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European Commission

2017

Annual Activity Report

DG Competition

Foreword by Johannes Laitenberger, Director-General

In 2017, the European Union celebrated the Treaty of Rome's 60th anniversary. In addition, in the spring of 2018 DG Competition will turn 60, so this is the appropriate time for us all to celebrate 60 years of competition policy at EU level. Since then, Europeans have competition rules that not only defend but also nurture competition on fair and equal terms. Consumers benefit and every company active on EU markets know the rules to be applied. By adopting the Treaty, the Member States created a set of competition rules that remain stable and operational to this day.

This report illustrates how the Commission enforced EU competition rules in 2017 and how EU competition policy contributed to the main objectives of the European Commission. In 2017, our initiatives boosted major sectors that are crucial for economic development and prosperity, for example energy, the digital economy, network industries, financial markets, pharmaceutical markets, and the agro-chemical sector.

Our 2017 enforcement record includes many significant initiatives and interventions. In relation to the ***Energy Union****, the Commission examined and approved the joint capacity mechanism for Ireland and Northern Ireland, the French government's reconstruction package for Areva, as well as authorised EDF's acquisition of Areva's nuclear reactor business. In the context of the* ***Digital Market Strategy****, the Commission published the Final Report of its e-commerce sector inquiry and adopted the decision fining Google for abusing its market dominance as a search engine by promoting* its own comparison shopping service in its search results whilst demoting those of rivals*. A key intervention safeguarding the fairness of the* ***Internal Market*** *was the decision to fine The Lithuanian Railways for eliminating freight services competition on a key section of track connecting Lithuania with neighbouring Poland. The decision concluding that Luxembourg granted an illegal targeted tax exemption to Amazon was another crucial step for the Commission's efforts to ensure fair tax competition across the internal market. Using the competition rules, the Commission contributed in several ways to the development of the* ***Capital Markets Union****, for example by monitoring the Interchange Fee Regulation, and by sanctioning the Deutsche Börse/London Exchange Group merger which raised serious competition concerns. The remedies offered by the merging parties were insufficient, so the Commission adopted a prohibition decision. The* **"ECN+" initiative** *proposed by the Commission will strengthen European competition law enforcement by further empowering Member States' competition authorities to intervene effectively whenever competition is distorted. Finally, the Commission continued to engage internationally in the competition field, actively contributing to the work in international fora such as the International Competition Network, the OECD, UNCTAD and the WTO.*

In the competition field, the European Commission had a productive year in 2017, but important challenges remain, in particular in the merger control area. The Treaty-based merger rules impose mandatory legal scrutiny of an increasingly large number of proposed mergers and acquisitions. The resource implications due to the level of merger notifications are beyond DG Competition's control and are driven by developments in the European economy. The fact that the total number of merger notifications increased by 36% between 2013 and 2017, puts a strain on the resources of the DG. These difficulties are exacerbated by the fact that merger assessments are becoming increasingly complex and wider in reach.

Under the authority and guidance of Commissioner Vestager, DG Competition has implemented a far-reaching and ambitious policy and enforcement agenda. As reflected in this report, the motivation and commitment of staff have made these accomplishments possible. Sixty years on, DG COMP remains true to the mission set by the Treaties, addressing the challenges of the past and the future.

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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. Competitive markets play a vital role supporting the Commission's efforts to achieve a strong and prosperous European Union. Consequently, EU competition policy contributes to the wider Commission objectives[1], 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.

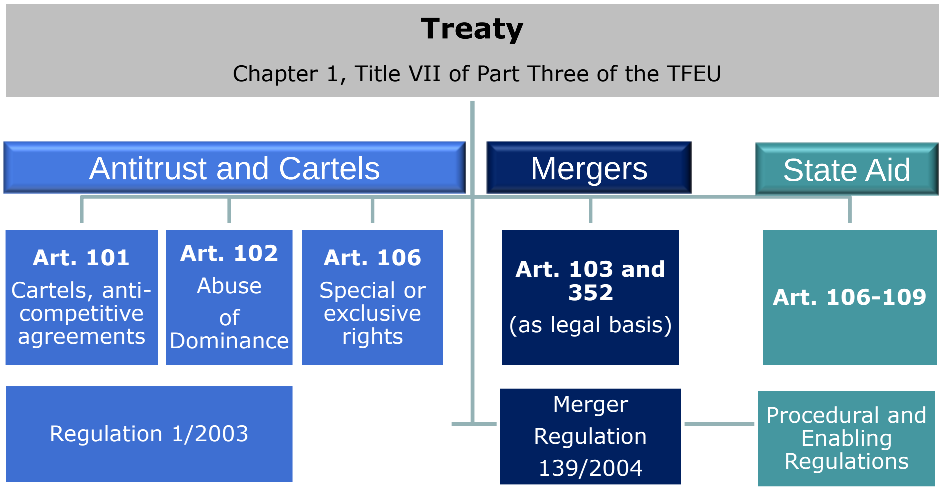
Manifestly, a scrupulous enforcement of the competition rules according to rigourous legal standards and in accordance with state-of-the-art economic analysis ensures fairness in the economy. This is crucial in an economic and political system intended to serve all citizens, as reflected in the Mission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

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

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

[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 courts[3], 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, as reflected in the Mission Letter by President Juncker[4]:

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

DG Competition carries out its mission mainly by taking direct enforcement actions[5] against companies or Member States when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies[6] or governmental action which leads to a distortion of competition in the internal market by giving some companies undue advantages over others. EU merger control[7] 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

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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.

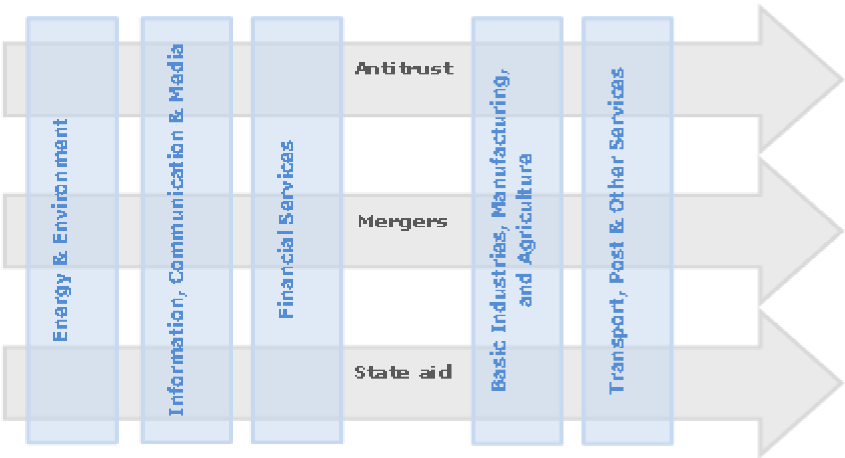
of better targeted aid that addresses market failure or equity objectives.[8] Such aid has a beneficial impact on competitiveness, employment and growth, and thus on the welfare of society as a whole.

By enforcing the competition rules, DG Competition provides added value for the EU economy in general, and for consumers in particular. Competition policy allows companies to compete on fair and equal terms, and stimulates technological development and innovation. Moreover, competition policy ensures that consumers get a wider choice of goods and services at lower prices.

DG Competition channels its limited resources, where not bound by legal obligations, to focus on the most harmful practices in key sectors. The Treaty-based merger rules impose mandatory legal scrutiny of an increasingly large number of proposed mergers and acquisitions. The number of merger notifications is driven by developments in the European economy, and is therefore beyond DG Competition's control. The fact that the total number of merger notifications increased by 36% between 2013 and 2017, puts a strain on the resources of the DG. These difficulties are exacerbated by the fact that merger assessments are becoming increasingly complex and wider in reach. The resource implications of dealing with an increasing number of merger notifications are a major challenge for DG Competition.

DG Competition works in partnerships with other Commission services to support the delivery of key Commission policies in a pro-competitive manner at EU and national level. In the international context, DG Competition strives to shape global economic governance by strengthening international cooperation in competition enforcement and making steps towards an increased convergence of competition policy instruments across different jurisdictions. DG Competition cooperates with competition authorities bilaterally as well as through international fora, such as Organisation for Economic Cooperation and Development (OECD), United Nations Conference on Trade And Development (UNCTAD) and the International Competition Network (ICN).

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



Directorate A is in charge of policy for all competition enforcement instruments, as well as of the European Competition Network, private enforcement and international relations. Directorate G is dedicated to cartel enforcement. Directorate H is responsible for applying most of the horizontal (i.e. non-sector specific) State aid rules. Directorate R is

[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 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

responsible for document management, finance and internal compliance, IT, and the management of issues related to security, ethics and business continuity.

The Chief Economist and his team provide support in terms of economic analysis for individual competition cases and 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 (791 staff members on 31.12.2017) and its legal powers. It has no operational budget.

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 constitutes the basis on which the College takes political responsibility for the decisions it takes as well as for the coordinating, executive and management functions it exercises, as laid down in the Treaties.[9]

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 2017 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. DG Competition continued its enforcement in a number of key sectors and areas relevant for the Commission's priorities, as outlined in the Political Guidelines. DG Competition continued to prioritise addressing the most harmful anti-competitive practices, in particular cartels.

Energy is one of the sectors where completing the Single Market will benefit Europe's consumers and businesses. In antitrust, the Commission continued to investigate the Gazprom's business practices in Central and Eastern Europe, as well as the possible foreclosure of gas markets by Bulgarian Energy Holding. Moreover, the Commission opened formal proceedings against Transgaz, the Romanian transmission system operator of natural gas. In mergers, the Commission authorised a number of transactions where companies invested in energy development and production from renewable sources, and the Commission authorised the acquisition of Areva's nuclear reactors business by EDF.[10] In State aid, the Commission approved the restructuring of the French nuclear technology provider Areva, cleared Hungary's financial support for the construction of two new nuclear reactors in Paks (Paks II) and approved the Hungarian support scheme for renewable electricity. The Commission also authorised aid schemes supporting renewable electricity production in France and Spain and approved the joint capacity mechanism for Ireland and Northern Ireland.

DG Competition continued to contribute to the implementation of the *Digital Single Market Strategy*. In antitrust, the Commission adopted a decision finding that Google abused its market dominance as a search engine by promoting its own comparison shopping service in its search results while demoting those of rivals. The Commission closed its investigation of Amazon's distribution agreements with e-book publishers after the company submitted commitments which resolved the Commission's competition concerns. The Final Report of the Commission's e-commerce sector inquiry was

[9] Article 17(1) of the Treaty on European Union.

[10] Case M.7764 EDF/Areva Reactor Business, Commission decision of 29 May 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7764. For further information see IP/17/1466 of 29 May 2017 available at http://europa.eu/rapid/press-release_IP-17-66_en.htm.

published. In mergers, the Commission cleared 21st Century Fox's proposed acquisition of Sky, authorised the acquisition of Telecom Italia by Vivendi subject to conditions, and conditionally approved the acquisition of smart-card maker Morpho by Advent International as well as the merger of Qualcomm and NXP, two of the leading players in the semiconductor industry. The Commission imposed a fine of EUR 110 million on Facebook for providing incorrect and misleading information when notifying the acquisition of WhatsApp in 2014. In State aid, all Member States have now adopted and/or updated national and/or regional broadband strategies. A number of broadband schemes were approved by the Commission, for example for Lithuania, Croatia, Austria, Germany and Poland.

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. The Commission fined Lithuanian Railways for hindering competition on the rail freight market. In the markets for pesticides, the Commission conditionally cleared the merger between US-based chemical companies Dow and Dupont, as well as ChemChina's acquisition of Swiss company Syngenta. The Commission prohibited the proposed takeover of Cemex Croatia by HeidelbergCement and Schwenk. In the air transport sector, the Commission approved the transaction between Lufthansa and Air Berlin as well as easyJet's acquisition of Air Berlin's operations at Berlin Tegel airport. Due to Air Berlin's precarious financial situation, the Commission granted Lufthansa a derogation from the standstill obligation in the EU Merger Regulation, allowing the airline to lease or purchase Air Berlin aircraft so that they could be used by Air Berlin subsidiaries LGW and NIKI. After a comprehensive investigation, the Commission informed Lufthansa about its competition concerns. The proposed acquisition of NIKI would have created a situation where the merged entity obtained very high market shares on a large number of routes. Lufthansa subsequently abandoned the merger, NIKI filed for insolvency on the same day.

DG Competition continued to contribute to the fulfilment of the *Capital Markets Union*. The Commission continues to monitor the implementation of the Interchange Fee Regulation. Moreover, the Commission continued its antitrust investigations into MasterCard's, Visa Inc.'s and Visa International's multilateral interchange fees (MIFs) for transactions in the EEA made with cards issued outside the EEA (inter-regional transactions), as well as MasterCard's rules for cross-border acquiring. The Commission prohibited the proposed merger between Deutsche Börse and London Stock Exchange Group, since the transaction would have created a de facto monopoly in the markets for clearing of fixed-income instruments. The Commission dealt with notified schemes aimed at encouraging investment in innovative SMEs and midcaps, applying the Risk Finance Guidelines. Moreover, the Commission approved Italian measures to facilitate the liquidation of Banca Popolare di Vicenza (BPVI) and Veneto Banca under national insolvency law. Moreover, the Commission approved Italy’s plan to provide a precautionary recapitalisation to the Italian bank Monte dei Paschi di Siena and authorised Portuguese aid for the sale of bridge bank Novo Banco, created in 2014 for the resolution of Banco Espirito Santo.

Fair tax competition is essential for the integrity of the Single Market and for ensuring that all companies doing business in the EU's Single Market can compete on fair and equal terms, regardless of size, sector or nationality. The Commission adopted a decision concluding that Luxembourg gave illegal tax benefits to Amazon. Luxembourg must now recover approximately EUR 250 million in unpaid tax from Amazon, plus interest. Moreover, the Commission opened an in-depth investigation into the UK scheme exempting certain transactions by multinational groups from the application of UK rules targeting tax avoidance. The Commission also opened an in-depth investigation into the Netherlands’ tax treatment of Inter IKEA Systems, suspecting that special arrangements may have resulted in a selective advantage favouring Inter IKEA Systems.

The Commission proposed new rules enabling Member States' competition authorities to be more effective enforcers of EU antitrust rules[11] (the so-called ECN+ proposal). This

[11] Proposal for a Directive of the European Parliament and of the Council to empower the competition

initiative seeks to further empower Member States' competition authorities and make sure they have all the tools they require to achieve their enforcement objectives.

The Commission continued its review of certain procedural and jurisdictional aspects of EU merger control. The public consultation was open until mid-February 2017 and attracted wide interest. A summary of the submissions received during the public consultation, together with their non-confidential versions, have been published on the Commission's Competition website.[12] A Staff Working Document is currently under preparation.

One of the cornerstones of the State Aid Modernisation reform is the General Block Exemption Regulation (GBER), which simplifies aid-granting procedures for Member States by authorising without prior notification a wide range of measures which fulfil horizontal common-interest objectives. In 2017, the GBER was extended, so that it covers investments in port and airport infrastructure.

DG Competition's external activities in 2017 were built on three core values; improving the efficiency of the Commission's enforcement action and safeguarding the effectiveness of its enforcement decisions; promoting these values worldwide, and promoting greater transparency and basic disciplines on subsidies control outside the EU.

The Treaty-based merger rules impose mandatory legal scrutiny of proposed mergers and acquisitions. The number of merger notifications are driven by developments in the European economy, and therefore beyond DG Competition's control. The total number of merger notifications increased by 36% between 2013 and 2017, and merger investigations are becoming more and more complex. The resource implications of dealing with an increasing number of merger notifications are a major challenge for DG Competition.

The activities of DG Competition provide added value for the EU economy in general, and for consumers in particular. Competition policy ensures that consumers get a wider choice of goods and services at lower prices. The enforcement of EU competition rules allows companies to compete on fair and equal terms, and stimulates technological development and innovation.

b) Key Performance Indicators (KPIs)

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

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

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

authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, COM/2017/0142 final, available at http://ec.europa.eu/competition/antitrust/proposed_directive_en.pdf.

[12] The summary of the submissions and their non-confidential versions are available at http://ec.europa.eu/competition/consultations/2016_merger_control/index_en.html.

KPI 1 and KPI 2

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

Like three national competition authorities[13], DG Competition also provides two estimates of the benefits to customers resulting from the Commission's cartel prohibition decisions (KPI 1) and from merger interventions (KPI 2).[14] However, these estimates underestimate the overall impact of cartel and merger decisions, because they do not capture the deterrence and non-price effects. Examples of such benefits are those stemming from better quality or wider choice, productivity gains, impact on employment, as well as possible pass-ons to final consumers in the case of intermediary goods or services.

In 2016, total estimated customer benefits from cartel prohibitions and merger interventions were exceptionally high. This was due to the large size of the markets affected by the decisions taken in that year. In 2017, total estimated customer benefits returned to levels observed in previous years, varying between EUR 3.9 and 6.2 billion, which corresponds to 0.03% - 0.04% of EU GDP.

