



Council of the  
European Union

072414/EU XXVI. GP  
Eingelangt am 22/07/19

Brussels, 22 July 2019  
(OR. en)

11414/19

RC 21

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 July 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	COM(2019) 339 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS <b>Report on Competition Policy 2018</b>

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Delegations will find attached document COM(2019) 339 final.

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Encl.: COM(2019) 339 final



Brussels, 15.7.2019  
COM(2019) 339 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 2018**

{SWD(2019) 297 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 2018

### 1. Fostering a competitive internal market for the benefit of European companies and consumers alike

The year 2018 marked the 60<sup>th</sup> anniversary of the entry into force of the Treaty on the European Economic Community, the foundation for today's European Union. Today, the European Union, with its 24.5 million small, medium-sized and large companies competing to serve its 500 million consumers, continues to provide a vibrant internal market contributing to the competitiveness of EU industry and sustainable development of the European economy based on competitive social market values.

From the very beginning, the EU has had Treaty rules<sup>1</sup> that gave the Commission the power to protect fair, undistorted competition in the internal market. EU competition rules lay down a well-defined legal framework for companies to do business in the internal market, enabling businesses of all sizes to compete fairly. This legal framework has evolved during the past six decades but adheres strictly to the principle of the rule of law under the close scrutiny by the European courts. The Commission rigorously applies the principles of non-discrimination, procedural fairness, transparency, predictability, the right to be heard and the protection of confidentiality in its daily enforcement practice. The predictability and credibility of the EU's system has made the Commission one of the leading and most influential competition authorities in the world.

In order to amplify the effects of its enforcement action, the Commission works hand in hand with the Member States' national competition authorities and national courts, and actively cooperates with competition agencies across the world – both at the bilateral level and at several international fora such as the OECD, the International Competition Network and UNCTAD - to develop a truly global level playing field and respect for the rule of law.

On 7 June 2018, as part of the Multiannual Financial Framework (MFF) for the period 2021-2027, the Commission adopted the proposal for the Single Market Programme<sup>2</sup>. This includes the new Competition Programme, with an indicative budget of EUR 140 million over the programme period. When adopted by the co-legislators, the Competition Programme will help the Commission to tackle new challenges for EU competition policy linked to the use of big data, algorithms and further fast-moving developments in an increasingly digital environment, as well as strengthen cooperation networks between Member States' authorities and the Commission to support fair competition in the Single Market.

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<sup>1</sup> Art. 3(1)(b) Treaty on the Functioning of the European Union. The principal competition rules are enshrined in Chapter 1, Title VII of Part Three, Articles 101-109 of the Treaty on the Functioning of the European Union (TFEU) and in the EU Merger Regulation (Regulation (EC) No 139/2004).

<sup>2</sup> See Proposal for a Regulation of the European Parliament and of the Council establishing the Programme for Single Market, competitiveness of enterprises, including small and medium-sized enterprises, and European statistics and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014, (EU) No 258/2014, (EU) No 652/2014 and (EU) 2017/826 COM/2018/441 final - 2018/0231 (COD): [https://ec.europa.eu/commission/publications/single-market-programme-legal-texts-and-factsheets\\_en](https://ec.europa.eu/commission/publications/single-market-programme-legal-texts-and-factsheets_en), [http://europa.eu/rapid/press-release\\_IP-18-4049\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4049_en.htm).

In 2018, the Commission's competition policy actions continued to target markets that matter for EU citizens and businesses in the EU, such as the telecommunications and digital sectors, financial services, energy and environment, agriculture and food, transport and manufacturing. This report is a non-exhaustive summary of activities undertaken by the Commission in the field of competition policy over the year 2018. Additional and more detailed information can be found in the accompanying Commission Staff Working Document and on the website of the Competition Directorate-General<sup>3</sup>.

## 2. Enhancing the effectiveness of competition enforcement

The Commission constantly aims at streamlining the procedures in competition cases and evaluating the economic effects of its past decisions, in order to enhance further the timeliness, efficiency and effectiveness of its enforcement actions under the EU competition rules.

In December 2018, the Commission published updated guidance for companies regarding business secrets and other confidential information<sup>4</sup> during antitrust proceedings, as well as guidance and templates for the use of so-called confidentiality rings<sup>5</sup> for access to file purposes. The access of companies to the information on the Commission's file is a fundamental procedural step in antitrust cases. These two new guidance documents are part of the Commission's continued work to increase the timeliness and efficiency of competition procedures, while guaranteeing due process and companies' rights of defense. They complement previous Commission guidance on best practices on data rooms<sup>6</sup>, guidance on confidentiality claims for the process of preparing public versions of its decisions<sup>7</sup>, as well as recommendations for the use of electronic document submissions<sup>8</sup>.

Following the effective framework for rewarding cooperation by companies investigated in the area of cartels and a first non-cartel case in 2016<sup>9</sup>, in 2018 the Commission concluded several non-cartel antitrust cases on the basis of cooperation by the companies under investigation<sup>10</sup>. Such cooperation allows the Commission to increase the relevance and impact of its decisions by speeding up its investigations, while companies can benefit from significant reductions of the fines depending on the nature and timing of their cooperation. In December 2018, the Commission published informal guidance on how companies can cooperate in antitrust probes in exchange for lower fines<sup>11</sup>.

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<sup>3</sup> See [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html).

<sup>4</sup> See [http://ec.europa.eu/competition/antitrust/business\\_secrets\\_en.pdf](http://ec.europa.eu/competition/antitrust/business_secrets_en.pdf).

<sup>5</sup> A confidentiality ring is a negotiated disclosure procedure through which a restricted circle of individuals is given access to confidential information contained in the Commission's file. See [http://ec.europa.eu/competition/antitrust/conf\\_rings.pdf](http://ec.europa.eu/competition/antitrust/conf_rings.pdf).

<sup>6</sup> See [http://ec.europa.eu/competition/mergers/legislation/disclosure\\_information\\_data\\_rooms\\_en.pdf](http://ec.europa.eu/competition/mergers/legislation/disclosure_information_data_rooms_en.pdf).

<sup>7</sup> [http://ec.europa.eu/competition/antitrust/guidance\\_on\\_preparation\\_of\\_public\\_versions\\_antitrust\\_04062015.pdf](http://ec.europa.eu/competition/antitrust/guidance_on_preparation_of_public_versions_antitrust_04062015.pdf).

<sup>8</sup> See [http://ec.europa.eu/competition/contacts/electronic\\_documents\\_en.pdf](http://ec.europa.eu/competition/contacts/electronic_documents_en.pdf).

<sup>9</sup> Case AT.39759 *ARA foreclosure*, Commission decision of 20 September 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39759](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39759).

<sup>10</sup> Commission decisions of 24 July 2018 in cases: AT.40181 *Philips*, AT.40182 *Pioneer*, AT.40465 *Asus* and AT.40469 *Denon & Marantz*; and Commission decision of 17 December 2018 in case AT.40428 *Guess*. For more information, see Chapter 3 of this Report.

<sup>11</sup> The factsheet setting out the framework for such cooperation was published at the occasion of the adoption of the prohibition decision in case AT.40428 – *Guess*, see [http://ec.europa.eu/competition/publications/data/factsheet\\_guess.pdf](http://ec.europa.eu/competition/publications/data/factsheet_guess.pdf).

*The European Parliament and the Council adopt the Commission's proposal to make the Member States' competition authorities more effective*

On 11 December 2018, the European Parliament and the Council adopted the so-called ECN+ Directive<sup>12</sup> empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust. The Directive was based on the Commission proposal of March 2017<sup>13</sup> following a public consultation between November 2015 and February 2016.

The ECN+ Directive will ensure that when applying the same legal provisions – the EU antitrust rules – national competition authorities have the effective enforcement tools and the resources necessary to detect and sanction companies that break EU competition rules. It will also ensure that they can take their decisions in full independence, based on the facts and the law. The new rules contribute to the objective of a genuine single market, promoting the overall goal of competitive markets, jobs and growth.

The ECN+ Directive shall be transposed by 4 February 2021. The Commission will monitor the transposition process and assist the Member States in transposing the Directive into national law within the two-year implementation period, starting from the publication of the Directive in the Official Journal.

*Reaping the benefits of the modernisation of State aid rules*

Since May 2012, the Commission has implemented a major reform package, the State Aid Modernisation. This consistent reform package allows Member States to implement State aid measures that foster investment, economic growth and job creation swiftly. As part of that package, new rules were introduced in 2014 – in particular the so-called General Block Exemption Regulation (GBER)<sup>14</sup>, which was further amended in 2017. These rules reduced the administrative burden for less distortive aid measures, which Member States no longer have to notify to the Commission. At the same time, measures that might seriously harm competition or fragment the Single Market continue to be subject to careful scrutiny. In the context of the Multiannual Financial Framework 2021-2027, the Commission proposed to simplify co-investment involving both EU funding and Member State investment, through further expansion of the EU State aid Enabling Regulation, which is the legal basis for the adoption of the General Block Exemption Regulation.

The 2018 State Aid Scoreboard<sup>15</sup> confirmed the benefits of the State Aid Modernisation package. Since 2015, over 96% of new implemented aid measures fell under the GBER allowing more rapid implementation by Member States and the focus of State aid control being more "big on big things and small on small things". The growing share of spending falling under the GBER also implies that, on average, State aid measures registered by the

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<sup>12</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.

<sup>13</sup> Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017SC0114>.

<sup>14</sup> See [http://ec.europa.eu/competition/state\\_aid/legislation/block.html](http://ec.europa.eu/competition/state_aid/legislation/block.html).

<sup>15</sup> See [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

Commission have been implemented by Member States much faster than in the past: compared to 2013, the average time to implement State aid measures decreased by 15%<sup>16</sup>.

