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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Report on Competition Policy 2021**

{SWD(2022) 188 final}

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**Contents**

1. Introduction .....	2
2. Ensuring that Competition Rules Remain Fit for the Future – Progress on the Extensive Policy Agenda .....	4
2.1. New legislative initiatives to strengthen the competition policy toolbox .....	4
2.2. Updating antitrust and merger rules and guidance to make them fit for new challenges.....	4
2.3. Updating State aid rules and guidance to make them fit for new challenges .....	7
2.4. Adjusting DG Competition to current and future enforcement needs .....	12
3. Competition Policy Enforcement Contributed to the Digital Transition and a Strong and Resilient Single Market .....	14
3.1. Enforcement in antitrust contributed to the digital transition and a strong and resilient Single Market .....	14
3.2. Merger control contributed to the digital transition and a strong and resilient Single Market .....	18
3.3. State aid control contributed to the digital transition and the resilience of the Single Market .....	19
4. Competition policy enforcement contributed to the green transition.....	20
4.1. State aid control contributed to the Green transition .....	20
4.2. Antitrust enforcement and merger control contributed to the green transition.....	21
5. Competition Policy Contributed to An Economy that Works for people .....	23
5.1. Resilient European financial services .....	23
5.2. Fiscal State aid and selective tax advantages.....	24
5.3. Competition policy continued to mitigate the economic and social fall-out from the COVID-19 pandemic .....	25
6. Joining Forces Shaping a European and Global Competition Culture.....	28
6.1. Policy Cohesion through the European Competition Network.....	28
6.2. Competition policy cooperation across the world.....	29

## 1. Introduction

The Annual Competition Report of 2021, addressed by the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, elaborates on the most important developments in EU competition policy and enforcement in 2021.

Competition policy is one of the cornerstones of the EU Single Market. Vigorous competition policy enforcement provides European businesses and consumers with choice, innovation, quality and competitive prices. In line with the Commission's priorities, competition policy enforcement also fosters competition towards a post-pandemic recovery and a greener, more digital, more resilient and more inclusive economy in the EU.

A strong and resilient Single Market supports entrepreneurship at all stages, enables businesses of all sizes to get the most out of the Single Market's scale and to use that scale as a competitive advantage to compete better in a globalised economy. EU competition policy must not only be effectively and consistently enforced but also sufficiently agile to deal with current and future challenges.

In 2021, under Executive Vice-President Vestager's leadership, competition policy continued to play an important role in the EU's response to the crisis, demonstrating its in-built ability to react swiftly to sudden changes in the economy. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak enabled necessary and proportionate support by Member States to otherwise viable businesses that ended up in jeopardy because of the pandemic. The Commission also laid out a path for a progressive phase-out of pandemic-related crisis measures under the Temporary Framework for State aid measures, accompanied by measures to kick start and crowd in private investment. To reduce the negative social and economic impact on the EU caused by Russia's invasion of Ukraine, the Commission will again use the flexibility of the State-aid policy toolbox. It will allow Member States to minimise the negative economic effects without distorting competition in the EU more than strictly necessary.

The Commission continued its work to make markets work better for citizens and businesses of all sizes by enforcing the EU competition rules in the areas of antitrust, merger control and State aid control – in the digital and other sectors – while considering the specificities of each market. The Commission did this while working hand in hand with Member States' national competition authorities (NCAs) and under the scrutiny of EU courts.

As set out in the *Commission Communication on a Competition Policy fit for new challenges*<sup>1</sup>, the Commission is carrying out an unprecedented review of EU competition policy, covering more than 20 sets of rules with the objective of making sure that EU competition policy instruments remain future-proof and support the EU's green and digital

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A competition policy fit for new challenges, COM(2021)713, 18.11.2021.

transitions, the recovery process, the response to economic developments and fostering the resilience of the Single Market.

The Commission is also in the process of complementing the competition policy toolbox with new instruments designed to tackle foreign subsidies and digital gatekeepers. In May 2021, the Commission tabled a Proposal for a Regulation on foreign subsidies distorting the internal market<sup>2</sup>. In 2021, significant progress was made by co-legislators as regards the Commission proposal for a Digital Markets Act.



In 2021, the Commission continued to increase the efficiency of its operations in competition policy enforcement. DG Competition continued its efforts to digitise its case handling processes. The year also brought major changes in deploying financial resources directly to competition policy enforcement by means of a dedicated operational budget. The Single Market Programme (SMP)<sup>3</sup> and its component for competition policy, with a budget of EUR 20.4 million for 2021, provides stable financing of measures enhancing the Commission’s enforcement capacity, policy initiatives, international cooperation as well as competition policy advocacy. DG Competition's Communications Strategy supports the Executive Vice President's ambition to pro-actively communicate the benefits of competition policy in a clear, consistent and continuous manner.

<sup>2</sup> Proposal for a Regulation of the European Parliament and the Council on foreign subsidies distorting the internal market, COM(2021) 223 final, 5.5.2021.

<sup>3</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (Text with EEA relevance), OJ L 153, 3.5.2021, p. 1–47. The Regulation applies retroactively, from 1 January 2021.

## 2. Ensuring that Competition Rules Remain Fit for the Future – Progress on the Extensive Policy Agenda

### 2.1. New legislative initiatives to strengthen the competition policy toolbox

Forming part of the EU Digital Strategy<sup>4</sup> to tackle systemic digital challenges such as the spread of cyber threats, hate speech, disinformation, limited competition and fairness in digital markets, the Commission presented two legislative proposals in December 2020, namely the Digital Services Act (DSA)<sup>5</sup> and the Digital Markets Act (DMA)<sup>6</sup>. The DMA proposes a series of directly applicable obligations for firms acting as important gatekeepers for businesses and consumers in the Single Market. The DMA remained a top legislative priority in 2021 as demonstrated by the adoption of the co-legislators' respective mandates in November and December 2021<sup>7</sup>.

In May 2021, the Commission tabled a proposal for a Regulation on foreign subsidies distorting the internal market<sup>8</sup>. While aid granted by EU Member States is closely scrutinised, subsidies granted by countries outside the EU to companies active in the EU go largely unchecked. The new rules would tackle foreign subsidies that distort competition in the Single Market. Under the proposed Regulation, the Commission would be able to investigate subsidies granted by foreign States to firms active in the EU and redress – when appropriate – the distortive effects caused by such State support<sup>9</sup>.

### 2.2. Updating antitrust and merger rules and guidance to make them fit for new challenges

The purpose of the on-going review of key antitrust and merger rules is to evaluate the rules in force and to adjust them where needed, keeping up with market developments that have transformed the way businesses operate, including the growth of e-commerce and online platforms. The Commission is also assessing whether further guidance to market participants is called for.

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<sup>4</sup> Shaping Europe's Digital Future, Commission publication of 19.2.2020, ISBN 978-92-76-16362-6.

<sup>5</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final, 15.12.2020.

<sup>6</sup> Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), COM(2020) 842 final, 15.12.2020.

<sup>7</sup> Press release, "Regulating 'big tech': Council agrees on enhancing competition in the digital sphere", 25 November 2021, available at <https://www.consilium.europa.eu/en/press/press-releases/2021/11/25/regulating-big-tech-council-agrees-on-enhancing-competition-in-the-digital-sphere/>; and press release, "Digital Markets Act: Parliament ready to start negotiations with Council", 15 December 2021, available at <https://www.europarl.europa.eu/news/en/press-room/20211210IPR19211/digital-markets-act-parliament-ready-to-start-negotiations-with-council>.

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market, COM(2021) 223 final, 5.5.2021.

<sup>9</sup> The proposal includes three tools: (i.) proposed concentrations where the target company has an EU turnover of at least EUR 500 million and the foreign financial contribution exceeds EUR 50 million, would have to be notified to the Commission; (ii.) bids in EU public procurement procedures involving foreign financial contributions where the value of the procurement is at least EUR 250 million would have to be notified to the Commission; and (iii.) the Commission would be empowered to investigate ex-officio other market situations, including smaller concentrations and smaller public procurement procedures. The Commission would have exclusive competence to enforce the Regulation. When the negative effects of the foreign subsidy outweigh its positive effects, the Commission will have the power to impose redress measures or accept commitments to remedy the distortion. Such measures and commitments include a range of structural or behavioural remedies, such as the divestment of certain assets or the prohibition of a certain market behaviour. The Commission will also have the power to prohibit a subsidised concentration or the award of a public procurement contract to a subsidised bidder.

## *Review of rules on vertical supply and horizontal cooperation continued*

Vertical agreements, such as those between suppliers of goods or services and their distributors, are common across all sectors of the EU economy. In July 2021, the Commission launched a public consultation on the draft revised Vertical Block Exemption Regulation (VBER) and Vertical Guidelines<sup>10</sup>. The aim of the ongoing revision is to clarify and simplify certain provisions and fill in perceived regulatory gaps where the current rules may no longer be fit for purpose due to market developments such as the growth of online sales and the emergence of new types of platform undertakings. The Commission aims at having new rules in place when the current rules expire on 31 May 2022.

As regards the review of the EU competition rules on horizontal cooperation, the purpose of these rules is to make it easier for undertakings to cooperate in ways that are economically desirable and without adverse effect from the point of view of competition policy. In May 2021, the Commission published the findings of the evaluation<sup>11</sup> of the two horizontal block exemption regulations on Research & Development and specialisation agreements (abbreviated R&D BER and Specialisation BER respectively, together HBERs), together with the Horizontal Guidelines. In July 2021, the Commission launched a public consultation on the policy options for the revision of the rules<sup>12</sup>. Since both regulations will expire on 31 December 2022. The Commission aims to have the new rules in place by this date.

### **Key findings from the evaluation of the rules on horizontal agreements**

The evaluation showed that the rules on horizontal agreements remain useful tools for businesses. However, the evaluation identified several areas where the rules are not sufficiently adapted to digitisation and the pursuit of sustainability goals. Some of the provisions in the HBERs are viewed as rigid and complex, while others are considered unclear and difficult to interpret by companies. More specifically, the conditions for exemption in the R&D BER may no longer be optimal for capturing pro-competitive R&D agreements and the scope of the Specialisation BER may be too narrow. Some provisions in the HBERs and Horizontal Guidelines are also considered unclear or overly strict. Finally, the Horizontal Guidelines offer little guidance on recent market developments such as digitisation, resilience and sustainability objectives<sup>13</sup> in horizontal agreements (for example, they do not provide sufficient legal certainty for the self-assessment of agreements pursuing sustainability objectives and data sharing/data pooling agreements).

In May 2021, the Commission also published the findings of the evaluation<sup>14</sup> on the functioning of the Motor Vehicle Block Exemption Regulation (MVBER)<sup>15</sup>. The Commission

<sup>10</sup> Public consultation on the draft revised Regulation on vertical agreements and vertical guidelines, from 09.07.2021 to 17.09.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-vber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-vber_en)

<sup>11</sup> Commission Staff Working Document - Evaluation of the Horizontal Block Exemption Regulation, SWD (2021) 103, 6.5.2021.

