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

**Report on Competition Policy 2016**

{SWD(2017) 175 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 2016**

### **1. Introduction**

Competition policy is based on legal and economic principles, and it is often associated with those two very important aspects. But this is just a part of what competition policy is about: competition policy has a direct impact on people's lives, and one of its key features is promoting open markets so that everyone – businesses and citizens – can get a fair share of the benefits of growth.

In his 2016 State of the Union speech, the President of the European Commission Jean-Claude Juncker recalled that *"(a) fair playing field also means that in Europe, consumers are protected against cartels and abuses by powerful companies. (...) The Commission watches over this fairness. This is the social side of competition law. And this is what Europe stands for"*<sup>1</sup>. Competition enforcement sends the message that everyone, however rich or powerful, has to play by the rules.

Competition policy cannot shape a fairer economy on its own, but it can make an important difference: enforcing competition law ensures that there is a voice for the consumers. Competition policy contributes towards a society that gives people choice, stimulates innovation, prevents abuses by dominant players, and drives companies to make the most of scarce resources thus contributing to addressing global challenges like climate change.

In addition, all decisions taken by Europe's competition enforcers – the Commission and national competition authorities – affirm that the EU is a community based on the rule of law. They also demonstrate to civil society that the system can work for the common good and deliver concrete benefits to citizens.

Commission's competition policy actions in 2016 focused on a wide range of policy areas, helping make markets work more fairly for everyone. At the same time, competition policy continued supporting the Commission's efforts to deliver on key political priorities, in particular a connected Digital Single Market, a deeper and fairer internal market, and an integrated and climate-friendly Energy Union.

The globalised economy also requires a global competition culture. This is why the Commission is strongly engaging with other EU institutions, international organisations and competition enforcers all over the world. Working together helps to multiply and spread the benefits of fair competition, in Europe and worldwide.

### **2. Ensuring a true level playing field for all: how State aid control helps tackle the challenge**

One of the key duties of the Commission, and in particular of the Commissioner for Competition, is to make sure that EU rules apply in a fair manner to any company that does business in the EU's single market - regardless of size, sector or nationality. This is the only

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<sup>1</sup> State of the Union 2016, available at [http://ec.europa.eu/priorities/state-union-2016\\_en](http://ec.europa.eu/priorities/state-union-2016_en)

way to ensure a true level playing field and it is the reason why the Commission has been enforcing State aid rules over the past decades.

### *Taking actions against selective tax advantages*

This approach applies to fiscal aid too: if a few selected companies can avoid tax, it makes it hard for companies that do pay their share of taxes to compete on equal terms. Giving a specific tax treatment to a particular company gives that company a benefit comparable to receiving cash. For that reason, the State aid rules apply to tax exemptions just as much as to any other type of aid. The Commission has been very active in tackling illegal State aid granted by means of tax rulings<sup>2</sup>. In August 2016, the Commission concluded that Ireland granted undue tax benefits, illegal under EU State aid rules, to Apple<sup>3</sup>.

#### **How tax rulings can involve State aid: The Apple decision**

The Commission found that two tax rulings issued by Ireland to Apple substantially and artificially lowered the tax paid by Apple in Ireland since 1991. The rulings endorsed a method to establish the taxable profits for two Irish incorporated companies of the Apple group (Apple Sales International and Apple Operations Europe) in Ireland, which did not correspond to economic reality: almost all profit from sales recorded by the two companies were internally attributed outside Ireland to a "head office" that existed only on paper since it had no physical presence and no employees anywhere in the world, and that could never have generated those profits. As a result of the profit attribution method endorsed in the tax rulings, Apple paid substantially less tax than other businesses in Ireland over its trading profits: this selective treatment allowed Apple to pay an effective corporate tax rate of 1 per cent on its European profits in 2003 down to 0.005 per cent in 2014.

The selective tax treatment of Apple in Ireland is illegal under EU state aid rules, because it gives Apple a significant advantage over companies that are subject to the regular national taxation rules. The Commission can order recovery of illegal state aid for a ten-year period preceding the Commission's first request for information in 2013. Ireland must now recover the unpaid taxes in Ireland from Apple for the years 2003 to 2014 of up to EUR 13 billion, plus interest.

As a matter of principle, EU State aid rules require that incompatible State aid is recovered in order to remove the distortion of competition created by the aid. There are no fines under EU State aid rules and recovery does not penalise the company in question. It simply restores equal treatment with other companies. Furthermore, all Commission decisions are subject to scrutiny by the EU Courts. If a Member State decides to appeal a Commission decision, it must still recover the illegal State aid unless it requests and successfully obtains interim measures ordering suspension of recovery from the EU Court. To fulfil its recovery obligation pending the outcome of the EC Court procedures, the Member State may, for example, place the recovered amount in an escrow account.

In September, the Commission also opened an in-depth investigation into Luxembourg's tax treatment of the GDF Suez group (now Engie)<sup>4</sup>. The Commission has concerns that several

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<sup>2</sup> See Case SA.38374 *Alleged aid to Starbucks*, Commission decision of 21 October 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38374](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38374); Case SA.38375 *Alleged aid to FFT- Luxembourg*, Commission decision of 21 October 2015, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38375](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375); Case SA.37667 *Excess Profit exemption in Belgium*, Commission decision of 11 January 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37667](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37667)

<sup>3</sup> Case SA.38373 *Alleged aid to Apple*, Commission decision of 30 August 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38373](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38373)

<sup>4</sup> Case SA.44888 *Potential aid to GDF Suez*, Commission decision to initiate the formal investigation procedure of 19 September 2016, 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)

tax rulings issued by Luxembourg may have given GDF Suez an unfair advantage over other companies, in breach of EU State aid rules<sup>5</sup>. The Commission also pursued the investigation into tax rulings granted by Luxembourg to McDonald's<sup>6</sup>, and the investigation into a transfer pricing arrangement granted by Luxembourg to Amazon<sup>7</sup>.

