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COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in the European Union

-- 2020 --

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European Union

1. This executive summary is provided by the Directorate-General for Competition of the European Commission to the OECD Competition Committee for information purposes only. The executive summary contains a non-exhaustive summary of activities undertaken by the Commission in the field of competition policy in the year 2020. More information can be found in the European Commission Report on Competition Policy 2020 and its accompanying Staff Working Document, as well as on the website of DG Competition¹.

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

2. In 2020, the Commission continued its comprehensive review of the EU competition rules to make them fit for a changing market environment, including the accelerating digitisation of the economy. The review follows from the input provided by the three independent Special Advisers in their report of April 2019 on digitisation and competition law². During the year, the Commission made substantial progress on its review agenda, which includes a large number of key block exemption regulations, guidelines and notices.

1.1.1. Review of rules on vertical supply and horizontal cooperation

3. With the publication of a Staff Working Document in September 2020³, the Commission concluded its evaluation of the Vertical Block Exemption Regulation (VBER)⁴ and the Vertical Guidelines⁵. The evaluation assessed to what extent the current regime had achieved its objective of providing a “safe harbour” for vertical agreements that are efficiency enhancing, create legal certainty and reduce compliance costs. The aim of the evaluation was to decide whether these rules should be allowed to lapse, be renewed in their current form or be revised. The evaluation showed that the VBER and the Vertical Guidelines remain useful tools that facilitate self-assessment by businesses. However, markets have developed and the evaluation identified a number of issues that need to be addressed. The Commission has launched a review with the aim to revise the current rules by 31 May 2022 when these rules expire.

4. In 2020, the Commission continued its evaluation of the Research & Development Block Exemption Regulation (R&D BER)⁶ and the Specialisation Block Exemption

¹ See http://ec.europa.eu/competition/index_en.html.

² “Competition Policy in the Digital Era”, 2019, See: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

³ Commission Staff Working Document – Evaluation of the Vertical Block Exemption Regulation, SWD(2020) 173 final, 8.9.2020.

⁴ 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. 1-7.

⁵ Guidelines on Vertical Restraints, OJ C 130, 19.5.2010, p. 1-46.

⁶ Commission Regulation (EU) 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 certain categories of research and development agreements, OJ L 335, 18.12.2010, p. 36-42.

Regulation (Specialisation BER)⁷, together referred to as the Horizontal block exemption regulations (HBERs). The Commission Guidelines on horizontal cooperation agreements (HGL) provide guidance for the interpretation of the HBERs and for the application of Article 101 TFEU on other horizontal agreements. The HBERs will expire on 31 December 2022. The purpose of these rules is to make it easier for companies to cooperate in ways that are economically desirable and without adverse effects on competition. The evaluation gathers evidence how these rules function. It will allow the Commission to determine whether it should let the Horizontal Block Exemption Regulations and the Guidelines lapse, be prolonged or revised. A Staff Working Document is foreseen in 2021.

5. In 2020, the Commission continued the evaluation of the Motor Vehicle Block Exemption Regulation (MVBER) adopted in 2010⁸. The purpose of the evaluation is to gather evidence on the functioning of the MVBER and its accompanying Guidelines, verifying if their objectives are fulfilled. The MVBER expires in May 2023 and requires the Commission to submit an evaluation report to the Parliament and the Council in 2021.

1.1.2. Antitrust Consortia Block Exemption Regulation for container shipping

6. In 2020, the Commission finalised its evaluation of the Consortia Block Exemption Regulation (CBER) concerning the container-shipping sector⁹. 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. Based on this review, the Commission extended the CBER until 25 April 2024¹⁰.

1.1.3. Selected procedural and jurisdictional aspects of EU merger control

7. In 2020, the Commission progressed to the final stages of its evaluation of Selected Procedural and Jurisdictional Aspects of EU Merger Control¹¹. A Staff Working Document summarising the main findings of the evaluation was published on 26 March 2021¹². Following the evaluation, the Commission adopted a communication providing guidance on the application of the referral mechanism between Member States as set out in Article 22 of the Merger Regulation. Moreover, the Commission launched an impact assessment exploring policy options for further simplification of EU merger rules¹³.

⁷ Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43-47.

⁸ Commission Regulation (EU) No 461/2010 of 27 May 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. 52-57.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ 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.

1.1.4. Evaluation of the Market Definition Notice

8. In 2020, the Commission initiated an evaluation of the Market Definition Notice¹⁴. This Notice provides guidance on principles and best practices for the Commission's application of the concepts of relevant product and geographic markets. The objective of the evaluation is to assess whether the notice is still fit for purpose in light of recent market developments across different sectors, including digital markets. The results of the evaluation are expected to be published in 2021.

1.2. Other relevant measures, including new guidelines

1.2.1. Commission response to the COVID-19 pandemic in antitrust and merger control

9. Preserving market discipline to secure the functioning of the Single Market is crucial in times of crisis. However, it was necessary to facilitate cooperation between companies when it was needed to fight adverse effects of the pandemic. To this end, the Commission swiftly adopted a series of measures covering multiple policy areas.

10. The Commission provided guidance to firms in a Communication¹⁵ setting out the main criteria the Commission uses when assessing cooperation projects addressing supply shortages of products and services necessary for fighting the COVID-19 outbreak, such as medicines and medical equipment. The Commission also adopted an *ad-hoc* comfort letter on the basis of this Communication¹⁶.

11. In April 2020, the Commission issued three implementing regulations temporarily widening the scope of the competition rules in three agricultural sectors adversely affected by the COVID-19 pandemic¹⁷. These Implementing Regulations allow farmers and recognised Inter-Branch Organisations to take temporary collective action to stabilise certain sectors.

12. The European Competition Network (ECN) issued a [joint statement on the application of the antitrust rules during the COVID-19 crisis](#). In the Joint Statement¹⁸, the members of the ECN expressed their understanding for the fact that the extraordinary situation may make it necessary for companies to cooperate to ensure the supply and fair distribution of scarce products. The ECN stated that its member authorities would not actively intervene against necessary and temporary measures put in place to avoid supply shortages. It is of utmost importance to ensure that products that are essential for protecting consumer health (for example facemasks and sanitising gel) remain available at competitive prices. The ECN stated that it would not hesitate to take action against

¹⁴ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5.

¹⁵ 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 116, 8.4.2020, p. 7.

¹⁶ https://ec.europa.eu/competition-policy/system/files/2021-03/medicines_for_europe_comfort_letter.pdf

¹⁷ 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. These Commission Implementing Regulations were followed by the adoption of 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, 7.7.2020, p. 13.

¹⁸ Joint statement by the European Competition Network (ECN) on application of competition law during the Corona-crisis. See: https://www.acceptance.ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf.

companies taking advantage of the health crisis by forming cartels or abusing dominant market positions. Due to the close cooperation between the ECN members in COVID-related antitrust cases, the ECN was able to speak with one voice to companies seeking to take antitrust-compliant measures.

