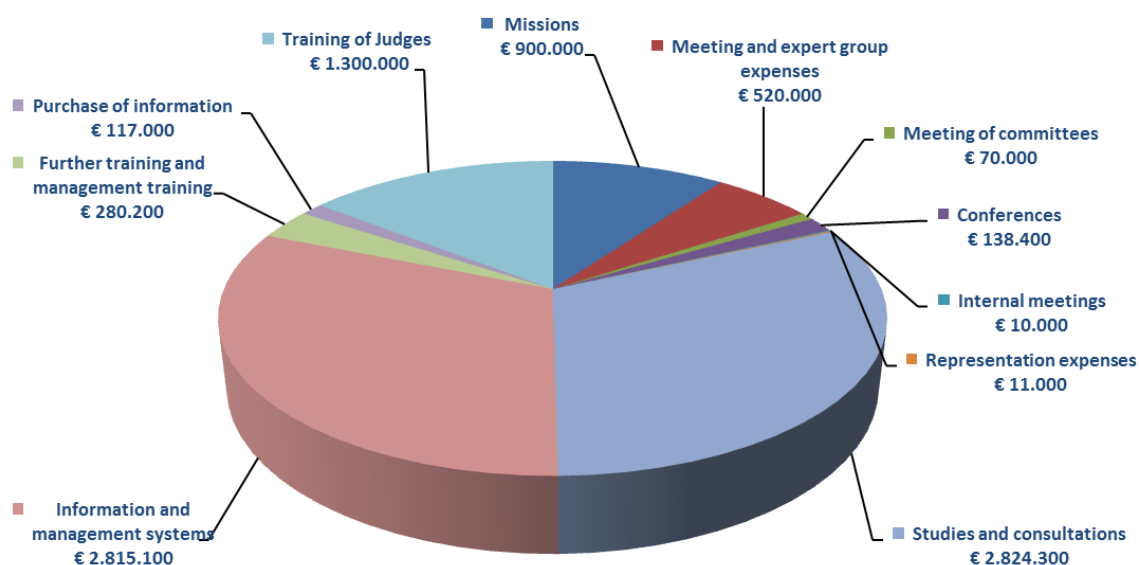
This section reports and assesses the elements identified by management that support the assurance on the achievement of the internal control objectives¹⁸¹. The DG's assurance building and materiality criteria are outlined in the AAR Annex 4. Annex 5 outlines the main risks together with the control processes aimed to mitigate them and the indicators used to measure the performance of the control systems.

Competition policy is implemented through enforcement and involves predominantly

¹⁸¹ Effectiveness, efficiency and economy of operations; reliability of reporting; safeguarding of assets and information; prevention, detection, correction and follow-up of fraud and irregularities; and adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programs as well as the nature of the payments (Article 32 FR).

procedural (case-handling) and advocacy activities. DG Competition manages a relatively modest administrative budget (EUR 7.46 million in 2016) under direct centralised management¹⁸². The budget covers the administrative costs in support of DG Competition's operations such as mission costs, expert groups, advisory committees, conferences, studies, consultations, expert advice, IT and training. DG Competition also manages a small grant programme (EUR 1,3 million) – Training of Judges – by co-delegation from DG Justice and purchase on-line information (EUR 117 000) by co-delegation from DG Communication. In addition, DG Competition received a budget of EUR 110 000 from DG Agriculture as a contribution to the corporate IT-project CASE@EC¹⁸³. Financial management is therefore not a major activity in DG Competition's operations (see graph of the total budget for 2016).

Total budget 2016 - direct centralised management



To optimise the use of its human resources and manage its budget in the most efficient manner, DG Competition operates a centralised circuit for its administrative expenditures, partially decentralised for the grant program and a decentralised circuit with counterweight for issuing recovery orders in relation to fines. The role of the operational units/directorates is important, in particular with respect to operational initiation and verification. A close and constant liaison with members of the DG's Finance Team is however essential throughout the expenditure life cycle. These arrangements allow for a more responsive organisation without endangering the effectiveness of internal controls.

