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European Commission

Annual Activity Report 2021

DG COMPETITION

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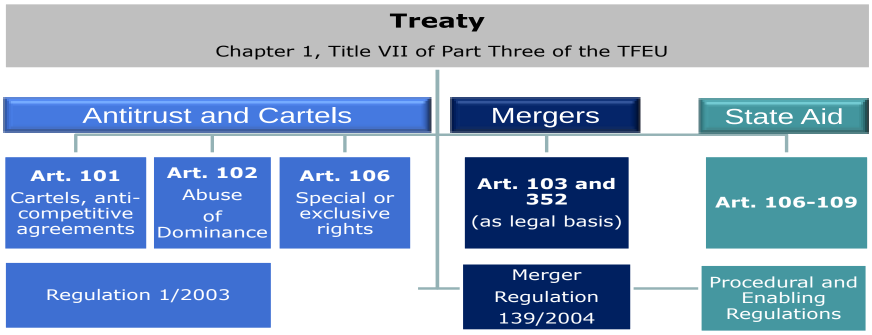
THE DG IN BRIEF

EU competition policy and enforcement protects the EU Single Market, benefiting consumers, businesses and society alike. It also fosters competition values towards recovery from the coronavirus pandemic and the economic crises to achieve a greener more digital and more resilient EU economy in line with the Commission's priorities.

The mission of DG Competition is to enable the Commission to make markets deliver more benefits to consumers, businesses and the society as a whole by protecting competition on the market and promoting a competition culture in the EU and worldwide**.** DG Competition does this by enforcing competition rules and through action aimed at ensuring that regulation takes competition duly into account among other public policy interests. Competition policy is an indispensable element of a functioning Single Market ensuring that all companies compete fairly on their merits and on equal terms, making markets more competitive and resilient, while generating higher productivity, innovation, growth, and lower prices.

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



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

(1) 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.

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

giving some companies undue advantages over others[3] or (iii) the emergence of market structures, which impede effective competition or result in the deterioration of market structures where competition is already less effective[4]. In 2021, the Commission continued its enforcement working hand in hand with Member States' national competition authorities (NCAs) and under the scrutiny of EU courts.

In 2021, approximately 70% of the staff of DG Competition (total staff 853) was engaged in enforcement activities. DG Competition channeled its resources, where not bound by legal obligations, to the most harmful practices in the internal market and worked in partnerships with other Commission services to support, in a pro-competitive way, the delivery of key Commission objectives. DG Competition is organised in a matrix structure combining enforcements instruments under different economic sectors. This organisation structure is designed to promote instrument and sector knowledge, as well as the flexible and efficient use of human resources.[5]

The Single Market Programme (SMP)[6], adopted in the context of the Multiannual Financial Framework 2021-2027 in April 2021, includes a dedicated component for competition policy. It provides stable financing of measures enhancing the Commission's competition enforcement capacity, policy initiatives, international cooperation as well as advocacy. The Commission decision implementing the SMP was adopted in May 2021[7] and since then DG Competition is to take action under the programme.

In 2021, DG Competition implemented its digital strategy and upgraded its case management systems. To this end, DG Competition continued to digitise its business processes and modernise its digital tools, transforming DG Competition into a more data-

(3) 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.

(4) 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.

(5) In November 2021, the number of units dealing with Important Projects of Common European Interest (IPCEI) was increased from one to two. Moreover, a Task Force for the Digital Markets Act was formed to support the adoption and implementation of the Digital Markets Act. In addition, DG Competition created a reinforced unit to implement a more coordinated approach to the State-aid policy ramifications of tax legislation and aggressive tax planning.

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

(7) Commission Implementing Decision of 6.5.2021 on the financing of the Programme for Single Market, competitiveness of enterprises, including small and medium sized enterprises, and European Statistics and the adoption of the work programme for 2021-2024.

driven organisation which will maximise the impact of the Commission's competition policy initiatives and enforcement. To improve cybersecurity and increase DG Competition staff's cyber awareness and cyber skills, DG Competition updated and implemented its IT security action plan. Finally, the Commission engaged in competition policy advocacy at multiple levels to support the effectiveness of EU competition policy.

EXECUTIVE SUMMARY

This annual activity report is a management report of the Director-General of DG Competition to the College of Commissioners. Annual activity reports are the main instrument of management accountability within the Commission and constitute the basis on which the College takes political responsibility for the decisions it takes as well as for the coordinating, executive and management functions it exercises, as laid down in the Treaties ([8]).

A. Key results and progress towards achieving the Commission's general objectives and DG's specific objectives (executive summary of section 1)

In 2021, EU competition policy continued to play an important role in the EU's efforts to respond to and overcome the health and economic crises caused by the coronavirus pandemic, demonstrating its ability to adjust swiftly to sudden changes in the economy.

EU competition policy and enforcement supported the Commission's general objectives, in particular, "A European Green Deal", "A Europe fit for the digital age" and "An economy that works for people" as well as the pathway to exit the pandemic. DG Competition contributed to the implementation of the Recovery and Resilience Facility (RRF), facilitating a resilient and more inclusive post-pandemic recovery of the EU economy. In the international context, DG Competition strived to shape global economic governance by strengthening international cooperation in competition enforcement and making steps towards an increased convergence of competition policy instruments across the world.

The State aid Temporary Framework[9] allowed Member States to support in a proportionate manner companies - in particular small and medium-sized enterprises ('SMEs') – that ended up in jeopardy due to the negative economic impact of the coronavirus pandemic. Economic support was granted to firms active in a wide variety of sectors while minimising the negative economic effects on the Single Market. The prolongation until 30 June 2022[10] of the Temporary Framework allowed Member States to continue supporting businesses in need.

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

([9]) Temporary Framework to support the economy in the context of the coronavirus outbreak, OJ C 91l, 20.3.2020, p. 1-9. Amendments were adopted on 3 April, 8 May, 29 June, 13 October 2020, 28 January and 18 November 2021.

([10]) With the last amendment, the Commission also introduced two new sections (3.13 and 3.14) in the COVID-19 Temporary Framework in order to facilitate the shift from direct COVID-19 crisis response in the form of liquidity support to a more long-term recovery focusing on investment and solvency measures. Those sections are applicable until 31 December 2022 (for investment support under section 3.13), and 31 December 2023 (for solvency support under section 3.14), respectively.

In 2021, DG Competition guided Member States when implementing the Recovery and Resilience Facility (RRF) and reviewed draft Recovery and Resilience Plans (RRPs). DG Competition committed to assess without delay State aid notifications related to the RRPs.

Furthermore, in 2021 DG Competition ensured that the competition rules remained fit for the future and continued being vigorously enforced.

The Commission made significant progress in its unprecedented review of EU competition rules and guidance, covering more than 20 sets of rules. The objective of the review is to ensure that all EU competition policy instruments remain fit for the future, contribute to the digital and green transitions, make the Single Market more resilient and EU industries competitive, both within the EU and globally. The Commission communication entitled Competition policy fit for new challenges[11] published in November 2021 highlighted the key elements of the review and described how it contributes to achieving the Commission's priorities. A more detailed account of the competition policy review is provided in Section 1, Key Results.

In addition, the Commission proposed that the competition policy toolbox should be complemented with two new instruments tackling foreign subsidies and digital gatekeepers. In May 2021, the Commission tabled a proposal for a Regulation on foreign subsidies distorting the internal market[12]. Moreover, the co-legislators reached a political agreement on the Commission proposal for a Digital Markets Act in March 2022.

Despite the continued pandemic, DG Competition continued to vigorously enforce the competition rules using all enforcement instruments across all economic sectors.

In 2021, the Commission adopted ten cartel decisions and one amendment decision. The Commission imposed fines amounting to EUR 1 746 million. The cartel decisions covered financial markets, railway transport services, car emission technology, food and biofuels. Moreover, the Commission adopted decisions against firms that had abused their dominant market position, for example in e-commerce and pharmaceuticals. The Commission continued to cooperate closely with national competition authorities (NCAs) in the European Competition Network (ECN).

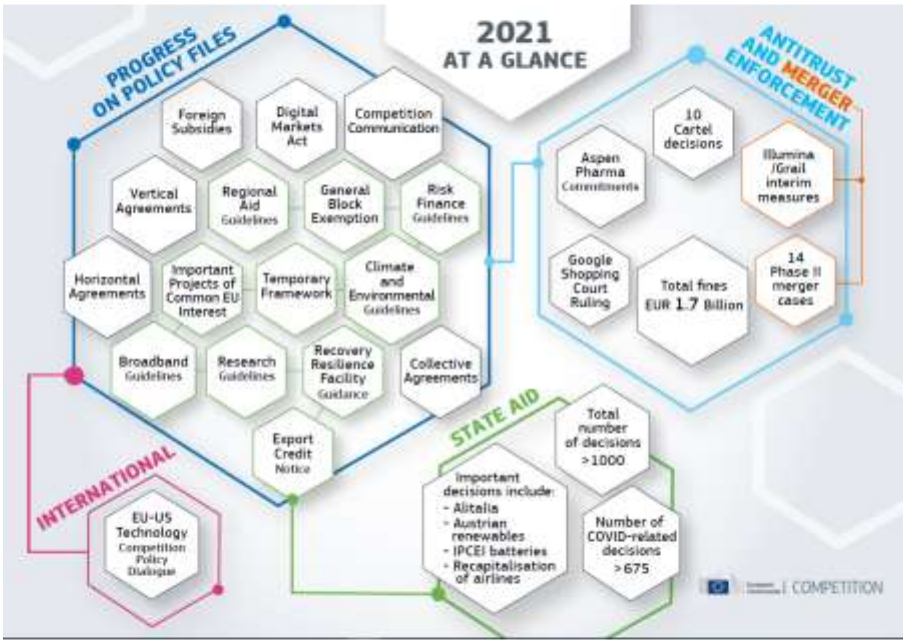
Merger control remained at a very high level with 396 adopted decisions and 14 in-depth investigations. Of these cases, 78% did not raise competition concerns and could be approved using the simplified notification procedure.

(11) See Communication from the Commission to the European Parliament, the Council, the Euroepan Economic and Social Committee and the Committee of the Regions A competition policy fit for new challenges of 18 November 2021 COM(2021) 713 final.

(12) Temporary Framework to support the economy in the context of the coronavirus outbreak, OJ C 91l, 20.3.2020, p. 1-9. Amendments were adopted on 3 April, 8 May, 29 June, 13 October 2020, 28 January and 18 November 2021.

The Commission adopted more than 1 000 State aid decisions in 2021. Of these, more than 675 decisions concerned State aid granted to remedy economic distress caused by the coronavirus pandemic.

The illustration below provides an overview of the progress made by DG Competition in 2021 across all its areas of responsibility, that is to say policy files, antitrust and merger enforcement, State aid control and international activities.



B. Key Performance Indicators (KPIs)

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

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

KPI 1 and KPI 2

To indicate the level of its activity and output, DG Competition publishes annually the number of adopted enforcement decisions by the Commission (or intervention rate). DG Competition also provides 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 not capture the deterrence and non-price effects of such decisions or other effects of competition policy.[13]

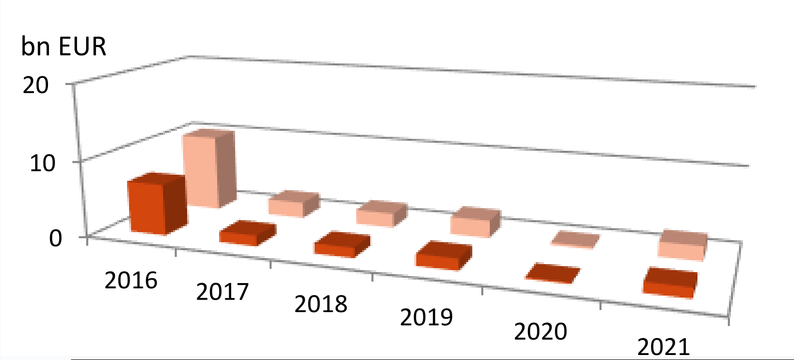
In 2021, the total estimated customer savings from cartel prohibitions and merger interventions varied between EUR 10.5 and 17.2 billion. The customer savings from cartel prohibitions have recovered from the low values recorded in 2020. The customer savings from the 2021 cartel decisions (KPI 1) varied between EUR 1.3-1.9 billion[14], depending on the assumption made about the level of the avoided price overcharge. Total customer savings resulting from the 14 merger interventions by the Commission (KPI 2) varied between EUR 9.2-15.3 billion[15], depending on the assumption made on the level of price increase avoided. This range is close to the average recorded during the previous five years.

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

([14]) 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. Cartels where the anticompetitive conduct ended more than three years before the Commission started its investigation are not taken into account. In the graph above, 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.

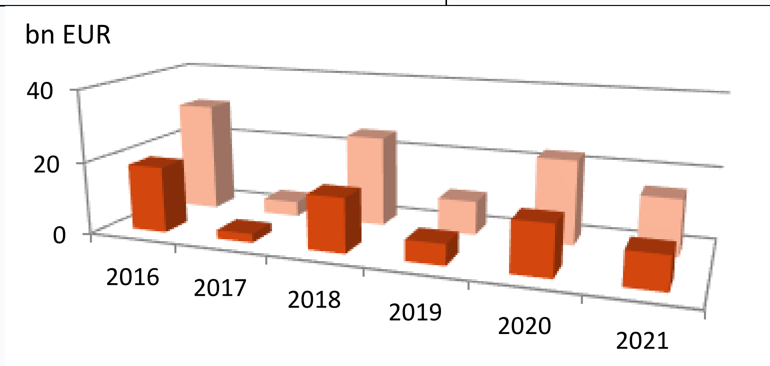
([15]) DG Competition calculation. The approach followed to estimate customer benefits from Commission's interventions (a merger prohibition, a merger approval subject to conditions or a withdrawal of a merger notification in Phase II due to the intervention by the Commission) takes into account (i) 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

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 1.3-1.9 bn (2021)



bn EUR	2016	2017	2018	2019	2020	2021
Cartel	**6.7-10.0**	**1.4-2.1**	**1.3-1.9**	**1.5-2.3**	**0.2-0.3**	**1.3-1.9**

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 9.2-15.3 bn (2021)



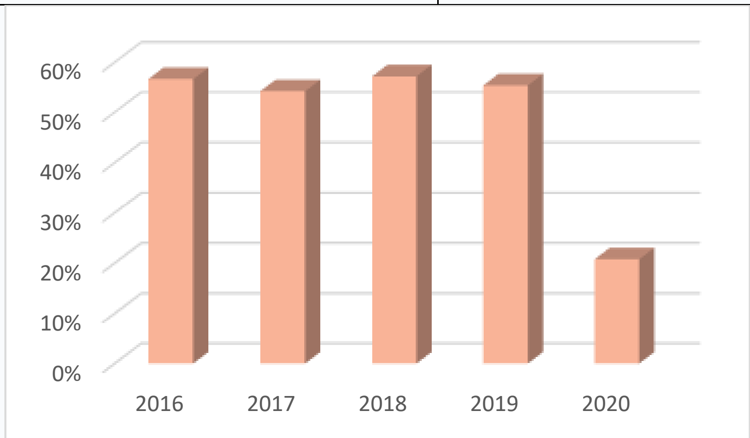
bn EUR	2016	2017	2018	2019	2020	2021
Merger	**18.3-30.4**	**2.4-4.1**	**15.0-25.0**	**5.7-9.4**	**13.8-23.0**	**9.2-15.3**

KPI 3

The key performance indicator for the contribution of competition policy towards the green transition supporting also the recovery from the crisis is measured by total State aid expenditure for environmental protection, renewables and energy savings as a percentage of total State aid in the EU. According to latest information, this amounted to 21% (2020), a sharp decrease from 2019 (55%). This abrupt fall in the indicator is due to COVID-19 pandemic and the subsequent State aid response to mitigate its economic effects (see KPI 6).