13. In merger control, the Commission was able to continue its activities while fully respecting its legal obligations and deadlines. To ensure business continuity during the pandemic, the Commission allowed firms to notify proposed mergers in electronic format.

1.3. Proposals for new legislation

1.3.1. Digital Markets Act and Digital Services Act

14. As a centerpiece of the Commission’s European Digital Strategy¹⁹, presented in February 2020, the Commission put forward two legislative proposals designed to create safe digital spaces for all users where their fundamental rights are protected. Moreover, the proposed legislation would create competitive conditions which allow digital businesses to innovate and grow within the Single Market and to compete globally.

15. In 2020, the Commission adopted a proposal for a Digital Markets Act for contestable and fair digital markets²⁰. The proposed regulation aims at addressing structural problems in digital markets, in particular large digital platforms acting as “gatekeepers”, that is to say platforms having an intermediate position linking a large user base to a large number of businesses. As part of the digital package, the Commission also tabled a proposal for a Digital Services Act²¹. Both Commission proposals will be discussed in Parliament and Council during 2021.

16. The Digital Markets Act – a proposed regulation to be adopted under Article 114 TFEU – would prevent gatekeepers from imposing unfair conditions on businesses and consumers. Examples of such unfair conditions include prohibiting businesses from accessing their own data, locking users into a particular service and limiting switching to alternative services. Companies would be designated as gatekeepers under the act if three cumulative quantitative criteria were fulfilled²². Designated gatekeepers would be subject to a number of obligations and prohibitions to ensure an open online environment that is fair for businesses and consumers and open to innovation. To ensure the effectiveness of the new rules, the possibility of sanctions for non-compliance with the prohibitions and obligations in the Digital Markets Act is foreseen.

¹⁹ Shaping Europe’s Digital Future, Commission publication of 19.2.2020, ISBN 978-92-76-16362-6.

²⁰ 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.

²¹ Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final, 15.12.2020. The act would introduce rules for online services (intermediary services, hosting services and online platforms). Providers of such services would be subject to among other things transparency and reporting requirements, information obligations, data sharing rules and codes of conduct.

²² Some large online platforms act as “gatekeepers” in digital markets. The Digital Markets Act establishes a set of criteria for qualifying a large online platform as a gatekeeper. These criteria will be met if a company: i.) has a strong economic position, significant impact on the internal market and is active in multiple EU countries, ii.) has a strong intermediation position, meaning that it links a large user base to a large number of businesses, and iii.) has (or is about to have) an entrenched and durable position in the market.

2. Enforcement of competition laws and policies

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1. Summary of activities of competition authorities and courts

The Commission

17. Throughout the first year of the Von der Leyen Commission, EU competition policy played a key role in the Commission's efforts to respond to and overcome the health and economic crisis caused by the COVID outbreak. Competition policy facilitated the path to recovery while taking fully into account the green and digital transitions of the EU economy. In line with the mission letter addressed by President von der Leyen to Executive Vice-President Vestager²³, the Commission continued to ensure that competition rules remain fit for the modern economy, vigorously enforced and contribute to a strong European industry, both within the EU and outside.

18. The COVID crisis affected the Commission's enforcement activities. Recognising the exceptional difficulties that companies faced, notably in the early phases of the lockdown, the Commission adjusted its priorities and reconsidered certain investigatory steps that would have required firms to react immediately²⁴. Moreover, the Commission temporarily halted inspections at company premises due to the health hazard. Using the eLeniency tool, launched in 2019, companies can submit statements with the same high level of protection as under the oral procedure, which would have required physical presence at Commission premises.

19. The fight against cartels remained a top priority for the Commission in 2020. A vigorous cartel enforcement is crucial also in times of crisis when firms may have increased incentives to collude. The Commission adopted three cartel decisions in 2020 covering six separate cartels and imposed cartel-related fines amounting to EUR 288 million.

Important judgements by the European Union Courts

Investigative powers

20. 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 1/2003²⁵. According to the Court of Justice, the Commission has a "certain discretion regarding its specific examination procedures"²⁶.

21. As part of that discretion, the Commission has the right to copy electronic documents as an intermediate step in its investigation.²⁷ 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

²³ Mission letter to Executive Vice-President Vestager, 1.12.2019. See: https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-margrethe-vestager_2019_en.pdf.

²⁴ For example requests for information or notifying Statement of Objections.

²⁵ 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.

²⁶ Nexans, para. 61.

²⁷ Nexans, para. 63.

protected²⁸. Making electronic copies of pertinent documents allow the investigated firms to keep using the original data. This reduces the Commission’s interference with companies’ operations caused by the inspections²⁹. The Court of Justice also confirmed the Commission’s practice of ‘*continued inspections*’ at its premises in Brussels. The Court of Justice confirmed that Article 20(2)(b) of Regulation No 1/2003 does not provide that the inspection must always be carried out at the company’s premises³⁰. 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*”. 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*”³¹.

22. In the *Alliance Casino & Intermarché* cases,³² the General Court issued three judgments concerning inspection decisions adopted by the Commission in 2017. The General Court largely confirmed the Commission’s powers in the early stages of its investigations. The General Court confirmed the clear distinction between “*indicia*”, relevant for the early stages of a Commission investigation leading to inspections, and the “*evidence*” needed to demonstrate an infringement of the competition rules. The General Court recalled that to order an inspection, the Commission must be in possession of sufficiently strong *indicia*.

23. The General Court held that in the early stages of the investigation, informal minutes of meetings and conference calls do not have to comply with the formal requirements of Article 19 of Regulation 1/2003³³. Furthermore, the General Court recalled that the information provided by manufacturers become *indicia* from the moment it is communicated to the Commission. As regards the content of the *indicia*, the General Court upheld one leg of the inspection decisions relating to exchanges of information about discounts obtained in the procurement markets for certain consumer products and on prices in 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 Commission’s possession were not sufficiently strong.

24. The General Court also examined if the dates chosen for the inspections caused “*disproportionate and intolerable damage*” to the companies’ business and found that this was not the case. The General Court considered that the dates chosen by the Commission were justified by the objective to have a maximum number of key staff present when the inspections take place. Finally, the General Court held that inspected firms were entitled to raise arguments related to the protection of their staff’s privacy.

²⁸ Nexans, para. 64; Prysmian, para. 58.

²⁹ Nexans, para. 66; Prysmian, para. 60.

³⁰ Nexans, para. 78.

³¹ Nexans, para. 81. Confirmed in Prysmian, para. 66.

³² 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.

³³ 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.

Procedural rights in Commission investigations

25. In *Retail Food Packaging*³⁴, the Court of Justice confirmed the General Court’s and the Commission’s assessment of cartel investigations, in particular in relation to the decision by both the Commission and the General Court not to hear or cross-examine a witness relied upon by the appellants.

26. In *Power Cables*³⁵ the Court of Justice highlighted the importance of clearly setting out all allegations in the Statement of Objections, allowing the investigated firms to submit their observations.