<sup>12</sup> Public consultation - Horizontal agreements between companies, 13.7.2021 to 5.10.2021. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation_en)

<sup>13</sup> The 2030 UN Agenda for Sustainable Development identifies 17 Sustainable Development Goals (such as climate action, affordable and clean energy or industry, innovation and infrastructure and 169 targets (including but not limited to strengthening resilience and adaptive capacity to climate-related disasters, ending deforestation and restoring degraded forests or developing sustainable, resilient and inclusive infrastructures).

<sup>14</sup> An Evaluation Report and a Staff Working Document (SWD) summarise the conclusions. Report from the Commission, Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, COM(2021)264, 28.05.2021. Commission Staff Working Document of the Motor Vehicle Block Exemption Regulation accompanying the document Report from the Commission, Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010, SWD(2021)112, 28.05.2021.

<sup>15</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, pp. 1–7.

concluded that while the principles of the MVBER remain valid, the emergence of new technologies and the increasing role of data in this industry ought to be reflected in the Commission’s guidance accompanying the MVBER. The current MVBER will expire on 31 May 2023. The Commission is currently reflecting on the follow-up to these findings, while also taking into account the ongoing review of the VBER.

### *Results of the evaluation of the Market Definition Notice published*

The Market Definition Notice<sup>16</sup> provides important guidance on how the Commission applies the concepts of relevant product and geographic markets in competition enforcement. In July 2021, the Commission published the results of the evaluation of the Market Definition Notice<sup>17</sup>. On the basis of the findings, the Commission has decided to review the Notice and will consult stakeholders on the draft of the revised Market Definition Notice in 2022.

#### **Key findings from the evaluation of the Market Definition Notice**

The Commission concluded that the principles of the Market Definition Notice, based on the case law of the EU courts, remain sound. However, they may not fully reflect recent developments in market definition practice, such as those related to digitisation. Areas where the Market Definition Notice might not be fully up-to-date include: (i.) the use and purpose of the SSNIP (small significant non-transitory increase in price) test in defining relevant markets; (ii.) digital markets, in particular with respect to products or services marketed at zero monetary price and to digital ecosystems; (iii.) assessment of geographic markets in conditions of globalisation and import competition; (iv.) quantitative techniques for market definition; (v.) calculation of market shares; and (vi.) non-price competition (including innovation).

### *Draft Guidelines published on the application of competition law to collective agreements for self-employed persons*

Some self-employed persons have little influence over their payment and working conditions. Collective bargaining can be an important tool to achieve better terms but some self-employed individuals can be considered “undertakings” and collective agreements may therefore be captured by the EU competition rules. To address this issue, the Commission consulted all stakeholders on different policy options in January 2021, first with an inception impact assessment, and then with a detailed questionnaire in March 2021<sup>18</sup>. On 9 December 2021, the Commission published for consultation draft Guidelines on the application of EU competition law to collective agreements regarding the working conditions of self-employed persons<sup>19</sup>. The Commission will assess the input from stakeholders with the aim to publish a final version of the Guidelines in 2022.

<sup>16</sup> Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, pp. 5–13.

<sup>17</sup> Commission Staff Working Document, Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997, SWD(2021) 199, 12.7.2021. See: [https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation\\_market-definition-notice\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation_market-definition-notice_en.pdf)

<sup>18</sup> Collective bargaining agreements for self-employed – scope of application EU competition rules, consultation period 5.3.2021 – 31.5.2021. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules/public-consultation_en)

<sup>19</sup> Communication from the Commission Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, 9.12.2021 C(2021) 8838 final ANNEX. The draft Guidelines are part of a package of initiatives by the Commission also including a proposal for a Directive on improving working conditions in platform work and a Communication on harnessing the full benefits of digitisation for the future of work.



## *Results of the evaluation of the procedural and jurisdictional aspects of EU merger control and further guidance on Article 22 published*

The objective of the evaluation of the procedural and jurisdictional aspects of EU merger control was to analyse how certain merger rules have worked under evolving market conditions. The evaluation focused on two topics in particular: (i.) the effectiveness of the turnover-based jurisdictional thresholds in capturing concentrations that may have a significant impact on competition in the Single Market; and (ii.) the effectiveness of the simplified notification procedure introduced in 2013. In March 2021, the Commission published the findings of the evaluation<sup>20</sup>.

### **Key findings from the evaluation of the procedural and jurisdictional aspect of EU merger control**

The Commission concluded that the turnover-based jurisdictional thresholds combined with the referral mechanism had generally proved to be effective in capturing relevant transactions in the EU Single Market. However, recent market developments have resulted in a gradual increase in acquisitions of firms that play or may develop into playing a decisive competitive role, despite generating little or no turnover at the time of the merger. The evaluation concluded that, in certain cases, transactions with a potential negative impact on competition were reviewed neither by the Commission, nor by any Member State. This included in particular acquisitions targeting nascent firms with competitive potential and innovative firms including in - but not limited to - the digital, pharmaceutical, biotechnology and certain other industrial sectors. The value of the target firm was not always sufficiently correlated to the transaction's potential anti-competitive effects.

The Commission adopted in March 2021 a communication providing guidance on how to apply the referral mechanism between Member States and the Commission as set out in Article 22 of the Merger Regulation<sup>21</sup> in the specific circumstances where the turnover-based thresholds do not reflect the competitive potential of the target and where the transaction is not notifiable to any Member State under national law. The Commission intends to encourage and accept more referrals under Article 22 of the Merger Regulation<sup>22</sup>.

### **2.3. Updating State aid rules and guidance to make them fit for new challenges**

In 2021, the Commission continued the evaluation and revision of existing State aid rules and guidance to further facilitate the green and digital transitions and foster the resilience of the Single Market when recovering from the COVID-19 pandemic. The Commission continued to follow market developments and stands ready to further adjust its policy tools so that the EU can respond swiftly to emerging crises.

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<sup>20</sup> Commission Staff Working Document, Evaluation of procedural and jurisdictional aspects of EU merger control, SWD(2021) 66 final, 26.3.2021.

<sup>21</sup> Communication from the Commission: Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, OJ C 113, 31.3.2021, pp. 1–6.

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



### *Adjustments of the State aid Temporary Framework*

Most recently, the Commission consulted Member States on a proposal to prolong until 30 June 2022 the Temporary Framework for State aid measures, while setting out the path for the progressive phase-out of pandemic-related crisis support. The Commission adopted the sixth amendment of the Temporary Framework in November 2021<sup>23</sup>. The prolongation of existing measures under the Temporary Framework for State aid measures until 30 June 2022 will avoid cliff-edge effects by preventing that businesses are suddenly cut off from targeted public support at a time when serious disturbances affecting Member States' economies have not yet ended. The Commission continues to pay due regard to developments potentially affecting the EU, including the social and economic impact on the EU caused by Russia's invasion of Ukraine, in order to act swiftly and adjust its policy tools where necessary. Moreover, the Commission introduced two new tools to kick start and crowd in private investment for a faster, greener and more digital recovery from the pandemic. The Commission introduced investment support towards a sustainable recovery until 31 December 2022 and solvency support until 31 December 2023, allowing Member States to leverage private funds and make them available for investments in SMEs, including start-ups and small mid-caps.

### *Guidelines on State aid for climate, environmental protection and energy adopted*

The Commission carried on with its review of the State aid rules to make them fit for purpose and aligned with the climate goals of the EU. In June 2021, the European Commission launched a public consultation<sup>24</sup> inviting all interested parties to comment on the proposed revision of the Energy and Environmental State aid Guidelines. In December 2021, the Commission endorsed the new Climate, Energy and Environmental State aid Guidelines (CEEAG)<sup>25</sup>. The revision widens the scope of the Guidelines to cover new economic areas such as clean mobility and the decarbonisation of industry. It will also provide a flexible framework by allowing support to all technologies that can deliver the European Green Deal. The wider scope of the Guidelines is accompanied by safeguards which ensure that the State aid is efficiently directed to where it is needed and require Member States to consult stakeholders when designing large State aid measures. The CEEAG will support EU efforts towards decarbonisation, a circular economy, biodiversity, clean or zero-emission mobility and buildings' energy efficiency and performance, with a view to meet the EU climate and energy targets for 2030 and 2050. The CEEAG entered into force in January 2022<sup>26</sup>. According to revised rules, more State aid will be considered compatible than before.

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<sup>23</sup> Communication from the Commission Sixth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance 2021/C 473/01, C/2021/8442, OJ C 473, 24.11.2021, pp. 1–15.

<sup>24</sup> Public consultations from 7.6.2021 to 2.8.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_en)

<sup>25</sup> Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, 27.1.2022, C(2022) 481 final.

<sup>26</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_566](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_566)

### *Revised IPCEI Communication adopted*

Important Projects of Common European Interest (IPCEI) bring together knowledge, expertise, financial resources and economic actors throughout the EU with a view to overcome important market failures, systemic failures and societal challenges which could not otherwise be addressed. They contribute to sustainable economic growth, jobs, competitiveness and strengthen the open strategic autonomy of the EU. To avoid that they distort competition in the Single Market, IPCEIs require the approval of the Commission under the State aid rules. IPCEIs enable breakthrough innovations up to the first industrial deployment and infrastructure investments of great importance where public intervention is necessary.<sup>27</sup> IPCEIs boost entrepreneurship in the EU, facilitate the green and digital transitions and increase the resilience of the Single Market. Following an evaluation and after an extensive consultation<sup>28</sup> of all interested parties on the proposed revised communication, the Commission adopted a revised Communication on State aid rules for Important Projects of Common European Interest (IPCEI Communication)<sup>29</sup> in November 2021. The revised IPCEI Communication applies as of 1 January 2022.

#### **Communication on State aid rules for Important Projects of Common European Interest**

The updated Communication widens the EU scope and transparent character of IPCEIs by stipulating that IPCEIs must normally involve at least four Member States. Moreover, IPCEIs must be designed in a transparent and inclusive manner. The revised Communication facilitates the participation of SMEs in IPCEIs and enhances the benefits of their involvement. The 2021 IPCEI Communication aligns its objectives with current EU priorities. To support the environmental strategies of the EU and to accelerate the green transition, the revised IPCEI Communication requires Member States to provide evidence of compliance of the notified projects with the 'do no significant harm' principle. In addition, the Communication clarifies the criteria to be used when combining EU and national funds.

### *Public consultation on the State aid Framework for research, development and innovation*

The State aid Framework for research, development and innovation (the RDI Framework)<sup>30</sup> incentivises risky research, development and innovation (RDI) activities, which would not occur in the absence of public support. The Commission launched a public consultation in April 2021 with a view to simplify the existing State aid Framework<sup>31</sup>. The objective is to make it easier for Member States to support research, development and innovation, including for SMEs and innovation clusters, while ensuring that possible competition distortions are kept to the minimum as well as providing the right incentives to enable the green and digital transition of the EU. Following the public consultation and the contributions received, the Commission continues its reflections on how to modernise the RDI Framework and make it future proof. Given the importance of the green and digital transitions and the resilience of the Single Market, these reflections on RDI Framework modernisation include for example areas such as testing and experimenting infrastructure as well as developing and delivering

<sup>27</sup> In the past, funding under the IPCEI Communication has been approved to projects related to batteries, microprocessors and certain infrastructures.

