



Management Plan 2017

DG COMPETITION



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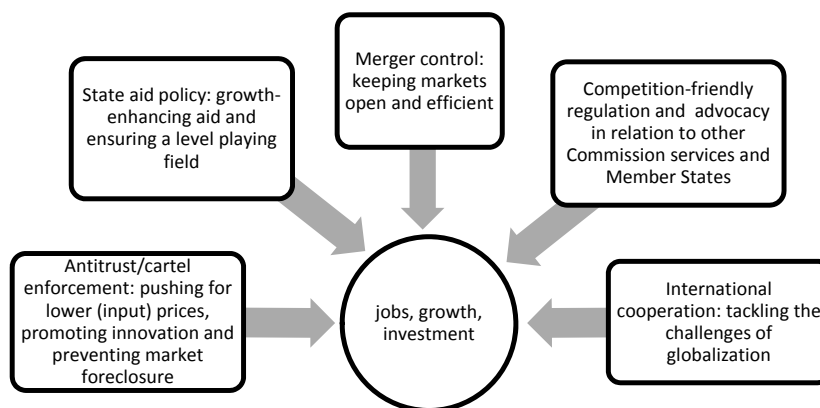
INTRODUCTION

The ultimate goal of EU competition policy is making markets function better for the benefit of consumers – both households and businesses – and the society as a whole, by protecting competition on the market and fostering a competition culture in the EU and worldwide. In his 2016 State of the Union speech¹, the President of the European Commission Jean–Claude Juncker recalled that *"(a) fair playing field also means that in Europe, consumers are protected against cartels and abuses by powerful companies (...) The Commission watches over this fairness. This is the social side of competition law. And this is what Europe stands for."*

By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributes in its Strategic Plan for 2016-2020² to the Commission's general objective *"A New Boost for Jobs, Growth and Investment"* in the European Union.

DG Competition performs the following functions³ to meet these obligations:

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



¹ Political Guidelines of President Juncker, http://ec.europa.eu/priorities/docs/pg_en.pdf State of Union 2016 Speech by President Juncker, http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm, Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014, http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf *"Competition policy is one of the areas where the Commission has exclusive competence and action in this field will be key to the success of our jobs and growth agenda. It should contribute to steering innovation and making markets deliver clear benefits to consumers, businesses and society as a whole. Every effort should be made to maximise the positive contribution of our competition policy in support of our overall priorities and to explain and demonstrate its benefits to citizens and stakeholders at all levels"*.

² Strategic Plan 2016-2020 for DG Competition, available at http://ec.europa.eu/atwork/synthesis/amp/doc/comp_sp_2016-2020_en.pdf

³ The Mission Letter asks the Commissioner for Competition to focus on: *"Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and world-wide"*.

Competition policy actions in 2017

DG Competition's competition policy actions in 2017 will focus on a wide range of policy areas, helping make markets work more fairly for everyone. At the same time, EU competition policy supports several key EU policies and initiatives, including Digital Single Market, Energy Union, Deeper and Fairer Internal Market and fight against tax evasion.

The Commission, together with the national competition authorities (NCAs) and national courts⁴, enforces EU competition rules, based on Articles 101-109 of the Treaty on the Functioning of the EU (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 actions⁵ against companies or Member States when it finds evidence of unlawful behaviour and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests.

In 2017, DG Competition will continue one of its key policy initiatives, "*Empowering the National Competition Authorities to be more effective enforcers of the EU competition rules*"⁶, creating a truly common competition enforcement area in the EU, building on the current achievements and identifying concrete areas of action to boost the enforcement powers of NCAs further. The Commission is working towards an EU legislative initiative with the aim of adopting a proposal in 2017.

One of the cornerstones of the State Aid Modernisation reform has been the new General Block Exemption Regulation (GBER)⁷, which simplified aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling horizontal common interest objectives. A further extension of the GBER is in preparation⁸ in order to cover investments in port and airport infrastructure, as was already announced at the time of adoption of the GBER.

DG Competition will also continue its key enforcement actions in 2017 notably in sectors and areas that are relevant for the Commission's priorities as outlined in the Political Guidelines. DG Competition will continue to give priority to addressing most harmful anti-competitive practices, in particular cartels.

Energy is one of the sectors in which completing the Single Market will bring significant benefits to Europe's consumers and businesses. DG Competition will continue its investigation into potential distortions of price reporting in relation to ethanol price benchmarks. It will also continue its on-going cases in the supply of

⁴ National competition authorities may apply Articles 101 and 102 TFEU and national courts also Articles 107 and 108 TFEU for State aid.

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

⁶ Commission Work Programme 2017, Annex I (New Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_i_en.pdf

⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 187, 26.6.2014, p. 1.

⁸ Commission Work Programme 2017, Annex II (Refit Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_ii_en.pdf

natural gas in Central and Eastern Europe, the gas markets in Bulgaria and the concessions for exploiting hydropower in France. Following the recent State aid sector inquiry into capacity mechanisms, DG Competition will continue to assess the compliance of individual existing and planned capacity mechanisms in several Member States in order to reach the interim targets as set out in the Strategic Plan of 2016-2020. In support of the Clean Energy For All Europeans Package⁹, DG Competition will continue to assess national support measures to promote renewable energy. This will contribute to achievements of the EU 2020 targets and to the further market integration of renewables in the electricity market, as well as, to cost effective support beyond 2020. In mergers, DG Competition will focus on keeping EU energy markets open and equipped to face the challenges of climate change and the modernisation of the energy supply translating into better outcomes of for EU businesses and households.

In 2017, competition policy and enforcement actions will continue to contribute to the implementation of the *Digital Single Market Strategy*. Taking action against anti-competitive foreclosure helps to keep markets competitive, and therefore to maintain incentives to innovate. Search engines are of central importance to a well-functioning Internet. In particular, DG Competition will continue its investigation of Google's practices. DG Competition will also continue its investigation of Qualcomm's practices in the baseband chipset area, as well as Amazon's practices in the publishing sector. In the area of telecoms, DG Competition will continue to remain involved in the legislative process of the Commission proposal for a Directive establishing the European Electronic Communications Code, ensuring that the new rules remain pro-competitive and to verify that network sharing agreements are designed in a pro-competitive manner, especially in concentrated markets. In 2017, carrying out the National Broadband Plans (NBPs), State aid control will continue to ensure that publicly funded networks do not crowd out private investments. DG Competition will also complete its sector inquiry into e-commerce in 2017, by publishing the final report. During 2017, the Commission will continue to keep a watchful eye in relation to mergers in the telecoms sector as well as the communications and IT sector in general.

DG Competition will also continue to contribute to the *Capital Markets Union*. Financial services are an area in which competition policy has made a significant positive contribution over the past years. In 2017, DG Competition will continue to remain active in the financial services sector. In particular, DG Competition will continue to assess the merger between Deutsche Börse and London Stock Exchange. DG Competition will continue in 2017 focusing its State aid control activities in the financial and banking sectors.

Competition policy goes hand in hand with the Commission's efforts towards a *Deeper and Fairer Internal Market*, ensuring that free movement rules are not undermined by anti-competitive conducts. In 2017, DG Competition will continue to contribute to the Single Market Strategy of the Commission, monitor markets and proceed with its investigations in a range of important sectors of the internal market for both EU households and businesses, including financial services, agri-food sector, pharmaceutical sector, transport, and manufacturing.

Fair tax competition is essential for the integrity of the Single Market and for keeping the playing field level for European companies. For these reasons, the fight

⁹ Communication of 30 November 2016 from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of Regions and the European Investment Bank, *Clean Energy For All Europeans*, COM(2016) 860 final, available at http://ec.europa.eu/energy/sites/ener/files/documents/com_860_final.pdf

against tax evasion and tax avoidance is high on the Commission's agenda. In 2017, DG Competition will continue to contribute to this by investigating whether Member States have granted selective fiscal advantages to individual undertakings or groups of undertakings.

Finally, to ensure that aid granted under existing aid schemes effectively complies with State aid rules, DG Competition aims in 2017 to make further progress towards effective and rapid enforcement of recovery decisions, as well as, to continue its monitoring efforts, in particular, in the areas where the implementation of State aid rules seems to raise more issues.

PART 1. MAIN OUTPUTS FOR THE YEAR

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

1.1. Antitrust and cartels

Articles 101, 102 and 106 TFEU

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

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

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

The aim of antitrust and cartels activity¹⁰ in DG Competition is to ensure effective enforcement of antitrust rules with a view to making markets work better protecting consumer welfare. This includes detection, sanctioning, deterrence and remedying of the most harmful anti-competitive practices, which hamper competition and negatively affect incentives to innovation and growth, as well as consumer welfare.

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

Cartels

In 2017, DG Competition will continue to give priority to enforcement activity against cartels. In addition to using the leniency programme, DG Competition will pursue ex officio detection of cartels, aim to reduce the average duration of cartel cases via inter alia the settlement procedure, ensure efficiency and uniformity when settling cases and impose fines at a sufficiently deterrent level.

¹⁰ First, Article 101 TFEU prohibits agreements between two or more independent market operators which restrict competition. This provision covers both horizontal agreements (between actual or potential competitors operating at the same level of the supply chain) and vertical agreements (between firms operating at different levels, i.e. agreement between a manufacturer and its distributor). Only limited exceptions are provided for in the general prohibition. The most flagrant example of illegal conduct infringing Article 101 TFEU is the creation of a cartel between competitors, which may involve price-fixing and/or market sharing. Second, Article 102 TFEU prohibits firms that hold a dominant position on a given market to abuse that position, for example by charging unfair prices, by limiting production, or by refusing to innovate to the prejudice of consumers. Third, Article 106 TFEU enables the Commission to protect competition in the internal market by prohibiting Member State measures that induce public or privileged undertakings to abuse a dominant position or to conclude anti-competitive agreements.

The cartels settlement procedure, introduced in 2008, continues to be widely used. It provides companies with 10% reduction in the fine if they accept liability for the infringement and do not contest the Commission's findings. The settlement procedure contributes to increasing the deterrent effect of the Commission's action against cartels since it leads to efficiency gains and thereby allows the Commission to focus resources on the detection and fight against other cartels. It is estimated that settlements allowed the Commission to reduce the duration by approximately two years. In 2017, the Commission will continue to apply the settlement procedure in cases considered suitable for this procedure.

The recent judgment in *Shrimps*¹¹ has confirmed the principle of the unfettered evaluation of evidence. Wiretap information can be used as evidence in cartel investigations as long as it has been lawfully obtained by the Commission and the parties have been given all opportunities to defend themselves against the use and content of this information as evidence. DG Competition also ensures that its investigative tools remain adapted to technological changes. In 2017, the Commission will continue to apply an improved methodology to gather digital evidence during inspections allowing it to deal more efficiently with the increasing quantity of digital data. The Antitrust Damages Directive¹², whose transposition deadline expired on 27 December 2016, endorsed the effectiveness of the public enforcement system and its instruments to detect and sanction cartels by setting out that leniency statements and settlement submissions cannot be disclosed in the context of private damages litigation.

