



Council of the  
European Union

Brussels, 22 June 2016  
(OR. en)

10587/16

RC 4

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 June 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 393 final
Subject:	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 2015

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Delegations will find attached document COM(2016) 393 final.

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Encl.: COM(2016) 393 final



Brussels, 15.6.2016  
COM(2016) 393 final

**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 2015**

{SWD(2016) 198 final}

# **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 2015**

### **I. Introduction**

Strong and effective EU competition policy has always been a cornerstone of the European project. Now that sustaining the recovery and boosting economic growth are at the top of EU agenda, competition policy is more important than ever.

Competition policy keeps markets efficient and open. For European consumers, this translates into better market outcomes such as lower prices, better quality products and services, and greater choice. In addition, healthy competition gives companies fair chances to do business and to achieve their commercial goals, which in turn encourages growth, job creation and prosperity. When companies are able to compete on their own merits, businesses and households benefit from a wide range of good quality, innovative products and services at competitive prices. Increased competition also drives companies to invest and to become more efficient. These efficiency gains are then passed on to the wider economy. The ultimate aim of competition policy is to make markets work better – to the advantage of households and businesses.

At the beginning of his mandate, the President of the European Commission, Jean-Claude Juncker, said that his Commission will focus on the key challenges facing European society and the economy. Competition policy has an important role to play in tackling those challenges. The work carried out in the field of competition in 2015 made a significant contribution to a number of Commission's key political priorities, namely boosting jobs, growth and investment, and creating a connected Digital Single Market, a resilient Energy Union, and a deeper and fairer single market.

The Commission is also committed to fostering a competition culture – both in the EU and beyond – by promoting closer dialogue with Member States<sup>1</sup> and with the other EU institutions, as well as extensive international cooperation.

The guiding principles of competition enforcement are to safeguard impartiality, enforce the rule of law and serve the common European interest. EU competition policy also centres around the values of fairness, political independence, transparency and due process.

### **II. Competition policy boosts innovation and investment across the EU**

Europe's economy is slowly turning a corner after the recent economic and financial crisis. In order to build a sound basis for sustainable growth and the creation of quality jobs, the EU needs to restore its investment levels, especially in strategic areas such as research, development and innovation. Europe's future should, in particular, be based on innovation. Competition policy can help achieve this by creating an environment that encourages investment and innovation.

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<sup>1</sup> See for example Competition Policy Brief Issue 2015-05, *Improving competition in the Member States to boost growth*.

Competitive pressure creates incentives for firms to invest, becoming more efficient, developing new technologies and creating better products. Enabling more effective competition helps stimulate investment by keeping markets open and ensuring that action is taken if a market leader abuses its position to prevent its competitors from growing and innovating. Econometric model simulations show that the Commission's merger and cartel decisions lead to a 0.7 % increase investment after five years.<sup>2</sup> In addition, EU State aid rules steer public resources towards mobilising new investment, ensuring that public funding incentivises private investments which would not have been made otherwise.

The Investment Plan for Europe<sup>3</sup> was launched in November 2014 with the aim of boosting investment. A key part of the plan is the European Fund for Strategic Investment<sup>4</sup> (EFSI), which became operational in late 2015. With the help of the European Investment Bank (EIB), EFSI provides financing backed by an EU budget guarantee, unlocking strategic investments which the market could not finance alone.

EFSI-supported project funding provided by the EIB does not fall under State aid rules. However, projects may also receive financial support ('co-financing') from the Member States (including from the European structural and investment funds) which is subject to State aid rules. This funding must be approved by the Commission unless it is granted on market terms. To support the EFSI, the Commission assesses the co-financing from Member State as a matter of priority. State aid rules go hand in hand with the Investment Plan's aim of addressing market failures and mobilising private investment. State aid control ensure that public investment projects address real needs, keep costs under control and guarantee that public money is genuinely needed to get projects off the ground.

#### *Revamped State aid rules to encourage growth-enhancing aid measures*

State aid rules have been overhauled in the context of the State aid modernisation (SAM) initiative.<sup>5</sup> The initiative helps Member States to better target aid measures towards economic growth, job creation and social cohesion. As part of SAM, the Commission is reinforcing its partnership with the Member States on the implementation of the new rules, as they have now increased responsibility to grant aid without prior notification to the Commission.

This strengthened partnership approach aims to ensure that greater flexibility for Member States to grant aid is balanced by better cooperation, diligent national controls and increased transparency. The Commission will support strategic investments by working with Member States on how to design growth-enhancing aid measures that promote a strong, integrated and dynamic single market.

The new State aid framework will ensure that public funding helps mobilise private investment to contribute to important objectives of common interest, without distorting competition. In this respect, in addition to the rules in the expanded General Block Exemption Regulation (GBER) adopted in 2014,<sup>6</sup> three areas are especially important to boost innovation

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<sup>2</sup> Dierx A., Ilzkovitz, F., Pataracchia, B., Ratto, M., Thum-Thysen, A., Varga, J., 'Distributional macroeconomic effects of EU competition policy – a general equilibrium analysis', *Competition Policy and Shared Prosperity* (forthcoming), World Bank.

<sup>3</sup> See [http://ec.europa.eu/priorities/jobs-growth-investment/plan/index\\_en.htm](http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm).

<sup>4</sup> See [http://ec.europa.eu/priorities/jobs-growth-investment/plan/efsi/index\\_en.htm](http://ec.europa.eu/priorities/jobs-growth-investment/plan/efsi/index_en.htm).

<sup>5</sup> See [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html).

<sup>6</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, OJ L 187, 26.6.2014, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.187.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG)

and investment across the EU. The Research, Development and Innovation (R&D&I) framework<sup>7</sup> facilitates the granting of aid measures for research, development and innovation activities, to complement private funding. The Risk Finance State aid guidelines<sup>8</sup> permit a more rapid and generous distribution of risk finance aid to innovative and growth-oriented small and medium-sized businesses (SMEs) and mid-caps. The Broadband Guidelines<sup>9</sup> support Member States in tackling funding gaps and market failures when it comes to providing adequate broadband coverage, especially in rural areas.

#### **Aid measures enabling ground-breaking research**

State aid rules help to encourage and spread innovation in the EU, by supporting cutting-edge projects in the most advanced technological fields.