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

The main indicators and/or conclusions on each control objective and area are summarised in the following table:

¹⁸² Appropriations sub-delegated to DG Competition are reported directly to the Directorate-Generals concerned, i.e. DG DIGIT (ISA2 – EUR 1.99 million) and DG Communication (Publication – EUR 12 018).

¹⁸³ Total budget 2016 – EUR 8.99 million.

Activity/ Indicator	Legality & regularity	Cost- Effectiveness of controls	Anti-Fraud Strategy	Reliability of information and reporting	Safeguard of Assets
Management of administrative expenditure	Error rate below 2%	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a
Grant programme	Error rate below 2%	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a

Coverage of the Internal Control Objectives and their related main indicators

- Control effectiveness as regards legality and regularity**

DG Competition has set up internal control processes aimed to ensure the adequate management of the risks relating to the legality and regularity of the underlying transactions, and the nature of payments. 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. In 2016, the error rate was 0%.

As regards the legality and regularity of the underlying transactions, the objective is to ensure that the estimated annual risk of errors in commitments and payments at the time of authorisation of the transaction is less than EUR 156 800¹⁸⁴.

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

In 2016, three procurement procedures were subject to a supervisory desk review by the local Advisory Committee for Procurements and Contracts, prior to the signature of the contract. Furthermore, 47% of the value of our financial operations was subject to an ex-post control. None of these controls unveiled errors. Thus, DG Competition does not expect to make any future corrections on payments made in 2016.

In the context of the protection of the EU budget, at the Commission's corporate level, the DGs' estimated overall amounts at risk and their estimated future corrections are consolidated.

For DG Competition, the estimated overall amount at risk at payment¹⁸⁵ for the 2016 payments made is EUR 39 441. This is the AOD's best, conservative estimation of the amount of *relevant expenditure*¹⁸⁶ during the year (EUR 7.89 million) not in conformity with the applicable contractual and regulatory provisions at the time the payment is made.

The expenditures have been subject to ex-post controls and no errors were identified. Thus, the conservatively estimated future corrections for those 2016 payments are close to zero (see table "Estimated overall amount at risk at closure 2016").

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

¹⁸⁴ This amount represents 2% of payments made in 2016 (EUR 7.84 million).

¹⁸⁵ In order to calculate the weighted average error rate (AER) for the total *relevant expenditure* in the reporting year, the *detected* error rates have been used.

¹⁸⁶ "*relevant expenditure*" during the year = payments made, minus new pre-financing paid out, plus previous pre-financing cleared.

Estimated overall amount at risk at closure

DG Competition	Payments made (m€)	<i>minus</i> new prefinancing (m€)	<i>plus</i> cleared prefinancing (m€)	relevant expenditure (m€) = (2) - (3) + (4)	Average Error Rate (%)	estimated overall amount at risk <i>at payment</i> (€) = (5) x (6)	Average Recoveries and Corrections (<i>adjusted ARC</i> ; %)	estimated future corrections (€) = (5) x (8)	estimated overall amount at risk <i>at closure</i> (€) = (7) - (9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Administrative expenditures and information purchase	7.51	N/A	N/A	7.51	0.5%	37 550	0	0	37 550
Grant program – Training of Judges	0.33	0.37	0.42	0.38	0.5%	1 891	0	0	1 891
Overall, total	7.84	0.37	0.42	7.89	0.5%	39 441	0	0	39 441

- *Cost-effectiveness and efficiency*

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

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

To measure the efficiency and effectiveness of controls, DG Competition relies on the indicators mentioned in Annex 5. In light of the limited budget, DG Competition applies for efficiency reasons a centralised financial circuit for its administrative expenditures and a decentralised circuit for grants, with a strong financial support role. The circuit complies with the baseline requirements of the Financial Regulation (FR) and allows detecting and rectifying mistakes immediately during the transaction process. Errors are generally of immaterial nature and consist of omissions, such as not joining the adequate supporting documents to the file.