In 2017, the Commission will continue to work together with other authorities within Europe and beyond (advocacy in the International Competition Network) to ensure efficient cooperation in the fight against cartels and that the instrument is and remains successfully used to end international cartels.

Other anticompetitive agreements and practices

Energy Union

In 2017, DG Competition will continue its antitrust enforcement activity in relation to anticompetitive behaviour in the energy sector pursuant to Articles 101, 102 and 106 TFEU, supporting the Commission's objective of achieving a European Energy Union. Antitrust enforcement can ensure fair access to indispensable energy infrastructure, remove obstacles to market integration and foster competition between and within Member States, helping to keep energy prices in check.

DG Competition will continue its investigation into potential distortions of price reporting in relation to ethanol price benchmarks established by a Price Reporting Agency¹³. On-going cases under Article 102 TFEU also concern the potential abuse by Gazprom of its dominant position in the supply of natural gas in Central and Eastern Europe¹⁴ and the possible foreclosure of gas markets in Bulgaria¹⁵ by the Bulgarian incumbent BEH. DG Competition will also continue to investigate if France has infringed EU antitrust rules by having granted to State-owned Electricité de

¹¹ Case T-54/14, judgment of 8 September 2016.

¹² Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance, OJ L 349, 5.12.2014, p. 1–19.

¹³ Case AT.40054 *Oil and Biofuel Markets*.

¹⁴ Case AT.39816 *Upstream gas supplies in Central and Eastern Europe*.

¹⁵ Case AT.39849 *BEH gas*.

France ("EDF") most of the country's concessions for exploiting hydropower¹⁶. DG Competition will also continue in 2017 to be active in the environmental sector, in particular waste management.

Within the context of the Energy Union Framework Strategy adopted in 2015, the Commission has been working on a number of legislative proposals. Competition enforcement and advocacy play a key role in making the internal energy market function by opening markets, avoiding discrimination and creating a level playing field between all market players (regardless of their nationality) and ultimately promoting innovation and investments to create a unified European energy market. DG Competition has therefore actively contributed to the legislative proposals and will continue to do so in 2017.

Digital Single Market

In 2017, DG Competition will continue its antitrust enforcement activity in the Information and Communication Technologies (ICT) sector to ensure effective competition in these markets. Taking action against anti-competitive foreclosure helps to keep markets competitive, and therefore to maintain incentives to innovate.

Search engines are of central importance to a well-functioning Internet. In 2017, DG Competition will continue its investigation of Google's practices¹⁷.

Mobile devices, including smartphones and tablets, play an increasingly important role in accessing the internet. DG Competition also continues its investigation on examining Google's conduct with regard to a range of mobile apps and services¹⁸.

In the area of telecoms, on 13 September 2016, the Commission adopted two legislative proposals: a proposal for a Directive establishing the "European Electronic Communications Code"¹⁹, which recasts the existing directives, and a proposal for a Regulation establishing the Body of European Regulators for Electronic Communications (BEREC), accompanied by two Communications: "Connectivity for a European Gigabit society: Laying the foundations for a

¹⁶ Infringement number 2015/2187 *Concessions hydroélectriques en France*.

¹⁷ In July 2016, the Commission sent a supplementary Statement of Objections to Google which outlined evidence reinforcing its preliminary conclusion that the company had abused a dominant position in the markets for general internet search services by systematically favouring its own comparison shopping product in its general search results. At the same time, the Commission sent a Statement of Objections to Google outlining its preliminary conclusion that Google had abused a dominant position in search advertising intermediation by artificially restricting the possibility of third party websites to display search advertisements from Google's competitors, see IP/16/2532 of 14 July 2016, http://europa.eu/rapid/press-release_IP-16-2532_en.htm

¹⁸ In April 2016, the Commission sent Google a Statement of Objections in which it reached the preliminary conclusion that the company had abused a dominant position by imposing restrictions on Android device manufacturers and mobile network operators which aimed at preserving and strengthening its dominance in general internet search, see IP/16/1492 of 20 April 2016, http://europa.eu/rapid/press-release_IP-16-1492_en.htm

¹⁹ Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) - COM(2016)590 and Annexes 1 to 11 - Impact Assessment - SWD(2016)303 - Executive Summary of the Impact Assessment - SWD(2016)304 - Evaluation and Executive Summary - SWD(2016)305, <https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code>

competitive Digital Single Market²⁰ and "5G for Europe: An Action Plan"²¹. DG Competition will continue to remain involved in the legislative process, ensuring that the new rules remain pro-competitive.

In 2017, DG Competition will continue to investigate a mobile network sharing agreement between the two largest operators in the Czech Republic²².

In the area of baseband chipsets, which process the core communication functions in smartphones, tablets and other mobile broadband devices, DG Competition's investigations of Qualcomm continue²³.

Also, together with DG Connect, DG Competition will continue to ensure that spectrum rules at national level are compatible with EU directives and in particular with the Competition Directive²⁴.

In the publishing sector, DG Competition will continue its investigation concerning Amazon's²⁵ parity clauses, sometimes referred to as MFNs or Most Favoured Nation clauses, found in its contracts with e-book publishers. The relevant clauses require publishers to inform and offer Amazon the same or more favourable terms compared to its competitors. The Commission is investigating the effect of such clauses and whether they make it more difficult for other e-book distributors to effectively compete with Amazon. In the area of media, DG Competition will continue the on-going investigation relating to cross-border provision of pay-TV services from or to the United Kingdom and Ireland²⁶.

In 2017, DG Competition will complete its sector inquiry into e-commerce by publishing the final report²⁷. The final report will be based on the factual findings as well as on the public consultation with stakeholders. The report will provide an overview of the main competition-relevant market trends identified in the e-commerce sector inquiry and will point to possible competition concerns. As a

²⁰ 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)587 and Staff Working Document - SWD(2016)300, <https://ec.europa.eu/digital-single-market/en/news/communication-connectivity-competitive-digital-single-market-towards-european-gigabit-society>

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "5G for Europe: An Action Plan" - COM(2016)588 and Staff Working Document - SWD(2016)306, <https://ec.europa.eu/digital-single-market/en/news/communication-5g-europe-action-plan-and-accompanying-staff-working-document>

²² For further information see IP/16/3539 of 25 October 2016, <http://europa.eu/rapid/press-release-IP-16-3539-en.htm>

²³ Statements of Objections, as regards payments to customers conditional on exclusivity and potential "predatory pricing" by charging prices below costs with a view to forcing its competition out of the market were sent to the company on 8 December 2015, see IP/15/6271, <http://europa.eu/rapid/press-release-IP-15-6271-en.htm>

²⁴ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services.

²⁵ The Commission opened a formal investigation into some of Amazon's e-book distribution arrangements in June 2015.

²⁶ In July 2016, the Commission made binding commitments offered by Paramount Pictures, see IP/16/2645 of 26 July 2016, <http://europa.eu/rapid/press-release-IP-16-2645-en.htm>

²⁷ On 15 September 2016 the Commission published a Preliminary Report on the e-commerce sector inquiry setting out its initial findings, see IP/16/3017 of 15 September 2016, <http://europa.eu/rapid/press-release-IP-16-3017-en.htm> The Preliminary Report was subject to a public consultation, which ended on 18 November 2016.

follow-up, the Commission might consider opening case investigations to enforce the competition rules and provide guidance to businesses on the types of restrictions that are permissible online.

Deeper and Fairer Internal Market

The Commission is engaging in wide-ranging efforts to support a deeper and fairer internal market. Competition policy goes hand in hand with internal market policy, creating a level playing field and ensuring that free movement rules are not undermined by anti-competitive conducts. In 2017, DG Competition will continue to monitor markets and proceed with its investigations in a range of important sectors of the internal market for both EU households and businesses, including financial services, agri-food sector, pharmaceutical sector, transport, and manufacturing. DG Competition will also continue to contribute to the Capital Markets Union and the Single Market Strategy of the Commission.

In 2017, the Commission intends to continue its investigations in the MasterCard II²⁸ and Visa MIF cases²⁹ on interbank fees in the financial sector. Together with DG FISMA it will also continue the monitoring of the implementation of Regulation 2015/751 on interchange fees for card-based payment transactions ('IFR') and Directive 2015/2366 on payment services ('PSD II') and adopt Regulatory Technical Standards on separation of payment card schemes and processing infrastructure (IFR) and on strong customer authentication and secure communications (PSD II). In the fast developing electronic payments market the Commission will specifically monitor whether traditional payment operators (e.g. banks and card schemes) may violate the competition rules by trying to maintain their gate-keeping position, or new operators (e.g. handset makers, operating system providers) may leverage their market power to create new gate-keeping or monopolistic positions.

In 2017, DG Competition will continue to monitor the commitments that apply for 10 years and will address the concerns of coordination and entry barriers in the over-the-counter (OTC) credit derivatives market following the adoption by the Commission of two commitment decisions addressed to the International Swaps and Derivatives Association (ISDA) and data provider IHS Markit in July 2016³⁰. DG Competition will possibly also engage in a study on potential competition issues of loan syndication³¹.

Other examples of on-going investigations in 2017 relate to the market entry of generic Modafinil (sleeping disorder medicine) in the pharmaceutical sector³², on-

²⁸ A Statement of Objections was issued in July 2015, see IP/15/5323 of 9 July 2015, http://europa.eu/rapid/press-release_IP-15-5323_en.htm and a hearing took place in May 2016.

²⁹ A second partial settlement was reached on 26 February 2014, OJ C 147, 16.5.2014, p. 7, but the case continues regarding Visa Inc.'s inter-regional inter-bank fees, Frequently Asked Questions http://europa.eu/rapid/press-release_MEMO-14-138_en.htm

³⁰ In July 2016, the Commission made binding commitments offered by ISDA and Markit, see IP/16/2586 of 20 July 2016 http://europa.eu/rapid/press-release_IP-16-2586_en.htm

³¹ This area exhibits close cooperation between market participants in opaque or in-transparent settings, such as over-the-counter (OTC) activities, which are particularly vulnerable to anti-competitive conduct. Work will focus on obtaining relevant information on market structure, dynamics between market participants and potential competition issues.

³² Case AT.39686 *Cephalon*, for further information see IP/11/511 of 28 April 2011 http://europa.eu/rapid/press-release_IP-11-511_en.htm?locale=fr

going investigations in the rail sector³³ and code share agreements between airlines³⁴.

DG Competition will also continue its investigation related to practices in the beer market³⁵ that may segment the internal market along national border as well as continue looking into agreements between operators in the milk and meat supply chain in France that may exclude foreign products from the market.