<sup>28</sup> Public consultations from 23.2.2021 to 20.4.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-ipcei\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-ipcei_en)

<sup>29</sup> Communication from the Commission: Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, C(2021) 8481 final.

<sup>30</sup> Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.

<sup>31</sup> Public consultations from 8.4.2021 to 3.6.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-rdi\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-rdi_en)

breakthrough technologies. The Commission expects the revised RDI Framework to be adopted in 2022.

### *Public consultation on the State aid Broadband Guidelines*

The State aid rules for the deployment of broadband networks (Broadband Guidelines)<sup>32</sup> facilitate the deployment and take-up of broadband networks in areas with insufficient connectivity, such as remote and sparsely populated regions. The Guidelines enable Member States to support modern infrastructure providing end-users with high-quality and affordable broadband services in areas where commercial operators have limited incentives to invest.

In July 2021, the Commission published its findings of the evaluation of the Broadband Guidelines<sup>33</sup>. It concluded that, overall, the existing rules work well and are fit for purpose but that some adjustments would be necessary to adapt the current rules to recent technological progress. Adequate investments are needed to meet the current EU policy objectives, in particular the EU 2025 Gigabit Society<sup>34</sup> and the 2030 Digital Compass<sup>35</sup>. In November 2021, the Commission submitted for public consultation the proposed revised Broadband Guidelines<sup>36</sup>. The public consultation remained open until 11 February 2022. The draft Guidelines aim to make it easier for Member States to stimulate the deployment of high-performing broadband networks, including Gigabit and 5G networks, while limiting competition distortions.

### *Scope of the General Block Exemption Regulation extended to facilitate EU programmes*

With the aim of improving the interplay between EU funding rules and EU State aid rules under the new Multiannual Financial Framework<sup>37</sup>, the Commission adopted in July 2021 amendments to the General Block Exemption Regulation (GBER)<sup>38</sup>. These amendments extend the scope of the regulation and streamline the State aid rules applicable to national funding falling within the scope of certain recently adopted EU programmes<sup>39</sup>.

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<sup>32</sup> Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, pp. 1-26.

<sup>33</sup> Commission Staff Working Document – Evaluation of the State Aid rules for broadband infrastructure deployment, SWD(2021) 194 final, 7.7.2021.

<sup>34</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society, COM (2016) 0587 final.

<sup>35</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Digital Compass: the European way for the Digital Decade, COM (2021) 118 final, 9.3.2021.

<sup>36</sup> Draft Communication from the Commission Guidelines on State aid for broadband networks, of 19.11.2021,

<sup>37</sup> See: [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027\\_en](https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_en)

<sup>38</sup> Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 270, 29.7.2021, p.39. Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the TFEU must normally be notified to the Commission and approved before it is put into effect, in order to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. However, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.

<sup>39</sup> The concerned national funds are those relating to: Financing and investment operations supported by the InvestEU Fund; Research, Development and Innovation (RDI) projects having received a “Seal of Excellence” under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; certain trans-European digital connectivity infrastructure projects funded or having received a “Seal of Excellence” under the Connecting Europe Facility; European Territorial Cooperation (ETC) projects, also known as Interreg.

With the amendment of the GBER, State aid granted by national authorities for projects funded by programmes managed at EU level can be directly implemented by the Member States without prior notification to the Commission. However, Member States have to inform the Commission about the aid measures after they have been adopted. In addition, the updated GBER allows Member States to provide State aid for the digital and green transitions. It allows a degree of flexibility to rapidly support companies needing assistance due to negative economic effects caused by unexpected external shocks. Exempting broad categories of State aid from prior notification is a major simplification and facilitates swift implementation by the Member States.

### *Green Deal GBER revision*

The GBER is currently undergoing a targeted revision that has the objective to allow Member States to mobilise quickly more aid for green projects, without the need for prior approval from the Commission. The revision aims to widen the scope of the GBER to cover aid for investments in new technologies such as hydrogen and carbon capture, storage or usage, which are essential to address strategic dependencies. The scope of the GBER will be extended to areas that are key to achieve the objectives of the European Green Deal, for example resource efficiency and biodiversity. Moreover, the GBER revision aims to refine the provisions on aid for investments in key policy areas such as the energy performance of buildings and the recharging and refuelling of infrastructure for clean mobility. Finally, the rules for defining eligible costs and eligible aid intensities will be made more flexible.

### *Revision of the Risk Finance Guidelines adopted*

In December 2021, the Commission adopted revised Guidelines on State aid promoting risk finance investments<sup>40</sup>. The revised Guidelines provide a number of improvements which will ease the application of the Guidelines, consolidate existing requirements for *ex-ante* assessment and limit the requirement to provide a funding gap analysis to the largest risk finance schemes. Moreover, the revised Guidelines introduce simplified conditions for the assessment of schemes aimed exclusively at start-ups and SMEs that have not yet made their first commercial sales. To ensure consistency, certain definitions included in the Guidelines are aligned with those in the GBER<sup>41</sup>. The revised Guidelines apply from 1 January 2022.

### *Revised Communication on the Short-term export credit insurance adopted*

In December 2021, the Commission adopted a revised Communication on short-term export credit insurance (STEC Communication)<sup>42</sup>. The Communication includes a limited number of amendments. For example, the Communication modifies the eligibility criteria for SMEs, which under certain circumstances may benefit from State insurance. Under the previous rules, the threshold for SMEs was an annual export turnover of maximum EUR 2 million. The

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<sup>40</sup> Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, pp. 1–36.

<sup>41</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 187, 26.6.2014, pp. 1-78.

<sup>42</sup> Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, OJ C 497, 10.12.2021, pp.5-13.

revised STEC Communication increases this threshold to EUR 2.5 million. The revised STEC Communication entered into force on 1 January 2022.

### *Revised Regional Aid Guidelines adopted*

The Regional Aid Guidelines allow Member States to support least favoured regions as well as regions facing transitional or structural challenges. The Guidelines also ensure the integrity of the Single Market while taking into account the EU cohesion objectives. Following the evaluation of the current rules in 2019<sup>43</sup> and an extensive consultation of stakeholders on the draft text, the Commission adopted the revised Regional Aid Guidelines in April 2021<sup>44</sup>. The revised guidelines include a number of targeted adjustments reflecting the experience gained from the application of the previous rules. They also take into account new policy priorities related to the European Green Deal and the European Industrial and Digital Strategies. The revised Regional Aid Guidelines entered into force on 1 January 2022.

### *Evaluation of the Agricultural Block Exemption Regulation and Guidelines published*

In May 2021, the Commission published an evaluation of the Agricultural Block Exemption Regulation and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas<sup>45</sup>. The evaluation concluded that overall these rules are fit for purpose and meet the needs of the sectors concerned<sup>46</sup>. However, certain targeted revisions, including clarifications of some concepts, further streamlining and simplification, alignment to the reform of the Common Agricultural Policy<sup>47</sup> as well as adjustments to reflect the current priorities of the EU, in particular the European Green Deal<sup>48</sup>. The next step is making an impact assessment, which looks into the issues identified during the evaluation. The Commission expects to have the revised rules adopted by 31 December 2022 when the current ones will expire.

## **2.4. Adjusting DG Competition to current and future enforcement needs**

### *Digital transformation*

The Commission recognises the digital transformation as a major political priority for its current mandate (Europe Fit for the Digital Age), not only for driving change in markets but also for enabling public sector modernisation. In 2021, DG Competition elaborated on and endorsed a comprehensive internal Digital Strategy, which will make DG Competition's investigatory processes and other activities more efficient. Moreover, the Digital Strategy will strengthen EU competition law enforcement by investing in state-of-the-art digital solutions and by modernising DG Competition's case management systems, notably by launching

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<sup>43</sup> Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1.

<sup>44</sup> Communication from the Commission: Guidelines on regional State aid, OJ C 153, 29.4.2021, pp. 1–46.

<sup>45</sup> The validity of these rules was previously extended until 31 December 2022. See: Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 as regards their period of application and making temporary adaptations to take into account the impact of the COVID-19 pandemic (Text with EEA relevance), OJ 424, 8.12.2020, pp. 30-31.

<sup>46</sup> The evaluation assessed how the current rules and have performed, in light of their main objectives: minimising distortions of competition and trade in the agricultural and forestry sector; ensuring the consistency of the agricultural State aid rules with the Common Agricultural Policy (CAP), in particular rural development objectives under the CAP; and simplifying procedures and reducing administrative costs. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review_en)

<sup>47</sup> See: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27_en)

<sup>48</sup> See: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)



CASE@EC for State Aid and document management. The Digital Strategy is firmly anchored in the European Commission's overall Digital Strategy which transforms the Commission into a digitally-enabled, user-focused and data-driven organisation.

DG Competition is developing and improving digital solutions supporting the interaction between external stakeholders such as NCAs, companies active in the Single Market, law firms and private citizens. In this context, DG Competition launched in 2021 three new digital solutions; State Aid Reporting Interactive (SARI2), eConfidentiality and eRFI. DG Competition also initiated a project to revamp case-related information published on the EUROPA website, with the aim to better access, search and export public data on competition policy (including State Aid, Antitrust and Merger cases and decisions). Given the sensitive and confidential nature of the information DG Competition handles, IT security plans for new as well as existing digital solutions have been drafted or updated. The necessary safety and monitoring measures are being implemented to enhance cyber security and cyber resilience.

In 2021, DG Competition continued investing in corporate intelligence, advanced data and machine learning services and solutions to support investigations. A dedicated unit conducts intelligence and investigative analyses and provides forensic IT support. Moreover, the unit collects and analyses information from publicly available sources and gathers information of potential investigative interest for the detection of new cases.

### *Resources and organisation*

To better cope with evolving policy developments, in November 2021 DG Competition carried out a re-organisation within the existing organisational structure. The number of units dealing with Important Projects of Common European Interest (IPCEI) was increased from one to two. Moreover, a Task Force for the Digital Markets Act was formed to support the adoption and implementation of the Digital Markets Act. In addition, DG Competition created a reinforced unit to implement a more coordinated approach to the State aid policy ramifications of tax legislation and aggressive tax planning.

### *The Single Market Programme*

The Single Market Programme (SMP) was adopted in April 2021<sup>49</sup>. With a budget of EUR 4.2 billion over the period 2021-2027, the SMP provides financial support to strengthen the governance and the functioning of the Single Market and includes a competition component, that is to say a dedicated budget for competition policy. With a budget of EUR 20.4 million for 2021, the SMP supported an effective and up-to-date enforcement of EU competition policy. Funds were also used for cooperation and partnerships with public administrations in the EU and worldwide as well as competition advocacy measures.

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<sup>49</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (Text with EEA relevance), OJ L 153, 3.5.2021, pp. 1–47. The Regulation applies retroactively, from 1 January 2021.