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 3 Total State aid expenditure for environmental protection, renewables and energy savings as a percentage of total State aid in the EU	Decreasing (mechanical effect connected to the COVID-19 pandemic and the large amount of State aid expenditure to mitigate its economic effects)	Increasing	21% (2020)

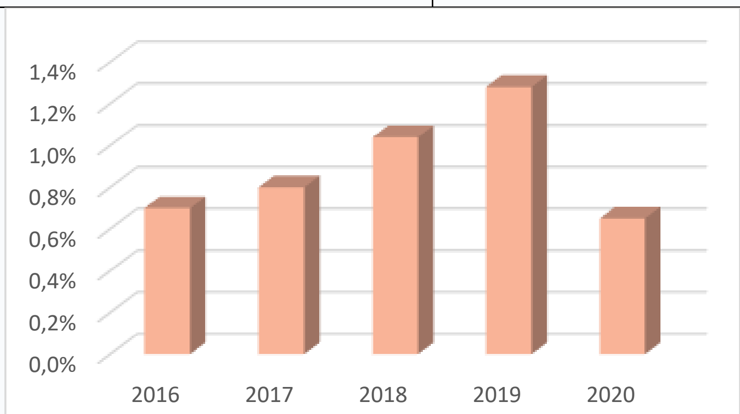


%	2016	2017	2018	2019	2020
KPI3	57%	54%	57%	55%	21%

KPI 4

The key performance indicator for the contribution of competition policy towards the digital transition supporting also the recovery from the crisis is measured by the total State aid expenditure for broadband as a percentage of total State aid in the EU. According to latest information, this amounted to 0.7% (2020), a sharp decrease from 2019 (1.5%). This abrupt fall in the indicator is due to COVID-19 pandemic and the subsequent State aid response to mitigate its economic effects (see KPI 6).

Impact indicator	Trend	Target (or milestones)	Latest known results
KPI 4 Total State aid expenditure for broadband as a percentage of total State aid in the EU	Decreasing (mechanical effect connected to the COVID-19 pandemic and the large amount of State aid expenditure to mitigate its economic effects)	Increasing	0.7% (2020)

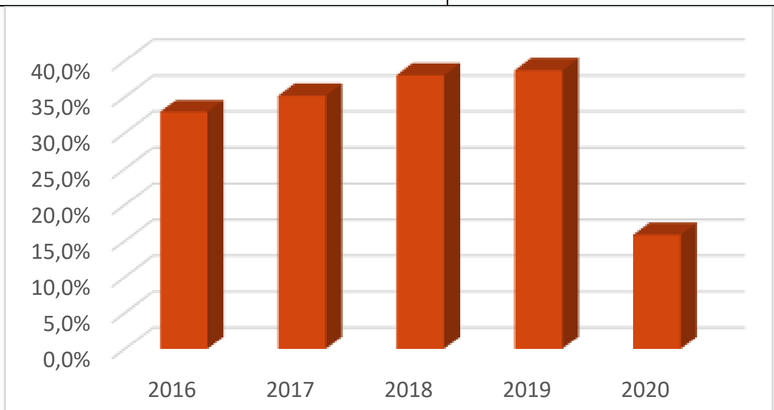


%	2016	2017	2018	2019	2020
KPI4	0.7%	0.8%	1.0%	1.3%	0.7%

KPI 5

The key performance indicator for the contribution of competition policy towards the objectives of the economy that works for people supporting also the recovery from the crisis is measured by the total State aid expenditure falling under the General Block Exemption Regulation as a percentage of total State aid in the EU. According to latest information, this amounted to 15.9% (2020), a sharp decrease from 2019 (38.7%). This abrupt fall in the indicator is due to COVID-19 pandemic and the subsequent State aid response to mitigate its economic effects (see KPI 6).

Impact indicator	Trend	Target (or milestones)	Latest known results
KPI 5 Total State aid expenditure falling under the General Block Exemption Regulation as a percentage of total State aid in the EU	Decreasing (mechanical effect connected to the COVID-19 pandemic and the large amount of State aid expenditure to mitigate its economic effects)	Increasing	0.7% (2020)



%	2016	2017	2018	2019	2020
KPI5	32.9%	35.2%	38.0%	38.7%	15.9%

KPI 6

The key performance indicator for the contribution of competition policy towards the objectives of the economy that works for people supporting the recovery from the pandemic crisis is measured by the total COVID-19 aid as a percentage of total State aid in the EU. According to latest information, this amounted to 60% in 2020.

Impact indicator	Trend	Target (or milestones)	Latest known results
KPI 6 Total COVID-19 aid as a percentage of total State aid in the EU.	Decreasing trend	Decreasing trend . State aid to remedy the serious disturbance to the economy caused by the COVID-19 pandemic is a temporary economic response by nature.	60% (2020)

%	2020	2021	2022	2024
KPI6	60.0%			N/A

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

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

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

In conclusion, management has reasonable assurance that, overall, suitable controls are in place and working as intended; risks are being appropriately monitored and mitigated. Improvements are necessary concerning, among others, the management of the new Single Market Competition Programme. The following action is taken in this respect: attribution of roles and responsibilities, design of internal rules and procedures and re-alignment of procedures with the central guidance. The Director-General, in his capacity as Authorising Officer by Delegation, has signed the Declaration of Assurance.

D. Provision of information to the Commissioner(s)

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

E. Specific actions on COVID-19

Across different areas, EU competition policy worked seamlessly with other social and economic policies of the Union to support the most affected sectors and workers during the COVID-19 pandemic and cushioned the impact of the crisis for companies, including SMEs and start-ups.

In particular, the Commission used the full flexibility of the State aid rules for exceptional circumstances to provide Member States with a tailor-made toolbox to support the economy during the coronavirus pandemic.[16] In 2021, the Commission, after consulting Member States, adopted the sixth amendment of the State aid Temporary Framework in November 2021[17] prolonging it until 30 June 2022 and setting out the path for the progressive phase-out of pandemic-related crisis support. The prolongation avoids that business will be suddenly cut off from necessary public support at a time when serious disturbances affecting Member States' economies have not yet ended.

([16]) Communication from the Commission: Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

([17]) Communication from the Commission Sixth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance 2021/C 473/01, C/2021/8442, OJ C 473, 24.11.2021, pp. 1–15.

Moreover, the Commission introduced two new tools to kick-start and crowd-in private investment for a faster, greener and more digital recovery: the investment support towards a sustainable recovery until 31 December 2022 and solvency support until 31 December 2023, allowing Member States to leverage private funds and make them available for investments in SMEs, including start-ups and small midcaps.

The Commission continued to review and approve extensive support measures by the Member States to alleviate the effects of the pandemic in a number of sectors. The aviation sector continued to be one of the most severely affected by the coronavirus pandemic throughout 2021. In 2021, the Commission adopted 35 decisions allowing State aid to firms active in aviation to help address their liquidity and capital needs brought about by the coronavirus crisis. These aid measures were generally approved under the Temporary Framework or Article 107(2)(b) TFEU. The Commission also amended its State Aid Temporary Framework[18] increasing the aid ceilings, as well as introducing new measures to create direct incentives for forward-looking private investment and solvency support measures. These aid measures included, inter alia, approved aid measures to *Air France*[19], TUI group[20], *Scandinavian Airlines Systems*[21] and *Finnair*[22]. The measures mainly compensated the airline for the damage suffered due to travel restrictions.

In 2020-2021, the Commission has taken close to 1200 coronavirus-related decisions (among them slightly more than 470 amendment decisions) in various sectors in all Member States, including those under the Temporary Framework. In 2021 alone, the Commission took more than 675 coronavirus-related decisions concerning State aid measures adopted by Member States.

The Commission assessed state support totalling EUR 3.13 trillion to companies affected by the coronavirus pandemic.[23] All State aid approved was necessary and proportionate to support businesses and remedy the serious disturbance to the European economy due to the coronavirus pandemic. Based on the replies of 26 Member States that responded to the

(18) See: https://ec.europa.eu/competition-policy/state-aid/coronavirus/temporary-framework/amendments_en.

(19) Case SA.59913, *France – COVID-19 - Recapitalisation of Air France and the Air France – KLM Holding*, OJ C 240, 18.6.2021, p.1.

(20) Case SA.59812, *Germany – COVID-19 - Recapitalisation of TUI*. The public version of this decision is not yet available. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3.

(21) Case SA. 63898, *Sweden - COVID-19 - State loan to SAS Consortium*, OJ C 33, 21.1.2022; and SA. 63250, *Denmark – SA.63250 COVID-19 – Subsidised loan to SAS*, OJ C 33, 21.1.2022.

(22) Case SA.60113, *Finland Finnair – COVID-19 - hybrid loan 107.2.b*, OJ C 240, 18.6.2021, p.1.

(23) The amounts included are best estimates based on amounts approved in State aid decisions and other available statistics, for example. mentioned in public communication by national authorities, and in official information communicated by the national authorities.

survey[24] conducted by the Commission, in the period until June 2021, of the EUR 3.01 trillion in aid approved by then, around 729 billion euros was actually spent.

The Antitrust Temporary Framework also continued to provide guidance and legal certainty to companies, e.g. when cooperating to preserve supply chains to address shortages of critical medicines and medical equipment or bottlenecks.

In merger control, the Commission was able to continue its activities without significant delays, while fully respecting legal obligations and deadlines. To ensure business continuity, the Commission provided guidance to market participants and allowed merging parties to notify transactions electronically, followed by paper copies later on.

Considering the exceptional circumstances, DG Competition continued to have in place procedures to ensure sound financial management and the continuity of financial transactions. The risk connected to DG Competition's transactions is considered low and the impact on the accounts of the Commission, should there be a mistake, is immaterial.

([24]) 26 out of 27 Member States replied to the survey launched in June 2021: Austria did not provide the requested information.

1. KEY RESULTS and progress towards achieving the Commission's general objectives and DG-specific objectives

Throughout 2021, EU competition policy contributed to the Commission's efforts to overcome the health crisis caused by the coronavirus pandemic and to facilitate the recovery from the economic crises. Competition policy contributed to the green and digital transitions of the EU economy and made markets work better for people. DG Competition continued to ensure that the competition policy rules remain fit for the rapidly evolving EU economy and that they continue to be vigorously enforced. Competition policy enforcement strengthened the resilience of the Single Market and made EU firms more competitive within the Single Market as well as across the world.

General objective 1: A European Green Deal

EU competition policy is well placed to contribute to the EU's environmental objectives and climate targets. All instruments of EU competition policy – antitrust, merger control and State aid – contribute to the European Green Deal and the plan for a future-ready economy and a climate-neutral EU by 2050.

In February 2021, DG Competition organised a stakeholder conference to discuss how antitrust policy, merger policy and State aid policy can best work together with environmental and climate policies. As a follow-up, DG Competition published, in September 2021, a Competition Policy Brief on how competition policy can and will support the Green Deal objectives[25]. The ongoing review of related EU competition rules and its timing was highlighted in the Commission Communication entitled Competition Policy fit for new challenges published in November 2021[26].

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

In December 2021, the Commission endorsed the Climate, Energy and Environmental State aid Guidelines (CEEAG)[27]. The guidelines entered into force in January 2022 and were

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([25]) See: https://ec.europa.eu/competition-policy/index/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10_en.

([26]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A competition policy fit for new challenges, COM(2021)713, 18.11.2021.

([27]) Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, 27.1.2022, C(2022) 481 final. The CEEAG supports EU efforts towards decarbonisation, a circular economy, biodiversity, clean or zero-emission mobility and building energy efficiency. The Guidelines broaden the categories of investments and technologies that Member States can support, allow or expand aid for the prevention or reduction of pollution. They feature sections for aid incentivising investments in areas such as energy performance of applicable from that moment[28]. The Guidelines contribute to the proper functioning of the internal market and facilitate the Commission's climate, energy and sustainability goals. Moreover, the Commission extended the scope of the General Block Exemption Regulation (GBER)[29] for State aid and streamlined the State aid rules applicable to national funding that fall within the scope of certain recently adopted EU programmes.[30] The extension also applied to, for example energy-efficient buildings and charging infrastructure for clean mobility. The corresponding GBER articles will be revised as part of the review of the GBER where a public consultation was launched in 2021[31]. The review would widen the scope of the GBER by expanding the types of measures exempted from ex-ante notification and increase the notification thresholds for State aid measures targeting climate, energy and environmental protection.

The ongoing review of certain antitrust rules – that is to say the block exemption regulations on research and development and specialisation agreements and the accompanying Horizontal Guidelines - will consider revisions that would facilitate the sustainability goals of the EU. Finally, the Commission published an evaluation of the Agricultural Block Exemption Regulation and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas.[32] The evaluation concluded that overall, the existing rules were held fit for purpose and meet the needs of the sectors concerned[33]. However, the

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buildings, and clean mobility, and ensure coherence with relevant EU law and policy, in particular, ending subsidies for the most polluting fossil fuels.

([28]) See: https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_566.

([29]) Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, p.39. Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the TFEU must normally be notified to the Commission and approved before it is put into effect, in order to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. However, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.

([30]) The concerned national funds are those relating to: Financing and investment operations supported by the InvestEU Fund; Research, Development and Innovation (RDI) projects having received a "Seal of Excellence" under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; European Territorial Cooperation (ETC) projects, also known as Interreg.

([31]) See: https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en.

([32]) The validity of these rules was previously extended until 31 December 2022. See: Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 as regards their period of application and making temporary adaptations to take into account the impact of the COVID-19 pandemic (Text with EEA relevance), OJ 424,8.12.2020, pp. 30-31.