In April, for example, the Commission assessed a GBP 50 million (around EUR 71 million) grant that the UK authorities intended to provide for designing a SABRE space launcher engine, and found it was in line with EU state aid rules. SABRE is a research and development project carried out by UK company Reaction Engines Limited, which aims to develop an engine that would significantly reduce the cost of launching satellites into a low Earth orbit. The Commission assessed the project under its R&D&I State aid framework, and concluded that the funding raised from private equity sources would not be enough to complete the project. Research in this area could lead to significant technological advances that would benefit consumers using products and services that derive from low Earth orbiting satellites, such as mobile communications.

### **III. Seizing the opportunities of the Digital Single Market**

Turning the Digital Single Market into a reality has been a Commission priority since the start of its mandate. The expansion of the digital economy, besides transforming our world and way of living, is one of the main drivers of economic growth. A thriving Digital Single Market would fuel innovation, create new jobs and also build new opportunities for European start-ups and small and medium-sized businesses (SMEs) to reach out to a market of over 500 million people. The Commission has estimated that creating a EU Digital Single Market by breaking down regulatory barriers, as well as moving from 28 national markets to a single one, could contribute EUR 415 billion per year to our economy and create hundreds of thousands of new jobs<sup>10</sup>.

In May 2015, the Commission adopted its Digital Single Market Strategy.<sup>11</sup> The strategy includes a set of 16 targeted actions, built around three pillars: (1) better access for consumers and businesses to digital goods and services across Europe; (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish; (3) maximising the growth potential of the digital economy.

<sup>7</sup> Communication from the Commission, *Framework for State aid for research and development and innovation*, OJ C 198, 27.6.2014, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.198.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.198.01.0001.01.ENG)

<sup>8</sup> Communication from the Commission, *Guidelines on State aid to promote risk finance investments*, OJ C 19, 22.1.2014, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04)).

<sup>9</sup> Communication from the Commission, *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ 2013 C 25, 26.1.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:en:PDF>.

<sup>10</sup> See [http://ec.europa.eu/priorities/digital-single-market\\_en](http://ec.europa.eu/priorities/digital-single-market_en).

<sup>11</sup> Communication of 6 May 2015 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *A Digital Single Market Strategy for Europe*, COM(2015) 192 final, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192>.

Digital markets are also a main priority in the competition policy field. Open and fair digital markets will boost innovation and bring benefits to both consumers and businesses. The Digital Single Market must be a place where all players — large and small — can develop innovative products and compete on their merits. In addition, competition policy tackles existing barriers online which are limiting the investment horizons of internet companies and start-ups, and preventing businesses, citizens and governments to fully benefit from digital tools.

*Ensuring undistorted competition on the web: Tackling online barriers and obstacles to innovation*

Rapid developments in the digital economy pose several challenges for policymakers, but do not require an overhaul of competition law and tools: competition policy instruments are adapting quickly to the specific features of the digital markets.<sup>12</sup>

**The e-commerce sector inquiry – deepening market knowledge to tackle cross-border barriers**

In May 2015, the Commission launched an antitrust sector inquiry into the e-commerce sector in the EU. In 2014, around half of all EU consumers shopped online, but only around 15 % of them bought online from a seller based in another EU Member State. This suggests that significant cross-border barriers to e-commerce still exist within the EU. The sector inquiry will focus in particular on potential barriers created by companies to the cross-border online trade in goods and services where e-commerce is most widespread, such as electronics, clothing and shoes, and digital content.

The sector inquiry will support the measures that the Commission and EU national competition authorities take against restrictions on online sales. Knowledge gained from the sector inquiry will contribute to better enforcement of competition law in the e-commerce sector.

One of the primary aims of competition enforcement is to encourage all industry participants to innovate, whether they are start-ups or have a dominant market share. The aim is to ensure that European consumers have as wide a choice as possible of innovative products. For example, in the online search market, the Commission is conducting an antitrust investigation into Google's practices.

In April, the Commission sent a Statement of Objections to Google, alleging that the company has abused its dominant position in the market for online search services in the European Economic Area by systematically favouring its own comparison shopping product in its general search results.<sup>13</sup> The Commission is concerned that the search results users receive are not always the most relevant to their queries. The Commission's preliminary view is that Google's behaviour infringes EU antitrust rules because it stifles competition and therefore harms consumers.

The Commission has previously outlined four concerns about Google's conduct, and the Statement of Objections described above relates to the first of those concerns (comparison shopping). The Commission is also actively investigating Google's conduct in relation to the other three concerns: copying of rivals' web content, advertising exclusivity, and undue restrictions on advertisers. The Statement of Objections in relation to comparison shopping does not in any way prejudge the outcome of the Commission's investigation into the other three concerns.

<sup>12</sup> See recent study from the European Parliament at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542235/IPOL\\_STU%282015%29542235\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542235/IPOL_STU%282015%29542235_EN.pdf)

<sup>13</sup> Case AT.39740 *Google search*, see IP/15/4780 of 15 April 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-4780\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4780_en.htm).

Another investigation in the digital sector concerns Amazon. In June, the Commission opened a formal antitrust investigation into some of Amazon's business practices in the distribution of e-books.<sup>14</sup> In particular, the investigation is focusing on clauses which appear to protect Amazon from competition from other e-book distributors, for example clauses granting it the right to be informed of more favourable or alternative terms offered to its competitors, and/or the right to terms and conditions at least as good as those offered to its competitors.

The Commission has concerns that such clauses may disrupt the level playing field and potentially decrease competition in the market to the detriment of consumers, making it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services. Such behaviour, if confirmed, would violate EU antitrust rules that prohibit abuses of a dominant market position and restrictive business practices. The Commission's goal is to ensure healthy inter-platform competition and make sure that market players do not abuse their position to obtain contractual terms and conditions that may act as an obstacle to innovation in the market.

#### *Promoting a wider choice in access to media for EU citizens*

A strong and swift competition enforcement is a key tool in effectively addressing issues that arise in the new and rapidly evolving sectors of the digital economy. However, ensuring vibrant competition in more traditional markets, such as broadcast television, is equally important for European citizens. The Commission is keen to ensure that consumers can choose between TV distributors who are competing on a fair and equal footing.<sup>15</sup>

#### **Protecting innovation incentives in the media sector**

In February 2015, the Commission cleared, under the EU Merger Regulation, Liberty Global's acquisition of a stake in the Belgian media company De Vijver Media NV ('De Vijver'), subject to commitments. The Commission's decision followed an in-depth investigation.

