



2015

Annual Activity Report

DG Competition



Foreword by Johannes Laitenberger, Director-General

2015 marks the first full year of the new Commission whose mandate was outlined on 15 July 2014 in the President's Political Guidelines. The Political Guidelines sets a new Agenda for Jobs, Growth, Fairness and Democratic Change.

EU competition policy supports several EU policies such as the digital agenda, energy policy, financial services policy, internal market policy as well as the fight against tax evasion and tax avoidance. It does so mainly through enforcement actions, i.e. fighting and preventing cartels, abuses of dominant positions and anticompetitive mergers as well as by facilitating better targeted growth-enhancing State aid. By mobilising its knowledge of key markets DG Competition can also share its expertise with other Commission's services in support of the top priorities outlined in the Political Guidelines.

In 2015, DG Competition's enforcement actions targeted sectors and areas that are relevant for the Commission's priorities as outlined in the Political Guidelines. Energy is one of the sectors in which completing the Single Market will bring significant benefits to Europe's consumers and businesses. Building an Energy Union based on energy efficiency, security of supply and sustainability requires investment in and development of energy infrastructure. In 2015, the Commission launched a sector inquiry which will contribute to the Commission's legislative proposal on electricity market design under the EU's Energy Union Strategy.

Creating a connected Digital Single Market aims to make Europe a world leader in information and communication technology, areas which increasingly occupy DG Competition and engage its staff in continuously keeping up with rapid developments in these fields. The more the integration of the Digital Single Market progresses, the greater the need for EU competition rules to ensure a fair level-playing field for all companies offering their goods and services on-line and in digital form across the EU. Through recent and substantial enforcement work, including the launch of the e-commerce sector inquiry, DG Competition is contributing to the Digital Single Market priority set out in the Political Guidelines.

Financial services are an area in which competition policy has made a significant positive contribution over the past years. Due to its systemic importance and its role in providing access to finance to the real economy, DG Competition remained active in the financial services sector. 2015 has been an important year for this market, with the adoption and entry into force of a legislative "payment package". These new rules will profoundly change the way payment providers can operate in the EU. In addition, DG Competition continued to play a role in the restructuring of banks in 2015.

A fully functioning Single Market requires that all market players – big or small, local or global – play by the rules. Therefore, also the fight against tax evasion and tax avoidance is one of the main priorities of the present Commission, and one of the most important initiatives to advance the completion of the EU Single Market. In 2015, competition policy played a key role in tackling this challenge.

Finally, in 2015 the Commission continued to give priority to cartel enforcement activity. As in preceding years, the Commission adopted cartel decisions in important sectors of the economy, such as the financial markets and the automotive industry.

Our enforcement and policy work in 2015 offered a significant contribution to the Commission's political priorities in 2015 and form a solid foundation for meeting the challenges ahead.

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INTRODUCTION

The DG in brief

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

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

"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.

...Mobilising competition policy tools and market expertise so that they contribute, as appropriate, to our jobs and growth agenda, including in areas such as the digital single market, energy policy, financial services, industrial policy and the fight against tax evasion. In this context, it will be important to keep developing an economic as well as a legal approach to the assessment of competition issues and to further develop market monitoring in support of the broader activities of the Commission."

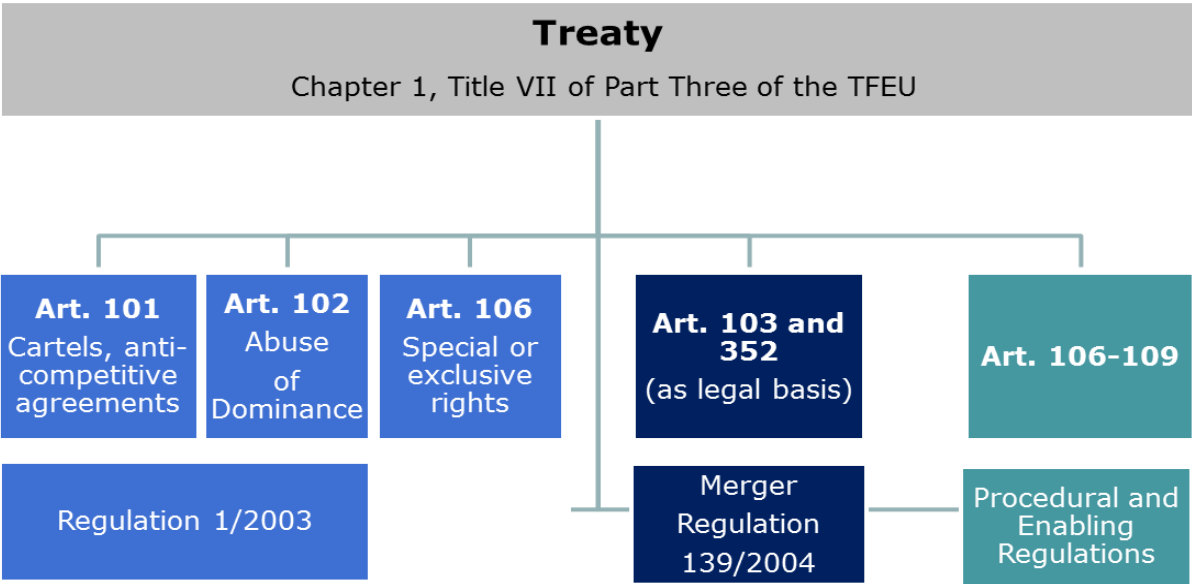


¹ Political Guidelines for the new European Commission as presented by President Juncker of 15 July 2014, http://ec.europa.eu/priorities/docs/pg_en.pdf#page=5

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

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

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



The Commission, together with the national competition authorities (NCAs) and with national courts, enforces EU competition rules based on Articles 101-109³ TFEU, to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits in the internal market. This benefits consumers, businesses and the European economy as a whole.

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

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

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".

DG Competition carries out its mission mainly by taking direct enforcement actions⁵ against companies or Member States when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies or governmental action which leads to a distortion of competition in the internal market by providing some companies undue advantages over others⁶. EU merger control⁷ aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner and preventing the emergence of market structures which impede effective competition or result in the deterioration of market structures where competition is already less effective. Finally, EU competition policy encourages granting of better targeted aid that addresses market failure or equity objectives⁸. Such aid has a beneficial impact on competitiveness, employment and growth, and thus on the welfare of the society as a whole.

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

DG Competition is comprised of ten Directorates. Five of these, the so-called "Markets and Cases Directorates", have a sectorial focus:

- Energy and environment;
- Information, communication and media;
- Financial services;
- Basic industries, manufacturing and agriculture; and
- Transport, post and other services.

Each of these sectorial Directorates is comprised of units specialising in the application of the main competition enforcement instruments (antitrust⁹, merger control¹⁰ and State aid control¹¹, respectively) to the given sector. This results in a matrix structure 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.

⁵ The Commission may adopt a prohibition decision, prohibiting the anti-competitive conduct and impose fines on the company (ies) or prohibit incompatible State aid by a Member State and order recovery of unlawfully granted incompatible aid. It may also adopt a commitment decision rendering commitments offered by the companies to address the Commission's competition concerns legally binding in antitrust proceedings, approve a merger transaction subject to legally binding commitments offered by the companies or impose conditions on the Member State with regard to the aid measure.

⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1-25.

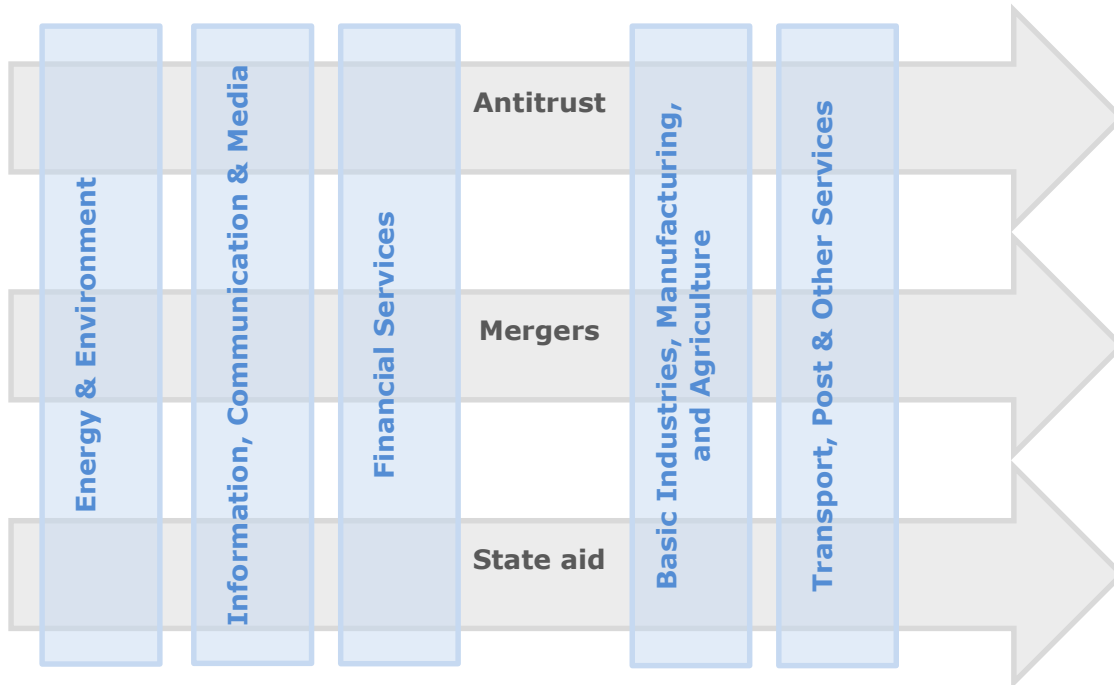
⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1-22.

⁸ Council Regulation (EU) No 733/2013, of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, OJ L 204, 31.7.2013, p. 11-14; for the State Aid Modernisation see also http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

⁹ Around 19% of DG Competition's working time goes to antitrust enforcement and around 9% to cartel enforcement (DG Competition calculation).

¹⁰ Around 21% of DG Competition's working time is spent on merger control (ibid).

¹¹ Almost 21% of DG Competition's working time is spent on State aid control (ibid).



A separate Directorate (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, such as those relating to: regional aid, R&D&I aid, risk finance aid, environmental aid, SME aid, employment aid, most areas of infrastructure aid, disaster aid and fiscal aid. It is also in charge of enforcing recovery decisions, cooperation with national courts in State aid and coordinating monitoring. Directorate H also includes a Task Force on Tax Planning Practices.

Directorate A is in charge of policy for all competition enforcement instruments, as well as of the European Competition Network, private enforcement and international relations¹².

Directorate R is responsible for document management, human and financial resources management, IT and the management of issues related to security, ethics and business continuity. Competition enforcement is a highly digitalised activity. Key business processes as well as exchanges with various stakeholders are supported by dedicated information systems. Against this background, sustained and continued investment in information technology is essential for DG Competition.

The Chief Economist and his team, provides support in terms of economic analysis for individual competition cases and DG Competition policy developments. He 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 (802 staff members on 31.12.2015) and its legal powers. It has no operational budget.

¹² Around 18% of DG Competition's working time goes to policy (ibid).

The year in brief

2015 marked a year with effective enforcement and policy actions including sectors and areas most relevant for the Commission's priorities as outlined in the President's Political Guidelines¹³. All competition enforcement instruments were applied in support of better functioning of the Single Market, aiming at ensuring that all companies can compete on equal terms across Europe.

Antitrust enforcement deterred and sanctioned the artificial fragmentation of the internal market. Important enforcement decisions were taken in sectors of strategic importance such as financial services, telecoms, the digital economy, energy, taxation and transport. Five cartel prohibition decisions were adopted with fines totalling approximately EUR 365 million as well as two antitrust decisions. Moreover, 318¹⁴ merger decisions and 691 State aid cases were concluded.

In 2015, DG Competition continued to work on the implementation of the State Aid Modernisation reform¹⁵ and the guidance on notion of aid. In the energy sector, the Commission launched a State aid sector inquiry into existing and planned capacity mechanisms measures taken by the Member States. During 2015, DG Competition continued its work into Member States' tax planning practices by concluding two investigations opened in 2014 and by opening two new in-depth investigations in 2015.

In the field of antitrust policy, the Commission launched a sector inquiry into the e-commerce sector¹⁶. Following its *Communication on Ten Years of Regulation 1/2003*¹⁷, the Commission launched a public consultation on potential EU legislative action to further strengthen the enforcement and sanctioning tools of national competition authorities (NCAs) to be more effective enforcers¹⁸. Further, the Commission published a number of guidance documents relating to its procedures, for example, *Best Practices on the disclosure of information in data rooms*¹⁹ in proceedings under Articles 101 and 102 TFEU and under the EU Merger Regulation. The Commission adopted a guidance paper on the use of electronic document submissions²⁰ and provided guidance on public versions of decisions²¹ under Articles 7 to 10, 23 and 24 of Regulation 1/2003. Finally, the Commission adopted new *Guidelines on the application of EU antitrust rules to the agricultural sector*, more precisely on the application of the rules set out in Articles 169, 170 and 171 of Regulation 1308/2013 establishing a Common Market Organisation for agricultural products (CMO Regulation) for the olive oil, beef and veal, and arable crops sectors²².

¹³ Political Guidelines for the new European Commission as presented by President Juncker on 15 July 2014, http://ec.europa.eu/priorities/docs/pg_en.pdf#page=5

¹⁴ In two cases, the parties abandoned a transaction during the in-depth investigation (second phase). See output table for mergers on page 34.

¹⁵ For a comprehensive overview of the State Aid Modernisation Reform, see DG Competition webpage http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

¹⁶ IP/15/4921 of 6 May 2015, http://europa.eu/rapid/press-release_IP-15-4921_en.htm

¹⁷ Communication from the Commission of 9 July 2014, *Ten Years Of Antitrust Enforcement Under Regulation 1/2003: Achievements And Future Perspectives*, COM/2014/0453 http://ec.europa.eu/competition/antitrust/legislation/antitrust_enforcement_10_years_en.pdf

¹⁸ IP/15/5998 of 4 November 2015 http://europa.eu/rapid/press-release_IP-15-5998_en.htm

¹⁹ Commission guidance *Best Practices on the disclosure of information in data rooms*, http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf

²⁰ *Recommendations for the Use of Electronic Document Submissions in Antitrust and Cartel case Proceedings* http://ec.europa.eu/competition/contacts/electronic_documents_en.pdf

²¹ *Guidance on the preparation of public versions of Commission decisions*, http://ec.europa.eu/competition/antitrust/guidance_on_preparation_of_public_versions_antitrust_04_062015.pdf

²² Commission notice *Guidelines on the application of the specific rules set out in Articles 169, 170 and*

In the field of merger policy in 2015, following the adoption of the White Paper "*Towards more effective EU merger control*"²³ in 2014, DG Competition engaged in further discussions with stakeholders on how an effective system for the review of minority shareholdings could be designed. The Commission also provided *Guidance on the preparation of public versions of Commission Decisions*²⁴ and published a policy brief entitled "*Market definition in a globalised world*"²⁵, explaining how it determines the geographic area affected by a merger. Mindful of the potential benefits of cooperation in merger cases for merging parties and competition agencies in terms of reduction of burden and costs for merging parties and avoidance of potential inconsistent outcomes, the Commission has invested significantly over the years in achieving and enhancing cooperation with other competition agencies worldwide.

