Management Plan 2019

DG COMPETITION
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INTRODUCTION

Competitive markets play an important role supporting the Commission's efforts to achieve a strong and prosperous European Union. A strong and effective EU competition policy is a cornerstone of the European Union and is one of the drivers boosting jobs, growth and investments. In his 2018 State of the Union speech, Commission President Juncker stated: "Ten years after Lehman Brothers, Europe has largely turned the page on an economic and financial crisis which came from outside but which cut deep at home." However, a lot of work remains to be done to make the Union's economic foundations sustainable, inclusive and innovative.

The ultimate goal of EU competition policy is making markets function better for the benefit of consumers – both households and businesses – and for the society as a whole. This is done by protecting and stimulating competition on fair and equal terms and by fostering a competition culture in the EU and worldwide. By tackling market distortions and creating economic opportunities in the internal market, DG Competition contributes notably to the Commission's priority "A New Boost for Jobs, Growth and Investment" in the European Union.

The Treaty provides the European Union with exclusive competences to establish the competition rules necessary for the functioning of the internal market. The principal competition rules are enshrined in Chapter 1, Title VII of Part Three, Articles 101-109 of the Treaty on the Functioning of the European Union (TFEU) and in the EU Merger Regulation (Regulation (EC) No 139/2004). To meet its Treaty-based obligations, DG Competition performs the following functions at EU level:

- enforcement of antitrust and cartel policy;
- enforcement of merger control;
- enforcement of State aid control;
- development of EU competition policy, competition policy instruments and guidance to companies and Member States in all these areas; and
- promoting competition culture and international cooperation; maintaining and strengthening the Commission's reputation world-wide, and striving for greater transparency and basic disciplines on subsidies control.

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3 Art. 3(1)(b) Treaty on the Functioning of the European Union.
4 The Mission Letter asks the Commissioner for Competition to focus on the following: "Mobilising competition policy tools and market expertise so that they contribute, as appropriate, to our jobs and growth agenda, including in areas such as the digital single market, energy policy, financial services, industrial policy and the fight against tax evasion. In this context, it will be important to keep developing an economic as well as a legal approach to the assessment of competition issues and to further develop market monitoring in support of the broader activities of the Commission; 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; Maintaining and strengthening the Commission’s reputation world-wide and promoting international cooperation in this area."
DG Competition's competition policy actions in 2019 will target a wide range of sectors in the EU economy, thereby promoting open and efficient markets so that both businesses and citizens can get a fair share of the benefits of economic growth. Moreover, EU competition policy will continue to support key political priorities of the Commission, in particular the Deeper and Fairer Internal Market, the Digital Single Market, the Energy Union, and the fight against tax evasion, as set out in the Commission President's Political Guidelines and the Commission Work Programme 2019.5

Together with the national competition authorities (NCAs) and national courts, the Commission enforces EU competition rules. National competition authorities may apply Articles 101 and 102 TFEU. National courts may in addition apply the State aid rules in Articles 107 and 108 TFEU. Within the Commission, DG Competition is primarily responsible for implementing the direct enforcement powers conferred to it by the Treaty. DG Competition carries out its mission mainly by taking direct enforcement actions6 against companies or Member States when it finds evidence of unlawful behaviour and by ensuring that legislation and other types of regulation take competition implications duly into account among other relevant public policy interests.

Some of DG Competition's main initiatives and enforcement activities foreseen for 2019 are highlighted below:7

On 4 December 2018, the European Parliament and the Council adopted the Directive to empower Member States' competition authorities to be more effective enforcers (the so-called ECN+ Directive)8. Member States must transpose the Directive into national law before the end of a two-year implementation period. The implementation period starts when the Directive is published in the Official Journal. The ECN+ Directive will ensure that when applying the same legal provisions - the EU antitrust rules – national competition authorities have the appropriate enforcement tools to create a genuine common competition policy enforcement area. To that end, the Directive provides for minimum guarantees of independence and resources, as well as the tools needed to effectively detect, stop and sanction infringements of the EU competition rules.

6 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.
7 Please note that on-going investigations by DG Competition are always without prejudice to the final decisions to be taken by the Commission in each case.
8 For further information see http://ec.europa.eu/competition/antitrust/nca.html
In 2019, the Commission will monitor the transposition process and assist the Member States when they transpose the Directive into national law.

The Commission is engaging in wide-ranging efforts to support a deeper and fairer internal market.\(^9\) Competition policy goes hand in hand with internal market policy, creating an integrated market with competition on fair and equal terms. In 2019, DG Competition will continue to monitor and investigate markets that matter for EU citizens and businesses, for example financial services, agriculture and food, the pharmaceutical sector, transport and manufacturing.

In 2019, DG Competition’s policy and enforcement initiatives will continue contributing to the completion of the Digital Single Market.\(^10\) Search engines are of central importance to the single market because they increase market transparency and reduce transaction costs when companies and consumers make transactions on-line across the EU. In 2019, DG Competition will continue monitoring Google’s compliance with the two decisions adopted against the company in 2017 and 2018. Moreover, DG Competition will continue other investigations into Google’s business practices. Following the Commission’s decision against Qualcomm\(^11\), the Commission will continue investigating in 2019 if Qualcomm engaged in predatory pricing of baseband chipsets. In June 2108 political agreement was reached to establish the “European Electronic Communications Code”, intended to boost investments in very high-capacity communications networks across the EU\(^12\). In 2019, DG Competition will remain closely involved in the legislative and implementation process. As a follow-up to the 2017 e-commerce sector inquiry\(^13\), DG Competition will continue in 2019 to investigate potential anti-competitive agreements and practices in the e-commerce sector, such as cross-border sales restrictions (geo-blocking), and retailers’ concerns about “dual-role” online platforms. In the broadband sector private companies tend to invest mostly in urban highly populated areas to maximise return on investment. In certain areas – in particular rural areas – public funds are needed to ensure the sustainability of investment supporting the deployment of broadband networks for the sake of inclusion and development. In 2019, State aid control will continue to ensure that publicly funded networks do not crowd out private investments.

Consumers throughout the EU should enjoy the benefits of an integrated and competitive European energy market\(^14\) that secures the supply of energy at affordable prices, and reduces the barriers to entry for innovative and environment-friendlier energy-generation technologies. This entails, in particular, ensuring that gas and electricity flow as freely as possible between Member States by stimulating interconnectivity and tackling territorial restrictions and artificial market partitioning within the EU. To this end, the Commission has adopted the commitment decision in the investigation into the upstream gas supplies in Central and Eastern Europe\(^15\) and DG Competition will, in 2019, ensure that Gazprom fully implements the commitments made binding with this decision. In the electricity sector, the Commission has adopted a commitment decision in the DE/DK Interconnector


\(^14\) The Energy Union is one of Commission President Juncker’s 10 priorities for 2014-19. See: https://ec.europa.eu/commission/priorities_en

case in December 2018\textsuperscript{16} to address the curtailment of the electricity interconnector between Denmark and Germany. In 2019, DG Competition will ensure that TenneT fully implements its commitments offered in this case so that capacity for cross-border electricity flows at the Danish-German border will no longer be curtailed in an unjustified manner. After the adoption of seven capacity mechanisms decisions in 2018, DG Competition will continue in 2019 to pay close attention to the remaining capacity mechanisms identified in the Capacity mechanism sector inquiry\textsuperscript{17}. In addition, DG Competition is assessing the compliance of other existing and planned capacity mechanisms in Member States not covered by the sector inquiry.

To reinforce \textit{The Capital Markets Union}\textsuperscript{18}, DG Competition will continue focusing on the financial sector in 2019. The investigations in the MasterCard II\textsuperscript{19} and Visa MIF cases\textsuperscript{20} on interchange fees and cross-border acquiring rules will continue. In the fast-developing electronic, mobile and instant payments markets, DG Competition will pursue its investigation in several Member States concerning access to bank account information by competing service providers. DG Competition will continue to monitor the implementation of Regulation 2015/751 on interchange fees for card-based payment transactions (IFR) and of the Regulatory Technical Standards on separation of payment card schemes and processing infrastructure\textsuperscript{21}. DG Competition will also monitor the implementation of the Directive 2015/2366 on payment services ("PSD II") and related Regulatory Technical Standards, which will apply from September 2019. Moreover, DG Competition will in 2019 assess the results of the study into competition in the syndicated lending market finalised at the end of 2018.\textsuperscript{22} DG Competition will continue to play a key role in 2019 in assessing public support in the financial sector, either for ailing banks to exit the market or for solvent banks to overcome a temporary liquidity strain or potential capital challenges under adverse scenarios.

The Juncker Commission is pursuing a far-reaching strategy to ensure that all companies, big and small, pay their fair share of tax where their profits are earned. Moreover President Juncker has highlighted the importance of continuing enforcing EU State aid rules to prevent Member States from giving unfair advantages to selected companies.\textsuperscript{23} In 2019, DG Competition will continue investigating whether Member States have granted \textit{selective fiscal advantages to individual companies or groups of companies}. While designing tax systems and collecting taxes are competences of EU Member States, they have to comply with internal market rules and competition law. In 2019, the Commission will continue its pending formal investigations into the Group

\begin{footnotesize}
\begin{enumerate}
\item[16] Case 40461. For further information see IP/18/2622 of 27 March 2018: \url{http://ec.europa.eu/competition/calls/tenders_open.html}
\item[17] On 16 November 2016, the Commission published the final report of its capacity mechanism sector inquiry, see IP/2016/4021 of 16 November 2016 \url{http://ec.europa.eu/competition/calls/tenders_open.html}
\item[18] A deeper and fairer economic and monetary union is one of Commission President Juncker’s 10 priorities for 2014-19. See: \url{https://ec.europa.eu/commission/priorities_en}
\item[19] A Statement of Objections was issued in July 2015, see IP/15/5323 of 9 July 2015, \url{http://ec.europa.eu/competition/calls/tenders_open.html} and a hearing took place in May 2016.
\item[20] 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 \url{http://ec.europa.eu/competition/calls/tenders_open.html}
\item[21] Commission Delegated Regulation supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements terms of accounting, organisation and decision-making process, OJ L 13, 18.1.2018, p 1-7. On the application of the Interchange Fee Regulation to three party payment card schemes see judgment of 7 February 2018 \textit{American Express}, C-304/16, ECLI:EU:C:2018:66.
\item[22] For further information see \url{http://ec.europa.eu/competition/calls/tenders_open.html} and Calls for tenders COMP/2017/008 EU loan syndication and its impact on competition in credit markets.
\end{enumerate}
\end{footnotesize}
Financing Exemption from the Controlled Foreign Company rules implemented by the United Kingdom and the tax rulings granted to Inter IKEA by the Netherlands.\(^{24}\)

With comprehensive **State Aid Modernisation reform** in place, and its rules fully enforced since several years, DG Competition stands well prepared to deal with challenges to come in 2019 and beyond. The General Block Exemption Regulation (GBER)\(^{25}\) - one of the cornerstones of the reform – enables DG Competition to deal with State aid cases efficiently, decisively and expeditiously.

The GBER simplifies 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 largest potential to distort competition in the Single Market have to be notified to the Commission beforehand. A larger number of 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.\(^{26}\) In 2019, DG Competition’s main focus - in partnership with the Member States – will be to continue ensuring effective compliance with the rules. Furthermore, in 2019 DG Competition will carry out a Fitness Check of the SAM package\(^{27}\), the Guidelines on State aid for railway undertakings and of the Communication on State aid for short term export credit insurance to verify to which extent the rules have functioned as intended and are fit for purpose. A prolongation of the rules is envisaged to provide stability, while allowing enough time to carry out the Fitness Check.

The Commission is also planning to amend State aid rules to accompany the Multiannual Financial Framework 2021-2027 (MFF). The aim is to simplify and streamline the interplay between State aid rules and funding rules under the next MFF.

When unlawful aid is declared incompatible, the Commission requires the Member State which granted it to recover the aid in order to re-establish the situation that existed on the market before the aid was granted. In 2019, DG Competition aims to make further progress towards effective and rapid **enforcement of recovery decisions**. A review of the 2007 notice on recovery\(^{28}\) started in 2018 with the aim to adopt a new notice in 2019. Moreover, the Commission has launched a study on the enforcement of State aid law by national courts, which is expected to be published in 2019.

Following the Article 50 TEU notification by the United Kingdom, the Commission is preparing the withdrawal of the United Kingdom from the EU. DG Competition will continue its work to prepare for and find solutions to any competition policy-related

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26 "We have handed back powers where it make more sense for national governments to deal with things. Thanks to the good work of Commissioner Vestager, we have delegated 90% of State aid decisions to the regional or local level", State of the Union speech on 13 September 2017 [http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm)


28 Notice from the Commission: Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid; OJ C 272, 15.11.2007, p. 4.
consequences of the withdrawal and assist the relevant Commission services\textsuperscript{29} in charge of coordinating the Commission work on Brexit.

\textsuperscript{29} The Brexit Preparedness Group (BPG) - established on 1 December 2017 and placed within the Commission’s Secretariat General - coordinates measures relating to preparedness and contingency planning across all policy areas preparing for the United Kingdom’s withdrawal from the EU.
PART 1. MAIN OUTPUTS FOR THE YEAR

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

1.1. Antitrust and cartels

<table>
<thead>
<tr>
<th>Articles 101, 102 and 106 TFEU</th>
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<td>According to Article 101 TFEU, anti-competitive agreements are &quot;prohibited as incompatible with the internal market&quot;. 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).</td>
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The aim of antitrust and cartels enforcement activity in DG Competition is to ensure effective enforcement of antitrust rules with a view to making markets work better enhancing 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 2019, DG Competition will continue to give priority to enforcement activity against cartels as foreseen in DG Competition Strategic Plan 2016-2020. In addition to applying the leniency programme, DG Competition will pursue ex officio detection of cartels, using its whistle-blower tool. Moreover, DG Competition will ensure efficiency and uniformity when settling cases and impose fines at a sufficiently deterrent level.

In 2019, the Commission will continue to apply the settlement procedure in suitable cases. The settlement procedure contributes to increasing the deterrent effect of

30 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.


32 Since 2010, 28 decisions were adopted under the settlement procedure out of a total of 52 decisions representing 54% of the fines imposed in cartel cases. 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 Commission's action against cartels since it leads to efficiency gains and allows the Commission to focus its resources on the detection and fight against other cartels.\textsuperscript{33}

DG Competition will ensure that its investigative tools remain well adapted to technological change and the rapidly increasing quantities of digital data. DG Competition will apply improved methodologies to gather digital evidence during inspections.

In 2019, DG Competition will continue working with other authorities in the EU and beyond – for example advocacy in the International Competition Network - to ensure effective cross-jurisdictional cooperation in the fight against international cartels impacting the EU.

\textit{Other anticompetitive agreements and practices}

\textit{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 an integrated market with competition on fair and equal terms. Competition policy ensures that free movement is not undermined by anti-competitive conduct. As foreseen in its Strategic Plan 2016-2020, DG Competition will, in 2019, continue to monitor markets and proceed with its investigations in a range of sectors that matter for EU citizens and businesses, including financial services, agriculture and food, the pharmaceutical sector, transport and manufacturing. DG Competition will also continue to contribute to the Capital Markets Union and the Commission's Single Market Strategy.

In the financial sector, DG Competition will in 2019 continue its investigations in the MasterCard II\textsuperscript{34} and Visa MIF cases\textsuperscript{35} on interchange fees\textsuperscript{36} and cross-border acquiring rules. In the fast developing electronic, mobile and instant payments markets, DG Competition will specifically monitor whether traditional payment operators (e.g. banks and card schemes) violate the competition rules by trying to maintain their gate-keeping position, or whether new operators (e.g. handset makers, operating system providers, other platform providers) may leverage their market power to create new gate-keeping or monopolistic positions. In particular, DG Competition will pursue its investigation in several Member States concerning access to bank account information by competing service providers.

Concerning sector-specific regulation on payments markets, DG Competition will continue to monitor the implementation of Regulation 2015/751 on interchange fees for card-based payment transactions (IFR) and of the Regulatory Technical Standards on

\textsuperscript{33} The judgement in case C-411/15P \textit{Timab}, judgment of 12 January 2017, confirmed the legality of parallel hybrid settlement cases in which some parties settle, and other don't. In particular, the Court confirmed the Commission's approach to take into account new information in the course of the standard procedure. The Court held that the Commission can depart from ranges of fines discussed during settlement talks for a company that in the end choose not to settle. In such cases, the Commission is bound to make its assessment and fines calculation on the basis of all relevant elements present at the time of the final decision.

\textsuperscript{34} A Statement of Objections was issued in July 2015, see IP/15/5323 of 9 July 2015, \url{http://europa.eu/rapid/press-release_IP-15-5323_en.htm} and a hearing took place in May 2016.

\textsuperscript{35} 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 \url{http://europa.eu/rapid/press-release_MEMO-14-138_en.htm}

\textsuperscript{36} In December 2018 the Commission sought feedback on commitments offered by Visa and MasterCard on inter-regional interchange fees, see IP/18/6655 of 4 December 2018, \url{http://europa.eu/rapid/press-release_IP-18-6655_en.htm} If the market test indicates that the commitments are a satisfactory way of addressing the Commission's concerns, the Commission may make them legally binding.
separation of payment card schemes and processing infrastructure. DG Competition cooperates closely with Member States for a coherent interpretation of these rules, focusing on assisting them in detecting and addressing circumvention. DG Competition launched a support study on the application of the Interchange Fee Regulation in preparation of a report to European Parliament and Council. DG Competition will monitor the implementation of the Directive 2015/2366 on payment services ("PSD II") and the related Regulatory technical standards on strong customer authentication and secure open standards of communication, which will apply from September 2019.

Following the decision to allow the Insurance block exemption regulation to expire in 2017, DG Competition together with the national competition authorities will continue to monitor the functioning of the European insurance markets in 2019. DG Competition will pursue its investigations concerning the Irish motor insurance market.

Moreover, DG Competition will continue to monitor the commitments that were established 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 2016. DG Competition will continue monitoring the commitments given to the Commission by Thomson Reuters, which facilitate the migration from the Reuters instrument code (RIC) to other competing identifiers through Thomson Reuters' licensing agreements. Given the importance of the syndicated lending market in the EU, DG Competition will assess the results of a study finalised at the end of 2018 on the functioning of and impact on competition in the syndicated loans market.

In the pharmaceutical sector and health services sector, DG Competition will continue to actively monitor markets for potential competition infringements, and in particular pursue its investigation into concerns of excessive pricing by Aspen Pharma regarding cancer medicines as well as its "pay for delay" investigation into the market entry of generic Modafinil (sleeping disorder medicine).

DG Competition will also continue its investigation related to alleged practices in the beer market that may segment the internal market along national borders. It will also continue to investigate the practices of retailers and their alliances. As mandated by

37 Commission Delegated Regulation supplementing Regulation (EU) 2015/751 of the European Parliament and of the Council on interchange fees for card-based payment transactions with regard to regulatory technical standards establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements terms of accounting, organisation and decision-making process, OJ L 13, 18.1.2018, p 1-7. On the application of the Interchange Fee Regulation to three party payment card schemes see judgment of 7 February 2018 American Express, C:304/16, ECLI:EU:C:2018:66.  
39 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  
41 RIC is a ticker-like code used by Thomson Reuters to identify financial instruments and indices. The codes are used for looking up information on various Thomson Reuters financial information networks.  
42 For further information see http://ec.europa.eu/competition/calls/tenders_open.html and Calls for tenders COMP/2017/008 EU loan syndication and its impact on competition in credit markets.  
the CMO Regulation, in 2018 the Commission submitted a report to the co-legislators on the implementation of competition rules in the agricultural sector, and in particular the specific competition rules regarding joint selling by producers in the agricultural sector of olive oil, beef and veal and arable crops. In this context, DG Competition published in 2018 a study on Producer Organisations and their activities in the olive oil, beef and veal, arable crops sectors to support this report, and assess the implementation of the specific regulation for these sectors. In 2019, DG Competition will continue to follow up the report and the study. Moreover, the Commission – DG Agriculture in cooperation with DG Competition - will manage the new notification system adopted by the Parliament and Council on the application of a particular derogation to 101 TFEU.

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.

With regard to the automotive sector, the Commission has recently launched the evaluation of the Motor Vehicle Block Exemption Regulation (461/2010) (MVBER), as mandated by Art. 7 MVBER. The Commission will take the process forward in 2019. Given the complexity of the sector and its importance for the European economy and the internal market, DG Competition will commission a study on the relevant market developments over the past decade, to be completed in early 2020. The results of the study will feed into the subsequent evaluation report to be submitted by 31 May 2021 at the latest.

In 2019, DG Competition will continue its investigations in relation to transport services. Moreover, DG Competition will continue its investigation in the rail passenger market.

In the field of air passenger services, DG Competition will pursue its investigations in the area of airline tickets distribution, which were formally opened in November 2018. In maritime services, DG Competition will finalise the evaluation of the Consortia Block Exemption Regulation, which started in May 2018.

50 See Articles 206 and 209 of the CMO regulation.
51 Article 7 MVBER stipulates that: “The Commission will monitor the operation of this Regulation and draw up a report on its operation by 31 May 2021 at the latest, having regarded in particular to the conditions set out in Article 101(3) of the Treaty”.
52 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
In 2019, DG Competition will also continue its on-going investigations involving Nike, Sanrio and Universal Studios in their role as licensors for well-known brands, such as FC Barcelona, Hello Kitty and Minions.55

**Digital Single Market**

In 2019, and as envisaged in its Strategic Plan 2016-2020, DG Competition will continue its antitrust enforcement activities 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 maintains incentives to innovate.

Search engines are of central importance to the single market because they increase market transparency and reduce transaction costs when companies and consumers make transactions on-line across the EU. The Commission adopted two prohibition Decisions in relation to Google’s conduct in this area in 2017 and 2018 respectively.56 In 2019, DG Competition will continue monitoring Google’s compliance with both decisions and will continue other ongoing investigations of Google’s practices, in particular Google potentially restricting third-party websites’ possibilities to display search advertisements from Google’s competitors (AdSense).57

In the area of telecoms, on 6 June 2018, political agreement was achieved to establish the "European Electronic Communications Code", which recasts the existing directives, and will boost investments in very high capacity networks across the EU, including in remote and rural areas58. In 2019, DG Competition will remain involved in the legislative process and the implementation and application of new legislation, ensuring that the new rules remain pro-competitive.

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 Directive.59

In 2019, DG Competition will also continue to investigate a mobile network-sharing agreement between the two largest operators in the Czech Republic60.

In the area of baseband chipsets - which process the core communication functions in smartphones, tablets and other mobile broadband devices – the Commission took a decision in 2018 finding that Qualcomm abused its dominant position by granting

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56 In June 2017, the Commission concluded via prohibition Decision that Google 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. A fine of EUR 2.42 billion was imposed. In July 2018, the Commission concluded via prohibition Decision that Google had abused a dominant position through a number of illegal practices regarding Android mobile devices to strengthen dominance of its search engine. A fine of EUR 4.34 billion was imposed.

57 In July 2016, 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


Apple, a major customer, payments conditional on exclusivity. In 2019, the Commission will continue to investigate if Qualcomm engaged in predatory pricing in this area.

In the publishing sector, DG Competition will continue monitoring the implementation by Amazon of its commitments concerning the removal and non-enforcement of parity clauses in its contracts with e-book publishers. In the audio-visual sector, DG Competition will continue the on-going investigation relating to cross-border provision of pay-tv services from or to the United Kingdom and Ireland. DG Competition envisages launching a call for tender in the first half of 2019 for a study on technology developments and rights management in the music sector.

As a follow-up to the e-commerce sector inquiry finalised in 2017, DG Competition will continue in 2019 to investigate potential anti-competitive agreements and practices in the e-commerce sector that are detrimental to a Digital Single Market. In particular, DG Competition will pursue its ongoing investigations into cross-border sales restrictions (geo-blocking) and discrimination on the basis of residence. Moreover, DG Competition will follow up on concerns about "dual-role" platforms raised by retailers in the course of the e-commerce sector inquiry.

**Energy Union**

Consumers throughout the EU should enjoy the benefits of an integrated and competitive single European energy market that secures the supply of energy at affordable prices, and reduces the barriers to entry for innovative and environment-friendlier energy-generation technologies.

In 2019, DG Competition will continue its antitrust enforcement activities in the energy sector pursuant to Articles 101, 102 and 106 TFEU. Antitrust enforcement aims to ensure fair access to indispensable energy infrastructure, remove obstacles to market integration and foster competition across the internal market. This entails, in particular, ensuring that gas and electricity flow as freely as possible between Member States by stimulating interconnectivity and tackling territorial restrictions and artificial market partitioning within the EU. Enforcement will contribute to the Energy Union, as foreseen in the DG Competition Strategic Plan 2016-2020.

To this end, the Commission has adopted the commitment decision in the case with regard to the upstream gas supplies in Central and Eastern Europe. In 2019,

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62 Statements of Objections, as regards concerns related to 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

63 The Commission opened a formal investigation into some of Amazon’s e-book distribution arrangements in June 2015. Less than two years later, on 4 May 2017, the Commission adopted a Decision that renders legally binding a set of commitments offered by Amazon to increase competition in e-books distribution. In essence, the commitments ban Amazon from enforcing or putting in place any non-price and price parity clauses in the whole of the EEA for a period of 5 years. For further information see IP/17/1223 of 4 May 2017, http://europa.eu/rapid/press-release_IP-17-1223_en.htm


DG Competition will ensure that Gazprom fully implements the commitments made binding with this decision. The commitments are intended to ensure the free flow of gas at competitive prices across Central and Eastern European gas markets. The Gazprom case demonstrates the Commission’s efforts to facilitate cross-border flows of energy between Member States. DG Competition will also follow up the draft commitments offered by Transgaz, the state-controlled gas transport infrastructure operator in Romania, in response to Commission concerns that it may have breached EU competition rules by restricting exports of natural gas from Romania. Other on-going investigations in the gas sector concern the possible foreclosure of gas markets in Bulgaria by the Bulgarian incumbent BEH and the investigation into the Liquid Natural Gas market to assess whether supply agreements between Qatar Petroleum companies exporting LNG and European importers have hindered the free flow of gas within the EEA, in breach of EU antitrust rules.

In the electricity sector, the Commission has adopted a commitment decision in the DE/DK Interconnector case in December 2018 to address the curtailment of the electricity interconnector between Denmark and Germany. In 2019, DG Competition will ensure that TenneT will fully implement the commitments offered in this case so that capacity for cross-border electricity flows will not be curtailed in an unjustified way in the future. In addition, DG Competition will continue to investigate if France has infringed EU antitrust rules by having granted to State-owned Electricité de France ("EDF") most of the country’s concessions for exploiting hydropower.

Moreover, DG Competition will continue its investigation into potential price distortions in the energy sector, whether carried out by a group of companies acting in concert (as in the Ethanol Benchmarks case) or by a dominant undertaking (as in the current investigation concerning the electricity sector in Greece).

Within the context of the Energy Union Framework Strategy adopted in 2015, the Commission has worked on a number of legislative proposals. Competition enforcement and advocacy play a key role in making the internal energy market function better by opening markets, tackling discrimination and allowing all market players to compete on fair and equal terms, regardless of their nationality. Promoting innovation and stimulating investments contributes to the creation of a unified EU energy market. DG Competition has actively contributed to the preparation of legislative proposals and will continue being active when the legislation is adopted and implemented in 2019.

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

**National competition authorities**

In 2019, DG Competition will continue working with NCAs on individual cases with a view to ensuring a coherent and effective application of Articles 101 and 102 TFEU, among other things by scrutinising envisaged national decisions submitted to the Commission in accordance with Regulation 1/2003. Moreover, DG Competition will continue furthering, organising and animating multilateral work in the ECN at different levels. The strategic steering comes from the twice-yearly meetings between the Director General of

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68 Case AT.39849 BEH gas.


DG Competition and the heads of the NCAs. Technical work is carried out at the ECN Plenary and in a range of ECN working groups and sectorial subgroups.

In May 2018, the European Parliament and the Council reached a political agreement on the proposal for a Directive to empower Member States' competition authorities to be more effective enforcers (the so-called ECN+ Directive)


The ECN+ Directive will ensure that when applying the same legal provisions - the EU antitrust rules – NCAs have appropriate enforcement tools to create a genuine common competition policy enforcement area. To that end, the Directive provides for minimum guarantees of independence and resources, as well as the tools needed to effectively detect, stop and sanction infringements of the EU competition rules. The new rules should enable national competition authorities to reach their full potential.

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).

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 2019, 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 actions in Member States' legal systems expired on 27 December 2016. Seven Member States transposed it by the deadline. Following the opening of infringement proceedings for lack of communication of transposing measures, 18 Member States transposed the Directive in 2017. Bulgaria, Greece and Portugal did so in the first half of 2018. In line with its recent Communication “EU law: Better results through better application”, the Commission has started assessing the conformity of the Directive's implementation. In the coming years, DG Competition will monitor national courts' application of the new

74 For further information see [http://ec.europa.eu/competition/antitrust/nca.html](http://ec.europa.eu/competition/antitrust/nca.html)

75 The Commission proposal followed from the 2014 Commission Communication on Ten Years of Regulation 1/2003, which identified concrete areas of action to boost the enforcement powers of NCAs. (See [http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20140453.doc](http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20140453.doc)). In November 2015, the Commission launched a public consultation on how to empower NCAs to be more effective enforcers. 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. 80% of stakeholders expressed broad support for taking action to ensure that NCAs have the means and instruments they need.


rules. Furthermore, following the publication of a “Study on quantifying passing-on effects in antitrust damages actions”\textsuperscript{78}, the Commission launched in July 2018 a targeted public consultation on draft guidelines to estimate the share of the overcharge passed-on to indirect customers.\textsuperscript{79} The adoption of these guidelines is foreseen for 2019.

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

The timeliness of enforcement action under the EU competition rules is key to ensuring their effectiveness. During the last years, the Commission has introduced several measures aimed at streamlining the procedures in competition cases. These measures include the possibility of cooperation by the party investigated with the result of a corresponding reduction in the fine imposed in the final prohibition decision. After a first case in 2016,\textsuperscript{80} the Commission concluded several antitrust cases on the basis of this procedure in 2018\textsuperscript{81} and will continue exploring possibilities for cooperation with interested parties in other cases. Another measure taken in 2018 is the publication of updated guidance on confidentiality claims in access to file\textsuperscript{82} and the use of voluntary confidentiality rings.\textsuperscript{83} In 2019, the Commission will continue looking into additional measures that could help increasing the timeliness of enforcement action for all instruments.

In view of the rapid changes in market realities resulting from the growing digitisation across the economy, the Commission has started a reflection process about how competition policy can best serve European consumers in a fast-changing world. The report of the panel of three external advisers appointed by Commissioner Vestager in 2018 on the future challenges of digitisation for competition policy, which is due by 31 March 2019, will contribute to identifying key digital challenges and their implications for competition policy.\textsuperscript{84}

Over the next few years, several Block Exemption Regulations (“BERs”) will expire: the Maritime Consortia BER in April 2020,\textsuperscript{85} the Vertical BER in May 2022,\textsuperscript{86}

\textsuperscript{78} See e.g. the study "Study on Passing On of Overcharges" (2016) prepared by RBB Economics and Cuatrecasas, Goncalves Pereira, available at \url{http://ec.europa.eu/competition/publications/reports/KD0216916ENN.pdf}

\textsuperscript{79} As foreseen in Article 16 of the Antitrust Damages Directive.

\textsuperscript{80} Case AT.39759 - ARA foreclosure, IP/16/3116 of 20 September 2016.

\textsuperscript{81} Cases AT.40181 – Philips, AT.40182 - Pioneer, AT.40465 - Asus and AT.40469 - Denon & Marantz (vertical restraints), IP/18/4601 of 24 July 2018.

\textsuperscript{82} To obtain the information necessary for its investigations, DG Competition is empowered to send requests for information to undertakings, associations of undertakings, governments and competent authorities of the Member States. After the adoption of a Statement of Objections, the parties to the proceedings are granted access to the case file. Access is granted to non-confidential versions of such documents. The updated guidelines provide informal guidance how to claim confidentiality for information provided in replies to requests for information.

\textsuperscript{83} A confidentiality ring is a voluntary arrangement where access is given to case documents containing business secrets and other confidential information, but only to a strictly limited number of persons specified beforehand, typically the parties’ legal representatives.


the Horizontal BERs in December 2022 and the Motor Vehicle BER in May 2023. In the period until then, the Commission will assess the extent to which these BERs correspond to current market needs and realities in order to take a decision whether to let them lapse, prolong their duration or revise them.

As part of the Commission proposals for Multiannual Financial Framework 2021–2027, the Commission adopted a proposal for a Single Market Programme, which includes a Competition Programme. The Competition Programme will aim at ensuring state-of-the-art IT tools and expertise (such as forensic IT, investigative and data analysis as well as artificial intelligence), and strengthening the cooperation with Member State authorities to support the enforcement fair competition in the Single Market. In 2019, DG Competition will focus on preparing the implementation of the Competition Programme.

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88 Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52. Before the expiry of the Motor Vehicle BER, the Commission is required to draw up a report on its operation by 31 May 2021 at the latest (see Article 7).


90 An Ambitious Competition Policy for a stronger Union in the digital age.
1.2. Merger control

EU merger control (Council Regulation (EC) 139/2004)
The purpose of EU merger control\(^91\) is to ensure that market structures remain competitive while facilitating smooth restructuring of the industry, not only as regards EU-based companies, but any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. But, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur\(^92\).

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

EU merger control\(^93\) 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\(^94\).

The vast majority of cases notified are approved in a simplified procedure\(^95\) without the need to open an in-depth investigation. Approximately 75% of all merger notifications received in the period January-September 2018 fell under the simplified procedure. DG Competition expects this trend to continue also in 2019.

The substantial growth in merger activity in recent years is reflected in the significant increase of the number of merger notifications received by the Commission. DG Competition expects this trend to continue in 2019.

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 2019, 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 Commission's priorities including in the field of Energy Union, Digital Single Market, Deeper, Fairer Internal Market and Capital Markets Union.

In the energy sector DG Competition will continue to assess the effects of the asset swap between RWE and E.ON on transitioning energy markets. The merger is the first large scale energy merger leading to the break-up of vertically integrated companies.

Considering the on-going consolidation between telecom operators, DG Competition will probably have to deal with a significant number of merger cases in the telecom sector also in 2019.

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\(^92\) 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.


\(^94\) See also DG Competition Strategic Plan 2016-2020.

In 2019, DG Competition will also continue to carefully review mergers in concentrated markets and markets which are seeing multiple instances of consolidation, such as basic industries and manufacturing. The Commission will finalise the review of the acquisition of Alstom by Siemens, both manufacturers of high speed trains.

Following the conditional clearance of ArcelorMittal’s acquisition of steel producer Ilva in 2018, the Commission will continue to investigate the impact of the transaction between Thyssenkrupp and Tata Steel. Other transactions in the basic industries sector that the Commission will review include the proposed acquisition of VDM by Aperam, a leading supplier of stainless steel and nickel alloys.

In 2019, DG Competition will also continue to review mergers in European passenger airline markets, which are currently going through substantial consolidation.

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 evaluation 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".

The public consultation was open until mid-February 2017 and attracted wide interest. A summary of the results of the public consultation, together with the non-confidential versions of the contributions received, were published on the Commission’s Competition website on 28 July 2017. The Commission is carrying out further research on the topics covered by the evaluation and will reflect on whether further action is required at this stage.

Reference is also made to the proposal for a Single Market Programme and the Competition Programme to ensure effective merger control in the future.

1.3. State aid control

State aid control (Articles 107, 106(2) and 93 TFEU)

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). State aid to undertakings for discharging services of general economic interest (SGEI) may be found compatible with the internal market (under Article 106.2 TFEU or Article 93 TFEU for transport). Likewise State aid for coordination of transport may be deemed compatible (Article 93 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


97 Idem footnote 92.
failures and objectives of common European interest as envisaged in DG Competition Strategic Plan 2016-2020.

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

The ambitious State Aid Modernisation (SAM) reform\(^98\) was launched in 2012\(^99\) 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 the Notion of Aid\(^100\) 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 is the General Block Exemption Regulation (GBER)\(^101\), 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 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.\(^102\)

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 evaluation requirements. In line with the entry into force of the transparency obligation, since 1 July 2016, DG Competition in cooperation with the Member States provided an informatics tool (the Transparency Award Module – TAM) to facilitate the compliance with the transparency requirement and to ensure the publication of aid awards granted above a certain threshold.\(^104\)

In 2019, DG Competition will carry out a Fitness Check of the SAM package\(^105\), the Guidelines on State aid for railway undertakings and of the Communication on State aid

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98 For a comprehensive overview of State Aid Modernisation, see [http://ec.europa.eu/competition/state_aid/modernisation/index_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html)


102 "We have handed back powers where it make more sense for national governments to deal with things. Thanks to the good work of Commissioner Vestager, we have delegated 90% of State aid decisions to the regional or local level", State of the Union speech on 13 September 2017 [http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm)

103 Evaluation has so far concerned 45 schemes in 15 Member States representing about EUR 50 billion in total annual budget. Almost 90% of schemes under evaluation concerns Energy, Broadband, R&D&I, or Regional aid.

104 Aid awards equal to or above EUR 500,000.

105 General Block Exemption Regulation no 651/2014, De minimis Regulation no 1407/2013, Regional aid guidelines, Risk finance aid guidelines, Communication on State aid for important projects of common
for short term export credit insurance to verify to which extent the rules have functioned as intended and are still fit for their purpose.

Most of the State aid rules reviewed and amended under SAM, including the GBER and the De Minimis Regulation, will expire by the end of 2020. The result of the Fitness Check is unlikely to be available at a time early enough to allow the Commission to draft and adopt the new rules before the current SAM rules expire. Therefore, the Commission envisages prolonging these rules.

In 2019, the main focus of DG Competition, in partnership with the Member States, is to continue ensuring effective compliance with the rules. This includes supporting the Member States in meeting the SAM obligations, including the transparency requirement. In this context, DG Competition will continue to facilitate and encourage the interoperability between the TAM and the registry systems existing in certain Member States.

The Commission is planning to amend State aid rules in a targeted manner to accompany the next MFF. The aim is to amend the GBER to simplify and streamline the interplay between State aid rules and funding rules under the next MFF. It should then be possible to combine national funds (including structural funds) and EU centrally managed funds as seamlessly as possible. More concretely, it is envisaged to extend the GBER in three areas to make it possible for Member States to implement State aid measures without prior notification:

- national funding combined with InvestEU;
- RD&I projects having received a Seal of Excellence under H2020 or Horizon Europe, as well as co-fund projects and Teaming actions under H2020 or Horizon Europe; and
- European Territorial Cooperation projects (ETC, also called Interreg, an important priority for cohesion policy).

The legal basis for this amendment, the State aid Enabling Regulation, was adopted in the Council on 26 November 2018. It was clarified that as regards the possibility to block exempt aid for IPCEI projects, insofar as granted either to SMEs or insofar as the aid amount is small, the Commission considers this already to be possible under the current Enabling Regulation.

Reference is also made to the proposal for a Single Market Programme and the Competition Programme106 to ensure effective State aid control in the future.

Aid to research, development and innovation (RDI) and for Important Projects of common European interest (IPCEI)

In 2019, 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, to projects that go beyond the state of the art and which bring innovative products and services to the market and ultimately to consumers. DG Competition will also continue, in particular in the context of the preparations for the next Multiannual Financial Framework 2021-2027, to cooperate closely with DG Research and Innovation and DG Regional and Urban Policy on "Seal of excellence" and co-fund programmes.

In order to support projects of strategic joint European interest, the Commission adopted in 2014 a Communication on Important Projects of Common European Interest

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106 Idem footnote 92.
(IPCEI)\textsuperscript{107}, setting out criteria according to which Member States can grant public support for IPCEIs.\textsuperscript{108} The communication is part of the SAM. DG Competition expects that the assessment of the first IPCEI in the RDI area concerning microelectronics will provide valuable lessons learned and a blueprint for the effective application of the State aid rules on IPCEIs in the future. Additional IPCEIs in different areas of overarching industrial importance for Europe are currently being explored by Member States, industry and stakeholders, for example batteries considered crucial for the shift from fossil fuels to e-mobility.

\textit{Aid to risk finance}

In order to support the objectives of the Capital Markets Union leading to improved access to finance and more sustainable investments in Europe, DG Competition continues to apply the risk finance regime in 2019. The risk finance regime 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.

\textit{Regional aid}

Regional State aid policy is an important instrument in the EU's toolbox to achieve greater cohesion. Spending on regional aid is an important component of the overall State aid spending by Member States: in the period 2009-2017, regional aid amounted to EUR 113.3 billion, or some 16\% of total State aid\textsuperscript{109} granted by Member States in that period. In 2019, DG Competition will continue to apply regional aid rules as set out in the Regional aid guidelines 2014-2020\textsuperscript{110} and in Articles 13-15 of the GBER. Following the Report on compliance with State aid rules in European Structural and Investment Fund (ESIF) operations by the European Court of Auditors (ECA)\textsuperscript{111}, in 2019 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 and financial instruments.

\textit{Energy Union}

\textit{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 2019, DG Competition will continue to apply the State aid rules applicable to the energy sector, most of which are embedded in the Environmental and Energy State Aid Guidelines (EEAG).

Support to energy from renewable sources will continue to be one of the key areas of work. This concerns mainly new schemes that either replace an older scheme or that include new features. Ensuring that aid is allocated through competitive tenders will lead

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{107} For further information see IP/ 14/673 of 13 June 2014 http://europa.eu/rapid/press-release_IP-14-673_en.htm
\item \textsuperscript{108} Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ C 188, 20.6.2014, p. 4–12.
\item \textsuperscript{109} Excluding agricultural aid.
\item \textsuperscript{111} Court of Auditors Special Report 24/2016 – "More efforts needed to raise awareness of and enforce compliance with State aid rule sin cohesion policy".
\end{itemize}
\end{footnotesize}
to cost-effective support for renewables. After the adoption of seven capacity mechanisms decisions in 2018, DG Competition will continue in 2019 to pay close attention to the remaining capacity mechanisms identified in the Capacity mechanism sector inquiry\textsuperscript{112}. In addition, DG Competition is assessing the compliance of other existing and planned capacity mechanisms in Member States not covered by the sector inquiry. Examples include market-wide capacity mechanisms and interruptibility schemes.

A review of The Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012\textsuperscript{113} (ETS Guidelines) has been launched in 2018 and will continue in 2019.\textsuperscript{114}

\textit{Aid for e-mobility}

As regards Commission initiatives with reference to environmental and emission objectives as well as the use of alternative fuels, DG Competition expects that notification of measures from Member States for the construction of infrastructure facilitating the uptake of alternative fuels will intensify further during 2018-2020 to encourage the switch to e-vehicles or vehicles running on other alternative fuels. As regards e-vehicles, also aid measures are expected to complement the infrastructure measures, including measures for the uptake of public transport vehicles running on alternative fuels.

\textit{Financial services}

\textit{Specific objective 9: Stability and promotion of competition in the banking sector}

In 2019, DG Competition will continue playing its role in State aid control in the financial and banking sectors.

The framework of the Banking Union introduced by the EU to deal with the failure of financial institutions is being implemented. The bail-in provisions of the Bank Recovery and Resolution Directive (BRRD)\textsuperscript{115} entered into force on 1 January 2016 with the aim of shifting the cost of bank failures to shareholders and creditors, and reduce the amount of State intervention at the detriment of the taxpayer. At this stage, banks are implementing the provisions of the BRRD which allow for the full application of the legal framework; at the same time, the new institutions in charge of supervision and resolution of systemic banks (namely the Single Supervisory Mechanism (SSM) and the Single Resolution Board (SRB)) have assumed their functions leaving a few cases, pre-dating the introduction of the new framework, to be resolved by DG Competition. However, the assessment of conformity with the State aid framework continues to be ensured not only under national insolvency proceedings but also within the new SSM framework in case the funding of bank resolution is supported by a national or the Single Resolution Fund (SRF), or aid is authorised as a temporary buffer in the form of "precautionary recapitalisation" and, last but not least, in order to confirm the absence of aid when State intervention is taking place under normal market conditions.


\textsuperscript{113} OJ C 158, p 4 of 5.6.2012.

\textsuperscript{114} Decide validation reference PLAN/2018/4137.

Therefore, DG Competition will continue to play a key role in 2019 in assessing public support in the financial sector - either for ailing banks to exit the market or for solvent banks to overcome a temporary liquidity strain or potential capital challenges under adverse scenarios. This is important to make sure that public support is kept to the necessary minimum 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. Within this general remit, addressing the issue of high non-performing loans (NPLs) - which are still hindering the economy of some Member States - may require State support. The existing State aid rules allow striking the right balance between preventing distortion of competition and fixing the NPL issue to preserve financial stability and to create better conditions for the financing of households and viable companies.

**Taking actions against selective tax advantages**

Fair tax competition is essential for the integrity of the Single Market and for ensuring that companies active in the EU can compete on fair and equal terms. For these reasons, the fight against tax evasion and tax avoidance is high on the Commission’s agenda. DG Competition contributes to this by investigating whether Member States have granted selective fiscal advantages to individual undertakings or groups of undertakings. While designing tax systems and collecting taxes are competences of EU Member States, they have to comply with internal market rules and competition law.

In the last few years, the Commission has adopted eight decisions against Member States endorsing multinationals’ aggressive tax planning structures. This applies to preferential tax schemes, such as the Belgian Excess Profit system and the corporate income tax regime in Gibraltar or individual tax rulings, like the case of Apple (Ireland), Amazon (Luxembourg) and Engie (Luxembourg). In these cases the national tax authorities accepted to artificially lower the taxes due by certain companies. Therefore, the Commission ordered the respective Member States to recover the unpaid taxes from these companies, removing the unfair competitive advantage they enjoyed and restoring equal treatment with other companies. In the case of McDonald’s (Luxembourg), the Commission’s suspicions that the Luxembourg – US Double Taxation Treaty had been misapplied were not confirmed. Therefore, the Commission concluded, based on the doubts raised in the opening decision, that Luxembourg had not granted any State aid incompatible with EU State aid rules.

In 2019, DG Competition will continue its pending formal investigations into the Group Financing Exemption from the Controlled Foreign Company rules implemented by the United Kingdom and the tax rulings granted to Inter IKEA by the Netherlands in order

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117 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.


119 SA.34914. Reference to be added after publication on 19/12.


to decide whether these measures provided the companies with undue financial advantages. The Commission remains available to cooperate with Member States when they decide to change their national tax legislation, as it did for Luxembourg, and Cyprus.

Beyond the area of aggressive tax planning, DG Competition is committed to ensuring competition on fair and equal terms between companies operating in the single market. DG Competition will remain vigilant ensuring that Member States do not use fiscal tools to unduly favour certain companies/economic sectors or shelter national companies from international competition.

The Commission will also continue to provide guidance to Member States and help them to design tax measures that comply with State aid rules, as already done in 2018 for example for health related taxes or real estate taxes.

**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 2019, State aid control in the manufacturing sector will continue to focus on enforcing the rules for rescue and restructuring of firms in difficulty in the "real" economy. These rules address aid to undertakings in difficulty, which absent the public funding would exit the market, leaving their assets and market share available to more efficient competitors. Such aid is particularly distortive because it slows down market-driven restructuring and resulting growth. Public funding in favour of companies in difficulty is therefore allowed only under strict conditions ensuring, in particular, that the company addresses the problems that caused its difficulties and becomes viable without continued State support.

**Aid in transport**

State aid control in the transport sector plays a key role in limiting distortions of competition on transport markets, traditionally marked by significant public intervention. It also ensures that public funding is targeted at projects and activities that deliver tangible benefits in terms of mobility.


125 These changes to the national legislation concerned for example the financing companies in Luxembourg and Cyprus.

The Commission will continue advising the Member States to ensure that the aid to airports complies with the Aviation Guidelines\(^{129}\), and it will provide support to public entities to ensure that their investments in airports remain either market conform or compatible with State aid rules. The Commission has proposed a targeted review\(^{130}\) of the Aviation Guidelines to prolong the application of the specific regime for operating aid for airports with up to 700 000 passengers per annum beyond 4 April 2019, namely until 4 April 2024, and to foresee the reassessment of these specific rules in the context of the overall evaluation of the Guidelines which has to be carried out by 4 April 2020. The purpose of the Aviation Guidelines evaluation is to assess whether the objectives set in the Guidelines have been reached, in particular concerning the temporary compatibility of operating aid to airports is part of the Fitness check of the SAM package.

In the rail sector, in 2019 the Commission will continue to enforce the State aid rules in order to prepare and accompany the liberalisation brought about by the 4th Railway Package\(^{131}\) in 2019. In this respect, the application of the State aid rules will ensure that public funding by Member States does not distort competition in rail transport services or raises barriers to entry for new entrants. In its enforcement activities, DG Competition will continue to work closely with DG MOVE, the national competition authorities and national rail regulators to ensure fair, transparent and non-discriminatory access to the rail market for all operators. Formal investigations to be pursued in 2019 also concern restructuring aid to a number of national railway companies, for example CFR Marfa in Romania\(^{132}\) and the Polish Regional Railways\(^{133}\). State aid also has a role to play in supporting the interoperability of European rail transport services, and fostering the modal shift aiming at the provision of cheaper and environmentally friendly transport services to businesses and citizens alike in the internal market.

The evaluation of the Railway Guidelines\(^{134}\) to verify in particular whether the Guidelines still fulfil the objective of enhancing the modal shift from road to rail and ensuring interoperability of European networks is part of the Fitness check of the SAM package.

In the maritime sector, DG Competition will continue to ensure a consistent application of the 2004 Maritime State aid Guidelines.

**Aid to the postal sector**

Despite the complete liberalisation of the postal sector in the EU, the letter market remains heavily concentrated and subject to very significant State intervention. While Member States enjoy a wide discretion in the definition of 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.

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128 SA.48171 (2018/C) Complaints against alleged State aid to Alitalia, see IP/18/3501.


130 Amendment of the Aviation Guidelines with respect to the specific regime on operating aid for small airports, PLAN/2018/2914.


133 Case SA.43127 (2018/C) – Restructuring of the Polish Regional Railways, see IP/18/394.

In 2019, the Commission will continue its assessment of SGEI compensations and other measures granted to postal operators, notably on the basis of the 2011 SGEI package. In particular, following the adoption of a first decision regarding Post Denmark in 2018, the Commission will pursue its analysis of additional measures granted to this operator by the Danish and/or the Swedish authorities.

**Digital Single Market**

In the broadband sector private companies tend to invest mostly in urban highly populated areas in view of the return on investment. As a result, in certain areas – in particular rural areas – public funds are needed to ensure the sustainability of investment supporting the deployment of broadband networks for the sake of inclusion and development. Public spending next to private investments continue to be key to achieve the longer term objectives set by the Digital Agenda for Europe and based on the “Gigabit Society” targets up to and beyond 2025. In 2019, State aid control continues to ensure that publicly funded networks do not crowd out private investments. The Commission will be taking new decisions that will be linked to the new connectivity targets and will continue to stimulate the use of the GBER. As basic broadband coverage is improving in the European Union, State aid assessments will become more and more targeted on deploying broadband networks in the so-called grey and black areas (areas where minimum one network operator is present). DG Competition will continue to actively contribute to the new European network of Broadband Competence Offices and the Toolkit for Rural Broadband throughout 2019.

In 2019, in the media and broadcasting area, the Commission, with the guidance of the Cinema Communication and the Broadcasting Communication, accompanies Member State investments, ensuring that support is well-designed in order to meet the underlying objectives of common interest while limiting negative effects on competition.

In the area of spectrum licensing, in line with the 2017 Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the EU, operators must migrate out of the 700 MHz band. In 2019, DG Competition

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137 Communication of 26 August 2010 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)] Coverage of 30 Mbps download for all Europeans and take-up of 100 Mbps subscriptions for at least 50% of European households.

138 As defined in the Communication of 14 September 2016 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 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.


141 Communication from the Commission on State aid for films and other audio-visual works (2013/C 332/01).


may be required to assess whether the compensations offered by Member States to cover operators’ migration costs are compatible with the State aid rules.

**Specific objective 10: Prevention and recovery of incompatible aid**

DG Competition's State aid control activity aims at 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 2019, DG Competition aims to make further progress towards effective and rapid enforcement of recovery decisions\(^\text{144}\). A review of the notice on recovery\(^\text{145}\) has begun in 2018 with the aim to adopt a new notice in 2019. At the same time the Commission has launched a study on the enforcement of State aid law by national courts\(^\text{146}\), which is expected to be published in 2019.

**Specific objective 11: Monitoring of aid measures**

Over the years, the architecture of State aid control has evolved. Today, 32% of aid is granted under block-exempted schemes which are not examined by the Commission prior to their entry into force\(^\text{147}\). Overall, 80% of aid is granted on the basis of previously approved aid schemes or Block Exemption Regulations\(^\text{148}\). 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.

In order to ensure that aid granted under existing aid schemes (in particular those enacted 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 exercise covers all Member States (smaller Member States are subject to monitoring at least every two years) and all main types of aid. In 2019, 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 2019 by further developing its new partnership with Member States.

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\(^{144}\) By 31 December 2018, the total amount of illegal and incompatible aid to be recovered from beneficiaries since 1999 stood at EUR 35.4 billion. At the same time, a total of approximately EUR 4.8 billion is currently outstanding. In 2018, the Commission adopted 5 new recovery decisions and an amount of EUR 350 million was recovered by the Member States.

\(^{145}\) Notice from the Commission: Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid; OJ C 272, 15.11.2007, p. 4.


\(^{147}\) This percentage concerns aid in terms of volume. Banking schemes are not considered here. For the latest publicly available figures, see Scoreboard, EU 28 2017 http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html.

\(^{148}\) Ibid.
The Commission launched a review of the Simplified Procedure Notice and of the Best Practices Code in 2016. 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.

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 contacts.

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

The Commission is also planning to amend State aid rules to accompany the MFF 2021-2027. The aim is to simplify and streamline the interplay between State aid rules and funding rules under the next MFF.

1.4. Promoting competition culture and international cooperation in the area of competition policy; maintaining and strengthening the Commission’s reputation world-wide and striving for greater transparency and basic disciplines on subsidies control

DG Competition engages in advocacy activities and promotes competition culture, including State aid control, 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 policy.

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

In 2019, 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 as the Reform of the Common Agricultural Policy. 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.

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153 It is envisaged that the revised Best Practices Code will repeal and replace the Simplified Procedure Notice both of which pre-date State Aid Modernisation.
154 Mission Letter by President Juncker to Commissioner Vestager.
In 2019, 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. DG Competition regularly assesses the economic impact of its market interventions illustrating the benefits of such interventions in terms of lower prices and better quality products. In 2019, DG Competition will continue its collaborative effort with the Joint Research Centre and DG ECFIN to model the macroeconomic impact of competition policy.

In 2019, 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 explaining to businesses and Member States the economic and legal approach used by the Commission when taking decisions. In 2019, DG Competition plans to conduct again *Eurobarometer Flash Survey on Citizens' Perception about Competition Policy*. The results of the survey benefit competition advocacy efforts by the Commission and the national competition authorities as stated in the DG Competition Strategic Plan 2016-2020.

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

In 2019, DG Competition aims at promoting international cooperation and convergence in the area of competition policy, a greater transparency and basic disciplines on subsidy control by undertaking a wide range of activities with international bodies and third countries.

A continued 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 aims in particular to include strong commitments on subsidies, beyond what exists in WTO, extending transparency to services subsidies, broader consultation possibilities and prohibiting the most distortive subsidies. Important agreements being negotiated include the FTA with Australia, Azerbaijan, Chile, Indonesia, Kyrgyzstan, Mercosur countries, New Zealand, Tunisia and Uzbekistan.

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

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

156 Eurobarometer Flash 403 on Citizens’ Perception about Competition Policy (2014) published in March 2015, [http://ec.europa.eu/competition/publications/reports/surveys_en.html](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](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.

157 Argentina, Brazil, Paraguay, and Uruguay.
Cooperation (MoUs). DG Competition's technical cooperation activities with the Chinese competition authorities are most notable and will continue in the coming years (2019-2022). Moreover, DG Competition has expanded its technical cooperation activities in Asia for this period to comprise also Japan, Korea, India and the ASEAN countries.\footnote{Association of Southeast Asian Nations.}

In 2019, DG Competition's cooperation in competition policy and in cases will continue with China's recently created China's State Administration for Market Regulation (SAMR), and it is envisaged to reconfirm the Terms of Reference on a Competition Policy Dialogue and to upgrade the merger case cooperation document signed in 2015. Furthermore, DG Competition will continue the dialogue on State aid control and Fair Competition Review and expects to reconfirm the Memorandum of Understanding with the SAMR.

DG Competition, together with DG Trade, will also continue to support discussions on improving subsidy rules in the World Trade Organisation (WTO) and the Organisation for Economic Cooperation and Development (OECD). Across the board, the intermediary objective is to achieve more transparency on subsidies to goods and services, with a view to broaden the scope of horizontal subsidies provision in the long-term, and to stimulate further reflections on prohibitions of certain subsidies. DG Competition is also actively supporting DG Trade's sectoral initiatives to address subsidies in the international context, such as for steel (G20 Global Forum on steel excess capacity), for semiconductors (Regional support guidelines for the semiconductor industry), for shipbuilding (OECD). Finally, DG Competition, together with DG Trade, will continue to work with EU Member States in the International subsidy policy group on gathering information on third country subsidies and exchange views on international subsidy policies at multilateral and bilateral level.


During 2019, DG Competition will continue to provide assistance to candidate countries and potential candidate countries as regards the implementation of the EU acquis in the competition policy field and, more generally, contribute to fostering a competition culture. DG Competition will also continue to support the Commission in the assessment of the ability of candidate countries to apply EU legislation, and more generally in the accession process.

In 2019, DG Competition will also continue to participate actively in international fora such as the Competition Committee of OECD, the International Competition Network (ICN) and the United Nations Conference on Trade and Development (UNCTAD) by means of written contributions and participation in meetings, conferences and workshops.

Following the Article 50 TEU notification by the United Kingdom, the Commission is preparing the withdrawal of the United Kingdom from the EU. DG Competition will continue its work to prepare for and find solutions to any competition policy-related
consequences of the withdrawal and assist the relevant Commission services\textsuperscript{161} in charge of coordinating the Commission work on Brexit.

**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 2019, 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.

In 2019, the Sounding Board consisting of some 60 staff members of DG Competition will conclude and make recommendations to the Senior Management of DG Competition on the implementation of the Smarter Working Initiative to identify further sources of efficiency and synergies as well as making DG Competition a better workplace.

If the applicable Framework Contract is available in 2019, DG Competition may decide to conduct *Eurobarometer Standard Qualitative Study DG Competition Stakeholder Survey* among its professional stakeholders on some key quality parameters\textsuperscript{162} related to DG Competition’s work as foreseen in DG Competition Strategic Plan 2016-2020.\textsuperscript{163}

In 2019, the European Court of Auditors (ECA) will publish a Special Report on its findings following an audit launched in April 2018 in the field of antitrust and merger control. The ECA examines in particular whether the Commission has been effective in enforcing the EU competition rules and how it has identified anticompetitive behaviour, conducted its investigations, and assessed as well as communicated the effectiveness and impact of its work on competition and the resulting benefits for citizens in the Single Market. The findings by the ECA will contribute to DG Competition’s constant efforts to improve its performance.

In addition, the ECA is launching an audit in the field of State aid in 2019. The audit aims to assess the efficiency and effectiveness of EU State aid procedures for aid granted to banks.

\textsuperscript{161} The Brexit Preparedness Group (BPG) - established on 1 December 2017 and placed within the Commission’s Secretariat General - coordinates measures relating to preparedness and contingency planning across all policy areas preparing for the United Kingdom’s withdrawal from the EU.

\textsuperscript{162} These parameters include i) Soundness of legal and economic analysis (clarity and comprehensibility of decisions, predictability of decisions, predictability of fines imposed, understanding the markets and quality of economic analysis), ii) Transparency and procedural fairness (level of transparency of DG Competition’s work, listening and informing in a timely manner, publication of non-confidential versions of decisions, stakeholder consultations on new rules, observance of procedural rules and burden on businesses and organisations), iii) Economic effectiveness (effectiveness of detection policy, deterrent effect of fines, impact of existing antitrust rules on planned business transactions, timeliness of decisions, focus on the right sectors, adaptation to the technological changes and globalisation, impact on the markets, use of settlements in cartel cases and commitment decisions in antitrust cases, enforcement of decisions and contribution to the EU’s economic growth) and iv) Communication and promotion of competition culture (clarity and comprehensibility of external communication, choice of communication and media channels and promotion of competition culture and policy convergence at the international level).

PART 2. MAIN ORGANISATIONAL MANAGEMENT OUTPUTS FOR THE YEAR

A. Human resource management

On 16 February 2017, DG Competition joined, alongside the other Commission services, the second pilot phase of the HR Modernisation Project. Further to the conclusion of the pilot phase mid-2018, it was decided in the second half of 2018 to proceed to the full roll-out of the project. DG Competition’s HR policy is planned and implemented under the new HR delivery model put in place by the HR Modernisation Project.

It is to be noted that this HR policy does not only form an integral part of the DG’s HR Strategy, but is also embedded in its ‘Smarter Working Initiative’. An action plan was established and comprises several HR initiatives to be developed or to be further implemented in the coming months and years. In the second half of 2018 up until early 2019, on-going and completed actions in the context of the ‘Smarter Working Initiative’ will be reviewed by a ‘Sounding Board’ of around 60 staff members and new action points will be added.

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

Following the positive results received from a staff survey launched in May 2017, a renewed version of the '10 DOs for people management' was signed by all senior and middle managers as well as Deputy Heads of Unit in 2018 and it was decided to further monitor compliance with the 10 DOs in 2018 and beyond, amongst others in the context of the work of the Sounding Board and through entry, exit and career development interviews with staff members which will be continued in 2019.

180° feedback development exercise for DG Competition’s managers

As an integral part of staff motivation, engagement, and retention strategy in DG Competition, a 180° feedback exercise for managers was launched in September 2014 and spread over several rounds. So far, DG Competition’s Director-General, 11 Senior Managers, 48 Heads of Unit and 28 Deputy Heads of Unit participated in the exercise. In October 2018, DG Competition launched another round for 40 Heads of Unit. Further to this new round of the 180° feedback exercise and based on its results in terms of areas for further development, follow-up training modules will be offered to all managers in 2019, as well as regular lunchtime sessions for managers dedicated to issues of people management.

Staff Survey 2018

The Staff Survey 2018, which was launched on 19th November, gives staff the opportunity to express their views about their current work and workplace. The results of the survey will be available at the beginning of 2019 and DG COMP will then carefully analyse the COMP-related results. Particular issues raised at the survey will be addressed and, after internal discussion, translated into an action plan as DG COMP is continuously striving to improve working conditions and to make DG COMP a better place to work.

In close cooperation with our internal communication unit, the (COMP-related) results of the staff survey will be communicated to DG COMP staff at a dedicated ‘hot topic’ session chaired by our Director-General. In addition, the results will also be published on the internal DG COMP website.

164 This will be done until the foreseen organisation of the exercise at Commission level has become effective.
Flexible working arrangements and fit@work

In 2018, several conferences and events with respect to the new Health and Wellbeing Action Plan for 2017-2020 were organised within the Commission as well as specifically within DG Competition.

In the context of the work of the Sounding Board, both the use of flexible working arrangements and of fit@work initiatives will be reviewed and new initiatives, tailor-made to the needs of the DG, will be developed in 2019, to be added to the Smarter Working Initiative Action Plan. Initiatives launched in the past years, such as the “Guidelines on flexible working arrangements in DG Competition”, will also be further monitored in 2019.

In early 2019, a Health Week will be organised in the Madou Building, during which there will be presentations on health-related topics, possibilities for staff to consult medical specialists on an individual basis and presentations of well-being activities offered in DG COMP and in the Commission more generally. Moreover, a voluntary blood collection will be organised in cooperation with the Account Management Centre and the Red Cross.

Other initiatives

The need for a review of the brochure for newcomers on mobility and careers in DG Competition will be assessed in the second half of 2018 and 2019, notably in the context of the work of the Sounding Board. In that context, reflections will also take place on how to make DG Competition an even more attractive workplace and how to best keep in touch with colleagues who left DG Competition in recent years, with a view to their possible return to the DG in 2019 and beyond.

As regards career development and guidance, in 2019 DG Competition strives to continue securing staff integration through dedicated coaching and mentoring, appointing a coach as well as a mentor to every newcomer. Furthermore, it will continue to hold entrance, career development, exit and return interviews.

In the context of the work of the Sounding Board, DG Competition plans to review the functioning of the career guidance pool of experienced managers and reflect on ways to further promote and to enlarge it in 2019 with additional experienced managers. The pool was created in 2016 to give staff the possibility to ask a manager from the pool for a confidential career guidance discussion.

DG Competition participated in the Commission's Career Day on 13 November 2018 and intends to continue contributing to such corporate initiatives in 2019. The Sounding Board will look into further ways to promote DG Competition as an attractive workplace, e.g. through a COMP-specific career day. Further reflection on alternative career paths (e.g. Senior Experts/Assistants) and on additional initiatives to retain and attract experienced staff took place in 2018 and will continue in 2019, in particular in the context of the work of the Sounding Board.

Objective 1: Attract, motivate and retain highly qualified staff

Main outputs in 2019:

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation of the Action Plan in the framework of DG Competition’s Smarter Working Initiative</td>
<td>Staff engagement index</td>
<td>Maintain above Commission average</td>
</tr>
</tbody>
</table>
On 19 July 2017, the Commission adopted a Communication on *A better workplace for all: from equal opportunities towards diversity and inclusion*\(^\text{165}\). The Diversity and Inclusion Charter is an integral part of the Communication, setting out the guiding principle for the Commission’s HR policies. It also reinforces and formalises the institution’s commitment to diversity and inclusion. In 2019 and beyond, DG Competition is committed to giving all staff members the same opportunities independent of their background and undertakes to respect the principle of non-discrimination in all its forms and at all stages of human resources management.

On 19 July 2017, the Commission also adopted a renewed approach to its commitment to reach at least 40% female managers by the end of 2019 (Decision SEC (2017)359). To this effect, the Decision sets quantitative targets of first female appointments to be made per Directorate-General and service at middle management level. In view of the demography of DG Competition and the predominance of women in the lower and middle AD-grades, DG Competition is working towards meeting that target and is on track to achieve it.

**Objective 2: 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 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation of initiatives aimed at increasing the number of female candidates to middle management positions: identification of possible candidates, mentoring scheme, outreaching activities (lunchtime session, open day, etc.)</td>
<td>Female representation in middle management</td>
<td>Increase the number of female Heads of Unit by 1(by 01/11/2019) in line with the Commission decision on female representation in middle management</td>
</tr>
<tr>
<td>Local fit@work and well-being initiatives, tailor-made to DG Competition's needs</td>
<td>Percentage of staff who feel that the Commission cares about their well-being</td>
<td>Maintain above Commission average</td>
</tr>
</tbody>
</table>

\(^{165}\) Communication of 19 July 2017 from the Commission *A better workplace for all: from equal opportunities towards diversity and inclusion*, C(2017)5300 final

B. Financial management: Internal control and Risk management

Competition policy is implemented through enforcement and involves predominantly investigative (case-handling) and advocacy activities. DG Competition manages a relatively modest administrative budget of EUR 9.2 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 and IT. Financial management is therefore not a critical challenge for the DG's operations.

In 2019, DG Competition will continue its rigorous management of its financial activities and further analyse its financial circuits in order to assess the functioning of the internal control system. It will in particular consider differentiating the frequency and/or the intensity of the controls and analysing whether there is scope to further improve the efficiency of its financial operations without risking the legality and regularity of its transactions.

On 2 May 2018 the Commission adopted the proposal for the Multiannual Financial Framework (MFF) for the period 2021-2027. On 7 June 2018, as a part of the new MFF package, the Commission adopted the Single Market Programme, which includes the new Competition Programme. The indicative budget of the Competition Programme is 140 million euro for 7 years period.

For the first time ever, the Competition Programme will help tackle new challenges for competition policy linked to the use of big data and algorithms and other fast-moving developments in an increasingly digital environment, as well as strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the Single Market.

The Commission strongly advocates an ambitious timetable for the negotiations aiming at an agreement on the main elements of the next Multiannual Financial Framework by spring 2019. Irrespective of the progress achieved in 2019 in the interinstitutional negotiations, DG Competition will start preparing implementation of Competition programme including detailed operational planning, development of indicators, reports and monitoring tools.

Objective 1: Effective and reliable internal control system giving the necessary guarantees concerning the legality and the regularity of the underlying transactions.

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Output</td>
</tr>
<tr>
<td>All transactions are reviewed ex-ante by the financial sector and allow the required corrections to be made during the transaction process.</td>
</tr>
<tr>
<td>Error rate detected on the legality and regularity of the underlying transactions for administrative budget implementation</td>
</tr>
</tbody>
</table>
Objective 2: Effective and reliable internal control system in line with sound financial management.

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that the controls in place do not contain systematic weaknesses</td>
<td>Number of instances of overriding controls or deviations from established procedures</td>
<td>&lt; 10</td>
</tr>
<tr>
<td>Compliance with contractual payment delays</td>
<td>Payments executed within the contractual limits</td>
<td>&gt; 90%</td>
</tr>
<tr>
<td>Implement the financial resources allocated to DG Competition</td>
<td>Budget execution with respect to budget appropriations</td>
<td>&gt; 90%</td>
</tr>
<tr>
<td>Risk-differentiated &amp; cost-effective internal control systems</td>
<td>Review status of the control systems to differentiate the frequency and/or the intensity of the DG’s controls</td>
<td>100% control systems reviewed and revised, if necessary</td>
</tr>
<tr>
<td>Increased awareness of new internal control framework</td>
<td>Awareness raising actions/year:</td>
<td>2/year</td>
</tr>
<tr>
<td></td>
<td>- Top Talk/DG blog item</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Staff lunch event</td>
<td></td>
</tr>
</tbody>
</table>

In 2019, DG Competition intends to continue its monitoring and follow-up of inadvertent disclosures of confidential information, and report on the implementation of the Anti-Fraud Strategy and its Code on Ethics. DG Competition Anti-Fraud Strategy will be updated in line with the revised Commission's Anti-Fraud Strategy, due to be adopted in late 2018 or early 2019.

DG Competition will continue its awareness raising activities for staff on ethics and security matters. This will include the traditional compulsory ethics training for newcomers, information sessions on the revised Code on Ethics and Anti-Fraud Strategy, and specific information sessions on information security.

In April 2017, the European Commission adopted a Communication on the Revision of Internal Control Framework (C (2017) 2373) with a view to aligning to the highest international standards set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) framework. The revised Internal Control Framework became fully applicable in January 2018. Consequently, all Commission services will assess the effectiveness of their internal control systems on the basis of the new framework and the internal control principles as of the Annual Activity Report 2018. DG Competition carried out several awareness raising initiatives on the new Internal Control Framework amongst its staff in 2018 and will continue to do so in 2019.
Objective 3: Minimisation of the fraud, ethics and security risks through 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 2019:

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Anti-Fraud Strategy</td>
<td>DG COMP Anti-Fraud Strategy revised in line with the latest Commission Anti-</td>
<td>June 2019 depending on date of adoption of the CAFS</td>
</tr>
<tr>
<td></td>
<td>Fraud Strategy (CAFS).</td>
<td></td>
</tr>
<tr>
<td>Increased level of ethics and anti-fraud</td>
<td>Number of training sessions on ethics and anti-fraud for all staff</td>
<td>2</td>
</tr>
<tr>
<td>awareness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fraud and ethics awareness for target</td>
<td>Newcomers attendance at ethics training and follow-up</td>
<td>90%</td>
</tr>
<tr>
<td>population as identified in the DG’s AFS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Code on Ethics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review of anti-fraud actions undertaken and</td>
<td>Regular monitoring of the implementation of the AFS and Code on Ethics,</td>
<td>Report to management once a year</td>
</tr>
<tr>
<td>proposal for further actions</td>
<td>and reporting to management</td>
<td></td>
</tr>
<tr>
<td>Knowledge and respect by staff of DG</td>
<td>Every reported incident has a follow-up action</td>
<td>100%</td>
</tr>
<tr>
<td>Competition’s security rules and incident</td>
<td></td>
<td></td>
</tr>
<tr>
<td>reporting procedures</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

C. Better Regulation

The main planned outputs linked to the Better Regulation objective in the Strategic Plan 2016-2020 are listed in Annex 1 under the relevant specific objective in the tables. They are presented in the tables under the heading “All new initiatives and REFIT initiatives from the Commission Work Programme” and “Other important items”.

D. Information management aspects

Document management is essential to the mission of DG Competition since competition enforcement must be based on factual evidence. Documents are delivered to case handlers in an electronic format in the reference file hosted within the electronic Case Management Information systems.

In 2019, DG Competition will continue the development of a common Case Management System for the Commission services participating in the Case Management Rationalisation project (CASE@EC). CASE@EC will be implemented within DG Competition in full synchronisation with ARES/HERMES. This will ensure that all documents received or sent by DG Competition, within the limits of the ARES/HERMES technology and in line with our confidentiality/security requirements, are stored in the central repository of the Commission.

Following the first release in early 2019 on horizontal projects, State aid enforcement will be implemented by mid-2019 and antitrust/cartels by the end of 2019. CASE@EC will cover the merger control instrument by June 2020. While the new case management system will be more powerful and performing, the infrastructure including
the desktops/laptops of the staff of DG Competition and the building's Ethernet network will also need to be upgraded to fully realise the envisaged performance gains and mitigate any performance issues as regards general office automation software that may be occurring. In this sense, DG Competition will continue requesting, in particular to DG DIGIT and OIB, the necessary infrastructure and equipment.

CASE@EC contributes to Pillar 1 of the Information Management Steering Board (IMSB) Work Programme 2018-2019.

As regards data protection, the Commission adopted on 7 November 2018 a Data Protection Action Plan. DG Competition will implement the Regulation on protection of individuals with regard to the processing of personal data by the Union institutions (GDPR).

On that basis, DG Competition will in particular raise awareness among staff on data protection issues and will notify its processing operations in the new corporate system, the Data Protection Record Management System (DPMS). The processing related to the core activities of DG Competition (investigations) has already been thoroughly reviewed and is compliant with the new data protection rules.

Furthermore, in order to avoid unwanted interference between data protection rules and investigations, the Commission adopted a Decision laying down the possibility to restrict certain rights of the data subjects in situations where their unlimited exercise could hamper competition enforcement. In 2019, DG Competition will monitor the implementation of the Regulation on protection of individuals with regard to the processing of personal data by the Union institutions.

DG Competition will continue in 2019 to develop knowledge management and information sharing/search tools to empower staff to share knowledge and best practices. The new "Knowledge Base" that offers various information sources – COMP WIKI, Commission, Court decisions in the competition field etc. - will be further improved by possibly adding other sources of information in a single user-friendly interface. In addition, DG Competition (i) will explore the possible contribution of Artificial Intelligence technologies to help staff review electronically stored documents originating from companies under scrutiny ("technology-assisted review) and (ii) will launch a study on certain use cases for data analytics applied to competition enforcement.

As regards information exchanges between DG Competition and Member States, DG Competition will continue to operate and improve the secure electronic information sharing systems developed under the ABCDE action of the ISA² programme, notably: (i) ECN2 to support exchanges on competition cases and policy within the European Competition Network (Commission and National Competition Authorities) and (ii) a suite of various State Aid applications used by Member State administrations. Moreover, DG Competition is developing new common IT solutions that can be re-used in EU Member States to automate and support certain enforcement activities. DG Competition will finalise the development of information systems to support (i) the process of requesting information from businesses for investigatory purposes, and (ii) confidentiality negotiations concerning access to case files of investigated companies.

Finally, DG Competition will monitor the deployment of electronic means within its management validation circuit (e-signatories based on e-mails, while awaiting implementation of such functionality in CASE@EC).

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

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing is mandatory in DG COMP. 100% of the documents must be filed, in 2018 in the own registration/document system (EDMA) of DG COMP and in 2019 in CASE@EC with a link to ARES.</td>
<td>Percentage of registered documents that are not filed (ratio)</td>
<td>0%</td>
</tr>
<tr>
<td>In DG COMP documents are exchanged and made visible in its own registration/document system (EDMA in 2018; CASE@EC in 2019). Security based on the need to know principle is implemented in the system also at the attachment level.</td>
<td>Percentage of documents in case files readable/accessible by all units in the DG.</td>
<td>99% of documents in case files are accessible to the whole DG</td>
</tr>
<tr>
<td>Outside DG COMP, no files are shared 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 COMP files are restricted to DG COMP.</td>
<td>Percentage of files shared with other DGs</td>
<td>0%</td>
</tr>
<tr>
<td>Acceptance and use of the collaborative tools</td>
<td>Percentage of sectoral and policy units using collaborative tools</td>
<td>100%</td>
</tr>
<tr>
<td>Paperless workflow of validation</td>
<td>Percentage of documents approved through an electronic workflow of validation</td>
<td>80% (all documents except when a signature on paper is required such as e-greffe or some financial transactions)</td>
</tr>
</tbody>
</table>
E. External communication activities

DG Competition has made no commitment for spending in significant external communication actions in 2019 but will rather continue to focus its external communication actions on mass media through close cooperation with the Spokesperson's Service. DG Competition will continue to implement a demand-led initiative inviting stakeholders to request speakers from DG Competition to explain EU competition rules/policy e.g. at their events and at the offices of DG Competition.