The Commission had concerns that, after the transaction, De Vijver would refuse to license its channels to TV distributors that are in competition with Telenet, a cable company controlled by Liberty Global. The commitments address these concerns by obliging De Vijver to license its channels – Vier, Vijf and any other similar channel it may launch – to TV distributors in Belgium under fair, reasonable and non-discriminatory terms. Without these commitments, the transaction could have translated in less competition in the TV distribution market and ultimately higher prices and less innovation for consumers.

In addition, the Commission authorised in April the proposed acquisition of the Portuguese telecommunications operator PT Portugal by the multinational cable and telecommunications company Altice. The decision is conditional on Altice's commitment to sell its two subsidiaries in Portugal.

PT Portugal is a telecommunications and multimedia operator with activities extending across all telecommunications segments in Portugal. The Commission was concerned that the merger, as initially notified, would have reduced competition in a number of telecommunications markets in Portugal. The merger would have removed a strong competitor from these markets, and this may have led to higher prices and less competition for Portuguese consumers. In order to remove these concerns, Altice offered to remove the overlap between the activities of Altice and PT Portugal by selling its Portuguese businesses Cabovisão and ONI. The Commission worked closely with the Portuguese competition authority when assessing the proposed transaction.

<sup>14</sup> Case AT.40153 *E-book MFNs and related matters*, see IP/15/5166 of 11 June 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-5166\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5166_en.htm).

<sup>15</sup> See Cases M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, Commission Decision of 24 February 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7194](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7194), and M.7499 *Altice / PT Portugal*, Commission decision of 20 April 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7499](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7499).

Another antitrust investigation concerns the cross-border provision of pay-TV services in the United Kingdom and Ireland. In July, the Commission sent a Statement of Objections to Sky UK and six major US film studios: Disney, NBC Universal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros.<sup>16</sup> The Commission's investigation, which was opened in January 2014, identified clauses in licensing agreements between the six film studios and Sky UK which require Sky UK to block access to films through its online pay-TV services or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland). Certain agreements also contain clauses requiring the film studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the United Kingdom and Ireland.

This situation affects European consumers who want to watch the pay-TV channels of their choice, regardless of where they live or travel in the EU. The Commission's preliminary view is that, in the absence of convincing justification, such clauses would constitute a violation of EU rules that prohibit anticompetitive agreements.

#### *Improving the functioning of innovative markets – mobile devices*

Mobile devices, such as smartphones and tablet computers, are now part of the everyday life of the majority of European citizens. 2015 was a milestone for European mobile communication users – the European Parliament and the Council adopted Regulation (EU) 2015/2120,<sup>17</sup> which will put an end to roaming charges in the EU from 15 June 2017. The aim of antitrust enforcement, together with legislation, is to protect competition in the area of mobile devices to ensure continued innovation to the benefit of European consumers.

Following the opening of two separate antitrust investigations in December, the Commission sent two Statements of Objections to Qualcomm, the world's largest supplier of baseband chipsets, which are used in consumer electronic devices. Baseband chipsets process communication functions in smartphones, tablets and other mobile broadband devices. They are used for both voice and data transmission.

The Commission's preliminary view is that the company has abused its dominant position in the worldwide markets for 3G (UMTS) and 4G (LTE) baseband chipsets, in breach of EU antitrust rules.<sup>18</sup> The first investigation is examining whether Qualcomm has abused its dominant market position by offering financial incentives to a major smartphone and tablet manufacturer on condition that it exclusively use Qualcomm baseband chipsets in its smartphones and tablets. Such conduct would have reduced the manufacturer's incentives to source chipsets from Qualcomm's competitors, harming competition and innovation in the markets for UMTS and LTE baseband chipsets. The second investigation is looking into whether Qualcomm engaged in predatory pricing by charging prices below cost with a view to forcing its competition out of the market.

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<sup>16</sup> Case AT.40023 *Cross-border access to pay-TV content*, see IP/15/5432 of 23 July 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-5432\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5432_en.htm).

<sup>17</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, pp. 1-18, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2120>.

<sup>18</sup> Cases AT.40220 *Qualcomm (exclusivity payments)* and AT.39711 *Qualcomm (predation)*, see IP/15/6271 of 8 December 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-6271\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6271_en.htm).

The market for the supply of hardware, however, is only one side of the coin – the software running on smartphones and tablets must also be subject to undistorted competition. The mobile applications and services on smartphones, tablets and other mobile devices are based on the device's operating system. Google Android has become the leading operating system for smart mobile devices in the European Economic Area, to the extent that Android is now used on the majority of smart mobile devices in Europe.

In April, the Commission opened formal proceedings against Google to investigate into whether the company's conduct in relation to Android may have breached EU antitrust rules.<sup>19</sup> Android is an open-source mobile operating system which is predominantly developed by Google. In principle, anyone can freely use and further develop Android. The majority of smartphone and tablet manufacturers, however, use the Android operating system in combination with a range of Google's proprietary applications and services, and therefore need to enter into certain agreements with Google.

The Commission is assessing if, by entering into anticompetitive agreements and/or by abusing a possible dominant position, Google has illegally hindered the development and market access of rival mobile operating systems, mobile communication applications and services in the European Economic Area. This investigation is distinct and separate from the Commission's investigation into Google's behaviour in relation to internet searches.

#### *Effective merger control to safeguard investment in the telecoms sector*

Effective competition in the telecoms sector is a key driver of investment and better market outcomes for consumers and businesses. Competition is the driving force that will attract the investment to develop the high-speed broadband networks that Europeans need. Consumers do not benefit from investment as such – they benefit from the impact of investment on the parameters of competition such as choice, quality and price.

Besides keeping the telecoms market open and competitive, competition enforcement remains a key tool in tackling market fragmentation in the EU.<sup>20</sup> Competition policy also complements the review of the telecoms regulatory framework, one of the main measures planned under the Digital Single Market Strategy.

In addition, merger control in this area plays a crucial role, by assessing whether a proposed merger would lead to increased investment to the benefit of consumers, for example in terms of increased network coverage.

In May, the Commission approved, under the EU Merger Regulation, the proposed acquisition of Jazztel, a telecommunications company registered in the UK but mainly active in Spain, by rival Orange SA of France.<sup>21</sup> The approval is conditional upon the full implementation by Orange of a number of commitments that will ensure effective competition in the fixed internet access services markets after the takeover.