In the sports sector, DG Competition will continue its antitrust investigation into the International Skating Union's³⁶ (ISU) rules imposing penalties on skaters up to a total ban from key international competitions if such skaters take part in events not approved by the ISU. Such rules are likely to prevent alternative organisers of sporting events from entering the market or drive them out of business.

In respect to manufacturing, DG Competition will continue to prevent anticompetitive agreements and practices as regards the supply of basic materials in order to ensure that EU high-value added industries such as automotive, aerospace, consumer products and chemicals can obtain the key needed inputs at competitive prices. These industries continue to represent a significant share of EU GDP, make a substantial contribution to the trade balance and also generate the high-value jobs that are at the heart of the Commission's strategy for re-industrialisation.

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

National competition authorities

In 2017, DG Competition will continue working with NCAs on individual cases with a view to ensure coherent and effective application of Articles 101 and 102 TFEU, inter alia by scrutinising envisaged decisions submitted to the Commission in accordance with Regulation 1/2003. It will also further organise and animate multilateral work in the ECN at different levels with a view to contribute to these objectives. The strategic steer comes from the regular half-yearly meetings of the heads of the NCAs with the Director General of DG Competition. Technical work is carried out in the ECN Plenary and in a range of ECN working groups and sectorial subgroups.

The 2014 Commission Communication³⁷ on Ten Years of Regulation 1/2003³⁷ took stock of the enforcement record by the Commission and the NCAs. Furthermore, it called upon creation of a truly common competition enforcement area in the EU, building on the current achievements and identifying concrete areas of action to

³³ On 10 November 2016, the Commission opened a formal investigation on the Czech rail market following concerns of possible predation by the rail incumbent to foreclose competitors, see IP/16/3656 of 10 November 2016, http://europa.eu/rapid/press-release_IP-16-3656_en.htm

³⁴ A Statement of Objections was sent to Brussels Airlines and TAP Portugal on 27 October 2016, see IP/16/3563 of 27 October 2016, http://europa.eu/rapid/press-release_IP-16-3563_en.htm

³⁵ On 30 June 2016, the Commission opened a formal investigation into AB InBev's practices on the Belgian beer market, see IP 16/2361 of 30 June 2016, http://europa.eu/rapid/press-release_IP-16-2361_en.htm

³⁶ A Statement of Objections was sent to the ISU on 27 September 2016, see IP/16/3201 of 27 September 2016, http://europa.eu/rapid/press-release_IP-16-3201_en.htm

³⁷ Communication from the Commission of 9 July 2014, *Ten Years Of Antitrust Enforcement Under Regulation 1/2003: Achievements And Future Perspectives*, COM/2014/0453, <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20140453.do>

boost the enforcement powers of NCAs further. In November 2015, the Commission launched a public consultation on how to empower NCAs to be more effective enforcers³⁸. The Commission has carefully reviewed all input received in the public consultation. 80% of stakeholders expressed broad support for taking action to ensure that NCAs have the means and instruments they need. On this basis, the Commission is working towards an EU legislative initiative with the aim of adopting a proposal in 2017³⁹.

National courts

EU antitrust rules are enforced not only by the European Commission and NCAs (public enforcement), but also by national courts when they protect subjective rights under Articles 101 and 102 TFEU, for example by awarding damages to consumers and companies harmed by infringements of these rules (private enforcement). This is because Articles 101 and 102 TFEU have direct effect and confer rights on individuals which can be enforced before national courts. Effective overall enforcement of antitrust rules in the EU requires interplay between public and private enforcement. In 2017, DG Competition will continue to strengthen its cooperation with national courts. DG Competition is committed to providing support to national courts in individual cases pending before them, by providing information and opinions concerning the application of the antitrust rules.

The deadline to implement Directive 2014/104/EU on antitrust damages actions⁴⁰ in Member States' legal systems expired on 27 December 2016. In 2017, the Commission will be assessing the completeness and accuracy of the directive's implementation. DG Competition will also follow related policy and case-law developments at national level with a report to the European Parliament and the Council, due by the end of 2020, on the effects of the harmonised EU-wide private enforcement regime on citizens and businesses. Further, following the publication in October 2016 of a "Study on quantifying passing-on effects in antitrust damages actions"⁴¹, the Commission will work towards issuing guidelines for national courts on this subject-matter⁴².

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

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

³⁸ The Commission invited feedback from a broad range of stakeholders on potential improvements to guarantee that NCAs (i) have the right tools to detect and sanction violations of the EU competition rules; (ii) have effective leniency programmes that encourage companies to come forward, possibly in several jurisdictions, with evidence of illegal cartels; and (iii) have adequate resources and are sufficiently independent when enforcing EU competition law.

³⁹ Commission Work Programme 2017, Annex I (New Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_i_en.pdf

⁴⁰ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance, OJ L 349, 5.12.2014, p. 1–19.

⁴¹ See e.g. the study "Study on Passing On of Overcharges" (2016) prepared by RBB Economics and Cuatrecasas, Gonçalves Pereira, available at <http://ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf>

⁴² As foreseen in Article 16 of the Antitrust Damages Directive.

In the context of its review of the Insurance Block Exemption Regulation (EU) No. 267/2010 (IBER)⁴³, DG Competition has assessed the replies to the public consultation⁴⁴ and consulted the stakeholders. The Report on the functioning and future of the IBER⁴⁵ was submitted to the Parliament and Council in March 2016. The Commission also published two studies⁴⁶ on issues regarding the functioning of the IBER. Following its review, the Commission's final position is to let the regulation expire on 31 March 2017⁴⁷. This means that as of 31 March 2017, the 2011 General Horizontal Guidelines will apply to the categories of cooperation previously covered by IBER namely: exchange of information and co(re)insurance. DG Competition will therefore provide advice and support to insurance undertakings in the period of adaptation in case these would need further clarification on the application of the Horizontal Guidelines.

In November 2015, the Commission adopted new Guidelines on the application of EU antitrust rules to the agricultural sector, more precisely on the application of the rules set out in Articles 169, 170 and 171 of *Regulation 1308/2013 establishing a Common Market Organisation for agricultural products* (CMO Regulation) for the olive oil, beef and veal, and arable crops sectors⁴⁸. These guidelines are intended to ensure a coherent application of the new derogations, helping farmers and other market operators to obtain efficiencies in production. In 2016, DG Competition monitored the food sector and the application of the adopted rules on joint-selling by producers in certain agricultural sectors. The Commission is mandated by the CMO Regulation to report to the legislator on the implementation of competition rules in the agricultural sector, in particular, the new specific competition rules regarding joint selling by producers in the agricultural sector of olive oil, beef and veal and arable crops in 2017⁴⁹. In this context, DG Competition is planning a study on *Producer Organisations and their activities in the olive oil, beef and veal, arable crops sectors*⁵⁰ to support this report.

⁴³ The regulation contains a sunset clause which foresees expiry in March 2017, OJ L83, 30.3.2010, p. 1.

⁴⁴ Targeted questionnaires sent to pools, customers, insurance intermediary federations/brokers and mutual insurance associations.

⁴⁵ The Report presents the preliminary findings and conclusions of the Commission's Review and is accompanied by a Staff Working Document (SWD), see Report of 17 March 2016 available at http://ec.europa.eu/competition/sectors/financial_services/iber_report_en.pdf; Staff Working document at http://ec.europa.eu/competition/sectors/financial_services/iber_sw_d_en.pdf; Executive summary at

http://ec.europa.eu/competition/sectors/financial_services/iber_executive_summary_en.pdf and IP/16/860 of 17 March 2016, http://europa.eu/rapid/press-release_IP-16-861_en.htm

⁴⁶ See *Switching of tangible and intangible assets between different insurance products* (August 2016) at http://ec.europa.eu/competition/sectors/financial_services/KD0216917ENN.pdf and *Different forms of cooperation between insurance companies and their respective impact on competition* (August 2016) at http://ec.europa.eu/competition/sectors/financial_services/KD0216918ENN.pdf

⁴⁷ For further information see MEX/16/4369 of 13 December 2016, http://europa.eu/rapid/press-release_MEX-16-4369_en.htm

⁴⁸ Commission Notice – Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors, OJ C 431, 22.12.2015.

⁴⁹ By 31 December 2017, as set out in Article 225(d) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671–854.

⁵⁰ See Annex 1 to Management Plan 2017 – DG Competition.

In 2016, the Commission reduced for the first time under Regulation 1/2003 the fine in a prohibition decision taking into account the cooperation of the party⁵¹. DG Competition will consider similar reductions in current investigations, where the parties may be interested in cooperating with the Commission's investigation.

1.2. Merger control

EU merger control

The purpose of EU merger control⁵² is to ensure that market structures remain competitive while facilitating smooth restructuring of the industry, not only as regards EU-based companies, but any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. But, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur⁵³.

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

EU merger control⁵⁴ aims to facilitate smooth market restructuring by assessing non-harmful mergers in a streamlined manner, while preventing the emergence of market structures which impede effective competition and the deterioration of such structures in cases where competition is already less effective. Thus EU merger control guarantees a rapid assessment and clearance of non-problematic mergers.

The vast majority of cases notified are approved in a simplified procedure⁵⁵ without the need to open an in-depth investigation. The simplified procedure is applied in relation to approximately 70% of all final Commission decisions in mergers. DG Competition expects this trend to continue also in 2017.

The substantial growth in merger activity in 2015 and 2016 is reflected in the significant increase of the number of merger notifications received by the Commission. DG Competition expects this trend to continue in 2017.

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

Industry restructuring is an important way of fostering efficient allocation of production assets. But, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to significant impediment to effective competition do not occur.

In 2017, DG Competition will remain vigilant in order to ensure that markets are kept open and competitive in the internal market and to effectively underpin the

⁵¹ Case AT.39759 *ARA foreclosure*, IP/16/3116 of 20 September 2016.

⁵² 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.

⁵³ DG Competition exclusively assesses those proposed merger transactions that exceed the thresholds of the EU Merger Regulation. Below these thresholds, Member States are competent to assess the transaction under their national legislation, referral rules allowing for some flexibility in the entire control system.

⁵⁴ 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.

⁵⁵ Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14.12.2013, p. 4.

Commission's priorities including in the field of Capital Markets Union, Energy Union, Digital Single Market and Deeper and Fairer Internal Market.

During 2017, the Commission will continue to keep a watchful eye in relation to mergers in the telecoms sector as well as the communications and IT sector in general.

In the financial services/financial infrastructure sector, DG Competition will continue in 2017 assessing the merger between Deutsche Börse and London Stock Exchange⁵⁶.

In the energy sector, merger control will focus on keeping EU energy markets open and equipped to face the challenges of climate change and the modernisation of the energy supply translating into better outcomes for EU businesses and households.

In 2017, DG Competition will also continue to investigate the ongoing European restructuring of the passenger airline and worldwide consolidation of the container liner shipping⁵⁷ sectors.