([33]) The evaluation assessed how the current rules and have performed, in light of their main objectives: minimising distortions of competition and trade in the agricultural and forestry sector; ensuring the consistency of the agricultural State aid rules with the Common evaluation revealed that the existing rules need certain targeted revisions, including clarifications of certain concepts, further streamlining and simplification, as well as adjustments reflecting the current priorities of the EU, in particular the future Common Agricultural Policy[34] and the European Green Deal[35].

Strengthening competition enforcement in support of the European Green Deal

State aid control

In 2021, the Commission assessed State aid granted by the Member States which promotes for example renewables, energy efficiency, clean mobility, clean mobility infrastructure, decarbonisation and the circular economy. In addition, the Commission assessed energy capacity mechanisms, closure aid for coal-fired power plants and State aid in agriculture, forestry and fisheries. Moreover, the Commission authorised the second important project of European common interest (IPCEI) on batteries[36]. The European Battery Innovation project supports research and innovation in the battery value chain. The IPCEI is consistent with the shift from using fossil fuels to environmentally friendly fuels and the twin transitions under the European Green Deal and the Digital Strategy[37].

The Commission approved a number of State aid measures supporting the green transition. They included, upgrading the district heating system in Bucharest, Romania[38], stimulating renewable electricity generation in Denmark[39] and prolonging and modifying an existing

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Agricultural Policy (CAP), in particular rural development objectives under the CAP; and simplifying procedures and reducing administrative costs. See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review_en.

([34]) See: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27_en.

([35]) See: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

([36]) State aid: Commission approves EUR 2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain, Commission press release of 26.1.2021. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_226. The non-confidential version of the decision will be made available under the case numbers SA.55855 (Austria), SA.55840 (Belgium), SA.55844 (Croatia), SA.55846 (Finland), SA.55858 (France), SA.55831 (Germany), SA.56665 (Greece), SA.55813 (Italy), SA.55859 (Poland), SA.55819 (Slovakia), SA.55896 (Spain), and SA.55854 (Sweden) in the State aid Register on the competition website. See: https://ec.europa.eu/competition/state_aid/register/.

([37]) Commission Communication Shaping Europe's Digital Future, 19.2.2020. See: https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

([38]) Case SA.57425, *Romania – Support measure for the upgrade of the Bucharest Municipality District heating network,* OJ C 177, 7 May 2021, p.1.

([39]) Case SA.56831, *Denmark – Multi-technology RES tenders 2021-2024,* OJ C 214, 4.6.2021, p.1.

German scheme supporting electricity generation using new, modernised and retrofitted highly efficient cogeneration power plants.[40] An additional German State aid scheme supports the generation of renewable hydrogen energy in countries outside the EU. The generated energy will then be imported to the EU and sold there[41]. The Commission also approved a EUR 30.5 billion French scheme supporting onshore solar, onshore wind and hydroelectric energy generation[42].

Antitrust enforcement

In 2021, the Commission adopted several antitrust decisions that contributed to the Commission's climate and sustainability objectives.

The Commission concluded a cartel investigation against five car manufacturers, *Daimler*, *BMW* and *Volkswagen group* (*Volkswagen*, *Audi* and *Porsche*) that breached EU antitrust rules by colluding when developing nitrogen oxide cleaning technology for diesel cars[43] The Commission imposed a fine of EUR 875.2 million. The car manufacturers agreed not to use the full potential of a jointly developed technology limiting harmful diesel emissions.

The Commission also fined railway companies *Österreichische Bundesbahnen* (ÖBB), *Deutsche Bahn* (DB) and *Société Nationale des Chemins de fer belges / Nationale Maatschappij der Belgische Spoorwegen* (SNCB) a total of EUR 48 million for their participation in a customer allocation cartel[44] relating to cross-border rail cargo transport services in the EU.

Furthermore, the Commission fined *Abengoa S.A.* and its subsidiary *Abengoa Bionenergía S.A.*[45], EUR 20 million for participation in a cartel concerning the wholesale price formation mechanism in the European ethanol market. Biofuels can contribute to promote cleaner transport and reduce greenhouse gas emissions and therefore play a key role in the Green transition.

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(40) Case SA.56826, *Germany – 2020 reform of support for cogeneration,* OJ C 306, 30.7.2021, p.1.

(41) Case SA.62619, *Germany – H2Global.* The public version of this decision is not yet available. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

(42) Case SA.50272, *France – Appels d'offres pour les renouvelables 2021-2026,* OJ C 450, 5.11.2021, p.1.

(43) Case AT.40178, *Car Emissions*, See: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581.

(44) Case AT.40330, *Rail cargo*. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1843.

(45) Case AT.40054, *Ethanol benchmarks.* See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40054.

Finally, the Commission made legally binding measures proposed by Greece to allow the competitors of *Public Power Corporation* (PPC) to purchase more electricity on a longer-term basis[46]. The commitments removed PPC's exclusive access to lignite-fired electricity generation, which the Commission, the General Court and the Court of Justice had considered to be anticompetitive. The commitments are fully in line with the objective of the Green Deal.

Merger enforcement

In the field of merger control, the environment sector saw intense merger and acquisition activity in 2021. The Commission approved with conditions the acquisition of *Suez* by *Veolia*[47] in December 2021. The implementation of the submitted commitments will ensure that the transaction will not to adversely affect competition in the water and waste management markets. These sectors are key to the European Green Deal and the circular economy. The Commission also authorised the acquisition of *Group Ecore* by *Derichebourg*[48], subject to the divestment of several metal scrap collection and recycling plants in France.

In recent years, a growing number of acquisitions in e-mobility - that is to say electric vehicles and their infrastructure, for example charging stations - have been notified to the Commission. Investments in e-mobility are critical for the green transition. For instance, in September 2021 the Commission unconditionally approved the acquisition of joint control by *BMW*, *Daimler* and *bp* of *CHARGE NOW*. The company provides e-mobility services and offers a subscription service giving consumers access to publically available charging stations for electric vehicles.[49] In July 2021, the Commission unconditionally approved the acquisition of joint control by *Elexent Holding SAS* (belonging to the Renault Group) and *GP JOULE Connect GmbH* of newly established joint venture providing tailored solutions to corporate customers for electric vehicle charging.[50]

([46]) The proposed remedies will lapse when existing lignite plants stop operating commercially or, at the latest, by 31 December 2024. Case AT.38700, *Greek lignite and electricity markets.* See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

([47]) Case M.9969, *Veolia / Suez*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

([48]) Case M.10249 - *Derichebourg Environnement / Groupe Ecore Holding*, Comission Decision of 16.12.2021.

([49]) Case M.10334, *BMW / Daimler /BP / Digital Charging Solutions*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

([50]) Case M.10327, *Elexent / GP JOULE Connect / Elexent DACH.* See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

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

In 2021, the Commission continued to support several important projects of common European interest (IPCEI) in development. One project concerns public support for large cross-border integrated projects for hydrogen and fuels derived from hydrogen. The project will encourage the scaling up of new technologies for producing clean hydrogen as well as the development of transportation and transmission infrastructure. This IPCEI will be in line with the Commission's Hydrogen strategy for a climate-neutral Europe.[51]

DG Competition also continued to promote pro-competitive rules and outcomes, for example in the Fit for 55 package[52] or the revision of the third energy package for gas[53,]

([51]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A hydrogen strategy for a climate-neutral Europe, COM(2020) 301 final, 8.7.2020.

([52]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 'Fit for 55': delivering the EU's 2030 Climate Target on the way to climate neutrality, COM(2021) 550 final. Related initiatives include the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, COM(2021)551; Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure, COM(2021)552; Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review, COM(2021)554; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, COM(2021)555; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, COM(2021)556; Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, COM(2021)557; Proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast), COM(2021)558; Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, COM(2021)559; Communication from the Commission to the European Parliament, the

the Energy Performance of Buildings Directive[54], the Regulation on the trans-European transport network, including the alignment of rail freight corridors[55].

General objective 2: A Europe fit for the digital age

In competitive markets firms must innovate and become more efficient to prosper. This applies in particular to innovation-driven and fast-moving digital markets. Effective enforcement of the EU competition rules and regulatory reforms are of vital importance in the digital transformation contributing to a resilient economic recovery of the EU. By enforcing the EU competition rules, the Commission continued in 2021 to tear down remaining barriers to the Single Market.

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

In 2021, the Commission made substantial progress in its review of EU competition policy, covering more than 20 sets of rules with the objective of making sure that all EU competition policy instruments remain future-proof and support the EU's green and digital

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Council, the European Economic and Social Committee and the Committee of the Regions A strategic rollout plan to outline a set of supplementary action to support the rapid deployment of alternative fuels infrastructure, COM(2021)560; Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on ensuring a level playing field for sustainable air transport, COM(2021)561; Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC, COM(2021)562; Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM(2021)563; Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism, COM(2021)564; Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union, COM(2021)567; Proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund, COM(2021)568; Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030, COM(2021)571.

([53]) Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen (recast), COM(2021) 803 final; Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast), COM(2021) 804 final.

([54]) Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast), COM/2021/802 final.

([55]) Proposal for a Regulation of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, amending Regulation (EU) 2021/1153 and Regulation (EU) No 913/2010 and repealing Regulation (EU) 1315/2013, COM(2021) 812.

transitions, the post-pandemic recovery as well as respond to economic developments and geopolitical challenges. The Commission also assessed whether further guidance to market participants is called for. The ongoing review and timing was set out in the Commission Communication Competition Policy fit for new challenges[56] published in November 2021.

Policy initiatives to strengthen the single market and the digital economy

To tackle systemic digital challenges such as limited competition and unfairness in digital markets, the Commission had presented in December 2020 a proposal for a Digital Markets Act (DMA), a proposal on which the European co-legislators reached an agreement on 24 March 2022[57]. The DMA is one of the centre-pieces of the EU Digital Strategy[58]. The DMA proposes a series of directly applicable obligations for firms operating digital platforms acting as gatekeepers for businesses and consumers in the EU. Such gatekeeping positions give rise to novel competition concerns[59].

State aid granted by EU Member States is subject to close scrutiny, while subsidies granted by States outside the EU to companies active in the Single Market go largely unchecked. Therefore, the Commission tabled a proposal for a Regulation on foreign subsidies distorting the internal market[60]. The new rules would tackle foreign subsidies that distort competition in the Single Market. Under the proposed Regulation, the Commission would be able to investigate foreign subsidies granted to firms active in the EU and, if needed, redress their distortive effects in the Single Market[61].

([56]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A competition policy fit for new challenges of 18 November 2021 COM(2021) 713 final.

([57]) The agreement brought to an end a 15-month legislative debate initially triggered by the European Commission's proposal for a Digital Markets Act and marks the final step in the democratic process that leads to a binding piece of legislation. The political agreement is now subject to formal approval by the European Parliament and the Council. For more information see Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), COM(2020) 842 final, 15.12.2020, and https://www.consilium.europa.eu/en/press/press-releases/2022/03/25/council-and-european-parliament-reach-agreement-on-the-digital-markets-act/

([58]) Shaping Europe's Digital Future, Commission publication of 19.2.2020, ISBN 978-92-76-16362-6.

([59]) Examples of such unfair conditions include prohibiting businesses from accessing their own data, locking users in a particular service and limiting switching to alternative services. Core platform services include: online intermediation services (that is to say, marketplaces and application stores), online search engines, social networking, cloud services, advertising services and more.

([60]) Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market, COM(2021) 223 final, 5.5.2021.

([61]) The proposal includes three tools: i) proposed concentrations where the target company has an EU turnover of at least EUR 500 million and the foreign financial contribution exceeds EUR 50

Review of antitrust rules and guidance

The purpose of the ongoing review of key antitrust and merger rules is to evaluate the rules in force and to adjust them where needed, keeping up with market developments that have transformed the way businesses operate, including the growth of e-commerce and online platforms.

In 2021, the Commission launched a public consultation on the draft revised Vertical Block Exemption Regulation (VBER) and the Vertical Guidelines[62]. The aim of the revised rules is to clarify and simplify certain provisions, fill in regulatory gaps and identify circumstances where the current rules are no longer suited to prevalent market conditions. The Commission aims at completing the review and have new rules in place when the current VBER expires on 31 May 2022.

The Commission published the findings of the evaluation of the two horizontal block exemption regulations on Research & Development and specialisation agreements (abreviated R&D BER and Specialisation BER respectively, together HBERs), together with the Horizontal Guidelines[63]. Subsequently the Commission launched a revision of these instruments[64].

Furthermore, the Commission published the findings of the evaluation[65] on the functioning of the Motor Vehicle Block Exemption Regulation (MVBER). The Commission concluded that

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million, would have to be notified to the Commission; ii) bids in EU public procurement procedures involving foreign financial contributions where the value of the procurement is at least EUR 250 million would have to be notified to the Commission; and iii) the Commission would be empowered to investigate ex-officio other market situations, including smaller concentrations and smaller public procurement procedures. The Commission would have exclusive competence to enforce the Regulation. When the negative effects of the foreign subsidy outweigh its positive effects, the Commission would have the power to impose redressive measures or accept commitments to remedy the distortion. Such measures and commitments would include a range of structural or behavioural remedies, such as the divestment of certain assets or the prohibition of a certain market behaviour. The Commission would also have the power to prohibit awarding a public procurement contract to subsidised bidders and prohibit subsidised mergers.

([62]) Public consultation on the draft revised Regulation on vertical agreements and vertical guidelines, from 09.07.2021 to 17.09.2021. See: https://ec.europa.eu/competition-policy/public-consultations/2021-vber_en.

([63]) Commission Staff Working Document - Evaluation of the Horizontal Block Exemption Regulation, SWD (2021) 103, 6.5.2021.

([64]) Public consultation - Horizontal agreements between companies, 13.7.2021 to 5.10.2021. See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation_en.

([65]) Report from the Commission, Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, COM(2021)264, 28.05.2021. Commission Staff Working Document of the Motor Vehicle Block Exemption Regulation while the principles of the MVBER remain valid, the emergence of new technologies and the increasing role of data in this industry ought to be reflected in the regulation. The current MVBER will expire on 31 May 2023. The Commission is currently reflecting on the follow-up to these findings, while also taking into account the ongoing revision of the VBER.

In addition, the Commission published the results of the evaluation[66] of the Market Definition Notice,[67] which provides important guidance on how the Commission applies the concepts of relevant product and geographic markets in antitrust and merger enforcement. On the basis of these findings, the Commission started working on a revised Market Definition Notice which remains fit for purpose in the digital age.

Following a consultation on the application of EU competition law to collective agreements for the self-employed[68], the Commission published for consultation draft Guidelines on the application of EU competition law to collective agreements regarding the working conditions of self-employed persons[69]. The Commission will assess the input from the consultation with the aim to publish a final version of the Guidelines in the second quarter of 2022.

Review of EU merger control rules and guidance

In 2021, the Commission published the findings of its evaluation of the procedural and jurisdictional aspects of EU merger control[70]. The evaluation concluded that the turnover-based jurisdictional thresholds combined with the referral mechanism had generally proved

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accompanying the document Report from the Commission, Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, SWD(2021)112, 28.05.2021.