It is estimated that 16% of the human resources in the Financial Team are attributed to controls of procurement and grants procedures, in addition to the base line controls as required by the Financial Regulation such as the "four-eye" principle. The ex-post review of procurements, grants, financial transactions and reported exceptions performed by the Internal Control Coordinator is estimated to be equivalent to 30% of a full time staff. In total, the cost of controls represents 1.3 full time post e.g. approximately EUR 179 400 or equivalent to 3% of total expenditure.

In 2016, all planned procurements were approved by senior management as being in line with the DG's objectives and priorities. One procedure had to be cancelled for the sake of completeness of information provided to tenderers. A new procedure was then published. DG Competition received no complaints from unsuccessful contractors, no legal proceedings were launched against the Commission and no cases were raised by the Ombudsman.

The average payment delay in 2016 was less than 20 days, which is in line with the average payment delay in 2015. Furthermore, more than 94% of all payments were executed within the contractual limit, which is similar to 2015. The average registration delay for an invoice was 4.5 days, which is below the Commission's target of five days. The time to inform beneficiaries in 2016 was 218 days, and the average time to grant 344 days. The main reason for the delay in signing the grant agreements was outside the control of DG Competition, namely several multi-beneficiaries took a long time to collect signed mandates from their partners and thereby extending the number of average days.

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, as mentioned above, compliance with regulatory provisions.

The total amount of payments in 2016 was EUR 7.84 million and the error rate was 0%. The controls and the measures taken comply with 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. Overall, during the reporting year the controls carried out by DG Competition for the management of the budget appropriations were efficient and cost effective.

Fraud prevention and detection and safeguarding of information

DG Competition has developed and implemented its own anti-fraud strategy since 2013, elaborated on the basis of the methodology provided by OLAF.

The Anti-Fraud Strategy complements the DG's Code on Ethics and Integrity and Security Guidelines. It takes into account the DG's relatively limited administrative budget and absence of operational budget. Its actions were reviewed and reported to the Director General yearly between 2014 and 2016. A thorough review is foreseen in 2017 in view of drafting a new version of the Strategy in line with the updated methodology provided by OLAF in 2016.

Anti-Fraud controls

The controls aimed at preventing and detecting fraud are not fundamentally different from those intended to ensure the legality and regularity of transactions. Each year, DG Competition assesses the risk of fraud in the context of its risk management exercise. The fraud risks are mitigated by specific controls. Activities and operations at a higher risk of fraud are subject to more in-depth monitoring and control. During the reporting year, no case of fraud was transmitted to OLAF for investigation. In addition, during the same period, OLAF has not initiated any case concerning the activities of DG Competition based on other sources of information. OLAF reports annually on the follow up of its investigations.

Throughout the year, the DG continued its participation in OLAF's Fraud Prevention and Detection Network, as well as its training and awareness raising activities (five courses for newcomers in 2016).

Safeguarding of information

In 2016, DG Competition had 13 cases of information security incidents, 6 of which were outside DG Competition's control and 7 were inadvertent disclosures of confidential information. These incidents were considered to be non-critical to its operations and thereby having no impact on the assurance. Bi-yearly reports were made to the Commissioner for Competition on the information security incidents (including risk assessments, recommendations and their follow-up). Six recommendations triggered specific follow-up actions, three of which concerned updates to DG Competition's Manuals of Procedure and the three others IT matters.

The analysis made has not unveiled any weakness which could have an impact on the assurance. In conclusion, DG Competition considers that its Anti-Fraud Strategy and safeguarding of information are effective.

2.1.2 Audit observations and recommendations

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

The overall objective of the audit on the Management of Local IT was to analyse and evaluate DG Competition's current internal control systems to ensure an adequate and effective management of its local IT activities. Overall, the IAS concluded that DG Competition manages to deliver local IT solutions to support the business processes despite the inherent complexity of the environment in which it operates and its underlying resource constraints (both human and financial). It depends heavily on local IT systems and senior management is aware of the importance of IT in achieving business objectives and devotes significant attention to it (e.g. through monthly IT Steering Committee meetings). However, the IAS concluded that significant improvements are needed in a number of key areas. The very important recommendations issued include amongst others the sustainability of IT funding, the alignment of business and IT strategies, project management and quality assurance.