In the field of Services of General Economic Interest (SGEI), more than 90% of aid measures are also block-exempted under the SGEI Decision according to the annual SGEI reports submitted by Member States.

The greater the transparency surrounding the use of State aid, the more likely it is that enforcement will be more effective. To that end, the Commission services facilitate compliance with the transparency provisions of the State Aid Modernisation Package – by developing, in cooperation with Member States, the Transparency Award Module<sup>17</sup> – an informatics tool for submission and publication of data on State aid awards above EUR 500 000. At the end of 2018, 25 Member States have joined the Transparency Award Module. More than 43 000 aid awards have been published by 25 Member States and Iceland.

In 2018, the Commission launched, in line with Commission's Better Regulation Guidelines, the evaluation of State aid rules adopted as part of the State Aid Modernisation Package, as well as of the railways guidelines, and of the short term export credit insurance. The evaluation takes the form of a “fitness check”<sup>18</sup> to verify whether the rules have actually worked in the way intended and are fit for purpose. It will provide a basis for decisions, to be taken by the Commission in the future, about whether to further prolong or update the rules.

#### *The fight against cartels continues*

The Commission recently set up an Anonymous Whistleblower Tool<sup>19</sup>, which makes it easier for individuals with insider knowledge of cartel conduct or other antitrust infringements to inform the Commission via a two-way encrypted messaging system about anti-competitive behaviour, while maintaining their anonymity.

In 2018, the Commission's strong enforcement record against hard-core cartels continued to demonstrate the effectiveness of the settlement procedure, which accounted for 75% of the decisions adopted throughout 2018. The settlement procedure helps bring secret cartels to light faster, freeing up valuable resources for other investigations. Under a settlement, undertakings that have participated in a cartel acknowledge their participation in the infringement and their liability for it. A settlement allows the Commission to apply a simplified procedure and reduce the duration and costs of the investigation, while companies benefit from swifter decisions and a 10% reduction in fines.

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<sup>16</sup> For additional and more detailed information, see Part I of the Commission Staff Working Document accompanying this Report.

<sup>17</sup> See <https://webgate.ec.europa.eu/competition/transparency/public/search/chooseLanguage>.

<sup>18</sup> The current fitness check will cover: the General Block Exemption Regulation (GBER); the ‘De minimis’ Regulation; the Regional aid Guidelines; the Research, Development and Innovation (RDI) Framework; the Communication on State aid for important projects of common European interest (IPCEI Communication); the Risk finance, Airport and aviation Guidelines; the Energy and Environmental Aid Guidelines (EEAG); the Rescue and restructuring Guidelines; the the Railways Guidelines; as well as the Short term export credit Communication (the two latter were not included in the 2012 State Aid Modernisation package). See [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en).

<sup>19</sup> See <http://ec.europa.eu/competition/cartels/whistleblower/index.html>.

On 21 February 2018, the Commission imposed a total of EUR 546 million in fines for cartel participation in three different cases concerning the maritime transport of cars and the supply of car parts<sup>20</sup>.

### **Commission decisions on maritime car carriers and automotive suppliers: the fight against hard-core cartels affecting European consumers and industries**

In three separate decisions, the Commission fined maritime car carriers EUR 395 million, suppliers of spark plugs EUR 76 million, and suppliers of braking systems EUR 75 million, for breaching the EU antitrust rules. All companies acknowledged their involvement in the cartels and agreed to settle the cases. All cases started with applications under the Leniency Notice. The successful immunity applicants involved in these cartels avoided fines because they revealed the existence of the cartels to the Commission.

For almost six years, from October 2006 to September 2012, five carriers (Chilean maritime carrier CSAV, the Japanese carriers "K" Line, MOL and NYK, and the Norwegian/Swedish carrier WWL-EUKOR) formed a cartel in the market for deep-sea transport of new cars, trucks and other large vehicles, on various routes between Europe and other continents. The carriers agreed to maintain the status quo in the market and to respect each other's traditional business on certain routes or with certain customers, by quoting artificially high prices or not quoting at all in tenders issued by vehicle manufacturers. The cartel affected car importers, vehicle manufacturers (as exporters) and final customers within the European Economic Area (EEA). During its investigation, the Commission cooperated with several competition authorities around the world, including in Australia, Canada, Japan and the US. MOL revealed the existence of the cartel, thus receiving full immunity and avoiding a fine of ca. EUR 203 million.

Within the automotive sector, the Commission imposed sanctions in two further cartel cases. One concerned spark plugs (automotive electric devices), in respect of which suppliers Bosch (Germany) and NGK (Japan) had colluded with Denso (Japan). The cartel lasted from 2000 until 2011 and aimed at avoiding competition by respecting each other's traditional customers and maintaining the existing status quo in the spark plugs industry in the EEA. Denso received full immunity for revealing the existence of the cartel and avoided a fine of ca. EUR 1 million. The other Commission decision related to two infringements in the field of braking systems. The first cartel concerned the supply of hydraulic braking systems and involved TRW (USA; now ZF TRW, Germany), Bosch (Germany) and Continental (Germany), and lasted from February 2007 to March 2011. The second infringement lasted from September 2010 to July 2011, related to the supply of electronic braking systems and involved Bosch and Continental. In both infringements, the car part suppliers aimed at coordinating their market behaviour by exchanging sensitive information, including on pricing elements. By revealing the cartels and receiving full immunity, TRW avoided a fine of ca. EUR 54 million, and Continental of ca. EUR 22 million.

The cartel decisions concerning spark plugs and braking systems are part of a series of major investigations into cartels in the automotive parts sector. The Commission had already fined suppliers of automotive bearings<sup>21</sup>, wire harnesses in cars<sup>22</sup>, flexible foam used (inter alia) in car seats<sup>23</sup>, parking

<sup>20</sup> Commission decisions of 21 February 2018: cases AT.40009 *Maritime car carriers*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40009](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40009); AT.40113 *Spark plugs*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40113](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40113); and AT.39920 *Braking systems*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39920](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39920).

<sup>21</sup> Case AT.39922 *Automotive bearings*, Commission decision of 19 March 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39922](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39922).

<sup>22</sup> Case AT.39748 *Automotive Wire Harnesses*, Commission decision of 10 July 2013, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39748](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39748).

<sup>23</sup> Case AT.39801 *Polyurethane Foam*, Commission decision of 29 January 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39801](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39801).

heaters in cars and trucks<sup>24</sup>, alternators and starters<sup>25</sup>, thermal systems<sup>26</sup>, lighting systems<sup>27</sup>, and occupant safety systems<sup>28</sup>.



Furthermore, on 18 September 2018, the Commission opened an in-depth investigation into the possible collusion of car manufacturers regarding technological development of emission cleaning systems for passenger cars. In October 2017, the Commission had carried out inspections at the premises of BMW, Daimler, Volkswagen and Audi in Germany as part of its initial inquiry in this case. The Commission is investigating whether these companies agreed not to compete against each other on the development and roll-out of emission control systems of cars sold in the EEA. The emission control systems concerned are Selective Catalytic Reduction (SCR)-systems, which reduce nitrogen oxide (NOx) emissions of passenger cars with diesel engines, and Otto Particulate Filters (OPF), which reduce emissions of particulate matter of passenger cars with petrol engines. The formal opening of proceedings does not prejudice the outcome of the investigation.

On 21 March 2018, the Commission issued a decision<sup>29</sup> in respect of a cartel in the capacitors sector. Capacitors are electrical components that store energy and are found in a wide variety of electronic devices used by consumers. Eight producers were fined a total of EUR 254 million for engaging in cartel practices from 1998 to 2012.

<sup>24</sup> Case AT.40055 *Parking Heaters*, Commission decision of 17 June 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40055](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40055).

<sup>25</sup> Case AT.40028 *Alternators and Starters*, Commission decision of 27 January 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40028](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40028).

<sup>26</sup> Case AT.39960 *Thermal Systems*, Commission decision of 8 March 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39960](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39960).

<sup>27</sup> Case AT.40013 *Lighting Systems*, Commission decision of 21 June 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40013](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40013).

<sup>28</sup> Case AT.39881 *Occupant Safety Systems*, Commission decision of 22 November 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39881](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39881).

<sup>29</sup> Case AT.40136 *Capacitors*, Commission decision of 21 March 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40136](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40136).

### *The Commission sanctions early implementation in the merger area*

EU merger rules require that companies notify to the Commission their planned mergers of EU dimension for review ("the notification requirement") and do not implement them until cleared by the Commission ("the standstill obligation"). The standstill obligation prevents the potentially irreparable negative impact of transactions on the single market, pending the outcome of the Commission's investigation.

On 24 April 2018, the Commission fined Altice<sup>30</sup>, headquartered in the Netherlands, EUR 124.5 million for implementing its acquisition of the Portuguese telecommunications operator PT Portugal before notification or approval by the Commission (so-called gun jumping). The fine should deter other companies from breaking the rules. Implementing mergers before notification or clearance undermines the effectiveness of the EU merger control system, which protects European consumers from a merger that would lead to higher prices or reduced choice.

### **3. Tackling new challenges in the digital economy**

Over the past six decades of European competition policy, markets have changed significantly. In particular, the digitalisation of the economy has profoundly transformed consumer behaviour and how markets operate.

A particular challenge concerns data, against the background of the growing importance of algorithms. Algorithms need data to learn: the greater the quantity of data, the more intelligent the algorithms. Another point of interest is the increasing market power of digital platforms with a dual role, providing for a distribution channel for others while marketing their own products. To make the most of the potential and opportunities that digital technology brings, Europe needs a genuinely connected Digital Single Market. Competition policy is an integral part of creating a well-functioning Digital Single Market.