To effectively complement its enforcement activities, the Commission has also proposed a coordinated EU wide response to corporate tax avoidance, following the global standards developed by the OECD in autumn 2015. To that effect, in January the Commission adopted an ambitious Anti-Tax Avoidance Package<sup>8</sup>, to help Member States take strong and coordinated action against tax avoidance and ensure that companies pay taxes wherever they make their profits in the EU.

In addition, in April the Commission adopted a proposal for a Directive which imposes on EU and non-EU multinational groups the publication of country-by-country reporting on the profit and tax paid as well as other information<sup>9</sup>. This type of reports will enable citizens to assess the tax strategies and the contribution to welfare by multinationals, leading the way towards greater corporate tax transparency.

#### *Increased transparency and legal certainty with the completion of the State Aid Modernisation initiative*

Transparency is important because it promotes the good use of taxpayers' money, and it has been a key pillar also of the State Aid Modernisation initiative, launched in 2012 in order to provide legal certainty and cut red tape for public authorities and companies<sup>10</sup>. A way to promote transparency is giving market participants relevant information about State aid measures granted by the Member States.

According to the new rules, granting authorities at all levels are required to provide information for each individual aid award exceeding EUR 500,000. As of July 2016 and starting from the date of the grant, the authorities have six months to publish, in a searchable database, information on the identity of the individual beneficiaries and on the received awards<sup>11</sup>. Transparency goes hand-in-hand with the simplified application of State aid rules that makes it easier for Member States to grant aid measures without the need to notify them to the Commission in advance.

To help public authorities and companies identify when public spending falls within, and outside, the scope of EU State aid control, in May the Commission published the Notice on the notion of aid as one of the last building blocks of its State Aid Modernisation initiative<sup>12</sup>.

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<sup>5</sup> For additional information, please see the Staff Working Document accompanying this Report.

<sup>6</sup> Case SA.38945 *Alleged aid to Mc Donald's – Luxembourg*, 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)

<sup>7</sup> Case SA.38944 *Alleged aid to Amazon*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38944](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944)

<sup>8</sup> See [http://ec.europa.eu/taxation\\_customs/business/company-tax/anti-tax-avoidance-package\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en)

<sup>9</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, COM/2016/0198 final, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0198>

<sup>10</sup> See [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html)

<sup>11</sup> The list of beneficiaries and other details about aid awards can be found at: <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

<sup>12</sup> *Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union*, OJ C 262, 19.7.2016, p. 1–50, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC)

The Notice gives clear guidance on all aspects of the definition of State aid. It is particularly important to facilitate public investment, as it helps Member States and companies design public funding in ways which do not risk distorting the level playing field in the Single Market or crowding out private investment. This will help maximise the effect of investments on economic growth and jobs, in line with the Commission's Investment Plan for Europe<sup>13</sup>.

### **3. Boosting competition and innovation across the Digital Single Market**

The market for digital services has quickly become one of the areas that matter most for European consumers. Digital technology can provide low prices, wide choice, rapid innovation, but whether consumers actually get those benefits depends on how the market works. The aim of competition policy is to ensure that consumers are treated fairly and that powerful businesses are prevented from striking deals that raise prices, or suppress innovation, or deny people the freedom to choose the products they want.

In this way the Digital Single Market is about much more than just making the economy more efficient. It is a way to give everyone a fair chance to reap the benefits of technological development. And it is a way to put consumers in control.

E-commerce is a case in point: the majority of adults in the EU have ordered consumer goods or services online in 2015, with the figure rising in some Member States to more than eight in ten people. E-commerce has become an important driver of price transparency and price competition, increasing consumers' choice and their ability to find the best deals, thus spurring competition and innovation. While it also creates new opportunities for businesses, dealing with a fast changing e-commerce marketplace may not be always easy. All companies active online, such as retailers and distributors but also manufacturers as well as content creators, are now faced with novel and significant challenges. The e-commerce sector inquiry launched by the Commission in 2015, as part of its Digital Single Market Strategy, contributes to a better understanding of those challenges and opportunities<sup>14</sup>.

#### **The e-commerce sector inquiry: First results and follow-up**

In September 2016, the Commission published the initial findings of the sector inquiry. During the inquiry the Commission gathered evidence from nearly 1,800 companies operating in e-commerce of consumer goods and digital content, and analysed around 8,000 distribution contracts. The Preliminary Report confirms the growing significance of e-commerce but also identifies certain business practices that may limit this online competition, in particular concerning online sales of consumer goods and copyright licensing agreements. The Commission may open case specific investigations on business practices that may raise competition concerns. The Preliminary Report was subject to a public consultation which ended on 18 November 2016.

In March, the Commission published its initial findings on geo-blocking, which found that the practice is widespread in e-commerce throughout the EU, especially for digital content. Almost 60% of responding digital content providers has contractually agreed with right holders to geo-block. If geo-blocking is the result of agreements between suppliers and distributors, it may restrict competition in the Single Market in breach of EU antitrust rules. Like any competition enforcement activity, investigations regarding geo-blocking require legal and economic assessment, which also includes an analysis of potential justifications for restrictions that have been identified.

Most geo-blocking by retailers is based on unilateral business decisions not to sell cross-border, i.e. independently from agreements with or commercial pressure of any supplier, and falls outside the scope of the EU competition rules. In the framework of the Digital Single

<sup>13</sup> See [https://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan\\_en](https://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan_en)

<sup>14</sup> See [http://ec.europa.eu/competition/antitrust/sector\\_inquiries\\_e\\_commerce.html](http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html)

Market Strategy, in May 2016 the Commission also adopted a proposal for a Regulation aiming at addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment, identifying those situations where different treatment of customers due to their location cannot be in any case justified<sup>15</sup>.

### *Preserving innovation when faced with online dominant players*

Certain business practices may limit consumer choice, but there is an even bigger problem when new products are prevented from reaching the market. Antitrust enforcement is essential to ensure that dominant companies do not deny others a chance to come up with the next generation of innovative ideas.