The Commission had concerns that the takeover, as initially notified, could have led to higher prices for fixed internet access services for consumers in Spain. To address these concerns,

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<sup>19</sup> Case AT.40099 *Google Android*, see MEMO/15/4782 of 15 April 2015, available at [http://europa.eu/rapid/press-release MEMO-15-4782\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-4782_en.htm).

<sup>20</sup> See for example Slovak Telecom decision (case AT.39523) of 15 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39523](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39523).

<sup>21</sup> Case M.7421 *Orange / Jazztel*, Commission decision of 19 May 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7421](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7421).

Orange submitted commitments to ensure that a new player may enter the retail market for fixed internet access services, and compete as strongly as Orange and Jazztel. The commitments remove the Commission's initial concerns.

The Commission has also opened two in-depth investigations into mergers in the telecoms sector. First, it is looking into the proposed acquisition of Telefónica UK by Hutchison,<sup>22</sup> to assess whether the transaction would harm competition. The Commission is concerned that the transaction could lead to higher prices, less choice and reduced innovation for customers of mobile telecommunications services in the United Kingdom. The Commission has also conducted an in-depth investigation into the takeover of BASE Belgium by Liberty Global<sup>23</sup> to make sure that consumers in Belgium do not suffer higher prices and reduced choice as a result of the proposed transaction.

Furthermore, the Commission reviewed the proposed merger of the Danish businesses Telenor and TeliaSonera.<sup>24</sup> The Commission had concerns that the merger would have created the largest mobile network operator in Denmark and would have resulted in a highly concentrated market structure, leading to price increases for customers and reduced investment incentives. In September 2015, after submitting two sets of remedies that appeared to be insufficient to address the competition concerns, the parties abandoned the transaction.

#### **IV. Building an integrated and climate-friendly European Energy Union**

The creation of an Energy Union is a big step towards an integrated, interconnected and resilient energy market, to the benefit of consumers, companies and the environment. Businesses and households, which are at the core of the Energy Union, should be able to pay affordable and competitive prices. At the same time, EU energy policy is based on the three pillars of sustainability, competitiveness and security of supply. Creating a strong Energy Union with an ambitious climate policy will require a fundamental transformation of Europe's energy system. In 2015, the Commission began delivering on this key priority.

In February, the Commission unveiled its Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy.<sup>25</sup> The Framework Strategy sets out, in five interrelated policy dimensions ('Energy security, solidarity and trust', 'Fully integrated European energy market', 'Energy efficiency contributing to moderation of demand', 'Decarbonisation of the economy', and 'Research, Innovation and Competitiveness'), the goals of Energy Union – and the steps the Commission will take to achieve it.

The EU needs to move away from an economy driven by fossil fuels, which is reliant on old technologies and outdated business models. The current fragmented system, characterised by uncoordinated national policies, market barriers and energy-isolated areas, must be overcome. Empowering consumers, by giving them information and choice, is also crucial.

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<sup>22</sup> Case M.7612 *Hutchison 3G UK / Telefónica UK*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7612](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7612).

<sup>23</sup> Case M.7637 *Liberty Global / BASE Belgium*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7637](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7637).

<sup>24</sup> Case M.7419 *TeliaSonera / Telenor / JV*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7419](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7419).

<sup>25</sup> Communication of 25 February 2015 from the Commission to the European Parliament, the Council, the Economic and Social Committee, the Committee of the Regions and the European Investment Bank, *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*, COM(2015) 080 final, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A80%3AFIN>.

Integrating energy markets is a key objective of the Energy Union. If gas and electricity flowed freely around the EU, this would be more economically sustainable, environmentally friendly, and socially inclusive.

*Antitrust enforcement to make energy more secure, affordable and sustainable.*

Antitrust enforcement plays a key role in fostering market integration in the Energy Union by tackling market distortions originating from the behaviour of dominant market players. The antitrust investigation into Gazprom's conduct in central and eastern Europe is a prime example of this.<sup>26</sup>

#### **Ensuring that dominant gas suppliers play by the rules – the Gazprom investigation**

In April, the Commission sent a Statement of Objections to Gazprom stating that some of its business practices in central and eastern European gas markets may constitute an abuse of its dominant market position, in breach of EU antitrust rules. Gas is an essential commodity in the daily life of most EU citizen, and the Commission's preliminary view is that Gazprom may be hindering competition in the gas supply markets in eight central and eastern European Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). Gazprom is the dominant natural gas supplier in those countries, with market shares well above 50 % in most, and in some cases up to 100 %.

On the basis of its investigation, the Commission's preliminary view is that Gazprom may be breaking EU antitrust rules by pursuing an overall strategy to partition central and eastern European gas markets, for example by reducing its customers' ability to resell the gas cross-border. This may have enabled Gazprom to charge unfair prices in certain Member States. Gazprom may also have abused its dominant market position by making the supply of gas dependent on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure.

Antitrust enforcement supports the creation of a single market for energy, also by breaking up anticompetitive market sharing agreements<sup>27</sup> and by keeping infrastructure accessible. Access to infrastructure is important for preventing market foreclosure and maintaining investment incentives. Important actions in this area include the Statement of Objections sent in March to Bulgarian Energy Holding (BEH), its gas supply subsidiary, Bulgargaz and its gas infrastructure subsidiary, Bulgartransgaz.<sup>28</sup>

BEH is the incumbent state-owned energy company in Bulgaria. It is vertically integrated, meaning that BEH supplies gas and its subsidiaries own or control the domestic Bulgarian gas transmission network, the only gas storage facility in Bulgaria, and the capacity on the main gas import pipeline into Bulgaria. The Commission has concerns that BEH and its subsidiaries may be abusing their dominant market position on the Bulgarian gas market, by preventing competitors from gaining access to the infrastructure they need in order to successfully compete on the country's gas supply market. Such conduct would violate EU antitrust rules, and result in less competition in the market and poorer market outcomes for the affected consumers.

The Commission has also concluded a separate antitrust investigation into BEH's behaviour on the non-regulated wholesale electricity market in Bulgaria.<sup>29</sup> The Commission had

<sup>26</sup> Case AT.39816 *Upstream gas supplies in Central and Eastern Europe*, see IP/15/4828 of 22 April 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-4828\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4828_en.htm).