The digital era has also brought entirely new market players to the fore, some of which have grown very rapidly and risen to become major technology providers. While the innovations of these successful companies, which dominate many recent and emerging digital markets, have made the lives of citizens and businesses easier, it remains essential that they are prevented from using their clout to undermine competition from others. To ensure that markets in Europe serve people and not the contrary, a regulation regarding data protection rules already exists<sup>31</sup> and a regulation promoting transparency obligations from online platforms<sup>32</sup> is being examined by the Council and the Parliament.

In 2018, the Commission started a reflection process how competition policy can best serve European consumers in a fast-changing world. To this end, the Commission appointed, Professors Heike Schweitzer, Jacques Crémer and Assistant Professor Yves-Alexandre de

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<sup>30</sup> Case M.7993 *Altice / Portugal* (Art. 14.2 proc.), Commission decision of 24 April 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7993](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7993).

<sup>31</sup> See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1–88.

<sup>32</sup> See the Commission proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services <https://ec.europa.eu/digital-single-market/en/news/regulation-promoting-fairness-and-transparency-business-users-online-intermediation-services>.

Montjoye as Special Advisers on the future challenges of digitisation for competition policy.<sup>33</sup> The Special Advisers' Report "Competition Policy for the Digital Era" was published on 4 April 2019.<sup>34</sup> In their report, the Special Advisers (i) identify what they see as the main specific features of digital markets; (ii) provide their views on the goals of EU competition law in the digital era; and (iii) discuss the application of competition rules to digital platforms and data, as well as the role of merger control in preserving competition and innovation. The report is designed to provide input to the Commission's ongoing reflection process about how competition policy can best serve European consumers in a fast-changing world.

#### *Antitrust enforcement defending innovation in the digital markets*

On 18 July 2018, the Commission took a decision<sup>35</sup> finding that Google had abused its dominant position and fined the company EUR 4.34 billion for anticompetitive restrictions it had imposed, since 2011, on mobile device manufacturers and network operators to cement its dominant position in general internet search.

#### **The "Google Android" case: restoring the benefits of effective competition in the mobile sphere for European consumers**

Google's search engine is its flagship product, with yearly adverts revenues above 95 billion US dollars, mostly due to increased use of smart mobile devices. Today, mobile internet makes up more than half of global internet traffic. Moreover, around 80% of smart mobile devices in Europe and worldwide run on Android, which makes for more than 2.2 billion devices in total.

The Commission's decision covers three types of restrictions that Google imposed on mobile device manufacturers and network operators to ensure that traffic was directed to Google Search:

- First, Google required manufacturers to pre-install the Google search and browser applications on devices running on the Android mobile operating system. Manufacturers had to comply if they wanted to be able to sell devices with the Google applications store.
- Second, Google paid manufacturers and network operators to make sure that only the Google search application was pre-installed on such devices.
- Third, Google obstructed the development of competing mobile operating systems. These could have provided a platform for rival search engines to gain traffic.

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<sup>33</sup> See [https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/commission-appoints-professors-heike-schweitzer-jacques-cremer-and-assistant-professor-yves\\_en](https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/commission-appoints-professors-heike-schweitzer-jacques-cremer-and-assistant-professor-yves_en) and <http://ec.europa.eu/competition/scp19/>.

<sup>34</sup> See <http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

<sup>35</sup> Case AT.40099 *Google Android*, Commission decision of 18 July 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40099](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40099).



While market dominance is, as such, not illegal under EU antitrust rules, dominant companies have a special responsibility not to abuse their dominant market position by restricting competition, either in the market where they are dominant or in separate, but related, markets. Google's behaviour denied other companies the chance to compete and innovate on the merits and was therefore in breach of EU antitrust rules. Most importantly, it denied European consumers the benefits of effective competition in the important mobile sphere.

The Commission decision required Google to bring its illegal conduct to an end in an effective manner within 90 days of the decision. At a minimum, the Commission's decision requires Google to stop and not re-engage in the three types of restrictions described above. The decision also requires Google to refrain from any measure that has the same or an equivalent object or effect as these practices. The Commission will monitor compliance with the decision very closely. The decision does not prevent Google from putting in place a reasonable, fair and objective system to ensure the correct functioning of Android devices using Google proprietary apps and services, without however affecting device manufacturers' freedom to produce devices based on Android forks.

In 2018, the Commission continued to investigate restrictions that Google had placed on the ability of certain third party websites to display search advertisements from Google's competitors (AdSense). On 20 March 2019, the Commission fined Google EUR 1.49 billion for those restrictions.<sup>36</sup>

On 24 January 2018, the Commission fined Qualcomm<sup>37</sup> EUR 997 million for abusing its market dominance in LTE baseband chipsets, in breach of EU antitrust rules. The Commission's decision requires Qualcomm to refrain from any practices that have the same or an equivalent object or effect in the future. The market for LTE baseband chipsets is

<sup>36</sup> Case AT.40411 *Google Search (AdSense)*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40411](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40411). See also: [http://europa.eu/rapid/press-release\\_IP-19-1770\\_en.htm](http://europa.eu/rapid/press-release_IP-19-1770_en.htm).

<sup>37</sup> Case AT.40220 *Qualcomm (exclusivity payments)*, Commission decision of 24 January 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40220](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40220).

characterised by high barriers to entry and in which Qualcomm is by far the world's largest supplier. Between 2011 and 2016, Qualcomm made significant payments to Apple on condition that it would exclusively use Qualcomm chipsets in its iPhone and iPad devices. The exclusivity payments denied rivals the possibility to compete on merits and deprived European consumers of genuine choice and innovation.

*Effective cartel enforcement protects competitive input prices for digital devices*

On 21 March 2018, the Commission fined eight producers of capacitors (Elna, Hitachi Chemical, Holy Stone, Matsuo, NEC Tokin, Nichicon, Nippon Chemi-Con and Rubycon) EUR 254 million<sup>38</sup> for participating in a 14-year long cartel for the supply of electrolytic capacitors. Capacitors are electrical components that store energy electrostatically in an electric field, and are used in a wide variety of electric and electronic products.

The cartel meetings and contacts took place mainly in Japan but the cartel conduct was implemented on a global scale, including in the EEA. The companies met regularly and exchanged commercially sensitive information on future prices and on future supply and demand needs. The objective was to coordinate future behaviour and avoid price competition. Sanyo Electric Co., Ltd. and its parent Panasonic Corporation received full immunity for revealing the existence of the cartel to the Commission avoiding a fine.

The Commission's investigation was part of a global effort. The competition authorities in Brazil, Japan, Singapore and Taiwan had already imposed fines on participants in the capacitors cartel prior to the decision by the Commission. In October 2018, Nippon Chemi-Con was the eighth company to be fined in the United States. The South Korean competition Authority followed suit in December 2018 by fining nine companies.

*EU antitrust rules protecting price competition and better choice for consumers in the area of e-commerce*

E-commerce creates significant possibilities for consumers as well as for businesses. European consumers can have access to a wider choice of goods and services, as well as the opportunity to make purchases across borders, and are able to compare prices of sellers all over Europe. Similarly, businesses can trade throughout the Single Market of more than 500 million people using a single website as their shop window. The rapidly growing online commerce market is now worth over EUR 500 billion in Europe every year, with more than half of Europeans shopping online.

The Commission's e-commerce sector inquiry, the results of which the Commission published on 10 May 2017<sup>39</sup> as part of its Digital Single Market strategy, showed that resale-price related restrictions are by far the most widespread restrictions of competition in e-commerce markets. Effective competition enforcement in this area is therefore very important. The findings also shed light on the increased use of automatic software applied by retailers for price monitoring and price setting.

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<sup>38</sup> Case AT.40136 *Capacitors*, Commission decision of 21 March 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40136](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40136).

<sup>39</sup> See [http://ec.europa.eu/competition/antitrust/sector\\_inquiry\\_final\\_report\\_en.pdf](http://ec.europa.eu/competition/antitrust/sector_inquiry_final_report_en.pdf).

### **Tackling price intervention: the Commission fines four consumer electronics manufacturers for fixing online resale prices**

On 24 July 2018, the Commission took separate decisions<sup>40</sup> fining Asus (Taiwan), Denon & Marantz, Pioneer (Japan) and Philips (the Netherlands) a total of 111 million euros, for restricting the ability of their online retailers to set their own retail prices for widely used consumer electronics products such as kitchen appliances, notebooks and hi-fi products. This type of conduct is called resale price maintenance. The four companies engaged in such conduct between 2011 and 2015. The price interventions limited effective price competition between retailers and led to an immediate effect on millions of European consumers, who faced higher prices for kitchen appliances, hair dryers, notebook computers, headphones and many other products available from online retailers.

The four manufacturers intervened particularly with online retailers, who offered their products at low prices. If those retailers did not follow the prices requested by manufacturers, they would face sanctions such as blocking of supplies. Many companies use pricing algorithms automatically adapting their prices to those of competitors. Thus, the pricing restrictions imposed on low pricing online retailers ended up having a broader impact on overall online prices for those consumer electronics products. Moreover, the use of sophisticated monitoring tools allowed the manufacturers to effectively track resale price setting in the distribution network and to intervene swiftly in case of price decreases.

All four companies cooperated with the Commission by providing relevant evidence and by expressly acknowledging the facts and the infringements of EU antitrust rules. Such cooperation resulted in speeding up the Commission's investigation and increasing the impact and relevance of its decision. At the same time, companies benefitted from reductions to the fines depending on the extent of their cooperation, ranging from 40% (for Asus, Denon & Marantz and Philips) to 50% (for Pioneer).

In its final report on the e-commerce sector inquiry, the Commission also found that more than one in ten surveyed retailers experienced cross-border sales restrictions in their distribution agreements.