In 2017, the Commission adopted five cartel decisions which affected a variety of markets in the automotive sector.[15] The number of adopted cartel decisions in 2017 was the same as in 2016. Total customer benefits from cartel decisions (KPI 1) in 2017 varied between EUR 1.4 and EUR 2.1 billion, depending on the assumption made about the level of the avoided price overcharge. The magnitude of customer benefits from 2017 cartel decisions is well below the one observed in 2013 and 2016 but similar to other years.

In 2017, total customer benefits from merger interventions by the Commission (KPI 2) varied between EUR 2.4 and 4.1 billion, depending on the assumption made on the level of price increase avoided. The 2017 customer benefits decreased substantially in comparison to the year before. As explained above, this was also due to the large size of the markets affected by the merger interventions in 2016. The 2017 figures are more in line with levels observed in earlier years. The number of merger interventions in 2017 (24) is comparable to the number of interventions in 2016 (27).

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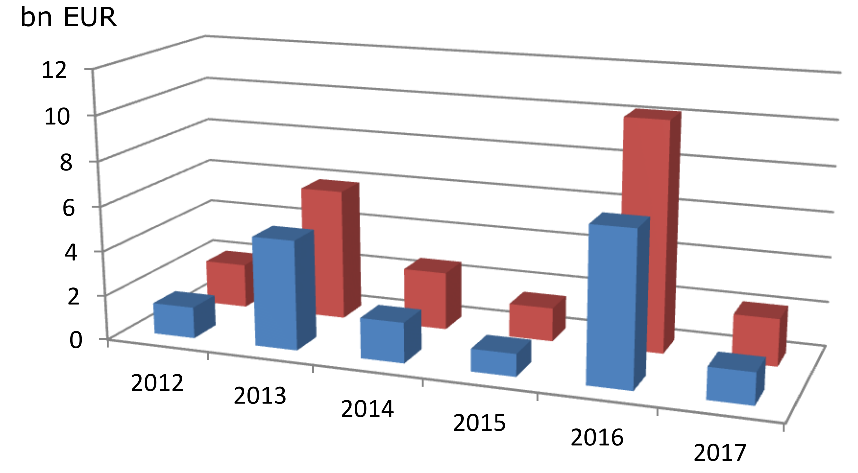
[13] The Netherlands Authority for Consumers and Markets, The National Commission on Markets and Competition (Spain) and the Competition and Markets Authority (United Kingdom).

[14] Since 2012, DG Competition has systematically calculated the direct benefits of its competition policy interventions using the estimated customer benefits approach. For methodology, see footnotes 16 and 17 below. See also *OECD Guide helping competition authorities assess the expected impact of their activities (April 2014)* http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf

[15] In addition to these five cartel decisions, the European Commission re-adopted the airfreight decision of 2010 and the envelopes decision of 2014. However, as the customer savings from these decisions were already included in the calculations for these earlier years, they are not included in the 2017 calculations to avoid double counting.

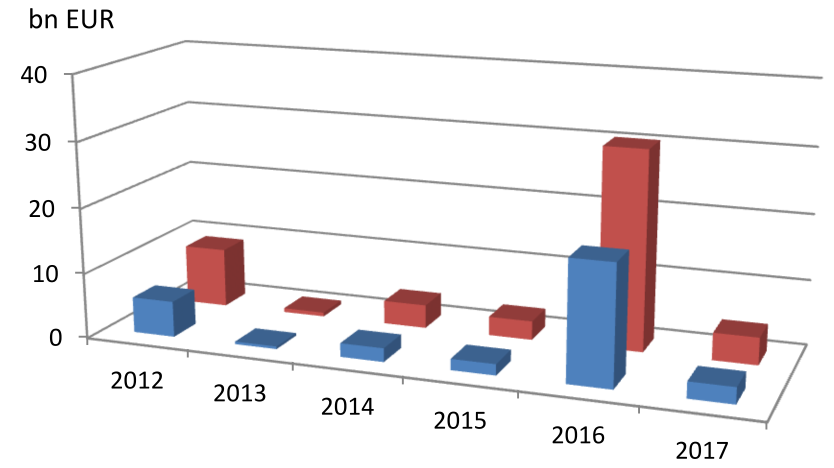
Impact indicator	Trend	Target (or milestones)	Latest known results
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions[16]	Stable (in line with markets affected)	Stable	EUR 1.4-2.1 bn (2017)



bn EUR	2012	2013	2014	2015	2016	2017
Cartel	1.4-2.0	4.9-5.9	1.8-2.6	1.0-1.5	6.8-10.2	1.4-2.1

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

Impact indicator	Trend	Target (or milestones)	Latest known results
KPI 2 The estimate of customer benefits resulting from merger interventions[17]	Stable (in line with markets affected)	Stable	EUR 2.4-4.1 bn (2017)



bn EUR	2012	2013	2014	2015	2016	2017
Merger	5.5-9.1	0.4-0.6	2.1-3.6	1.7-2.9	18.3-30.4	2.4-4.1

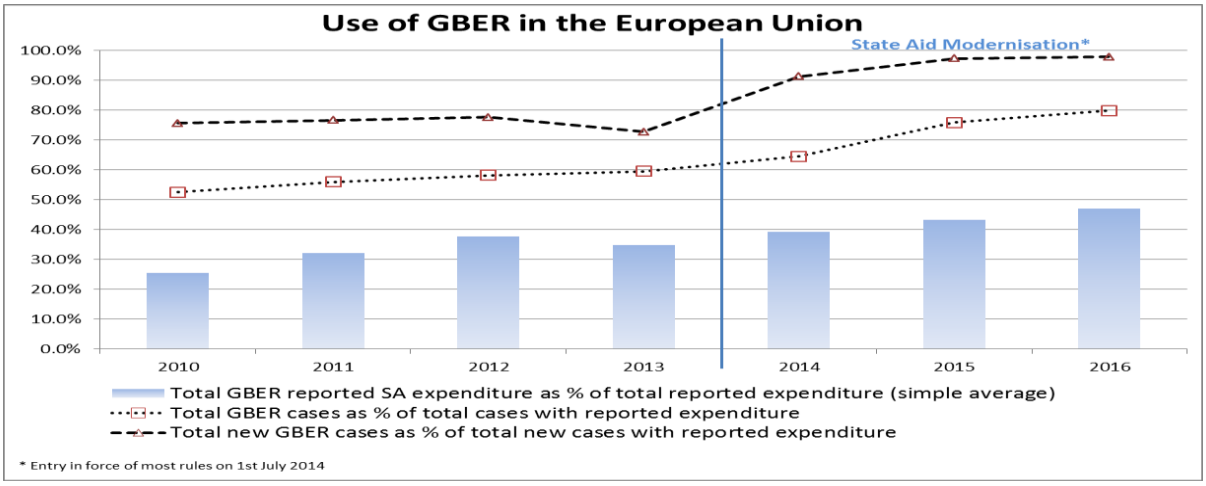
It is apparent from the above graphs that the estimate of customer benefits may show considerable variation over time, both for cartels and mergers, depending on the size of the affected markets in cases where the Commisison intervened. Because the evolution of the customer benefits is influenced by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

KPI 3

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

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

modernisation of State aid rules. Total spending on GBER measures in the EU represented some 47% of total expenditure in 2016, that is to say an increase of approximately 12 percentage points compared to 2014.



Result indicator	Trend	Target	Latest known results (2016)
KPI 3 The share of GBER expenditure over total expenditure on State aid	On track	Maintain or increase	47%

KPI 4

Competition law enforcement is a highly digitalised activity. Key business processes as well as exchanges with various stakeholders are supported by dedicated information systems. Therefore, in the area of organisational management of DG Competition, the related key performance indicator (KPI 4) measures the progress of the DG-Competition-lead ICT project 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 (2017)
KPI 4 Implementation of a common Case Management System for the Commission services participating in the CASE@EC project	On track	Completed implementation of the new common Case Management System	Framework contract signed (3/4/2017); Development team put in place and implementation work started.

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

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

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

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

d) Information to the Commissioner

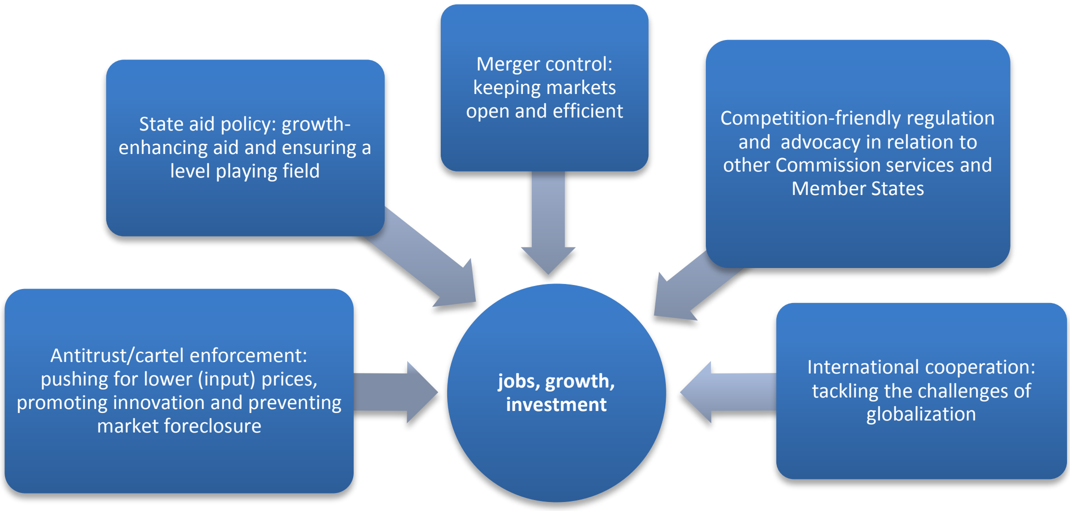
In the context of the regular meetings during the year between the DG and the Commissioner on management matters, also the main elements of this report and assurance declaration have been brought to the attention of Commissioner Vestager, responsible for competition policy.

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

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

By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributes to the Commission's general objective "A New Boost for Jobs, Growth and Investment" in the EU.[18] Competition policy supports several key EU policies and initiatives, including Digital Single Market, Energy Union, Deeper and Fairer Internal Market and the fight against tax evasion. DG Competition performs the following functions[19] to meet these obligations:

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



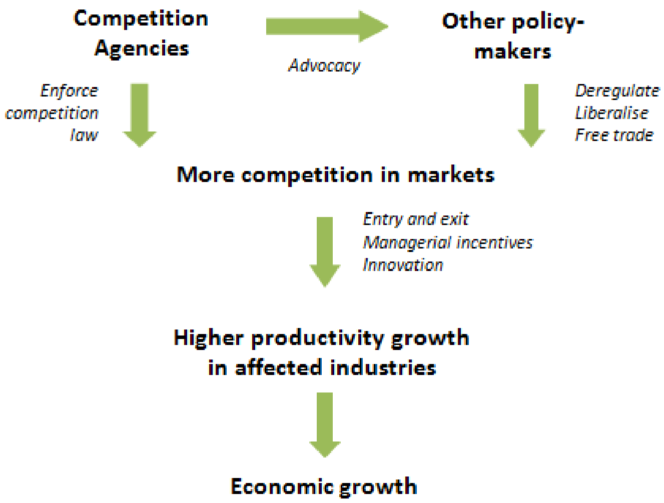
[18] Political Guidelines of President Juncker, http://ec.europa.eu/priorities/docs/pg_en.pdf State of Union 2015 Speech by President Juncker, http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014, http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_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*".

Since it is not meaningful[20] to set numerical targets for competition policy enforcement, most of the indicators used to measure the Commission's performance include trends as targets (stable, increase, decrease, no target). On-going investigations by the Commission are always without prejudice to the final decision in the case at hand.

However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions and merger interventions, and considers the impact of competition policy on growth and macroeconomic performance more generally.[21] Fines imposed by the Commission flow into the EU budget, reducing the contributions by Member States and act as deterrence for future infringements.[22]

It is difficult to reliably measure the effect of competition law on economic growth, but according to the OECD[23], there is solid evidence in support of each of the correlations shown below, and their combined effect boosting economic growth.



[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.

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

[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

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).

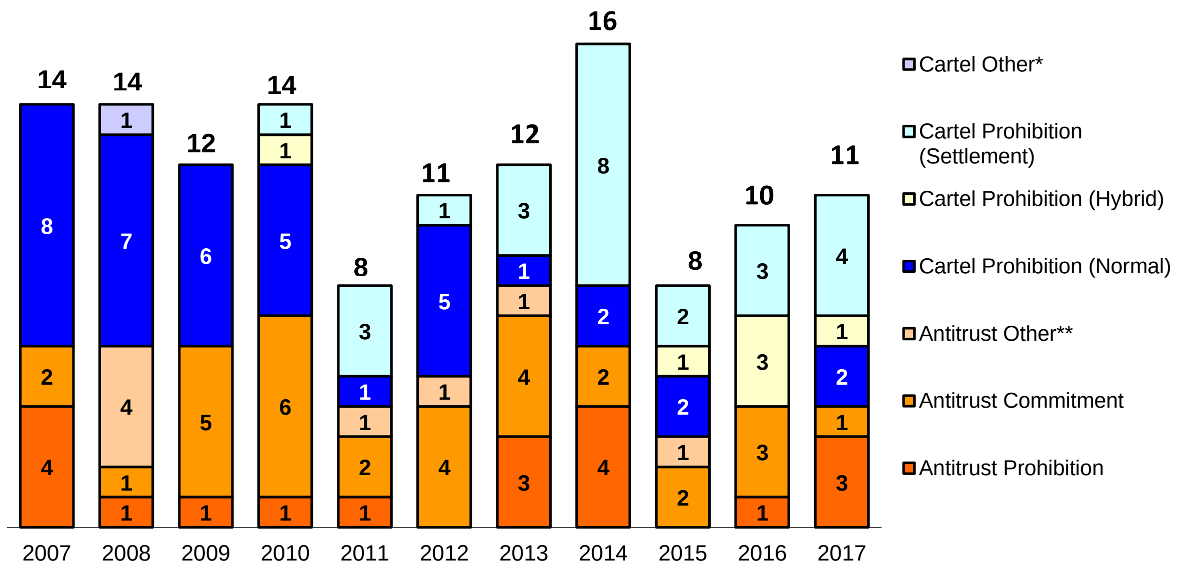
Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position in a market or to acquire such a position. Just as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits abusive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

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

DG Competition's activities in the field of antitrust and cartels aim at ensuring an effective enforcement of the antitrust rules with a view to making markets work better and protecting consumer welfare. These activities include detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices, which hamper competition and negatively affect incentives to innovation and growth, as well as consumer welfare.[24]

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 decisions[25].

Cartel and antitrust interventions, Commission decisions 2006-2017



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

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

[25] See Annexes to the AAR, Annex 12, Specific Objective 1, result indicator 1, p. 17.

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 2017, the Commission continued to give priority to cartel enforcement. The Commission adopted seven cartel decisions, imposing fines totalling approximately EUR 1.95 billion. The Commission also continued to work together with the national competition authorities (NCAs) and other authorities within Europe and beyond (for example advocacy within the International Competition Network) to ensure efficient cooperation in the fight against cartels.

The ordinary cartel procedure remains important because not all investigations may be eligible for settlement discussions. Relevant factors for screening cases in order to determine whether a settlement procedure seeems appropriate 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 ordinary procedure.

The Commission fined Scania for participating in a cartel[26]

In 2017, the Commission imposed a fine of EUR 880 million on Scania, for participating in a cartel in the market for the manufacturing of medium (weighing 6 to 16 tons) and heavy trucks (weighing over 16 tons). In July 2016, the Commission had reached a settlement decision concerning the trucks cartel with MAN, DAF, Daimler, Iveco and Volvo/Renault[27]. Since all five companies agreed to settle the case with the Commission, their fines were further reduced by 10%. Scania decided not to settle this cartel case with the Commission, unlike the other five participants. As a result, the Commission's investigation against Scania was carried out under the ordinary cartel procedure. Road haulage is an essential part of the European transport sector and its competitiveness depends among other things on truck prices.

In 2017, the Commission adopted a decision[28], in what became the first cartel case in the circular economy, imposing a total fine of EUR 68 million on four European recycling companies (Campine, Eco-Bat Technologies, Johnson Controls and Recylex) for having participated between 2009 and 2012 in a cartel to fix the purchase prices of scrap automotive batteries in Belgium, France, Germany and the Netherlands.

In addition, the Commission concluded investigations in the car parts sector sanctioning the undertakings involved in three cartels with fines amounting to approximately EUR 220 million. Cartels for car parts increase the input costs for car manufacturers. Therefore, they impair the competitiveness of the automotive sector and artificially raise the price paid by European consumers who buy cars.

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[26] See IP/17/3502 of 27 September 2017 available at http://europa.eu/rapid/press-release_IP-17-3502_en.htm.

[27] Case AT.39824 *Trucks*, Commission decision of 19 July 2016, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39824.

[28] Case 40018 *Car battery recycling*, Commission decision of 8 February 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40018.