## Competition advocacy

In 2021, the Commission engaged in competition policy advocacy and outreach at multiple levels to support the effectiveness of EU competition policy, most prominently with Executive Vice-President Vestager participating in events and at press conferences. Press releases, newsletters and social media were used to communicate the benefits of competition policy. Dedicated events at international level or together with Member States were also organised. Due to the COVID-19 pandemic, most events were held in virtual and/or hybrid formats in 2021.

### 3. Competition Policy Enforcement Contributed to the Digital Transition and a Strong and Resilient Single Market

Through the headline ambition “A Europe fit for the digital age”, President von der Leyen defined the digital area as one of her top priorities for this Commission mandate. In competitive markets firms must innovate and become more efficient to prosper<sup>50</sup>. This applies both to innovation-driven and fast-moving digital markets as well as to markets that are not yet digital. Effective enforcement of the EU competition rules and regulatory reforms are of vital importance for the digital transformation of the EU economy, for the recovery from the COVID-19 pandemic and for strengthening the resilience of the Single Market.

#### 3.1. Enforcement in antitrust contributed to the digital transition and a strong and resilient Single Market

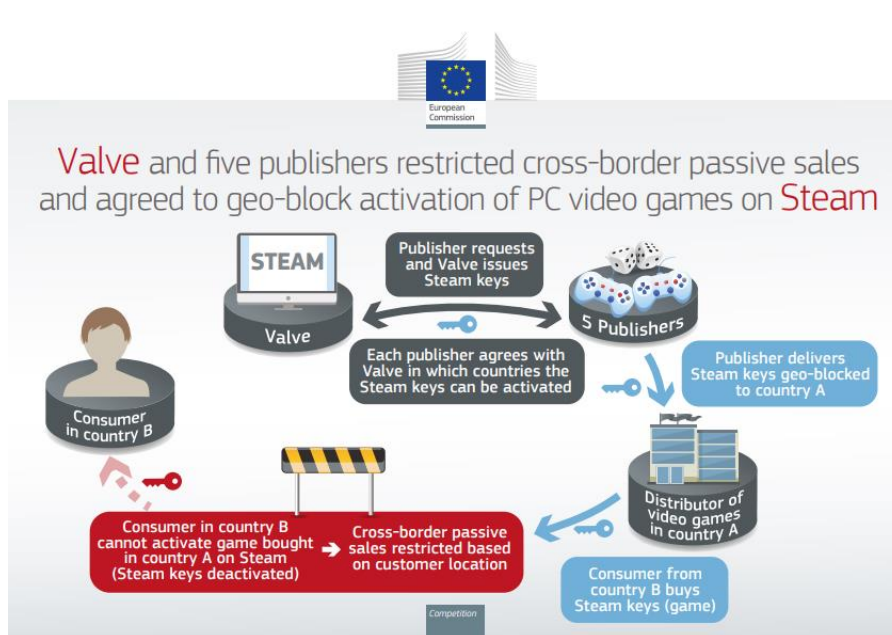
In 2021, the Commission continued to vigorously enforce the competition rules to address competition restrictions in the Single Market.

In the markets for PC video gaming the Commission fined *Valve*, the owner of the online PC gaming platform Steam and five publishers – *Bandai Namco*, *Capcom*, *Focus Home*, *Koch Media* and *ZeniMax* – a total of EUR 7.8 million for restricting cross-border sales of PC video games on the basis of customers’ geographical location within the EEA (“geo-blocking”)<sup>51</sup>. The fines for the publishers, totalling over EUR 6 million, were reduced because the companies cooperated with the Commission. Valve chose not to cooperate and was fined over EUR 1.6 million.

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<sup>50</sup> The importance of competition and innovation is also highlighted in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social and the Committee of the Regions “An SME Strategy for a sustainable and digital Europe” - 10.3.2020 COM(2020) 103 final and in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social and the Committee of the Regions “Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery” – 25.5.2021 COM(2021) 350 final.

<sup>51</sup> Cases AT.40413, *Focus Home*; AT.40414, *Koch Media*; AT.40420, *ZeniMax*; AT.40422, *Bandai Namco* and AT.40424, *Capcom*. See [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_21\\_170](https://ec.europa.eu/commission/presscorner/detail/es/ip_21_170).



In April 2021, the Commission issued a Statement of Objections to *Apple* provisionally finding that Apple distorted competition in the music streaming market as it abused its dominant position for the distribution of music streaming apps through its App Store<sup>52</sup>. The Commission takes issue with the mandatory use of Apple's own in-app purchase mechanism imposed on music streaming app developers to distribute their apps via Apple's App Store. The Commission is also concerned that Apple applies certain restrictions on app developers preventing them from informing iPhone and iPad users of alternative, cheaper purchasing possibilities.

The Commission also continued its investigations into potentially anti-competitive practices by *Amazon*<sup>53</sup>. The Commission has concerns that Amazon distorts competition in online retail markets by systematically relying on non-public business data of independent sellers who sell on Amazon's marketplace. This practice benefits Amazon's own retail business, which directly competes with those third party sellers. In a separate case, the Commission investigates the possibility that Amazon gives preferential treatment to its own retail offers to the detriment of Amazon marketplace sellers that use Amazon's logistics and delivery services.

In June 2021, the Commission opened a formal antitrust investigation to assess whether *Facebook* violated EU competition rules by using advertising data gathered from, in particular, advertisers to compete with them in markets where Facebook is also active, for example classified ads<sup>54</sup>. The Commission has concerns that Facebook uses data from competing providers when advertising on Facebook's social network to give Facebook

<sup>52</sup> Case AT.40437, *Apple - App Store Practices (music streaming)*. See: [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_21\\_2093](https://ec.europa.eu/commission/presscorner/detail/en/speech_21_2093)

<sup>53</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703 - *Amazon - Buy Box*. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077).

<sup>54</sup> Case AT.40684, *Facebook leveraging*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1.2.3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1.2.3)

Marketplace a competitive advantage. The formal antitrust investigation will also assess whether or not Facebook ties Facebook Marketplace, the company's online classified ads service, to its own social network. The Commission will examine if the way Facebook Marketplace is embedded in the social network is a form of anti-competitive tying that gives the company an advantage when reaching customers and forecloses competing online classified ads services.

In June 2021, the Commission opened a formal antitrust investigation into the online advertising sector. The Commission is investigating whether Google favoured its own online display advertising technology in the ad-tech supply chain for the benefit of YouTube and to the detriment of competing providers of advertising technology services, advertisers and online publishers<sup>55</sup>. Moreover, the formal investigation will examine whether Google is distorting competition by restricting access by third parties to user data for advertising purposes on websites and apps, while reserving such data for its own use. The Commission's investigation focuses on display advertising where Google offers a number of services to advertisers as well as to publishers.

In November 2021, the General Court largely upheld<sup>56</sup> the Commission's earlier decision in the Google shopping case.

#### **The Google Search (Shopping) case**

In June 2017, the Commission fined *Google* EUR 2.42 billion for abuse of its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service<sup>57</sup>. Google's comparison-shopping function for Europe is a product that allows consumers to compare products and prices online and find deals from online retailers, including online shops of manufacturers, platforms (such as Amazon and eBay), and other re-sellers. In 2008, Google adopted a strategy to push its own comparison shopping service. Because of Google's illegal practices, traffic to Google's comparison shopping service increased substantially, while competing comparison shopping services suffered substantial traffic losses on a lasting basis. Following the Commission's decision, Google amended the so-called shopping box to allow third-party comparison-shopping services to feature in the box. In November 2021, the General Court largely upheld the Commission's decision<sup>58</sup>.

In a market for pharmaceutical products, the Commission in February 2021 accepted a set of commitments offered by *Aspen*<sup>59</sup>, following an investigation into Aspen's alleged excessive pricing. Aspen agreed to reduce its prices by 73% on average across Europe (except Italy) for six medicines that are essential to treat serious forms of blood cancer, including myeloma and leukaemia. These price reductions will save substantial amounts for EU health systems and will ensure that these medicines remain available on the market.

<sup>55</sup> Case AT.40670, *Google - Adtech and Data-related practices*. See:

[https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>56</sup> Judgment of the General Court of 10.11.2021, Case T-612/17, *Google LLC and Alphabet, Inc. v European Commission*, EU:T:2021:763.

<sup>57</sup> Case AT.39740, *Google Search (Shopping)*. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf).

<sup>58</sup> Judgment of the General Court of 10.11.2021, Case T-612/17, *Google LLC and Alphabet, Inc. v European Commission*, EU:T:2021:763.

<sup>59</sup> Case AT.40394, *Aspen*, Commission Decision of 10.2.2021 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement, C(2021) 724 final.

In March 2021, the Commission opened a formal antitrust investigation to determine whether *Teva* had abusively blocked or delayed the entry of new firms competing with *Teva*'s blockbuster drug Copaxone to the detriment of patients and health systems<sup>60</sup>.

In March 2021, the European Court of Justice upheld the Commission's earlier decision in the *Lundbeck* case concerning pay-for-delay agreements.

#### **The Court of Justice's judgment in the *Lundbeck* case<sup>61</sup>**

In the *Lundbeck* case, the European Court of Justice fully confirmed the Commission's approach<sup>62</sup> to pay-for-delay agreements in the context of patent disputes. In pay-for-delay agreements, a pharmaceutical company offers transfers of value to producers of generic medicines to induce them to abandon or delay their market entry. In 2002, *Lundbeck* had concluded a number of agreements with different makers of generic medicines concerning generic versions of *Lundbeck*'s branded drug citalopram, a "blockbuster" antidepressant. These firms agreed with *Lundbeck* not to enter the market in return for substantial cash payments and other inducements. These incentives amounted to tens of millions of euros. *Lundbeck* internally spoke about a "club" being formed and "a pile of \$\$\$" to be shared with the generics producers.

The Court of Justice upheld the Commission's assessment that such pay-for-delay agreements constituted restrictions by object, because the value transfers could not have had any other explanation than the interest of the parties not to engage in competition on the merits. The Court also confirmed that, at the time of the agreements, *Lundbeck* and the producers of generic medicines were potential competitors, because they had real and concrete opportunities to enter the market and compete with *Lundbeck*. Moreover, they did not face any insurmountable entry barriers.

Following the launch of the antitrust inquiry into the sector of the consumer *Internet of Things* (IoT) in 2020<sup>63</sup>, the Commission published a preliminary report for consultation in June 2021<sup>64</sup>. The sector inquiry focussed on products and services related to digital voice assistants, smart home devices and wearable devices. The final report and its accompanying Staff Working Document were published in January 2022<sup>65</sup>.

