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**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in the European Union

-- 2021 --

This report is submitted by the European Union to the Competition Committee FOR INFORMATION.

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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 2021. More information can be found in the European Commission Report on Competition Policy 2021 and its accompanying Staff Working Document, as well as on the website of DG Competition<sup>1</sup>.

### **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 2021, 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 purpose of the on-going review of key antitrust and merger rules is to evaluate the rules in force and to adjust them where needed, keeping up with market developments that have transformed the way businesses operate, including the growth of e-commerce and online platforms.

##### ***1.1.1. Review of rules on vertical supply and horizontal cooperation***

3. In July 2021, the Commission launched a public consultation on the draft revised [Vertical Block Exemption Regulation \(VBER\)](#) and Vertical Guidelines<sup>2</sup>. The aim of the ongoing revision is to clarify and simplify certain provisions and fill in perceived regulatory gaps where the current rules may no longer be fit for purpose due to market developments such as the growth of online sales and the emergence of new types of platform undertakings. The Commission aims at having new rules in place when the current rules expire on 31 May 2022.

4. As regards the review of the EU competition rules on horizontal cooperation, the purpose of these rules is to make it easier for undertakings to cooperate in ways that are economically desirable and without adverse effect from the point of view of competition policy. In May 2021, the Commission published the findings of the evaluation<sup>3</sup> of the two horizontal block exemption regulations on Research & Development and specialisation agreements (abbreviated R&D BER and Specialisation BER respectively, together HBERs), together with the Horizontal Guidelines.

5. The evaluation showed that the rules on horizontal agreements remain useful tools for businesses. However, the evaluation identified several areas where the rules are not sufficiently adapted to digitisation and the pursuit of sustainability goals. Some of the provisions in the HBERs are viewed as rigid and complex, while others are considered unclear and difficult to interpret by companies. More specifically, the conditions for

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<sup>1</sup> See [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html).

<sup>2</sup> Public consultation on the draft revised Regulation on vertical agreements and vertical guidelines, from 09.07.2021 to 17.09.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-vber\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-vber_en)

<sup>3</sup> Commission Staff Working Document - Evaluation of the Horizontal Block Exemption Regulation, SWD (2021) 103, 6.5.2021.

exemption in the R&D BER may no longer be optimal for capturing pro-competitive R&D agreements and the scope of the Specialisation BER may be too narrow. Some provisions in the HBERs and Horizontal Guidelines are also considered unclear or overly strict. Finally, the Horizontal Guidelines offer little guidance on recent market developments such as digitisation, resilience and sustainability objectives in horizontal agreements (for example, they do not provide sufficient legal certainty for the self-assessment of agreements pursuing sustainability objectives and data sharing/data pooling agreements).

6. In July 2021, the Commission launched a public consultation on the policy options for the revision of the rules<sup>4</sup>. Since both regulations will expire on 31 December 2022. The Commission aims to have the new rules in place by this date.

7. In May 2021, the Commission published the findings of the evaluation on the functioning of the Motor Vehicle Block Exemption Regulation (MVBER)<sup>5</sup>. The Commission concluded that while the principles of the MVBER remain valid, the emergence of new technologies and the increasing role of data in this industry ought to be reflected in the Commission's guidance accompanying the MVBER. The current MVBER will expire on 31 May 2023. The Commission is currently reflecting on the follow-up to these findings, while also taking into account the ongoing review of the VBER.

### *1.1.2. Evaluation of the Market Definition Notice*

8. The Market Definition Notice<sup>6</sup> provides important guidance on how the Commission applies the concepts of relevant product and geographic markets in competition enforcement. In July 2021, the Commission published the results of the evaluation of the Market Definition Notice<sup>7</sup>. The Commission concluded that the principles of the Market Definition Notice, based on the case law of the EU courts, remain sound. However, they may not fully reflect recent developments in market definition practice, such as those related to digitisation. Areas where the Market Definition Notice might not be fully up-to-date include: (i.) the use and purpose of the SSNIP (small significant non-transitory increase in price) test in defining relevant markets; (ii.) digital markets, in particular with respect to products or services marketed at zero monetary price and to digital ecosystems; (iii.) assessment of geographic markets in conditions of globalisation and import competition; (iv.) quantitative techniques for market definition; (v.) calculation of market shares; and (vi.) non-price competition (including innovation). On the basis of the findings, the Commission has decided to review the Notice and will consult stakeholders on the draft of the revised Market Definition Notice in 2022.

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<sup>4</sup>Public consultation - Horizontal agreements between companies, 13.7.2021 to 5.10.2021. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules/public-consultation_en)

<sup>5</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, pp. 1–7.

<sup>6</sup> Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, pp. 5–13.

<sup>7</sup> Commission Staff Working Document, Evaluation of the Commission Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997, SWD(2021) 199, 12.7.2021. See: [https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation\\_market-definition-notice\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2021-07/evaluation_market-definition-notice_en.pdf)

### ***1.1.3. Draft Guidelines published on the application of competition law to collective agreements for self-employed persons***

9. Some self-employed persons have little influence over their payment and working conditions. Collective bargaining can be an important tool to achieve better terms but some self-employed individuals can be considered “undertakings” and collective agreements may therefore be captured by the EU competition rules. To address this issue, the Commission consulted all stakeholders on different policy options in January 2021, first with an inception impact assessment, and then with a detailed questionnaire in March 2021<sup>8</sup>. On 9 December 2021, the Commission published for consultation draft Guidelines on the application of EU competition law to collective agreements regarding the working conditions of self-employed persons<sup>9</sup>.