<sup>27</sup> See for example case AT.39952 *Power Exchanges*, Commission decision of 5 March 2014, see IP/14/215 available at [http://europa.eu/rapid/press-release\\_IP-14-215\\_en.htm](http://europa.eu/rapid/press-release_IP-14-215_en.htm)

<sup>28</sup> Case AT.39849 *BEH gas*, see IP/15/4651 available at [http://europa.eu/rapid/press-release\\_IP-15-4651\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4651_en.htm).

<sup>29</sup> Case AT.39767 *BEH Electricity*, see IP/15/6289 of 10 December 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-6289\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6289_en.htm)

concerns that BEH had set up artificial barriers between national markets. In particular, BEH had been selling electricity to traders using contracts which prohibited them from reselling the electricity outside Bulgaria. BEH offered to address the Commission's concerns by setting up an independent power exchange in Bulgaria, through which electricity can be traded anonymously with no possibility of checking where it is resold. On 10 December 2015, the Commission made the commitments offered by BEH legally binding.

*State aid control to ensure a climate-friendly and resilient energy market without undue competition distortions*

To accompany the transition to a green economy, another important focus of competition policy is ensuring that markets work properly and that government support – including support to facilitate the drive towards renewable energy sources – does not create imbalances.

Through its Energy and Environmental State Aid Guidelines,<sup>30</sup> the Commission is promoting the integration of renewable energy sources into the market to avoid distortions to competition. From 2016, generators using renewables have to sell their electricity directly on the market. Public support may only be granted as a premium on top of the market price. In addition, from 2017, Member States will have to grant operating aid through a competitive bidding process.

Furthermore, the guidelines have been designed to contribute to bringing innovative low-carbon energy technologies to market, allowing State aid to be granted in cases where market failures are present. The guidelines also encourage EU Member States to cooperate with each other and take into account the electricity supply from other Member States.

In addition, State aid control is helping to create a connected, integrated and secure energy market in Europe by assessing national measures to ensure electricity supply (known as 'capacity mechanisms').

#### **The capacity mechanisms sector inquiry – delivering on the Energy Union objectives**

In April, the Commission launched a State aid sector inquiry to gather information on existing or planned capacity mechanisms, i.e. measures taken by Member States to ensure that electricity supply can match demand in the medium and long term. The sector inquiry aim at examining, in particular, whether such measures ensure security of electricity supply without distorting competition between electricity suppliers or hindering cross-border trade.

This sector inquiry is the first under EU State aid rules and covers a representative sample of Member States that have capacity mechanisms in place or are considering them, namely: Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain and Sweden. While governments have a legitimate interest in ensuring that there is sufficient electricity supply to avoid blackouts, competition policy should make sure that public measures underpin investments in electricity supplies, are consistent with policy instruments aimed at fostering decarbonisation, and do not unduly favour particular producers or technologies.

*Keeping Europe an attractive place for investment – merger control in the energy sector*

For network industries such as the energy sector, it is essential to prevent the creation of market structures which could impede effective competition, thereby reducing the incentives to invest and innovate. EU merger control continued to be an effective tool for keeping the

<sup>30</sup> Communication from the Commission, *Guidelines on State aid for environmental protection and energy 2014-2020*, OJ C 200, 28.6.2014, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628%2801%29>.

EU energy market open and ensuring that investment translates into better market outcomes for EU businesses and households.

Following an in-depth review and very close cooperation with the Antitrust Division of the US Department of Justice, the Commission approved, under the EU Merger Regulation, the proposed acquisition of the energy businesses of Alstom of France by US-based General Electric (GE).<sup>31</sup> The transaction is a good example of how EU-based technology can thrive and attract foreign investment.

The approval is conditional on the divestiture of central parts of Alstom's heavy duty gas turbine business, which are mainly used in gas-fired power plants, to Ansaldo of Italy. The Commission had concerns that the transaction would have eliminated one of GE's main global competitors in the heavy duty gas turbines market, in which GE is the world's largest manufacturer and Alstom is one of the global top players. This would have led to less innovation and higher prices. The commitments offered by GE address these concerns. Furthermore, advanced heavy duty gas turbine technology is especially important for meeting climate change goals and modernising the EU's energy supply.

## **V. Towards a deeper and fairer EU Single Market**

In times of increasing globalisation, a deeper and fairer single market is a central asset for building a stronger EU economy that drives jobs and growth. This is the reason why advancing the integration of the single market remains at the top of the Commission's agenda. The Commission's goal is to open up new opportunities for citizens and businesses by allowing people, goods, services and capital to move more freely within the single market's borders.

### *Enhancing tax transparency and ensuring a fair tax burden for all*

A fully functioning single market requires that all market players – whether large or small, local or global – pay their fair share of tax. Therefore, the fight against tax evasion and tax fraud is one of the main priorities of the Juncker Commission, and one of the most important initiatives for advancing the completion of the EU single market.

In March, the Commission unveiled a Tax Transparency Package,<sup>32</sup> aimed at ensuring that Member States are equipped with the information they need to protect their tax bases and effectively target companies that try to avoid paying their fair share of tax. In June, the package was followed by the Commission's Action Plan for Fair and Effective Taxation.<sup>33</sup> The action plan sets out a series of initiatives to tackle tax avoidance, secure sustainable revenues and strengthen the single market for businesses. Collectively, these measures will significantly improve the corporate tax environment in the EU, making it fairer, more efficient and more growth-friendly.

Competition policy plays a key role in tackling this challenge. Following in-depth investigations which were launched in June 2014, the Commission concluded that Luxembourg and the Netherlands have granted selective tax advantages (illegal under EU

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<sup>31</sup> Case M.7278 *General Electric / Alstom (Thermal power – Renewable power & Grid Business)*, Commission decision of 8 September 2015, available at

[http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result](http://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result).

<sup>32</sup> See IP/15/4610 of 18 March 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-4610\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4610_en.htm).

<sup>33</sup> See IP/15/5188 of 17 June 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-5188\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5188_en.htm).

State aid rules) to Fiat Finance and Trade<sup>34</sup> and Starbucks.<sup>35</sup> For each of these companies, a tax ruling issued by the respective national tax authority artificially lowered the tax paid by the company.<sup>36</sup> Under EU State aid rules, tax rulings cannot use methods, no matter how complex, to establish transfer prices with no economic justification and which unduly shift profits to reduce the taxes paid by the company. Such practices would give the company concerned an unfair competitive advantage over other companies, typically SMEs that are taxed on their actual profits because they pay market prices for the goods and services they use.