In the ongoing investigations in the agro-chemical sector, in particular the proposed merger between Dow and DuPont⁵⁸, DG Competition will continue to assess the effect on innovation in 2017. In 2017, DG Competition will also continue to carefully review mergers in concentrated markets, such as, basic industries and commodities markets.

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

In 2016, the Commission launched a public consultation in the context of an ongoing evaluation⁵⁹ of procedural and jurisdictional aspects of EU merger control. This ongoing evaluation builds upon the results of the 2014 public consultation to the White Paper "*Towards more effective EU merger control*".

In the White Paper the Commission made concrete proposals on a possible extension of EU merger control to the acquisition of non-controlling minority shareholdings, the streamlining of the referral system and additional simplification. The feedback received on the topics of referrals and further simplification was broadly supportive of the Commission's proposals. On the other hand, respondents to the 2014 public consultation generally considered the proposals as regards minority shareholdings as not proportionate to the perceived limited scope of the problem identified. Following this public consultation and some additional reflection on the topic of minority shareholdings, there appears to be no need, at this stage, to carry out any further evaluation in this field.

⁵⁶ Case M.7995 *Deutsche Börse / LSE*. In September 2016, the Commission opened an in-depth investigation into the transaction, based on concerns that the merger could lead to higher prices, less choice and reduced innovation in a number of markets, mostly due to the fact that it combines Europe's largest clearing houses. The review continues in 2017.

⁵⁷ Following the clearance decisions with commitments in 2016 in Cases M.7908 *CMA CGM/NOL* and M.8120 *Hapag Lloyd/UASC*, the three leading Japanese container liner shipping companies *K Line*, *MOL* and *NYK* announced on 31 October 2016, a Joint Venture combining their activities.

⁵⁸ Case M.7932 *Dow / DuPont*, IP/16/2784 of 11 August 2016 http://europa.eu/rapid/press-release_IP-16-2784_en.htm

⁵⁹ *Consultation on Evaluation of procedural and jurisdictional aspects of EU merger control*, launched on 7 October 2016 until 13 January 2017, http://ec.europa.eu/competition/consultations/2016_merger_control/index_en.html

Meanwhile, a debate has emerged on the effectiveness of the turnover-based jurisdictional thresholds in EU merger control when it comes to some high-valued transactions involving target companies with limited or no turnover, notably in the digital economy. Facebook's acquisition of WhatsApp has been a catalyst for this recent debate. The ongoing evaluation of procedural and jurisdictional aspects of EU merger control focusses thus on whether the current purely turnover-based thresholds of the Merger Regulation allow capturing all transactions which can potentially have an impact on the internal market and, if not, about the possibility to introduce complementary jurisdictional thresholds, based for instance on the transaction value. In addition to this, the evaluation seeks to explore the potential for further simplification of EU merger control, going beyond the suggestions made in the White Paper. A number of technical aspects of merger procedures will also be reviewed. In 2017, the Commission will carefully review all input received in the public consultation before deciding whether and to what extent it should take further action.

1.3. State aid control

State aid control

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

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

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

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

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

The ambitious State Aid Modernisation (SAM) reform⁶⁰ was launched in 2012⁶¹ and aimed at promoting good aid that supports investments and spurs growth while contributing to Member States' efforts towards budgetary consolidation. In 2016, the Commission adopted the last remaining item in completing SAM - the Notice on

⁶⁰ For a comprehensive overview of State Aid Modernisation, see http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

⁶¹ Communication of 8 May 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU State Aid Modernisation (SAM)*, COM(2012) 209 final.

the Notion of Aid⁶² which provides guidance on the scope of State aid control with a view to facilitate public investment in the EU.

One of the cornerstones of the State Aid Modernisation reform has been the new General Block Exemption Regulation (GBER)⁶³, which simplified aid granting procedures for Member States by authorising without prior notification a wide range of measures fulfilling horizontal common interest objectives. Only cases with the biggest potential to distort competition in the Single Market will remain for ex-ante assessment (notification). As a result of the reform, a significantly larger number of smaller and unproblematic measures are exempted from prior notification, in exchange for strengthened controls at Member State level, greater transparency and better evaluation of the impact of aid. As mentioned in the Commission Work Programme 2017, a further extension of the GBER is in preparation⁶⁴ in order to cover investments in port and airport infrastructure, as was already announced at the time of adoption of the GBER.

The SAM reform also implied a greater role for the Member States in State aid control including in designing State aid measures to fit the rules (particularly the GBER), taking responsibility and complying with the transparency and evaluation⁶⁵ requirements. In 2016, DG Competition in cooperation with the Member States provided an informatics tool to facilitate the compliance with the transparency requirement and to ensure the publication of aid awards granted. Since February 2016, the scheme level expenditure information that is annually reported by the Member States has been published on DG Competition's website. DG Competition will continue to support the Member States in meeting the SAM obligations. In 2017, the main focus of DG Competition, in partnership with the Member States, is to ensure effective compliance with the new rules.

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

In 2017, DG Competition will continue implementing the State aid rules in the area of RDI with the aim of making sure that public funding goes to research projects that would not have happened otherwise, that is to say to projects that go beyond the state of the art and which bring innovative products and services to the market and ultimately to consumers.

Aid to risk finance

The risk finance regime, which the Commission continues to apply in 2017, provides the framework for seamless support of new ventures from their creation to their development into global players, so as to help them overcome the critical stages – the so-called "valley of death" – where private financing is either unavailable or not available in the necessary amount or form.

⁶² Commission notice on the Notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.

⁶³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 187, 26.6.2014, p. 1.

⁶⁴ Commission Work Programme 2017, Annex II (Refit Initiatives), at http://ec.europa.eu/atwork/pdf/cwp_2017_annex_ii_en.pdf

⁶⁵ Evaluation has so far concerned 33 schemes in 13 Member States representing EUR 38 billion in total annual budget, or about 40% of Member States' annual State aid expenditures. The initial focus in 2014-2015 was mostly on large aid schemes implemented under the GBER for either R&D&I or regional aid. In 2016, the practice was extended to notified broadband and energy schemes as well.

Regional aid

Regional State aid policy continues to be an important instrument in the EU's toolbox to achieve greater cohesion also in 2017. Spending on regional aid is an important component of the overall State aid spending by Member States: in the period 2008-2013, regional aid amounted to EUR 78.5 billion, or some 18.5% of total State aid granted by Member States in that period. Following the Report on compliance with State aid rules in ESIF operations by the European Court of Auditors (ECA)⁶⁶, in 2017 DG Competition will continue to strengthen its efforts to increase awareness and knowledge of State aid rules among ESIF stakeholders in the Member States, including Managing Authorities and national audit authorities. It will also continue to cooperate closely with other DGs responsible for ESIF programmes in order to implement the recommendations formulated by ECA.

Energy Union

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

State aid control in the areas of energy and environment contributes to reaching the EU ambitious energy and climate targets at the least possible cost for taxpayers and without undue distortions of competition. In 2017, DG Competition will continue to apply the Environmental and Energy State Aid Guidelines. Moreover, DG Competition will pay particular attention to ensure that aid promoting electricity from renewable energy sources is in general granted through competitive bidding processes. The rules on granting aid through competitive bidding processes are mandatory as of 1 January 2017. Several Commission decisions since mid-2014 give guidance on the circumstances in which competitive bidding processes must be envisaged and how grid constraints, promotion of innovative technologies and diversification can be taken into account when designing support measures.

Following the recent State aid sector inquiry into capacity mechanisms⁶⁷, DG Competition is assessing the compliance of individual existing and planned capacity mechanisms in several Member States. This is to ensure that these schemes are implemented only when necessary for security of supply reasons and that their distortive effects on the electricity market are limited. In order to reach its interim milestone for 2017, DG Competition will focus on assessing large new country-wide schemes (for instance for Italy and Ireland) and non-notified existing schemes which the sector inquiry has identified as harmful, for instance, mechanisms designed as a capacity payment⁶⁸.

Digital Single Market

In the broadband sector private companies tend to invest mostly in urban highly populated areas which can assure rapid return on investment. As a result, in certain areas – in particular rural areas – public funds are needed to ensure the

⁶⁶ Court of Auditors Special Report 24/2016 – "More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy"

⁶⁷ On 16 November 2016, the Commission published the final report of its capacity mechanism sector inquiry, see IP/2016/4021 of 16 November 2016 http://europa.eu/rapid/press-release_IP-16-4021_en.htm

⁶⁸ DG Competition Strategic Plan 2016-2020, Specific objective 8, result indicator 2: Number of EEAG-compatible capacity mechanisms as share of all existing capacity mechanisms.

sustainability of investment supporting the deployment of broadband networks for the sake of inclusion and development.

Therefore, public spending next to private investments continue to be key to achieve the longer term objectives set by the Digital Agenda for Europe up to and beyond 2025⁶⁹.

Since the adoption of the Digital Agenda for Europe (DAE) 2020⁷⁰, most Member States have gradually adopted National Broadband Plans (NBPs). State involvement (via State aid and regulation) has been very significant and will continue in 2017. Experience with more than 140 State aid decisions in the sector indicates that difficulties still exist with the implementation of certain State aid schemes. In 2017, State aid control continues to ensure that publicly funded networks do not crowd out private investments. To safeguard incentives for private investment, the Commission will assess public spending against pro-competitive benchmarks.

Taking actions against selective tax advantages

Fair tax competition is essential for the integrity of the Single Market and for keeping the playing field level for European companies. For these reasons, the fight against tax evasion and tax avoidance is high on the Commission's agenda⁷¹. DG Competition contributes to this by investigating whether Member States have granted selective fiscal advantages to individual undertakings or groups of undertakings⁷². While designing tax systems and collecting taxes are competences of EU Member States, they have to comply with internal market rules and competition law.

The Commission has recently confirmed that aggressive tax planning may entail a breach of EU State aid rules. This applies to preferential tax schemes, like the Belgian Excess Profit system⁷³ or individual tax rulings, like the case of Apple

⁶⁹ As defined in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – *Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society*, of 14 September 2016 COM(2016) 587 final:

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

⁷⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *A Digital Agenda for Europe*, COM/2010/0245 f/2 [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010DC0245R\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010DC0245R(01)) Coverage of 30 Mbps download for all Europeans and take-up of 100 Mbps subscriptions for at least 50% of European households.

⁷¹ Mission Letter by President Juncker to Commissioner Vestager, 1 November 2014, http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf

⁷² In 2013 DG Competition set up a task force to investigate ex-officio whether Member States grant special tax deals to companies, in particular to multinational companies. This Task Force, which was in the meantime transformed into a permanent unit, has been systematically investigating the tax ruling practice in all Member States. In the overall context DG Competition's contribution consists, *inter alia*, in ensuring that tax authorities do not grant fiscal advantages to selected companies or kind of companies.