### ***1.1.4. Evaluation of the procedural and jurisdictional aspects of EU merger control and further guidance on Article 22***

10. The objective of the evaluation of the procedural and jurisdictional aspects of EU merger control was to analyse how certain merger rules have worked under evolving market conditions. In March 2021, the Commission published the findings of the evaluation<sup>10</sup>. The Commission concluded that the turnover-based jurisdictional thresholds combined with the referral mechanism had generally proved to be effective in capturing relevant transactions in the EU Single Market. However, recent market developments have resulted in a gradual increase in acquisitions of firms that play or may develop into playing a decisive competitive role, despite generating little or no turnover at the time of the merger. The evaluation concluded that, in certain cases, transactions with a potential negative impact on competition were reviewed neither by the Commission, nor by any Member State. This included in particular acquisitions targeting nascent firms with competitive potential and innovative firms including in - but not limited to - the digital, pharmaceutical, biotechnology and certain other industrial sectors. The value of the target firm was not always sufficiently correlated to the transaction's potential anti-competitive effects.

11. In March 2021 the Commission adopted a communication providing guidance on how to apply the referral mechanism between Member States and the Commission as set out in Article 22 of the Merger Regulation<sup>11</sup> in the specific circumstances where the turnover-based thresholds do not reflect the competitive potential of the target and where

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<sup>8</sup> Collective bargaining agreements for self-employed – scope of application EU competition rules, consultation period 5.3.2021 – 31.5.2021. 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/public-consultation\\_en](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/public-consultation_en)

<sup>9</sup> Communication from the Commission Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons, 9.12.2021 C(2021) 8838 final ANNEX. The draft Guidelines are part of a package of initiatives by the Commission also including a proposal for a Directive on improving working conditions in platform work and a Communication on harnessing the full benefits of digitisation for the future of work.

<sup>10</sup> Commission Staff Working Document, Evaluation of procedural and jurisdictional aspects of EU merger control, SWD(2021) 66 final, 26.3.2021.

<sup>11</sup> Communication from the Commission: Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, OJ C 113, 31.3.2021, pp. 1–6.

the transaction is not notifiable to any Member State under national law. The Commission intends to encourage and accept more referrals under Article 22 of the Merger Regulation<sup>12</sup>.

## 1.2. Other relevant measures, including new guidelines

### *1.2.1. Adjusting DG Competition to current and future enforcement needs*

12. The Commission recognises the digital transformation as a major political priority for its current mandate (Europe Fit for the Digital Age), not only for driving change in markets but also for enabling public sector modernisation. In 2021, DG Competition elaborated on and endorsed a comprehensive internal Digital Strategy, which will make DG Competition's investigatory processes and other activities more efficient. Moreover, the Digital Strategy will strengthen EU competition law enforcement by investing in state-of-the-art digital solutions and by modernising DG Competition's case management systems, notably by launching CASE@EC for State aid and document management. The Digital Strategy is firmly anchored in the European Commission's overall Digital Strategy that transforms the Commission into a digitally-enabled, user-focused and data-driven organisation.

13. DG Competition is developing and improving digital solutions supporting the interaction between external stakeholders such as NCAs, companies active in the Single Market, law firms and private citizens. In this context, DG Competition launched in 2021 three new digital solutions; State Aid Reporting Interactive (SARI2), eConfidentiality and eRFI. DG Competition also initiated a project to revamp case-related information published on the EUROPA website, with the aim to better access, search and export public data on competition policy (including State Aid, Antitrust and Merger cases and decisions). Given the sensitive and confidential nature of the information DG Competition handles, IT security plans for new as well as existing digital solutions have been drafted or updated. The necessary safety and monitoring measures are being implemented to enhance cyber security and cyber resilience.

14. In 2021, DG Competition continued investing in corporate intelligence, advanced data and machine learning services and solutions to support investigations. A dedicated unit conducts intelligence and investigative analyses and provides forensic IT support. Moreover, the unit collects and analyses information from publicly available sources and gathers information of potential investigative interest for the detection of new cases.

### *1.2.2. The Single Market Programme*

15. The Single Market Programme (SMP) was adopted in April 2021<sup>13</sup>. With a budget of EUR 4.2 billion over the period 2021-2027, the SMP provides financial support to strengthen the governance and the functioning of the Single Market and includes a

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<sup>12</sup> Article 22 of the Merger Regulation allows Member States to ask the Commission to examine any concentration that does not have an EU dimension, but which affects cross-border trade and threatens to significantly affect competition within the territory of the Member State(s) making the request, irrespective of whether such transaction is notifiable under the national merger control rules of the referring Member State(s).

<sup>13</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 (Text with EEA relevance), OJ L 153, 3.5.2021, pp. 1–47. The Regulation applies retroactively, from 1 January 2021.

competition component, that is to say a dedicated budget for competition policy. With a budget of EUR 20.4 million for 2021, the SMP supported an effective and up-to-date enforcement of EU competition policy. Funds were also used for cooperation and partnerships with public administrations in the EU and worldwide as well as competition advocacy measures.

### 1.3. Proposals for new legislation

#### *1.3.1. Digital Markets Act and Digital Services Act*

16. Forming part of the EU Digital Strategy<sup>14</sup> to tackle systemic digital challenges such as the spread of cyber threats, hate speech, disinformation, limited competition and fairness in digital markets, the Commission presented two legislative proposals in December 2020, namely the Digital Services Act (DSA)<sup>15</sup> and the Digital Markets Act (DMA)<sup>16</sup>. The DMA proposes a series of directly applicable obligations for firms acting as important gatekeepers for businesses and consumers in the Single Market. The DMA remained a top legislative priority in 2021 as demonstrated by the adoption of the co-legislators' respective mandates in November and December 2021<sup>17</sup>.