27. Concerning the Commission’s pending investigation in *Metal Packaging*³⁶, the European Courts dealt with procedural issues. 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 does not negatively affect a company’s position and therefore does not constitute a challengeable act³⁷. Moreover, the General Court rejected an application for interim measures, which would have suspended a Commission request for information pursuant to Article 18(3) of Regulation 1/2003. The applicants could not show any urgency resulting from providing replies while having to wait for a decision in the main proceedings³⁸.

Use of evidence

28. While largely confirming the Commission’s practice in *Power Cables*, the Court of Justice held that to be held liable for the conduct of another cartel participant in a single and continuous infringement, the undertaking in question has to be aware of the conduct or be reasonably able to foresee it. Without proving such awareness, the Commission cannot hold the undertaking liable³⁹.

Liability for cartel conduct

29. In *Power Cables*, the Court of Justice confirmed the Commission’s approach when attributing liability for cartel conduct⁴⁰. As regards “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 transferred⁴¹.

30. The Court of Justice considered that the General Court was correct when it concluded that the Commission is not obliged to consider each piece of evidence submitted by a company before rejecting the presumption of parental liability to a former subsidiary in cases where the company in question owned all or almost all of the shares in the subsidiary at the time⁴².

³⁴ Case C-702/19 P *Silver Plastics and Johannes Reifenhäuser v Commission*, judgment of the Court of 22.10.2020.

³⁵ Case C-607/18 P *NKT v Commission*, judgment of the Court of 14.5.2020 paras. 47-60.

³⁶ Case AT.40522.

³⁷ Case C-418/19 P *Silgan Closures v Commission*.

³⁸ Case T-808/19 R *Silgan International Holdings v Commission*.

³⁹ Case C-607/18 P *NKT v Commission*, judgment of the Court of 14.5.2020, paras. 164-171.

⁴⁰ Case C-601/18 P *Prysmian v Commission*; Case C-611/18 P *Pirelli v Commission*, judgment of the Court of 28.10.2020.

⁴¹ *Prysmian*, paras. 83-93.

⁴² *Pirelli*, paras. 33-53.

Calculation of fines

31. In *Smart Card Chips*⁴³, the General Court ruled on the proportionality of a fine imposed on *Infineon*⁴⁴. 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 it had not reviewed all anti-competitive contacts. Such a 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 proven to the requisite legal standard the existence of one contact (out of eleven). This failure reduced the number of anticompetitive contacts, which warranted a fine reduction for mitigating circumstances from 20% to 25%. Accordingly, the General Court reduced the fine from EUR 82.8 million to EUR 76.8 million.

32. In *Retail Food Packaging*⁴⁵, the Court of Justice concurred with the Commission in relying on the company's group turnover in the last full business year when calculating the 10% turnover cap in Article 23(2) of Regulation 1/2003.

33. In the *GEA judgment*⁴⁶ in the *Heat Stabilisers* case, the Court of Justice confirmed the Commission's practice when attributing joint and severed liability for fines between several entities which were part of the same undertaking at the time of the infringement. 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.

2.1.2. Significant cases

Cartels

34. In November 2020, the Commission fined the pharmaceutical companies *Teva* and *Cephalon*⁴⁷ EUR 60.5 million for agreeing to delay for several years the market entry of a less expensive generic version of modafinil (a drug treating sleep disorders) after Cephalon's main patents had expired. Teva held its own modafinil patents and was ready to enter the modafinil market with its own generic version of the drug.⁴⁸ The Commission found that the "pay for delay" agreement caused substantial competitive harm by artificially keeping modafinil prices high to the detriment of consumers. The anti-competitive agreement had the object and effect of eliminating Teva as a competitor and allowed Cephalon to continue charging high prices after the expiry of its patents.

35. In July 2020, the Commission fined three energy suppliers - *Orbia*, *Clariant* and *Celanese* - EUR 260 million for colluding to buy ethylene to the detriment of ethylene sellers⁴⁹. All companies admitted their involvement in the cartel, assisted the Commission in its investigation and agreed to settle the case. A fourth cartel member, *Westlake*, was not fined because it revealed the cartel to the Commission.

⁴³ Case T-758/14 RENV Infineon Technologies AG v Commission, judgment of the General Court of 8.7.2020.

⁴⁴ Case AT.39574, Commission Decision C(2014) 6250 of 3 September 2014.

⁴⁵ Case C-702/19 P Silver Plastics and Johannes Reifenhäuser v Commission, judgment of the General Court of 11.7.2019.

⁴⁶ Case C-823/18 P Commission v GEA, judgment of the Court of 25.11.2020.

⁴⁷ See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2220.

⁴⁸ At the time, Teva had already started selling modafinil in the United Kingdom. The anti-competitive agreement was concluded before Teva acquired Cephalon.

⁴⁹ Case AT.40410 Ethylene, Commission Decision of 14.7.2020. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40410/40410_1654_6.pdf.

36. In September 2020, the Commission concluded another two cartel investigations into car parts markets⁵⁰. It fined manufacturers *Brose* and *Kiekert* EUR 18 million in total. *Magna* and *Brose* took part in a bilateral cartel concerning door modules and window regulators⁵¹, while *Magna* and *Kiekert* colluded for the provision of latches and strikers. In both cartels, the companies fixed prices and exchanged commercially sensitive information. *Magna* was not fined because the company revealed both cartels to the Commission.

Abuse of Dominance

37. In 2019, the Commission imposed interim measures on *Broadcom*⁵². In the Commission's preliminary view, *Broadcom* abused its dominant position in the markets for systems-on-chips for (i) TV set-top boxes, (ii) fibre modems, and (iii) xDSL modems. *Broadcom* concluded agreements containing exclusivity-inducing provisions with manufacturers of the above-mentioned products. In October 2020, the Commission decided to make legally binding a number of commitments offered by *Broadcom*⁵³. The company committed to suspend existing exclusivity and quasi-exclusivity arrangements as well as leveraging provisions for TV set-top boxes and modems included in agreements with original equipment manufacturers. Moreover, *Broadcom* agreed not conclude similar agreements in the future.

38. In January 2020, the Commission concluded its final probe into markets for licensed merchandise. The Commission fined several companies belonging to *Comcast Corporation*, including *NBCUniversal*, EUR 14.3 million for breaching EU antitrust rules⁵⁴. *NBCUniversal* included clauses in licensing agreements for film merchandise prohibiting licensees from selling online, selling outside specific territories or to other than specified customers. These clauses partitioned the Single Market to the detriment of consumers.

39. In February 2020, the Spanish hotel group *Meliá* was fined EUR 6.7 million for including clauses in its agreements with tour operators which restricted hotel reservations to customers resident in specified Member states⁵⁵. These provisions artificially partitioned the Single Market by restricting tour operators' ability to sell hotel accommodation freely in all EEA countries and preventing them from responding to direct requests from consumers situated outside their allocated geographic markets.

