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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 2020**

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## INTRODUCTION

The Report on Competition Policy 2020 and this Staff Working Document provide the first account of the competition policy developments under the Commission led by President von der Leyen<sup>1</sup>. Covering the developments in EU competition policy in 2020, it also is the 50th year the Commission submits such a report.

When the EU now faces one of its biggest crises, a robust competition policy in the EU is more important than ever. EU competition policy and enforcement preserves the EU single market, benefits consumers, businesses and society alike. It also projects competition values in the efforts to launch a pathway to recovery from the current health and economic crisis to achieve a greener, more digital and more resilient EU economy, in line with the Commission's broader agenda.

Throughout 2020, EU competition policy contributed to the Commission's efforts to respond to and overcome the health and economic crisis due to COVID-19. The Commission adjusted the State aid framework and swiftly adopted a number of State aid decisions in various sectors to help Member States alleviate the economic effects of the pandemic, while limiting negative effects on the internal market. In antitrust, the Commission provided to companies guidance and an ad hoc comfort letter, setting out the main criteria when assessing cooperation projects in essential products and services during the pandemic. In addition, the Commission closely cooperated and coordinated COVID-19 related competition issues in the European Competition Network (ECN). Finally, in the area of merger control, the Commission took measures to ensure business continuity for companies notifying transactions, while ensuring compliance with legal obligations, and continued to safeguard the implementation of the EU merger rules.

In addition, the Commission took major steps in 2020 to launch important new policy initiatives to ensure that the competition rules remain fit for purpose fully able to deal with challenges, such as structural problems in digital markets and foreign subsidies, which could distort competition in EU markets. The Commission also engaged with stakeholders to reflect how competition rules could better support the green transition and started a process to assess whether there is a need for measures to ensure EU competition law does not stand in the way of collective bargaining for self-employed in need of protection. The Commission further continued to advance on its significant policy review agenda encompassing a large number of its key block exemption regulations, guidelines and notices.

EU competition policy enforcement in 2020 targeted a wide range of economic sectors in the EU. It was above all the demonstrated flexibility of the State aid instrument that came to the forefront to support the efforts of the EU and the Member States to alleviate the consequences of the pandemic.

The present Staff Working Document is composed of two parts. The first part presents the main legislative and policy developments in 2020 across the three competition instruments: State aid, antitrust (including cartels) and mergers. In the second part, specific enforcement actions are detailed in a sectoral overview.

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<sup>1</sup> Political Guidelines for the next European Commission – A Union that strives for more – My agenda for Europe, 2019-2024 by candidate for President of the European Commission Ursula von der Leyen. See: [https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf).

## I. LEGISLATION AND POLICY DEVELOPMENTS

### 1. STATE AID CONTROL

**State aid control** is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the single market.

The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, State aid, which contributes to well-defined objectives of common interest without unduly distorting competition between undertakings and trade between Member States, may be considered compatible with the internal market (under Article 107(3) TFEU).

The objectives of the Commission's control of State aid are to ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints, that aid does not restrict competition but addresses market failures for the benefit of society as a whole. In addition to this, the Commission acts to prevent and recover State aid which is incompatible with the internal market.

The Commission enforces State aid rules to make sure that the support Member State governments grant to companies does not give them an unfair advantage in the Single Market. In 2020, State aid policy played an important role in the crisis response to stabilise the economy. The Temporary Framework adopted at the beginning of the crisis, and amended several times, set out the conditions the Commission would apply to declare aid compatible. Well-targeted public support helped counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity. To prepare the exit from the crisis towards a sustainable and resilient recovery of the EU economy with focus on green and digital transition, DG Competition together with other Commission services assisted Member States preparing their Recovery and Resilience Plans (RRPs).

However, year 2020 was not limited to crisis response and recovery. The extensive review of the State aid rules and enforcement work continued across sectors. A new policy initiative was started to consider the impact of subsidies granted by non-EU governments to companies in the EU, as these fall outside EU State aid control. To launch a debate on new tools to address this regulatory gap, the Commission adopted a White Paper on foreign subsidies<sup>2</sup> in June 2020. An extensive consultation of stakeholders was carried out in 2020.

#### 1.1 Temporary State aid Framework to mitigate the effects of the COVID-19 pandemic

The COVID-19 outbreak has had significant negative repercussions on the economy of Member States. The various containment measures adopted by Member States, such as social distancing measures, travel restrictions, quarantines and lockdowns have affected undertakings and their employees in all sectors. Well-targeted public support has been necessary to ensure that sufficient liquidity remains available in the markets, to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity during and after the COVID-19 outbreak.

On 13 March 2020, the Commission set out in its Communication on a coordinated economic

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<sup>2</sup> White Paper on levelling the playing field as regards foreign subsidies, COM(2020) 253 final, 17.6.2020.

response to the COVID-19 outbreak<sup>3</sup> the various options available to Member States outside the scope of EU State aid control and which they may put in place without the involvement of the Commission. These include measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.

The in-built flexibility of the EU State aid rules enable Member States to take swift and effective action to support citizens and undertakings, in particular SMEs, facing economic difficulties due to the COVID-19 outbreak. At the same time, they ensure that State aid is effective in reaching those companies in need and that harmful subsidy races are avoided.

Member States may design support measures in line with de minimis Regulations<sup>4</sup> or the Block Exemption Regulations<sup>5</sup> without the involvement of the Commission. In addition, on the basis of Article 107(3)(c) TFEU and as further specified in the Rescue and Restructuring State aid Guidelines<sup>6</sup>, Member States can notify to the Commission aid schemes to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak.

Furthermore, on the basis of Article 107(2)(b) TFEU Member States can also compensate undertakings that have been particularly hit by the outbreak (e.g. in the sectors of transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events for damages suffered due to and directly caused by the outbreak. Member States can notify such damage compensation measures and the Commission will assess them directly under Article 107(2)(b) TFEU<sup>7</sup>.

#### *1.1.1. The Temporary Framework: adoption, expansion and prolongation*

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<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup: Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final.

<sup>4</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1; Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013, p. 9; Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45 and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

<sup>5</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1; Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

<sup>6</sup> Communication from the Commission: Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

<sup>7</sup> Nevertheless, aid on the basis of Article 107(2)(b) TFEU must compensate for damage directly caused by the COVID-19 outbreak, such as damage directly caused by quarantine measures precluding the beneficiary from operating its economic activity. Other kind of aid addressing more generally the economic downturn from the COVID-19 outbreak is to be assessed under the different compatibility basis of Article 107(3)(b) TFEU, and therefore in principle on the basis of this Temporary Framework.

To complement the above-mentioned possibilities, on 19 March 2020, the Commission adopted a Temporary Framework to enable Member States to use the full flexibility foreseen under State aid rules to support the economy<sup>8</sup>. The Temporary Framework was initially established with an expiry date of 31 December 2020. It provides for a number of aid measures that the Commission considers compatible under Article 107(3)(b) TFEU, such as limited amount of aid, selective tax advantages and State guarantees for loans. The aim of the Temporary Framework is to allow Member States to tackle the difficulties undertakings are currently encountering whilst maintaining the integrity of the EU internal market and ensuring a level playing field.

The Commission set out in the Temporary Framework the compatibility conditions it will apply in principle to the aid granted by Member States under Article 107(3)(b) TFEU. Pursuant to that article the Commission may declare compatible with the internal market aid ‘*to remedy a serious disturbance in the economy of a Member State*’. Member States must therefore show that the measures notified to the Commission under the Temporary Framework are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions of that framework are fully respected.

The Temporary Framework includes certain requirements related to the green and digital transformation. Indeed, large undertakings that received recapitalisation aid must report on how the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

The Commission has amended the Temporary Framework several times to adapt the State aid framework to the various needs of the EU economy that arise in the context of the COVID-19 outbreak. In particular:

- On 3 April 2020, the Commission amended the Temporary Framework to enable Member States to accelerate research, testing and production of COVID-19 relevant products<sup>9</sup>. to protect jobs and to further support the economy, among other things, through tax payments deferrals and wage subsidies for employees<sup>10</sup>.
- On 8 May 2020, the Commission adopted a second amendment of the Temporary Framework introducing further exemptions for recapitalisation and subordinated debt measures to further support the economy in the context of the COVID-19 outbreak applicable until the end of June 2021<sup>11</sup>.

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<sup>8</sup> Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Commission Communications C(2020) 2215, OJ C 112I, 4.4.2020, p. 1; C(2020) 3156, OJ C 164, 13.5.2020, p. 3; C(2020) 4509, OJ C 218, 2.7.2020, p. 3; C(2020) 7127, OJ C 340I, 13.10.2020, p. 1 and C(2021) 564, OJ C 34, 1.2.2021, p. 6.

<sup>9</sup> The Temporary Framework lays down the conditions under which the Commission will consider such measures compatible with the internal market under Article 107(3)(c) TFEU. The Commission took due consideration of the positive effects of such measures on tackling the health emergency crisis provoked by the COVID-19 outbreak when balancing them against the potential negative effects of such measures on the internal market.

<sup>10</sup> Communication from the Commission: Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak C(2020) 2215, OJ C 112I, 4.4.2020, p. 1.

<sup>11</sup> Communication from the Commission: Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak C(2020) 3156, OJ C 164, 13.5.2020, p. 3.

- On 29 June 2020, the Commission adopted a third amendment of the Temporary Framework enabling Member States to further support micro, small and start-up companies and incentivise private investments<sup>12</sup>.
- On 13 October 2020, the Commission prolonged the Temporary Framework for six months until 30 June 2021 (until 30 September 2021 for recapitalisations) and introduced a new measure enabling Member States to support companies facing a decline in turnover of at least 30% compared to 2019 due to the outbreak<sup>13</sup>. The new measure contributes to part of the beneficiaries' fixed costs that are not covered by their revenues, up to a maximum amount of EUR 3 million per undertaking.
- On 28 January 2021, the Commission prolonged all measures set out in the Temporary Framework, including recapitalisation measures, until 31 December 2021, and expanded the scope of the Temporary Framework by increasing the ceilings set out in it and by allowing the conversion of certain repayable instruments into direct grants until the end of 2021<sup>14</sup>.

The Commission has put in place all necessary procedural facilities to enable a swift approval process. Where necessary, decisions are taken within days of receiving a complete State aid notification from Member States, and the Commission assists Member States with any queries.

#### *1.1.2. Measures authorised in the context of the COVID-19 outbreak*

In 2020, the Commission took 408 decisions approving 497 national measures notified by 27 Member States and the United Kingdom. On this basis, the amount of around EUR 3.08 trillion of total State aid approved so far can be estimated. There are a number of important caveats: for some measures under the Temporary Framework, it is not necessary to indicate an amount. Therefore, the amounts included are best estimates based on amounts approved in State aid decisions and other available statistics, e.g. mentioned in public communication by national authorities, and in official information communicated by the national authorities.

All State aid approved was necessary and proportionate to support businesses and remedy the serious disturbance to the European economy due to the Coronavirus outbreak. At the same time, there were major differences in the amounts approved across Member States, which appears linked to the fiscal space they have as well as the respective size of their economies.

More specifically, around 51.5% of State aid approved was notified by Germany. Italy notified measures that represent around 14.7% of the entire amount of State aid approved, while the aid notified by France represented 13.9% of this amount. The aid notified by Spain represented 4.8% of the entire amount of State aid approved, while the aid notified by Poland and Belgium corresponded to around 2% and 1.8% respectively. Aid notified by other

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<sup>12</sup> Communication from the Commission: Third amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak C(2020) 4509, OJ C 218, 2.7.2020, p. 3.

<sup>13</sup> Communication from the Commission: 4th Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance C(2020) 7127, OJ C 340 I, 13.10.2020, p. 1.

<sup>14</sup> Communication from the Commission: Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance C(2021) 564, OJ C 34, 1.2.2021, p. 6-15.

Member States is estimated to be between 0.01% and 1.5% of the total estimated amount of EUR 3.08 trillion.

Based on the replies of all 27 Member States to two consecutive surveys carried out by the European Commission, in the period between mid-March and end of December 2020, EUR 2.96 trillion in aid approved by then, around 544 billion euros was actually spent. In absolute terms, according to the preliminary data sent by Member States, France has granted more than a fourth of the total aid paid out (EUR 155.36 billion), followed by Italy with 19.8% of the total aid paid out (EUR 107.9 billion), Germany with 19.1% of the total aid paid out (EUR 104.25 billion) and Spain at 16.7% (EUR 90.8 billion). In relative terms, according to the preliminary data sent by Member States, Spain is the country that has disbursed the most as compared to its own GDP (7.3%), followed by France (6.4%), Italy (6.0%), Greece (4.39%), Malta (3.9%), Hungary (3.7%), Portugal (3.6%), Poland (3.6%) and Cyprus (3.5%). At EU 27 level, the Coronavirus related State aid spending corresponds to around 3.9% of EU GDP. A number of these aid measures have been co-financed by cohesion policy, notably thanks to the two emergency response packages proposed by the Commission, and approved by the European Parliament and the European Council in 2020: the Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+).

Beyond aid notified under the Temporary Framework, State aid considered less distortive, for example aid based on the *de minimis* regulations<sup>15</sup> or certain block exemption regulations<sup>16</sup>, can be adopted without prior approval of the Commission. In 2020, these included measures such as wage subsidies, payment suspensions of corporate taxes and VAT and social welfare contributions. Moreover, the Commission approved under Article 107(3)(b) TFEU measures adopted by Member States for undertakings particularly hit by the outbreak (for example in transport, tourism, culture, hospitality and retail sectors) to compensate for damages incurred because of the crisis (See further the Annex 2)<sup>17</sup>.

## **1.2 Preparing for the exit from the crisis – Recovery and Resilience Facility (RRF)**

The Commission supports the implementation of the first pillar of the Next Generation EU, the Recovery and Resilience Facility (RRF)<sup>18</sup> to facilitate a sustainable and resilient recovery of the EU economy with focus on green and digital transition. With funds of EUR 672.5

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<sup>15</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1; Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector, OJ L 352, 24.12.2013 p. 9; Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45 and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

<sup>16</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance). OJ L 187, 26.6.2014, p. 1. Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, 20.6.2017, p. 1.

<sup>17</sup> Annex 2 provides a complete overview of State aid adopted under the Treaty.

<sup>18</sup> Commission Proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility, COM(2020) 408 final, 28.5.2020. In December 2020 a political agreement was reached in the Council and the European Parliament approved the RRF Regulation in February 2021.

billion, the RRF accounts for the largest part by far of the EUR 750 billion NextGenerationEU recovery package<sup>19</sup>. The RRF will support public investments and reforms in the Member States, helping them to address the economic and social impact of the COVID-19 pandemic as well as to facilitate the green and digital transitions.

To receive grants and low-interest loans under the RRF, Member States must submit Recovery and Resilience Plans (RRPs) to be assessed by the Commission before disbursement of any funds. In 2020, the Commission assisted Member States in the preparation of their RRFs in compliance with competition rules and in particular with the State aid rules. To this end, the Commission published a set of guiding templates in December 2020 and updated them in January 2021.

### 1.3 Outcome of the State Aid Fitness Check

In 2020, the Commission concluded the “fitness check” of the State aid rules<sup>20</sup> adopted as part of the State Aid Modernisation (‘SAM’), together with the Railway Guidelines and the Short-term export credit Communication (‘STEC’), which were not part of the State Aid Modernisation. The Commission looked into whether the rules are fit for purpose, also in view of the European Green Deal, Industrial Strategy and Digital Strategy. The Fitness check, the results of which were published on 30 October 2020<sup>21</sup>, suggests that, overall, the SAM architecture and State aid rules which were reformed under the SAM initiative, are broadly fit for purpose. There is no need to reform the State aid framework of SAM as such.

However, the individual sets of rules need revision and/or update, including clarifications, further streamlining and simplification, as well as adjustments to reflect recent legislative developments, current priorities, as well as market and technology developments. The rules also need to be aligned with future challenges and the Commission priorities. This is particularly important as State aid can, and should, contribute to the Green Deal as well as the Digital and Industrial Strategies.

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<sup>19</sup> Other instruments to be used are for example the Just Transition Fund, the Digital Europe Programme, res cEU and the new health programme EU4Health.

<sup>20</sup> The Fitness check covered the following rules, which were adopted as part of the State Aid Modernisation: General Block Exemption Regulation (GBER) (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1-78); De minimis Regulation (Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1-8); Guidelines on regional State aid (Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1-45); Framework for State aid for research and development and innovation (RDI) (Communication from the Commission: Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1-29); Communication on important projects of common European interest (IPCEI) (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, p. 4-12); Guidelines on State aid to promote risk finance investments (Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4-34); Guidelines on State aid to airports and airlines (Communication from the Commission: Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3-34); Guidelines on State aid for environmental protection and energy (Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55); Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Communication from the Commission: Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1-28). In addition, it also covered the Railways Guidelines from 2008 and the Short term export credit Communication from 2012. Those rules were not revised as part of the State Aid Modernisation, but an evaluation was relevant in the light of developments in EU law and the Commission’s case practice.

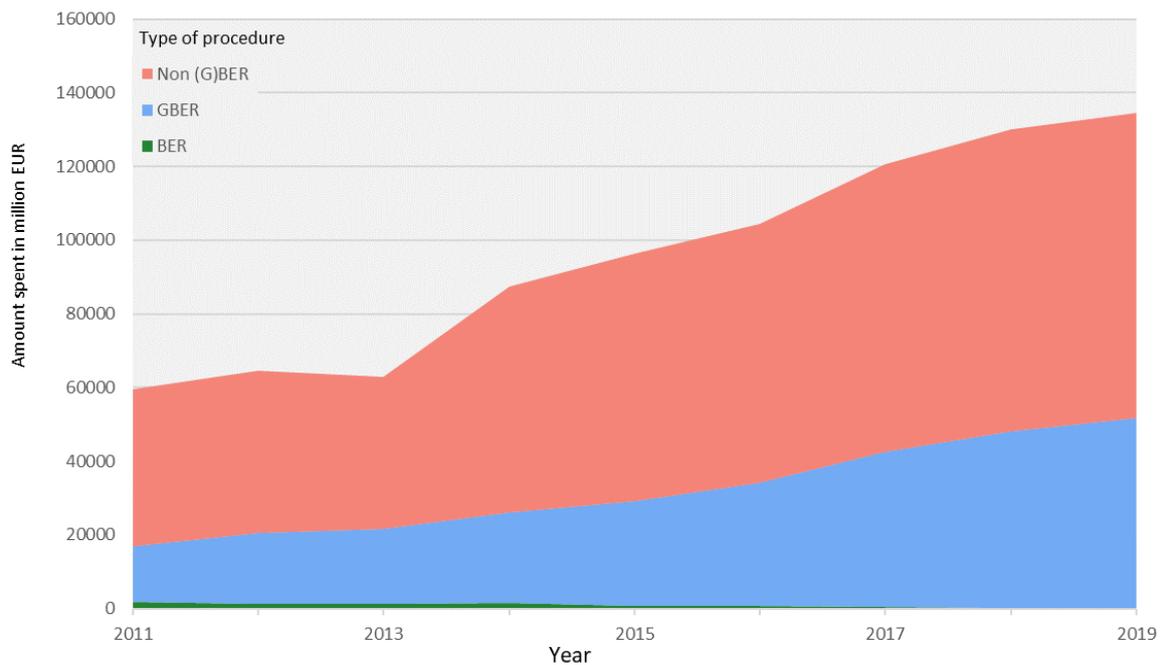
<sup>21</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance>.

The short-term export-credit insurance Communication (STEC) was adopted in 2013 with the purpose of ensuring that State aid does not distort competition in the internal market among private and public or publicly-supported export-credit insurers as well as among exporters in different Member States. In the fitness check, STEC rules were found as fit for purpose. In 2020, STEC was prolonged until the end of 2021 and revised to provide for more flexibility in response to the COVID-19 outbreak. Under the revised rules, all commercial and political risks associated with exports to the countries listed in the Annex to the Communication (including all Member States) are considered as temporarily non-marketable until 31 December 2021, in line with the duration of the Temporary Framework.

#### 1.4 Aid for horizontal objectives

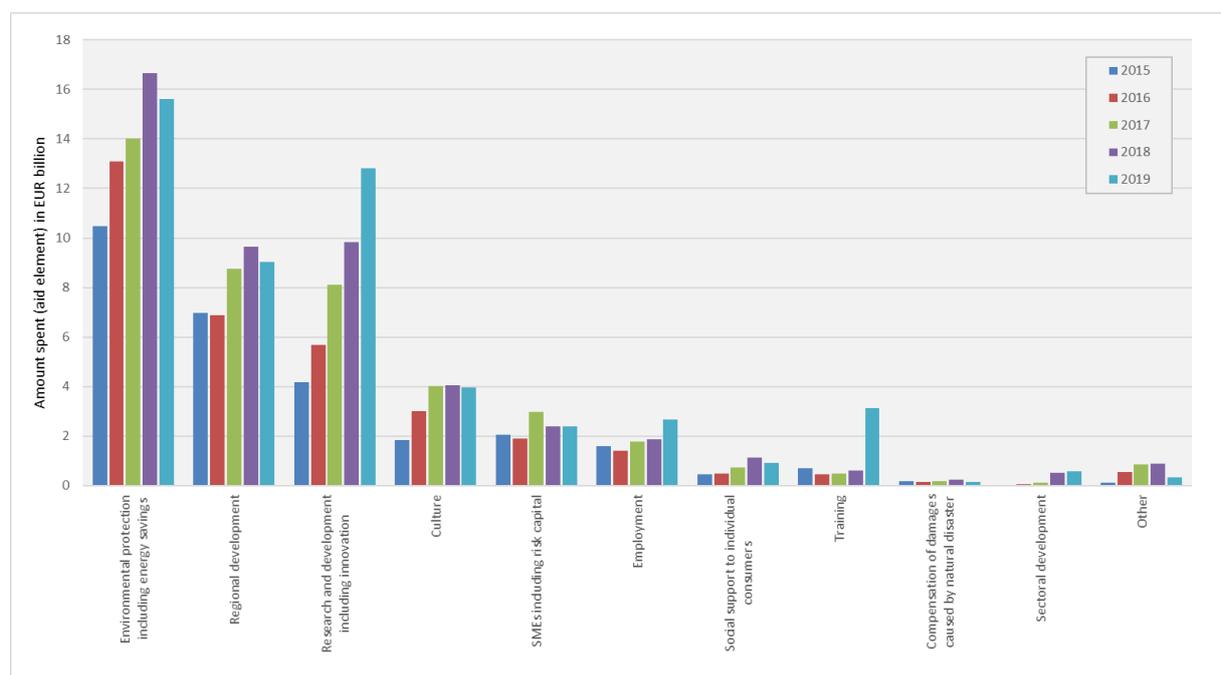
Aid for horizontal objectives in the common interest generally accounts for the overwhelming majority of all aid. As illustrated by the graphs below, much of horizontal aid falls under the General Block Exemption Regulation (GBER)<sup>22</sup>. Already now, the GBER allows Member States to implement a wide range of public support measures in areas such as research and development, environmental protection or support to SMEs.

Breakdown of State aid expenditure by procedure type



<sup>22</sup> Aid for horizontal objectives in the common interest have accounted for the overwhelming majority of all aid, while much of the horizontal aid fell under the GBER. Leaving aside the largest five State aid schemes, the share of (G)BER in State aid spending (71.8% and EUR 51.8 billion) is greater than the level of spending for notified cases (28.8% and EUR 20.3 billion) in 2019. Moreover, by now Member States are implementing large GBER schemes for a wide variety of objectives.

## GBER State aid expenditure by objective in the EU, excluding aid for agriculture, fisheries and railways



To ensure that national and EU funds can be combined seamlessly under the proposed Multiannual Financial Framework for 2021-2027 without undermining competition in the internal market, the objective is to improve the interplay between EU funding rules and State aid rules and streamline State aid control of national funds, including EU shared management funds, combined with funds from EU programmes managed centrally by the Commission. In 2020, the Commission continued to assess evaluations of the impact of large national aid schemes involving horizontal objectives.

### 1.4.1. Evaluation of aid schemes

The State Aid Modernisation (SAM) introduced the requirement to evaluate aid schemes. The aim is to gather the necessary evidence to better identify the impact, positive and negative, of the aid and to provide input for future policy-making by the Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain aid categories<sup>23</sup> as well as for a selection of notified schemes under the new generation of State aid guidelines<sup>24</sup>.

By the end of 2020, the Commission had approved Member States' evaluation plans covering 54 State aid schemes. Thirteen additional schemes are currently under analysis, covering a total of 14 Member States<sup>25</sup> and the United Kingdom. Most of these decisions concerned either large regional aid projects or Research, Development and Innovation (RDI) aid schemes under GBER or notified energy and broadband schemes. In total, these schemes

<sup>23</sup> Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

<sup>24</sup> Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

<sup>25</sup> Austria, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Spain, and Sweden.

account for over EUR 57 billion in annual State aid budget. By the end of 2019, the Member States had delivered to the Commission 21 interim and 24 final evaluation reports. They were assessed by the Commission services and considered to be of average to good quality<sup>26</sup>.

In 2020, the Commission also completed a fact-finding study to assess the implementation of the evaluation requirement as foreseen by the GBER and relevant guidelines. The results of the study indicate that State aid evaluation works already quite well and does not need drastic changes in the future. The study offers suggestions for the development of strategies to support the development of evaluation capacity among Member States, for broadening the possible methodological approaches maintaining high quality standards, and for fostering a wider use of the evaluation results.

The Commission continued to accompany the implementation of the evaluation requirement by publishing policy briefs<sup>27</sup> and by organising dedicated workshops with Member States' representatives and evaluation experts. The current priority of the Commission is to comprehensively assess evaluation reports, both intermediate and final ones, in order to: (i) give appropriate feedback to Member States, (ii) make sure that results are used for better policy-making, and (iii) provide evidence to assist Member States when reflecting on future legal developments.

#### *1.4.2. Aid for research, development and innovation (RDI)*

RDI spending in the EU has traditionally been lagging behind major global competitors, mainly due to lower levels of private investment. To achieve the greatest possible impact with the available budgets, RDI aid measures should not replace or crowd out private financing. On the contrary, efforts should be directed at encouraging more private investments. RDI aid can help where market forces alone do not deliver necessary investments in promising but high-risk innovative projects. Therefore, the State aid rules for RDI help ensuring that public funding goes to projects that otherwise would not be realised due to market failures. In particular, this includes projects that go far beyond the state of the art, and which bring innovative products or services (including digitalisation) to the market and ultimately to consumers. The RDI State aid rules provide for flexible and simple criteria for assessing the compatibility of State aid and thereby facilitate the implementation of support for RDI projects by Member States.

In 2020, the Commission continued to ensure that aid schemes and individual measures notified or pre-notified under the RDI State aid rules were well targeted to projects enabling ground-breaking research and innovation activities. Its State aid control activities covered a variety of sectors including the aeronautic, as well as research and technology infrastructures, innovation clusters, high power computing, with a focus on support for the development of new clean technologies supporting Europe's green transition.

In a significant number of cases the Commission cooperated with Member States with a view to enabling them to adjust envisaged RDI measures and bring them in line with the GBER.

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<sup>26</sup> All the submitted evaluation reports are reviewed by the JRC within the framework of the Administrative Arrangement established between DG Competition and the JRC on the: "Support to the quality assessment of evaluation reports in the area of State Aid, 2018-2020". From 2021 onwards, the JRC will continue to support DG Competition under the new Administrative Arrangement for the "Support to the quality assessment of evaluation plans and reports in the area of State Aid, 2021-2023 (EVALSA II)".

<sup>27</sup> Competition Policy Briefs 7/2014: [http://ec.europa.eu/competition/publications/cpb/2014/007\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2014/007_en.pdf); and 3/2016: [http://ec.europa.eu/competition/publications/cpb/2016/2016\\_003\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2016/2016_003_en.pdf).

This way, aid measures could be granted swiftly without having to be notified to the Commission, thereby speeding up public support for RDI. It is noteworthy that following the State Aid Modernisation in 2014, total RDI State aid expenditure under the GBER as well as the RDI Framework rose from EUR 8.9 billion in 2014 to EUR 11.27 billion in 2018, with EUR 9.94 billion disbursed in 2018 under the GBER alone.

Following the second public consultation, in 2020, the Commission continued work on its proposals for RDI-related amendments to the GBER to facilitate and simplify the way in which centrally managed funding from Horizon Europe can be combined or, in cases of projects having received a Seal of Excellence, in particular by SMEs, be substituted by national funding. The proposed amendments aim to align certain aspects of State aid rules on the one hand and Horizon Europe rules on the other. This will allow preventing potential discrepancies causing delays or difficulties in the roll-out of RDI funding under the next Multiannual Financial Framework (MFF).

Finally, following the Fitness check of the State aid rules for RDI (the results of which were published in October 2020 in a Commission Staff Working Document<sup>28</sup> which included an independent evidence-based evaluation on the implementation of the 2014 State aid rules for RDI<sup>29</sup>, as well as of their effects on RDI investments and competition), in 2020, the Commission continued work on revising the State aid for RDI. The objective is to ensure that the revised State aid rules in the area of RDI are fit for purpose taking into account the market evolution, in particular the technological development, as well as the specific objectives of the twin transition to a green and digital economy, and the EU research and innovation policy.

#### *1.4.3. Aid enabling Member States jointly to support important projects of common European interest*

The Commission assesses proposed State aid for the execution of important projects of common European interest (IPCEI) based on the compatibility criteria set in a dedicated Communication<sup>30</sup> adopted in 2014. In order to be deemed compatible under these rules, eligible projects must address a market failure or other important systemic failures and

- (i) significantly contribute to strategic EU objectives;
- (ii) involve several Member States;
- (iii) involve private financing by the beneficiaries;
- (iv) generate positive spill over effects across the EU that limit distortions to competition.

Depending on the type of project supported, additional specific conditions apply:

- a) RDI activities must be of a major innovative nature or constitute an important added value in terms of research and innovation and must go beyond the state-of-the-art;
- b) First industrial deployment activities<sup>31</sup> must allow for the development of a new product or service with high research and innovation content or the deployment of a fundamentally innovative production process, excluding incremental development;

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<sup>28</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance>.

<sup>29</sup> Retrospective evaluation of State aid rules for RDI and the provisions applicable to RDI State aid of the GBER applicable in 2014-2020, [https://ec.europa.eu/competition/state\\_aid/modernisation/fitness\\_check\\_en.html](https://ec.europa.eu/competition/state_aid/modernisation/fitness_check_en.html).

<sup>30</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.

<sup>31</sup> First industrial deployment refers to the upscaling of pilot facilities, including the testing phase, but excludes mass production and commercial activities.

- c) Projects in the areas of energy, transport or the environment must either be of great importance for the environmental, energy, including security of energy supply, or transport strategy of the Union or contribute significantly to the internal market.

In line with the Commission's battery alliance initiative<sup>32</sup>, throughout 2020 intensive discussions took place between several Member States and the Commission for a second IPCEI on the battery value chain, following the first IPCEI which was approved in December 2019<sup>33</sup>. In December 2020, twelve Member States jointly notified the second IPCEI on batteries for e-mobility and energy storage. This is consistent with the Commission's policies to shift from the use of environmentally harmful fossil fuels to alternative fuel technologies and the twin transition of the EU economy under the Green Deal and the Digital Strategy. The Commission approved the second IPCEI on batteries on 26 January 2021<sup>34</sup>.

In addition, in line with the recommendations of the strategic forum for IPCEI, discussions with Member States and industry for possible new IPCEIs in the areas of hydrogen technologies and systems, low carbon industry and microelectronics intensified in 2020. Concrete projects in these areas are expected to emerge in the course of 2021.

In 2020, the Commission finalised the evaluation of the IPCEI Communication in the context of the fitness check of the State aid modernisation package. The results showed that the IPCEI rules are broadly fit for purpose but that some targeted modifications may be warranted notably in light of the practical experience gained from IPCEI cases (on microelectronics and batteries) and to ensure that the IPCEI rules fully support the Commission priorities, in particular the European Green Deal and the Digital Strategy. The Commission prolonged the rules until the end of 2021 and plans a revision of the IPCEI Communication in 2021.

#### *1.4.4. Regional aid*

Regional aid is an important instrument in the EU toolbox to promote economic and social cohesion. The regional aid framework 2014-2020 was due to expire at the end of 2020. The Commission extended, however, the regional aid provisions in the GBER for three years and the Regional Aid Guidelines (RAG) by one year until the end of 2021<sup>35</sup>. Related to that extension, the Commission also adopted a one year prolongation of its regional aid map for each Member State.

In 2020, the Commission finalised the evaluation<sup>36</sup> of the regional aid framework in the context of the State aid fitness check. The results showed that the rules worked well in principle but required some adjustments, notably in light of the new Commission priorities. Based on this, the Commission published in July 2020 a draft text of the new RAG for stakeholder comments. The new RAG are expected to be adopted in the first half of 2021 and will apply from 2022.

In 2020, the Commission also adopted several regional aid decisions, authorising regional

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<sup>32</sup> Strategic Action Plan on Batteries, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe on the Move, 17.5.2018, COM(2018) 293 final Annex 2.

<sup>33</sup> Available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6705](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6705).

<sup>34</sup> Available at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_226](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_226).

<sup>35</sup> OJ C 224, 8.7.2020, p. 2, available at

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/prolongation\\_sa\\_guidelines\\_en.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/prolongation_sa_guidelines_en.pdf).

<sup>36</sup> Available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance>.

investment aid for the large investment project of Toray<sup>37</sup> for a new battery separator film plant in Hungary and also approving the amendment of an evaluation plan of a large block exempted French scheme<sup>38</sup>. The Commission further initiated a formal investigation procedure in relation to the large investment project of the chemical company LG Chem Group<sup>39</sup>, expanding its battery cell production of electric vehicles in Poland. Finally, the Commission decided that the Madeira Free Zone scheme<sup>40</sup> had not been implemented in line with earlier Commission decisions and Portugal will have to recover aid from companies that did not create real economic activity and jobs in Madeira.

In 2020, the Commission continued advising Member States' authorities on how to interpret and implement the regional aid provisions of the GBER, thus helping them to make a success of the reforms introduced under the 2014 State aid modernisation to the benefit of both consumers and businesses.

#### *1.4.5. Aid to risk finance*

The Risk Finance Guidelines, which were adopted in 2014 as part of the State Aid Modernisation package, set out the conditions under which aid to promote risk finance investments may be considered compatible with the internal market. They are due to expire in 2021, following a prolongation adopted by the Commission on 2 July 2020<sup>41</sup>. Their recent evaluation in the framework of the comprehensive State aid fitness check in 2019-2020 showed that the rules are broadly fit for purpose but that they could be updated to reflect regulatory, technological and market developments. On 17 December 2020, the Commission announced the revision of the Risk Finance Guidelines to render the rules more effective and efficient<sup>42</sup>.

#### *1.4.6. Infrastructure support measures*

The Commission approved several support measures for infrastructure projects. On 20 March 2020, the Commission concluded<sup>43</sup> that the public financing model of the Fehmarn Belt coast-to-coast infrastructure between Denmark and Germany is in line with EU State aid rules. The Commission also approved two measures to encourage the shift from road to rail: on 17 February 2020 the Commission approved<sup>44</sup> an aid scheme, as well as individual aid measures, to encourage the shift of freight transport in the Land of Saxony-Anhalt in Germany and on 31 March 2020, the Commission approved<sup>45</sup> State aid to Treeden Group for the construction of a transshipment terminal in Poland. Finally, on 7 August 2020 the Commission approved<sup>46</sup> a

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<sup>37</sup> Case SA.54226 Regional investment aid to Toray Industries – Hungary.

<sup>38</sup> Case SA.55006 France – Amendment of the approved 2015 evaluation plan for the DOM investment scheme “aide fiscale à l’investissement outre-mer (investissements productifs)”.

<sup>39</sup> Case SA.53903 Regional investment aid to LG CHEM 2 – LIP.

<sup>40</sup> Case SA.21259 Madeira Free Trade Zone – Tax scheme – ex officio investigation.

<sup>41</sup> OJ C 224, 8.7.2020, p. 2 (available at

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/prolongation\\_sa\\_guidelines\\_en.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/prolongation_sa_guidelines_en.pdf)).

<sup>42</sup> The roadmap for the initiative ‘State aid – rules on risk finance for small and medium-sized enterprises (SMEs)’ was published on 17 December 2020 (available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12783-State-aid-rules-on-risk-finance-for-SMEs>).

<sup>43</sup> Case SA.39078 Financing of the Fehmarn Belt Fixed Link project.

<sup>44</sup> Cases SA.54102 and SA.56001 Scheme to support rail infrastructure related to freight transport in Saxony-Anhalt.

<sup>45</sup> Case SA.52716 Construction of TREEDEN GROUP transshipment terminal at the PKP LHS Station in Wola Baranowska.

<sup>46</sup> Case SA.56832 Sixth amendment to the concession agreement relating to the Istrian Y Motorway (sub-phase 2B2-1: section “Vranja interchange to the Ucka tunnel/Kvarner portal”).

Croatian plan to prolong the Istrian Y motorway concession agreement between Croatia and the company Bina-Istra.

## **1.5 Monitoring, recovery and cooperation with national courts**

### *1.5.1. Increased monitoring of existing State aid to ensure competition on fair and equal terms*

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is granted under block-exempted schemes which are not examined by the Commission before entering into force. Pursuant to the most recent figures available<sup>47</sup>, approximately 95% of the new State aid measures adopted in 2018 are covered by GBER and, among all the State aid measures active in the same year, 86% are GBER measures. These figures show that it is essential for the Commission to verify that Member States apply State aid rules for the schemes correctly and that they only grant aid when all required conditions are met. Therefore, monitoring is the counterweight to the State aid architecture based on ‘self-assessment’ by Member States resulting from the exemption from the notification obligation (e.g. GBER) or the approval by the Commission of State aid schemes.

The Commission introduced monitoring in 2006 as a regular, *ex post*, sample-based control of existing aid schemes, which comprises a monitoring sample of approximately 50 schemes per year. The goals of monitoring are (i) to identify and seek correcting of irregularities by Member States concerned, (ii) to expand the awareness of State aid rules among national granting authorities, (iii) to contribute to improving State aid rules, (iv) to detect errors in reporting and (v) to act as a deterrence.

In the context of the COVID-19 crisis, all Member States have focussed their administrative resources on fighting the pandemic. For this reason, unlike in previous years in which the monitoring cycle was run on a yearly basis, the 2020 monitoring cycle covers two years, 2020 and 2021. It monitors 19 Member States, all main types of aid both approved and block exempted, the Member States’ transparency obligations<sup>48</sup>, and puts an emphasis on the criterion “undertakings in difficulty”.

The Commission follows up on irregularities and uses the means at its disposal to address the competition distortions that these irregularities have caused. In some cases, Member States offer to voluntarily redress the problems detected, for example to amend national legislation or to recover excess aid granted. In other cases, the Commission may need to take formal action.

### *1.5.2. Restoring competition by recovering of State aid granted in breach of the rules*

To ensure the integrity of the internal market, Member States must take all necessary measures to recover unlawful and incompatible aid. The purpose of recovery is to restore the situation that existed on the internal market prior to the granting of the aid; this is necessary to ensure that competition in the internal market can take place on fair and equal terms. In 2020, the Commission made further progress to ensure that recovery decisions are enforced effectively and immediately.

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<sup>47</sup> See the State Aid Scoreboard 2019, available at [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

<sup>48</sup> Transparency Award Module, see: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

By 31 December 2020, the sum of unlawful and incompatible aid recovered from beneficiaries amounted to EUR 28.4 billion<sup>49</sup>. At the same point in time, the outstanding amount pending recovery was EUR 6.7 billion.

In 2020, the Commission adopted six new recovery decisions and an amount of EUR 126 million was recovered by the Member States. As of the end of December, the Commission had 52 pending recovery cases<sup>50</sup>.

Recovery decisions adopted in 2020	6
Amount recovered in 2020 (EUR million)	126
Pending recovery cases on 31 December 2020	52

As guardian of the Treaties, the Commission may use all legal means at its disposal to ensure that Member States implement their recovery obligations, including launching infringement procedures. In 2020, the Commission launched one action under Article 108(2) TFEU<sup>51</sup> and an additional action under Article 260(2) TFEU<sup>52</sup> (both instances concerning Greece).

### 1.5.3. Cooperation with national courts to ensure the effectiveness of State aid rules

The Commission continued its cooperation with national courts and tribunals under Article 29 of the Procedural Regulation<sup>53</sup>. This includes direct case-related assistance to national courts when they apply EU State aid law. The courts and tribunals can ask the Commission to provide case related information, or to provide an opinion on the application of State aid rules. The Commission may also submit *amicus curiae* observations at its own initiative.