Search engines have a key role in guiding consumers across the digital environment, and the Commission considers this market as one of its enforcement priorities. In July, two Statements of Objections were sent to Google and its parent company, Alphabet<sup>16</sup>. The Commission reinforced, in a supplementary Statement of Objections that follows the one issued in the same case in April 2015, its preliminary conclusion that Google has abused its dominant position by systematically favouring its comparison shopping service in its search result pages. The Commission is concerned that users do not necessarily see the most relevant results in response to queries, which would be to the detriment of consumers and innovation in the market. By sending a supplementary Statement of Objections, the Commission reinforced its preliminary conclusion whilst at the same time protecting Google's rights of defence by giving it an opportunity to respond formally to the additional evidence. On-going investigation by the Commission is always without prejudice to the final decision to be taken by the Commission in the case.

Separately, the Commission also sent a Statement of Objections to Google on restrictions that the company has placed on the ability of certain third party websites to display search advertisements from Google's competitors<sup>17</sup>. Google places search ads directly on the Google search website but also as an intermediary on third party websites, such as online retailers, telecoms operators and newspapers, through its "AdSense for Search" platform. The Commission's preliminary view is that these practices have enabled Google to prevent existing and potential competitors, including other search providers and online advertising platforms, from entering and growing in this commercially important area.

Smartphones and tablets account for more than half of global internet traffic, and are expected to account for even more in the future. A competitive mobile internet sector is increasingly important for consumers and businesses in Europe and the Commission has been extremely vigilant to promote fair and vibrant competition in this area.

In April, the Commission sent a Statement of Objections informing Google of its preliminary view that the company has, in breach of EU antitrust rules, abused its dominant position

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<sup>15</sup> Proposal for a Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, COM/2016/0289 final - 2016/0152 (COD), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0289>

<sup>16</sup> Case AT.39740 *Google search*, see IP/16/2532 of 14 July 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-2532\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2532_en.htm)

<sup>17</sup> Case AT.40411 *Google Search (AdSense)*, see IP/16/2532 of 14 July 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-2532\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2532_en.htm)

through restrictive terms in agreement with Android device manufacturers and mobile network operators<sup>18</sup>.

The Commission's preliminary findings indicate that, as a consequence of Google's behaviour, rival search engines, mobile operating systems and web browsers may have not been able to compete on their merits, but rather been artificially excluded from certain business opportunities. At the same time, consumers may have been denied a wider choice of mobile apps, online services and innovative platforms, in breach of EU antitrust rules.

The Commission has also continued pursuing the antitrust investigation opened in 2015 against Amazon, the biggest e-book distributor in Europe<sup>19</sup>. The Commission has concerns that Amazon's arrangements with publishers may make it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services.

#### *Towards a borderless market for digital content: the pay-tv case*

A true Digital Single Market means that EU consumers should be able to watch the pay-TV channels of their choice regardless of where they live or travel in the EU. The Commission is looking at whether the licensing agreements between six major EU film studios and Sky UK, preventing consumers in other EU countries to access Sky's UK and Irish pay-TV services, may be in breach of EU competition rules<sup>20</sup>.

In April, Paramount offered commitments to address the Commission's concerns regarding certain clauses in film licensing contracts for pay-TV between Paramount and Sky UK. The Commission then consulted market participants to verify the appropriateness of the proposed commitments and, in the light of the results of this market test, considered that the commitments, as clarified by Paramount, addressed its concerns. In July, the Commission adopted a decision to make the commitments offered by Paramount legally binding under EU antitrust rules<sup>21</sup>. The Commission's investigation continues regarding the conduct of Disney, NBCUniversal, Sony, Twentieth Century Fox, Warner Bros and Sky.

#### *An open and competitive telecoms framework, to the benefit of European consumers*

Consumers would not be able to enjoy new digital service without a good, affordable internet connection. That means that affordable mobile networks are essential, and so is competition: competition keeps prices down, and drives mobile operators to invest in better networks. To promote a genuine Digital Single Market, the Commission cannot leave any room for anticompetitive agreements or mergers that harm competition, and raise prices for consumers<sup>22</sup>.

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<sup>18</sup> Case AT.40099 *Google Android*, see IP/16/1492 of 20 April 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-1492\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1492_en.htm)

<sup>19</sup> Case AT.40153 *E-book MFNs and related matters*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40153](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40153)

<sup>20</sup> Case AT.40023 *Cross-border access to pay-TV content*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40023](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023)

<sup>21</sup> See IP/16/2645, available at [http://europa.eu/rapid/press-release\\_IP-16-2645\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2645_en.htm)

<sup>22</sup> See Case M.7612 *Hutchison 3G UK / Telefónica UK*, Commission decision of 11 May 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7612](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7612) and Case M.7758 *Hutchison 3G Italy / Wind / JV*, Commission decision of 1 September 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7758](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7758)

## **Two important merger control decisions in the telecoms sector**

Conditions today vary significantly from one national telecoms market to another. There is no "one size fits all", and the Commission always takes the different specificities into account in its analysis.

Following an in-depth investigation, in May the Commission blocked under the EU Merger Regulation the proposed acquisition of Telefónica UK's "O2" by Hutchison 3G UK's "Three", that would have created a new market leader in the mobile market in the United Kingdom. The Commission had strong concerns that the significantly reduced competition in the market would have resulted in higher prices and less choice for consumers in the United Kingdom. The takeover would also likely have hampered innovation and the development of network infrastructure in the United Kingdom, which is a serious concern especially for fast moving markets. The remedies proposed by Hutchison failed to adequately address the concerns raised by the takeover.

In September, the Commission approved under the EU Merger Regulation a proposed telecommunications joint venture between Hutchison and VimpelCom in Italy, subject to conditions. Following an in-depth review, the Commission concluded that the structural remedies offered by Hutchison and VimpelCom fully addressed the Commission's competition concerns. The parties will ensure the market entry of French telecom operator Iliad as a new mobile network operator in Italy. This means that the two operators can grow and reap the benefits of combining their assets, whilst Italian mobile customers will continue to profit from innovative mobile services at fair prices and on high quality networks. The case shows that telecom companies in Europe can grow both within the same country and cross-border, provided effective competition is preserved.