#### *1.3.2. Regulation on Foreign Subsidies*

17. In May 2021, the Commission tabled a proposal for a Regulation on foreign subsidies distorting the internal market<sup>18</sup>. While aid granted by EU Member States is closely scrutinized, subsidies granted by countries outside the EU to companies active in the EU go largely unchecked. The proposal includes three tools: (i.) proposed concentrations where the target company has an EU turnover of at least EUR 500 million and the foreign financial contribution exceeds EUR 50 million, would have to be notified to the Commission; (ii.) bids in EU public procurement procedures involving foreign financial contributions where the value of the procurement is at least EUR 250 million would have to be notified to the Commission; and (iii.) the Commission would be empowered to investigate ex-officio other market situations, including smaller concentrations and smaller public procurement procedures. Under the proposed Regulation, the Commission would be able to investigate subsidies granted by foreign

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<sup>14</sup> Shaping Europe's Digital Future, Commission publication of 19.2.2020, ISBN 978-92-76-16362-6.

<sup>15</sup> 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.

<sup>16</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.

<sup>17</sup> Press release, "Regulating 'big tech': Council agrees on enhancing competition in the digital sphere", 25 November 2021, available at <https://www.consilium.europa.eu/en/press/press-releases/2021/11/25/regulating-big-tech-council-agrees-on-enhancing-competition-in-the-digital-sphere/>; and press release, "Digital Markets Act: Parliament ready to start negotiations with Council", 15 December 2021, available at <https://www.europarl.europa.eu/news/en/press-room/20211210IPR19211/digital-markets-act-parliament-ready-to-start-negotiations-with-council>.

<sup>18</sup> Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market, COM(2021) 223 final, 5.5.2021.



States to firms active in the EU and redress – when appropriate – the distortive effects caused by such State support<sup>19</sup>.

## 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*

18. In 2021, under Executive Vice-President Vestager’s leadership, competition policy continued to play an important role in the EU’s response to the crisis, demonstrating its in-built ability to react swiftly to sudden changes in the economy. In State aid, the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“Temporary Framework for State aid measures”)<sup>20</sup> enabled necessary and proportionate support by Member States to otherwise viable businesses that ended up in jeopardy because of the pandemic. The Commission also laid out a path for a progressive phase-out of pandemic-related crisis measures under the Temporary Framework for State aid measures, accompanied by measures to kick start and crowd in private investment.

19. In 2021, the Commission continued to increase the efficiency of its operations in competition policy enforcement. DG Competition continued its efforts to digitise its case handling processes. The year also brought major changes in deploying financial resources directly to competition policy enforcement by means of a dedicated operational budget. The Single Market Programme (SMP)<sup>21</sup> and its component for competition policy, with a budget of EUR 20.4 million for 2021, provides stable financing of measures enhancing the Commission’s enforcement capacity, policy initiatives, international cooperation as well as competition policy advocacy. DG Competition’s Communications Strategy supports the Executive Vice President’s ambition to pro-actively communicate the benefits of competition policy in a clear, consistent and continuous manner.

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<sup>19</sup> The Commission would have exclusive competence to enforce the Regulation. When the negative effects of the foreign subsidy outweigh its positive effects, the Commission will have the power to impose redress measures or accept commitments to remedy the distortion. Such measures and commitments include a range of structural or behavioural remedies, such as the divestment of certain assets or the prohibition of a certain market behaviour. The Commission will also have the power to prohibit a subsidised concentration or the award of a public procurement contract to a subsidised bidder.

<sup>20</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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

<sup>21</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 (Text with EEA relevance), OJ L 153, 3.5.2021, p. 1–47. The Regulation applies retroactively, from 1 January 2021.

20. The Commission's strong cartel enforcement record in 2021 shows its continued determination to vigorously fight cartels and to protect the competitive process during the recovery period. In 2021, the Commission adopted 10 decisions and imposed a fines totalling EUR 1746 million. The decisions covered numerous sectors such as financial markets, railway transport services, car emissions, food and biofuels. The Commission was also able to gradually resume its inspection activities that had been temporarily suspended for sanitary and logistic reasons during the earlier phase of the pandemic.

### *2.1.2. Important judgements by the European Union Courts*

21. In 2021, the Union Courts issued a comparatively small number of judgments concerning the Commission's cartel enforcement compared to the situation a few years ago. However, the overwhelming majority of judgments issued fully confirmed the Commission's cartel enforcement practice. This included a confirmation from the CJEU of the Commission's practice of conducting hybrid settlement proceedings. The courts also confirmed that Article 101 TFEU and Article 53 of the EEA Agreement provide the Commission with jurisdiction to review cartels that operate worldwide.

#### *Shopping comparison services*

22. In June 2017, the Commission fined *Google* EUR 2.42 billion for abuse of its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service<sup>22</sup>. Google's comparison-shopping function for Europe is a product that allows consumers to compare products and prices online and find deals from online retailers, including online shops of manufacturers, platforms (such as Amazon and eBay), and other re-sellers. In 2008, Google adopted a strategy to push its own comparison shopping service. Because of Google's illegal practices, traffic to Google's comparison shopping service increased substantially, while competing comparison shopping services suffered substantial traffic losses on a lasting basis. Following the Commission's decision, Google amended the so-called shopping box to allow third-party comparison-shopping services to feature in the box. In November 2021, the General Court largely upheld the Commission's decision<sup>23</sup>.

#### *Procedural rights in Commission investigations and the Commission's jurisdiction*

23. In a judgment concerning the *Steel Abrasives* cartel<sup>24</sup>, the CJEU held that the Commission had not breached a company's defence rights by referring to it in a settlement decision that predated its sanctioning in a decision taken in ordinary procedure (staggered hybrid settlement case). In the CJEU's view, the Commission did not breach the presumption of innocence and the principle of impartiality. The CJEU agreed with the General Court that the Commission had taken "sufficient precautions" in its drafting, stating "unequivocally" that the settlement decision was not addressed to the appellant and that it referred to the company where it was necessary to do so to establish the liability of the other members of the cartel.

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<sup>22</sup> Case AT.39740, *Google Search (Shopping)*. See: [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39740/39740\\_14996\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf).