While the Commission received no requests for information in 2020, it received two requests for opinion from Belgian courts. The first request by Ondernemingsrechtbank Gent concerned the interpretation of a 2001 Commission decision proposing appropriate measures on the sale of industrial lands at a preferential rate. The second by Hof Van Beroep te Gent concerned an alleged State aid in the context of the sale of agricultural land.

In 2020 the Commission intervened in recognition and enforcement proceedings before the U.S. District Court of the District of Columbia in two cases<sup>54</sup>. To make its views publicly known, the Commission publishes its opinions and *amicus curiae* observations, as well as observations to others, e.g. arbitration courts, on its website<sup>55</sup>.

Following the publication of the study on the state of play of the enforcement of State aid

<sup>49</sup> The reference period is 1 January 1999 to 31 December 2020. In addition, the amount of EUR 4.5 billion could not be recovered from concluded insolvency proceedings because of the lack of mass from the liquidation of assets which did not allow satisfying the State aid claims.

<sup>50</sup> This includes 11 pending recovery cases concerning the agricultural and fisheries sectors.

<sup>51</sup> Consolidated version of the TFEU, OJ C 115, 9.5.2008, p. 47.

<sup>52</sup> Respectively, Case C-11/20 Commission v. Greece, action brought on 10 January 2020; Case C-51/20 Commission v. Greece, action brought on 29 January 2020.

<sup>53</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248 of 24.9.2015, p. 9.

<sup>54</sup> The Commission submitted written submissions on the enforcement of investment arbitration awards obtained against Italy on the basis of the Energy Charter Treaty and oral observations on the enforcement of an investment arbitration award obtained against Romania based on an intra-EU bilateral investment treaty.

<sup>55</sup> See: [http://ec.europa.eu/competition/court/overview\\_en.html](http://ec.europa.eu/competition/court/overview_en.html).

rules by national courts on 30 July 2019<sup>56</sup> and based on the assessment of its main findings on the enforcement of State aid rules at national level, the Commission is currently revising the Communication on the Enforcement of State aid rules by national courts<sup>57</sup>.

In 2020 the Commission continued its advocacy efforts; it was actively involved in evaluating the training programmes for national judges and in assessing their needs and also provided training during workshops and conferences.

## 1.6 Significant judgments by the European Union Courts in the State aid area

The European Courts in 2020 brought clarifications on

- the notion of aid, including on the (non) economic nature of certain activities<sup>58</sup>, on State resources<sup>59</sup>, on selective advantage and the market economy operator principle<sup>60</sup>;
- Services of General Economic Interest (SGEI)<sup>61</sup>, and on the compatibility assessment under Article 107(3)(c) TFEU<sup>62</sup>; as well as
- procedural matters and recovery<sup>63</sup>.

In a judgment of 11 June 2020<sup>64</sup>, *Commission and Slovak Republic v Dôvera*, the Court of Justice brought clarifications on the non-economic nature of compulsory health insurance systems. It considered that the existence of a certain degree of competition in the provision of healthcare services was not such as to call into question the social and solidarity-based nature of a compulsory health insurance system. The system was characterised by compulsory membership, an absence of direct link between the amount of the social security contributions and the benefits provided, the presence of a risk equalisation mechanism between insurers, and a State supervision. In this context, the presence of competition is secondary and not capable of changing the non-economic nature of the scheme.

In the judgment *Larko v Commission* of 26 March 2020, the Court of Justice clarified the burden of proof in relation to the market economy operator principle (MEOP). The Court recalled that it is for the Member State to prove that the MEOP is applicable, by establishing unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting as a private operator. However, once it is

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<sup>56</sup> See: <https://ec.europa.eu/competition/publications/reports/kd0219428enn.pdf>.

<sup>57</sup> Commission Notice on the enforcement of State aid law by national courts, OJ C 85, 9.4.2009, p. 1.

<sup>58</sup> Case C-262/18 P *Commission v Dôvera zdravotná poisťovňa*, judgment of the Court of Justice of 11.6.2020.

<sup>59</sup> For example Case C-556/19 – *Eco TLC*, judgment of the Court of Justice of 21.10.2020.

<sup>60</sup> For example Case T-515/13 *RENV Spain v Commission*, judgment of the General Court of 23.9.2020; Case C-212/19 *Compagnie des pêches de Saint-Malo*, judgment of the Court of Justice of 17.9.2020; Case C-244/18 P *Larko v Commission*, judgment of the Court of Justice of 26.3.2020; Case T-778/16 *Ireland v Commission*, judgment of the General Court of 15.7.2020; Case T-892/16 *Apple Sales International and Apple Operations Europe v Commission*, judgment of 15.7.2020.

<sup>61</sup> For example, Case C-817/18 P *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others v Vereniging Gelijkberechtiging Grondbezitters*, judgment of the Court of Justice of 3.9.2020; Case T-316/18 *První novinová společnost v Commission*, judgment of the General Court of 15.10.2020.

<sup>62</sup> For example Case C-594/18 P *Austria v Commission*, judgment of the Court of Justice of 22.9.2020.

<sup>63</sup> For example on suspension injunctions and opening decisions, Case C-456/18 P *Hungary v Commission*, judgment of the Court of Justice of 4.6.2020; on recovery, limitation periods and national law, Case C-627/18 *Nels on Antunes da Cunha*, judgment of the Court of Justice of 30.4.2020; on complaints and form of decision, Case T-745/17 *Kerkosand v Commission*, judgment of the General Court of 9.9.2020; on preliminary rulings and validity of decisions, Case C-212/19 *Compagnie des pêches de Saint-Malo*, judgment of the Court of Justice of 17.9.2020.

<sup>64</sup> Case C-262/18 P *Commission v Dôvera zdravotná poisťovňa*, judgment of the Court of Justice of 11.6.2020.

established that the MEOP is applicable, it is for the Commission to prove the advantage, and to not only rely on a negative assumption of the existence of an advantage in the absence of other positive evidence.

In the judgment of 22 September 2020, *Austria v Commission*<sup>65</sup> (Hinkley Point C), the Court of Justice clarified certain aspects of the compatibility assessment under article 107(3)(c) TFEU. Under that Treaty provision the Commission must verify that two conditions are fulfilled to declare an aid compatible: the aid must facilitate the development of an economic activity, and the aid shall not adversely affect the trading conditions to an extent contrary to the common interest. When assessing the first condition the Commission identifies the economic activity that the aid aims at developing, but is not required to identify the relevant product market. When assessing the second condition, the Commission balances the positive and the negative effects of the aid; but when assessing the latter, it is only required to identify the negative effects of the aid on competition on the relevant product market and intra-EU trade. When adopting State aid guidelines, the Commission can also not unduly restrict the scope of Article 107(3)(c) TFEU by adding conditions which are not present in that Treaty provision.

In C-212/19 *Compagnie des pêches de Saint Malo*<sup>66</sup>, the Court of Justice declared a State aid decision invalid in the context of a reference for a preliminary ruling. The Court considered the questions admissible despite the fact that they were more than just interpretation questions and related to the validity of the decision. On substance, the Court clarified that in case of relief from social security contributions owed to the State by the employee but paid to the State by the employer (i.e. the undertaking), direct aid to the employer is excluded if there is an obligation on the undertaking to pass on that advantage to the employee. In such a case, the undertaking acts as a mere intermediary.

In the judgment *Kerkosand vs Commission* of 9 September 2020<sup>67</sup> the General Court clarified that a Commission decision confirming that an aid measure fulfils the conditions of the GBER and is hence exempt from the notification requirement, is a no objection decision in the meaning of article 4(3) of Regulation 2015/1589.

### **1.7 Audit by the European Court of Auditors (ECA) on the Commission's control of State aid to financial institutions**

In October 2020, the European Court of Auditors (ECA) published the conclusions and recommendations related to its audit of the Commission's control of State aid to EU financial institutions<sup>68</sup>. The audit focused on the application of financial-sector State aid rules since August 2013 (when the Commission started to apply the 2013 Banking Communication) until the end of 2018.

In its Special Report, ECA acknowledged that, overall, the EU has developed appropriate means and powers for the efficient control of State aid to banks and that the rules for the control of State aid to the financial sector were well drafted and clear. It also concluded that the Commission allocated the necessary resources and expertise to State aid enforcement in this sector and established a robust ethical framework. On the other hand, ECA was of the view that, in some areas, State aid enforcement in the financial sector could be improved. To

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<sup>65</sup> Case C-594/18 P *Austria v Commission*, judgment of the Court of Justice of 22.9.2020.

<sup>66</sup> Case C-212/19 *Compagnie des pêches de Saint-Malo*, judgment of the Court of Justice of 17.9.2020.

<sup>67</sup> Case T-745/17 *Kerkosand v Commission*, judgment of the General Court of 9.9.2020.

<sup>68</sup> See <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=54624>.

that end, ECA recommended the Commission to conduct an evaluation of the existing rules after the current COVID-19 crisis and by 2023 at the latest, to work on document management and to encourage Member States to better respect best practices, and to improve performance management indicators.

The Commission strives to improve its enforcement action in the area of State aid, as it does in all other areas. Therefore, the Commission agreed to put forward a series of actions to follow up on ECA's recommendations. For instance, the Commission will continue to work on the improvement of its internal processes and document management system to further increase efficiency. This process has already started. The Commission will also encourage Member States to respect the existing best practices on, for example, the length of pre-notification contacts. In addition, the Commission will revisit the existing performance indicators in its management reports to increase accuracy of the monitoring of its enforcement action in the relevant area.

Finally, in the context of the ECA Special Report, the Commission also committed to carry out an evaluation of current financial-sector State aid rules. At the same time, the Commission has announced a review of the EU bank crisis management framework, i.e. the Bank Recovery and Resolution Directive and the Deposit Guarantee Scheme Directive. As a follow-up to the Eurogroup statement of 30 November 2020<sup>69</sup>, the Commission continues its process towards reviewing its State aid framework for banks in the context of the review of the bank crisis management framework (the Bank Recovery Resolution Directive and the Deposit Guarantee Scheme Directive), using a holistic approach to ensure consistency in particular in relation to adequate burden sharing of shareholders and creditors to protect taxpayers, and the preservation of financial stability.

## 2. ANTITRUST AND CARTELS

### Articles 101, 102 and 106 TFEU

According to Article 101 TFEU, anti-competitive agreements are prohibited as incompatible with the internal market. Article 101 TFEU prohibits agreements with an anti-competitive object or effects where companies coordinate their behaviour instead of competing independently. However, even if a horizontal or a vertical agreement could be viewed as restrictive it might be allowed under Article 101(3) TFEU if it ultimately fosters competition (for example by promoting technical progress or by improving distribution).

Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position or to acquire such a position. Dominant undertakings, as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits the abusive behaviour by dominant undertakings that, for example, directly or indirectly impose unfair purchase- or selling prices or other unfair trading conditions.

Finally, Article 106 TFEU prevents Member States from enacting or maintaining in force measures contrary to the Treaty rules regarding public undertakings and undertakings to which Member States grant special or exclusive rights.

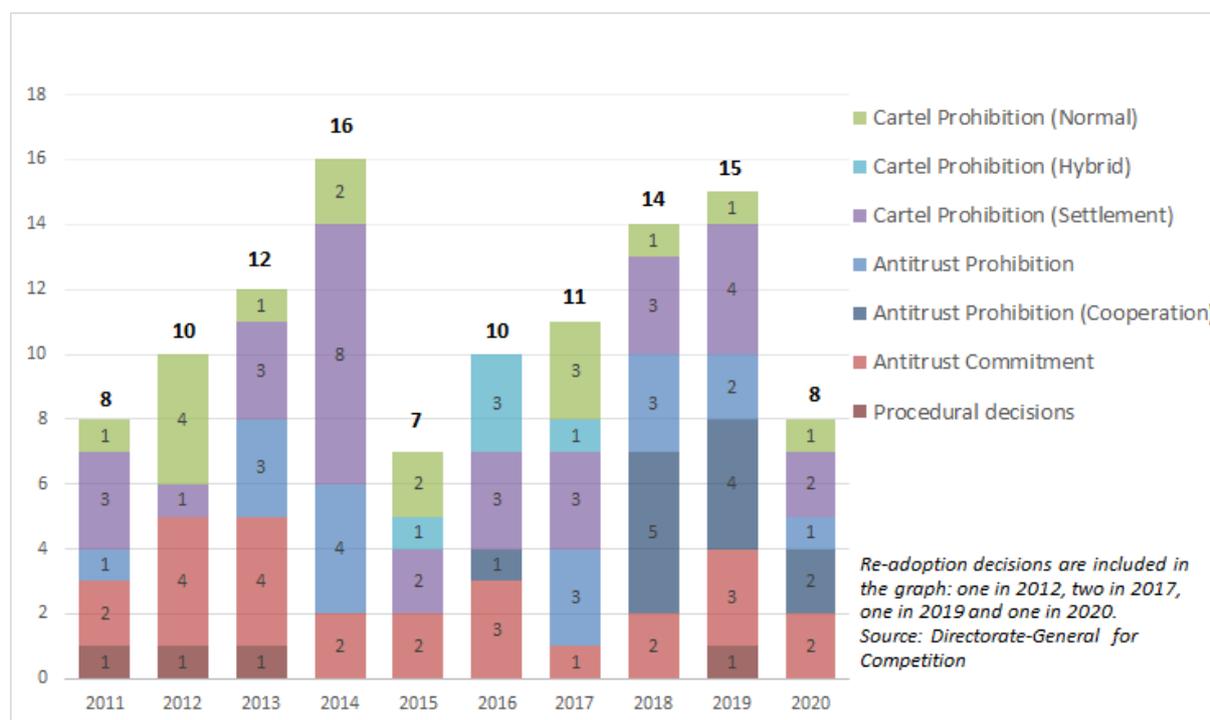
Preserving market discipline to secure the functioning of the Single Market is essential especially in times of crisis. Effective enforcement of the EU competition rules is of vital importance to the digital transformation of the EU economy and a resilient recovery after the pandemic; antitrust enforcement can contribute in tearing down remaining barriers to the

<sup>69</sup> See: <https://www.consilium.europa.eu/en/press/press-releases/2020/11/30/statement-of-the-eurogroup-in-inclusive-format-on-the-esm-reform-and-the-early-introduction-of-the-backstop-to-the-single-resolution-fund/>.

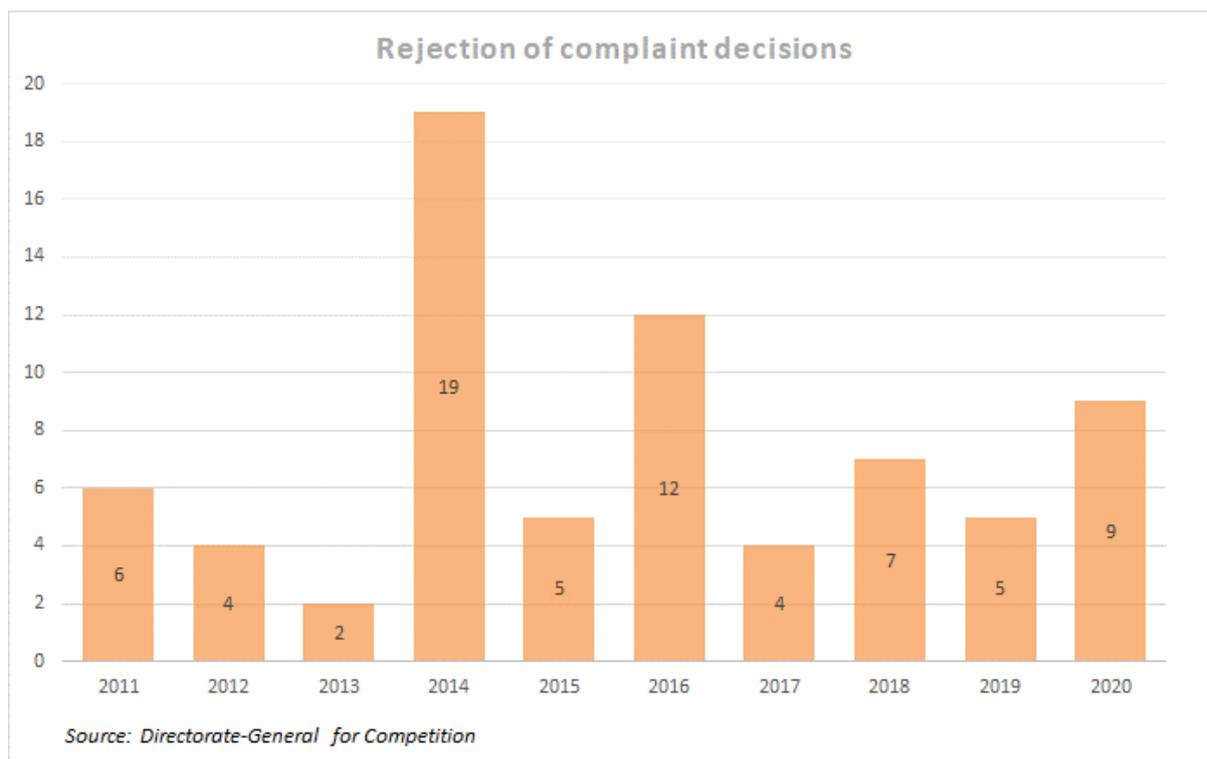
Single Market and eliminating restrictions in the development of clean technologies and the free flow of resources necessary for the circular economy and the Green Deal's objectives. The present Staff Working Document highlights the recent antitrust and cartel decisions, while the graphs below give an overview of antitrust enforcement activity in the past ten years, including also decisions rejecting complaints<sup>70</sup>.

Alongside enforcement, reforms are also crucial to ensure competition policy is fully effective: the Commission advanced on its review agenda encompassing a large number of its key block exemption regulations, guidelines and notices as well as moved forward the work on a number of ongoing initiatives to ensure fair competition in the single market.

#### *Antitrust and cartel decisions 2011-2020*



<sup>70</sup> Cases AT.39999 Concurrence/Samsung, AT.40584 MAN Italia, AT.40629 Services postaux, AT.40572 Dutch Bricks, AT.40626 Strutture Trasporto Alto Adige S.p.A. and Trenitalia S.p.A., AT.40594 Kids Furniture, AT.40562 Polish biodiesel supplies, AT.40665 Toyota and AT.40609 Polish fuel app.



## 2.1 Review of antitrust rules and guidance

Due to the COVID-19 outbreak, the Commission and the national competition authorities took action and provided guidance on antitrust rules and cooperation between companies in the context of the pandemic. In 2020, the Commission also advanced on its review of antitrust rules and guidance to ensure that they are fit for a changing market environment, including the accelerating digitalisation of the economy as well as a new initiative. The review also follows from the input provided by the three independent Special Advisers in their report of April 2019 on digitisation and competition law<sup>71</sup>.

### 2.1.1. COVID-19 related guidance

On 8 April 2020, the Commission adopted a “*Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak*”<sup>72</sup>. The document lays down the main criteria that the Commission will use when assessing cooperation projects aimed at addressing a shortage of supply of essential products and services during the COVID-19 outbreak. The Temporary Framework is not sector specific, but refers to and builds on experience gained by the Commission in discussions with stakeholders in the health sector.

The Temporary Framework also introduced a new and temporary tool – so called *ad hoc* ‘comfort letters’ – that allows the Commission to exceptionally give not only swift guidance but also adequate certainty and comfort to individual initiatives. The Commission decided to

<sup>71</sup> “Competition Policy in the Digital Era”, 2019: See: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>

<sup>72</sup> Communication from the Commission: Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, OJ C 116I, 8.4.2020, p. 7.

add this new instrument, as an exception to the self-assessment rule, and in addition to the existing routes for providing guidance in specific situations<sup>73</sup>, since these existing routes cannot address situations of extreme urgency due to their procedural requirements. This does not mean that the Commission has re-introduced a notification system or abandoned its discretion to decide how and when to give guidance. Self-assessment remains the rule, but the Commission is ready to engage and discuss and will ensure that its extensive general guidance reflects today's needs and business realities<sup>74</sup>. The Commission will decide on a case-by-case basis what the appropriate form of response to individual requests will be, based on e.g. the public interest, complexity, urgency and the risks that the companies will be exposed to. By maintaining its discretion to decide when and how to give guidance, the Commission can prioritise the investigations that require its action.

On the same day it adopted the Temporary Framework, the Commission issued the first – and so far, the only<sup>75</sup> – comfort letter, addressed to the European association of generic pharmaceutical manufacturers “Medicines for Europe”<sup>76</sup>. The letter concerns a specific cooperation among pharmaceutical producers, targeting the risk of shortage of critical hospital medicines for the treatment of Coronavirus patients. The cooperation consists in modelling demand, identifying production capacity and existing stocks, adapting or reallocating production and stocks based on projected and actual demand and, potentially, addressing the distribution of COVID-19 medicines. The Commission concluded that this temporary cooperation did not raise competition concerns under Article 101 TFEU, provided that a number of conditions stipulated in the letter are satisfied.

### 2.1.2. *Digital Markets Act*

As a centerpiece of the European Digital Strategy<sup>77</sup>, presented by the Commission in February 2020, the Commission put forward two Digital Acts aimed at creating a safer digital space for all users where their fundamental rights are protected, as well as a level playing field to allow innovative digital businesses to grow within the Single Market and compete globally.

In addition to a Digital Services Act (DSA)<sup>78</sup>, the Commission adopted, on 15 December 2020, a proposal for a Regulation for a Digital Markets Act (DMA)<sup>79</sup>. Both Commission proposals are subject to the ordinary legislative procedure and will be discussed in Parliament and Council during 2021.

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<sup>73</sup> See Article 10 of Council Regulation (EC) No 1/2003 (Finding of inapplicability) and Commission Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters) (Text with EEA relevance), OJ C 101, 27.4.2004, p. 78-80.

<sup>74</sup> To facilitate contact with the Commission on COVID-19 related antitrust issues, the Commission launched an “Antitrust rules and Coronavirus” webpage providing information and contact details for requests for guidance on specific cooperation projects, available at <https://ec.europa.eu/competition/antitrust/coronavirus.html>. COMP-COVID-ANTITRUST@ec.europa.eu.

<sup>75</sup> State of play at the end of 2020.

<sup>76</sup> [https://ec.europa.eu/competition/antitrust/medicines\\_for\\_europe\\_comfort\\_letter.pdf](https://ec.europa.eu/competition/antitrust/medicines_for_europe_comfort_letter.pdf).

<sup>77</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, 14.1.2020, COM(2020) 22 final 2020/0006 (COD).

<sup>78</sup> Proposal for a Regulation of the European Parliament and of the Council a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM(2020) 825 final, 15.12.2020.

<sup>79</sup> Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) COM(2020) 842 final, 15.12.2020.

The proposal for a Digital Markets Act builds on the horizontal Platform to Business Regulation<sup>80</sup>, on the findings of the EU Observatory on the Online Platform Economy<sup>81</sup> and on the Commission's extensive experience in dealing with digital and online markets through competition law enforcement. The proposal seeks to address more effectively the problems arising in digital markets, such as the gatekeeper power of large digital platforms. These are large companies that have a significant impact on the internal market, serve as an important gateway for business users to reach their customers and which enjoy, or will foreseeably enjoy, an entrenched and durable position.

The Commission's proposal establishes three objective cumulative criteria to identify the "gatekeepers" that will fall under the scope of the Regulation. Each of those qualitative criteria is accompanied by a series of quantitative criteria. If all of the quantitative thresholds are met, the company concerned is presumed to be a gatekeeper, unless it submits substantiated arguments to demonstrate the contrary. The criteria are the following:

1. A size that impacts the internal market: represented by an annual turnover in the European Economic Area (EEA) equal to or above EUR 6.5 billion in the last three financial years, or where the company's average market capitalisation or equivalent fair market value amounted to at least EUR 65 billion in the last financial year, and it provides a core platform service in at least three Member States;
2. The control of an important gateway for business users towards final consumers: met when the company operates a core platform service with more than 45 million monthly active end users established or located in the EU and more than 10 000 yearly active business users established in the EU in the last financial year;
3. An (expected) entrenched and durable position: this is presumed to be the case if the company met the other two criteria in each of the last three financial years.

If not all these thresholds are met, the Commission may designate a company as a gatekeeper on the basis of a qualitative assessment following a market investigation. This mechanism would also allow the Commission to designate as a gatekeeper a company which can be foreseen to enjoy such a position in the near future.

The proposed Regulation sets out harmonised rules addressing practices by gatekeepers that limit the contestability of core platform services or are unfair vis-à-vis their business users. Designated gatekeepers have to ensure compliance with the obligations of the proposed Regulation within six months after one or more of the core platform services they provide have been identified as fulfilling the thresholds of the proposed Regulation.

To ensure the effectiveness of the rules, the proposed Regulation foresees the possibility of sanctions for non-compliance with the obligations, including fines of up to 10% of the company's worldwide turnover. In case of systematic non-compliance, the Commission can impose additional behavioural or structural remedies to the extent that they are necessary to ensure compliance and proportionate to the infringement.

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<sup>80</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11.7.2019, p. 57-79.

<sup>81</sup> EU Observatory on the Online Platform Economy, see: <https://ec.europa.eu/digital-single-market/en/eu-observatory-online-platform-economy>.

Finally, to keep the rules future-proof, the proposal for a Digital Markets Act provides the Commission with the possibility to carry out market investigations to examine whether new services in the digital sector should be added to the list of core platform services. Moreover, the same tool would allow the Commission to detect new practices by gatekeepers that are not effectively addressed by the proposed Regulation.

### *2.1.3. Guidance on vertical agreements*

The Commission finalised the evaluation of the Vertical Block Exemption Regulation (VBER)<sup>82</sup>, and the accompanying Guidelines on Vertical Restraints (Vertical Guidelines)<sup>83</sup>. The findings of this evaluation phase are set out in the Staff Working Document that the Commission published in September 2020<sup>84</sup>. A key finding was that the VBER and the Vertical Guidelines are useful tools, which significantly facilitate the self-assessment of vertical agreements, but that there is room for improvement. On this basis, the Commission launched an impact assessment to have revised rules in place when the currently applicable rules of the VBER expire in May 2022. In October 2020, the Commission asked stakeholders for feedback setting out the scope of the impact assessment and proposed policy options<sup>85</sup>. In December 2020, the Commission launched a public consultation on the basis of an online questionnaire to collect more specific input from stakeholders to inform the drafting of the revised rules.

The Commission also continued its review of the Motor Vehicle Block Exemption Regulation (MVBER)<sup>86</sup>, which will expire in May 2023 and mandated an evaluation report by May 2021. In this context, the Commission appointed consultants to carry out a fact-finding study that was delivered in November 2020. Most importantly, an online public consultation with stakeholders was launched on 12 October 2020, and ran until 25 January 2021. The information gathered through different processes will feed into the Commission's evaluation report, which will in turn form the basis for drawing up and assessing the options for the future regime and deciding among them.

The COVID-19 pandemic proved a challenging environment for the manufacturing sectors, which were faced with both plant shutdowns and falls in demand. In this context, the Commission has been open to engage with stakeholders on the potential application of the antitrust rules to co-operative schemes intended to facilitate recovery in the aftermath of the COVID-19 crisis. For example, in the automotive sector, the Commission had fruitful exchanges with representatives of companies who approached it for feedback on particular frameworks for cooperation. The Commission provided informal clarifications as to what kinds of cooperation were likely to be unproblematic, and identified the necessary safeguards for the cooperation to bring benefits without the risk of anticompetitive effects.

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<sup>82</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1.

<sup>83</sup> Guidelines on Vertical Restraints (Text with EEA relevance), OJ C 130, 19.5.2010, p. 1-46.

<sup>84</sup> Commission Staff Working Document: Evaluation of the Vertical Block Exemption Regulation, 8.9.2020, SWD(2020) 172 final.

<sup>85</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12636-Revision-of-the-Vertical-Block-Exemption-Regulation>.

<sup>86</sup> Commission Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

#### *2.1.4. Guidance on horizontal agreements*

In 2020, the Commission progressed with the evaluation of the rules exempting certain horizontal agreements<sup>87</sup> from the EU's general competition rules. The EU competition rules on horizontal agreements include two Block Exemption Regulations for horizontal cooperation agreements that exempt, respectively, certain research & development and specialisation agreements from Article 101 TFEU. The accompanying guidelines on horizontal cooperation agreements (Horizontal Guidelines) provide further guidance to help companies in their efforts to engage in competition law compliant cooperation agreements, giving also detailed recommendations on topics such as the competitive assessment of information exchanges, joint purchasing, joint commercialisation and standardisation.

The Commission launched the evaluation in 2019, in view of the expiry of the two Horizontal Block Exemption Regulations (HBERs) on 31 December 2022. While the Horizontal Guidelines do not have an expiry date, they are evaluated together with the HBERs. In 2020, the Commission received the results of the public stakeholder consultation<sup>88</sup> and the consultation of the national competition authorities<sup>89</sup>. The Commission also launched an evaluation support study on the rules on horizontal agreements. The findings of the evaluation process will be set out in a Staff Working Document.

#### *2.1.5. Sustainability and competition*

The European Green Deal aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy. Executive Vice-President Vestager stated that all of Europe's policies – including competition policy – will have their role to play in the pursuit of these objectives<sup>90</sup>.

On 13 October 2020, DG Competition published a call for contributions on a number of issues about how competition rules – State aid, antitrust and merger control – can work together with sustainability policies<sup>91</sup>. The purpose of the call was to gather the views and proposals from stakeholders, including competition experts, academia, industry, environmental groups and consumer organisations. The input from the public will be used to inform the on-going revisions of Commission block exemption regulations and guidelines in both the antitrust and State aid fields.

#### *2.1.6. Collective bargaining of self-employed*

Digital platforms have changed the way people work. They provide access to work, and flexibility; but they can also leave some workers vulnerable. And those providing services through platforms do not always fit into traditional employment categories. That means that for these – as for a great many others in a changing EU economy – it is not always clear

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<sup>87</sup> Commission Regulation No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of research and development agreements, OJ L 335, 18.12.2010, p. 36; Commission Regulation No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty to categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43.

<sup>88</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11886-Evaluation-of-EU-competition-rules-on-horizontal-agreements/public-consultation>.

<sup>89</sup> Summary of the contributions of National Competition Authorities to the evaluation of the R&D and the Specialisation Block Exemption Regulations and the Commission Guidelines on Horizontal Cooperation Agreements, available at: [https://ec.europa.eu/competition/consultations/2019\\_hbers/NCA\\_summary.pdf](https://ec.europa.eu/competition/consultations/2019_hbers/NCA_summary.pdf).

<sup>90</sup> Competition and Sustainability, speech of 24 October 2019, GCLC Conference on Sustainability and Competition Policy, Brussels.

<sup>91</sup> [https://ec.europa.eu/competition/information/green\\_deal/index\\_en.html](https://ec.europa.eu/competition/information/green_deal/index_en.html).

whether EU competition rules allow them to come to agreements to jointly negotiate on their working conditions.

In June 2020, the Commission therefore launched a process to assess whether there is a need for measures at EU level to ensure that EU competition law does not stand in the way of collective bargaining for self-employed in need of protection. Following the initial information gathering process as part of the consultation on the Digital Services Act and discussions with social partners and businesses, the Commission published on 6 January 2021 an inception impact assessment describing the problem and outlining four policy options for future action.

## 2.2 Important judgments by the European Union Courts

### 2.2.1. *Review of decisions finding an infringement*

In 2020, the European Courts issued fewer judgments than usual concerning the Commission's cartel enforcement. The judgments issued largely confirmed the Commission's cartel enforcement practice. In particular, the European Courts confirmed to a large extent the Commission's investigatory techniques during inspections of suspected infringements of EU competition, focusing in particular on the power to make copies of documents and the possibility to continue inspections in Brussels. At the same time, the European Courts highlighted the importance of having a certain level of evidence on file justifying the need for an inspection.

Other judgments focussed on companies' procedural rights during the Commission's cartel investigations, largely confirming the Commission's general handling of such investigations while drawing attention to the importance of setting out all allegations in the Statement of Objections prior to issuing an infringement decision.

In relation to the question of liability for cartel conduct, the European Courts confirmed longstanding case law and Commission practice in relation to the concepts of '*parental liability*' and '*economic continuity*', and, in doing so, safeguarded the efficient enforcement of EU competition law.

### 2.2.2. *Investigative powers*

In two judgments concerning the ***Power Cables*** cartel, the Court of Justice confirmed the Commission's conduct during inspections carried out under Article 20 of Regulation 1/2003<sup>92</sup>. According to the Court of Justice, the Commission had a "*certain discretion regarding its specific examination procedures*"<sup>93</sup>.

As part of that discretion, it was within the Commission's right to make copies of electronic documents as an intermediate step in the investigation of the data<sup>94</sup>. The Court of Justice rejected the argument that the powers conferred upon the Commission have to be interpreted narrowly, as long as it was ensured that the rights of the defence of the investigated undertakings were protected<sup>95</sup>. Making copies of certain documents enabled the investigated

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<sup>92</sup> Case C-606/18 P *Nexans v Commission*, judgment of the Court of Justice of 16.7.2020; Case C-601/18 P *Prysmian v Commission*, judgment of the Court of Justice of 24.9.2020.

<sup>93</sup> *Nexans*, para. 61.

<sup>94</sup> *Nexans*, para. 63.

<sup>95</sup> *Nexans*, para. 64; *Prysmian*, para. 58.

undertaking to continue to use the original data, thus reducing the interference in that undertaking's operation caused by the Commission's inspections<sup>96</sup>.

In the same judgments, the Court of Justice also confirmed the Commission's practice of so-called '*continued inspections*' at its premises in Brussels. The Court confirmed that Article 20(2)(b) of Regulation No 1/2003 does not provide that the inspection must in all circumstances be carried out exclusively at the company's premises<sup>97</sup>. According to the Court of Justice, there can be legitimate reasons for continuing an inspection in Brussels "*also in the interest of the undertakings concerned*", as, for example, the processing of "*large volumes of data could have the effect of significantly extending the duration of the inspectors' presence at the undertaking's premises, which would be liable to hamper the effectiveness of the inspection and to needlessly increase the interference in that undertaking's operations*"<sup>98</sup>.

In the *Alliance Casino & Intermarché* investigations<sup>99</sup> the General Court issued three judgments concerning inspection decisions adopted by the Commission in 2017 concerning inspections in the French retail sector. In its judgments the General Court largely confirmed the Commission's powers in the early stages of an investigation. The General Court confirmed the clear distinction between "indicia", relevant for the early stages of a Commission investigation leading to inspections, and "evidence" relevant for subsequent stages in order to demonstrate an infringement of competition rules. The General Court further recalled that, to order an inspection, the Commission must be in possession of sufficiently strong indicia.

The General Court held that in the early stages of the investigation, in order to serve as indicia, informal minutes of meetings and conference calls did not have to comply with the formal requirements of Article 19 of Regulation 1/2003<sup>100</sup>. It also found the minutes of the meetings and conference with manufacturers drafted by Commission officials as being credible. Furthermore, the General Court recalled that the information provided by manufacturers become indicia from the moment it is communicated to the Commission, and not when it materialised in the form of minutes. As regards the content of the indicia, the General Court, upheld one leg of the inspection decisions relating to exchanges of information on discounts obtained on the procurement markets of certain everyday consumer products and on prices on the market for the sale of services to brand manufacturers of those products. However, the General Court annulled the second leg of the inspection decisions relating to exchanges of information concerning future commercial strategies of the undertakings under suspicion, concluding that the indicia in possession of the Commission were not sufficiently strong.

The General Court also examined if the dates chosen for the inspections caused "disproportionate and intolerable damage" to the undertakings' business and found that this was not the case. It also considered that the dates chosen by the Commission were justified by the objective to have the maximum number of key staff present. Finally, the General Court

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<sup>96</sup> Nexans, para. 66; Prysmian, para. 60.

<sup>97</sup> Nexans, para. 78.

<sup>98</sup> Nexans, para. 81. Confirmed in Prysmian, para. 66.

<sup>99</sup> Cases T-249/17 Casino, Guichard-Perrachon and Achats Marchandises Casino SAS (AMC) v Commission, T-254/17 Intermarché Casino Achats v Commission and T-255/17 Les Mousquetaires and ITM Entreprises v Commission, judgment of the General Court of 5.10.2020; for background concerning the cases see below section Agri-food industry.

<sup>100</sup> And Article 3 of Regulation 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty.

also held that inspected undertakings were entitled to raise arguments related to the protection of their staff's privacy and noted that the undertakings had not identified those documents where copies could have led to a violation of staff privacy.

### 2.2.3. *Procedural rights in Commission investigations*

In a judgment concerning the ***Retail Food Packaging*** cartel<sup>101</sup>, the Court of Justice confirmed the General Court's and the Commission's handling of its cartel investigation (in particular in relation to the decision of both the Commission and the General Court not to hear or cross-examine a witness relied upon by the appellants).

Nevertheless, the Court of Justice highlighted in a judgment concerning the ***Power Cables*** cartel the importance of setting out all allegations clearly in the Statement of Objections, thus allowing the undertakings investigated to submit their observations<sup>102</sup>.

Concerning the Commission's pending investigation in ***Metal Packaging***<sup>103</sup>, the European Courts dealt with procedural issues concerning the conduct of the Commission's investigation. In one court order, the Court of Justice confirmed the General Court's finding that a decision to formally initiate proceedings according to Article 2(1) of Regulation 773/2004 did not negatively affect a company's position and therefore did not constitute a challengeable act<sup>104</sup>. In a second court order, the president of the General Court rejected an application for interim measures against a Commission request for information pursuant to Article 18(3) of Regulation 1/2003, as the applicants could not show any urgency resulting from providing replies while having to wait for a decision in the main proceedings, i.e. concerning the applicants' action for annulment against the Commission's Article 18(3) decision<sup>105</sup>.

### 2.2.4. *Use of evidence*

While generally confirming the Commission's practice of assessing and relying on evidence, the Court of Justice nevertheless highlighted in one judgment concerning the ***Power Cables*** cartel that – in order to be held liable for the conduct of another participant in the context of a single and continuous infringement – the undertaking in question had to have been aware of it or reasonably able to foresee it. Without proving such awareness, the Commission was not entitled to hold the undertaking liable – even if the insufficient proof of awareness concerned “non-essential” parts of the cartel (in this case a refusal to supply accessories and technical assistance to competitors not participating in the cartel)<sup>106</sup>.

### 2.2.5. *Liability for cartel conduct*

In two judgments concerning the ***Power Cables*** cartel, the Court of Justice confirmed the Commission's interpretation of the concept of attributing liability for cartel conduct to undertakings<sup>107</sup>.

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<sup>101</sup> Case C-702/19 P *Silver Plastics and Johannes Reifenhäuser v Commission*, judgment of the Court of 22.10.2020.

<sup>102</sup> Case C-607/18 P *NKT v Commission*, judgment of the Court of 14.5.2020 paras. 47-60.

<sup>103</sup> Case AT.40522.

<sup>104</sup> Case C-418/19 P *Silgan Closures v Commission*.

<sup>105</sup> Case T-808/19 R *Silgan International Holdings v Commission*.

<sup>106</sup> Case C-607/18 P *NKT v Commission*, judgment of the Court of 14.5.2020, paras. 164-171.

<sup>107</sup> Case C-601/18 P *Prysmian v Commission*; Case C-611/18 P *Pirelli v Commission*, judgment of the Court of 28.10.2020.

Concerning the concept of ‘*economic continuity*’, the Court of Justice confirmed that where two entities constitute one economic entity, the fact that the entity that committed the infringement still exists does not per se preclude imposing a penalty on the entity to which its economic activities were transferred. This is to avoid restructurings being used to escape the liability for competition law infringements<sup>108</sup>.

Concerning the concept of ‘*parental liability*’, the Court of Justice held that the General Court, in its original judgment, had been right to hold that the Commission did not have to consider each and every piece of evidence advanced by a company to reject the application of the presumption of parental liability to a former subsidiary in cases where the company held all or almost all of the shares in the subsidiary at that time<sup>109</sup>.

#### 2.2.6. Calculation of fines

In the *Smart Card Chips* case<sup>110</sup>, the General Court ruled on the proportionality of a fine imposed on Infineon<sup>111</sup>. Both the General Court and the Court of Justice had already confirmed the existence and duration of the cartel, but the Court of Justice nevertheless sent the case back to the General Court because the latter had not reviewed all anti-competitive contacts. Such review was necessary to assess whether Infineon’s fine was commensurate with the number and intensity of anticompetitive contacts.

In its second review, the General Court concluded that the Commission had not succeeded in proving to the requisite legal standard the existence of one contact (out of eleven) and that this reduced number of anticompetitive contacts warranted an increase of the reduction of the fine for mitigating circumstances from 20% to 25%, reducing the fine from EUR 82.8 million to EUR 76.8 million.

In the *Retail Food Packaging* cases<sup>112</sup>, the Court of Justice concurred with the Commission in relying on the company’s group turnover in the last full business year for purposes of calculating the 10% turnover cap according to Article 23(2) of Regulation 1/2003.