In October, the Commission opened an investigation into a network sharing agreement between two Czech operators of mobile telephony, O2 CZ/CETIN and T-Mobile CZ<sup>23</sup>. O2 CZ and T-Mobile CZ are both major telecoms operators in the Czech Republic, and together they serve approximately three quarters of the Czech retail mobile telecommunications market. The Commission is investigating in particular whether the cooperation between O2 CZ/CETIN and T-Mobile CZ risks slowing down quality improvements in existing infrastructure, and delaying or hindering the deployment of new technologies and services, in particular in densely populated areas. The Commission will also investigate the impact of potential efficiencies that could be brought about by the network sharing. Based on this assessment, the Commission will establish whether the cooperation violates Article 101 TFEU that prohibits anticompetitive business practices.

To ensure a pro-competitive telecoms framework, in September 2016 the Commission presented a proposal for a Directive establishing the "European Electronic Communications Code", and a proposal for a Regulation establishing the Body of European Regulators for Electronic Communications (BEREC).

### *Promoting inclusive access to high speed broadband networks*

In order to seize all the opportunities of the digital work, Europe also needs a first-class telecoms infrastructure. A key priority of the Digital Single Market strategy<sup>24</sup> is ensuring that EU citizens and companies, in particular small and medium sized ones, can access high speed broadband networks. Public funding is often needed to attain this objective while ensuring inclusion, particularly as concerns rural areas that are less attractive for private investors.

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<sup>23</sup> Case AT.40305 *Network sharing between O2 CZ / CETIN and T-Mobile CZ in the Czech Republic*, see IP/16/3539 of 25 October 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-3539\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3539_en.htm)

<sup>24</sup> In its Communication "Connectivity for a Competitive Digital Single Market - Towards a European Gigabit" (COM/2016/587), the Commission confirmed the importance of Internet connectivity for the Digital Single Market and, building on the Digital Agenda for Europe goals, set out a vision for a European Gigabit society operationalised through three strategic objectives for 2025.

The Commission approved under EU State aid rules the UK National Broadband Scheme for 2016-2020<sup>25</sup>, Italy's ultra-broadband plan for 2016-2022<sup>26</sup> and the French broadband scheme "Plan Très Haut Débit"<sup>27</sup>. Each scheme was also accompanied by a detailed evaluation plan to assess its impact, the results of which will be submitted to the Commission.

The Commission's State aid assessment is based on the 2013 Broadband Guidelines<sup>28</sup>. The goal is to avoid that public funding takes the place of private investment, and to promote effective competition by ensuring that other service providers can use the publicly funded infrastructure on a non-discriminatory basis.

#### **4. Delivering a Single Market that empowers EU citizens and businesses**

By creating a deeper and fairer Single Market, competition policy has a very concrete impact on people's life: EU citizens and business deal with the market every single day. Building a society that treats everyone fairly means that the market should work in a way that empowers consumers and ensures that their voices are heard. Competition enforcement steps in when, for instance because of a cartel, consumers pay more than they should or have troubles finding the product they look for. Merger control is also essential to ensure that mergers do not harm the competitive structure of the markets and thus consumers and the wider economy.

In order for the Single Market to reach its full potential, the Commission has recently stepped up its efforts on the effective enforcement of European rules across all policy areas. In December 2016 the Commission adopted a Communication on "EU law: Better results through better application"<sup>29</sup> to make the application, implementation and enforcement of EU law more strategic and more focused, for the benefit of citizens, consumers and businesses.

##### *Achieving an efficient and sustainable transport sector across the EU*

The transport sector represents a key sector for European households: transport-related goods and services are the second biggest household budget item after house-related expenditure<sup>30</sup>. Competitive prices for transport services are directly important for millions of Europeans.

In October, the Commission sent a Statement of Objections to Brussels Airlines and TAP Portugal on their codeshare cooperation on passenger services between Brussels and Lisbon<sup>31</sup>. A codeshare agreement is a commercial agreement whereby the airline operating a flight allows another airline to market the flight and issue tickets for it, as if it were operating the flight itself. Codeshare partners also agree on how they will compensate each other for the seats they sell on their partner's flights. Codesharing can bring benefits for passengers in terms of wider network coverage and better connections. However, the Commission has concerns that in this particular case Brussels Airlines and TAP Portugal may have used their

<sup>25</sup> Case SA.40720 *National Broadband Scheme for the UK for 2016-2020*, Commission decision of 26 May 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_40720](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40720)

<sup>26</sup> Case SA.41647 *Italy - Strategia Banda Ultra Larga*, Commission decision of 30 June 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_41647](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41647)

<sup>27</sup> Case SA.37183 *Plan France Très Haut Débit*, Commission decision of 7 November 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37183](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37183)

<sup>28</sup> Communication from the Commission, *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ 2013 C 25, 26.1.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:en:PDF>

<sup>29</sup> See [https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/applying-eu-law\\_en](https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/applying-eu-law_en)

<sup>30</sup> Source: Eurostat. See [http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Household\\_consumption\\_expenditure\\_-\\_national\\_accounts](http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Household_consumption_expenditure_-_national_accounts)

<sup>31</sup> Case AT.39860 *Brussels Airlines/TAP Air Portugal*, see IP/16/3563 of 27 October 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-3563\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3563_en.htm)

codesharing to restrict competition and harm passengers' interests on the Brussels to Lisbon route.

The Commission also opened in November an investigation to assess whether the Czech railway incumbent České dráhy, a.s. (ČD) charged prices below costs with the aim of shutting out competition in rail passenger transport services, in breach of EU antitrust rules<sup>32</sup>. Competition is essential to drive prices down and service quality up, especially in previously monopolised markets. The Commission will take a close look at České dráhy's business practices to make sure it does not push competitors out of the market to the detriment of passengers. The opening of proceedings does not prejudge the outcome of the investigation.

Railway incumbents have often been subject to competition scrutiny. In April, the Commission relieved Deutsche Bahn ahead of schedule from commitments made binding in December 2013, as several competitors have now entered the German railway traction current market, thereby addressing the Commission's competition concerns. The growth in the level of competition in the German railway power supply market confirms that the commitments were successful at remedying Commission's competition concerns. This is a good example of how commitment decisions can quickly and effectively open up markets, ensure a level playing field and lead to more competition and lower prices for consumers and businesses.