As regards senior management 2015 also saw a change of the Director-General for Competition in the appointment of Johannes Laitenberger²⁶ succeeding Alexander Italianer, who became the new Secretary-General.

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

171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors, OJ C 431, 22.12.2015, p. 1.

²³ White Paper "*Towards more effective EU merger control*", COM(2014) 449 final, http://ec.europa.eu/competition/consultations/2014_merger_control/mergers_white_paper_en.pdf

²⁴ Guidance on the preparation of public versions of Commission decisions, http://ec.europa.eu/competition/mergers/legislation/guidance_on_preparation_of_public_versions_mergers_26052015.pdf

²⁵ Commission policy brief *Market definition in a globalised world* (March 2015), http://ec.europa.eu/competition/publications/cpb/2015/002_en.pdf

²⁶ Handover note to Mr Laitenberger of 22 July 2015 (2015/072011) providing the new Director-General for Competition with necessary information on achievements against objectives in the Management Plan 2015, human resources, financial aspects and other operational and organisational aspects.

EXECUTIVE SUMMARY

The Annual Activity Report is a management report of the Director-General of DG Competition to the College of Commissioners. It is the main instrument of management accountability within the Commission and constitutes the basis on which the Commission takes its responsibility for the management of resources by reference to the objectives set in the management plan and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

The executive summary has four subsections:

- a) Policy highlights of the year (executive summary of section 1);
- b) The five most relevant Key Performance Indicators (5 KPIs) for the illustration of policy highlights identified in the DGs 2015 Management Plan;
- c) Key conclusions on Management and Internal control (executive summary of section 2); and
- d) Information to the Commissioner.

a) Policy highlights of the year (executive summary of section 1)

Effective competition policy keeps the markets level and open, which translates into lower prices, better quality and wider choices for EU consumers, as well as stimulating investment. Healthy competition enables companies to get fair opportunities to do business and to achieve their commercial goals, thereby fostering growth and creating jobs and prosperity²⁷. Competition policy therefore contributes to the Europe 2020 Strategy of the Commission for smart, sustainable and inclusive growth both directly, by its contribution to the smooth functioning of markets, and indirectly, by helping Member States improve the outcome on a number of markets of specific interest for the future of Europe.

In 2015, DG Competition continued to work on the remaining item of the State Aid Modernisation reform²⁸ – the guidance on notion of aid and engaged to develop a partnership with the Member States for the implementation of the reform. DG Competition was active in many sectors of the economy prioritised in the Europe 2020 Strategy of the Commission under all three instruments. Notably, the Commission assessed the energy sector (wholesale electricity market (Bulgarian Energy Holding (BEH)), investment in renewable energies (Germany, Croatia and Romania), public support for gas infrastructure projects (Poland), upstream gas supplies in central and eastern Europe (Gazprom); intellectual property and information technologies (ICT) (cross-border access to pay-tv content, search engines, baseband chipsets (Qualcomm), Optical Disc Drives, mobile operating systems, telecommunication markets); financial service sector (MasterCard, Yen interest rates derivatives); taxation (Fiat Finance and Trade/Luxembourg and Starbucks Manufacturing/the Netherlands, Belgian excess profit system, McDonalds/Luxembourg); transport (Baltic Rail transport, Sky Team alliance members, Blocktrains). In 2015, the Commission launched a State aid sector inquiry into existing and planned capacity mechanisms measures taken by the Member States.

In 2015, the number of Commission decisions and preliminary concerns (Statement of Objections and Preliminary Assessments) in the field of antitrust and cartel enforcement amounted to 21. In antitrust, two commitment decisions were adopted in the field of energy (Bulgarian Energy Holding (BEH)) and transport (SkyTeam alliance members Air France/KLM, Alitalia and Delta). The Commission also launched a sector inquiry into the e-commerce sector and a public consultation on potential EU legislative action to further strengthen the enforcement and sanctioning tools of national competition authorities (NCAs).

In 2015, the Commission took 318 final decisions in merger cases. In two cases, the parties abandoned a transaction during the in-depth investigation (second phase). The number of 22 interventions in 2015 was significantly higher compared with the average of the last six years, which amounted to around 15 interventions per year. In 2015, 13 mergers were approved subject to commitments in first phase and seven in second phase investigation. There was no case where the Commission had to prohibit a notified merger transaction.

In 2015, also 691 State aid cases were concluded²⁹ in various sectors of the economy.

²⁷ Econometric model simulations show that the Commission's merger and cartel decisions have a sizeable impact on GDP growth and job creation and can raise investment by 0.7% after 5 years. Dierx A., F. Ilzkovitz, B. Pataracchia, M. Ratto, A. Thum-Thyssen and J. Varga (to be published in 2016), *"Distributional macroeconomic effects of EU competition policy – a general equilibrium analysis"*, chapter in *"Competition Policy and Shared Prosperity"*, World Bank.

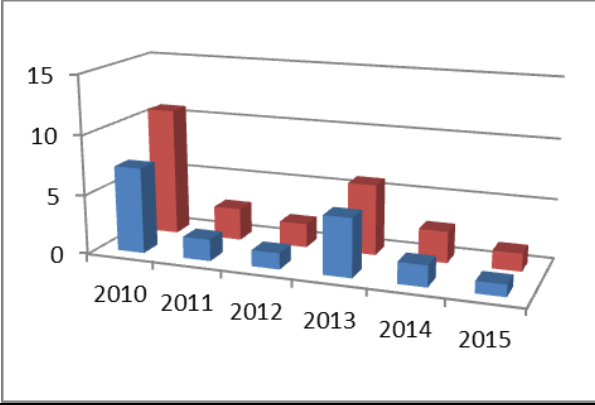
²⁸ For a comprehensive overview of the State Aid Modernisation Reform, see DG Competition webpage http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

²⁹ Including decided/closed monitoring of approved cases, decided/closed complaints, decisions not to

b) Key Performance Indicators (5 KPIs)

Four of DG Competition's five key performance indicators measure the performance of the main competition policy instruments: antitrust, merger control and State aid control. While these indicators do not pretend to deliver an exhaustive account of DG Competition's work or its impact on markets, they constitute the core quantifiable indicators of our work.

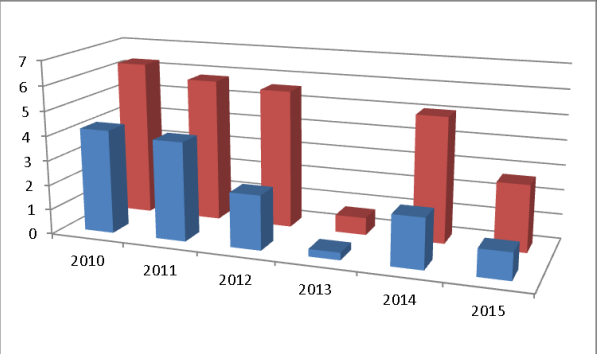
DG Competition, like most competition authorities, provides each year the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. However, it also provides as two key performance indicators estimates of the benefits to customers³⁰ resulting from the Commission's (KPI 1) cartel prohibition decisions and (KPI 2) horizontal merger interventions³¹. However, such indicators underestimate the overall impact of cartel and merger decisions, as they ignore the non-price and deterrence effects of such decisions.

Impact indicator	Trend	Target (or milestones)	Latest known results												
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions ³²	☹	Stable	EUR 0.99-1.49 bn (2015)												
															
		Cartel	<table border="1"> <thead> <tr> <th></th> <th>2010</th> <th>2011</th> <th>2012</th> <th>2013</th> <th>2014</th> <th>2015</th> </tr> </thead> <tbody> <tr> <td>Cartel</td> <td>7.20-10.80</td> <td>1.80-2.70</td> <td>1.35-2.00</td> <td>4.89-5.92</td> <td>1.78-2.64</td> <td>0.99-1.49</td> </tr> </tbody> </table>		2010	2011	2012	2013	2014	2015	Cartel	7.20-10.80	1.80-2.70	1.35-2.00	4.89-5.92
	2010	2011	2012	2013	2014	2015									
Cartel	7.20-10.80	1.80-2.70	1.35-2.00	4.89-5.92	1.78-2.64	0.99-1.49									

³⁰ raise objections, Initiation of formal procedure, Final decisions, Non-aid decisions and Other decisions. 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>

³¹ The two indicators on customer benefits remain in substance unaltered from the corresponding indicators included in the Management Plan 2015, only the wording of the indicator has changed. In the Management Plan 2016, DG Competition no longer sets a target (N/A) for these estimates, as they follow from the Commission's enforcement actions but depend on external factors, in particular company behaviour (decisions by companies on the market) and to a large extent leniency applications and merger notifications.

³² For methodological explanation, see footnote 41 below.

Impact indicator	Trend	Target (or milestones)	Latest known results			
KPI 2 The estimate of customer benefits resulting from horizontal merger interventions ³³	☺	Stable	EUR 1.08-2.69 bn (2015)			
						
		Merger	2010 4.20-6.30	2011 4.00-5.80	2012 2.20-5.60	2013 0.30-0.70

It is evident from the above graphs that the estimate of customer benefits may show considerable variation over time, both as regards cartels and as regards horizontal mergers, which is also due to external factors relating to company behaviour and actions taken. Therefore, it is not meaningful to set a numerical target for these two indicators as this depends on actions beyond the control of the Commission (such as leniency applications, notifications). DG Competition's target in this regard means that it does not aim for either an increase or a decrease³⁴. It should also be noted that these estimates do not include any benefits stemming from better quality or wider choice, other effects of competition policy, such as productivity gains or impact on jobs, any possible pass-on to final consumers in the case of intermediary goods or services. Moreover, they ignore the deterrent effects of the Commission's merger and cartel decisions and therefore underestimate the actual impact of EU competition enforcement on consumers.

The key performance indicators for State aid control are the percentage of State aid granted by Member States for horizontal objectives of common interest (KPI 3) and the overall cumulative level of crisis aid to the financial sector actually used by Member States, expressed as percentage of GDP (KPI 4). While the aim for the third key performance indicator is to increase, the fourth key performance indicator should stop increasing once economic recovery progresses.

The rationale for indicating the percentage of State aid granted by Member States for horizontal objectives of common interest (KPI 3) is to show the level of State aid granted at horizontal objectives of Community interest, "good aid", such as regional development, employment, environmental protection, promotion of research and development and innovation, risk capital and development of SMEs. The indicator shows an increase from 76.4 (2013) to 84.9% (2014) for horizontal aid by Member States for objectives of common interest.

³³ For methodological explanation, see footnote 42 below.

³⁴ As of 2016, Competition will no longer set a target (N/A) for these estimates.

Result indicator	Trend	Target (or milestones)	Latest known results														
KPI 3 The percentage of State aid foreseen by Member States for horizontal objectives of common interest (such as regional development, employment, environmental protection, promotion of research and development and innovation, risk capital and development of SMEs)	☺	Increase	84.9% (2014) ³⁵														
		<table border="1"> <caption>Data for KPI 3 Bar Chart</caption> <thead> <tr> <th>Year</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>67.1%</td> </tr> <tr> <td>2009</td> <td>70.2%</td> </tr> <tr> <td>2010</td> <td>72.0%</td> </tr> <tr> <td>2011</td> <td>74.9%</td> </tr> <tr> <td>2012</td> <td>74.1%</td> </tr> <tr> <td>2013</td> <td>76.4%</td> </tr> <tr> <td>2014</td> <td>84.9%</td> </tr> </tbody> </table>		Year	Percentage	2008	67.1%	2009	70.2%	2010	72.0%	2011	74.9%	2012	74.1%	2013	76.4%
Year	Percentage																
2008	67.1%																
2009	70.2%																
2010	72.0%																
2011	74.9%																
2012	74.1%																
2013	76.4%																
2014	84.9%																

The key performance indicator relating to the overall level of crisis aid to the financial sector actually used by Member States (KPI 4) measures the gradual phasing out of crisis aid measures of temporary nature and the linked risk of competition distortions in the financial services.

In the period of 2007 until 2014, the volume of aid in the form of capital (i.e. recapitalisations and asset relief measures) amounted to EUR 644.6 billion (4.6% of EU 2014 GDP). More specifically, recapitalisations totalled EUR 455.8 billion (3.3% of EU GDP), whilst asset relief measures amounted to EUR 188.8 billion (1.4% of EU GDP). Between 2007 and 2014, DG Competition has taken more than 450 State aid decisions, determining the restructuring or orderly resolution of around 110 European banking institutions³⁶. The volume of guarantees and other liquidity support reached its peak in 2009, with the outstanding amount of EUR 906.0 billion (7.4% of EU 2009 GDP). Since then the crisis has gradually receded in many Member States, and the outstanding amount of other liquidity support dropped to EUR 236.5 billion (1.7% of EU 2014 GDP) in 2014. That year the outstanding amount of guarantees was EUR 204.5 billion (1.5% of EU GDP), whilst other outstanding liquidity measures amounted to EUR 32.1 billion (0.2% of EU GDP).

³⁵ The percentages in this graph differ from those presented in the AAR 2013. Previous figures referred to 27 Member States whereas the present figures take account of 28 Member States. Furthermore, Member States can update past expenditure figures which may result in change of the percentages. We have used the latest information of the State aid scoreboard, see http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html

³⁶ See *Competition State aid brief: State aid to European banks: returning to viability* of February 2015, available at http://ec.europa.eu/competition/publications/csb/csb2015_001_en.pdf

Result indicator	Trend	Target (or milestones)	Latest known results																											
KPI 4 The overall level ³⁷ of crisis aid to the financial sector actually used by Member States, expressed as percentage of EU28 2014 GDP	☺ ³⁸	To stop increasing once the financial crisis is over	6.3% (2014)																											
<table border="1"> <thead> <tr> <th>In billion euros</th> <th>2007</th> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> <th>2012</th> <th>2013</th> <th>2014</th> </tr> </thead> <tbody> <tr> <td>Accumulated recapitalisation and asset relief measures</td> <td>2.5</td> <td>127.5</td> <td>297.7</td> <td>445.2</td> <td>480.1</td> <td>606.4</td> <td>636.4</td> <td>644.6</td> </tr> <tr> <td>Outstanding guarantees and liquidity measures</td> <td>0.4</td> <td>422.6</td> <td>906</td> <td>862.5</td> <td>649.5</td> <td>536.4</td> <td>386.9</td> <td>236.5</td> </tr> </tbody> </table>				In billion euros	2007	2008	2009	2010	2011	2012	2013	2014	Accumulated recapitalisation and asset relief measures	2.5	127.5	297.7	445.2	480.1	606.4	636.4	644.6	Outstanding guarantees and liquidity measures	0.4	422.6	906	862.5	649.5	536.4	386.9	236.5
In billion euros	2007	2008	2009	2010	2011	2012	2013	2014																						
Accumulated recapitalisation and asset relief measures	2.5	127.5	297.7	445.2	480.1	606.4	636.4	644.6																						
Outstanding guarantees and liquidity measures	0.4	422.6	906	862.5	649.5	536.4	386.9	236.5																						

The last key performance indicator, (5) implementation of case management rationalisation, represents DG Competition's horizontal activities. It measures the progress of the DG-Competition-lead ICT project to develop a new Case Management system for the participating DGs and thus contribute to the modernisation and rationalisation of case and document management in the Commission. The trend is positive. Sustained and continued investment in information technology is essential for DG Competition, where key business processes as well as exchanges with various stakeholders are supported by dedicated information systems.