In its GEA judgment<sup>113</sup> in the *Heat Stabilisers* case, the Court of Justice confirmed the Commission’s practice when attributing joint and several liability for fines between several entities which were part of the same undertaking at the time of the infringement. The Court of Justice clarified that in such scenarios the Commission’s practice complies with the principle of equal treatment. The Court of Justice upheld the Commission’s appeal, annulled the judgment of the General Court and referred the matter back to the General Court to decide on the remaining pleas.

### 2.3 The fight against cartels remains a top priority

Cartels are the most serious form of competition infringements and cause significant harm to both consumers and the economy as a whole. They can lead to inflated prices, limit consumer choices and restrict innovation. The Commission’s enforcement against hard core cartels

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<sup>108</sup> Prysmian, paras. 83-93.

<sup>109</sup> Pirelli, paras. 33-53.

<sup>110</sup> Case T-758/14 RENV Infineon Technologies AG v Commission, judgment of the General Court of 8.7.2020.

<sup>111</sup> Case AT.39574, Commission Decision C(2014) 6250 of 3 September 2014.

<sup>112</sup> Case C-702/19 P Silver Plastics and Johannes Reifenhäuser v Commission, judgment of the General Court of 11.7.2019.

<sup>113</sup> Case C-823/18 P Commission v GEA, judgment of the Court of 25.11.2020.

prevents companies from profiting from such illegal arrangements and ensures a level playing field for business.

The fight against cartels therefore remained a top priority also during 2020, but the COVID-19 crisis had an impact on the Commission's enforcement activities. Recognising the exceptional difficulties that companies faced, notably in the early phases of the lock-down, the Commission adjusted its priorities and reconsidered certain envisaged steps that would have triggered the need for immediate business reactions (such as requests for information or the notification of Statement of Objections), if and when warranted. It also temporally refrained from carrying out inspections that would have required a longer presence in the company premises. The Commission nevertheless stressed the need to ensure a vigorous cartel enforcement also during an economic crisis, when there might be an increased incentive to collude. The eLeniency<sup>114</sup> tool, launched in 2019, enabled companies to submit statements with the same high level of protection as the oral procedure (that would have required a presence in the Commission's premises)<sup>115</sup>. The tool was frequently used for documents submitted in the context of the leniency, the cartel settlement or the antitrust cooperation procedures.

Despite the particular circumstances, the Commission nevertheless adopted three cartel decisions concerning six separate cartels in sectors which directly affected European consumers and European business; namely car parts, the chemical sector and retail food packaging. The decisions resulted in total fines of approximately EUR 288 million. Two of the decisions were adopted under the cartel settlement procedure, which again proved to be a successful and efficient tool to resolve cartel cases. The third decision was a re-adoption.

In July 2020, the Commission adopted its second decision in recent times concerning a purchasing cartel. It found that four major purchasers of ethylene had colluded to buy ethylene for the lowest possible price on the ethylene merchant market in Germany, France, the Netherlands and Belgium. The Commission fined Celanese (based in US), Orbia (based in Mexico) and Clariant (based in Switzerland)<sup>116</sup> totalling EUR 260 million. A fourth participant to the collusion, Westlake (based in US) was not fined as it received full immunity under the leniency procedure for revealing the cartel and cooperating with the Commission. All companies acknowledged their involvement in the cartel and agreed to settle the case. The decision demonstrates that the Commission does not tolerate any form of cartels and that the EU antitrust rules do not only prohibit cartels related to coordination of selling prices, but also cartels related to coordination of purchasing prices<sup>117</sup>.

In September 2020, the Commission fined Brose and Kiekert<sup>118</sup>, two German suppliers of closure systems, for their respective participation in two separate cartels. Brose took part in a cartel coordinating the prices of door modules and window regulators supplied to Daimler and was fined EUR 3.2 million. Kiekert participated in a cartel coordinating the prices of latches

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<sup>114</sup> See <https://ec.europa.eu/competition/cartels/leniency/eleniency.html>.

<sup>115</sup> In February 2020, the Commission decided not to offer the possibility to submit statements through the oral procedure.

<sup>116</sup> Case AT.40410 Ethylene, Commission Decision of 14 July 2020, available at: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40410](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40410).

<sup>117</sup> See also the first Commission Decision on a purchasing cartel adopted under the 2006 Fines Guidelines in the case AT.40018 Car Battery Recycling, available at [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40018](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40018).

<sup>118</sup> Case AT.40299 Closure systems, Commission Decision of 29 September 2020, available at: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40299](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40299).

and strikers supplied to BMW and Daimler and was fined EUR 15 million. A third participant to the collusion, Magna, based in Canada and Austria, escaped fines after having received full immunity under the EU leniency procedure. All companies acknowledged their involvement in the cartels and agreed to settle the case. This cartel decision is part of a series of major investigations into collusions in the automotive parts sector. The Commission has already fined suppliers of automotive bearings, wire harnesses in cars, flexible foam used (inter alia) in car seats, parking heaters in cars and trucks, alternators and starters, air conditioning and engine cooling systems, lighting systems, occupant safety systems, and spark plugs and braking systems<sup>119</sup>. The 2020 decision brings the total amount of Commission fines for cartels in this sector to EUR 2.2 billion.

On 17 December, 2020 the Commission re-adopted a decision imposing total fines of EUR 9.4 million on the CCPL Group for its participation in three separate retail food packaging cartels. The General Court had in its judgement of 11 July 2019 annulled the fines imposed on CCPL in the original 2015 decision after having found that the Commission had insufficiently reasoned its inability to pay assessment<sup>120</sup>. In line with its consistent practice, the Commission decided to re-adopt a fine that had been annulled for purely procedural reasons.

Case name	Adoption date	Fine imposed EUR	Undertakings concerned	Prohibition Procedure
Ethylene purchases	14/07/2020	260 443 000	4	Settlement
Closure Systems	29/09/2020	18 196 000	3	Settlement
Retail food packaging	17/12/2020	9 441 000	1	Prohibition

## 2.4 Cooperation within the European Competition Network and with national courts

### 2.4.1. Cooperation with national competition authorities within the European Competition Network

Since 2004, the Commission and the national competition authorities in all EU Member States cooperate through the European Competition Network (ECN)<sup>121</sup>. The objective of the ECN is to build an effective legal framework to enforce European competition law against companies who engage in cross-border business practices which restrict competition.

In 2020, the Commission continued to ensure the coherent application of Articles 101 and 102 through the ECN. Two of the key supporting cooperation mechanisms in Regulation 1/2003<sup>122</sup> are the obligation on national competition authorities to inform the Commission about a new investigation at the stage of the first formal investigative measure and to consult the Commission on envisaged decisions. In 2020, 139 new investigations were launched

<sup>119</sup> Cases AT.39748 Automotive Wire Harnesses (2013), AT.39922 Automotive bearings (2014), AT.39801 Polyurethane Foam (2014), AT.40055 Parking Heaters (2015), AT.40028 Alternators and Starters (2016), AT.39960 Thermal Systems (2017), AT.40013 Lighting Systems (2017), AT.39881 Occupant Safety Systems (2017), AT.40113 Spark plugs (2018) and AT.40481 Occupant Safety Systems II (2019).

<sup>120</sup> Case T-522/15 CCPL v Commission, judgment of the Court of 11.7.2019.

<sup>121</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43-53 and OJ C 374, 13.10.2016, p. 10.

<sup>122</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1-25.

within the network, 97 envisaged decisions were submitted, compared to 138 new investigations, and 95 envisaged decisions in 2019. These figures include Commission investigations and decisions, respectively.

On top of these cooperation mechanisms set out in Regulation 1/2003, other ECN cooperation work streams equally ensure a coherent enforcement of the EU competition rules. The network meets regularly to discuss cases at early stages, policy issues, as well as matters of strategic importance. In 2020, 24 meetings across horizontal working groups and sector-specific sub-groups were organised, where competition authorities' officials exchanged views.

#### *2.4.2. Transposition of the ECN+ Directive*

The ECN+ Directive<sup>123</sup> empowering Member States' competition authorities to be more effective enforcers of EU competition rules in the field of antitrust entered into force on 4 February 2019. 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 infringe Articles 101 and 102 TFEU. 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. In 2020, the Commission has continued to monitor the transposition process and assisted the Member States in their efforts in incorporating the Directive into national law by 4 February 2021.

##### **Empowering NCAs to become more effective enforcers**

Once transposed by Member States into national law, NCAs will:

- benefit from minimum guarantees of independence when applying EU competition rules;
- have the basic guarantee of the human and financial resources they need to perform their tasks;
- have an effective investigative and decision-making toolbox, including to gather digital evidence stored on mobile devices;
- be able to impose deterrent fines, for example companies will no longer be able to escape fines by restructuring;
- have effective leniency programmes in place which encourage companies to report cartels throughout the EU;
- provide each other with mutual assistance so that, for example companies with assets in other Member States cannot escape from paying fines.

The importance of companies' fundamental rights is underlined: appropriate safeguards will be in place for the exercise of NCAs' powers, in accordance with the EU Charter of Fundamental Rights and general principles of EU law.

#### *2.4.3. Cooperation with national courts*

Effective overall enforcement of antitrust rules in the EU, for the benefit of both EU households and businesses, requires interplay between public and private enforcement. In addition to its cooperation with NCAs in the context of the ECN, the Commission also continued its cooperation with national courts under Article 15 of Regulation 1/2003. The

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<sup>123</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, 14.1.2019, p. 3-33.

Commission helps national courts to enforce the EU competition rules in an effective and coherent manner by providing case-related information or an opinion on matters of substance or by intervening as *amicus curiae* in proceedings pending before the national courts.

Following approval from the concerned courts, the Commission publishes its opinions and *amicus curiae* observations on its website.

#### *2.4.4. Private enforcement*

Directive 2014/104/EU on antitrust damages actions (Damages Directive)<sup>124</sup> aims at ensuring that anyone harmed by infringements of the EU competition rules can effectively avail itself of the right to compensation before national courts. To assist national courts in how to protect confidential information disclosed in private enforcement proceedings, the Commission adopted in 2020 a Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law<sup>125</sup>.

The Communication seeks to provide practical guidance to national courts in selecting effective protective measures, considering among others the specific circumstances of the case, the type of information requested, the extent of the disclosure, the parties and relationships concerned as well as any administrative burdens and cost implications. It presents a number of measures (e.g. redactions, confidentiality rings, use of experts, closed hearings) national courts may, depending on their procedural framework, order to protect confidential information in the context of disclosure requests throughout and after the closing of the proceedings, and it describes how and when such measures could be effective. The Communication is non-binding and does not alter existing rules under EU law or the laws of the Member States. Its goal is, however, to be a source of inspiration, in particular for national courts that deal with damages actions for infringements of EU competition law.

The Commission submitted in December 2020 a report about the implementation of the Damages Directive to the European Parliament and the Council<sup>126</sup>. The report takes stock of the implementation of some of the core rules of the Directive, such as the right to full compensation, disclosure of evidence, evidentiary value of infringement decisions, limitation periods, passing on of overcharges and estimation of harm. The report also notes that since the adoption of the Damages Directive in 2014, the number of damages actions before national courts has significantly increased and damages actions have become much more widespread in the EU. Therefore, while the effectiveness of the measures will depend on their actual implementation by the national courts, the rights of victims of antitrust infringements have been already strengthened. Based on the findings of the report, the Commission has drawn positive conclusions as regards the consistent implementation of the rules. The Commission intends to continue to monitor the developments in the Member States with a view to evaluating the Directive, once sufficient experience from the application of its rules is available.

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<sup>124</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1-19.

<sup>125</sup> Communication from the Commission: Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law, C(2020) 4829, OJ C 242, 22.7.2020, p. 1-17.

<sup>126</sup> Commission Staff Working Document on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union SWD(2020) 338 final, 14.12.2020. Available at

[https://ec.europa.eu/competition/antitrust/actionsdamages/report\\_on\\_damages\\_directive\\_implementation\\_en.pdf](https://ec.europa.eu/competition/antitrust/actionsdamages/report_on_damages_directive_implementation_en.pdf).

## 2.5 Audit by the European Court of Auditors on antitrust

In November 2020, the European Court of Auditors (ECA) published a Special Report on EU merger control and antitrust proceedings in the period 2010-2017<sup>127</sup>. In the report, ECA concluded that the European Commission, the enforcer of EU competition rules, has generally made good use of its powers in antitrust proceedings and merger control, and addressed competition concerns with its decisions. ECA also found that overall the NCAs and the Commission cooperated well in the European Competition Network.

However, ECA points to the increasing complexity of the context in which competition rules are enforced, especially due to the challenges relating to digital markets, and sees a need to scale up market oversight. The ECA acknowledges the efforts made by the Commission since 2017 to accelerate its antitrust proceedings, and takes note of the constantly high success rate of the Commission defending its competition decisions in EU Courts. The ECA report confirms the relevance of the Commission's ongoing review of competition rules and of the tools at its disposal to ensure that they are fit for the changing market environment, including the accelerating digitalisation of the economy. As also detailed in this report, the Commission has a significant policy agenda in antitrust for the next years, including the review of its horizontal and vertical rules and guidance and of the market definition notice, as well as efforts to introduce new policy tools in digital markets, in line with the Commission Work Programme.

In the report, ECA calls for the Commission to perform a study of the deterrent effect of its fines and update its fine-setting methodology as appropriate. The Commission envisages to conduct an external study on whether the fines imposed under its current fining methodology achieve that aim. Finally, ECA recommends that the Commission regularly carries out ex-post evaluations of its enforcement. The Commission accepts this recommendation subject to the availability of sufficient resources.

### 3. MERGER CONTROL

#### EU merger control

The purpose of EU merger control is to ensure that market structures remain competitive while enabling smooth restructuring of the industry. This applies not only to EU-based companies, but also to any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur.

EU merger control ensures that all firms active in EU markets can compete on fair and equal terms. Proposed transactions which may distort competition are subject to close scrutiny by the Commission. If necessary to protect competition, the Commission can give merging firms the possibility to dispel competition concerns by offering commitments. If sufficient commitments cannot be found or agreed upon, the Commission may prohibit the transaction. In its assessments, the Commission takes into account efficiencies possibly brought about by mergers. Efficiencies may have positive effects on costs and innovation, for example,

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<sup>127</sup> Special Report 24/2020 *The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight*, of 19 November 2020, available at [https://www.eca.europa.eu/Lists/ECADocuments/SR20\\_24/SR\\_Competition\\_policy\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR20_24/SR_Competition_policy_EN.pdf).

provided that they are verifiable, merger-specific and likely to be passed on to consumers. Despite the impact of the COVID-19 pandemic, the Commission's enforcement activity in 2020 remained very similar to the previous year.

### 3.1 Recent enforcement trends

In 2020, 361 mergers were notified to the Commission. While the number of merger notifications initially slowed down at the outbreak of the COVID-19 pandemic crisis, the overall number of merger notifications received in 2020 has remained relatively stable when compared with recent years. After years of continuous and significant increase in the number of notifications received in the period 2013-2018 (including an all-time record in 2018 with the highest number of notifications ever received), the number of notifications have experienced a slight decline in the last two years but still remain high. While in the period 2010-2014, the Commission received on average 289 notifications per year, in the period 2015-2019 the yearly average increased to 373. Moreover, there were 30 reasoned pre-notification submissions by notifying parties, requesting referral of a case from the Commission to a national competition authority or vice versa.

Like in the previous years, most mergers notified in 2020 did not raise competition concerns and could be processed speedily. The simplified procedure was used in 76% of all notified transactions in 2020, showing the continuous positive impact of the simplification package adopted by the Commission in December 2013. The proportion of simplified cases in the period 2004-2013 was substantially lower, at 59%.

Nevertheless, 2020 involved intensive work by the Commission both due to the large number of notified transactions and the complexity of a significant number of cases. An increasing number of notified transactions concerned already concentrated industries. This required the Commission to carefully assess their potential impact on competition, employing sophisticated quantitative techniques and comprehensive qualitative investigations. In 2020, the Commission opened in-depth investigations (second phase) in eight cases. These cases concerned diverse sectors such as manufacture and retail sale of lenses and eyewear, hydraulic components, automotive, digital healthcare and wearable devices, and financial markets.

The Commission increasingly has to assess mergers involving digital issues, both in the digital and traditional industries, and their number is likely to continue growing. In 2020, the Commission cleared Google's acquisition of Fitbit subject to commitments aimed at ensuring that the market for wearables and the nascent health digital space remain open and competitive.

Despite the impact of the COVID-19 pandemic, the Commission's enforcement activity in 2020 remained very similar to the previous year. The Commission adopted 352 merger decisions in 2020<sup>128</sup> and intervened in 18 cases, a slightly lower number than previous years but that remains in the 5-7% range (out of total decisions adopted) of previous years. In 2020, 13 mergers were cleared subject to commitments in first phase, three were cleared with remedies after a second phase<sup>129</sup> and one was cleared unconditionally in second phase. Two

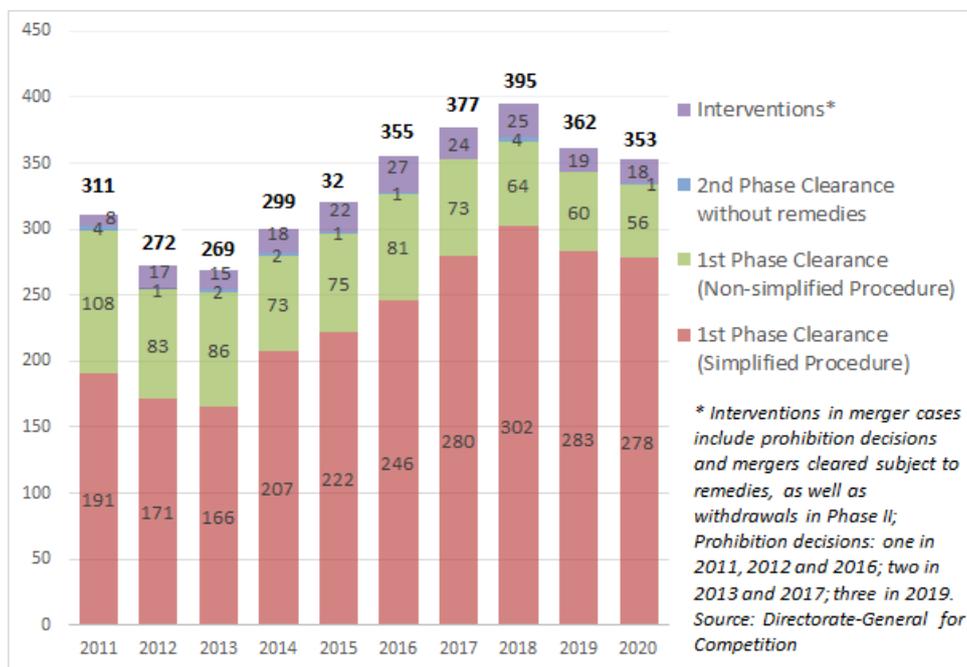
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<sup>128</sup> For the purposes of this report, decisions based on Articles 6(1)(a), 6(1)b, 6(1)b in combination with 6(2), 8(1), 8(2) and 8(3) of the Merger Regulation are considered as final decisions.

<sup>129</sup> Case M.9014 PKN ORLEN/GRUPA LOTOS, Case M.9730 FCA/PSA, Case M.9660 Google/Fitbit.

cases were abandoned during the in-depth investigation<sup>130</sup>. Finally, the Commission did not prohibit any transaction in 2020.

#### *Merger decisions 2011-2020:*



Most remedies accepted by the Commission in 2020 consisted of divestitures of tangible or intangible assets. This confirms the Commission’s general preference for structural remedies in merger cases as best suited to address in a durable manner competition concerns arising from a concentration. In 2020 some complex transactions were successfully resolved in Phase I subject to comprehensive remedy packages offered by the Notifying Parties in due time, such as in the *Alstom/Bombardier* case. The Commission accepted non-divestiture remedies in a few cases, where they were considered to solve effectively the underlying competition concerns in light of the specificities of the sector and the case at hand.

Finally, in 2020, two procedural infringement cases continued to be under investigation. One against Merck GmbH concerning their alleged provision of incorrect and/or misleading information during the Commission’s merger review, and one against Telefonica for breach of the commitments given in relation to its acquisition of E-Plus in 2014.

### **3.2 The evaluation of selected procedural and jurisdictional aspects of EU merger control**

In 2020, the Commission has entered the final stages of its evaluation of selected procedural and jurisdictional aspects of EU merger control<sup>131</sup>. A Staff Working Document summarising the main findings of the evaluation was published on 26 March 2021<sup>132</sup>. Following the results of the evaluation, the Commission adopted a communication providing guidance on the

<sup>130</sup> Case M.9547 Johnson & Johnson/Tachosil, Case M.9097 Boeing/Embraer.

<sup>131</sup> The evaluation focussed on four topics, (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects of the procedural and investigative framework for the assessment of mergers.

<sup>132</sup> Commission Staff Working Document: Evaluation procedural and jurisdictional aspects of EU merger control, SWD(2021) 66 final, 26.3.2021. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1384](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1384)

application of the referral mechanism between Member States set out in Article 22 of the Merger Regulation, and launched an impact assessment on exploring policy options for further targeting and simplification of merger procedures<sup>133</sup>.

### **3.3 Market definition notice**

On 26 June 2020, as part of an evaluation, the Commission launched a public consultation to seek views from stakeholders whether the Notice on market definition (Market Definition Notice) is still fit for purpose, in particular in light of recent market developments, including digitalisation. The summary of the stakeholder views was published on 18 December 2020<sup>134</sup>. The evaluation work is ongoing.

### **3.4 Significant judgments by EU courts in merger control**

In its judgment of 4 March 2020<sup>135</sup> the Court of Justice dismissed Marine Harvest's appeal against the General Court's judgment whereby it upheld the Commission decision imposing a EUR 20 million fine to Marine Harvest for gun jumping. The Commission decision was therefore validated by the Court of Justice.

In its judgment of 28 May 2020<sup>136</sup> the General Court annulled the Commission Decision adopted in 2016 which prohibited Hutchison's acquisition of O2 UK and provided guidance on the assessment of whether a transaction gives rise to a significant impediment of effective competition when such a transaction does not result in the creation or strengthening of a dominant position. The Commission appealed the General Court judgment on 7 August 2020.

In its judgment of 5 October 2020<sup>137</sup> the General Court upheld the Commission decision to prohibit the joint acquisition of Cemex Croatia by HeidelbergCement and SchwenkZement through their joint venture Duna Brava. The Court validated the Commission's jurisdictional and substantive assessment of the transaction.

In its judgment of 16 December 2020, in case T-430/18 American Airlines v Commission, the General Court upheld a 2018 Commission decision adopted in the context of the implementation of remedies made binding in 2013 to clear the merger between American Airlines and US Airways. The General Court validated the Commission's interpretation of the threshold an airline has to fulfil to obtain grandfathering rights over remedy slots used on a given route on which competition problems have been identified.

### **3.5 Audit by the European Court of Auditors on merger control**

As per section 2.5, the European Court of Auditors (ECA) published in November 2020 a Special Report on EU merger control and antitrust proceedings in the period 2010-2017<sup>138</sup>. On merger control, ECA found that the Commission completed its merger reviews within the

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<sup>133</sup> Communication from the Commission: Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, C(2021) 1959 final, 26.3.2021.

<sup>134</sup> Summary of the stakeholder consultation: Evaluation of the Market Definition Notice of 18.12.2020, available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12325-Evaluation-of-the-Commission-Notice-on-market-definition-in-EU-competition-law/public-consultation>.

<sup>135</sup> Case C-10/18 P Mowi (formerly Marine Harvest) v Commission.

<sup>136</sup> Case T-399/16 CK Telecoms UK Investments v Commission.

<sup>137</sup> Case T-380/17 HeidelbergCement and Schwenk Zement v Commission.

<sup>138</sup> Special Report 24/2020 *The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight*, of 19 November 2020, available at

[https://www.eca.europa.eu/Lists/ECADocuments/SR20\\_24/SR\\_Competition\\_policy\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR20_24/SR_Competition_policy_EN.pdf).

legal deadlines. However, the Commission has to cope with an increasing number of concentrations of companies and more and more data to be analysed. ECA concluded that the Commission successfully applied a simplified merger procedure but still can act upon further streamlining measures. In addition, ECA studied the turnover-based thresholds used for deciding whether a transaction would affect competition in the internal market, as well as the option of charging merger fees.

The Commission accepts to look into possible ways to optimise merger procedures and case management. ECA's recommendation of regular ex-post evaluations concerns also merger control, for example, when assessing whether assumptions about market developments after intervention in a merger operation were correct. While the Commission accepts the recommendation it notes that the implementation of the recommendation is subject to the availability of sufficient resources.

#### 4. DEVELOPING THE INTERNATIONAL DIMENSION OF EU COMPETITION POLICY

As world markets continue to integrate and more companies rely on global value chains, competition agencies need to increase their collaboration and agree on common standards and procedures more than ever before. Effectively enforcing competition rules depends to a growing extent on co-operation with other enforcement authorities and having effective tools to ensure a fair business environment in the EU.

##### 4.1 Control of foreign subsidies – a new policy initiative to strengthen the Commission toolbox

Europe's economy is open and closely interlinked with the rest of the world. Therefore, ensuring a fair business environment in the Single Market is key for companies in the EU. Subsidies given by Member States have always been subject to strict EU State aid rules. Subsidies granted by non-EU governments to companies active in the EU, however, seem to have an increasingly negative impact on the internal market, but fall outside EU State aid control.

To launch a debate on new tools to address this regulatory gap, the Commission adopted a White Paper on foreign subsidies on 17 June 2020<sup>139</sup>. An extensive consultation was carried out in 2020<sup>140</sup>, to which the Commission received 150 contributions from various stakeholders. The Commission also received 22 submissions on the Inception Impact Assessment<sup>141</sup>, published on 6 October 2020, and carried out targeted consultations of stakeholders on the available policy options and their impacts.

The White Paper put forward several complementary options to address the existing regulatory gap:

**Module 1** proposed the establishment of a general market scrutiny instrument to capture all possible market situations in which foreign subsidies may cause distortions in the Single

<sup>139</sup> White Paper on levelling the playing field as regards foreign subsidies, COM(2020) 253 final, 17.6.2020, available at [https://ec.europa.eu/competition/international/overview/foreign\\_subsidies\\_white\\_paper.pdf](https://ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf).

<sup>140</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12621-Trade-investment-addressing-distortions-caused-by-foreign-subsidies/public-consultation>.

<sup>141</sup> See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12621-Addressing-distortions-caused-by-foreign-subsidies/feedback?p\\_id=8607947](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12621-Addressing-distortions-caused-by-foreign-subsidies/feedback?p_id=8607947).

Market. Under this Module, the competent supervisory authority, could act upon any indication or information that a company active in the EU benefits from a foreign subsidy. If the existence of a foreign subsidy and its distortive impact is established, and not outweighed by its positive impact, the authority would impose remedial measures, such as redressive payments and structural or behavioural remedies.

**Module 2** aimed to specifically address distortions caused by foreign subsidies facilitating the acquisition of an EU target. Under Module 2, companies benefitting from financial support of a non-EU government would need to notify their acquisitions of EU companies, above a given threshold, to the Commission. Should the Commission find that the acquisition is facilitated by a distortive foreign subsidy, it could accept commitments or impose redressive measures or prohibit the acquisition.

**Module 3** addressed the distortive effect of foreign subsidies on EU public procurement procedures. Under this Module, the White Paper proposes a mechanism where bidders would have to notify financial contributions received from non-EU countries. The competent authorities would then assess whether there is a foreign subsidy and whether it distorts the awarding of the public procurement. In such a case, the bidder could be excluded from the procurement procedure.

Finally, the White Paper set out ways to address the issue of foreign subsidies in the case of applications for EU financial support.

As announced in the Commission Work Programme 2021<sup>142</sup>, a legislative proposal on addressing distortions caused by foreign subsidies will be presented in 2021.

#### **4.2 Multilateral relations**

In 2020, the Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules. To this effect, the EU, US and Japan agreed in a common statement in January 2020<sup>143</sup> to strengthen the existing rules on industrial subsidies. Moreover, in 2020 the Commission was engaged in several sectoral initiatives addressing subsidies in the international context, for example the G20 Global Forum on steel excess capacity. Finally, the Commission also continued the work with EU Member States in the International Subsidy Policy Group, exchanging views and coordinating initiatives concerning international subsidy policies at multilateral and bilateral level.

In 2020, the Commission continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), the World Bank, and United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meeting in June 2020, the Commission contributed to the discussions on conglomerate effects of mergers<sup>144</sup>, start-ups, killer acquisitions and merger control thresholds<sup>145</sup>, consumer data rights and impact on competition<sup>146</sup>, and on line

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<sup>142</sup> Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: Commission Work Programme 2021 – A Union of vitality in a world of fragility, COM(2020) 690 final.

<sup>143</sup> See: [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158567.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158567.pdf).

<sup>144</sup> See: <https://www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm>.

<sup>145</sup> See: <https://www.oecd.org/daf/competition/start-ups-killer-acquisitions-and-merger-control.htm>.

of business restrictions<sup>147</sup>. In December 2020, the Commission contributed to the Competition Committee's deliberations on the role of competition policy in promoting economic recovery<sup>148</sup>, economic analysis in merger investigations and the role of economists in merger teams and qualitative evidence review<sup>149</sup>. Furthermore, the Executive Vice President Margrethe Vestager delivered a keynote speech in the opening session "Competition Policy: Time for a reset" of the OECD Global Forum on Competition<sup>150</sup>.

In the ICN, following the 2020 Virtual Annual Conference, which took place in September, the Commission continued its three-year co-chair role of the Unilateral Conduct Working Group, which it currently shares with the South African and Japanese Competition Authorities. The Commission continued the multi-annual project on the "assessment of dominance and market power in digital", where it published the survey report on dominance/significant market power<sup>151</sup> in July 2020. DG Competition contributed to various work products of the Cartel Working Group, in particular the "Guidance on Enhancing Cross-border Leniency Cooperation" and the "Big Data Project". The Commission is also an active member in the other ICN Working Groups; the Merger Working Group, the Advocacy Working Group, and the Agency Effectiveness Working Group.

In UNCTAD, the Commission contributed to the eighth Conference on Competition and Consumer Protection in October 2020<sup>152</sup>. The conference included discussions on competitive neutrality, combating cross-border cartels and consumer protection and competition in the digital economy.

#### *4.2.1. Relations with the United Kingdom*

In 2020, the Commission continued to prepare for the withdrawal of the United Kingdom from the European Union, including the competition and State aid related aspects of that withdrawal. The Withdrawal Agreement between the European Union and the United Kingdom, which entered into force on 1 February 2020<sup>153</sup>, set out the continued application of the EU acquis during the transition period, until end 2020. It included, amongst others, provisions for State aid and competition cases which were ongoing at the end of the transition period. The Commission issued guidance explaining the application of the Withdrawal Agreement in competition matters<sup>154</sup>.

In December 2020, the negotiations on the EU-UK Trade and Cooperation Agreement (TCA)<sup>155</sup> were finalised. The agreement provisionally applies from 1 January 2021. It includes comprehensive competition and subsidies chapters ensuring that competition between the EU and the United Kingdom is not distorted after the United Kingdom leaves the EU.

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<sup>146</sup> See: <https://www.oecd.org/daf/competition/consumer-data-rights-and-competition.htm>.

<sup>147</sup> See: <https://www.oecd.org/daf/competition/line-of-business-restrictions-as-a-solution-to-competition-concerns.htm>.

<sup>148</sup> See: <https://www.oecd.org/daf/competition/role-of-competition-policy-in-promoting-economic-recovery.htm>.

<sup>149</sup> See: <https://www.oecd.org/daf/competition/economic-analysis-in-merger-investigations.htm>.

<sup>150</sup> See: <https://www.oecd.org/competition/globalforum/competition-policy-time-for-a-reset.htm>.

<sup>151</sup> See: <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2020/07/UCWG-Report-on-dominance-in-digital-markets.pdf>.

<sup>152</sup> See: <https://unctad.org/meeting/eighth-United-nations-conference-competition-and-consumer-protection>.

<sup>153</sup> See: [https://ec.europa.eu/info/reasons-United-kingdom/eu-uk-withdrawal-agreement\\_en](https://ec.europa.eu/info/reasons-United-kingdom/eu-uk-withdrawal-agreement_en).

<sup>154</sup> See: [https://ec.europa.eu/info/sites/info/files/brexit\\_files/info\\_site/eu-competition-law\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/eu-competition-law_en_0.pdf).

<sup>155</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part, OJ L 444, 31.12.2020, p. 14-1462.

#### 4.2.2. *Other bilateral relations*

At bilateral level, the EU and China concluded in principle the negotiations for a Comprehensive Agreement on Investment (CAI) on 30 December 2020<sup>156</sup>. China committed to a greater level of market access for EU investors, including some new important market openings. The Agreement improves the transparency of subsidies, essentially by extending the current WTO transparency disciplines for industrial goods to also cover services sectors. In addition, it also establishes a two-stage consultation mechanism between the parties allowing to collect the necessary information to assess the effects of specific subsidies on the investment interests of a party. China also made commitments to ensure fair treatment for EU companies, so they can compete on a better level playing field in China, including in terms of disciplines for state owned enterprises, transparency of subsidies and rules against the forced transfer of technologies.

The Commission aims at including provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2020, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand and Uzbekistan.

As regards the draft Second Generation Cooperation Agreement between the EU and Canada, the Commission is in regular contact with the Canadian Competition Bureau to find a solution on data protection in Canada lining up to the standards established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement<sup>157</sup>. Moreover, the Commission continued the negotiations with Japan on a Second Generation Agreement with a view to updating the existing cooperation agreement from 2003<sup>158</sup>.

Another key area of the Commission's activities is technical cooperation on competition policy and enforcement with the European Union's main trading partners. To frame this cooperation, the Commission has signed a number of Memoranda of Understanding (MoUs). The Commission has signed MoUs with the BRICS<sup>159</sup> countries and Mexico, and it has engaged in technical cooperation with these countries to varying degrees. In 2020, the Commission also continued its technical cooperation activities with the Japanese, Korean, Indian, Chinese and ASEAN<sup>160</sup> competition authorities<sup>161</sup>.

In negotiations with candidate countries and potential candidates, the Commission's main policy objective – in addition to advocating a competition culture – is to help these countries to create legislative frameworks with well-functioning operationally independent competition authorities that build up a solid enforcement record. To meet the conditions for EU accession in the competition policy field, these requirements must be fulfilled. In 2020, the Commission continued to monitor candidate countries' and potential candidates' compliance with their commitments under the Stabilisation and Association agreements. In 2020, the Commission also continued monitoring the implementation of the competition acquis in neighbouring countries, with which the EU has concluded deep and comprehensive free trade agreements.

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<sup>156</sup> EU – China Comprehensive Agreement on Investment (CAI), available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2237>.

<sup>157</sup> See: <http://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=C-1/15>. Currently, Canada is preparing an overhaul of its domestic privacy act.

<sup>158</sup> See: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22003A0722(01)).

<sup>159</sup> BRICS is an acronym commonly used to denote the countries Brazil, Russia, India, China and South Africa.

<sup>160</sup> Association of Southeast Asian Nations.

<sup>161</sup> See: <https://competitioncooperation.eu/>.

The Commission has also been actively engaging with several African national and regional authorities to develop cooperation in the competition field. In 2020, the Commission continued negotiations for the future Agreement for ACP countries (the Cotonou Agreement)<sup>162</sup> and the related Economic Partnership Agreements (EPAs). The Commission reached a political deal on the former on 3 December 2020<sup>163</sup>.

## 5. EXTERNAL COMMUNICATION

The Directorate-General for Competition's external communication is focussed on the use of mass media to reach a variety of audiences, including businesses, lawyers, researchers, academics, students and the general public. This is achieved principally via the Executive Vice President's press conferences, press releases and speeches, as well as social media. In addition, the Directorate-General issues newsletters and other publications aimed at stakeholders and the general public, as well as participation by staff in stakeholder conferences.

The Directorate-General for Competition produced 952 press releases related to competition cases during 2020. Of these, 286 were longer, multilingual, press releases while a further 666 were shorter and monolingual ("midday express"). Some of the cases and policy initiatives generated broad media coverage, such as the antitrust decision to accept commitments by Broadcom, the decision to fine pharmaceutical companies Teva and Cephalon EUR 60.5 million for delaying entry of cheaper generic medicine, the approval of the acquisition of Fitbit by Google, the proposal for a State aid Temporary Framework to support the economy in the context of the Coronavirus outbreak, its four successive amendments and the many support measures that were approved under its provisions and the proposals for a Digital Markets Act and a Digital Services Act. All of these cases and policy projects were covered by TV, radio, print and internet media around the globe.

Throughout 2020, Executive Vice-President Vestager delivered around 35 speeches to a variety of audiences. The Director-General delivered 25 speeches at a variety of international events.

On social media, the Directorate General for Competition was active on Twitter during 2020. Throughout the year, around 1 056 tweets from the Directorate-General's account achieved more than 4.3 million impressions (i.e. the number of times a tweet appears in someone's feed). The tweet posted in March regarding the revision of the State aid rules due to the Coronavirus outbreak achieved the most impressions (36 500). Other popular tweets included those on the proposals for the Digital Services Act and the Digital Markets Act posted in December (32 500 impressions); the opening of the investigation into Apple's App Store rules posted in June (32 200 impressions) and the opening of the in-depth investigation into the proposed acquisition of FitBit by Google posted in June (22 500 impressions). The number of followers on the COMP Twitter account rose by 2 870 over 2020 to a total of 18 616.

The number of subscribers to the Directorate General's revamped electronic newsletter was 13 168 subscribers in 2020, while its publications in the EU Bookshop were viewed, downloaded or ordered as paper copies 6 000 times.

<sup>162</sup> See: [https://ec.europa.eu/international-partnerships/acp-eu-partnership\\_en](https://ec.europa.eu/international-partnerships/acp-eu-partnership_en).

<sup>163</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2291](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2291).

## **6. THE SINGLE MARKET PROGRAMME**

Adapting to an increasingly digital and globalised environment is a major challenge for the enforcement of EU competition policy. New sophisticated IT tools and algorithms used by economic operators combined with an exponential increase in electronic communications, quantity of data and the number of documents on case files make many competition investigations increasingly complex.

The Multiannual Financial Framework 2021-2027 includes for the first time a Competition Programme, which is within the Single Market Programme. Negotiations on the Single Market Programme with the co-legislators, the European Parliament and the Council, were launched in October 2019 and were concluded in December 2020 by a provisional political agreement on the text. The adoption of the Single Market Programme by the co-legislators followed on 28 April 2021<sup>164</sup>. With EUR 4.2 billion over the period of 2021-2027, the Programme provides an integrated package to support and strengthen the governance of the Single Market, including for financial services. The Single Market Programme will ensure a budget of around EUR 140 million for the seven-year period dedicated to the Competition Programme. That will enable the Commission to directly support competition policy development and to ensure efficient, effective and relevant competition enforcement. The Single Market Programme Regulation will apply retroactively from 1 January 2021.

The Competition Programme will enable the Commission to modernise EU competition policy enforcement by investing in state-of-the-art IT tools (including AI), to better deter and detect any wrongdoings. Moreover, the Competition Programme will allow investing in knowledge and expertise, strengthening the cooperation between the Commission and the Member States' competition authorities in all areas of EU competition law, ensuring strong global presence, and raising stakeholder awareness of EU competition policy.

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<sup>164</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014, OJ L 153, 3.5.2021, p. 1-47.

## II. SECTORAL OVERVIEW

### 1. ENERGY & ENVIRONMENT

#### 1.1 Overview of key challenges in the sector

Competition policy contributes to the EU's environmental objectives and climate targets, including the decarbonisation of the economy, and the shift in the transport sector from polluting fossil fuels to alternative fuels in accordance with the Commission's mobility policy. To this end, the Commission authorises State aid measures promoting the deployment of renewables, improving energy efficiency, stimulating demand for low emission vehicles for public and private transport, thereby contributing to the reduction of CO<sub>2</sub> emissions. In addition, the Commission authorises intermediate measures reducing nitrogen oxides (NO<sub>x</sub>) emissions by allowing support for the retrofitting of polluting vehicles used in public transport. Competition policy also ensures that consumers have access to sustainable energy at the lowest possible price, and supports innovation.

After the adoption in December 2019 of the "European Green Deal" Communication, which outlined a number of policy initiatives to reach net-zero greenhouse gas (GHG) emissions in the EU by 2050 and to tackle other environment-related challenges<sup>165</sup>, in March 2020<sup>166</sup> the Commission put forward a proposal for a European Climate Law<sup>167</sup> in order to ensure that its climate neutrality goals are met and developed a wide range of legislative proposals aimed at making possible the achievement of the intermediate target of 55% reduction of GHG emissions by 2030, then endorsed by the European Council in December 2020. The Commission has also adopted a number of strategies aiming at supporting the green transition in the energy sector, such as the Energy System Integration Strategy<sup>168</sup>, the Hydrogen Strategy<sup>169</sup> or the Offshore Renewable Strategy<sup>170</sup>. It has also pursued its policy in the field of battery development by creating the European Battery Alliance in December<sup>171</sup>.