#### **Tackling unfair tax advantages – The Starbucks and Fiat Finance & Trade decisions**

Tax rulings as such are perfectly legal. In the Starbucks and Fiat Finance & Trade cases, however, the two tax rulings under investigation endorsed artificial and complex methods to establish taxable profits for the companies. Such methods set prices for goods and services sold between companies in the Fiat and Starbucks groups (so-called ‘transfer prices’) that did not correspond to market conditions and thus did not reflect the economic reality.

EU State aid rules require that incompatible State aid is recovered in order to reduce the distortion of competition created by the aid. In its two decisions, the Commission has set out the methodology for calculating the value of the undue competitive advantage enjoyed by Fiat and Starbucks, i.e. the difference between what the company paid and what it would have paid without the tax ruling. This amount ranges from around EUR 20 30 million for each of Fiat and Starbucks, but the precise amounts of tax to be recovered will be determined by the Luxembourg and Dutch tax authorities on the basis of the methodology established in the Commission decisions. In addition, the companies will no longer benefit from the advantageous tax treatment granted by these tax rulings.

In December, the Commission opened a formal probe into Luxembourg’s tax treatment of McDonald’s.<sup>37</sup> The Commission’s preliminary view is that a tax ruling granted by Luxembourg may have selectively derogated from the provisions of its national tax law and the Luxembourg-US double taxation treaty, granting McDonald’s an advantage not available to other companies in a comparable factual and legal situation.

The Commission also raised concerns that tax rulings may entail State aid issues in relation to Apple in Ireland<sup>38</sup> and Amazon in Luxembourg.<sup>39</sup> An additional in-depth investigation into the Belgian ‘excess profit’ ruling system was launched in February 2015.<sup>40</sup> On 11 January 2016, the Commission issued a negative decision with recovery, concluding that selective tax advantages granted by Belgium under its ‘excess profit’ tax scheme are illegal under EU State

<sup>34</sup> Case SA.38375 *Alleged aid to FFT- Luxembourg*, Commission decision of 21 October 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38375](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375).

<sup>35</sup> Case SA.38374 *Alleged aid to Starbucks*, Commission decision of 21 October 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38374](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38374).

<sup>36</sup> See IP/15/5880 of 21 October 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-5880\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5880_en.htm).

<sup>37</sup> Case SA.38945 *Alleged aid to Mc Donald's – Luxembourg*, Commission decision to initiate formal investigation procedure of 3 December 2015, see IP/15/6221 available at [http://europa.eu/rapid/press-release\\_IP-15-6221\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6221_en.htm).

<sup>38</sup> Case SA.38373 *Alleged aid to Apple*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38373](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38373).

<sup>39</sup> Case SA.38944 *Alleged aid to Amazon*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38944](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944).

<sup>40</sup> Case SA.37667 *Excess Profit exemption in Belgium*, Commission decision to initiate the formal investigation procedure of 3 February 2015, see IP/15/4080 available at [http://europa.eu/rapid/press-release\\_IP-15-4080\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4080_en.htm).

aid rules and ordering their recovery.<sup>41</sup> At the same time, the Commission continues to pursue its inquiry into tax rulings practices in all EU Member States.<sup>42</sup>

### *Enabling EU national competition authorities to be more effective enforcers*

Another essential aspect for creating a truly level playing field for companies across the single market is making sure that businesses can rely on the consistent application of EU competition rules, regardless of the Member State in which they operate. In this respect, the role of national competition authorities is crucial. The entry into force of Regulation 1/2003<sup>43</sup> in 2004 transformed the competition enforcement landscape, giving national competition authorities and national courts a key role in enforcing EU antitrust rules alongside the Commission. EU competition rules are now being applied on a scale that the Commission could never have achieved on its own, and in a more thorough and effective way than would otherwise have been possible.

The 2014 Commission Communication on Ten Years of Regulation 1/2003<sup>44</sup> identified a number of concrete areas of action to boost the enforcement powers of national competition authorities and increase convergence between national systems. The Commission is now reflecting on whether the toolbox available to national competition authorities can be further improved. In November 2015, the Commission launched a dedicated public consultation, inviting general public and stakeholders to share their experience and provide feedback on potential EU legislative action to further strengthen the enforcement and sanctioning tools of national competition authorities.

### *Empowering EU consumers by breaking up cartels*

Keeping the single market fair, transparent, and open is good for EU businesses and Member States' economies, but first and foremost it is important for European citizens. A clear example is the Commission's work on anti-cartel enforcement. In a well-functioning single market, companies are encouraged to be more efficient and inventive than their rivals, and this ends up benefiting EU consumers through better products and lower prices. Cartels harm consumers and the economy as a whole, when companies set prices instead of the market.

In June, the Commission fined eight manufacturers and two distributors of retail food packaging trays a total of over EUR 115 million for having participated in at least one of five separate cartels.<sup>45</sup> The eight manufacturers were Huhtamäki of Finland, Nespak and Vitembal of France, Silver Plastics of Germany, Coopbox, Magic Pack and Sirap-Gema of Italy and Linpac of the UK. The two distributors were Ovarpack of Portugal and Propack of the UK.

Rather than competing on their merits, the companies fixed prices and allocated customers of polystyrene foam or polypropylene rigid trays, in breach of EU antitrust rules, affecting millions of consumers buying food. Polystyrene foam and polypropylene rigid trays are used

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<sup>41</sup> See IP/16/42 of 11 January 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-42\\_en.htm](http://europa.eu/rapid/press-release_IP-16-42_en.htm).

<sup>42</sup> See IP/14/2742 of 17 December 2014, available at [http://europa.eu/rapid/press-release\\_IP-14-2742\\_en.htm](http://europa.eu/rapid/press-release_IP-14-2742_en.htm).

<sup>43</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32003R0001>.

<sup>44</sup> Communication of 9 July 2014 from the Commission to the European Parliament and the Council, *Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives*, COM(2014) 453, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0453>.

<sup>45</sup> Case AT.39563 *Retail Food Packaging*, Commission decision of 24 June 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39563](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39563).

for packaging food sold in shops or supermarkets, for products such as cheese, meat, fish or cakes.