Result indicator	Trend	Target (2017)	Latest known results (2015)
KPI 5 Implementation of a common Case Management System for the Commission services participating in the Case Management Rationalisation project	☺	Completed implementation of the new common Case Management System	Inception concluded Tender process started

³⁷ DG Competition calculation. This consists of the following two components (calculated as % of EU GDP 2014): total recapitalisation and asset relief measures 2007-2014: EUR 644.6 billion (4.6%); outstanding guarantees and other liquidity measures for 2014: EUR 236.5 billion (1.7%).

³⁸ After having reached a peak in 2009 with EUR 906.0 billion, the outstanding guarantees and other liquidity measures provided by Member States clearly demonstrate a steadily declining trend from 2009 onwards reaching its lowest level since the beginning of the crisis in 2007 with EUR 236.5 billion outstanding at the end of 2014. The same declining trend can be observed for yearly approval and use of recapitalisation and impaired asset measures which register a historical low in 2014 with EUR 8.2 billion decreased from the peak observed in 2009 with EUR 170.2 billion. However, while these trends show that the crisis is perhaps less acute today, important amounts of crisis aid have been approved and used in 2014, as well.

c) Key conclusions on Management and Internal control (executive summary of section 2)

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

The Commission has adopted a set of internal control principles, based on international good practice, aimed to ensure the achievement of policy and operational objectives. The Financial Regulation (FR) requires that the organisational structure and the internal control systems used for the implementation of the budget are set up in accordance with these standards. DG Competition has assessed the internal control systems during the reporting year and has concluded that the internal control principles are implemented and function as intended. Please refer to AAR section 2.3 for further details.

In addition, DG Competition has systematically examined the available control results and indicators as well as the observations and recommendations issued by internal auditors and the European Court of Auditors. These elements have been assessed to determine their impact on the management's assurance as regards the achievement of control objectives. Please refer to Section 2 for further details.

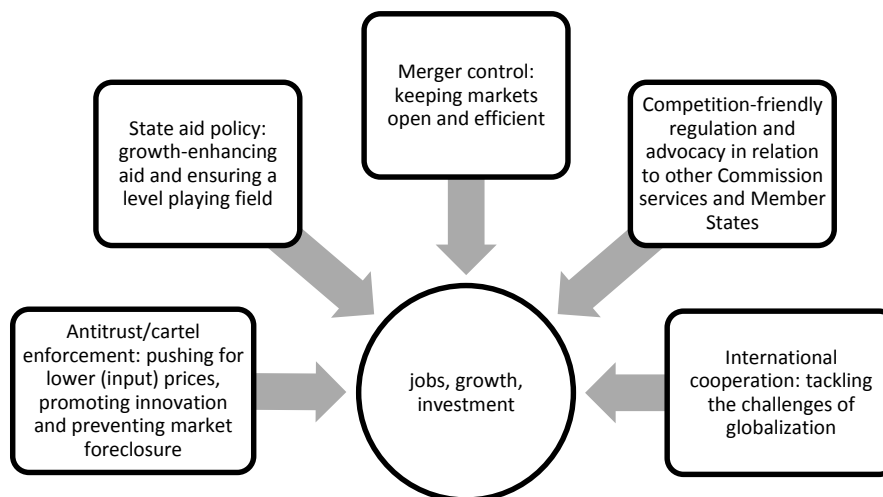
In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated; and necessary improvements and reinforcements are being implemented. The Director General, in his capacity as Authorising Officer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

d) Information to the Commissioner(s)

The main elements of this report and assurance declaration have been brought to the attention of Commissioner Margrethe Vestager, responsible for competition policy.

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

The general objectives of DG Competition are i) to enhance consumer welfare and efficiently functioning markets in the EU by protecting competition and ii) to promote competition culture in the EU and worldwide. Through pursuing these general objectives, competition policy will for its part contribute to the improvement of the functioning of the Single Market, a key lever for jobs, growth and investment.



It can be difficult to measure the effect of competition law on economic growth, but according to the OECD³⁹, there is solid evidence in support of each of the relationships shown below.



³⁹ 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 General objective 1: To enhance consumer welfare in the EU and efficiently functioning markets by protecting competition

The objective at the heart of EU competition policy is to enhance consumer welfare and efficiently functioning markets by protecting competition from market distortions whether originating from Member States (distortive State aids) or market players, including public undertakings with special or exclusive rights (distortive unilateral or coordinated behaviour), or mergers that would significantly impede effective competition. Undistorted competition on the market enhances consumer welfare and promotes productivity and growth through allocative efficiency (entry of more efficient firms and exit of less efficient firms), productive efficiency (incentives for a firm to become more efficient) and dynamic efficiency (innovation moving the technological frontier).

In 2015, all enforcement and policy instruments of DG Competition were used to enhance consumer welfare and efficiently functioning markets by protecting competition on the markets (see specific objectives 1.3-1.5 for further details). DG Competition also shared its expertise with other Commission's services in support of the policy priorities outlined in the Political Guidelines.

General objective 1: To enhance consumer welfare in the EU and efficiently functioning markets by protecting competition		<input type="checkbox"/> programme-based (please name the related spending programme) <input checked="" type="checkbox"/> Non programme-based
Impact indicator 1: Estimate of customer benefits resulting from Commission decisions prohibiting cartels and from horizontal merger interventions ⁴⁰		
Rationale: Quantitative indicator to ensure positive impact of competition enforcement on consumer welfare		
Source: DG Competition calculation		
Baseline (2014)	Milestone (2015)	Target
Cartel prohibition decisions ⁴¹ : EUR 1.78-2.64 bn Horizontal merger decisions ⁴² : EUR 2.02-5.06 bn	EUR 0.99-1.49 bn EUR 1.08-2.69 bn	Stable level ⁴³

⁴⁰ The two indicators on customer benefits remain in substance unaltered from the corresponding indicators included in the Management Plan 2015, only the wording has changed.

⁴¹ DG Competition calculation. The approach followed to estimate customer benefits from stopping a cartel (prevented harm) consists in multiplying the assumed increased price brought about by the cartel (called the "overcharge") by the value of the affected products or markets and then by 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 focussed on the particular circumstances of each case and an assessment of important quantitative indicators, including the specific market conditions, the lifespan of the cartel, the ease of reaching and renewing cartel agreements as well as the potential reactions of outsiders (such as new entrants). 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. Finally, the estimates obtained are also conservative because other consumer benefits, such as innovation, quality and choice are not taken into account. Financial services: the customer benefit calculation for the cartels is based upon the termination of the cartels in their entirety (some parties having settled; for others the proceeding against them is ongoing).

⁴² DG Competition calculation. The approach followed to estimate customer benefits from the Commission's intervention in the form of a prohibition of a horizontal merger or an approval of such a merger subject to conditions consisted in predicting the change in consumer surplus. The prevention of anticompetitive effects such as the negative impacts on innovation and choice are not taken into account, even though some cases are also largely based on non-price effects, especially effects on innovation. In practical terms, the calculation of the predicted change in consumer surplus arising from the Commission's intervention in each product market is based on three factors: (i) the total

Impact indicator 2: Success rate before the European Courts in competition cases Rationale: Indicator for the quality of enforcement decisions following the review by the European Courts Source: Legal Service statistics as reported annually to the Global Competition Review ⁴⁴		
Baseline (2014)	Milestone (2015)	Target
87% (State aid) 75% (Antitrust and mergers)	86% (State aid); 72% (Antitrust and mergers)	70%
Impact indicator 3: Impact of competition policy and enforcement on the markets Rationale: Qualitative indicator to estimate long-term market impact of competition enforcement Source: DG Competition Stakeholder Survey ⁴⁵		
Baseline (2014)	Target (Next survey foreseen in 2019)	
4.8 (scale 1-7)	Increasing trend	
Impact indicator 4: Impact of competition enforcement on economic growth Rationale: Qualitative indicator to indicate the long-term impact of competition enforcement as an accelerator of economic growth Source: DG Competition Stakeholder Survey ⁴⁶		
Baseline (2014)	Target (Next survey foreseen in 2019)	
3.6 (scale 1-5)	Increasing trend	

1.2 General objective 2: To promote competition culture in the EU and worldwide

In 2015, DG Competition engaged in competition advocacy in relation to other Commission services, other EU institutions and at national and international levels, with the aim of shaping the regulatory framework and policy initiatives in a competition-friendly way (see specific objectives 1.6-1.7 for further details). Competition-friendly regulation and competition culture create favourable conditions for investments and innovation, which enhances consumer welfare and efficiently functioning markets, enables growth and contributes towards more convergence.

For the benefit of competition advocacy efforts by the Commission and the national competition authorities, DG Competition discussed and shared the results of the *Flash Eurobarometer 403 Citizens' Perception about Competition Policy*⁴⁷ with the national competition authorities in the European Competition Network (ECN) in February 2015, ahead of the publication of the survey in March 2015.

The increased convergence of competition regimes worldwide is a prerequisite for the effectiveness and success of EU competition policy in a globalised economy. In 2015, DG

size (by value) of the product market concerned, (ii) the likely price increase avoided and (iii) the length of time that this market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors. The expected price increase is set at 3-5%, a value in line with current academic literature, albeit a conservative estimate. The lower boundary of the estimate is based upon a 3% price increase lasting for two years, the higher boundary upon a 5% price increase for a duration depending on the barriers to entry of the affected market. The stable target is a planning assumption. As the merger control activity is driven by notifications, it is not meaningful to provide a numerical target for this indicator.

⁴³ In the Management Plan 2016, DG Competition no longer sets a target (N/A) for these estimates, as they follow from the Commission's enforcement actions but depend on external factors, in particular company behaviour (decisions by companies on the market) and to a large extent leniency applications and merger notifications.

⁴⁴ As reported in <http://globalcompetitionreview.com/surveys/article/36089/european-unions-european-commission-directorate-general-competition>

⁴⁵ Eurobarometer Standard Qualitative Study – DG Competition Stakeholder Survey (2014), Aggregate Report p. 42, http://ec.europa.eu/competition/publications/reports/surveys_en.html

⁴⁶ Eurobarometer Standard Qualitative Study – DG Competition Stakeholder Survey (2014), Aggregate Report p. 46, http://ec.europa.eu/competition/publications/reports/surveys_en.html

⁴⁷ Flash Eurobarometer 403 – Citizens' Perception about Competition Policy (2014), 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

Competition continued to promote international convergence both bilaterally and in international venues such as the International Competition Network (ICN), the OECD or UNCTAD, and will continue to closely cooperate with the competition authorities of the Member States, gathered in the European Competition Network (ECN).

General objective 2: To promote competition culture in the EU and worldwide		<input type="checkbox"/> programme-based (please name the related spending programme) <input checked="" type="checkbox"/> Non programme-based
Impact indicator 1: Promotion of competition culture		
Rationale: Qualitative indicator to estimate the success of DG Competition's advocacy activities		
Source: DG Competition Stakeholder Survey ⁴⁸		
Baseline (2014)	Target (Next survey foreseen in 2019)	
4.9 (scale 1-7)	Increasing trend	
Impact indicator 2: Percentage of positive replies in surveys conducted among citizens agreeing that effective competition has a positive impact on them as consumers		
Rationale: Indicator to measure citizens' view of competition		
Source: Eurobarometer Citizens' Survey ⁴⁹		
Baseline (2014)	Target (Next survey foreseen in 2019)	
74%	Increasing trend	

1.3 ABB activity: "Control of State aid"

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.

The Commission has almost completed its ambitious State Aid Modernisation (SAM) reform⁵⁰ aimed at promoting good aid that supports investments and spurs growth while contributing to Member States' efforts towards budgetary consolidation. In 2015, work continued on the guidance on the notion of aid and supporting Member States in their implementation of the new framework, including requirements on transparency and evaluation of aid.

Among the key objectives of the reform are tangible cuts in red tape, the promotion of a better use of limited public resources by Member States and of a higher contribution of aid measures to investment and growth. The new State aid rules⁵¹ simplify aid granting procedures for Member States by authorising without prior notification a wide range of

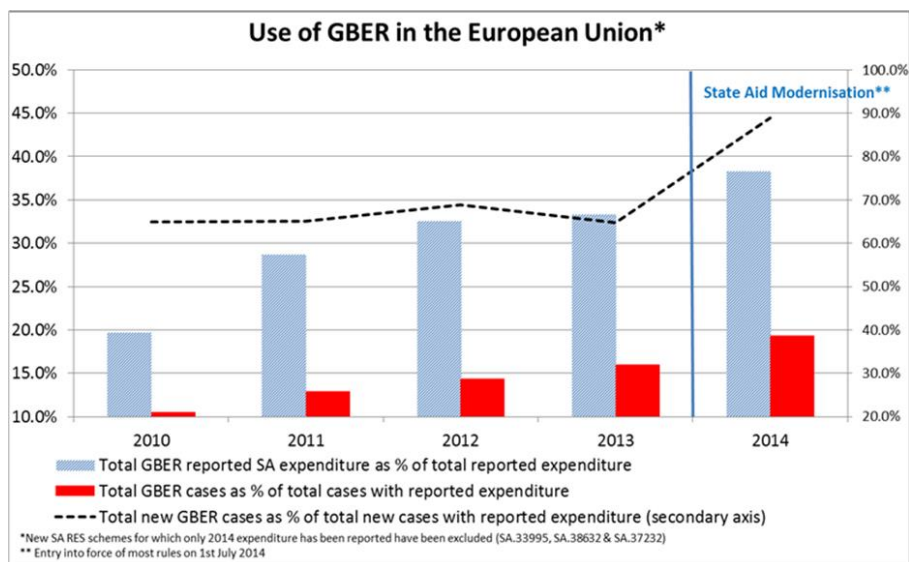
⁴⁸ Eurobarometer Standard Qualitative Study – DG Competition Stakeholder Survey (2014), Aggregate Report p. 51 http://ec.europa.eu/competition/publications/reports/surveys_en.html

⁴⁹ Flash Eurobarometer 403 – Citizens' Perception about Competition Policy (2014), p. 6, http://ec.europa.eu/competition/publications/reports/surveys_en.html

⁵⁰ For a comprehensive overview of State Aid Modernisation, see DG Competition webpage: http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

⁵¹ 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.

measures fulfilling horizontal common interest objectives. Only cases with the biggest potential to distort competition in the Single Market will remain for ex-ante assessment (notification). As a result a significantly larger number of smaller and unproblematic measures are exempted from prior notification, in exchange for strengthened controls at Member State level, greater transparency and better evaluation of the impact of aid.



Aid to research, development and innovation ("R&D&I")

The new State aid rules under the research, development and innovation (R&D&I) framework continue to encourage and contribute to spreading innovation in the EU for the benefit of businesses and consumers. In 2015, the Commission approved ambitious projects in areas such as satellite launchers, electricity transportation or aeronautics under the new rule, in projects such as SABRE (United Kingdom), Supergrid (France) and TS 3000 (France). On the other hand, the Commission remained vigilant and decided to investigate further the impact on competition of a project setting a test facility in the railway industry in Spain.

Aid to risk finance

The Commission also continued to apply the new simpler, more flexible and generous State aid framework for the provision of risk finance to SMEs and mid-caps⁵². The new risk finance regime provides the framework for seamless support of new ventures from their creation to their development into global players.