In accordance with the agreed action plan of the Local IT Audit, all the actions were completed by the end of 2016 for:

- 3 very important recommendations (IT funding, alignment of business and IT strategies and role of the LISO in DG Competition);
- 5 important recommendations (IT governance, management of IT risks, management of IT continuity, firewall and network services management, and database management).

Work continues concerning the remaining two very important recommendations with a view to finalising all actions by the end of 2017 as planned.

In 2016, the Commission's Internal Audit Service (IAS) did not issue any new report on audits it conducted on DG Competition. During 2016, IAS started the field work for an audit on "Enforcement of the EU antitrust policy: cooperation with EU national competition authorities and national courts".

The implementation of the agreed actions addressing the recommendations contained in the reports following the IAS 2015 audits¹⁸⁷ is ongoing according to plan. None of the recommendations issued by the IAS are overdue.

In a Special Report on compliance with State aid rules in ESIF operations¹⁸⁸, the European Court of Auditors (ECA) found a number of State aid related errors in projects implemented by Member States and co-financed by ESIF in the programming period 2006-2013. ECA recognised that the Commission had already taken several measures to remedy the situation in the 2014-2020 programming period and called upon the Commission to continue its efforts to further increase awareness and knowledge of State aid rules among ESIF stakeholders in the Member States, including Managing Authorities and national audit authorities. The Commission will therefore continue to implement the recommendations formulated by ECA.

The Internal Auditor concludes that the internal control systems audited are overall working satisfactorily and do not impact on the assurance, although a number of very important findings¹⁸⁹ remain to be addressed in line with the agreed action plans.

2.1.3 Assessment of the effectiveness of the internal control systems

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

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

The DG's annual review of its implementation of the Internal Control Standards (ICS-15) was based on an initial desk review by the ICC staff, followed by discussions with relevant horizontal units responsible for the implementation of the ICS. This also includes the DG's risk assessment and update of its Risk Register. No critical risks were identified for DG Competition. As a rather non-spending DG, the inherent risks of DG Competition relate to procedures leading to Commission decisions in the field of competition policy, handling of confidential information as well as attracting and maintaining highly qualified staff.

¹⁸⁷ Audit on Knowledge management (five important recommendations) and Audit on the Management of local IT (five very important and five important recommendations).

¹⁸⁸ Court of Auditors Special Report 24/2016 "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy" available at http://www.eca.europa.eu/Lists/ECADocuments/SR16_24/SR_STATE_AIDS_EN.pdf

¹⁸⁹ DG Competition has three remaining open recommendations of which two are very important.

In addition, DG Competition reviews the reporting of exceptions and non-compliance events, defined as control overrides or deviations from policies and procedures, and the results of the ex-post controls and supervisory activities.

DG Competition has assessed the internal control systems during the reporting year and has concluded that the internal control standards are implemented and functioning as intended and has no impact on the assurance.

2.1.4 Conclusions as regards assurance

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

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

The intrinsic risk for administrative expenditure managed by DG Competition, including procurement and grants, is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place. The Authorising Officer by Delegation's best estimation of the risks relating to the legality and regularity for the expenditure authorised during the reporting year (EUR 7.84 million) is below 0.5%.

Further assurance is obtained by the risk management process put in place, and the very limited number of significant exceptions and non-compliance events reported in 2016. Management has obtained satisfactory evidence that the internal control system in its entirety is implemented effectively in the DG.

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

DG Competition has put in place suitable control measures to limit risks of errors and guarantee that assets and information are safeguarded, and to prevent, detect and correct fraud and irregularities. Where necessary, improvements of the overall control strategy and processes were made in the course of the year.