<sup>23</sup> Judgment of the General Court of 10.11.2021, *Case T-612/17, Google LLC and Alphabet, Inc. v European Commission*, EU:T:2021:763.

<sup>24</sup> Judgment of the Court of Justice of 18.3.2021, C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

24. In two judgments concerning the *Capacitors* cartel<sup>25</sup>, the General Court confirmed the Commission's territorial jurisdiction in the application of Article 101 TFEU and Article 53 of the EEA Agreement. The applicants contested the Commission's territorial jurisdiction, namely on the ground that the anticompetitive conduct was Asia-oriented and was neither implemented nor had a significant effect in the EEA<sup>26</sup> and refuting any relevant link to the EEA<sup>27</sup>.

25. According to the General Court, the conditions for the territorial application of Article 101 TFEU and Article 53 of the EEA Agreement are satisfied in two situations: in the first place, where the practices covered by that article are implemented in the territory of the internal market, irrespective of the place where they were formed<sup>28</sup> and, in the second place, where it is foreseeable that those practices will have an immediate and substantial effect in the internal market<sup>29</sup>.

26. The General Court stated that the criterion of the implementation of the cartel is satisfied by, among other things, mere sales within the European Union of the product that is the subject of the cartel, irrespective of the location of the sources of supply and the production plants<sup>30</sup>.

#### *Liability for cartel conduct*

27. In a judgment concerning the *Power Cables* cartel, the CJEU confirmed the Commission's and the General Court's interpretation of the concept of 'parental liability' for attributing liability for a company's cartel conduct to its parents<sup>31</sup>.

28. The CJEU confirmed that the Commission was entitled to rely on the *AKZO* presumption of a parent exercising decisive influence over a subsidiary not only in a situation where it held all or virtually all the capital of the subsidiary, but also where it held all the voting rights associated with its subsidiary's shares<sup>32</sup>. In the same judgment, the CJEU also confirmed that the Commission was right to rely on personal links concerning the board composition of the subsidiary when finding that a parent company exercised decisive influence. Such personal links could indeed be found even in situations where a

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<sup>25</sup> Judgments of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, EU:T:2021:635 and T-363/18, *Nippon Chemi-Con v Commission*, EU:T:2021:638.

<sup>26</sup> Judgment of the General Court of 29.9.2021, T-363/18, *Nippon Chemi-Con v Commission*, para. 71, EU:T:2021:638.

<sup>27</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 73, EU:T:2021:635.

<sup>28</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 75, EU:T:2021:635.

<sup>29</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 77, EU:T:2021:635.

<sup>30</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, para. 76, EU:T:2021:635.

<sup>31</sup> Judgment of the Court of Justice of 27.1.2021, C-595/18 P, *The Goldman Sachs Group v Commission*, EU:C:2021:73.

<sup>32</sup> Judgment of the Court of Justice of 27.2.2021, Case C-595/18 P, *The Goldman Sachs Group Inc. v European Commission*, paras. 29-42, EU:C:2021:73.

member of a company's board is connected to another company through 'previous advisory services' or 'consultancy agreements'<sup>33</sup>.

29. In the *Retail Food Packaging cartel*, the CJEU confirmed settled case law on the presumption of effective exercise of decisive influence of a parent company over its controlled operating companies and further confirmed the Commission's cartel enforcement practice in this respect<sup>34</sup>.

### *Setting of fines*

30. In a judgment concerning the Steel Abrasives cartel, the CJEU set aside a part of the General Court's judgment that reduced the original fine from EUR 6.2 million to EUR 3.87 million<sup>35</sup>. In the CJEU's view, the General Court had violated the principle of equal treatment and failed to state proper reasons when it applied a 75% discount under point 37 of the Commission's Guidelines on Fines<sup>36</sup> to the appellant – a discount that was identical to that given to a different company. The CJEU held that the General Court had failed to set out the reasons why, despite that difference in situation, it was consistent with the principle of equal treatment to grant the appellant a rate of reduction identical to that granted to the other company<sup>37</sup>.

31. In a judgment concerning the *Capacitors* cartel, the General Court confirmed the Commission's decision to increase the fine, since the company had been held liable for a similar infringement in the past<sup>38</sup>. The Commission found that, notwithstanding the fact that that first infringement had been penalised when the infringement found in *Capacitors* cartel was ongoing, it was necessary to apply an increase in the basic amount of the fine on account for repeated infringement, and, consequently, to take into account the entire period of the company's liability for the infringement, including a period of almost nine months preceding the adoption of the original DRAMs decision<sup>39</sup>. The General Court considered that the company had already been found to have committed an infringement and that, despite that finding and the penalty imposed, it had continued to participate for almost two years in another similar infringement<sup>40</sup>.

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<sup>33</sup> Judgment of the Court of Justice of 27.2.2021, Case C-595/18 P, *The Goldman Sachs Group Inc. v European Commission*, paras. 89-104, EU:C:2021:73.

<sup>34</sup> Judgment of the Court of Justice of 15.4.2021, C-694/19 P, *Italmobiliare SpA and Others v European Commission*, EU:C:2021:286.

<sup>35</sup> Judgment of the General Court of 18. 3.2021, Case C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

<sup>36</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, *OJ C 210, 1.9.2006, p. 2–5*.

<sup>37</sup> Judgment of the General Court of 18.3.2021, Case C-440/19 P, *Pometon v Commission*, paras. 145-154, EU:C:2021:214.

<sup>38</sup> Judgment of the General Court of 29.9.2021, T-341/18, *NEC v Commission*, EU:T:2021:634.

<sup>39</sup> Case COMP/38.511 – *DRAMs*.

<sup>40</sup> Judgment of the General Court of 16.12.2004, Case T-341/18, *Carlo De Nicola v European Investment Bank*, EU:T:2004:367.