40. In *Romanian Gas Interconnectors*, the Commission made commitments offered by *Transgaz* legally binding under EU antitrust rules⁵⁶. 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

⁵⁰ In recent years, the Commission has fined for cartel activities suppliers of automotive bearings, wire harnesses in cars, flexible foam used 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, braking systems, seatbelts, airbags and steering wheels.

⁵¹ Case AT.40299 Closure Systems, Commission Decision of 29.9.2020, public version not yet available.

⁵² Case AT.40608 *Broadcom*, Commission Decision of 16.10.2019. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40608/40608_2791_11.pdf.

⁵³ Case AT.40608 *Broadcom* – Commitments under Article 9 of Regulation 1/2003, 7.10.2020. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40608/40608_2794_3.pdf.

⁵⁴ 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.

⁵⁵ Case AT.40528 *Meliá* (Holiday Pricing), Commission Decision of 21.2.2020. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40528/40528_418_3.pdf.

⁵⁶ Case AT.40335 Romanian gas interconnectors, Commission Decision of 6 March 2020.

Member States, in particular to Hungary and Bulgaria. The final commitments offered by Transgaz enable the free flow of gas from Romania and support the further integration of South-eastern Europe into the EU internal energy market. The commitments ensure that market participants have access to additional capacities for gas exports from Romania, that Transgaz's pricing does not discriminate between domestic and export prices and that Transgaz does not use other means to restrain exports, in particular by delaying the construction of infrastructure. The commitments will remain in force until 31 December 2026.

2.2. Mergers and acquisitions

2.2.1. Statistics on mergers notified and/or controlled under competition laws

41. Despite the pandemic, the Commission was able to continue its activities while respecting its legal obligations and deadlines⁵⁷. In 2020, 361 transactions were notified to the Commission. Like in previous years, the vast majority of notified mergers did not raise competition concerns and could be processed speedily. The Commission adopted 352 merger decisions and intervened in 18 cases. In the latter category, 13 mergers were cleared subject to commitments in first phase⁵⁸, three mergers⁵⁹ were cleared with remedies after a second phase investigation and one merger⁶⁰ was cleared unconditionally in second phase. Two cases were abandoned during the in-depth investigation⁶¹. The Commission did not prohibit any transaction in 2020. The simplified procedure was used in 76% of all notified transactions. The Commission has to assess an increasing number of mergers involving digital issues. This trend is expected to continue in coming years.

42. In 2020, the Commission cleared *Google's* acquisition of *Fitbit*⁶² subject to commitments aimed at ensuring that the market for wearables and the nascent health digital space remains open and competitive.

43. 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 as best suited to address competition concerns arising from market concentrations.

2.2.2. Summary of significant cases

44. In November 2020, the Commission approved, subject to commitments, the proposed acquisition of *Covage* by *SFR FTTH*, a company jointly controlled by *Altice*, *Allianz* and *Omers*⁶³. *SFR FTTH* and *Covage* are major fibre network operators in France. *Covage* sells fibre network accesses at the wholesale level while *Altice* is active both at the

⁵⁷ To ensure business continuity in times of a pandemic, the Commission introduced the eNotifications tool, which allows firms to notify planned mergers online.

⁵⁸ Cases M.9408 Assa Abloy/Agta Record, M.9434 UTC/Raytheon, M.9461 AbbVie/Allergan, M.9502 Synthomer/Omnova Solutions, M.9517 Mylan/Upjohn, M.9546 Gategroup/LSG European Business, M.9554 Elanco Animal Health/Bayer Animal Health Division, M.9674 Vodafone Italia/Tim/INWIT JV, M.9677 DIC/BASF Colors & Effects, M.9728 Altice/Omers/Allianz/Covage, M.9744 Mastercard/Nets, M.9776 Worldline/Ingenico and M.9779 Alstom/Bombardier Transportation.

⁵⁹ Case M.9014 PKN Orlen/Grupa Lotos, Case M.9730 FCA/PSA, Case M.9660 Google/Fitbit.

⁶⁰ Case M.9409 Aurubis/Metallo Group Holding.

⁶¹ Case M.9547 Johnson & Johnson/Tachosil, Case M.9097 Boeing/Embraer.

⁶² Case M.9660 Google/Fitbit. Commission Decision of 17.12.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9660.

⁶³ Case M.9728 Altice/Omers/Allianz/Covage, Commission Decision of 27.11.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9728.

wholesale and retail levels. The Commission found that the transaction would have given the merged firms a very strong position in the market for wholesale fibre-to-the-office services. As a result, alternative retailers would have fewer alternative suppliers. Since Covage would become vertically integrated in SFR's retail activities, the merged entity would have both the ability and the incentive to prevent retail competitors from accessing Covage's fibre capacity at wholesale level. SFR offered to divest 95% of Covage's fibre-to-the-office business and offered to conclude a transitional service agreement allowing the divested business to become fully independent.

45. In the markets for the supply of motor fuels and related products, the European Commission conditionally approved in July 2020 the acquisition of *Grupa Lotos* and *PKN Orlen*, two large Polish integrated oil and gas companies⁶⁴. The Commission had concerns that the transaction, as initially notified, would have harmed competition for motor fuels in Poland, jet fuel in Poland and Czechia and related products such as different types of bitumen in Poland. PKN Orlen offered a divestment package and other commitments. The package included divestment of a stake in an oil refinery, storage depots, retail fuel stations and bitumen production facilities. The Commission concluded that remedies would allow competitors to compete effectively with the merged firm.

46. In the rail transportation sector, the Commission conditionally approved *Alstom's* acquisition of *Bombardier Transportation* in July 2020⁶⁵. Alstom and Bombardier compete in the manufacturing and supply of very high speed trains ("very high speed rolling stock") and railway signalling solutions. The Commission concluded that the transaction would have raised serious competition concerns. Alstom would have become the market leader for the provision of very high speed rolling stock, mainline rolling stock and mainline signalling. The Commission accepted a comprehensive commitments package offered by the merging firms. The remedies included divesting train platforms and production facilities for very high speed rolling stock and mainline rolling stock. Alstom and Bombardier also offered to supply to signalling competitors legacy on-board-units, necessary interfacing information and provide support services.

47. In the automotive sector, the Commission approved, following an in-depth investigation and subject to conditions, the merger between *Fiat Chrysler Automobiles* (FCA) and *Peugeot SA* (PSA)⁶⁶. The transaction created the world's fourth largest automotive group, to be named *Stellantis*. The Commission concluded that the merger would have harmed competition in the market for small light commercial vehicles ("LCVs") in several Member States. The merging firms committed to extend the current cooperation agreement between PSA and Toyota for small LCVs. PSA produces Toyota vehicles for sale in the EU. The extended agreement will increase the production capacity available for Toyota and transfer prices will be reduced for vehicles and associated spare parts and accessories. These measures allow Toyota to compete effectively with Stellantis and expand in the EU market for small LCVs. Moreover, FCA and PSA agreed to amend repair and maintenance agreements concluded with their repairer networks. Access to the repairer networks will be facilitated, allowing competitors and new entrants to compete in the market for small LCVs.