On 17 December 2018, the Commission fined the clothing company Guess close to EUR 40 million for anticompetitive agreements to block cross-border sales. Guess' distribution agreements tried to prevent EU consumers from shopping in other Member States by blocking retailers from advertising and selling cross-border. This allowed the company to maintain artificially high retail prices, in particular in Central and Eastern European countries. Guess fully cooperated with the Commission by acknowledging the infringement and providing relevant evidence, and was able as a result to benefit from a 50% reduction of its fine.<sup>41</sup>

The Guess decision follows up on the results of the sector inquiry. The Commission launched the investigation as a stand-alone procedure, independent of the sector inquiry. Moreover, the decision addresses the issue of sales restrictions that are at odds with the Single Market and complements the rules on unjustified geo-blocking, which are in force as of 3 December 2018<sup>42</sup>.

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<sup>40</sup> Commission decisions of 24 July 2018: cases (vertical restraints) AT.40181 *Philips*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40181](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40181); AT.40182 *Pioneer*, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40182](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40182); AT.40465 *Asus* available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40465](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40465); and AT.40469 *Denon & Marantz*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40469](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40469).

<sup>41</sup> Commission decision of 17 December 2018: antitrust case AT.40428 *Guess*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40428](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40428)

<sup>42</sup> Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, OJ L 60I, 2.3.2018, pp. 1–15.

### *EU State aid rules enabling European governments to support broadband deployment*

The Commission has defined its “digital agenda” targets and its targets for the “Gigabit Society”<sup>43</sup> as one of its strategic priorities. Reaching the Digital Single Market connectivity objectives for 2020 and 2025 is estimated to require an overall investment of around EUR 500 billion over the coming decade. While private funding is expected to cover a large share of such investment, public funding is required to ensure that rural and remote areas are not left behind. State aid control seeks to ensure that such public investments do not crowd out (planned) private investments and that publicly-financed infrastructure is open to all operators to compete. In this context, in 2018, the European Commission approved, under the Broadband Guidelines<sup>44</sup>, a Bavarian project<sup>45</sup> to deploy very high capacity networks in six municipalities. This was the first time the Commission looked at a support measure as envisaged by the objectives of the Gigabit Communication. The transmission speeds are far above those that users have had so far in the target areas. The new networks will therefore bring about a significant improvement in line with the strategic objectives of the Gigabit Communication.

### *EU State aid rules enabling Member States jointly to support important projects of common European interest*

In June 2014, the Commission adopted a Communication on Important Projects of Common European Interest (IPCEI)<sup>46</sup>, aiming to encourage Member States to support projects that make a clear contribution to economic growth, jobs and the competitiveness of Europe. The IPCEI framework complements other State aid rules such as the General Block Exemption Regulation<sup>47</sup> and the Research, Development and Innovation Framework<sup>48</sup>, which allows supporting innovative projects whilst ensuring that potential competition distortions are limited. The rules thus enable ground-breaking research and innovation and sharing of the results widely, whilst ensuring that the support by taxpayer money truly serves European citizens.

In December 2018, the Commission found that an integrated project jointly notified by France<sup>49</sup>, Germany<sup>50</sup>, Italy<sup>51</sup> and the United Kingdom<sup>52</sup> for research and innovation in

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<sup>43</sup> See <https://ec.europa.eu/digital-single-market/en/news/communication-connectivity-competitive-digital-single-market-towards-european-gigabit-society>. See also <https://ec.europa.eu/digital-single-market/en/broadband-europe>.

<sup>44</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>45</sup> Case SA.48418 *Bavarian gigabit pilot project – Germany*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48418](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48418).

<sup>46</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, OJ C 188, 20.6.2014, pp. 4–12.

<sup>47</sup> See [http://ec.europa.eu/competition/state\\_aid/legislation/block.html#gber](http://ec.europa.eu/competition/state_aid/legislation/block.html#gber).

<sup>48</sup> Communication from the Commission - Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, pp. 1–29.

<sup>49</sup> Case SA.46705 *IPCEI on Microelectronics – France*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46705](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46705).

<sup>50</sup> Case SA.46578 *IPCEI on Microelectronics - Germany*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46578](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46578).

<sup>51</sup> Case SA.46595 *IPCEI on Microelectronics - Italy*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46595](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46595).

<sup>52</sup> Case SA.46590 *IPCEI on Microelectronics - UK*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46590](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46590).

microelectronics is in line with EU State aid rules and contributes to a common European interest. The Commission has identified microelectronics as one of six Key Enabling Technologies deemed to be crucial for future industrial development.<sup>53</sup>

The four Member States will provide up to EUR 1.75 billion in funding for this project aimed at enabling research and developing innovative technologies and components (e.g. chips, advanced optical equipment, integrated circuits, and smart sensors) that can be integrated in a large set of downstream applications. These include consumer devices, e.g. home appliances and automated vehicles, and commercial and industrial devices, e.g. management systems for batteries used for electric mobility and energy storage. In particular, it is expected that the project will stimulate additional downstream research and innovations in particular in relation to the broad area of the Internet of Things and to connected or driverless cars. The project aims at additionally unlocking EUR 6 billion in private investment, and it is to be completed by 2024.

#### **4. Competition policy in support of the EU's energy and environment objectives**

The Commission continues to work towards a European Energy Union in which clean energy can flow freely and securely. Reliable energy supplies, at reasonable prices for businesses and consumers alike, causing minimal environmental impact, are essential to the European economy.

##### *State aid in support of greening the economy*

State aid rules play a key role in promoting green and energy-efficient means of electricity production and consumption. They also support the investments necessary to provide security of supply, whilst decarbonising the European energy system. To this extent, the State aid rules help the EU reach its ambitious energy and climate targets at lowest possible cost for taxpayers and without unduly distorting competition in the Single Market, as well as contributing to the achievement of the Paris Agreement pledge to cut emissions in the EU by at least 40% by 2030.

In 2018, the enforcement of State aid rules in the renewable energy field remained very high. The Commission approved 21 schemes in support of renewables and energy-efficient power plants. As a result, almost all Member States have now received State aid clearance for their renewables and combined heat and power (CHP) support schemes. For example, in Flanders, high-efficiency CHP installations receive certificates in exchange for their energy savings and can then sell these certificates on the market in order to obtain additional revenues on top of the usual electricity market price<sup>54</sup>.

The State aid clearances granted in 2018 in the renewable energy field were based on the 2014 Guidelines on State aid for environmental protection and energy. These Guidelines have enabled an increasing number of Member States to foster sustainable energy through competitive and technologically neutral tenders and to integrate renewables in the electricity market. This has resulted in lower cost for consumers in the electricity system as a whole. As an example, the first technologically neutral tender in Denmark approved in 2018 delivered record low prices, with both solar and on-shore wind projects winning the support.

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<sup>53</sup> See [http://europa.eu/rapid/press-release\\_IP-18-6862\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6862_en.htm)

<sup>54</sup> See [http://europa.eu/rapid/press-release\\_IP-18-821\\_en.htm](http://europa.eu/rapid/press-release_IP-18-821_en.htm)

Moreover, on 26 February 2018, the Commission approved<sup>55</sup> EUR 70 million public support scheme for electric buses and charging infrastructure in Germany until the end of 2021. To qualify for the support, public transport operators must ensure that their electric and plug-in hybrid buses operate with electricity from renewable sources. On 14 November 2018, the Commission approved<sup>56</sup> EUR 107 million public support for greener buses in Germany, by retrofitting diesel buses used for public passenger transport in approximately 90 municipalities where the limits for nitrogen oxides emissions were exceeded in 2016 or 2017. Both measures are in line with the EU environmental goals, as well as with the European Strategy for low-emission mobility, and its support for the move towards zero-emission vehicles in cities and for creating a market for such vehicles.

*Regulating the electricity market while delivering on the EU's energy and climate objectives*

Capacity mechanisms aim at ensuring the security of electricity supply. Typically, capacity mechanisms offer additional rewards to capacity providers, on top of income obtained by selling electricity on the market, in return for maintaining existing capacity or investing in new capacity needed to guarantee security of electricity supplies. However, capacity mechanisms cannot substitute electricity market reforms at national and European levels. In parallel Member States must implement market reforms to address market or regulatory failures that undermine the incentive for energy operators to invest in energy capacity in accordance with the decarbonisation objectives of the Union.

In its 2016 report of the Sector Inquiry on Capacity Mechanisms<sup>57</sup>, the Commission concluded that capacity mechanisms can affect the generation mix and in particular interact with instruments aimed at fostering decarbonisation. To promote non-fossil based capacity, the Commission recommended that eligibility or allocation criteria for capacity mechanisms allow renewables and demand-side operators to compete alongside other capacity. Otherwise, capacity mechanisms may risk jeopardising decarbonisation objectives while pushing up the price for security of supply.

On 18 December 2018, a political agreement was reached on the Clean Energy for All Europeans Package<sup>58</sup>. The Package constitutes an important step towards the decarbonisation of the European energy system. Future capacity mechanisms will incorporate new caps regarding the carbon emissions of fossil fuel origin. Moreover, the Package introduces a new market design to create the right investment incentives and to enable further development of renewables in the electricity sector.

**State aid measures continue to ensure security of energy supply for European citizens and businesses**

On 7 February 2018<sup>59</sup>, the Commission approved six electricity capacity mechanisms to ensure security of supply in Belgium<sup>60</sup>, France<sup>61</sup>, Germany<sup>62</sup>, Greece<sup>63</sup>, Italy<sup>64</sup> and Poland<sup>65</sup>. An additional

<sup>55</sup> Case SA.48190 *Support scheme for the acquisition of electric buses for urban public transport*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48190](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48190).

<sup>56</sup> Case SA.51450 *Scheme for retrofitting diesel buses in local public transport*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_51450](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51450).