Cartels in the car parts sector

In 2017, the Commission imposed a total fine of EUR 155 million on six car *air conditioning and engine cooling*[29] suppliers for taking part between 2004 and 2009 in one or more of four cartels concerning supplies of components to car manufacturers in the EEA. All six suppliers (Behr, Calsonic, Denso, Panasonic, Sanden and Valeo) acknowledged their involvement in the cartels and agreed to settle the case. Denso was not fined for three of the cartels as it revealed their existence to the Commission. Panasonic was not fined for one of the cartels as it revealed its existence to the Commission. All other parties co-operated with the Commission under the leniency program and benefitted accordingly from fine reductions. Since all six undertakings agreed to settle the case with the Commission, they benefited from a reduction of fines by 10%.

The Commission fined three companies EUR 27 million for having coordinated prices and other trading conditions for the supply of *vehicle lighting systems*[30] across the European Economic Area (EEA) for more than three years. Vehicle lighting systems include parts such as headlamps or daytime running lights. The cartel concerned the supply of these spare parts to manufacturers of passenger and commercial vehicles after the end of mass production of a car model. All three suppliers (Valeo, Automotive Lighting and Hella) acknowledged their involvement in the cartel and agreed to settle the case. Valeo was not fined for the cartel as it revealed its existence to the Commission. Since the 3 companies agreed to settle the case with the Commission, their fines were reduced by 10%.

The Commission imposed a total fine of EUR 34 million for four different infringements on five *Occupant Safety Systems*[31] suppliers, which for several years coordinated prices or markets and exchanged sensitive information for the supply of seatbelts, airbags and steering wheels to Japanese car manufacturers (Toyota, Suzuki, and Honda) in the European Economic Area (EEA). All companies (Tokai Rika, Takata, Autoliv, Toyoda Gosei, and Marutaka) acknowledged their involvement in the cartels and agreed to settle the case. Consequently, their fines were reduced by 10%. Tokai Rika and Takata were not fined for one and three infringements respectively, as they revealed their existence to the Commission.

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Car battery recycling	08/02/2017	67 609 000	4	Prohibition
Thermal systems	08/03/2017	155 575 000	6	Settlement
Airfreight (readoption)	17/03/2017	776 465 000	11	Prohibition
Envelopes (readoption)	16/06/2017	4 729 000	1	Settlement
Lighting Systems	21/06/2017	26 744 000	3	Settlement
Trucks (Scania)	27/09/2017	880 523 000	1	Hybrid*
Occupant Safety Systems	22/11/2017	34 011 000	5	Settlement

*** ordinary procedure part of a hybrid case with a settlement decision in July 2016**

Other anticompetitive agreements and practices

Energy Union

In 2017, DG Competition continued its antitrust enforcement activities 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

[29] Case AT.4000 *Thermal Systems*, Commission decision of 8 March 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39960. See also http://europa.eu/rapid/press-release_IP-17-501_en.htm.

[30] Case AT.40013 *Lighting systems*, Commission decision of 21 June 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40013. See also http://europa.eu/rapid/press-release_IP-17-1741_en.htm.

[31] Case AT.39881 *Occupant Safety Systems*, Commission decision of 22 November 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39881. See also http://europa.eu/rapid/press-release_IP-17-4844_en.htm.

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. Competition policy ultimately promotes fairness and economic growth within the EU.

The Commission continued investigating the business practices of Gazprom in Central and Eastern Europe.[32] According to the Commission's preliminary assessment, Gazprom broke EU antitrust rules by pursuing an overall strategy to partition Central- and Eastern European gas markets. In 2017, the Commission market tested the commitments offered by Gazprom to resolve the Commission's competition concerns. The Commission invited all interested parties to submit their views on the commitments, receiving a significant number of submissions. The Commission may subsequently adopt a decision making commitments legally binding. If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to prove an infringement of the EU antitrust rules.

The Gazprom case exemplifies very well 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.

The Commission continued its investigation into the possible foreclosure of gas markets in Bulgaria by the Bulgarian incumbent, Bulgarian Energy Holding. Moreover, the Commission opened formal proceedings against the Romanian Transmission System Operator of natural gas (Transgaz) to investigate whether it might be hindering the free flows of natural gas from Romania to neighbouring Member States. The Commission also continued its investigation into potential collusion practices between three ethanol producers, Abengoa SA of Spain, Alcogroup SA of Belgium and Lantmännen ek för of Sweden.

Digital Single Market

Digital technology has become an integral part of EU citizens' life at home, at work, while studying or when travelling. 360 million Europeans use the internet every day, with almost 60% of them having access through a mobile- or smart-phone. To make the most of the new opportunities digital technology brings, the European Union needs a genuinely connected Digital Single Market. Competition policy is an integral part of the Commission's strategy to improve and strengthen the Digital Single Market, creating growth and generating hundreds of thousands of new jobs[33]. In the digital sector, it is crucial that companies dominating the market are prevented from using their market power to shut down competition, severely harming innovation.

In 2017, the Commission adopted a decision finding that Google abused its market dominance as a search engine by promoting its own comparison shopping service in its search results whilst demoting those of rivals[34]. The Commission fined Google EUR 2.42 billion for breaching EU antitrust rules. The Commission ordered Google to comply with the principle of giving equal treatment to rival comparison shopping services and its own service. Google's behaviour denied other companies the chance to compete on the merits and to innovate. Moreover, it denied European consumers a genuine choice of services and the full benefits of innovation.

[32] 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.

[33] For further information, see https://ec.europa.eu/commission/priorities/digital-single-market_en.

[34] Case AT.39740 *Google search (Shopping)*, see IP/17/1784 of 27 June 2017, available at http://europa.eu/rapid/press-release_IP-17-1784_en.htm.

The "Google Shopping" case

Google's flagship product is the Google search engine, which provides search results to consumers, who pay for the service with their data. In 2004, Google entered the separate market for comparison shopping with a product later called "Google Shopping". From 2008, Google began to favour its comparison shopping service in 13 countries within the EEA by systematically giving prominent placement to its own comparison shopping service in its search results, and demoting those of rivals. This gave Google an illegal advantage in the comparison shopping market rather than constituting competition on the merits. Evidence showed that even the most highly ranked rival service appeared on average only on page four of Google's search results, and others appeared even further down. Google's own comparison shopping service was not subject to Google's generic search algorithms, including such demotions. Consequently, Google's comparison shopping service was much more visible to consumers in Google's search results, compared to rival comparison shopping services.

The evidence shows that consumers click far more often on results that are more visible, i.e. the results appearing higher up in Google's search results. As a result of Google's illegal practices, traffic to Google's comparison shopping service increased significantly, whilst rivals suffered very substantial losses of traffic on a lasting basis.

The Commission continues to investigate Google's possible abuse of dominant positions in two other cases; mobile apps and services (Android[35]) and search advertising intermediation on third-party websites (AdSense[36]).

In 2017, the Commission also examined Amazon's distribution agreements with e-book publishers in the EU and adopted a decision rendering legally binding a set of commitments offered by *Amazon*[37] to increase competition in e-books distribution. In essence, the commitments ban Amazon from enforcing or putting in place any non-price and price-parity clauses anywhere in the EEA for a period of 5 years. The commitments will help ensure innovation and fair competition in Europe's e-books market annually worth more than EUR 1 billion euros, and increase choice and competition to the benefit of European consumers.

The Amazon case

The e-book investigation was opened to examine whether Amazon abused its dominant position for the distribution of English and German language e-books to consumers in the EEA by imposing a number of parity provisions (so-called Most Favoured Nation or MFN clauses). These provisions required e-book publishers to notify Amazon of more favourable or alternative non-price and price terms and conditions they offer elsewhere and/or to make available to Amazon those more favourable or alternative terms and conditions.

During its investigation, the Commission reached the preliminary conclusion that these MFNs were reducing publishers' incentives to support and invest in differentiated offers with Amazon's competitors. They also reduced Amazon's competitors' ability and incentives to develop and differentiate their offerings, thus deterring their entry and/or expansion. The binding commitments offered by Amazon and made legally binding apply for five years to all e-book distribution agreements in the EEA and cover the following points:

- Amazon will not enforce clauses requiring publishers to offer Amazon (or inform it about) similar terms and conditions as those offered to Amazon's competitors;
- Publishers whose e-book contracts with Amazon contain a clause linking discount possibilities for e-books to the retail price of a given e-book on a competing platform (so-called Discount Pool Provision) will be offered the possibility to terminate such contracts; and
- Amazon will not include in any new e-book agreement any of the MFN clauses mentioned, including Discount Pool Provisions.[38]

A Monitoring Trustee is responsible for monitoring the application of the commitments throughout their duration. Third parties who have queries in relation to the Commitments may contact the Trustee as provided for in the Commission's Decision.

[35] Case AT.40099 *Google Android*, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099.
[36] Case AT.40411 *Google Search (AdSense)*, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411.
[37] Case AT.40153 *E-book MFNs and related matters*, Commission decision of 4 May 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40153.
[38] For further information see IP/17/1223 of 4 May 2017, http://europa.eu/rapid/press-release_IP-17-1223_en.htm.

One of the main goals of the Commission's Digital Single Market strategy[39] is to grant better access for consumers and businesses to goods and services, for example by ensuring compliance with EU competition rules, ending unjustified geo-blocking and enabling cross-border portability of online content services. E-commerce should give consumers a wider choice of goods and services, as well as the opportunity to make purchases across borders. However, despite more and more goods and services traded over the internet worldwide, cross-border online sales within the EU are only growing slowly.

In 2017 the Commission continued its work on one of the key actions of the second pillar of the Digital Single Market strategy, i.e. the review of the telecoms regulatory framework[40]. The Code has been designed to take into account changes in markets, consumer trends and technology. Its provisions include measures to stimulate investment in and take-up of very high capacity networks in the European Union, new spectrum rules for mobile connectivity and 5G, as well as changes to governance, the universal service regime, end-user protection rules, and numbering and emergency communication rules.

In 2017, the Commission adopted the final report[41] of *the e-commerce sector inquiry*.[42] The objective of the sector inquiry was 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. The report confirms that the growth of e-commerce over the last decade and, in particular, increased online price transparency and price competition, had a significant impact on companies' distribution strategies and consumer behaviour.

These findings help the Commission to better target the enforcement of the EU competition rules in e-commerce markets. Furthermore, the sector inquiry has prompted a number of companies to review their commercial practices on their own initiative. This can help consumers to purchase products more easily cross-border and benefit from lower prices and a wider choice of retailers.

In 2017, the Commission launched three separate investigations to assess if certain online sales practices prevent consumers from enjoying cross-border choice and being able to buy consumer electronics, video games and hotel accommodation at competitive prices[43]. The three investigations address the specific issues of retail price restrictions, discrimination on the basis of location and geo-blocking. The preliminary results of the e-commerce sector inquiry show that the use of these restrictions is widespread throughout the EU.

In addition, the Commission opened a formal antitrust investigation into the distribution agreements and practices of clothing manufacturer and retailer Guess[44]. The Commission also launched three separate antitrust investigations to assess whether Nike, Sanrio and

39 See https://ec.europa.eu/digital-single-market/.

40 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 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.

41 Report from the Commission to the Council and the European Parliament, *Final report on the E-commerce Sector Inquiry*, COM(2017) 229 final, available at http://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf.

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

43 See IP/17/201 of 2 February 2017, available at http://europa.eu/rapid/press-release_IP-17-201_en.htm.

44 Case AT.40428 *Guess*, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40428.

Universal Studios are restricting cross border and online sales of merchandising products[45]. The Commission will examine whether the licensing and distribution practices of these companies may be denying consumers access to wider choice and better deals in the single market.

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 case[46] as regards payments to customers conditional on exclusivity and potential 'predatory pricing' by charging prices below costs with a view to forcing its competition out of the market. The case was concluded in January 2018[47]. In 2017, the Commission also continued its investigation into a mobile network sharing agreement between the two largest operators in the Czech Republic[48].

A Deeper and Fairer Internal Market

In 2017, the Commission continued its efforts to support a deeper and fairer internal market. Competition policy goes hand in hand with internal market policy, ensuring that free movement rules are not undermined by anti-competitive conducts.

Financial sector

In the area of financial services, the Commission continued to monitor the implementation of the Interchange Fee Regulation (IFR). In 2017, the Commission adopted the Regulatory Technical Standards ("RTSs") under the Interchange Fee Regulation, which establish the requirements for payment card schemes and processing entities to ensure independence in terms of accounting, organisation and decision making processes. The RTSs gives guidance for implementation of the IFR requirement on independence of card schemes and processing entities.

Moreover, the Commission continued its antitrust investigations into MasterCard's, Visa Inc.'s and Visa International's multilateral interchange fees ("MIFs") for transactions in the EEA made with cards issued outside the EEA ("inter-regional transactions"). The Commission also continued the investigation into MasterCard's rules for cross-border acquiring, which allegedly prevent merchants in countries with high interchange fees for acquiring services from using lower-priced services from acquirers established in other Member States. In 2017, the Comission issued a Supplementary Statement of Objections to Visa Inc and Visa International on inter-regional MIFs.[49]

Furthermore, the Commission continued to monitor developments in new payments services markets. In 2017 it carried out inspections investigating allegations that online access to bank account information by competing non-bank owned service providers is prevented by incumbent banks to exclude such service providers from the market.[50] In the field of motor insurance, the Commission carried out inspections in Ireland concerning alleged breaches of Articles 101 and 102 TFEU.

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[45] Case AT.40432 *Licensed* merchandise – Sanrio, AT.40433 *Licensed merchandise - Universal Studios*, AT.40436 *Licensed merchandise – Nike*, see IP/17/1646 of 14 June 2017, available at http://europa.eu/rapid/press-release_IP-17-1646_en.htm.

[46] 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.

[47] On 24 January 2018, the Commission adopted a prohibition decision in case AT.40220 Qualcomm (exclusivity payments) and fined Qualcomm EUR 997 million for abusing its market dominance in LTE baseband chipsets. For further information see IP/18/421 of 24 January 2018, available at http://europa.eu/rapid/press-release_IP-18-421_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] In the *MasterCard* case, the Statement of Objections was issued in 2015, and an oral hearing was held in 2016.

[50] For further information see MEMO/17/3761 available at http://europa.eu/rapid/press-release_MEMO-17-3761_en.htm.

Pharmaceutical sector

European citizens need access to innovative, safe and affordable pharmaceutical products. In the EU, each Member State has different pharmaceutical pricing and reimbursement policies, adapted to its own economic and health needs. Nonetheless, all pharmaceutical companies operating in the EU single market must respect the competition rules.

In 2017, the Commission opened a formal investigation[51] into concerns that Aspen Pharma has engaged in excessive pricing concerning five life-saving cancer medicines. The Commission is examining whether Aspen has abused a dominant market position in breach of EU antitrust rules.

The Commission is looking into pricing practices for life-saving medicines: the Aspen case

Aspen Pharma is a pharmaceutical company headquartered in South Africa, with several subsidiaries in the EEA. The investigation concerns Aspen Pharma's pricing practices for niche medicines used for treating cancer, such as hematologic tumours. The medicines are sold with different formulations and under multiple brand names. Aspen acquired these medicines after their patent protection had expired.

The Commission is investigating allegations that Aspen Pharma has imposed very significant and unjustified price increases of up to several hundred percent, so-called 'price gouging'. To impose such price increases on national procurement bodies, Aspen Pharma may have threatened to withdraw the medicines in question in certain Member States and the company may have actually done so in certain cases. The investigation covers all of the EEA except Italy, where the Italian competition authority adopted an infringement decision against Aspen Pharma in 2016.

This is the Commission's first investigation into concerns about excessive pricing practices in the pharmaceutical industry.

The Commission remains vigilant to tackle attempts by originator companies to delay or hamper the introduction of generic medicines into the market. In 2017, the Commission sent a Statement of Objections to pharmaceutical company Teva. The Commission informed Teva of its preliminary view that an agreement concluded with its competitor Cephalon was in breach of EU antitrust rules. Under the agreement, Teva committed not to market a cheaper generic version of Cephalon's drug for sleep disorders (modafinil).

The Commission also continued monitoring patent settlements between originator and generic companies. The 2017 report (on the eighth monitoring exercise covering the year 2016) shows that the number of settlements that might merit closer scrutiny by competition authorities has progressively decreased since the 2009 Pharmaceutical Sector Inquiry and has stabilized at a low level (around 10%).[52]

Transport sector

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

In the rail transport sector, it is crucial to prevent national railway incumbents from using their control over the national rail infrastructure to penalise competitors. In 2017, the Commission fined Lithuanian Railways close to EUR 28 million for hindering competition on the rail freight market.[53]

The Commission fined Lithuanian Railways for hindering competition on the rail freight market

The Commission's investigation found that actions by the Lithuanian incumbent state-owned rail company responsible for both railway infrastructure and rail transport hindered competition on the rail freight market when dismantling a 19 km section of track connecting Lithuania and Latvia and thus preventing a major customer of Lithuanian Railways from using the services of another rail operator.

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[51] Case AT.40394 *Aspen*, see IP/17/1323 of 15 May 2017, available at http://europa.eu/rapid/press-release_IP-17-1323_en.htm.

[52] More information is available on the Commission's competition website, in the pharmaceuticals section: http://ec.europa.eu/competition/sectors/pharmaceuticals/overview_en.html.

