



2019

Annual Activity Report

DG Competition



Foreword by Olivier Guersent, Director-General, DG Competition

The year 2019 was a year of transition for the EU. The European Parliament elections in May 2019 recorded the highest overall turnout since 1994. The mandate of President Juncker's Commission came to an end, and President Von der Leyen's Commission took up its duties in November 2019.

Also for DG Competition, 2019 was a year of change. My predecessor as Director-General Johannes Laitenberger was appointed judge at the General Court and stepped down as Director-General in September 2019. Cecilio Madero Villarejo took over as Acting Director-General for the last four months of the year. Under their leadership, 2019 became a very successful year for DG Competition. The hard-working and professional staff of DG Competition did its utmost to deliver on the priorities set by the outgoing Commission while at the same time preparing for the next Commission mandate.

The year 2019 was also a challenging year for DG Competition and its resources were stretched to the limit. The ongoing evaluations and reviews under the Better Regulation framework of a significant number of competition-related legislation put an additional strain on DG Competition's scarce resources. The number of merger notifications remained at a very high level, despite a small decrease compared to 2018 (when the highest number of notifications in the history of EU merger control was notified). As illustrated in this report, a large number of substantial decisions were adopted in 2019 across all enforcement instruments; antitrust, cartels, mergers and State aid. An enforcement record we can be proud of!

The foundations of EU competition law are as relevant today as they were when the Treaty of Rome was signed more than 60 years ago. The competition rules give companies of all sizes a chance to compete on fair and equal terms and help EU consumers get a fair deal in the internal market.

Our economy has to adapt to a digital future. Markets are evolving at an increasingly rapid pace. Digitisation offers all firms, big and small, the opportunity to become more productive and competitive. EU firms' ability to innovate will make a difference between taking the lead, or falling behind. DG Competition is faced with new challenges linked to the use of big data, algorithms and other developments in an increasingly digital environment. We have to ensure that our competition policy is fit for the modern economy, while continuing to vigorously enforce the competition rules. This will be one of the greatest challenges for DG Competition in the coming years.

Competition policy plays a crucial role in EU industrial policy. Companies that face strong competition in the single market become competitive also on a global scale. It would be a mistake to try to create "European Champions" by picking a favourite and then protecting the chosen firm from competition in the EU. Competition policy should give everyone a fair chance so that the most productive and innovative companies can grow without being held back by unfair competition. Competition policy can also help the EU industry adapting to the challenges of global warming and meeting the objective of the European Green Deal.

For me personally, it is an exciting but challenging task to come back to my old DG as Director-General. I have previously worked 17 years at DG Competition in various positions, so in many ways it feels like coming home. I look forward to leading DG Competition into the new Commission mandate under the stewardship of Executive Vice-President Vestager.

The results detailed in this report are due to the great efforts made by the entire DG Competition staff under the leadership of Director-General Laitenberger, Acting Director-General Madero Villarejo and Commissioner Vestager. Many others within the Commission and beyond also contributed to the success. My heartfelt thanks to everyone!

Table of Contents

THE DG IN BRIEF	4
EXECUTIVE SUMMARY	7
A) KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF GENERAL AND SPECIFIC OBJECTIVES OF THE DG (EXECUTIVE SUMMARY OF SECTION 1)	7
B) KEY PERFORMANCE INDICATORS (KPIs)	10
C) KEY CONCLUSIONS ON FINANCIAL MANAGEMENT AND INTERNAL CONTROL (EXECUTIVE SUMMARY OF SECTION 2.1)	13
D) PROVISION OF INFORMATION TO THE COMMISSIONER.....	14
1. KEY RESULTS AND PROGRESS TOWARDS THE ACHIEVEMENT OF THE COMMISSION'S GENERAL OBJECTIVES AND DG'S SPECIFIC OBJECTIVES	15
1.1 ANTITRUST AND CARTELS	16
1.2 MERGER CONTROL	23
1.3 STATE AID CONTROL	29
1.4 PROMOTING COMPETITION CULTURE AND INTERNATIONAL COOPERATION IN THE AREA OF COMPETITION POLICY; MAINTAINING AND STRENGTHENING THE COMMISSION'S REPUTATION WORLD-WIDE	41
2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL	45
2.1. FINANCIAL MANAGEMENT AND INTERNAL CONTROL	45
2.1.1. CONTROL RESULTS.....	46
2.1.2. AUDIT OBSERVATIONS AND RECOMMENDATIONS	57
2.1.3. ASSESSMENT OF THE EFFECTIVENESS OF INTERNAL CONTROL SYSTEMS	57
1. SOURCE AND METHODOLOGY FOR THE INTERNAL CONTROL SYSTEMS.....	58
2. INTERNAL CONTROLS SELF-ASSESSMENT FOR 2019	58
2.1.4 CONCLUSIONS ON THE ASSURANCE.....	59
DECLARATION OF ASSURANCE	60
2.2. OTHER ORGANISATIONAL MANAGEMENT DIMENSIONS	61
2.2.1 HUMAN RESOURCE MANAGEMENT.....	61
2.2.2 BETTER REGULATION (ONLY FOR DGs MANAGING REGULATORY ACQUIS)	62
2.2.3 INFORMATION MANAGEMENT ASPECTS	65
2.2.4 EXTERNAL COMMUNICATION ACTIVITIES.....	66

THE DG IN BRIEF

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

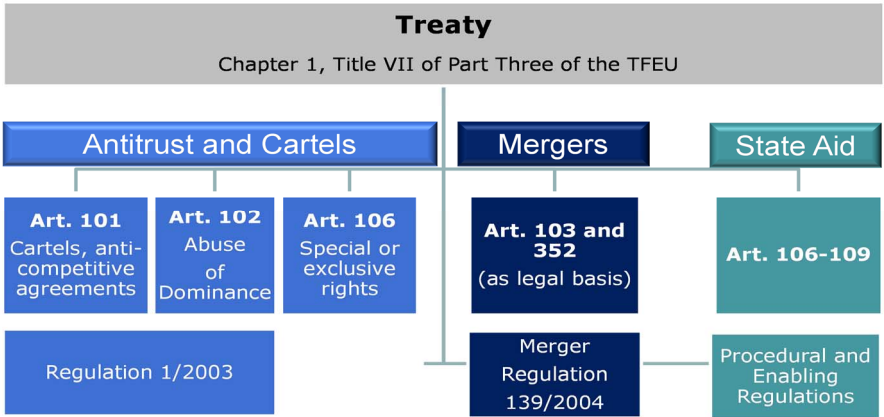
Competitive markets play an important role supporting the Commission's efforts to achieve a strong and prosperous EU. Competition contributes to an efficient use of society's scarce resources, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. DG Competition's competition policy actions in 2019 targeted a wide range of sectors in the EU economy, thereby promoting open and efficient markets so that both businesses and citizens can get a fair share of the benefits of economic growth. Moreover, EU competition policy continued to support key political priorities of the Commission, in particular its objectives linked to the internal market, digitalisation, fair taxation, as well as energy and climate as set out in the Commission President's Political Guidelines and the Commission Work Programme.

A rigorous enforcement of the competition rules according to strict legal standards and in accordance with state-of-the-art economic analysis ensures fairness in the economy.



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

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



The Commission, together with the national competition authorities (NCAs) and with national courts¹, enforce EU competition rules based on Articles 101-109 TFEU. Within the Commission, DG Competition is primarily responsible for implementing these direct enforcement powers. DG Competition performs the following functions to meet these obligations, as reflected in the Mission Letter by President Juncker²:

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

DG Competition carries out its mission mainly by taking direct enforcement actions³ against companies or Member States when it finds evidence of unlawful behaviour – be it anti-competitive agreements between firms, abusive behaviour by dominant companies⁴ or governmental action which leads to a distortion of competition in the internal market by giving some companies undue advantages over others. EU merger control⁵ 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 the granting of better targeted aid that addresses market failure or equity objectives.⁶ 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 the most harmful practices in the internal market. 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.

The activities of DG Competition create EU added value. When DG Competition prioritises its enforcement actions and decides whether or not to initiate investigations *ex-officio*, one of the main decision criteria is the impact on the internal market and EU economy. By pursuing high-impact cases, DG Competition can maximise the added value of its interventions but it also pursues cases for their precedence value, providing signals to the market participants. EU added value is also an important factor when deciding whether a case should be investigated by DG Competition or by one or several national competition authorities (NCAs). DG Competition concentrates on cases where intervention at EU level generates added value. The objective of EU State aid policy is also to create EU added value by stimulating better targeted and more effective State aid while minimising its market-distorting effects in the internal market. DG Competition also

¹ Articles 101 and 102 TFEU; national courts also play a role in the application of Articles 107-109 TFEU.

² 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*".

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

uses key performance indicators in its external communication illustrating the results of its actions to EU consumers, citizens and businesses, as well as to the EU economy.

In the international context, DG Competition strives to shape global economic governance by strengthening international cooperation in competition enforcement and making steps towards an increased convergence of competition policy instruments across different jurisdictions.

DG Competition accomplishes its tasks primarily through its human resources (801 staff members on 31 December 2019) and its legal powers. It has currently no own operational budget. The financial resources administered by DG Competition come from the administrative budget. DG Competition awaits the outcome of co-legislators' work on the Commission Proposal for the Multiannual Financial Framework (MFF) for the period of 2021-2027. The proposal includes a Single Market Programme and within it a new Competition Programme. The programme would help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and other developments in an increasingly digital environment and strengthen cooperation networks between Member States' competition authorities and the Commission to support fair competition in the single market. The indicative operational budget for the Competition Programme would amount to EUR 140 million over the period 2021-2027.

EXECUTIVE SUMMARY

The Annual Activity Report is a management report by the Director-General of DG Competition to the College of Commissioners. Annual Activity Reports are the main instrument of management accountability within the Commission and constitutes the basis on which the College takes political responsibility for the decisions it takes as well as for the coordinating, executive and management functions it exercises, as laid down in the Treaties.⁷

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

The year 2019 was another challenging year for DG Competition and its resources were stretched to the limit. The number of merger notifications remained at a very high level. Strong enforcement actions were taken in the fields of antitrust and State aid control. In addition, DG Competition continued to work towards further streamlining the procedures in competition cases to enhance further the timeliness, efficiency and effectiveness of its enforcement actions under the EU competition rules and evaluating the effects of its past decisions. Finally, the ongoing evaluations and reviews under the Better Regulation framework of a significant number of competition rules and guidance constituted a major work stream.

The year 2019 was also a year of transition, the last year of the Juncker-Commission and the start of the Von der Leyen-Commission. DG Competition did its utmost to deliver on the priorities set by the outgoing Commission, while at the same time preparing for the next Commission mandate.

Energy is one of the sectors where completing the single market will bring substantial benefits to Europe's consumers and businesses. In 2019, the Commission assessed commitments proposed by *Transgaz*, the Romanian gas network operator. The commitments aim at ensuring that sufficient capacities of gas produced in Romania can be freely exported to other Member States.⁸ In mergers, the Commission adopted several decisions concerning joint ventures that were set up to develop and/or operate renewable energy assets.⁹ Moreover, the Commission assessed the large asset swap between *RWE* and *E.ON*¹⁰ in the electricity sector whereby RWE acquired the majority of E.ON's renewable and nuclear generation assets and in return, E.ON acquired Innogy, an RWE subsidiary active in the distribution and retail sales of gas and electricity. To obtain the Commission's approval, E.ON committed to divest some of its energy retail businesses in Czechia, Germany and Hungary. Through this asset swap, the RWE and E.ON re-focussed their businesses at different levels of the value chain. In State aid, the Commission adopted twenty decisions concerning renewables and combined heat and power support schemes.¹¹ The Commission approved one Important Project of Common European Interest (IPCEI) concerning innovations in the batteries value chain (from materials, chemicals, cells, modules and packs to recycling and reuse), with seven

⁷ Case AT.40335 *Romanian gas interconnectors*, Commission decision of 1 June 2017. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1501.

⁸ Case AT.40335 *Romanian gas interconnectors*, Commission decision of 1 June 2017. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1501.

⁹ For instance, case M.9106 *REDEN H2 / BERROUTE*, Commission decision of 29 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9106 and case M.9438 *ENGIE/BPCE GROUP/PSFV PALMA DEL RIO*, Commission decision of 23 August 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9438.

¹⁰ Case M.8871 *RWE/E.ON Assets*, Commission decision of 26 February 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8871.

¹¹ Cases SA.55761, SA.50920, SA.45765, SA.48601, SA. 51190, SA.49673, SA.49674, SA. 52085, SA. 52960, SA. 50807, SA. 49672, SA. 53347, SA. 54949, SA. 50199, SA. 55100, SA. 51192, SA. 52530, SA. 54375, SA. 54376, and SA. 51614.

participating Member States.¹²

Competition policy enforcement continued to contribute to the implementation of the *Digital Single Market*. In 2019, the Commission fined Google EUR 1.49 billion for abusing its market dominance by imposing a number of restrictive clauses in contracts with third-party websites ("publishers"), which prevented Google's rivals from placing their search adverts on these websites.¹³ The Commission fined *Qualcomm* EUR 242 million for abusing its dominant position in the worldwide market for UMTS-compliant chipsets.¹⁴ The pay-TV investigation, opened in 2014, was closed in 2019.¹⁵ The investigation related to certain contractual clauses in the licensing agreements concluded between *Sky UK* and six major film studios (*Disney, Fox, Paramount, NBC Universal, Sony* and *Warner Bros*) after the parties had offered commitments to solve the anti-competitive issues. In October 2019, the Commission issued a decision ordering as an interim measure *Broadcom* to stop applying certain provisions in agreements with six of its main customers.¹⁶ The Commission concluded that, *prima facie*, *Broadcom* abused its dominant position by imposing exclusivity-inducing provisions on manufacturers of TV set-top boxes and modems. In merger control, the Commission cleared the acquisition of *DNA* by *Telenor*¹⁷, the acquisition by *Vodafone* of *Liberty Global's cable business* in Czechia, Germany, Hungary and Romania, subject to remedies.¹⁸ Moreover, the Commission cleared the acquisition of *Kathrein's antenna and filter assets* by *Ericsson*¹⁹ and the acquisition of *Red Hat* by *IBM*.²⁰ In State aid, the Commission adopted a number of cases authorising State aid for broadband measures.²¹

DG Competition also continued to contribute to the fulfilment of the *Capital Markets Union*. The reduced number of State aid cases for banks show the increased stability of EU banks. In 2019, there was only one direct support measure for a commercial bank in the EU that contained State aid.²² High levels of non-performing loans is a legacy problem in some Member States, such as Greece²³ and Italy.²⁴ In 2019, the Commission

¹² IPCEIs are large cross-border, integrated projects that often entail significant risks, which private investors are not willing to take on by themselves. In such cases, public support from several EU Member States may be necessary to fill the financing gap to overcome market failures and allow such projects to see the light of day. Crucially, these projects must generate positive spill-over effects across the entire EU, not limited to the participating countries.

¹³ Case AT.40411 *Google Search (AdSense)*, Commission decision of 20 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411.

¹⁴ Case AT. 39711 *Qualcomm (predation)*, Commission decision of 18 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39711.

¹⁵ Case AT. 40023 *Cross-border access to pay-TV - NBC Universal / Paramount Pictures C / SKY (UK) / Sony Pictures Entertainment / The Walt Disney Company / Twentieth Century Fox Int Ltd / Warner Bros Entertainment UK Ltd*, Commission decision of 7 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023.

¹⁶ Case AT. 40608 *Broadcom*, Commission decision of 16 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40608.

¹⁷ Case M.9370 *Telenor / DNA*, Commission decision of 15 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9370.

¹⁸ Case M.8864 *Vodafone / Certain Liberty Global Assets*, Commission decision of 18 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8864.

¹⁹ Case M.9332 *Ericsson / Kathrein Antenna and Filter Assets*, Commission decision of 20 August 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9332.

²⁰ Case M.9205 *IBM / Red Hat*, Commission decision of 27 June 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9205.

²¹ Case SA.49935 *Superfast Broadband (SFBB) Project - Greece*, Commission decision of 7 January 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49935. Case SA.54472 *National Broadband Plan - IE*, Commission decision of 15 November 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54472. Case SA.53925 *Broadband Scheme for NGA White and Grey Areas - Spain*, Commission decision of 10 December 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53925. Case SA.54668 *Bavarian gigabit scheme - DE*, Commission decision of 29 November 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54668.

²² Case SA.52917(2019/N) *Liquidity support to Banca Carige - Cassa di Risparmio di Genova e Imperia*, Commission decision of 18 January 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52917.

²³ SA.53519(2019/N) *Hellenic Asset Protection Scheme ('Hercules')*. Commission decision of 15 November 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53519.

also adopted two cartel decisions in Foreign Exchange spot trading, imposing total fines of EUR 1.07 billion. In addition, the Commission concluded separate antitrust investigations into *Mastercard's*, *Visa Inc.'s* and *Visa International's multilateral interchange fees* (MIFs).²⁵ Moreover, the Commission intervened in the proposed merger between two leading insurance brokers, *Marsh* and *Jardine Lloyd Thompson*.²⁶

Competition policy goes hand in hand with the Commission's efforts towards a *Deeper and Fairer Internal Market*. In 2019, the Commission fined *Nike* EUR 12.5 million for preventing traders from selling merchandising products of some of the EU's best-known football clubs to other countries within the EEA.²⁷ *Sanrio* was fined EUR 6.2 million for restrictions concerning products featuring Hello Kitty and other characters.²⁸ The Commission fined *AB InBev*, EUR 200 million for abusing its dominant market position by restricting the possibility for supermarkets and wholesalers to buy Jupiler beer at lower prices in the Netherlands and import it into Belgium.²⁹ In merger control, the Commission prohibited the proposed acquisition of *Alstom* by *Siemens*,³⁰ *Tata Steel/ThyssenKrupp/JV*³¹ and *Wieland/Aurubis Rolled Products/Schwermetall*.³²

As regards *fair tax competition*, the Commission continued to review tax rulings and tax measures based on complaints and market information. The Commission concluded that the UK gave illegal tax advantages to certain multinational companies by granting them an exemption from a set of anti-avoidance rules known as Controlled Foreign Company (CFC) rules.³³

In 2019, the DG Competition continued to streamline its procedures to enhance the timeliness and effectiveness of EU competition rules. DG Competition launched its eLeniency online tool.³⁴ It is designed to make it easier for companies and their legal representatives to submit statements and documents as part of leniency and settlement proceedings. DG Competition continued its evaluation of the legal framework in the antitrust, mergers and State aid fields, in line with the Better Regulation guidelines.

In antitrust, DG Competition continued carrying out a number of evaluations concurrently. The ongoing evaluations include the rules exempting certain vertical and horizontal agreements from the EU's general competition rules. For both sets of rules the scope of the evaluation consist of one or two Block Exemption Regulations (BERs) and accompanying Guidelines. The vertical and horizontal rules expire in May and December 2022, respectively. DG Competition also launched the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER), which will expire in May 2023. The Commission finalised its evaluation of the Consortia Block Exemption Regulation (CBER). The

²⁴ SA.53518(2019/N) *Third prolongation of the Italian guarantee scheme for the securitisation of non-performing loans*. Commission decision of 16 August 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53518.

²⁵ These proceedings were closed as regards Visa Europe following its commitments, Case AT.39398 *VISA MIF*, Commission decision of 26 February 2014. See:

http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9728_3.pdf.

²⁶ Case M.9196 *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, Commission decision of 22 March 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9196.

²⁷ Case AT.40436 *Ancillary sports merchandise - Nike*, Commission decision of 25 March 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40436

²⁸ Case AT.40432 *Licensed Merchandise - Sanrio*, Commission decision of 9 July 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40432.

²⁹ Case AT40134 *AB InBev Beer Trade Restrictions*, Commission decision of 13 May 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40134.

³⁰ See: http://europa.eu/rapid/p0ress-release_IP-18-4527_en.htm.

³¹ Case M.8713 *Tata Steel/ThyssenKrupp/JV*, Commission decision of 11 June 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8713.

³² Case M.8900 *Wieland / Aurubis Rolled Products / Schwermetall*, Commission decision of 6 February 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8900.

³³ Case SA.44896 *Aid implemented by the United Kingdom concerning CFC Group Financing Exemption*, Commission decision of 2 April 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44896.