In 2015, the Commission adopted several decisions on schemes aimed at encouraging investment in innovative SMEs and midcaps. This included one scheme in United Kingdom (EIS-VCT scheme, targeting innovative SMEs and midcaps) and two schemes in France (Amortissement exceptionnel des investissements des entreprises dans les PME innovantes and ISF-PME schemes).

Regional aid

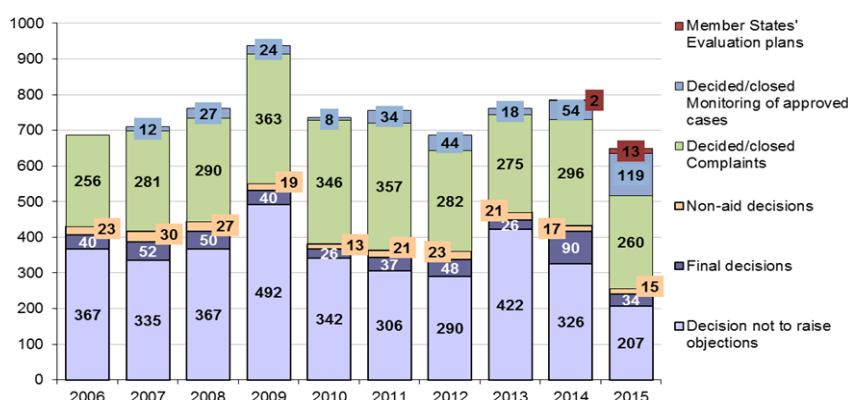
Regional aid is an important instrument in the EU's toolbox to promote greater economic and social cohesion. Spending on regional aid is also an important component of the

⁵² The new rules, contained in the new Risk Finance Guidelines and in the new GBER, entered into force on 1 July 2014.

overall State aid spending by Member States: in the period 2008-2013, regional aid amounted to EUR 78.5 billion, or some 18.5% of total State aid granted by Member States in that period.

In 2015, the Commission adopted several decisions on regional aid measures under the new provisions, e.g. on investment aid schemes⁵³, operating aid schemes in the Outermost regions⁵⁴, and on evaluation plans for exempted large regional aid schemes⁵⁵. The Commission also adopted several decisions on regional aid measures to support large investment projects under the preceding rules, including a final decision authorising regional aid for investments by Volkswagen in Portugal (cars), and approved aid for Nexen in the Czech Republic (tyre production), for Nitrogénművek in Hungary and for Duslo in Slovakia (both in the fertilizer sector).

State aid enforcement (Commission decisions, monitoring and Member States' Evaluations Plans) 2006-2015



Energy and environment

State aid control in the areas of energy and environment is an important part of competition policy, as it contributes to creating conditions for sustainable use of resources in the EU and thereby to fulfilling the Europe 2020 goals.

During 2015, Member States continued to extensively promote renewable energy sources (RES) to achieve the national RES and CO₂ reduction targets by 2020 and beyond. Based on the provisions of the 2008 Environmental Aid Guidelines (EAG) and, since mid-2014,

⁵³ Case SA.39869 *Corporate tax exemption scheme* (BG), Commission decision of 14 September 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39869

⁵⁴ Cases SA.38536 *Aide fiscale à l'investissement outre-mer* and SA.38823 *Reduced rate of excise duty applied to rum and liqueurs produced and consumed in Madeira (2014-2020)*, Commission decisions of 2 March 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38536 and http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38823

⁵⁵ Cases SA.39460 *Evaluation plan for the block exempted large aid scheme "Bund-Länder-Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur – Gewerbliche Wirtschaft"* (DE), Commission decision of 22 July 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39460; SA.39669 *Evaluation plan of the Development Tax Benefit Scheme* (HU), Commission decision of 16 January 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39669; SA.38830 *Evaluation plan Polish SEZ scheme* (PL), Commission decision of 16 June 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38830 and SA.42136 *Evaluation Plan: Inovação Empresarial* (PT), Commission decision of 19 August 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_42136

of the new Energy and Environmental Aid Guidelines (EEAG)⁵⁶, the Commission adopted a high number of decisions in this area, for example, aid to 20 individual offshore wind farms in Germany⁵⁷, a support scheme to renewable energy sources in Croatia⁵⁸ and amendments to the Romanian green certificates support system for promoting renewable electricity⁵⁹. Those Commission decisions aim at avoiding over-compensation and competitive distortions through the RES schemes. Furthermore, in line with the EU's energy and climate change objectives, the Commission has positively assessed a number of Member States' interventions aimed at energy efficiency, better infrastructure including the modernisation of district heating and aid to high efficiency co-generation installations. In the gas sector, lack of diversification and consequently competition in sources of supply is a concern for security of supply in the EU, which is increasingly dependent on imports. In 2015, the Commission also adopted a decision on public support for nine gas infrastructure projects in Poland⁶⁰, which will help diversification of gas supplies.

In 2015, the Commission launched a State aid sector inquiry into existing and planned capacity mechanisms in the EU. The purpose of the inquiry is to analyse the need for such mechanisms and to identify design features that distort competition between capacity providers or hinder cross-border electricity trade.

State aid sector inquiry – Existing and planned capacity mechanisms in the EU⁶¹

Capacity mechanisms are measures taken by Member States to ensure that electricity supply can match demand in the medium and long term. They are designed to support investment to fill an expected capacity gap and ensure security of supply.

The Commission sent different sets of questions to selected public authorities and market participants in 11 EU countries – Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain and Sweden. It assessed the replies and invites comments on its preliminary findings in early 2016. The final results will be published by the end of 2016.

The sector inquiry will supplement and support the implementation of the *Guidelines on State aid for environmental protection and energy*⁶² that entered into force in July 2014. Moreover, the sector inquiry will contribute to the Commission's legislative proposal on electricity market design under the EU's Energy Union Strategy.

⁵⁶ Communication from the Commission, *Guidelines on State aid for environmental protection and energy 2014-2020*, OJ C 200, 28.6.2014, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628(01))

⁵⁷ Cases SA.39723, SA.39724, SA.39725, SA.39726, SA.39731, SA.39732, SA.39733, SA.39735, SA.39738, SA.39739, SA.39741, SA.39742, SA.39722, SA.39727, SA.39728, SA.39729, SA.39730, SA.39734, SA.39736, SA.39740 *Germany – Support to 20 large offshore wind farms under the EEG Act 2014*, OJ C 292, 4.9.2015, see IP/15/4788 of 16 April 2015, http://europa.eu/rapid/press-release_IP-15-4788_en.htm

⁵⁸ Case SA.38406 *Renewables support scheme in Croatia 2014-2015*, Commission decision of 1 September 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38406

⁵⁹ Case SA.37177 *Romania – Amendments to the green certificates support system for promoting electricity from renewable sources*, Commission decision of 4 May 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37177 OJ C 343, 16.10.2015.

⁶⁰ Case SA.39050 *Aid to gas infrastructure in Poland*, Commission decision of 17 July 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39050 OJ C 325, 2.10.2015, see IP/15/5403 of 17 July 2015, http://europa.eu/rapid/press-release_IP-15-5403_en.htm

⁶¹ IP/15/4891 of 29 April 2015, http://europa.eu/rapid/press-release_IP-15-4891_en.htm

⁶² Communication from the Commission – *Guidelines on State aid for environmental protection and energy 2014-2020*, OJ C 200, 28.6.2014, p. 1-55, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628(01))

Telecoms sector

State aid also contributes to the Commission's objectives on the Digital Single Market. The Commission State aid decisions complement private investments in areas which are not profitable on commercial terms and are necessary to achieve those objectives, when it is established that the measures are pro-competitive. As regards the market for broadband, telecoms and related markets, DG Competition is actively pursuing a number of investigations, in order to ensure that aid is targeted and meets the criteria to foster an optimal infrastructure market in the EU.

With a view to stimulating overall investment in next-generation access (NGA) infrastructure and ensure that customers benefit from State intervention, where a broadband infrastructure is built using State aid, operators must fulfil a number of conditions which include measures to ensure third parties' effective wholesale access to the subsidised broadband infrastructure as foreseen in the Broadband State Aid Guidelines⁶³. This helps to ensure that the positive effects of the aid measure outweigh its potential negative effects and minimises any distortive effect. In 2015, the Commission approved, among others, Germany's federal State aid scheme for NGA deployment⁶⁴.

Financial sector

Due to its systemic importance, the Commission has remained very active in the financial services sector also in 2015. It continued to enforce State aid rules for the financial sector with the aim to ensure that aided financial institutions restructure adequately or exit the market in an orderly way and to limit competition distortions from State aid within the internal market, while limiting the use of taxpayers' money to the minimum necessary. Although the situation in the financial markets improved markedly, DG Competition has analysed 117 banks, around one quarter of Europe's banking sector in terms of assets, under the special crisis rules. Of those banks, 61 banks were restructured and 41 were orderly liquidated. As of December 2015, one case is still pending.

In particular, State aid rules played a key role in 2015 in supporting the efforts of the four largest Greek banks to address capital shortfalls identified by the European banking supervisor⁶⁵. Between November and December, the Commission approved State aid measures for the recapitalisations of Piraeus Bank⁶⁶ and National Bank of Greece⁶⁷. The banks submitted restructuring plans aimed at ensuring long-term viability, which would allow them to refocus on lending to Greek businesses and support the recovery of the Greek economy. Also, the Commission is ensuring a consistent application of State aid rules to the banking sector in the framework of the Economic Adjustment Programme in Cyprus and in the post-programme context in Portugal⁶⁸ and took decisions on two

⁶³ Communication from the Commission *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ C 25, 26.1.2013, p. 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>

⁶⁴ Case SA.38348 *NGA Germany*, Commission decision of 18 February 2014, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38348

⁶⁵ <https://www.bankingsupervision.europa.eu/press/pr/date/2015/html/sr151031.en.html>

⁶⁶ Case SA.43364 *2015 additional restructuring aid to Piraeus Bank*, Commission decision of 29 November 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43364

⁶⁷ Case SA.43365 *2015 additional restructuring aid to National Bank of Greece (NBG)*, Commission decision of 4 December 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43365

⁶⁸ Portugal successfully exited its three years Economic Adjustment Programme in June 2014.

Portuguese banks, Novo Banco⁶⁹ and Banif⁷⁰.

In 2015, the Commission also approved under State aid rules the restructuring plan of the third-largest domestically owned Irish bank, Permanent TSB⁷¹, took an amendment decision on an Austrian network of cooperative banks i.e. Österreichische Volksbanken AG (ÖVAG) and the Austrian Volksbanken, found the resolution plans for four small Italian banks⁷², which constitute around 1% of the Italian banking sector, to be in line with State aid rules⁷³.

Transport

2015 was the first full year of application of the Guidelines on State aid to airports and airlines, which entered into force on 4 April 2014⁷⁴. The Commission adopted the first national schemes under the new guidelines aimed to serve as a model of how the different categories of aid that can be authorised in the airports and airlines sector can be applied. In particular, France was authorised three separate national schemes for investment aid, for operating aid for airport infrastructure⁷⁵, and for "Start-up" aid for airlines operating from regional airports⁷⁶. The United Kingdom had a national Start-up aid scheme authorised⁷⁷, and Ireland was authorised a national scheme covering investment and operating aid for airport infrastructure⁷⁸. The application of the guidelines was consolidated by opening of new investigations. Two investigations were opened on the same day concerning two Romanian airports situated in close proximity, as well the airlines that operate from those airports⁷⁹.

Postal services

In 2015 the Commission took a number of State aid decisions in the postal sector. The

⁶⁹ Case SA.43976 *Amendment to the resolution of Banco Espírito Santo*, Commission decision of 19 December 2015,

http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_43976

⁷⁰ Case SA.43977 *Resolution of Banif – Banco Internacional do Funchal SA*, Commission decision of 21 December 2015,

http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_43977

⁷¹ Case SA.33442 *Restructuring of Irish Life and Permanent Group Holdings plc*, Commission decision of 9 April 2015, http://ec.europa.eu/competition/state_aid/cases/241557/241557_1662492_396_2.pdf

⁷² Banca delle Marche, Banca dell'Etruria e del Lazio, Cassa di Risparmio di Ferrara, and Cassa di Risparmio della Provincia di Chieti.

⁷³ Cases SA.39453, SA.41134, SA.41925 and SA.43547, Commission decision of 22 November 2015. The non-confidential versions of the four decisions will be published in the State aid register on the competition website under the case numbers SA.39453, SA.41134, SA.41925 and SA.43547 once potential confidentiality issues have been resolved.

⁷⁴ Communication from the Commission, *Guidelines on State aid to airports and airlines*, OJ C 99, 4.4.2014, p. 3, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.099.01.0003.01.ENG

⁷⁵ Cases SA.38937 *Régime d'aide à l'investissement des petits et moyens aéroports* and SA.38938 *Régime d'aide au démarrage des compagnies aériennes*, Commission decisions of 8 April 2015,

http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38937 and

http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38938.

⁷⁶ Case SA.38936 *Régime d'aide à l'exploitation des petits et moyens aéroports*, Commission decision of 8 April 2015, http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38936

⁷⁷ Case SA.39466 *Start-up aid to airlines operating in the United Kingdom*, Commission decision of 31 July 2015, http://ec.europa.eu/competition/state_aid/cases/258034/258034_1678164_84_3.pdf

⁷⁸ Case SA.39757 *Ireland support scheme for aid for regional airports*, Commission decision of 31 July 2015, http://ec.europa.eu/competition/state_aid/cases/258116/258116_1676549_114_2.pdf

⁷⁹ Cases SA.32963 *State aid to Wizz Air and Cluj-Napoca Airport* and SA.33769 *Alleged aid to Târgu Mureş Transilvania Airport, Wizz Air, Ryanair and other airlines*, Commission decisions of 31 July 2015, http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_32963 and http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_33769

Commission approved UK plans to grant GBP 640 million (around EUR 890 million) to the UK Post Office Ltd⁸⁰ for delivering a whole range of the public services over a larger network of post offices than would be commercially optimal from 1 April 2015 to 31 March 2018. The Commission also approved compensations to Polish Post⁸¹ and Poste Italiane⁸² for the delivery of the universal service obligation which includes basic postal services delivered throughout the country at affordable prices and at certain minimum quality requirements. In addition, the Commission pursued its formal investigation launched on 1 August 2014 on the projects of the Greek State to set up a compensation fund to finance the universal service obligation entrusted to Hellenic Post over 2016-2021.

Tax planning practices

Since 2013, the Commission has been systematically looking into tax planning practices via its dedicated Task Force. The Commission has continued throughout 2014 and 2015 to gather information on tax planning practices in Member States. In December 2014⁸³, the Commission extended its State aid enquiry to include all Member States. The enquiry is aimed at clarifying allegations that tax rulings may constitute State aid and to allow the Commission to take a view of the practices of all Member States. On the basis of the information received, in June 2015, the Commission requested 15 Member States to provide a substantial number of individual tax rulings⁸⁴.

In 2014 the Commission opened four formal investigations where it raised concerns that tax rulings may entail State aid issues. These investigations concern rulings for Apple in Ireland⁸⁵, Starbucks in the Netherlands, Fiat Finance & Trade, and Amazon in Luxembourg⁸⁶. Two of these cases (Starbucks and Fiat Finance & Trade) have been concluded in 2015 with negative decisions with recovery⁸⁷. In 2015, the Commission also launched an in-depth investigation into the Belgian excess profit system⁸⁸ and opened a formal probe into Luxembourg's tax treatment of McDonald's⁸⁹.