#### **Final report of the sector enquiry into the consumer "Internet of Things"**

In January 2022, the Commission published the findings of its sector inquiry into the consumer Internet of Things ("IoT")<sup>66</sup>. This sector is growing rapidly and there is increasing demand for voice assistants as user interfaces for interacting with other smart devices and consumer IoT services. A number of potential competition issues were identified, such as exclusivity and tying practices for voice assistants, limiting the possibility to use different voice assistants on the same smart device, lack of interoperability and limiting functionalities on third-party smart devices and consumer IoT services. The complex standardisation landscape and complex proprietary technologies may adversely affect the growth potential of consumer IoT products. Limiting out-of-the-box features available to users was another concern. Other potential competition restraints were pre-installations, default-settings and prominent placement of consumer IoT services on smart devices or in relation to voice assistants. The

<sup>60</sup> Case AT.40588, *Teva Copaxone*. See:

[https://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>61</sup> Judgments of the Court of Justice of 25.3.2021, C-586/16 P, *Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission*, EU:C:2021:241; C-588/16 P, *Generics (UK) v Commission*, EU:C:2021:242; C-591/16 P, *Lundbeck v Commission*, EU:C:2021:243; C-601/16 P, *Arrow Group and Arrow Generics v Commission*, EU:C:2021:244; C-611/16 P, *Xellia Pharmaceuticals and Alpha Pharma v Commission*, EU:C:2021:245; and C-614/16 P, *Merck KGaA v Commission*, EU:C:2021:246.

<sup>62</sup> Commission Decision C(2013) 3803 final of 19.6.2013 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39226 – *Lundbeck*).

<sup>63</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1326](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1326).

<sup>64</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2884](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2884).

<sup>65</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_402](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402).

<sup>66</sup> Commission Staff Working Document – Report from the Commission to the Council and the European Parliament: Final report - Sector inquiry into consumer Internet of Things, SWD (2022) 10 final, 20.1.2022.

information collected in the sector inquiry on the consumer IoT will provide guidance for the Commission's future enforcement and regulatory activities. It also contributes to the legislative debate on the Commission's proposal for the Digital Markets Act.

### 3.2. Merger control contributed to the digital transition and a strong and resilient Single Market

Merger control ensures that consolidation takes place in a way that preserves sufficient competitive pressure in the markets affected by a merger. Merger control prevents the creation of market structures where businesses and consumers have too little choice, face lower innovation, lesser quality or higher prices. Merger control requires an assessment of the positive and negative effects of consolidation.

In 2021, the Commission's merger activity remained at a very high level. The Commission adopted 396 merger decisions in various sectors (in 2020 the Commission adopted 352 merger decisions) of which 309 were approved following a simplified procedure. The Commission intervened in 14 proposed acquisitions, of which 11 transactions were approved subject to conditions. Three notified transactions were abandoned by the parties and withdrawn in Phase II.

In March 2021, the Commission approved, following an in-depth investigation and subject to conditions, the acquisition of *Eaton Hydraulics* by *Danfoss*<sup>67</sup>. The company supplies hydraulic components used in machinery used in the agricultural, industrial and construction industries. The commitments addressed the Commission's competition concerns and ensured that downstream machine manufacturers could continue to benefit from competitive prices and a wide choice of innovative components for their products.

In March 2021, the Commission approved, following an in-depth investigation and subject to conditions, the acquisition of *GrandVision* by *EssilorLuxottica*<sup>68</sup>. The company is active in the markets for eyewear products (sunglasses, lenses and frames) and retail sales of such products. By intervening, the Commission ensured that competition at retail level remains vibrant benefitting customers in Belgium, Italy and the Netherlands.

In April 2021, *Air Canada* and *Transat* decided to terminate a proposed merger agreement<sup>69</sup>. This followed an in-depth investigation by the Commission into the proposed acquisition notified in April 2020, concentrating on the parties' overlapping operations in the passenger air transport services between the EEA and Canada. The Commission's preliminary findings were that the proposed transaction would raise competition concerns on a large number of transatlantic routes and, based on the results of the market test, the remedies offered by the parties appeared insufficient.

In December 2021, the *International Consolidated Airlines Group (IAG)* and *Air Europa* decided to withdraw its proposed merger agreement<sup>70</sup>. The withdrawal followed an in-depth

<sup>67</sup> Case M.9820 - *Danfoss / Eaton Hydraulics*.

<sup>68</sup> Case M.9569 – *EssilorLuxottica / Grandvision*.

<sup>69</sup> Case M.9489 - *Air Canada / Transat*.

<sup>70</sup> Case M.9637 – *IAG / Air Europa*, OJ C 519, 22.12.2021, p. 2.



investigation by the Commission into the proposed acquisition of Air Europa by IAG which controls Iberia, British Airways, and several other airlines<sup>71</sup>. The Commission was concerned that the proposed transaction could significantly reduce competition on 70 origin and destination city pairs within and to/from Spain, where both airlines offer direct services.

In 2021, the Commission continued its in-depth investigation into the proposed acquisition of *Daewoo Shipbuilding & Marine Engineering* by *Hyundai Heavy Industries Holding*. In January 2022 the Commission prohibited the merger because it would have created a dominant position by the merged company and reduced competition in the worldwide market for the construction of large liquefied gas carriers (LLNGs). Liquefied natural gas (LNG) contributes to the diversification of the EU's energy sources and improves energy security.

### 3.3. State aid control contributed to the digital transition and the resilience of the Single Market

Broadband infrastructure that meets the needs for very high digital speeds, capacities, and quality is key to meeting the EU 2025 connectivity objectives set out in the EU 2025 Gigabit Society<sup>72</sup> and the Digital Strategy<sup>73</sup> as well as the EU 2030 connectivity objectives set out in the 2030 Digital Compass<sup>74</sup>. State aid contributes to the roll-out of high performance broadband networks in the EU in addressing market failures, that is to say situations and areas where there is no incentive for commercial operators to provide sufficient broadband coverage.

In 2021, in addition to projects supporting the roll-out and take-up of fixed broadband services, the Commission approved several projects concerning the roll-out of mobile broadband services, including, in May 2021, a EUR 2.1 million German aid scheme<sup>75</sup> and, in December 2021, a Spanish scheme to support the deployment of passive infrastructure for the provision of mobile communication services in areas without 4G mobile coverage<sup>76</sup>.

In June 2021, the Commission found that the aid received by terrestrial operators for the extension of the terrestrial television network to remote areas of Spain contravened EU State aid rules. Following the annulment of a 2013 Commission decision (concerning all regions but Castilla-La Mancha), the Commission confirmed that, between 2005 and 2008, the operators of terrestrial platforms received an incompatible selective advantage over their competitors. The Court of Justice confirmed the Commission's decision concerning Castilla-La Mancha in September 2018<sup>77</sup>. Since Spain had only partially recovered the aid, the

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<sup>71</sup> Case M.9637 - *IAG / Air Europa*.

<sup>72</sup> Commission Communication Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society, COM (2016) 0587, 14.9.2016.

<sup>73</sup> Commission Communication Shaping Europe's Digital Future, 19.2.2020. See:

[https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020\\_en\\_4.pdf](https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf).

<sup>74</sup> Commission Communication, Digital Compass: the European way for the Digital Decade, COM (2021) 118 final, 9.3.2021.

<sup>75</sup> Case SA.59574, *Germany - Deployment of high-performance mobile infrastructure in Germany- DE*, OJ C 410, 8.11.2021, p.1.

<sup>76</sup> Case SA.64394 RRF - Spain- National aid scheme for passive infrastructure for mobile networks.

<sup>77</sup> Judgment of the Court of Justice of 20.9.2018, C-114/17, *Kingdom of Spain v European Commission*, EU:C:2018:309.



Commission initiated proceedings before the Court of Justice. In April 2021, the Court held that Spain has failed to recover the aid (C-704/19)<sup>78</sup>. The recovery of this aid is ongoing.

#### 4. Competition policy enforcement contributed to the green transition

EU competition policy is well placed to contribute to the EU's environmental objectives and climate targets, including the decarbonisation of the economy and the shift in the transport sector from polluting fossil fuels to alternative fuels in accordance with the Commission's mobility policy. Competition law enforcement contributes to the European Green Deal<sup>79</sup> by keeping markets efficient, fair and innovative. In this context, the effective enforcement under the State aid instrument is key to avoid distortions of competition in the Single Market.

In February 2021, DG Competition organised a stakeholder conference to discuss how antitrust policy, merger policy and State aid policy can best work together with environmental and climate policies. As a follow-up, DG Competition published, in September 2021, a Competition Policy Brief on how competition policy can and will support the Green Deal objectives<sup>80</sup>.

##### 4.1. State aid control contributed to the Green transition

In 2021, the Commission approved a number of State aid measures intended to support the green transition of the EU. In particular, 18 measures supporting renewable energy and 7 for supporting clean mobility were approved by the Commission.

In January 2021, the Commission adopted a decision authorising the second Important Project of Common European Interest (IPCEI) on batteries<sup>81</sup>. The project, entitled European Battery Innovation, will support research and innovation in the battery value chain. The twelve Member States will provide up to EUR 2.9 billion in funding in the coming years. The public funding is expected to unlock an additional EUR 9 billion in private investments. The project complements the first IPCEI in the battery value chain approved in December 2019<sup>82</sup>. The project is consistent with the Commission's policies to shift from the use of fossil fuels to alternative fuel technologies and green and digital transitions of the EU economy under the European Green Deal and the Digital Strategy<sup>83</sup> as well as to increase the resilience of the EU's economy.

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<sup>78</sup> Judgment of the Court of Justice of 29.4.2021, C-704/19, *European Commission v Kingdom of Spain*, EU:C:2021:342.

<sup>79</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, the European Green Deal, COM(2019) 640 final.

<sup>80</sup> [https://ec.europa.eu/competition-policy/index/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10\\_en](https://ec.europa.eu/competition-policy/index/news/competition-policy-brief-12021-policy-support-europes-green-ambition-2021-09-10_en).

<sup>81</sup> State aid: Commission approves EUR 2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain, Commission press release of 26.1.2021. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_226](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_226). The non-confidential version of the decision will be made available under the case numbers SA.55855 (Austria), SA.55840 (Belgium), SA.55844 (Croatia), SA.55846 (Finland), SA.55858 (France), SA.55831 (Germany), SA.56665 (Greece), SA.55813 (Italy), SA.55859 (Poland), SA.55819 (Slovakia), SA.55896 (Spain), and SA.55854 (Sweden) in the State aid Register on the competition website. See: [https://ec.europa.eu/competition/state\\_aid/register/](https://ec.europa.eu/competition/state_aid/register/).

<sup>82</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6705](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6705).

<sup>83</sup> Commission Communication Shaping Europe's Digital Future, 19.2.2020. See: [https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020\\_en\\_4.pdf](https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf).

In February 2021, the Commission approved Romanian plans to support the upgrade of the district heating system in Bucharest<sup>84</sup>. The EUR 254 million aid measure funded by EU structural funds will help Romania achieve its energy efficiency targets and will contribute to the reduction of greenhouse gases and other pollutants without unduly distorting competition.

In April 2021, the Commission approved the prolongation and modification of a German scheme to support the production of electricity from renewable energy sources and from mine gas, as well as reductions of charges to fund support for electricity from renewable sources. The reduction of charges will be available to energy-intensive companies and shore-side electricity supply to ships while at berth in ports.

In May 2021, the Commission approved a Danish aid scheme to support electricity production from renewable sources. The measure will help Denmark reach its renewable energy targets without unduly distorting competition and will contribute to the European objective of achieving climate neutrality by 2050<sup>85</sup>.