³⁴ See: https://ec.europa.eu/commission/presscorner/detail/en/ip_19_1594.

Commission proposed prolonging the CBER for another four years. The prolongation of the CBER was adopted on 24 March 2020.

In mergers, DG Competition continued its evaluation of selected procedural and jurisdictional aspects of EU merger control, in accordance with the Better Regulation framework. The evaluation focusses on four topics, namely (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects.

In addition to these initiatives, on 9 December 2019 Commissioner Vestager announced a review of the 1997 Market Definition Notice.³⁵

In 2019, DG Competition continued to evaluate the State aid rules adopted as part of the State Aid Modernisation, including the Railways Guidelines, and the rules for short-term export credit insurance. The respective rules are assessed in the framework of a fitness check.³⁶ It aims to verify whether the rules are still fit for purpose. To allow sufficient time to finalise the evaluation and incorporate future changes, DG Competition launched already in 2019 the process to prolong the validity of those State aid rules which expire by the end of 2020.³⁷ In addition, the revision of the Emissions trading scheme State aid guidelines (ETS Guidelines) continued in 2019.³⁸

b) Key Performance Indicators (KPIs)

To understand the impact on the market and the progress in improving our organisational management, DG Competition monitors the following key performance indicators on a yearly basis:

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

Three of the four key performance indicators relate to the main competition policy instruments: antitrust and cartels, merger control and State aid control and the fourth indicator to organisational management.

KPI 1 and KPI 2

Each year, DG Competition provides the number of decisions adopted (or intervention rate) to indicate the level of activity and output for the preceding year. DG Competition also provides two estimates of the benefits to customers resulting from the Commission's cartel prohibition decisions (KPI 1) and from merger interventions (KPI 2). However, such estimates underestimate the overall impact of cartel and merger decisions, as they do

³⁵ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5–130.

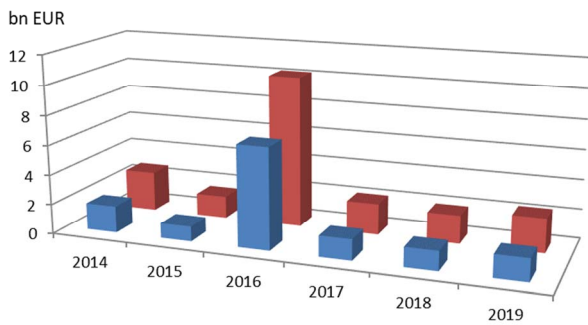
³⁶ The current fitness check covers: the General Block Exemption Regulation (GBER); the 'De minimis' Regulation; the Regional aid Guidelines; the Research, Development and Innovation (RDI) Framework; the Communication on State aid for important projects of common European interest (IPCEI Communication); the Risk finance, Airport and aviation Guidelines; the Energy and Environmental Aid Guidelines (EEAG); the Rescue and restructuring Guidelines; the Railways Guidelines; as well as the Short term export credit Communication (the two latter were not included in the 2012 State Aid Modernisation package). See https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en.

³⁷ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622730_en#plan-2018-4846, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622656_en#plan-2018-4843 and https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622705_en#plan-2018-4845.

³⁸ See for further details: https://ec.europa.eu/competition/consultations/2020_ets_stateaid_guidelines/index_en.html.

not capture the deterrence and non-price effects of such decisions or other effects of competition policy.³⁹

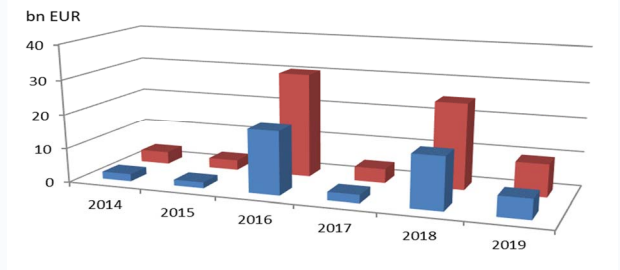
In 2019, customer savings from cartel prohibitions were slightly higher than in the two preceding years. The customer savings from cartel decisions (KPI 1) varied between EUR 1.5-2.3 billion⁴⁰, depending on the assumption made about the level of the avoided price overcharge. Total customer savings resulting from the 19 merger interventions by the Commission (KPI 2) varied between EUR 5.7-9.4 billion⁴¹, depending on the assumption made on the level of price increase avoided. Total estimated customer savings from cartel prohibitions and merger interventions varied between EUR 7.2 and 11.7 billion.

Impact indicator	Trend	Target (or milestones)	Latest known results														
KPI 1 The estimate of customer benefits resulting from cartel prohibition decisions	Stable (in line with markets affected)	Stable	EUR 1.5-2.3 bn (2019)														
																	
<table border="1"> <thead> <tr> <th>bn EUR</th> <th>2014</th> <th>2015</th> <th>2016</th> <th>2017</th> <th>2018</th> <th>2019</th> </tr> </thead> <tbody> <tr> <td>Cartel</td> <td>1.8-2.7</td> <td>1.0-1.5</td> <td>6.8-10.2</td> <td>1.4-2.1</td> <td>1.3-1.9</td> <td>1.5-2.3</td> </tr> </tbody> </table>				bn EUR	2014	2015	2016	2017	2018	2019	Cartel	1.8-2.7	1.0-1.5	6.8-10.2	1.4-2.1	1.3-1.9	1.5-2.3
bn EUR	2014	2015	2016	2017	2018	2019											
Cartel	1.8-2.7	1.0-1.5	6.8-10.2	1.4-2.1	1.3-1.9	1.5-2.3											

³⁹ Since 2012, DG Competition has systematically calculated the direct benefits of its competition policy interventions using the estimated customer benefits approach. For the methodology, see footnotes below. See also *OECD Guide helping competition authorities assess the expected impact of their activities (April 2014)* <http://www.oecd.org/daf/competition/Guide-competition-impact-assessmentEN.pdf>.

⁴⁰ DG Competition calculation. The approach followed to estimate customer benefits from stopping a cartel (prevented harm) consists in multiplying (i) the assumed increased price brought about by the cartel in the past (called the "overcharge") by (ii) the value of sales by cartel members in the market directly affected by the cartel and (iii) the likely duration of the cartel had it remained undetected. A 10% to 15% overcharge is assumed. This is conservative when compared to the findings of recent empirical literature which report considerably higher median price overcharges for cartels. In order to estimate what the likely duration of the cartel would have been if it had continued undetected, a case-by-case analysis was carried out. This analysis focused on the particular circumstances of each case as reflected in indicators of cartel stability, including the number of cartel participants, their market shares, the characteristics of the product concerned, the level of market entry barriers and other market conditions. The cartels are classified into three categories: "unsustainable", "fairly sustainable" and "very sustainable". It is assumed that the cartels in the first category would have lasted one extra year in the absence of the Commission's intervention, the cartels in the second category three years, and the cartels in the third group six years. The assumptions concerning the likely duration of the cartels are made prudently to establish a lower limit rather than to estimate the most likely values. In the above graph, the lower boundary of the estimate is marked in blue and the higher boundary in red. Finally, the estimates obtained are conservative because other customer benefits, such as innovation, quality and choice are not taken into account.

⁴¹ DG Competition calculation. The approach followed to estimate customer benefits from Commission's interventions (a merger prohibition, a merger approval subject to conditions or a withdrawal of a merger notification in Phase II due to the intervention by the Commission) takes into account (i) the likely price increase avoided (3% and 5 % for the lower and upper boundary of the estimated customer benefits, respectively); (ii) the total size (by value) of the product market affected and (iii) the expected duration of the price increase avoided. This duration reflects the expected length of time that the affected product market would have taken to self-correct either by the arrival of a new entrant or by the expansion of existing competitors. In the graph above, the lower boundary of the estimate is marked in blue and the upper boundary in red. The prevention of anticompetitive effects such as the negative impact of the proposed merger on innovation and choice are not taken into account. The stable target is a planning assumption. Since the merger control activity is driven by notifications, it is not meaningful to provide a numerical target for this indicator.

Impact indicator	Trend	Target (or milestones)	Latest known results												
KPI 2 The estimate of customer benefits resulting from merger interventions	Stable (in line with markets affected)	Stable	EUR 5.7-9.4 bn (2019)												
		 <table border="1" data-bbox="534 555 1445 636"> <thead> <tr> <th>bn EUR</th> <th>2014</th> <th>2015</th> <th>2016</th> <th>2017</th> <th>2018</th> <th>2019</th> </tr> </thead> <tbody> <tr> <td>Merger</td> <td>2.1-3.6</td> <td>1.7-2.9</td> <td>18.3-30.4</td> <td>2.4-4.1</td> <td>15.0-25.0</td> <td>5.7-9.4</td> </tr> </tbody> </table>		bn EUR	2014	2015	2016	2017	2018	2019	Merger	2.1-3.6	1.7-2.9	18.3-30.4	2.4-4.1
bn EUR	2014	2015	2016	2017	2018	2019									
Merger	2.1-3.6	1.7-2.9	18.3-30.4	2.4-4.1	15.0-25.0	5.7-9.4									

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

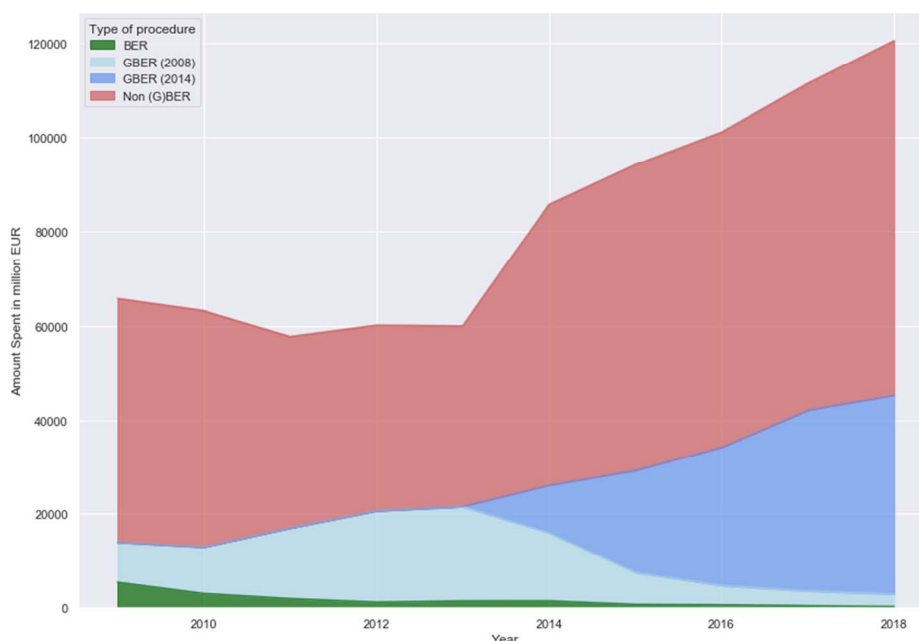
KPI 3

In State aid, the key performance indicator (KPI 3) measures the share of General Block Exemption Regulation (GBER) expenditure over total expenditure on State aid.

As shown in the graph below,⁴² expenditure under GBER represented in 2018 approximately 45 billion EUR, entailing an increase of some 123% compared to 2013. Approximately 89% of all measures with reported expenditure (that is to say not only new measures), fell under GBER in 2018. However, when considering the average of individual Member States' expenditure, in 2018 Member States spent some 51% of their total spending on GBER measures, an increase of approximately 18 percentage points compared to 2013.

⁴² Figures from the 2019 State Aid Scoreboard.
See: https://ec.europa.eu/competition/state_aid/scoreboard/index_en.html.

Breakdown of State aid expenditure by procedure type



Result indicator	Trend	Target	Latest known results (2019)
KPI 3 The share of GBER expenditure over total expenditure on State aid	On track	Maintain or increase	37.4%

KPI 4

Competition law enforcement is a highly digitalised activity. Key business processes as well as exchanges with various stakeholders are supported by dedicated information systems. The related key performance indicator (KPI 4) measures the progress of the DG-Competition-lead ICT project CASE@EC to develop a new Case Management system for the participating Commission Services. The configuration and customisation of the purchased Case Management framework as well as its integration with other IT systems is on-going. The first version covering Horizontal Projects was released in 2019. Preparing for the release of CASE@EC version 2 in 2020, it was adapted and extended so that it fulfils the requirements of the State Aid instrument.

Result indicator	Trend	Target (2019)	Latest known results (2019)
KPI 4 Implementation of a common Case Management System for the Commission services participating in the CASE@EC project	On track	Release into production of the first version of the new common Case Management System.	First version released into production in March 2019; Update released in June 2019.

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

In accordance with the governance arrangements of the 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.

To ensure the achievement of policy and management objectives, the Commission has adopted a set of internal control principles based on international good practice. The financial regulation requires that the organisational structure and the internal control systems used to implement the budget be set up in accordance with these principles. DG Competition has assessed its internal control systems during the reporting year and has concluded that it is effective and the components and principles are present and functioning as intended. Please refer to AAR section 2.1.3 for further details.

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

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended, risks are being appropriately monitored and mitigated 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) Provision of information to the Commissioner

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

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

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

By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributed to the Commission's general objective "A New Boost for Jobs, Growth and Investment" in 2016-2019⁴³. Competition policy supported several key EU policies and initiatives, including Digital Single Market, Energy Union, Deeper and Fairer Internal Market and the fight against tax evasion. DG Competition performed the following functions to meet these obligations:

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



Since it is not meaningful⁴⁴ to set numerical targets for competition policy enforcement, most of the indicators used to measure the Commission's performance include trends as targets (stable, increase, decrease, no target). On-going investigations by the Commission are always without prejudice to the final decision in the case at hand.

DG Competition provides the number of decisions to indicate the level of activity and output for the preceding year, also for deterrence purposes. DG Competition also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions and horizontal merger interventions, and considers the impact of competition policy on growth and macroeconomic performance more generally.⁴⁵ Fines

⁴³ Political Guidelines of President Juncker at http://ec.europa.eu/priorities/docs/pg_en.pdf State of Union 2015 Speech by President Juncker at http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014 at http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf;

⁴⁴ As far as merger and State aid enforcement is concerned, DG Competition's activities are largely driven by notifications by companies and Member States, which is a factor beyond the control of the Commission. As regards antitrust and cartel enforcement, a target would also depend on factors beyond the Commission's control (decisions of the parties or other market players to disclose such infringements through the leniency programme, whistleblowing, complaints or the availability of information to the Commission to detect infringements ex officio). In each case, the Commission must fully respect the rights of defence of the parties.

⁴⁵ Ilzkovitz F., Cai M., Cardani R., Dierx A. and Pericoli F. (2020), "The macroeconomic and sectoral impact of

imposed by the Commission reduce Member States' contributions to the EU budget and act as deterrence for future infringements.

It is difficult to measure reliably the effect of competition law on economic growth. However, according to the OECD⁴⁶, there is solid evidence in support of each of the relationships shown below and on the fact that their combined effect boosts the economic growth.



1.1 Antitrust and cartels

Articles 101, 102 and 106 TFEU

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

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

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

DG Competition's activities in antitrust and cartels aim at ensuring an effective enforcement of the antitrust rules with a view to making markets work better and protecting consumer welfare. These activities include detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices, which hamper competition and negatively affect incentives for innovation and growth, as well as consumer welfare.⁴⁷

In antitrust, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of its enforcement activity and output for the preceding year, including for deterrence purposes. It also provides an estimate of the customer benefits resulting from the Commission's cartel prohibition decisions.⁴⁸

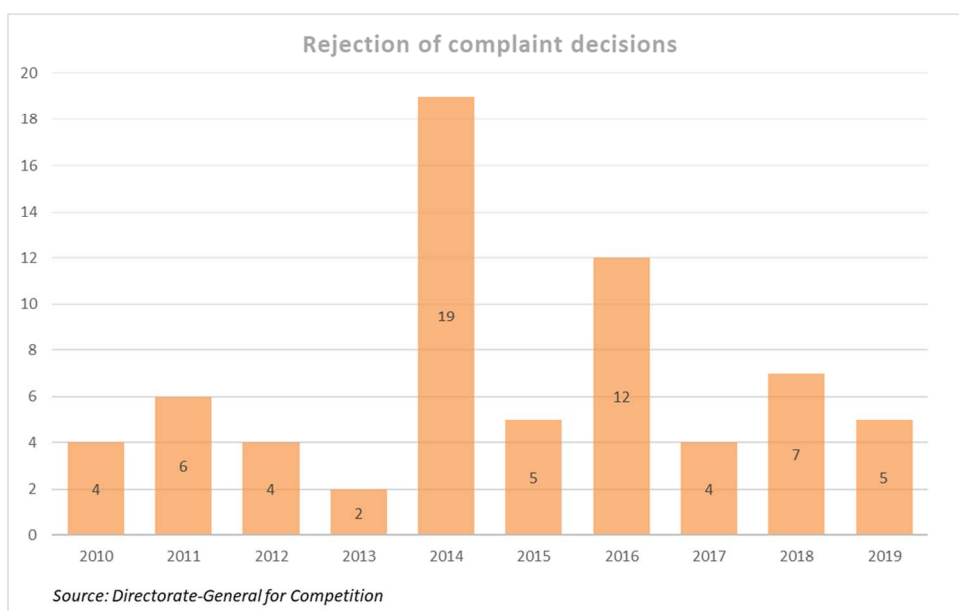
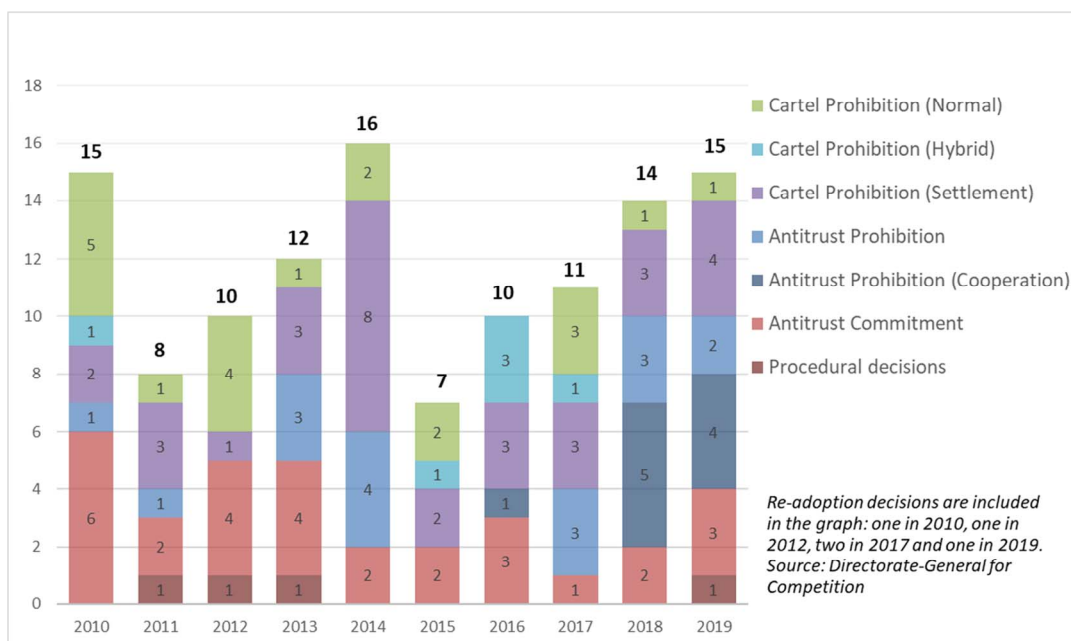
EU competition policy", in Ex Post Economic Evaluation of Competition Policy: The EU Experience, F. Ilzkovitz and A. Dierx, Ed., Wolters Kluwer.

⁴⁶ 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>.

⁴⁷ In its Intel judgement the European Court of Justice set aside the General Court's ruling that had found that Intel's exclusivity-based rebates were anticompetitive in nature, and referred the case back to the General Court. C-413/14 P *Intel v Commission*, judgment of the European Court of Justice of 6 September 2017, ECLI:EU:C:2017:632.

⁴⁸ See Annexes to the AAR, Annex 12, Specific Objective 1, result indicator 1.

Antitrust and cartel decisions 2010-2019



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

Cartels

Cartels are the most serious 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. Access to adequately priced input products is essential in an era of global competition.