The Commission is currently reviewing the 2014 Guidelines on State aid for environmental protection and energy (EEAG), whose validity has been extended until the end of 2021 to allow finalising the revision. On 12 November 2020, a public consultation was launched on the Inception impact assessment and on the design of the future EEAG that will apply from 1 January 2022 and the related GBER articles<sup>172</sup>. The revision of the EEAG and the relevant GBER provisions aim at delivering a fit-for-purpose, modern, simplified, easy to apply and future-proof enabling framework for public authorities to help reaching the EU environmental and energy objectives in a cost effective manner while minimising potential distortions of competition and trade within the Union. The revision is based on the findings of the Fitness Check of the State aid modernisation package, which showed that the EEAG and corresponding GBER rules have generally delivered on their objectives, but also identified certain aspects where the rules should be further simplified and modernised in a way that

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<sup>165</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019) 640 final. See: [https://ec.europa.eu/info/publications/communication-european-green-deal\\_en](https://ec.europa.eu/info/publications/communication-european-green-deal_en).

<sup>166</sup> See: [https://ec.europa.eu/info/publications/communication-european-green-deal\\_en](https://ec.europa.eu/info/publications/communication-european-green-deal_en).

<sup>167</sup> See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588581905912&uri=CELEX:52020PC0080>.

<sup>168</sup> See: [https://ec.europa.eu/energy/topics/energy-system-integration/eu-strategy-energy-system-integration\\_en](https://ec.europa.eu/energy/topics/energy-system-integration/eu-strategy-energy-system-integration_en).

<sup>169</sup> See: [https://ec.europa.eu/energy/topics/energy-system-integration/hydrogen\\_en](https://ec.europa.eu/energy/topics/energy-system-integration/hydrogen_en).

<sup>170</sup> See: [https://ec.europa.eu/energy/topics/renewable-energy/eu-strategy-offshore-renewable-energy\\_en](https://ec.europa.eu/energy/topics/renewable-energy/eu-strategy-offshore-renewable-energy_en).

<sup>171</sup> See: [https://ec.europa.eu/growth/industry/policy/european-battery-alliance\\_en](https://ec.europa.eu/growth/industry/policy/european-battery-alliance_en).

<sup>172</sup> See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12616-Revision-of-the-Energy-and-Environmental-Aid-Guidelines-EEAG->

minimises distortions of trade and competition in the Single Market and in line with the objectives of the Green Deal.

In October 2020, the Commission launched a call for contributions on how competition policy can further support the objectives of the Green Deal. This call encompasses all the instruments of competition policy. The contributions received supported the “The Green Competition Conference”, which took place on 4 February 2021<sup>173</sup>.

## **1.2 Effective competition in the green economy**

In 2020, competition enforcement continued to contribute to the EU environmental objectives through the application of the State aid, antitrust and merger rules.

### *1.2.1. E-mobility*

The large-scale deployment of charging stations under a competitive market is important to ensure the take-up of electric vehicles and encourage the shift away from fossil fuels. In addition, support for the acquisition of low emission vehicles should be limited to what is needed to incentivise the purchase of those vehicles instead of more polluting conventional vehicles.

In 2020, the Commission approved 14 schemes for the deployment of electric charging stations and other alternative fuel infrastructures as well as for the acquisition of low emission vehicles (in particular electric buses for public transport). Moreover, the Commission approved support schemes to retrofit diesel vehicles used in municipalities where harmful NOx emission limits were exceeded. These measures are in line with the EU environmental goals, as well as with the European Strategy for low-emission mobility, and the policy for the shift to zero-emission vehicles in cities and for creating a functioning market for such vehicles.

### *1.2.2. Reduction of emissions*

On 14 December 2020, the Commission approved a EUR 30 billion Dutch scheme providing aid in the form of premia paid based on CO<sub>2</sub> emission avoided to industrial installations reducing CO<sub>2</sub> emissions through the production of renewable energy, the recovery of waste heat, replacing ‘dirty’ with low carbon electricity, for the production of renewable hydrogen or the production of heat<sup>174</sup> or by the capturing and storing of CO<sub>2</sub><sup>175</sup>. The selection of beneficiaries and the level of support will be set through competitive bidding processes. The premium will be paid per ton of CO<sub>2</sub> emission avoided, based on the consumption or production of cleaner energy compared to energy production/consumption from fossil fuels or measured based on captured CO<sub>2</sub>.

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<sup>173</sup> See :

[https://ec.europa.eu/competition/information/green\\_deal/index\\_en.html](https://ec.europa.eu/competition/information/green_deal/index_en.html) and <https://webcast.ec.europa.eu/competition-green-deal-conference>.

<sup>174</sup> Those are so-called electrification projects. To ensure that the support effectively leads to carbon emission reductions, electrification projects will obtain support only for a limited number of running hours each year based on the number of hours in which the electricity supply in the Netherlands is expected to be met completely from low carbon sources.

<sup>175</sup> Case SA.53525 press release available under [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2410](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2410).

In July 2020, the Commission approved a scheme to support electricity production from renewable sources in Ireland, the Renewable Electricity Support Scheme (RESS)<sup>176</sup>. The RESS, will help Ireland reach its national target to transition away from fossil fuels and reach a share of 70% of renewables in its electricity mix by 2030. The scheme contains provisions for the treatment of energy communities and local communities where wind farms are to be installed, in line with State aid rules. The Commission found that the aid is necessary, has an incentive effect and is proportionate and limited to the minimum necessary, as the amount of aid will be set through competitive auctions.

### *1.2.3. MFF-related GBER amendment (energy efficiency in certain buildings and low emission mobility infrastructure)*

In order to further simplify and synergise support from national and EU funds, in 2019 the Commission initiated a targeted review of the GBER also covering financial products supported by the InvestEU Fund under the new Multiannual Financial Framework. To this end, the Commission proposed compatibility conditions for facilitating the combination under the same project of investments in energy efficiency measures with investments improving the energy performance of mainly residential buildings and those used for social, educational or public administration activities. Following the second public consultation on those new provisions<sup>177</sup> and to ensure consistent treatment, in 2020 the Commission proposed additional new GBER provisions for investment aid (outside of InvestEU) to publicly accessible charging or refuelling infrastructure for zero- and low emission road vehicles from charging or refuelling stations supplying renewable electricity or hydrogen.

### *1.2.4. State aid guiding templates*

The Recovery and Resilience Facility supports the green transition. Each Recovery and Resilience Plan (RRP) will have to include a minimum of 37% of expenditure related to climate. In 2020, the Commission published guiding templates to assist Member States in the design of their national Recovery and Resilience Plans in line with EU State aid rules, including for a series of support measures for environmental protection in line with the “European flagships” of the Commission’s Annual Sustainable Growth Strategy 2021. These guiding templates include templates on Energy and hydrogen infrastructure<sup>178</sup>, Energy from renewable sources<sup>179</sup>, including renewable sourced hydrogen production, District heating/cooling generation and distribution infrastructure<sup>180</sup>, Energy efficiency in buildings<sup>181</sup>, Electric charging stations and hydrogen stations for road vehicles<sup>182</sup>, as well as Acquisition of zero and low-emission road vehicles<sup>183</sup>.

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<sup>176</sup> Case SA.54683 Irish RES electricity support, Commission Decision of 20.7.2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_54683](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54683).

<sup>177</sup> See second public consultation: [https://ec.europa.eu/competition/consultations/2020\\_gber/index\\_en.html](https://ec.europa.eu/competition/consultations/2020_gber/index_en.html).

<sup>178</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_energy\\_and\\_hydrogen\\_infrastructure.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_energy_and_hydrogen_infrastructure.pdf).

<sup>179</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_renewable\\_power\\_generation.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_renewable_power_generation.pdf).

<sup>180</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_district\\_heating.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_district_heating.pdf).

<sup>181</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_energy\\_efficiency\\_in\\_buildings.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_energy_efficiency_in_buildings.pdf).

<sup>182</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_electric\\_and\\_hydrogen\\_charging\\_stations.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_electric_and_hydrogen_charging_stations.pdf).

<sup>183</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/template\\_RFF\\_premiums\\_acquisition\\_low\\_emission\\_vehicles.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_premiums_acquisition_low_emission_vehicles.pdf).

### *1.2.5. Renewables and cogeneration*

In 2020, the Commission adopted seventeen decisions concerning renewables and combined heat and power support schemes<sup>184</sup>, which concerned a number of different renewable technologies (such as for example geothermal, photovoltaic, onshore and offshore wind, biomass) including some new features, such as the support of local communities and the use of decarbonisation technologies (such as hydrogen). An increasing number of Member States grant support for the production of renewable energy through competitive tenders and by integrating renewables installations in the electricity market. This has resulted in lower cost for consumers in the electricity system as a whole<sup>185</sup>.

Antitrust enforcement also contributes to the objective of a low-carbon economy and the Green Deal. After sending a Statement of Objections in 2018, the Commission continued in 2020 its investigation of ethanol producers suspected of having colluded to manipulate ethanol benchmarks published by the price reporting agency Platts<sup>186</sup>. If confirmed, such practices harm competition and undermine EU Green Deal and energy objectives by increasing prices for renewable energy, in this case biofuels used for transport.

The Commission has been discussing with the Greek authorities remedies in the long-running Greek lignite antitrust case, relating to Greece having granted state-owned PPC privileged access rights to lignite. In December 2019, Greece adopted a new National Energy and Climate Plan according to which all existing lignite-fired units would be decommissioned by 2023. In this context, the Greek authorities submitted a remedies package in October 2020, which the Commission has consulted with the market. The common objective is to finalise the design of the remedies in order to close the case.

### *1.2.6. Coal exit*

Phasing out coal-fired power plants also contributes in a crucial way to the transformation to a climate-neutral economy, in line with the European Green Deal objectives. In 2020, the Commission approved Germany's plans to provide incentives for the early closure of hard coal-fired power plants and to compensate the businesses that leave the market early via competitive tenders in line with EU State aid rules<sup>187</sup>. The Commission also approved as proportionate the compensation granted by the Netherlands for the early closure of the Hemweg coal power plant<sup>188</sup>.

### *1.2.7. ETS Guidelines revision*

On 21 September 2020, the Commission adopted revised EU Emission Trading System State aid Guidelines in the context of the system for greenhouse gas emission allowance trading

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<sup>184</sup> Cases SA.55891, SA.56125, SA.56908, SA.54683, SA.57657, SA.58556, SA.55695, SA.59020, SA.59024, SA.57507, SA.59028, SA.59842, SA.59125, SA.59126, SA.55453, SA.57476 and SA.59015.

<sup>185</sup> Resulting from bidding processes, weighted average price of wind capacity fell by 62% between 2015 and 2019, while the weighted average price of solar capacity fell by 51% between 2014 and 2019. Based on the sample covered by the study Retrospective evaluation rules for environmental support study on State aid protection and energy of 5 June 2020, see: <https://op.europa.eu/en/publication-detail/-/publication/d3289dd8-a930-11ea-bb7a-01aa75ed71a1>.

<sup>186</sup> Case AT.40054 Ethanol Benchmarks. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40054](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40054).

<sup>187</sup> Case SA.58181 Tender mechanism for the phase-out of hard coal in Germany. See:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2208](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2208).

<sup>188</sup> Case SA.54537 Prohibition of coal for the production of electricity in the Netherlands. See:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_863](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_863).

post-2021 (the ‘ETS Guidelines’). They entered into force on 1 January 2021 with the start of the new ETS trading period, and replace the previous Guidelines adopted in 2012.

The ETS Guidelines aim at reducing the risk of “carbon leakage”, where companies move production to countries outside the EU with less ambitious climate policies, leading to less economic activity in the EU and no reduction in greenhouse gas emissions globally. In particular, they enable Member States to compensate companies in at-risk sectors for part of the higher electricity prices resulting from the carbon price signals created by the EU ETS (so-called “indirect emission costs”). At the same time, overcompensation of companies would risk running counter to the price signals created by the EU ETS to promote a cost-effective decarbonisation of the economy and create undue distortions of competition in the Single Market.

Against this background, the revised ETS Guidelines:

- target aid only at sectors at risk of carbon leakage due to high indirect emission costs and their strong exposure to international trade. Based on an objective methodology, 10 sectors and 20 sub-sectors are eligible (compared to 13 sectors and 7 sub-sectors under the previous Guidelines);
- set a stable compensation rate of 75% in the new period (reduced from 85% at the beginning of the previous ETS trading period), and exclude compensation for non-efficient technologies, to maintain the companies’ incentives for energy efficiency; and
- make compensation conditional upon additional decarbonisation efforts by the companies concerned, such as complying with the recommendations of their energy efficiency audit.

The Guidelines also take into account the specificities of small and medium-sized enterprises (SMEs), in line with the SME Strategy for a sustainable and digital Europe, by exempting them from the new conditionality requirement in order to limit their administrative burden.

### **1.3 Secure Energy Supply**

Capacity mechanisms are measures taken by Member States to ensure that electricity supply can match demand in the medium and long term. They are designed to support investment to fill expected capacity gaps and ensure security of supply. Typically, on top of income obtained by selling electricity on the market, capacity mechanisms offer capacity providers additional rewards in return for maintaining existing capacity or investing in new capacity needed to guarantee security of electricity supply. Before introducing a measure for security of supply, Member States should prove its necessity and proportionality in line with EU sectoral legislation and the minimisation of distortions of competition.

However, capacity mechanisms cannot substitute electricity market reforms at national and EU levels. The 2019 electricity market regulation<sup>189</sup> requires Member States planning to introduce capacity mechanisms to present a market reform plan to address regulatory and other failures that undermine investment incentives in the electricity sector. The regulation will also prevent high-emission generation capacity from participating in capacity mechanisms.

In 2020, the Commission has continued its enforcement activity with respect to measures

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<sup>189</sup> Regulation (EU) 2019/943 of the European Parliament and the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54.

aimed at security of supply, including capacity mechanisms, on the wake of the evidence brought about by the 2016 sector enquiry<sup>190</sup>. The Commission has engaged actively with several Member States with a view to guiding them towards a procompetitive design of these measures. The entry into force of the Clean Energy for all Europeans Package has also contributed to the review of the existing schemes to ensure compliance with the State aid rules as well as energy regulatory aspects and a better energy market design. In Greece, the Commission has considered appropriate to allow for the temporary prolongation of the Transitory Flexibility Remuneration Mechanism (TFRM) and interruptibility schemes conditional upon a market reform plan and a number of competition commitments<sup>191</sup>.

In 2020, the Commission also approved the state guarantees for securing loans for Lithuania<sup>192</sup> and Cyprus<sup>193</sup> targeting infrastructure projects for securing gas supplies. The Lithuanian measure will serve to finance the purchase of the Floating Storage and Regasification Unit of their LNG terminal. In Cyprus, the measure approved will support the construction of a liquefied natural gas (“LNG”) terminal at Vasilikos Bay, in Cyprus.

In a landmark judgment of 22 September 2020<sup>194</sup>, the Court of Justice maintained the validity of the Commission decision authorising the UK to support the construction of new nuclear capacity (Hinkley Point C reactor). The Court confirmed that Member States may choose nuclear energy for securing their electricity supplies if this choice does not distort trading conditions to an extent contrary to the common interest.

#### **1.4 Effective competition in energy markets**

The objective of competition law enforcement in the energy sector is to strengthen and integrate the principles outlined in sector-specific regulation to create a well-functioning unified market, where energy can be exchanged freely and securely across the EU, and where all related services are provided competitively.

In 2020, the Commission has worked on a series of cases to ensure the integrity of the single energy market. With its 2020 decision in the Romanian Gas Interconnectors case the Commission made commitments offered by Transgaz legally binding under EU antitrust rules<sup>195</sup>. The Commission was concerned that Transgaz, the sole gas transmission network operator in Romania, may have sought to create or maintain barriers to the cross-border flow of natural gas from Romania to other Member States, in particular Hungary and Bulgaria. The final commitments offered by Transgaz and adopted by the Commission enable the free flow of gas from Romania and support the further integration of South Eastern Europe into the European internal energy market. These commitments ensure that market participants have access to additional capacities for gas exports from Romania, that Transgaz’s tariffs proposal do not discriminate between domestic and export tariffs, and that Transgaz does not use other

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<sup>190</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_4021](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_4021).

<sup>191</sup> Case SA.56102 Second prolongation of the Transitory Flexibility Remuneration Mechanism(TFRM) [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_20\\_1771](https://ec.europa.eu/commission/presscorner/detail/en/mex_20_1771).

<sup>192</sup> Case SA.57032 Support to the LNG terminal of Klaipėda in Lithuania [https://ec.europa.eu/info/news/state-aid-commission-approves-additional-state-guarantee-klaipeda-lng-terminal-lithuania-2020-nov-20\\_en](https://ec.europa.eu/info/news/state-aid-commission-approves-additional-state-guarantee-klaipeda-lng-terminal-lithuania-2020-nov-20_en).

<sup>193</sup> Case SA.55388 State aid to Cyprus LNG Terminal. See: [https://ec.europa.eu/info/news/state-aid-commission-approves-state-guarantee-financing-lng-terminal-cyprus-2020-dec-08\\_en](https://ec.europa.eu/info/news/state-aid-commission-approves-state-guarantee-financing-lng-terminal-cyprus-2020-dec-08_en).

<sup>194</sup> Case C- 594/18 P Austria vs Commission, judgment of the Court of 22.9.2020.

<sup>195</sup> Case AT.40335 Romanian gas interconnectors, Commission Decision of 6 March 2020.

See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_407](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_407).

means to refrain exports, in particular by delaying infrastructures completion. These commitments will remain in force until 31 December 2026.

Moreover, in the LNG markets case, the Commission opened a formal investigation in June 2018 to assess whether the long-term agreements of Qatar Petroleum, the largest supplier of LNG to the EU, contain direct or indirect territorial restrictions<sup>196</sup>. Whilst LNG cargos can in theory move freely on a worldwide basis, the Commission continues to investigate whether some clauses of the contracts, such as those restricting cargo diversions, may limit the free flow of LNG within the EEA, thereby segmenting the internal market.

Competition enforcement in 2020 also focused on ensuring that all market players can compete on fair and equal terms and that alternative suppliers are not subject to abusive conduct by incumbent operators. State-owned energy provider Bulgarian Energy Holding (BEH), active in the gas supply market and controlling the Bulgarian gas transmission network, was fined in 2018 for blocking competitors' access to key gas infrastructure in Bulgaria<sup>197</sup>. The aim of the Commission's intervention was to enable competitors to enter the Bulgarian gas supply market and compete with BEH, bringing gas prices down and ensuring the integration of the Bulgarian gas market with neighbouring markets. On 1 March 2019, BEH appealed against the Commission decision<sup>198</sup>. In 2020, the Commission has continued defending this case before the ECJ.

Furthermore, the Commission has continued monitoring the implementation of the commitments made legally binding on Gazprom by decision in 2018<sup>199</sup>. The commitments addressed the competition concerns identified by the Commission and have enabled the free flow of gas at competitive prices in Central and Eastern Europe. Gazprom offered to the relevant customers the possibility to amend their gas contracts in line with the commitments. The reaction of the customers who accepted to modify their contracts confirmed that the commitments are economically viable and attractive for the market. The new clauses in the gas supply contracts have been working well and have had a substantial impact on gas prices in Central and Eastern European Member States. This is highlighted by the application of the price revision clause in Bulgaria, which has led in March 2020 to a new price formula and a reduction of more than 40% in the gas price for the Bulgarian wholesaler, Bulgargaz<sup>200</sup>.

In electricity markets, following up from the DE/DK Interconnector case<sup>201</sup> whose commitments on capacity availability and interconnection extension it monitors, the Commission continues tracking potential discriminatory behaviours or restrictions to the free flow of electricity amongst Member States.

The energy sector has also seen intense mergers and acquisition activity in 2020. The most prominent case has been the proposed acquisition of Grupa Lotos by PKN Orlen under the

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<sup>196</sup> Case AT.40416 LNG supply to Europe, Commission Decision of 21 June 2018. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40416](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40416).

<sup>197</sup> Case AT.39849, BEH Gas. For further information see IP/18/6846, Commission Decision of 17 December 2018. See: [https://ec.europa.eu/commission/presscorner/detail/fr/IP\\_18\\_6846](https://ec.europa.eu/commission/presscorner/detail/fr/IP_18_6846).

<sup>198</sup> Case AT.39849 BEH gas. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39849](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39849).

<sup>199</sup> Case AT.39816 Upstream gas supplies in Central and Eastern Europe, Commission Decision of 24 May 2018. See: [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>200</sup> See: <https://www.gov.bg/en/Press-center/News/PRIME-MINISTER-BOYKO-BORISSOV-THE-PRICE-OF-NATURAL-GAS-FOR-BULGARIA-DECREASES-BY-OVER-40>.

<sup>201</sup> Case AT.40461 DE/DK Interconnector. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40461](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40461).

EU Merger Regulation. PKN Orlen and Grupa Lotos are two large Polish integrated oil and gas companies<sup>202</sup>. The Commission reviewed the merger, which could potentially have lessened competition in the supply of fuels and related markets in Poland and Czechia. To obtain the Commission's approval, PKN Orlen offered a large and complex package of remedies that combine, among other things, refining capacity, greater access to infrastructure to facilitate import and fuel retail stations. These commitments will preserve competition and ensure a genuine choice and fair fuel prices for households as well as businesses.

## **2. INFORMATION AND COMMUNICATION TECHNOLOGIES AND MEDIA**

### **2.1 Overview of key challenges in the sector**

Markets in the information, communication, technologies and media sectors (ICT) continue to be characterised by digitisation and a rapid pace of technological change, which constantly brings to market new devices and new intangible advances, such as services, applications, and ecosystems. Business models and sources of revenue tend to change faster in digital markets than elsewhere. Furthermore, since a few years, the media sector has been characterised by technological convergence: various types of devices and networks can be used to deliver content to viewers (films, music and editorial contents offered by different platforms are available on TV screens, tablets and laptops running through fixed or mobile telecommunications networks). Technological innovation has also created cross-border opportunities and poses challenges to established business practices.

Network effects are frequently observed in ICT markets, meaning that they may be particularly prone to lock-in and entrenched positions of market dominance. Market players frequently have a dual role, by operating a platform or marketplace for third parties and at the same time offering their own products or services on that platform or marketplace in competition with those third parties. In ICT markets, access to and control over various types of data will often be decisive for commercial success. At the same time, anti-competitive practices may cause the small and innovative competitors to exit early from the market.

With a view to contributing to the Digital Transition, effective antitrust scrutiny of the behaviour of market players, including platforms, as well as timely intervention need to be ensured in ICT markets. To make and keep markets open and competitive in line with the goals of the digital agenda, enforcement must focus on safeguarding interoperability and competition between different technological platforms, and improving standard setting.

Finally, State aid policy and enforcement are important enablers of the Digital Transition, which requires a combination of technological developments, industrial strength, world-class infrastructure and an appropriate regulatory framework.

### **2.2 Contribution of EU competition policy to tackling the challenges**

#### *2.2.1. Data and platforms*

In view of these characteristics and challenges, the Commission's antitrust enforcement activities in ICT markets pay particular attention to platforms and the access and use of data.

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<sup>202</sup> Case M.9014 PKN Orlen/Grupa Lotos, Commission Decision of 14 July 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9014](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9014).

In the *Amazon Data* case<sup>203</sup>, the Commission issued a Statement of Objections against Amazon as regards Amazon’s systemic reliance on non-public business data of independent sellers who sell on its marketplace, to the benefit of Amazon’s own retail business, in direct competition with those third party sellers. The Commission’s preliminary findings show that very large quantities of non-public seller data flow directly into the automated systems of Amazon’s retail business and are available to its employees. Amazon’s ability to aggregate these granular data and use them in its automated decision-taking mechanisms to calibrate its retail offers and strategic business decisions, is preliminarily found to be capable of harming competition on the merits in online retail and marginalising third party sellers, in particular in best-selling product categories.

The Commission is examining how Google and Facebook gather and use data, and the impact of such practices on competition. In addition, the Commission is examining the potential tying of Facebook Marketplace to Facebook’s social network.

In July 2020, the Commission launched a sector inquiry into the Internet of Things (“IoT”) sector, based on Article 17 of Regulation 1/2003<sup>204</sup>. The IoT sector inquiry has as its main goal to gain a more comprehensive understanding of competition issues, market dynamics and business challenges in the consumer IoT sector. Despite the early stage of development of this sector, there are indications of practices that could affect competition in this area, such as restrictions of data use, given the accumulation of big data by platforms and “gatekeepers”. The sector inquiry will allow the Commission to examine indications of conducts in this sector that could lead to restrictions or distortions of competition, and allow for early intervention if necessary. A preliminary report will be published in the first half of 2021, followed by a public consultation. The final report will be issued in 2022.

#### **The Google / Fitbit merger**

On 17 December 2020, after an in-depth investigation the Commission cleared the acquisition of Fitbit by Google<sup>205</sup>. The approval is conditional on full compliance with a commitments package offered by Google. The Commission’s investigation focused on the data collected via Fitbit’s wearable devices and the interoperability of wearable devices with Google’s Android operating system for smartphones. By acquiring Fitbit, Google would acquire (i) the database maintained by Fitbit about its users’ health and fitness; and (ii) the technology to develop a database similar to that of Fitbit. By increasing the already vast amount of data that Google could use for the personalisation of ads, it would be more difficult for rivals to match Google’s services in the markets for online search advertising, online display advertising and the entire “ad tech” ecosystem. The transaction would therefore raise barriers to entry and expansion for Google’s competitors for these services to the detriment of advertisers, who would ultimately face higher prices and have less choice. In addition, a number of players in the market for digital healthcare currently access health and fitness data provided by Fitbit through a Web Application Programming Interface (“Web API”), in order to provide services to Fitbit users and obtain their data in return. The Commission found that Google might restrict competitors’ access to the Fitbit Web API and that such a strategy would come especially at the detriment of start-ups in the nascent European digital healthcare space. Finally, the Commission was concerned that Google could put competing manufacturers of wrist-worn wearable devices at a disadvantage by degrading their interoperability with Android smartphones.

To address the Commission’s competition concerns, Google committed that it will not use for Google Ads the health and wellness data collected from wrist-worn wearable devices and other Fitbit devices of users in the EEA, including search advertising, display advertising and advertising intermediation products. Google will maintain a technical separation of the relevant Fitbit’s user data, which will be stored in a “data silo” that is

<sup>203</sup> Case AT.40462 Amazon Marketplace. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40462](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40462).

<sup>204</sup> Sector inquiry IoT, Commission Decision of 16 July 2020. See:

[https://ec.europa.eu/competition/antitrust/IoT\\_decision\\_initiating\\_inquiry\\_en.pdf](https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf).

<sup>205</sup> Case M.9660 Google/Fitbit, Commission Decision of 17 December 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9660](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9660).

separate from any other Google data that is used for advertising. Google will also ensure that European Economic Area ('EEA') users will have an effective choice to grant or deny the use of health and wellness data stored in their Google Account or Fitbit Account by other Google services. Furthermore, Google will maintain access to users' health and fitness data to software applications through the Fitbit Web API, without charging for access and subject to user consent. Finally, Google will continue to license for free to Android original equipment manufacturers (OEMs) those public APIs covering all current core functionalities that wrist-worn devices need to interoperate with an Android smartphone. To ensure that this commitment is future-proof, any improvements of those functionalities and relevant updates are also covered.

The Commission equally continues its enforcement actions ensuring that platforms, which hold a "gatekeeper" role, do not engage in practices, which could lead to a distortion of competition. In June 2020, the Commission initiated three formal antitrust proceedings against Apple concerning Apple's rules on the distribution of apps that compete with Apple's own apps and services on Apple's App Store in the European Economic Area (EEA)<sup>206</sup>. These investigations concern in particular (i) the mandatory use of Apple's own proprietary in-app purchase system through which Apple charges app developers a 30% commission on in-app payments, and (ii) restrictions on the ability of developers to inform iPhone and iPad users of alternative cheaper purchasing possibilities outside of apps. The conduct in question may also dis-intermediate developers of competing apps from important customer data, while Apple may obtain valuable data about the activities and offers of its competitors. The Commission investigates whether those practices distort competition between Apple and other app developers and harm consumers. On 30 April 2021, the Commission sent a Statement of Objections to Apple on the Apple App Store rules for music streaming apps<sup>207</sup>.

As part of the line of cases looking into potential "self-preferencing" and discriminatory practices of digital "dual role" platforms, the Commission, on 10 November 2020, initiated a second formal antitrust investigation into Amazon's business practices<sup>208</sup>. Amazon might artificially favour, on its marketplace, its own retail offers and the offers of third-party sellers that use Amazon's logistics and delivery services (the so-called "fulfilment by Amazon" or "FBA" sellers). In particular, the Commission will investigate whether the criteria that Amazon sets to select the winner of the "Buy Box" and to enable sellers to offer products to Prime users, under Amazon's Prime loyalty programme, lead to preferential treatment of Amazon's retail business or of FBA sellers. Winning the "Buy Box" and effectively reaching Prime users are crucial for sellers to generate sales on the platform.

### *2.2.2. Cross-border access to content*

On 9 December 2020, the Court of Justice set aside the General Court's earlier, confirmatory judgment, and annulled the Commission's decision of 26 July 2016, which made binding commitments offered by Paramount studios in the pay-TV investigation<sup>209</sup>. The pay-TV investigation related to certain clauses in licensing contracts for pay-TV between six major

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<sup>206</sup> Case AT.40437 Apple App Store Practices – music streaming, Commission Decision of 16 June 2020. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40437/40437\\_657\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40437/40437_657_3.pdf); Case AT.40652 Apple App Store Practices – e-books/audiobooks, Commission Decision of 16 June 2020. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40652/40652\\_142\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40652/40652_142_3.pdf); Case AT.40716 Apple App Store Practices, Commission Decision of 16 June 2020. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40716/40716\\_13\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40716/40716_13_3.pdf).

<sup>207</sup> Case AT.40437 Apple App Store Practices – music streaming. See:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2061](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061).

<sup>208</sup> Case AT.40703 Amazon – Buy Box, Commission Decision of 10 November 2020. See:

[https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40703/40703\\_67\\_4.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40703/40703_67_4.pdf).

<sup>209</sup> Case C-132/19 P Groupe Canal+ v Commission, judgment of the Court of 9.12.2020; Case T-873/16 Groupe Canal+ v Commission, judgment of the Court of 12.12.2018.

film studios and Sky UK. Such clauses restricted Sky UK's ability to accept unsolicited requests from consumers located outside the UK and Ireland, eliminating cross-border competition and rendering more difficult cross border access to audio-visual content. The Court of Justice's judgment confirmed the Commission's interpretation of Article 101(1) TFEU and indicated that the geo-blocking clauses at issue created absolute territorial protection and thus had as their object the restriction of competition. The Court of Justice's judgment also confirmed that the Murphy-judgment of the Court of Justice<sup>210</sup> on sports content applies to copyright protected audio-visual content, such as films. This reinforces the Commission's interpretation that cross-border access to such services cannot be prevented contractually.

### 2.2.3. Technology Markets

The Commission's actions in technology markets aim at keeping markets competitive and maximising incentives to innovate. In this context, the Commission has continued monitoring compliance with its decisions in the *Google Search (Shopping)*<sup>211</sup> and *Google Android*<sup>212</sup> cases, as well as market developments regarding other Google verticals, notably *Local*<sup>213</sup> and *Jobs*<sup>214</sup>.

The Commission is engaged in a number of other preliminary investigations in the field of information technology and consumer electronics, including into Nokia's licensing practices in relation to Standard Essential Patents (SEPs) in the automotive sector.

#### **The Broadcom Case**

In October 2020, the Commission closed proceedings with respect to potential exclusionary conduct by Broadcom in the field of components for TV set-top boxes and modems<sup>215</sup>. Broadcom's final commitments offer was made legally binding under EU antitrust rules by Commission decision of 7 October 2020. Pursuant to the commitments, Broadcom will, in particular, suspend all existing exclusivity or quasi-exclusivity arrangements and/or leveraging provisions concerning systems-on-a-chip for TV set-top boxes and Internet modems and refrain from entering into new agreements comprising such terms, for a period of seven years.

In the Broadcom case, with interim measures aimed at preventing irreparable damage to competition already in place, commitments discussions could take place in an efficient manner and without the risk of the market deteriorating in the meantime, leading to a timely and comprehensive solution, thus promoting fair competition to the benefit of consumers.

The Commission approved on 11 August 2020 the acquisition of joint control of Archipels, a newly created company based in France, by the Caisse des Dépôts et Consignation, comprising La Poste, (CDC), based in France, the Électricité de France group (EDF), based in France, and the ENGIE group (ENGIE), based in France<sup>216</sup>. Archipels will be active in the sector of authenticity certification and the management, by block chain, of documents and information related to individuals.

<sup>210</sup> Case C-403/08 Football Association Premier League Ltd and Others v QC Leisure and Others and Case C-429/08 Karen Murphy v Media Protection Services Ltd, judgment of the Court of 4.10.2011.

<sup>211</sup> Case AT.39740 Google Search (Shopping). See: [https://europa.eu/rapid/press-release\\_IP-17-1784\\_en.htm](https://europa.eu/rapid/press-release_IP-17-1784_en.htm).

<sup>212</sup> Case AT.40099 Google Android. See: [https://europa.eu/rapid/press-release\\_IP-18-4581\\_en.htm](https://europa.eu/rapid/press-release_IP-18-4581_en.htm).

<sup>213</sup> Case AT.40585 Google Local.

<sup>214</sup> Case AT.40592 Google Jobs.

<sup>215</sup> Case AT.40608 Broadcom, Commission Decision of 7 October 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40608](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40608).

<sup>216</sup> Case M.9619 CDC/EDF/ENGIE/La Poste, Commission Decision of 11 August 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9619](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9619).

#### 2.2.4. Telecommunication sector

European consumers must be able to benefit from increased choice in the telecommunication sector thanks to low prices, high quality and innovative services. Today, incumbents must, pursuant to regulatory obligations, provide wholesale services and network access to alternative operators. The fast and efficient roll-out of 5G, ensuring the European industry's competitiveness in an increasingly digital society, is a key priority for the Commission. Network sharing agreements can be a source of efficiencies – such agreements can facilitate the roll-out of advanced technological solutions by reducing the costs. These type of agreements are also a means for operators to quickly and efficiently deploy 5G networks. The better the parties can strike the optimal balance between competition and cooperation, the more the networks will benefit consumers both in terms of quality and prices. However, not all network sharing arrangements are beneficial and potential anti-competitive effects have to be carefully assessed in order to avoid harm to competition and consumers.

On 19 February 2020, the Commission approved unconditionally the acquisition of joint control over Prosegur Alarmas by Telefónica and Prosegur, all three companies active in Spain<sup>217</sup>.

In 2020 the Commission continued its investigation into a mobile network-sharing agreement between the two largest operators in Czechia, O2/CETIN and T-Mobile following the issuance of a Statement of Objections (SO) on 7 August 2019<sup>218</sup>. The Commission's preliminary view in the SO was that the network-sharing arrangement was anti-competitive because it was likely to remove the incentives of the two mobile operators to improve their networks and services.

On 6 March 2020, the Commission issued a common merger/antitrust press communication in which it announced the clearance of the joint venture, INWIT, subject to commitments, as well as its *prima facie* finding on the antitrust aspects of the case<sup>219</sup>. In 2019 Telecom Italia (TIM) and Vodafone Italia decided to consolidate parts of their mobile infrastructure by merging all their tower assets into a commonly held joint venture, INWIT, by entering into agreements to share their passive network (towers, masts, etc.) in the whole of Italy as well as their 2G, 4G and 5G active networks (the signal processing equipment) in selected municipalities. While the creation of the joint venture was reviewed under the EU Merger Regulation, the Commission investigated in parallel the agreements on passive and active network sharing under Article 101 on a preliminary basis. In this context the Commission also reviewed the geographical extent of the active sharing, namely the parties' initial decision to exclude from the active sharing all municipalities above 100.000 inhabitants, in light of the assumption that densely populated areas are also considered as the most profitable areas for investment and roll-out on an individual basis. The Commission's dialogue with TIM and Vodafone led the parties to scale down their active sharing further, excluding municipalities above 100.000 inhabitants as well as most of their densely populated suburbs, corresponding to over 30% of the Italian population and more than 33% of data traffic. In this area, the parties will continue to compete on network quality while retaining the benefits of network

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<sup>217</sup> Case M.9559 Telefónica/Prosegur/Prosegur Alarmas España, Commission Decision of 19 February 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9559](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9559).

<sup>218</sup> Case AT.40305 Network sharing – Czechia. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40305](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40305).

<sup>219</sup> Case M.9674 Vodafone Italia/TIM/INWIT JV, Commission Decision of 6 March 2020. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_414](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_414).

sharing in the remaining cities and towns as well as rural areas. The Commission concluded that this adjustment seemed appropriate to alleviate possible concerns stemming from the network sharing agreement, taking into account that the Italian telecommunication markets are less concentrated than in other Member States, and that concerns in relation to the network roll-out of recent entrants were addressed by the commitments in the merger decision, *prima facie*.

On 27 November 2020, the Commission approved, subject to conditions, the acquisition of Covage by SFR FTTH, a company jointly controlled by Altice, Allianz and Omers<sup>220</sup>. Altice/SFR FTTH and Covage are leading fibre networks operators in France. The Commission had concerns that (i) on the wholesale fiber-to-the-office (“FTTO”) access networks market the competitive constraint exercised by Covage would be eliminated by the creation of a large market leader both nationally and in multiple local markets; and (ii) that the merged entity would have the ability and incentive to shut out retail competitors from competitive access to Covage’s fibre capacity at wholesale level, as Covage would become vertically integrated into SFR’s retail activities. To address these concerns, SFR FTTH offered to divest to a suitable buyer of 25 subsidiaries and of assets corresponding to the bulk of Covage’s local fibre loop (FTTO) business. In addition, SFR FTTH offered a transitional service agreement, including access to all assets and services required to operate the divested business competitively for a duration enabling the divested business to become fully independent from SFR FTTH.

#### 2.2.5. Media

The Commission authorized on 30 April 2020 the creation of a joint venture based in Sweden by Nordic Entertainment Group AB (NENT) of Sweden and Telenor ASA of Norway<sup>221</sup>. The joint venture will be mainly active in the provision of TV distribution services in Denmark, Finland, Norway and Sweden.

On 30 June 2020, the Commission approved the acquisition of sole control of Banijay and Endemol Shine, companies based in France and the Netherlands respectively, by Lov Group, based in France<sup>222</sup>. The Commission concluded that the proposed acquisition would not raise any competition concerns given the presence of a sufficient number of alternative players with portfolios of similar content in the countries concerned.

On 12 August 2020, the Commission approved the creation by Liberty Global and DPG Media of a joint venture that will operate a Subscription Video on Demand (SVOD) business<sup>223</sup>. The Commission’s investigation found that the proposed transaction is unlikely to hinder effective competition. In particular (i) the joint venture, Liberty Global and DPG Media will each exercise their content acquisition activities separately, (ii) the joint venture will not include linear channels and ancillary services linked to the linear broadcasting of such channels, and (iii) a number of strong alternative SVOD players will remain in the market.

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<sup>220</sup> Case M.9728 Altice/Omers/Allianz/Covage, Commission Decision of 27 November 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9728](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9728).

<sup>221</sup> Case M.9604 NENT/Telenor/JV, Commission Decision of 30 April 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9604](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9604).

<sup>222</sup> Case M.9676 Lov Group/Banijay/ESG, Commission Decision of 30 June 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9676](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9676).

<sup>223</sup> Case M.9802 Liberty Global/DPG Media/JV, Commission Decision of 12 August 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9802](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9802).

On 6 October 2020, the Commission unconditionally cleared the acquisition of Central European Media Enterprises (CME) by PPF Group NV (PPF)<sup>224</sup>. PPF and CME are both active in the acquisition of sports broadcasting rights in Czechia and Slovakia and in the sale of advertising space in Czechia. In parallel, the two companies are active at different levels of the TV value chain. CME is mainly active as a wholesale supplier of TV channels in a number of Member States, while PPF offers retail audio-visual and telecommunications services in Bulgaria, Czechia and Slovakia. The Commission found that the transaction would not affect the companies' position in these markets.

In January 2020, the Commission concluded the final probe in relation to the sale of licensed merchandise. The Commission fined several companies belonging to Comcast Corporation, including *NBCUniversal*, EUR 14.3 million for breaching EU antitrust rules<sup>225</sup>. *NBCUniversal* included clauses in licensing agreements for film merchandise prohibiting licensees from selling online, selling outside specific territories or to specific customers. These clauses partitioned the Single Market to the detriment of consumers.