Overall Conclusion

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

DECLARATION OF ASSURANCE

I, the undersigned, Johannes Laitenberger,

Director-General of DG Competition

In my capacity as authorising officer by delegation,

Declare that the information contained in this report gives a true and fair view¹⁹⁰.

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 limited conclusion of the Internal Auditor on the state of control and its observations as well as 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 2017

(signed)

Johannes Laitenberger

¹⁹⁰ True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG.

2.2 Other organisational management dimensions

2.2.1 Human resource management

The strategic HR objectives of DG Competition are designed to contribute more broadly to the attainment of the entire set of its business objectives, rather than being limited to one business objective each.

In a human resource management (HRM) environment, characterised by ongoing staff cuts and a reform of the HRM service delivery model in the Commission, DG Competition continued its effort to build a sustainable and balanced workforce throughout 2016. Despite these challenges, 2016 saw an improvement on the main HRM issues facing the DG. Staff turnover, which had been identified as a major point of concern, fell to its lowest level since measurement began (from 13.9% in 2015 to 10.8% in 2016), allowing for more stability in HRM planning. The external mobility deficit of staff departing from and arriving at DG Competition narrowed significantly (from -15 in 2015 to -4 in 2016). The vacancy rate showing the number of vacant posts as a share of all posts in DG Competition also continued its decline (from 7.4% in 2015 to 6.1% in 2016). The main HRM outputs linked to specific indicators that led to this overall improvement in 2016 are listed in Annex 2.

DG Competition has been among the most advanced Commission DGs in the field of equal opportunities. Hence, following the 2015 Commission Decision on female representation in management, which set a 40% female representation target for the entire organisation by 2019, DG Competition was given a binding target of four first appointments of female heads of unit and an indicative target of 45% female heads of unit.

Thanks to the DG's comprehensive approach, three first appointments of female heads of unit were made in 2016 (representing 60% of middle management appointments) and female representation in middle management climbed to 36%. The perspective of reaching 45% female middle managers is a realistic perspective for the DG in a longer term. However, whether this indicative target can be reached by 2019 will depend on the number of available vacancies.

Following an analysis of the DG Competition e-survey (end of 2015) and the adoption of two new Commission decisions on part-time and telework (beginning of 2016), DG Competition revised its internal guidelines on flexible working arrangements. The revised guidelines were published on the intranet and complemented by an e-brochure containing a practical summary of the applicable rules. A session for middle managers on the implementation of flexible working arrangements and an information event for all staff were subsequently held.

Throughout 2016, DG Competition also continued to focus on the quality and sustainability of our workforce. To reinforce the already strong career guidance offer at DG Competition, a pool of experienced managers was created. Managers from this career guidance pool have since been contacted by 31 staff members in 2016. Furthermore, a brochure on careers and mobility in DG Competition was published and distributed as part of the welcome pack to every newcomer. The brochure contains information about the entire range of jobs and work areas in DG Competition as well as about career paths and opportunities for mobility inside the DG.

The aggregate results of the entire 180° feedback exercise for middle and senior managers in DG Competition were presented to all staff in 2016. As a follow-up to these results, a number of training modules and coaching sessions were offered to the managers. A pilot blended programme focused on communication was developed in collaboration with an external consultant. Based on the combined experiences in the first wave of the exercise, a second wave was launched at the end of 2016. A tailored programme has also been developed for deputy Heads of Unit.

In the exit interviews systematically conducted by the HRM team of DG Competition with all staff leaving the DG, the proportion of the most common reasons cited by colleagues for their departure shifted. While in previous years far more than half of all staff, especially in the AD

staff category, had indicated to be leaving the DG in order to exercise mobility, their share fell below 50% in 2016. Among AST and SC staff, it also decreased to just above 50%. The proportion of staff citing a more natural reason of departure, such as end of contract, grew correspondingly. The concentration of departures in the higher grades and of arrivals in the lower grades, cited as a point of concern in recent years, was no longer visible in 2016. Turnover by statutory staff who left DG Competition before having even worked three years in the DG fell sharply from 3.4% in 2015 to 1.1% in 2016.