The Commission's strong enforcement record against hard-core cartels continued in 2019. As in preceding years, the Commission adopted cartel decisions in economically important sectors such as financial services and the automotive industry. The settlement procedure remained the Commission's predominant tool to streamline its fight against cartels. The procedure accounted for four out of five cartel decisions adopted in 2019.

The “Forex - Three Way Banana Split” and “Forex – Essex Express” cartel decisions

In 2019, the Commission adopted two decisions concerning separate cartels in Foreign Exchange (Forex) spot trading, imposing total fines of EUR 1.07 billion. All banks sanctioned cooperated under the Settlement Notice. Both cartels concerned the trading of the eleven most liquid and frequently traded world currencies (Euro, British Pound, Japanese Yen, Swiss Franc, US, Canadian, New Zealand and Australian Dollars, as well as Danish, Swedish and Norwegian Crowns). Certain individual traders in charge of Forex spot trading exchanged commercially sensitive information such as outstanding customer orders, bid-ask spreads (that is to say prices) applicable to specific transactions, open risk positions and other details of their current or planned trading activities. The information exchanges, following the tacit understanding reached by the participating traders, enabled them to make informed decisions whether to sell or buy the currencies they had in their portfolios and when. Moreover, these information exchanges allowed the traders – and therefore the banks to identify opportunities for coordination.

The first decision “Forex - Three Way Banana Split” was addressed to five banks (*UBS, Barclays, RBS, Citigroup* and *JPMorgan*) and imposed total fines of EUR 811,197,000. The infringement started in late December 2007 and ended in early 2013. The second decision “Forex - Essex Express” was addressed to four banks (*Barclays, RBS, MUFG Bank* and *UBS*) and imposed total fines of EUR 257,682,000. The infringement started in late December 2009 and ended in mid-July 2012.

The Commission’s cartel enforcement comprised five decisions in 2019, imposing fines close to EUR 1.5 billion.

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Occupants Safety Systems (II)	05/03/2019	368 277 000	3	Settlement
Forex (Three Way Banana Split)	16/05/2019	811 197 000	5	Settlement
Forex (Essex Express)	16/05/2019	257 682 000	4	Settlement
Reinforcing steel bars re-adoption	04/07/2019	16 074 000	5	Prohibition
Canned Vegetables	27/09/2019	31 647 000	3	Settlement

Other anticompetitive agreements and practices

Energy Union

Antitrust enforcement in the energy sector plays a key role in removing obstacles to the free flow of gas and electricity across Member States, promoting interconnectivity and avoiding artificial market partitioning.

In 2019, DG Competition further assessed commitments proposed in 2018 by *Transgaz*, the Romanian gas network operator. The commitments are aimed at ensuring that sufficient capacities of gas produced in Romania can be freely exported to other Member States.⁴⁹

In the *LNG markets* case (formal investigation opened in 2018)⁵⁰, DG Competition continued investigating whether the long-term agreements of Qatar Petroleum contain anti-competitive territorial restrictions allowing market segmentation preventing the full use of LNG terminals.

In electricity markets, issues have arisen in particular with regard to the curtailment of interconnector capacity for cross-border flows following increased domestic electricity production from renewable sources. The 2018 *DE-DK Interconnectors case*,⁵¹ required

⁴⁹ Case AT.40335 *Romanian gas interconnectors*, Commission decision of 1 June 2017. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1501.

⁵⁰ Case AT.40416 *LNG supply to Europe*, Commission decision of 21 June 2018. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40416.

⁵¹ Case AT. 40461 *DE/DK Interconnector*. For further information, see IP/18/6722 of 7 December 2018. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40461.

the German network operator *TenneT* to enable imports of electricity from Denmark into Germany via interconnectors linking the two countries. In 2019, the Commission monitored the implementation of the commitments guaranteeing that 75% of the electricity interconnectors' capacity is available for trade.

Digital Single Market

In April 2019, the Commission addressed a Statement of Objections to *Valve* – owner of *Steam*, the world's largest PC video game distribution platform – and five PC video game publishers – *Bandai Namco*, *Focus Home*, *Koch Media* and *ZeniMax*.⁵² The Commission is concerned that Valve and the five PC video game publishers agreed to use geo-blocked activation keys to prevent cross-border sales of PC video games.

The pay-TV investigation, opened in 2014, was closed in 2019.⁵³ The investigation related to certain contractual clauses in the licensing agreements concluded between *Sky UK* and six major film studios (*Disney*, *Fox*, *Paramount*, *NBC Universal*, *Sony* and *Warner Bros*) after the parties had offered commitments to solve the anti-competitive issues.

The Google Search (AdSense) case

In March 2019, the Commission fined Google EUR 1.49 billion for abusing its market dominance by imposing a number of restrictive clauses in contracts with third-party websites ("publishers") which prevented Google's rivals from placing their search adverts on these websites.⁵⁴ Through AdSense for Search, Google provides search adverts to owners of publisher websites, such as newspaper websites, blogs or travel sites aggregators. Google is an intermediary between advertisers and website owners that want to profit from the space around their search results pages. AdSense for Search works as an online search advertising intermediation platform.

Google is by far the strongest player in online search advertising intermediation in the EEA. It is not possible for competitors in online search advertising such as Microsoft and Yahoo to sell advertising space in Google's own search engine results pages. Therefore, third-party websites represent an important entry point for other suppliers of online search advertising intermediation services to grow their business and try to compete with Google.

Google's provision of online search advertising intermediation services to the most commercially important publishers took place via individually negotiated agreements. The Commission concluded that Google infringed EU competition law by abusing its dominant position in the market for online search advertising intermediation in the EEA by:

- a) requiring publishers not to source online search ads from Google's competitors ("exclusivity");
- b) requiring publishers to reserve the most prominent space on their search results pages for a minimum number of search ads from Google and preventing them from placing competing search ads above or next to Google search ads ("premium placement/minimum Google ads");
- c) requiring publishers to obtain Google's approval before making any change to the display of competing search ads ("authorising equivalent ads").

The Commission found that Google's conduct harmed competition and consumers, and stifled innovation. Google's rivals were unable to grow and offer alternative online search advertising intermediation services to those of Google. As a result, website owners had limited options for monetizing space on these websites and were forced to rely almost solely on Google.

In July 2019, the Commission fined *Qualcomm* EUR 242 million for abusing its dominant position in the worldwide market for UMTS (so-called 3G) compliant chipsets, in breach of EU antitrust rules.⁵⁵ Between mid-2009 and mid-2011, Qualcomm supplied certain quantities of three of its UMTS chipsets to two of its key customers, Huawei and ZTE, below long-run average incremental costs with the intention of eliminating Icera.

⁵² Cases AT.40413 - *Focus Home*, AT.40414 - *Koch Media*, AT.40420 - *ZeniMax*, AT.40422 - *Bandai Namco* and AT.40424 - *Capcom*. See: https://europa.eu/rapid/press-release_IP-19-2010_en.htm.

⁵³ Case AT. 40023 *Cross-border access to pay-TV - NBC Universal / Paramount Pictures C / SKY (UK) / Sony Pictures Entertainment / The Walt Disney Company / Twentieth Century Fox Int Ltd / Warner Bros Entertainment UK Ltd*, Commission decision of 7 March 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023.

⁵⁴ Case AT.40411 *Google Search (AdSense)*, Commission decision of 20 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411.

⁵⁵ Case AT. 39711 *Qualcomm (predation)*, Commission decision of 18 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39711.

DG Competition also continued monitoring compliance with its decisions in the *Google Android*⁵⁶ and *Google Search (Shopping)*⁵⁷ cases. Moreover, DG Competition continued to investigate the other vertical cases concerning the company, *Google Local*⁵⁸ and *Google Jobs*.⁵⁹

Interim Measures – The Broadcom case

On 16 October 2019, the Commission issued a decision pursuant to Article 8 of Regulation 1/2003 ordering Broadcom to stop applying certain provisions contained in agreements with six of its main customers.⁶⁰ The decision is the first interim measures decision since 2001 and the first one adopted under Regulation 1/2003. The decision concerns systems-on-a-chip for TV set-top boxes and modems located at customer premises. The Commission concluded that, prima facie, Broadcom abused its dominant position in the markets of systems-on-chip for (i) TV set-top boxes, (ii) fibre modems, and (iii) xDSL modems by entering into agreements with manufacturers of TV set-top boxes and modems that contain exclusivity-inducing provisions. Furthermore, it concluded that serious and irreparable damage to competition would have likely materialised in the absence of interim measures. In particular, the Commission concluded that an urgent intervention was needed to prevent competitors from being marginalised or exiting the markets.

In 2019, the Commission continued its investigation into a mobile network-sharing agreement between the two largest operators in Czechia, *O2/CETIN* and *T-Mobile*, and adopted a Statement of Objections against these operators.⁶¹ The network-sharing arrangement may remove the incentives of the two mobile operators to improve their networks and services.

A deeper and fairer internal market

In 2019, the Commission fined *Nike* EUR 12.5 million for preventing traders from selling merchandising products (e.g. mugs, clothing, etc.) carrying logos or images of some of the EU's best-known football clubs and federations to other countries within the EEA.⁶² Nike's non-exclusive licensing and distribution agreements breached EU competition rules. These agreements included clauses explicitly prohibiting active and passive sales to EEA countries not specifically allocated to the licensees. Nike also threatened licensees to ensure compliance with the restrictions.

In 2019, *Sanrio* was fined EUR 6.2 million for restrictions concerning products featuring Hello Kitty and other characters owned by the company.⁶³ Sanrio used a combination of direct and indirect measures to restrict cross-border sales.

In May 2019, the Commission fined *AB InBev*, the world's largest brewing company, EUR 200 million for abusing its dominant market position.⁶⁴ Between 2009 and October 2016, AB InBev pursued a deliberate strategy to restrict the possibility for supermarkets and wholesalers to buy Jupiler beer at lower prices in the Netherlands and to import it into Belgium.

⁵⁶ Case AT.40099 *Google Android*, Commission decision of 18 July 2018. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099.

⁵⁷ Case AT.39740 *Google Search (Shopping)*, Commission decision of 27 June 2017. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740.

⁵⁸ Case AT.40585 *Google Local*.

⁵⁹ Case AT.40592 *Google Jobs*.

⁶⁰ Case AT. 40608 *Broadcom*, Commission decision of 16 October 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40608.

⁶¹ Case AT. 40305 *Network sharing – Czechia*, Commission decision of 7 August 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40305.

⁶² Case AT.40436 *Ancillary sports merchandise – Nike*, Commission decision of 25 March 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40436

⁶³ Case AT.40432 *Licensed Merchandise – Sanrio*, Commission decision of 9 July 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40432.

⁶⁴ Case AT40134 *AB InBev Beer Trade Restrictions*, Commission decision of 13 May 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40134.

The financial sector

In 2019, the Commission concluded its investigation into Mastercard's cross-border acquiring rules, which prevented merchants located in countries with high interchange fees to seek lower-priced services from acquirers established in Member States with lower interchange fees. The Commission concluded that Mastercard's rules prevented retailers from benefitting from lower fees and restricted competition between banks cross border. The Commission imposed a fine of EUR 570 million on Mastercard.⁶⁵



In addition, the Commission concluded separate antitrust investigations into Mastercard's, Visa Inc.'s and Visa International's multilateral interchange fees (MIFs) applied to transactions in the EEA made with consumer debit and credit cards issued outside the EEA (inter-regional MIFs).⁶⁶ These MIFs were not capped by the Interchange Fee Regulation and represented a significant burden to merchants in the EU and increase retail prices for all consumers. Both Mastercard and Visa offered to reduce the current level of inter-regional MIFs to or below binding caps. In 2019, the Commission adopted two decisions making the commitments offered by Mastercard and Visa legally binding under EU antitrust rules to address the Commission's competition concerns, effective within six months.⁶⁷

In motor insurance, the Commission opened a formal antitrust investigation to assess whether the access conditions to the *Insurance Link* data pooling system administered by Insurance Ireland is in breach of Article 101 TFEU.⁶⁸

The pharmaceutical sector

In 2019, DG Competition continued investigating two cases where two firms are suspected of preventing or reducing consumers' access to effective, innovative and affordable medicines. The first case concerns pay-for-delay practices by *Cephalon* impeding the market entry of generic modafinil (a sleeping disorder medicine).⁶⁹ The second case concerns *Aspen Pharma*.⁷⁰ DG Competition suspects that Aspen Pharma may have imposed unfair and excessive prices for a range of cancer medicines in all countries

⁶⁵ Case AT.40049 *MasterCard II*, Commission decision of 29 April 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40049.

⁶⁶ These proceedings were closed as regards Visa Europe following its commitments, Case AT.39398 *VISA MIF*, Commission decision of 26 February 2014. See:

http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9728_3.pdf.

⁶⁷ See: https://europa.eu/rapid/press-release_IP-19-2311_en.htm.

⁶⁸ Case AT.40511 *Insurance Ireland: Insurance claims database and conditions of access*, Commission decision of 14 May 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40511.

⁶⁹ Case AT.39686 *Cephalon*, see: IP/17/2063 of 17 July 2017: http://europa.eu/rapid/press-release_IP-17-2063_en.htm.

⁷⁰ Case AT.40394 *Aspen*. See: IP/17/1323 of 15 May 2017: http://europa.eu/rapid/press-release_IP-17-1323_en.htm and http://ec.europa.eu/competition/antitrust/cases/dec_docs/40394/40394_235_3.pdf.

in the EEA except Italy.⁷¹

In January 2019, the Commission published a report to the Council and the European Parliament entitled "Competition enforcement in the pharmaceutical sector (2009-2017) - European competition authorities working together for affordable and innovative medicines". The report provides an overview of how the Commission and the national competition authorities, by enforcing the EU antitrust and merger rules, have contributed to innovative and competitive pharmaceutical markets and to the affordability of medicines."

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

Enhancing the effectiveness of competition enforcement

Since 2004, the Commission and the NCAs in all EU Member States cooperate with each other through the European Competition Network (ECN).⁷² In 2019, the Commission continued to ensure the coherent application of Articles 101 and 102 through the ECN. National competition authorities are obliged to inform the Commission about a new investigation at the stage of the first formal investigative measure and to consult the Commission on envisaged decisions. In 2019, 138 new investigations were launched within the network and 95 envisaged decisions were submitted, compared to 165 new investigations and 75 envisaged decisions in 2018. These figures include Commission investigations and decisions, respectively. Moreover, the network meets regularly to discuss cases at early stages, policy issues and matters of strategic importance. In 2019, 28 such meetings were held.

The ECN+ Directive empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust entered into force on 4 February 2019.⁷³ Member States must incorporate the Directive into national law by 4 February 2021.

National courts

EU antitrust rules are enforced not only by the Commission and NCAs (public enforcement), but also by national courts when they enforce in national civil proceedings the rights individuals derive from Articles 101 and/or 102 TFEU, for example by awarding damages to consumers and companies harmed by infringements of these rules (private enforcement). The Commission also helps national courts to enforce the EU competition rules, for example by providing case-related information, opinions or by intervening as *amicus curiae* in cases before national courts.

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

In 2019, the Commission continued to streamline its procedures in competition cases to enhance the timeliness and effectiveness of EU competition rules. The Commission also continued its evaluation of different rules and guidance documents in the antitrust field in line with the Better Regulation rules.

⁷¹ The Italian competition authority adopted an infringement decision against Aspen on 29 September 2016.

⁷² Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.04.2004, pp. 43-53 and OJ C 374, 13.10.2016, p. 10.

⁷³ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.01.2019, pp. 3-33.

The Special Advisers' Report – "Competition Policy for the digital era"

In March 2018, the Commission appointed Professors Heike Schweitzer, Jacques Crémer and Assistant Professor Yves-Alexandre de Montjoye as Special Advisers on the future challenges of digitisation for competition policy.⁷⁴ Their report "Competition policy for the digital era" was published in April 2019.⁷⁵ The report analyses the main characteristics of the digital economy, such as extreme returns to scale of digital services, network externalities and the importance of possessing very large volumes of data. These characteristics have given rise to a large number of digital markets with "super-dominant" incumbents.

The Special Advisers consider that the basic competition law framework is fundamentally sound and sufficiently flexible to ensure efficient competition enforcement in the digital era. However, the specific characteristics of platforms, digital ecosystems, and the data economy should be better taken into account by competition enforcers and regulators. Moreover, the Special Advisers consider that digital markets require additional emphasis on theories of harm and identification of anti-competitive strategies. Concerning access to data, the authors state that competition law should not be regarded as a general panacea. Sector-specific regulation could provide solutions that are more effective.

In March 2019, DG Competition launched its eLeniency online tool.⁷⁶ It is designed to make it easier for companies and their legal representatives to submit statements and documents as part of leniency and settlement proceedings in cartel cases, as well as non-cartel cooperation cases.

In 2019, DG Competition made substantial progress in its evaluation, in line with Better Regulation requirements, of the rules exempting certain vertical⁷⁷ and horizontal agreements⁷⁸ from the EU's general competition rules. The purpose of the evaluations is to allow the Commission to decide whether to let the rules lapse, prolong their duration or revise them. The vertical and horizontal rules expire in May and December 2022, respectively. DG Competition launched the review of the Motor Vehicle Block Exemption Regulation (MVBER)⁷⁹, which will expire in May 2023. Moreover, the Commission finalised its evaluation of the Consortia Block Exemption Regulation (CBER).⁸⁰ The Commission proposed prolonging the CBER for another four years. The prolongation of the CBER was adopted on 24 March 2020. In December 2019, Executive Vice-President Vestager announced the review of the Market Definition Notice.⁸¹ The review will make sure that the Notice is accurate, up to date and easily accessible, setting out a clear and consistent guidance for antitrust and merger cases across different industries.

1.2 Merger control

EU merger control

EU merger control ensures that all companies active in EU markets can compete on fair and equal terms. Merger control protects markets where companies compete not only on price, but also on other parameters such as innovation. The purpose of EU merger control is to ensure that market structures remain competitive while enabling smooth restructuring of industrial sectors. The merger rules apply to all companies active in EU markets. Industry restructuring by mergers is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation

⁷⁴ See <https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/commission-appoints-professors-heike-schweitzer-jacques-cremer-and-assistant-professor-yves-en> and <http://ec.europa.eu/competition/scp19/>.

⁷⁵ See: <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

⁷⁶ See: https://ec.europa.eu/commission/presscorner/detail/en/ip_19_1594.

⁷⁷ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

⁷⁸ Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development agreements, OJ L 335, 18.12.2010, p. 36; Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty to categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43.

⁷⁹ Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

⁸⁰ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).

⁸¹ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5-130.

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.

Proposed transactions which may distort competition are subject to scrutiny by the Commission. If necessary to protect competition, the merging companies may offer commitments to dispel competition concerns. The Commission may also prohibit transactions, which is very rare (less than 1% of cases). In its assessment, the Commission takes into account potential efficiencies brought about by a merger.

The year 2019 entailed intensive work by DG Competition due to the large number of notified transactions as well as the increasing complexity of a large number of the cases. DG Competition is increasingly dealing with transactions in concentrated industries, such as basic industries (steel, copper or aluminium) or the railway sector. Such mergers require DG Competition to assess the proposed mergers' potential impact on competition, employing sophisticated quantitative techniques and to carry out comprehensive qualitative analyses. DG Competition also puts an increased emphasis on other competition parameters than price, such as a proposed merger's impact on investments, innovation and quality.

In merger control, DG Competition's activities are driven by notifications by companies. Therefore, it is not meaningful to set numerical targets for merger enforcement actions. DG Competition provides the number of decisions to indicate the level of activity and output in the preceding year. Moreover, DG Competition provides an estimate of the customer benefits resulting from the Commission's merger interventions.⁸²

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

EU merger control aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner. Like in previous years, a large majority of notified mergers did not raise competition concerns and could be processed speedily. The simplified procedure was used in 78% of all notifications in 2019, demonstrating the positive impact of the simplification package adopted by the Commission in 2013. The proportion of simplified cases in the period 2004-2013 was substantially lower, at 59%.

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

In 2019, 382 mergers were notified to the Commission. The number of notifications in 2019 remained at a very high level with only a small decrease compared to 2018. Between 2010-2014, the Commission received on average 289 notifications per year, while between 2015-2019 the average increased to 375. Moreover, there were 28 reasoned pre-notification submissions by notifying parties, requesting referral of a case from the Commission to a national competition authority or vice versa.