<sup>57</sup> See [http://ec.europa.eu/competition/sectors/energy/capacity\\_mechanisms\\_final\\_report\\_en.pdf](http://ec.europa.eu/competition/sectors/energy/capacity_mechanisms_final_report_en.pdf)

<sup>58</sup> See <https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/clean-energy-all-europeans>

<sup>59</sup> See [http://europa.eu/rapid/press-release\\_IP-18-682\\_fr.htm](http://europa.eu/rapid/press-release_IP-18-682_fr.htm)

<sup>60</sup> Case SA.48648 *Belgian Strategic Reserve*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48648](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48648).

capacity mechanism was approved for Greece in on 30 July 2018.<sup>66</sup> Basing its decisions on the 2014 Guidelines on State Aid for Environmental Protection and Energy, the Commission found that the measures will contribute to ensuring security of supply without causing higher electricity prices for consumers or hindering electricity flows across EU borders and that they were thus in line with the EU State aid rules.

The seven capacity mechanisms approved, concern more than half of the EU population. They cover a range of different types of mechanism that address the specific need in each Member State. The seven decisions support the Commission's Energy Union Strategy to deliver secure and competitive energy in Europe.

By means of the EU Emissions Trading System (ETS), State aid rules also play a key role in delivering on climate objectives by lowering the indirect costs of the EU's carbon market for the most electricity-intensive industries. The core principle of the ETS is that polluters should pay for their carbon emissions. However, outside of the EU, not all countries apply this principle. If enterprises were to delocalise some of their production outside the EU as a result of carbon costs, this would result in an increase of global carbon emissions. Because electricity generators do not receive free allowances, they have to buy them, thereby increasing the electricity price for consumers. To this end, Member States may partially compensate electricity-intensive consumers for the indirect costs resulting from the ETS.

In 2012, the Commission adopted Guidelines setting the conditions under which Member States can grant such partial compensation regarded as constituting State aid for the trading period 2012-2020. On 14 March 2018, the Council and the Parliament adopted a revised ETS Directive for the period 2021-2030. It underlines that Member States should seek to limit their compensation to 25% of their ETS auction revenues. The Commission therefore launched on 20 December 2018 the revision process of the ETS State aid Guidelines.

#### *Supporting open and integrated markets for gas and electricity*

To achieve its ambitions enshrined in the Paris Agreement<sup>67</sup>, the EU needs to increase the share of renewable energy in its energy mix, such as wind and solar, while ensuring availability of competitively priced gas as a flexible back-up capacity. Effective competition in European gas markets does not only depend on the enforcement of EU competition rules but also on investment in gas supply diversification, well-targeted European and national energy legislation and their proper implementation. All this builds into the European Energy Union, which is a key priority of the Commission.

In 2018, the Commission continued to promote the development of an open and competitive energy market to the benefit of consumers, in line with Energy Union objectives.

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<sup>61</sup> Case SA.48490 *Specific demand response tender in France*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48490](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48490).

<sup>62</sup> Case SA.45852 *German capacity reserve*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_45852](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45852).

<sup>63</sup> Case SA.48780 *Prolongation of the Greek interruptibility scheme*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48780](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48780).

<sup>64</sup> Case SA.42011 *Italian capacity mechanism*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_42011](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_42011).

<sup>65</sup> Case SA.46100 *Planned Polish capacity mechanism*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46100](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46100).

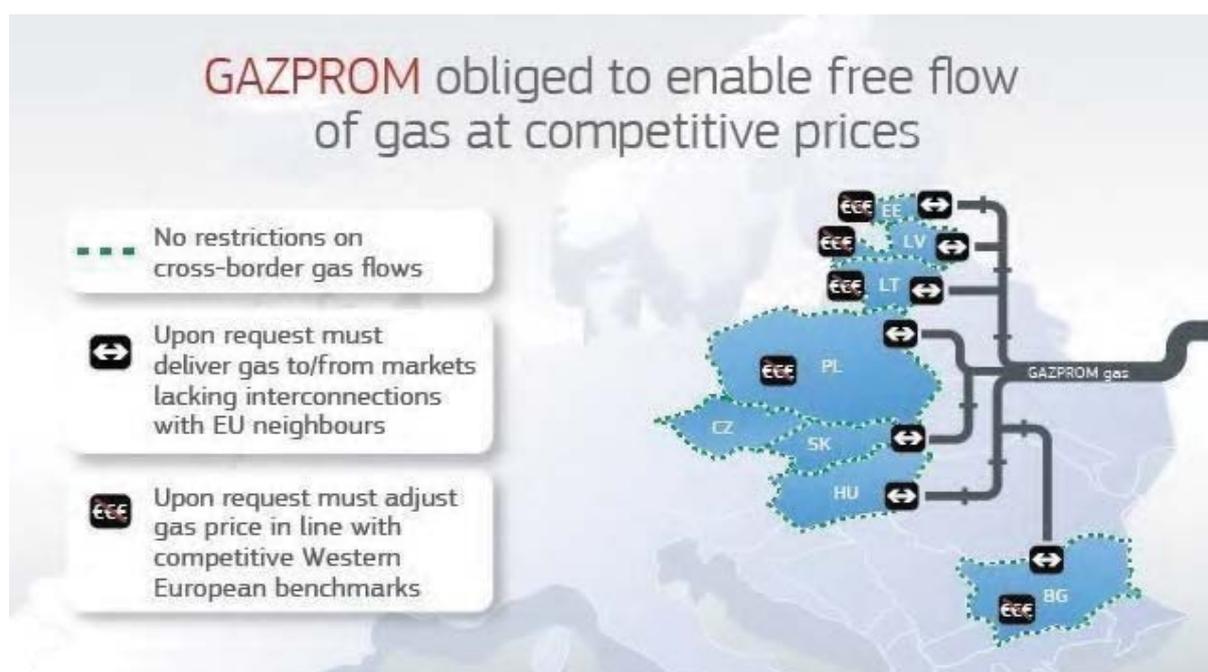
<sup>66</sup> [http://ec.europa.eu/competition/sectors/energy/state\\_aid\\_to\\_secure\\_electricity\\_supply\\_en.html](http://ec.europa.eu/competition/sectors/energy/state_aid_to_secure_electricity_supply_en.html)

<sup>67</sup> See [https://ec.europa.eu/clima/policies/strategies/2030\\_en](https://ec.europa.eu/clima/policies/strategies/2030_en).

On 24 May 2018, the Commission adopted a decision<sup>68</sup> removing obstacles created by Gazprom, which affected free flow of gas in Central and Eastern Europe, and imposing on Gazprom a set of obligations for its future conduct.

### The Gazprom decision: enabling free flow of gas at competitive prices

Gazprom is the dominant gas supplier in a number of Central and Eastern European countries. In April 2015, the Commission set out its concerns that Gazprom breached EU antitrust rules by pursuing an overall strategy to partition gas markets along national borders in eight Member States: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia. This strategy enabled Gazprom to charge higher gas prices in five of these Member States (Bulgaria, Estonia, Latvia, Lithuania and Poland).



To address the Commission's competition concerns, Gazprom must comply with a set of obligations aimed at ensuring the free flow of gas at competitive prices across Central and Eastern Europe. These obligations on Gazprom will be in place for eight years. They reflect feedback from stakeholders in a market test, which the Commission launched in March 2017.

Specifically, there are four parts to Gazprom's obligations. First, Gazprom's customers are no longer restricted from re-selling purchased gas cross-border. Second, they have more flexibility on where they want Gazprom to deliver their gas (some parts of Central and Eastern Europe, namely the Baltic States and Bulgaria, are still isolated from other Member States due to the lack of interconnectors). Third, customers receive an effective tool to make sure their gas price reflects the price level in competitive Western European gas markets, especially at liquid gas hubs. Fourth, Gazprom cannot act on any advantages concerning gas infrastructure.

Combined, these obligations address the Commission's competition concerns and achieve its objectives of enabling the free flow of gas in Central and Eastern Europe at competitive prices. The Commission decided to make these obligations (so-called "commitments") legally binding on Gazprom, which means that if the company breaks any of these obligations, the Commission can impose a fine of up to 10% of its worldwide turnover.

<sup>68</sup> Case AT. 39816 *Upstream gas supplies in Central and Eastern Europe*, Commission decision of 24 May 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39816](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39816).

On 21 June 2018, the Commission opened a formal investigation<sup>69</sup> to assess whether supply agreements between Qatar Petroleum companies exporting liquefied natural gas (LNG) and European importers have hindered the free flow of gas within the European Economic Area, in breach of EU antitrust rules. Qatar Petroleum is the largest exporter of LNG globally and to Europe, accounting for around 40% of the EU's overall LNG imports and significantly higher import shares in certain Member States. The Commission will further investigate whether Qatar Petroleum's long-term agreements (typically of 20 or 25 years' duration) for the supply of LNG into the EEA contain territorial restrictions, segmenting the EU's internal gas market.

On 7 December 2018, the Commission adopted a decision rendering legally binding the commitments offered by German grid operator TenneT<sup>70</sup> to increase significantly cross-border flows of electricity between Denmark and Germany. TenneT will ensure that a specific guaranteed capacity is available at all times, thus allowing more electricity producers to access the German wholesale market. This is fully in line with the Commission's ambition to make the European energy market more competitive and integrated, and to facilitate the Union's transition to cleaner, renewable energy sources to the benefit of consumers.

On 17 December 2018, the Commission fined<sup>71</sup> Bulgarian Energy Holding (BEH), its gas supply subsidiary Bulgargaz and its gas infrastructure subsidiary Bulgartransgaz (the BEH group) EUR 77 million for blocking competitors' access to key gas infrastructure in Bulgaria, in breach of EU antitrust rules.

Furthermore, the Commission continues its investigation of the Romanian transmission system operator Transgaz<sup>72</sup> for potential export restrictions of gas.

## 5. Protecting competition in the Single Market

Successful global companies are often the result of organic growth in competitive home markets due to their business expertise and innovativeness. However, in some cases companies may determine that mergers can help them gain the size and strength necessary to compete more efficiently both in Europe and abroad. They may expect the mergers to combine complementary portfolios, bring about scale efficiencies or facilitate entry into new markets or geographies. These benefits, in so far as they materialise, can also bring benefits to their customers. EU merger control allows companies to grow by acquiring other businesses, while at the same time preserving choice, quality, innovation and competitive prices for citizens and businesses in the EU.