### 2.2.6. Facilitating the Digital Transition

The Commission, Member States and the private sector are cooperating to facilitate the Digital Transition, which will also be an important enabler for the Green Transition. In addition to regulation, effective State aid control will be key for a well-functioning Digital Single Market. It will help to ensure a fair business climate, favour innovation, and significant business opportunities for the private sector, expected to finance the majority of digital investments. 20% of the funds in the Recovery and Resilience Framework (“RRF”) are dedicated to the digital component. A large part of this will be aimed at digital infrastructure, which is a key digitalization driver. The RRF being subject to State aid rules, State aid control will ensure that such funds are used to remedy market failures, ensure that private investment is not crowded out and distortion of competition is limited to a minimum. Furthermore, in 2020, the Commission launched an evaluation of the State aid guidelines for broadband deployment, with a view to verifying whether these are still relevant and fit for purpose. In parallel, in 2020, a number of broadband and mobile infrastructure cases were adopted, which align the Commission's approach with technological developments<sup>226</sup>.

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<sup>224</sup> Case M.9669 PPF Group/Central European Media Enterprises, Commission Decision of 6 October 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9669](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9669).

<sup>225</sup> Case AT.40433 Film merchandise, Commission Decision of 30.1.2020. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40433/40433\\_734\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40433/40433_734_3.pdf).

<sup>226</sup> Commission Decision in cases SA.52732 National VHC scheme in grey NGA areas – Germany, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_52732](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52732); SA.56599 Modification of the Superfast Broadband (SFBB) Project – Greece, [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3;); SA.57357 Broadband vouchers scheme for students – Greece, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57357](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57357), SA.57495 Broadband vouchers for certain categories of families – Italy; [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57495](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57495); SA.55742 Aid for the replacement of the frequency-dependent equipment for broadcasting in the context of migration from the 700 MHz band – Czechia, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55742](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55742); SA.55578 Mobile infrastructure roll-out in Hesse – Germany, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55578](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55578); SA.58261 Broadband Austria 2020 Prolongation – Austria, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_58261](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58261); SA.58074 – Mobilfunk Bayern Modification – Germany, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_58074](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58074); SA.54684 – High-capacity mobile infrastructure roll-out in Brandenburg – Germany, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_54684](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54684).

### 3. FINANCIAL SERVICES

#### 3.1 Overview of key challenges in the sector

EU competition policy with its three enforcement instruments – antitrust, merger and State aid control – plays an important role in ensuring that competition takes place on fair and equal terms throughout the financial sector and that disruptive technologies are developed and applied for the benefit of consumers and businesses alike. Innovative technology should never be used to erect barriers in emerging markets.

Financial services is a sector undergoing rapid and profound change. New players in financial services like Apple Pay have already entered payments markets and providers of FinTech services<sup>227</sup> continue to gain ground in many areas. Nevertheless, established players like card schemes in payments, banks for deposits and credit services, as well as traditional insurers are still indispensable. Whether involving new players or established ones, the Commission – through its merger enforcement instrument – closely scrutinises consolidations between competitors and vertical integrations in the financial services sectors, notably when such mergers may create or strengthen data-based market power.

In 2020, the COVID-19 crisis has had an impact on the different sectors of financial services. For example, in payments, the pandemic has led to an increase in contactless and digital payments in shops with digital wallets, payment apps and contactless cards. While in-store card transactions decreased in general during the COVID-19 lockdown measures, the percentage of contactless payments among all in-store card payments increased. This was accelerated by consumer preferences for contactless payments without interaction with a terminal/keypad. Similar considerations apply to mobile payments with digital wallets and apps, which are becoming increasingly popular as a payment method.

Moreover, the loss of revenues and turnover that resulted from the lockdown measures responding to the COVID-19 crisis, translated into measures and certain pressure on the banking sector to provide for credit payment windows to business clients. These and other related measures required temporary agreed guidelines that were coordinated by supervisory authorities and assessed for compliance with competition law.

Despite the COVID-19 crisis, index tracking funds and investment vehicles continued to grow in significance within the EU capital markets and the significance of the index producing industry as well as the market for market data on which index users rely, became increasingly apparent. This was emphasised in particular by policy initiatives and commercial strategies aiming to encourage a stronger shift towards sustainable investment patterns through the greater use of rigorous environmental, social and corporate governance indices. The relative growth of index tracking investment vehicles also further stimulated the debate relating to how common ownership of competing portfolio companies might impact on competition levels within the academic and legal communities.

The insurance sector faced the prospect of potential pressure from mounting insurance claims related to the COVID-19 crisis. Cooperation amongst insurance service providers in the EU occurred in relation to the granting of rebates on insurance premiums in the context of the pandemic. Such cooperation necessitated both a need to stand ready to provide guidance in

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<sup>227</sup> Fintech refers to the integration of technology into offerings by financial services companies to improve their use and delivery to consumers. Fintech primarily works by unbundling offerings by such firms and creating new markets for them.

the event of uncertainty of the compatibility with EU competition law of specific cooperation initiatives with an EU dimension and, at the same time, a need for vigilance to detect situations where companies seek to take advantage of the COVID-19 crisis to breach antitrust law.

Beyond the traditional financial services mentioned above and the COVID-19 crisis, disruptive changes in terms of new products, services or competitors have continued to emerge. Although some of the entries of digital enterprises in the financial services markets may have positive effects for competition in the internal market, important risks may also arise. To this end, the Commission has started investigations into possible anti-competitive conduct related to restrictions on companies offering new forms of payment solutions. Key concerns relate to the application and interpretation of card scheme rules regarding the products offered by these companies.

The development of cryptocurrencies and the announcement by Facebook and others of plans to develop a new private digital currency (Diem, previously Libra) raises a number of regulatory challenges, including possible competition issues. DG Competition therefore continues to closely monitor developments in this area, and works in cooperation with other services of the Commission to make sure that new technologies will be used for the benefit of all citizens and businesses and without jeopardising financial stability.

While new entrants challenged established players, the banking sector in the EU stabilised further in 2020: capital buffers increased, funding conditions remained benign, and asset quality further improved. These developments were mainly thanks to the supportive macroeconomic environment present until the start of the COVID-19 crisis, but also the positive impact of the EU's enhanced regulatory framework for the financial services sector put in place in the context of Banking Union. At the same time, in the Member States which were hit the hardest during the financial crisis, some banks still had to cope with lingering legacy issues such as high stocks of non-performing loans. In addition, banks across the EU handled a variety of structural challenges such as overcapacity, continued low profitability due to the persistent low-interest-rate environment, the integration of digital technologies into business models, new sources of competition such as FinTech players (as mentioned above) and more demanding sector-specific legislation.

The improved resilience of the sector as a whole enabled EU banks to immediately play a role supportive of the real economy when the COVID-19 crisis started. From the outset, financial intermediaries were key in passing on public support to households and firms in need of liquidity, as enabled by the Commission's Temporary Framework for State aid measures to support the economy. As such, EU banks were vital for keeping borrowers in temporary distress afloat and preventing the emergence of new non-performing loans and harmful second-round effects such as foreclosures and a sharp increase in unemployment.

During 2020, the effect of the COVID-19 crisis on the banking sector itself has remained limited, while the outlook is still subject to high uncertainty. In addition, EU banks indirectly benefitted from the public support to non-financial borrowers and were granted flexibility by regulators and supervisors. At the same time, supervisors asked them to refrain from paying dividends to preserve capital. The impact of the COVID-19 crisis on the EU banking sector might materialise over time, and will be dependent on the further development of the pandemic and the smoothness of the economic exit strategy.

## 3.2 Contribution of EU competition policy to tackling the challenges

### 3.2.1. Contribution of EU competition policy to innovation and fairness in payments

In 2020, the Commission continued its assessment of the application of the Interchange Fee Regulation (IFR)<sup>228</sup>. A study which collected and analysed comprehensive market information from all Member States to that effect was published on 11 March 2020<sup>229</sup>.

On 29 June 2020, the Commission published a Report to the European Parliament and the Council on the application of the IFR<sup>230</sup>, processing input from the study, as well as from stakeholders and national authorities. The Report concludes that the IFR has achieved its main objectives. In particular, decreased interchange fees for consumer cards led to reduced merchant charges, improved services and lower prices for consumers. An increase in cross-border card transactions, improved transparency and a limited increase in the use of acquirers located in other Member States reduced fragmentation of the internal market. The Report concluded that some areas require continuous robust enforcement, monitoring and data gathering, for example to continue the complex assessment of the implementation of fee caps and their possible circumvention. In other areas, recent implementation prevented conclusions on impact. The Report did not conclude, therefore, on the need for legal revision. As part of the continued consultation and evaluation process, the Commission collected additional views from stakeholders and national competent authorities during a public hearing on the IFR on 7 December 2020.

The European Payments Initiative (EPI) is an initiative by Euro-zone banks aimed at competing with international card schemes and Big Tech companies, with a focus on creating an integrated pan-European card scheme and instant payment solution based on the innovative SEPA Instant Credit Transfer Scheme. This is in line with policy objectives set out in Commission Communications on a *Retail Payments Strategy for the EU*<sup>231</sup>, and *Towards a Stronger International Role of the Euro*<sup>232</sup>. Starting in October 2019, the Commission provided antitrust guidance (on issues such as governance, standardisation, cooperation and exchange of information) and guidance on the application of the IFR.

### 3.2.2. Antitrust and cartel investigations in the financial services sector

On 16 June 2020, the Commission opened a formal antitrust investigation to assess whether Apple's conduct in connection with Apple Pay breaches EU competition rules<sup>233</sup>. The investigation concerns Apple's terms, conditions and other measures for integrating Apple Pay in merchant apps and websites on iPhones and iPads, Apple's limitation of access to the Near Field Communication (NFC) functionality ("tap and go") on iPhones for payments in stores, and alleged refusals of access to Apple Pay. Apple Pay is a digital mobile wallet operating on Apple (iOS) devices. Based on the Commission's preliminary fact-finding, Apple appears to have engaged in practices that may distort competition among providers of

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<sup>228</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, p. 1-15.

<sup>229</sup> Study on the application of Interchange Fee Regulation (2020), by Ernst&Young and Copenhagen Economics. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_442](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_442).

<sup>230</sup> Report on the application of Regulation (EU) 2015/751 on interchange fees for card-based payment transactions of 29 June 2020, SWD(2020), 118 final.

<sup>231</sup> Commission Communication on a Retail Payments Strategy for the EU, 24.9.2020, COM(2020) 592 final.

<sup>232</sup> Commission Communication: Towards a stronger international role of the Euro, 5.12.2018, COM(2018) 796/4.

<sup>233</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1075](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1075).

digital mobile wallets and reduce choice and innovation. The Commission is currently carrying out its in-depth investigation as a matter of priority to determine whether there has been a breach of EU competition rules by Apple.

During 2020, the Commission continued monitoring and scrutinising the ongoing preparations for the introduction of the Diem stablecoin (formerly Libra) by the Swiss based Diem Association and the related plans of Facebook's subsidiary "Novi" to introduce mobile wallets for Diem related payments and money transfers. The launch of Diem in the EU has been delayed because of regulatory concerns regarding the risks for financial security and stability. To address these concerns, the Commission adopted in September 2020 a proposal for a Regulation on Markets in Crypto-Assets (MiCa)<sup>234</sup>, which seeks to regulate and supervise crypto-assets, like Diem. The objective of the monitoring is timely antitrust assessment of the impact for the payment sector and consumer welfare.

As regards competition in capital markets, the Commission continued to monitor this sector, in particular focussing on the markets for market data, covering identifiers, asset price data, consolidated feeds and indices where there continue to be informal complaints against incumbent suppliers. These informal complaints allege that incumbents would be applying abusive licensing terms/prices, as opposed to fair, reasonable and non-discriminatory ("FRAND") prices. In relation to asset management, in September 2020 the Commission published a Report on Common Shareholding in Europe<sup>235</sup>. The Report proposed a new means to measure the phenomenon and found that such shareholdings were widespread and increasing across the European economy. It also applied econometric analysis for one pilot sector that showed a positive correlation between common shareholdings and economic performance. However, this analysis did not show causality. The Commission shall continue to monitor the phenomenon in 2021.

In the field of motor insurance, the Commission continued in 2020 its investigation into the conditions of access to the Insurance Link data pooling system administered by the association of undertakings Insurance Ireland<sup>236</sup>. The investigation aims to assess whether the conditions imposed on companies wishing to participate in and access the Insurance Link database, may have had the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database. In 2020, the Commission also continued its monitoring of competition in the insurance sector.

### *3.2.3. Merger investigations in the financial sector*

The Commission continued to ensure that concentrations in the financial services sector do not lead to consumers paying higher prices or being offered less choice. In the area of payment systems, the Commission investigated two mergers which were approved subject to conditions remedying concerns identified in the market investigation.

On 17 August 2020, the Commission approved the acquisition of Nets' account-to-account

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<sup>234</sup> Proposal for a Regulation on Markets in Crypto-assets amending Directive (EU) 2019/1937, 24.9.2020, COM(2020) 593 final.

<sup>235</sup> The Report was undertaken by the Finance & Economy Unit of the Commission's Joint Research Centre at the request of the Commission's Directorate-General for Competition. See: [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC121476/jrc121476\\_jrc\\_commonshareholding\\_final.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC121476/jrc121476_jrc_commonshareholding_final.pdf).

<sup>236</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_2509](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2509).

payment business by Mastercard<sup>237</sup>, subject to the transfer of a global license for Nets' "Realtime 24/7" technology for account-to-account core infrastructure services, and of the relevant personnel and other assets. Account-to-account core infrastructure is the backbone that allows the smooth processing of payments between bank accounts, including instant payments. The Commission found that the transaction as originally notified would have harmed competition and lead to higher prices and less choice for the provision of account-to-account core infrastructure services. The Commission concluded that, as both companies have strong positions and are close competitors, the transaction would have led to the anti-competitive strengthening of the leading player, Mastercard.

On 30 September 2020, the Commission authorized the acquisition of Ingenico by Worldline<sup>238</sup>, subject to the parties' commitment to divest certain businesses active in provision of point-of-sale (i.e. card readers) merchant acquiring and terminal provision and management in Belgium, Luxembourg, and Austria. The Commission was concerned that the transaction would create or strengthen a dominant position in these markets and so would harm competition and lead to higher prices and less choice.

As regards the financial and insurance sectors, the Commission opened two in-depth investigations under the EU Merger Regulation.

Following an in-depth investigation opened on 22 June 2020, the Commission conditionally approved on 13 January 2021 the proposed acquisition of the Refinitiv Business by the London Stock Exchange Group<sup>239</sup>. The Commission found that the transaction as initially proposed would significantly impede effective competition in the markets for the provision of trading services for European government bonds, as well as for the trading and clearing services for over-the-counter interest rate derivatives. The Commission also found that following the transaction, competitors in consolidated real-time data feeds and desktop services could be foreclosed from accessing LSEG's input data, and that competitors in index licensing could be foreclosed from accessing Refinitiv's input data. To address the Commission's concerns, LSEG committed to divest the Borsa Italiana group and to maintain open access to relevant input data and for over-the-counter interest rate derivatives clearing services, for a duration of 10 years. LSEG's commitments will ensure that the markets will remain open and competitive and the acquisition will not lead to higher prices or less choice and innovation for these products.

On 21 December 2020, the Commission also opened an in-depth investigation into the proposed acquisition of Willis Towers Watson by Aon<sup>240</sup>. The Commission is concerned that the transaction could significantly reduce competition in the markets for commercial risk brokerage services, re-insurance brokerage and provision of retirement and health & welfare services to commercial customers.

#### *3.2.4. State aid investigations in the financial sector*

In 2020, there were no new individual cases of State aid to financial institutions. This reflects

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<sup>237</sup> Case M.9744 Mastercard/Nets. Commission Decision of 17 August 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9744](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9744).

<sup>238</sup> Case M.9776 Worldline/Ingenico. Commission Decision of 30 September 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9776](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9776).

<sup>239</sup> Case M.9564 LSEG/Refinitiv Business. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9564](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9564).

<sup>240</sup> Case M.9829 AON/Willis Towers Watson. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9829](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9829).

largely the fact that the EU banking sector had largely overcome the previous financial crisis before the COVID-19 crisis hit – with no immediate effects for the banking sector in 2020. At the same time, Member States have been increasing intervention in the banking sector in market conform terms, i.e. under conditions which would warrant the intervention of a private investor rather than relying in direct public support.

Nevertheless, in 2020 the Commission did still authorise the prolongation of already existing schemes under which Member States can provide aid to foster the restructuring or orderly market exit of entities in distress, should there be a need. For Poland, the Commission approved an extension of a scheme (in place since December 2016) under which the Polish authorities can grant aid to cooperative and small commercial banks that have been placed in resolution<sup>241</sup>. It also approved a further prolongation of the Polish credit union liquidation scheme (in place since February 2014)<sup>242</sup>. For Ireland, the Commission authorised the prolongation of the credit union restructuring scheme<sup>243</sup> (in place since October 2014) and of the orderly winding-up scheme for credit unions (in place since December 2011)<sup>244</sup>. In all the above-mentioned schemes, terms were included to ensure that any aid granted is limited to the minimum necessary and that any competition distortions are mitigated.

In spite of an overall positive development over the last years of the financial sector, high levels of non-performing loans (NPL) are a legacy problem especially in some Member States. In 2020, the Hellenic Asset Protection Scheme (“Hercules”), approved as free of State aid, was available for Greek banks to address the NPL issue. This scheme is an example of how Member States can help banks clean up their balance sheets without granting aid or distorting competition. Such State guarantees apply only to senior tranches under certain conditions which are remunerated on market terms.

In 2020, the Italian guarantee scheme for the securitisation of non-performing loans (Fondo di Garanzia sulla Cartolarizzazione delle Sofferenze – “GACS”) continued to apply. By assisting banks to securitise and move non-performing loans off their balance sheets, the scheme is an important component of Italy’s strategy to tackle banks’ asset-quality problems. Between February 2016 and February 2021, the scheme has been accessed 27 times, removing around EUR 74 billion of non-performing loans from the Italian banking system.

For Italy, the Commission approved a new orderly wind-down scheme for small Italian banks that have been put into compulsory administrative liquidation<sup>245</sup>. Given the exceptional circumstances linked to the COVID-19 crisis and the safeguards against undue competition distortions included in the scheme, the Commission accepted that banks with a balance sheet up to EUR 5 billion (instead of the EUR 3 billion threshold mentioned in the 2013 Banking Communication) could benefit from the new liquidation scheme. The Commission made clear that it would also temporarily accept that a higher threshold for similar schemes is applied by other Member States in the context of the COVID-19 crisis, as long as similar safeguards to

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<sup>241</sup> Cases SA.56141 Fourth prolongation of the resolution scheme for cooperative banks and small commercial banks, OJ C 260, 7.8.2020, p. 4; SA.58389 Fifth prolongation of the resolution scheme for cooperative banks and small commercial banks, OJ C 430, 11.12.2020, p. 7.

<sup>242</sup> Case SA.56635 Tenth prolongation of the Credit Unions Orderly Liquidation Scheme, OJ C 277, 21.8.2020, p. 3.

<sup>243</sup> Cases SA.57053 11<sup>th</sup> prolongation of the Credit Union restructuring and stabilisation scheme, OJ C 220, 3.7.2020, p. 8; SA.58819 12<sup>th</sup> prolongation of Credit Union restructuring and stabilisation scheme (not yet published in the OJ, but available at [https://ec.europa.eu/competition/state\\_aid/cases1/202050/288445\\_2219131\\_68\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202050/288445_2219131_68_2.pdf)).

<sup>244</sup> Case SA.57378 16<sup>th</sup> prolongation of the Credit Union Resolution Scheme 2020-2021, OJ C 336, 9.10.2020, p. 7.

<sup>245</sup> Case SA.57516 COVID-19 – Italian orderly liquidation scheme for small banks (not yet published in the OJ and public version of decision not yet available).

those implemented by Italy can be demonstrated.

The Commission also approved a few liquidity support schemes. This was the case for Greece, where the Commission allowed the prolongation of a bank guarantee scheme (in place since November 2008) to address remaining challenges related to banks' liquidity situation<sup>246</sup>. In relation to Italy, the Commission gave its green light to a new liquidity support scheme for viable Italian banks with temporary liquidity issues<sup>247</sup>.

To complement commercial financing provided by lending institutions or investment funds, Member States can provide aid to young SMEs and start-ups that typically suffer from limited access to finance to grow and develop their full potential due to well-defined market failures, most notably the problem of asymmetric information available to investors. These measures can either be directly implemented by Member States if they fall under the General Block Exemption Regulation (GBER)<sup>248</sup>, or structured as notifiable schemes under the Risk Finance Guidelines<sup>249</sup>.

In 2020, the Commission approved modifications of existing risk finance schemes in France<sup>250</sup> and Germany<sup>251</sup>, with budgets of EUR 160 million (2020-2025) and EUR 88 million (2021-2022), respectively. The Commission further found that a EUR 12.5 million Czech scheme<sup>252</sup> to foster the financing of SMEs through capital markets (the so-called "IPO Fund") does not involve State aid within the meaning of EU rules because the IPO Fund will participate in the public offerings launched by the SMEs at the same time and under the same terms as private investors.

Member States continued to promote the creation or expansion of development banks. These financial institutions implement State aid schemes on behalf of the Member States and, in 2020, have notably played a key role in addressing the economic consequences of the COVID-19 crisis. From a State aid perspective, publicly funded development banks can be active within a well-defined remit that addresses market failures and if they do not engage in activities crowding out commercial financial institutions. In 2020, the Commission approved funding (including the start-up capital of up to EUR 800 million) for the creation of a new development finance institution in the Netherlands: Invest International<sup>253</sup>. It also authorised funding (including capital of approx. EUR 1.7 billion) for the setup of a new development bank in Scotland: the Scottish National Investment Bank<sup>254</sup>. Finally, the Commission approved Portuguese plans to set up a new national development bank (Banco Português de Fomento), resulting from the merger between the existing Instituição Financeira de

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<sup>246</sup> Cases SA.55767 Prolongation of the Greek State Guarantee Scheme for banks 1.12.2019-31.05.2020 (Art. 2 of Law 3723/2008), OJ C 74, 6.3.2020, p. 4; SA.57262 Prolongation of the Greek State Guarantee Scheme for banks 01.06.2020-30.11.2020 (Art. 2 of Law 3723/2008), OJ C 277, 21.8.2020, p. 5.

<sup>247</sup> Case SA.57515 COVID-19 – Italian bank liquidity support scheme (not yet published in the OJ, but available at [https://ec.europa.eu/competition/state\\_aid/cases1/202051/287680\\_2223630\\_98\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202051/287680_2223630_98_2.pdf)).

<sup>248</sup> OJ L 187, 26.6.2014, p. 1 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710>).

<sup>249</sup> OJ C 19, 22.1.2014, p. 4 (available at <https://eurlex.europa.eu/legalcontent/EN/ALL/?uri=CELEX%3A52014XC0122%2804%29>).

<sup>250</sup> Case SA.55869 Dispositif IR-PME pour les investissements dans les FCPI et FIP, OJ C 269, 14.8.2020, p. 1.

<sup>251</sup> Case SA.59267 INVEST – Direct grants for risk capital Investments – Prolongation and Amendment of the INVEST Guidelines (not yet published in the OJ and public version of decision not yet available).

<sup>252</sup> Case SA.57590 IPO Fund (not yet published in the OJ, but available at [https://ec.europa.eu/competition/state\\_aid/cases1/202049/286455\\_2217342\\_172\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202049/286455_2217342_172_2.pdf)).

<sup>253</sup> Case SA.55465 Invest International, OJ C 326, 2.10.2020, p. 3.

<sup>254</sup> Case SA.54780 Scottish National Investment Bank (not yet published in the OJ, but available at [https://ec.europa.eu/competition/state\\_aid/cases1/202049/288562\\_2216747\\_58\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202049/288562_2216747_58_2.pdf)).

Desenvolvimento and PME Investimentos<sup>255</sup>.

#### **4. TAXATION AND STATE AID**

##### **4.1 Overview of key challenges on tax evasion and avoidance and fiscal aid**

The Commission's enforcement activities in this area tackle tax base erosion and profit shifting to better align the right to tax with economic activity. State aid investigations into Member States' tax ruling practices are one of the tools the Commission has at its disposal to ensure that companies pay the taxes they owe in the Member States where they generate economic value.

Tax evasion and avoidance can be the result of aggressive tax planning strategies, in so far as they shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. Aggressive tax planning can be pursued by using preferential tax schemes, or by requesting individual tax rulings. They all have in common that they result in a loss of tax revenue in the Member State where economic value is generated (but not taxed), and in the EU as a whole because the tax eventually paid is less than it would have been if the profits had not been shifted.

The side effects of aggressive tax planning for the EU are particularly negative. First, it results in undue tax reliefs that distort competition by leading to advantages for certain companies or groups of companies. Second, it involves an issue of social fairness as the revenues foregone from untaxed multinationals need to be compensated, which normally shifts the burden to the less mobile income of SMEs and labour. Third, from the perspective of the delocalisation of activities, aggressive tax planning can present a threat to the sustainable growth of the internal market.

Although, in the absence of harmonisation, direct taxation is a competence of the Member States, national tax measures have to comply with internal market rules and be in line with EU competition rules. The recent judgments of the General Court have confirmed that Article 107 TFEU allows the Commission to determine whether a tax measure confers on undertakings an economic advantage which places the beneficiaries in a more favourable position than other taxpayers. In particular, the General Court considered that the Commission can assess under State aid rules whether the transfer pricing method validated by a tax ruling leads to an outcome which is established in conformity with the arm's length principle<sup>256</sup>.

##### **4.2 The Contribution of EU competition policy to tackling the challenges**

###### *4.2.1. State aid investigations and decisions concerning aggressive tax planning*

In 2020, the Commission continued its investigation into Member States' tax rulings practice and changes in tax legislation. To recall, the Commission started gathering in 2014 information on Member States' tax rulings practices for the years 2010-2013. This enquiry was aimed at clarifying allegations that tax rulings may constitute State aid and to allow the

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<sup>255</sup> Case SA.55719 Banco Português de Fomento, OJ C 294, 4.9.2020, p. 4.

<sup>256</sup> Joined Cases T-755/15 and T-759/15 Grand Duchy of Luxembourg and Fiat Chrysler Finance Europe v European Commission, judgment of the General Court of 24.9.2019, paras. 159 and 160; Joined Cases T-760/15 and T-636/16, Kingdom of the Netherlands and Others v European Commission, judgment of the General Court of 24.9.2019, para. 107; Joined Cases T-131/16 and T-263/16 Belgium and Magnetrol International v European Commission, judgment of the General Court of 14.2.2019, para. 67; Joined cases T-778/16 and T-892/16, Ireland and Others v European Commission, judgment of the General Court of 15.7.2020, paras 224 and 225.

Commission to take an informed view of the practices of all Member States. Overall the Commission looked into more than a thousand rulings.

However, Member States have moved on since 2013 both in terms of tax legislation and of ruling practice. In order to take an informed view of this evolution, at the end of 2019, the Commission requested all Member States to provide an update of their legislative and administrative practices and a list of tax rulings for the years 2014 to 2018. This process of information gathering continued in 2020 and the Commission is reviewing the information.

#### *4.2.2. Important cases*

The Commission continued the investigation of its pending cases on alleged aid granted by the Netherlands to Inter IKEA, to Starbucks and to Nike; on alleged aid granted by Luxembourg to Huhtamäki; and on alleged aid granted by Belgium to 39 individual aid beneficiaries of the Belgian excess profit scheme.

Also in 2020, the Commission defended a number of its decisions before the Court. On 15 July 2020, the General Court annulled<sup>257</sup> the Commission decision on State aid granted by Ireland to Apple on the basis that the Commission had not shown the existence of a selective advantage in favour of Apple to the requisite legal standard. However, it upheld the Commission decision on the applicability of important legal principles.

#### **Ireland – General Court judgment on Apple**

On 15 July 2020, the General Court annulled the Commission decision of 30 August 2016 in case SA.38373. In that decision, the Commission had declared that Ireland had granted illegal and incompatible State aid to Apple Sales International (ASI) and Apple Operations Europe (AOE) based on two findings of advantage (primary and subsidiary line of reasoning) and several findings of selectivity. The Court ruled that the Commission failed to demonstrate to the requisite legal standard that the tax rulings from 1991 and 2007 provided ASI and AOE with a selective advantage for the purposes of Article 107(1) TFEU.

Under the primary finding of advantage, the Commission had argued in the decision that the Apple IP licenses, which had been transferred to ASI and AOE via a buy-in and cost sharing agreement (CSA) with Apple Inc., should have been allocated to the Irish branches of ASI and AOE for tax purposes, since only those Irish branches had the capacity to generate any income from those licenses. According to the Court, the Commission had not demonstrated that the income attributed to the Irish branches represented the value of the activities actually carried out by the Irish branches. It held that attributing essential assets and functions to the Irish branches solely on the basis that the companies had no staff outside the branches was inconsistent with Irish law and the authorized OECD Approach. The lack of employees and physical presence outside the Irish branch does not, in itself, preclude a conclusion that the company, and not the branch, controls that property.

Equally, the Court rejected the Commission argument that the head offices of ASI and AOE, through their boards of directors, did not have the ability to perform the essential functions of the companies. The Court accepted that Apple Inc. conducted the central strategic management in Cupertino, and that this should be taken into account for profit attribution purposes, particularly in relation to the Apple IP underlying the group's products. In doing so, the General Court ignored the Commission's arguments that these activities were undertaken by a separate entity, and were already remunerated under a CSA between Apple Inc. and ASI/AOE.

As regards the subsidiary finding of advantage, which was based on accepting Ireland and Apple's hypothesis that the Apple IP licenses should be attributed to the head offices of ASI and AOE, the Court considered that the method used by the Commission to attribute profits to the Irish branches was incorrect. While acknowledging the defective and inconsistent nature of the tax rulings, the General Court considered that the methodological errors identified by the Commission were not sufficient to demonstrate the existence of an advantage.

The Commission decided to appeal the judgment to the European Court of Justice. The General Court judgment raises important legal issues that are of relevance to the Commission

<sup>257</sup> General Court judgment in Cases T-778/16, Ireland v Commission and T-892/16, Apple Sales International and Apple Operations Europe v Commission of 15 July 2020.

in its application of State aid rules to tax planning cases. The Commission is bringing this matter before the European Court of Justice to bring clarity on these legal issues.

At the same time, whilst the Commission decision on Apple was annulled, this does not bring into question the long standing principle dating back to very early case law of the Court of Justice that tax sovereignty must be exercised in light of Treaty principles and EU State aid laws. The Court's judgment on Apple, in line with its previous judgments on the Belgian Excess Profit scheme, Fiat, and Starbucks, confirmed that Member States must set their tax laws in respect of EU law, including State aid rules. The Court also confirmed the Commission's approach to assess whether transactions between group companies give rise to an advantage under EU State aid rules based on the so-called 'arm's length principle'.

#### *4.2.3. Investigations into discriminatory tax schemes and measures sheltering national companies from competition in the internal market*

With regard to the investigation into fiscal aid to ports, the Commission took negative decisions adopted in January 2016 (Dutch public undertakings<sup>258</sup>) and July 2017 (Belgian<sup>259</sup> and French<sup>260</sup> ports). These decisions were upheld by the General Court<sup>261</sup>.

In January 2019, the Commission proposed appropriate measures to Italy<sup>262</sup> and Spain<sup>263</sup>. The two Member States were invited to abolish the corporate tax exemptions for port authorities from 1 January 2020. Spain accepted the appropriate measures. As a consequence, in November 2019, the Commission closed the investigation related to the Spanish ports<sup>264</sup>. Italy did not accept the appropriate measures. Therefore, the Commission adopted a negative decision in December 2020<sup>265</sup>, ordering Italy to remove the unjustified corporate tax exemptions for port authorities, because these exemptions provide them with a selective advantage, in breach of EU State aid rules. Public remit activities carried out by port authorities are not subject to State aid control. As a consequence, the request to abolish the tax exemptions only concerns income from economic activities. If port authorities generate profits from economic activities, these need to be taxed under the normal national tax laws to avoid distortions of competition.

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<sup>258</sup> Case SA.25398 Corporate tax exemption of Dutch public enterprises, Commission Decision of 21 January 2016. See: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_25338](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_25338).

<sup>259</sup> Case SA.38393 Ports taxation in Belgium, Commission Decision of 27 July 2017. See: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38393](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38393).

<sup>260</sup> Case SA.38398 Ports taxation in France, Commission Decision of 27 July 2017. See: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38398](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38398).

<sup>261</sup> Case T-160/16 Groningen Seaports NV and Others v European Commission, judgment of the General Court of 31.5.2018. Case T-673/17 Port autonome du Centre and de l'Ouest and Others v Commission, judgment of the General Court of 20.9.2019. Case T-674/17 Le Port de Bruxelles and Région de Bruxelles-Capitale v Commission, judgment of the General Court of 20.9.2019. Case T-696/17 Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven v Commission, judgment of the General Court of 20.9.2019. Case T-747/17 UPF v Commission, judgment of the General Court of 30.4.2019. Case T-754/ Chambre de commerce and d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission, judgment of the General Court of 30 April 2019.

<sup>262</sup> Case SA.38399 Ports taxation in Italy, Commission Decision of 8 January 2019. See: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38399](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38399).

<sup>263</sup> Case SA.38397 Ports taxation in Spain, Commission Decision of 8 January 2019 and 7 March 2019. See: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38397](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38397).

<sup>264</sup> Case SA.38397 Ports taxation in Spain, Commission Decision of 15 November 2019 [https://ec.europa.eu/competition/state\\_aid/cases1/201951/273981\\_2118576\\_340\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/201951/273981_2118576_340_2.pdf).

<sup>265</sup> Case SA.38399 Ports taxation in Italy, Commission Decision of 4 December 2020. The public version of this decision is not yet available.

The Commission's action is consistent with the objective to ensure that all companies pay their fair share of taxes and that no sector or company unduly receives a more favourable corporate tax treatment than its competitors. Ports are essential to the EU economy and the Commission does not prevent Member States from providing aid to their ports, for instance when this is necessary to develop port infrastructure. However, corporate tax exemptions provide a bigger advantage to those beneficiaries who are most profitable. They are neither transparent, nor limited or targeted at financing activities or investments which are necessary and justified by objectives of common interest.

## **5. BASIC INDUSTRIES AND MANUFACTURING**

### **5.1 Overview of key challenges in the sector**

Manufacturing makes up more than 20% of the EU's economy, serving as a driver of growth and innovation, and employing around 35 million people: more than 20% of the EU workforce. The two million companies active in the sector face substantial challenges, in the form of trade tensions, the introduction of advanced technologies and the need to radically adapt their practices to make them climate friendly. All of this must now be seen against the backdrop of the pandemic, which has brought factory shutdowns and substantial changes in both working practices and the patterns of demand. The proposed Recovery and Resilience Facility along with the "European Green Deal" and a New Industrial Strategy for Europe, aim to address these challenges by supporting the competitiveness of the EU businesses and boosting investment during the pandemic recovery and the transition to a digitalised and clean economy. Enforcing the antitrust and merger rules in the manufacturing and basic industries sectors contributes to this transformation, in particular by ensuring that innovation is not hampered and that firms can compete on fair and equal terms. Meanwhile, the application of the State aid rules ensures that purely national interests do not distort competition, and that public funding is directed towards research, training and energy efficiency. Improving EU firms' long-term competitiveness in the Single Market also makes these firms fitter to compete in the global market place.

### **5.2 Contribution of EU competition policy to tackling the challenges**

#### *5.2.1. Antitrust investigations in basic industries and manufacturing*

Manufacturing and consumer goods industries continue to represent a significant share of the Commission's enforcement practice. In 2020, the Commission continued its lines of action (including individual casework, market surveillance and advocacy) in these sectors. It also engaged with stakeholders on the potential application of the antitrust rules to co-operative schemes intended to facilitate the response to the COVID crisis. At the same time, it continued to monitor the aftermarkets in manufacturing industries, to ensure that competition is not reduced to the overall detriment of consumers.

#### *5.2.2. Merger investigations in basic industries and manufacturing*

In 2020, the Commission continued its thorough review of mergers and acquisitions involving the basic industries and consumer goods sector, to ensure the availability of diversified and affordable products across the EU, and to protect innovation.

In the specialty chemicals industry, the Commission authorised on 15 January 2020 the acquisition of *Omnova* by *Synthomer*<sup>266</sup>, subject to the divestment of Synthomer's global vinyl pyridine latex business. The Commission found that the acquisition would have likely led to higher prices, reduced choice in products and lower quality of services provided to customers because the market for the supply of vinyl pyridine latex in the EEA is highly concentrated, with Synthomer and Omnova being the only two players with EEA production capacity, and characterised by high barriers to trade across regions.

In the pigment industry, the Commission authorised on 7 December 2020 the acquisition of *BASF Colors & Effects* by *DIC Corporation*<sup>267</sup>, subject to the divestment of DIC's pigment manufacturing facility located in Bushy Park (South Carolina, US). The Commission found that following the transaction as originally notified, customers seeking pigments for the most complex applications would have had insufficient alternatives for the supply of some colour indices within perylene and quinacridones pigments.

On 30 August 2019, aircraft manufacturers, *Boeing* and *Embraer*<sup>268</sup>, notified their proposed creation of two joint ventures: (i) a joint venture solely controlled by Boeing that would take over Embraer's global commercial aircraft business; and (ii) a joint venture jointly controlled by the two companies that would be in charge of the marketing of the Embraer KC-390 military aircraft. The Commission opened an in-depth investigation into the joint ventures on the 4 October 2019 due to concerns that the transaction could remove Embraer as the third largest global competitor in an already highly concentrated commercial aircraft industry. In particular, the Commission had concerns about the impact of the transaction in the small single-aisle commercial aircraft segment (100-150 seats) where Boeing and Embraer appeared to engage in head-to-head competition on price and other parameters in important aircraft purchasing campaigns, as well as the elimination of Embraer's potential position as a small but important competitive force in the overall single-aisle market. The transaction was ultimately abandoned by Boeing and Embraer, and the notification was withdrawn on 8 May 2020.

On 27 February 2020, the Commission approved *Assa Abloy's* acquisition of *Agta Record*<sup>269</sup> without opening an in-depth investigation, subject to the following conditions: (i) the divestment of Agta Record's automatic pedestrian door business in the Netherlands, Austria, Hungary and Slovenia and of Assa Abloy's automatic pedestrian business in the United Kingdom and France; (ii) the divestment of Agta Record's industrial high-speed door business located in France; and (iii) Assa Abloy's commitment to supply spare parts and related technical information and servicing tools on fair and reasonable terms for a period of at least ten years in a range of EEA countries. The Commission had concerns that the proposed transaction would have significantly reduced competition in the supply of different types of automatic pedestrian doors in various Member States and in the supply of industrial high-speed doors in France mainly. These concerns also extended to the provision of after-sales services, including maintenance, repair and overhaul of the products in question, and access to spare parts. Without the conditions, the proposed acquisition could have led to

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<sup>266</sup> Case M.9502 Synthomer/Omnova. Commission Decision of 15 January 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9502](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9502).

<sup>267</sup> Case M.9677 DIC/BASF Colors & Effects. Commission Decision of 7 December 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9677](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9677).

<sup>268</sup> Case M.9097 Boeing/Embraer. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9097](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9097).

<sup>269</sup> Case M.9408 Assa Abloy/Agta Record. Commission Decision of 27 February 2020. See: [https://ec.europa.eu/competition/mergers/cases1/20212/m9408\\_2435\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/20212/m9408_2435_3.pdf).

increased prices for intermediary and final customers of these products in the relevant countries.

On 23 December 2019, *EssilorLuxottica* notified its planned acquisition of *GrandVision*<sup>270</sup> to the Commission. *EssilorLuxottica* is the largest global eyewear company, active in sunglasses, lenses and frames. It owns or operates several well-known brands in the eyewear universe such as Ray-Ban, Oakley and Chanel. It is also present with optical retail chains in various countries, including Italy. *GrandVision* is a globally active eyewear retailer, which operates some of the largest optical chains throughout Europe, such as *GrandOptical* and *Pearle*. The acquisition follows the recent (2018) merger between *Essilor* and *Luxottica*, which the Commission cleared unconditionally after an in-depth investigation. The Commission opened an in-depth review of *EssilorLuxottica*'s planned acquisition of *GrandVision* on 6 February 2020 and, by the end of 2020, the case was still ongoing.