The Commission adopted 362 merger decisions in 2019,⁸³ and intervened in 19 cases, a slightly lower number than previous years it that remains in the 5-7% range (of total decisions adopted).⁸⁴ Ten mergers were cleared subject to commitments in first phase and six were authorised with remedies after second-phase investigations. No unconditional clearance decisions after second phase investigations were adopted in 2019. In three cases the Commission adopted prohibition decisions since the remedies proposed by the merging firms did not address sufficiently the competition concerns identified by the Commission. No transaction was abandoned by the merging parties

⁸² See Annexes to the AAR, Annex 12, Specific Objective 5, result indicator 1.

⁸³ For the purposes of this report, decisions based on Articles 6(1)(a), 6(1)b, 6(1)b in combination with 6(2), 8(1), 8(2) and 8(3) of the Merger Regulation are considered as final decisions.

⁸⁴ Commission interventions in merger cases include prohibition decisions and mergers cleared subject to commitments, as well as withdrawals during second phase in-depth investigations.

during the in-depth investigation phase in 2019. Most remedies accepted by the Commission in 2019 consisted of divestitures of tangible or intangible assets.⁸⁵

The prohibition decisions adopted in 2019 are a good illustration of the need for sound and solid remedies to solve the competition concerns that some transactions raise. For instance, in *Siemens/Alstom* the parties proposed a remedy package which was inadequate in scope, very complex and gave rise to significant dependencies and implementation risks.⁸⁶ The proposed remedies failed to sufficiently address the competition concerns, and the Commission had no choice but to prohibit the merger. Also in *Tata Steel/ThyssenKrupp/JV*⁸⁷, the Commission prohibited the creation of a joint venture where the parties were not able to offer adequate remedies to address the competition concerns caused by the merger. It would have reduced competition, reduced choice in suppliers and resulted in higher prices for EU customers for different types of steel. Moreover, the Commission prohibited *Wieland's* proposed acquisition of *Aurubis Rolled Products* and Aurubis' stake in *Schwermetall*.⁸⁸ The merger would have reduced competition and increased prices for rolled copper products. The proposed remedies did not effectively address the identified competition concerns.

In *Harris/L3* the parties offered divestiture of a viable business which fully alleviated the competition concerns.⁸⁹ In a few cases in 2019, the Commission accepted non-divestiture remedies where they were considered to solve effectively the underlying competition concerns.⁹⁰

The Commission imposed a fine of EUR 52 million on *General Electric* for providing incorrect information during the review of its acquisition of *LM Wind*,⁹¹ and a fine of EUR 28 million on *Canon* for implementing its acquisition of *Toshiba* before notification and approval by the Commission.⁹²

⁸⁵ See for instance: Case M.8674 *BASF/SOLVAY'S EP AND P&I BUSINESS*, Commission decision of 18 January 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8674; Case M.9076 *NOVELIS / ALERIS*, Commission decision of 1 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9076; Case 9014 *E.ON / INNOGY*, Commission decision of 17 September 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9014.

⁸⁶ Case M.8677 *Siemens/Alstom*, Commission decision of 6 February 2019. See:

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8677.

⁸⁷ Case M.8713 *Tata Steel/ThyssenKrupp/JV*, Commission decision of 11 June 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8713.

⁸⁸ Case M.8900 *Wieland / Aurubis Rolled Products / Schwermetall*, Commission decision of 6 February 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8900.

⁸⁹ Case M.9234 *HARRIS CORPORATION / L3 TECHNOLOGIES* Commission decision of 21 June 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9234.

⁹⁰ For example, Case M.9064 *TELIA COMPANY/BONNIER BROADCASTING HOLDING*, Commission decision of 12 November 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9064.

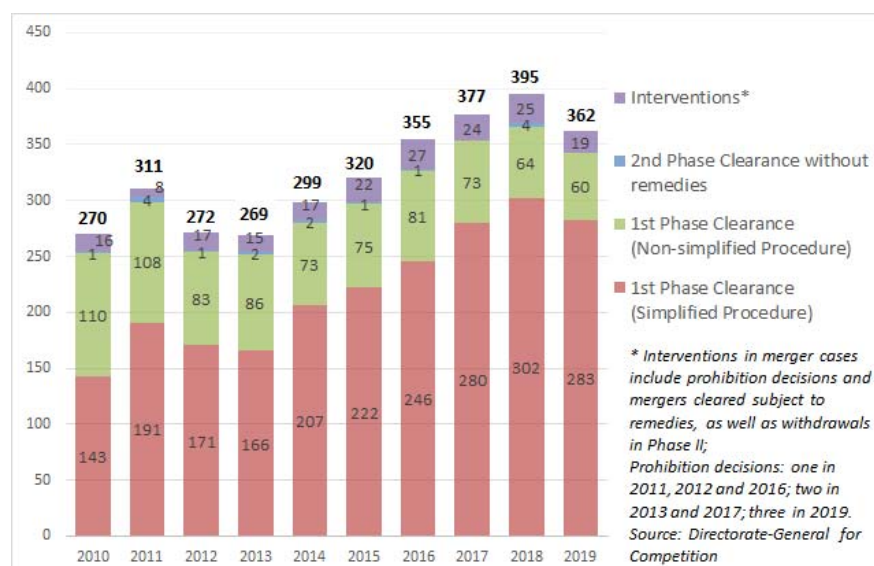
⁹¹ Case M.8436 *GENERAL ELECTRIC COMPANY / LM WIND POWER HOLDING* (Art. 14.1 proc.), Commission decision of 8 April 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8436.

⁹² Case M.8179 *CANON / TOSHIBA MEDICAL SYSTEMS CORPORATION* (Art. 14.2 proc.), Commission decision of 27 June 2019.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8179.

Merger decisions 2010-2019



Energy Union

In the case *RWE/E.ON Assets*,⁹³ the Commission examined the competitive impact of RWE's acquisition of the majority of E.ON's renewable and nuclear generation assets (as well as a 16.67% minority interest in E.ON) on the market for electricity generation in Germany. The transaction was ultimately considered as unproblematic because the additional generation capacity acquired by RWE was limited and largely composed of nuclear assets which are due to be decommissioned by 2022. The *RWE/E.ON Assets* case was part of a complex asset swap where, in exchange for its generation assets, *E.ON* acquired *Innogy*,⁹⁴ an RWE subsidiary active in the distribution and retail sales of gas and electricity. To obtain the Commission's approval, E.ON committed to divest some of its energy retail businesses in Czechia, Germany and Hungary.

Digital Single Market

In the telecommunications sector, the Commission cleared the acquisition of *DNA* by *Telenor*.⁹⁵ *DNA* provides mobile and fixed communications services, broadband internet services and TV distribution services in Finland, while *Telenor* is active in mobile and fixed telecommunications services and TV distribution services in the Nordic region. There were very limited overlaps between the companies' activities and a number of strong players remain after the merger. The Commission did not identify any competition concerns regarding the vertical links between certain affected markets.

In 2019, the Commission approved, after an in-depth investigation, the acquisition by *Vodafone* of *Liberty Global's cable business* in Czechia, Germany, Hungary and Romania, subject to remedies.⁹⁶ *Vodafone* and *Liberty Global's* subsidiary (*Unitymedia*) offer fixed broadband services in Germany based on their own non-overlapping cable networks. The transaction would have eliminated an important competitive constraint. In addition, the merged entity's increased market power could have endangered the TV broadcasters' market positions. To address the competition concerns, *Vodafone* submitted a comprehensive set of remedies.

⁹³ Case M.8871 *RWE/E.ON Assets*, Commission decision of 26 February 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8871.

⁹⁴ Case M.8870 *E.ON/INNOGY*, Commission decision of 17 September 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8870.

⁹⁵ Case M.9370 *Telenor / DNA*, Commission decision of 15 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9370.

⁹⁶ Case M.8864 *Vodafone / Certain Liberty Global Assets*, Commission decision of 18 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8864.

The Commission also cleared the acquisition of *Kathrein's* antenna and filter assets by *Ericsson*.⁹⁷ The transaction raised no competition concerns, neither for potential bundling of passive antennas, filters and radio access network (RAN) equipment, nor for the supply of antenna modules to RAN equipment suppliers.

In 2019, the Commission approved the acquisition of *Red Hat* by *IBM*, both providers of IT solutions to business customers.⁹⁸ The Commission found that the merged entity would continue to face significant competition from other players on the markets for middleware and system infrastructure software. There was no risk that the merged entity would exclude or marginalise its competitors by bundling or degrading interoperability with Red Hat's flagship product Red Hat Enterprise Linux.⁹⁹

The Commission also approved the acquisition of *Symantec's Enterprise Security Business (SESB)* by *Broadcom*.¹⁰⁰ SESB offers advanced threat protection and information protection solutions. Broadcom supplies semiconductors as well as infrastructure software solutions. The proposed acquisition would not raise any competition concerns given the limited horizontal overlaps between the two firms' activities. The Commission also excluded any competition concerns due to the vertical or conglomerate relationships between the companies.

In 2019, the Commission cleared the acquisition of *Mellanox* by *NVIDIA*.¹⁰¹ Mellanox supplies network interconnect products and solutions that facilitate efficient data transmission within datacentres. NVIDIA supplies visual computing based on graphics processing units (GPUs), as computing platforms for gaming, professional visualisation, datacentre and automotive applications. The proposed acquisition would not raise any competition concerns, because the companies mainly supply complementary products.

The Commission authorised *Telia's* acquisition of *Bonnier Broadcasting* subject to commitments.¹⁰² The Commission had concerns that the transaction would have reduced competition in Finland and Sweden. To address the identified competition concerns, Telia offered a package of commitments for Finland and Sweden. The package includes a commitment to license free-to-air channels and basic and premium pay-TV channels on fair, reasonable and non-discriminatory terms. Telia also committed to license standalone OTT rights to secure competition in TV distribution over the internet. Finally, Telia committed to provide access to the merged entity's streaming services for end users, access to TV advertising space for rival telecom providers and TV distributors.

Deeper and Fairer Internal Market

The Siemens/Alstom merger

In July 2018, the Commission opened an in-depth investigation of the proposed acquisition of Alstom by Siemens.¹⁰³ The Mobility Division of Siemens offers a broad portfolio of trains (rolling stock), rail automation and signalling equipment, as well as rail electrification systems. Alstom is active worldwide in the rail transport industry, offering a wide range of rolling stock (from high-speed trains to metros and trams) as well as signalling and rail electrification systems. In February 2019, the Commission prohibited

⁹⁷ Case M.9332 *Ericsson / Kathrein Antenna and Filter Assets*, Commission decision of 20 August 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9332.

⁹⁸ Case M.9205 *IBM / Red Hat*, Commission decision of 27 June 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9205.

⁹⁹ Middleware is software used for making and operating enterprise application software, i.e. business-oriented tools, such as online payment processing. System infrastructure software allows companies to configure, control, automate and share the use of hardware resources (e.g. servers) across enterprise application software.

¹⁰⁰ Case M.9538 – *Broadcom / Symantec's Enterprise Security Business*, Commission decision of 30 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9538.

¹⁰¹ Case M.9424 – *NVIDIA / Mellanox*, Commission decision of 19 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9538.

¹⁰² Case M.9064 – *Telia Company / Bonnier Broadcasting Holding*, Commission decision of 12 November 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9064.

¹⁰³ See: http://europa.eu/rapid/press-release_IP-18-4527_en.htm.

the proposed transaction under the EU Merger Regulation.¹⁰⁴ The proposed transaction would have combined the two largest suppliers of trains and signalling solutions in the EEA, not only in terms of size of the combined operations, but also in terms of their geographic footprint.

The merging parties proposed a remedy package that was inadequate in scope, very complex and gave rise to significant dependencies and implementation risks. The proposed remedies did not resolve the Commission's concerns for the very-high speed rolling stock market and the mainline signalling markets. The Commission concluded that the merger would have led to higher prices, reduced choice for suppliers and fewer innovative products, to the detriment of train operators and rail infrastructure managers.

The financial sector

In 2019, the Commission cleared the proposed merger between two leading insurance brokers, *Marsh* and *Jardine Lloyd Thompson*, subject to commitments.¹⁰⁵ The two companies were market leaders in the provision of services to airline companies and aerospace manufacturers needing to insure highly complex risks. The Commission required the divestment of *Jardine Lloyd Thompson's* activities in the areas of concern, maintaining the competitive environment.

The pharmaceutical sector

In 2019, the Commission approved the acquisition of *Pfizer's Consumer Healthcare* business by *GlaxoSmithKline*,¹⁰⁶ subject to the divestment of *Pfizer's ThermoCare*-branded products, designed for the treatment of topical pain.

The Commission also unconditionally approved the acquisition of *Celgene* by *BMS*.¹⁰⁷ The Commission concluded that the transaction did not raise any competition concerns, because a large number of R&D organisations compete with the parties in the same therapeutic areas.

The transport sector

In air transport, the Commission cleared in 2019 the acquisition of a 31% joint-controlling interest of *Air France-KLM* in *Virgin Atlantic Limited*. The acquisition led to joint control over *Virgin Atlantic* by *Air France-KLM*, *Delta Air Lines Inc.* and *Virgin Group*.¹⁰⁸ None of the overlapping routes raised competition concerns. *Virgin Atlantic*, *Delta* and *Air France-KLM* are not close competitors and face competition from other carriers on the overlap routes. It is unlikely that the companies' combined slot portfolios would prevent competitors from entering or expanding at these airports.

The Commission also cleared subject to commitments the acquisition of *Flybe* by *Connect Airways*, a consortium by *Virgin Atlantic*, *Stobart Aviation* and *Cyrus*.¹⁰⁹ The transaction would have led to quasi-monopolies on two direct EU routes, namely *Birmingham-Amsterdam* and *Birmingham-Paris*. To address these competition concerns, *Connect Airways* committed to release five daily slot pairs at *Amsterdam Schiphol* and three daily slot pairs at *Paris Charles de Gaulle* airport.

In maritime transport, the Commission assessed the acquisition of *CEVA Logistic* by *CMA CGM*.¹¹⁰ The Commission analysed whether the vertically integrated entity would have

¹⁰⁴ Case M.8677 *Siemens / Alstom*, Commission Decision of 6 February 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8677.

¹⁰⁵ Case M.9196 *Marsh & McLennan Companies / Jardine Lloyd Thompson Group*, Commission decision of 22 March 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9196.

¹⁰⁶ Case M.9274 *GlaxoSmithKline / Pfizer Consumer Healthcare Business*. Commission decision of 10 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9274.

¹⁰⁷ Case M.9294 *BMS / Celgene*. Commission decision of 29 July 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9294.

¹⁰⁸ M.8964 *Delta/Air France-KLM/Virgin Group/Virgin Atlantic*, Commission decision of 12 February 2019.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8964.

¹⁰⁹ M.9287 *Connect Airways/Flybe*, Commission decision of 5 July 2019.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9287.

¹¹⁰ Case M.9221 *CMA CGM/CEVA*, Commission decision of 6 February 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9221.

the ability and incentive to engage in input or customer foreclosure, and concluded that it was not the case. Moreover, since CEVA's demand represented a very small percentage of the total demand in the EEA, CEVA was not considered as a customer with a significant degree of market power.

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

In designing the EU merger control rules, the Commission pursues three objectives: (i) to ensure that the Merger Regulation covers all types of concentrations that may significantly affect the internal market; (ii) to deal as efficiently as possible with those types of cases which typically are unlikely to raise competition concerns, cutting red tape where possible for undertakings, and (iii) to allow to investigate efficiently and comprehensively those cases that may bring harm, adopting sound decisions grounded on facts, evidence and economic analysis; where concerns are confirmed, they need to be fully and effectively solved before letting the merger go ahead.

DG Competition continuously evaluates the substantive and procedural rules that make up the legal framework for merger control. In 2019, the DG Competition continued its evaluation of selected procedural and jurisdictional aspects of EU merger control, in accordance with the Better Regulation framework. The evaluation, launched in 2016, focusses on four topics, namely (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects. In 2018, DG Competition launched a separate public consultation with stakeholders on competition and digitisation. The consultation results, together with the findings of the Special Advisers' 2019 Report "Competition policy for the digital era"¹¹¹, will feed into the ongoing evaluation process.

1.3 State aid control

State Aid Control

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

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

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

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

One of the cornerstones of the State Aid Modernisation reform (SAM) is the General Block Exemption Regulation (GBER) adopted in 2014.¹¹² GBER simplifies aid-granting procedures for Member States by authorising without prior notification a wide range of unproblematic measures fulfilling EU objectives in the common interest. Only cases with the biggest potential to distort competition are still subject to notification. Since 2014, State aid granted without prior notification has surged. The 2019 State Aid Scoreboard

¹¹¹ See: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

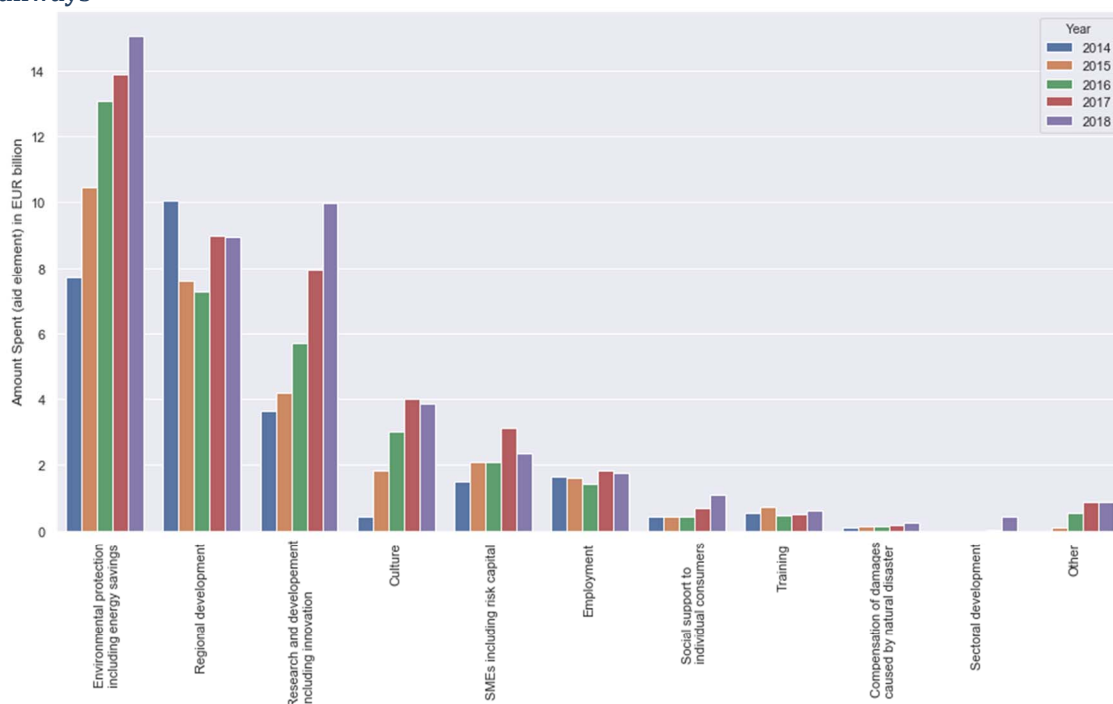
¹¹² Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L 187, 26.6.2014, p. 1.

confirms that SAM has led to quicker implementation of public support by Member States. GBER simplifies the aid-granting procedure for Member States by authorising without prior notification a wide range of measures fulfilling certain criteria and specific EU objectives in the common interest.

As shown in the graph above (p. 12), expenditure under GBER amounted to EUR 45 billion, an increase of 123% compared to 2013. Approximately 89% of all measures with reported expenditure (not only new measures) fell under GBER in 2018.

GBER introduced new aid categories¹¹³ and the increase in expenditure under GBER reflects the impact of the new regulation. In 2018, as compared to 2014, total GBER spending for aid to culture and heritage conservation has increased dramatically (+805%). Large increases were also recorded for environmental protection and energy savings (+95.7%), for research, development and innovation (+74.3%) and for aid to compensate damages caused by natural disasters (+130.7%). The scope of GBER was extended further in 2017, notably State aid to ports and airports.¹¹⁴ DG Competition expects that block-exempted aid as a share of total aid granted by Member States will increase further in the coming years.