Evaluation of aid

By the end of 2015, the Commission had approved evaluation plans covering 17 large State aid schemes submitted by 10 Member States⁹⁰; the large majority of these decisions concerned either regional or R&D&I aid schemes. These schemes' annual

⁸⁰ Case SA.38788 *Compensation to Post Office Limited for costs incurred to provide SGEIs 2015-2018*, Commission decision of 19 March 2015,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38788

⁸¹ Case SA.38869 *Compensation of Poczta Polska for the net cost of USO 2013-2015*, Commission decision of 26 November 2015,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38869

⁸² Case SA.43243 *State compensations granted to Post Italiane SpA for the delivery of universal postal service over the periods 2012-2015 and 2016-2019*, Commission decision of 1 August 2015,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43243

⁸³ IP/14/2742 of 17 December 2014, http://europa.eu/rapid/press-release_IP-14-2742_en.htm

⁸⁴ IP/15/5140 of 8 June 2015, http://europa.eu/rapid/press-release_IP-15-5140_en.htm

⁸⁵ Case SA.38373 *Alleged aid to Apple*, Commission decision of 11 June 2014,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38373

⁸⁶ Case SA.38944 *Alleged aid to Amazon*, Commission decision of 7 October 2014,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944

⁸⁷ IP/15/5880 of 21 October 2015, http://europa.eu/rapid/press-release_IP-15-5880_en.htm

⁸⁸ IP/15/6221 of 3 December 2015, http://europa.eu/rapid/press-release_IP-15-6221_en.htm

⁸⁹ IP/15/4080 of 3 February 2015, http://europa.eu/rapid/press-release_IP-15-4080_en.htm, and Case

SA.37667 *Excess profit tax ruling system in Belgium*, Commission decision of 11 January 2016,

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667

⁹⁰ Czech Republic, Germany, Spain, France, Hungary, Austria, Poland, Portugal, Finland, and United Kingdom.

budgets amount to some EUR 10 billion.

Monitoring of existing State aid

In order to ensure that aid granted under existing aid schemes (without being individually notified and examined by the Commission) effectively complies with State aid rules, DG Competition performs since 2006 a systematic, sample based, ex-post control (so-called "monitoring exercise"). Initially, DG Competition reviewed each year a sample of 20-30 schemes. To further improve the effectiveness of this control, the scope of the monitoring exercise has been systematically enlarged from 2010 onwards and covered 96 block-exempted or approved schemes in 2015. The 2015 cycle covered all Member States, all main types of aid approved as well as block-exempted schemes. Furthermore, the sample contained a number of block-exempted schemes under the new General Block Exemption Regulation⁹¹. Also, the Commission carried out two pilot projects on targeted monitoring.

Recovery of incompatible aid

When unlawful aid is declared incompatible, the Commission is obliged to ask for its recovery by the Member State who granted it in order to restore the situation in the market prior to the granting of the aid to ensure that the level-playing field in the internal market is maintained. Further progress was made in 2015, to ensure that recovery decisions are enforced effectively and immediately. By 31 December 2015, the amount of illegal and incompatible aid recovered from beneficiaries had increased to EUR 13.5 billion⁹², from EUR 8.5 billion in December 2004⁹³. This means that the percentage of illegal and incompatible aid still to be recovered decreased slightly from 74% at the end of 2004 to around 55% at the end of 2015.

In 2015, the Commission adopted 17 new recovery decisions and an amount of EUR 6.1 million was recovered by the Member States. As of the end of December, the Commission had 54 pending recovery cases. The Commission may use all legal means at its disposal to ensure that Member States implement their recovery obligations, including launching infringement procedures. In 2015, the Court of Justice condemned two Member States pursuant to Article 108(2) TFEU⁹⁴ (France and Germany)⁹⁵ and one Member State pursuant to Article 260(2) TFEU (Italy)⁹⁶.

Recovery decisions adopted in 2015	17
Amount recovered in 2015 (EUR million)	6.1
Pending recovery cases on 31 December 2015	54

⁹¹ 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.

⁹² Reference is the period from 1 January 1999 until 31 December 2015.

⁹³ Reference is the period from 1 January 1999 until 31 December 2005.

⁹⁴ Consolidated version of the Treaty on the Functioning of the European Union (TFEU), OJ C 115, 9.5.2008, p. 47.

⁹⁵ Cases C-63/14 *Commission v France*, judgment of the Court of 9 July 2015, ECLI:EU:C:2015:458 and C-674/13, *Commission v Germany*, judgment of the Court of 6 May 2015, ECLI:EU:C:2015:302.

⁹⁶ C-367/14 *Commission v Italy*, judgment of the Court of 17 September 2015, ECLI:EU:C:2015:611 and C-302/09 *Commission v Italy*, judgment of the Court of 6 October 2011, ECLI:EU:C:2011:634.

1.4 ABB activity: "Cartels, antitrust and liberalisation"

Articles 101, 102 and 106 TFEU

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

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

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

1.4.1 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 2015, the Commission continued to give priority to cartel enforcement activity. The Commission adopted five cartel decisions imposing fines of approximately EUR 365 million. In 2015, the Commission completed its investigation of seven infringements in the sector of Yen interest rate derivatives (YIRD) by adopting an ordinary decision against the UK-based broker ICAP, who acted as a facilitator in six of those collusions⁹⁷. Two settlement decisions were adopted in 2015. The first settlement decision concerned two German producers of automotive parts who coordinated prices and allocated customers with regards to fuel-operated parking heaters for a period of over ten years (Parking Heaters⁹⁸). The second settlement concerned the down-stream sales of cargo transport services in connection with block trains (Blocktrains⁹⁹) and is the first Commission cartel decision in the rail cargo transport services sector. The Commission adopted two prohibition decisions in 2015 against a cartel of eight manufacturers and two distributors of retail food packaging trays (Retail Food Packaging¹⁰⁰) and a cartel of eight optical disc drive suppliers who coordinated their behaviour in relation to procurement tenders organised by two computer manufacturers (Optical Disc Drives¹⁰¹).

Moreover, a number of statements of objections were also adopted by the Commission,

⁹⁷ Case AT.39861 *Yen Interest Rate Derivatives*, Commission decision of 4 February 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39861

⁹⁸ Case AT.40055 *Parking Heaters*, Commission decision of 17 June 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40055

⁹⁹ Case AT.40098 *Blocktrains*, Commission decision of 15 July 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40098

¹⁰⁰ Case AT.39563 *Retail Food Packaging*, Commission decision of 24 June 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39563

¹⁰¹ Case AT.39639 *Optical Disc Drives*, Commission decision of 21 October 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39639

such as against the non-settling parties in the Mushrooms case¹⁰², as well as in the Car battery recycling¹⁰³ and Capacitors cases¹⁰⁴.

Settlement cases have amounted for a significant proportion of the decisions adopted this year, confirming that this instrument has been fully established. It is of major importance for the Commission's enforcement practice that the General Court confirmed in *Timab*¹⁰⁵ the legality of "hybrid" cases in which both a normal prohibition decision and a prohibition decision subject to the settlement procedure are adopted in the same investigation because some parties do not opt for the settlement route.

The flow of immunity and leniency applications continues to be important in a wide number of economic sectors. The Antitrust Damages Directive that entered into force on 25 December 2014 endorsed the effectiveness of the public enforcement system by setting out that leniency statements and settlement submissions can never be disclosed in the context of private damages litigation.

With five cartel prohibition decisions, and fines totalling approximately EUR 365 million, the Commission's cartel enforcement remains strong and effective. Fines imposed by the Commission flow into the EU budget, reducing the contributions by Member States and act as deterrence for future infringements.

Case name	Adoption date	Fine imposed EUR	Under-takings concerned	Prohibition procedure
Yen interest rates derivatives	04/02/2015	14 960 000	1	Hybrid*
Parking heaters	17/06/2015	68 175 000	2	Settlement
Retail food packaging	24/06/2015	115 865 000	10	Normal
Blocktrains	15/07/2015	49 154 000	3	Settlement
Optical disc drives	21/10/2015	116 377 000	7	Normal

*normal procedure part of a hybrid case with a settlement decision in December 2013

Each year DG Competition provides an estimate of the benefits to customers resulting from the Commission's cartel prohibition decisions¹⁰⁶. In 2015, the estimated customer benefits resulting from cartel prohibition decisions of the Commission amounted to between EUR 0.99 billion and EUR 1.49 billion.

Estimates of customer benefits resulting from cartel prohibition decisions at EU level

	2010	2011	2012	2013	2014	2015
EUR billion	7.20-10.8	1.8-2.7	1.35-2.0	4.89-5.92	1.78-2.64	0.99-1.49

¹⁰² Case AT.39965 *Mushrooms*, see IP/15/5065 of 28 May 2015, http://europa.eu/rapid/press-release_IP-15-5065_en.htm

¹⁰³ Case AT.40018 *Car Battery Recycling*, see IP/15/5254 of 24 June 2015, http://europa.eu/rapid/press-release_IP-15-5254_en.htm

¹⁰⁴ Case AT.40136 *Capacitors*, see IP/15/5980 of 4 November 2015, http://europa.eu/rapid/press-release_IP-15-5980_en.htm

¹⁰⁵ Case T-456/10 *Timab Industries and Cie financière et de participations Roullier (CFPR) v Commission*, judgment of the General Court of 20 May 2015, ECLI:EU:T:2015.

¹⁰⁶ OECD *Guide for helping competition authorities assess the expected impact of their activities* (April 2014), <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>

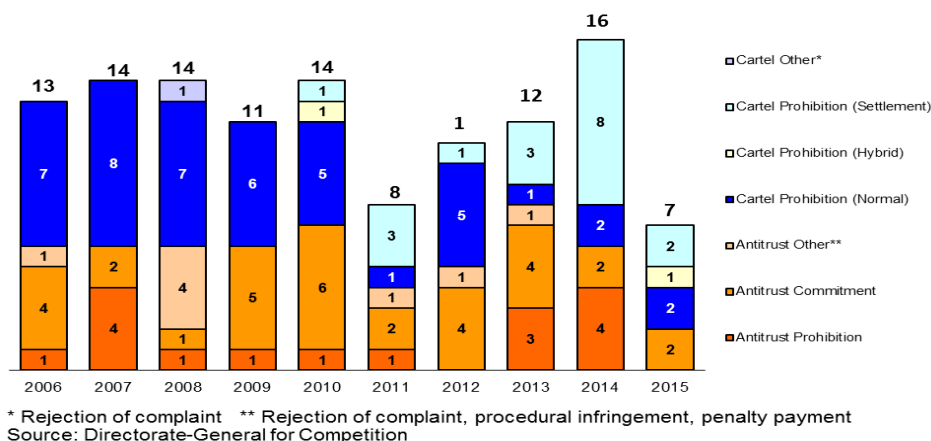
1.4.2 Other anti-competitive agreements and practices

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

In 2015, the Commission adopted two commitment decisions concerning anticompetitive practices by companies: (1) to solve competition concerns in the wholesale electricity markets in Bulgaria¹⁰⁷ (Bulgarian Energy Holding (BEH) and (2) to facilitate entry by new competitors on three transatlantic routes in the air transport sector (SkyTeam alliance members Air France/KLM, Alitalia and Delta¹⁰⁸). In addition, in 2015, the Commission adopted eight Statements of Objections in on-going investigations (Baltic Rail transport¹⁰⁹, Bulgarian Energy Holding (BEH)¹¹⁰, Google¹¹¹, Upstream Gas supplies in Central and Eastern Europe (Gazprom)¹¹², MasterCard¹¹³ Cross-border access to pay-tv (six major US film studios and Sky UK)¹¹⁴, Qualcomm predation and Qualcomm exclusivity payments¹¹⁵).

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

Antitrust and cartel output



¹⁰⁷ Case AT.39767 *BEH Electricity*, see IP/15/6289 of 10 December 2015, http://europa.eu/rapid/press-release_IP-15-6289_en.htm

¹⁰⁸ Case AT.39964 *Air France-KLM/Delta/Alitalia*, Commission decision of 12 May 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39964

¹⁰⁹ Case AT.39595 *Baltic rail transport*, see IP/15/2940 of 5 January 2015, http://europa.eu/rapid/press-release_IP-15-2940_en.htm

¹¹⁰ Case AT.39849 *BEH Gas*, see IP/15/4651 of 23 March 2015, http://europa.eu/rapid/press-release_IP-15-4651_en.htm

¹¹¹ Case AT.39740 *Google*, see IP/15/4780 of 15 April 2015, http://europa.eu/rapid/press-release_IP-15-4780_en.htm

¹¹² Case AT.39816 *Upstream Gas Supplies in Central and Eastern Europe*, see IP/15/4828 of 22 April 2015, http://europa.eu/rapid/press-release_IP-15-4828_en.htm

¹¹³ Case AT.40049 *MasterCard II*, see IP/15/5323 of 9 July 2015, http://europa.eu/rapid/press-release_IP-15-5323_en.htm

¹¹⁴ Case AT.40023 *Cross-border access to pay-tv content*, see IP/15/5432 of 23 July 2015, http://europa.eu/rapid/press-release_IP-15-5432_en.htm

¹¹⁵ Cases AT.39711 and AT.40220 *Qualcomm*, see IP/15/6271 of 8 December 2015, http://europa.eu/rapid/press-release_IP-15-6271_en.htm

Energy

In 2015, antitrust enforcement actions have challenged practices that partition the internal market and practices that prevent new entrants from accessing the market. These behaviours lead to higher energy prices. In this context, the Commission accepted in 2015 the commitments¹¹⁶ offered by the Bulgarian Energy Holding (BEH) to solve competition concerns in the wholesale electricity markets in Bulgaria. Further, in 2015 the Commission sent a Statement of Objections to BEH, and two of its subsidiaries: Bulgargaz BEH's gas supply subsidiary and Bulgartransgaz, BEH's gas infrastructure subsidiary for a possible abuse of dominant position in the Bulgarian natural gas markets¹¹⁷.

Information and Communication Technologies (ICT) and media sector

In 2015, DG Competition continued its antitrust enforcement in the ICT sector, contributing to creating a connected Digital Single Market as set out in the Political Guidelines. With a view to the importance of achieving an integrated Digital Single Market, the Commission increased its focus in 2015 to the on-line distribution of goods and digital services.

The e-commerce sector inquiry – Deepening market knowledge to tackle cross-border barriers

In 2015, the Commission launched a sector inquiry into e-commerce markets¹¹⁸. The inquiry aims to gather market information in order to better understand the nature, prevalence and effects of barriers to online trade erected by companies, and to assess them in light of EU antitrust rules. If, after analysing the results, the Commission identifies specific competition concerns, it could open case investigations to enforce the competition rules and provide guidance to businesses on the types of restrictions that are permissible online. The results may also be useful as inputs into the other actions within the Digital Single Market strategy.

The Commission expects to publish a preliminary report for consultation in mid-2016. The final report is expected to follow in 2017.

In the broadcasting sector, the Commission adopted a Statement of Objections in 2015 against six major US film studios¹¹⁹ (Disney, NBC Universal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros.) and Sky UK. In the publishing sector, the Commission opened a formal investigation in 2015 into some of Amazon's e-book distribution arrangements¹²⁰.