In 2020, the most significant case in the automotive sector was the proposed merger of *Peugeot SA* and *Fiat Chrysler Automobiles*, which creates the fourth largest automotive group in the world<sup>271</sup>. Following a Phase 2 investigation, the Commission was concerned that the merger could have harmed competition in the manufacture and supply of small light commercial vehicles in Belgium, Czechia, France, Greece, Italy, Lithuania, Poland, Portugal and Slovakia. Those concerns were solved by remedies aimed at facilitating entry and expansion of competitors. They consisted of (i) an extension of the cooperation agreement already in force between *PSA* and *Toyota* for small light commercial vehicles under which *PSA* produces the vehicles for sale by *Toyota* under the *Toyota* brand mainly in the European Union, by way of increasing the available capacity for *Toyota* and reducing the prices for the vehicles and spare parts/accessories; and (ii) an amendment of the "repair and maintenance" agreements in force between *PSA*, *FCA* and their repairers, to facilitate competitors' access to *PSA* and *FCA*'s repair and maintenance networks for light commercial vehicles.

The Commission continued its in-depth investigation opened on 17 December 2019 into the proposed acquisition of *Daewoo Shipbuilding & Marine Engineering (DSME)* by *Hyundai Heavy Industries Holdings (HHIH)*, both active in the manufacturing of cargo vessels and based in South Korea. The Commission initially investigated the impact of the transaction on liquefied natural gas (LNG) carriers, LPG carriers, large containerships and oil tankers. In the course of its in-depth market investigation, the Commission focused its efforts on the global market for large LNG carriers (LLNGCs) characterized by high concentration and barriers to entry such as track record, know-how and technology. However, the investigation was suspended on 14 July 2020, as *HHIH* did not comply with the deadline set for the submission of information requested by the Commission by means of a decision issued pursuant to Article 11(3) EUMR. The procedure remained suspended until the end of 2020, absent the submission by *HHIH* of the requested information.

In 2020, the Commission continued its in-depth investigation into the proposed acquisition of *Chantiers de l'Atlantique* by *Fincantieri*, as opened on 30 October 2019, and its likely effects on competition in the global market for the construction of large cruise ships. The investigation was suspended on 13 March 2020, as *Fincantieri* did not comply with the deadline set for the submission of information requested by the Commission by means of a

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<sup>270</sup> Case M.9569 *EssilorLuxottica/Grandvision*. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9569](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9569).

<sup>271</sup> Case M.9730 *FCA/PSA*, Commission Decision of 21 December 2020. See:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9730](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9730).

decision issued pursuant to Article 11(3) EUMR. The procedure remained suspended until the end of 2020, absent the submission by Fincantieri of the requested information. Over the suspension period, the Commission monitored market developments and the impact of the COVID-19 pandemic, with the assistance of market participants.

### *5.2.3. State aid investigations in basic industries and State aid for the rescue and restructuring of companies in difficulties*

State aid rules play a key role in maintaining a level playing field in the EU manufacturing sector, in particular by ensuring that ineffective companies are not kept artificially alive through continued public funding.

In February 2020, the Commission found that for several years the Romanian rail freight operator CFR Marfa had received around EUR 570 million of incompatible State aid through the non-collection of public debt and a debt write-off. This gave the state-owned company an unfair advantage over its many competitors in the liberalised rail freight transport market in Romania, which CFR Marfa now has to pay back to the Romanian State<sup>272</sup>.

The Commission also found that the restructuring plan of the Romanian uranium processing company CNU was not addressing the problems that had created the company's financial difficulties and was thus incompatible with EU law. In particular, the plan contained no measures capable of making the company viable on its own merits in the long-term and no private investors had agreed to participate in the restructuring alongside the State<sup>273</sup>.

In February 2020, the Commission approved Romanian plans to grant a EUR 251 million temporary rescue loan to the state-owned electricity producer Complexul Energetic Oltenia, which was experiencing financial difficulties. CE Oltenia has 3.2 gigawatt of capacity and generates close to 25% of electricity in Romania. The Commission considered in particular that the loan was limited to meeting the company's well identified liquidity needs. Furthermore, Romania committed to ensure that, after six months, the loan would either be fully repaid, or CE Oltenia would undertake a comprehensive restructuring in order to return to viability in the long term, or be liquidated. The Commission also found that the aid contributed to an objective of common interest. In this respect, the loan has mitigated the risk of an insolvency process which would have led to the potential loss of 13 000 jobs in a region with already relatively high unemployment. In line with its Commitments, Romania notified a restructuring plan for Oltenia to the Commission, which is currently being assessed in an in-depth investigation.

The Commission also assessed a Croatian rescue aid in the form of a State guarantee on a loan of around EUR 40 million in favour of Đuro Đaković, a manufacturer of freight wagons for special purposes with a diversified industrial portfolio including defence, transport, industry and energy<sup>274</sup>. The company is located in the Eastern part of Continental Croatia, in an area with high unemployment, and has a staff of 794 people. The State guarantee will help Đuro Đaković obtain the funds necessary to cover its liquidity needs for the next six months. The Commission found that the State guarantee was necessary to allow Đuro Đaković to continue production, deliver on contracts already entered into and avoid layoffs in a structurally disadvantaged area. Moreover, the company's liquidity needs over the six next months are based on reasonable assumptions. Finally, Croatia committed to provide a

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<sup>272</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_313](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_313).

<sup>273</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_314](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_314).

<sup>274</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_836](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_836).

restructuring plan for Đuro Đaković within six months following the first disbursement of the guaranteed funds.

Moreover, the State aid rules helped to level the playing field during the COVID-19 outbreak by ensuring that Member States' support measures towards the economy all followed the same set of common rules. The Commission approved many national schemes covering all sectors, including the manufacturing sector and basic industries, such as the German umbrella scheme for recapitalisation measures<sup>275</sup>, the Spanish recapitalisation fund<sup>276</sup>, or the Polish recapitalisation scheme<sup>277</sup>, to mention just a few. The Commission also assessed numerous individual measures, as for example the EUR 5 billion loan guarantee in favour of the French automotive group Renault<sup>278</sup> or the EUR 71 million loan guarantee in favour of the French automotive supplier Novares<sup>279</sup>.

## 6. AGRI-FOOD INDUSTRY

### 6.1 Overview of key challenges in the sector

Food supply chains are resilient sources of stable supply of a variety of products to consumers, including in very challenging conditions such as those that prevailed in 2020. Operators in food supply chains face in normal times a number of challenges: (i) increased competition from supply inside as well as outside Europe, (ii) higher and changing demands from end consumers in terms of qualitative aspects such as health, animal welfare, variety and improved traceability, and (iii) higher investment needs to mitigate the fact that the EU food value chain is a contributor to air, soil and water pollution, an important source of GHG emissions and has a significant impact on biodiversity, (iv) uncertainty regarding productivity, as community wide strategies may affect the possibilities to use inputs and agricultural land in most productive ways<sup>280</sup>.

The structural characteristics of the European agricultural sector make it more difficult to cope with the aforementioned challenges. First, agricultural producers are the least concentrated level of the food supply chain in the EU, producing relatively homogenous outputs. They are mostly small or grouped into small cooperatives and other types of producer organisations. In contrast, their input suppliers and customers (processors, wholesalers and retailers) are often much larger and more concentrated, giving them, together with credible outside options, more bargaining power in their negotiations with farmers<sup>281</sup>. Second, unforeseeable events, such as adverse weather conditions and diseases, can significantly reduce crop yields, resulting in volatility of output and prices.

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<sup>275</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2256](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2256).

<sup>276</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1426](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1426).

<sup>277</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1041](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1041).

<sup>278</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_779](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_779).

<sup>279</sup> [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_20\\_953](https://ec.europa.eu/commission/presscorner/detail/en/mex_20_953).

<sup>280</sup> See e.g. Krzysztofowicz, M., Rudkin, J., Winthagen, V. and Bock, A., *Farmers of the future*, EUR 30464 EN, Publications Office of the European Union, Luxembourg.

<https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/farmers-future>.

<sup>281</sup> There are approximately 11 million farms in the European Union which produce agricultural products for processing by about 300 000 enterprises in the food and drink industry. The food processors sell their products through some 2.8 million enterprises within the food distribution and food service industry, delivering food to the EU's 500 million consumers. See: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/factsheet-food-supply-chain\\_march2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/factsheet-food-supply-chain_march2017_en.pdf).

A continued integration into larger producer organisations, where these organisations aggregate supply in terms of both volumes and variety of products, can help the European farmers to cope with these challenges. Such integration can provide more stability and risk-management, scale to reach more customers, flexibility, more value and more bargaining power. This may further strengthen the role of the farmers in the food supply chain.

The COVID-19 pandemic has represented very challenging conditions in 2020 for food supply chains and highlighted the importance of a robust and resilient food supply chain that functions in all circumstances to facilitate access to a sufficient supply of affordable food for consumers. The increasing incidence of climate related disturbances continues to pose a threat to the stability of the food supply chain and reinforces the need to maintain its sustainability and resilience. While the EU's food supply chain has demonstrated an overall resilience in the ongoing crisis, some specific sectors, products, and groups of workers have had to sustain higher levels of pressure. This was caused by sudden change of demand patterns (with the closure from one day to another of horeca and food services and a complete switch of demand towards a variety of retail channels), staff shortages due to confinement measures, lack of access to cross-border or seasonal workers, restrictions on workplace conditions, or COVID-19 outbreaks (in particular in some processing plants), for example. Challenges in storage of production in e.g. aquaculture reinforced this pressure. Consequently, the efficiency of the supply chains has also been hampered.

#### *6.1.1. The Farm to Fork strategy as a response to the challenges*

As part of its Green Deal, the Commission adopted the Farm to Fork strategy on 20 May 2020 with the purpose of transforming the EU food system into a sustainable one.

In practice, the strategy has three central aims: 1) to ensure that the EU food value chain has a neutral or positive impact on the environment which entails preserving earth's resources and mitigating the effects of climate change; 2) to guarantee that the EU population has access to sufficient amounts of sustainable food; 3) to ensure that the economic returns for actors in the value chain increase whilst the affordability of the most sustainable food products is preserved. Some of the most noteworthy ambitions are to address the Green Deal targets and those stemming from the Farm to Fork Strategy and the Biodiversity Strategy for 2030 including among others the reductions in a) overall use and risk of pesticides by 50% by 2030, b) in nutrient loss by 50% by 2030, and c) in the sales of antimicrobials for farmed animals and aquaculture by 50% by 2030. Further goals include reaching the level of 25% of EU agricultural land being organic in 2030, full access to fast broadband in rural areas by 2025, improving animal welfare standards, etc.

In order to achieve a sustainable food system it is expected that, alongside regulatory changes imposed on the value chain actors, the latter would also contribute by engaging into voluntary cooperation agreements having as their aim the achievement of sustainability. In order to assist them and to address any concerns of competition law issues raised in the context of cooperation, the Commission will clarify the scope of competition rules applicable to collective initiatives

#### *6.1.2. Opportunities and challenges posed by increased retail concentration in the internal market*

Until recently, chains of retailers have multiplied joint-procurement alliances aimed at improving their purchasing processes, but also to reinforce their bargaining power vis-à-vis their suppliers that include large manufacturers with strong market positions in many product

categories. Such alliances may benefit the final consumers provided that retailers pass on to them the lower prices and costs that they obtain through alliances. A prerequisite for such a passing on is that retailers maintain effective downstream competition, and do not use their purchasing alliances as fora to collude on other aspects of their activities beyond joint procurement.

### *6.1.3. Challenges for the optimal functioning of the EU internal market*

The first challenge to a proper functioning of the EU internal market is the existence of protectionist agreements in certain national markets. Operators in some national markets (e.g. retailers alone or together with other levels of the chain) sometimes agree on giving preference to domestic products even though this preference is not based on objective criteria (quality, specific traits, etc.) of the products. This preference is sometimes promoted through the labelling of origin of domestic products. Such discrimination based on nationality has implications for the fundamental principle of the EU to give a fair chance to all producers inside the EU independently of their origin. The Commission, together with National Competition Authorities, has monitored food markets and initiated investigations

Secondly, international food manufacturers, present for several years with equal or similar brands in different Member States reportedly try to compartmentalise the Internal Market by preventing or hindering retailers from importing products from lower-priced markets into higher-priced markets. In November 2020, the Commission published a study on territorial supply constraints (TSCs) in the EU retail sector<sup>282</sup>. TSCs are constraints set by private operators which may limit retailers' possibilities to purchase products from whom and from where they want. The study found that TSCs exist in the form of various practices for a number of products and in a number of markets, ultimately fragmenting the Single Market<sup>283</sup>. Refusals to supply, quantitative restrictions, destination obligations and differentiation of products in terms of packaging and labelling requirements are the most prevalent barriers faced by retailers and wholesalers when attempting to source cross border. Different taxation regimes, cost differences in inputs and production and different pricing of logistics contribute also to the fragmentation of the internal market.

A third challenge appears to be the growth of common shareholding<sup>284</sup>, i.e. common owners. Common shareholding affects operators in the European food supply chains. The JRC report by Rosati et al (2020)<sup>285</sup> studies the effects of common shareholding in the industry of manufacturing of non-alcoholic beverages in Europe<sup>286</sup>. The results show that large funds steadily hold significant blocks of shares in 20 to 25% of the market players. The study finds that the acquisition of part of Barclays' portfolio under the BlackRock-Barclays Global Investors merger of 2009 emerges clearly from the picture. Based on the econometric analysis, the results suggest a positive association between common shareholding and the market power of firms in the industry for manufacturing of non-alcoholic beverages. However, these findings should be treated with caution, as it cannot fully be ruled out that the merged entities did not specifically target companies that would have performed well after the

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<sup>282</sup> See: [https://ec.europa.eu/growth/content/study-territorial-supply-constraints-eu-retail-sector\\_en](https://ec.europa.eu/growth/content/study-territorial-supply-constraints-eu-retail-sector_en).

<sup>283</sup> See:

[https://ec.europa.eu/growth/content/half-eu-fast-moving-consumer-goods-sellers-experience-supply-constraints-based-their\\_en](https://ec.europa.eu/growth/content/half-eu-fast-moving-consumer-goods-sellers-experience-supply-constraints-based-their_en).

<sup>284</sup> Common shareholding is the simultaneous ownership of shares in many firms active in the same sector.

<sup>285</sup> Rosati, N., Bomprezzi, P., Ferraresi, M., Frigo, A. and Nardo, M., Common Shareholding in Europe, EUR 30312 EN, Publications Office of the European Union, Luxembourg, 2020.

<sup>286</sup> See: <https://ec.europa.eu/jrc/en/publication/common-shareholding-europe>.

financial crisis 2007-2008. However, the results of the study suggests that the institutions did not substantially alter their portfolio in anticipation of the economic and financial turmoil.

## **6.2 EU competition policy's contribution to the functioning of the Single Market**

### *6.2.1. Making farmers more competitive in the Single Market*

The Common Market Organisation (CMO) Regulation<sup>287</sup> lays out competition rules for the production and trade of agricultural products, including specific rules concerning agreements and organisations of producers<sup>288</sup>. In 2020 the Commission issued its first opinion on the compatibility of agreements of farmers (or associations thereof) potentially restricting competition with the objectives of the Common Agricultural Policy, pursuant to Article 209(2) of the CMO Regulation.

The Spanish association Cooperativas agro-alimentarias (CAA), requested an opinion on a plan of its members to regulate the supply of olive oil to the market through temporary storage of olive oil. Due to the characteristics of olive trees and due to natural conditions, olive oil production varies significantly between years. When olive oil supply exceeds a certain threshold, taking into account domestic consumption and exports, the CAA and its member cooperatives that wish to do so plan to store on a temporary basis a part of the excess volume of olive oil.

Based on the information available, the Commission was of the opinion that the agreements of the CAA and the cooperatives participating in the mechanism are compatible with the objectives set out in Article 39 of the Treaty<sup>289</sup>. However, according to the third subparagraph of Article 209(1) of the CMO Regulation, the agreements, decisions and concerted practices must not entail an obligation to charge an identical price and must not exclude competition.

### *6.2.2. The application of the EU State aid rules in the agricultural and fishery sector*

State aid to promote the economic development of the agricultural and forestry sectors is embedded in the broader Common Agricultural Policy (CAP) and in particular the rural development policy. Similarly, State aid to promote the economic development of the fishery and aquaculture sectors is closely linked to the Common Fishery Policy (CFP) and in particular to EU support granted under the European Fisheries and Maritime Fund (EMFF). The economic effects of State aid do not change depending on whether it is (even partly) financed by the Union, or whether it is financed by a Member State alone. Consequently, the use of State aid can be justified only if it is in line with the CAP and the CFP and meets the underlying objectives of those policies in terms of ensuring viable food production and promoting an efficient and sustainable use of resources in order to achieve intelligent and sustainable growth, including economic, social and employment benefits.

The Commission has set up specific frameworks of rules for State aid in agriculture, forestry, fishery and aquaculture. Most of those rules are long-standing and have proven their relevance over the years. However, State aid rules are limited in time and the current State aid

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<sup>287</sup> Regulation on (EU) No 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

<sup>288</sup> See the 2018 Competition report on agriculture for more details about these rules:

[https://ec.europa.eu/competition/sectors/agriculture/report\\_on\\_competition\\_rules\\_application.pdf](https://ec.europa.eu/competition/sectors/agriculture/report_on_competition_rules_application.pdf).

<sup>289</sup> Commission Decision of 28 October 2020 on the request for an opinion pursuant to Article 209 of Regulation (EU) No 1308/2013 by the Cooperativas agro-alimentarias – Spanish olive oil sector, C(2020) 7322 final.

rules, which were set to expire at the end of 2020, are therefore under review. The review comprises the Agricultural Block Exemption Regulation (ABER)<sup>290</sup>, the State aid Guidelines for agriculture, forestry and rural areas<sup>291</sup>, the Fisheries Block Exemption Regulation (FIBER)<sup>292</sup>, the Regulation on de minimis aid in the fishery and aquaculture sector<sup>293</sup> and the State aid Guidelines for fishery and aquaculture<sup>294</sup>. In the meanwhile, the Commission has decided to extend the application of those rules until the end of 2022, in order to ensure their alignment with the future CAP and EMFF regulations, for which the legislative procedures are still pending.

In 2020, the Commission continued to assess notifications by the Member States and adopted 189 decisions and continued to advise Member States' authorities on how to interpret and implement the applicable State aid rules. The Commission also continued to check all new block exempted measures designed by Member States under the Agricultural Block Exemption Regulation (ABER) prior to their entry into force and advised Member States in case of any doubts or problems, thereby enabling them to implement the corresponding aid schemes quickly.

### *6.2.3. Mitigating the effects of the pandemic context*

In 2020, the prolonged closure of bars, restaurants and other catering venues, as well as the cancellation of most events, has triggered supply disruption in a number of agricultural markets. This has prompted the Commission to authorise on a temporary basis agreements on the collective management of quantities, pursuant to Article 222 of the CMO Regulation.

In accordance with Article 222 of the CMO Regulation, the Commission has granted derogations from Article 101 TFEU through four Implementing Regulations covering the whole EU territory and authorising the conclusion of agreements of a maximum duration of six months for the raw milk, flowers and plants, potatoes for processing, and wine and wine products<sup>295</sup>.

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<sup>290</sup> Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

<sup>291</sup> Commission Communication: European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014-2020, OJ C 204, 1.7.2014, p. 1.

<sup>292</sup> Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

<sup>293</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

<sup>294</sup> Commission Communication: Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

<sup>295</sup> Commission Implementing Regulation (EU) 2020/593 of 30 April 2020 authorising agreements and decisions on market stabilisation measures in the potatoes sector, OJ L 140, 4.5.2020, p. 13; Commission Implementing Regulation (EU) 2020/594 of 30 April 2020 authorising agreements and decisions on market stabilisation measures in the live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage sector, OJ L 140, 4.5.2020, p. 17; Commission Implementing Regulation (EU) 2020/599 of 30 April 2020 authorising agreements and decisions on the planning of production in the milk and milk products sector, OJ L 140, 4.5.2020, p. 37; Commission Implementing Regulation (EU) 2020/975 of 6 July 2020 authorising agreements and decisions on market stabilisation measures in the wine sector, OJ L 215, p. 13.

#### *6.2.4. Investigation into possible restrictions of parallel trade*

In 2020 the Commission has continued its ex-officio investigations into possible restrictions of parallel trade of food products. One investigation initiated in 2019 concerns a number of potentially restrictive practices on the markets for chocolate, biscuits and coffee products.

#### *6.2.5. Buying alliances and competition in retail trade in the single market*

In 2020 the Commission has continued the proceedings, opened in November 2019, against two large retailers, Casino and Les Mousquetaires/Intermarché, regarding a potential collusion built around their purchasing alliance, and consisting of a coordination on shop development and on prices towards final consumers. In doing this, the Commission addresses an EU-wide systemic risk of collusion through alliances both at national and international level. The risk of excessive transparency has been made more acute since retailers have often changed partners in these alliances, and specialised managers have been moving between retailers and alliances as a result, thus providing more opportunities for retailers to collude. The Alliance Casino & Intermarché case is subject of court proceedings at the General Court. On 5 October 2020 the General Court ruled on the legality of the 2017 inspection decisions of the Commission<sup>296</sup>. Details about the judgments are presented in section 2.2.2 above on Important judgments by the European Union Courts.

#### *6.2.6. Broadband in rural areas*

The Commission is committed to avoid the complexity linked to the use of different State aid frameworks for connectivity. The GBER provisions have been simplified by replacing the broadband section in the regional GBER section and concentrating assessment of all broadband aid under the specific broadband provisions, that are to be significantly expanded, inter alia, to allow to deploy 5G in areas with no 4G coverage and to deploy 4G in areas with no 3G coverage.

## **7. PHARMACEUTICAL AND HEALTH SERVICES SECTORS**

### **7.1 Overview**

Competition law enforcement in the pharmaceutical and healthcare sectors in 2020 contributed to consumers' access to effective, innovative and affordable medicines as emphasised in the objectives of the Commission's new Pharmaceutical Strategy for Europe<sup>297</sup>. This addresses issues with the affordability and accessibility of medicines which have, over the past years, become an increased concern in the pharmaceutical sector.

The Commission and the competition authorities in the Member States monitor the pharmaceutical and health services sectors to identify potential competition issues. This enforcement action, which complements the regulatory frameworks in these sectors, fosters both dynamic competition, which leads to more innovative medicines, and effective price competition, which contributes to more affordable and accessible medicines and treatments.

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<sup>296</sup> Cases T-249/17 Casino, Guichard-Perrachon and Achats Marchandises Casino SAS (AMC) v Commission; T-254/17 Intermarché Casino Achats v Commission and T-255/17 Les Mousquetaires and ITM Entreprises v Commission (under appeal).

<sup>297</sup> See: [https://ec.europa.eu/health/sites/health/files/human-use/docs/pharmastrategy\\_com2020-761\\_en.pdf](https://ec.europa.eu/health/sites/health/files/human-use/docs/pharmastrategy_com2020-761_en.pdf).

## 7.2 Contribution of EU competition policy

### 7.2.1. Antitrust enforcement in the pharmaceutical sector

In 2020, the Commission investigated firms suspected of preventing or reducing consumers' access to effective, innovative and affordable medicines.

#### **The Cephalon case<sup>298</sup>**

On 26 November 2020, the Commission issued a decision fining the pharmaceutical companies Teva and Cephalon a total of EUR 60.5 million. These companies agreed to delay for several years the market entry of a less expensive generic version of Cephalon's drug for sleep disorders, modafinil, after Cephalon's main patents had expired. The agreement amounted to a violation of Article 101 TFEU by object and by effect. It caused substantial harm to EU patients and healthcare systems by keeping prices artificially high for modafinil.

The Commission's decision concerned a patent settlement agreement whereby Cephalon induced Teva not to enter the market with a generic version of modafinil, in exchange for a package of commercial transactions that were beneficial to Teva and some cash payments. Teva held its own patents relating to modafinil's production process, was ready to enter the modafinil market with its own generic version and it had even started selling its generic product in one Member State. Nonetheless, Teva agreed with Cephalon to withdraw from the market and not to challenge Cephalon's patents. The Commission's investigation found that for several years, this "pay-for-delay" agreement eliminated Teva as a competitor and allowed Cephalon to continue charging supra-competitive prices, even if its main modafinil patent had long expired.

While generally patent settlements can be legitimate, the Commission showed that the settlement agreement between Teva and Cephalon was not. Teva committed to stay out of the modafinil markets, not because it was convinced of the strength of Cephalon's patents, but because of the substantial value it received from Cephalon. Without the "pay-for-delay" settlement agreement, Teva could have entered the market earlier and could have, in turn, pushed down prices for modafinil.

#### **The Aspen case<sup>299</sup>**

In June 2020, the Commission adopted a Preliminary Assessment pursuant to Article 9 of Regulation 1/2003 in its first excessive pricing investigation in the pharmaceutical sector. The Preliminary Assessment set out the Commission's concerns about the pricing practices by Aspen Pharmacare, a South African pharmaceutical company, regarding six of its cancer medicines mainly used in the treatment of leukaemia and other haematological cancers in several EU Member States (excluding Italy) and EEA countries.

The Commission's assessment follows the framework of analysis set out by the Court of Justice in its *United Brands* judgment<sup>300</sup>. Aspen's accounting data on revenues and costs revealed that, after the price increases, Aspen consistently earned very high profits from the sales of these cancer medicines in Europe, when compared to the profit levels of similar companies in the industry. In certain cases, high profit margins can be explained by, for example, the need to reward significant innovation and commercial risk-taking. However, the Commission's assessment did not reveal any justifications for Aspen's very high profit levels.

In July 2020, the Commission published Aspen's commitments proposal in the Official Journal to seek feedback during a market test consultation. Aspen's proposed commitments would drastically reduce prices for Aspen's cancer medicines and include a supply commitment. The responses to the market test were overwhelmingly supportive of the Commission's enforcement action, and provided certain suggestions for improvements of some technical or practical aspects of the commitments.

On 10 February 2021, the Commission accepted and declared binding final commitments from Aspen to remove the concerns of excessive pricing: (a) Aspen will reduce its prices across Europe for all six cancer medicines under investigation by, on average, approximately 73%; (b) these new prices will be the maximum that Aspen can charge for the coming ten years. They will start taking effect already as of October 2019 when Aspen first approached the Commission with a commitment proposal; and (c) Aspen guarantees the supply of these medicines for the next five years, and, for an additional five-year period, will either continue to supply or make its marketing authorisation available to other suppliers.

<sup>298</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2220](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2220).

<sup>299</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_524](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_524).

<sup>300</sup> Case C-27/76 *United Brands v Commission*, judgment of the Court of Justice of 14.2.1978.

These commitments deliver to patients and national health systems concrete and tangible benefits at a moment when there are widespread concerns about companies withdrawing from supplying some Member States (a concern also highlighted in the Commission's Pharmaceutical Strategy for Europe)<sup>301</sup>.

The Commission will continue investigating potentially abusive unilateral conduct, including potentially anticompetitive practices delaying the entry of rival products, such as generic or biosimilar versions of medicines.

### 7.2.2. Merger review in the pharmaceutical sector

In 2020, the Commission continued its thorough review of pharmaceutical mergers and acquisitions, to ensure the availability of diversified and affordable medicines and medical devices to patients and medical practitioners across the EU, and to protect innovation.

On 10 January 2020, the Commission approved the acquisition of *Allergan* by *AbbVie*<sup>302</sup>, subject to the divestment of a product under development by Allergan to treat inflammatory bowel disease (IL-23 inhibitor). The Commission was concerned that following the concentration AbbVie would not continue to develop this promising pipeline product of Allergan, for which only two other competing pipeline products, in addition to AbbVie's and Allergan's IL-23 inhibitors, are currently being developed. Without this divestment, the transaction would have led to a loss of innovation in inflammatory bowel disease treatments.

On 22 April 2020, the Commission approved the merger between *Mylan* and *Pfizer's Upjohn division*<sup>303</sup>, subject to the divestment of Mylan's business for certain genericized medicines. While finding no competition concerns for the majority of the products supplied by both companies, the Commission found that the merger raised competition concerns for 36 molecule-country pairs where the position of the two companies was strong and only a limited number of significant competitors would have remained on the market in the absence of the proposed remedies.

On 28 May 2020, the Commission waived the commitments made by *Takeda* to obtain clearance of its acquisition of *Shire* (which was conditionally authorised on 20 November 2018)<sup>304</sup>. The Commission found that permanent, significant and unforeseeable developments took place during the divestiture process, which affected the evolution of the competitive landscape in inflammatory bowel diseases treatments and which have negatively impacted the development of Shire's pipeline drug so that the divestment of SHP 647 was no longer necessary to render Takeda's acquisition of Shire compatible with the internal market.

The Commission also continued its thorough review of animal health mergers and acquisitions to protect innovative and competitively priced pharmaceutical products for animals. On 8 June 2020, the Commission approved the acquisition of *Bayer's animal health division* by *Elanco*<sup>305</sup>, subject to the divestment of otitis products and endoparasiticides for pets and anticoccidials for ruminants in the EEA, the UK and globally. The Commission

<sup>301</sup> See points 2.2 and 4.1 here: [https://ec.europa.eu/health/sites/health/files/human-use/docs/pharmastrategy\\_com2020-761\\_en.pdf](https://ec.europa.eu/health/sites/health/files/human-use/docs/pharmastrategy_com2020-761_en.pdf)

<sup>302</sup> Case M.9461 AbbVie/Allergan. Commission Decision of 10 January 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9461](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9461).

<sup>303</sup> Case M.9517 Mylan/Upjohn. Commission Decision of 22 April 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9517](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9517).

<sup>304</sup> Case M.8955 Takeda/Shire. Commission Decision of 28 May 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8955](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8955).

<sup>305</sup> Case M.9554 Elanco Animal Health/Bayer Animal Health Division. Commission Decision of 8 June 2020. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9554](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9554).

found that, as originally notified, this transaction, which created the second largest animal health company, would have raised competition concerns in the provision of otitis products and parasiticides in a number of EEA countries where both companies have strong positions and/or face a limited number of competitors.

### *7.2.3. State aid actions in the health services sector*

The Commission made progress on the evaluation of the State aid rules for health and social Services of General Economic Interest (SGEI) and the SGEI de minimis Regulation that was launched in 2019<sup>306</sup>. In order to also appropriately evaluate the SGEI de minimis Regulation and to avoid a gap after its expiry, it was prolonged for another three years until 31 December 2023<sup>307</sup>. By carrying out the evaluation, the Commission aims to get a better and more detailed understanding of the potential issues that Member States may have had in implementing the rules.

Together with the prolongation of the SGEI de minimis Regulation, and in light of the COVID-19 pandemic, a temporary derogation for undertakings in difficulty to benefit from SGEI de minimis aid was introduced.

## **8. TRANSPORT, TOURISM, AND POSTAL SERVICES**

### **8.1 Overview**

The transport and postal services sectors account for approximately 5% of the EU economy, and their performance can have many beneficial effects for other sectors of the European economy. Transport is the key to both an integrated internal market and to an open economy integrated into the world economy. Tourism accounts for 3.9% of the EU economy.

The transport sector was hit hard by the COVID-19 pandemic, particularly the air transport sector. Numerous airlines were on the brink of bankruptcy due to the restrictions on passenger movements, which caused a dramatic drop in revenues and required public support.

### **8.2 Contribution of EU competition policy**

#### *8.2.1. Merger review in the aviation sector*

On 3 April 2020 the Commission adopted a clearance decision with commitments in the in-flight catering sector. Gategroup had proposed to acquire the European business of Lufthansa Service Group (“LSG”)<sup>308</sup>. The Commission concluded that the notified transaction would have led to a quasi-monopoly or left at most only one remaining viable competitor in the markets for in-flight catering services at airports in Belgium (Brussels), Germany (Berlin-Tegel, Cologne, Dusseldorf, Frankfurt, Hamburg, Hannover, Munich), France (Paris Charles de Gaulle), and Italy (Rome Fiumicino). To address the Commission’s concerns, Gategroup committed to divest the overlap businesses in order to facilitate the entry or expansion of competing in-flight caterers at those airports. The commitments were subject to an up-front buyer clause.

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<sup>306</sup> See: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435_en).

<sup>307</sup> Commission Regulation (EU) 2020/1474 of 13 October 2020 amending Regulation (EU) No 360/2012 as regards the prolongation of its period of application and a time-bound derogation for undertakings in difficulty to take into account the impact of the COVID-19 pandemic, OJ L 337 of 14.1.2020, p. 1-2, available at: <http://data.europa.eu/eli/reg/2020/1474/oj>.

<sup>308</sup> Case M.9546 Gategroup/LSG European Business, Commission Decision of 3 April 2020.

On 25 May 2020, the Commission opened an in-depth investigation into the acquisition of Transat (the parent company of Air Transat) by Air Canada<sup>309</sup>. Air Canada and Transat are respectively the first and second largest providers of scheduled passenger air transport services between the European Economic Area (EEA) and Canada. The Commission is concerned that the proposed transaction may reduce competition in the passenger air transport services on 33 origin and destination (O&D) citypairs between the EEA and Canada. The Commission's preliminary market investigation revealed that Air Canada and Transat have been historically competing head-to-head for the passenger air transport services between the EEA and Canada. Other airlines, in particular the EEA national carriers, were found to be more distant competitors, only competing on a very small subset of routes out of their respective home hubs. As the proposed transaction was notified to the Commission at a point in time where the aviation sector is impacted by the Coronavirus outbreak, the Commission has been also investigating the impact that the Coronavirus crisis would have on Air Canada's, Transat's and their competitors' operations and hence the competitive landscape in the mid- and long-term. The parties subsequently decided to terminate the proposed merger agreement on 2 April 2021<sup>310</sup>.

On 16 December 2020, the European Court delivered a judgment<sup>311</sup> in a case brought by American Airlines against the Commission. American Airlines had applied for the annulment of the Commission's decision of 2018 granting grandfathering rights on the ground that the slot remedy taker, Delta Airlines, had not made appropriate use of the slots during the preceding utilisation period. The European Court sided with the Commission's interpretation and dismissed the application.

#### *8.2.2. Antitrust enforcement in the aviation sector*

In 2020, the Commission continued with its *ex officio* investigation based on concerns about the imposition of content Most Favoured Nation clauses ("MFN clauses") by Global Distribution Systems (GDSs)<sup>312</sup>. The investigation focuses on MFN clauses governing the content that airlines distribute through travel agents.

#### *8.2.3. State aid to the aviation sector*

The aviation sector has been among the worst affected by the COVID-19 pandemic. To assist Member States in their effort to support the aviation sector in this context, the Commission issued in April 2020 a document<sup>313</sup> guiding Member States on how to best channel public funding to safeguard air connections. Moreover, the Commission helped several Member States design public service compensations that complied with the so-called Altmark criteria and could therefore be exempted from notification to the Commission.

In 2020, the Commission adopted 42 decisions allowing State aid to airlines, airports and ground handling companies to address their liquidity and capital needs caused by the COVID-

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<sup>309</sup> Case M.9489 Air Canada/Transat, see:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_934](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_934).

<sup>310</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_1562](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_1562).

<sup>311</sup> Case T-430/18 American Airlines v Commission, judgment of the General Court of 16.12.2020.

<sup>312</sup> GDSs are two-sided platforms that act as a technical intermediary between, on one side, travel service providers, such as airlines, rail operators and hotel companies and, on the other side, travel agents and travel management companies. The Commission initiated proceedings in November 2018 in this case. See:

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_6538](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6538).

<sup>313</sup> Overview of the State aid rules and public service obligations rules applicable to the air transport sector during the COVID-19 outbreak.

19 pandemic. The aid measures were generally approved under the Temporary Framework, Article 107(2)(b) TFEU which allows Member States to compensate undertakings for the damage directly caused by the COVID-19 pandemic, or under the Rescue and Restructuring rules. A few notable examples are presented below.

On 15 and 24 April 2020, the Commission approved State guarantees by Denmark<sup>314</sup> and Sweden<sup>315</sup>, each of up to EUR 137 million of revolving credit facilities in favour of SAS. The measures are intended to compensate the airline for the damage caused by the COVID-19 pandemic. On 17 August 2020, the Commission also approved plans by Denmark and Sweden to contribute up to approximately EUR 1 billion to the recapitalisation of SAS.

On 4 May 2020, the Commission approved EUR 7 billion aid by France to Air France, consisting of a State guarantee on loans and a shareholder loan, to provide urgent liquidity to the company in the context of the COVID-19 pandemic<sup>316</sup>.

On 18 May 2020, the Commission approved a State guarantee by Finland of a EUR 600 million loan to Finnair to mitigate the economic impact of the COVID-19 pandemic on the company<sup>317</sup>. On 9 June 2020, the Commission approved Finland's plan to contribute EUR 286 million to the recapitalisation of Finnair through the subscription of new shares by the State in the rights issue launched by Finnair on 10 June 2020<sup>318</sup>.

On 25 June 2020, the Commission approved a plan by Germany to contribute EUR 6 billion to the recapitalisation of Deutsche Lufthansa AG, the parent company of Lufthansa Group. The Commission found the measure to be compatible with the Temporary Framework, as it aims to restore the balance sheet position and liquidity of the company in the exceptional situation caused by the pandemic, while including the necessary safeguards to limit distortions of competition. The commitments undertaken by Deutsche Lufthansa AG, i.e. the company will make available certain slots and assets at its congested hub airports of Frankfurt and Munich, and will preserve effective competition in markets, where it holds significant market power<sup>319</sup>. Deutsche Lufthansa AG committed to publishing information on how the use of the received aid supports the company's activities in line with EU and national obligations linked to the green and digital transformation<sup>320</sup>.

On 13 July 2020, the Commission approved EUR 3.4 billion aid by the Netherlands to KLM consisting of a State loan guarantee and a subordinated State loan to provide urgent liquidity to the company in the context of the COVID-19 pandemic. The Netherlands imposed certain

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<sup>314</sup> Case SA.56795 Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines, Commission Decision of 15 April 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56795](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56795).

<sup>315</sup> Case SA.57061 Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines, Commission Decision of 24 April 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57061](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57061).

<sup>316</sup> Case SA.57082 COVID-19 – Encadrement temporaire 107(3)(b) – Garantie et prêt d'actionnaire au bénéfice d'Air France, Commission Decision of 4 May 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57082](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57082).

<sup>317</sup> Case SA.56809 COVID-19 – State loan guarantee for Finnair, Commission Decision of 18 May 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56809](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56809).

<sup>318</sup> Case SA.57410 COVID – recapitalisation of Finnair, Commission Decision of 9 June 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57410](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57410).

<sup>319</sup> Case SA.57153 COVID-19 – Aid to Lufthansa, Commission Decision of 25 June 2020, see :

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57153](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57153).

<sup>320</sup> There are similar reporting requirements in all recapitalisation measures, i.e. SAS and Finnair.

conditions on the aid measures with respect to profit allocation, working conditions and sustainability<sup>321</sup>.

In September and December 2020, the Commission approved Italian plans to grant compensation to Alitalia for the damage suffered from containment measures and travel restrictions linked to the COVID-19 outbreak. Since the start of the Coronavirus outbreak, Alitalia has suffered a significant reduction of its services, resulting in high operating losses. On 4 September, the Commission approved a direct grant of EUR 199.45 million, corresponding to the estimated direct damage suffered by Alitalia in the period from 1 March 2020 to 15 June 2020<sup>322</sup>. Subsequently, Italy notified to the Commission an additional aid measure in the form of a EUR 73.02 million direct grant to compensate Alitalia for further damage suffered on 19 specific routes from 16 June 2020 to 31 October 2020 due to emergency measures imposed to limit the spread of the virus. The Commission approved the second measure on 29 December 2020<sup>323</sup>. For both measures, the Commission has thoroughly verified that compensation is only granted for damages directly linked to the Coronavirus outbreak and that the compensation does not exceed what is necessary to make good that damage. The Commission's investigations into loans granted by Italy to Alitalia in the process of the airline's restructuring are currently ongoing<sup>324</sup>.

In June 2020, the Commission approved a EUR 1.2 billion rescue loan in favour of the Portuguese airline TAP Air Portugal, which had been in financial difficulties since 2019, before the COVID-19 outbreak<sup>325</sup>. The measure notified by Portugal aimed to provide TAP with sufficient resources to address its immediate liquidity needs, with a view to preparing a plan for the long-term viability of the company. The Commission found that the measure would help avoiding disruptions for passengers in particular in view of the easing of travel restrictions and the upcoming touristic season. At the same time, the strict conditions attached to the loan in terms of remuneration and use of the funds and its duration limited to six months would reduce the distortion of competition potentially triggered by the State support to a minimum.

Also in June 2020, Portugal notified to the Commission public financing in favour of SATA, an air transport company ultimately controlled by the Portuguese Autonomous Region of Azores<sup>326</sup>. SATA provides air transport passenger and cargo services within Azores, and from and to several national and international destinations. With respect to certain routes, it has been entrusted with a public service obligation to ensure connectivity of the islands and operation of small airports. The Commission approved a public guarantee of up to approximately EUR 133 million on a temporary loan strictly related to urgent liquidity needs linked to the provision by SATA of essential services including routes subject to public service obligations and services of general economic interest at local airports. Separately, the Commission has opened an in-depth investigation to assess whether certain public support measures in favour of SATA were in line with the 2014 Guidelines on State aid for rescue and

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<sup>321</sup> Case SA.57116 COVID-19 – State loan guarantee and State loan for KLM, Commission Decision of 13 July 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57116](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57116).