(66) Commission Staff Working Document, Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997, SWD(2021) 199, 12.7.2021. See: https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation_market-definition-notice_en.pdf.

(67) Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, pp. 5–13.

(68) Collective bargaining agreements for self-employed – scope of application EU competition rules, consultation period 5.3.2021 – 31.5.2021. See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules/public-consultation_en.

(69) Communication from the Commission Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, 9.12.2021 C(2021) 8838 final ANNEX. The draft Guidelines are part of a package of initiatives by the Commission also including a proposal for a Directive on improving working conditions in platform work and a Communication on harnessing the full benefits of digitisation for the future of work.

(70) Commission Staff Working Document, Evaluation of procedural and jurisdictional aspects of EU merger control, SWD(2021) 66 final, 26.3.2021.

to be effective in capturing relevant transactions in the EU Single Market. In certain cases, however, transactions with a potential negative impact on competition were reviewed neither by the Commission, nor by any Member State because the transactions did not meet the relevant thresholds. This included in particular acquisitions targeting nascent firms with competitive potential and innovative firms including in - but not limited to - the digital, pharmaceutical, biotechnology and certain other industrial sectors. Following the publication of the findings of the evaluation, the Commission launched an impact assessment exploring policy options for further simplification of the merger procedures, including a potential introduction of electronic notification as the default way of notifying merger transactions. The simplification initiative aims to ease the administrative burden of businesses as well as of the Commission.

The Commission adopted a Communication providing guidance on how to apply the referral mechanism between Member States and the Commission as set out in Article 22 of the Merger Regulation[71]. To address the regulatory gap, the Commission intends to encourage and accept more referrals under Article 22 of the Merger Regulation[72]. The first requests for Article 22 guidance were submitted to the Commission at the end of 2021.

Review of State aid control rules and guidance

In 2021 the Commission worked on a targeted amendment of the General Block Exemption Regulation (GBER) to be adopted in 2022.[73] This amendment complements the parallel revisions of the guidelines on important projects of common European interest, regional aid, on aid for research, development and innovation, on risk finance aid and on aid for environmental protection and energy.

To improve the interplay between EU funding rules and EU State aid rules under the new Multiannual Financial Framework[74], the Commission extended the scope of the GBER)[75],

(71) Communication from the Commission: Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, C(2021) 1959 final, 26.3.2021.

(72) Article 22 of the Merger Regulation allows Member States to ask the Commission to examine any concentration that does not have an EU dimension but which affects cross-border trade and threatens to significantly affect competition within the territory of the Member State(s),making the request irrespective of whether such transaction is notifiable under the national merger control rules of the referring Member State.

(73) See https://ec.europa.eu/competition-policy/public-consultations/2021-gber_en.

(74) See: https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_en.

(75) Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, p.39. Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the TFEU must normally be notified to the Commission and approved before it is put into effect, in order to ensure that public spending does not cause unfair competition for companies operating

streamlining the State aid rules applicable to national funding falling within the scope of certain recently adopted EU programmes[76].

IPCEIs play an important role in boosting European entrepreneurship and facilitating the twin green and digital transitions. They also contribute to the resilience of the EU economy. Following an evaluation and an extensive consultation[77] on the proposed revised communication, the Commission adopted a revised Communication on State aid rules for Important Projects of Common European Interest (IPCEI Communication)[78] in November 2021. The revised IPCEI Communication applies as of 1 January 2022.

In 2021, the Commission published the findings of the evaluation[79] of the State aid rules for the deployment of broadband networks (Broadband Guidelines)[80]. The evaluation concluded that, overall, the existing rules work well and remain fit for purpose but some adjustments may be necessary to adapt the current rules to technological progress and current market developments. A revision should also take into account current EU policy objectives, in particular the EU 2025 Gigabit Society[81] and 2030 Digital Compass[82]. In November 2021, the Commission submitted for public consultation the proposed revised Broadband Guidelines[83].

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within the EU's internal market. However, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.

(76) The concerned national funds are those relating to: Financing and investment operations supported by the InvestEU Fund; Research, Development and Innovation (RDI) projects having received a “Seal of Excellence” under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; European Territorial Cooperation (ETC) projects, also known as Interreg.

(77) Public consultations form 23.2.2021 to 20.4.2021. See: https://ec.europa.eu/competition-policy/public-consultations/2021-ipcei_en.

(78) Communication from the Commission: Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, C(2021) 8481 final.

(79) Commission Staff Working Document – Evaluation of the State Aid rules for broadband infrastructure deployment, SWD(2021) 194 final, 7.7.2021.

(80) Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, pp. 1-26.

(81) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society, COM (2016) 0587 final.

(82) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Digital Compass: the European way for the Digital Decade, COM (2021) 118 final, 9.3.2021.

(83) Draft Communication from the Commission Guidelines on State aid for broadband networks, of 19.11.2021. The public consultation remained open until 11 February 2022.

To explore how to best simplify the existing State aid Framework for research, development and innovation (the RDI Framework)[84] and to make it easier for Member States to support RDI activities, including by SMEs, the Commission carried out a public consultation in 2021[85]. The objective of the consultation and a possible future revision of the RDI Framework would be to find ways to provide incentives enabling the green and digital transitions while minimising distorsions to competition.

In 2021, the Commission adopted revised Guidelines on State aid promoting risk finance investments[86]. The revised rules include a number of improvements to make the rules easier to apply, to consolidate existing requirements for *ex-ante* assessment and limit the requirement to provide a funding gap analysis to the largest risk finance schemes. Moreover, the Guidelines introduce simplified conditions for assessing State aid schemes exclusively targeting start-up firms and SMEs that have not yet made their first commercial sales. To ensure consistency, certain definitions included in the Guidelines are aligned with those in the GBER[87]. The revised Guidelines apply from 1 January 2022.

Furthermore, the Commission adopted a revised Communication on short-term export credit insurance (STEC Communication)[88]. The Communication modifies the eligibility criteria for SMEs, which under certain circumstances may benefit from State insurance. Under the revised rules, the threshold for SMEs was increased to EUR 2.5 million. The revised STEC Communication entered into force on 1 January 2022.

Following the evaluation of the current rules[89] and a public consultation, the Commission adopted revised Regional Aid Guidelines in 2021[90]. The revised guidelines, which entered into force on 1 January 2022, include a number of targeted adjustments and take into account new policy priorities related to the European Green Deal and the European Industrial and Digital Strategies.

([84]) Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.

([85]) Public consultations from 8.4.2021 to 3.6.2021. See: https://ec.europa.eu/competition-policy/public-consultations/2021-rdi_en.

([86]) Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, pp. 1–36.

([87]) 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 (Text with EEA relevance), OJ L 187, 26.6.2014, pp. 1-78.

([88]) Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, pp.5-13.

([89]) Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1.

([90]) Communication from the Commission: Guidelines on regional State aid, OJ C 153, 29.4.2021, pp. 1–46.

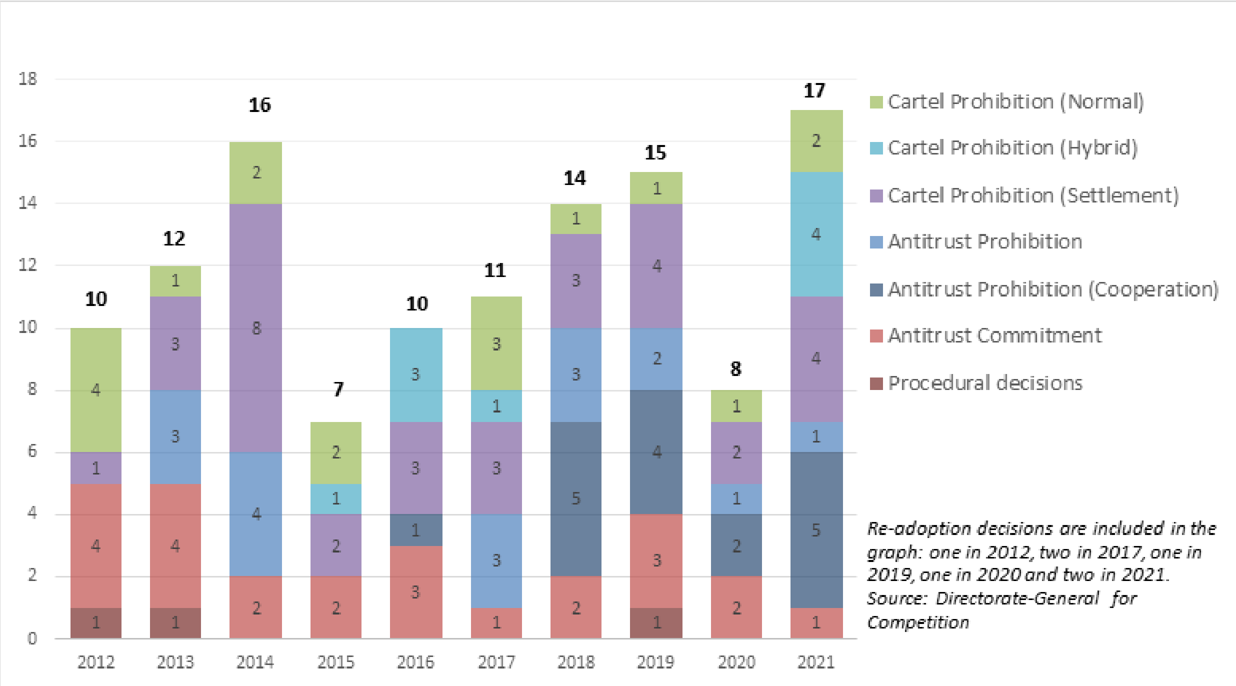
Strengthening competition enforcement in support of a Europe fit for the digital age

Effective enforcement of the EU competition rules and regulatory reforms are of vital importance in the digital transformation of the EU economy contributing to a resilient recovery in the EU and a strong Single Market.

Antitrust enforcement

In 2021, the Commission continued to vigorously enforce the EU competition rules across all economic sectors and markets, including digital ones.

Commission antitrust decisions 2012-2021



The Commission's solid cartel enforcement record in 2021 shows its continued determination to find and penalise cartels, for instance by pursueing its strategy to open cartel investigations on its own initiative, in order to protect competition during the recovery from the coronavirus pandemic and economic crises. In 2021, the Commission adopted ten cartel decisions and one amendment decision and imposed total fines of EUR 1 746 million. The decisions covered numerous sectors such as financial markets, railway transport services, car emissions, food and biofuels. The Commission was also able to gradually resume its inspection activities that had been temporarily suspended during the pandemic for sanitary and logistic reasons.

Cartel decisions 2021

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Rail Cargo[91]	20/04/2021	48 594 000	3	Settlement
SSA bonds[92]	28/04/2021	28 494 000	4	Prohibition
EGB[93]	20/05/2021	371 393 000	7	Prohibition
YIRD re-adoption[94]	28/05/2021	6 450 000	1	Prohibition
EIRD re-adoption[95]	28/06/2021	31 739 000	1	Prohibition
Car emissions[96]	08/07/2021	875 189 000	3	Settlement
Canned vegetables[97]	19/11/2021	20 000 000	1	Prohibition
Forex (Sterling lads)[98]	02/12/2021	83 294 000	1	Prohibition
Forex (Sterling lads)[99]	02/12/2021	261 101 000	4	Settlement
Ethanol benchmarks[100]	10/12/2021	20 000 000	1	Settlement
Total		**1 746 254 000**	**26**	

In the e-commerce sector, the Commission fined *Valve*, the owner of the online PC gaming platform Steam and the five publishers *Bandai Namco*, *Capcom*, *Focus Home*, *Koch Media* and *ZeniMax* EUR 7.8 million for restricting cross-border sales of PC video games on the basis of customers' geographical location within the EEA ("geo-blocking")[101]. The

(91) Case AT. 40330 *Rail cargo*, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1843

(92) Case AT. 40346 - *Sovereign and Agency bonds,* https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2004

(93) Case AT. 40324 *European Governments Bonds,* https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2565

(94) Case AT. 39861 *YIRD*

(95) Case AT. 39914 *EIRD*

(96) Case AT. 40178 *Car emissions*, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581

(97) Case AT. 40127 *Canned vegetables*, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6164

(98) Case AT. 40135 – FOREX; https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6548

(99) Case AT. 40135 – FOREX; https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6548

(100) Case AT. 40054 *Ethanol benchmarks,* https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40054

(101) Case AT.40413, *Focus Home*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1; Case AT.40414, *Koch Media*, See:

Commission also issued a Statement of Objections to *Apple* provisionally finding that Apple distorted competition in the music streaming market by abusing its dominant position for the distribution of music streaming apps through the App Store[102]. Furthermore, the Commission continued its investigation into potential anti-competitive practices by *Amazon*.[103] Finally, the Commission opened a formal antitrust investigation into the online advertising sector, assessing whether *Google* favoured its own online display advertising technology services in the ad-tech supply chain to the detriment of competing providers of advertising technology services, advertisers and online publishers[104]. In 2021, the General Court upheld[105] the Commission's previous decision in the Google Shopping case.

In the financial services sector, the Commission issued in 2021 a Statement of Objections to *Insurance Ireland*, an association of Irish insurers, provisionally finding it breached Article 101 TFEU by restricting access of competing insurers and their agents to its data sharing platform, which contains information important to be active in the Irish motor vehicle insurance market.

In the market for pharmaceutical products, the Commission accepted a set of commitments offered by *Aspen*[106] to address excessive pricing concerns. Under the commitments, Aspen will reduce its prices across Europe for six off-patent medicines that are essential to treat serious forms of blood cancer, including myeloma and leukaemia. These price reductions will save EU health systems substantial amounts and ensure that these medicines remain available. The Commission also opened a formal antitrust investigation into whether *Teva* may have abusively blocked or delayed the market entry of competitors to its blockbuster

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https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1; Case AT.40420, *ZeniMax*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1; Case AT.40422, *Bandai Namco*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1; Case AT.40424, *Capcom*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1.

(102) Case AT.40437, *Apple - App Store Practices (music streaming)*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3.

(103) Case AT.40462 - *Amazon Marketplace* and Case AT.40703 - *Amazon - Buy Box.* See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077.

(104) Case AT.40670, *Google - Adtech and Data-related practices*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

(105) Judgement of the General Court of 10.11.2021, *Google LLC and Alphabet, Inc. v European Commission,* Case T-612/17.