32. The General Court, in another judgment concerning the *Capacitors* cartel<sup>41</sup>, also confirmed that the Commission did neither infringe the principle of *ne bis in idem*<sup>42</sup> nor the principle of proportionality when applying a deterrence factor of 16% despite there already having been substantial fines imposed in other jurisdictions.

33. In the *Retail Food Packaging* cartel case, the president of the General Court issued a court order dismissing an application for interim measures seeking the suspension of a Commission decision against CCPL, and ordering it to pay fines of EUR 9.44 million. The Commission had re-imposed a significantly lower fine on CCPL following an earlier successful appeal by the company concerning lack of sufficient reasoning regarding the company's ability to pay the fine. In his court order, the president of the General Court stated that any appeal against the revised Commission decision was unlikely to be successful, as the Commission appeared to have conducted a sufficient analysis of CCPL's financial situation<sup>43</sup>.

#### *Payment of cartel fines*

34. In the *Commission v Printeos*<sup>44</sup>, concerning the Envelopes cartel, the CJEU dismissed the Commission's appeal and upheld the judgment of the General Court, ruling that the Commission is obliged to pay default interest when reimbursing a competition fine provisionally paid by an addressee who contested it, and which is later annulled or decreased by the courts. Printeos was entitled to receive: 1) a default interest from the date the fine was provisionally paid until the date of its repayment to Printeos (at ECB refinancing rate plus 2 %); and 2) a compound default interest on the above amount of default interest from the date Printeos lodged its action before the General Court (i.e. ordering payment of interests on an unpaid default interest, at ECB refinancing rate plus 3.5 %).

#### *Application of the Commission's Leniency Notice*

35. In a judgment concerning the *Car Battery Recycling* cartel, the CJEU confirmed the Commission's and the General Court's interpretation of the Commission's 2006 Leniency Notice<sup>45</sup>. The CJEU held that the concept of 'partial immunity' should apply only to undertakings that adduce evidence concerning new facts previously unknown to the Commission. A mere strengthening of evidence already in the Commission's possession was insufficient for a company to obtain partial immunity<sup>46</sup>.

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<sup>41</sup> Judgment of the General Court of 29.9.2021, T-342/18, *Nichicon v Commission*, paras. 512 – 520, EU:T:2021:635.

<sup>42</sup> The principle of *ne bis in idem* refers to the prohibition of double jeopardy. Literally translated *ne bis in idem* means 'not twice about the same'.

<sup>43</sup> Order of the President of the General Court of 22.7.2021, T-130/21 R, *CCPL v Commission*; OJ C 391, 27.9.2021, p. 18; the main proceedings are still pending.

<sup>44</sup> Judgment of the Court of Justice of 20.1.2021, C-301/19 P, *Commission v Printeos*, EU:C:2021:39.

<sup>45</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases (2006/C 298/11), OJ C 298, 8.12.2006, p. 17–22.

<sup>46</sup> Judgment of the Court of Justice of 3.6.2021, C-563/19 P, *Recylex and others v Commission*, EU:C:2021:428, paras. 27-43.

36. Along similar lines, the CJEU confirmed in a judgment concerning the *Retail Food Packaging cartel*<sup>47</sup> the Commission's and General Court's position that the appellant in that case did not qualify for immunity under the Commission's 2006 Leniency Notice, as another company first provided the Commission with information enabling it to conduct an unannounced inspection.

37. In a judgment concerning the *Capacitors cartel*<sup>48</sup>, the General Court confirmed the Commission's practical application of the concept of 'partial immunity'. In this case, the applicant provided the Commission with additional information allowing it to extend the duration of the infringement, and, in return, the Commission granted partial immunity to the applicant for the extended time period, thereby reducing the duration multiplier used for the applicant accordingly. However, the Commission did not reduce the applicant's gravity multiplier. In its judgment, the General Court confirms the Commission's conclusion that the evidence submitted by the applicant had no impact on the gravity of the infringement.

#### *Private enforcement of EU Competition Law*

38. On 15 July 2021, the CJEU rendered its judgement in case *RH vs Volvo*<sup>49</sup>. Supplementing the 2019 case *Tibor-Trans v. DAF Trucks*<sup>50</sup>, the judgment provided detailed guidance on how to allocate jurisdiction over cartel damages claims under Article 7(2) of the Regulation No 1215/2012<sup>51</sup> Brussels I Recast. A legal or natural person domiciled in a Member State may be sued in another Member State before the courts for the place where the harmful event occurred or may occur. Consequently, in an action for damages caused by an infringement of Article 101 TFEU, the place where the damage occurred is situated in the Member State of the market affected by that infringement in which additional costs were incurred. The CJEU pointed out that two criteria should be applied to identify the competent court in the Member States. First, if the undertaking that has been harmed purchased the goods affected by the collusion exclusively within the jurisdiction of a single court, that court has jurisdiction. Secondly, if purchases were made in several places, each undertaking that has been harmed can bring the action before the court for the place where the claimant has its registered office.

39. In its judgment of 6 October 2021, the CJEU dealt with a question for a preliminary ruling submitted by a Spanish court in case *Sumal*<sup>52</sup>. The judgment clarifies, among other things that, the functional concept of an undertaking is applicable both in the public and the private enforcement of EU competition law. In follow-on actions for damages, a fully-

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<sup>47</sup> Judgment of the Court of Justice of 15.4.2021, C-694/19 P, *Italmobiliare and others v Commission*, EU:C:2021:286.

<sup>48</sup> Judgment of the General Court of 29.9.2021, Case T-344/18, *Rubycon v Commission*, EU:T:2021:637.

<sup>49</sup> Judgment of the Court of Justice of 15.7.2021, C-30/20, *RH v Volvo AB*, EU:C:2021:604.

<sup>50</sup> Judgment of the Court of Justice of 29.9.2019, C-451/18, *Tibor-Trans v DAF Trucks*, EU:C:2019:635.