⁷³ For further information see IP/16/42 of 12 January 2016, http://europa.eu/rapid/press-release_IP-16-42_en.htm

(Ireland)⁷⁴. In these cases the national tax authorities accepted to artificially lower the taxes due by certain companies. Therefore, the Commission has ordered the respective Member States to recover the unpaid taxes from these companies, in order to remove the unfair competitive advantage they have enjoyed and to restore equal treatment with other companies.

The Commission will in 2017 continue its pending formal investigations into tax rulings granted to Amazon, McDonald's and Engie by Luxembourg, in order to decide whether these rulings provided the companies with undue financial advantages⁷⁵. In 2017, the Commission will also continue assessing the tax ruling practices of all Member States.

The Commission will continue in 2017 its investigation as regards the corporate tax exemptions for ports' economic activities in Belgium and France⁷⁶. State aid in the form of such tax advantages distorts competition and creates an obstacle to growth and jobs in Europe. The Commission's action in this area is consistent with the principle that all companies should pay their fair share of taxes.

With regard to sector-specific taxes with discriminating elements, resulting in State aid to certain operators, the Commission will remain vigilant to address possible issues. Following the Commission's decisions in 2016 on three Hungarian fiscal measures⁷⁷, all featuring a progressive tax rate structure in breach of EU State aid rules, the Commission will continue investigating a Polish retail tax similar to the Hungarian taxes⁷⁸.

Financial services

Specific objective 9: Stability and promotion of competition in the banking sector

In 2017, DG Competition will continue focusing its State aid control activities in the financial and banking sectors.

The EU has introduced tools (legislation and institutions) to deal with banks' failure, and a clear cost distribution between the creditors and the rest of the banking

⁷⁴ For further information see IP/16/2923 of 30 August 2016, http://europa.eu/rapid/press-release_IP-16-2923_en.htm

⁷⁵ For further information see IP/14/1105 of 7 October 2014, http://europa.eu/rapid/press-release_IP-14-1105_en.htm; IP/15/6221 of 3 December 2015, http://europa.eu/rapid/press-release_IP-15-6221_en.htm and IP/16/3085 of 19 September 2016, http://europa.eu/rapid/press-release_IP-16-3085_en.htm

⁷⁶ For the Ports Taxation in Belgium, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38393 and for the Ports Taxation in France, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38398. Moreover, in January 2016 the Commission adopted a negative Decision as regards the corporate tax exemption for Dutch public seaports, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_25338

⁷⁷ For the Hungarian Advertisement Tax, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39235; for the Hungarian food chain inspection fee, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40018; and for the Hungarian health contribution of tobacco industry businesses, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41187

⁷⁸ For the Polish retail tax, see http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44351

system for the protection of the taxpayer. The bail-in provisions of the Bank Recovery and Resolution Directive (BRRD) entered into force on 1 January 2016. The BRRD is shifting the cost of bank failures to shareholders and creditors, and has the objective to minimise State aid. However, also under this new resolution framework, State aid is still possible, both outside resolution and in resolution cases.

State intervention remains a tool used by national authorities to avoid triggering bail-in in case they are structured at no aid terms⁷⁹, i.e. precautionary recapitalisation or under national insolvency regimes. DG Competition will continue to play a key role in controlling future public supports in the financial sector, to make sure that the aid given is kept to the necessary minimum (among other by ensuring subordinated debt burden sharing, as required by the 2013 Banking Communication⁸⁰; such conversion of subordinated debt into capital reduces the aid amount needed) and that adequate measures are taken to ensure return to viability and minimise distortions of competition, to preserve equality of treatment among Member States and to maintain the integrity of the internal market. In that respect, in 2016 the Court of Justice – in the *Kotnik* case⁸¹ - confirmed that the Commission's requirement that subordinated debt is converted into capital prior to any state aid injection is not disproportionate in view of the objective to limit the aid to the minimum necessary.

Deeper and fairer internal market in the real economy

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

Aid to manufacturing and undertakings in difficulty

In 2017, State aid control in manufacturing industries will continue to be geared at enforcing the rules for rescue and restructuring of firms in difficulty in the "real" economy. These rules address particularly distortive aid to distressed undertakings which without public support would normally exit the market leaving their assets and market share available to more efficient competitors. Given the potential of such aid to slow down productivity and market-driven restructuring, such aid is allowed only under specific conditions ensuring, in particular, that the aid contributes to objectives of common interest.

In this respect, the Commission will continue its investigation on approximately EUR 4 billion restructuring aid planned to be granted by France to Areva, a State-owned company active in the supply of nuclear fuel and reactors⁸². This is the highest amount of restructuring aid ever granted to an industrial undertaking. Another case in the nuclear fuel sector may involve restructuring aid to the

⁷⁹ See for instance the Hungarian bad bank purchasing NPLs at market price. See also the Italian scheme for State guarantee on senior debt instruments issued by vehicles purchasing NPLs; the guarantee is offered at a market conform guarantee fee. Both measures were approved as aid-free measures in 2016.

⁸⁰ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("Banking Communication") OJ C 216, 30.7.2013, p. 1–15.

⁸¹ Case C 526/14 *Kotnik and Others v Državni zbor Republike Slovenije*, judgment of the Court of 19 July 2016, ECLI:EU:C:2016:767.

⁸² Case SA.44727 *Restructuring aid to Areva*, Commission decision of 19 July 2016.

Romanian State-owned supplier *Compania Nationala a Uraniului SA*, following rescue aid approved by the Commission in 2016⁸³. Both cases involve a particularly concentrated market worldwide as well as issues of security of supply under the Euratom Treaty. In the steel sector, the Commission will pursue the ongoing proceedings regarding alleged aid totalling approximately EUR 2 billion granted by Italy to keep *Ilva* – EU's third largest steel producer – afloat, pending the planned sale of the company⁸⁴. Finally, the Commission will continue in 2017 its investigation of alleged aid to the Romanian chemical (chlorine) producer *Oltchim*, also in the context of the sale of the company⁸⁵.

Aid in transport

The transport system is the backbone of the internal market. State aid control has a key role to play in achieving a modern, integrated, efficient and affordable EU transport system, which is a powerful driver for growth and jobs. It contributes to limiting distortions of competition on transport markets, which have been traditionally marked by significant public intervention, so that those markets are as competitive as possible to the benefit of consumers. Moreover, it ensures that public funding is targeted at projects and activities that deliver tangible benefits in terms of mobility of people and goods across Europe.

As regards aviation, which is a priority area, the EU has around 150 scheduled airlines operating in a highly competitive environment, notably on intra-EU routes, where the market is fully liberalised and truly pan-European. Thus, it is essential to ensure that airlines receive State aid only exceptionally, and that aid to airports does not give rise to undue competition distortions on the downstream air transport market. Moreover, aid to regional airports should be granted only if and to the extent that those airports fulfil genuine transport needs, and with a view to phasing out operating aid. In 2017, the Commission will continue to focus on these enforcement priorities, based on the 2014 Aviation State aid Guidelines. In addition, the Commission will pay particular attention to airport cases involving services of general economic interest (SGEIs), to make sure that the operation of an airport is not qualified as an SGEI without adequate justifications. Finally, in 2017, the Commission is expected to adopt a Commission proposal for a Regulation extending the General Block Exemption Regulation (GBER) to unproblematic types of State aid to airports⁸⁶. This will cut red tape for Member States, airport operators and the Commission, and allow the Commission to focus on cases which potentially involve significant distortions of competition.

In the rail sector, certain forms of State funding to incumbent operators are particularly harmful in that they hamper the emergence of real competition and sometimes result in maintaining inefficient operations and poor quality of service. This is notably the case for cross-subsidisation between infrastructure management and transport operations within incumbent groups, overcompensation of public service activities and public funding linked to public service activities which are not sufficiently defined or too wide in scope. In 2017, DG Competition will continue to prioritise such measures, which will be particularly relevant also in the wake of the

⁸³ Case SA.46312 *Rescue aid to Compania Nationala a Uraniului SA*, Commission decision of 30 September 2016.

⁸⁴ Case SA.38613 *Alleged aid for Ilva in A.S.*, Commission decision of 20 January 2016 and extension of proceedings on 13 May 2016.

⁸⁵ Case SA.36086 *Potential aid to Oltchim*, Commission decision of 8 April 2016.

⁸⁶ The Commission launched a 2nd public consultation from 13 October 2016 until 8 December 2016 inviting stakeholders to comment on the targeted review of GBER extension to ports and airports.

adoption of the 4th Railway Package⁸⁷. Formal investigations to be pursued in 2017 also concern restructuring aid to a number of national railway companies. Competitive railway companies support growth and competitiveness of their industrial suppliers upstream and also the provision of cheaper and environmentally friendly transport services to businesses and citizens alike in the internal market.

In the maritime sector, DG Competition will continue to work towards preventing abuses of the favourable fiscal and social charge regime allowed for shipping companies ("tonnage tax"), ensuring a consistent application of the 2004 Maritime State aid Guidelines. It will also give particular attention to financial compensations linked to large public service contracts.

Aid to the postal sector

Despite the complete liberalisation of the postal sector in the EU between 2011 and 2013, the letter market remains heavily concentrated and subject to very significant State intervention. While Member States enjoy a wide discretion in the definition of Services of General Economic Interest (SGEIs), it must be ensured that their financing does not overcompensate postal incumbents and unduly distort competition not only in the markets directly affected by the aid such as the traditional letter market but also, through potential cross-subsidisation, in neighbouring markets and in particular the fast-expanding field of parcel delivery.

In 2017, the Commission will pursue its rigorous enforcement of State aid rules in the postal sector based on its 2012 SGEI package⁸⁸, notably as regards the most significant cases (notifications and complaints) falling within the scope of the 2012 SGEI Framework which impose stringent compatibility conditions, to ensure a level playing field between postal incumbents and competitors. In 2017, the Commission will continue its formal investigations regarding the Spanish incumbent Correos⁸⁹.

Specific objective 10: Prevention and recovery of incompatible aid

Over the years, the architecture of State aid control has evolved. Today, 29% of aid is granted under block-exempted schemes which are not examined by the Commission prior to their entry into force⁹⁰. Overall, 85% of aid is granted on the basis of previously approved aid schemes or Block Exemption Regulations⁹¹. In that context, it is essential for the Commission to verify that Member States apply the schemes correctly and that they have granted aid only if all required conditions were met. Moreover, DG Competition's State aid control activity also aims at

⁸⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and social Committee and the Committee of the Regions on "*The Fourth Railway Package – Completing the Single European railway area to foster European competitiveness and growth*", COM(2013) 25 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0025&from=EN>

⁸⁸ For further information see IP/11/1571 of 20 December 2011, http://europa.eu/rapid/press-release_IP-11-1571_en.htm

⁸⁹ Case SA.37977 (2016/C) – Complaint regarding unlawful State aid in favour of Sociedad Estatal Correos y Telégrafos S.A., see IP/16/284 of 11 February 2016, http://europa.eu/rapid/press-release_IP-16-284_en.htm

⁹⁰ This percentage concerns aid in terms of volume. Banking schemes are not considered here. For the latest publicly available figures (2015), see Scoreboard, EU 28 (2009-2014), http://ec.europa.eu/competition/state_aid/scoreboard/

⁹¹ Ibid.

ensuring effective prevention and recovery of incompatible State aid in order to prevent that Member States re-create artificial barriers to intra-community trade.