<sup>322</sup> [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_20\\_1567](https://ec.europa.eu/commission/presscorner/detail/en/mex_20_1567).

<sup>323</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2540](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2540).

<sup>324</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_3501](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3501) and [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_349](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_349).

<sup>325</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1029](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1029).

<sup>326</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1489](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1489).

restructuring<sup>327</sup>.

Moreover, the Commission assessed in favour of Corsair<sup>328</sup> two French support measures: a restructuring aid measure totalling EUR 106.7 million and a measure in the form of a EUR 30.2 million tax credit compensating damage suffered because of the Coronavirus outbreak. The financial difficulties of Corsair, a private French airline, had been severely aggravated by the travel restrictions imposed by France and several destination countries to limit the spread of the Coronavirus.

As regards airports, the Commission approved for instance on 11 August 2020 a German scheme which allows firstly, for damage compensation under Article 107(2)(b) TFEU and secondly, for liquidity support in the form of grants, guarantees on loans, subsidised interest rates and deferrals of certain taxes and charges under the Temporary Framework<sup>329</sup>.

On 11 August 2020 the Commission approved a German aid scheme to support airports affected by the Covid-19 outbreak. The scheme, which is open to all operators of German airports, was approved partially based on Article 107(2)(b) TFEU and partially under the Temporary Framework. Under the scheme, the German authorities may (i) compensate airports for revenue losses directly caused by the coronavirus outbreak during the period 4 March - 30 June 2020, in the form of direct grants, and (ii) provide liquidity support in the form of grants, guarantees on loans, subsidised interest rates and deferrals of certain taxes and charges to airports facing liquidity shortages<sup>330</sup>.

On 23 November 2020 the Commission approved a EUR 4.4 million Romanian aid scheme to compensate regional airport operators for the damage suffered due to the Coronavirus outbreak. Under the scheme, operators of Romanian airports with annual traffic turnovers between 200 000 to 3 million passengers are compensated with direct grants for net losses incurred between 16 March and 30 June 2020<sup>331</sup>.

As regards ground handling operators, the Commission approved on 8 July 2020 a EUR 25 million Belgian aid to support Aviapartner, a ground handling service provider at Brussels National Airport (Zaventem). The aid measure was provided in the form of a convertible loan<sup>332</sup>.

In addition to COVID-19 related measures, the Commission approved operating aid to regional airports under the Aviation Guidelines to keep the airports running until they become profitable again, with the aim of ensuring connectivity of citizens and facilitating regional development in the regions concerned. The Commission approved for instance EUR 18.2 million aid for Saarbrücken airport in Germany<sup>333</sup> and EUR 6.37 million to secure the

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<sup>327</sup> Communication from the Commission: Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1-28.

<sup>328</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2398](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2398).

<sup>329</sup> Case SA.57644 COVID-19 Airport Scheme, Commission Decision of 11 August 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57644](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57644).

<sup>330</sup> Case SA.57644 COVID-19: Airport Scheme, Commission Decision of 11 August 2020, see: [https://ec.europa.eu/competition/state\\_aid/cases1/202033/287537\\_2180954\\_47\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202033/287537_2180954_47_2.pdf).

<sup>331</sup> Case SA.58676 COVID-19 Support for Romanian regional airports, Commission Decision of 23 November 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_58676](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58676).

<sup>332</sup> Case SA.57637 COVID-19 – Recapitalisation of Aviapartner, Commission Decision of 7 July 2020, see: [https://ec.europa.eu/competition/state\\_aid/cases1/202051/287017\\_2221214\\_124\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/202051/287017_2221214_124_2.pdf).

<sup>333</sup> Case SA.55302 Operating aid to Saarbrücken airport (2019-2024), Commission Decision of 12 May 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55302](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55302).

functioning of the Debrecen airport in Hungary<sup>334</sup>.

#### 8.2.4. Evaluation of the Aviation Guidelines / Relevant GBER provisions

As a part of the State aid Fitness Check, the Commission carried out an *ex post* evaluation of the Aviation Guidelines<sup>335</sup> and the relevant rules under the GBER as regards aid for airport infrastructure. This involved a targeted consultation and an external study on the rules for operating aid. The evaluation focused in particular on the rules governing operating aid for airports, as the transitional period introduced by the Aviation Guidelines is set to end in 2024, as well as on the passenger thresholds and aid intensities for operating and for investment aid.

Furthermore, the Commission has evaluated the rules for aid to airlines, including the rules on start-up aid under the Aviation Guidelines. The evaluation found that the transitional period allowing operating aid under the Aviation Guidelines appears to be insufficient to allow many regional airports to become cost-covering by 2024. Furthermore, according to the evaluation, there seems to be a structural need for operating aid for airports with less than 200 000 passengers per year, currently covered by the GBER. Another finding was that the Aviation Guidelines do not specifically address measures to mitigate airports' impact on the environment and the climate.

#### 8.2.5. Court Judgments in aviation aid cases

The General Court delivered three important judgments concerning State aid cases in the aviation sector. In the Sardinian airports case<sup>336</sup> the General Court dismissed the actions brought by the airlines easyJet, Volotea and Germanwings seeking the annulment of the Commission's decision of 29 July 2016 which declared partly incompatible with the internal market the aid granted by Italy to several European airlines, including the three at issue, serving Sardinia.

In its judgment in the *Sea Handling SpA* case<sup>337</sup>, the Court of Justice of the European Union dismissed the action brought by the City of Milan seeking the annulment of the judgment of the General Court of 13 December 2018 and the annulment of the Commission decision of 19 December 2012, which found that State aid granted between 2002 and 2010 by SEA, the State-owned operator of the Milan Malpensa and Milan Linate airports, to its subsidiary SEA Handling, ground handling operator at the airports, was incompatible with EU State aid rules. The Court confirmed the Commission's finding that the capital injections were imputable to the Italian State and that no private investor would have continued investing in a loss-making activity for such a long period without any concrete prospect of a return on its investment.

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<sup>334</sup> Case SA.57109 Operating aid to Debrecen International Airport Kft., Commission Decision of 14 September 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57109](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57109).

<sup>335</sup> Communication from the Commission: Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3-34.

<sup>336</sup> Case T-8/18 easyJet v Commission, judgment of the General Court of 13.5.2020; Case T-607/17 Volotea v Commission, judgment of the General Court of 13.5.2020; Case T-716/17 Germanwings v Commission, judgment of the General Court of 13.5.2020.

<sup>337</sup> Case C-160/19 P Comune di Milano v Commission, judgment of the Court of 10.12.2020.

### *8.2.6. Antitrust Consortia Block Exemption Regulation (CBER) concerning the container shipping sector*

In 2020, the Commission finalised its evaluation of the Consortia Block Exemption Regulation (CBER) concerning the container shipping sector<sup>338</sup>. The Commission analysed responses received during a public consultation in 2018. The Commission published its findings in a Staff Working Document on 20 November 2019, which summarised and presented the results of the evaluation process. Based on the review, the Commission extended the CBER for another four years, i.e. until 25 April 2024. The extension of the CBER was adopted on 24 March 2020 and published in the Official Journal of the European Union on 25 March 2020<sup>339</sup>.

### *8.2.7. State aid enforcement in the maritime transport sector*

Numerous maritime routes operated so far on a commercial basis were on the verge of collapse due to the restrictions on passenger movements, which caused a dramatic drop in revenues. Public intervention was urgently needed to preserve connectivity with remote territories and islands in many Member States and the Commission quickly responded to that challenge and accompanied Member States in their effort to support the maritime sector in the context of the outbreak.

First, the Commission issued in April 2020 a specific guidance document<sup>340</sup> aimed at guiding Member States on how to best channel public funding to safeguard maritime connections. Second, the Commission helped several Member States design public service compensations that complied with the so-called Altmark criteria and could therefore be exempted from notification to the Commission. Third, the Commission approved under Article 107(2)(b) TFEU a number of schemes (i.e. Sweden, Estonia, Finland) to compensate the damages suffered by the maritime sector as a result of the COVID-19 outbreak.

Moreover, in 2020, the Commission approved a number of State aid schemes under the Maritime State aid Guidelines<sup>341</sup>, which allow tax reliefs for shipping companies. The aim of the Guidelines is to maintain the EU maritime sector's competitiveness in relation to third countries and promote EU maritime employment. The Commission approved an extension of the UK Waterborne Freight Grant scheme promoting the development of coastal and short sea-shipping<sup>342</sup>; an extension of the Croatian tonnage tax scheme to commercial yachts involved in international navigation<sup>343</sup>; the inclusion of certain service vessels in the Belgian seafarer scheme for example, research vessels, pipe and cable laying vessels, as well as vessels for raising, repairing and dismantling windmills and other off-shore installations<sup>344</sup>;

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<sup>338</sup> Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256, 29.9.2009, p. 31.

<sup>339</sup> Commission Regulation (EU) 2020/436 of 24 March 2020 amending Regulation (EC) No 906/2009 as regards its period of application, OJ L 90, 25.3.2020, p. 1.

<sup>340</sup> Overview of the State aid rules and Public Service rules applicable to the maritime sector during the COVID-19 pandemic.

<sup>341</sup> Commission communication C(2004)43: Community guidelines on State aid to maritime transport, OJ C 13, 17.1.2004, p. 3-12.

<sup>342</sup> Case SA.54911 Waterborne Freight Grant, Commission Decision of 21 January 2020, see: [https://ec.europa.eu/competition/state\\_aid/cases1/20207/282390\\_2131740\\_78\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/20207/282390_2131740_78_2.pdf).

<sup>343</sup> Case SA.55577 Extension to the tonnage tax scheme, Commission Decision of 3 April 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37912](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37912).

<sup>344</sup> Case SA.56474 Extension of the Belgian seafarer scheme to certain vessels, Commission Decision of 27 April 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56475](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56475).

the Italian international registry scheme consisting in a corporate tax reduction for shipping companies as well as other tax and social contributions' reductions<sup>345</sup>; the German seafarer scheme on the reduction of social security contributions, the inclusion of research vessels in a Danish seafarer scheme<sup>346</sup>; and the introduction of a new seafarer scheme in Estonia consisting in a partial reduction of labour-related costs for passenger shipping companies<sup>347</sup>.

Lastly, the Commission opened the formal investigation procedure regarding the three public service contracts granted by France to Corsica Linea for the provision of maritime services between Marseille and the ports of Ajaccio, Bastia and L'Île Rousse, as the Commission has doubts whether the contracts are in line with the so-called SGEI framework<sup>348</sup>.

#### *8.2.8. Judgment in the Spanish Tax Lease case*

By its judgment of 25 July 2018, the Court of Justice, hearing an appeal brought by the Commission, set aside the judgment in *Commission v Spain and Others*<sup>349</sup>. The Court of Justice held that the General Court, in its analysis of the selective nature of the Spanish 'Tax Lease System' ('the STL system') to certain finance lease agreements allowing shipping companies to benefit from a 20-30% price reduction when purchasing ships constructed by Spanish shipyards, misapplied the provisions of the Treaty relating to State aid and that, contrary to the findings of the General Court, the Commission's decision was not vitiated by a failure to state reasons for the distortion of competition and effect on trade. As the General Court had not ruled on all the pleas in law raised before it, the Court of Justice referred the case back to the General Court. By its *renvoi* judgment of 23 September 2020, *Spain and Others v Commission*, T-515/13 RENV and T-719/13 RENV<sup>350</sup>, the General Court dismissed the actions brought by the applicants.

#### *8.2.9. Antitrust enforcement in the rail sector*

On 30 October 2020, the Commission has adopted a Statement of Objections in case AT.40156 Czech rail. In the Commission's preliminary view, the state-owned Czech rail incumbent České dráhy (ČD) has breached EU antitrust rules by charging prices below cost. If confirmed, ČD's conduct would amount to an infringement of Article 102 TFEU through predatory pricing. The Commission takes the preliminary view that between 2011 and 2019 ČD engaged in predatory pricing on the Prague-Ostrava route. This conduct appears to have taken place at a time when RegioJet and Leo Express posed a growing threat to ČD, quickly expanding on the Prague-Ostrava route and beyond.

On 18 November 2020, the General Court delivered its judgment in case T-814/17, *Lietuvos geležinkeliai AB (Lithuanian Railways) v European Commission*. The European Commission had fined Lithuanian Railways in 2017 an amount of EUR 27 873 000 for hindering competition on the rail freight market, in breach of EU antitrust rules, by removing a rail track connecting Lithuania and Latvia. The removal of the track made it more difficult for the

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<sup>345</sup> Case SA.48260 Italian international registry scheme, Commission Decision of 11 June 2020, see:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_48260](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48260).

<sup>346</sup> Case SA.55760 Tax deduction scheme for seafarers to include research vessels, Commission Decision of 9 July 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55760](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55760).

<sup>347</sup> Case SA.57541 Support for international passenger shipping, Commission Decision of 27 August 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57541](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57541).

<sup>348</sup> Communication from the Commission: European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15-22.

<sup>349</sup> Case C-128/16 P *Commission v Spain*, judgment of the Court of Justice of 25.7.2018.

<sup>350</sup> Case T-515/13 RENV *Spain v Commission*, judgment of the General Court of 23.9.2020.

Latvian rail freight operator to enter Lithuania and serve a customer based in Lithuania. Lithuanian Railways failed to show any objective justification for the removal of the track. In 2020, Lithuanian Railways rebuilt the track. The GC confirmed that the Commission correctly interpreted the concepts of abuse of a dominant position, of objective justification under Article 102 TFEU and also confirmed that the Commission correctly determined the duration of an infringement. In particular, the Court noted that the removal of the track cannot be assessed in the light of the case-law established in relation to refusal to provide access to essential facilities, which sets a higher threshold for finding that a practice is abusive than that applied in the contested decision. In fact, the conduct assessed in the decision must be analysed as an act capable of hindering market entry by making access to the market more difficult and thus leading to an anticompetitive foreclosure effect. However, the Court reduced the fine to EUR 20 068 650 on the basis of its unlimited jurisdiction. Lithuania Railways lodged an appeal against the judgment of the General Court in Case C-42/21 P.

#### *8.2.10. Rail and intermodal State aid enforcement*

As in other transport modes hit by the COVID-19 pandemic, public intervention was urgently needed to preserve connectivity and the Commission quickly responded to that challenge.

First, the Commission issued in April 2020 a guidance document on the possibilities available to provide support to railway undertakings in the pandemic. Second, the Commission supported Member States in amending existing public service contracts to address the exceptional circumstances in line with the applicable rules. Third, the Commission approved under Article 107(2)(b) TFEU three schemes under which public service operators are compensated for the damages suffered as a result of the COVID-19 outbreak<sup>351</sup>. Furthermore, the Commission approved a scheme for the reduction of track access charges and parking fees<sup>352</sup> (similar schemes have been notified but not approved yet on 31 December 2020).

Besides the handling of COVID-19 related cases, the Commission continued to enforce State aid rules applicable to the rail sector. The Commission approved several schemes<sup>353</sup> for the coordination of transport (which is broad concept encompassing aid for infrastructure use, aid to reduce negative externalities or aid for interoperability measures) on the basis of the 2008 State aid Guidelines and Article 93 TFEU. Approved schemes include for instance aid to support measures for noise reduction, aid to support research into environmentally-friendly rail transport support for systems ensuring interoperability, in particular to enhance the deployment of ERTMS and aid for single wagon transport. All these measures support the modal shift from road to rail as the safer and more environmentally-friendly transport mode, which constitutes a priority to implement the European Green Deal.

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<sup>351</sup> Cases SA.57675 (Germany) and SA.58738 (Netherlands).

<sup>352</sup> Case SA.57371 (Austria).

<sup>353</sup> Cases SA.57886 (Sweden) – Environmental compensation for rail freight transport; SA.55861 (Czechia) – ERTMS Prolongation; SA.55912 (Italy) – Prolongation of the aid scheme for combined transport in the Province of Trento; SA.57271 (Germany) – Prolongation of the Funding Guidelines for noise reduction measures on freight wagons; SA.56718 (Italy) – Incentives for rail transport; SA.58046 (Germany) – Support for rail freight transport (single wagon); SA.55353 (Germany) – Programme to support innovation in rail freight transport; SA.57809 (Denmark) – Prolongation and amendment of the scheme for the support of ERTMS equipment; SA.57556 (Belgium) – Prolongation du régime de promotion du transport combiné ferroviaire et du trafic diffus pour 2021; SA.58023 (Belgique) – Prolongation du régime d'aide en faveur des modes de transport alternatif à la route pour la période 2021-2025; SA.57398 (France) – Augmentation du budget globale du Plan d'Aides à la Modernisation et à l'Innovation de la flotte fluviale pour la période 2018-2022 (PAMI).

As regards policy developments, in 2020, the Commission completed the evaluation of the State aid rules in the railway sector laid down in the Community guidelines on State aid for railway undertakings adopted in 2008 as part of the State aid Fitness check. The Commission services concluded that those rules are no longer fit for purpose and need to be reviewed, as set out in the Staff Working Document of 30 October 2020.

Regarding new case-law in the land transport sector, the Court of Justice replied on 19 December 2019<sup>354</sup> to a preliminary ruling concerning the public company Ferrovie del Sud Est e Servizi Automobilistici S.r.l. The judgment provides useful guidance on the notions of: (i) beneficiary of potential aid; (ii) transfer of state resources; and (iii) distortion of competition.

#### *8.2.11. Confirmation of the Commission's inspection decisions by the Court of Justice*

On 30 January 2020, the Court of Justice (in joined cases C-538/18P and C-539/18P<sup>355</sup>) dismissed the appeals brought by České dráhy (ČD) against the General Court's judgments of 20 June 2018 (cases T-325/16<sup>356</sup> and T-621/16<sup>357</sup>). The General Court judgments validated two Commission inspection decisions in ongoing cases investigating the alleged involvement of České dráhy in, respectively, abuse of dominance (AT.40156) and cartel conducts (AT.40401). The judgment of the Court of Justice, upholding the respective judgments of the General Court<sup>358</sup>, confirmed the Commission's prerogative to carry out successive inspections in the premises of the same undertaking to investigate different suspected infringements, where justified by the needs of such enquiries pursuant to its powers under Regulation No. 1/2003.

#### *8.2.12. State aid enforcement in the road sector*

The Commission adopted two decisions concerning Germany directly under Article 93 TFEU. Some of the potential beneficiaries of these two aid measures operate on tracks (local trains, trams etc.). On 28 August 2020, the Commission approved a scheme that aims at providing funding for the construction, extension, renewal and improvement of communication systems and the development of an electronic fare system in North-Rhine Westphalia<sup>359</sup>. On 22 December 2020, the Commission approved a scheme that aims at supporting the coordination of local public transport and further improving the modal split (i.e. the distribution of trips/transport over different transport modes) in favour of local public transport in Germany<sup>360</sup>. With a budget of EUR 300 million over a period of four years (2020-2023), the scheme promotes the investment and innovation capacity of local public transport with the view to achieve a sustainable mobility transition from private motorised transport to climate-friendly local public transport.

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<sup>354</sup> Judgment of 19 December 2019, *Arriva Italia e a.*, C-385/18, EU:C:2019:1121.

<sup>355</sup> Joined Cases C-538/18 P and C-539/18 P *České dráhy v Commission*, judgment of 30.12.2020.

<sup>356</sup> Case T-325/16 *České dráhy v Commission*, judgment of the General Court of 20.6.2018.

<sup>357</sup> Case T-621/16 *České dráhy v Commission*, judgment of the General Court of 20.8.2018.

<sup>358</sup> The General Court fully confirmed the second inspection decision, while it partially annulled the first inspection decision in as far as it went beyond the scope of the investigation in the alleged predation practices by ČD, covering routes other than Prague-Ostrava. In practice, that had no negative influence on the Commission's action (the Commission's ongoing investigation relates exclusively to the Prague-Ostrava route).

<sup>359</sup> Case SA.56519 *Investment in Intermodal Transport Control System and electronic billing system*, Commission Decision of 28 August 2020, see:

[https://ec.europa.eu/competition/eojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56519](https://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=3_SA_56519).

<sup>360</sup> Case SA.57783 *Support scheme for model projects that strengthen local public transport*, Commission Decision of 22 December 2020, see: [https://ec.europa.eu/competition/eojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_57783](https://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=3_SA_57783).

On 5 October 2020, the General Court ruled on two almost identical complaints on public road transport in Lower Saxony<sup>361</sup>. With effect from 1 January 2017, the Land of Lower Saxony replaced Section 45a PBefG (*Personenbeförderungsgesetz*) with Section 7a NNVG (*Niedersächsisches Nahverkehrsgesetz*). The Commission decided on 12 July 2018 that the replacement does not amount to a transfer of resources to an undertaking and hence does not amount to State aid. On 5 October 2020 the General Court confirmed this approach. The case is now under appeal before the European Court of Justice (C-656/20 P and C-666/20 P).

### 8.2.13. State aid enforcement in the postal services sector

Electronic substitution of traditional letters continues, which in turn results in a decline in letter volumes. Nevertheless, postal services continue to have a significant economic and social value, not the least because they are also active on other markets, in particular parcel delivery. Efficient postal services are a key factor in allowing e-commerce to realise its full potential for growth and creating jobs.

Through State aid control in the postal sector, the Commission pursues multiple related goals. State aid control ensures that where a postal service provider – typically a postal incumbent – is entrusted with a costly public service obligation, any compensation paid to the provider does not distort competition between postal incumbents and new entrants. State aid should not shield the recipients from competitive pressures and market developments, but should incentivise efficiency, innovation and investment.

On 7 February 2020, after a lengthy procedure including several appeals before the Union Courts, the Commission concluded that a pension measure implemented by Germany and that covered a major share of the pensions for Deutsche Post's retired civil servants for the period from 1995 to 1999 does not constitute State aid within the meaning of Article 107(1) TFEU on the basis that it does not confer an advantage to Deutsche Post<sup>362</sup>.

On 12 May 2020, the Commission concluded that capital injections for PostNord Logistics A/S, which is ultimately a subsidiary of the joint Danish and Swedish company PostNord AB, do not constitute State aid on the basis that the capital injections were not imputable to Denmark and/or Sweden<sup>363</sup>. The Decision has been appealed (T-525/20, pending).

On 14 May 2020, the Commission approved State aid granted by Spain for Correos' universal postal service obligation. In this decision, the Commission concluded that the measure was in line with State aid rules by ensuring that the compensation granted by Spain to Correos would not exceed the net cost of the public service mission, meaning there will not be any overcompensation. In its decision, the Commission also addressed the concerns raised in a complaint lodged in March 2019 by two industry organisations who alleged that Correos received incompatible State aid through several measures, including the universal service obligation<sup>364</sup>.

On 23 June 2020, the Commission opened an in-depth investigation to assess whether the

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<sup>361</sup> Cases T-583/18 and T-597/18 GVN and Hermann Albers v Commission, judgment of the General Court of 5.10.2020.

<sup>362</sup> Case SA.17653 Deutsche Post, Commission Decision of 7 February 2020, see:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_17653](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_17653).

<sup>363</sup> Case SA.52489/SA.52658 Alleged State aid to PostNord Logistics, Commission Decision of 12 May 2020, see:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_52489](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_52489).

<sup>364</sup> Case SA.50872 USO compensation for Correos, 2011-2020, Commission Decision of 14 May 2020, see:

[https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_50872](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50872).

compensation granted by Czechia to Czech Post to fulfil its public service mission is in line with EU State aid rules<sup>365</sup>. The concerns that led to the formal investigation relate to potential overcompensation between 2018 and 2022 for the delivery of the universal postal service. Moreover, two complaints were submitted in parallel.

On 1 December 2020, the Commission approved Universal service obligation (USO) compensation for Poste Italiane for the period 2020-2024<sup>366</sup>. This approval followed the presentation by Italy of relevant information to calculate the net avoided cost of the universal postal service, including a customer survey on the impact of the discontinuation of Poste Italiane's postal activities (including the USO) in a counterfactual scenario where Poste Italiane would not receive the aid.

The General Court decided on two postal cases in 2020. First the General Court upheld the State aid decision of 19 February 2018 concluding that the USO compensation granted to Czech Post over the period 2013-2017 was compatible aid under the SGEI Framework<sup>367</sup>. Second, the Court of Justice upheld the General Court in its judgment concerning Polish Post<sup>368</sup>. In this latter case, the Court confirmed the Commission's approach regarding the assessment of universal service compensations under the SGEI framework. In particular, it confirmed the approach to be taken regarding compensation funds as well as the articulation between the Postal Directive and the SGEI Framework.

#### *8.2.14. Antitrust enforcement in the hotel sector*

On 21 February 2020 the Commission fined the Spanish hotel group Meliá EUR 6 678 000 for including restrictive clauses in its agreements with tour operators. These clauses discriminate among consumers within the European Economic Area (EEA) based on their place of residence, in breach of EU antitrust rules.

The Commission investigation showed that Meliá entered into contracts with tour operators that restricted active and passive sales for hotel accommodation. More specifically, Meliá's standard terms and conditions for contracts with tour operators contained a clause according to which those contracts were valid only for reservations of consumers who were resident in specified countries.

These agreements may have partitioned the European Single Market by restricting the ability of the tour operators to sell freely the hotel accommodation in all EEA countries and to respond to direct requests from consumers who were residents outside the defined countries. As a result, consumers were not able to see the full hotel availability or book hotel rooms at the best prices with tour operators in other Member States. Meliá cooperated with the Commission beyond its legal obligation to do so. Therefore, the Commission granted Meliá a 30% fine reduction in return for this cooperation.

Following the decision by European Competition Network (ECN) in 2017 to keep the hotel booking sector under review and to re-assess the state of competition, on 9 July 2020, the Commission published an open call for tender for a market study on the distribution of hotel

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<sup>365</sup> Case SA.55208/SA.55497/SA.55686 Czech Post compensation for the period 2018-2022 / Complaints regarding alleged incompatible State aid to Czech Post, Commission Decision of 23 June 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55208](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55208).

<sup>366</sup> Case SA.55270 USO Compensation – Poste italiane S.p.A., Commission Decision of 1 December 2020, see: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55270](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55270).

<sup>367</sup> Case T-316/18 První novinová společnost v Commission, judgment of the General Court of 15.10.2020.

<sup>368</sup> Case C-431/19 P Inpost Paczkomaty v Commission, judgment of the Court of Justice of 17.12.2020.

accommodation in the EU. The study will be conducted in 2021 and will focus on Austria, Belgium, Cyprus, Poland, Spain and Sweden. The market study is intended to provide up-to-date information on how hotels market and sell their rooms, including: (i) whether distribution arrangements differ between Member States; (ii) whether there have been changes relative to the findings of a monitoring exercise conducted by a group of EU competition authorities in 2016; and (iii) whether national laws banning booking platform parity clauses have led to changes in distribution arrangements.

## ANNEX 1.

### State aid decisions adopted under the Temporary Framework in 2020<sup>369</sup> by country

	Member State	Case number	Title	Decision date
1	Austria	SA.56840	COVID-19 – Austrian liquidity assistance scheme	08-04-2020
2	Austria	SA.56981	COVID-19: Austrian scheme for guarantees on bridge loans	17-04-2020
3	Austria	SA.57148	COVID-19: Support Measures by Carinthia, Styria, Tyrol, Upper Austria and Vienna	19-05-2020
4	Austria	SA.57340	COVID-19: Individual aid to Apeptico – Emergency Call for the research of COVID-19	03-07-2020
5	Austria	SA.57345	COVID-19: Individual aid to Panoptes – Emergency Call for the research of COVID-19	03-07-2020
6	Austria	SA.57928	AT- COVID-19; Compensation scheme: Directive for fixed cost subsidies for economic activities of Non-Profit-Organisations	06-08-2020
7	Austria	SA.58360	Richtlinien des NÖ Wirtschafts- und Tourismusfonds – Förderprogramm COVID-19	10-09-2020
8	Austria	SA.58661	COVID-19: Fixed Cost Compensation according to 3.12 Temporary Framework	20-11-2020
9	Belgium	SA.56807	COVID-19 - Mesures de soutien en faveur des aéroports wallons – Moratoire sur les redevances de concession	11-04-2020
10	Belgium	SA.57057	R&D scheme of Brussels Capital Region “R&D Projects – COVID-19”	17-04-2020
11	Belgium	SA.57056	Aide dans le cadre de la crise sanitaire du COVID-19, en vue d’indemniser les entreprises actives dans la production primaire de produits agricoles et dans l’aquaculture, dans le domaine de l’alimentation	24-04-2020
12	Belgium	SA.57083	COVID-19 – Guarantee scheme – Walloon Region	30-04-2020
13	Belgium	SA.57132	COVID-19 Flemish subordinated loan scheme for start-ups, scale-ups, and SMEs	05-05-2020
14	Belgium	SA.57173	Walloon scheme for COVID-19 relevant research and development	12-05-2020
15	Belgium	SA.57187	Credendo Bridge Guarantee	13-05-2020
16	Belgium	SA.57605	Strategische transformatiesteun aan ondernemingen in het Vlaams Gewest die investeringen doen betreffende de productie van COVID-19 relevante producten (Strategic transformation aid to undertakings in the Flemish Region for investments in COVID-19)	19-06-2020
17	Belgium	SA.57637	COVID-19 – Recapitalisation of Aviapartner	07-07-2020
18	Belgium	SA.57797	COVID-19: Support to the social tourism sector	09-07-2020
19	Belgium	SA.57869	Loan guarantee scheme in response to the COVID-19 crisis aimed at SMEs	14-07-2020
20	Belgium	SA.58014	Aid scheme to support potato growers and ornamental plant growers affected by COVID-19	27-07-2020
21	Belgium	SA.58081	Besluit van de Vlaamse Regering tot instellen van een terugbetaalbaar voorschot ter ondersteuning van de opstart van de evenementensector (Decision of the Flemish Government regarding a repayable advance in support of the restart of the event sector.)	27-07-2020
22	Belgium	SA.58165	Exonération de la contribution annuelle obligatoire en	05-08-2020

<sup>369</sup> A number of these decisions have subsequently been amended.

			faveur de l'AFSCA et destinée à financer les contrôles des établissements, à charge des entreprises du secteur HORECA et du commerce de détail alimentaire ambulants.	
23	Belgium	SA.57544	COVID-19: Aid to Brussels Airlines	21-08-2020
24	Belgium	SA.58649	COVID-19 Aides au producteurs de pommes de terre de conservation détenteurs en propriété d'un stock de pomme de terre en vente libre.	23-09-2020
25	Belgium	SA.58299	COVID-19: Aid to the Flemish airports	28-09-2020
26	Belgium	SA.58691	COVID-19 – aid to the Flemish coach sector	06-10-2020
27	Belgium	SA.58763	Belgium – COVID-19: Aid to hotels and apart-hotels	09-10-2020
28	Belgium	SA.59297	Aid for the payment of employer social security contributions in sectors particularly affected by the COVID-19 outbreak.	19-11-2020
29	Bulgaria	SA.56933	COVID-19 – Bulgaria – Bulgarian Development Bank Guarantee scheme	08-04-2020
30	Bulgaria	SA.56905	COVID-19 – Employment scheme for preserving jobs in most affected sectors	14-04-2020
31	Bulgaria	SA.57052	COVID-19 Bulgaria financial instrument measure under 3.1 Temporary Framework	23-04-2020
32	Bulgaria	SA.57283	Call for Proposals BG16RFOP002-2.073 “Supporting micro and small enterprises to overcome the economic impact of the COVID-19 pandemic”	13-05-2020
33	Bulgaria	SA.57795	COVID-19: Supporting medium enterprises to overcome the economic impact of the COVID-19 pandemic	26-06-2020
34	Bulgaria	SA.57759	Bulgaria – COVID-19 – Short-Term Employment Support in Response to the COVID-19 Pandemic	14-07-2020
35	Bulgaria	SA.58050	State aid for tour operators	24-07-2020
36	Bulgaria	SA.58095	COVID-19: concession fee deferral Burgas and Varna airports	14-08-2020
37	Bulgaria	SA.58328	“Aid to provide liquidity to farmers active in primary agricultural production to overcome the effects of the negative economic impact of COVID-19”	27-08-2020
38	Bulgaria	SA.59182	COVID-19: Aid to micro, small and medium-sized coach companies	30-11-2020
39	Bulgaria	SA.59704	Support for small enterprises with a turnover of over BGN 500 000 to overcome the economic consequences of the COVID-19 pandemic	16-12-2020
40	Bulgaria	SA.59990	COVID-19: State aid scheme for tour operators and travel agents	18-12-2020
41	Croatia	SA.56877	Portfolio insurance of liquidity loans for exporters under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	06-04-2020
42	Croatia	SA.56957	STATE AID SCHEME CROATIAN BANK FOR RECONSTRUCTION AND DEVELOPMENT Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and Amendment to the Temporary Framework for State aid measures to support the economy	09-04-2020
43	Croatia	SA.56998	State aid in fisheries supporting economy – COVID-19	17-04-2020
44	Croatia	SA.57175	Guarantee schemes and subsidised loans scheme	12-05-2020
45	Croatia	SA.57595	State Aid Programme of the Ministry of Culture to Support the Economy in the Current COVID-19 Outbreak	17-06-2020
46	Croatia	SA.57711	State aid Scheme to support the maritime, transport, transport infrastructure, tourism and related sectors	30-06-2020

			impacted by the COVID-19 outbreak	
47	Croatia	SA.59815	State Aid Program for primary agricultural producers due to difficult business conditions caused by the pandemic COVID-19	11-12-2020
48	Cyprus	SA.57511	COVID-19 – CY – Waiver of interests and penalties for late payment of VAT	10-06-2020
49	Cyprus	SA.57587	Aid scheme in support of the primary agricultural production sector to address the impact of the COVID-19 outbreak, on the basis of the EU Temporary State Aid Framework	16-06-2020
50	Cyprus	SA.57654	COVID-19: Subsidy Scheme for Micro and Small enterprises and Interest Rate Subsidy Scheme	25-06-2020
51	Cyprus	SA.57691	SA.57691(2020/N) – Cyprus – COVID-19 – Incentive scheme towards airlines	01-07-2020
52	Cyprus	SA.57762	Support Scheme for newspapers – CY – COVID-19	03-07-2020
53	Cyprus	SA.58923	Loan provided to Hermes Airports Limited for addressing financial implications of the effects of COVID-19	17-11-2020
54	Cyprus	SA.60263	Support scheme for organised producer groups and/or producer organisations in the agricultural sector due to the effects of the restrictive measures implemented during the COVID-19 pandemic	22-12-2020
55	Czechia	SA.56961	Scheme for investment aid for the production of COVID-19 relevant products	14-04-2020
56	Czechia	SA.57094	Czechia – COVID-19 – Loan guarantee scheme to support the economy in response to the COVID-19 crisis	05-05-2020
57	Czechia	SA.57071	COVID-19 – Support to R&D projects	08-05-2020
58	Czechia	SA.57195	Czechia – COVID-19 related loan guarantees managed by CMZRB	15-05-2020
59	Czechia	SA.57464	COVID-19: Program to support entrepreneurs affected by the spread of the COVID-19 (rent payments)	02-06-2020
60	Czechia	SA.57475	Opex 2020 - Loan Principal Reduction	03-06-2020
61	Czechia	SA.57506	COVID-19: State aid measures in Moravia-Silesia	26-06-2020
62	Czechia	SA.57149	COVID-19: Social security contribution relief for self employed affected by COVID-19 Waiver of penalties related to pension and state employment policy contributions payments	06-07-2020
63	Czechia	SA.57848	Aid to mitigate the effects of SARS COV-19 on agricultural and food production (AGRICOID)	06-07-2020
64	Czechia	SA.57102	COVID-19 – Wage subsidies in Czechia	27-07-2020
65	Czechia	SA.58018	COVID-19: Support for Health Spa's	07-08-2020
66	Czechia	SA.58213	COVID-19: Aid to the cultural sector	19-08-2020
67	Czechia	SA.58167	COVID-19 – CZ – 3.1 TF – Operational Programme Employment	24-08-2020
68	Czechia	SA.58398	Accommodation Facility Support (COVID-Accommodation)	27-08-2020
69	Czechia	SA.57358	COVID-19: Public health insurance reliefs for self-employed	09-09-2020
70	Czechia	SA.59336	Aid to mitigate the impact of SARS COV-19 outbreak on agrifood production (AGRICOID)	11-11-2020
71	Czechia	SA.58430	COVID-19 – City of Pilsen's aid programme	13-11-2020
72	Czechia	SA.59536	COVID-19: Continuation of the support programme for businesses in the cultural sector	25-11-2020
73	Czechia	SA.58353	Landesprogramm zur Bekämpfung der Langzeitarbeitslosigkeit – Sozialer Arbeitsmarkt [SN]	22-12-2020
74	Czechia	SA.59340	COVID-19 – Aid for sport entities and organisations- CZ	22-12-2020

75	Denmark	SA.56708	Danish guarantee scheme for SMEs affected by COVID-19	21-03-2020
76	Denmark	SA.56808	Liquidity guarantee scheme under the Temporary Framework for State aid measures to support the economy in the COVID-19 outbreak	30-03-2020
77	Denmark	SA.56856	State loan for the Danish Travel Guarantee Fund as a result of COVID-19	02-04-2020
78	Denmark	SA.57027	COVID-19 – Credit facility and tax deferrals linked to VAT and payroll tax – Denmark	30-04-2020
79	Denmark	SA.57164	Denmark – COVID-19 – Loan scheme for early stage and companies in the venture segment	05-05-2020
80	Denmark	SA.57919	COVID-19: Limited amounts of aid scheme for self employed	13-07-2020
81	Denmark	SA.57920	COVID-19: Limited amounts of aid scheme for self-employed and freelancers related to large events and seasonal work	13-07-2020
82	Denmark	SA.57931	Limited amounts of aid scheme for undertakings under restrictive measures (prohibition lifted from 8 June or later)	14-07-2020
83	Denmark	SA.57543	Denmark – COVID-19 recapitalisation of SAS	17-08-2020
84	Denmark	SA.58157	Aid to Danish airports and airlines which land in and depart from Denmark	03-09-2020
85	Denmark	SA.58780	Targeted compensation scheme for fixed costs (prohibition lifted from 1 September or later)	08-10-2020
86	Denmark	SA.58515	Wage compensation scheme for undertakings prohibited from operating due to COVID-19 prohibition	09-10-2020
87	Denmark	SA.59048	COVID-19: Aid to cafés, restaurants, bars, nightclubs, venues & their suppliers	29-10-2020
88	Denmark	SA.59091	COVID-19: Targeted compensation scheme for fixed costs (sub-suppliers)	11-11-2020
89	Denmark	SA.57678	COVID-19 – Dani recapitalisation scheme	20-11-2020
90	Denmark	SA.59414	COVID-19: Danish local wage compensation scheme	26-11-2020
91	Denmark	SA.59370	COVID-19 – Temporary Framework/3.1 measure to support airlines holding a Danish air operator certificate	27-11-2020
92	Denmark	SA.58681	Compensation scheme for production costs resulting in a loss due to cancellation of events related COVID-19	27-11-2020
93	Denmark	SA.59764	Compensation scheme for self-employed affected by COVID-19 related measures	08-12-2020
94	Denmark	SA.59960	Scheme for cancelled, deferred or substantially modified large events due to COVID-19	11-12-2020
95	Denmark	SA.60094	Danish compensation scheme for fixed costs (umbrella scheme under TF3.12)	21-12-2020
96	Denmark	SA.60081	Danish compensation scheme for fixed costs (umbrella scheme under TF3.1)	21-12-2020
97	Estonia	SA.56804	Loan guarantee scheme of Estonia under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	30-03-2020
98	Estonia	SA.57014	COVID-19 Estonian aid schemes under Section 3.1 TF – direct grants and payment advantages	21-04-2020
99	Estonia	SA.57028	COVID-19 Estonian aid schemes under Section 3.1 TF – guarantees on loans, loans and subsidised interest rates for loans	28-04-2020
100	Estonia	SA.57403	COVID-19: Support for rent payments for trade and service operators negatively affected by Coronavirus outbreak	28-05-2020
101	Estonia	SA.57586	Estonia COVID-19 – Recapitalisation of Nordica	11-08-2020