<sup>51</sup> Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32.

<sup>52</sup> Judgment of the Court of Justice (Grand Chamber) of 6.10.2021, C-882/19, *Sumal, S.L. v Mercedes Benz Trucks España, S.L.*, EU:C:2021:800.

owned subsidiary may be held liable for an infringement of EU competition law of its parent company, on the condition that they form an economic unity. The decisive criterion to identify an economic unity is an uniform behaviour on the market. The CJEU clarified that the delineation of economic unity is based on a two-step test: (i) the economic, organisational and legal links and (ii) the special link between the economic activity of the subsidiary and the subject matter of the parent's infringement. It is on the claimant to prove both links. In light of the functional concept of an undertaking, a parent company can be part of several economic units.

40. On 11 November 2021, the CJEU rendered a judgment in the case *Stichting Cartel Compensation*<sup>53</sup>, confirming that a national court has the power to find an infringement of Article 101 TFEU and to award antitrust damages also for the period when the Commission did not have at its disposal effective powers for the enforcement of EU competition law. The preliminary questions referred to the Court arose in a dispute concerning damage claims in respect of conduct in the air transport sector, that had occurred prior to the application of the rules implementing Article 101 TFEU. At the relevant time the transitional regime of Articles 104 and 105 TFEU applied. In the underlying decision concerning the same conduct (*Airfreight*)<sup>54</sup> the Commission had decided that it could not apply Article 101 TFEU to the conduct for the time period covered by the transitional regime.

### 2.1.3. Significant cases

#### *Cartels*

41. In April 2021<sup>55</sup>, the Commission adopted a decision against *Bank of America Merrill Lynch, Crédit Agricole, Credit Suisse* and *Deutsche Bank* for taking part in a cartel concerning Supra-sovereign, Sovereign and Agency bonds denominated in US Dollars (USD SSA bonds). The Commission imposed fines totalling EUR 28.494 million against these banks, except *Deutsche Bank*, which revealed the existence of the cartel and received full immunity under the leniency procedure.

42. In May 2021, the Commission fined *Bank of America, Natixis, Nomura, UBS, UniCredit* and *WestLB* (now *Portigon*)<sup>56</sup> a total of EUR 371 million in respect of a cartel in the primary and secondary market for European Government Bonds (EGB). *RBS* (now *NatWest*) was not fined as it received full immunity under the leniency procedure for revealing the cartel.

43. Furthermore, in July 2021, the Commission took a decision against five car manufacturers *Daimler, BMW, Volkswagen, Audi* and *Porsche*<sup>57</sup>. The Commission imposed fines totalling EUR 875 million against these car manufacturers for restricting technical development in the area of emission cleaning technology for diesel cars. *Daimler*

<sup>53</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_661](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_661).

<sup>54</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-03/cp220053en.pdf>.

<sup>55</sup> Case AT.40346 *Sovereign and Agency bonds*, see: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2004](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2004)

<sup>56</sup> Case AT.40324 *European Governments Bonds*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2565](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2565)

<sup>57</sup> Case AT. 40178 *Car emissions*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3581](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3581)

was not fined because it revealed the existence of the cartel. All companies acknowledged their involvement in the cartel and agreed to settle the case.

44. In April 2021, in the railway transport services<sup>58</sup>, the Commission sanctioned *Österreichische Bundesbahnen (ÖBB)*, *Deutsche Bahn (DB)* and *Société Nationale des Chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen (SNCB)* for their participation in a customer allocation cartel, which concerned cross-border rail cargo transport services on so-called blocktrains on key EU rail corridors. The three companies admitted their involvement in the cartel and agreed to settle the case. The Commission fined DB and SNCB a total of EUR 48 million, while ÖBB received full immunity.

45. In the agri-food sector, in November 2021, the Commission fined *Conserve Italia Soc. coop. agricola* and its subsidiary *Conserves France S.A.* (together ‘*Conserve Italia*’)<sup>59</sup>, totalling EUR 20 million. The decision follows an earlier settlement decision adopted in September 2019 against three other undertakings for participating in the same cartel. *Conserve Italia* decided not to settle the case and, as a result, the Commission's investigation against *Conserve Italia* continued under the standard cartel procedure. For more than 13 years, from 2000 to 2013, *Conserve Italia* and the other cartel participants set prices, agreed on market shares and volume quotas, allocated customers and markets, exchanged commercially sensitive information, and coordinated their replies to tenders.

46. In December 2021, the Commission concluded its investigation into the Foreign Exchange spot trading market<sup>60</sup>. The Commission fined *Barclays*, *RBS HSBC* and *Credit Suisse* a total amount of EUR 344 million (which came on top of the EUR 1.07 billion that had already been imposed in the two earlier Forex cases). *UBS* was not fined as it received full immunity under the leniency procedure for revealing the existence of the cartels.

47. In December 2021, the Commission fined *Abengoa S.A.* and its subsidiary *Abengoa Bionenergía S.A.*<sup>61</sup>, EUR 20 million for participation in a cartel concerning the wholesale price formation mechanism in the European ethanol market. Biofuels can contribute to promote cleaner transport and reduce greenhouse gas emissions and therefore play a key role in the green transition.

### *Abuse of Dominance*

48. In a market for pharmaceutical products, the Commission in February 2021 accepted a set of commitments offered by *Aspen*<sup>62</sup>, following an investigation into *Aspen*'s alleged excessive pricing. *Aspen* agreed to reduce its prices by 73% on average across Europe (except Italy) for six medicines that are essential to treat serious forms of blood cancer, including myeloma and leukaemia. These price reductions will save substantial

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<sup>58</sup> Case AT.40330 *Rail cargo*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_1843](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1843)

<sup>59</sup> Case AT.40127 *Canned vegetables*, see [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6164](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6164)

<sup>60</sup> Case AT.40135 *FOREX*, see [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40135](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40135)

<sup>61</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>62</sup> Case AT.40394, *Aspen*, Commission Decision of 10.2.2021 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement, C(2021) 724 final.



amounts for EU health systems and will ensure that these medicines remain available on the market.