### *The key merger operations in the agro-chemical sector*

Seeds and pesticides are essential for farmers and ultimately consumers. The Commission ensures effective competition in this sector, so that farmers can have access to innovative products, better quality and competitive prices. In assessing recent mergers in this

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<sup>69</sup> Case AT.40416 *LNG supply to Europe*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40416](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40416).

<sup>70</sup> Case AT.40461 *DK/DE Interconnector*, Commission Decision of 7 December 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40461](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40461).

<sup>71</sup> Case AT.39849 *BEH gas*, Commission decision of 17 December 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39849](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39849).

<sup>72</sup> Case AT.40335 *Romanian gas interconnectors*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40335](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40335).

concentrated market, between Dow and DuPont<sup>73</sup> and between Syngenta and ChemChina<sup>74</sup>, the Commission assessed their impact on all aspects of competition, including farmers' costs and innovation. Both decisions followed an in-depth review of the proposed transactions.

On 21 March 2018, the Commission gave conditional approval to Bayer's plans to buy Monsanto<sup>75</sup> under the EU Merger Regulation, following an in-depth review. The merger was conditional on the divestiture of an extensive remedy package worth above EUR 6 billion, which addresses the parties' overlaps in seeds, pesticides and digital agriculture.

**The conditional approval of the merger between Bayer and Monsanto: maintaining competition and innovation in the agro-chemical market**

Bayer (Germany) and Monsanto (United States) are both major players in the seeds and pesticides industries. Monsanto is the world's largest supplier of seeds, which generates most of its sales in the US and Latin America (less than 10% of its products are sold in Europe). Bayer is the second largest supplier of pesticides worldwide, selling about 30% of its products in Europe. It is also an important globally active seeds supplier for a number of crops.

As part of its in-depth investigation, the Commission assessed more than 2,000 different product markets and reviewed 2.7 million internal documents. In particular, the market investigation identified competition concerns in the areas of pesticides, seeds and traits, as well as digital agriculture.

To address the identified competition concerns, the Commission decision of 21 March 2018 specifically required Bayer to sell its EUR 6 billion worth of relevant businesses and assets, including research and development, to a suitable purchaser. The Commission concluded that the divestment package enables a suitable competitor to sustainably replace Bayer's competitive constraint in the relevant markets and continue to innovate, for the benefit of all Europeans, consumers and farmers alike, and the environment.

On 30 April 2018, the Commission conditionally approved under the EU Merger Regulation the acquisition of parts of Bayer's Crop Science business by BASF<sup>76</sup> – in relation to the Bayer/Monsanto merger divestment commitments.

By making sure that the number of global players actively competing in these concentrated markets stays the same, the Commission decision on Bayer/Monsanto ensures that effective competition and innovation in seeds and traits, pesticides and digital agriculture markets continues, and that farmers have as wide a choice as before when it comes to suppliers of seeds and pesticides in these markets.

The transaction created the largest global integrated seeds and pesticide company.

Given the worldwide scope of Bayer and Monsanto's activities, the Commission cooperated closely with a number of competition authorities on this case, notably with the Department of Justice in the United States of America and the antitrust authorities of Australia, Brazil, Canada, India, China and South Africa.

When it comes to seeds and pesticides there are additional vital concerns that go beyond competition policy, including consumer protection, food safety and ensuring the highest

<sup>73</sup> Case M.7932 *Dow / DuPont*, Commission decision of 27 March 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7932](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7932).

<sup>74</sup> Case M.7962 *ChemChina / Syngenta*, Commission decision of 5 April 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7962](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7962).

<sup>75</sup> Case M.8084 *Bayer / Monsanto*, Commission decision of 21 March 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8084](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8084).

<sup>76</sup> Case M.8851 *BASF / Bayer Divestment Business*, Commission decision of 30 April 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8851](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8851).

standards for the environment and the climate. The existing national and European regulatory standards on these matters will remain just as strict after these mergers as before them and continue to apply.

#### *Preserving effective competition on European steel markets*

Steel is a critical input for many European industries and products, and the European steel sector employs around 360,000 people in more than 500 production sites across 23 Member States.

On 7 May 2018, following an in-depth review, the Commission approved the acquisition of Ilva by ArcelorMittal<sup>77</sup>, the largest producer of flat carbon steel in Europe and worldwide. The Commission decision is conditional on the divestiture of an extensive remedy package to preserve effective competition on European steel markets, to the benefit of consumers and businesses.

#### **The Commission's conditional approval of ArcelorMittal's acquisition of Ilva**

ArcelorMittal, headquartered in Luxembourg, controls a wide production network across the European Economic Area, while Ilva has major production assets in Italy, including its steel plant in Taranto, Europe's largest single-site integration flat carbon steel plant. ArcelorMittal's acquisition of Ilva creates by the far largest steelmaker in Europe.

As part of its in-depth investigation, the Commission reviewed more than 800,000 internal documents and took into account feedback from over 200 customers active in a wide range of sectors, such as construction, car manufacturing, household appliances, and tubes. These customers rely on competitive steel prices to compete with imported products in the Single Market as well as on global markets.

In order to address the Commission's competition concerns on hot rolled, cold rolled and galvanised flat carbon steel, ArcelorMittal proposed to sell a number of steel plants throughout Europe to one or more buyers competing with ArcelorMittal on a lasting basis.

The Commission concluded that the proposed transaction, as modified by the commitments, ensures that competition is preserved on European steel markets and does not result in higher prices, in the interest of European manufacturing industries and consumers. The decision is conditional on full compliance with the commitments.

Merger control thus goes hand in hand with decisive EU action to protect the EU's steel industry from unfair trade distortions from third countries. The Commission takes into account the concerns of European steel industry but also the many European businesses that rely on steel as an input. Currently, there are various trade defence measures in place on imports of steel and iron products, including from China, Russia, India and several others. Moreover, several trade defence investigations for steel products are currently ongoing. In addition, the Commission participates in the Global Forum on Steel Excess Capacity to tackle root causes of the global overcapacity in the steel sector to develop concrete policy solutions.

The sale of Ilva's assets to ArcelorMittal should equally help accelerate the urgent environmental clean-up works in the Taranto Region. This essential de-pollution work should

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<sup>77</sup> Case M.8444 *ArcelorMittal / Ilva*, Commission decision of 7 May 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8444](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8444).

continue without delay<sup>78</sup> to protect the health of neighbouring population and environment, as agreed in 2016-2017 with the Italian authorities.

In a separate investigation under State aid rules, the Commission had concluded on 21 December 2017<sup>79</sup> that two loans granted by Italy in 2015 to support Ilva involved illegal and incompatible State aid. The Commission requested Italy to recover undue benefits of ca EUR 84 million from Ilva.

#### *The Commission's in-depth investigation into Siemens' proposed acquisition of Alstom*

Trains and the signalling equipment that guide them are essential for transport in Europe. On 13 July 2018, the European Commission opened an in-depth investigation<sup>80</sup> to assess the proposed acquisition of Alstom by Siemens, under the EU Merger Regulation.

Siemens (Germany) and Alstom (France) are global leaders in rail transportation, and the proposed transaction would combine the two largest suppliers of rolling stock and signalling solutions in the EEA, not only in terms of size of the combined operations, but also in terms of their geographic footprint.

The Commission's concerns related to the possibility of reduced competition in the markets where the merged entity would be active, particularly in the supply of several types of trains (rolling stock) and signalling systems to rail operators. This could lead to higher prices, less choice of suppliers and innovative products, to the detriment of train operators, infrastructure managers and ultimately the millions of Europeans who use rail transportation every day for work or leisure. The Commission considered that the entry of new competitors into the EEA rolling stock or signalling solutions markets, including in particular of potential Chinese suppliers, appeared unlikely to occur in the foreseeable future.

The Commission carried out an in-depth investigation into the effects of the transaction to determine whether its competition concerns were confirmed. The Commission considered that the merger would have harmed competition in markets for railway signalling systems and very high-speed trains. The parties did not offer remedies sufficient to address these concerns. On 6 February 2019, the Commission prohibited Siemens' proposed acquisition of Alstom under the EU Merger Regulation<sup>81</sup>.

#### *Fostering a competitive transport market*

A competitive and efficient transport sector is essential for a well-functioning single market, a sustainable growth strategy and an open economy integrated into the global markets.

The very considerable growth in air traffic continued in 2018, partly driven by the benefits of intense competition between airlines and airports. Preserving effective competition in this sector continued to be a priority. As regards airports, the Commission adopted a decision finding that the twenty-year extension of the concession for Athens International Airport Eleftherios Venizelos does not constitute State aid.<sup>82</sup> This decision was adopted only after the

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<sup>78</sup> Since 2013, the Commission has been pursuing infringement proceedings against Italy for failure to ensure that Ilva complies with EU legislation on environmental standards.

<sup>79</sup> Case SA.38613 *Aid to Ilva*, Commission decision of 21 December 2017, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38613](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38613).

<sup>80</sup> Case M.8677 *Siemens / Alstom*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8677](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8677).

<sup>81</sup> See [http://europa.eu/rapid/press-release\\_IP-19-881\\_en.htm](http://europa.eu/rapid/press-release_IP-19-881_en.htm).

<sup>82</sup> See [http://europa.eu/rapid/press-release\\_IP-18-6785\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6785_en.htm).

initial concession fee of EUR 484 million, which was based on financial and business parameters that were not in line with market conditions, was increased to EUR 1,115 million. In the light of this increased price, the Commission found that the extended concession involves no State aid because Athens International Airport S.A. will pay an adequate market fee to continue operating Athens International Airport Eleftherios Venizelos.