In June 2021, the Commission approved the prolongation and modification of an existing German scheme to support the production of electricity by new, modernised and retrofitted highly efficient cogeneration plants. The approved scheme will promote energy efficiency and contribute to further reductions in CO2 emissions<sup>86</sup>.

In July 2021, the Commission approved a EUR 30.5 billion French scheme to support to operators of onshore solar, onshore wind and hydroelectric installations. The measure will help France achieve its renewable energy targets without unduly distorting competition and will contribute to the European objective of achieving climate neutrality by 2050<sup>87</sup>.

In addition, in December 2021, the Commission approved a EUR 900 million German scheme to support investments in the production of renewable hydrogen in non-EU countries, which will be then imported and sold in the EU<sup>88</sup>. The scheme, called H2Global, aims at meeting the EU demand for renewable hydrogen that is expected to increase in the coming years by supporting the development of the unexploited renewable resource potential outside the EU. Moreover, H2Global will support projects leading to substantial reductions in greenhouse emissions, in line with the environmental and climate objectives set out in the European Green Deal.

#### 4.2 Antitrust enforcement and merger control contributed to the green transition

In July 2021, the Commission found that the car manufacturers *Daimler*, *BMW* and *Volkswagen group* (*Volkswagen*, *Audi* and *Porsche*) breached EU antitrust rules by colluding on technical development in the area of nitrogen oxide cleaning for diesel cars<sup>89</sup>. The

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<sup>84</sup> Case SA.57425, *Romania – Support measure for the upgrade of the Bucharest Municipality District heating network*, OJ C 177, 7 May 2021, p.1.

<sup>85</sup> Case SA.56831, *Denmark – Multi-technology RES tenders 2021-2024*, OJ C 214, 4.6.2021, p.1.

<sup>86</sup> Case SA.56826, *Germany – 2020 reform of support for cogeneration*, OJ C 306, 30.7.2021, p.1.

<sup>87</sup> Case SA.50272, *France – Appels d'offres pour les renouvelables 2021-2026*, OJ C 450, 5.11.2021, p.1.

<sup>88</sup> Case SA.62619, *Germany – H2Global*. The public version of this decision is not yet available. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>89</sup> Case AT.40178, *Car Emissions*, See: [https://ec.europa.eu/competition/antitrust/cases1/202146/AT\\_40178\\_8022289\\_3048\\_5.pdf](https://ec.europa.eu/competition/antitrust/cases1/202146/AT_40178_8022289_3048_5.pdf).

Commission imposed fines of EUR 875.2 million after all parties had agreed to settle the case under the cartel settlement procedure. Daimler was not fined because it revealed the existence of the cartel to the Commission. The car manufacturers had colluded to hold back the full potential of a jointly developed technology to limit harmful emissions of diesel cars by signalling to each other that they would not compete on over-fulfilling EU car emission standards.

In April 2021, the Commission fined railway companies *Österreichische Bundesbahnen* (ÖBB), *Deutsche Bahn* (DB) and *Société Nationale des Chemins de fer belges / Nationale Maatschappij der Belgische Spoorwegen* (SNCB) a total of EUR 48 million for their participation in a customer allocation cartel<sup>90</sup>. The infringement concerned cross-border rail cargo transport services in the EU provided by ÖBB, DB and SNCB under the freight sharing model and carried out in so-called blocktrains<sup>91</sup>. The Commission's investigation revealed that the three railway companies coordinated their conduct by exchanging collusive information on customer requests for competitive offers and providing each other with cover quotes to protect their respective business.

In September 2021, the Commission made legally binding measures proposed by Greece to allow the competitors of *Public Power Corporation* (PPC) to purchase more electricity on a longer-term basis<sup>92</sup>. Greece submitted these measures to remove the distortion created by PPC's exclusive access to lignite-fired generation, which the Commission and the EU courts had found to create an inequality of opportunity in Greek electricity markets. The proposed remedies will lapse when existing lignite plants stop operating commercially or, at the latest, by 31 December 2024<sup>93</sup>.

In December 2021, the Commission fined *Abengoa S.A.* and its subsidiary *Abengoa Bionenergía S.A.*<sup>94</sup>, EUR 20 million for participation in a cartel concerning the wholesale price formation mechanism in the European ethanol market. Biofuels can contribute to promote cleaner transport and reduce greenhouse gas emissions and therefore play a key role in the green transition.

In the field of merger control, the Commission approved with conditions the acquisition of *Suez* by *Veolia*<sup>95</sup> in December 2021. Veolia and Suez are active in the water treatment and waste management sectors. The two companies offer a wide range of services to municipal and industrial customers. The Commission's investigation revealed that the transaction would lead to significant horizontal overlaps in several markets in France and in EEA. These overlaps would risk eliminating the competitive pressure exerted by Suez on Veolia.

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<sup>90</sup> Case AT.40330, *Rail cargo*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>91</sup> Under the freight sharing model, which is a contract model foreseen in international railway law, railway companies performing cross-border rail services provide customers with a single overall price for the service required under a single multilateral contract.

<sup>92</sup> Case AT.38700, *Greek lignite and electricity markets*. See:

[https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>93</sup> The same commitments were made by Greece to the Eurogroup in 2018 as a condition for the release of additional financial relief under the European Stability Mechanism for financial assistance to Greece.

<sup>94</sup> Case AT.40054, *Ethanol benchmarks*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40054](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40054)

<sup>95</sup> Case M.9969, *Veolia / Suez*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

Customers would therefore have faced a reduced choice of service solutions, often limited to the merged entity, without having any real bargaining power.

## 5. Competition Policy Contributed to An Economy that Works for people

The social market economy is one of the foundations that the EU is built upon and EU competition policy underpins it. In 2021, DG Competition supported this headline ambition by enforcing the competition rules and protecting competition on fair and equal terms. The digital dimension was taken into account for example when implementing the Recovery and Resilience Facility, the Capital Markets Union, the Banking Union, and ensuring effective taxation<sup>96</sup>.

### 5.1. Resilient European financial services

#### *Antitrust enforcement in financial services*

EU competition policy plays an important role in ensuring that competition takes place on fair and equal terms throughout the financial services sector. In 2021, the Commission focused strongly on cartel enforcement in the financial services sector, imposing fines totalling EUR 740 million on 16 different financial institutions.

In April 2021<sup>97</sup>, the Commission adopted a decision against *Bank of America Merrill Lynch, Crédit Agricole, Credit Suisse* and *Deutsche Bank* for taking part in a cartel related to Supra-sovereign, Sovereign and Agency bonds denominated in US Dollars (USD SSA bonds). The four investment banks cooperated through a core group of traders that exchanged commercially sensitive information. The cartel participants, communicated via multilateral or bilateral chatrooms using Bloomberg terminals.

In May 2021, the Commission sanctioned another bond-trading cartel, imposing fines totalling EUR 371 million. The Commission concluded that *Bank of America, Natixis, Nomura, RBS* (now *NatWest*), *UBS, UniCredit* and *WestLB* (now *Portigon*) breached EU antitrust rules. A group of traders employed by these companies participated in a cartel in the primary and secondary markets for European Government Bonds (EGB)<sup>98</sup>.

In December 2021, the Commission sanctioned a third cartel in the Foreign Exchange spot trading market<sup>99</sup>. The Commission fined *Barclays, RBS HSBC* and *Credit Suisse* a total amount of EUR 344 million (adding to the EUR 1.7 billion that had already been imposed on these firms in the two earlier Forex cases).

In June 2021, the Commission issued a Statement of Objections to *Insurance Ireland*, an association of Irish insurers. The Commission took the preliminary view that Insurance

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<sup>96</sup> Communication from the Commission: Action Plan to fight tax evasion and to make taxation simple and easy (Q2 2020) included in the Adjusted Commission Work Programme 2020 COM(2020) 440 final Annex 1 and 2, 27.5.2020.

<sup>97</sup> Case AT.40346, *Sovereign and Agency bonds*, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2004](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2004)

<sup>98</sup> Case AT.40324, *European Government Bonds*. See:

[https://ec.europa.eu/competition/antitrust/cases1/202142/AT\\_40324\\_7971056\\_3662\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases1/202142/AT_40324_7971056_3662_3.pdf)

<sup>99</sup> Case AT.40135, *FOREX* [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40135](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40135)

Ireland breached EU antitrust rules by restricting competition in the Irish motor vehicle insurance market<sup>100</sup>.

### *State aid enforcement in financial services*

The Commission authorised the prolongation of several existing State aid schemes allowing Member States to continue strengthening the resilience of the financial sector, without having to grant new State aid to individual financial institutions. Moreover, the Commission authorised the prolongation of schemes for the restructuring or orderly market exit of banks in distress located in Poland<sup>101</sup>, Ireland<sup>102</sup> and Denmark<sup>103</sup>. In addition, the Commission addressed potential liquidity shortages of banks in Greece<sup>104</sup>. Finally, the Commission authorised the prolongation of market-consistent guarantee schemes for the securitisation of non-performing loans in Greece (Hercules<sup>105</sup>) and Italy (GACS<sup>106</sup>). These guarantee schemes help banks to clean up their balance sheets without granting State aid or distorting competition.

For Cyprus<sup>107</sup> and Greece<sup>108</sup>, the Commission authorised indirect State aid to several financial institutions. The State aid schemes are primarily geared at providing social support to vulnerable households at risk of losing their homes. In addition, the Commission authorised Member States' support of recently founded SMEs and start-ups frequently held back by limited access to finance. To this end, the Commission approved a modification of the existing risk finance scheme in France<sup>109</sup>.

## 5.2. Fiscal State aid and selective tax advantages

The Commission approved in 2021 several State aid schemes deferring payment of taxes to mitigate the economic impact of the COVID-19 pandemic. In January 2021, the Commission approved under the Temporary Framework for State aid measures a EUR 156 million Lithuanian aid scheme for companies negatively affected by the COVID-19 pandemic<sup>110</sup>. The public support includes tax deferrals and tax-related liquidity measures (for example payment in instalments of tax arrears, interest free debt periods as well as suspensions of tax debt recovery).

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<sup>100</sup> Case AT.40511, *Insurance Ireland: Insurance claims database and conditions of access*. See:

[https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>101</sup> Case SA.63002, *Poland – Eleventh prolongation of the Credit Unions Orderly Liquidation Scheme*, OJ C 285, 16.7.2021, p.1; Case SA.64522, *Poland – Sixth prolongation of the resolution scheme for cooperative banks and small commercial banks*, OJ C 487, 3.12.2021, p.1.

<sup>102</sup> Case SA.62303, *Ireland – 13<sup>th</sup> Prolongation of the Credit Union restructuring and stabilisation scheme*, OJ C 240, 18.6.2021, p.1; Case SA.100030, *Ireland – 14<sup>th</sup> Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*, OJ C 487, 3.12.2021, p.1; and Case SA.62649, *Ireland – 17<sup>th</sup> Prolongation of the Credit Union Resolution Scheme 2020-2021*, OJ C 240, 18.6.2021, p.1.

<sup>103</sup> Case SA.58478, *Denmark – Third prolongation of the winding-up scheme for small banks*, OJ C 60, 19.2.2021, p.1.