The Commission's enforcement action in technology markets focused on cases where dominant companies may have used their position in the market to foreclose competition in an anti-competitive manner. For example, in 2015, the Commission sent a Statement of Objections to Google¹²¹ on comparison shopping services and opened formal proceedings to examine in depth Google's conduct as regards the mobile operating system Android. In the area of baseband chipsets, which process the core communication functions in smartphones, tablets and other mobile broadband devices, the Commission

¹¹⁶ Case AT.39767 *BEH Electricity*, see IP/15/6289 of 10 December 2015, http://europa.eu/rapid/press-release_IP-15-6289_en.htm

¹¹⁷ Case AT.39849 *BEH gas*, see IP/15/4651 of 23 March 2015, http://europa.eu/rapid/press-release_IP-15-4651_en.htm

¹¹⁸ IP/15/4921 of 6 May 2015, http://europa.eu/rapid/press-release_IP-15-4921_en.htm

¹¹⁹ Case AT.40023 *Cross-border access to pay-tv*, see IP/15/5432 of 23 July 2015, http://europa.eu/rapid/press-release_IP-15-5432_en.htm

¹²⁰ IP/15/5166 of 11 June 2015, http://europa.eu/rapid/press-release_IP-15-5166_en.htm

¹²¹ Case AT.39740 *Google*, see IP/15/4780 of 15 April 2015, http://europa.eu/rapid/press-release_IP-15-4780_en.htm

opened formal proceedings on 16 July 2015¹²² to examine in depth Qualcomm's conduct as regards financial incentives to customers and potential 'predatory pricing' by charging prices below costs with a view to forcing its competitors out of the market. Statements of Objections were sent to the company on 8 December 2015¹²³.

Financial sector

2015 has been an important year for the European payment market, with the adoption and entry into force of a legislative "payment package"¹²⁴, the Interchange Fee Regulation¹²⁵ and the publication of the Revised Payment Services Directive (PSD II)¹²⁶. These new rules will profoundly change the way payment providers can operate in the EU.

In 2015, DG Competition continued its antitrust investigations in the financial sector, one of the Commission's priority areas to achieve a fairer and more integrated internal market. In 2015, a Statement of Objections was sent to MasterCard¹²⁷ in the proceedings against its interchange fees for transactions in the EEA with cards issued outside the EEA ("inter-regional transactions") and rules hindering cross border acquiring, which allegedly artificially segments the internal market and prevents the usual competitive process in acquiring. Also, the investigative efforts into the credit default swaps (CDS) market continued throughout 2015. In 2015, the Commission fined the United Kingdom based broker ICAP EUR 14.96 million for facilitating six cartels in the sector of Yen interest rate derivatives (YIRD) between 2007 and 2010.

In 2015, the Impact Assessment procedure for the review of the Insurance Block Exemption Regulation (EU) No. 267/2010 (IBER)¹²⁸ continued. DG Competition assessed the replies to targeted questionnaires¹²⁹ received following the public consultation in 2014 and took further stakeholder contacts. To gain additional input for the Impact Assessment, DG Competition commissioned two studies on issues regarding the functioning of the IBER that have been raised by stakeholders in the context of the consultation process. Preparatory steps for the Report¹³⁰ on the functioning and future of the IBER, which has to be submitted to the Parliament and Council by March 2016, were taken.

¹²² IP/15/5383 of 16 July 2015, http://europa.eu/rapid/press-release_IP-15-5383_en.htm

¹²³ IP/15/6271 of 8 December 2015, http://europa.eu/rapid/press-release_IP-15-6271_en.htm

¹²⁴ http://ec.europa.eu/competition/sectors/financial_services/payments_en.html

¹²⁵ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p. 1. The Interchange Fee Regulation was preceded by extensive legal action by the Commission challenging the interchange fees applied by MasterCard and Visa, including in particular the prohibition of MasterCard's intra-regional MIFs in 2007 and commitments from Visa Europe in 2010 and 2014 to reduce significantly all the MIFs it fixes in the EU. In September 2014 the European Court of Justice endorsed the Commission's decision in the MasterCard case.

¹²⁶ European Parliament and Council Directive (EU) 2015/2366 of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35, http://ec.europa.eu/finance/payments/framework/index_en.htm#151008

¹²⁷ Case AT.40049 *MasterCard II*, see IP/15/5323 of 9 July 2015, http://europa.eu/rapid/press-release_IP-15-5323_en.htm In the parallel case against Visa Inc. and Visa International the investigation regarding interchange fees for inter-regional transactions the investigation continues; see Frequently Asked Questions http://europa.eu/rapid/press-release_MEMO-14-138_en.htm

¹²⁸ Insurance Block Exemption Regulation (EU) No. 267/2010 (IBER), OJ L 83, 30.3.2010, p. 1. The regulation contains a sunset clause which foresees expiry in March 2017.

¹²⁹ Targeted questionnaires were sent to pools, customers, insurance intermediaries' federations/brokers and mutual insurance associations.

¹³⁰ The report will present the Commission's preliminary views on the functioning and future of the IBER at this stage and will not prejudge the final decision that the Commission will take on its future once the Impact Assessment is completed.

Other sectors

In 2015, as regards the transport sector, the Commission continued its work on the transatlantic airline alliances and adopted a decision¹³¹ accepting commitments offered by SkyTeam alliance members Air France/KLM, Alitalia and Delta on three transatlantic routes.

In the field of pharmaceuticals, the Commission published in 2015 the non-confidential version of its decisions in the Lundbeck¹³², Fentanyl¹³³ and Perindopril (Servier)¹³⁴ investigations and continued its investigation in relation to the market entry of generic Modafinil (sleeping disorder medicine) in the EEA¹³⁵.

Finally, in 2015, in the sports sector the Commission opened a formal antitrust investigation into the International Skating Union's (ISU) eligibility rules¹³⁶.

1.5 ABB activity: "Merger control"

EU merger control

The purpose of EU merger control¹³⁷ 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.

The number of notified mergers increased significantly in 2015 compared to the previous six years. Overall, 360 transactions were notified, including 33 reasoned pre-notification submissions by the notifying parties to request the referral of a case from the Commission to a Member State or from a Member State to the Commission. In 11 cases, the Commission opened in-depth investigations (second phase). These cases concerned various industry sectors, including the manufacture of engines and turbines, energy production, telecoms, music rights management, the manufacture of paper and packaging material, the distribution of office products, the manufacture of beverage cans and aluminium bottles, food & beverages, and small package delivery services.

In 2015, the Commission took 318 final decisions in merger cases¹³⁸. In two cases, the parties abandoned a transaction during the in-depth second phase investigation. The number of 22 interventions in 2015 was significantly higher compared with the average

¹³¹ Case AT.39964 *Air France-KLM/Delta/Alitalia*, Commission decision of 12 May 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39964

¹³² Case AT.39226 *Lundbeck*, Commission decision of 19 June 2013, http://ec.europa.eu/competition/antitrust/cases/dec_docs/39226/39226_8310_11.pdf

¹³³ Case AT.39685 *Fentanyl*, Commission decision of 10 December 2013, http://ec.europa.eu/competition/antitrust/cases/dec_docs/39685/39685_1976_7.pdf

¹³⁴ Case AT.39612 *Perindopril (Servier)*, Commission decision of 9 July 2014, http://ec.europa.eu/competition/antitrust/cases/dec_docs/39612/39612_11972_5.pdf

¹³⁵ Case AT.39686 *Cephalon*, see IP/11/511 of 28 April 2011, http://europa.eu/rapid/press-release_IP-11-511_en.htm?locale=fr

¹³⁶ IP/15/5771 of 5 October 2015, http://europa.eu/rapid/press-release_IP-15-5771_en.htm

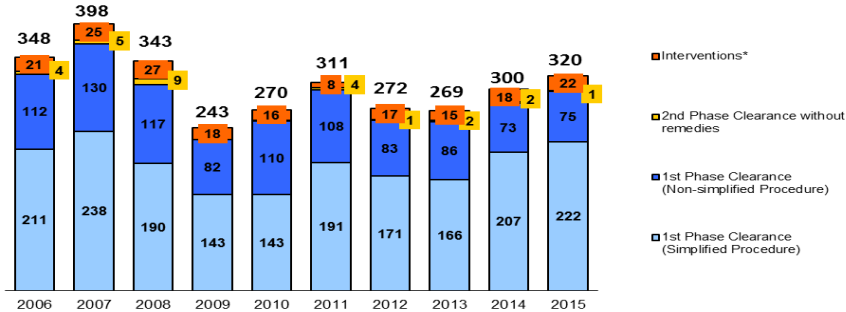
¹³⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1-22.

¹³⁸ For the purposes of this report, decisions based on Articles 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. Commission interventions in merger cases include prohibition decisions and mergers cleared subject to commitments, as well as withdrawals during second phase in-depth investigation.

of the last 6 years, which amounted to around 15 interventions per year. In 2015, 13 mergers were cleared subject to commitments in first phase and seven in second phase. There was no case where the Commission had to prohibit a notified transaction.

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

Merger decisions



* 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 and 2012 and two in 2013.
Source: Directorate-General for Competition

Each year, DG Competition also provides an estimate of the benefits to customers resulting from the Commission's horizontal merger interventions¹³⁹. In 2015, the estimated customer benefits resulting from the Commission's horizontal merger interventions amounted to between EUR 1.08-2.69 billion.

Estimates of customer benefits resulting from horizontal merger interventions at EU level

	2010	2011	2012	2013	2014	2015
EUR billion	4.20-6.30	4.00-5.80	2.20-5.60	0.30-0.70	2.02-5.06	1.08-2.69

Energy

In 2015, as in the previous years, a number of companies invested into development¹⁴⁰ and production from renewable sources¹⁴¹, such as wind parks¹⁴², solar parks¹⁴³ and waste-to-energy plants¹⁴⁴. In 2015, the Commission cleared the acquisition of the Thermal Power, Renewable Power and Grid businesses of Alstom by General Electric (GE), subject to conditions (GE/Alstom).

¹³⁹ Interventions include Commission prohibition decisions and decisions approving a merger subject to conditions removing the competition concern, after a first phase investigation or following an in-depth second phase investigation, and withdrawals of notification during the second phase investigation.
¹⁴⁰ Case M.7539 *Gip Ii/ Acs / Devco*, Commission decision of 27 March 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7539
¹⁴¹ Case M.7633 *Kia/ Gas Natural Fenosa/ Gpg*, Commission decision of 11 September 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7633
¹⁴² Case M.7609 *Omnes Capital/ Predica Prevoyance/ Quadran/ Quadrica*, Commission decision of 8 May 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7609
¹⁴³ Case M.7816 *EGP / F2I / JV*, Commission decision of 7 December 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7816
¹⁴⁴ Case M.7745 *Fortum / Lietuvos Energija / JV*, Commission decision of 23 November 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7745

ICT

In the IT sector, the Commission dealt with a series of multi-billion mergers in the semiconductor industry. In September, it cleared NXP's acquisition of Freescale, subject to remedies aimed at preserving competition in the market for radio frequency power transistors¹⁴⁵. In the media sector, the Commission conditionally cleared the acquisition by Liberty Global of a stake in De Vijver Media¹⁴⁶, a Belgian TV broadcasting and production company.

Telecommunication sector

2015 saw significant merger activity in the EU's telecommunications sector. The Commission conditionally cleared the mergers between Altice and PT Portugal¹⁴⁷, and between Orange and Jazztel¹⁴⁸ – two of Spain's four providers of nationwide fixed telephony and internet access. The Commission reviewed the proposed merger of the Danish businesses of Telenor and TeliaSonera¹⁴⁹, however before any decision was taken, the parties abandoned the transaction. In addition, the Commission reviewed the merger between Liberty Global and BASE¹⁵⁰ and is reviewing the merger between two of the United Kingdom's four mobile network operators, namely Hutchison 3G and Telefónica UK¹⁵¹. In both cases, the Commission opened in-depth investigations in 2015.

Financial sector

The Commission assessed several mergers in the banking, insurance and capital markets sectors. For example, the acquisition of Istituto Centrale delle Banche Popolari Italiane by Advent International and Bain Capital, involving markets related to payment cards¹⁵² or the acquisition by Aviva of Friends Life and Tenet which affected the United Kingdom life insurance market¹⁵³.

Pharmaceutical and health services sector

The consolidation trend affecting the pharmaceutical industry continued over the course of 2015, and the Commission adopted 15 decisions covering the sector by the end of the year. In the four cases which raised competition concerns (Novartis/GSK Oncology, GSK/Novartis Vaccines and Consumer Health, Mylan/Abbott-EPD-DM and Pfizer/Hospira); the transaction was cleared subject to remedies, following first phase investigation.

¹⁴⁵ Case M.7585 *NXP Semiconductors / Freescale Semiconductor*, Commission decision of 17 September 2015, http://ec.europa.eu/competition/mergers/cases/decisions/m7585_20150917_20212_4572466_EN.pdf

¹⁴⁶ Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, Commission decision of 24 February 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7194

¹⁴⁷ Case M.7499 *Altice/PT Portugal*, Commission decision of 20 April 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7499

¹⁴⁸ Case M.7421 *Orange / Jazztel*, Commission decision of 19 May 2015, http://ec.europa.eu/competition/mergers/cases/decisions/m7421_3082_3.pdf

¹⁴⁹ Case M.7419 *TeliaSonera / Telenor / JV*, Commission decision of 11 September 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7419

¹⁵⁰ Case M.7637 *Liberty Global / BASE Belgium*, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7637

¹⁵¹ Case M.7612 *Hutchison 3G UK / Telefónica UK*, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7612

¹⁵² Case M.7711 *Advent International / Bain Capital / Icbpi*, Commission decision of 16 September 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7711

¹⁵³ Case M.7478 *Aviva / Friends Life / Tenet*, Commission decision of 13 March 2015, http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7478

1.6 ABB activity: "Policy coordination, European Competition network (ECN) and international cooperation"

In order to meet the above-mentioned general and specific objectives, it is important to constantly adapt competition policy to new market developments and contemporary economic and legal thinking. Consequently, DG Competition regularly reviews the competition rules on substance and procedures, notably through Commission Regulations and "soft law" such as Guidelines, Communications and Notices. In addition to providing legal certainty and transparency for all stakeholders, these instruments play an important role in preventing and deterring restrictions of competition that harm consumers by informing companies and governments about the criteria the Commission uses in assessing anti-competitive agreements, abuses of dominant positions, mergers and State aid.

State aid policy

In 2014 the Commission completed to a large extent its ambitious State Aid Modernisation (SAM) reform¹⁵⁴, which was launched in 2012¹⁵⁵ and aimed at promoting good aid that supports investments and spurs growth while contributing to Member States' efforts towards budgetary consolidation.

In 2015, work continued on the remaining item, the guidance on the notion of aid and to accompany the Member States in the implementation of the reform in a partnership mode by reviewing national practices, developing guidance, IT tools and training initiatives. To oversee implementation and facilitate compliance with the new requirements for transparency and evaluations, the Commission has set up a High Level Group (HLG) with Member States as well as some dedicated working groups.

Antitrust policy

The national competition authorities (NCAs) are essential partners of the Commission for enforcing the EU competition rules. Since the entry into force of Regulation 1/2003 in 2004, NCAs are empowered to apply Articles 101-102 TFEU. This is done in close cooperation in the European Competition Network (ECN). The 2014 Commission Communication on Ten Years of Regulation 1/2003 identified a number of areas of action to strengthen the enforcement powers of NCAs¹⁵⁶.