(106) Case AT.40394, *Aspen*, Commission Decision of 10.2.2021 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement, C(2021) 724 final.

drug Copaxone, to the detriment of patients and health systems[107]. In 2021, the Court of Justice upheld the Commission's earlier decision in the *Lundbeck* case concerning pay-for-delay agreements.[108]

Sector Inquiry into the Internet of Things

Following the launch in 2020 of a sector inquiry into the Internet of Things (IoT) for consumers[109], the Commission published a preliminary report in June 2021[110]. The sector inquiry focussed on potential competitive issues for products and services related to digital voice assistants, smart home devices and wearable devices. The final report and its accompanying Staff Working Document were published in January 2022[111].

Merger control

In 2021, the Commission's merger activity remained at a very high level. The vast majority of notified mergers did not raise competition concerns and were reviewed speedily. The Commission adopted 396 merger decisions of which 309 were assessed under the simplified procedure, that is to say for 78% of the notifications. The Commission received 44 reasoned submissions during the pre-notification stage where notifying parties requested referrals from the Commission to a national competition authority (NCA) or vice versa. The Commission intervened in 14 cases. Eleven transactions were approved subject to conditions and three notifications were withdrawn by the merging parties themselves during the in-depth investigation stage. These interventions ensured that mergers did not lead to higher prices, lower product and service quality or less innovation.

([107]) Case AT.40588, *Teva Copaxone*. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

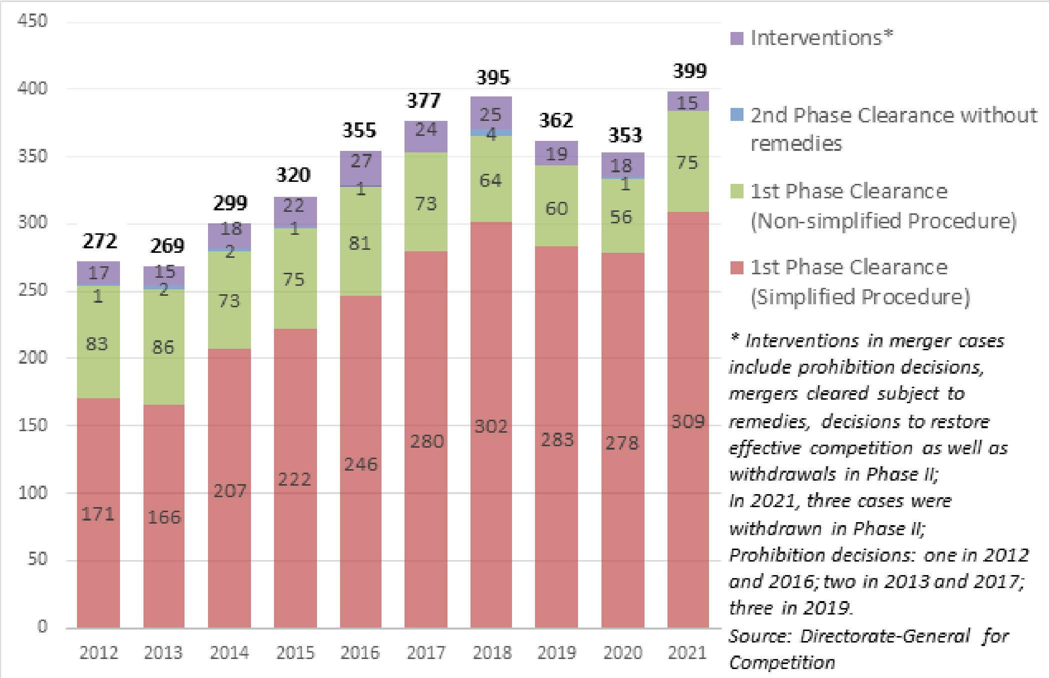
([108]) Judgments of the Court of Justice of 25 March 2021, C-586/16 P, *Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission*; C-588/16 P, *Generics (UK) v Commission*; C-591/16 P, *Lundbeck v Commission*; C-601/16 P, *Arrow Group and Arrow Generics v Commission*; C-611/16 P, *Xellia Pharmaceuticals and Alpharma v Commission*, and C-614/16 P, *Merck KGaA v Commission*.

([109]) See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1326.

([110]) See: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2884.

([111]) See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402.

Merger outcomes 2012-2021



The Commission approved, following an in-depth investigation and subject to conditions, the acquisition of *Eaton Hydraulics* by *Danfoss*[112], in the supply of hydraulic components used in machinery for the agricultural, industrial and construction industries and the acquisition by *EssilorLuxottica* of *GrandVision*[113] in eyewear products (that is to say sunglasses, lenses and frames) and optical retail sales of such products. In both cases the commitments addressed the Commission's competition concerns.

In 2021, the Commission continued its in-depth investigation into the proposed acquisition of *Daewoo Shipbuilding & Marine Engineering* by *Hyundai Heavy Industries Holding*.[114] The Commission concluded that the merger between the two South Korean shipbuilders would create a dominant position by the merged company and would reduce competition in the worldwide market for the construction of large liquefied gas carriers (LLNGs). Liquefied natural gas (LNG) contributes to the diversification of the EU's energy sources and improves energy security. The merging firms did not propose to the Commission any remedies that could have solved the identified competition concerns. The Commission concluded that the merger would have led to fewer suppliers and higher prices for large vessels transporting LNG. In January 2022 the Commission prohibited the acquisition.

In the pharmaceutical sector, following a referral pursuant to Article 22 of the Merger Regulation, the Commission opened an in-depth investigation in the proposed acquisition of *GRAIL* by *Illumina*[115]. The Commission had serious doubts that the proposed acquisition

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([112]) Case M.9820 - *Danfoss / Eaton Hydraulics*

([113]) Case M.9569 – *EssilorLuxottica / Grandvision*

([114]) Case M.9343 – *Hyundai Heavy Industries / Daewoo Shipbuilding & Marine Engineering*

([115]) Case M.10188 – Illumina/GRAIL

would reduce competition and innovation in the emerging market for the development and commercialisation of cancer detection tests based on sequencing technologies. In August 2021, Illumina announced that it would complete its acquisition of GRAIL while the Commission's review was still pending. The Commission subsequently opened an investigation to assess whether Illumina had breached the standstill obligation in Article 7 of the Merger Regulation. In October 2021, the Commission adopted interim measures to restore and maintain the competitive conditions prior to Illumina's early implementation of the merger with GRAIL[116]. It was the first time the Commission adopted interim measures following early implementation of a notified merger.

In the financial sector, the Commission authorised two mergers subject to commitments after in-depth investigations. *Aon* acquired *Willis Towers Watson.* The two companies are active in insurance and reinsurance broking as well as he provision of retirement, health & welfare and investment services to commercial customers. The *London Stock Exchange Group* acquired *Refinitiv*[117]. The commitments offered by the merging firms removed competitive concerns about horizontal overlaps in the market for European government bond trading services and about the vertical relationships created by the merger for financial data and the trading and clearing of interest rate derivatives.

In the transport sector, the Commission continued its in-depth investigation into the proposed acquisition of *Transat* (the parent company of Air Transat) by *Air Canada*. The Commission provisionally concluded that the proposed transaction would raise competition concerns on a large number of transatlantic routes. The parties decided to abandon the proposed merger agreement in April 2021[118]. In 2021, the Commission also opened an in-depth investigation into a proposed acquisition of *Air Europa* (a subsidiary of a Spanish tourism group Globalia Corporación Empresarial) by *International Consolidated Airlines Group* (IAG)[119]. The Commission had concerns that the proposed transaction would significantly reduce competition on 70 flight routes within and to/from Spain, so-called origin and destination city pairs, where both airlines offered direct connections competing with each other. The proposed merger was abandoned in December 2021.

In 2021, the Commission also opened an investigation into a possible breach of Article 21 of the EU Merger Regulation by Hungary. The investigation concerns the proposed acquisition by *VIG* of two Hungarian subsidiaries of *AEGON.* Both firms are active in the insurance sector. In addition, the Commission adopted a decision under Article 14 of the Merger Regulation imposing fines of EUR 7.5 million on *Sigma-Aldrich* for having provided incorrect or misleading information during the Commission’s investigation of *Merck’s* acquisition of Sigma-Aldrich in 2015[120].

([116]) Case M.10493 – *Illumina / GRAIL, (Art. 8(5) EU Merger Regulation procedure)*.

([117]) Case M.9564 – LSEG / Refinitiv

([118]) Case M.9489 – Air Canada/Transat

([119]) Case M.9637 IAG/Air Europa

([120]) Case M.7435 Merck/Sigma-Aldrich

State aid control

Broadband infrastructure that conveys digital data at very high speeds with sufficient capacity and quality is key to meeting the EU 2025 connectivity objectives set out in the Digital Strategy[121]. State aid contributes to the rollout of high-capacity broadband networks when there is no incentive for commercial operators to provide sufficient broadband coverage. In such cases, the Commission authorised State aid subject to certain conditions.[122] The coronavirus pandemic underlined the need to invest in connectivity in rural and remote areas to bridge the digital divide. This is an EU priority, in line with the EU 2025 objectives and reflected in several EU programmes, including the Recovery and Resilience Facility, InvestEU and the Connecting Europe Facility 2 (Digital).

In 2021, the Commission approved a number of State aid measures for broadband services. The Commission approved, among other things, a EUR 2.1 billion German aid scheme to support the deployment, operation, and granting of access to high-performance infrastructure for mobile communicaton services in areas served only by 2G networks and below[123]. Furthermore, the Commission approved a EUR 150 million Spanish scheme to support the deployment of infrastructure for the provision of mobile communication services in areas where there is no 4G mobile coverage with speeds of at least 10 Mbps download and 3 Mbps upload[124]. Finally, the Commission approved a EUR 610 million Italian voucher scheme to help SMEs access high-speed broadband services[125].

In 2021 - following the annulment of a Commission decision adopted in 2013[126] - the Commission re-adopted a decision on State aid received by terrestrial operators between 2005 and 2008 for extending the terrestrial television network to remote areas in Spain. The Commission found that the State aid covering network extensions in 16 autonomous regions of Spain (that is to say all regions except Castilla-La Mancha) contravened EU State aid rules[127]. Recovery of the State aid is ongoing. As regards the Castilla-La Mancha region

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([121]) Commission Communication Shaping Europe's Digital Future, 19.2.2020. See: https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

([122]) EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks, OJ C25, 26.01.2013, p.1.

([123]) Case SA.59574, *Germany - Deployment of high-performance mobile infrastructure in Germany-DE*, OJ C 410, 8.11.2021, p.1.

([124]) Case SA.64394, Spain – *National aid scheme for passive infrastructure for mobile networks*, OJ C 90, p. 8-9

([125]) Case SA.57496, *Broadband vouchers for SMEs* – Italy, OJ C 33, p. 3

([126]) Case SA.28599, *Spain – Aid for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha)*. OJ L 217, 23.7.2014, p. 52–87.

([127]) Case SA.28599, *Spain – Aid for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha)*. OJ L 417, 23.11.2021, p. 1–58.

in Spain, the Commission adopted a decision in 2014[128], finding that the extension of the terrestrial television network was incompatible with EU State aid rules, because some operators of terrestrial platforms received a selective competitive advantage. The Court of Justice confirmed the Commission decision in September 2018[129]. Because Spain had only partially recovered the State aid, the Commission initiated proceedings before the Court of Justice. In April 2021, the Court held that Spain has failed to implement the Commission's decision [130]. The recovery of the outstanding State aid amount is ongoing.

Co-operation with the partners in the ECN Network

In 2021, the Commission continued to ensure the coherent application of Articles 101 and 102 through the ECN[131]. Two of the key supporting cooperation mechanisms in Regulation 1/2003 are the obligation on national competition authorities 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 2021, 145 new investigations were launched within the network and 84 envisaged decisions were submitted. These figures include Commission investigations and decisions, respectively.

In addition to the cooperation mechanisms set out in Regulation 1/2003, other ECN cooperation work streams ensure a coherent enforcement of the EU competition rules. ECN members met regularly to discuss cases at early stages, policy issues, as well as matters of strategic importance. In 2021, 37 meetings across horizontal working groups and sector-specific sub-groups were organised, where competition authorities' officials exchanged views.

In 2021, the Commission monitored and assisted Member States in their efforts when incorporating the ECN+ Directive[132] into national law by 4 February 2021. In March 2021, the Commission opened infringement procedures against 22 Member States because they had failed to notifiy that they had implemented the ECN+ Directive before the deadline. Of the 22 Member States, 14 subsequently notified implementation before the end of 2021. Before closing the infringement proceedings, the Commission will verify that the ECN+

([128]) Case SA.27408, *Spain – Aid for the deployment of digital terrestrial television in remote and less urbanised areas in Castilla-La Mancha*. OJ L 222, 17.8.2016, p. 52–84

([129]) Judgment of the Court of Justice of 20 September 2018, C-114/17, *Kingdom of Spain v European Commission*.

([130]) Judgment of the Court of Justice of 29 April 2021, C-704/19, *European Commission v Kingdom of Spain*.

([131]) 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. See: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0427%2802%29.

([132]) 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.

Directive has been correctly implemented. In 2021, the Commission continued to assist the remaining Member States when finalising the implementation of the Directive.

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

Multilateral relations

In 2021, the Commission continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), and United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meetings of 2021, the Commission contributed to discussions on competition enforcement and regulatory alternatives, competition compliance programmes, potential competition, methodologies to measure market competition, environmental considerations in competition enforcement and the promotion of competitive neutrality by competition authorities. As co-chair of the ICN Unilateral Conduct Working Group, the Commission continued a multi-annual project assessing dominance and market power in digital markets. In 2021, the Commission also participated in the 19th meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.

The Commission continued its endeavours to improve international subsidy rules. Reforming the subsidy rules is one of the EU's main priorities when reviewing the World Trade Organization trade rules, as confirmed in the joint statement by the EU, US and Japan[133].

Bilateral relations

In 2021, the Commission and the US competition authorities launched the EU-US Joint Technology Competition Policy Dialogue to develop common approaches and strengthen the cooperation on competition policy and enforcement in the technology sectors[134]. The Commission also continued its close cooperation in competition policy with China's State Administration for Market Regulation (SAMR) under the 2019 cooperation documents[135]. The Commission remained in close contact with the Korean Fair Trade Commission and the Japanese Fair Trade Commissions under the respective cooperation agreements[136]. As regards the draft Second Generation Cooperation Agreement between the EU and Canada, regular dialogue continued between DG Competition and the Canadian Competition Bureau to find a solution on data protection in Canada which is consistent with the standards

(133) See: https://trade.ec.europa.eu/doclib/press/index.cfm?id=2330.

(134) See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6671.

(135) See: https://ec.europa.eu/competition-policy/international/bilateral-relations/china_en.

(136) See: https://ec.europa.eu/competition-policy/international/bilateral-relations/korea_en.https://ec.europa.eu/competition-policy/international/bilateral-relations/japan_en.

established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement[137]. Moreover, in 2021, the Commission continued negotiations with Japan with the aim to conclude a Second Generation Competition Cooperation Agreement, updating the existing cooperation agreement from 2003[138].