When unlawful aid is declared incompatible, the Commission is obliged to ask for its recovery by the Member State who granted it in order to restore the situation in the market prior to the granting of the aid. The purpose is to re-establish the situation that existed on the market prior to the granting of the aid in order to ensure that the level-playing field in the internal market is maintained. In 2017, DG Competition aims to make further progress towards effective and rapid enforcement of recovery decisions⁹².

Specific objective 11: Monitoring of aid measures

In order to ensure that aid granted under existing aid schemes (without being individually notified and examined by the Commission) effectively complies with State aid rules, DG Competition performs a systematic, sample based, ex-post control (so-called "monitoring exercise"). The scope of the monitoring exercise has been systematically enlarged and covers about 80 block-exempted or approved schemes. The exercise covers all Member States and all main types of aid. In 2017, DG Competition will continue its monitoring efforts, in particular in the areas where the implementation of State aid rules seems to raise more issues.

Specific objective 12: EU competition law instruments aligned with market realities and contemporary economic and legal thinking

In view of maintaining EU competition law instruments aligned with market realities and contemporary economic and legal thinking, DG Competition will focus on ensuring an effective implementation of the State Aid Modernisation package in 2017 by further developing its new partnership with Member States. As indicated in Recital 1 of the new General Block Exemption Regulation (GBER)⁹³, an extension of the GBER is in preparation in order to cover investments in port and airport infrastructure (as well as some other technical adjustments based on the experience of the first years of application of the GBER).

In 2016, the Commission launched a review⁹⁴ of the Simplified Procedure Notice⁹⁵ and of the Best Practices Code⁹⁶. The Simplified Procedure Notice sets out the conditions under which the Commission adopts short-form decisions declaring certain types of State support measures compatible with the internal market and provides guidance in respect of the procedure to be followed.

⁹² By 31 December 2015, the total amount of illegal and incompatible aid recovered from beneficiaries since 1999 stood at EUR 12.3 billion. At the same time, a total of approximately EUR 5.8 billion is currently outstanding. In 2015, the Commission adopted 16 new recovery decisions and an amount of EUR 1.2 billion was recovered by the Member States. At the end of 2015, the Commission had 49 pending active recovery cases (DG Competition calculations).

⁹³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), OJ L 187, 26.6.2014, p. 1.

⁹⁴ The Commission launched a public consultation on the Simplified Procedure Notice during January to April 2016.

http://ec.europa.eu/competition/consultations/2016_simplified_procedure/index_en.html

⁹⁵ Commission Notice on a simplified procedure for the treatment of certain types of State aid, OJ C 136, 16.6.2009, p. 3-12.

⁹⁶ Notice from the Commission, Best Practices Code on the conduct of State aid proceedings http://ec.europa.eu/competition/state_aid/legislation/best_practices_code_en.pdf

The Best Practices Code provides guidance on the day-to-day conducts of State aid procedures and exchange of information between the Commission and Member States. In that respect, it encourages Member States to engage in informal discussions with Commission services and use pre-notification contacts⁹⁷.

In the light of the comments received from the public consultations, the Commission will review these texts in 2017 with the objective to ensure coherence and consistency in the application of the various instruments of the State Aid framework.

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

DG Competition engages in advocacy activities and promotes competition culture in the EU and world-wide. Maintaining and strengthening the Commission's reputation world-wide and promoting international cooperation in this area is also defined as a priority for the present Commission in the area of competition policy⁹⁸.

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

In 2017, DG Competition will continue to work in close cooperation with other Commission services on the Commission's wider economic policy and economic governance agenda, including participating to horizontal policy coordination exercises such as the European Semester and the support to structural reforms as well as contribute to other policy initiatives of the Commission. Such cooperation is aimed at:

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

In 2017, DG Competition will also continue to work together with other services of the Commission and with other institutions, in particular the European Parliament, the Council and the European Central Bank (ECB).

Specific objective 14: Explaining competition policy and its benefits

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

In 2017, DG Competition will continue, together with national competition authorities in the European Competition Network (ECN), its advocacy efforts aimed at demonstrating the benefits of competition to citizens as well as stakeholders and

⁹⁷ The Commission launched a public consultation on the Best Practices Code on 25 November 2016 until 25 February 2017. http://ec.europa.eu/competition/consultations/2016_cbp/index_en.html

⁹⁸ Mission Letter by President Juncker to Commissioner Vestager.

explaining to businesses and Member States the economic and legal approach used by DG Competition when taking decisions⁹⁹. It intends to publish again *EU competition policy in action – COMP in Action*, first published in 2016¹⁰⁰. In 2019, DG Competition plans to conduct again *Citizens' Perception about Competition Policy (Eurobarometer Flash)*¹⁰¹. The results of the survey benefit competition advocacy efforts by the Commission and the national competition authorities.

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

In 2017, DG Competition aims at promoting international cooperation and convergence in the area of competition policy and greater transparency and basic disciplines on subsidies control by undertaking a wide range of activities.

One important field of activity concerns the negotiation of Free Trade Agreements (FTAs) which include competition and State aid provisions in order to ensure a level playing field for European and foreign companies. DG Competition stands ready to support the Commission as regards EU's transatlantic trade agenda with the United States. Other important agreements being negotiated include the FTA with Japan, Indonesia, Mercosur and Mexico.

Another field of activity is the technical cooperation with the Commission's main trading partners with which DG Competition has signed Memoranda of Understanding on Cooperation (MoUs). DG Competition's technical cooperation activities with the Chinese competition authorities are most notable and will continue in the coming years.

A significant programme for technical cooperation with the Indian competition authorities will continue to run during 2017. DG Competition is also providing technical assistance as a follow-up to recently concluded FTAs to countries such as Ukraine.

DG Competition, together with DG Trade, will continue to support discussions on enhanced subsidy disciplines in the World Trade Organisation (WTO) in the aftermath of the Nairobi ministerial conference of December 2015.

In 2017, DG Competition will continue the work on a 2nd generation agreement with Canada¹⁰², which includes provisions into the existing Cooperation Agreement¹⁰³.

⁹⁹ DG Competition's printed publications were sent to 6 452 subscribers/readers and the digital publications to 34 880 in 2015.

¹⁰⁰ EU competition policy in action, *COMP in Action (2016)*, available at <http://ec.europa.eu/competition/publications/kd0216250enn.pdf>

¹⁰¹ Eurobarometer Flash 403 on Citizens' Perception about Competition Policy (2014) published in March 2015, http://ec.europa.eu/competition/publications/reports/surveys_en.html. See also Flash EB 264 EU citizens' perceptions about competition policy (2009), http://ec.europa.eu/competition/publications/reports/surveys_en.html According to the results of the survey, more than 80% of EU citizens believe that competition between companies can lead to better prices, more choice, innovation and economic growth. On the question used as an indicator, 74% of EU citizens respond that effective competition has a positive impact on them as a consumer. EU citizens identify competition concerns in sectors which largely correspond also to the priority sectors that DG Competition focuses on.

¹⁰² For further information see <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016PC0421> and <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52016PC0423>

The 2nd generation agreement would enable both competition agencies to exchange evidence they have obtained in their respective investigations. Once the Commission receives the authorisation by the Council¹⁰⁴, DG Competition will start negotiations on a 2nd generation agreement with Japan.

In 2017, DG Competition will also continue to participate actively in international fora such as the Competition Committee of Organisation for Economic Co-operation and Development (OECD), International Competition Network (ICN) and United Nations Conference on Trade and Development (UNCTAD) by means of written contributions and participation in oral discussions in meetings, conferences and workshops.

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

DG Competition is committed to ensuring competition policy enforcement of the highest standards. In 2017, DG Competition will continue to adhere to the highest standards of professionalism, intellectual rigour and integrity so as to ensure the highest standards in the enforcement of competition policy.

¹⁰³ Council and Commission Decision of 29 April 1999 concerning the conclusion of the Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, OJ L 175, 10.7.1999 p. 49.

¹⁰⁴ Proposal for a Council Decision authorizing the Commission to open negotiations for an agreement amending the Agreement on cooperation in the area of competition policy between the European Union and the Government of Japan, Roadmap of 19 April 2016, 2016/COMP/003, http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_comp_003_competition_policy_japan_en.pdf

PART 2. MAIN ORGANISATIONAL MANAGEMENT OUTPUTS FOR THE YEAR

A. Human resource management

The HR Modernisation project implemented according to the Communication on Synergies and Efficiencies of April 2016 makes changes to the way that HR services are delivered. HR services will be delivered by an Account Management Centre (AMC) inside DG HR. Each DG will have an HR Business Correspondent, responsible for defining HR strategy and taking HR decisions, in consultation with the management of the DG, as well as ensuring that the DG gets the HR services it needs, in cooperation with the AMC. DG Competition will move to the new way of working in 2017¹⁰⁵. To define the HR strategy and priority actions for making progress towards the Strategic Plan targets is the responsibility of the HR Correspondent and will continue to be addressed in the DG Management Plan and Annual Activity Report.

The 2015 Commission decision on female representation in management, which set a 40% female representation target for the entire organisation by 2019, contains the more ambitious target of 45% for female middle management participation in DG Competition. As of 1 September 2016, female representation was at 34.1% of middle management. In view of the demography of DG Competition and the predominance of women in the lower and middle AD grades, the 2019 target would still appear achievable¹⁰⁶.

In an "*Analysis of the degree of integration of equal opportunities into local human resources management*", DG Human Resources acknowledged the progress DG Competition had made towards becoming a respectful working environment, pointing to the percentage of positive replies in the staff survey. At the same time, it recommended the DG to explore the extent to which it was considerate of the needs and aspirations of its diverse workforce and, if need be, to take follow-up initiatives to improve the inclusiveness of its working environment. In response to these recommendations, a set of concrete actions to groom a larger number of female candidates for future management appointments (i.e. creation of a voluntary female AD mentoring scheme) and to improve reasonable accommodation for staff with disabilities has been proposed for implementation in 2017.

Furthermore, 2017 will see fit@work initiatives in line with conferences and events organised at central level and tailor-made to the needs of DG Competition. A number of communication initiatives regarding the rules and use of flexible working arrangements in the DG have taken place in 2016, including a fit@work corner on the DG intranet, presentations to staff and an update of the "*Guidelines on flexible working arrangements in DG Competition*". These initiatives will be continued in 2017.