[53] Case AT.39813 *Baltic rail*, Commission decision of 2 October 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39813.

Lithuanian Railways failed to show any objective justification for the removal of the track. Lithuanian Railways is the incumbent state-owned rail company in Lithuania. The company is vertically integrated, so that it is responsible for both railway infrastructure and rail transport.

Sports market

In 2017, the Commission adopted a decision finding that the International Skating Union's (ISU) rules imposing severe penalties on athletes participating in speed skating competitions that were not authorised by the ISU were in breach of EU antitrust law[54].

The Commission fined ISU for a breach of EU antitrust rules – precedent case

The ISU could impose these penalties at its own discretion, even if the independent competitions posed no risk to legitimate sports objectives, such as the protection of the integrity and proper conduct of sport, or the health and safety of athletes. By imposing such restrictions, the ISU eligibility rules restricted competition and enabled the ISU to pursue its own commercial interests to the detriment of athletes and organisers of competing events.

As a result of the ISU eligibility rules, athletes were not allowed to offer their services to organisers of competing skating events and could be deprived of additional sources of income during their relatively short speed skating careers. The ISU eligibility rules prevented independent organisers from putting together their own speed skating competitions because they were unable to attract top athletes. This limited the development of alternative and innovative speed skating competitions, to the detriment of fans and spectators.

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

Enhancing the effectiveness of competition enforcement

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

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

In March 2017, the Commission proposed new rules to enable Member States' competition authorities to be more effective enforcers of EU antitrust rules (the so-called ECN+). The proposal seeks to further empower Member States' competition authorities and make sure they have all the tools they require to achieve this.

ECN+: How the proposed Directive will strengthen EU national competition authorities

The proposed rules, once adopted, will provide the national competition authorities with a minimum common toolkit and effective enforcement powers, making sure that they will:

a) act independently when enforcing EU antitrust rules and work in a fully impartial manner, without taking instructions from public or private entities;
b) have the necessary financial and human resources to do their work;
c) have all the powers needed to gather all relevant evidence, such as the right to search mobile phones, laptops and tablets;
d) have adequate tools to impose proportionate and deterrent sanctions for breaches of EU antitrust rules. The proposal ensures that the concepts of undertaking, parental liability and succession are applied in line with the case law of the European Court of Justice, so that companies cannot escape fines through corporate re-structuring. National competition authorities will also be able to enforce the payment of fines against infringing companies that do not have a legal presence on their territory, an important feature since an increasing number of companies operate internationally;
e) have harmonised core conditions for leniency programmes and a common system of summary

[54] Case AT.40208 *International Skating Union's Eligibility rules* available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40208.

applications, which encourage companies to come forward with evidence of illegal cartels. This will increase the overall incentives for companies to participate in leniency programmes and report their participation in a cartel.

The Commission's proposal underlines the importance of companies' fundamental rights and requires authorities to respect appropriate safeguards for the exercise of their powers, in accordance with the EU Charter of Fundamental Rights and general principles of EU law. The proposal for new rules takes the form of a Directive that will allow national specificities to be respected. The proposal for a Directive is currently with the European Parliament and the Council, as part of the ordinary legislative procedure. Once adopted, Member States have to transpose the provisions of the Directive into national law.

A new whistleblower tool

Until now, most cartels have been detected through the Commission's leniency programme, which allows businesses to report their own involvement in a cartel in exchange for a reduction of the fine imposed on them. In 2017, the Commission launched a new anonymous whistleblower tool, which gives an opportunity also to individuals who have knowledge of the existence or functioning of a cartel, or other types of antitrust violations, to help end such practices. The figures after the first months of use are positive and show that the new channel has been taken up by whistleblowers.

If people are concerned about business practices that may be in violation of competition law, the whistleblower tool can help put things right by providing information, while maintaining anonymity. Inside knowledge can be a powerful tool to help the Commission uncover cartels and other anti-competitive practices. The new system increases the likelihood of detection and prosecution and so stands to further deter businesses from entering or remaining in cartels, or carrying out other types of illegal anti-competitive behaviour. Information can contribute to the success of Commission's investigations quickly and more efficiently, to the benefit of consumers and the EU's economy as a whole.

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 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 providing information and opinions and intervening as amicus curiae in proceedings pending before the national courts. Renewed efforts were made to make national courts submit to the Commission judgements in national competition law proceedings.

Directive 2014/104/EU on antitrust damages actions (Damages Directive) aims at ensuring that anyone harmed by infringements of the EU competition rules can effectively avail itself of the right to compensation before national courts. The deadline to implement the Damages Directive in Member States' legal systems expired on 27 December 2016.

The Commission monitors the transposition closely and takes all necessary steps to ensure that the new rules are in place across the EU as soon as possible. In 2017, the Commission sent Letters of Formal Notice opening infringement procedures against 21 Member States for non-communication of transposing measures by the deadline. By

January 2018, 26 Member States had fully transposed the Directive. For the remaining two Member States, infringement procedures are on-going. With regard to communicated transposition measures, the Commission has started examining whether these are complete and correct as far as the Directive is concerned.

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

The Commission continued to develop its thinking on the interaction between competition policy, algorithms, and data issues. In 2017, Commissioner Vestager set out a number of issues relating to algorithms and automated systems, and how these can reinforce or lead to restrictions of competition.[55] Companies cannot shield themselves from antitrust liability by arguing that an algorithm was responsible for their pricing, and what is illegal offline is likely to be illegal when carried out through algorithms instead. DG Competition made a written contribution to the 2017 OECD roundtable on competition and algorithms. Moreover, Director-General Laitenberger gave a speech that dealt with the competition implications of data and algorithms.[56]

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 TFEU[57]. 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. In 2017, the Commission continued to use confidentiality rings.

[55] For further information see https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/bundeskartellamt-18th-conference-competition-berlin-16-march-2017_en.

[56] For further information see http://ec.europa.eu/competition/speeches/text/sp2017_15_en.pdf.

[57] 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.

1.2. Merger control

EU Merger Control

The purpose of EU merger control[58] 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 occur[59].

In the field of merger control, DG Competition's activities are driven by notifications by companies. Therefore it is not meaningful to set numerical targets for merger enforcement actions as this depends on actions beyond the control of the Commission. However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year. Moreover, DG Competitiuon provides an estimate of the customer benefits resulting from the Commission's merger interventions[60].

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

EU merger control aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective. 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 procedure.[61] In 2017, the simplified procedure was applied in relation to approximately 73% of all final Commission decisions in mergers.[62]

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

In 2017, the number of proposed mergers notified to the Commission was 380, a substantial increase compared to the preceding years, and the second highest number in the history of EU merger control. In the period 2010-2016 the average number of notifications was 306 per year[63]. Each year since 2013 the number of merger notifications has increased. The Commission received 28 reasoned pre-notification submissions by the merging parties requesting the referral of a transaction from the Commission to a Member State or vice versa.

The Commission took 377 final decisions in merger cases in 2017[64]. The 24 interventions was a somewhat higher number compared to the average number of the last seven years; 20 interventions per year[65]. In 2017, 18 mergers were cleared subject to

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58 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.

59 DG Competition exclusively assesses proposed mergers exceeding the turnover thresholds in the EU Merger Regulation. Below these thresholds, Member States are competent to assess transactions under national merger rules. The referral rules allow for flexibility in the overall merger control system in the EU.

60 See Annexes to the AAR, Annex 12, Specific Objective 5, result indicator 1, p. 17.

61 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.

62 See Annexes to the AAR, Annex 12, Specific Objective 4, result indicator 1, p. 17.

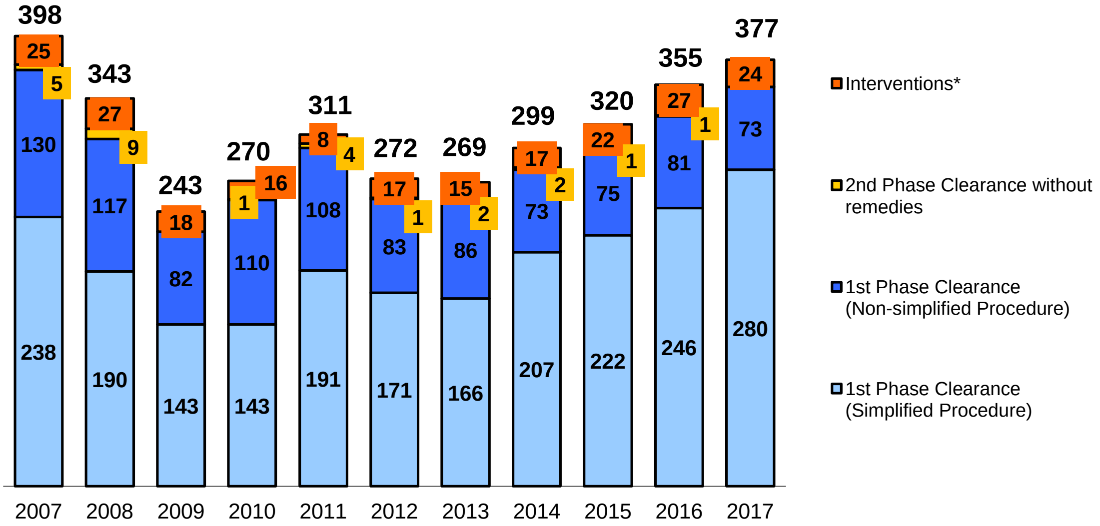
63 The total number of notifications received in 2017 is 5% higher than in 2016 and 13% higher than in 2015.

64 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.

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

commitments in the first phase and two in the second phase. In two cases, the parties abandoned a transaction during the in-depth investigation[66]. Moreover, the Commission adopted prohibition decisions[67] in two cases.[68]

Merger enforcement, the Commission decisions 2007-2017:



* 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. Two in 2013 and 2017;
Source: Directorate-General for Competition

Energy Union

As in previous years, a number of companies invested in development and production from renewable sources,[69] in particular in wind parks.[70] The Commission also analysed and authorised two acquisitions in the industry for the production of wind turbines; the

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66 Case M.7095 *SOCAR/DESFA*, notified to the Commission on 1 October 2014 and the notification withdrawn on 2 February 2017. Case M.8222 *Knorr-Bremse/ Haldex*, notified to the Commission on 1 June 2017 and the notification withdrawn on 19 September 2017.

67 Case M.7995 *Deutsche Börse/ London Stock Exchange Group,* Commission decision of 29 March 2017 and case M.7878 *HeidelbergCement/ Schwenk/ Cemex Hungary/ Cemex Croatia*, Commission decision of 5 April 2017.

68 See also Case T-194/13 *UPS v Commission*, judgment of the General Court of 7 March 2017, in which the Court annulled the Commission's 2013 decision prohibiting the acquisition by UPS of TNT Express on procedural ground. The General Court held that the Commission had not communicated to UPS the final version of an econometric model used in the contested decision, thus infringing UPS' rights of defence. The Commission has apealled the annulment to the Court of Justice.

69 Case M.8508 *Engie/Cdc/Solairecorsica 1-2-3*, Commission decision of 4 July 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8508; Case M.8413 *Engie/Omnes Capital/Predica/Engie Pv Besse/Engie Pv Sanguinet*, Commission decision of 10 April 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8413.

70 Case M.8635 *Sojitz/Kepco/Luricawne/Fixarra/Evalair/Plum*, Commission decision of 25 October 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8635; Case M.8608 *Engie/La Caisse Des Depots Et Consignations/Ceolfalram76*, Commission decision of 18 October 2016 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8608; Case M.8595 *GE/Macquarie/Mett*, Commission decision of 28 August 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8595; M.8592 Centerbridge/*Egph/JV*, Commission decision of 4 September 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8592; M.8346 *Macquarie/Ussl/Osw Assets Of UK Gib*, Commission decision of 22 May 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8346.

acquisition of Gamesa by Siemens[71] and of LM Wind by GE[72]. Moreover, the Commission analysed and authorised the acquisition of Areva's nuclear reactors business by EDF.[73]

Digital Single Market

In the telecommunications sector, the Commission cleared in 2017 the creation of a joint venture that will provide mobile payment services to businesses and consumers in Lithuania.[74] The parent companies of the JV, Bitė, Tele2 and Telia are all retail mobile telecommunications services providers, while Telia also provides colocation services, hosting other companies' servers in its data centers. In 2017, the Commission authorised the acquisition of Telecom Italia by Vivendi, subject to conditions.

In the IT sector, the Commission conditionally approved the acquisition of smart card maker Morpho by Advent International[75], a private equity firm already controlling smart card and digital security provider Oberthur. Moreover, the Commission cleared the acquisition of networking products supplier Brocade by semiconductor manufacturer Broadcom, subject to conditions.[76] The Commission also cleared, subject to conditions, the proposed acquisition of NXP by Qualcomm, two of the leading players in the semiconductor industry.[77]

The media sector is vital for the development of information and communication technologies, as well as for the dissemination and preservation of culture, information, education and democracy. Since digital content is increasingly available and distributed across various platforms (digital terrestrial, cable, satellite, Internet, mobile networks), firms tend to engage to combine production of content and its distribution. When assessing media mergers, one of the Commission's main objectives is to ensure that access to key elements - whether content, technology or interconnection - is not negatively affected.

The Commission cleared 21st Century Fox's proposed acquisition of Sky, the leading pay-tv operator in Austria, Germany, Ireland, Italy and the United Kingdom.[78] The Commission has exclusive jurisdiction to assess the impact of the proposed transactions on competition in the various markets affected within the EEA. However, the EU Merger Regulation recognises that Member States may take appropriate measures, including prohibiting proposed transactions, to protect other legitimate interests, such as media plurality. In this regard, the UK Secretary of State for Culture Media and Sport is currently considering whether to take appropriate measures to protect media plurality in the United Kingdom in relation to the proposed acquisition of Sky by 21st Century Fox.

When assessing a proposed merger, the Commission must be able to take decisions in full knowledge of accurate facts. The EU Merger Regulation obliges companies to provide correct information that is not misleading, since this is essential for the Commission to review mergers and takeovers in a correct, timely and effective manner.

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71 Case M.8134 *Siemens/Gamesa*, Commission decision of 13 March 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8134.

72 Case M.8283 *GE/LM Wind Power Holding*, Commission decision of 20 March 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8283.

73 Case M.7764 *EDF/Areva Reactor Business*, Commission decision of 29 May 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7764. For further information see IP/17/1466 of 29 May 2017 available at http://europa.eu/rapid/press-release_IP-17-1466_en.htm.

74 Case M.8251 *Bitė/Tele2/Telia Lietuva/JV*, Commission decision of 19 July 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8251.

75 Case M.8258 *Advent International/Morpho*, Commission decision of 19 April 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8258.

76 Case M.8314 *Broadcom/Brocade*, Commission decision of 12 May 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8314.

77 Case M.8306 *Qualcomm/NXP Semiconductors*, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8306.

78 Case M.8354 *Fox/Sky*, Commission decision of 7 April 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8354.

Importance of submitting correct information that is not misleading

When notifying the acquisition of WhatsApp in 2014, Facebook maintained that it would be unable to establish reliable automated matching between Facebook users' accounts and WhatsApp users' accounts.[79] Contrary to Facebook's statements during the 2014 merger review, the Commission found that the technical possibility to match accounts did exist already in 2014, and that Facebook staff was aware of this. Therefore, the Commission imposed in 2017 a fine of EUR 110 million on Facebook for providing incorrect and misleading information.[80]

Deeper and Fairer Internal Market

The importance of well-functioning financial markets that are based on fair competition and enable equal access to finances is not restricted to banks. The whole economy benefits when businesses can raise money also on competitive financial markets for which exchange operators create the necessary infrastructure.

Prohibition of the proposed merger between Deutsche Börse and London Stock Exchange Group

In 2017, the Commission prohibited the proposed merger between Deutsche Börse and London Stock Exchange Group, which would have combined the activities of the two largest stock exchange operators in the EU. The two companies own the stock exchanges of Germany, Italy and the United Kingdom, as well as several of the largest EU clearing houses. Clearing services ensure the execution of trades made on stock exchanges, and are essential for the stability of financial markets. The Commission concluded that the merger would have significantly reduced competition by creating a de facto monopoly in the markets for clearing fixed-income instruments. As no sufficient remedies were offered, the Commission prohibited the proposed transaction in 2017.[81]

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

Prohibition of the proposed acquisition in the cement market in Croatia

In 2017, the Commission prohibited the proposed joint acquisition of Cemex Croatia by German cement manufacturers HeidelbergCement and Schwenk.[82] The Commission concluded that the merger would have significantly reduced competition in grey cement markets in Croatia. The remedy proposed by the parties was deemed insufficient to replace the competition that would have disappeared with the merger.

In 2017, the Commission also examined a number of number of merger transations in the fiels of seeds and pesticides, which are essential for farmers and ultimately consumers.

In the markets for pesticides, the Commission authorised after an in-depth review the merger between US-based chemical companies Dow and Dupont.[83] The authorisation was subject to the condition that DuPont divest its global pesticide business. In addition, the Commission cleared in 2017 ChemChina's (China) acquisition of Syngenta (Switzerland), subject to conditions.[84] The approval was conditional on the divestiture of significant parts of ChemChina's European pesticide and plant growth regulator business.