Commission consults on boosting enforcement powers of national competition authorities

Following-up the 2014 Communication, the Commission launched in 2015 a public consultation¹⁵⁷ on empowering the national competition authorities (NCAs) to be more effective enforcers. The Commission invites feedback from a broad range of stakeholders on potential improvements to guarantee that NCAs (i) have the right tools to detect and sanction violations of the EU competition rules; (ii) have effective leniency programmes that encourage companies to come forward, possibly in several jurisdictions, with evidence of illegal cartels; and (iii) have adequate resources and are sufficiently independent when enforcing EU competition law.

¹⁵⁴ For a comprehensive overview of State Aid Modernisation, see DG Competition webpage: http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

¹⁵⁵ Communication of 8 May 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), COM(2012) 209 final.

¹⁵⁶ Communication from the Commission of 9 July 2014, *Ten Years Of Antitrust Enforcement Under Regulation 1/2003: Achievements And Future Perspectives*, COM/2014/0453 http://ec.europa.eu/competition/antitrust/legislation/antitrust_enforcement_10_years_en.pdf

¹⁵⁷ IP/15/5998 of 4 November 2015, http://europa.eu/rapid/press-release_IP-15-5998_en.htm

DG Competition is in the process of carefully reviewing all input received in the public consultation before deciding whether and to what extent it should take further action, including, possibly, an EU legislative initiative.

Directive 2014/104/EU on antitrust damages actions was adopted in 2014 and Member States need to implement the Directive in their legal systems by 27 December 2016. In 2015, the Commission supported Member States in their implementation efforts by facilitating information exchange and cooperation. DG Competition closely monitors policy, legislative and case-law developments at national level to evaluate the results of the implementation of the new rules for citizens and businesses.

In 2015, in order to further increase transparency and to offer guidance to parties and practitioners the Commission published a number of guidance documents relating to its procedures: (i) the *Best Practices on the disclosure of information in data rooms*¹⁵⁸ in proceedings under Articles 101 and 102 TFEU providing practical guidance on when and how to use data rooms to disclose in a restricted manner business secrets and other confidential information obtained during antitrust proceedings; (ii) the *Guidance on the preparation of public versions of Commission Decisions*¹⁵⁹ setting out how the Commission prepares the public version of antitrust decisions, and (iii) the guidance paper titled *Recommendations for the Use of Electronic Document Submissions in Antitrust and Cartel Case Proceedings*¹⁶⁰ contains guidance in particular on how to submit documents electronically to the Commission.

Merger policy

In the White Paper "*Towards more effective EU merger control*" adopted in July 2014, the Commission made some concrete proposals to improve the Merger Regulation in a few areas. Those mainly concern the possible extension of the EU Merger Regulation to minority shareholdings and a proposed streamlining of the referral system and other procedures. In light of the views expressed by stakeholders during the public consultation on the White Paper, the proportionality of a possible review system for minority shareholdings will be further assessed. For this purpose, DG Competition engaged in 2015 in further discussions with relevant stakeholders on the question of how to design an effective system for the review of minority shareholdings which would pose as little administrative burden as possible on companies.

In addition, the Commission published the *Best Practices on the disclosure of information in data rooms*¹⁶¹ in proceedings under the EU Merger Regulation providing practical guidance on when and how to use data rooms to disclose in a restricted manner business secrets and other confidential information obtained during merger proceedings. It also provided *Guidance on the preparation of public versions of Commission Decisions* adopted under the Merger Regulation¹⁶². Finally it published a policy brief entitled "*Market*

¹⁵⁸ Commission guidance (2015) *Best Practices on the disclosure of information in data rooms*, http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf

¹⁵⁹ Commission guidance (2015) *Guidance on the preparation of public versions of Commission Decisions* http://ec.europa.eu/competition/antitrust/guidance_on_preparation_of_public_versions_antitrust_04_062015.pdf

¹⁶⁰ Commission guidance (2015) *Recommendations for the Use of Electronic Document Submissions in Antitrust and Cartel Case Proceedings*, http://ec.europa.eu/competition/contacts/electronic_documents_en.pdf

¹⁶¹ Commission guidance (2015) *Best Practices on the disclosure of information in data rooms*, http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf

¹⁶² Commission guidance (2015) *Guidance on the preparation of public versions of Commission Decisions* http://ec.europa.eu/competition/mergers/legislation/guidance_on_preparation_of_public_versions_mergers_26052015.pdf

*definition in a globalised world*¹⁶³ and commissioned an independent economic report on the topic of "*Geographic Market Definition in European Commission Merger Control*"¹⁶⁴.

International cooperation and convergence

In 2015, DG Competition continued to actively engage in the international level negotiations on Free Trade Agreements (FTAs) aiming to include in the agreements competition and State aid provisions. In 2015 the negotiations with the US on a Transatlantic Trade and Investment Partnership Agreement (TTIP), launched in 2013, were one of the priorities for the Commission's international efforts. Another important agreement currently being negotiated is the FTA with Japan, where significant progress was made during the year. In 2015, the Commission also focused its efforts on negotiating the competition provisions included in the FTA with Vietnam. In addition, during 2015 negotiations between the Commission and its Canadian counterparts to include provisions on the exchange of information into the existing EU-Canada Cooperation agreement have made good progress.

Also at the bilateral level, DG Competition's technical cooperation activities with the Chinese competition authorities have continued throughout 2015 under the cooperation programme (EUCTP II¹⁶⁵), as well as with the Indian competition authorities, CITA¹⁶⁶ continued and will run until 2018. As for accession negotiations, DG Competition identified the opening benchmarks for negotiations of the competition chapter with Serbia¹⁶⁷. DG Competition also continued its active engagement in competition related international fora such as the Competition Committee of the OECD, the International Competition Network (ICN), the World Bank and UNCTAD. Mindful of the potential benefits of effective inter-agency cooperation in merger cases, namely in terms of reduction of burdens and costs for merging parties and avoidance of potential inconsistent outcomes, the Commission has invested significantly in achieving and enhancing cooperation with its counterparts over the years. In September 2015, the Commission, as co-chair of the ICN Merger Working Group, hosted in Brussels the 11th ICN Merger Workshop where international cooperation in merger cases was discussed in great detail.

1.7 Horizontal activities

1.7.1 Policy strategy and coordination

Policy Strategy and Evaluation

DG Competition prioritises its actions in order to maximise its impact on the functioning of markets. Prioritisation entails a careful selection of sectors which are the most important for the competitiveness of the EU economy and the functioning of which has the greatest – direct or indirect – effect on consumers, and of the most appropriate tools (enforcement, soft law, (sectoral) regulation, competition advocacy) to achieve such an impact. In order to ensure timely and effective resolution of opened proceedings, DG Competition follows progress in each enforcement case, monitors workload, outputs, and working time, and allocates resources and cases accordingly. Also, DG Competition

¹⁶³ Commission policy brief (2015) *Market definition in a globalised world* http://ec.europa.eu/competition/publications/cpb/2015/002_en.pdf

¹⁶⁴ Commission Report (2016) on *Geographic Market Definition in European Commission Merger Control* http://ec.europa.eu/competition/publications/reports/study_gmd.pdf

¹⁶⁵ EU-China Trade Project II.

¹⁶⁶ Capacity Building Initiative for Trade Development programme launched in 2014.

¹⁶⁷ *Report on Serbia* (2015), Chapter 8 on Competition, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf

constantly assesses its performance, structures and processes to make sure that it is effectively delivering its objectives. Strategic planning within DG Competition, in accordance with the Commission Strategic Planning and Programming cycle, ensures that its policy proposals and enforcement acts pass efficiently through the Commission decision making system.

In 2015, DG Competition implemented the Commission's Better Regulation policy in a decentralised way. While the operational units are responsible for conducting impact assessments, ex-post evaluations, external studies and public consultations, the Better Regulation Network of DG Competition is supervised by DG Competition's support unit and i) coordinates the five-year rolling evaluation plan, ii) strengthens the link between DG Competition's activities and evaluations, impact assessments and public consultations, iii) organises trainings to build up further capacity and iv) supports the teams performing evaluations and impact assessments with practical advice on procedural and methodological aspects. DG Competition's evaluation function supported the start-up phase of several evaluations by operational units, ensured quality control of interim deliverables and organised trainings to build up further evaluation Better Regulation capacity¹⁶⁸.

Competition advocacy and transparency

This activity also includes competition advocacy and transparency efforts on the side of DG Competition, which contribute to a pro-competitive regulatory framework at EU and national level (Annual Growth Survey, European Semester). The Commission's "smart regulation" rules require that DGs perform (ex-ante) impact assessments of all new or amended instruments necessary "for the most important Commission initiatives and those which will have the most far-reaching impacts".

Since 1971, DG Competition produces a detailed report on its activities in its Annual Competition Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, and engages in a structured dialogue with other institutions. DG Competition engages with the European Parliament, in particular the Economic and Monetary Affairs Committee (ECON), on a multitude of topics and strives to provide timely and effective replies to parliamentary questions.

In 2015, DG Competition commissioned a number of studies illustrating the economic impact of its policy interventions at the macro, micro and sectorial level¹⁶⁹. Amongst other things, the studies illustrated how the Commission's competition policy decisions can have a significant positive impact on macroeconomic performance, in terms of growth, equality, investment and job creation. A study that focused on the energy sector showed that EU merger policy enforcement is consistently and significantly related to better market outcomes in terms of consumer price levels and productivity¹⁷⁰. That same study conducted in-depth investigations into the effects of specific policy decisions (concerning the E.ON antitrust case and the GDF Suez merger case). A second study looked at the price effects of two merger decisions in the telecoms sector (i.e. T-

¹⁶⁸ Evaluation of the access to file/complaints system in Antitrust, Evaluation of State aid decisions in the area of Rescue and Restructuring Aid, Study on the impact of competition policy interventions in the energy sector, Study of an evaluative nature regarding the Training of Judges Programme, Meta-study regarding all evaluations done about merger cases interventions in Europe, Study estimating the macro-economic impact of competition policy interventions.

¹⁶⁹ These studies can be found on DG Competition's webpage http://ec.europa.eu/competition/publications/reports_en.html

¹⁷⁰ ICF Consultancy Services in association with DIW Berlin (2015), *The economic impact of enforcement of competition policies on the functioning of EU energy markets*, A study report prepared for DG Competition, Publications Office of the European Union.

Mobile/tele.ring and T-Mobile/Orange)¹⁷¹. More generally, a meta study of ex-post evaluations of merger decisions by European competition authorities highlighted the benefits of their market interventions¹⁷². In addition, an evaluation of the Commission's approach to geographic market definition was carried out on the basis of a sample of recent merger cases where this topic played an important role in the assessment¹⁷³. A final ex-post evaluation concerned the Commission's ex-ante assessment of restructuring plans submitted by the Member States together with the restructuring State aid submissions¹⁷⁴.

Internal and external communication

DG Competition's external communication strategy aims 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. This contributes to increased legal certainty and compliance in the areas of antitrust and cartels, mergers and State aid.

In parallel, DG Competition makes continuous efforts to improve the internal communication. To this end an Internal Communication Strategy and Action plan for 2014-2016 was established that focuses on four objectives that will ensure full information flow at all levels (top-down, bottom-up and horizontal), improve staff's understanding of Commission and DG Competition's policy strategy and priorities and help them see the connection between their job and those priorities. In 2015, DG Competition did not undertake any spending in significant external communication actions.

Highest standards in the enforcement of competition policy

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

DG Competition is committed to adhere to the highest standards of professionalism, intellectual rigour and integrity so as to ensure the highest standards in the enforcement of competition policy. Recently, DG Competition conducted, for the second time, Eurobarometer Standard Qualitative survey among its professional stakeholders on some key quality parameters¹⁷⁵ related to DG Competition's work¹⁷⁶. There was also

¹⁷¹ Aguzzoni, L. Buehler, B., Di Martile, L., Ecker, G., Kemp, R., Schwarz, A. and Stil, R. (2015), [Ex-post evaluation analysis of two mobile telecom mergers: T-Mobile/tele.ring in Austria and T Mobile / Orange in the Netherlands](#), Publications Office of the European Union.

¹⁷² Ormosi, P., Mariuzzo, F., Havell, R. with Fletcher, A. and Lyons, B. (2015), *A review of merger decisions in the EU: What can we learn from ex-post evaluations?*, A study report prepared for DG Competition, Publications Office of the European Union.

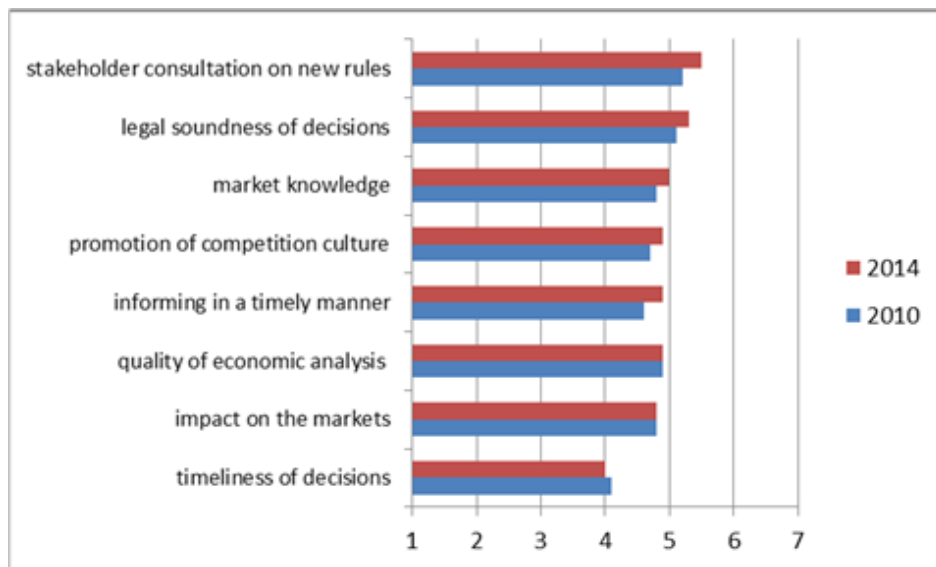
¹⁷³ Fletcher, A. and Lyons, B., (2016), *Geographic market definition in European Commission merger control*, A study report prepared for DG Competition.

¹⁷⁴ WIFO, Spi, ECORYS, ZEW and IDEA, (2016), *Ex-post evaluation of the impact of restructuring aid decisions on the viability of aided (non financial) firms*, A study report prepared for DG Competition, Publications Office of the European Union.

¹⁷⁵ 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

widespread agreement among stakeholders that DG Competition's impact on the market is significant by promoting competition, raising awareness for competition rules and acting as deterrent. DG Competition envisages repeating the survey in 2019.

DG Competition Stakeholder Survey (Eurobarometer 2010/2014)



1.8 Examples of specific efforts to improve economy and efficiency of financial and non-financial activities

Access to file

In 2015, DG Competition continued to work on the evaluation of the procedural rules on access to file, which constitute an important phase in its antitrust and merger proceedings ensuring the rights of defence of the parties concerned. The aim is to assess whether the rules efficiently address the objectives set for them. The evaluation aims at providing DG Competition with better information on the respective costs and benefits of the access-providing methods set out in *the Notice on the rules for access to the Commission file*¹⁷⁷ and in *the Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU*¹⁷⁸, concerning the disclosure of information in data rooms and confidentiality rings. In 2015, DG Competition focused on reviewing the feedback obtained and in 2016 aims to finalise and publish the evaluation and draw conclusions from it in its enforcement practise. In this context, DG Competition also published additional

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).