<sup>104</sup> Case SA.59030, *Greece – Prolongation of the Liquidity Guarantee Scheme for banks*, OJ C 144, 23.4.2021, p.1.

<sup>105</sup> Case SA.62242, *Greece – Prolongation of the Hercules scheme*, OJ C 214, 4.6.2021, p.1.

<sup>106</sup> Case SA.62880, *Italy – Fourth prolongation of the Italian guarantee scheme for the securitisation of non-performing loans*, OJ C 295, 23.7.2021, p.1.

<sup>107</sup> Case SA.63005, *Cyprus – Scheme for the management of loans granted Cyprus under Government Housing Plans (OIKIA Scheme)*, OJ C 366, 10.9.2021, p.1.

<sup>108</sup> Case SA.100197, *Greece - Extension of SA.58555 "Temporary primary residence protection scheme"*. The official version of the decision is not yet published. The official version of the decision is not yet published. See:

[https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>109</sup> Case SA.59985, *France - Modification de la décision Aide d'État SA. 55869 (2019/N) : Dispositif IR-PME pour les investissements dans les FCPI et FIP*, OJ C 195, 21.5.2021, p.1.

<sup>110</sup> Case SA.60632, *Lithuania - COVID-19 - Deferral of tax payments*, OJ C 41, 5.2.2021, p.1.

In March 2021, the Commission had decided to refer the United Kingdom to the Court of Justice for failing to fully recover illegal State aid of up to EUR 100 million. The illegal State aid had been granted as a tax exemption for passive interest and royalties in Gibraltar between 2011 and 2013<sup>111</sup>. The Commission had declared this corporate tax exemption regime unlawful and incompatible with State aid rules in 2018 and more than two years after the Commission decision, the Gibraltar authorities had recovered less than 20% of the total illegal aid<sup>112</sup>. Because the pending aid amounts and due recovery interest were fully repaid in escrow accounts between May 2021 and July 2021, the Commission repealed its previous decision to initiate Article 108(2) TFEU proceedings against the United Kingdom.

### 5.3. Competition policy continued to mitigate the economic and social fall-out from the COVID-19 pandemic

The Commission used the full flexibility of the State aid rules for exceptional circumstances to adapt the Temporary Framework for State aid measures. The change provided Member States with a tailor-made toolbox supporting the economy during the COVID-19 pandemic. Since it was first adopted in March 2020, the Commission adapted the rules to the developing needs of Member States and businesses. Two additional amendments were adopted in January and November 2021<sup>113</sup>. The sixth amendment sets out a path towards a step-by-step phase-out of the crisis measures while avoiding cliff-edge effects and limiting the risk for greater economic divergence between Member States.

#### *State aid decisions under Article 107(3)(b) TFEU and the Temporary Framework*

The Commission continued to assess aid measures under Article 107(3)(b) TFEU, Article 107(3)(c) TFEU and the Temporary Framework for State aid measures. The Temporary Framework for State aid measures, which was initially established with an expiry date of 31 December 2020, provides for a number of aid measures that the Commission considers compatible under Article 107(3)(b) and Article 107(3)(c) TFEU, such as limited amount of aid, selective tax advantages and State guarantees for loans. By the end of 2021, the Commission had taken more than 1180 decisions in all Member States, including those under the Temporary Framework for State aid measures.

In 2021, for example, the Commission approved under the Temporary Framework a EUR 800 million Greek scheme to support companies active in tourism affected by the COVID-19 pandemic<sup>114</sup>. The Commission concluded that the measure was necessary, appropriate and proportionate to remedy a serious disturbance in the Greek economy. As regards Italy, in

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<sup>111</sup> Commission Decision (EU) 2019/700 of 19 December 2018 on the State Aid SA.34914 (2013/C) implemented by the United Kingdom as regards the Gibraltar Corporate Income Tax Regime, C/2018/7848, OJ L 119, 7.5.2019, pp. 151–20.

<sup>112</sup> This case relates to facts that took place prior to the United Kingdom's withdrawal from the European Union.

<sup>113</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

<sup>114</sup> Case SA.63123, *Greece - COVID-19: Support to tourism sector*, OJ C 223, 11.6. 2021, p.1.



October 2021, the Commission approved under the Temporary Framework a EUR 31.9 billion Italian scheme to support companies affected by the COVID-19 pandemic<sup>115</sup>.

A number of these measures have been co-financed by cohesion policy, following the two packages of measures launched by the Commission: the Coronavirus Response Investment Initiative (CRII), the Coronavirus Response Investment Initiative Plus (CRII+) and REACT-EU package.

In March 2021, the Commission approved a French State guarantee scheme of up to EUR 20 billion intended to support the economy in the context of the COVID-19 pandemic<sup>116</sup>. The scheme provides long-term funding to companies and facilitates new investments supporting the recovery from the COVID-19 pandemic.

### *COVID-19 related State aid decisions and policy initiatives*

In August 2021, the Commission approved a set of guarantees on synthetic securitisation tranches under the European Guarantee Fund managed by the European Investment Bank Group<sup>117</sup>. The initiative supports companies affected by the COVID-19 pandemic in 22 participating Member States<sup>118</sup>.

### *State aid decisions under Article 107(2)(b) TFEU*

Article 107(2)(b) TFEU enables the Commission to approve State aid measures granted by Member States to compensate undertakings for damage directly caused by exceptional occurrences such as the COVID-19 pandemic (for example in transport, tourism, culture, hospitality and retail sales). Member States may notify to the Commission damage compensation measures under Article 107(2)(b) TFEU provided that the aid is proportionate and there is a direct causal link between the exceptional occurrence (the COVID-19 pandemic) and the damage suffered by the beneficiaries<sup>119</sup>.

For example, in January 2021 the Commission authorised a EUR 12 billion German umbrella scheme to compensate companies for damages suffered due to restrictive measures introduced to contain the COVID-19 pandemic<sup>120</sup>. Under this scheme, companies from all sectors will be entitled to compensation for damages suffered during the lockdown periods as a consequence of restrictions imposed by the German government in March/April and November/December 2020.

In April 2021 the Commission authorised under Article 107(2)(b) TFEU a Danish scheme of EUR 1.74 billion to compensate mink farmers and mink farming-related businesses for

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<sup>115</sup> Case SA.62668, *Italy - COVID-19 - IT - Automatic tax measures and non-repayable grants*. The decision was adopted under Articles 106(2), 107(2)(a), 107(2)(b) and 107(2)(c) TFEU. See:

[https://ec.europa.eu/competition/elojade/iseif/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/iseif/index.cfm?fuseaction=dsp_result&policy_area_id=3)

<sup>116</sup> Case SA.58639, *France - COVID-19: Dispositif de garantie aux fonds de prêts participatifs et d'obligations subordonnées*, OJ C 84, 12.3.2021, p.1.

<sup>117</sup> Consisting of the European Investment Bank, "EIB" and the European Investment Fund, "EIF".

<sup>118</sup> See Commission press release of 16.8.2021, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_4204](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4204).

<sup>119</sup> For example, a damage caused by quarantine measures precluding the beneficiary from operating its economic activity. Other kinds of aid, addressing more generally the economic downturn from the coronavirus pandemic, is to be evaluated under the compatibility principles set out in Article 107(3)(b) TFEU and the Temporary Framework for State aid measures.

<sup>120</sup> Case SA.60045, *Germany - November Assistance Extra under Article 107 (2)(b) TFEU-Covid*, OJ C 41, 5.2.2021, p.1.

measures taken in the context of the COVID-19 pandemic<sup>121</sup>. In May 2021, the Commission authorised a EUR 10 billion German scheme to compensate companies in all sectors for damage caused by the emergency measures taken to limit the spread of the COVID-19<sup>122</sup>. Moreover, in July 2021, the Commission approved a EUR 800 million Italian scheme to compensate airports and ground handling operators for the damage caused by the COVID-19 pandemic, in particular, the travel restrictions imposed to limit the spread of the virus<sup>123</sup>.

### *State aid to the aviation sector*

Throughout 2021, the aviation sector continued to be one of the most severely affected by the COVID-19 pandemic. During this year, the Commission adopted 35 decisions allowing State aid to undertakings active in the aviation sector to fulfil their liquidity and capital needs brought about by the COVID-19 pandemic. These State aid measures were most frequently approved under the Temporary Framework for State aid measures or Article 107(2)(b) TFEU.

The Commission approved State aid to the airlines Air France<sup>124</sup>, TUI<sup>125</sup>, Scandinavian Airlines Systems<sup>126</sup>, Finnair<sup>127</sup> and others. Moreover, the Commission assessed several rescue or restructuring measures for airlines such as TAP<sup>128</sup> and Condor<sup>129</sup> and authorised State aid to ensure the long-term viability of those and other airlines.

In September 2021, the Commission adopted two decisions regarding the Italian airline Alitalia. After in-depth investigations into two State loans amounting to EUR 900 million in total granted in 2017, the Commission concluded that these loans constituted unlawful and incompatible State aid<sup>130</sup>. In a separate decision<sup>131</sup>, the Commission found that the new Italian airline ITA, that is set to take over a part of Alitalia's assets, is not the economic successor of Alitalia and therefore not liable to repay illegal aid received by Alitalia. Moreover, the Commission found that the EUR 1.35 billion capital injection into ITA was market conform. Consequently, the capital injections did not constitute State aid under EU rules.

### *The Recovery and Resilience Facility became operational - Preparing the exit from the crisis*

The Recovery and Resilience Facility (RRF) entered into force on 19 February 2021<sup>132</sup>. It finances reforms and investments in Member States from the start of the pandemic in February 2020 until 31 December 2026. The RRF is the centrepiece of NextGenerationEU, a

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<sup>121</sup> Case SA.61945, *Denmark - Aid scheme for mink farmers and related businesses affected by the COVID-19 out-break*, OJ C 195, 21.5.2021, p.1.

<sup>122</sup> Case SA.62784, *Germany - Covid-19 - Art. 107 2b Federal Umbrella Scheme*, OJ C 223, 11.6.2021, p.1.

<sup>123</sup> Case SA.63074, *Italy - Damage compensation scheme for airport infrastructure managers and ground handling operators in Italy*, OJ C 327, 13.8.2021, p.1.

<sup>124</sup> Case SA.59913, *France – COVID-19 - Recapitalisation of Air France and the Air France – KLM Holding*, OJ C 240, 18.6.2021, p. 1.

<sup>125</sup> Case SA.59812, *Germany – COVID-19 - Recapitalisation of TUI*. The public version of this decision is not yet available. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3)

<sup>126</sup> Case SA. 63898, *Sweden - COVID-19 - State loan to SAS Consortium*, OJ C 33, 21.1.2022; and SA. 63250, *Denmark – SA.63250 COVID-19 – Subsidised loan to SAS*, OJ C 33, 21.1.2022.

<sup>127</sup> Case SA.60113, *Finland - Finnair – COVID-19 - hybrid loan 107.2.b*, OJ C 240, 18.6.2021, p.1.