The Commission aims to include provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2021, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand and Uzbekistan.

With regard to the candidate countries and potential candidate countries, the Commission's main policy objective is to help these countries to create legislative frameworks for competition policy. They should include well-functioning and operationally independent competition authorities able to build up solid enforcement records. In 2021, the Commission continued to monitor candidate countries' compliance with their commitments under the respective Stabilisation and Association agreements.

The Commission also engaged with several African national and regional authorities to develop cooperation in the competition field. In 2021, the Commission hosted joint workshops with the South African Competition Commission on digital aspects of competition law and on cooperation between competition authorities.

External communication and advocacy

DG Competition reaches out to a variety of stakeholders, including businesses, lawyers, advisers, policy makers, academics, students and civil society to communicate the benefits of competition policy. Various channels are being used for this purpose. In 2021, the main communication channel was the participation by Executive Vice-President Vestager at prominent events and press conferences. Moreover, press releases, newsletters and social media were frequently used to communicate the benefits of competition policy. Dedicated events at international level or together with Member States were also organised. Due to the coronavirus pandemic, most events were held in virtual and/or hybrid formats in 2021. In 2021, Executive Vice-President Vestager delivered 43 speeches to a variety of audiences. The Director-General also participated in more than 40 international events. DG Competition posted some 900 tweets from its account and reached close to 14 000 subscribers with its electronic newsletter; its publications in the EU Bookshop were viewed, downloaded or ordered as paper copies some 6 000 times.

During 2021 DG Competition issued more than 1 000 press releases. Some of the cases and policy initiatives generated broad media coverage, for example the Statement of Objections sent to Apple on App Store rules for music streaming providers, the decision to fine car manufacturers for restricting competition in emission cleaning for new diesel

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([137]) See: http://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=C-1/15. Currently, Canada is preparing an overhaul of its domestic privacy act.

([138]) See: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722(01).

passenger cars and the proposal for a new regulation to address distortions caused by foreign subsidies in the Single Market

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

In 2021, competition policy contributed to several major EU initiatives and objectives that are part of the Europe fit for the digital age. These contributions build on DG Competition's understanding of how markets work, based on its experience from its enforecement and policy initiatives. DG Competition cooperated with other services to ensure that these initiatives reflect a pro-competitive approach in the overall digital transformation process. Such cooperation took place in the context of the Digital Compass Communication[139] (and the related Digital Decade Policy Programme[140]), the Artificial Intelligence package[141], the proposal for a Regulation establishing a framework for a European Digital Identity[142] and the Directive on improving working conditions in platform work[143]. Moreover, DG Competition ensured that the pro-competitive perspective and the importance of an open EU economy were duly highlighted in the update of the 2020 New Industrial Strategy for Europe[144], the 2021 Annual Single Market Report[145], the EU's strategic dependencies and capacities[146] and the setting up of certain industrial alliances, for example the Alliance on

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([139]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2030 Digital Compass: the European way for the Digital Decade, COM(2021)118 final

([140]) Proposal for a Decision of the European Parliament and of the Council establishing the 2030 Policy Programme "Path to the Digital Decade", COM(2021)574.

([141]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on fostering a European approach to Artificial Intelligence, COM(2021) 205 final; Proposal for a Regulation of the European Parliament and the Council laying down requirements for Artificial Intelligence, COM(2021) 206 final; Revision of the Coordinated Plan on AI annex to COM(2021) 205 final.

([142]) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity. COM(2021) 281.

([143]) Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work,COM(2021) 762 final.

([144]) Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery, COM(2021) 350 final, 5.5.2021

([145]) Commission Staff Working Document Annual Single Market Report 2021 Accompanying the Commission Communication Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery, SWD (2021) 351 final, 5.5.2021

([146]) Commission Staff Working Document Strategic dependencies and capacities Accompanying the Commission Communication Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery, SWD(2021) 352 final, 5.5.2021 processors and semiconductor technologies and Alliance for Industrial Data, Edge and Cloud. DG Competition emphasised that competition policy and industrial policy should complement each other, mutually benefitting the green and digital transitions, the recovery from the coronavirus pandemic and the resilience of the Single Market.

General objective 3: An economy that works for people

In 2021, the Commission supported this Commission headline ambition by enforcing the competition rules and protecting competition on fair and equal terms. The digital and pro-competitive narrative was safeguarded for example when implementing the Recovery and Resilience Facility (RRF), and initiatives related to the Capital Markets Union, the Banking Union, Anti-Money Laundering, Sustainable Finance, and business taxation[147].

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

State aid control facilitated aid for horizontal objectives

Aid for horizontal objectives accounted for the overwhelming majority of all aid. Much of horizontal aid fell under the General Block Exemption Regulation (GBER)[148]. The GBER allows Member States to implement a wide range of public support measures in areas such as research and development, environmental protection or support to SMEs.

State aid to banks was necessary to safeguard financial stability while protecting competition

In 2021, for the second year in a row, there were no new individual cases of State aid to financial institutions. The EU banking sector managed to withstand the coronavirus pandemic due to the wide range of State aid schemes set up by the Member States to support the real economy and shield banks from the consequences of a deep economic downturn. These State and schemes were approved by the Commission under the Temporary Framework.

The Commission authorised the prolongation of several existing State aid schemes allowing Member States to continue strengthening the resilience of the financial sector without having to grant new State aid to individual financial institutions. The Commission authorised the prolongation of schemes for the restructuring or orderly market exit of

(147) Communication from the Commission to the European Parliament and the Council, Business Taxation for the 21st Century, COM/2021/251 final.

(148) Aid for horizontal objectives in the common interest have accounted for the overwhelming majority of all aid, while much of the horizontal aid fell under the GBER. Leaving aside the largest State aid scheme in 2018, the share of GBER in State aid spending (49% and 45.0 billion EUR) was at a comparable level as spending for notified schemes (51% and 46.8 billion EUR) in 2018. Other categories of horizontal aid included research, development and innovation (9%) and regional development (9%).

distressed banks in Poland[149], Ireland[150] and Denmark[151] as well as addressing potential liquidity shortages for banks in Greece[152]. Moreover, the Commission authorised the prolongation of market-consistent guarantee schemes for the securitisation of non-performing loans in Greece ("Hercules" [153]) and Italy ("GACS"[154]). These guarantee schemes help banks to clean up their balance sheets without granting State aid or distorting competition.

For Cyprus[155] and Greece[156], the Commission authorised indirect aid to financial institutions in schemes primarily providing social support to vulnerable households at risk of losing their homes. In addition, the Commission authorised Member States' support of recently founded SMEs and start-ups frequently held back by limited access to finance. To this end, the Commission approved a modification of the existing risk finance scheme in France[157].

In 2021, the Commission announced[158] its plans to launch an evaluation of the State aid framework for banks in 2022, in the broader context of the review of the crisis

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([149]) Case SA.63002, *Poland – Eleventh prolongation of the Credit Unions Orderly Liquidation Scheme,* OJ C 285, 16.7.2021, p.1; Case SA.64522, *Poland – Sixth prolongation of the resolution scheme for cooperative banks and small commercial banks,* OJ C 487, 3.12.2021, p.1.

([150]) Case SA.62303, *Ireland – 13th Prolongation of the Credit Union restructuring and stabilisation scheme,* OJ C 240, 18.6.2021, p.1; Case SA.100030, *Ireland – 14th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector,* OJ C 487, 3.12.2021, p.1; and Case SA.62649, *Ireland – 17th Prolongation of the Credit Union Resolution Scheme 2020-2021,* OJ C 240, 18.6.2021, p.1.

([151]) Case SA.58478, *Denmark – Third prolongation of the winding-up scheme for small banks,* OJ C 60, 19.2.2021, p.1.

([152]) Case SA.59030, *Greece – Prolongation of the Liquidity Guarantee Scheme for banks,* OJ C 144, 23.4.2021, p.1.

([153]) Case SA.62242, *Greece – Prolongation of the Hercules scheme,* OJ C 214, 4.6.2021, p.1.

([154]) Case SA.62880, *Italy – Fourth prolongation of the Italian guarantee scheme for the securitisation of non-performing loans,* OJ C 295, 23.7.2021, p.1.

([155]) Case SA.63005, *Cyprus – Scheme for the management of loans granted Cyprus under Government Housing Plans (OIKIA Scheme),* OJ C 366, 10.9.2021, p.1.

([156]) Case SA.100197, *Greece - Extension of SA.58555 "Temporary primary residence protection scheme"*. The official version of the decision is not yet published. The official version of the decision is not yet published. See: https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3.

([157]) Case SA.59985, *France - Modification de la décision Aide d'État SA. 55869 (2019/N) : Dispositif IR-PME pour les investissements dans les FCPI et FIP,* OJC 195, 21.5.2021, p.1.

([158]) See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A competition policy fit for new challenges of 18 November 2021 COM(2021) 713 final, Annex, p. 4.

management and deposit insurance framework launched by the Commission in 2021.

State aid enforcement in the area of taxation - taking action against selective tax advantages

The fight against tax evasion and tax avoidance remained high on the Commission's agenda in 2021. The Commission decided to refer the United Kingdom to the Court of Justice for failing to fully recover illegal State aid of up to EUR 100 million. The illegal State aid was granted as a corporate tax exemption regime for passive interest and royalties, and as five tax rulings in Gibraltar[159]. The Commission in 2018 declared those measures unlawful and incompatible with State aid rules. More than two years after the Commission decision, the Gibraltar authorities had recovered less than 20% of the total illegal aid. Following the decision of the Commission, the United Kingdom quickly implemented the outstanding recovery by payments into escrow accounts, so that the Commission finally did not need to launch the Court action.

Temporary support of the economy through COVID-19 aid

The State aid Temporary Framework - adopted at the beginning of the crisis and adjusted several times - set out the conditions the Commission would apply to declare State aid compatible with Article 107(3)(b) TFEU (aid to "remedy a serious disturbance in the economy of a Member State").[160]

By the end of 2021, the Commission had taken more than 1180 decisions (among them slightly more than 470 amendment decisions) authorising measures in all Member States in the context of the coronavirus pandemic, including those under the Temporary Framework. In 2021, the Commission adopted 675 such COVID-19 related State aid decisions.[161]

DG Competition and other DGs assisted Member States when preparing their Recovery and Resilience Plans (RRPs) under the Recovery and Resilience Facility (RRF).

DG Competition continued to ensure that investment and reform projects supported in the RRPs are compatible with State aid rules. Member States must notify to the Commission measures that may entail State aid and that do not fall under a block exemption regulation or under an existing authorized scheme. To that end, DG Competition published a Practical guidance to Member States for a swift treatment of State aid notifications in the RRF

([159]) Commission Decision (EU) 2019/700 of 19 December 2018 on the State Aid SA.34914 (2013/C) implemented by the United Kingdom as regards the Gibraltar Corporate Income Tax Regime, C/2018/7848, OJ L 119, 7.5.2019, pp. 151–20.

([161]) The figure includes decisions, adopted under the exceptional legal basis supporting the Temporary Framework as well under State aid rules applying in non-exceptional circumstances. It also includes subsequent amendments to previously adopted decisions.

framework and continued to provide guidance and templates to the Member States[162]. The Commission also committed to to assess without delay any related State aid notification. See also the specific section above on COVID-19 related measures.

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

DG Competition contributed proactively to several major initiatives and objectives forming part of An Economy that works for people. Building on its extensive enforcement and policy experience DG Competition undersands very well how competitive markets work. Input from DG Competition was used when completing the implementation of the Capital Markets Union and the Banking Union (including the Capital Markets Union Package[163]), the review of capital requirements legislation[164], the review of prudential rules for insurance companies[165]

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(162) See: https://ec.europa.eu/competition/state_aid/what_is_new/practical_guidance_to_MS_for_notifications_under_RRF.pdf.

(163) Capital Markets Union package of November 2021, including a proposal for a Regulation of the European Parliament and of the Council establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, COM(2021)723 final; a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2015/760 as regards the scope of eligible assets and investments, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules and as regards requirements pertaining to the authorisation, investment policies and operating conditions of European long-term investment funds, COM(2021)722 final; a proposal for a Directive of the European Parliament and of the Council amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds, COM(2021)721 final; and a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 600/2014 as regards enhancing market data transparency, removing obstacles to the emergence of a consolidated tape, optimising the trading obligations and prohibiting receiving payments for forwarding client orders, COM(2021) 727 final.

(164) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor, COM(2021)664 final; Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU, COM(2021)663 final; and proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities, COM(2021)665 final

(165) Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee

(Solvency II), as well as initiatives concerning anti-money laundering[166], sustainable finance[167] and business taxation[168].

Examples of EU added value

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

DG Competition uses key performance indicators in its external communication. They illustrate the impact of competition policy enforcement on EU consumers, citizens and businesses, as well as on the EU economy as a whole. In 2021, the total estimated customer savings from the cartel prohibitions and merger interventions by the Commission ranged between EUR 10.5-17.2 billion. The fines imposed by the Commission for infringements of EU competition law amounted to EUR 1.7 billion in 2021. The fines reduce Member States' contributions to the EU budget and act as deterrence for future infringements.

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measures, macro-prudential tools, sustainability risks, group and cross-border supervision, COM/2021/581 final

([166]) Proposal for a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, COM(2021)421 final

([167]) Communication from the Commission to the European Parliament and the Council - EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal, COM/2021/188 final; and Communication from the Commission to the European Parliament and the Council, Strategy for Financing the Transition to a Sustainable Economy, COM/2021/390 final

([168]) Communication from the Commission to the European Parliament and the Council, Business Taxation for the 21st Century, COM(2021)251 final

2. MODERN AND EFFICIENT ADMINISTRATION AND INTERNAL CONTROL

2.1. Financial management and internal control

Assurance is provided on the basis of an objective examination of evidence of the effectiveness of risk management, control and governance processes.