GBER State aid expenditure by objective in the EU, excluding aid for agriculture, fisheries and railways



The growing share of spending falling under the GBER implies that on average the Member States implement State aid measures much more quickly than in the past. The average time to implement State aid measures decreased from about 2.2 months before SAM to 0.6 months after SAM. Notified measures tend to have bigger budgets and spending than in the past, in line with the Commission's approach to be 'big on big things and small on small things'.¹¹⁵ The median annual budget for notified measures is higher than for GBER measures. Since 2014, it has increased from around EUR 12 million to more than EUR 17.5 million in 2018. Median annual budgets of GBER measures have

¹¹³ New categories: Aid for innovation clusters, organisational innovation, natural disasters, transport in remote regions, broadband infrastructure, culture and heritage conservation (including audio-visual works), sport multifunctional recreational infrastructures, and local infrastructure.

¹¹⁴ In 2017, Member States reported more than EUR 50 million of State aid spending under GBER, of which EUR 7 million for inland ports, EUR 39 million for maritime ports and EUR 6 million for regional airports.

¹¹⁵ Speech by European Commission President-elect on 10 September 2014, See: http://europa.eu/rapid/press-release_SPEECH-14-585_en.htm.

increased even more, from some EUR 6 million in 2014 to almost EUR 12 million in 2018.

Cooperation with Member States

The SAM Working Group met three times in 2019. The Working Group addressed topics related to SAM implementation, such as innovation clusters and important projects of common European interest (IPCEIs). In 2019, the Commission continued its bilateral cooperation with the Member States. Bilateral cooperation generally deals with horizontal cross-cutting issues, such as country-specific compliance and implementation, governance, State-owned enterprises, and cases in problematic sectors.

Transparency Award Module

The SAM transparency provisions require Member States to publish information about aid beneficiaries awarded more than EUR 500,000.¹¹⁶ Member States have six months to provide the information, with the exception of fiscal aid where the limit is one year. In cooperation with Member States the Commission developed the Transparency Award Module (TAM) – an informatics tool for publication of the transparency data.¹¹⁷ TAM ensures that the information submitted is consistent and comparable across Member States. The Commission is improving TAM user friendliness and interoperability to encourage Member States having national registries to use the TAM as well. Twenty-five Member States (and Iceland) have joined TAM and more than 73,000 aid grants to more than 33,000 beneficiaries have been published. DG Competition conducts annual compliance checks to verify the completeness and accuracy of the information published in TAM or national State aid registries. In 2019 DG Competition launched its second compliance check, expected to be completed in the first half of 2020.

Evaluation of aid schemes

Evaluation of aid schemes is another requirement introduced by SAM. The aim is to better identify the impact of the aid to provide input for future policy-making by the Member States and the Commission. Evaluation is required for large GBER schemes in certain aid categories¹¹⁸ as well as for a selection of notified schemes under the new generation of State aid guidelines.¹¹⁹

By the end of 2019, the Commission had approved evaluation plans covering 45 State aid schemes. Three additional schemes are currently under analysis, covering a total of 15 Member States.¹²⁰ Most decisions concerned either large regional aid projects or Research, Development and Innovation (RDI) aid schemes under GBER or notified energy and broadband schemes. These schemes amount to more than EUR 54 billion in annual budget. By the end of 2019, the Member States had delivered to the Commission 16 interim and four final evaluation reports. DG Competition also commissioned a fact-finding study which will assess the evaluation requirement. The current priority is to comprehensively assess evaluation reports, both intermediate and final ones, to give feedback to Member States, stimulate better policy-making, and assist Member States reflecting on future legal developments.

¹¹⁶ See: http://ec.europa.eu/competition/publications/cpb/2016/2016_004_en.pdf.

¹¹⁷ See: <https://webgate.ec.europa.eu/competition/transparency/public/search>.

¹¹⁸ Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

¹¹⁹ Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

¹²⁰ Czechia, Germany, Greece, Spain, France, Hungary, Ireland, Italy, Lithuania, Austria, Poland, Portugal, Finland, Sweden and the United Kingdom.

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

In 2019, the Commission continued its cooperation with national courts.¹²¹ Cooperation includes case-related assistance to national courts when they apply EU State aid law. The Commission provides case-related information, opinions and submit *amicus curiae* observations.

The correct application of State aid rules is a shared responsibility between the national authorities, national courts and the Commission. The role of national courts is essential to protect the direct effect of the standstill obligation in Article 108(3) TFEU. The Commission published in 2019 the “*Study on the enforcement rules and decisions of State aid by national courts*”.¹²² The Study identifies emerging trends and challenges, and presents best practices. It also sets out national courts’ opinions on the cooperation tools in the Procedural Regulation. The results of the study will feed into the Commission’s deliberations when deciding whether a review of the 2009 notice on the enforcement of State aid law by national courts¹²³ is necessary.

In 2019, DG Competition received a request for information from a Romanian Court concerning the status of proceedings in a pending complaint case. Furthermore, a Romanian court requested the Commission to clarify whether an envisaged investment into a state-owned enterprise would raise State aid concerns. Two further requests for opinion came from courts in Estonia seeking the Commission’s opinion on existing renewable energy schemes. In 2019, the Commission intervened in proceedings before the courts in one Member State and in arbitral proceedings in another.¹²⁴

In 2019, DG Competition continued its advocacy efforts. It was actively involved in evaluating the financing of training programmes for national judges and in assessing their needs. DG Competition staff also organised workshops and conferences.

Aid for research, development and innovation

In 2019, the Commission continued to ensure that aid schemes and individual measures notified or pre-notified under the RDI rules were well targeted to projects enabling ground-breaking research and innovation activities. Its State aid control activities covered a variety of sectors including the aeronautic, virtual research and technology infrastructures, as well as innovation clusters. In a number of cases the Commission assisted Member States to bring envisaged RDI measures in line with the GBER. Such aid measures could then be granted swiftly without Commission notification. Under SAM, 96% of all RDI measures (84% in value terms) in the EU are implemented under GBER.

In 2019, the Commission proposed certain RDI-related amendments to GBER to facilitate and simplify how centrally managed funding from Horizon Europe could be combined or – for projects that have received a Seal of Excellence - substituted by national funding. The amendments would prevent discrepancies in the roll-out of RDI funding under the next MFF.

DG Competition launched in 2019 an external study which will provide an independent evidence-based retrospective evaluation of the implementation of the current RDI State Aid rules. Their effects on RDI investments and competition will be analysed and current and future challenges identified. The objective of the study is to assess whether the current RDI State aid rules are still fit for purpose.

¹²¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248 of 24.9.2015, pp. 9-29.

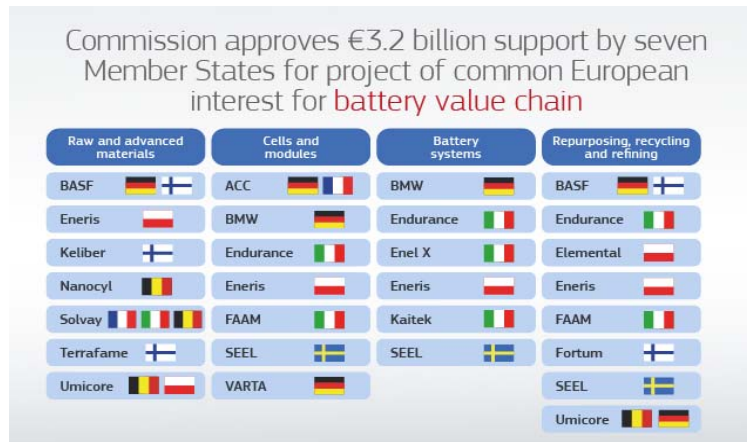
¹²² See: <https://ec.europa.eu/competition/publications/reports/kd0219428enn.pdf>.

¹²³ Commission notice on the enforcement of State aid law by national courts, OJ C 85, 9.4.2009, p. 1–22.

¹²⁴ The Commission submitted written submissions in one case before a Romanian court. The Commission also submitted an *amicus curiae* brief in recognition and enforcement proceedings before the U.S. District Court of the District of Columbia in three cases.

IPCEI for batteries

On 9 December 2019, the Commission approved an Important Project of Common European Interest (IPCEI) concerning innovations in the batteries value chain (from materials, chemicals, cells, modules and packs to recycling and reuse), with seven participating Member States (Belgium, Finland, France, Germany, Italy, Poland and Sweden). The project involves 17 direct participants, mostly industrial actors, including small and medium-sized enterprises. The direct participants will closely cooperate with each other and with over 70 external partners. Total State aid approved is nearly EUR 3.2 billion, with approximately EUR 5 billion in additional private investments. The completion of the overall project is planned for 2031 (with differing timelines for each sub-project).¹²⁵



Aid to risk finance

SMEs remain heavily dependent on traditional bank lending, which is still limited by banks' refinancing capacity, risk appetite and capital adequacy. The current Risk Finance Guidelines¹²⁶ and the corresponding parts of the GBER aim to offer better incentives for private sector investors (including institutional ones) to increase their funding activities in SME and midcaps financing.

In 2019, the Commission approved two schemes that incentivise private investors to invest in SMEs struggling to receive financing. The Austrian risk finance scheme provides tax incentives to mid-sized financing companies for funding of SMEs.¹²⁷ The Italian scheme provides specific tax advantages for investments in innovative start-ups and SMEs.¹²⁸

The Fitness Check of State aid rules continued in 2019. The risk finance rules, as well as the Communication on short-term export-credit insurance,¹²⁹ are undergoing an evaluation in line with the Better Regulation Framework.¹³⁰

Regional aid

In 2019, DG Competition continued advising Member States on how to interpret and implement the regional aid provisions in the GBER, helping them to make the best use of the SAM reforms. DG Competition received in 2019 an external study it had

¹²⁵ IPCEIs are large cross-border, integrated projects that often entail significant risks, which private investors are not willing to take on by themselves. In such cases, public support from several EU Member States may be necessary to fill the financing gap to overcome market failures and allow such projects to see the light of day. Crucially, these projects must generate positive spill-over effects across the entire EU, not limited to the participating countries.

¹²⁶ Communication from the Commission, *Guidelines on State aid to promote risk finance investments*, OJ C 19, 22.01.2014, p. 4. See: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04)).

¹²⁷ Case SA.45840 *Tax Incentives for Mid-Sized Business Financing Companies*. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45840.

¹²⁸ Case SA.48570 (2018/N) *Italy – Fiscal incentives for investments in innovative start-ups and innovative SMEs*. Commission decision of 15 February 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48570.

¹²⁹ Case OJ C392, 19.12.2012, p. 1.

¹³⁰ See: https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

commissioned to provide an evidence-based assessment of the implementation of the regional aid framework.¹³¹ The study and stakeholder opinions serve as inputs when the Commission assesses whether the current regional aid framework is still fit for purpose.

The Commission adopted several decisions on notified regional investment aid measures under the Regional Aid Guidelines. It authorised regional investment aid for two large investment projects, namely aid to *LG Chem* (for electric vehicles batteries production in Poland)¹³² and aid to *Navigator Tissue Cacia* (for production of sanitary goods in Portugal)¹³³. Moreover, the Commission approved three evaluation plans for large block-exempted regional aid schemes in Hungary¹³⁴, Italy¹³⁵ and Poland¹³⁶, the extension of a French scheme¹³⁷ providing support for productive investments in outermost regions, and the revision of the regional aid map for France.¹³⁸

Moreover, the Commission initiated formal investigation procedures in relation to three large investment projects. The projects are *Samsung SDI's* expansion of its existing electric vehicles battery production facility in Hungary, *Peugeot's* investment in its existing car plant in Spain¹³⁹ and *PCC's* investment in Poland in a plant to produce ultra-pure monochloroacetic acid.¹⁴⁰

Infrastructure

In 2019, the Commission opened an in-depth investigation to assess whether Danish and Swedish public support for the Øresund fixed road-rail link is in line with EU State aid rules. Moreover, in June 2019, the Commission opened an in-depth investigation to determine whether the public financing model of the Fehmarn Belt fixed road-rail link, between Denmark and Germany, is in line with EU State aid rules. Both in-depth investigations follow the General Court's annulment of previous Commission decisions approving the respective support.

Digital Single Market

It is essential to invest in broadband infrastructure that meets the needs for very high digital speeds, capacities, and quality. Public funding may be required to ensure that rural, remote and other underserved areas, where private providers are unlikely to invest, can also benefit from new technologies. However, public subsidies must not crowd out private investment and distortion of competition must be limited to a minimum. In 2019 the Commission adopted a number of cases authorising State aid for broadband measures which take into account recent developments and recognise the need for very

¹³¹ This framework consists of the Regional Aid Guidelines for 2014-2020, the regional aid maps, and the GBER provisions applicable to regional aid.

¹³² Case SA.47662 *LIP Aid to LG Chem Wrocław Energy Sp. z o.o.* – Poland. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47662.

¹³³ Case SA.49461 *Regional investment aid to Navigator Tissue Cacia S.A.* – LIP – Portugal. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49461.

¹³⁴ Case SA.52527 *Evaluation Plan for the aid scheme "Aid for regional investment from the Economic Development and Innovation Operational Program (EDIOP)".* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52527.

¹³⁵ Case SA.53192 *Evaluation plan: SME investment aid scheme for purchase of new machinery and equipment 2019-2020.* See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53192.

¹³⁶ Case SA.52028 *Evaluation plan: Regional aid program granted to some entrepreneurs for the implementation of a new investment.* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52028.

¹³⁷ Case SA.50299 *Aide fiscale à l'investissement outre-mer (investissements productifs).* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50299.

¹³⁸ Case SA.53541 *Carte française des zones d'aides à finalité régionale (décision SA 38182 (2014 N)) - 3ème utilisation de la réserve.* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53541.

¹³⁹ Case SA.49579 *Regional aid to PCAE (Peugeot Citroën Automóviles España S.A.) – Spain.* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49579.

¹⁴⁰ Case SA.38330 *Alleged unlawful regional investment aid to PCC MCAA sp. Zo.o (PCC) – Poland.* See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49579.

high capacity network infrastructure.¹⁴¹

Selective tax advantages

In the period 2014-2018, DG Competition gathered information on tax planning practices, enquiring into the tax rulings practice and possible fiscal aid schemes of all Member States for the years 2010 to 2013. The enquiry aimed to clarify allegations that tax rulings may constitute State aid. The Commission examined more than a thousand rulings. DG Competition requested at the end of 2019 all Member States to provide an update of their legislative and administrative practices and a list of tax rulings for the years 2014 to 2018.

United Kingdom – The CFC decision.

On 2 April 2019, the Commission concluded that the UK gave illegal tax advantages to certain multinational companies by granting them an exemption from a set of anti-avoidance rules known as Controlled Foreign Company (CFC) rules.¹⁴²

CFC rules seek to prevent UK companies from artificially diverting profits arising from UK activities and assets to a subsidiary based in a low or no tax jurisdiction. UK CFC rules reallocate such artificially diverted profits back to the UK parent company and tax them accordingly.

The Commission's in-depth investigation showed that the impugned exemption known as the Group Financing Exemption grants a preferential treatment to UK companies artificially diverting profits arising from UK activities or assets from foreign related companies via an offshore subsidiary, derogating from the UK CFC rules. The Commission concluded that the exemption is partially justified and accepted that a mechanical rule may avoid disproportionately burdensome intra-group tracing exercises to ascertain whether profits arise from UK connected capital, but it also declared the exemption partly to constitute unlawful state aid which needs to be recovered. The UK amended its CFC rules from 1 January 2019. The new CFC rules no longer raise a concern under State aid rules.

In 2019, the Commission opened an in-depth investigation into the tax treatment granted by the Netherlands to *NEON* and *CN BV*, the Nike Group's operating European headquarters for, respectively, Nike and Converse.¹⁴³ The Commission also opened an in-depth investigation into the tax treatment by Luxembourg of *Huhtalux*, a company of the Huhtamäki group that carried out on-lending financing activities between group companies.¹⁴⁴ Following the General Court's judgment annulling the decision on the *Belgian Excess Profit* scheme, the Commission opened separate in-depth investigations into 39 "excess profit" tax rulings granted by Belgium to multinational companies.¹⁴⁵

Transport services

As a consequence of the extension of GBER to aid to airports in 2017, the Commission received few notifications of investment aid in 2019. Most of the notifications received in 2019 concerned operating aid to smaller regional airports with fewer than 700,000 passengers per year.¹⁴⁶ Most State aid cases in the aviation sector concerned possible illegal operating aid to airlines, often in the context of agreements concluded with airlines

¹⁴¹ Case SA.49935 Superfast Broadband (SFBB) Project – Greece, Commission decision of 7 January 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49935. Case SA.54472 National Broadband Plan – IE, Commission decision of 15 November 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54472. Case SA.53925 Broadband Scheme for NGA White and Grey Areas – Spain, Commission decision of 10 December 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53925. Case SA.54668 Bavarian gigabit scheme – DE, Commission decision of 29 November 2019, available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54668.

¹⁴² Case SA.44896 *Aid implemented by the United Kingdom concerning CFC Group Financing Exemption*, Commission decision of 2 April 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44896.

¹⁴³ Case SA.51284 *Netherlands – Potential Aid to Nike*, Commission decision of 11 January 2019. See: https://ec.europa.eu/commission/presscorner/detail/de/IP_19_322.

¹⁴⁴ Case SA.50400 *Luxembourg – Possible State aid in favour of Huhtamäki*, decision of 7 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50400.

¹⁴⁵ Cases SA.53964 to SA.54002 *Belgium – Excess Profit Exemption*, decisions of 16 September 2019. See, for instance: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53964.

¹⁴⁶ Case SA.45140 *Antwerp Airport*, Commission decision of 12 November 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45140.

by airports or local authorities.¹⁴⁷

After a formal investigation, the Commission concluded that marketing agreements concluded by the French local authorities with *Ryanair* to promote *Montpellier airport* gave Ryanair an unfair and selective advantage over its competitors and caused harm to other regions and other regional airports. The Commission adopted a negative decision finding these marketing agreements to be illegal State aid and ordered France to recover EUR 8.5 million from Ryanair.¹⁴⁸

As regards rescue and restructuring aid to airlines, in 2019, the Commission approved the EUR 25 million restructuring aid awarded to *AerDorica S.p.A.*, the ailing operator of the Italian *Aeroporto delle Marche*, as it was compliant with the compatibility conditions under the 2014 Rescue and Restructuring Guidelines.¹⁴⁹

The Commission also authorised under the Rescue and Restructuring Guidelines a EUR 380 million rescue loan backed by a State guarantee in favour of the German airline *Condor*. The airline faced an acute liquidity shortage after the entry into liquidation of its UK parent company, the Thomas Cook Group.¹⁵⁰

As regards aid to maritime transport, the Commission approved the extension to new types of vessels of a *Danish seafarer scheme*.¹⁵¹ Under the amended scheme, shipping companies opting for the Danish International Register of Shipping (DIS) scheme and employing seafarers aboard certain specialised vessels providing off-shore activities can benefit from an exemption from income taxes for their seafarers.¹⁵²

In 2019, the Commission approved the prolongation of certain amendments to the *Dutch tonnage tax scheme*. The prolonged amendments concern a reduced tonnage tax rate for large vessels exceeding 50,000 net tons, a reduced tonnage tax base for ship management companies and the application of the tonnage tax schemes to cable-laying vessels, pipeline laying vessels, research vessels and crane vessels.¹⁵³

The Commission also adopted in 2019 several decisions on tonnage tax schemes as well as seafarer schemes. First, the Commission approved the prolongation of the Cypriot tonnage tax and seafarer scheme for a ten-year period until 31 December 2029.¹⁵⁴ The Commission adopted a decision covering a tonnage tax and a seafarer scheme for Estonia.¹⁵⁵ The country does not have any maritime scheme in place at the moment and at present no cargo vessel engaged in international transport flies the Estonian flag. The schemes are thus expected to boost the competitiveness of Estonia as a maritime country. Moreover, the Commission adopted a decision approving a 10-year prolongation of a Danish seafarer scheme for dredgers.¹⁵⁶ The Commission also approved a Polish

¹⁴⁷ Case SA.38145 *Alleged illegal State aid to Ryanair*, Commission decision of 04 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38145.

¹⁴⁸ Case SA.47867 *Aide présumée en faveur de Ryanair à l'aéroport de Montpellier*, Commission decision of 2 August 2019. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4991.