The Commission also opened an in-depth investigation of the proposed acquisition of Monsanto (US) by Bayer (Germany).[85] Given the worldwide scope of Bayer and

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[79] Case M.7217 *Facebook / Whatsapp*, Commission decision of 3 October 2014, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7217.

[80] Case M.8228 *Facebook / Whatsapp* (Art. 14.1 proc.), see IP/ 17/1369 of 18 May 2017, available at http://europa.eu/rapid/press-release_IP-17-1369_en.htm.

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

[82] Case M.7878 *HeidelbergerCement / Schwenk / Cemex Hungary / Cemex Croatia*, Commission decision of 5 April 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7878 .

[83] Case M.7932 *Dow / DuPont*, Commission decision of 27 March 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7932.

[84] Case M.7962 *ChemChina / Syngenta*, Commission decision of 5 April 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7962.

[85] Case M.8084 *Bayer / Monsanto*, see IP/17/2762 of 22 August 2017, available at http://europa.eu/rapid/press-release_IP-17-2762_en.htm.

Monsanto's activities, the Commission is cooperating closely with other competition authorities, notably with the Department of Justice in the US and the antitrust authorities of Australia, Brazil, Canada and South Africa.

In the air transport sector, the Commission reviewed the acquisition of certain Air Berlin assets by Lufthansa[86] and easyJet.[87] Lufthansa initially notified the Commission of its intention to acquire two of Air Berlin's subsidiaries, NIKI and LGW, as well as a collection of Air Berlin's aircraft, crew and slots. Following a comprehensive market investigation and a market test of the commitments proposed by Lufthansa, the Commission reached the preliminary view that the acquisition of NIKI woud lead to a significant number of routes where the merged entity would obtain very high market shares, and that barriers to entry for competitors would become higher. Lufthansa decided to abandon the NIKI transaction, and as a direct consequence NIKI filed for insolvency.[88] The Commission eventually approved the transaction between Lufthansa and Air Berlin.[89] In addition, the Commission authorised easyJet's acquisition of Air Berlin's operations at Berlin Tegel airport.[90]

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

In 2016, the Commission launched a public consultation concerning the evaluation of selected procedural and jurisdictional aspects of EU merger control. The evaluation built on the results of the 2014 public consultation on the White Paper "*Towards more effective EU merger control*"[91]. The evaluation focussed on four topics, namely (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects.

The public consultation was open until February 2017 and attracted wide interest. The Commission received more than 90 submissions from public and private stakeholders, including national competition authorities, other public bodies, associations, companies, law firms, research institutes and private individuals. A summary of the submissions received during the public consultation, together with their non-confidential versions, have been published on the Commission's Competition website[92].

The results of the public consultation confirm that the EU merger control system works well overall and that there is no need for a fundamental overhaul. The Commission is now reflecting - taking into account among other things the results of the public consultation - whether potential improvements merit proposing any legislative or non-legislative changes to the Merger Regulation. A Staff Working Document is currently under preparation.

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[86] Case M.8633 *Lufthansa/certain Air Berlin assets.* Further inforamtation available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8633.

[87] Case M.8672 *easyJet/ certain Air Berlin assets.* Further information available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8672.

[88] Following a decision of NIKI's creditors committee, the assets of NIKI were sold in January 2018 to its founder, Mr Niki Lauda, and rebranded as Laudamotion.

[89] Case M.8633 *Lufthansa/certain Air Berlin assets*, Commission decision of 21 December 2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area, available at http://europa.eu/rapid/press-release_IP-17-5402_en.htm.

[90] Case M.8672 *easyJet/certain Air Berlin assets*, Commission decision of 12 December 2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area, available at http://ec.europa.eu/competition/mergers/cases/decisions/m8672_673_5.pdf.

[91] For further information on the 2014 public consultation on the White Paper, see http://ec.europa.eu/competition/consultations/2014_merger_control/index_en.html.

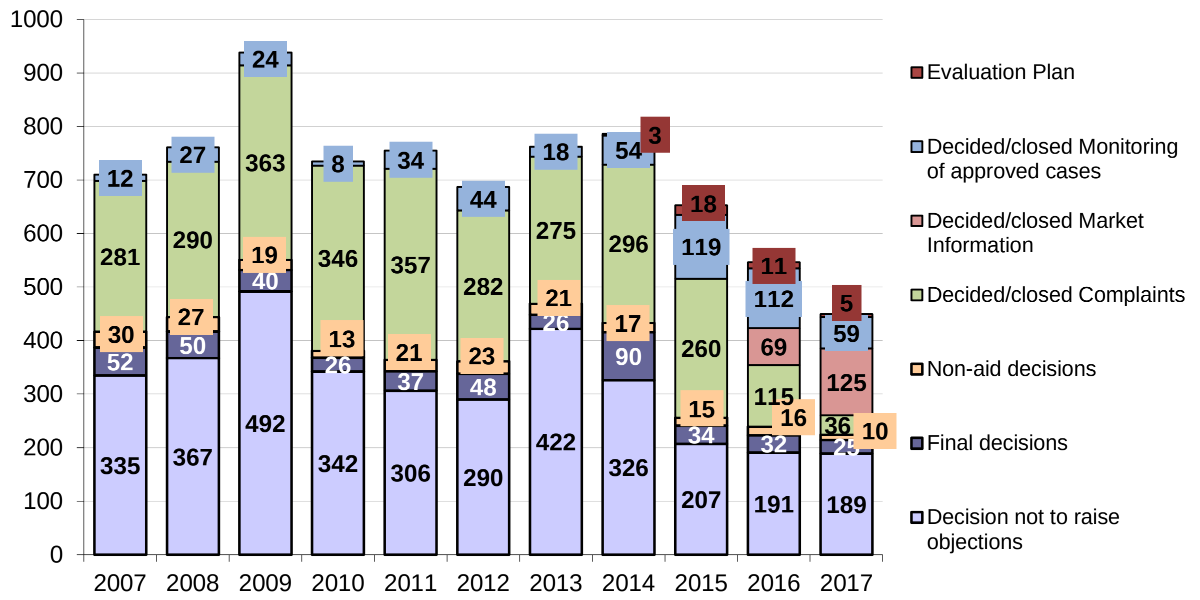
[92] The summary of the submissions and their non-confidential versions are available at http://ec.europa.eu/competition/consultations/2016_merger_control/index_en.html.

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 most 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.

State aid enforcement (Commission decisions, monitoring and Member States' Evaluation Plans) 2007-2017



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

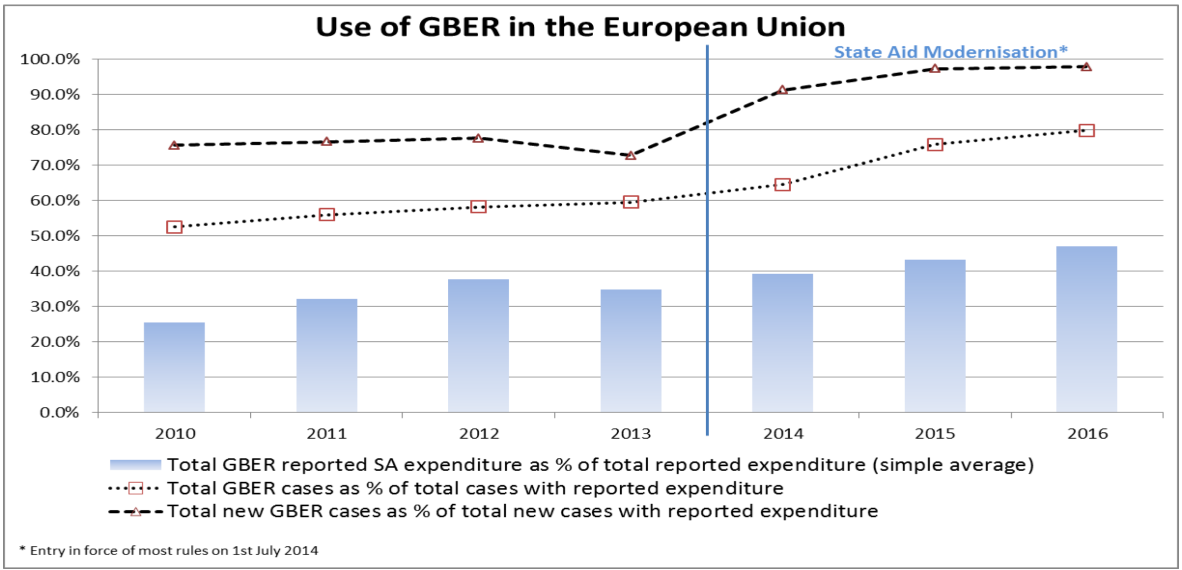
One of the cornerstones of the State Aid Modernisation reform (SAM) is the General Block Exemption Regulation (GBER) adopted in 2014.[93] GBER simplifies aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling EU objectives in the common interest. Only cases with the biggest potential to distort competition in the single market will still face ex ante assessment (notification).

[93] 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.

As a result of the reform, a significantly larger number of smaller and unproblematic measures are exempted from prior notification, notably aid granted to tackle local needs.

Since the 2014 adoption of the GBER, there has been a surge in State aid granted without prior notification to the Commission, indicating an important reduction of Member States' regulatory burden. Based on the 2017 State Aid Scoreboard[94], this trend has continued in the past years.

The graph below[95] shows that since 2015, more than 97% of new aid measures where expenditure was reported for the first time, were covered by the GBER, an increase of about 25 percentage points compared to 2013. Approximately 80% of all aid measures for which expenditure was reported (that is to say not only new measures), were covered by GBER in 2016. Total spending on GBER measures in the EU represented some 47% of total expenditure in 2016, that is to say an increase of approximately 12 percentage points compared to 2014.



The 2014 GBER introduced new aid categories[96] and to a large extent, the reported increase in expenditure on GBER measures reflects the impact of the new regulation. In 2016, as compared to 2014, total GBER spending for aid to culture and heritage conservation, for broadband and for local infrastructure has increased about fivefold, while it doubled for R&D&I and for SMEs. Significant increases were also recorded for environmental protection and energy savings (+68%) and for aid to compensate damages caused by natural disasters (+30%). The GBER was extended in 2017, in particular aid to ports and airports.[97] It is therefore to be expected that the share of

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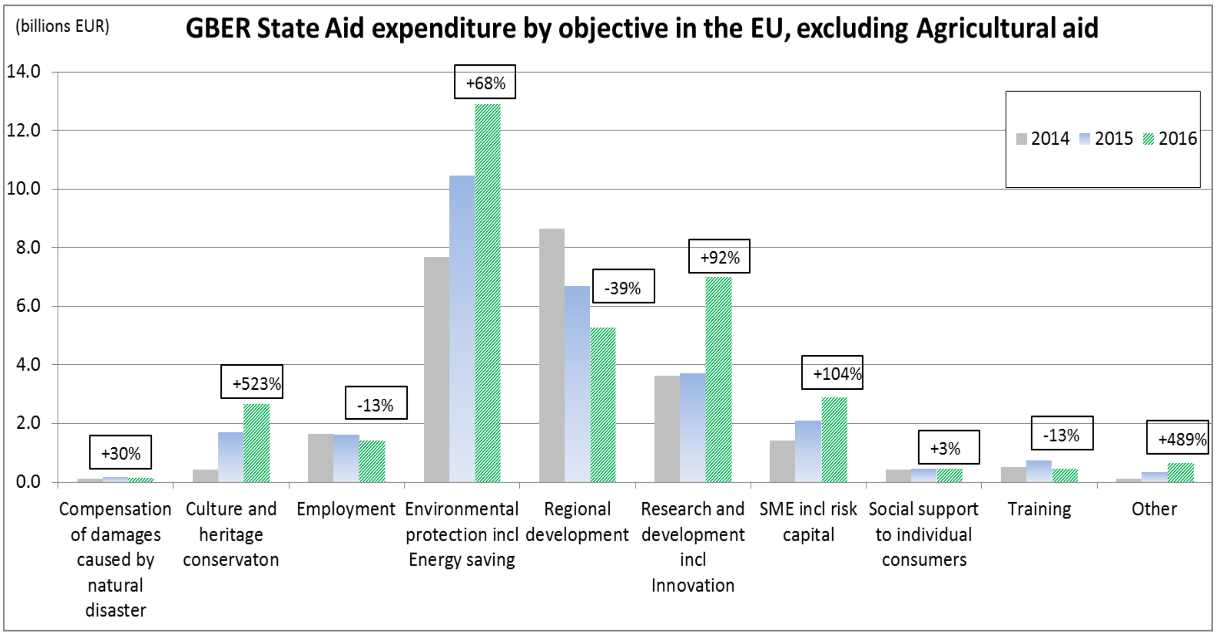
94 The 2017 State Aid Scoreboard comprises aid expenditure made by Member States before 31 December 2016 and which falls under the scope of Article 107(1) TFEU. The data is based on the annual reporting by Member States pursuant to Article 6(1) of Commission Regulation (EC) 794/2004 available at http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html.

95 Figures from the 2017 State Aid Scoreboard. For further information, see http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html.

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

97 Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs., OJ L 156, 20.6.2017, available at http://eur-lex.europa.eu/legal-

block-exempted aid among total aid granted by Member States will continue to increase in the coming years.



Commission simplifies rules for public investment in ports and airports, culture and the outermost regions

As regards airports, Member States can now make public investments in regional airports handling up to 3 million passengers per year with full legal certainty and without prior control by the Commission. This will facilitate public investment in more than 420 airports across the EU (which account for about 13% of air traffic). The Regulation also allows public authorities to cover operating costs of small airports handling up to 200 000 passengers per year. These small airports account for almost half of all airports in the EU, but less than 1% of air traffic. They may not always be as profitable as larger airports, but they can play an important role for the connectivity of a region and are unlikely to distort competition in the EU single market.

With regard to ports, Member States can now make public investments of up to €150 million in sea ports and up to €50 million in inland ports with full legal certainty and without prior control by the Commission. This includes dredging costs that certain ports need to incur to keep the waterway deep enough for ships to dock. For ports these costs are non-negotiable because of their geography, regardless of how efficient and competitive they are.

Evaluation of aid schemes

Evaluation of aid schemes is another requirement introduced by SAM. The aim is to gather the necessary evidence to better identify impacts, both positive and negative, of the aid and inform future policy-making by Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain aid categories[98] as well as for a selection of notified schemes under the new generation of State aid guidelines[99].

By the end of 2017, the Commission had approved evaluation plans covering 35 State aid schemes submitted by 13 Member States[100]. Most of these decisions concerned either large regional or R&D&I aid schemes under the GBER or notified energy- and broadband-schemes. In total, these schemes account for approximately EUR 48 billion in annual State aid budget. The Commission services support the implementation of the evaluation

content/EN/TXT/?qid=1497952641554&uri=CELEX:32017R1084.

98 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.

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

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

requirement by publishing policy briefs[101] and by organising dedicated workshops with Member States' representatives and evaluation experts.

Aid to research, development and innovation

The State aid rules for R&D&I help ensure that public funding goes to research projects that would not otherwise be realised due to market failures, that is to say projects that truly go beyond the state of the art and which bring innovative products and services to the market and ultimately to consumers. The rules, using flexible and simple criteria for assessing the compatibility of State aid, facilitate the implementation of support for R&D&I projects by Member States.

In 2017, the Commission ensured that aid schemes and individual aid measures notified under the R&D&I rules were targeted to projects enabling ground-breaking research and innovation activities. Its State aid control activities covered a variety of sectors including the automated/connected driving, e-mobility, aeronautic, and microelectronic sectors.

Aid to risk finance

SMEs across the EU remain heavily dependent on traditional bank lending, which is still limited by banks' refinancing capacity, risk appetite and capital adequacy. The financial crisis has exacerbated the problem with a large number of SMEs still being unable to receive the necessary finance. Given the pivotal importance of SMEs and midcaps for the whole EU economy, this situation has a negative impact on growth and job creation. The current Risk Finance rules aim to offer better incentives for private sector investors - including institutional ones – to increase their funding activities in the critical area of SME and midcaps financing. The rules also mirror other EU initiatives designed to promote wider use of financial instruments in the context of new support programmes such as Horizon 2020 or COSME (the Programme for the Competitiveness of Enterprise and SMEs)[102].

The current Risk Finance Guidelines[103] 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 2017, under the Risk Finance Guidelines, the Commission dealt with notified schemes aimed at encouraging investment in innovative SMEs and midcaps. In particular, it approved the prolongation of an amended scheme in Italy granting fiscal incentives for investments in innovative start-ups.

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 Commission reviewed in 2017 the regional aid provisions in the GBER. Three important changes were made. As regards operating aid to the outermost regions, the sectoral scope was widened and the aid ceilings applicable to these regions were increased. Moreover, provisions on operating aid for companies conducting business in very sparsely populated regions were introduced. Finally, the Commission modified the anti-relocation provisions in the regional investment aid section. The new provisions

[101] For further information see the Competition Policy Briefs 7/2014 available at http://ec.europa.eu/competition/publications/cpb/2014_007_en.pdf and 3/2016 available at http://ec.europa.eu/competition/publications/cpb/2016/2016_003_en.pdf.

[102] 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.

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

require notification of aid for investments involving a transfer of economic activities from other Member States.

The Commission adopted several decisions on notified regional investment aid measures under the Regional aid Guidelines. It approved the Octroi de Mer scheme providing regional operating aid for companies located in the French Outermost regions[104]. Moreover, the Commission adopted positive decisions on regional investment aid for two large investment projects, namely aid to Mondi (paper and paper products, Slovakia)[105] and to MOL Petrolkémia (petrochemical plant in Hungary)[106]. The Commission started a formal investigation of regional investment aid granted to Jaguar Land Rover in Slovakia (cars)[107]. In addition, the Commission approved a Polish regional aid scheme for the shipbuilding sector[108], as well as an amendment of the French Regional aid map[109]. Finally, the Commission adopted two decisions approving evaluation plans for Italy on a SME investment aid scheme for purchase of new machinery and equipment[110] and on an aid scheme for large investment projects "Contratti di Sviluppo"[111].

European Fund for Strategic Investments

In the context of the European Fund for Strategic Investments (EFSI), with the objective to generate EUR 315 billion in investment in Europe, the Commission continued in 2017 to apply the accelerated procedure for approving, within six weeks, Member State co-financing that constitutes notifiable State aid. This, in turn, continued to contribute to the necessary public and private financing to accomplish 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 2025. Most of the financing for the upgrade and deployment of next-generation networks in the broadband sector comes from private companies. State aid control seeks to ensure that where a market failure arises and publicly funded networks are needed, these do not crowd out private investments.

Commission approved Member States' adoption of broadband aid schemes

All Member States have now adopted and/or updated national and/or regional broadband strategies[112]. In 2017, extensive national and regional broadband schemes were approved by the Commission, such as

[104] Case SA.46899 (2016/N), *Operating aid scheme for outermost regions providing reductions on the Octroi de Mer Tax*, Commission decision of 15 March 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46899.

[105] Case SA.45584 (2016/N), *Investment aid to Mondi*, Commission decision of 13 July 2017. The public version of this decision will become available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45584.

[106] Case SA.48382 (2017/N), *Regional investment aid to MOL Petrolkémia Zrt*, Commission decision of 25 October 2017. The public version of this decision will become available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48382.

[107] Case SA.45359 (2016/N), *Regional investment aid to Jaguar Land Rover Jaguar*, Commission decision of 24 May 2017. The public version of this decision will become available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45359.

[108] Case SA.47690 (2017/N), *State aid scheme for regional investments of SMEs in the shipbuilding sector, Commission decision of …* . The public version of this decision will become available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47690.

[109] Case SA.47094 (2016/N), *Amendment of the Regional aid map 2014-2020 – Second use of the population reserve*, Commission decision of 10 February 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47094.

[110] Case SA.47180 (2017/EV), *SME investment aid scheme for purchase of new machinery and equipment,* Commission decision of 15 June 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47180.

[111] Case SA.48248 (2017/EV), *Evaluation plan of the aid scheme for large investment projects "Contratti di Sviluppo"*, Commission decision of 12 October 2017. The public version of this decision will become available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48248.

[112] Even though a few Member States do not yet have a single document that can be regarded as a national broadband plan, all of them have at least an overall strategic approach for the deployment of

for Lithuania[113], Croatia[114], Austria[115], Germany[116] and Poland[117]. During the period 2009-2017, the Commission approved State aid for broadband amouting to EUR 38 billion. Despite the approval of this amount of State aid by the Commission, the Member States only effectively spent around 30% of this amount, often with a co-financing from European funds[118] amounting to around EUR 3 billion. During the same period, Member States adopted 85 broadband State aid measures benefitting from the GBER.

The Commission approved two aid schemes supporting the development and the promotion of educational and culturally valuable digital video games in Germany[119] and Denmark[120].

Selective tax advantages

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

In 2017, the Commission concluded that Luxembourg gave illegal tax benefits to Amazon.[121]

Selective tax advantages - the Commission decision in the Amazon case

Following an in-depth investigation launched in October 2014, the Commission concluded that a tax ruling issued by Luxembourg in 2003, and prolonged in 2011, lowered the tax paid by Amazon in Luxembourg without any valid justification. The tax ruling enabled Amazon to shift the vast majority of its profits from an Amazon group company that is subject to tax in Luxembourg (Amazon EU) to a company which is not subject to tax (Amazon Europe Holding Technologies), without valid economic justification. Transactions between companies in a corporate group must be priced in a way that reflects economic reality. This means that the payments between two companies in the same group should be in line with arrangements that take place under commercial conditions between independent businesses (the "arm's length principle").

The Commission's investigation showed that the level of the royalty payments, endorsed by the tax

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next generation access networks that is implemented in practice.

113 State aid case SA.46372 - Lithuania - *NGA broadband deployment in rural areas of Lithuania (PRIP 2)*, Commission decision of 4 July 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46372.

114 State aid case SA.41065 - Croatia - *National Programme for broadband aggregation infrastructure*, Commission decision of 6 June 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41065. For further information see IP/17/1545 of 6 June 2017 available at http://europa.eu/rapid/press-release_IP-17-1545_en.htm.

115 State aid case SA.46731 – Austria – *Aid to fast broadband infrastructure in rural areas in Niederösterreich*, Commission decision of 3 April 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46731.

116 State aid case SA.46805 – Germany – *Follow up German NGA/Vula product*, Commission decision of 11 August 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46805. For further information see IP/17/2502 of 11 August 2017 available at http://europa.eu/rapid/press-release_IP-17-2502_en.htm.

117 State aid case SA.46203 – Poland – *Modifications in the aid scheme the Broadband network project in Eastern Poland*, Commission decision of 21 December 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46203. Further information available under http://europa.eu/rapid/midday-express-21-12-2017.htm.

118 European funds mostly used by Member States for the financing of their broadband programmes are the European Regional Development Fund, the European Agricultural Fund for Rural Development and to a less extent the Cohesion Fund.

119 State aid cases SA.46572 – Germany – *Bavarian games support measure*, Commission decision of 4 September 2017 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3.

120 SA.45735 – Denmark - *Scheme for the development, production and promotion of cultural and educational digital games*, Commission decision of 12 May 2017 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3.

121 Case SA.38944 – Luxembourg – *Aid to Amazon*, Commission decision of 4 October 2017 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3&case_title=amazon. For further information see IP/17/3701 of 4 October 2017 available at http://europa.eu/rapid/press-release_IP-17-3701_en.htm.

ruling, was inflated and did not reflect economic reality. As a result, these profits were not taxed. In fact, the ruling enabled Amazon to avoid taxation on almost three quarters of the profits it made from all Amazon sales in the EU. On this basis, the Commission concluded that the tax ruling granted a selective economic advantage to Amazon.

A stand-alone company, also based in Luxembourg and subject to the same national taxation laws, would have had to pay four times as much in tax as Amazon on the same profits – as a result of the tax ruling. That does not allow companies to compete on an equal footing and it is illegal under EU State aid rules.

Luxembourg must recover from Amazon approximately EUR 250 million in unpaid tax, plus interest. This amount covers the eight year period during which Amazon had this structure in place. It is for the Luxembourg tax authorities to determine the exact amount, based on the method set out in the Commission's decision.

In 2017, the Commission opened an in-depth investigation into the UK scheme exempting certain transactions by multinational groups from the application of UK rules targeting tax avoidance.

The Commission also opened an in-depth investigation into the Netherlands' tax treatment of Inter IKEA, one of the two groups operating the IKEA business. The Commission's investigation concerns two tax rulings, granted by the Dutch tax authorities in 2006 and 2011, which have significantly reduced Inter IKEA Systems' taxable profits in the Netherlands. The Commission considers at this stage that the treatment endorsed in the two tax rulings may have resulted in a selective advantage in favour of Inter IKEA Systems, which was not available to other companies subject to the same national taxation rules in the Netherlands.

Deeper and fairer internal market in the "real economy" - Aid to manufacturing and undertakings in difficulty

Companies in financial difficulty can receive State aid only for the objective of restoring their long-term viability. Aid granted to companies in difficulty is highly distortive because it artificially keeps a company in the market that would otherwise have left it. It can therefore only be granted under strict conditions. The State aid rules for industrial restructuring ensure that public funding goes to companies addressing their problems to become viable on their own.

In 2017, 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".

The Commission continued in 2017 its in-depth investigation into the restructuring of the Romanian petrochemical company Oltchim.[122] The Commission's inquiry is aimed at ensuring that the restructuring and privatisation of Oltchim enables the company to become viable in the long term and that debt waivers given by Oltchim's public creditors do not result in an unfair competitive advantage over the company's competitors.

The Commission adopted in 2017 a decision concluding that two measures granted by Italy in favour of steel producer *ILVA*[123] gave the company an undue advantage over its competitors. The Commission found that a State guarantee and public loan were granted on terms more favourable than market conditions and placed ILVA in a better situation than other EU steelmakers, which have to finance their operations and restructure at their own expense. Ilva has to pay back to Italy the undue advantage calculated to approximately EUR 84 million.

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[122] 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. For further information see IP/16/1321 available at http://europa.eu/rapid/press-release_IP-16-1321_en.htm.

[123] Case SA.38613 – Italy – *Aid to Ilva*, Commission decision of 21 December 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38613. For further information see IP/17/5401 available at http://europa.eu/rapid/press-release_IP-17-5401_en.htm.

Aid to the transport sector

In 2017, several Commission decisions were adopted closing long-standing investigations into aid to airports and airlines.

In the Brussels airport case[124], the Commission conducted an in-depth investigation of the public support granted by Belgium to three airlines flying from Brussels Airport, namely Brussels Airlines, TUI Airlines Belgium and Thomas Cook Airlines Belgium. The investigation confirmed that the scheme constituted illegal State aid, since it gave the three airlines an unfair advantage over their competitors. The Belgian Government subsequently abolished the scheme and ordered the three airlines to reimburse the aid received with interest. Therefore, the Commission's decision declared the aid illegal but did not order recovery of the aid.

The Commission also authorised a temporary EUR 150 million bridging loan granted by Germany in favour of AirBerlin[125]. The airline filed for insolvency after its main shareholder Etihad withdrew its financial backing for the loss-making company. The Commission concluded that the bridging loan – granted under strict conditions - protected the interests of air passengers. The loan allowed Air Berlin to continue providing its services for the short period of time needed for the company to comply with its contractual obligations.

Railway restructuring

In 2017, the Commission approved restructuring aid to Greek railway companies OSE and TRAINOSE. The aid measures were designed to help the two public rail companies become more efficient and provide better services to Greek passengers and business customers. Moreover, the Commission adopted a decision finding that Bulgarian support measures in favour of the publicly-owned railway incumbent BDZ are in line with EU State aid rules. These decisions show that the State aid rules can be used to address the problematic issues around debt levels that some incumbent rail operators are carrying. The State aid rules allow Member States to help these companies avoid serious financial difficulties or having to significantly reduce staff, while easing the transition to an open and competitive rail market.

In the maritime sector, the Commission approved the prolongation of the Belgium tonnage tax scheme until the end of 2022.[126] Furthermore, the Commission authorised the prolongation and modification of the Lithuanian tonnage tax scheme[127]. Finally, the Commission approved the Maltese tonnage tax scheme subject to commitments.[128]

Aid to the postal sector

Based on the 2012 SGEI package[129], State aid control in the postal sector in 2017 continued to focus on ensuring competition on equal terms between incumbent postal operators and their competitors, keeping postal markets open and facilitating entry.

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[124] Commission decision of 18 July 2017, SA.38105 (2014/C (ex 2014/NN)) - Belgium - *Subside en faveur de certaines compagnies aériennes opérant à l'aéroport de Bruxelles-National*. For further information see Daily News (MEX/17/2071) of 18 July 2017 available at http://europa.eu/rapid/press-release_MEX-17-2071_en.htm.

[125] Case SA.48937 – Germany – *Rescue aid in favour of Air Berlin PLC & Co. Luftverkehrs KG*, Commission decision of 4 September 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48937. For further information see IP/17/3083 available at http://europa.eu/rapid/press-release_IP-17-3083_en.htm.

[126] Case SA.41330 *Prolongation du régime de taxe au tonnage Belgique*, Commission decision of 6 November 2017 available at http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3&case_number=41330. For further information see IP/17/4382 of 6 November 2017 available at http://europa.eu/rapid/press-release_IP-17-4382_en.htm.

[127] Case SA.45764 Lithuania – *State aid in favour of maritime transport Prolongation and modification of the tonnage tax scheme*, Commission decision of 16 June 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45764.

[128] Case SA. 33829, *Maltese tonnage tax scheme and other State measures in favour of shipping companies and their shareholders*, Commission Decision of 19 December 2017, not yet published. For further information see IP/17/5361 of 19 December 2017 available at http://europa.eu/rapid/press-release_IP-17-5361_en.htm.

[129] For further information see IP/16/3398 available at http://europa.eu/rapid/press-release_IP-11-1571_en.htm.

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

State aid control in the areas of energy and environment contributes to reaching the EU's ambitious energy and climate targets without undue distortions of competition while minimising cost for taxpayers. In 2017, the Commission continued to ensure that renewable support schemes favoured market integration of new electricity generation from renewable sources and that support was granted through competitive bidding.

A well-functioning Energy Union requires strong and innovative technology providers which compete on equal terms. A case in point is the restructuring of the French nuclear technology provider Areva[130].

The Areva Restructuring

In 2016, France notified the Commission of a restructuring plan to restore Areva group's competitiveness and improve its financial position. The plan included State aid in the form of a public capital injection of over four billion euros. The Commission analysed whether the planned injections of public capital into the company would not unduly favour Areva over its competitors, and whether the restructuring contained sufficient safeguards to mitigate the distorsions of competition. In 2017, the Commission concluded that French plans are in line with EU State aid rules, allowing the company to become viable without unduly distorting competition in the single market.

The restructuring plan includes the divestiture of Areva's reactor business to the French energy company EDF, subject to the Commission's review of the planned transaction under the EU merger control rules. In 2017, the Commission found that the divestiture would not raise competition concerns. The French authorities will submit regular monitoring reports to the Commission, to ensure that the restructuring plan is implemented in full and in line with the Commission's decision, until the restructuring period of Areva comes to an end in 2019.

In 2017 the Commission cleared Hungary's financial support for the construction of two new nuclear reactors in Paks (Paks II)[131]. Member States are free to determine their energy mix. The Commission's role is to ensure that the distortion of competition on the energy market as a result of the State support is limited to a minimum. The Hungarian Government made substantial commitments which allowed the Commission to approve the support.

The Commission approved in 2017 the new Hungarian support scheme for renewable electricity[132]. Moreover, the Commission approved four schemes supporting electricity production from wind and solar generators situated on buildings and on the ground in France[133]. Finally, the Commission found a Spanish scheme for renewable electricity to be in line with EU State aid rules[134]. These schemes are all accompanied by detailed evaluation plans to assess their impact. The results of the evaluations will be submitted to the Commission.

The Commission's 2016 sector inquiry into capacity mechanism[135] serves as a basis for close cooperation between the Commission and the EU Member States to ensure that

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[130] Case SA.44727 *Restructuring aid to Areva*, Commission decision of 10 January 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44727 and M.7764 EDF / Areva reactor business, Commission decision of 29 May 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7764.

[131] SA.38454 Possible aid to the Paks nuclear power station, Commission decision of 6 March 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38454.

[132] SA.44076 *RES support scheme – METÁR*, Commission decision of 11 July 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44076.

[133] Cases SA.46552, SA.47753, SA.48066 and SA.48238, see IP/17/3581 of 29 September 2017, available at http://europa.eu/rapid/press-release_IP-17-3581_en.htm.

[134] Case SA.40348 Support for electricity generation from renewable energy sources, cogeneration and waste, Commission decision of 10 November 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40348.

[135] On 16 November 2016, the Commission published the final report of its capacity mechanism sector inquiry, see IP/2016/4021 of 16 November 2016 http://europa.eu/rapid/press-release_IP-16-4021_en.htm.

capacity mechanisms are well-designed and fit for their purpose. In 2017, the Commission approved the joint capacity mechanism for Ireland and Northern Ireland.[136]

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

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

In 2017, the Commission approved Italian measures to facilitate the liquidation of Banca Popolare di Vicenza (BPVI) and Veneto Banca under national insolvency law.[137] Moreover, In July, the Commission approved Italy's plan to provide a precautionary recapitalisation to the Italian bank Monte dei Paschi di Siena, on the basis of a detailed restructuring plan.[138] Finally, the Commission approved Portuguese aid for the sale of Novo Banco[139], the bridge bank that Portugal had created in 2014 in the framework of the resolution of Banco Espirito Santo (BES).[140]

Specific objective 10: Prevention and recovery of incompatible aid

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

To ensure the integrity of the single market, the Commission has the power and the duty to request that Member States recover unlawful and incompatible aid which has unduly distorted competition and trade between Member States. In 2017, further progress was made to ensure that recovery decisions are enforced effectively and immediately.