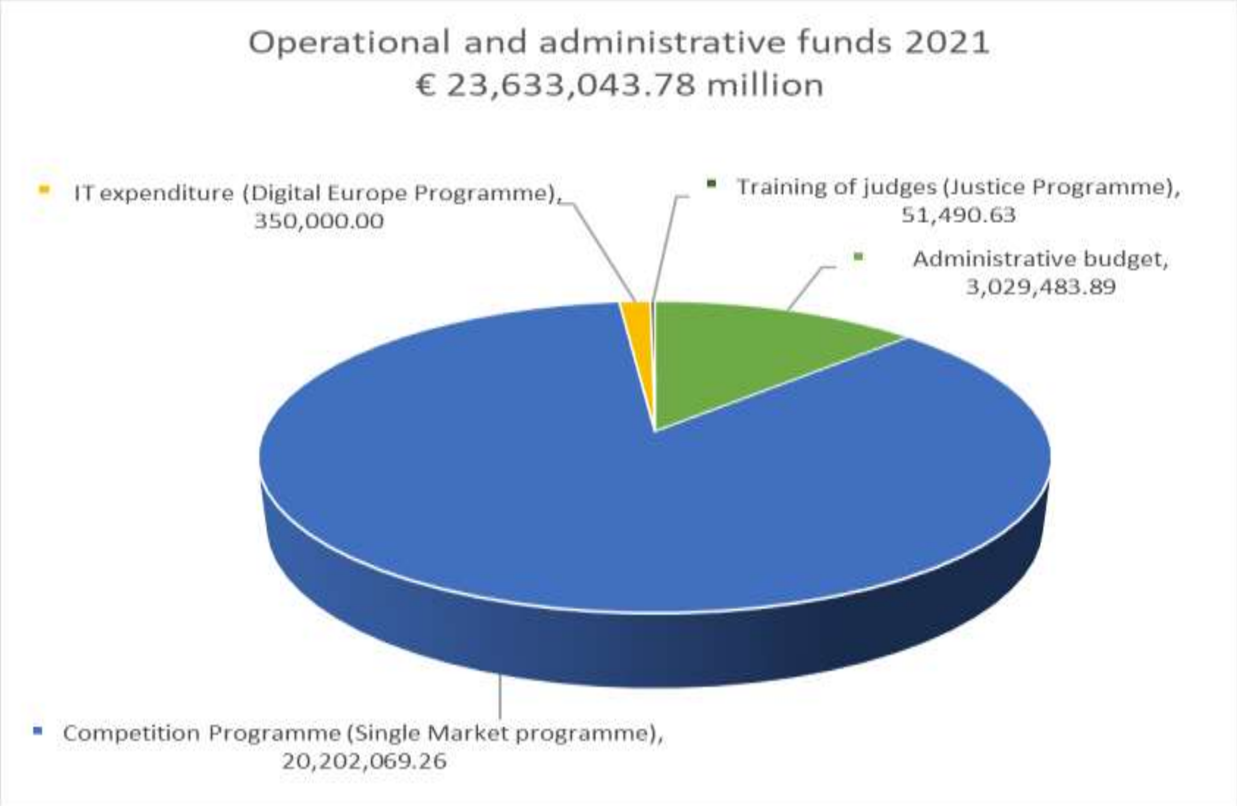
This examination is carried out by management, who monitors the functioning of the internal control systems on a continuous basis, and by internal and external auditors. The results are explicitly documented and reported to the Director-General. The following reports have been considered:

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

These reports result from a systematic analysis of the available evidence. 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 covers the control results and other relevant elements that support management's assurance. It is structured into 2.1.1 Control results, 2.1.2 Audit observations and recommendations, 2.1.3 Effectiveness of internal control systems, and resulting in 2.1.4 Conclusions on the assurance.

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



2.1.1. Control results

This section reports and assesses the elements identified by management which support the assurance on the achievement of the internal control objectives (ICO)[169]. The DG's assurance building and materiality criteria are outlined in AAR Annex 5. The AAR Annex 6 outlines the main risks together with the control processes to mitigate them and the indicators used to measure the performance of the relevant control systems.

The Internal Control Framework of DG Competition governs the internal controls related to the main inherent risks in DG Competition, which concern procedures leading to Commission enforcement action (that is to say Commission decisions) and policy initiatives

(169) 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.

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 May 2021, DG Competition started implementing a dedicated operational budget. In the Multiannual Financial Framework 2021-2027, the new Single Market Programme (SMP) includes a dedicated component for competition policy, which provides stable financing of measures enhancing the Commission's competition enforcement capacity, policy initiatives, international cooperation as well as advocacy. The SMP was adopted in April 2021[170]. The Commission decision implementing the SMP was adopted in May 2021[171]. Since then DG Competition is able to implement measures under the SMP.

In 2021, the financial management played a smaller 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 management of funds under an operational budget (20.2 million in 2021) that is supporting enforcement and development of competition policy, a modest administrative budget (3.03 million in 2021) supporting organisational management and functioning of the DG and other resources (from co-delegated budget such as the Digital Europe Programme and the Justice Programme).

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

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

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

(171) Commission Implementing Decision of 6.5.2021 on the financing of the Programme for Single Market, competitiveness of enterprises, including small and medium sized enterprises, and European Statistics and the adoption of the work programme for 2021-2024.

Safeguard of information and 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		Positive conclusion	Positive conclusion	Positive conclusion	No

Governance structures

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

The Communication C(2017) 2373 on the Revision of the Internal Control Framework prompted the Directors General and the Directors of the Executive Agencies to formally appoint a Director in charge of Risk Management and Internal Control. For DG Competition, the Director of the General Affairs Directorate is nominated the Director in charge of risk management and internal control taking responsibility for the completeness and reliability of management reporting on the results and on the achievement of objectives. (See Annex 1 for the Statement of the Director in charge of Risk Management and Internal Control).

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

- Cases of "confirmation of instructions" (new FR art 92.3) - no such cases for the DG
- Cases of financing not linked to costs (new FR art 125.3) - no such cases for the DG
- Financial Framework Partnerships >4 years (new FR art 130.4) - no such cases for the DG
- Cases of flat-rates >7% for indirect costs (new FR art 181.6) - no such cases for the DG
- Cases of "Derogations from the principle of non-retroactivity of grants pursuant to Article 193 FR" (new Financial Regulation Article 193.2) - no such cases for the DG.

Overview table (amounts in EUR million):

Risk-type / Activities	Grants (e.g. actual costs based, or lump sums, or entitlements)	Procurement (e.g. minor or major values)	*Recovery orders from Commission services (e.g. chargeback and Administrative Arrangements)*	*Total Expenditure*	NEI, e.g. Revenues, Assets, OBS ((in)tangible or financial assets & liabilities)
Operational budget	0.50	4.85	0.02	5.37	
Administrative budget		9.89	0.66	10.55	
Corporate case management solutions					25.03
Totals (coverage)	**0.50**	**14.74**	***0.68***	***15.92***	***25.03***

Effectiveness of controls

a) Legality and regularity of the transactions

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

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

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 318,375. All corrections take place before the actual payment is made (ex-ante), and there are no errors left at the moment of payment. As regards the error rate, DG Competition applied the approach recommended by DG BUDG and assumed the average error rate of 0.5%, which is the most conservative estimate.

During the reporting year, there were a limited number of recorded exceptions, which had no impact on the legality and regularity of the transaction. The DG's grants programmes are very small and ex-post controls and audits are not obligatory, thus COVID-19 has not had an impact.

In 2021, 1 procurement procedures was subject to a supervisory desk review by the local Advisory Committee for Procurements and Contracts, prior to the signature of the contract.

Furthermore, a representative (47.09% of the commitments, 41.95% of the total value of 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 2021 was EUR 15.92 million and the average error rate was 0.5%. The controls and the measures taken comply with the baseline requirement and give the management sufficient assurance of sound financial management, in particular, as the prevention of potential errors in procurement procedures is less expensive than costs of potential litigations and/or legal proceedings.

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

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

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

DG Competition's relevant expenditure, its estimated overall risk at payment, estimated future corrections and risk at closure are set out in Table X: Estimated risk at payment and at closure.

The estimated overall risk at payment for 2021 expenditure amounts to EUR 0.08 million, representing 0.5% of the DG's total relevant expenditure for 2021 (EUR 15.67 million). This is the AOD's best, conservative estimate of the amount of relevant expenditure during the year not in conformity with the contractual and regulatory provisions applicable at the time the payment was made.

This expenditure has been subject to ex-post controls and the average error rate was 0.5 %. The conservatively estimated future corrections for 2021 expenditure are close to 0.

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

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

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

DG Competition	Relevant expenditure	Estimated risk (error rate %) *at payment*		Estimated future corrections and deductions		Estimated risk (error rate %) *at closure*	
(1)	*(2)*	*(3)*		*(4)*		*(5)*	
	m EUR	*m EUR*	*%*	*m EUR*	*%*	*m EUR*	*%*
Operational and administrative expenditure	15.67	0.08	0.5	0	0	0.08	0.5
DG total	**15.67m EUR**	***0.08m EUR***	***0.5%***	***0m EUR***	***0%***	***0.08m EUR***	***0.5%***

b) Fraud prevention, detection and correction

DG Competition has developed and implemented its own anti-fraud strategy since 2013, on the basis of the methodology provided by OLAF. It is updated every three years, and was last updated on 18 December 2020. Its implementation is being monitored and reported to the management annually through the internal control monitoring process. Planned activities concerning awareness raising, ethics training and security training have been completed. These activities continue in 2022 along with anti-fraud awareness raising and review of the sensitive functions.

DG Competition also contributed to the Commission anti-fraud strategy and did not receive any *financial* recommendations from OLAF. The results achieved during the year thanks to the anti-fraud measures in place can be summarised as follows: the fraud risks and controls have been assessed and the risk of fraud remains low; thanks the revised ethics guidance and the several corporate and local specific ethics trainings organised, staff has a good level of awareness of the Commission ethics rules and how they apply to DG Competition's work.

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

c) Other control objectives: safeguarding of information and IT systems

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

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

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

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

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

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

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

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

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

The implementation of the internal controls in DG Competition during 2021 contributed to the high quality of enforcement decisions taken by the Commission in the various instruments of competition policy (antitrust, merger control and State aid control). The risk management process has helped to identify and address the main risks that can prevent the achievement of the objectives. Potential weaknesses or errors have been mitigated and corrected through ex-ante controls involving among other things step-by-step procedures and consultations to be followed in the daily operations. A dedicated team in DG Competition continuously updates internal instrument-specific Manuals of Procedures to take account of developments and recent jurisprudence.

The control objective is to ensure that the Commission’s competition policy enforcement is of sufficiently high quality to withstand the scrutiny of the EU courts. This contributes to deterrent effect of competition policy enforcement and avoids undermining the Commission as an enforcer of EU competition policy, by avoiding reputational damage or claims for damages.

Ex-ante controls include management structures and procedures for enforcement and policy initiatives, involving the highest political level, expert economic advice of the Chief Economist Team, peer review panels, consultations with other Commission services, opinions by the Legal Service, independent Hearing Officers, Principal Adviser, a tailored governance structure, comprehensive knowledge sharing tools and IT systems and support. (See annex 6 for details). The ex-post controls of the effectiveness as regards enforcement in the area of the EU competition policy include the Commission's Legal Service yearly analysis and assessment notes on the litigation of the Union and EFTA Courts, including cases lodged, pending and concluded. The analysis of the external audit results has unveiled some weaknesses. A comprehensive set of recommendations has been agreed with the Court to be implemented until 2024. Action has been taken in 2021 to implement these recommendations. These weaknesses however could not have a material impact on the performance of the Directorate General in terms of the effectiveness of the controls. DG Competition therefore concludes that the effectiveness of the internal control objectives has been achieved.

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

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

The amount of fines and penalties issued in 2021 was EUR 1.783 million, of which related to antitrust 1.754 million, mergers 7 million and State aid 22 million, which is 1.386 million more than in 2020. Fines amounting to EUR 14.03 million were cancelled due to Court judgements. There were no waiver decisions adopted. 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.

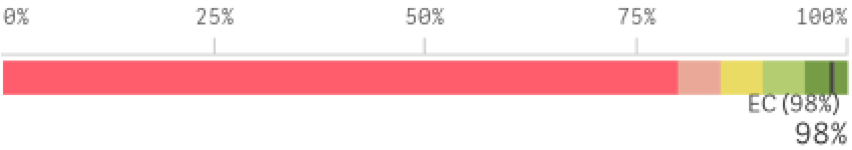
Conclusion

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

Efficiency of controls

The principle of efficiency concerns the best relationship between resources employed and results achieved. This section outlines the indicators used to monitor the efficiency of the control systems. DG Competition continuously reviews its control strategy[172] to ensure the cost-effectiveness of controls.

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

Timely Payments	COMP Score	EC Score
	**98%**	**98%**

The average payment delay in 2021 was 15.2 days[173], which is slightly less than the average payment delay in 2020 (15.6 days). Furthermore, 98% of all payments were executed within the contractual limit, which is slightly lower than in 2020 (99%).

The time to inform beneficiaries in 2021 was 152 days (cf. 102 days in 2019, no grants were awarded in 2020) and the average time to grant increased to 272 days from the deadline to submit proposals (198 days in 2019, no grants were awarded in 2020). The reasons for the increase in time was mainly due to the absence of staff of the beneficiaries during the ongoing pandemic or, in one case, the need for a formal board decision of a beneficiary delaying the signature by one month.

Following the risk analysis that started in 2020 in preparation to the introduction of the dedicated operational budget, the financial circuits were revised effective from September 2021. The aim was to increase efficiency and adjust the controls based on the value of the transactions, focusing in controls more on higher value transactions. Therefore, the revision of the circuit reduced the number of actors in the validation chain from 5 to 3 for transactions below EUR 15 000 and from 5 to 4 for transactions below the Directive threshold, while maintaining the 5 actors validation chain for transactions above the Directive threshold.

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

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

([172]) DG Competition Internal Control Strategy adopted on 28 June 2021.

([173]) Cf. table 6 in Annex 3.

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

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

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

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

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

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

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

Much of the delivery of the strategic objectives depends on the staff of DG Competition. DG Competition continuously reviews its resource allocation within its matrix structure to promote the flexible and efficient use of human resources to ensure delivery of its priorities and therefore closely monitors workload and time management indicators in this context. It also takes action to find further efficiencies in its working methods across the instruments, 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.

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

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

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

e. Other control objectives: Control efficiency as regards fines imposed in the area of competition

Fines imposed in the field of EU competition law can have a high monetary value. However, the stable regulatory environment relating to their processing and collection reduces the risk of encoding errors significantly. An automatically generated monthly list of competition decisions with fines is circulated to ensure a timely encoding in ABAC.

In 2021, fines imposed were introduced into the accounting system in correct and timely manner and the accounts therefore reflects the value of the assets concerned.

Economy of controls

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

The activities of DG Competition are specific, so are the risks. Despite the relatively limited volume of payments (EUR 15.9 million) and budget (EUR 23.6 million), the financial stakes affected by the quality of decisions prepared by DG Competition are significantly higher:

Funds managed	
Payments (Expenditure) 2021	EUR 15.9 M€
Total budget (Operational, administrative and co-delegated)	EUR 20.6 M
Decisions with fines adopted in 2021	EUR 1.783 M
Total amount of pending fines	EUR 14.966 M
Number of pending fines on 31 December 2021	107

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.

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

As regards financial management, it is estimated that 8.2 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 0.72 of one full time post.

The ex-post review of procurements, grants, financial transactions and reported exceptions performed by Unit I4 is estimated to be equivalent to 0.4 of one full time staff.