DG Competition made continuous efforts to improve internal communication. The Internal Communication Strategy and Action plan for 2014-2016 focused on ensuring fluid information flow at all levels (top-down, bottom-up and horizontal), improving staff understanding of Commission and DG Competition policy and priorities, and helping them see the connection between their job and those priorities. In the 2016 Commission staff survey, DG Competition maintained the high score it had already achieved in the 2014 staff survey – one of the highest of all Commission DGs.

2.2.2 Better regulation

In 2016, DG Competition finalised a number of studies that can help to further improve policy making and working practices including studies on: (1) the passing-on of overcharges (to facilitate the implementation of the Directive on antitrust damages actions), (2) issues pertaining to the insurance production process (to facilitate the application of the Insurance Block Exemption Regulation), (3) certain aspects related to the treatment of minority shareholdings, (4) the economic impact of competition policy enforcement on the functioning of telecoms markets in the EU, (5) financing models for public services in the EU and their impact on competition, and (6) the training of judges in EU competition law. In addition, a study on the economic impact of enforcement of competition policies on the functioning of EU energy markets was published.

2.2.3 Information management aspects

Competition enforcement is evidence based and evidence is found increasingly in electronic documents. Information systems which contribute to an efficient management of competition activities, as well as document management itself, constitute essential support functions for the daily operations of DG Competition. In 2016 DG Competition continued the development of a common Case Management System for the Commission services participating in the Case Management Rationalisation project¹⁹¹. In addition, DG Competition continued to develop Knowledge Management and information sharing tools like 'COMPWiki' to empower staff to share knowledge and best practices within the DG and employ collaborative tools such as COMP Collaborative Platform and e-Discovery for their daily activities. 2016 witnessed a substantial increase of the use of collaborative tools, in particular in the area of evidence management within case teams; the volume of documents reached 8 494 000 documents indexed.

2.2.4 External communication activities

DG Competition's external communications strategy aims to use mass media (audiovisual, internet and print media) to highlight the benefits and relevance of our competition policy decisions and initiatives to citizens, businesses and other stakeholders, and Member States. This not only helps to build political support for our work, and that of the EU in general, but also contributes to increased legal certainty and compliance in the areas of antitrust and cartels, mergers and State aid. In 2016, DG Competition did not undertake any spending on significant external communication actions but rather concentrated on closely supporting the work of the Commission Spokesperson's Service with mass media.

¹⁹¹ CASE@EC is still at a conceptual stage: call for tenders launched in 2016, signature of the contract and rolling out to follow.

2.2.5 Examples of initiatives to improve economy and efficiency of financial and non-financial activities

Smarter Working Initiative

As an example of an initiative to improve economy and efficiency of its non-financial activities in 2016, DG Competition worked on its overarching Smarter Working Initiative, for which it obtained the Commission internal communication award in 2016. This ongoing initiative engages all staff in identifying further sources of efficiencies and synergies as well as ways to make DG Competition a better work place. By the end of 2016, actions were taken as regards collaborative working, electronic communication, IT tools, ownership of DG Competition strategy, career guidance and management, flexible working arrangements and improvements to the building disposition. Improvements introduced, for instance, to Knowledge Management and information sharing tools like 'COMPWiki' empower staff to share knowledge and best practices within the DG and employ collaborative tools such as COMP Collaborative Platform and e-Discovery in their daily activities. In 2017, work in some of the above topics, like IT and collaborative ways of working will continue, and action is planned in particular as regards some management related topics and training and learning opportunities.

Analysis of financial circuits

As an example of an initiative to improve economy and efficiency of its financial activities, DG Competition started an analysis of its financial circuits in 2016 in order to assess the functioning of the internal control system. It will in particular consider whether there is scope to further improve the efficiency of its financial operations without risking the legality and regularity of our transactions. The review is ongoing and will be finalised in 2017.