49. In March 2021, the Commission opened a formal antitrust investigation to determine whether *Teva* had abusively blocked or delayed the entry of new firms competing with *Teva*'s blockbuster drug Copaxone to the detriment of patients and health systems<sup>63</sup>.

50. In March 2021 the Commission opened a formal investigation to assess whether the power exchange *EPEX Spot SE* has been taking advantage of its dominant position to hinder the activities of competitors on the market for electricity intraday trading facilitation services in at least six Member States (Austria, Belgium, France, Germany, Luxembourg and the Netherlands)<sup>64</sup>. This behaviour, if proven, may be contrary to Article 102 TFEU as it may distort the prices of electricity trading, and could ultimately lead to higher electricity prices for consumers and a slowdown in the greening of the electricity system by preventing the cost-effective integration of renewable technologies in the electricity mix.

51. In April 2021, the Commission issued a Statement of Objections to *Apple* provisionally finding that *Apple* distorted competition in the music streaming market as it abused its dominant position for the distribution of music streaming apps through its App Store<sup>65</sup>. The Commission takes issue with the mandatory use of *Apple*'s own in-app purchase mechanism imposed on music streaming app developers to distribute their apps via *Apple*'s App Store. The Commission is also concerned that *Apple* applies certain restrictions on app developers preventing them from informing iPhone and iPad users of alternative, cheaper purchasing possibilities.

52. In June 2021, the Commission opened a formal antitrust investigation to assess whether *Facebook* violated EU competition rules by using advertising data gathered from, in particular, advertisers to compete with them in markets where *Facebook* is also active, for example classified ads<sup>66</sup>. The Commission has concerns that *Facebook* uses data from competing providers when advertising on *Facebook*'s social network to give *Facebook Marketplace* a competitive advantage. The formal antitrust investigation will also assess whether or not *Facebook* ties *Facebook Marketplace*, the company's online classified ads service, to its own social network. The Commission will examine if the way *Facebook Marketplace* is embedded in the social network is a form of anti-competitive tying that gives the company an advantage when reaching customers and forecloses competing online classified ads services.

53. In June 2021, the Commission opened a formal antitrust investigation into the online advertising sector. The Commission is investigating whether *Google* favoured its own online display advertising technology in the ad-tech supply chain for the benefit of *YouTube* and to the detriment of competing providers of advertising technology services,

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<sup>63</sup> Case AT.40588, *Teva Copaxone*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>64</sup> Case AT.40700 - Intraday trading of wholesale electricity.

<sup>65</sup> Case AT.40437, *Apple - App Store Practices (music streaming)*. See: [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_21\\_2093](https://ec.europa.eu/commission/presscorner/detail/en/speech_21_2093)

<sup>66</sup> Case AT.40684, *Facebook leveraging*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

advertisers and online publishers<sup>67</sup>. Moreover, the formal investigation will examine whether Google is distorting competition by restricting access by third parties to user data for advertising purposes on websites and apps, while reserving such data for its own use. The Commission's investigation focuses on display advertising where Google offers a number of services to advertisers as well as to publishers.

## 2.2. Mergers and acquisitions

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

54. While the COVID-19 pandemic continued throughout 2021 the Commission's merger activity remained at a very high level. The Commission adopted 396 merger decisions in various sectors of which 309 were approved following a simplified procedure. The Commission intervened in 14 proposed acquisitions, of which 11 transactions were approved subject to conditions. Three notified transactions were abandoned by the parties and withdrawn in Phase II.

55. Moreover, in 2021 the Commission received 44 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a national competition authority or vice versa. The Commission accepted to examine two transactions following a referral pursuant to Article 22 of Council Regulation (EC) No 139/2004 (the 'EU Merger Regulation')<sup>68</sup> and referred four transactions pursuant to Article 9 of the EU Merger Regulation to be examined by national competition authorities.

56. Nevertheless, in 2021, the Commission's merger enforcement was intensive due to the large number of notified transactions as well as the complexity of a significant number of cases. An increasing number of notified transactions concerned already concentrated industries. Reviewing such transactions required the Commission to carefully assess their potential impact on competition, employing sophisticated quantitative techniques and comprehensive qualitative investigative tools.

### 2.2.2. Summary of significant cases

57. In March 2021, the Commission approved, following an in-depth investigation and subject to conditions, the acquisition of *Eaton Hydraulics* by *Danfoss*<sup>69</sup>. The company supplies hydraulic components used in machinery used in the agricultural, industrial and construction industries. The commitments addressed the Commission's competition concerns and ensured that downstream machine manufacturers could continue to benefit from competitive prices and a wide choice of innovative components for their products.

58. In March 2021, the Commission approved, following an in-depth investigation and subject to conditions, the acquisition of *GrandVision* by *EssilorLuxottica*<sup>70</sup>. The company is active in the markets for eyewear products (sunglasses, lenses and frames) and retail sales

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<sup>67</sup> Case AT.40670, *Google - Adtech and Data-related practices*. See: [https://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1,2,3](https://ec.europa.eu/competition/elojade/iseef/index.cfm?fuseaction=dsp_result&policy_area_id=1,2,3)

<sup>68</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1-22.

<sup>69</sup> Case M.9820 - *Danfoss / Eaton Hydraulics*.

<sup>70</sup> Case M.9569 – *EssilorLuxottica / Grandvision*.

of such products. By intervening, the Commission ensured that competition at retail level remains vibrant benefitting customers in Belgium, Italy and the Netherlands.