⁶⁴ Case M.9014 PKN Orlen/Grupa Lotos, Commission Decision of 14.7.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9014.

⁶⁵ Case M.9779 Alstom/Bombardier Transportation, Commission Decision of 31.7.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9779.

⁶⁶ Case M.9730 FCA/PSA, Commission Decision of 21.12.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9730.

Important Judgements by the European Courts in merger control

48. In its judgment of 4 March 2020⁶⁷ the Court of Justice dismissed *Marine Harvest's* appeal against the General Court's judgment upholding the Commission decision imposing a EUR 20 million fine on Marine Harvest for "gun jumping", that is to say integrating the merging firms' activities and assets before the proposed transaction had obtained regulatory approval.

49. In its judgment of 28 May 2020⁶⁸ the General Court annulled the Commission Decision adopted in 2016 prohibiting *Hutchison's* acquisition of O2 UK. The General Court provided guidance how to assess whether a proposed 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 has appealed the General Court's judgment.

50. In its judgment of 5 October 2020⁶⁹ 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 General Court validated the Commission's jurisdictional and substantive assessment of the transaction.

3. The role of competition authorities in the formulation and implementation of other policies

3.1. Response to COVID-19

51. With the rapid spread of the COVID-19 virus and its profound adverse impact on the EU economy, EU policymakers were obliged to react quickly to address the unprecedented threat. Decisive action included the EUR 750 billion NextGenerationEU recovery instrument⁷⁰, the activation of the general escape clause in the Stability and Growth Pact⁷¹, and the joint procurement of medical devices such as ventilators, masks and vaccines.

52. Competition policy – in particular State aid policy - became an important component of the crisis response intended to stabilize the economy. Well-targeted public support was crucial to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activities. At the same time, the Commission ensured that public support could reach companies in need and that harmful subsidy races were avoided.

53. The Temporary Framework for State aid adopted at the beginning of the crisis set out the conditions the Commission would apply to declare aid compatible with Article 107(3)(b) TFEU (aid to "remedy a serious disturbance in the economy of a Member

⁶⁷ Case C-10/18 P *Mowi* (formerly *Marine Harvest*) v Commission.

⁶⁸ Case T-399/16 *CK Telecoms UK Investments* v Commission.

⁶⁹ Case T-380/17 *HeidelbergCement and Schwenk Zement* v Commission.

⁷⁰ NextGenerationEU – part of the Multiannual Financial Framework 2021-2027 - is a EUR 750 billion temporary recovery instrument to help repair the immediate economic and social damage brought about by the Coronavirus pandemic. The Recovery and Resilience Facility is the centrepiece of NextGenerationEU with EUR 672.5 billion in loans and grants available to support reforms and investments undertaken by EU countries. See: Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I, 22.12.2020, p. 11–22.

⁷¹ Articles 121 and 126 TFEU.

State”)⁷². The Temporary Framework was amended several times in 2020, demonstrating the Commission’s ability to adapt the rules to the changing nature of the crisis.

54. In April 2020, the Temporary Framework was extended to cover support to companies that develop, test and manufacture products needed to fight the coronavirus such as vaccines, medicines, medical devices, disinfectants and protective equipment, as well as wage support and tax deferral schemes⁷³. The Temporary Framework was amended again in May 2020. The amended framework set the criteria how Member States carry out recapitalisations and provide subordinated debt to companies in need. A third amendment in June 2020 extended the Temporary Framework to enable Member States to provide public support to micro and small companies, even if they were already in financial difficulty on 31 December 2019. A fourth amendment was adopted in October 2020, prolonging the scope of the Temporary Framework by six months until 30 June 2021 and enabling recapitalisation support until 30 September 2021. The Temporary Framework was amended a fifth time in January 2021 prolonging it until 31 December 2021.

55. In a short time, the Commission adopted a large number of State aid decisions under the Temporary Framework allowing Member States to alleviate the economic effects of the COVID-19 pandemic. In 2020, the Commission adopted 598 coronavirus-related State aid decisions⁷⁴. In this period, the Commission authorized State aid estimated to EUR 3.08 trillion⁷⁵. Certain aid measures were co-financed by cohesion policy instruments, such as the Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+).

56. Several Member States notified “umbrella schemes” covering different sectors of the economy through different types of aid, including support targeted at small and medium-sized enterprises (SMEs). For example, France notified a EUR 7 billion umbrella scheme supporting SMEs. The scheme included several types of support, such as direct grants, loans with favorable interest rates and state guarantees for loans⁷⁶. A number of Member States, including Denmark, Bulgaria, Greece, Italy, Romania, Belgium and Slovakia notified aid supporting SMEs. Aid to SMEs was provided in various forms such

⁷² 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.

⁷³ This extension of the Temporary Framework sets out the conditions the Commission would apply to declare aid compatible with Article 107(3)(c) TFEU (“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”).

⁷⁴ The figure includes decisions, adopted under the exceptional legal basis supporting the Temporary Framework as well as under State aid rules applying in non-exceptional circumstances. It also includes subsequent amendments to previously adopted decisions.

⁷⁵ The amount includes State aid measures adopted under the Temporary Framework, all COVID-19 related State aid approved under other sets of State aid rules and adjusted amounts included in subsequent amendment decisions.

⁷⁶ Case SA.56985 (2020/N) France – COVID-19: Régime cadre temporaire pour le soutien aux entreprises, Commission Decision of 20.4.2020. See:

https://ec.europa.eu/competition/state_aid/cases1/202017/285598_2149988_102_2.pdf.

as tax deferrals (Denmark)⁷⁷, public guarantee schemes (Bulgaria)⁷⁸ and grants covering interest on existing debt obligations (Greece)⁷⁹.

57. Several Member States notified aid to support research, development, testing infrastructures and production of Coronavirus-related products⁸⁰. For example, Germany notified an umbrella scheme to support research, development, testing and production of Coronavirus-relevant products⁸¹.

58. The EU transport sector was severely hit by the global pandemic. 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-19 pandemic. A number of airlines benefitted from aid approved under the Temporary Framework (Article 107(3)(b) TFEU), including Air France, Lufthansa, SAS, Austrian Airlines, airBaltic, Blue Air, KLM, Nordica and Brussels Airlines⁸². Aid to airlines was also authorised under Article 107(3)(c) TFEU and the Guidelines on rescue and restructuring aid⁸³. For example, the Commission approved State aid to French airline Corsair. The airline's existing financial difficulties were aggravated by the coronavirus outbreak. Therefore, the State aid consisted of two separate measures; EUR 106.7 million in restructuring aid and EUR 30.2 million to compensate Corsair for damage caused by the coronavirus pandemic⁸⁴. Portuguese airline TAP did not qualify for aid under the Temporary Framework because the company was already in financial difficulty before 31 December 2019. However, the Commission approved a EUR 1.2 billion rescue loan to TAP⁸⁵. The Commission also approved schemes to compensate regional and local public transport companies for damage suffered because of lockdowns and other measures⁸⁶. In addition to transport, the Commission approved under Article 107(3)(b) TFEU measures adopted by Member States for firms particularly hit by the outbreak, for example in the

⁷⁷ Case SA.57027 (2020/N) Denmark COVID-19: Credit facility and tax deferrals linked to VAT and payroll tax, Commission Decision of 30.4.2020. See:

https://ec.europa.eu/competition/state_aid/cases1/202019/285826_2153371_56_2.pdf.