Transport is also an important area for growth, due to its specific function in servicing the other sectors of the economy. Road haulage, in particular, is an essential part of the European Single Market: there are over 30 million trucks on European roads, which account for around three quarters of inland transport of goods in Europe. The competitiveness of the sector is contingent on the prices of the vehicles used by transporters.

In July, the Commission found that MAN, Volvo/Renault, Daimler, Iveco and DAF broke EU antitrust rules, and imposed a record fine of EUR 2.9 billion<sup>33</sup>.

#### **A landmark decision in the road transport sector: The trucks cartel case**

The Commission's decision relates specifically to the market for the manufacturing of medium (weighing between 6 to 16 tons) and heavy trucks (weighing over 16 tons). MAN, Volvo/Renault, Daimler, Iveco and DAF together account for around 9 of every 10 medium and heavy trucks produced in Europe.

Instead of competing with each other, the companies colluded on pricing for over 14 years, from 1997 to 2011, until the Commission carried out unannounced inspections of the firms. Over the years the discussions between the companies covered the same topics, namely the respective "gross list" price increases, the timing for the introduction of new emissions technologies and the passing on to customers of the costs for the emissions technologies. All companies acknowledged their involvement and agreed to settle the case.

Proceedings were also opened with regard to Scania, which was not part of the settlement decision. Therefore, for this company the investigation continues under the standard (non-settlement) cartel procedure.

This decision is also important to stress the importance of a functioning competitive market in fostering the development and dissemination of cost-efficient low-emission technologies, which is one of the elements of the European Strategy for low-emission mobility.

<sup>32</sup> See IP/16/3656 of 10 November 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-3656\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3656_en.htm)

<sup>33</sup> Case AT.39824 *Trucks*, Commission decision of 19 July 2016, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39824](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39824).

### *Protecting competition in concentrated markets*

The role of Commission's merger control is very important to protect fair competition across all sectors and industries, but it may be even more relevant in sectors that are already relatively concentrated. The Commission needs to make sure that powerful companies do not misuse their power in a way that benefits them, but harms their customers and the rest of the economy.

For example, the Commission has been particularly vigilant in the crop protection market, to ensure that the market structures resulting from mergers do not end up negatively affecting European farmers, whose livelihood depends on access to seeds and crop protection at competitive prices. In 2016, the Commission opened two in-depth investigations into proposed mergers in this area.

The first proposed transaction concerns Dow and DuPont, two US firms, and would create the world's largest integrated crop protection and seeds company<sup>34</sup>. It would combine two competitors with leading herbicides and insecticides portfolios and with a strong track record of bringing innovative crop protection and seeds products to the market. The second proposed merger is between Syngenta of Switzerland, one of the main global seeds and crop protection companies, and ChemChina of China, which controls Adama, the largest supplier of generic crop protection products in Europe<sup>35</sup>. Their products are used for the cultivation of several of the main crops grown in Europe, including cereals, cotton, corn, fruits and vegetables, oilseed rape, soybean, sugarbeet and sunflowers. The in-depth investigations will look at whether the proposed mergers could lead to higher prices or less innovation for these products.

### *A fairer financial sector to underpin the real economy*

Financial markets provide an essential function for the European economy, and in order to support the ongoing economic recovery they need to be stable, open and competitive. Since the onset of the crisis, competition policy has been playing a key role in achieving a more fair and transparent financial sector in the EU.

In June 2016, all elements of the Interchange Fee Regulation became fully applicable<sup>36</sup>. The new rules make the costs of payments with debit or credit cards more transparent to retailers and consumers and allow them to make efficient choices. In the past, the fees charged by the banks for these card payments were largely kept in the dark even though the costs were ultimately paid by consumers. The Interchange Fee Regulation capped these fees, thus lowering costs to the benefit of millions of European consumers and retailers.

In parallel, the Commission continued its antitrust investigation into MasterCard's and Visa's inter-bank fees in relation to payments made by cardholders from non-EEA (European Economic Area) countries, which are not part of the Interchange Fee Regulation and are still a burden for European merchants<sup>37</sup>. The Commission has also continued the investigation into

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<sup>34</sup> Case M.7932 *Dow / DuPont*, 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>35</sup> Case M.7962 *Chemchina / Syngenta*, 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>36</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.L\\_.2015.123.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.L_.2015.123.01.0001.01.ENG).

<sup>37</sup> Case AT.40049 *Mastercard II*, available at

[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40049](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40049) and AT.39398 *Visa MIF*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39398](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39398).

MasterCard's rules with respect to cross-border acquiring, which limit the possibility for a merchant to benefit from better conditions offered by banks established elsewhere in the internal market.

Businesses and households need sound financial intermediaries – typically banks – to underpin investment and consumption decisions. The crisis showed that when banks in Europe have problems, the effects can reach far beyond the immediate threat to depositors and shareholders. It can severely affect a country's financial stability, and almost inevitably has spillover effects on other Member States and even beyond the EU. In this context, State aid control remained an essential tool to ensure a safer and sounder banking sector in the EU.

State aid rules are an integral part of the Banking Union, guaranteeing equal treatment between the Member States that are in the Banking Union and those that are not. The role of State aid control is to ensure that the choices made by the national government do not unduly burden the public purse or distort the level playing field in the EU. In 2016 the Commission took several decisions to help stabilise the banking sectors in various Member States<sup>38</sup>.

The Commission has also opened an in-depth investigation to assess, under the EU Merger Regulation, whether the proposed merger between Deutsche Börse AG (DB) and London Stock Exchange Group (LSE) would reduce competition in several financial market infrastructure areas<sup>39</sup>. The proposed merger would combine the activities of DB and LSE. By combining the exchanges of Germany, the United Kingdom and Italy, as well as several of the largest European clearing houses, it would create by far the largest European exchange operator.