¹⁴⁹ Case SA.49901 *Restructuring aid to AerDorica S.p.A – Airport Marche/Ancona*, Commission decision of 22 February 2019 See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49901.

¹⁵⁰ Case SA.55394 *Germany - Rescue Aid to Condor*, Commission decision of 14 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55394.

¹⁵¹ Case SA.52069 *Prolongation of the Danish seafarer regime for dredgers*, Commission decision of 16 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52069.

¹⁵² Case SA.45300 *Amendment of the Danish Tonnage Tax scheme (Extension of the tonnage tax scheme to cover a number of specialized vessels)*, Commission decision of 12 October 2018 See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45300.

¹⁵³ Case SA.51263 *Prolongation of the Dutch tonnage tax scheme for ship managers, large vessels and service vessels*, Commission decision of 26 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51263.

¹⁵⁴ Case SA.51809 *Prolongation of the Cyprus tonnage tax and seafarer scheme*. Commission decision of 16 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51809.

¹⁵⁵ Case SA.53469 *State aid in favour of maritime transport*, Commission decision of 16 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53469.

¹⁵⁶ Case SA.52069 *Prolongation of the Danish seafarer regime for dredgers* Commission decision of 16 December 2019. See:

scheme reducing the income tax for seafarers.¹⁵⁷ Finally, the Commission authorised the prolongation of a Swedish scheme reducing both income tax and social security contributions as well as a fee on wages of seafarers by 99%.¹⁵⁸

In 2019, the Commission approved numerous schemes supporting rail¹⁵⁹ and intermodal¹⁶⁰ transport on the basis of the 2008 State aid Guidelines.¹⁶¹ Approved measures included for example aid for external costs, infrastructure aid, aid to support measures for noise reduction and aid to support research into environmentally-friendly rail transport and support for systems ensuring interoperability, in particular to enhance the deployment of ERTMS.¹⁶²

Postal services

In 2019, the General Court upheld the 2015 Commission decision on the financing of *Polish Post's* universal service obligation via a compensation fund.¹⁶³ The judgment confirms the Commission's approach for the assessment of universal service compensations under the SGEI framework.¹⁶⁴ The judgment also clarifies the approach to be taken for compensation funds as well as the interplay between the Postal Directive¹⁶⁵

-
- https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52069.
- ¹⁵⁷ Case SA.46380 *Poland – Reduction of income tax for seafarers*, Commission decision of 16 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46380.
- ¹⁵⁸ Case SA.46740 *Sweden – Tax deduction scheme for seafarers*, Commission decision of 16 December 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46740.
- ¹⁵⁹ *Cases SA.51714 (Italy) and SA.51559 (France) Prolongation de l'aide au service transitoire d'autoroute ferroviaire alpine*, Commission decisions of 02 August 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51714 and https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51559; SA.52898 *Financial measure to stimulate rail freight*, Commission decision of 08 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52898; SA.54990 *Aid in favour of rail freight transport in Emilia-Romagna region*, Commission decision of 10 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54990; SA.55025 *Prolongation of Rail Freight Transport Scheme 2020-2022*. Commission decision of 15 November 2019, See: <https://ec.europa.eu/competition/elojade/isef/index.cfm>.
- ¹⁶⁰ Case SA.51613 *Combined transport aid scheme for Luxembourg 2019-2022*, Commission decision of 08 July 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51613; SA.52499 *Extension of the Integrated Transport Scheme in the Province of Trento, Italy*, Commission decision of 06 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52499; SA.52828 *Incentive scheme for combined cargo transport*, Commission decision of 04 February 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52828; SA.53158 - *Aide à l'exploitation de services réguliers de transport combiné de marchandises alternatifs au mode tout routier pour la période 2018-2022*, Commission decision of 29 October 2019, See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53158; Commission decision of 18 October 2019, SA.54860 - *Mode Shift Revenue Support (MSRS) scheme*, See : https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54860; Case SA. 55507 *Austria - Support for rail transport in the mountainous regions*; Commission decision of 16 December 2019, see: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3; Case SA. 55443 *Poland - Aid for the implementation of projects to reduce noise emissions by freight wagons*, Commission decision of 16 December 2019, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55443.
- ¹⁶¹ Communication from the Commission: Community guidelines on State aid for railway undertakings, OJ of 22 July 2008, C 184, p. 13, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:184:0013:0031:EN:PDF>.
- ¹⁶² Commission decision of 05 November 2019, SA.55451 - *The Netherlands - Support for ERTMS-upgrade*, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55451. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6223. The European Rail Traffic Management System ERTMS aims at ensuring interoperability of train control and command systems in the European Union.
- ¹⁶³ Case T-283/16 (Joined Cases T-282/16, T-283/16) *Inpost Paczkomaty v Commission* Judgment of the General Court (Third Chamber, Extended Composition) of 19 March 2019 *Inpost Paczkomaty sp. z o.o. and Inpost S.A. v European Commission*.
- ¹⁶⁴ Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15-22.
- ¹⁶⁵ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of

and the SGEI Framework. The judgment was appealed by InPost and the appeal is still pending.¹⁶⁶

The Commission approved in 2019 a EUR 171.74 million public service compensation granted by Italy to *Poste Italiane* for distributing newspapers and publications of book publishers and non-profit organisations.¹⁶⁷

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

The Commission authorises State aid measures promoting the deployment of renewables, improving energy efficiency, stimulating demand for low emission vehicles for public and private transport, and reducing CO₂ emissions. In addition, the Commission authorises intermediate measures reducing nitrogen oxides (NO_x) emissions by allowing the retrofitting of polluting vehicles used in public transport. The enforcement of the State aid rules in the renewable energy, energy efficiency, and low-emission mobility fields remained high in 2019. The Commission adopted twenty decisions concerning renewables and combined heat and power support schemes.¹⁶⁸ As a result, an increasing number of Member States grant support for the production of renewable energy through competitive and technology-neutral tenders and by integrating renewables installations in the electricity market. In 2019, the Commission also adopted two decisions related to *capacity mechanisms in Italy*¹⁶⁹ and the *UK*¹⁷⁰, which take into account the provisions of the electricity market regulation on capacity mechanisms.

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

The EU financial sector has largely overcome the financial crisis. This positive development is reflected in the reduced number of State aid cases for banks. In 2019, there was only one direct support measure for a commercial bank in the EU that contained State aid.

The one case involving State aid in 2019 was liquidity support provided by Italy to *Cassa di Risparmio di Genova e Imperia* ("Banca Carige") in form of guarantees to newly issues liabilities.¹⁷¹ The Commission's assessment showed that the measure was targeted, proportionate and limited in time and scope. The Commission therefore concluded that the liquidity support was in line with EU rules.

In 2019, the Commission adopted a decision concluding that the recapitalisation of *German NordLB* was market conform. The Commission found that Germany's plans to strengthen the capital position of state-owned Norddeutsche Landesbank – Girozentrale

service, as amended by Directives 2002/39/EC and 2008/6/EC, OJ L 15, 21.2.1998, p. 14-25. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01997L0067-20080227>.

¹⁶⁶ C-431/19 P - Inpost Paczkomaty v Commission, case pending.

¹⁶⁷ SA.48492 *Italy- Compensation to Poste Italiane for reduced tariffs for publishers and not-for profit organizations 2017-2019*, Commission decision of 14 June 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48492.

¹⁶⁸ Cases SA.55761, SA.50920, SA.45765, SA.48601, SA. 51190, SA.49673, SA.49674, SA. 52085, SA. 52960, SA. 50807, SA. 49672, SA. 53347, SA. 54949, SA. 50199, SA. 55100, SA. 51192, SA. 52530, SA. 54375, SA. 54376, and SA. 51614.

¹⁶⁹ Case: SA.53821 (2019/N) *Italy - Modification of the Italian capacity mechanism*, Commission decision of 21 March 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53821.

¹⁷⁰ Case: Aid SA.35980 (2018/C) *United Kingdom - Electricity Market Reform: Capacity Mechanism* Commission decision of 24 October 2019.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35980.

¹⁷¹ Case SA.52917(2019/N) *Liquidity support to Banca Carige - Cassa di Risparmio di Genova e Imperia*, Commission decision of 18 January 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52917.

(NordLB) did not include any State aid.¹⁷² The measures allowed the investments needed to make the necessary structural changes and downsize the bank. The European Central Bank, as responsible supervisor, gave its approval to the plan in November 2019.

A second case of direct capital support for an individual bank involved the investment of *Romania in CEC Bank*.¹⁷³ The Commission found that the State, as the sole owner of CEC Bank, would carry out a capital injection in the bank at the same conditions that a private market operator would accept.

In addition to cases involving individual support for banks, the Commission decided to prolong a number of schemes set up to ensure orderly liquidation of small banks, credit unions or other credit institutions in Croatia,¹⁷⁴ Denmark,¹⁷⁵ Greece,¹⁷⁶ Ireland,¹⁷⁷ and Poland.¹⁷⁸

High levels of non-performing loans remain in some Member States. In 2019 the Commission approved the *Hellenic Asset Protection Scheme* ("Hercules") as free of State aid.¹⁷⁹ The Commission also approved a scheme to support households at risk of losing their homes due to difficulties in mortgage repayments.¹⁸⁰ The Commission also prolonged the Italian guarantee scheme for the securitisation of non-performing loans (*Fondo di Garanzia sulla Cartolarizzazione delle Sofferenze* – "GACS").¹⁸¹

Specific objective 10: Prevention and recovery of incompatible aid

To ensure the integrity of the single market, the Commission has the power and the duty to request that Member States recover unlawful and incompatible aid which has unduly distorted competition and trade between Member States. The purpose of recovery is to re-establish the situation that existed on the market prior to the granting of the aid.

By 31 December 2019, the sum of illegal and incompatible aid recovered from beneficiaries amounted to EUR 37.1 billion.¹⁸² The outstanding amount pending recovery was EUR 5.5 billion.¹⁸³ In 2019, the Commission adopted four new recovery decisions and an amount of EUR 159 million was recovered by the Member States. As of the end of December, the Commission had 42 pending recovery cases.

¹⁷² Case SA.49094(2019/N) *Market-conform measures for strengthening capital and restructuring of Norddeutsche Landesbank*, Commission decision of 5 December 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49094.

¹⁷³ SA.53869(2019/N) *Market-conform recapitalisation of CEC Bank*, Commission decision of 29 October 2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53869.

¹⁷⁴ SA.51814 *Reintroduction of the resolution scheme for small credit institutions with total assets below EUR 1,5 billion*. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51814.

¹⁷⁵ SA.54807 *Prolongation of the winding-up scheme for small banks*. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54807.

¹⁷⁶ SA.54332 *Prolongation of the Greek State Guarantee Scheme for banks*. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54332.

¹⁷⁷ SA.55542 *10th prolongation of the Credit Union restructuring and stabilisation scheme*. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55542; and SA. 54244

15th prolongation of the Credit Union Resolution Scheme 2019-2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54244.

¹⁷⁸ SA.54463 *Third prolongation of the resolution scheme for cooperative banks and small commercial banks*.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54463.

¹⁷⁹ SA.53519(2019/N) *Hellenic Asset Protection Scheme ('Hercules')*. Commission decision of 15 November

2019. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53519.

¹⁸⁰ SA.53520(2019/N) *Primary Residence Protection Scheme*. Commission decision of 22 November 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53520.

¹⁸¹ SA.53518(2019/N) *Third prolongation of the Italian guarantee scheme for the securitisation of non-performing loans*. Commission decision of 16 August 2019. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53518.

¹⁸² The reference period is 1 January 1999 to 31 December 2019.

¹⁸³ The amount is composed of EUR 2.6 billion from 42 pending cases and EUR 2.9 billion where the aid amount has been registered in insolvency proceedings that are still pending.

Recovery decisions adopted in 2019	4
Amount recovered in 2019 (EUR million)	159
Pending recovery cases on 31 December 2019	42

In 2019, the Commission published a new Notice on the implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (the "Recovery Notice")¹⁸⁴. It consolidates the case law developments established since the adoption of the old 2007 Notice. The new notice also includes more information on the infringement procedures, both under Article 108(2) TFEU and 260 TFEU, as well as established new practices in the cooperation between the Commission and the Member State concerned by a recovery decision.

Specific objective 11: Monitoring of aid measures

Today, a substantial part of aid is granted under block-exempted schemes and not examined by the Commission before entering into force. Overall, roughly 80% of aid measures were granted on the basis of previously approved aid schemes or block exemption regulations.¹⁸⁵ In that context, it is essential for the Commission to verify that Member States apply State aid rules for the schemes correctly. To that end, the Commission introduced in 2006 a regular, *ex post*, sample-based control of existing aid schemes (monitoring), which comprises a monitoring sample of approximately 50 schemes per year. The 2019 cycle covered 19 Member States and all main types of aid both approved and block-exempted. Since 2018, Member States have to report on individual aid exceeding EUR 500,000. DG Competition follows up on irregularities and uses the means at its disposal, as appropriate, to address the competition distortions that these may have caused.

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

GBER allows Member States to implement a wide range of public support measures without prior notification to the Commission, in areas such as research and development, environmental protection and SME support.

It is crucial that national and EU funds can be combined seamlessly under the new MFF without undermining competition. To this end, the Commission launched a targeted review of GBER, which extends GBER to national funds, including EU shared management funds, combined with centrally managed programmes InvestEU Programme, Horizon Europe and Interreg. The second public consultation on the draft proposal is planned to take place in 2nd quarter of 2020.

Launch of the Fitness check of the 2012 State aid modernisation package, railways guidelines and short term export credit insurance

A number of the State aid rules adopted as part of SAM expire by the end of 2020, while others have no fixed expiry date. To provide predictability and legal certainty, whilst preparing for a possible future update of the SAM State aid rules, the Commission will proceed in two steps. First, the Commission launched the process to prolong the validity of those State aid rules which would otherwise expire by the end of 2020. Second, the Commission is evaluating those rules. The respective rules are assessed in the framework of a fitness check which will assess if the SAM State aid rules are still fit for purpose and whether the objectives of SAM have been met. The fitness check provide the basis for

¹⁸⁴ Commission Notice on the recovery of unlawful and incompatible State aid, OJ C 247 of 23.7.2019, p. 1–23.

¹⁸⁵ State Aid Scoreboard 2019. See: http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html.

decisions by the Commission, about whether to further prolong or possibly update the rules.¹⁸⁶

Review of the Emissions trading scheme State aid guidelines (ETS Guidelines)

After intensive work in 2019, the Commission submitted for public consultation in early 2020 the draft ETS State aid guidelines for the period 2021-2030. The core principle of the ETS is that polluters should pay for their carbon emissions. However, third countries do not always apply climate policies with the same level of ambition as the EU. To this end, Member States may partially compensate electricity-intensive consumers at significant risk of carbon leakage for their ETS indirect costs. The revised ETS Guidelines will set the conditions when Member States can grant such partial compensation.

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

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

In 2019, Commissioner Vestager and DG Competition cooperated with other Commission services to ensure a consistent approach to competition-related issues across the Commission, making competition policy a key contributor to achieving long-term Commission objectives such as growth and competitiveness. Moreover, DG Competition contributed its specific competition-related knowledge and provided input to other Commission policy areas. Model simulations show that the Commission's competition policy interventions (including deterrent effects) may lead to a 0.3% GDP increase in the medium term (see footnote 45 above).

DG Competition also continued to work together with other EU institutions. The European Parliament, the Council, the Committee of the Regions and the Economic and Social Committee are key partners in the interinstitutional dialogue on competition policy. DG Competition presented its 2018 Annual Report on Competition Policy to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, and engaged in structural dialogue with these institutions.

In December 2019, DG Competition Acting Director-General Cecilio Madero Villarejo participated in the discussions in the European Parliament's Economic and Monetary Affairs committee following the presentation by rapporteur Yon-Courtin of the draft Parliament opinion on the 2018 Annual Report on competition policy. The Commission engaged with the Committee of the Regions and the Economic and Social Committee throughout the year.

In 2019, Commissioner Vestager made several appearances before Parliament. In February, Commissioner Vestager appeared before EP's Special Committee on Taxation, and attended an in camera session of the Banking Union working group of Parliament's Economic and Monetary Affairs committee. In March 2019, Commissioner Vestager participated in the Structural Dialogue with Parliament's Economic and Monetary Affairs committee.

In May 2019, Commissioner Vestager attended the European Economic and Social Committee's 543rd plenary session for an exchange of views with the Committee's members on the challenges of competition policy for the new Commission and the new

¹⁸⁶ The current fitness check covers the General Block Exemption and De Minimis Regulations, Regional Aid Guidelines, Research and Development Framework, the IPCEI Communication, Risk Finance, Airport and Aviation Guidelines, Environmental and Energy Guidelines, Rescue and Restructuring Guidelines, as well as the Railways Guidelines and Short-Term Export Credit Communication.

Parliament, in particular in the context of the digital economy and sustainable development.

Specific objective 14: Explaining competition policy and its benefits

DG Competition's external communication is focussed on the use of mass media to reach a variety of audiences, including businesses, lawyers, researchers, academics, students and the general public. This is achieved principally via the Commissioner's press conferences, press releases and speeches, as well as social media. In addition, DG Competition issues newsletters and other publications, and staff participates in stakeholder conferences. The mass media are by far the most cost-effective channel to reach a wide audience. According to Eurobarometer Flash 476 Survey on "Citizens' Perception about Competition Policy" published in April 2019, people's two main sources of information about competition policies were television (58%) and newspapers or magazines, including online (58%). These were followed by internet-based media (33%) and radio (33%). The percentage of positive replies by EU citizens agreeing that effective competition has a positive impact on them as consumers increased to 78% from 74% in 2014.¹⁸⁷

Throughout 2019, Commissioner Vestager delivered 67 speeches to a variety of audiences. The Director-General and Acting Director-General delivered 25 speeches at a variety of international events. DG Competition produced 525 press releases in 2019. Of these, 120 were longer, multilingual, press releases while 415 were shorter and monolingual ("midday express"). Some of the cases generated broad media coverage, such as the prohibition of Siemens' proposed acquisition of Alstom, the Google AdSense antitrust decision and the decision to impose interim measures on Broadcom.

A highlight in 2019 was the Commission's conference on 17 January "Shaping competition policy in the era of digitisation". Some 490 people from 27 countries attended in person and more than 35,000 connected to the live stream. DG Competition generated 209,000 impressions (that is to say the number of times a tweet appears in someone's feed) of tweets related to the conference. DG Competition was very active on Twitter during 2019. Throughout the year, around 590 tweets from DG Competition's account generated more than 3.5 million impressions. The number of followers on the COMP Twitter account rose by 3,480 to 15,800. The number of subscribers to the DG Competition's electronic newsletters was 22,000 in 2019 (+5%), while its publications in the EU Bookshop were viewed, downloaded or ordered as paper copies 6,200 times (+3%).

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

The main objective of the Commission's international activities in the competition field is to advocate a global competition culture, promoting competition conditions allowing companies to compete on the merits on fair and equal terms across the world. The Commission also seeks to reinforce the role of competition policy in international organisations and cooperates with agencies globally.

Multilateral relations

In 2019, the Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules. Moreover, the Commission engaged in several international initiatives addressing sectoral issues, for example the G20 Global Forum on

¹⁸⁷ <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2209>.

steel excess capacity. The Commission also continued the work with EU Member States in the International Subsidy Policy Group, exchanging views and coordinating initiatives concerning international subsidy policies at multilateral and bilateral level.

In 2019, DG Competition continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), the World Bank, and United Nations Conference on Trade and Development (UNCTAD). In 2019, DG Competition took up a three-year co-chair role of the ICN Unilateral Conduct Working Group. DG Competition co-organised the ICN Unilateral Conduct Workshop on digital matters in competition law in Mexico City. DG Competition continued chairing the ICN Cartel Working Group until summer 2019. DG Competition continues to contribute to the Cartel Working Group's ongoing projects on "Enhancing Coordination on Leniency Matters" and the "Big Data Project". DG Competition is also an active member in the other ICN Working Groups. DG Competition participated in the 18th meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy in July 2019.

Bilateral relations

At bilateral level, the Commission aims at including provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2019, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand, Tunisia and Uzbekistan, and concluded the negotiations with Kyrgyzstan and Mercosur. Negotiations on a Comprehensive Investment Agreement with China are ongoing. In 2019, the Commission also continued its close cooperation with China on competition policy.