⁷⁸ Case SA.56933 (2020/N) Bulgaria COVID-19: intermediate SME loan guarantee program, Commission Decision of 8.4.2020.

See: https://ec.europa.eu/competition/state_aid/cases1/202015/285460_2146849_41_2.pdf

⁷⁹ Case SA.56839 (2020/N) Greece COVID-19: Support to SME loan obligations in the form of grants under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, Commission Decision of 8.4.2020. See:

https://ec.europa.eu/competition/state_aid/cases1/202016/285303_2147455_84_2.pdf.

⁸⁰ For instance Italy (SA.56786), Belgium (SA.57173 and SA.57057), France (SA.57367), Malta (SA.57204 and SA.57075) and Czechia (SA.56961 and SA.57071).

⁸¹ Case SA.57100 Germany – COVID-19: Federal Framework Aid for COVID-19 related R&D, investments in testing infrastructures and production, Commission Decision of 28.4.2021. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57100.

⁸² See respectively cases SA.57082, SA.57153, SA.57543 and SA.58342, SA.57539, SA.56943, SA.57026, SA.57116, SA.57586, SA.57544.

⁸³ 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.

⁸⁴ Case SA.58463 France – Restructuring aid for Corsair, Commission Decision of 11.12.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58463.

⁸⁵ Case SA.57369 COVID-19 – Aid to TAP, Commission Decision of 10.6.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57369.

⁸⁶ For example Case SA.57675 (2020/N) Germany COVID-19 – scheme for regional and local public passenger transport, Commission Decision of 7.8.2020. See:

https://ec.europa.eu/competition/state_aid/cases1/202033/287584_2180796_60_2.pdf.

tourism, culture, hospitality and retail sectors⁸⁷. The Commission also adopted a number of decisions under Article 107(2)(b) TFEU (aid to make good the damage caused by natural disasters or exceptional occurrences), for example to compensate damages to the self-employed, to subsidise companies' fixed costs and to compensate losses due to the cancellation of sports events⁸⁸.

59. The Commission approved under Article 107(3)(b) TFEU a range of State aid measures destined for specific areas of Member States. Germany, for instance, notified a EUR 46 billion fund ('BayernFonds') in the forms of guarantees, recapitalisation instruments and subsidised debt instruments for Bavaria to provide liquidity and capital support to enterprises⁸⁹. State aid measures were also approved for the Wallonia and Brussels regions of Belgium and the regions of Friuli Venezia Giulia and the South of Italy⁹⁰.

60. For the amounts approved by the Commission, there were substantial differences between Member States. These differences are partially explained by the diverging sizes of the Member States' economies. Approximately 51.5% of State aid approved was notified by Germany. Italy notified measures representing 14.7% of the entire approved State aid amount, whereas the aid notified by France represented 13.9% of the total. The aid notified by Spain represented 4.8% of the approved State aid amount, while the aid notified by Poland and Belgium corresponded to around 2% and 1.8% respectively. Aid notified by other Member States range between 0.01% and 1.5% of the total amount of EUR 3.08 trillion. It should be noted that the actual economic impact of these State aid measures depends on their implementation, not on their respective budgets.

61. Between mid-March 2020 and the end of the year, EUR 2.96 trillion in aid was approved but only some EUR 544 billion was actually spent. According to the preliminary data submitted by Member States, France has granted more than 25% of the total aid paid out (EUR 155.36 billion), followed by Italy with a disbursement rate of 19.8% (EUR 107.9 billion). Germany disbursed 19.1% of the total aid granted (EUR 104.25 billion) and Spain 16.7% (EUR 90.8 billion). Spain has disbursed the largest amount compared to its own GDP (7.3%), followed by France (6.4%), Italy (6.0%), Greece (4.4%), Malta (3.9%), Hungary (3.7%), Portugal (3.6%), Poland (3.6%) and Cyprus (3.5%). For all the 27 Member States level, the coronavirus-related State aid spending corresponded to approximately 3.9% of EU GDP.

⁸⁷ For example case SA.58214 Ireland – COVID-19 Adaptation Fund for the Re-Opening of Tourism and Hospitality businesses.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58214;

Case SA.57595 Croatia – State Aid Programme of the Ministry of Culture to Support the Economy in the Current COVID-19 Outbreak.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57595;

Case SA.59048 Denmark – COVID-19: Aid to cafés, restaurants, bars, nightclubs, venues & their suppliers, see:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_59048.

⁸⁸ Case SA.56791 Temporary compensation scheme for self-employed financially affected by the COVID-19, Commission Decision of 25.3.2021, see:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56791;

Case SA.57291 COVID-19 Compensation Scheme: Directive for fixed cost subsidies, Commission Decision of 23.5.2020.

See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57291;

Case SA.57614 Compensation scheme for sport organisations, facilities and cancellation of sport events related to COVID-19 (the "COVID – Sport Programme") – Czechia, Commission Decision of 22.7.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202030/286956_2175432_128_2.pdf.

⁸⁹ Case SA.57447 Germany – COVID-19 measures of the BayernFonds. See:

https://ec.europa.eu/competition/state_aid/cases1/202040/286247_2192300_93_2.pdf.

⁹⁰ Cases SA.57083, SA.57056, SA.58802 and SA.57005.

62. Member States also adopted measures that fall outside the scope of EU State aid control. Such measures included wage subsidies, suspensions of company taxes, VAT transfers and social welfare contributions.

3.2. State aid policy review

3.2.1. *Fitness check of State aid rules concluded*

63. In 2020, the Commission concluded the fitness check⁹¹ of the State aid rules that were adopted as part of the State Aid Modernisation (SAM) package. The Railway Guidelines⁹² and the Short-term export credit Communication (STEC)⁹³ were also included in the fitness check. Moreover, the Commission assessed whether these rules are still fit for purpose, in the light of the European Green Deal⁹⁴, the New Industrial Strategy⁹⁵ and the Digital Strategy⁹⁶.

64. The results of the fitness check were published in October 2020. The Commission concluded that the evaluated rules remain largely fit for purpose. However, certain provisions may need to be revised, clarified, simplified and adjusted to better reflect recent legislative developments, current priorities, changes in market conditions and technology

⁹¹ 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.

⁹² Communication from the Commission: Community guidelines on State aid for railway undertakings OJ C 184, 22.7.2008, p. 13-31.

⁹³ Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 392, 19.12.2012, p. 1-7.

⁹⁴ 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, 11.12.2019.

⁹⁵ 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: A New Industrial Strategy for Europe, COM(2020) 102 final, 10.3.2020.

⁹⁶ Shaping Europe's Digital Future, Commission Communication of 19.2.2020.

developments. The Commission has prolonged⁹⁷ the validity of these State aid rules until 31 December 2021⁹⁸. The rules would otherwise have expired at the end of 2020.

3.2.2. Review of State aid rules supporting the European Green Deal

65. The State aid guidelines relevant for the European Green Deal currently undergo a targeted revision to be finished by the end of 2021. These include the Regional aid Guidelines⁹⁹, the IPCEI Communication¹⁰⁰, the RDI Framework¹⁰¹, the Risk Finance Guidelines, the Environmental and Energy Guidelines (EEAG)¹⁰² as well as the relevant provisions in the GBER¹⁰³.

66. The amended Emission Trading System State aid Guidelines (ETS) entered into force on 1 January 2021 with the start of the new ETS trading period. The ETS guidelines enable Member States to compensate companies in sectors at risk of carbon leakage for part of the higher electricity prices resulting from the carbon costs imposed by the ETS (so-called indirect emission costs).

67. In November 2020, the Commission invited comments¹⁰⁴ from stakeholders on certain aspects of the Guidelines on State aid for environmental protection and energy. These Guidelines, whose validity was prolonged until 31 December 2021, were also evaluated as part of the fitness check. These Guidelines need to be adjusted in light of new technologies, novel support measures as well as recent environmental and energy legislation and policy.

68. In 2020, the Commission finalised the evaluation of the 2014 Communication on Important Projects of Common European Interest (IPCEI)¹⁰⁵, as part of the fitness check. The IPCEI Communication remains broadly fit for purpose but some targeted modifications may be warranted to ensure that the IPCEI rules fully support the Commission's main priorities, in particular the European Green Deal and the Digital

⁹⁷ Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the 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, Communication from the Commission: Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 224, 8.7.2020, p. 2-4.

⁹⁸ The following State aid rules were prolonged until 31 December 2023: General Block Exemption Regulation (GBER), De minimis Regulation, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. See also Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, OJ L 215, 7.7.2020, p. 3-7.

⁹⁹ Guidelines on regional State aid for 2014-2020, which entered into force on 1 July 2014, OJ C 209, 23.7.2013, p. 1.

¹⁰⁰ 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.

¹⁰¹ Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.

¹⁰² Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55.

¹⁰³ 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.

¹⁰⁴ Commission statement inviting comments on revision of Guidelines on State aid for environmental protection and energy, 12.11.2020.

¹⁰⁵ 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.

Strategy. The public consultation on a revised IPCEI Communication was launched in February 2021.

3.2.3. Stakeholder consultation on the Broadband State aid guidelines

69. In September 2020, the Commission launched a public consultation inviting Member States and stakeholders to provide their views and comments on the existing EU State aid rules on public support for the deployment of broadband networks¹⁰⁶. The 2013 Broadband State aid Guidelines enable Member States to provide support for the deployment of broadband networks, subject to certain conditions¹⁰⁷.

3.2.4. Evaluation of the SGEI package continued

70. In 2020, the Commission continued its evaluation of the package for Services of General Economic Interest (SGEI) adopted in 2012. The evaluation covers the SGEI Communication, the SGEI Decision, the SGEI Framework and the SGEI *de minimis* Regulation¹⁰⁸. The overall objective of the SGEI package is to support Member States' funding of SGEIs. The results of the evaluation are planned to be published in 2021.

3.2.5. Review of agricultural and fisheries State aid rules

71. The Commission continued its review of the agricultural and fisheries State aid rules. The review comprises the Agricultural Block Exemption Regulation (ABER)¹⁰⁹, the State aid Guidelines for agriculture, forestry and rural areas¹¹⁰, the Fisheries Block Exemption Regulation (FIBER)¹¹¹, the Regulation on *de minimis* aid in the fishery and aquaculture sector¹¹² and the State aid Guidelines for fishery and aquaculture¹¹³. The revised rules should start applying in 2023.

3.3. Significant State aid cases

3.3.1. Important Project of Common European Interest

72. In 2020 discussions took place between 12 Member States and the Commission for a second IPCEI covering the battery value chain. In December 2020, Austria, Belgium,

¹⁰⁶ Public consultation: Evaluation of State aid rules for broadband infrastructure deployment. See: https://ec.europa.eu/competition/consultations/2020_broadband/index_en.html.

¹⁰⁷ Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p. 1-25.

¹⁰⁸ Evaluation of State aid rules for health and social services of general economic interest (SGEI) and of the SGEI *de minimis* Regulation.

See: https://ec.europa.eu/competition/state_aid/legislation/evaluation_sgei_en.html.

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ 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.

¹¹² 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.

¹¹³ Commission Communication: Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

Croatia, Finland, France, Germany, Greece, Italy, Poland, Slovakia, Spain and Sweden jointly notified the second IPCEI on batteries for e-mobility and energy storage. The twelve Member States will provide up to EUR 2.9 billion in funding in the coming years. The public funding is expected to unlock an additional EUR 9 billion in private investments. The project complements the first IPCEI in the battery value chain approved in December 2019. In January 2021 the Commission authorised the second IPCEI for batteries¹¹⁴.

3.3.2. Action against selective tax advantages

73. The fight against tax evasion and tax avoidance remains high on the Commission's agenda. In 2020 the Commission continued the investigation of alleged State aid granted by the Netherlands to Inter IKEA, Starbucks and Nike. The Commission also investigated alleged aid granted by Luxembourg to Huhtamäki and by Belgium to 39 beneficiaries of the Belgian excess profit scheme.

74. In July 2020, the General Court annulled the Commission's decision of 2016, where the Commission found that two Irish tax rulings in favour of *Apple* constituted incompatible State aid. The General Court held that the Commission did not show to the requisite legal standard that Apple had been granted a selective economic advantage¹¹⁵. The General Court considered that the Commission failed to prove that the contested tax rulings were the result of discretion exercised by the Irish tax authorities. The Commission has appealed the judgment to the Court of Justice¹¹⁶.

3.4. Fostering a global competition culture

75. Despite the constraints imposed by the pandemic, the Commission continued to cooperate internationally¹¹⁷ both on multilateral and bilateral level.

76. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of World Trade Organisation's trade rules. To this effect, the EU, the US and Japan agreed in a common statement in January 2020 to strengthen the existing rules on industrial subsidies¹¹⁸. In 2020, the Commission continued its active engagement in international fora such as the OECD Competition Committee, the International Competition Network (ICN), the World Bank and the United Nations Conference on Trade and Development (UNCTAD).

¹¹⁴ State aid: Commission approves EUR 2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain, Commission press release of 26.1.2021. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_226. The non-confidential version of the decision will be made available under the case numbers SA.55855 (Austria), SA.55840 (Belgium), SA.55844 (Croatia), SA.55846 (Finland), SA.55858 (France), SA.55831 (Germany), SA.56665 (Greece), SA.55813 (Italy), SA.55859 (Poland), SA.55819 (Slovakia), SA.55896 (Spain), and SA.55854 (Sweden) in the State aid Register on the competition website. See: https://ec.europa.eu/competition/state_aid/register/.