¹⁷⁶ 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>

¹⁷⁷ Commission notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, OJ C 325, 22.12.2005, p. 7.

¹⁷⁸ Commission notice on best practices for the conduct of proceedings concerning Articles.101 and 102 TFEU, OJ C 308, 20.10.2011, p. 6.

guidance to companies subject to antitrust and merger proceedings by the Commission on the disclosure of information in data rooms¹⁷⁹. The document aims at increasing transparency and predictability of the process within the existing legal and procedural framework, thereby enhancing the efficiency of antitrust and merger investigations.

Staff allocation

In 2015, DG Competition continued to benefit from the support of the Staffing Advisory Group (SAG) to efficiently manage its available resources. The SAG, as a permanent body having a support, coordination and advisory function in the area of staff allocation, ensures that staff allocation decisions are taken in a coherent and efficient way. The SAG makes a regular (at least every six months) review of the overall allocation of staff across instruments and sectors in relation to priorities, planning and workload. Comparing the workload of units within its instrument networks as well as within the DG, also allows DG Competition to efficiently re-allocate staff to the areas where this is most needed. In 2015, SAG contributed to the redeployments in relation to Task Force Digital Single Market in Directorate C for the purpose of the e-commerce sector inquiry, the State aid unit in Directorate B for the purposes of the State aid sector inquiry into capacity mechanisms in the EU and in relation to reinforcement of the Task Force Tax Planning Practices. It also examined and made proposals for the absorption and distribution of staff reductions resulting from the progressive reduction of Commission staff by 5% in the period 2013-2018.

¹⁷⁹ *Best Practices on the disclosure of information in data rooms in proceedings under Articles 101 and 102 TFEU and under the EU Merger Regulation* of 2 June 2015, available at http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf.

2. MANAGEMENT AND INTERNAL CONTROL

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

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

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

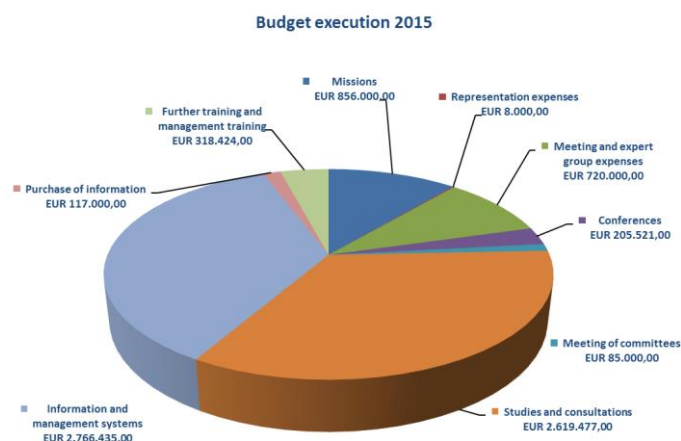
This section reports the control results and other relevant elements that support management's assurance on the achievement of the internal control objectives¹⁸⁰. It is structured into:

- (a) Control results;
- (b) Audit observations and recommendations;
- (c) Effectiveness of the internal control system; resulting in
- (d) Conclusions as regards assurance.

Competition policy is implemented through enforcement and involves predominantly procedural (case-handling) and advocacy activities. DG Competition manages a relatively modest administrative budget (EUR 7.72 million in 2015¹⁸¹) 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 (see graph for the budget execution in 2015). Financial management is therefore not a major activity in DG Competition's operations. As of 2015, DG Competition also manages a small grant programme (EUR 1 million) – Training of Judges – by co-delegation with DG Justice.

¹⁸⁰ Effectiveness, efficiency and economy of operations; reliability of reporting; safeguarding of assets and information; prevention, detection, correction and follow-up of fraud and irregularities; and adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programs as well as the nature of the payments (Article 32 FR).

¹⁸¹ Other administrative expenditures within the global envelope and Information purchase (co-delegation DG Communication). Appropriations sub-delegated to DG Competition are reported directly to the Directorate-Generals concerned i.e. DG DIGIT and DG Communication.



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 and a decentralised circuit with counterweight for issuing recovery orders in relation to fines. The role of the operational units/directorates is important, in particular with respect to operational initiation and verification. A close and constant liaison with members of the DG's Finance Team is however essential throughout the expenditure life cycle. These arrangements allow for a more responsive organisation without endangering the effectiveness of internal controls.

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

2.1 Control results

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

2.1.1 Control effectiveness as regards legality and regularity

DG Competition has set up internal control processes aimed to ensure the adequate management of the risks relating to the legality and regularity of the underlying transactions, and the nature of payments. The control objective is to ensure that the Director-General has reasonable assurance that the total amount of any financial operation authorised during the reporting year, which would not be in conformity with the applicable contractual or regulatory provisions, does not exceed 2% of the total expenditure. In 2015, the error rate was 0%.

As regards the legality and regularity of the underlying transactions, the objective is to ensure that the estimated annual risk of errors in commitments and payments at the time of authorisation of the transaction is less than EUR 127 600¹⁸².

¹⁸² This amount represents 2% of payments made in 2015 (EUR 6.38 million).

In order to reach this conclusion, 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.

During the reporting year there was one recorded deviation, which had no impact on the legality and regularity of the transaction.

In 2015, five 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, 66.6% of the financial operations were subject to an ex-post control. None of these controls unveiled errors. Thus, DG Competition does not expect to make any future corrections on payments made in 2015.

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. It is therefore possible to conclude that the control objective has been achieved.

2.1.2 Efficiency and Cost-effectiveness

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

The principle of efficiency concerns the best relationship between resources employed and results achieved. The principle of economy requires that the resources used by the institution in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price. This section outlines the indicators used to monitor the efficiency of the control systems, including the benefits of these controls. DG Competition continuously reviews its control strategy to ensure the cost-effectiveness of controls.

To measure the efficiency and effectiveness of controls, DG Competition relies on the indicators mentioned in Annex 5. In light of the limited budget, DG Competition applies for efficiency reasons a centralised financial circuit, 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 the procurement procedures, in addition to the base line controls as required by the Financial Regulation such as the "four-eye" principle. The ex-post review of procurements, 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 175 000 or less than 3% of total expenditure.

In 2015, all planned procurements were approved by senior management as being in line with the DG's objectives and priorities. Four procedures at a total value of EUR 575 000 had to be cancelled due to either the poor quality of the offers or because no offers were received. However, DG Competition received no complaints from unsuccessful contractors, no legal proceedings were launched against the Commission and no cases were raised by the Ombudsman.

Despite the lack of payment credits on two budget lines sub-delegated to DG Competition, the average payment delay in 2015 was less than 20 days, compared to 26 days in 2014. Furthermore, more than 94% of all payments were executed within the contractual limit, compared to 88% in 2014. The average registration delay for an invoice

was 3.6 days, which is below the Commission's target of five days.

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

The total amount of payments in 2015 was EUR 6.38 million and the error rate was 0%. The controls and the measures taken comply with baseline requirement and give the management sufficient assurance of sound financial management, in particular, as the prevention of potential errors in procurement procedures is less expensive than costs of potential litigations and/or legal proceedings. Overall, during the reporting year the controls carried out by DG Competition for the management of the budget appropriations were efficient and cost effective.

2.1.3 Fraud prevention and detection

Anti-Fraud Strategy

In 2013 DG Competition developed its Anti-Fraud Strategy as foreseen in the Commission's overall Anti-Fraud Strategy¹⁸³. The Strategy complements the DG's Code on Ethics and Integrity and takes into account the DG's relatively limited administrative budget and absence of operational budget.

The actions taken in 2015 are as follows:

- Reviewed Security Guidelines, taking into account the risk of fraud, were adopted by Senior Management on 26 January 2015;
- A total of 20 financial courses were attended by the six members of DG Competition's Finance Team;
- DG Competition collaborated to the review of the Commission's ethics leaflet for staff, drafting the new section on insider dealing;
- The obligation by case handlers to sign on a yearly basis a conflict of interest form (for long-lasting cases), was integrated in the Case Management Rationalisation project, due to be completed in 2017; and
- DG Competition continued its participation in OLAF's Fraud Prevention and Detection Network, as well as in the meetings of the Working Group on Conflicts of Interests.

These actions were reviewed and reported to the Director-General on 13 January 2016.

Anti-Fraud controls

The controls aimed at preventing and detecting fraud are not fundamentally different from those intended to ensure the legality and regularity of transactions. Each year, DG Competition assesses the risk of fraud in the context of its risk management exercise. The fraud risks are mitigated by specific controls. Activities and operations at a higher risk of fraud are subject to more in-depth monitoring and control. During the reporting

¹⁸³ COM(2011) 376, 24.6.2011.

year, no case of fraud was transmitted to OLAF/IDOC 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.

Both OLAF and IDOC report annually on the follow up of their investigations.

2.2 Audit observations and recommendations

This section reports and assesses the observations, opinions and conclusions reported by auditors in their reports as well as the opinion 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.

In 2015, the Commission's Internal Audit Service (IAS) issued two reports following recent audits¹⁸⁴ it conducted on DG Competition. All recommendations contained in the reports were accepted by DG Competition and action plans addressing the findings were agreed upon between the two services. The implementation of the agreed actions is ongoing.

The Internal Auditor concludes that the internal control systems audited are overall working satisfactorily, although a number of very important findings remain to be addressed in line with the agreed action plans.

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

Regarding the Audit on Knowledge management, the overall objective was to assess the efficiency and effectiveness of the knowledge management process put in place by DG Competition to address the risk of losing knowledge and expertise in competition case handling.

Due to the nature of DG Competition's core business, knowledge management is a key factor for the DG to achieve its strategic objectives. In this respect, the IAS concluded that the knowledge collection, storing and sharing systems in place are efficient and effective and adequately support DG Competition staff in ensuring high quality and consistent competition case handling. The IAS audit identified a few areas for further improvement to strengthen this knowledge sharing culture.

None of the very important recommendations issued by the IAS are overdue and the action plans addressing all recommendations are being implemented as foreseen.

¹⁸⁴ Audit on Knowledge management (five important recommendations) and Audit on the Management of local IT (five very important and five important recommendations).

Following its Special Report SR 15/2011¹⁸⁵, the European Court of Auditors (ECA) issued in February 2015 its Follow-up Report in which it concluded that the State Aid Modernisation, launched five months after the publication of SR 15/2011, addressed most of the Court's recommendations.

2.3 Assessment of the effectiveness of the internal control systems

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

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

The DG's annual review of its implementation of the Internal Control Standards (ICS-15) was based on an initial desk review by the ICC staff, followed by discussions with relevant horizontal units responsible for the implementation of the ICS. As a rather non-spending DG, the inherent risks of DG Competition relate to procedures leading to Commission decisions in the field of competition policy, handling of confidential information as well as attracting and maintaining highly qualified staff.

For 2015, ICS 3, 12 and 14 were prioritised and are detailed below.

ICS 3 – Staff allocation and mobility

In 2015, DG Competition again reviewed its resource allocation and mobility so as to continue to match its resources best with the policy priorities. Based on policy priorities, workload and time management indicators, DG Competition undertook several internal redeployments.

Moreover, DG Competition continued to encourage flexible use of resources, in particular within its instrument networks ("décloisonnement"). The existing DG Competition workload and performance indicators by instrument (Antitrust, Cartels, Mergers and State aid) were further fine-tuned in 2015. Also within the respective instrument areas the weighting system for the specific instrument (State aid and Antitrust) allowed for staff to be moved or to be detached from one unit to another. The weighting system compares the workload by looking at past output as well as at expected future work. A specific weight is attached to all future cases thus making it possible to compare the expected workload of different cases on a sound basis. Time has also proven the effectiveness of the workload indicators to the extent that the move of staff allowed for a more equal workload across instrument areas/units. The workload is re-evaluated on a regular basis to lead to an even better repartition of workload amongst staff if needed.

In 2015, DG Competition embarked on the implementation of its Strategic HR Plan, a multi-annual planning tool that is coordinated by DG HR. The Strategic HR Plan serves to plan human resources needs and developments in a three-year horizon (2015-2017). It is divided in two parts: (1) the political and business priorities of the DG and their

¹⁸⁵ Special Report 15/2011 "Do the Commission's procedures ensure effective management of State aid control?", http://www.eca.europa.eu/Lists/ECADocuments/SR11_15/SR11_15_EN.PDF

implications for its staffing, and (2) the HR objectives of the DG and how they will help to achieve its business objectives. The Plan includes a gap analysis between the available resources and the projected needs for resources.

ICS 12 – Information and communication

To respond to the need of a more strategic approach to communication on competition policy, DG Competition adopted in 2015 a communication strategy for the period 2016-2019 which sets the main communication objectives and channels. The communication strategy includes a number of actions to integrate better communication aspects in DG Competition's daily work and decision-making and to anticipate communication needs. These include developing new means to underpin the discussions on communication strategy and making a better use of the forthcoming communication opportunities.

ICS 14 – Evaluation of Activities

During the past two years, DG Competition has rigorously developed its evaluation activities, function, network, methodologies, practices and training to integrate evaluations to its activities according to its multi-annual evaluations plan and Commission guidelines.

A number of evaluations and studies with evaluative elements have been concluded in 2015, covering topics as diverse as access to file/complaints in antitrust, restructuring aid decisions in State aid, mergers in the telecom sector and the economic impact of competition policy interventions in the energy sector. A new project has been launched regarding the telecom sector and a further one is planned to start in 2016 regarding restructuring aid decisions concerning banks.

In 2015, DG Competition started to implement the new Better Regulation Guidelines of the Commission and created a Better Regulation network that holds meetings every two months between its representatives from all instruments. The policy-making process has become very complex due to the new Guidelines, but the DG adapted its working methods, with a coordination unit providing a helpdesk and tailor-made advice which is used almost daily by other units.

In addition, the Principal Adviser with her staff cooperates with National Competition Authorities and the academia to further develop an evaluation methodology specifically for competition policy.

In conclusion, the internal control standards are effectively implemented and functioning.

2.4 Conclusions as regards assurance

This section reviews the assessment of the elements reported above (in Sections 2.1, 2.2 and 2.3) and draws conclusions supporting the declaration of assurance and namely, whether it should be qualified with reservations.

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

The intrinsic risk for administrative expenditure managed by DG Competition, including procurement, 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 6.38 million) is between 0% and 2%, which implies an amount at risk below EUR 127 600.

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 2015. 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.

In conclusion, management has reasonable assurance that suitable controls are in place and working as intended; resources assigned to the DG have been used for their intended purposes and in accordance with the principles of sound financial management and those of legality and regularity; risks are appropriately monitored and mitigated and necessary improvements and reinforcements are being implemented. Furthermore, it is also possible to conclude that the internal control systems provide sufficient assurance with regard to the achievement of the other internal control objectives. On this basis, the Director-General, in his capacity as Authorising Officer by Delegation has signed the Declaration of Assurance.

3. 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 view¹⁸⁶.

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 opinion of the Internal Audit Service on the state of control and its observations for years prior to the year of this declaration.

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

Brussels, 21 March 2016

(Signed)

Johannes Laitenberger

¹⁸⁶ True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG.