



# **A practical insight on DG Competition work processes and competition law related issues**

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# **1. Introduction**

*It all starts with asking why? and how?*

## **2. Internal Processes & Practical Tips**

*Antitrust, Mergers and State aid*

## **3. Recent Developments**

*Antitrust: VBER, ECN+, cases*

*Mergers: revision of Merger Regulation, Best practices, cases*

*State aid: SAM, Fitness check, MFF, cases*

## **4. Key Challenges Ahead**

*Digital world and innovation*

*European Champions*

*Brexit*

*What can we expect for the future?*



# Fairness (why?)

- **Rationale:**

- To produce fairer outcomes for consumers
- To ensure competition on the merits

- **Legal notion** in competition rules

- **Procedural:**

- Help correct substantive outcomes: ICN guiding principles for procedural fairness
- Rights of defense, impartial decisions, objective communications
  - » UPS/TNT judgement





## ***2. Internal Processes & Practical Tips***



## 2.1. Enforcement guidelines (how?)

- **Speed:**

- Speed = Justice
  - » 2 years for high-tech markets in antitrust
  - » Less than 25 WD for 70% of mergers
  - » 5 months for notified state aid measures
- But tension between speed and rights of defence



- **Relevance:**

- Link with priorities of the Commission; Big on big, small on small

- **Quality:**

- More detailed Court's scrutiny
- Strong decisions in the current political climate
- Right balance between "playing safe" and "moving the goal post"

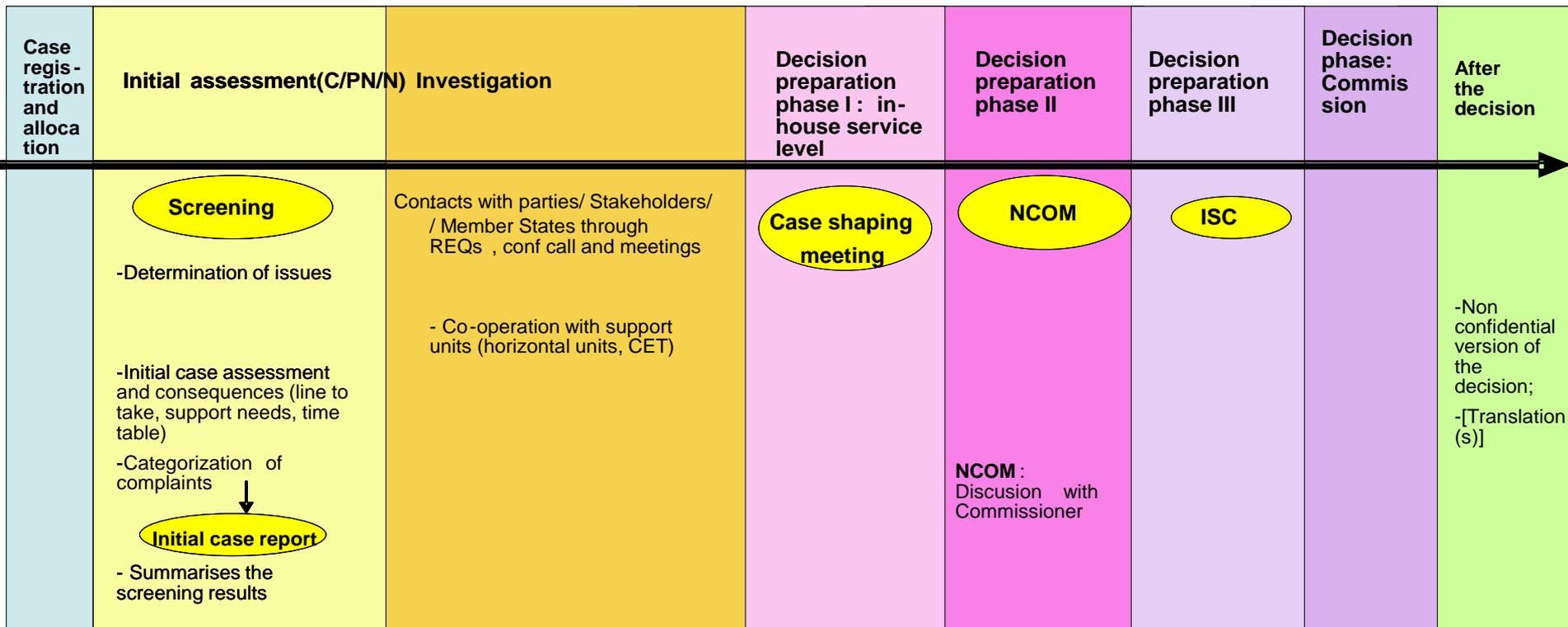


- **Communication:**

- To (continue) existing, our work needs to be well understood



## 2.2. Internal processes: how we work





## 2.3. Practical tips

(recap)

- Identify the **main issues** clearly
- **Complaints** need to be well-substantiated
- Use the **simplified forms**/ streamlined procedures in mergers and state aid
- Engage early with **pre-notification** talks
- **Immunity** on hypothetical terms is possible
- Involve **economists** early on (especially for mergers and state aid)
- Submit any **remedies** at an early stage
- Don't **misuse rights of defence** to avoid disclosing documents
- Don't hesitate in **meeting/talking** to the case team/Cab to present your case (especially in complex markets/cases or political cases)





## 2.3. Practical tips

- Meetings with case teams/ Cab - tips:
  - **Prepare** (slides, jargon, attribute roles)
  - Be **forthcoming** about any potential problems (gives credibility/generates goodwill)
  - Make your case on the **basis of competition law**:
    - Technical assessment/ independent authority (legal/ economic arguments are important)
    - Not enough to explain how important your company/ market is
    - Understand the limits of DG COMP's remit
  - **Don't assume** case teams know your sector/ product
  - Show **understanding** for the Commission's work and the Court's precedents
  - **Be open** to listen to what the Commission will say
  - **Don't misuse the press**/ generate aggressive press



## ***3. Recent Developments***



## 3.1. Recent developments - Antitrust

### 3.1.1. Numbers/enforcement:

- 2017: as many investigations as the 2 previous years combined
- Increasing number of decisions in the next years
- Around EUR 15.5 billion in fines during this mandate (44 decisions in antitrust and cartel)

### 3.1.2. Legislation/policy making:

#### 3.1.2.1. Vertical Block Exemption Regulation:

- Expires in 31 May 2022
- Evaluation (18 months) & Impact Assessment (24 months)
- Public consultation on Q1/2019; (ii) public workshop on Q4/2019





# 3.1. Recent developments - Antitrust

## 3.1.2.2. Consortia Block Exemption Regulation

- It expires on 25 April 2020
- Currently all options are possible (expiry, prolongation)
- Next steps: staff working document in Spring 2019
- The decision to prolong will depend on sufficient degree of certainty that consortia agreements satisfy all the conditions of art 81(3)

## 3.1.2.3. ECN+ (Directive 2019/1)

- Make national competition authorities more effective enforcers & ensure the proper functioning on the internal market
- New fining powers:
  - » Denmark and Ireland need to adapt the current fully criminal system: adopt administrative system or fines by civil courts
  - » 2 years after publication to transpose Directive

## 3.1. Recent developments - Antitrust

### 3.1.3. Cases/ lessons learned



#### 3.1.2.1. Airline ticket distribution

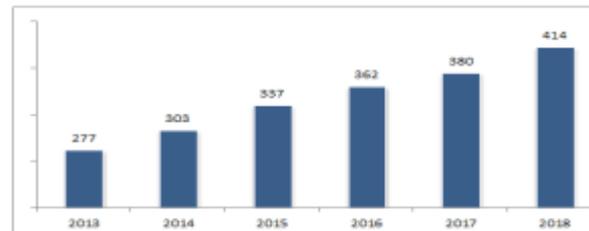
- Between 50 and 70% of network airline tickets are sold via travel agents, which use Computurised Reservation Systems (CRRs): Amadeus, Sabre and Travelport
- November 2018: Commission **opened proceedings** against Amadeus and Sabre
  - » Investigating whether clauses in agreements restrict the ability of airlines and travel agents to buy ticket distribution services from 3rd parties.



## 3.2. Recent developments - Mergers

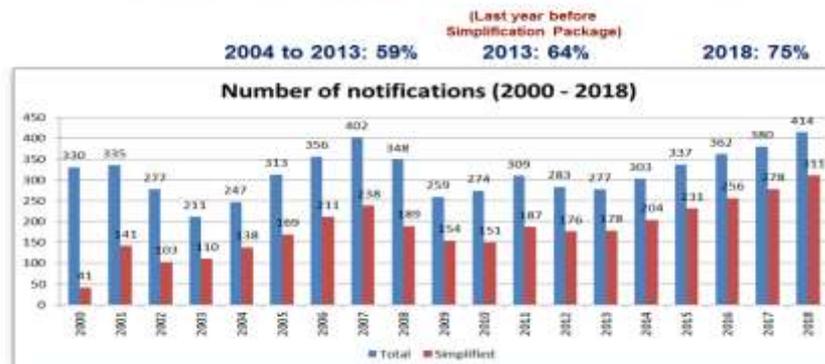
### 3.2.1. Numbers / enforcement:

- Sharp increase over 5 last years (277 in 2013 to 414 in 2018)



- Increase in **simplification** procedure: from 64% in 2013 to 73% in 2017 (decrease to 61% in 2018)

### Simplified vs normal procedure





## 3.2. Recent developments - Mergers

### 3.2.1. Numbers / enforcement:

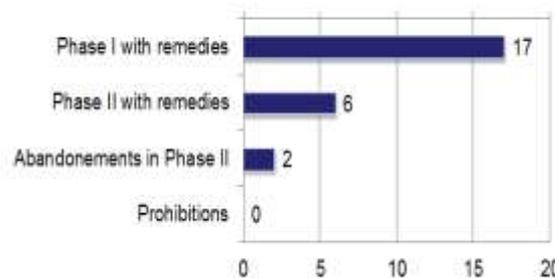
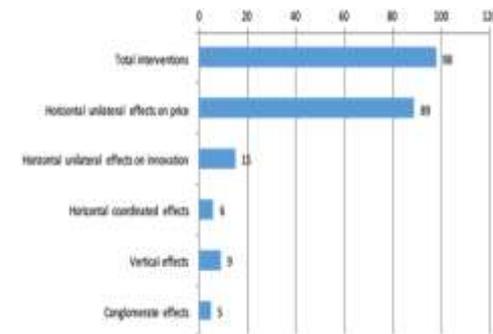
#### Types of interventions:

- 89/98 horizontal mergers/non-coordinated affects
- increased use of quantitative data/internal docs;
- several infringement cases

- **Remedies:**

17 in Phase I, 6 in Phase II in 2018; structural solutions preferable

ToH: Interventions in the period 2015-2018 (98 cases)



**25**  
Intervention  
cases



## 3.2. Recent developments - Mergers

### 3.2.2. Legislation/ Policy making:

#### 3.2.2.1. Results of 2016 launched **evaluation exercise**:

- Confirmed merger control system works well but scope for limited improvements
- Commission is reflecting whether this merits a reform of the EU merger Regulation

#### 3.2.2.2. Finalising **Best Practices** on internal documents



## 3.2. Recent developments - Mergers

### 3.2.3. Cases/lessons learned:



#### 3.2.3.1. Siemens/Alstom:

- Prohibition after in-depth investigation: significant overlaps in signalling and high-speed trains markets (parties current market leaders)
- Several complaints
- No adequate remedies
- Takeaways:
  - Cases are analysed on the merits (competition rules)
  - Submit suitable remedies at early stage



## 3.2. Recent developments - Mergers

### 3.2.3. Cases/lessons learned:

#### 3.2.3.2. Air Berlin:

- 2 concentrations: easyJet (approved) and Lufthansa (approved with remedies, after NIKI was dropped)
- Theories of harm:
  - 1<sup>st</sup> theory: each route /each O&D
    - » NIKI and Lufthansa overlapped on 130 routes (insufficient remedies)
  - 2<sup>nd</sup> theory: slot portfolio effects
    - » For easyJet: no concerns (25% + face competition)
    - » For Lufthansa: (increase its share of slots in summer to 54%, with a "net" increment of 5%): commitments
- Takeaways:
  - Possibility to derogate from the standstill obligation
  - Conditions for failing firm defence unlikely to be fulfilled
  - Need for cooperation between competition rules and other rules





## 3.3. Recent developments – State Aid

### 3.3.1. Numbers/ enforcement:

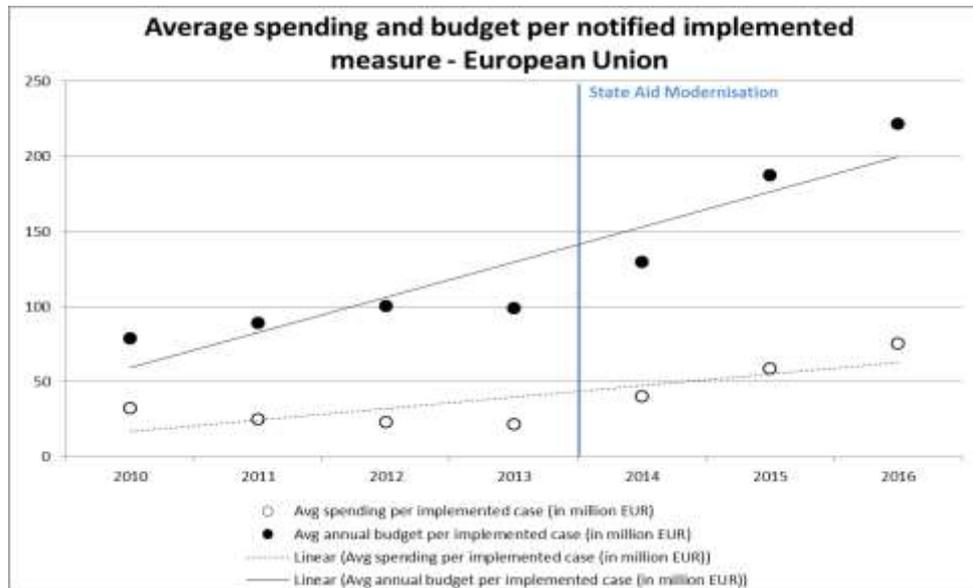
- Since 2015, 96% of new measures covered by the GBER
- In 2017, 82% of all measures with reported expenditure were done under GBER
- Total spending under GBER = 47% of total SA expenditure in 2017

European Union (registered)							
	2011	2012	2013	2014	2015	2016	2017
Total number of notifications	395	450	590	349	257	236	233
Share of GBER	51%	48%	41%	70%	89%	89%	87%



## 3.3. Recent developments – State Aid

### 3.3.1. Numbers/ enforcement:





## 3.3. Recent developments – State Aid

### 3.3.2. Legislation/ Policy making:

#### 3.3.2.1. State Aid Modernization (SAM)

- Making it work
- Final touches:
  - Extension of GBER  
(ports and airports – 17/06/2017)
  - Best Practices Code (16/07/2018)





## 3.3. Recent developments – State Aid

### 3.3.2.2. Comprehensive State aid Fitness check

- GBER, de minimis, regional aid guidelines, risk finance aid guidelines, energy and environmental guidelines, rescue and restructuring aid guidelines, airports and aviation aid guidelines, railway guidelines and RDI aid framework

### 3.3.2.3. Streamlining SA rules for the new MFF - extend GBER to:

- National funding combined with InvestEU
- European Territorial Cooperation projects (ETC/Interreg)
- Seal of Excellence under H2020 or Horizon Europe, as well as co-fund projects and Teaming actions under H2020 or Horizon Europe



## 3.3. Recent developments – State Aid

### 3.3.3. Cases / lessons learned:

#### 3.3.3.1. Aviation

- Still many cases of incompatible aid to airlines through marketing agreements and PSOs
- The Court has recently upheld several SA decisions from 2014
- Fitness check includes the aviation guidelines

#### 3.3.3.2. Maritime

- Consolidation / continues to contribute to economic prosperity in the EU
- Tonnage tax schemes: Portuguese TT and Danish TT



## 3.3. Recent developments – State Aid

### 3.3.3.3. Rail

- Our goals:
  - We aim at contributing to decarbonisation/greening by using state aid policy to enhance modal shift
  - Ensure correct application of PSO regulation
  - Several cases on rescue and restructuring of railway undertakings



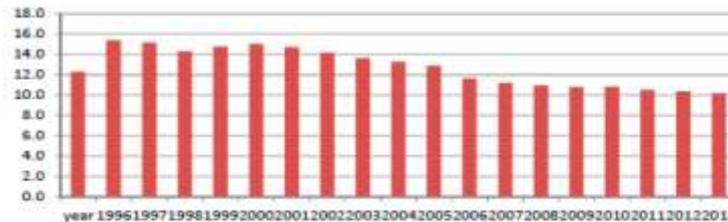


## 3.3. Recent developments – State Aid

### 3.3.3.3. Rail

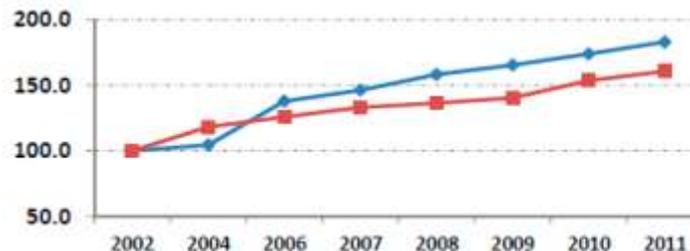
Advantages of competition in the rail sector (benefits arising from award of public passenger transport service contracts by tender):

- increase in passenger numbers and in train frequency, large investments,
- reduction of public subsidies, reduced operating costs
- SE and NL: 20-30 %; DE: evolution of public subsidies to tendered PSCs (by train.km)



Source : H Link own database

- When PSCs not tendered out, subsidy levels go up





## ***4. Key Challenges***



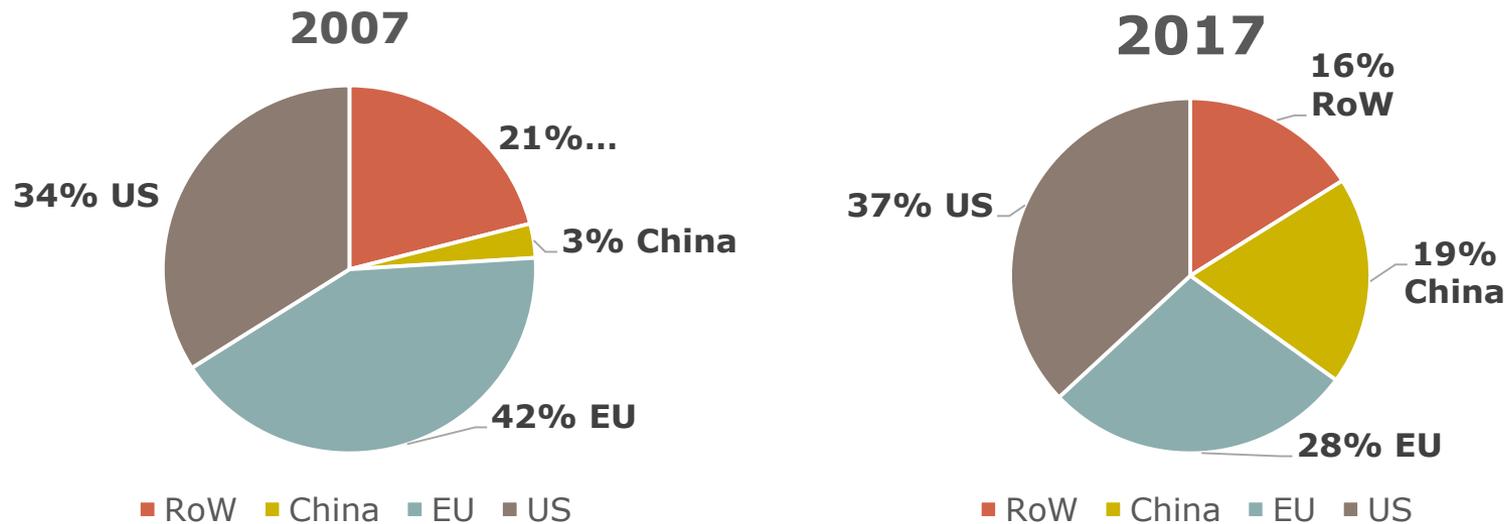
## 4.1. European Champions



- **The challenge:** Promoting European Champions
- **Our rules apply:** COMP rules are fit for purpose
  - COMP rules ensure EU companies are competitive & innovative both inside and outside EU markets
  - COMP rules ensure the well-functioning of the internal market
- **Our action for the future:**
  - *“We should not accept unfair competition from the outside” (Margrethe Vestager)*
    - » TRADE tools; WTO
    - » Advocating competition culture: dialogue with China
    - » State aid matching clauses
    - » Important Projects of Common European Interest (IPCEI)



## *The number of European companies in the top 100 in 2017....*



*... has significantly declined over the last decade*



## Unicorns are mainly located in the US and China

RANK	COMPANY	VALUATION (US \$BILLION)	COUNTRY
1	Ant Financial	150.0	China
2	Bytedance	75.0	China
3	Uber	72.0	US
4	DiDi	56.0	China
5	Alibaba Cloud	39.0	China
6	Airbnb	30.0	US
7	Tencent Music	30.0	China
8	SpaceX	24.0	US
9	Flipkart	20.0	India
10	Cainiao	20.0	China
79	Klarna	2.25	Sweden
92	HelloFresh	2.0	Germany
131	BlaBlaCar	1.6	France

Note: It refers to a privately held startup company with a current valuation of US\$1 billion or more.  
Source: Forbes, WSJ, WSJ



## 4.2. Digital world & Competition



- **The challenge:** Digital technology is everywhere
  - Concerns about who controls data, the power of platforms, worries that innovation might stall with big companies
- **Our rules apply:** COMP rules are flexible
  - Data in merger cases:
    - » Important parameter of competition: Microsoft/ LinkedIn
    - » Accumulation of data: Google/DoubleClick, FB/Whatsapp, Verizon/Yahoo
- **Our action for the future:** New work streams
  - Report by 3 special advisers (March 2019)
  - Conference “Shaping competition policy in the era of digitisation” (January 2019)
  - Public consultation (6 July 2018)



## 4.3. Innovation & Competition

- **The challenge:** ensuring EU companies are innovative
- **Our rules apply:** COMP take into account innovation
  - Antitrust:
    - » Cooperation between competitors is within competition limits
    - » Prevents dominant companies to stop others from innovating
  - Mergers:
    - » Efficiencies defense (Tom Tom/TeleAtlas)
    - » Commitments to divest R&D business (Dow/Dupont, Bayer/Monsanto)
  - State aid:
    - » Enables MS to contribute to private sectors investments into innovation without distorting the single market
- **Our action for the future:**
  - RD&R GBER expires in 2022 (fitness check)





## 4.4. Brexit

- **The challenge:** 3 options

- Deal
- No deal
- Delay



- **Our rules apply:**

- During a transition period until December 2020 or beyond:
  - Business as usual for COMP cases continues

- **Our action for the future:**

- If no deal:
  - COMP rules will cease to apply
  - Growing concerns in the industry in case of no deal



# Conclusion:

## What can we expect in 2019?

- **End of mandate:**

- Strategic brief
- Preparation for setting up a new Commission
  - EP elections
  - Commission's President elections
  - New commission: new commissioners, new structure?, new priorities



- **Key issues for the future:**

- Already mentioned ongoing challenges (digitization, innovation, European champions, China and state subsidies)
- E-mobility
- Connected vehicles and vehicular automation



**Thank you for your attention!**

*The views expressed are those of the author and cannot be regarded as stating an official position of the European Commission.*