In total, the cost of controls represents 8.92 full time staff e.g. approximately EUR 995 772 (EUR 913 692 for ex-ante controls and EUR 82 080 for ex-post controls) or equivalent to 6.69% of total expenditure. This is higher than in 2020 when the total costs of controls represented 2.34% of total expenditure. The increase in ex-ante controls can be explained by the increase in budget managed and the new task of programme management under the new Single Market Programme (SMP) that includes a dedicated component for competition policy.

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

The cost of control is estimated at 0.51 of a full time equivalent (EUR 91 145), which includes the tasks related to anti-fraud and ethics by the local ethics/anti-fraud contact point and the HR Business correspondent. The increase of 0.24 FTE with respect to 2020 is explained by the increased workload related to the preparation of the Guide on ethics for DG COMP staff.

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

The controls in this area include the follow-up of the IT Risk Register, the preparation of IT security risk assessments and IT security plans for new information systems, as well as the time dedicated to IT security tasks by staff working on local systems administration, project management and operations management, and the functions of Local Informatics Security Officer and Local Security officer. The cost is calculated as the FTEs of the statutory staff involved in these security controls (a total of 2.12 FTEs or EUR 305 886), and the costs incurred on contracts for External Service Providers (EUR 270 000). The overall cost of these controls is therefore EUR 575 886. This figure is a significant increase compared to last year. It is explained by the fact that the calculation method now includes an estimation of the IT security tasks carried out by 19 other staff in the informatics unit, and by the progressive increase in resources dedicated to IT Security in line with the IT and Cybersecurity Board recommendations and the current cyber-threat landscape.

d. Other control objectives: Cost of control as regards enforcement and policy action taken in the area of EU competition policy

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

The coordination units of each competition instrument serve as centres of expertise that apply quality controls. Their unique role is recognised in DG Competition estimates of the costs of controls: DG Competition estimates that 51 full time equivalents (EUR 9 042 300) from these units can be allocated to the quality control of the enforcement and policy action taken in the area of EU competition policy. This is the same number of full time equivalents as in 2020 - 51 (EUR 8 010 800).

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

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

Once the decision is adopted, the cost of controls to ensure a correct registration of a fine decision corresponds to less than 10% of a full time equivalent (same as in 2020) as the number of fines decisions in a year is limited.

Conclusion on the cost-effectiveness of controls

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

2.1.2. Audit observations and recommendations

This section sets out the observations, opinions and conclusions reported by auditors – including the limited conclusion of the Internal Auditor on the state of internal control. Summaries of the management measures taken in response to the audit recommendations are also included, together with an assessment of the likely material impact of the findings on the achievement of the internal control objectives, and therefore on management's assurance. In 2021, DG Competition was audited by both external and internal independent auditors: the European Court of Auditors (ECA) and the Commission internal audit service (IAS).

A. European Court of Auditors (ECA)

In 2021 DG Competition has not been subject to ECA audits as a lead Commission service but has contributed to a number of ECA audits. In June 2021, the ECA published a special report 15/2021 Air passenger rights during the COVID-19 pandemic. The ECA maintained in recommendation 2(b) that the Commission should take further action to remind Member States that airlines can also use the State aid granted to them to cover the reimbursement of air passengers. Such action could, for example, include a specific communication or a note on this aspect to Member States. In November 2021, the Commission addressed all Member States a note to this effect. In 2021, DG Competition also took action to implement recommendations in ECA's 2020 performance audits in State aid to financial sector and antitrust and merger proceedings.

B. Internal Audit Service (IAS)

In 2021, the IAS concluded an audit on the preparedness of the Competition Programme (CP). In its limited conclusion on the state of internal control of DG Competition, the IAS concluded that the internal control systems in place for the audited processes 2019-2021[174] - taking also into account that the management of DG Competition has accepted all the recommendations issued by the IAS and adopted Action Plans to implement the recommendations - are effective, except for the observations giving rise to the very important recommendations from the audit on the preparedness of the Competition Programme (2021). This includes three very important recommendations where necessary improvements are needed as regards the design and formalisation of the overall process of the CP implementation, selection and prioritisation of the projects during the planning and programming, as well as the design of the monitoring and reporting processes. These improvements are necessary to mitigate the risk of decreased operational efficiency, which could potentially impact the achievement of the programme objectives or their timely completion. The recommendations will be addressed by DG Competition in 2022 in line with the agreed Action Plan.

In consequence, DG Competition considers that, in view of the Action Plan agreed with the IAS for risk mitigation, the residual risk related to the above-mentioned very important recommendations does not affect in a material way the achievement of the internal control objectives, and therefore the assurance provided in the AAR.

([174]) Audit on management of recovery orders for competition fines (incl. guarantees for competition fines) and for recovery orders in the context of the Commission's 'corrective capacity' (2019); Limited review of the management of State Aid in the field of agriculture in DG AGRI (2020); Limited review of the internal control framework in DG Competition (2020); Audit on the preparedness of the Competition Programme (2021).

2.1.3. Assessment of the effectiveness of internal control systems

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

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

DG Competition has assessed in a structured review process its internal control system during the reporting year. To this end, DG Competition used existing procedures (DG Competition IC strategy and DG Competition IC Framework) and structures (senior management, DG Competition IC Coordinator, DG Competition IC Network) established and operating according to the Communication on the Revision of the Control Framework and the Implementation Guide of the Internal Control Framework of the Commission.

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

DG Competition has assessed its control system during the reporting year and has concluded that it is effective and the components and principles are present and functioning well overall, but some improvements are needed as minor deficiencies were related to Internal Control Principles 1-6, 8-10, 13-14 and 16. A need for major improvements was identified related to Principle 3, due to the three very important IAS recommendations. The improvements and remedial measures implemented or envisaged are following agreed Action Plans and recommendations. These include the management of the new Single Market Competition Programme, and alignment of the DG Competition Internal Control Framework implementation with the central guidance.

2.1.4. Conclusions on the assurance

This section reviews the assessment of the elements already reported above, 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, based on the comprehensive, complete and reliable information reported for all significant budget areas (in Sections 2.1.1, 2.1.2 and 2.1.3).

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

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

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

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

Finally, results from audits during the reporting year did not include any critical findings. As for the very important recommendations from the IAS on the audit on the competition programme, the agreed action plan foresees the implementation of the recommendations in 2022. The residual risk from audit recommendations remaining open from previous years and being implemented by DG Competition is not considered to have an impact on the declaration of assurance.

Overall Conclusion

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

2.1.5. Declaration of Assurance

I, the undersigned, Olivier Guersent

Director-General of DG Competition

In my capacity as authorising officer by delegation.

Declare that the information contained in this report gives a true and fair view [175].

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, 31 March 2022

(signed)

Olivier Guersent

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

2.2. Modern and efficient administration – other aspects

2.2.1. Human resource management

DG Competition continued to improve during 2021 human resource management. As a priority, DG Competition ensured that its resources are effectively allocated to the priorities set, especially in view of the continued work on the Recovery and Resilience Facility (RRF), the assessment of the national Recovery and Resilience Plans (RRPs), the ongoing COVID-19 related enforcement work, IPCEI related State aid pre-notifications as well as the numerous competition and new Commission priority initiatives. For example, the workstream related to third-country subsidies continued and a new Task Force 'Digital Markets Act' was created within DG Competition in 2021.

In order to ensure the effective management of human resources and to optimise the capacity to deliver on priorities, DG Competition adopted in June 2021 a local HR strategy consistent with the overall corporate HR strategy. The objectives of the local HR strategy are focused on "Talent", "Leadership & Management", "Workplace & Wellbeing" and "Organization& Culture". The implementation of the strategy started in 2021 through a number of key initiatives and cultural developments which are summarized in an action plan.

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

The compliance with the '10 DOs for people management', signed by all senior and middle managers as well as Deputy Heads of Unit in 2018, was further monitored in 2021 through 84 entry, 85 exit and 44 career development interviews with staff members.

180° feedback development exercise for DG Competition's managers

As an integral part of its staff motivation, engagement, and retention strategy, DG Competition conducted 180° feedback exercises for all senior and middle managers as well as Deputy Heads of Unit. Based on the results of the exercises in terms of areas for further development, follow-up courses focusing on 'coaching and developing others' were organized both for Head of Units and Deputy Head of Units. Furthermore, a follow-up course on 'handling difficult conversations' has been organized for Deputy Head of Units in 2021.

Staff engagement index

DG Competition's staff engagement index increased to 77% in the 2021 staff survey (1 point more than in the 2018 staff survey), which is higher than the Commission staff engagement index of 72%.

Other initiatives for a better workplace

As regards career development and guidance, in 2021 DG Competition continued securing staff integration through dedicated coaching and mentoring for every newcomer. Furthermore, it continued with entrance, career development and exit interviews. Moreover, the reflection on alternative career paths (i.e. Senior Experts) started in the second half of 2021 with a survey among the DG Competition colleagues concerned, followed by a first inaugural meeting.

On 1 April 2020, the Commission adopted measures to reach gender equality at all levels of management by the end of 2024 (Decision SEC (2020)146). To this effect, the Decision sets quantitative targets of first female appointments to be made per Directorate-General and service at middle management. DG Competition should make two first female appointments until 2022 and reach a female representation of 50%. On 31 December 2021, DG Competition met and even exceeded the target of two first female appointments. Furthermore, DG Competition had at middle management level a female representation of 48.94 %.

2.2.2. Digital transformation and information management

Digital transformation

2021 constitutes the second year of DG Competition's implementation of its five-year digital modernisation plan to become a data-driven organisation equipped with state-of-the-art digital tools to support EU competition enforcement, in line with the principles and objectives of the European Commission Digital Strategy. DG Competition made significant progress in digitising business processes and modernising digital solutions in the main clusters:

First, DG Competition is the domain leader in the Commission for modern case management solutions and has developed a common case management platform (CASE@EC) for use by Commission services. CASE@EC will replace progressively DG Competition's ageing case and document management systems. In 2021, CASE@EC has been rolled-out for State Aid case management as well as document registration and management processes for all competition instruments. Work has continued to prepare the implementation of other business domains in CASE@EC, notably Horizontal Projects, Antitrust/Cartels and Merger case management. Moreover, work has begun to add support for the Digital Markets Act and Foreign Subsidies instruments in time for the entry into force of these two new instruments.

Second, as regards digital solutions facilitating digital exchanges with Member States' administrations, companies and citizens, DG Competition achieved significant progress in modernizing digital solutions. In 2021, DG Competition has:

- Improved the State Aid digital solutions (GENIS) and launched an entirely rebuilt application for the reporting of State Aid expenditures by Member States.
- Improved the platform to communicate securely with the European Competition network in the context of Antitrust and Mergers proceedings (ECN2) and the digital solution for leniency applications (eLeniency).
- Rolled-out a fully new digital solution supporting negotiations on confidentiality claims with external parties (eConfidentiality) in the context of Access to File and preparation of decisions.

- Launched in pilot mode a new digital solution supporting Requests for Information in the context of market investigations (eRFI), which will eventually replace the ageing IT system currently supporting market investigations.
- Undertaken work to enable sharing the code of the eLeniency and eConfidentiality solutions with interested National Competition Authorities to increase reusability and support collaboration with Member States and assist them in their own journey of digital transformation.
- Started a project to revamp the publication of competition cases' data on the EUROPA website to help citizens and external stakeholders to access, search and export public competition data.

Third, with respect to the area of data analytics and artificial intelligence tools, projects have been started to define improvements to the handling of large volumes of case related submissions as well as oral statements and on premise access to file. Furthermore, DG Competition has run proof of concepts on advanced data and machine-learning services and digital solutions to support competition investigations, including on the IoT (Internet of Things) sector enquiry and certain second-phase merger and priority antitrust investigations. Work has been undertaken to revamp the eDiscovery document review solution. Finally, new dashboards and reports have been delivered improving the visualisation of information.

Moreover, DG Competition keeps investing into state-of–the-art, non-standard hardware and software solutions operated by specialised staff in the context of investigative and forensic IT activities, performed to detect and effectively prosecute anticompetitive conduct.

Fourth, given its sensitive and confidential nature, DG Competition's information needs to be kept secure. In 2021, IT security plans for a number of new and existing digital solutions have been drafted or updated, and the necessary safety and monitoring measures are being implemented.

Data protection

As regards Data Protection, DG Competition continued to follow up on the implementation of the Commission's Data Protection Action Plan (C(2018) 7432 final) by reviewing its data processing operations in order to ensure their conformity with the new legal framework, notably with the general principles laid down in the regulation. A full review of the processing operations was completed in October 2021.

In addition, Data Protection Coordinators (DPC) team raised awareness on data protection through centrally organised courses and specific action: advertising of training sessions at corporate level, presentations in internal meetings, internal blog posts. The DPC team maintains regular contacts with colleagues involved in processing operations and regularly updates the dedicated Intranet section. Information about data protection principles is also systematically included in the training sessions for newcomers in view of ensure full embedding of data protection rules in the daily work of all staff.

2.2.3. Sound environmental management

DG Competition takes full account of the environmental impact of all its actions and actively promotes measures to reduce the related day-to-day impact of the administration and its work. Having its offices in one of the Commission buildings participating in the Eco-Management and Audit Scheme (EMAS), DG Competition's activities conform with the EMAS and contributed to the reduction of the building's energy consumption, CO_2 emissions, waste generation, water use and office paper consumption.

DG Competition worked towards more efficient waste management by utilising the waste sorting stations installed and internal communication on their better usage. Due to the persisting COVID-19 conditioned teleworking, a satisfactory survey was postponed to a period when more staff presence in the office resumes. The pandemic also defined the ongoing reduction of prints per person. A low CO_2 footprint is based on fewer missions, internal and external meetings, which were performed predominantly via various video-conferencing tools. Collection of old electrical items was prepared in the end of the year, to be performed in Q1 of 2022. Building an EMAS and volunteers' teams continued in 2021. EMAS was incorporated into the Internal Control Network of the DG. EMAS campaigns on corporate level were timely promoted locally via MyIntracom, COMP Newsletter and/ or via emails to all staff members.

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

In recent years, the volume of documentation linked to competition cases has been consistently increasing. At the same time, the Commission has to manage its limited human resources smartly, efficiently and flexibly in line with the priorities. In 2021, in view of also replacing the different legacy case management applications with a common new case management tool CASE@EC, DG Competition started a review of the case management processes and working arrangements in its registry. This work will continue in 2022 and will also be supported by the findings of the IAS audit related to CASE@EC and registry in 2022. The aim is to harmonise the registry working arrangements across the three competition instrument specific registry teams to function as much as possible as one single registry.

In June 2021, DG Competition took action to implement recommendations of the European Court of Auditors (ECA) in its Special Reports on the Commission's control of State aid to EU financial institutions and EU merger control and antitrust proceedings in 2020.