Enhancing transparency in the area of financial derivatives has also been a Commission priority. In July, the Commission accepted the commitments offered by the International Swaps and Derivatives Association Inc. (ISDA) and information service provider Markit, concerning the licensing of intellectual property that is needed to offer trading services on the market for credit default swaps (CDS)<sup>40</sup>. A CDS is a contract designed to transfer the credit risk, or risk of default, linked to a debt obligation such as government or corporate bonds. CDS are used by investors both to hedge risks and as investments.

The Commission had market tested the draft commitments in April and the outcome was positive. In the light of the results of the market test, Markit proposed minor modifications and clarifications to the initial commitments. The final commitments address the Commission's concerns as they will make it easier to trade CDS on exchanges, while improving transparency. The Commission's decision ensures that all trading venues can benefit from fair, reasonable and non-discriminatory access to data and intellectual property owned by ISDA and Markit to offer all-to-all trading of credit derivatives. This increases market stability and also translates into more choice and lower transaction costs for investors. The commitments thereby contribute to the aim of the MifID 2<sup>41</sup> and of the Banking Union<sup>42</sup>.

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<sup>38</sup> For additional information, please see the Annex of the Staff Working Document accompanying this Report.

<sup>39</sup> Case M.7995 *Deutsche Börse / London Stock Exchange Group*, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=2\\_M\\_7995](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=2_M_7995)

<sup>40</sup> Case AT.39745 *CDS - Information market*, Commission decision of 20 July 2016, available at [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_39745](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_39745)

<sup>41</sup> Markets in Financial Instruments Directive. See [http://ec.europa.eu/finance/securities/isd/mifid2/index\\_en.htm](http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm)

<sup>42</sup> For additional information on the Banking Union, see [http://ec.europa.eu/finance/general-policy/banking-union/index\\_en.htm](http://ec.europa.eu/finance/general-policy/banking-union/index_en.htm).

Furthermore, in December the Commission fined Crédit Agricole, HSBC and JPMorgan Chase a total of EUR 485 million, for participating in a cartel in euro interest rate derivatives<sup>43</sup>. Barclays, Deutsche Bank, RBS and Société Générale reached a settlement with the Commission on the same cartel case in December 2013. Given that Crédit Agricole, HSBC and JPMorgan Chase chose not to settle, the investigation continued under the Commission's standard cartel procedure. This decision marks the end of the first of several cartels detected and punished in the financial services sector.

### *Enforcing competition rules in the world of sport*

The scope of competition law has of course some limitations, but when competition enforcement is the right tool, it is important that the Commission takes timely action to restore fairness in a specific area of the economy. Some sectors have a long tradition of competition policy decisions, but this may not always be the case for other sectors. Sport is a recent example.

In September 2016, the Commission informed the International Skating Union (ISU) of its preliminary view that the ISU rules under which athletes face severe penalties for participation in unauthorised speed skating events may be in breach of EU antitrust rules<sup>44</sup>.

#### **Competition law and sport federations: The International Skating Union investigation**

The ISU is the sole body recognised by the International Olympic Committee to administer the sports of figure skating and speed skating on ice. Its members are national ice-skating associations. Sporting rules are subject to EU antitrust rules when the body setting the rules or the companies and persons affected by the rules are engaged in an economic activity.

International sports governing bodies play a unique role in setting the rules of the game and ensuring uniform standards of conduct. According to the rules established by the ISU, if an athlete participates in an unauthorised event, the athlete faces a range of penalties leading potentially to a life-time ban from all key international speed skating competitions. The Commission has concerns that the penalties set out in the ISU rules restrict the commercial freedom of athletes and prevent new organisers of international speed skating events from entering the market because they are unable to attract top athletes.

The Commission has decided to pursue this investigation because it raises specific allegations of breaches of competition law at the international level, rather than wider issues related to the governance of sport.

Besides, State aid control plays a role in preserving the level playing field in sports. Following three separate in-depth investigations, in July 2016 the Commission concluded that public support measures granted by Spain to seven professional football clubs gave those clubs an unfair advantage over other clubs, in breach of EU State aid rules<sup>45</sup>. EU State aid rules apply to public interventions in the market to ensure that they do not distort competition by selectively favouring one market participant over another. Professional football is a commercial activity, and public money in this area must comply with fair competition rules.

<sup>43</sup> Case AT.39914 *Euro Interest Rate Derivatives*, available at

[http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=1\\_39914](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=1_39914)

<sup>44</sup> Case AT.40208 *International Skating Union's Eligibility rules*, see IP/16/3201 of 27 September 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-3201\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3201_en.htm)

<sup>45</sup> Cases [SA.29769](#) *Aid to certain Spanish football clubs* (tax privileges for Real Madrid CF, FC Barcelona, Athletic Club Bilbao, Club Atlético Osasuna), [SA.33754](#) *Aid to Real Madrid*, and [SA.36387](#) *Aid to Valencia football clubs* (Valencia, Hercules and Elche), see IP/16/2401 of 4 July 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-2401\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2401_en.htm)

This is especially important for the majority of professional clubs which have to operate without subsidies.

## 5. Unlocking the potential of the European Energy Union and Circular Economy

Consumers are active and central players on the energy markets of the future. Pushing for a truly competitive European energy market has the potential to impact the energy bills of European businesses and households: building an integrated and climate-friendly European Energy Union, free from technical or regulatory barriers, will give consumers across the EU a better choice of supply and the best energy deals.

In November, the Commission presented a package of measures to keep the EU energy sector competitive and boost the clean energy transition<sup>46</sup>. The "Clean Energy for All Europeans" package has three main goals: putting energy efficiency first, achieving global leadership in renewable energies, and providing a fair deal for consumers. The legislative proposals cover energy efficiency, renewable energy, the design of the electricity market, security of electricity supply and governance rules for the Energy Union. The package also contains a number of measures aimed at protecting the most vulnerable consumers.

Along with the package, the Commission published the final report of its State aid sector inquiry into national measures to ensure that adequate capacity to produce electricity is available at all times (so-called "capacity mechanisms")<sup>47</sup>.

### Helping design better aid measures to secure electricity supplies

The purpose of the State aid sector inquiry on capacity mechanisms, which covered over 120 market participants in eleven Member States, was to gather information on capacity mechanisms to examine, in particular, whether they ensure sufficient electricity supply without distorting competition or trade in the EU Single Market.