By 31 December 2017, the sum of illegal and incompatible aid recovered from beneficiaries amounted to EUR 13.3 billion[141]. At the same time, the outstanding amount pending recovery was EUR 18.4 billion. In 2017, the Commission adopted six new recovery decisions and EUR 261.4 million was recovered by the Member States. As of the end of December, the Commission had 44 pending recovery cases.

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[136] SA.44464 Irish Capacity Mechanism: reliability option scheme, Commission decision of 24 November 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44464, and SA.44465 Northern Irish Capacity Mechanism: reliability option scheme, Commission decision of 24 November 2017 available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44465. For further information see IP/17/4944 of 24 November 2017 available at http://europa.eu/rapid/press-release_IP-17-4944_en.htm.

[137] Case SA.45664 Orderly liquidation of Banca Popolare di Vicenza and Veneto Banca - Liquidation aid, Commission decision of 25 June 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45664.

[138] Case SA.47677 New aid and amended restructuring plan of Banca Monte dei Paschi di Siena, Commission decision of 4 July 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47677.

[139] Case SA.49275 Sale of Novo Banco with additional aid in the in the context of the 2014 Resolution of Banco Espírito Santo, S.A., Commission decision of 11 October 2017, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49275.

[140] Case SA.39250 *Monitoring of Banco Espirito Santo*, Commission decision of 3 August 2014, available at http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39250.

[141] The reference period is 1 January 1999 to 31 December 2017.

Recovery decisions adopted in 2017	6
Amount recovered in 2017 (EUR million)	261.4
Pending recovery cases on 31 December 2017	44

Specific objective 11: Monitoring of aid measures

It is essential for the Commission to verify that Member States apply State aid rules for the schemes correctly and that they only grant aid when all required conditions are met. To this end, the Commission introduced in 2006 a regular, ex post, sample-based control of existing aid schemes ("monitoring"). Building on the Court of Auditors recommendations[142], the Commission has substantially increased the size of the monitoring sample in the last three annual cycles to more than 50 schemes per year. It also extended the scope of its control.

The 2017 cycle covered most Member States[143] and all main types of aid approved as well as block-exempted schemes. Furthermore, the sample included block-exempted schemes implemented under the GBER[144]. Also, the Commission continued on targeted monitoring where it examined whether Member States correctly applied the criterion on the incentive effect.

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

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

To facilitate the implementation of SAM, the Commission supports Member States in various ways in the framework of a multilateral partnership. The Working Group on SAM implementation (SAM WG) is a forum for Member States to exchange best practices on their systems for State aid control, creating an effective network for the informal discussion of State aid issues among Member States and with the Commission. Other dedicated working groups or workshops deal with specific aspects of SAM implementation, in particular the new requirements for transparency and evaluation or issues related to State aid to infrastructure. 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 2017, under the Chair of France, and addressed several policy and compliance issues related to SAM implementation. It reported on the main topics discussed in the Working Group during the past year and on the follow-up to recommendations from past Chairs (Finland, Sweden and the United Kingdom) to the HLF held on 28 June, in Brussels. On this occasion it was agreed to extend the mandate of the Working Group in order to include issues related to the interpretation and implementation of State aid rules, in addition to national practices for complying with these rules. The HLF also endorsed the work plan submitted by the Chair for the period 2017-2018.

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142 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.

143 Except Cyprus and Estonia.

144 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.

In 2017, the Commission also continued its bilateral cooperation with certain Member States. Launched in 2015, the overall objective of this process is to achieve both good State aid policy and effective State aid control at the national level. Three structured cooperation processes are on-going with Italy, Bulgaria and Romania. Based on practical work programmes, these cooperation processes are dealing with governance issues, issues concerning State-owned enterprises, as well as cases in problematic sectors. More tailor-made bilateral cooperation has been developed with nine Member States (Belgium, Croatia, Greece, Hungary, the Netherlands, Poland, Portugal, Slovenia and Spain), with a view to addressing country-specific compliance and implementation issues. Work is on-going towards deepening cooperation with additional Member States.

State Aid Modernisation and transparency

The SAM transparency provisions require Member States to publish information about the beneficiaries of aid awards above EUR 500 000[145]. Member States have six months starting from the date of granting to provide the required data, with the exception of awards in the form of fiscal aid for which the information needs to be provided within one year from the date of granting. The Commission services facilitated compliance with this requirement by developing, in cooperation with Member States, the Transparency Award Module – an informatics tool for submission and publication of data required under the transparency provisions.[146] By the end of October 2017, 24 Member States had joined the Transparency Award Module, and approximately 15 000 aid grantings had been published by 22 Member States.

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

The Commissuion 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 the area of competition policy is defined as a Commission priority.[147]

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

In 2017, 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 and input.

In 2017, 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 European Parliament's resolution on the Commission's Report on Competition Policy 2015 and its second Special Committee on Taxes, the European Parliament, the European Economic and Social Committee and European Committee of Regions in connection with its Report on the Commission's Report on Competition Policy 2016 and the European Central Bank taking part in conferences and workshops.

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[145] For further information see the Competition Policy Brief 4/2016 available at http://ec.europa.eu/competition/publications/cpb/2016/2016_004_en.pdf.

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

[147] Mission Letter by President Juncker to Commissioner Vestager.

Specific objective 14: Explaining competition policy and its benefits

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

In 2017, DG Competition continued its advocacy efforts aimed at demonstrating the benefits of competition to citizens as well as stakeholders and explaining to businesses and Member States the economic and legal approach used by DG Competition when taking decisions. DG Competition published the second edition of *EU competition policy in action – COMP in Action*[148]*,* which was selected as the key publication for DG Competition*.*

DG Competition has twice conducted *Flash Eurobarometer* Survey *– Citizens' Perception about Competition Policy*[149]. The results of the survey benefit competition advocacy efforts by the Commission and the national competition authorities. DG Competition plans to repeat the survey again in 2018.

As every year[150], DG Competition presented its 2016 Report on Competition Policy to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, and engaged in a structured dialogue with the institutions. DG Competition engaged with the European Parliament, in particular the Economic and Monetary Affairs Committee (ECON), on a multitude of topics and strived to provide timely and effective replies to parliamentary questions.

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

As world markets continue to integrate and more and more companies rely on global value chains, competition agencies need to agree on common standards and procedures more than ever before. Effectively enforcing competition rules depends to an increasing extent on co-operation with other enforcers. When the business practices of a company harm competition in different countries and continents, fair and level market conditions can only be restored if the authorities involved cooperate closely.

The Commission is at the forefront of international cooperation in the competition field, both on the multilateral and bilateral levels. In 2001, the Commission was among the founding members of the International Competition Network, which now counts more than 130 members. The Commission is also active in all international fora devoted to competition policy, including the OECD, UNCTAD, the WTO, and the World Bank. Director-General Laitenberger is a member of the Bureau of the the OECD Competition Committee and of the Steering Committee of the International Competition Network.

At bilateral level, the Commission negotiates Free Trade Agreements, which include competition and State aid provisions. In 2017, the Commission provisionally concluded

[148] EU competition policy in action, *COMP in Action (2017)*, available at http://ec.europa.eu/competition/publications/comp_in_action/index.html.

[149] 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.

[150] Since 1971.

its negotiations with Japan, and continued negotiations with Mexico, Mercosur and Indonesia. The Commission opened negotiations with Chile and Azerbaijan. Moreover, the Commission engages in a wide range of cooperation activities with competition authorities in a number of third countries, on the basis of agreements or memoranda of understanding.

In 2017, the Commission signed a Memorandum of Understanding with China's National Development and Reform Commission, starting a dialogue with China on State aid control. The EU-China State aid cooperation dialogue will support EU's and China's mutual interests and joint work to promote fair global competition.

DG Competition's international activities are part of the Commission's broader strategy to foster a global competition culture, as well as to promote global markets where companies compete on the merits. The Commission is active in the WTO to prevent countries from granting anti-competitive subsidies. Moreover, the Commission has created a dedicated forum with EU Member States to raise awareness about international subsidy policies and to exchange views on ongoing developments in this field.

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

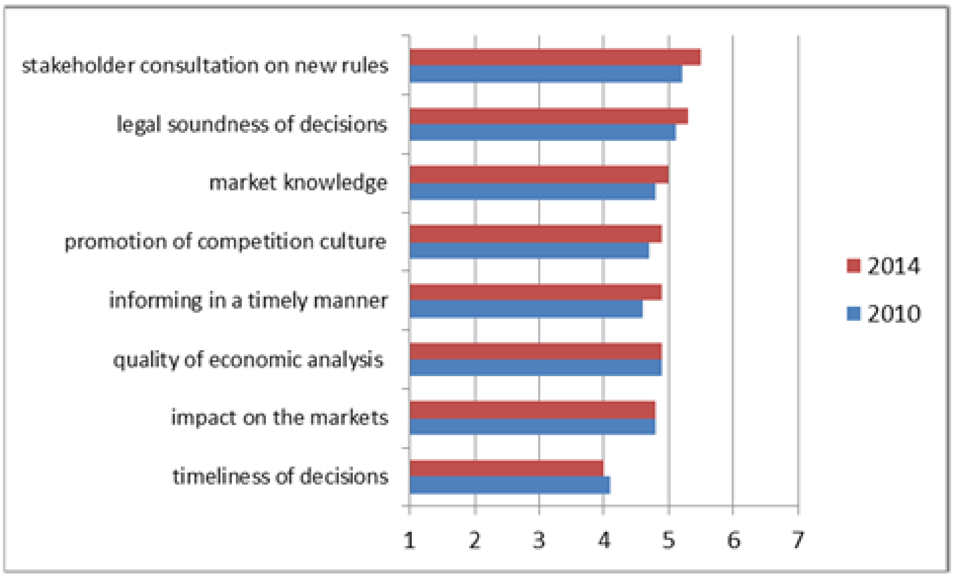
Competition policy enforcement of the highest standard is necessary to fulfil the above-mentioned general and operational objectives. Fair, impartial, efficient and transparent enforcement of the competition rules strengthens the EU's ability to deliver results with respect to consumer welfare, efficient markets, growth and advocacy.

DG Competition adheres to the highest standards of professionalism, intellectual rigour and integrity to ensure the highest standards in the enforcement of competition policy. In 2017, DG Competition continued to implement its Smarter Working Initiatives action plan, identifying additional efficiencies and synergies and making DG Competition a better workplace.

According to an earlier Eurobarometer Standard Qualitative survey related to DG Competition's work[151], conducted among professional stakeholders on certain key quality parameters[152], 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 plans to conduct the survey again in 2018.

[151] 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.

[152] 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).


stakeholder consultation on new rules
legal soundness of decisions
market knowledge
promotion of competition culture
informing in a timely manner
quality of economic analysis
impact on the markets
timeliness of decisions
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2014
2010

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 issued by the Accounting Officer;
- the observations, recommendations and limited conclusions issued 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. 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.

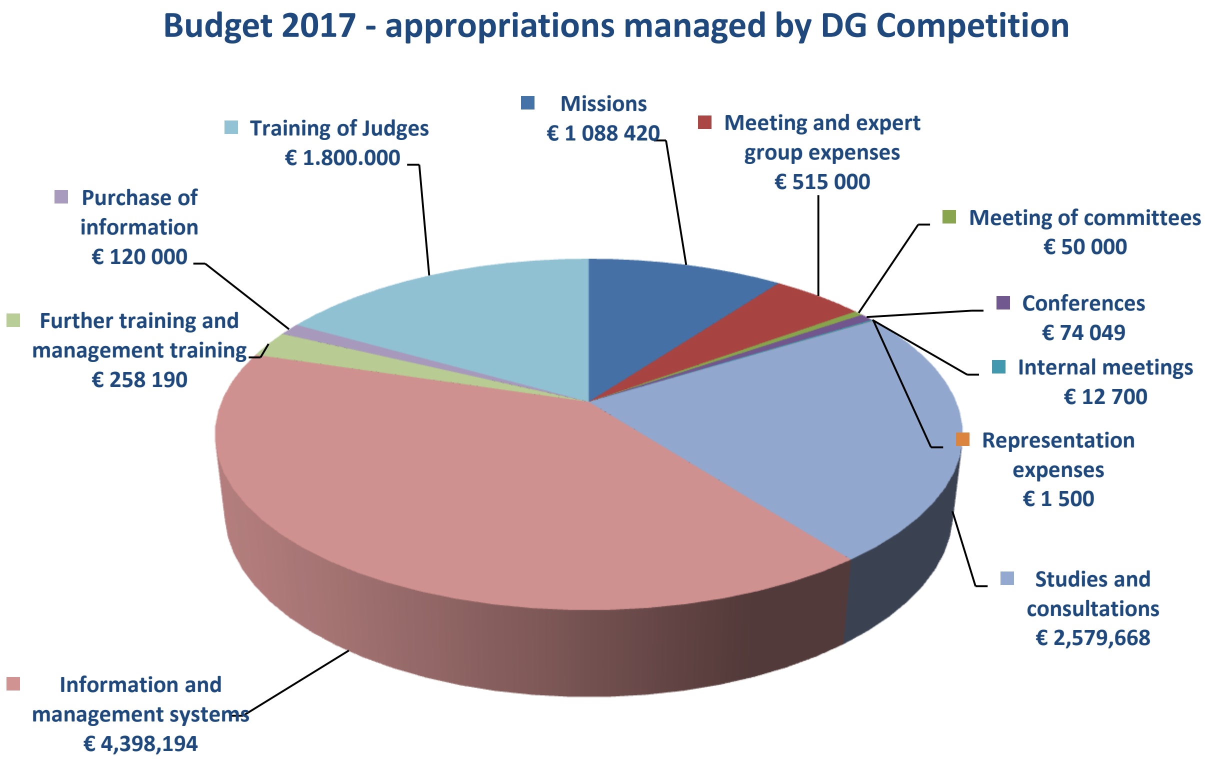
2.1.1 Control results

This section reports and assesses the elements identified by management that support the assurance on the achievement of the internal control objectives[153]. The DG's assurance building and materiality criteria are outlined in the AAR Annex 4. Annex 5

[153] 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 programmes as well as the nature of the payments (FR Art 32).

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 procedural (case-handling) and advocacy activities. DG Competition manages a relatively modest administrative budget (EUR 8,68 million in 2017)[154] under direct centralised management. 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 1,8 million) – Training of Judges – by co-delegation from DG Justice and purchase on-line information (EUR 120 000) by co-delegation from DG Communication. In addition, DG Competition receives by co-delegation a budget of EUR 50 000 from DG AGRI, EUR 100 000 from DG MARE and EUR 150 000 from DG TRADE as a contribution to the corporate IT-project CASE@EC. The total budget managed by DG Competition therefore amounts EUR 10,9 million.[155] Financial management is therefore not a major activity in DG Competition's operations (see graph of the total budget for 2017).



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 implementation of the Budget. 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

[154] This amount reflects DG COMP's global envelope and OLAF's contribution for CASE@EC (through a recovery order).

[155] Appropriations cross sub-delegated to DG Competition are reported directly to the Directorate-Generals concerned, i.e. DG DIGIT (ISA2 – EUR 2,77 million), DG BUDG (CASE@EC – EUR 97 212) and DG Communication (Publication – EUR 17 700).

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:

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, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

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

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 107 800[156]. All corrections take place before the actual payment is made (ex-ante), and there are no errors left at the moment of payment. Nonetheless, to calculate the error rate, DG COMP has taken a most conservative approach and estimates the average error rate at 0.5%.

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

In 2017, six procurement procedures were subject to a supervisory desk review by the local Advisory Committee for Procurements and Contracts, prior to the signature of the contract. Furthermore, a representative (40% of the value of the financial transaction) sample of the financial transactions of DG Competition was subject to an ex-post control. None of these controls unveiled significant errors.

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

Conclusion

Taking into account the conclusions of the review of the elements supporting assurance, it is possible to conclude that the internal controls systems implemented by DG COMP provide sufficient assurance to adequately manage the risks relating to the legality and regularity of the underlying transactions. Furthermore, it is also possible to conclude that

[156] This amount represents 2% of payments made in 2017 (EUR 5,39 million).

the internal control systems provide sufficient assurance with regards to the achievement of the other internal control objectives.

In the context of the protection of the EU budget, at the Commission's corporate level, the DGs' estimated overall amounts at risk and their estimated future corrections are consolidated. For DG Competition, the estimated overall amount at risk *at payment*[157] for 2017 expenditure is EUR 26 600. This is the AOD's best, conservative estimation of the amount of relevant expenditure[158] (EUR 5,32 million) during the year 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 with significant impact was found. The difference between those two amounts leads to the estimated overall amount at risk at closure to close to zero.

Estimated overall amount at risk at closure

DG Competition	Payments made (m€)	*minus* new prefinancing (m€)	*plus* cleared prefinancing (m€)	**relevant expenditure** (m€) = (2) – (3) + (4)	Average Error Rate (%)	estimated overall amount at risk *at payment* (€) = (5) x (6)	Average Recoveries and Corrections (*adjusted* **ARC**; %)	estimated future corrections (€) = (5) x (8)	**estimated overall amount at risk *at closure* (€)** = (7) – (9)
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8)*	*(9)*	*(10)*
Administrative expenditures	5.01	N/A	N/A	5.01	0.5%	25 050	*0*	0	25 050
Grant program – Training of Judges	0.38	0.29	0.22	0.31	0.5%	1 550	0	0	1 550
Overall, total	5.39	0.29	0.22	5.32	0.5%	26 600	0	0	26 600

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

[157] In order to calculate the weighted average error rate (AER) for the total *relevant expenditure* in the reporting year, the *detected*, estimated or other equivalent error rates have been used.