In November 2018, the Commission opened proceedings under Article 101 TFEU against Amadeus<sup>83</sup> and Sabre<sup>84</sup>, leading worldwide suppliers of computerised reservation systems. The investigation focuses on possible restrictions in competition in the market for airline ticket distribution services. The Commission is concerned that such restrictions could create barriers to innovation and raise ticket distribution costs, ultimately raising ticket prices for travellers.

As regards the airline sector, the Commission's merger decisions in the context of the bankruptcy of Air Berlin allowed for a timely acquisition of Air Berlin's assets by strong competitors which will not only preserve but improve competition at various airports in Germany and Austria to the benefit of many European passengers flying out and to these airports<sup>85</sup>. To counter undue distortions of competition through the granting of state aid to airlines in economic difficulties, the Commission also opened a formal investigation into a EUR 900 million bridge loan granted by the Italian State to Alitalia in the course of 2017<sup>86</sup>.

## **6. Making the financial sector more resilient in a Banking Union context**

The general stabilisation of the financial sector and the gradual implementation of the Banking Union regulatory framework has resulted in less interventions from the public budget, hence a reduction of new State aid cases in this sector. Moreover, the Commission could complete the monitoring of a further ten banks with respect to commitment obligations resulting from past State aid decisions, as well as close a number of long-standing legacy cases.

In Germany, the Commission approved in 2018 the aid-free privatisation of HSH Nordbank following an open and competitive process leading to the bank's sale at a positive price and entailing restructuring to restore the bank's long-term viability.<sup>87</sup> The Slovenian state sold 65% of its stake in the NLB Group, in line with a set of revised commitments approved by the Commission in 2018.<sup>88</sup> This sale was a crucial element of the Commission's viability assessment in the NLB State aid decision of 2013. The Commission continues to monitor Slovenia's compliance with the remaining commitments.

Despite the EU banking sector's improving resilience, parts of the financial sector still face some legacy problems, which pre-date the Banking Union framework, notably the still high

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<sup>83</sup> Cases AT.40617 *Airline ticket distribution (Amadeus)*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40617](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40617).

<sup>84</sup> Case AT.40618 *Airline ticket distribution (Sabre)*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40618](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40618).

<sup>85</sup> See [http://europa.eu/rapid/press-release\\_IP-17-5244\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5244_en.htm), [http://europa.eu/rapid/press-release\\_IP-17-5402\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5402_en.htm), and [http://europa.eu/rapid/press-release\\_IP-18-4494\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4494_en.htm).

<sup>86</sup> See [http://europa.eu/rapid/press-release\\_IP-18-3501\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3501_en.htm).

<sup>87</sup> Case SA.52288 – *Germany*, Commission decision of 26 November 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_52288](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52288).

<sup>88</sup> Case SA.33229 – *Slovenia*, Commission decision of 10 August 2018 available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_33229](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33229).

level of non-performing loans in some Member States. The Commission's financial-sector State aid control continues to play a central role in dealing with these issues.

In 2018, the Commission approved liquidation aid for the sale of Cyprus' second largest bank, the Cyprus Cooperative Bank, and the winding down of the residual entity<sup>89</sup>. This allowed for the orderly market exit of the bank that had already received State support twice in the past and enabled the removal of almost 30% of Cypriot non-performing loans from the domestic banking system. Also in Cyprus, the Commission gave its approval to the ESTIA scheme to support private households and micro-companies that have encountered difficulties in repaying mortgage loans and risk losing their primary residence.<sup>90</sup>

In Italy, the Italian State guarantee scheme to facilitate the securitisation of non-performing loans (GACS), initially approved in February 2016 and subsequently prolonged until early March 2019<sup>91</sup>. Under the scheme, Italian banks will continue to be able to finance the disposal of selected non-performing loans using a State guarantee granted at market terms. The GACS scheme has made an important contribution to the removal of non-performing loans from the Italian banking system: the 17 different GACS-supported non-performing loan disposals between the scheme's entry into force and mid-November 2018 accounted for ca. 60% of the total net reduction of bad loans in Italy during that period (approximately EUR 51 billion in gross non-performing loans).

## **7. Ensuring a level playing field in the area of taxation**

Confidence in the EU Single Market depends on creating a level playing field for companies to compete on merit, also when it comes to taxation. For example, a Member State cannot give tax benefits to multinational groups which are not available to other companies (often local businesses), since that would severely distort competition.

*The Commission continues its fight against selective tax advantages*

On 20 June 2018, the Commission concluded that Luxembourg's tax treatment of Engie,<sup>92</sup> a supplier of gas and electricity, was illegal with regard to EU State aid procedures and incompatible with EU State aid rules. As a result, Luxembourg was required to recover more than EUR 120 million from Engie.

### **Putting a stop to selective tax advantages: The Engie decision**

Following an in-depth investigation launched in September 2016, the Commission concluded that two sets of tax rulings issued by Luxembourg have artificially lowered Engie's tax burden in Luxembourg for about a decade, without any valid justification.

In 2008 and 2010, respectively, Engie implemented two complex intra-group financing structures for two Engie group companies in Luxembourg, Engie LNG Supply and Engie Treasury Management. These involved a triangular transaction between Engie LNG Supply and Engie Treasury Management, respectively, and two other Engie group companies in Luxembourg.

<sup>89</sup> Case SA.35334 – Cyprus, Commission decisions of 19 June 2018 and 28 August 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_35334](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_35334).

<sup>90</sup> Case SA.49554 – Cyprus, Commission decision of 3 December 2018, available at [http://ec.europa.eu/competition/state\\_aid/cases/276985/276985\\_2032224\\_96\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/276985/276985_2032224_96_2.pdf).

<sup>91</sup> Case SA.51026(2018/N) – Italy, Commission decision of 31 August 2018 available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_51026](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51026).

<sup>92</sup> Case SA.44888 *Aid to Engie*, Commission decision of 20 June 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_44888](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44888).

The Commission's investigation showed that tax rulings issued by Luxembourg endorsed an inconsistent treatment of the same transaction both as debt and as equity, which did not reflect economic reality as it artificially reduced the company's tax burden. As a result, Engie paid an effective corporate tax rate of 0.3% on certain profits in Luxembourg for about a decade.

On this basis, the Commission concluded that the tax ruling granted a selective economic advantage to Engie. Specifically, the rulings enabled Engie to avoid paying any tax on 99% of the profits generated by Engie LNG Supply and Engie Treasury Management in Luxembourg. Luxembourg was required to recover from Engie more than EUR 120 million in unpaid tax.



The Commission welcomed the legislative steps taken by Luxembourg's Government to amend its tax code and bring relevant provisions into line with the OECD's Base Erosion and Profit Shifting project<sup>93</sup>. They also contain an amendment of its corporate income tax law to prevent the non-taxation of profits arising in the context of the conversion of loans into shares. The amendment however does not concern triangular transactions as those implemented by Engie.

The EU's State aid rules prevent Member States from giving unfair tax benefits only to selected companies. Member States cannot discriminate between companies in the same legal and factual situation in light of the objective of the same national laws. Such discrimination distorts competition and is illegal under the State aid rules. Furthermore, the State aid rules require that illegal and incompatible State aid is recovered in order to remove the distortion of competition created by the aid. There are no fines under State aid rules and recovery does not penalise the company in question, it simply restores equal treatment with other companies.

On 19 September 2018, the Commission found that the non-taxation of certain McDonald's profits in Luxembourg<sup>94</sup> did not lead to illegal State aid. This treatment, which was in line with national tax laws and the Luxembourg-United States Double Taxation Treaty, did not provide a selective advantage in favour of McDonald's, but was the consequence of a mismatch between Luxembourg and US tax laws. Therefore, the Commission concluded that Luxembourg did not break EU State aid rules.

<sup>93</sup> See <http://www.oecd.org/tax/beps/>.

<sup>94</sup> Case SA.38945 *Alleged aid to Mc Donald's – Luxembourg*, Commission decision of 19 September 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38945](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38945).

Among the above-mentioned changes to the tax code to bring tax law in line with the OECD's Base Erosion and Profit Shifting project, Luxembourg strengthened the criteria under its tax code to define a permanent establishment. Under the new provisions, which entered into effect on 1 January 2019, Luxembourg can, under certain conditions, require companies that claim to have a taxable presence abroad to submit confirmation that they are indeed subject to taxation in the other country.

Additionally, on 19 December 2018, the Commission concluded that Gibraltar<sup>95</sup> gave illegal tax advantages to multinational companies through a corporate tax exemption regime for interest and royalties from 2011 to 2013, as well as through five individual tax rulings that provided selective tax benefits on certain income generated by Dutch limited partnerships. The beneficiaries must return unpaid taxes of around EUR 100 million to Gibraltar.

During the Commission's investigation, Gibraltar amended its tax rules to enhance its tax ruling procedure, reinforce its transfer pricing rules, enhance taxpayers' obligations (e.g. filing of annual returns, providing meaningful information in applications for rulings) and improve transparency on how it implements its territorial system of taxation. The Commission welcomed these improved rules, which entered into effect in October 2018.

The Commission continues its investigations concerning tax rulings issued by the Netherlands in favour of Inter IKEA<sup>96</sup> and a tax scheme for multinationals in the United Kingdom<sup>97</sup>.

*The Commission's investigations of individual tax rulings in Member States prove their effectiveness*

Tax rulings as such are not a problem under EU State aid rules, if they simply confirm that tax arrangements between companies within the same group comply with the relevant tax legislation. However, tax rulings that confer a selective tax advantage to specific companies can distort competition within the EU's Single Market, in breach of EU State aid rules.