¹⁰⁵ DG Competition will be supported by AMC 1, which will serve the following group of DGs: COMP, ECFIN, EMPL, FISMA, GROW, TAXUD and TRADE.

¹⁰⁶ With regard to Deputy Heads of Unit, who constitute the prime reserve pool for future management appointments, the baseline figures looked significantly more positive: the female representation rate stood at 41.9%. Moreover, 50% of newly appointed Deputy Heads of Unit in 2016 were women.

Objective: The DG deploys effectively its resources in support of the delivery of the Commission priorities and core business, has a competent and engaged workforce, which is driven by an effective and gender-balanced management and which can deploy its full potential within supportive and healthy working conditions.

Main outputs in 2017:

Description	Indicator	Target
<i>Increase the number of female Heads of Unit in line with the Commission decision on female representation in management</i>	<i>Female representation in middle management</i>	45% (2019)
<i>Local fit@work and well-being initiatives, tailor-made to DG Competition's needs</i>	<i>Percentage of staff who feel that the Commission cares about their well-being</i>	<i>Maintain above Commission average</i>

A brochure for newcomers on mobility and careers in DG Competition has been published in autumn 2016 in response to the comparatively high rate of outward mobility that the DG has seen over the past years. The brochure contains information about the entire range of work areas in DG Competition and about opportunities for mobility inside the DG. By describing a variety of management as well as non-management careers, it also aims at enriching the vision of career progression among staff.

As regards career development and guidance, DG Competition strives to secure staff integration through dedicated coaching and mentoring, appointing a coach as well as a mentor to every newcomer. Furthermore, it holds entrance, career development, exit and return interviews. In addition, a career guidance pool of experienced managers was created in 2016. Further activities to be developed and implemented as part of the Smarter Working Initiative include the definition of alternative career paths (e.g. as regards Senior Experts/Assistants) and the organisation of a Career Day.

Finally, DG Competition reviewed in 2016 its "*10 DOs for people management*", a set of best practices signed by all its managers. To include newly-appointed managers and Deputy Heads of Unit, a new signing ceremony is programmed to take place in early 2017. In order to foster a more consistent and uniform implementation of the "*10 DOs*" by management across the DG, awareness-raising and communication actions are also planned in 2017.

Objective: Attract, motivate and retain highly qualified staff

Main outputs in 2017:

Description	Indicator	Target
<i>Implementation of the Action Plan in the framework of DG Competition's Smarter Working Initiative</i>	<i>Staff engagement index</i>	<i>Maintain above Commission average</i>

B. Financial Management: Internal control and Risk management

Competition policy is implemented through enforcement and involves predominantly procedural (case-handling) and advocacy activities. DG Competition manages a relatively modest administrative budget of EUR 7.5 million under direct centralised management. The budget covers the administrative costs in support of

DG Competition's operations such as mission costs, expert groups, advisory committees, conferences, studies, consultations, expert advice, IT and training. Financial management is therefore not a critical challenge for the DG's operations.

In 2017, as an example of an initiative to improve economy and efficiency of its financial activities, DG Competition will continue the analysis its financial circuits in order to assess the functioning of the internal control system. It will in particular consider whether there is scope to further improve the efficiency of its financial operations without risking the legality and regularity of its transactions.

Objective: Effective and reliable internal control system giving the necessary guarantees concerning the legality and the regularity of the underlying transactions		
Main outputs in 2017:		
Description	Indicator	Target
<i>All transactions are reviewed ex-ante by the financial sector and allow the required corrections to be made during the transaction process.</i>	<i>Transactions made in accordance with financial circuits</i>	100%
	<i>Error rate detected on the legality and regularity of the underlying transactions for administrative budget implementation</i>	< 2%

Objective: Effective and reliable internal control system in line with sound financial management.		
Main outputs in 2017:		
Description	Indicator	Target
<i>To ensure that the controls in place do not contain systematic weaknesses</i>	<i>Number of instances of overriding controls or deviations from established procedures</i>	< 10
<i>Compliance with contractual payment delays</i>	<i>Payments executed within the contractual limits</i>	> 90%
<i>Implement the financial resources allocated to DG COMP</i>	<i>Budget execution with respect to budget appropriations</i>	> 90%

In 2017, DG Competition intends to continue its follow-up of inadvertent disclosures of confidential information, and report on the implementation of the AFS and Code on Ethics. The foreseen review of the DG's AFS and Code on Ethics has been postponed following the adoption by the Commission on 4 April 2016 of a Communication on Synergies and Efficiencies in the Commission, which sets the path for the implementation of a new HR Service Delivery Model which will modify the roles and responsibilities of DGs on HR matters.

In parallel, the Commission is expected to adopt a new Decision on Outside Activities and Assignments and DG Human Resources is due to publish an updated

Practical Guide to Staff on Ethics and Conduct. DG Competition's AFS and Code of Ethics will be reviewed in light of these documents, taking into account DG OLAF's updated methodology for the development of DG's Anti-Fraud Strategies¹⁰⁷ and the results of the pilot phase of the new local HR Business Correspondents and centralised Account Management Centres, in which DG Competition intends to participate in the first half of 2017. In the meantime, DG Competition will continue to invite newcomers to attend compulsory ethics training, and to ensure that awareness raising activities are organised.

Objective: Minimisation of the fraud, ethics and security risks through the application of effective anti-fraud, ethics and security measures, integrated in all activities of the DG, based on the DG's Anti-Fraud Strategy (AFS), Code on Ethics and Security Guidelines.

Main outputs in 2017:

Description	Indicator	Target
<i>Drafting of updated AFS and review of Code on Ethics</i>	<i>Updated AFS (elaborated on the basis of the updated methodology provided by OLAF) and Code on Ethics</i>	<i>AFS and Code on Ethics updated</i>
<i>Monitoring of attendance at ethics training and follow-up</i>	<i>Fraud and ethics awareness is increased for target population as identified in the DG's AFS and Code on Ethics</i>	<i>Close to 100% newcomers attending ethics training</i>
<i>Review of anti-fraud actions undertaken and proposal for further actions</i>	<i>Regular monitoring of the implementation of the AFS and Code on Ethics, and reporting to management</i>	<i>Report to management once a year</i>
<i>Monitoring and reporting of incidents and follow-up of recommendations</i>	<i>Knowledge and respect by staff of DG Competition's security rules and incident reporting procedures</i>	<i>Reduction of inadvertent disclosures of confidential information</i>

C. Better Regulation

The main planned outputs linked to the Better Regulation objective in the Strategic Plan are listed in Part 1 under the relevant specific objective. They are presented in the tables under the headings "All new initiatives and REFIT initiatives from the Commission Work Programme" and "other important items".

D. Information management aspects

Competition enforcement is based on factual evidence. This makes document management essential to the core business of DG Competition. The documents are delivered to case handlers in an electronic format in the reference file hosted within the electronic Case Management Information systems. In 2017 DG Competition will continue the development of a common Case Management System for the Commission services participating in the Case Management Rationalisation project

¹⁰⁷ DG OLAF – *Methodology and guidance for DGs' anti-fraud strategies*, published on 16 February 2016, available at <https://myintracomm.ec.europa.eu/serv/en/fraud-prevention/FPDNetwork/Documents/201602%20-%20Updated%20guidelines%20AFS.pdf>

(Case@EC), and launch the first implementations: State aid enforcement and horizontal activities.

The Commission adopted a new corporate strategy for data, information and knowledge management in October 2016. The new strategy establishes a corporate framework while leaving room for DGs to develop and implement their own approaches tailored to their unique needs. A new Information Management Steering Board has been created to oversee the implementation of the strategy, to ensure coherence between actions and to prioritise them. DG Competition's Deputy Director General with special responsibility for mergers has been appointed as member of the Board and DG Competition will therefore contribute actively to the implementation of this strategy in 2017. In particular, DG Competition will in this forum share its experiences in the areas of search, collaboration and knowledge management (including experiences from the Case@EC project) as well as on implementation of the need to know principle for sensitive information. It will also continue to develop knowledge management and information sharing/search tools like 'COMPWiki' to empower staff to share knowledge and best practices and employ collaborative tools such as COMP Collaborative Platform and e-Discovery for their daily activities. Finally, the public data collected on aid granted by Member States should be published in the Open Data Portal.

DG Competition is also deploying more electronic means within its management validation circuits (based on e-mail, while awaiting implementation of such functionality in the Case@EC).

Objective: Information and knowledge in your DG is shared and reusable by other DGs. Important documents are registered, filed and retrievable.

Main outputs in 2017:

Output	Indicator	Target
<i>Instead of Ares, internally DG Competition uses its own registration/document system (EDMA). In EDMA 100% of documents are filed, including also those that are sent from EDMA to other DGs via Ares, since filing is mandatory in DG Competition.</i>	<i>Percentage of registered documents that are not filed¹⁰⁸ (ratio)</i>	<i>0% (Ares) 0% (EDMA)</i>
<i>Instead of HAN, inside DG Competition documents are exchanged and made visible in DG Competition's own registration/document system (EDMA), in which 99% of files are accessible to the whole DG. Security can be and is implemented in EDMA, also at the attachment level. The target here is not a quality measure, but reflects a policy decision taken in DG Competition on accessibility.</i>	<i>Percentage of HAN files readable/accessible by all units in the DG</i>	<i>99% (EDMA)</i>

¹⁰⁸ Each registered document must be filed in at least one official file of the *Chef de file*, as required by the *e-Domec policy rules* (and by ICS 11 requirements). The indicator is to be measured via reporting tools available in Ares.

<i>This number reflects only files in HAN containing documents exchanged with other DGs, which is and should remain an exception. In its own registration/document system (EDMA), DG Competition shares no files with other DGs. Competition regulations set out a strict professional secrecy obligation and limitations on use of data for any other purposes than competition cases. Therefore, by definition DG Competition files are restricted to DG Competition.</i>	<i>Percentage of HAN files shared with other DGs</i>	<i>0% (EDMA)</i>
<i>The percentage represents the proportion of units using either the Collaborative Platform or e-Discovery</i>	<i>Percentage of units using collaborative tools to manage their activities</i>	<i>100%</i>
<i>Use of electronic validation to increase efficiency and facilitate follow-up.</i>	<i>Number of documents with an electronic validation circuit.</i>	<i>70% of relevant documents are validated electronically¹⁰⁹</i>

E. External communication activities

DG Competition has made no commitment for spending in significant external communication actions in 2017 but will rather continue to focus its external communication actions on mass media through close cooperation with the Spokesperson's Service.