102	Estonia	SA.59338	COVID-19: Aid to undertakings in tourism and directly related sectors	25-11-2020
103	Estonia	SA.59278	COVID-19: Support for (1) industrial research and experimental development by companies affected by the COVID-19 crisis, and (2) for COVID-19 related R&D	03-12-2020
104	Finland	SA.57059	COVID-19: Loan guarantee and subsidised interest rate loan scheme for undertakings most affected by COVID-19	20-04-2020
105	Finland	SA.56995	COVID-19: Framework Scheme for State aid measures (section 3.1 of the Temporary Framework)	24-04-2020
106	Finland	SA.57221	Temporary aid in favour of undertakings in fishery and aquaculture sector affected by the COVID-19 outbreak	06-05-2020
107	Finland	SA.57231	COVID-19: Temporary aid in favour of undertakings in primary agriculture production affected by the COVID-19 outbreak	06-05-2020
108	Finland	SA.56809	COVID-19: State loan guarantee for Finnair	18-05-2020
109	Finland	SA.57192	Loan guarantee scheme for maritime enterprises under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	28-05-2020
110	Finland	SA.57410	COVID-19 – recapitalisation of Finnair	09-06-2020
111	France	SA.56709	France – COVID-19: Plan de sécurisation du financement des entreprises	21-03-2020
112	France	SA.56823	COVID-19 – French Solidarity Fund – Scheme for enterprises in temporary difficulties due to COVID-19	30-03-2020
113	France	SA.56985	Régime cadre temporaire au soutien des entreprises dans la crise du COVID-19	20-04-2020
114	France	SA.56868	COVID-19: Garanties des préfinancements des entreprises françaises exportatrices	24-04-2020
115	France	SA.57134	COVID-19: Aide sous forme de garanties de prêts au profit du groupe Renault.	29-04-2020
116	France	SA.57082	COVID-19 – Cadre temporaire 107(3)(b) – Garantie et prêt d’actionnaire au bénéfice d’Air France	04-05-2020
117	France	SA.57405	COVID-19 – Groupe Novares	26-05-2020
118	France	SA.57367	Aid for COVID-19 relevant R&D projects, investment into relevant testing and upscaling infrastructures, and investment into COVID-19 relevant production capacities.	05-06-2020
119	France	SA.57754	COVID-19: Dispositif d’activité partielle ad hoc	29-06-2020
120	France	SA.57695	COVID-19: Régime d’aides sous la forme de prêts publics subordonnés	30-06-2020
121	Germany	SA.56714	Germany – COVID-19 measures	22-03-2020
122	Germany	SA.56787	COVID-19: Bundesregelung Bürgschaften 2020	24-03-2020
123	Germany	SA.56790	Federal Framework “Small amounts of aid 2020” – COVID-19	24-03-2020
124	Germany	SA.56863	Germany – COVID-19 – Federal framework for subsidised loans 2020	02-04-2020
125	Germany	SA.57100	Germany – COVID-19 – Federal Framework “Aid for COVID-19 related R&D, investments in testing infrastructures and production facilities” (“Bundesregelung Forschungs-, Entwicklungs- und Investitionsbeihilfen”)	28-04-2020
126	Germany	SA.57153	COVID-19 – Aid to Lufthansa	25-06-2020
127	Germany	SA.56814	COVID-19 measures of the Wirtschaftsstabilisierungsfonds	08-07-2020
128	Germany	SA.57644	COVID-19: Airport Scheme	11-08-2020
129	Germany	SA.57447	COVID-19 measures of the BayernFonds	20-08-2020

130	Germany	SA.59289	Fixkostenhilfe 2020 – DE	20-11-2020
131	Germany	SA.58504	COVID-19: Bundesregelung für Rekapitalisierungsmaßnahmen und nachrangiges Fremdkapital 2020	01-12-2020
132	Greece	SA.56857	First loss business loans portfolio guarantees for new working capital loans in the current COVID-19 outbreak	03-04-2020
133	Greece	SA.56815	Greek COVID-19 measure – Repayable Advance Scheme (RAS) for enterprises affected by the COVID-19 outbreak	07-04-2020
134	Greece	SA.56839	Greek COVID measure: support to SMEs loan obligations	08-04-2020
135	Greece	SA.57194	State Aid Grants in the Floriculture Primary Production Section under the COVID-19 Temporary Framework (Commission C(2020) 1863/19.3.20)	05-05-2020
136	Greece	SA.57165	COVID-19 – Wage subsidies to self-employed	11-05-2020
137	Greece	SA.58029	Support to primary sector farmers, producers and open air markets' sellers on the basis of the COVID-19 Temporary Framework.	23-07-2020
138	Greece	SA.58048	Support of the sheep and goat farming primary sector on the basis of the COVID-19 Temporary Framework.	23-07-2020
139	Greece	SA.58069	Support of the primary sector/ asparagus production on the basis of the COVID-19 Temporary Framework.	23-07-2020
140	Greece	SA.58367	COVID-19 - WORKING CAPITAL FOR VERY SMALL AND SMALL ENTERPRISES IN THE REGION OF CENTRAL MACEDONIA	28-08-2020
141	Greece	SA.58368	COVID-19: Working Capital and Investment Loan Scheme by the Greek Infrastructure Fund	19-10-2020
142	Greece	SA.58867	Wage subsidies to self-employed affected by the COVID-19 outbreak	22-10-2020
143	Greece	SA.59033	COVID-19 – Aid for cultural activities in the Municipality of Athens	28-10-2020
144	Hungary	SA.56926	Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak	08-04-2020
145	Hungary	SA.56994	Scheme financed from Structural Funds for enterprises in temporary financial difficulties due to the COVID-19	17-04-2020
146	Hungary	SA.57007	COVID-19 Scheme to provide aid in form of wage subsidies for employees in research and development	17-04-2020
147	Hungary	SA.57121	COVID-19: Exceptional Liquidity Guarantee Programs by Garantiqa Zrt and the Hungarian Development Bank	28-04-2020
148	Hungary	SA.57064	COVID-19: Grants, guarantee and subsidised interest measures	29-04-2020
149	Hungary	SA.57198	Crisis Rural Guarantee Programme by AVHGA	07-05-2020
150	Hungary	SA.57329	Temporary aid scheme for the agri-food sector, aquaculture and forestry affected by the Coronavirus outbreak	19-05-2020
151	Hungary	SA.57269	COVID-19 – CAPITAL FUNDS	20-05-2020
152	Hungary	SA.57285	COVID-19: Grant Scheme related to the Széchenyi Card Programme	20-05-2020
153	Hungary	SA.57468	COVID-19 umbrella scheme of direct grants provided from the appropriations managed at the level of ministries' budgetary chapters	09-06-2020
154	Hungary	SA.57767	COVID-19: Scheme to provide payroll related exemptions in the aviation industry	07-07-2020
155	Hungary	SA.58202	COVID-19 related research, development and production support scheme	10-08-2020
156	Hungary	SA.58420	COVID-19: Recapitalisation Fund Scheme managed by HIVENTURES Zrt	20-11-2020

157	Hungary	SA.59477	State aid SA.59477 (2020/N) – Hungary – COVID-19: Scheme for the protection of the economy during the second state of emergency	10-12-2020
158	Ireland	SA.56845	Repayable Advances Scheme – COVID-19	30-03-2020
159	Ireland	SA.57036	COVID-19: Sustaining Enterprise Scheme	21-04-2020
160	Ireland	SA.57453	Scheme to facilitate COVID-19 relevant research and development, to support construction and upgrade of testing and upscaling facilities of COVID-19 relevant products and to support investments into the production of COVID-19 relevant products	03-06-2020
161	Ireland	SA.57509	COVID-19 – Irish Restart Grant	03-06-2020
162	Ireland	SA.58214	Ireland – COVID 19 Adaptation Fund for the Re-Opening of Tourism and Hospitality businesses	14-08-2020
163	Ireland	SA.57465	COVID-19: Credit Guarantee Scheme	14-08-2020
164	Ireland	SA.58387	Beef Finishers Payment	24-08-2020
165	Ireland	SA.58562	COVID-19 – Live performance support scheme	18-11-2020
166	Ireland	SA.58955	COVID-19: Irish Coach Tourism Scheme	19-11-2020
167	Ireland	SA.59719	COVID-19 Ireland-Based Inbound Tourism Agents Business Continuity Scheme	18-12-2020
168	Italy	SA.56786	Production of medical equipment and masks	22-03-2020
169	Italy	SA.56690	State guarantee to support debt moratorium by banks to SME borrowers	25-03-2020
170	Italy	SA.56966	Italy – COVID-19: Loan guarantee schemes under the Fondo di garanzia per le PMI	13-04-2020
171	Italy	SA.56963	Guarantee scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	13-04-2020
172	Italy	SA.57068	Loan guarantees and grants under the ISMEA Guarantee Fund according to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	21-04-2020
173	Italy	SA.57005	Granting of the State aid under the COVID-19 anti-crisis program provided for by art. 12 of the regional law n. 5/2020 in compliance with the TF for State aid measures to support the economy in the current COVID-19 outbreak	21-04-2020
174	Italy	SA.57185	Loans provided by ISMEA in favour of undertakings of the agricultural and fishery sector affected by the COVID-19 outbreak	04-05-2020
175	Italy	SA.57349	Plan for the socio-economic emergency in the Campania region – Aid measures in favour of the undertakings of the agricultural sector, of the fishery and aquaculture sector, of the buffalo livestock sector and of the floriculture sector	19-05-2020
176	Italy	SA.57021	RegimeQuadro – COVID-19	21-05-2020
177	Italy	SA.57439	COVID-19 – Interests on the anticipation of the amounts payable to farmers in the framework of the CAP support schemes	28-05-2020
178	Italy	SA.57252	Modifications to COVID-19 Regime Quadro	24-06-2020
179	Italy	SA.57429	COVID-19 – Tax exemptions and tax credits adopted as a consequence of the economic crisis caused by COVID-19	26-06-2020
180	Italy	SA.57752	COVID-19 – Italy, Grants to small businesses and self-employed	08-07-2020
181	Italy	SA.57947	Support measures for undertakings carrying out activities in the agricultural, forestry, fishery and aquaculture sectors and the activities related thereto, in relation with the COVID-19 outbreak crisis	15-07-2020

182	Italy	SA.57891	DIRECT GRANTS TO ITALIAN COMPANIES ENGAGING IN INTERNATIONAL ACTIVITIES AND OPERATIONS	31-07-2020
183	Italy	SA.57289	COVID-19: Capital-strengthening measures for medium-sized companies	31-07-2020
184	Italy	SA.58208	COVID-19 – Aid in the form of guarantees on loans and subsidised interest rates managed by the “Istituto per il Credito Sportivo” as provided by Article 14, Para 1 and 2 of Law Decree of 8 April 2020, no. 23.	19-08-2020
185	Italy	SA.58300	COVID-19 – Fiscal measures for the municipality of Campione d’Italia	21-08-2020
186	Italy	SA.57612	Patrimonio Rilancio project	17-09-2020
187	Italy	SA.58727	COVID-19: Supporting measures for companies for reducing the contagions risk in the workplace.	30-09-2020
188	Italy	SA.58802	COVID-19 – Decontribuzione SUD – Agevolazione contributiva per l’occupazione in aree svantaggiate	06-10-2020
189	Italy	SA.58418	COVID-19 – Tax treatment of revaluation of assets by agricultural cooperatives	14-10-2020
190	Italy	SA.59255	COVID-19: Exemption of social security contribution payment for companies not applying for wage support measures	10-11-2020
191	Italy	SA.59295	COVID-19: exemption of social security contribution payment for companies in the tourism and thermal bath sector engaging with fixed-term contract	16-11-2020
192	Italy	SA.58801	COVID-19 – Aid to small publishers – IT	17-11-2020
193	Italy	SA.58847	COVID-19 – Aid to music publishers – IT	17-11-2020
194	Italy	SA.59590	COVID-19: Contribution for economic and commercial activities in historic centers	03-12-2020
195	Italy	SA.59509	Support measures for undertakings carrying out activities in the agricultural, forestry, fishery and aquaculture sectors and the activities related thereto, in relation with the COVID-19 outbreak crisis	07-12-2020
196	Italy	SA.59755	COVID-19: Aid to tour operators and travel agencies – Italy	04-12-2020
197	Italy	SA.59992	COVID-19: Support measure for the congress and fair industry	17-12-2020
198	Latvia	SA.56722	COVID-19: Loan guarantee scheme and subsidied loan scheme	23-03-2020
199	Latvia	SA.56932	Procedure for administration and monitoring of emergency support measures in the sector of agriculture and food due to a negative impact of COVID-19 virus spread	16-04-2020
200	Latvia	SA.57287	State aid for short-term loans in agriculture to relieve the negative impact of the COVID-19 outbreak	12-05-2020
201	Latvia	SA.57423	COVID-19: Grants for the benefit of tourism operators	29-05-2020
202	Latvia	SA.56943	COVID-19: Recapitalization of Air Baltic – Latvia	03-07-2020
203	Latvia	SA.57655	Guarantees for large and medium-sized undertakings affected by the COVID-19 outbreak	06-07-2020
204	Latvia	SA.57409	LATVIA – COVID-19 – Recapitalisation Fund	06-07-2020
205	Latvia	SA.57740	COVID-19: Reduction of the lease payments for lessees of publicly-owned property	09-07-2020
206	Latvia	SA.58072	COVID-19 – Aid to performers of economic activities in the tourism sector	27-07-2020
207	Latvia	SA.58117	COVID-19: Aid for forestry cooperatives affected by the Coronavirus outbreak	31-07-2020
208	Latvia	SA.58104	Limited amounts of aid (direct grant scheme) to support the employer's mandatory State social security contributions for undertakings whose exporting activities are affected by COVID-19 outbreak	03-08-2020

209	Latvia	SA.59592	Grants to companies affected by the COVID-19 crisis to ensure the flow of working capital	17-12-2020
210	Lithuania	SA.56927	State aid measures to support the economy in the current COVID-19 outbreak – LT	08-04-2020
211	Lithuania	SA.56980	Loans to the companies most affected by COVID-19 – Lithuania	09-04-2020
212	Lithuania	SA.57066	SA.57066 (2020/N) – Lithuania – COVID-19: Direct grants to cover interest on loans of SMEs active in road freight transport	24-04-2020
213	Lithuania	SA.57135	The Measure “Partial Rent Compensation for the Enterprises Most Affected by COVID-19”	30-04-2020
214	Lithuania	SA.57342	Program to fund new culture products and (or) services	20-05-2020
215	Lithuania	SA.57008	COVID-19 – Aid Fund for Business	26-05-2020
216	Lithuania	SA.57529	Individual guarantees and interest and guarantee premium compensation during the COVID-19 outbreak	16-06-2020
217	Lithuania	SA.57665	COVID-19: Lithuanian guarantees and loans for tour operators, accommodation and catering service providers	25-06-2020
218	Lithuania	SA.57823	Temporary State Aid to economic entities active in agriculture and aquaculture facing economic difficulties during the outbreak of COVID-19	14-07-2020
219	Lithuania	SA.58476	COVID-19 compensation for tour operators	11-09-2020
220	Lithuania	SA.59345	Temporary State Aid to Fur Animal Keepers facing economic difficulties caused by the outbreak of COVID-19	13-11-2020
221	Lithuania	SA.58885	COVID-19 – Deferral of social security contributions	18-11-2020
222	Lithuania	SA.58645	Measure No. 01.2.1-LVPA-T-858 “COVID-19 R&D” of Priority 1 “Promotion of Research, Experimental development and Innovation” of the Operational Programme for EU Structural Funds Investments for 2014-2020. Measure No. 03.3.1-LVPA-T-859 “COVID-19 produc	06-10-2020
223	Lithuania	SA.60308	Lithuania – COVID-19 – Subsidies for enterprises	22-12-2020
224	Lithuania	SA.60379	COVID-19: Direct COVID-19 loans	23-12-2020
225	Luxembourg	SA.56742	Scheme for enterprises in temporary financial difficulties due to COVID-19	24-03-2020
226	Luxembourg	SA.56805	Loan guarantee scheme of Luxembourg under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	27-03-2020
227	Luxembourg	SA.56954	COVID19 – LU – Scheme for R&D aid and investment aid for the production of COVID-19 relevant products	08-04-2020
228	Luxembourg	SA.57305	COVID-19: Luxembourg Investment aid for certain sectors	20-05-2020
229	Luxembourg	SA.57304	Luxembourgish solidarity fund for undertakings affected by the COVID-19 outbreak	29-05-2020
230	Luxembourg	SA.57338	COVID-19 Luxembourg – Aid for commercial shops	29-05-2020
231	Luxembourg	SA.57530	COVID-19 – Aid scheme for audio-visual production companies	18-06-2020
232	Luxembourg	SA.59322	COVID-19 – Aid scheme for uncovered costs under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	24-11-2020
233	Luxembourg	SA.59428	COVID-19: nouvelle aide de relance	24-11-2020
234	Luxembourg	SA.59726	COVID-19 – Support of the meat sector	09-12-2020
235	Luxembourg	SA.59945	COVID-19: Support of wine sector	15-12-2020
236	Luxembourg	SA.59944	COVID-19: Support of the seed sector	15-12-2020
237	Malta	SA.56843	COVID-19: Loan guarantee scheme	02-04-2020

238	Malta	SA.57075	COVID-19 R&D Fund	22-04-2020
239	Malta	SA.57076	COVID-19 Wage Supplement Scheme	24-04-2020
240	Malta	SA.57204	Investment Aid for the Production of COVID-19 Relevant Products	12-05-2020
241	Malta	SA.57163	MDB COVID-19 Interest Rate Subsidy Scheme (CIRSS)	13-05-2020
242	Malta	SA.57574	Bond subscription facility By the Malta Development Bank	03-07-2020
243	Malta	SA.58006	Support to entrepreneurs affected by the spread of COVID-19 (rent and electricity payments of business premises).	15-07-2020
244	Malta	SA.57984	COVID-19 Grant Scheme for Bluefin Tuna (BFT) Fishers	20-07-2020
245	Malta	SA.57961	MDB COVID-19 Small Loan Guarantee Scheme (CSLG)	29-07-2020
246	Malta	SA.58306	Temporary State aid to Land Farmers – COVID-19	08-09-2020
247	Netherlands	SA.56915	Direct grant scheme for e-Health services at home under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak	03-04-2020
248	Netherlands	SA.56914	COVID-19: GO-C Guarantee Scheme	22-04-2020
249	Netherlands	SA.57107	Subsidised interest rates scheme	24-04-2020
250	Netherlands	SA.57397	Dutch temporary guarantee scheme for small bank loans for medium sized and small enterprises due to the COVID-19 outbreak	27-05-2020
251	Netherlands	SA.57712	Dutch direct grant scheme to support fixed costs of small and medium-sized enterprises affected by the COVID-19 outbreak	26-06-2020
252	Netherlands	SA.57850	COVID-19: Subsidised interest rates for loans	08-07-2020
253	Netherlands	SA.57116	COVID-19: State loan guarantee and State loan for KLM	13-07-2020
254	Netherlands	SA.57897	COVID-19: E-Health at home 2.0	15-07-2020
255	Netherlands	SA.57985	COVID-19 – State loans for Travel Guarantee Funds	28-07-2020
256	Netherlands	SA.59021	COVID-19 Planned aid in favour of InnoGenerics	11-11-2020
257	Poland	SA.56876	Polish anti-crisis measures – COVID-19 – guarantee scheme	03-04-2020
258	Poland	SA.56896	COVID-19 – Anti-crisis measures in the form of loans and guarantees financed from EU funds	08-04-2020
259	Poland	SA.56979	Polish anti-crisis measures – COVID-19 virus interest rates subsidies	10-04-2020
260	Poland	SA.57065	COVID-19: anti-crisis measures in the form of loans and guarantees financed from the re-use of resources returned from 2007-2013 financial instruments	22-04-2020
261	Poland	SA.56922	Polish anti-crisis measures – COVID-19 virus – wage subsidies, tax and social contributions reliefs and other measures.	23-04-2020
262	Poland	SA.57015	State aid in the form of grants or repayable assistance under operational programmes for 2014-2020 to support the Polish economy in connection with the occurrence of the COVID-19 pandemic outbreak.	24-04-2020
263	Poland	SA.56996	COVID-19 – Repayable advance scheme for micro, small and medium-sized enterprises	27-04-2020
264	Poland	SA.57191	The Polish anti-crisis measures – COVID-19 – state aid in the simplified repayable from from financial engineering instruments.	11-05-2020
265	Poland	SA.57306	COVID-19: Financial shield for large enterprises: Liquidity loans	25-05-2020
266	Poland	SA.57055	The Polish anti-crisis measures – COVID-19 – equity	11-06-2020

			instruments	
267	Poland	SA.57568	Polish anti-crisis measures – COVID-19 – interest rates subsidies (for farmers)	12-06-2020
268	Poland	SA.57519	Poland: R&D aid for COVID-19 relevant research and development, investment aid for the construction and upgrade of relevant testing and upscaling infrastructures, and investment aid for investments into production facilities for the production of C	18-06-2020
269	Poland	SA.57452	Guarantees on factoring	23-07-2020
270	Poland	SA.57726	State aid in the form of reduction of the annual fee for perpetual usufruct and relief in rent, lease and usufruct fees to support entrepreneurs affected by the COVID-19 pandemic outbreak	28-07-2020
271	Poland	SA.58105	COVID-19: Aid scheme for agricultural producers who are at risk of liquidity loss as a result of agricultural market restrictions due to COVID-19	31-07-2020
272	Poland	SA.58102	COVID-19 support to tour operators and other undertakings active in tourism and culture	21-09-2020
273	Poland	SA.58185	COVID-19: Polish anti-crisis measures – State aid granted by the State Forests	29-10-2020
274	Poland	SA.57172	COVID-19 anti-crisis measure – Tax deferrals	13-11-2020
275	Poland	SA.59382	Aid for producers of ornamental plants (chrysanthemums) threatened by a loss of liquidity due to restrictions on the agricultural market caused by the COVID-19 epidemic.	13-11-2020
276	Poland	SA.60060	Aid for pig producers who are threatened with a financial liquidity loss due to restrictions on the agricultural market caused by the COVID-19 outbreak.	16-12-2020
277	Poland	SA.59158	COVID-19 – Aid to LOT Polish Airlines	22-12-2020
278	Poland	SA.59763	COVID-19 – The Financial Shield for SME 2.0 (aid in the form of limited amounts of subsidy for micro- and aid in form of support for uncovered fixed cost for small and medium-sized enterprises)	23-12-2020
279	Portugal	SA.56755	Guarantee schemes related to COVID-19	22-03-2020
280	Portugal	SA.56873	Direct grant and loan guarantee scheme	04-04-2020
281	Portugal	SA.56886	COVID-19. Credit line with subsidised interest rates addressed to undertakings active in the fishery and aquaculture sector.	08-04-2020
282	Portugal	SA.57035	COVID-19 Support to R&D projects, testing - infrastructures and production of COVID-19 related products	17-04-2020
283	Portugal	SA.57049	COVID-19 – TF measure to preserve employment on the Azores Islands I	20-05-2020
284	Portugal	SA.57050	COVID-19 – TF measure to preserve employment on the Azores Islands II	20-05-2020
285	Portugal	SA.57494	COVID-19 – Direct grant and loan guarantee scheme – Autonomous Region of Madeira	22-06-2020
286	Portugal	SA.58423	Credit line for anticipating the support provided for in the POSEI Program to producers and companies in the agricultural and agri-food sectors in the Autonomous Region of Madeira COVID-19	31-08-2020
287	Portugal	SA.58658	COVID-19 – Temporary Framework measure to support employment on the Azores	20-10-2020
288	Portugal	SA.59450	PT Direct Grants Micro and Small Companies COVID-19	27-11-2020
289	Romania	SA.56895	Romania – COVID-19: Support scheme for SMEs	10-04-2020
290	Romania	SA.57408	COVID-19: Framework scheme for State aid in the form of subsidised loans and guarantees on loans	01-07-2020

291	Romania	SA.57817	Romania – COVID-19 – Oradea airport support scheme to airlines	27-07-2020
292	Romania	SA.58166	Support for SMEs and certain related large enterprises to overcome the economic crisis caused by the COVID-19 pandemic	27-08-2020
293	Romania	SA.58450	Supporting the activity of breeders in the pig sector in the context of the economic crisis caused by the COVID-19 pandemic	02-09-2020
294	Romania	SA.58452	Supporting the activity of breeders in the poultry sector in the context of the economic crisis caused by the COVID-19 pandemic	02-09-2020
295	Romania	SA.58453	Supporting the activity of breeders in the bovine sector in the context of the economic crisis caused by the COVID-19 pandemic	09-09-2020
296	Romania	SA.59156	COVID-19 – Incentive scheme for airlines operating at Sibiu airport	20-11-2020
297	Romania	SA.59520	Supporting the activity of producers in the wine sector in the context of the economic crisis generated by the COVID-19 pandemic	20-11-2020
298	Romania	SA.58462	COVID-19 – Guarantees on factoring	23-11-2020
299	Slovakia	SA.56986	COVID-19 TF aid to preserve employment and self-employment during the health crisis	21-04-2020
300	Slovakia	SA.57599	COVID-19: Rent rebate for tenants	16-06-2020
301	Slovakia	SA.57483	COVID-19 Government Resources Higher Level Liquidity Needs Support State Aid Scheme – Eximbanka	18-06-2020
302	Slovakia	SA.57484	COVID-19 Government Resources Basic Level Liquidity Needs Support State Aid Scheme – SIH	18-06-2020
303	Slovakia	SA.57485	COVID-19 ESIF Basic Level Liquidity Needs Support State Aid Scheme – SIH	18-06-2020
304	Slovakia	SA.57829	COVID-19 – Slovakia: State aid scheme for temporary aid to support COVID-19 research, development and testing	13-07-2020
305	Slovakia	SA.58054	COVID-19: ESFI Liquidity Support State Aid Scheme for Innovative Companies with Limited Access to Credit Facilities	10-08-2020
306	Slovakia	SA.59996	COVID 19: costs subsidies under 3.1 of the TF	21-12-2020
307	Slovakia	SA.59240	COVID-19 – Aid to airport operators	22-12-2020
308	Slovenia	SA.56999	Intervention measures to mitigate the effects of the SARS-CoV-2 (COVID-19) infectious disease epidemic on the economy	24-04-2020
309	Slovenia	SA.57143	COVID-19 Liquidity guarantee scheme and rent relief	30-04-2020
310	Slovenia	SA.57558	COVID-19 – Additional intervention measures scheme (Short-time work scheme, wage subsidies for June, cableways, agriculture land)	26-06-2020
311	Slovenia	SA.57724	COVID-19 Framework scheme for state aid in the form of soft loans	08-07-2020
312	Slovenia	SA.57782	COVID-19 – Support for SMEs and for COVID-19 related RDI and investment projects	14-08-2020
313	Slovenia	SA.58887	Exceptional temporary support to farmers and SMEs affected by the COVID-19 crisis (Article 39(b) of the Rural Development Programme of the Republic of Slovenia for the period 2014-2020)	15-10-2020
314	Slovenia	SA.59149	COVID-19 – Support for self-employed in form of monthly basic income and partial compensation for the lost income due to quarantine.	29-10-2020
315	Slovenia	SA.59124	COVID-19 – Re-establishment of air connectivity of Slovenia	16-11-2020
316	Slovenia	SA.59717	COVID-19 – Aid in the form of partial reimbursement	21-12-2020

			of the uncovered fixed costs	
317	Slovenia	SA.60270	COVID-19: Financial assistance for the duration of incapacity for work due to COVID-19	23-12-2020
318	Spain	SA.56803	COVID-19 - Guarantee scheme to companies and self-employed to support the economy in the current COVID-19 outbreak	24-03-2020
319	Spain	SA.56851	ECON – Umbrella Scheme – National Temporary Framework for State aid in the form of direct grants, repayable advances, tax advantages, guarantees on loans and subsidised interest rates for loans to support the economy in the current COVID outbreak.	02-04-2020
320	Spain	SA.57019	COVID-19 – Spain – Temporary Framework support measures for COVID RDI and testing infrastructure, wages, tax/social contribution deferral and COVID related production	24-04-2020
321	Spain	SA.57659	ES – COVID-19 – Recapitalisation fund	31-07-2020
322	Sweden	SA.56860	COVID-19: Government guarantee programme for companies	02-04-2020
323	Sweden	SA.56812	Loan guarantee scheme to airlines under the temporary framework for state aid measures to support the economy in the current COVID-19 outbreak	11-04-2020
324	Sweden	SA.56972	COVID-19 – Rent rebate for tenants	14-04-2020
325	Sweden	SA.58342	Sweden – COVID-19 recapitalisation of SAS	17-08-2020
326	Sweden	SA.58822	Compensation scheme for undertakings faced with turnover losses due to COVID-19 in June-July 2020	15-10-2020
327	United Kingdom	SA.56792	UK COVID-19 measure CBILS Guarantee	25-03-2020
328	United Kingdom	SA.56794	Coronavirus Business Interruption Loan Scheme (CBILS) Grant – COVID-19	25-03-2020
329	United Kingdom	SA.56841	COVID-19 Temporary Framework for UK authorities	06-04-2020
330	United Kingdom	SA.57152	COVID-19 – UK – Self-Employed (including members of partnerships) Income Support Scheme	11-05-2020
331	United Kingdom	SA.57617	COVID-19 Temporary Framework for Gibraltar Authorities	06-07-2020
332	United Kingdom	SA.58205	Scottish Enterprise Subordinated Loan Scheme	24-08-2020

## ANNEX 2.

### State aid decisions adopted directly under the Treaty by country

	Member State	Case number	Title	Decision date
1	Austria	SA.57291	COVID-19; Compensation Scheme: Directive for fixed cost subsidies.	23-05-2020
2	Austria	SA.57539	COVID-19 – Aid to Austrian Airlines	06-07-2020
3	Austria	SA.57371	COVID-19 – Amendments to the existing aid scheme for the provision of rail freight services in certain forms of production and temporary support for rail freight and passenger transport	25-11-2020
4	Belgium	SA.56919	The title of the aid measure is “the COVID-19-guarantee” as specified in Section 4 and Articles 22/4/1 and 22/4/2 of the COVID-19 Guarantee Act.	09-04-2020
5	Belgium	SA.56819	COVID-19 – Loan guarantee scheme in response to the COVID-19 crisis	11-04-2020
6	Belgium	SA.57188	COVID-19: Reinsurance of short-term credit and surety risks	15-05-2020
7	Croatia	SA.55373	COVID-19 Damage compensation to Croatia Airlines	30-11-2020
8	Cyprus	SA.58340	Support scheme for the pig sector (piglets) due to the effects of the restrictive measures implemented during the COVID-19 pandemic	25-08-2020
9	Czechia	SA.57614	CZ – Compensation scheme for non-profit sport organisations related to COVID-19	22-07-2020
10	Czechia	SA.58198	COVID-19: Aid scheme to support facilities with in-patient spa medical rehabilitative care in the Karlovy Vary region	21-10-2020
11	Czechia	SA.59118	COVID-19: Call 2 for the Program to support entrepreneurs affected by the spread of the COVID-19 (rental payments)	03-11-2020
12	Denmark	SA.56685	State aid notification on compensation scheme cancellation of events related to COVID-19	12-03-2020
13	Denmark	SA.56791	Temporary compensation scheme for self-employed financially affected by the COVID-19	25-03-2020
14	Denmark	SA.56774	Compensation scheme to companies exposed to large turnover decline related to COVID-19	08-04-2020
15	Denmark	SA.56795	Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines	15-04-2020
16	Denmark	SA.57112	COVID-19 – Portfolio guarantee on trade credit insurance	15-05-2020
17	Denmark	SA.57106	COVID-19 compensation scheme for the Danish media sector	27-05-2020
18	Denmark	SA.57352	COVID-19 compensation scheme to travel operators for losses incurred by cancellations	29-05-2020
19	Denmark	SA.57930	Temporary targeted compensation scheme for companies affected by COVID-19 prohibitions (bans and cancelled events)	13-07-2020
20	Denmark	SA.57932	COVID-19 :Temporary targeted compensation scheme for undertakings affected by closure of borders and travel restrictions	22-07-2020
21	Denmark	SA.59747	COVID-19: Damage compensation to operators of rail passenger services that concluded net-cost public service contracts	21-12-2020
22	Estonia	SA.57643	COVID-19: Aid to companies active in international maritime passenger transport	09-07-2020

23	Estonia	SA.58678	COVID-19: Exceptional temporary support due to the COVID-19 outbreak for the food processing sector	06-10-2020
24	Estonia	SA.58783	COVID-19 – Estonia: aid to support businesses operating in the old town or city centre of Tallinn and modifications to SA.57014 (2020/N)	21-10-2020
25	Finland	SA.57284	COVID-19: Finnish damage compensation scheme for restaurants	28-05-2020
26	France	SA.56765	COVID-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d’exploitation délivrées par la France	31-03-2020
27	France	SA.56903	COVID-19: State guarantee for the reinsurance cover of domestic trade credit insurance risks	12-04-2020
28	France	SA.57219	COVID-19: Garanties des cautions	11-05-2020
29	France	SA.57607	COVID 19: Garantie de l’État en soutien à l’assurance-crédit	16-07-2020
30	France	SA.58125	Corsair – Compensation for the damage caused by the COVID-19 outbreak	11-12-2020
31	Germany	SA.56941	COVID-19: First-loss portfolio guarantee on trade credit insurance	13-04-2020
32	Germany	SA.56867	COVID-19 – Support for Condor	27-04-2020
33	Germany	SA.57741	COVID-19: Aid in the form of guarantees on vouchers issued for package tours	31-07-2020
34	Germany	SA.57675	COVID-19 – scheme for regional and local public passenger transport	07-08-2020
35	Germany	SA.58464	COVID-19 – Bavarian Assistance Programme to safeguard the Social Infrastructure of Youth Hostels, School Country Homes, Youth Education Centres and Family Holiday Centres	29-09-2020
36	Germany	SA.59228	COVID-19 – federal compensation scheme for child and youth education/work	26-11-2020
37	Greece	SA.58616	COVID-19: WORKING CAPITAL FOR MICRO AND SMALL ENTERPRISES IN 12 GREEK REGIONS	28-09-2020
38	Greece	SA.58929	Support of the primary sector in the production of “Kalamon” table olives, early watermelon of low coverage and spring potatoes, and, in Crete, green house crops of tomatoes, cucumbers and eggplants	19-10-2020
39	Greece	SA.58555	COVID-19 temporary primary residence protection scheme	12-11-2020
40	Greece	SA.59462	COVID-19 : Damage compensation to Aegean Airlines	23-12-2020
41	Hungary	SA.57375	COVID-19 Compensation scheme related to future investment	23-06-2020
42	Italy	SA.57937	Italy – COVID-19 – State guarantee for portfolio of trade credit insurances	13-08-2020
43	Italy	SA.58114	Alitalia damage COVID-19 – new	04-09-2020
44	Italy	SA.59029	COVID-19 – Compensation scheme for carriers having an Italian operating licence	22-12-2020
45	Italy	SA.59188	Alitalia COVID-19 Damage Compensation II	29-12-2020
46	Lithuania	SA.57514	Temporary State Aid to bovine animal producers and milk producers facing economic difficulties caused by the outbreak of COVID-19	05-06-2020
47	Lithuania	SA.57508	Aid to undertakings engaged in the processing of agricultural products in the poultry and eggs sectors and which have incurred losses due to the epidemic of COVID-19.	29-07-2020
48	Lithuania	SA.58856	Temporary State Aid to poultry farmers and poultry processing undertakings facing economic difficulties	16-10-2020

			caused by the outbreak of COVID-19	
49	Lithuania	SA.58540	COVID-19: Trade credit insurance portfolio guarantee scheme	22-12-2020
50	Luxembourg	SA.57708	COVID-19 Reinsurance of short term credit and surety risks	01-07-2020
51	Netherlands	SA.57217	NL LNV AGRI Compensation scheme agricultural and horticultural undertakings COVID-19	08-05-2020
52	Netherlands	SA.57095	Netherlands – COVID-19: Portfolio guarantee on trade credit insurance	25-05-2020
53	Netherlands	SA.57554	Compensation Scheme Special Transport for Special Groups due to the COVID-19 outbreak	29-06-2020
54	Netherlands	SA.58738	COVID-19 – Support for regional and long-distance public passenger transport	03-11-2020
55	Poland	SA.57054	The Polish anti-crisis measures – COVID-19 – write off of loans	29-05-2020
56	Poland	SA.58212	COVID-19 – Aid scheme for Polish airports	28-09-2020
57	Portugal	SA.57369	COVID-19 – Aid to TAP	10-06-2020
58	Portugal	SA.58101	Rescue aid to SATA Group	18-08-2020
59	Romania	SA.57178	Romania – COVID-19 – Aid to Timișoara Airport	05-08-2020
60	Romania	SA.57026	COVID-19 – Aid to Blue Air	20-08-2020
61	Romania	SA.56810	COVID-19 – Aid to TAROM	02-10-2020
62	Romania	SA.58531	Romania – COVID-19 – State aid scheme for commercial trade credit risk guarantee	15-10-2020
63	Romania	SA.58676	COVID-19 support for Romanian regional airports	23-11-2020
64	Slovenia	SA.57459	Compensation scheme for damage caused by the COVID-19 outbreak	29-06-2020
65	Slovenia	SA.59014	COVID-19: Reduction of the minimum concession fee caused by natural disasters or exceptional occurrences	30-10-2020
66	Spain	SA.59045	COVID-19: Guarantee scheme for undertakings with composition agreements	20-11-2020
67	Spain	SA.58458	COVID-19: Trade credit reinsurance scheme	04-12-2020
68	Sweden	SA.57051	COVID-19 – aid for cancelled or postponed cultural events in Sweden	22-04-2020
69	Sweden	SA.57061	Sweden – Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines	24-04-2020
70	Sweden	SA.57372	Sweden Compensation scheme for undertakings faced with turnover losses due to COVID-19	11-06-2020
71	Sweden	SA.57710	Compensation for damages suffered by passenger ferries due to COVID-19	06-07-2020
72	United Kingdom	SA.57451	United Kingdom – Trade credit insurance support scheme	28-07-2020
73	United Kingdom	SA.58477	COVID-19: Free distribution of PPE to health and social care services, community pharmacies and public sector organisations	17-09-2020
74	United Kingdom	SA.58206	Film & TV Production Restart Scheme – UK	02-10-2020
75	United Kingdom	SA.58466	COVID-19 – 107.2.b – Tax relief Scottish airports	02-12-2020
76	United Kingdom	SA.60013	Reimbursement for losses incurred due to COVID-19 outbreak in the Scottish Poultry Sector	18-12-2020

### ANNEX 3.

#### Banking State aid cases: Decisions adopted by the Commission in 2020 by country

	Member State	Case number / Title	Type of Decision	Date of Adoption
1	Denmark	SA.34445(2012/C) The transfer of property-related assets from FIH to the FSC	Positive decision	25.02.2020
2	Greece	SA.57262(2020/N) Prolongation of the Greek State Guarantee Scheme for banks 01.06.2020-30.11.2020 (Art. 2 of Law 3723/2008)	No objection	16.06.2020
3	Greece	SA.53105(2019/FC) Alleged aid to Eurobank through sale of Piraeus Bank Bulgaria	No objection	15.1.2020
4	France	SA.56071(2019/N) Renouvellement de l'autorisation de l'extension des activités de SFIL-CAFFIL au financement des crédits à l'exportation	No objection	7.5.2020
5	France	SA.55869(2019/N) Dispositif « IR-PME » de réduction d'impôt sur le revenu (IR) pour la souscription au capital de PME – Souscription de parts de fonds communs de placement dans l'innovation (FCPI) et de fonds d'investissement de proximité (FIP)- et ESUS	No objection	26.6.2020
6	Ireland	SA.58819(2020/N) 12th prolongation of Credit Union restructuring and stabilisation scheme	No objection	30.10.2020
7	Ireland	SA.57378(2020/N) 16th prolongation of	No objection	12.6.2020

			the Credit Union Resolution Scheme 2020-2021		
8	Ireland	SA.57053(2020/N)	11th prolongation of the Credit Union restructuring and stabilisation scheme	No objection	08.05.2020
9	Italy	SA.57515(2020/N)	COVID-19 – Italian bank liquidity support scheme	No objection	10.11.2020
10	Italy	SA.57516(2020/N)	COVID-19 – Italian orderly liquidation scheme for small banks	No objection	20.11.2020
11	Poland	SA.56141(2020/N)	Fourth prolongation of the resolution scheme for cooperative banks and small commercial banks	No objection	29.4.2020
12	Poland	SA.58389(2020/N)	Fifth prolongation of the resolution scheme for cooperative banks and small commercial banks	No objection	29.10.2020
13	Poland	SA.56635(2020/N)	Tenth prolongation of the Credit Unions Orderly Liquidation Scheme	No objection	8.6.2020
14	Portugal	SA.55719(2020/N)	Banco Português de Fomento	No objection	4.8.2020
15	The Netherlands	SA.55465(2020/N)	Invest International	No objection	29.5.2020
16	United Kingdom	SA.54780(2020/N)	Scottish National Investment Bank	No objection	5.11.2020