¹¹⁵ Cases T-778/16 and T-892/16 State aid – Aid implemented by Ireland – Decision declaring the aid incompatible with the internal market and unlawful and ordering recovery of the aid – Advance tax decisions (tax rulings) – Selective tax advantages – Arm's length principle), judgments of 15.7.2020. See: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=228621&doclang=en>.

¹¹⁶ Statement by Executive Vice-President Margrethe Vestager on the Commission's decision to appeal the General Court's judgment on the Apple tax State aid case in Ireland, Commission statement of 25.9.2020. See: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1746.

¹¹⁷ See the Mission letter:

https://ec.europa.eu/commission/commissioners/sites/commcwt2019/files/commissioner_mission_letters/mission-letter-margrethe-vestager_2019_en.pdf.

¹¹⁸ Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, 14.1.2020. See: https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158567.pdf

77. In 2020 the Withdrawal Agreement between the European Union and the United Kingdom¹¹⁹ was applicable, including the provisions for State aid and competition cases. The Commission issued guidance concerning the application of the Withdrawal Agreement in competition matters¹²⁰. In December 2020, the negotiations on the EU-UK Trade and Cooperation Agreement (TCA)¹²¹ 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 UK is not distorted after the UK has left the EU.

78. In December 2020, the EU and China concluded in principle the negotiations for a Comprehensive Agreement on Investment (CAI)¹²². China committed to a greater level of market access for EU investors, including some new important market openings. 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.

79. When negotiating Free Trade Agreements (FTAs), the Commission endeavors to include comprehensive chapters on competition policy and State aid control. In 2020, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand and Uzbekistan.

80. In 2020, the Commission continued its technical cooperation on competition policy and enforcement with the EU's main trading partners. The Commission also continued assisting EU candidate countries and potential candidates to fulfil the necessary requirements in the competition field for a future accession to the EU.

White Paper on foreign subsidies

81. The EU economy is open and closely interlinked with the rest of the world. For this reason, the EU needs tools which ensure a fair business environment in the Single Market. 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 distortive impact on the internal market, but fall outside EU State aid control. To launch a debate on possible new tools to address the alleged regulatory gap, the Commission adopted a White Paper on foreign subsidies¹²³ in June 2020. An extensive consultation of stakeholders was carried out in 2020.

¹¹⁹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7.

¹²⁰ Notice to Stakeholders – Withdrawal of the United Kingdom and EU rules in the field of competition, Commission Notice of 2.12.2020. See: https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/eu-competition-law_en_0.pdf.

¹²¹ 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. See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_2020.444.01.0014.01.ENG.

¹²² EU-China Comprehensive Agreement on Investment – Agreement in Principle, 30.12.2020 See: https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159242.pdf.

¹²³ White Paper on levelling the playing field as regards foreign subsidies, COM(2020) 253 final, 17.6.2020.

4. Resources of competition authorities

4.1. Resources overall (current numbers and change over previous year):

4.1.1. Annual budget

82. In 2020, the total budget for competition law enforcement increased by 7 million euro to 117.4 million euro.

4.1.2. Number of employees (person-years):

83. On 31 December 2020, DG Competition employed 798 permanent staff members (including officials, temporary agents and administrative staff, excluding trainees and external service providers) and 84 staff members on fixed-term contracts compared to 779 and 80 staff members respectively at the end of 2019. Out of the 798 permanent staff members, 524 officials and temporary agents (that is to say excluding contractual agents) worked in competition enforcement compared to 516 at the end of 2019. Of the total staff 50% were lawyers, 30% economists, 10% lawyers and economists with mixed profiles. A further 10% have other education backgrounds.

4.2. Human resources (person-years) applied to:

84. In 2020, approximately 100 officials and temporary agents worked on dominance cases, 41 worked on anti-cartel cases, 67 worked in merger enforcement and 159 worked in State aid control. Moreover, 157 officials and temporary agents worked in policy support, human resources, for senior management, the Chief Economist team and for the public communications team. The remaining officials and administrative staff were engaged in administrative support, case support, research, auditing, planning and other activities.

5. Summaries of or references to new reports and studies on competition policy issues

5.1. Implementation report on Damages Directive

85. The Damages Directive¹²⁴ sets out rules to ensure that anyone who has suffered harm caused by an infringement of competition law can effectively exercise the right to claim full compensation before national courts.

86. In December 2020, the Commission submitted an Implementation Report to the Parliament and the Council as required in the Damages Directive¹²⁵. 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. Since the adoption of the Directive in 2014, the number of damages actions before national courts has

¹²⁴ 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.

¹²⁵ Article 20 Damages Directive.

increased and damages actions have become more widespread. The cumulative number of cases was 239 in 2019. These cases came from thirteen Member States¹²⁶.

5.2. Collective bargaining for the self-employed

87. Digital platforms affect the way people work. They provide access to work and greater flexibility but they can also lead to greater vulnerability for some workers. People who provide their services through digital platforms do not always fit into traditional employment categories and it is not always clear whether EU competition rules could act as a barrier to collective bargaining by workers. In June 2020, the Commission started to assess a possible need for measures at EU level providing increased legal certainty for the self-employed. In January 2021, the Commission published an inception impact assessment setting out the initial options for future action¹²⁷.

5.3. “Internet of Things” sector enquiry

88. To allow the Commission to gain a more comprehensive understanding of competition issues, market dynamics and business challenges for the “Internet of Things”, the Commission launched a sector inquiry in July 2020¹²⁸. The final report is foreseen in 2022.

5.4. Competition policy and sustainability policies working together

89. EU competition policy contribute to the EU’s environmental objectives and climate targets, including the decarbonisation of the economy and the shift from fossil fuels to alternative fuels. Therefore, the Commission issued in October 2020 a call for contributions on how competition rules and sustainability policies should work together¹²⁹. The Commission invited competition experts as well as representatives of academia, industry, environmental groups and consumer organisations to provide their views on how antitrust policy, merger policy and State aid policy should work together with environmental and climate policies. These contributions fed into a conference held in February 2021. A report is foreseen in 2021.

¹²⁶ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Spain, plus the United Kingdom.

¹²⁷ Inception Impact Assessment – Collective bargaining agreements for self-employed – scope of application of EU competition rules, 6.1.2021. See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules>.

¹²⁸ Commission Decision of 16.7.2020 initiating an inquiry into the sector for consumer Internet of Things related products and services pursuant to Article 17 of Council Regulation (EC) No 1/2003, COM (2020) 4754 final. See: https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf.

¹²⁹ Competition Policy supporting the Green Deal – Call for contributions, Commission memorandum of 13 October 2020. See: https://ec.europa.eu/competition/information/green_deal/call_for_contributions_en.pdf.