As regards the draft Second Generation Cooperation Agreement between the Commission and Canada, DG Competition is in regular contact with the Competition Bureau of Canada to find a solution on data protection in Canada so that it aligns with the standards established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement. DG Competition continued the negotiations with Japan on a Second Generation Agreement with a view to updating the existing cooperation agreement from 2003.

The Commission also assists neighbouring countries. For example, in 2019 DG Competition monitored the implementation of the EU competition acquis in countries such as Ukraine. In negotiations with enlargement candidate countries and potential candidate countries, the Commission's main policy objective - in addition to advocating a competition culture - is to help these countries to create legislative frameworks with well-functioning operationally independent competition authorities that build up a solid enforcement record. In 2019, the Commission continued to monitor candidate countries' compliance with their commitments under the Stabilisation and Association agreements.

DG Competition also actively engaged with several African national and regional authorities to develop cooperation in the competition field.

In 2019, the Commission continued to prepare for the withdrawal of the United Kingdom from the EU. The EU-UK Withdrawal Agreement sets out the continued application of the EU acquis during the transition period until the end of 2020. It includes comprehensive provisions for State aid and competition policy.

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

Fair, impartial, efficient and transparent enforcement of the competition rules strengthens the EU's ability to deliver results to strengthen the single market and increase consumer welfare. DG Competition adheres to the highest standards of professionalism, intellectual rigour and integrity to ensure the highest standards in the

enforcement of competition policy.

In 2019, DG Competition conducted a review of the *Smarter Working Initiative Action Plan* by the Sounding Board consisting of a large number of staff across the DG. The Sounding Board reviewed current working methods to identify additional efficiencies and synergies to make DG Competition a better workplace. The Sounding Board presented its findings and recommendations in a report finalised in December 2019.

To ensure enforcement efficiency, DG Competition continually adapts to an increasingly digital environment. New sophisticated IT tools and algorithms used by economic operators combined with an exponential increase in electronic communications, quantity of data and the number of documents in case files make major competition investigations extremely complex and burdensome. The Commission's proposals for the next MFF (2021-2027) include, for the first time, a Single Market Programme which includes a competition policy component, entitled "An Ambitious Competition policy for a stronger Union in the digital age".¹⁸⁸ The Single Market Programme would enable the Commission to directly support the development of EU competition policy with a dedicated indicative budget of EUR 140 million over the programming period. When adopted by the co-legislators – foreseen for 2020 – the competition policy programme would help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and fast-moving market developments in an increasingly digital environment and strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the single market.

According to an earlier Eurobarometer Standard Qualitative Stakeholder Survey,¹⁸⁹ there was widespread agreement that DG Competition's impact on the market is significant by promoting competition, raising awareness for competition rules and acting as deterrent. Due to unavailability of an appropriate Commission Framework Contract, it was not possible to repeat the survey in 2019.

¹⁸⁸ Proposal for a Regulation of the European Parliament and of the Council establishing the Programme for single market, competitiveness of enterprises, including small and medium-sized enterprises, and European statistics and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014, (EU) No 258/2014, (EU) No 652/2014 and (EU) 2017/826, COM/2018/441 final - 2018/0231 (COD); *An Ambitious Competition policy for a stronger Union in the digital age*:

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

¹⁸⁹ Eurobarometer Standard Qualitative Study – Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2014) published in March 2015, http://ec.europa.eu/competition/publications/reports/surveys_en.html; see also Qualitative Eurobarometer survey about the perceived quality of DG Competition's actions (2010), http://ec.europa.eu/competition/publications/reports/surveys_en.html; see also annual ranking of competition authorities around the world by Global Competition Review (GCR), the latest June 2015, <http://globalcompetitionreview.com/surveys/article/38830/european-commissions-directorate-general-competition>.

2. ORGANISATIONAL MANAGEMENT AND INTERNAL CONTROL

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

The first subsection reports the control results and all other relevant information that support management's assurance on the achievement of the internal control objectives¹⁹⁰. It includes any additional information necessary to establish that the available evidence is reliable, complete and comprehensive. It covers all activities, programmes and management modes relevant to the DG.

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

2.1. Financial management and internal control

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

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

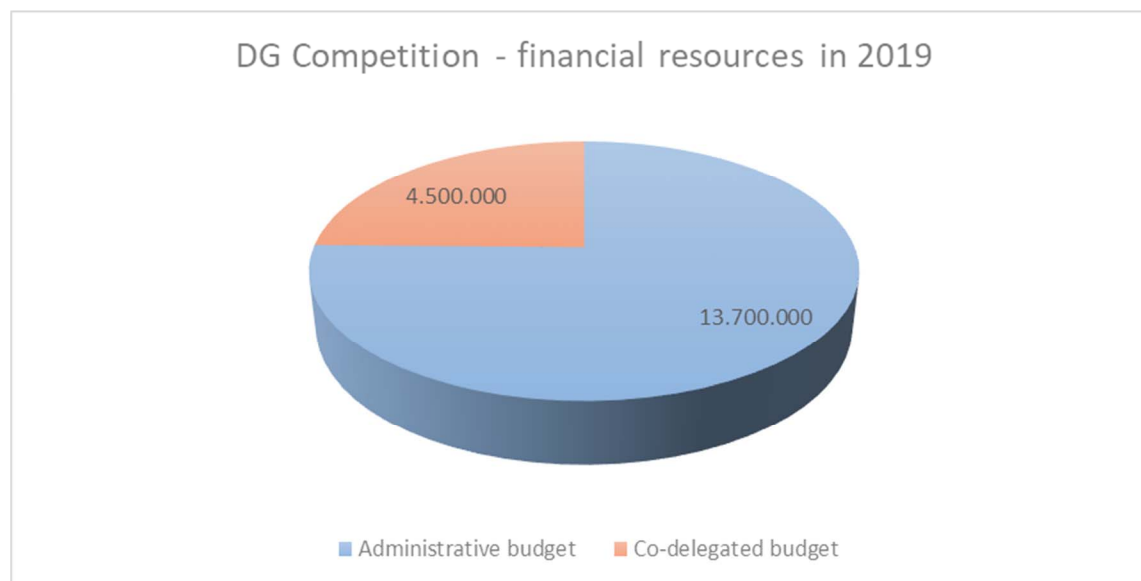
- Contribution of the Internal Control Coordinator, including the opinion and the observations of the ex-post controls of financial transaction; and the results of internal control monitoring at the DG level;
- Register of exceptions and non-compliance events;
- Risk assessment and risk register presented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

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

This section is for reporting the control results and other relevant elements that support management's assurance. It is structured into (a) Control results, (b) Audit observations and recommendations, (c) Effectiveness of internal control systems, and resulting in (d) Conclusions on the assurance. The financial resources of DG Competition derive from its

¹⁹⁰ Art 36.2 FR: a) effectiveness, efficiency and economy of operations; b) reliability of reporting; c) safeguarding of assets and information; d) prevention, detection, correction and follow-up of fraud and irregularities; and e) adequate management of risks relating to the legality and regularity of underlying transactions. Moreover, the internal control framework is a principle-based system with the aim of ensuring robust internal control, by providing the necessary flexibility to allow departments to adapt to their specific characteristics and circumstances.

moderate administrative budget and other resources:



2.1.1. Control results

This section is for reporting and assessing the elements identified by management which support the assurance on the achievement of the internal control objectives¹⁹¹. The DG's assurance building and materiality criteria are outlined in AAR Annex 4. Annex 5 outlines the main risks together with the control processes to mitigate them and the indicators used to measure the performance of the relevant control systems.

DG Competition is committed to ensuring EU competition policy enforcement of the highest standards respective regulations, guidelines and best practices aligned with market realities and contemporary economic and legal thinking and advocacy activities.

The Internal Control Framework of DG Competition governs the internal controls related to the main inherent risks in DG Competition, which concern procedures leading to Commission enforcement actions (Commission decisions) and policy initiatives in the field of EU competition policy, handling of confidential information as well as attracting and maintaining highly qualified staff and the necessary IT support and tools.

Considering the impact that competition enforcement decisions can have on EU citizens, companies and the Member States, DG Competition cannot focus any less on its non-financial than its financial controls.

In 2019 the financial management played a minor part in DG Competition's overall activity. This is reflected in the Internal Control Framework and the controls in place. The implementation of EU competition policy involves a modest administrative budget (13.7 million in 2019¹⁹²) supporting organisational management and functioning of the DG.

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

¹⁹¹ 1) Effectiveness, efficiency and economy of operations; 2) reliability of reporting; 3) safeguarding of assets and information; 4) prevention, detection, correction and follow-up of fraud and irregularities; and 5) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments (FR Art 36.2). The 2nd and/or 3rd Internal Control Objective(s) (ICO) only when applicable, given the DG's activities.

¹⁹² This amount reflects DG COMP's administrative expenditures (see annex 3).

Activity/ Indicator	Legality & regularity	Cost- Effective- ness of controls	Anti-Fraud Strategy	Reliability of information and reporting	Safeguard of Assets	Reputational risk	Reservations
Security of IT-systems	n/a	Positive conclusion	Area covered by the AFS	Positive conclusion	Positive conclusion	Positive conclusion	No
Enforcement and policy action taken in the area of EU competition policy	Positive conclusion	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	Positive conclusion	No
Fines imposed in the area of competition	Positive conclusion	Positive conclusion	Area covered by the AFS	Positive conclusion	Positive conclusion	Positive conclusion	No
Security of information		Positive conclusion		Positive conclusion	Positive conclusion	Positive conclusion	No
Fraud, Insider trading, Conflict of interests		Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	Positive conclusion	No
Management administrative expenditure	Error rate below 2%	Positive conclusion	Area covered by the AFS	Positive conclusion	n/a	n/a	No

Governance structures

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

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

1. Effectiveness = the control results and benefits

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

1.1. Control effectiveness as regards security of IT-systems

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

The controls in place include the yearly review of the IT Risk Register and the requirement for new information systems¹⁹³ to have a security plan.

The IT Risk Register describes the most prominent IT related risks of DG Competition. IT Risk Management ensures visibility, accountability and regular monitoring of IT risks, in order to address them in the best possible ways.

The implementation of the security plans ensures that new information system comply with the highest standards for cybersecurity. DG Competition implements tailored IT security plans for new information systems in alignment with the EC Corporate IT Security Strategy and the EC Decision (EU, Euratom) 2017/46 on the security of communication and information systems.

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

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

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

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

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

The implementation of the internal controls in DG Competition during 2019 contributed to the high quality of enforcement decisions taken by the Commission in the various instruments of competition policy (antitrust, merger control and State aid control). The risk management process has helped to identify and address the main risks that can prevent the achievement of the objectives. Potential weaknesses or errors have been mitigated and corrected through ex-ante controls involving among other things step-by-step procedures and consultations to be followed in the daily operations. A dedicated team in DG Competition continuously updates internal instrument-specific Manuals of Procedures to take account of developments and recent jurisprudence.

¹⁹³ Information systems released for the first time into production after 1 January 2019.

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

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

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

In 2019, a total amount of EUR 4.09 billion was imposed in fines. The controls in place ensured that the related decisions were free of errors, that the amounts have been correctly registered and that the reporting at the year-end is true and fair. Follow-up of outstanding amounts in cooperation with DG Budget and the Legal Service was performed 3 times during the year.

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

1.4. Control effectiveness as regards security of information

The control objective is to ensure that confidential information is not disclosed in the course of proceedings. In 2019, DG Competition had 13 cases of inadvertent disclosures of sensitive information, all of which were considered as being non-critical and therefore having no impact on the assurance. All incidents triggered immediate mitigating measures and recommendations to prevent further disclosures.

1.5. Control effectiveness as regards fraud, insider trading, conflict of interests

DG Competition's anti-fraud strategy has been in place since 2013 and is currently being updated in line with the latest guidance provided by OLAF in November 2019. The Anti-Fraud Strategy takes into account the DG's relatively limited administrative budget and absence of operational budget so far. In this context, possible fraudulent activities would mostly be linked to ethical concerns arising in the case management process (conflicts of interest, undue influence by stakeholders) and insider trading. In 2019 the main focus remained to promote awareness among staff, in particular new staff, and to provide continued guidance to established staff on specific ethical questions.

During the reporting year, no case of fraud was transmitted to OLAF for investigation and OLAF did not initiate any case concerning the activities of DG Competition based on other sources of information. The questions and declarations on possible conflicts of interest demonstrate the existence of ethical awareness among staff.

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

In 2019, DG Competition organised five training sessions on Ethics and Integrity for newcomers. So far, 95 out of 105 new colleagues that started in 2019 participated to a training session (=90%). The remaining 10 colleagues were invited for the training session of 3 April 2020, which has been cancelled until further notice. In any event, colleagues are being invited to this training until they have participated in order to reach the 100% objective from the Internal Control Register. Furthermore, the Commission organised generic trainings on ethics and anti-fraud for its staff.

1.6. Control effectiveness as regards legality and regularity in financial management

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

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

As regards the legality and regularity of the underlying transactions, the objective is to ensure that the estimated annual risk of errors in commitments and payments at the time of authorisation of the transaction is less than EUR 274 000. All corrections take place before the actual payment is made (ex-ante), and there are no errors left at the moment of payment. As regards the error rate, DG Competition applied the approach recommended by DG BUDG and assumed the average error rate of 0.5%, which is the most conservative estimate.

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

In 2019, two 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. Moreover, the DG had none of the following cases: 'confirmation of instructions' (Article 92.3 FR), financing not linked to costs (Article 125.3 FR), Financial Framework Partnerships >4 years (Article 130.4 FR), flat rates >7% for indirect costs (Article 181.6 FR), or "Derogations from the principle of non-retroactivity of grants pursuant to Art 193 FR" (Article 193.2 FR).

Furthermore, a representative (61.7% of the commitments, 53.5% of the payments) sample of the financial transactions of DG Competition was subject to an ex-post control. Overall, during the reporting year the controls carried out by DG Competition for the management of the budget appropriations were efficient and cost effective.

The total amount of payments in 2019 was EUR 13.7 million and the observed error rate was 0%. The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance of sound financial management, in particular, as the prevention of potential errors in procurement procedures is less expensive than costs of potential litigations and/or legal proceedings.

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

DG Competition has low-risk type of expenditures mainly in the area of procurement with strong ex-ante and ex-post controls, therefore the risk at payment, estimated future correction and risk at closure remains stable.

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

Conclusion

In the context of the protection of the EU budget, the DG's estimated overall risk at payment, estimated future corrections and risk at closure are consolidated at Commission level. DG Competition's data is shown in the Table "*Estimated overall amount at risk at closure 2019*" below.

The estimated overall risk at payment for 2019 expenditure is EUR 68 400. This is the AOD's best, conservative estimation of the amount of *relevant expenditure* during the year (EUR 13.7 million) not in conformity with the contractual and regulatory provisions applicable at the time the payment was made.

These expenditures have been subject to ex-post controls and the observed error rate was 0%. Thus, the conservatively estimated future corrections¹⁹⁴ for those 2019 payments are close to zero.

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

¹⁹⁴ Even though to some extent based on the 7 years historic Average of Recoveries and financial Corrections (ARC), which is the best available indication of the corrective capacity of the ex-post control systems implemented by the DG over the past years, the AOD has not adjusted this historic average. Any ex-ante elements, one-off events, (partially) cancelled or waived ROs, and other factors from the past years that would no longer be relevant for current expenditures have been adjusted in order to come to the best but conservative estimate of the ex-post future corrections to be applied to the reporting year's relevant expenditure; cf.note 8 in the table.

Estimated overall amount at risk at closure

DG Competition	"payments made" (m€)	minus new pre-financing (m€)	plus cleared pre-financing (m€)	= "relevant expenditure" (m€) =(2)-(3)+(4)	Average Error Rate (weighted AER; %)	estimated overall risk at payment (m€) =(5)x(6)	Average Recoveries and Corrections (adjusted ARC; %)	estimated future corrections (m€) =(5)x(8)	estimated overall risk at closure (m€) =(7)-(9)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Administrative expenditure	12.73	N/A	N/A	12.73	0.5%	63 650	0	0	63 650
Grants program – Training of Judges	1.01	0.39	0.33	0,95	0.5%	4 750	0	0	4 750
Overall, total	13.74	0.39	0.33	13.68	0.5%	68 400	0	0	68 400

- (2) Payments made or equivalent, e.g. expenditure registered in the Commission's accounting system, accepted expenditure or cleared pre-financing. In all cases of Co-Delegations (Internal Rules Article 3), "payments made" are covered by the Delegated DGs.
- (3) New pre-financing actually paid out by the department itself during the financial year (i.e. excluding any pre-financing received as a transfer from another department).
- (4) "Pre-financing paid/cleared" are always covered by the Delegated DGs.
- (5) For the purpose of equivalence with the ECA's scope of the EC funds with potential exposure to legality & regularity errors (see the ECA's Annual Report methodological Annex 1.1), our concept of "relevant expenditure" includes the payments made, subtracts the new pre-financing paid out and adds the previous pre-financing actually cleared during the financial year. This is a separate and 'hybrid' concept, intentionally combining elements from the budgetary accounting and from the general ledger accounting.
- (6) In order to calculate the weighted Average Error Rate (AER) for the total relevant expenditure in the reporting year for low-risk types of expenditure, where there are indications that the equivalent error rate might be close to 'zero' (e.g. administrative expenditure), it is recommended that 0.5% be used as a conservative estimate.

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

The principle of efficiency concerns the best relationship between resources employed and results achieved. This section outlines the indicators used to monitor the efficiency of the control systems. DG Competition continuously reviews its control strategy¹⁹⁵ to ensure the cost-effectiveness of controls.

2.1. Control efficiency as regards security of IT-systems

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

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

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

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

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

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

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

Fines imposed in the field of EU competition law can have a high monetary value.

¹⁹⁵ The existent throughout 2019 draft DG Competition Internal Control Strategy was formally endorsed on 9 December 2019.

However, the stable regulatory environment relating to their processing and collection reduces the risk of encoding errors significantly. An automatically generated monthly list of fine decisions is circulated to ensure a timely encoding in ABAC.

In 2019, fines imposed were introduced into the accounting system in correct and timely manner and the accounts therefore reflects the value of the rights concerned.

2.4. Control efficiency as regards security of information

DG Competition revised the handling instructions for documents requiring special handling. An information session on this issue was co-organised with the DG HR Security Directorate.

Also a phishing exercise was carried out by DG DIGIT covering all DG Competition staff in December 2019.

Many controls are embedded in the Manuals of Procedures, so that they are routinely implemented in the course of investigations and inadvertent disclosures of sensitive information can be prevented. When information security incidents were detected, staff took action swiftly. Procedures were adapted when necessary.

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

All new and returning staff had to follow a compulsory half-day course on ethics within six months of their arrival.

In the first working day of the year, all staff received the annual reminder about conflict of interest rules in the Staff Regulations. All staff appointed to work on a case also had to declare the absence of conflicts of interest prior to joining the case team.

2.6. Control efficiency as regards legality and regularity in financial management

The average payment delay in 2019 was less than 20 days¹⁹⁶, which is in line with the average payment delay in 2018. Furthermore, more than 97.4% of all payments were executed within the contractual limit, which is almost the same as in 2018 (97.6%). The average registration delay for an invoice was 1 day, which is below the Commission's target of five days and lower than the average registration delay in 2018 (1.33 days). The time to inform beneficiaries in 2019 was 102 days (95 days in 2018), and the average time to grant was reduced to 198 days (211 days in 2018).

In 2019, DG Competition revised the reporting procedure for beneficiaries of action grants under the Training of Judges program. DG Competition introduced a simplified methodology for verification of expenditures in order to reduce the financial and administrative burden for beneficiaries when reporting and for DG Competition when verifying actual costs incurred. Moreover, DG Competition took further steps towards paperless procurement within the e-Procurement project developed within the Commission.

¹⁹⁶ Cf. table 6 in Annex 3.