**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.

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Output</strong></td>
</tr>
<tr>
<td>Implement demand-led initiative inviting stakeholders to request speakers from DG Competition to explain EU competition rules/policy at their events</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

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

DG Competition is continuously looking for further opportunities to increase its effectiveness, efficiency and flexibility and to optimise its matrix structure. Following its own E-survey (2015) and Commission Staff Survey (2016), its “Smarter Working Initiative” engages all staff in identifying further sources of efficiencies and synergies as well as ways in making DG Competition a better work place.

Currently Sounding Board of some 60 colleagues from DG Competition is reviewing actions taken so far and making further recommendations to the senior management on issues relating, *inter alia*, the best use of resources in a matrix structure, increasing project-based internal mobility via décloisonnements, continuing to foster the development and engagement of the staff and management in DG Competition, to further improve the Directorate-General's managerial culture and to provide a solid basis for rising job satisfaction in DG Competition.

In 2019, the Sounding Board will review, conclude and make recommendations to the Senior Management of DG Competition on the implementation of the Smarter Working Initiative to identify further sources of efficiency and synergies in the way DG Competition is operating as well as making DG Competition a better workplace.
**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**

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
<th>Related to spending programme(s) -</th>
</tr>
</thead>
<tbody>
<tr>
<td>Output</td>
<td>Indicator</td>
</tr>
<tr>
<td>Conduct of investigations and adoption of Commission decisions in the field of antitrust and cartels in accordance with EU competition law</td>
<td>Intervention rate(^{168})</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
<th>Related to spending programme(s) -</th>
</tr>
</thead>
<tbody>
<tr>
<td>Output</td>
<td>Indicator</td>
</tr>
<tr>
<td>Effective support to NCAs on individual cases with a view to ensure coherent and effective application of Articles 101 and 102 TFEU</td>
<td>Implementation of comments on envisaged decisions received from the NCAs(^{170})</td>
</tr>
<tr>
<td>Efficient support to NCAs on individual cases with a view to ensure coherent and effective application of Articles 101 and 102</td>
<td>Time to reply to NCAs</td>
</tr>
</tbody>
</table>

---

\(^{168}\) Intervention rate consists of final antitrust and cartel decisions by the Commission. 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 investigations by DG Competition are always without prejudice to the final decision to be taken by the Commission in each 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.

\(^{170}\) The accuracy of the indicator depends on how accurately the NCAs report to the Commission.
Half-yearly meetings of the Heads of the NCAs with the Director General of DG Competition, regular meetings of ECN Plenary, ECN working groups and sectorial subgroups.

| Regular meetings | 2019 (no target) |

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

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
<th>Related to spending programme(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other important outputs</td>
<td></td>
</tr>
<tr>
<td>Output</td>
<td>Indicator</td>
</tr>
<tr>
<td><strong>Support to national courts in individual cases pending before them</strong></td>
<td><strong>Information and opinions provided to national courts concerning the application of the EU antitrust rules</strong></td>
</tr>
<tr>
<td><strong>Efficient support to national courts in individual cases pending before them</strong></td>
<td><strong>Time to reply to requests for information and requests for opinion from national courts</strong></td>
</tr>
<tr>
<td><strong>Guidelines for national courts on quantifying passing-on effects in antitrust damages actions</strong></td>
<td><strong>Adoption</strong></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Main outputs in 2019:</th>
<th>Related to spending programme(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other important outputs</td>
<td></td>
</tr>
<tr>
<td>Output</td>
<td>Indicator</td>
</tr>
<tr>
<td><strong>Evaluation of the Motor Vehicle Block Exemption Regulation (PLAN/2018/4817)</strong></td>
<td><strong>Continued</strong></td>
</tr>
<tr>
<td><strong>Evaluation of the Vertical Block Exemption Regulation (PLAN/2018/4003)</strong></td>
<td><strong>Public consultation to be launched</strong></td>
</tr>
<tr>
<td><strong>Report by the Special Advisers to Commissioner Vestager on the future challenges of digitisation for</strong></td>
<td><strong>Publication</strong></td>
</tr>
</tbody>
</table>

---

171 See Commission Notice on cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC, OJ C101/43, 27.04.2004.
### Merger control

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

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td>Number of Commission decisions adopted in a simplified procedure</td>
<td>2019 (no target(^{172}))</td>
</tr>
<tr>
<td>Lessening the burden for businesses</td>
<td>Ratio of merger decisions taken by the Commission in a simplified procedure</td>
<td>Stable level</td>
</tr>
</tbody>
</table>

**Related to spending programme(s):** -

\(^{172}\) 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.

**Specific objective 5: Prevention of anticompetitive effects of mergers with a view to protecting consumer welfare**

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct of investigations and adoption of Commission decisions in the field of merger control in accordance with EU competition law</td>
<td>Number of merger decisions adopted by the Commission (&quot;non-simplified&quot;) per year</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>Level of enforcement activity</td>
<td>Number of merger decisions adopted by the Commission per year</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>Commission's merger decisions subject to commitments, withdrawals in phase II, or prohibitions</td>
<td>Intervention rate per year</td>
<td>2019 (no target)</td>
</tr>
</tbody>
</table>
### Specific objective 6: EU competition law instruments maintained aligned with market realities and contemporary economic and legal thinking

**Main outputs in 2019:**

**Other important outputs**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluation of procedural and jurisdictional aspects of EU Merger Control (2017/COMP/003)</td>
<td>Finalisation and publication of Evaluation Staff Working Document</td>
<td>2019</td>
</tr>
</tbody>
</table>

### State aid control

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

**Main outputs in 2019:**

**All new initiatives and REFIT initiatives from the Commission Work Programme**

| Targeted modification of the General Block Exemption Regulation in relation to the EU funding programmes (PLAN/2018/2884) | Adoption | 2019 |
| Prolongation of the Commission Regulation (EU) N°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 | Adoption | 2019 |
| Fitness check of 2012 State aid modernisation (SAM) package, including railways guidelines and short term export credit insurance (PLAN/2018/4881) | Launch/continue | 2019 |
| Prolongation of the State aid rules reformed under the State aid modernisation (SAM) package and expiring by the end of 2020:  
  * Guidelines on regional State aid for 2014-2020  
  * Guidelines on risk finance aid for 2014-2020  
  * Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of | Adoption | 2019 |
State aid to promote the execution of important projects of common European interest
- Guidelines on State aid for environmental protection and energy 2014-2020
- Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty

Revision of the ETS State aid Guidelines (PLAN/2018/4137) | Public consultation to be launched | 2019

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of enforcement activity</td>
<td>Number of opening decisions per year (2015)</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>Study on the enforcement of State aid law by national courts</td>
<td>Publication</td>
<td>2019</td>
</tr>
</tbody>
</table>

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

Main outputs in 2019:

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct of investigations and adoption of decisions in the field of State aid in accordance with EU State aid rules</td>
<td>Adoption of Commission decisions</td>
<td>2019 (no target)</td>
</tr>
</tbody>
</table>

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

Main outputs in 2019:

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct of investigations and adoption of decisions in the field of State aid in accordance with EU State aid rules</td>
<td>Adoption of Commission decisions</td>
<td>2019 (no target)</td>
</tr>
</tbody>
</table>

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.
### Specific objective 10: Prevention and recovery of incompatible aid
Related to spending programme(s) -

#### Main outputs in 2019:

Other important outputs

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption of recovery decisions in the field of State aid in accordance with EU State aid rules</td>
<td>Adoption of Commission decisions</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>Revision of State aid Enforcement Notice – (PLAN/2018/2922)</td>
<td>Adoption</td>
<td>2019</td>
</tr>
<tr>
<td>Revision of the State aid Recovery Notice – (PLAN/2018/2406)</td>
<td>Adoption</td>
<td>2019</td>
</tr>
</tbody>
</table>

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

#### Main outputs in 2019:

Other important outputs

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring of decisions in the field of State aid in accordance with EU State aid rules</td>
<td>Number of aid measures subject to ex-post monitoring</td>
<td>At least 50</td>
</tr>
</tbody>
</table>

### 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 2019:

All new initiatives and REFIT initiatives from the Commission Work Programme

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>See output under objective 7 and 10</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
### Specific objective 13: Competition advocacy contributing to a pro-competitive regulatory framework at EU and national level

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Other important outputs</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of competition aspects of initiatives adopted and implemented at EU level(^{174})</td>
<td>Number of substantial replies to Commission inter-service consultations</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>European Semester country specific recommendations(^{175})</td>
<td>Number of country specific recommendations promoted or co-monitored by DG Competition</td>
<td>2019 (no target)</td>
</tr>
<tr>
<td>ECN Communication and Advocacy Working Group</td>
<td>Annual meeting</td>
<td>2019</td>
</tr>
</tbody>
</table>

### Specific objective 14: Explaining competition policy and its benefits

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Other important outputs</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions to explain EU competition rules to stakeholders</td>
<td>Number of people reached with communication actions directly supporting EU competition policy(^{176})</td>
<td>Throughout 2019</td>
</tr>
<tr>
<td>DG Competition's publications</td>
<td>Number of subscribers/readers of DG Competition's publications (^{177})</td>
<td>Increasing trend</td>
</tr>
<tr>
<td>Eurobarometer Flash Citizens' Survey on Competition Policy</td>
<td>Percentage of positive replies agreeing that effective competition has a positive impact on consumers</td>
<td>2019</td>
</tr>
</tbody>
</table>

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\(^{174}\) 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).

\(^{175}\) DG Competition calculation.

\(^{176}\) Collated monitoring data collected by DGs from their actions, from monitoring and evaluation contractors; from Opinion polls etc. (DG Competition calculation).

\(^{177}\) Baseline 2015 – DG Competition’s publications sent to 6 452 subscribers/readers and the digital publications to 34 880.
### Specific objective 15: Promoting international cooperation and convergence in the area of competition policy and greater transparency and basic disciplines on subsidies control internationally

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of convergence with third countries' competition authorities and inclusion of WTO and provisions on subsidies</td>
<td>Number of competition cooperation agreements and free trade agreements containing competition and subsidies clauses</td>
<td>37 agreements (2019)</td>
</tr>
<tr>
<td>Contribution of the Commission to increased international convergence of competition policy on multilateral for a</td>
<td>Number of contributions^{178} to OECD, ICN and UNCTAD</td>
<td>15-20 (2019-2021)</td>
</tr>
<tr>
<td>Contribution of the Commission to increased international convergence of competition policy bilaterally</td>
<td>Number of technical assistance workshops organised with third countries</td>
<td>(2019-2022) China (12) Brazil (2) Japan, Korea, India, ASEAN (min. 2)</td>
</tr>
</tbody>
</table>

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

**Main outputs in 2019:**

<table>
<thead>
<tr>
<th>Output</th>
<th>Indicator</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions to explain EU competition rules to stakeholders</td>
<td>Number of people reached with communication actions directly supporting EU competition policy^{179}</td>
<td>Throughout 2019</td>
</tr>
</tbody>
</table>

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^{178} E.g. Studies/papers presented, written contributions, participation in oral discussions.

^{179} Collated monitoring data collected by DGs from their actions, from monitoring and evaluation contractors; from Opinion polls etc. (DG Competition calculation).