<sup>128</sup> Case SA.60165 – Portugal - Restructuring aid to TAP SGPS.

<sup>129</sup> Case SA.63203, *Germany – Restructuring of Condor*, OJ C 429, 15.4.2021.

<sup>130</sup> Case SA.48171 – Italy – *Complaints against alleged State aid to Alitalia*.

<sup>131</sup> Case SA.58173 – Italy – *Newco ITA*; See Commission Press Release of 10.9.2021, “Commission finds new air carrier ITA is not Alitalia's economic successor and Italy's capital injections into ITA are market conform”, available at:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4665](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4665)

<sup>132</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, pp. 17–75.

temporary recovery instrument that allows the Commission to raise funds to help repair the immediate economic and social damage brought about by the COVID-19 pandemic.

The aim of the RRF<sup>133</sup> is to mitigate the economic and social impact of the COVID-19 pandemic and make the EU more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions. The RRF allows the Commission to raise funds to help Member States implement reforms and investments that are in line with the EU's priorities.

To benefit from RRF support, Member States must submit Recovery and Resilience Plans (RRPs) to the Commission. These plans set out the reforms and public investment projects that each Member State plans to implement with the support of the RRF. DG Competition has provided guidance<sup>134</sup> to accompany and facilitate the implementation of the RRFs to ensure that supported investment and reform projects are compatible with State aid rules. DG Competition also provided practical guidance to Member States for a swift treatment of State aid notifications within the RRF framework<sup>135</sup>.

## 6. Joining Forces Shaping a European and Global Competition Culture

### 6.1. Policy Cohesion through the European Competition Network

In 2021, the Commission continued to ensure the coherent application of Articles 101 and 102 through the ECN<sup>136</sup>. Two of the key cooperation and support mechanisms in Regulation 1/2003 are first, the national competition authorities' (NCAs) obligation to inform the Commission about new investigations already at the stage of the first formal investigative measure and second, to consult the Commission on envisaged decisions. In 2021, 145 new investigations were launched within the network and 84 planned decisions were submitted.

In addition to the cooperation mechanisms set out in Regulation 1/2003, other ECN cooperation mechanisms ensure a coherent enforcement of the EU competition rules across jurisdictions. ECN members meet regularly to discuss recently opened cases, policy issues and matters of strategic importance. In 2021, horizontal working groups and sector-specific sub-groups held 37 meetings where NCA officials exchanged views and experience.

In 2021, the Commission monitored and assisted Member States in their efforts to incorporate the ECN+ Directive<sup>137</sup> into national law. This had to be done by 4 February 2021. In March 2021, the Commission opened infringement procedures against 22 Member States because they had failed to notify that they had implemented the ECN+ Directive before the deadline. Of the 22 Member States, 14 subsequently notified implementation before the end of 2021. Before closing the infringement proceedings, the Commission will verify that the ECN+

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<sup>133</sup> See the Recovery and Resilience Scoreboard, which gives an overview of how the implementation of the Recovery and Resilience Facility (RRF) and the national recovery and resilience plans is progressing: [https://ec.europa.eu/economy\\_finance/recovery-and-resilience-scoreboard/index.html](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html)

<sup>134</sup> See: [https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates_en)

<sup>135</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/practical\\_guidance\\_to\\_MS\\_for\\_notifications\\_under\\_RRF.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/practical_guidance_to_MS_for_notifications_under_RRF.pdf)

<sup>136</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.04.2004, pp. 43-53 and OJ C 374, 13.10.2016, p. 10. See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0427%2802%29>.

<sup>137</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.01.2019, pp. 3–33.

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

## 6.2. Competition policy cooperation across the world

### *Multilateral relations*

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

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

The Commission continued its endeavours to improve international subsidy rules. Reforming the subsidy rules is one of the EU's main priorities when reviewing the World Trade Organization trade rules, as confirmed in the joint statement of the EU, US and Japan<sup>138</sup>.

### *Bilateral relations*

In December 2021, the Commission and the US competition authorities launched the EU-US Joint Technology Competition Policy Dialogue to develop common approaches and strengthen the cooperation on competition policy and competition policy enforcement in the technology sectors<sup>139</sup>. The Commission remained in close contact with the Korean Fair Trade Commission and the Japanese Fair Trade Commission under the respective cooperation agreements<sup>140</sup>. In 2021, the Commission continued the negotiations with Japan on a Second Generation Competition Cooperation Agreement<sup>141</sup>. As regards the draft Second Generation Cooperation Agreement between the EU and Canada, the Commission is in regular contact with the Canadian Competition Bureau to find a solution on data protection standards in Canada that are consistent with the standards established by the Opinion of the Court of Justice on the 2014 EU-Canada Passenger Name Record Agreement<sup>142</sup>. Finally, the Commission continued its close competition policy cooperation with China's State Administration for Market Regulation under the 2019 cooperation agreements<sup>143</sup>.

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<sup>138</sup> See: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2330>

<sup>139</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_6671](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6671)

<sup>140</sup> See: [https://ec.europa.eu/competition-policy/international/bilateral-relations/korea\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/korea_en); [https://ec.europa.eu/competition-policy/international/bilateral-relations/japan\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/japan_en).

<sup>141</sup> See: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722(01))

<sup>142</sup> See: <http://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=C-1/15>. Currently, Canada is preparing an overhaul of its domestic privacy act.

<sup>143</sup> See: [https://ec.europa.eu/competition-policy/international/bilateral-relations/china\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/china_en)

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

For the candidate countries and the potential candidates, the Commission's main policy objective is to assist them when adopting legal frameworks for competition policy, creating well-functioning operationally independent competition authorities and building up solid enforcement records. In 2021, the Commission continued to monitor candidate countries' and potential candidates' compliance with their commitments under the Stabilisation and Association agreements.

To develop cooperation in the competition field, the Commission also continued to engage with a number of national and regional authorities in Africa. In 2021, the Commission hosted joint workshops with the South African Competition Commission on digital aspects of competition policy and on cooperation between competition authorities.

#### *A regular and constructive inter-institutional dialogue*

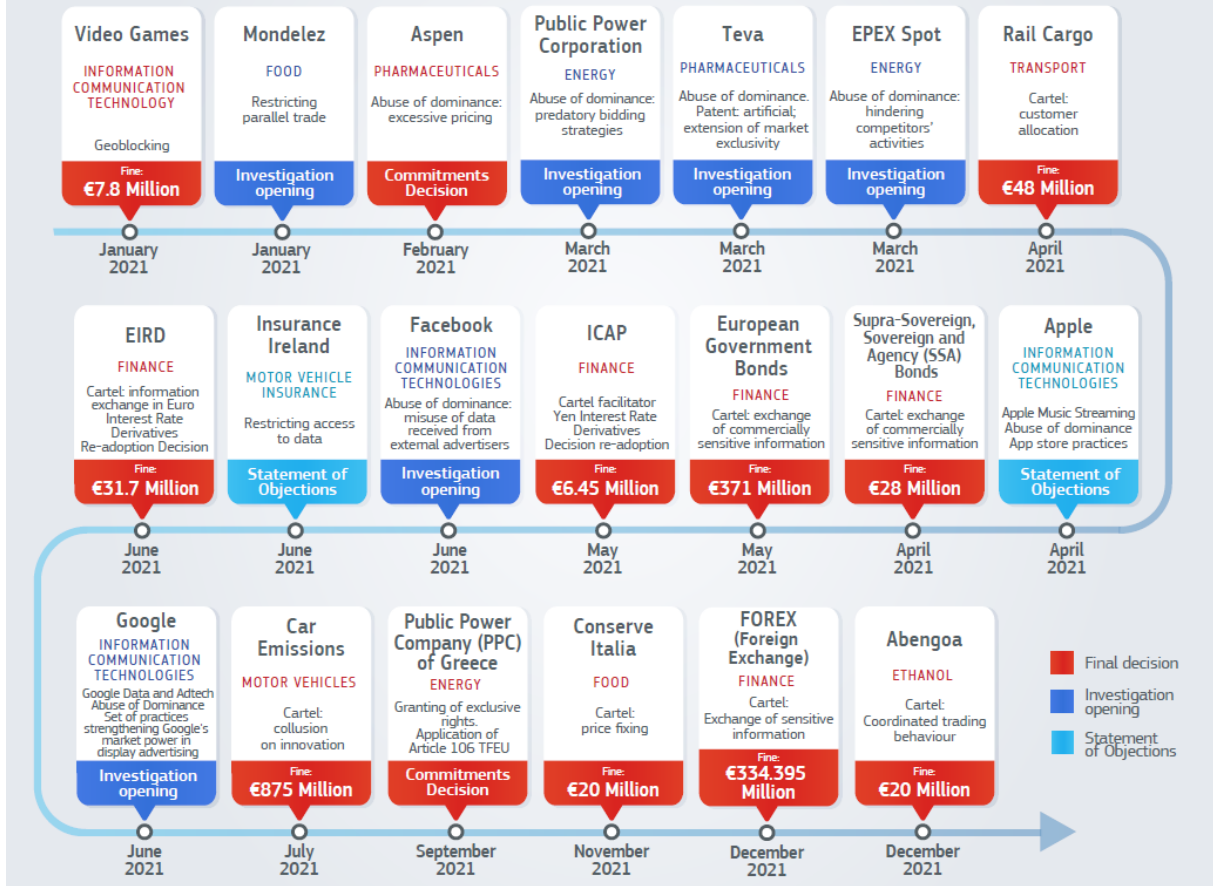
The European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions are key partners to the Commission in the continuing dialogues on competition policy. Despite the COVID-19 pandemic, the dialogues continued in 2021 through in-person meetings and remote participation.

In the European Parliament, Executive Vice-President Vestager participated in 2021 in a number of exchanges of views, including dialogues on the Digital Markets Act in the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Legal Affairs as well as in the Committee on Industry, Research and Energy. Moreover, Executive Vice-President Vestager exchanged views with the the Subcommittee on Tax Matters on digital taxation and State aid in the tax area. In addition, Executive Vice-President Vestager participated in plenary debates on competition policy; on the Climate, Energy and Environmental State aid guidelines, on the Digital Markets Act and on the EU-US Trade and Technology Council. Finally, Executive Vice-President Vestager participated in several structured dialogues with committees of the European Parliament, for example in a structured dialogue with the Committee on Economic and Monetary Affairs.

In its written response of September 2021 to the Parliament's resolution on competition policy (rapporteur Van Overtveldt; ECR, BE), the Commission highlighted, among other things, the adoption of the Temporary Framework for State aid measures, the COVID-19 crisis, investigations into Member States' tax ruling practices and changes in tax legislation. Moreover, the Commission highlighted the proposal for a Digital Markets Act and the ongoing revision of the State aid rules (most importantly the revision of EEAG which followed the so-called fitness check).

In 2021, in the Council, Executive Vice-President Vestager participated in exchanges of views and debates on competition policy matters, including several meetings of the Competitiveness Council - Internal market and industry.

# COMPETITION ENFORCEMENT IN ANTITRUST AND CARTELS 2021





# EU MERGER CONTROL 2021