3. Economy = the cost of controls

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

The activities of DG Competition are specific, so are the risks. Despite the relatively limited volume of payments (EUR 13.7 million) and budget (EUR 18.2 million), the financial stakes affected by the quality of decisions prepared by DG Competition are significantly higher:

Funds managed	
Payments (Expenditure) 2019	13.7 M€
Total budget (Administrative and co-delegation)	18.2 M€
Decisions with fines adopted in 2019	4.1 B€
Amount of pending fines due to appeal to the European Court of Justice	14.6 B€
Number of pending fines on 31 December 2019	118

The risk exposure is also coupled with risks associated with:

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

The exposure related to those risks cannot be monetarised but is considered high - significantly higher than the payments and the total budget. In this situation, the cost of controls cannot be measured against the payments (or budget) and needs to be commensurate with the combined exposures related to risks affecting recovery decisions, amounts recovered and on-going efforts on pending recovery cases.

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

3.1. Cost of control as regards security of IT-systems

The cost of controls as regards both the follow-up of the IT Risk Register, as well as the definition of security plans for new information systems, (as described above in the section on control efficiency for the security of IT-systems) can be estimated at about 0.8 of a full time equivalent (EUR 136 720).

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

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

The coordination units of each competition instrument serve as centres of expertise that apply quality controls. Their unique role is recognised in our estimate of the costs of controls: we estimate that 48 full time equivalents (EUR 8 203 200) from these units can be allocated to the quality control of the enforcement and policy actions taken in the area of EU competition policy.

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

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

The number of transactions are few and the related costs of control correspond to less than 10% of a full time equivalent.

3.4. Cost of control as regards security of information

The costs of control regarding security of information are estimated to be 0.43 of a full time equivalent (EUR 72 786), which includes the tasks of local security officer and local informatics security officer.

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

The cost of control is estimated at 0.26 of a full time equivalent (EUR 44 416), which includes the tasks related to anti-fraud and ethics by the local ethics/anti-fraud contact point and the HR Business correspondent.

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

As regards financial management, it is estimated that 2 full time staff are attributed to ex-ante controls of procurement and grants procedures, in addition to the base line controls as required by the Financial Regulation such as the "four eyes" principle. Ex-post controls accounts for 0.20 of one full time post.

The ex-post review of procurements, grants, financial transactions and reported exceptions performed by Unit 04 is estimated to be equivalent to 0.41 of one full time staff.

In total, the cost of controls represents 2.6 full time post e.g. approximately EUR 311 227 (EUR 218 800 for ex-ante controls and EUR 92 427 for ex-post controls) or equivalent to 3.42% of total expenditure. This is at the same level as in 2018 when the total costs of controls represented 3.32% of total expenditure.

4. Conclusion on the cost-effectiveness of controls

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

The rules of EU competition policy and enforcement have been in place for more than 60 years and the control strategy has been elaborated and tested over a long period of time. The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance, in particular, as the prevention of potential errors is less expensive than costs of

potential litigations and/or legal proceedings. The Commission decisions in the area of competition policy are complex and, consequently, some of their controls labour-intensive. DG Competition has a stable control environment and its control strategy is consistent with previous years. Overall, during the reporting year the controls carried out by DG Competition for the management of its operations were efficient and cost effective.

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

2.1.2. Audit observations and recommendations

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

At the end of 2019, DG Competition had no open critical or very important audit recommendations. Therefore, audit findings are unlikely to have a material impact on the achievement of the internal control objectives and management's assurance.

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

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

2.1.3. Assessment of the effectiveness of internal control systems

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

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

DG Competition has assessed its internal control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning as intended.

1. Source and methodology for the internal control systems.

Following the Commission's central guidance¹⁹⁷ DG Competition adopted its Internal Control Framework (DG Competition ICF) on 1 December 2017, which became applicable as of 2018. Following the revision for 2019, the DG Competition ICF includes 35 specific internal control and monitoring indicators (criteria), relating to key controlled processes and matching five ICF components and 17 principles.

The control activities included:

1. The Internal Control Framework was presented to the Senior Management Meeting together with the risk register.
2. Lunch seminar was conducted, attended by the risk and control correspondents, managers and involved staff.
3. A Top Talk (a periodic meeting with staff, video-recorded and distributed speech of the DG) dedicated one of its main chapters to the Internal Control Framework and its key concepts and principles.
4. Desk review of the DG Competition Internal Control Framework, benchmarking with best practices of other DGs, review of the DG BUDG guidance, updates of the ICF and the Internal Control Strategy of the DG.
5. Internal Control Management Meeting on 24 November 2019: Participants were briefed on the Internal Control Framework and discussed issues relevant to its application in DG Competition (timing, resources, and links to risk management system, business continuity and ethics).
6. Attribution of the internal control monitoring activities to dedicated staff members.
7. Adoption of the Internal Control Strategy and internal control monitoring indicators for 2020.
8. Assessment of the effectiveness of the DG Competition ICF.

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

2. Internal controls self-assessment for 2019

DG Competition has assessed its internal control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning as intended.

The Internal Control Network meeting of 21 November and the Senior Management Meeting of 9 December 2019:

- Confirmed the effective functioning of the Internal Control Framework and meeting all the monitoring criteria established for 2019.
- Accepted the proposed assignments of the process owners to each of the monitoring criteria (see the right column at Annex 1).
- Endorsed the update to the DG Competition Internal Control Framework.
- Endorsed the DG Competition's Internal Control Strategy

¹⁹⁷ DG Budget, Secretariat-General.

- Endorsed, for 2020, a number of minor changes to eight out of the 35 existing monitoring criteria, either in the definition of the indicator or in the baseline/target values.

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

2.1.4 Conclusions on the assurance

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

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

The intrinsic risk for administrative expenditure managed by DG Competition, including procurement and grants, is relatively low because of the limited budget as well as the centralised and direct mode of budget implementation. The risks are effectively mitigated by means of controls put in place. The Authorising Officer by Delegation's best estimation of the risks relating to the legality and regularity for the expenditure authorised during the reporting year (EUR 0.07 million) is below 0.5%.

Further assurance is obtained by the risk management process put in place, and the very limited number of significant exceptions and non-compliance events reported in 2019. 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 to prevent, detect and correct fraud and irregularities. Comprehensive ex-ante controls were put in place within the financial circuits. Their effectiveness has been positively assessed in an independent quarterly ex-post review and received an independent assurance in an independent yearly review and report. Where necessary, improvements of the overall control strategy and processes were made in the course of the year.

Overall Conclusion

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

DECLARATION OF ASSURANCE

I, the undersigned, Olivier Guersent

Director-General of DG Competition

In my capacity as authorising officer by delegation

Declare that the information contained in this report gives a true and fair view¹⁹⁸.

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

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, ex-post controls, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

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

Brussels, 30 March 2020

(e-signed)

Olivier Guersent

¹⁹⁸ True and fair in this context means a reliable, complete and correct view on the state of affairs in the DG.

2.2. Other organisational management dimensions

2.2.1 Human resource management

While improvements regarding the human resource management (HRM) environment, characterised by a reform of the HR service delivery model in the Commission, have been made, DG Competition continued in 2019 its effort to build a sustainable and balanced workforce. The main HRM outputs linked to specific indicators are listed in Annex 2.

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

The e-survey on the 10 DOs for people management, launched in spring 2017, revealed that staff members are convinced that the 10 DOs are relevant for their working environment, but even more important, the majority of staff members are of the opinion that the 10 DOs are well implemented. All senior and middle managers, as well as Deputy Heads of Unit, signed a renewed version of the 10 DOs on 28 May 2018. The compliance with the 10 DOs was further monitored in 2019, amongst others in the context of the work of the Sounding Board and through different interviews with staff members. Based on the combined experiences from the previous rounds with middle and senior managers, a new round of the 180° feedback development exercise was launched for 40 Heads of Units. The aggregate results of the exercise were presented to the entire staff of DG Competition in a top talk on 2 July 2019.

To reinforce the existing career guidance offer in DG Competition, a pool of experienced managers (senior and middle managers) was created in 2016. In 2019, 5 Directors, 7 Heads of Unit and 1 Advisor were available to provide career guidance to all categories of staff upon request. For this purpose, a guide on 'Tips & Tricks for Managers' was elaborated and made available to all managers. A brochure on careers and mobility in DG Competition is distributed as part of the welcome pack to every newcomer.

When comparing staff movements from and to other DGs and institutions at the end of 2019, DG Competition's external mobility deficit is at -27 with 73 officials leaving and 46 officials joining. When also taking into account temporary agents, external recruitments and staff leaving the EU institutions, the external mobility deficit becomes a surplus of 5, with 88 staff members leaving and 93 persons joining the DG, of which 62 through external recruitments.

In terms of work profile, the percentage of staff that belong to the "Law monitoring and enforcement" profile slightly decreased from 79% to 78.7%, which is still in line with DG Competition's core business and mandate. This underscores the strong link between the DG's capacity to operate successfully and the availability of staff with this profile. Meanwhile, the share of staff in the "Administrative support" profile remained stable at 1.7%.

Following the 2015 Commission Decision on female representation in management, which set a 40% female representation target for the entire organisation by 2019, the DG was given a binding target of four first appointments of female heads of unit for the period 2015 to 2019 and an

indicative target of 45% female heads of unit. In order to meet the Commission targets by the end of the mandate, new measures were adopted in July 2017, which set the quantitative target of first female heads of unit appointments in DG Competition at two by 1 November 2019. Furthermore, the College adopted on 7 May 2019 supplementary measures according to which in case a female manager is re-assigned to a non-management function in her DG, the concerned DG was assigned an additional female target to be made by November 2019. Female representation in middle management rose to 44% on 1 January 2020 (against 43.18% on 1 January 2019).

The Internal Communication Strategy and Action plan for 2017-2019 continues to guide our work on internal communications, with a view to motivating the Directorate-General's staff by informing them about the many aspects of the DG's work (and how it fits into the Commission's policy objectives) and steps taken to improve their working environment. In addition to the IntraComm page (MyCOMP), we have a weekly email newsletter for all staff, "COMP This Week", which contains links to all important news, including speeches and notices about internal training and "Hot Topics". We produced a number of "One Minute Flash" videos of colleagues explaining important decisions, and worked with the "Commission en Direct" team to raise awareness among staff in the Commission as a whole about the relevance of competition policy to overall Commission objectives. At the start of the Von der Leyen Commission we started to communicate to staff about the new Commission's priorities and the role of competition policy in delivering these. Internal communications was one of the themes covered by the Directorate-General's *Smarter Working Initiative* Sounding Board, launched towards the end of 2018, and whose conclusions will form part of the 2020 Internal Communications Strategy.

Initiatives to improve economy and efficiency - Sounding Board

In the second half of 2018 up to until early 2019, a 'Sounding Board' of around 60 staff members reviewed the on-going and completed actions in the context of the Smarter Working Initiative. In the second half of 2019, DG Competition's staff was invited to take a direct and active part in the final deliberations of the Sounding Board. The Sounding Board constitutes a unique and sizable initiative: During their discussions, the participants have brought to the fore around 170 proposals for action, a few already implemented, the rest of the proposals in need of deciding upon. New action points will be added to the action plan in 2020.

2.2.2 Better regulation (only for DGs managing regulatory acquis)

DG Competition continued its evaluation of the legal framework in the antitrust, mergers and State aid fields, in line with the Better Regulation guidelines. A cross-cutting objective for the evaluations is ensuring that EU competition rules remain fit for purpose in a fast-digitising world.¹⁹⁹

In the antitrust field, DG Competition continued carrying out a number of evaluations concurrently, making substantial progress in 2019. The ongoing evaluations include the rules exempting certain vertical²⁰⁰ and horizontal agreements²⁰¹ from the EU's general competition rules. For both sets of rules the

¹⁹⁹ The Commission has published the timelines for reviews of a number of policy guidance documents. See https://ec.europa.eu/competition/antitrust/legislation/timeline_table_M_AT_final.pdf and https://ec.europa.eu/competition/state_aid/legislation/timeline_table_SA_final.pdf.

²⁰⁰ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

²⁰¹ Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development

scope of the evaluation consist of one or two Block Exemption Regulations (BERs) and accompanying Guidelines.²⁰² The vertical and horizontal rules expire in May and December 2022, respectively.

DG Competition also launched the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER)²⁰³, which will expire in May 2023. In 2019, the Commission finalised its evaluation of the Consortia Block Exemption Regulation (CBER).²⁰⁴ Based on the results of evaluation, the Commission proposed prolonging the CBER for four years. The prolongation of the CBER was adopted on 24 March 2020.

In the merger area, DG Competition continued its evaluation of selected procedural and jurisdictional aspects of EU merger control, in accordance with the Better Regulation framework. The evaluation focusses on four topics, namely (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects. DG Competition is currently carrying out further research on the different topics covered by the evaluation.

In addition to these initiatives, on 9 December 2019 Commissioner Vestager announced a review of the 1997 Market Definition Notice.²⁰⁵ This notice is of crucial importance for both antitrust and merger enforcement.

In 2019, DG Competition continued to evaluate in line with the Commission's Better Regulation Guidelines, the State aid rules adopted as part of the State Aid Modernisation, the railways guidelines, and the short term export credit insurance. The respective rules are assessed in the framework of a fitness check²⁰⁶. The fitness check aims to verify whether the rules have actually worked in the way intended and are still fit for purpose. It will provide a basis for decisions, to be taken by the Commission in the future, about whether to further prolong the rules or possibly update these rules. The stakeholders could provide feedback on the Roadmap for the fitness check on the "Have your say" portal between 7 February 2019 and 7 March 2019.²⁰⁷ In 2019, the open public consultation²⁰⁸ on the fitness check run between 17 April 2019 and 19 July 2019. In addition, a

agreements, OJ L 335, 18.12.2010, p. 36; Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty to categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43.

²⁰² Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

²⁰³ Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

²⁰⁴ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).

²⁰⁵ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5–130.

²⁰⁶ The current fitness check will cover: the General Block Exemption Regulation (GBER); the 'De minimis' Regulation; the Regional aid Guidelines; the Research, Development and Innovation (RDI) Framework; the Communication on State aid for important projects of common European interest (IPCEI Communication); the Risk finance, Airport and aviation Guidelines; the Energy and Environmental Aid Guidelines (EEAG); the Rescue and restructuring Guidelines; the Railways Guidelines; as well as the Short term export credit Communication (the two latter were not included in the 2012 State Aid Modernisation package). See https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en.

²⁰⁷ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en#plan-2018-4881.

²⁰⁸ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981/public-consultation_en.

number of targeted consultations for the different rules subject to the fitness check has been carried out.²⁰⁹ In order to provide early feedback to the stakeholders, the results of the open public consultation have been summarised in the factual summary report published on the "Have your say" portal.²¹⁰

In parallel, DG Competition launched the process to prolong the validity of those State aid rules, which expire by the end of 2020.²¹¹ In addition, the revision of the Emissions trading scheme State aid guidelines (ETS Guidelines) continued in 2019. The stakeholders could provide feedback on the Inception impact assessment on the "Have your say" portal between 20 December 2018 and 17 January 2019.²¹² In 2019, the open public consultation²¹³ run between 21 February 2019 and 16 May 2019. In addition, a targeted consultation of sectors affected has run between 13 February 2019 and 9 April 2019.²¹⁴ As part of the ongoing revision, the Commission has published for consultation the draft ETS State aid guidelines for the period 2021-2030.²¹⁵

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

Apart from those areas, the Commission has also announced that it envisages a future exemption for R&D projects by SMEs awarded with the 'Seal of Excellence' label under the EU's future Horizon Europe fund. This would be possible because the rules for projects to qualify for the 'Seal of Excellence', as assessed by the Commission before awarding the Seal of Excellence, and the relatively limited size of financial support would remove competition concerns. The Roadmap has been published for feedback on the "Have your say" portal between 30 January 2019 and 27 February 2019.²¹⁶ In 2019, the public consultation on the draft rules²¹⁷ run between 26 June 2019 and 27 September 2019.²¹⁸

²⁰⁹ For further details see:

https://ec.europa.eu/competition/state_aid/modernisation/fitness_check_en.html.

²¹⁰ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981/public-consultation_en#consultation-outcome.

²¹¹ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622730_en#plan-2018-4846, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622656_en#plan-2018-4843 and https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6622705_en#plan-2018-4845.

²¹² For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6600267_en#plan-2018-4137.

²¹³ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6600267/public-consultation_en.

²¹⁴ For further details see:

https://ec.europa.eu/competition/consultations/2019_ets_guidelines/index_en.html.

²¹⁵ See for further details:

https://ec.europa.eu/competition/consultations/2020_ets_stateaid_guidelines/index_en.html.

²¹⁶ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-526584_en#plan-2018-2884.

²¹⁷ For further details see: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6600267/public-consultation_en.

²¹⁸ See for further details: https://ec.europa.eu/competition/consultations/2019_qber/index_en.html.

Furthermore, the Commission has launched the evaluation of EU's State aid rules for health and social Services of General Economic Interest (SGEIs) as updated in the so-called 2012 SGEI package. The purpose of the evaluation is to check if the rules on health and social services meet their objectives. The Roadmap for this evaluation has been published on the "Have your say" portal for feedback between 17 June 2019 and 15 July 2019.²¹⁹ The open public consultation has run between 31 July 2019 and 4 December 2019.²²⁰

2.2.3 Information management aspects

Following the entry into force of the new data protection rules (Regulation 2018/1725), and the adoption of the Commission's Data Protection Action Plan (C(2018)7432), DG Competition put in place the specific Decision in the field of competition (C(2018)8109) and continued the review of its data processing operations in order to make sure that they are in line with the new legal framework, notably with the general principles laid down in the regulation. Through the review process, the compliance of the processing operations was assessed, aiming to ensure that personal data are processed lawfully and in full respect of the general principles enshrined in Article 4 of Regulation 2018/1725.

In this review, priority was given to the core activity of the DG (investigations in the three instruments) for which the records in the DPMS central system (corporate application for registering processing operations) were finalised and privacy statements meeting the new standards were published on DG Competition webpage. Whenever possible, data subjects were provided with a copy of (or a link to) the relevant privacy statement and, when this proved to be impossible, they were informed via the publication on the web. The review of other, more limited, processing operations is continuing.

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

In March 2019, the first version of the new Case Management system covering "Horizontal Projects" at DG Competition was released into production. 2019 has also witnessed intense work to configure and customise the purchased Case Management software to the requirements of the State Aid instrument (version 2 of CASE@EC), which will be released into production in 2020, along with an update of "Horizontal Projects".

DG Competition has also improved the State Aid family of tools²²¹ as well as ECN2, which supports the secure collaboration and communication between the ECN authorities. In addition, to support the immunity and leniency programme in cartel investigations and antitrust cooperation cases, DG Competition launched the eLeniency tool in March 2019.²²² To support the secure exchange of large

²¹⁹ See for further details: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435_en.

²²⁰ See for further details: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435/public-consultation_en.

²²¹ These tools include SANI2, SARI, the Scoreboard, the Transparency Award Module and the Recovery Interest Calculator.

²²² See: https://ec.europa.eu/commission/presscorner/detail/en/ip_19_1594.

volumes of sensitive documents with Member States' administrations as well as companies and law firms, DG Competition released into production the secure exchange tool "COMP eTrustEx" (version 2.0), which has seen significant take up by external stakeholders.²²³

As regards Artificial Intelligence (AI), DG Competition, in cooperation with DGs RTD and DIGIT, conducted a proof of concept on machine learning applied to document review. With regard to cooperation amongst national competition authorities, the ECN Working Group "Digital Investigations and AI" was set up as a forum for cooperation on new technologies applied to competition enforcement and held two meetings in 2019.

In 2019, DG Competition also completed the first phase of the consolidation of its local data centre into the corporate data centres run by DG DIGIT.²²⁴ DG Competition's data centres have therefore been decommissioned. The second phase of the project consists of enabling a setting whereby DG DIGIT can fully administer all servers and operating systems.

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

2.2.4 External communication activities

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

In 2019, DG Competition again participated in the Commission Open Doors event at the Berlaymont, with a total budget of EUR 25,000. Approximately 15,000 visitors visited the Open Doors event in total. DG Competition continued its outreach activity with 12 speaking events to new audiences, explaining how competition policy benefits society as a whole, and how competition policy can help stakeholders. DG Competition staff also spoke to 36 groups in the Commission Visitors' Centre. DG Competition also increased its social media activity in 2019, via Twitter, where we now have 15,800 followers.

²²³ See https://ec.europa.eu/competition/contacts/exchange_platform_en.html.

²²⁴ This has been a key action of the Commission's Synergies and Efficiencies Review in the ICT domain.