Annual communication spending (based on estimated commitments):		
Baseline (Year 2015): -	Target (2017): -	
Objective: Citizens perceive that the EU is working to improve their lives and engage with the EU. They feel that their concerns are taken into consideration in European decision making and they know about their rights in the EU.		
Main outputs in 2017:		
Description	Indicator	Target
<i>A proxy for the global overall perception of the EU citizens measured by Eurobarometer.</i>	<i>Percentage of EU citizens having a positive image of the EU (provided by DG Communication)</i>	<i>Positive image of the EU ≥ 50%</i>
<i>Help stakeholders understand EU competition rules</i>	<i>Number of people reached with communication actions directly supporting EU competition policy as a result of the DG's actions</i>	<i>Increasing trend.</i>

¹⁰⁹ Some documents still require at the end of the validation process a signature on paper, such as e.g. eGreffe forms.

F. Example(s) of initiatives to improve economy and efficiency of financial and non-financial activities of the DG

In 2017, as an example of an initiative to improve economy and efficiency of its financial activities, DG Competition will continue its analysis of its financial circuits in order to assess the functioning of the internal control system. It will in particular consider whether there is scope to further improve the efficiency of our financial operations without risking the legality and regularity of its transactions.

As an example of an initiative to improve economy and efficiency of its non-financial activities, DG Competition launched in 2016 an overarching exercise aimed at finding "Smarter Ways of Working"¹¹⁰. This ongoing initiative engages all staff in identifying further sources of efficiencies and synergies as well as ways to make DG Competition a better work place. DG Competition will complete the implementation of the follow-up actions related to this initiative in 2017.

¹¹⁰ DG Competition was awarded the Commission's Internal Communication award for this initiative in 2016.

ANNEXES TO THE MANAGEMENT PLAN

Annex 1. Tables

Antitrust and cartels

Relevant general objective: A New Boost for Jobs, Growth and Investment		
Specific objective 1: Effective enforcement of antitrust rules with a view to protecting consumer welfare		Related to spending programme(s) -
Main outputs in 2017		
Other important outputs		
Description	Indicator	Target
Conduct of investigations and adoption of Commission decisions in the field of antitrust and cartels in accordance with EU competition law	Intervention rate ¹¹¹	2017 (no target ¹¹²)
Final Report on sector inquiry into e-commerce	Publication of Report	2017
Specific objective 2: Effective and coherent application of EU competition law by the national competition authorities		
		Related to spending programme(s) -
Main outputs in 2017		
All new initiatives and REFIT initiatives from the Commission Work Programme		
Description	Indicator	Target
Legislative proposal on empowering the National Competition Authorities to be more effective enforcers (2017/COMP/001)	Adoption	2017 (no target)
Other important outputs		
Description	Indicator	Target
Support to NCAs on individual cases with a view to ensure coherent and effective application of Articles 101 and 102 TFEU	Regular contacts	2017 (no target)
Half-yearly meetings of the heads of the NCAs with the Director General of DG Competition, regular	Regular meetings	2017 (no target)

¹¹¹ Intervention rate consists of final antitrust and cartel decisions by the Commission.

¹¹² It is not meaningful to set numerical targets for competition policy enforcement. Most of the indicators used to measure the Commission's performance include trends as targets (stable, increase, decrease, no target). On-going investigation by the Commission is always without prejudice to the final decision to be taken by the Commission in the case. However, DG Competition, like most competition authorities, provides the number of decisions (or intervention rate) to indicate the level of activity and output for the preceding year, also for deterrence purposes. As regards antitrust and cartel enforcement, a target would also depend on factors beyond the Commission's control (decisions of the parties or other market players to disclose infringements through the leniency programme, whistleblowing, complaints or the availability of information to the Commission to detect infringements ex officio). In each and every case, the Commission must fully respect the rights of defence of the parties.

meetings of ECN Plenary, ECN working groups and sectorial subgroups.		
Specific objective 2: Effective and coherent application of EU competition law by national courts		Related to spending programme(s) -
Main outputs in 2017		
Other important outputs		
Description	Indicator	Target
Support to national courts in individual cases pending before them	Information and opinions provided to national courts concerning the application of the EU antitrust rules	2017 (no target)
Guidelines for national courts on quantifying passing-on effects in antitrust damages actions	Adoption	No target

Specific objective 3: EU competition law instruments maintained aligned with market realities and contemporary economic and legal thinking		Related to spending programme(s)
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target date
Study on Producer Organisations and their activities in the olive oil, beef and veal, arable crops sectors	Finalisation of the Study	2017
Advice and support provided to insurance undertakings on the application of the Horizontal Guidelines at the expiry of the Insurance Block Exemption Regulation (IBER) on 31 March 2017	Advice and support to insurance undertakings	2017

Merger control

Specific objective 4: Facilitating smooth market restructuring by assessing non-harmful mergers in a streamlined manner		Related to spending programme(s): -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target
Assessment of non-harmful mergers in a streamlined manner and adoption of Commission decisions in the field of merger control in accordance with EU competition law	Number of Commission decisions adopted in a simplified procedure	2017 (no target ¹¹³)
Lessening the burden for businesses	Ratio of merger decisions taken by the Commission in a simplified procedure	Stable level

Specific objective 5: Prevention of anticompetitive effects of mergers with a view to protecting consumer welfare		Related to spending programme(s) -
Main outputs in 2017		
Other important outputs		
Description	Indicator	Target
Conduct of investigations and adoption of Commission decisions in the field of merger control in accordance with EU competition law	Number of merger decisions adopted by the Commission ("non-simplified") per year	2017 (no target)
Level of enforcement activity	Number of merger decisions adopted by the Commission per year	2017 (no target)
Commission's merger decisions subject to commitments, withdrawals in phase II, or prohibitions	Intervention rate per year	2017 (no target)

Specific objective 6: EU competition law instruments maintained aligned with market realities and contemporary economic and legal thinking		Related to spending programme(s) -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target date
Evaluation of procedural and jurisdictional aspects of EU Merger Control (2017/COMP/003)	Finalisation and publication of Evaluation Staff Working Document	2017

¹¹³ DG Competition's enforcement activities in the merger area are driven by merger activity on the markets and notifications by companies. As this is a factor beyond the control of the Commission, no output target can be set.

State aid control

Specific objective 7: Overall effectiveness of State Aid Modernisation, increasing share of better targeted growth-enhancing aid		Related to spending programme(s) -
Main outputs in 2017:		
All new initiatives and REFIT initiatives from the Commission Work Programme		
Description	Indicator	Target
Revision of Commission Regulation 651/2014 introducing exemption provisions for ports and airports in the Commission Regulation declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (2017/COMP/002)	Adoption	2017
Other important outputs		
Description	Indicator	Target
Level of enforcement activity	Number of opening decisions per year (2015)	2017 (no target ¹¹⁴)

Specific objective 8: Compliance of renewable support schemes and capacity remuneration mechanisms with State aid rules		Related to spending programme(s) -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target
Conduct of investigations and adoption of decisions in the field of State aid in accordance with EU State aid rules	Adoption of Commission decisions	2017 (no target)

Specific objective 9: Stability and promotion of competition in the banking sector		Related to spending programme(s) -
Main outputs in 2017		
Other important outputs		
Description	Indicator	Target
Conduct of investigations and adoption of decisions in the field of State aid in accordance with EU State aid rules	Adoption of Commission decisions	2017 (no target)

Specific objective 10: Prevention and recovery of incompatible aid		Related to spending programme(s) -
Main outputs in 2017:		
Other important outputs		

¹¹⁴ DG Competition's enforcement activities in the State aid area are also driven by notifications by Member States. As this is a factor beyond the control of the Commission, no output target can be set.

Description	Indicator	Target
Adoption of recovery decisions in the field of State aid in accordance with EU State aid rules	Adoption of Commission decisions	2017 (no target)

Specific objective 11: Monitoring of aid measures Related to spending programme(s) -

Main outputs in 2017:
Other important outputs

Description	Indicator	Target
Monitoring of decisions in the field of State aid in accordance with EU State aid rules	Number of aid measures subject to ex-post monitoring	At least 75

Specific objective 12: EU competition law instruments maintained aligned with market realities and contemporary economic and legal thinking Related to spending programme(s) -

Main outputs in 2017:
All new initiatives and REFIT initiatives from the Commission Work Programme

Description	Indicator	Target
Review of the Simplified Procedure Notice and of the Code of Best Practice (2013/COMP/001)	Adoption	2017

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

Specific objective 13 Competition advocacy contributing to a pro-competitive regulatory framework at EU and national level Related to spending programme(s): -

Main outputs in 2017:
Other important outputs

Description	Indicator	Target
Review of competition aspects of initiatives adopted and implemented at EU level ¹¹⁵	Number of substantial replies to Commission inter-service consultations	2017 (no target)
European Semester country specific recommendations ¹¹⁶	Number of country specific recommendations promoted or co-monitored by DG Competition	2017 (no target)
ECN Communication and Advocacy Working Group	Annual meeting	2017

¹¹⁵ Number of substantial replies to Commission inter-service consultations: replies in which DG Competition either provides a positive reply under the conditions that its reservations are taken into account or a negative reply (DG Competition calculation).

¹¹⁶ DG Competition calculation.

Specific objective 14: Explaining competition policy and its benefits		Related to spending programme(s): -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target
Actions to explain EU competition rules to stakeholders	Number of people reached with communication actions directly supporting EU competition policy ¹¹⁷	Throughout 2017
DG Competition's publications	Number of subscribers/readers of DG Competition's publications ¹¹⁸	Increasing trend

Specific objective 15: Promoting international cooperation and convergence in the area of competition policy and greater transparency and basic disciplines on subsidies control internationally		Related to spending programme(s): -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target
Level of convergence with third countries' competition authorities	Number of competition cooperation agreements and free trade agreements containing competition and State aid clauses	34 new agreements (2019)
Contribution of the Commission to increased international convergence of competition policy on multilateral fora	Number of contributions ¹¹⁹ to OECD, ICN and UNCTAD	15-20 (2015-2017)
Contribution of the Commission to increased international convergence of competition policy bilaterally	Number of technical assistance workshops organised with third countries	(2015-2017) China (8) India (2) Brazil (1)

Specific objective 16 Ensuring the highest standards in the enforcement of competition policy		Related to spending programme(s): -
Main outputs in 2017:		
Other important outputs		
Description	Indicator	Target
Actions to explain EU competition rules to stakeholders	Number of people reached with communication	Throughout 2017

¹¹⁷ Collated monitoring data collected by DGs from their actions, from monitoring and evaluation contractors; from Opinion polls etc. (DG Competition calculation).

¹¹⁸ Baseline 2015 – DG Competition's publications sent to 6 452 subscribers/readers and the digital publications to 34 880.

¹¹⁹ E.g. Studies/papers presented, written contributions, participation in oral discussions.

	actions directly supporting EU competition policy ¹²⁰	
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¹²⁰ Collated monitoring data collected by DGs from their actions, from monitoring and evaluation contractors; from Opinion polls etc. (DG Competition calculation).