[158] "*relevant expenditure*" during the year = payments made, minus new pre-financing paid out [plus retentions made by the Cohesion family DGs], plus previously paid pre-financing which was cleared in the reporting year [minus retentions released or (partially) withheld by the Cohesion family DGs)].

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-eyes" 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 185 900 (EUR 143.000 for ex-ante controls and EUR 42 900 for ex-post controls) or equivalent to 3.44% of total expenditure. The slight difference from last year (3% of total expenditure) comes from the lower total value of the payments made in 2017 (EUR 5.39 million comparing to EUR 7,84 million in 2016), while the number of operations is comparable.

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.

In 2017, all planned procurements were approved by senior management as being in line with the DG's objectives and priorities. One payment was reduced due to the contractor's failure to fully deliver the services in accordance with the contractual requirements. 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 2017 was less than 20 days, which is in line with the average payment delay in 2016. Furthermore, more than 95% of all payments were executed within the contractual limit, which is slighthy higher than in 2016 (94%). The average registration delay for an invoice was 1.33 days, which is below the Commission's target of five days and much lower than the average registration delay in 2016 (4.5 days). The time to inform beneficiaries in 2017 was 227 days, and the average time to grant was 314 days, (344 days in 2016). The main reason for the delay in signing the grant agreements was outside the control of DG Competition: the forward budget included in the application contained clerical errors and inaccuracies and it took a long time to the beneficiaries to submit a correct version of the budget.

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

Conclusion

The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance of sound financial management, in particular, as the prevention of potential errors in procurement procedures is less expensive than costs of potential litigations and/or legal proceedings. 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

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 the Security Guidelines. It takes into account the DG's relatively limited administrative budget and absence of operational budget.

The revision of the DG's Anti-Fraud Strategy started in 2017 but was not finalized due to the ongoing review by OLAF of the Commission's Anti-Fraud Strategy, which serves as a basis for DG-level strategies. Moreover, the adoption of a new DG COMP Code on Deontology and Anti-Fraud was postponed awaiting the new decision on Outside Activities and Assignments by DG HR as well as the results of the pilot phase of the Synergies and Efficiencies project in the HR domain. Therefore, a thorough review is foreseen in 2018 in view of drafting a new version of the Strategy, together with the adoption of the new Code on Deontology and Anti-Fraud.

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.

Conclusion

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

Safeguarding of information

In 2017, DG Competition had 10 cases of inadvertent disclosures of confidential information. These incidents were considered to be non-critical to its operations and thereby having no impact on the assurance. Yearly report was made to the Commissioner for Competition on the information security incidents (including risk assessments, recommendations and their follow-up). Nine recommendations triggered specific follow-up actions, seven of which concerned updates to DG Competition's Manuals of Procedure or reminders about existing rules or best practices and the two others IT matters.

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.

IAS audit on financial management of procurement contracts and grants in DG COMP (2017)

In 2017, the Commission's Internal Audit Service (IAS) conducted an audit on Financial Management of Procurement Contracts and Grants in DG Competition. The scope of the audit was to assess the adequacy of DG Competition's management of grants, procurement and the related financial transactions. In particular, IAS reviewed the design and implementation of the controls in place, to assess whether they ensure the legality and regularity of the financial procedures and transactions and whether they are effective and efficient. IAS concluded that DG Competition's management of grants, procurement and the related financial transactions complies with the applicable rules and regulations. Furthermore, DG Competition manages calls for proposals and tenders effectively and has adequate controls in place to review, report and monitor the expected results.

IAS underlined several strengths in the system, such as the Financial Team's strong support to the operational units both for procurement and for grants and strong ex-post control strategy and reporting in place, with a combination of risk-based and random sampling, and a clear description of the control approach and of the test results.

The opinion issued by the IAS was that the internal control system in place in DG Competition provides reasonable assurance regarding the achievement of the business objectives set up for procurement and grants and their financial management. There were no audit findings, thus no recommendations.

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

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

IAS underlined a number of strengths in the system: DG Competition effectively and proactively manages relations with the key actors in the Member States (timely replies to national competition authorities and courts as well as up to 100% compliance rates with the provided opinions, amicus curie briefs, information and comments) and facilitates networks aimed at sharing knowledge beyond the formal obligations under Regulation 1/2003, which has been viewed positively by the main stakeholders.

However, IAS concluded that the Commission has not received complete information from some Member States on the content of the national judgments related to the enforcement of EU antitrust law, as required by Regulation 1/2003. Therefore, the very important recommendation concerns the cooperation with the national courts and the limited flow of information from the Member States to the Commission. To improve cooperation with national courts, DG Competition should assess and take appropriate steps to ensure that it receives national judgments. The audit also found that periodic reconciling by the national competition authorities of their data base with ECN2 should take place, they should receive a confirmation on the completeness and reliability of the communications under Article 11(3) and a formal procedure for the review of the cases communicated under Article 11(3) of Regulation 1/2003 be defined. The Commission could also reflect on the objectives and the specific goals of the ECN working groups. In response to the audit findings by IAS, the corresponding action plan was agreed with IAS in 2017 and is being implemented.

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

Furthermore, DG Competition followed-up on the IAS audit on the Management of Local IT (2015), aiming to analyse and evaluate DG Competition's 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, the latter due to a lack of an operational budget).

The agreed action plan of the Local IT Audit foresaw 10 recommendations. In 2017, the IAS closed the eight recommendations that were completed in 2016.

Moreover, the implementation of the actions of the two remaining recommendations was completed as planned in 2017 and proposed for review and closure. They concerned:

- One "important" recommendation with respect to project management and quality assurance[159];
- One "very important" recommendation with respect to the implementation of the recommendations of the security gap analysis.

Follow-up to IAS audit on knowledge management in DG COMP (2015)

In line with the IAS 2017 audit plan, IAS performed a second follow-up of the audit on Knowledge Management in DG Competition in 2017. Based on the results of this second follow-up, IAS assessed that the two remaining recommendations addressed to DG Competition had been adequately and effectively implemented and, consequently, were closed. No further recommendations remain to be followed up.

Follow-up to ECA audit on compliance with State aid rules in ESIF operations (2016)

In a Special Report on compliance with State aid rules in ESIF operations[160], the European Court of Auditors (ECA) 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 has continued to implement the recommendations formulated by ECA. A cooperation channel was established between DG REGIO auditors and DG COMP ex post - monitoring team to ensure efficient exchange of information and to facilitate forthcoming access to the relevant information on State aid irregularities contained in DG REGIO's MAPAR and IMS databases (ECA recommendation a) addressed to DG REGIO).

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

The Internal Auditor concludes that the internal control systems audited are effective.

2.1.3 Assessment of the effectiveness of the internal control systems

The Commission has adopted an Internal Control Framework based on international good practice, aimed to ensure the achievement of policy and operational objectives. In addition, as regards financial management, compliance with the internal control framework is a compulsory requirement. The Internal Control Framework (ICF) of DG Competition, adopted in December 2017, will be applicable as of 1 January 2018.

During 2017, DG Competition progressed as planned with the transition towards the new IC Principles of the ICF: The new internal control monitoring criteria were defined in the Management Plan 2018, and the Director/HoU in charge of risk management and internal control was appointed in December 2017.

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

[159] During 2017, the IAS agreed to reclassify this recommendation as "important" instead of "very important".

[160] 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.

for DG Competition. In view of its limited budget, 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.

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 system during the reporting year and has concluded that the internal control standards are implemented and functioning as intended and have no impact on the assurance.

2.1.4 Conclusions as regards assurance

This section reviews the assessment of the elements reported above (in Sections 2.1.2 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 the management and auditors monitoring. The reports result from a systematic analysis of the evidence available. This approach provides sufficient guarantees as to the completeness and reliability of the information reported and results in a complete coverage of the budget delegated to the Director-General of DG Competition.

The intrinsic risk for administrative expenditure managed by DG Competition, including procurement and grants, is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place. The Authorising Officer by Delegation's best estimation of the risks relating to the legality and regularity for the expenditure authorised during the reporting year (EUR 5.39 million) is below 0.5%.

Further assurance is obtained by the risk management process put in place, and the very limited number of significant exceptions and non-compliance events reported in 2017. 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 view[161]*.*

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 the observations of the Internal Audit Service 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 Commission.

Brussels, 27 March 2018

(signed)

Johannes Laitenberger

[161] True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG/Executive Agency.

2.2 Other organisational management dimensions

2.2.1 Human resource management

In a human resource management (HRM) environment characterised by a reform of the HR service delivery model in the Commission, DG Competition continued in 2017 its effort to build a sustainable and balanced workforce. The main HRM outputs linked to specific indicators are listed in Annex 2.

In line with the Strategic HR Plan, the Management Plan and the annual Risk Register of DG Competition, the main HRM challenges were related to: (1) attracting and retaining high-quality staff, (2) developing a balanced workplace, (3) ensuring a solid learning and development agenda for executive and non-executive staff, and (4) strengthening internal communication on HRM. The HRM policies and processes to meet all four of these challenges were incorporated into the Action Plan drawn up in the framework of the Smarter Working Initiative of DG Competition.

The e-survey on the 10 DOs for people management, launched in spring 2017, revealed that staff members are convinced that the 10 DOs are relevant for their working environment, but even more important, the majority of staff members are of the opinion that the 10 DOs are well implemented. A DG Competition Management Seminar was organised on 6 June 2017 to discuss the outcome of the e-survey as well as the results of the 180° feedback development exercise for managers. Based on the combined experiences from the previous rounds with middle and senior managers, the 180° feedback development exercise was also launched for 28 Deputy Heads of Unit in spring 2017.

To reinforce the already strong career guidance offer in DG Competition, a pool of experienced managers (senior and middle managers) was created in 2016. In 2017, 6 Directors, 10 Heads of Unit and 1 Advisor were available to provide career guidance to all categories of staff (upon request). For this purpose, a guide on 'Tips & Tricks for Managers' was elaborated and made available to all managers. A brochure on careers and mobility in DG Competition is distributed as part of the welcome pack to every newcomer.

When comparing staff movements from and to other DGs and institutions at the end of 2017, DG Competition's external mobility deficit is at -22 with 64 officials leaving and 42 officials joining. It should be noted that 6 officials left the DG in the framework of the Synergies and Efficiencies exercises for HR services. When also taking into account temporary agents, external recruitments and staff leaving the EU institutions, the external mobility deficit decreases to -6, with 88 staff members leaving and 82 persons joining the DG, of which 40 through external recruitments.

In terms of work profile, the percentage of staff that belong to the "Law monitoring and enforcement" profile increased further to 78.9%, in line with DG Competition's core business and mandate. This underscores the strong link between the DG's capacity to operate successfully and the availability of staff with this profile. Meanwhile, the share of staff in the "Administrative support" profile declined further to a total of 1.8%, which results from the DG's contribution to the Synergies and Efficiencies exercise for HR and Logistic services.

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

Thanks to the DG's comprehensive approach, 1 first appointment of a female head of unit was made at the beginning of 2017. In addition, 3 female managers joined DG

Competition in 2017 in the framework of the 2016 and 2017 Inter-DG Middle Management Mobility Exercises. Hence, female representation in middle management rose to 38.6% (compared to 35% at the end of 2016). In view of the demography of the DG and the predominance of women in the lower and middle AD grades (with an average of 46.4% in all AD grades and 42.9% among deputy heads of unit), the perspective of nominating two other female heads of unit by November 2019 is a realistic perspective for the DG. In order to meet this challenge, every management appointment will have to be carefully weighed and women have to be actively encouraged to apply for middle management positions.

DG Competition made continuous efforts to improve internal communication. The Internal Communication Strategy and Action plan for 2017-2019 focused on ensuring a smooth flow of information at all levels (top-down, bottom-up and horizontal), improving staff understanding of the Commission and DG Competition's policy priorities, and helping colleagues see the connection between their jobs and those priorities. The all staff COMP Day Out, organised in September 2017 was an opportunity to reinforce this message.

The Internal Communication Survey conducted at the beginning of 2017 gave us important insights on how to further improve our communication tools and make internal communication flows as efficient as possible.

2.2.2 Better regulation (only for DGs managing regulatory acquis)

In 2017, DG Competition finalised a number of studies that can help to further improve policy making and working practices, including studies on: (1) the microeconomic impact of enforcement of competition policies on innovation, (2) the ex-post assessment of the impact of State aid on competition, (3) the subsidy disclosure practices in EU Member States, (4) the economic impact of competition policy enforcement on the functioning of telecoms markets in the EU, (5) the monitoring indicators system to support DG Competition's future policy assessments and (6) the training of judges in EU competition law. In addition, DG Competition continued with the calculation of customer benefits from antitrust (cartels) and merger enforcement,[162] and with the evaluation of selected procedural and jurisdictional aspects of EU merger control. Furthermore, in 2017 the Commission adopted the impact assessment accompanying the 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.[163]

2.2.3 Information management aspects

Competition enforcement is evidence-based and electronic documents have become one of the most important sources of evidence. Information systems contribute to a secure, efficient and integrated management of competition cases and constitute essential support functions for the daily operations of DG Competition.

In 2017, DG Competition purchased a commercial Case Management Framework product and put a team in place, in order to configure, develop and further customize the product which will become the common case management system (CASE@EC) for the six Commission services currently participating in the project[164]. In addition, DG Competition

[162] See for example the publication of those results in the Annual Competition Report 2016 available at https://publications.europa.eu/en/publication-detail/-/publication/b046238b-98f7-11e7-b92d-01aa75ed71a1.

[163] See SWD(2017) 114 final, 22 March 2017 available at http://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-114-F1-EN-MAIN-PART-1.PDF and http://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-114-F1-EN-MAIN-PART-2.PDF.

[164] DGs AGRI, BUDG, MARE, OLAF, TRADE and COMP.

developed the 'Knowledge Base' to further improve the DG's knowledge management capabilities by enabling powerful search from a single interface across various information sources, including its information-sharing tool 'COMPWiki'.[165] This tool was widely used by DG Competition staff in 2017. On average, COMPWiki had 20,000 page views every month. Some 80% of DG Competition staff with access to COMPWiki connected to it at least once per month, and around 75% of DG Competition senior and middle managers connected to COMPWiki at least once per month. Twelve percent of COMPWiki users contributed directly to updating the tool, either by creating new pages or by updating existing pages.

All units continued to regularly use the DG Competition's collaborative tools such as the COMP Collaborative Platform and eDiscovery. Major new functionalities were added to the eDiscovery software to help staff to easier find and manage evidence in growing case files.[166]

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, as well as to Member States. This not only helps to build political support for our work, and that of the EU in general, but also contributes to increased legal certainty and compliance in the areas of antitrust and cartels, mergers and State aid. DG Competition closely supported the work of the Commission Spokesperson's Service with mass media.

In 2017, DG Competition participated in the European Commission Open Doors event at the Berlaymont, with a total budget of EUR 20,000. Approximately 8,000 visitors visited the DG Competition stand. DG Competition launched a new outreach activity in November through its website, and published the "COMP in Action publication" at a cost of EUR 5,000.[167] Stakeholders were encouraged to invite speakers from DG Competition to explain how competition policy benefits society as a whole, and how competition policy can help them. DG Competition also increased its social media activity in 2017, via Twitter.[168]

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 2017, DG Competition continued its implementation work of the overarching Smarter Working Initiative.

Following its own E-survey (2015) and Commission Staff Survey (2016), this ongoing DG Competition initiative engages all staff in identifying further sources of efficiencies and synergies as well as ways in making DG Competition a better work place. By the end of 2017, further actions were taken in the following areas: making the best use of resources in a matrix structure, including increasing project-based internal mobility via décloisonnements; becoming ever clearer in communication; further clarifying the roles and best practices working with the coordination units, the Chief Economist Team, and Legal Service; as well as continuing to foster the development and engagement of the

[165] At the time of writing, selected DG COMP staff is testing the Knowledge Base for final release to the entire DG.
[166] The volume of processed and indexed documents has substantially increased reaching approximately 14 million documents. The new eDiscovery version is being tested by selected case teams ahead for its final release to the entire DG.
[167] This cost was borne by DG COMM.
[168] In 2017, DG Competition published 1067 tweets, and had 9800 followers.

staff and management in DG Competition (e.g. all-management seminar of 6 June; all-staff away day of 25 September); the renewal of key management principles to further improve the Directorate-General's managerial culture and provide a solid basis for rising job satisfaction in DG Competition.

In 2018, work in the areas mentioned above will continue and the impact of the measures already taken may be assessed in the forthcoming Commission Staff Survey 2018.

Analysis of financial circuits

As an example of an initiative to improve economy and efficiency of its financial activities, DG Competition continued the analysis of its financial circuits in 2017 in order to assess the functioning of the internal control system. It is considering in particular 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 still ongoing and will be finalised in 2018.