Capacity mechanisms are very important as they can help reduce the risk of black-outs for European consumers and companies. At the same time, unnecessary and badly designed capacity mechanisms can distort competition, hamper necessary market reforms, hinder electricity flows across borders, lead to consumers overpaying for electricity and risk contradicting decarbonisation objectives. The final report concludes that Member States need to better assess the need for such mechanisms, and provides indications on how to deliver on security of supply while minimising competition distortions.

### *Working for a pro-competitive oil and gas sector in the EU*

The exploration and production of oil and gas are key sectors in ensuring competitive energy prices for consumers and companies across the EU. They are also particularly important for the efficient use of available gas resources within the EU, a key element of the Energy Union strategy in terms of ensuring security of supply.

In this area, the Commission opened an in-depth investigation into the acquisition of oilfield service provider Baker Hughes by Halliburton in January<sup>48</sup>. In May, the parties abandoned the proposed merger, following competition concerns against that transaction expressed by a number of competition agencies across the world, including the Commission. Based on the Commission's analysis, the proposed transaction raised competition concerns on a very large number of markets related to oilfield services provided to oil and gas exploration and

<sup>46</sup> See IP/16/4009 of 30 November 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-4009\\_en.htm](http://europa.eu/rapid/press-release_IP-16-4009_en.htm)

<sup>47</sup> See [http://ec.europa.eu/competition/sectors/energy/state\\_aid\\_to\\_secure\\_electricity\\_supply\\_en.html#2](http://ec.europa.eu/competition/sectors/energy/state_aid_to_secure_electricity_supply_en.html#2)

<sup>48</sup> Case M.7477 *Halliburton / Baker Hughes*, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7477](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7477)

production companies in the European Economic Area (EEA). The Commission's investigation was carried out in close cooperation with a number of competition agencies across the world such as the US Department of Justice, the Brazilian competition authority (CADE) and the Australian Competition and Consumer Commission.

The Commission also continued its investigations into the potential abuse by Gazprom of its dominant position in the supply of natural gas in Central and Eastern Europe<sup>49</sup>, and the possible foreclosure of gas markets in Bulgaria by the Bulgarian incumbent BEH<sup>50</sup>. The purpose of antitrust enforcement in this sector is to achieve more competitive gas markets in Europe and facilitate market integration as well as the exchanges of energy between Member States.

#### *Supporting recycling and renewable energy sources*

The transition towards a circular economy is a key block of the strategy for achieving a more sustainable Europe. "Closing the loop" of product lifecycles through greater recycling and re-use brings benefits for both the environment and the economy. Effective competition in the waste management sector contributes to tackling the challenge by making recycling affordable for consumers.

In September, the Commission fined Altstoff Recycling Austria (ARA) EUR 6 million for blocking competitors from entering the Austrian market for management of household packaging waste from 2008 to 2012, in breach of Article 102 TFEU which prohibits the abuse of a dominant market position<sup>51</sup>.

#### **Antitrust enforcement in the waste management sector**

In Austria, producers of goods are obliged to take back packaging waste that results from the use of their products. They may transfer this task to a company that takes care of the collection and recycling for them against a licence fee paid by goods' producers. The Commission found that competitors who wanted to enter or expand in the waste management market were dependent on receiving access to the nationwide collection infrastructure, partly controlled and partly owned by ARA. The investigation also found that between March 2008 and April 2012 ARA refused to give access to this infrastructure, so that competitors were excluded from the market and competition eliminated.

After the Commission started its investigation, Austria adopted a new waste law in September 2013 and ARA began granting access to its household waste collection infrastructure. Several competitors have entered the market since then. ARA acknowledged the infringement, ensured that the decision could benefit from administrative efficiencies, and proposed a structural remedy; the fine was therefore reduced by 30% due to ARA's cooperation with the Commission.

While the parties cooperate with the Commission in commitment decisions and cartel settlement cases, the cooperation procedure was used in the context of a non-cartel antitrust prohibition decision for the first time since the entry into force of Regulation 1/2003. Cooperation in non-cartel antitrust proceedings may help strengthen the effectiveness of the Commission's enforcement actions, and it could be applied to other cases in the future.

Boosting recycling is only part of the path towards a more sustainable Europe: investing in low-carbon and clean energy technologies is also a priority. Renewables are the energy

<sup>49</sup> Case AT.39816 *Upstream gas supplies in Central and Eastern Europe*, 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)

<sup>50</sup> Case AT.39849 *BEH gas*, 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>51</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)

sources of the future, and over the past few years almost every Member State adopted a renewable energy support scheme. In 2016, the Commission adopted under State aid rules 15 decisions on new support schemes to renewable energy producers, contributing to increase the sustainability of the EU energy sector as well as environmental protection.

## 7. Shaping a European and global competition culture

In order to make a real difference in making the economy work more fairly for everyone, competition rules have to be applied evenly for all Europeans, regardless of the Member State where they live, work or shop. This is why the Commission has been looking at whether national competition authorities have all the powers, the resources and the independence they need to effectively enforce EU competition law.

### **Stronger national competition authorities to effectively apply EU competition rules**

Enforcement of the EU competition rules is now taking place on a scale which the Commission could never have achieved on its own. Since 2004, the Commission and the national competition authorities took over 1000 enforcement decisions, with the national competition authorities being responsible for around 85% of the total. Action by a multiplicity of enforcers is a much stronger, more effective and better deterrent for companies that may be tempted to breach the EU competition rules.

Building on the Communication on Ten Years of Regulation 1/2003<sup>52</sup>, the Commission has reflected on whether the toolbox available to national competition authorities can be further improved. In 2016 the Commission received and collected feedback on these issues from a wide range of stakeholders, including businesses and consumer groups, national competition authorities, national governments and members of the European Parliament.

A public consultation held between November 2015 and February 2016 showed that approximately 75% of respondents considered that the effectiveness of national competition authorities could be further enhanced. Also, 80% of replies supported taking action at EU level to ensure that national competition authorities have the means and instruments they need<sup>53</sup>.