The Commission also fined eight optical disc drive suppliers a total of EUR 116 million for having coordinated their behaviour in relation to procurement tenders organised by two computer manufacturers, Dell and Hewlett Packard.<sup>46</sup> The suppliers on which a fine was imposed were Philips, Lite-On, their joint venture Philips & Lite-On Digital Solutions, Hitachi-LG Data Storage, Toshiba Samsung Storage Technology, Sony, Sony Optiarc and Quanta Storage. Although the cartel contacts took place outside of the European Economic Area (EEA), they were implemented on a worldwide basis including in the EEA.

Optical disc drives are used, for example, in personal computers, CD and DVD players and video games consoles to read or record data stored on optical discs, such as CDs, DVDs or Blu-ray discs. The cartel concerned optical disc drives for desktops and laptops. Making sure these types of markets remain competitive is especially important to guarantee fair prices for today's consumers, and innovative products for the consumers of the future.

Dismantling cartels is like repealing a hidden tax that millions of unsuspecting consumers in Europe were forced to pay. Moreover, cartels remove the incentives for business to innovate, severely hampering EU dynamism and future growth.

*Making financial services markets work better – competition policy developments in the financial and payment sectors*

The Commission also adopted a cartel decision in the financial sector, one of the Commission's priority areas for achieving a fairer and more integrated single market. In February, the Commission fined the UK-based broker, ICAP, around EUR 15 million for having breached EU antitrust rules by facilitating several cartels in the sector of yen interest rate derivatives (YIRD).<sup>47</sup> In this respect, in December 2013, fines were imposed on a number of major banks following the adoption of a settlement decision.

The YIRD investigation is just one example of the Commission's efforts to fight anticompetitive practices in the financial markets. The payment sector offers another relevant example. In July 2015, the Commission sent a Statement of Objections to MasterCard, for having allegedly raised the costs of card payments, thereby harming consumers and retailers in the EU.<sup>48</sup> Payments by card play a key role in the single market, both for domestic and cross-border purchases, including online purchases. European consumers and businesses carry out over 40 % of their non-cash payments each year using payment cards.

The Statement of Objections outlines the Commission's preliminary view that MasterCard's rules prevent banks from offering lower interchange fees to retailers based in another country in the European Economic Area, where interchange fees may be higher. As a result, retailers cannot benefit from lower fees elsewhere and cross-border competition between banks may be restricted, in breach of European antitrust rules. The Statement of Objections also alleges that MasterCard's interchange fees for transactions in the EU using MasterCard cards issued

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<sup>46</sup> Case AT.39639 *Optical Disc Drives*, Commission decision of 21 October 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39639](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39639).

<sup>47</sup> Case AT.39861 *Yen Interest Rate Derivatives (YIRD)*, Commission decision of 4 December 2013, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39861](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39861).

<sup>48</sup> Case AT.40049 *Mastercard II*, see IP/15/5323 of 9 July 2015 available at [http://europa.eu/rapid/press-release\\_IP-15-5323\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5323_en.htm).

in other regions of the world breach European antitrust rules by setting an artificially high minimum price for processing these transactions.

One of the two issues in the current investigation concerns inter-regional transactions, which are not covered by the Interchange Fee Regulation<sup>49</sup> that was adopted in April 2015. Building on almost ten years of antitrust case-law in the payment sector, the Regulation has put a cap on interchange fees for cards issued and used in the EU, benefiting consumers and businesses and encouraging growth and innovation. As cards are the most widely used method of online payment, the Regulation is also an important building block for completing the Digital Single Market.

### *State aid rules in the banking sector – supporting the economic recovery and minimising distortions of competition*

In the banking sector, State aid control continued to limit distortions of competition and ensure a level playing field, while at the same time reducing the use of taxpayers' money to the minimum necessary. In addition, in January 2015 the Bank Resolution and Recovery Directive (BRRD)<sup>50</sup> entered into force, setting out the rules for the resolution of banks and large investment firms in all Member States. State aid to failing banks notified to the Commission after 1 January 2015 can only be granted if the bank is put into resolution, in compliance with the provisions of the BRRD in addition to EU State aid rules.

In November, the Commission found the resolution plans of Banca delle Marche, Banca Popolare dell'Etruria e del Lazio, Cassa di Risparmio di Ferrara and Cassa di Risparmio della Provincia di Chieti (combined market share of about 1 % in Italy) to be in line with EU State aid rules.<sup>51</sup> The four banks, all of which had already been under special administration, were put into resolution by the Bank of Italy in line with the BRRD. The Commission found that Italy's plans to use the national resolution fund minimised the use of public funds and any distortions to competition resulting from the measures, while preserving financial stability.

In addition, State aid rules played a key role in supporting the efforts of the four largest Greek banks to address capital shortfalls identified by the European banking supervisor.<sup>52</sup> Between November and December, the Commission approved State aid measures for the recapitalisations of Piraeus Bank<sup>53</sup> and the National Bank of Greece.<sup>54</sup> The banks submitted

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<sup>49</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.L\\_.2015.123.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.L_.2015.123.01.0001.01.ENG).

<sup>50</sup> European Parliament and Council Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 173, 12.6.2014, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427289116879&uri=CELEX:32014L0059>.

<sup>51</sup> Cases SA.39543 *Resolution of Banca delle Marche S.p.A.*, Commission decision of 22 November 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_39543](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39543); SA.41134 *Resolution of Banca Popolare dell'Etruria e del Lazio - Soc. Coop.*, Commission decision of 22 November 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_41134](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41134); SA.41925 *Resolution of Cassa di risparmio di Ferrara S.p.A.*, Commission decision of 22 November 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_41925](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41925); and SA.43547 *Resolution of Cassa di risparmio della Provincia di Chieti S.p.A.*, Commission decision of 22 November 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43547](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43547).

<sup>52</sup> See <https://www.bankingsupervision.europa.eu/press/pr/date/2015/html/sr151031.en.html>.

<sup>53</sup> Case SA.43364 *2015 additional restructuring aid to Piraeus Bank*, Commission decision of 29 November 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43364](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43364).

restructuring plans aimed at ensuring their long-term viability, which would allow them to refocus on lending to Greek businesses and support the recovery of the Greek economy.