Member States have achieved significant progress in implementing the Commission decisions to recover unpaid taxes adopted in the previous year by the Commission, which de facto prevents companies from continuing to benefit from illegal advantages. In May 2018, Luxembourg completed the recovery of more than EUR 260 million from Amazon, plus an amount of EUR 21 million of recovery interest. In October 2018, Luxembourg also recovered more than EUR 120 million from Engie, plus EUR 1 million of recovery interest. In the same month, Ireland recovered the full illegal and incompatible aid from Apple, i.e. EUR 13.1 billion, plus about EUR 1.2 billion of recovery interest. For all these cases, the money is in an escrow account, pending the outcome of the ongoing appeal of the Commission's decision before the EU courts.

## **8. Joining forces in fostering a global competition culture**

As world markets continue to integrate and more and more companies rely on global value chains, competition authorities need to increase their collaboration and agree on common standards and procedures more than ever before. Enforcing competition rules effectively

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<sup>95</sup> Case SA.34914 UK - Gibraltar Corporate Tax regime (ITA 2010), Commission decision of 19 December 2018, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_34914](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_34914).

<sup>96</sup> Case SA.46470 Potential aid to IKEA – NL, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46470](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46470).

<sup>97</sup> Case SA.44896 Potential State aid scheme regarding United Kingdom CFC group financing exemption, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_44896](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_44896).

depends to a growing extent on co-operation with other enforcers. When business practices of a company harm competition in different countries and continents, fair and level market conditions can only be restored if enforcement authorities play as a team.

The Commission has been at the forefront of international cooperation in the competition field, both on the multilateral and bilateral levels. Back in 2001, the Commission was among the founding members of the International Competition Network (ICN), which now counts more than 130 members. The Commission is also active in all international fora devoted to competition, including the OECD, UNCTAD, the WTO, and the World Bank<sup>98</sup>.

At bilateral level, the Commission aims to foster the international level playing field through including competition and State aid provisions in its Free Trade and Association agreements. In 2018, the Commission continued negotiations with Chile, Mexico, Mercosur, Azerbaijan, Tunisia, Indonesia, Andorra, Monaco and San Marino and opened negotiations with Australia, New Zealand, Kyrgyzstan and Uzbekistan. At the end of 2018, the European Union and Switzerland negotiators agreed on the text of an Institutional Framework Agreement, which also includes State aid rules. Moreover, the Commission engages in a wide range of cooperation activities with competition authorities in a number of third countries, on the basis of agreements or memoranda of understanding. In June 2018, the Commission signed an Administrative Arrangement with Mexico.

In 2018, DG Competition's cooperation in competition policy and in cases, including the dialogue on State aid control, continued with China's State Administration for Market Regulation (SAMR) which was established in 2018 as a result of reorganization of the Chinese central administration. SAMR regroups the Anti-Monopoly Bureaus of Ministry of Commerce, National Development and Reform Commission (NDRC) and State Industry for Industry and Commerce as well as the Fair Competition Review Bureau of the NDRC. The Directorate-General for Competition had case cooperation with SAMR in five merger review cases and responded to SAMR's solicitation for comments on its draft regulations prohibiting abuse of dominant market position. Moreover, it had several exchanges at technical level regarding SAMR's activities to promote its Fair Competition Review System.

The Commission remains committed to fostering a far-reaching competition culture, as well as to promoting a global level playing field where companies can compete on their merits. In 2018, the Commission continued its endeavours to improve multilateral rules regarding subsidies, as part of the EU concept for WTO modernisation. The main objectives are to increase transparency, to have better rules on harmful subsidies and to adequately address issues with State-owned enterprises. Moreover, the Commission continued to engage in sectoral initiatives to address subsidies in the international context, such as for steel (G20 Global Forum on steel excess capacity), for semiconductors (Regional support guidelines for the semiconductor industry), and for shipbuilding (OECD). Finally, the Commission continues to work with EU Member States in the International subsidy policy group to exchange views and coordinate initiatives on international policy subsidies at multilateral and bilateral level.

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<sup>98</sup> For additional and more detailed information, see Part I of the Commission Staff Working Document accompanying this Report.

### *Upholding a regular and constructive inter-institutional dialogue*

The European Parliament, the Council and the consultative committees, with their specific roles vis-à-vis European citizens and stakeholders, are key partners in the dialogue on competition policy.

In April, Commissioner Vestager exchanged views with Parliament's plenary session on on-going general achievements in competition policy. In October, she discussed the benefits of competition to boost the competitiveness of European industries. In November, she welcomed together with Parliament the finalisation of the new Directive to make national competition agencies more effective enforcers of the European competition rules. The Commissioner also had topical debates with Committees in Parliament: the Economic and Monetary Affairs Committee in June and October, and the Industry and Research Committee in July. For his part, Director-General Johannes Laitenberger visited the dedicated Competition Working Group of the Economic and Monetary Affairs Committee in May. In November, he exchanged views with the full Economic and Affairs Committee, following Deputy Director General Carles Esteva Mosso's preparatory debate in this Committee in October.

As in previous years, the Parliament adopted a resolution on the Commission's annual Report on competition policy. The Parliament endorsed a robust competition policy that preserves the integrity of the internal market and empowers citizens with affordable prices, choice and innovations in the market place. This was welcomed support for the Commission's efforts in 2018 to tackle illegal cartels and abuses of a dominant position of companies, and to review mergers and State aid given in our Single Market.

Also in 2018, Parliament remained engaged in the fight against tax evasion and tax avoidance. Parliament welcomed that State aid control has proven effective in tackling selective tax advantages for multinationals. In 2018, the Commission continued to take important actions in this area<sup>99</sup>. The Commission took a systematic approach to analysing the evidence on tax rulings from all Member States.

Parliament urged the Commission to continue playing its key role in controlling State aid in the financial sector, ensuring that aid to banks be kept to the minimum necessary and that adequate measures be taken to return the banks to viability and to minimise distortions of competition in the internal market. The Commission shared Parliament's goal of reducing State aid in the sector over time. The Commission continued to explain its actions in this field in the other institutions.

In April, Parliament organised a hearing on the digital economy. Parliament called upon the Commission to reflect on the way that competition enforcement can remain up-to-date in an online society. In March, Commissioner Vestager appointed three special advisers to seek their input on key upcoming digital changes that will affect markets and consumers, and on their implications for competition. As part of the same exercise, the Commission initiated a consultation process on the importance of data, algorithms and other aspects of the digital economy and asked interested parties to submit their views. Parliament's ECON Committee welcomed these initiatives.

In July, the Commissioner exchanged views with Members of the Parliament on the way that competition enforcement helps to boost the competitiveness of European industries. She explained that for every company that wants to merge, many companies in Europe rely on

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<sup>99</sup> For detailed information, see Chapter 2 of this Report.

input products at fair prices so that they can themselves grow in global markets. In this spirit, the Commission continues to investigate large industrial mergers for their impact on competition and thanked Parliament for its strong encouragement to do so.

As national competition authorities take 85% of decisions applying EU antitrust rules, it proved imperative to boost their effectiveness as enforcers. In December 2018, Parliament and Council signed a Directive requiring Member States to give national competition agencies effective investigative powers and enforcement tools to protect competition on their territories, as well as the possibility to impose deterrent fines for anticompetitive behaviour and coordinate their leniency programmes. The Commission assured the Parliament that it would carefully check that Member States implement the Directive completely and effectively. In response to a call from Parliament, the Commission also stated that interim measures could be a key tool for competition authorities to ensure that competition is not harmed while an investigation is ongoing. With a view to enabling competition authorities to deal more effectively with developments in fast-moving markets, the Commission committed to undertake an analysis of whether there are means to simplify the adoption of interim measures within the European Competition Network within two years from the date of transposition of the new Directive. The Commission agreed to present the results to Parliament and Council.

The Commission recognised the importance that Parliament and Council attach to effective competition throughout the food chain. In this spirit, in its recent decisions, such as the Bayer/Monsanto merger in the agro-chemical sector, the merger between US-based chemical companies Dow and DuPont, and ChemChina's acquisition of Syngenta, the Commission applied an approach requiring substantial divestments of assets as a condition for clearing the transactions. The Commission continued to investigate AB InBev concerning its possible restrictions of parallel imports of its beers into Belgium. The Commission also published the Study on Producer Organisations and their activities in the olive oil, beef and veal and arable crops sectors, which was commissioned in order to understand better the challenges of farmers to set up producer organisations that can help them improve their position in the supply chain.

In 2018, Commissioner Vestager and DG Competition also contributed, from the perspective of competition policy, to the debate on the Union's next multi-annual financial framework. The Commissioner attended the Competitiveness Council in March to explain how State aid rules can accommodate the growth of start-ups and midcaps, in view of the on-going discussions on the next multi-annual financial framework. At the end of 2018, Parliament and Council endorsed the proposed amendment to the Council Enabling Regulation 2015/1588 to exempt further categories of State aid from the obligation to notify aid to the Commission.

The institutions also discussed the need to boost competition enforcement further under the next Union's multi-annual financial framework. In December, Parliament's Economic and Monetary Affairs Committee endorsed the competition aspects of the Single Market Programme. The Committee agreed that the Commission should have stable finances to invest in IT equipment to deal effectively with competition cases, to support cooperation networks with national and international competition agencies and to boost communication efforts to secure compliance with European competition rules throughout the EU.

Representatives of DG Competition also exchanged views with the Economic and Social Committee. The Committee endorsed the main strands of the Commission's work in competition enforcement. The Committee also gave full support to the Council Enabling Regulation in the field of State aid.

*The United Kingdom's notification under Article 50 TEU*

Following the Article 50 TEU notification by the United Kingdom, the Commission started preparing the withdrawal of the United Kingdom from the European Union. Directorate-General for Competition takes part in the preparation of this withdrawal, for what concerns the instruments in its portfolio (mergers, antitrust and State aid). Among other things, the Directorate-General for Competition supported the Commission's Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU in the negotiations on the withdrawal agreement.