Furthermore, a Public Hearing was co-organised with the European Parliament on 19 April 2016 to gather additional views<sup>54</sup>. Given the overall support for empowering national competition authorities to be more effective enforcers, the Commission has started developing the way forward, in the form of a proposal for an EU legislative initiative.

### *Keeping up with globalisation – Competition cooperation across the world*

With companies increasingly operating across national borders, a growing number of merger transactions, cartels and other anti-competitive practices have an international dimension and affect markets in several countries, and often different continents. As companies go global, so must competition enforcers: therefore, finding better ways to work together is a priority for competition authorities around the world.

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<sup>52</sup> Communication of 9 July 2014 from the Commission to the European Parliament and the Council, *Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives*, COM(2014) 453, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0453>.

<sup>53</sup> Public consultation on "Empowering the national competition authorities to be more effective enforcers of the EU competition rules", available at [http://ec.europa.eu/competition/consultations/2015\\_effective\\_enforcers/index\\_en.html](http://ec.europa.eu/competition/consultations/2015_effective_enforcers/index_en.html).

<sup>54</sup> Public Hearing co-organised by the Committee on Economic and Monetary Affairs (ECON) of the European Parliament and DG Competition of the European Commission of 19 April 2016, available at <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20160419-0900-COMMITTEE-ECON>

Cooperation among competition authorities helps promote consistent outcomes, increases investigative efficiency by reducing unnecessary duplication of work, and encourages mutual understanding between agencies, while reducing costs for companies. In 2016 the Commission confirmed its commitment in this area, by actively participating in competition-related international bodies such as the Competition Committee of the OECD, the World Bank and the United Nations Conference on Trade and Development (UNCTAD). The Commission is also a leading member of the International Competition Network (ICN), the main global forum of competition agencies with 132 members. Important results of this multilateral engagement are the Merger Remedies Guide and the Cartel Working group's Catalogue on Investigative Powers, both adopted by the International Competition Network in 2016.

At bilateral level, in 2016 the Commission started Free Trade Agreements (FTAs) negotiations with Armenia, Mexico, Indonesia and Philippines, re-opened negotiations with Mercosur, and made progress in the negotiations with Japan. The Commission's efforts on FTA negotiations in the competition area focus on the inclusion of competition and State aid provisions, with the aim of promoting convergence of competition policy instruments and practices across jurisdictions, as well as protecting the global level playing field.

In June 2016, the Commission submitted to the Council a draft agreement to include provisions on the exchange of information collected in the course of competition proceedings into the existing EU-Canada Cooperation agreement. The possibility to exchange evidence would improve cooperation between the Commission and the Canadian Competition Bureau, leading to enhanced competition law enforcement. In addition, the Commissioner for Competition Margrethe Vestager agreed with Chairman Sugimoto, the Head of the Japan Fair Trade Commission, to start negotiations to upgrade also the EU-Japan cooperation agreement with provisions for the exchange of evidence.

The Commission is also actively engaged in technical cooperation with emerging economies that are developing their competition policy and enforcement regimes. In June, the Commission signed a Memorandum of Understanding (MoU) with South-Africa, which adds to the MoUs signed with all other BRICS<sup>55</sup> countries in recent years.

#### *Upholding a fruitful inter-institutional dialogue*

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

As in previous years, the Parliament adopted a resolution on the Commission's annual report on competition policy. The Commission welcomes the Parliament's support for competition policy as a cornerstone of the European project. The Commission agrees that competition empowers consumers, drives economic growth and keeps markets open for business, including SMEs. In this sense, competition policy makes markets fairer for everyone. The Commission agrees with Parliament that competition enforcement is essential to prevent abuses of economic power and to ensure that every company and entrepreneur has a fair share of the benefits of growth.

The Commission welcomes the Parliament's engagement in the fight against tax evasion and tax avoidance. In April 2016, Commissioner Vestager exchanged views with the Parliament's

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<sup>55</sup> Brazil, Russia, India, China, South Africa.

second Special Committee on Taxes. In 2016, the Commission undertook important actions in this area<sup>56</sup>. The Commission also obtained evidence on tax rulings from all Member States and is taking a systematic approach to analysing that evidence. In June 2016, the Commission published a Working Paper on State aid and tax rulings and organised a High Level Forum to give clarity to Member States on the application of the State aid rules to tax rulings.

The Parliament reiterated its request to end the State aid crisis regime for banks. The Commission takes the view that current State aid rules are needed to preserve financial stability and minimise the cost to taxpayers, and to ensure that restructured banks return to lend to companies and households, thus contributing to the completion of the Banking Union. The State aid rules also preserve a level playing field between banks that receive State aid and banks that do not. In February 2016, Commissioner Vestager participated in an open exchange of views with MEPs to explain the Commission's approach under the State aid rules.

Other recommendations from the Parliament are reflected in this Report, namely the contribution that an independent enforcement of the competition rules makes to the Commission's political priorities to deepen the Digital Single Market and the Energy Union, and to guarantee the competitiveness of the European industry in a globalised world. This Report lists the actions that the Commission took this year to safeguard competition in important sectors of the European economy. In May and August 2016, DG Competition also participated in workshops and debates in the Parliament to discuss the contribution that competition enforcement can make to improve the functioning of the food supply chain.

The Commission welcomes the Parliament's call on the Commission to further a true competition culture in the Member States. In April 2016, the Commission and the Parliament organised a hearing on the Commission's initiative to allow national competition authorities to reach their full potential as effective enforcers of the European competition rules. Commissioner Vestager participated in the hearing. As part of her structured dialogue with Parliament, Commissioner Vestager also had an exchange with the ECON committee in October 2016.

The Commission welcomes the interest of the European Economic and Social Committee and the Committee of the Regions on competition policy and is willing to engage in constructive exchanges. Commissioner Vestager participated in the debate on "European Competition Policy" at the plenary meeting of the Economic and Social Committee on 14 July 2016. In the Committee of the Regions, the Commission explained its approach to services of general economic interest in the EU.

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<sup>56</sup> For detailed information, see Chapter 2 of this Report.