The Commission is also ensuring the consistent application of State aid rules to the banking sector under the Economic Adjustment Programme in Cyprus. In particular, in December 2015 the Commission found a capital injection of EUR 175 million in favour of the Cypriot Cooperative Central Bank Ltd and its subsidiaries to be in line with EU State aid rules.<sup>55</sup> The Commission concluded that the restructuring measures that the bank committed to implementing would minimise competition distortions while ensuring that the bank becomes viable in the long-term.

In the post-programme context in Portugal,<sup>56</sup> the Commission approved under EU State aid rules a prolongation of Portuguese state guarantees on bonds issued by Novo Banco,<sup>57</sup> and State aid measures to cover the funding gap in the resolution of Banif.<sup>58</sup> The proposed aid measures aimed, respectively, to ensure the maintenance of adequate liquidity for Novo Banco and enable Banif's orderly exit from the market, helping to underpin the financial stability of the Portuguese banking sector.

## **VI. Promoting fruitful international cooperation and a constructive inter-institutional dialogue in the competition area**

The Commission, and in particular the Commissioner for Competition, Margrethe Vestager, is fully committed to an open and constructive exchange on competition issues globally and with other EU institutions.

### *Stepping up international cooperation with traditional and emerging economic players*

The progressive integration of the world economies has important implications on the work of competition enforcers – globalisation is mainly about interdependence. In the past 25 years, the number of competition regimes around the world has increased dramatically from around 20 at the beginning of the 1990s to around 130 in 2015, embracing 85 % of the world's population. While the increase in the number of antitrust agencies is a sign that competition culture is further developing around the world, the Commission's efforts are also addressing the challenges that come with it.

To this end, the Commission is actively engaging in international cooperation on competition matters, both bilaterally and multilaterally in competition fora such as the Competition Committee of the OECD, the United Nations Conference on Trade and Development (UNCTAD) and the International Competition Network (ICN).

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<sup>54</sup> Case SA.43365 *2015 additional restructuring aid to National Bank of Greece (NBG)*, Commission decision of 4 December 2015, available at

[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43365](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43365).

<sup>55</sup> Case SA.43367 *2015 additional restructuring aid to the Cooperative Central Bank*, Commission decision of 18 December 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43367](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43367).

<sup>56</sup> Portugal successfully exited its three years Economic Adjustment Programme in June 2014.

<sup>57</sup> Case SA.43976 *Amendment of the 2014 Resolution of Banco Espírito Santo S.A. (Novo Banco S.A.)*, Commission decision of 19 December 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43976](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43976).

<sup>58</sup> Case SA.43977 *Resolution of Banif - Banco Internacional do Funchal, S.A.*, Commission decision of 21 December 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_43977](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_43977).

As co-chair of the ICN Merger Working Group, the Commission contributed to developing the Practical Guide to International Enforcement Cooperation in Mergers, adopted in 2015. The Practical Guide provides direct and case-based guidance for ICN members on how agencies can align timetables, share information and cooperate, both on substance and on remedies so to avoid inconsistencies.

Successful cooperation in merger control in 2015 also encompassed bilateral relations. In October, the Commission and the Ministry of Commerce of the People's Republic of China (MOFCOM) signed a Practical Guidance for Cooperation on Reviewing Merger Cases. The Practical Guidance will allow for greater transparency on the timing and content of discussions between the Commission and MOFCOM, leading to more efficient, consistent and non-conflicting reviews where a merger is to be assessed by both authorities. It represents a further element of cooperation between the EU and China, in addition to the technical cooperation activities currently being developed as part of a dedicated cooperation programme (EUCTP II<sup>59</sup>).

The Commission is continuing its work on including competition and State aid provisions in the negotiations on Free Trade Agreements (FTAs). In 2015, significant progress was made on competition provisions in the FTAs with Japan and Vietnam. The Commission also made progress on its negotiations with the US on a Transatlantic Trade and Investment Partnership Agreement (TTIP), which will include a competition chapter.

#### *Structured dialogue with the European Parliament*

In 2015, the Commission continued its successful working relationship with the European Parliament, in particular the Economic and Monetary Affairs (ECON) Committee.

As part of her structured dialogue with Parliament, Commissioner Vestager visited the ECON Committee in July and November. She welcomed the opportunity to attend the Committee and engage with the members of Parliament on a constructive debate on competition policy.

Commissioner Vestager also attended the Competition Working Group of the ECON Committee in April and the Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE) in May and September. In June, she attended the Agriculture and Rural Development (AGRI) Committee to discuss the draft Guidelines for joint selling in the beef and veal, olive oil, and arable crops sectors.

#### **Boosting Parliament's involvement in competition policy initiatives**

Following its 'Communication on Ten Years of Council Regulation 1/2003', the Commission is reflecting on how to empower the National Competition Authorities to be more effective enforcers of EU antitrust rules. The ECON Committee was informed about the public consultation launched in November 2015, with a view to obtaining feedback from a wide range of stakeholders. Furthermore, Commissioner Vestager committed to encouraging Parliament's full involvement in this initiative, to the extent the concrete content of the proposal will allow for it.

#### *Continuing to improve DG Competition's communication with the European Parliament*

DG Competition's regular briefing seminar for assistants and political advisers from the ECON Committee covering the main themes in the 2014 Report on Competition Policy took

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<sup>59</sup> EU-China Trade Project II.

place in July 2015. Similarly, DG Competition provided background briefings on State aid policy and procedures for members of TAXE and associated staff.

DG Competition worked with the Competition Working Group to prepare a workshop in May 2015 on international cooperation in competition enforcement and EU-US relations in this area. Moreover, DG Competition's newly appointed Director-General, Johannes Laitenberger, became the first Director-General to attend Parliament's Working Group on Competition Policy in December 2015.

DG Competition was the lead DG for 331 written Parliamentary questions and 7 petitions prepared by Commission services.

*DG Competition's engagement with the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR)*

The Commission informed the EESC and the CoR about major policy initiatives and participated in study groups and section meetings. Accordingly, the former Director-General of DG Competition, Alexander Italianer, attended the EESC Single Market, Production and Consumption Section meeting on 14 July. In turn, the EESC issued opinions on 'State aid to firms: is it effective and efficient' (own-initiative opinion) on 16 September and on the 2014 Report on Competition Policy on 9 December. The CoR issued an opinion on financial instruments in support of territorial development on 14 October.