59. In April 2021, *Air Canada* and *Transat* decided to terminate a proposed merger agreement<sup>71</sup>. This followed an in-depth investigation by the Commission into the proposed acquisition notified in April 2020, concentrating on the parties' overlapping operations in the passenger air transport services between the EEA and Canada. The Commission's preliminary findings were that the proposed transaction would raise competition concerns on a large number of transatlantic routes and, based on the results of the market test, the remedies offered by the parties appeared insufficient.

60. In December 2021, the Commission approved with conditions the acquisition of *Suez* by *Veolia*<sup>72</sup>. *Veolia* and *Suez* are active in the water treatment and waste management sectors. The two companies offer a wide range of services to municipal and industrial customers. The Commission's investigation revealed that the transaction would lead to significant horizontal overlaps in several markets in France and in EEA. These overlaps would risk eliminating the competitive pressure exerted by *Suez* on *Veolia*. Customers would therefore have faced a reduced choice of service solutions, often limited to the merged entity, without having any real bargaining power.

61. In December 2021, the *International Consolidated Airlines Group* (IAG) and *Air Europa* decided to withdraw its proposed merger agreement<sup>73</sup>. The withdrawal followed an in-depth investigation by the Commission into the proposed acquisition of *Air Europa* by IAG which controls *Iberia*, *British Airways*, and several other airlines<sup>74</sup>. The Commission was concerned that the proposed transaction could significantly reduce competition on 70 origin and destination city pairs within and to/from Spain, where both airlines offer direct services.

#### *Important Judgements by the European Courts in merger control*

62. In its judgment of 22 September 2021, the General Court upheld the Commission's decision imposing two fines totalling EUR 124.5 million on the telecommunications operator *Altice* for gun jumping, while granting *Altice* a limited reduction of 10% of the amount of the fine applied in relation to the infringement of the notification obligation laid down in Article 4(1) of the Merger Regulation<sup>75</sup>.

63. In its judgment of 20 October 2021<sup>76</sup>, the General Court upheld two 2017 Commission decisions approving, under the EU Merger Regulation, the acquisition of certain *Air Berlin* assets by *EasyJet* and *Lufthansa* respectively. The General Court upheld the Commission's assessment, notably confirming that the route-by-route assessment traditionally carried out by the Commission in merger cases involving airlines was not

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<sup>71</sup> Case M.9489 - *Air Canada / Transat*.

<sup>72</sup> Case M.9969, *Veolia / Suez*. See: [https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp\\_result&policy\\_area\\_id=1.2.3](https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=1.2.3)

<sup>73</sup> Case M.9637 – *IAG / Air Europa*, OJ C 519, 22.12.2021, p. 2.

<sup>74</sup> Case M.9637 - *IAG / Air Europa*.

<sup>75</sup> Judgment of the General Court of 22.9.2021, T-425/18, *Altice Europe v Commission*, EU:T:2021:607.

<sup>76</sup> Judgments of the General Court of 20.10.2021, T-240/18 and T-296/18, *Polskie Linie Lotnicze 'LOT' v Commission*, EU:T:2021:723; EU:T:2021:724.

warranted in these two cases, since Air Berlin had completely and definitely ceased its operations at the time of the mergers. Furthermore, the General Court found that the analytical framework applied by the Commission under the airport-by-airport approach was sufficiently and adequately explained.

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

#### 3.1. Competition policy continued to mitigate economic and social fall-out from the COVID-19 pandemic

64. The Commission used the full flexibility of the State aid rules for exceptional circumstances to adapt in 2021 the Temporary Framework for State aid measures.<sup>77</sup> It provided Member States with a tailor-made toolbox supporting the economy during the COVID-19 pandemic. Since it was first adopted in March 2020, the Commission adapted the rules sixth times in line with the developing needs of Member States and businesses. The fifth and sixth amendments were adopted in January and November 2021 respectively. The sixth amendment sets out a path towards a step-by-step phase-out of the crisis measures while avoiding cliff-edge effects and limiting the risk for greater economic divergence between Member States.

##### *3.1.1. State aid decisions under Article 107(3)(b) TFEU and the Temporary Framework for State aid measures*

65. In 2021, the Commission continued to assess aid measures under Article 107(3)(b) TFEU, Article 107(3)(c) TFEU and the Temporary Framework for State aid measures. By the end of 2021, the Commission had taken more than 1180 decisions in all Member States, including those under the Temporary Framework for State aid measures.

##### *3.1.2. COVID-19 related State aid decisions and policy initiatives*

66. In August 2021, the Commission approved a set of guarantees on synthetic securitisation tranches under the European Guarantee Fund managed by the European Investment Bank Group<sup>78</sup>. The initiative supports companies affected by the COVID-19 pandemic in 22 participating Member States<sup>79</sup>.

##### *3.1.3. State aid decisions under Article 107(2)(b) TFEU*

67. Article 107(2)(b) TFEU enables the Commission to approve State aid measures granted by Member States to compensate undertakings for damage directly caused by exceptional occurrences such as the COVID-19 pandemic (for example in transport, tourism, culture, hospitality and retail sales). Member States may notify to the Commission

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<sup>77</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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

<sup>78</sup> Consisting of the European Investment Bank, “EIB” and the European Investment Fund, “EIF”.

<sup>79</sup> See Commission press release of 16.8.2021, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_4204](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4204).

damage compensation measures under Article 107(2)(b) TFEU provided that the aid is proportionate and there is a direct causal link between the exceptional occurrence (the COVID-19 pandemic) and the damage suffered by the beneficiaries<sup>80</sup>.

#### **3.1.4. State aid to the aviation sector**

68. Throughout 2021, the aviation sector continued to be one of the most severely affected by the COVID-19 pandemic. During this year, the Commission adopted 35 decisions allowing State aid to undertakings active in the aviation sector to fulfil their liquidity and capital needs brought about by the COVID-19 pandemic. These State aid measures were most frequently approved under the Temporary Framework for State aid measures or Article 107(2)(b) TFEU.

#### **3.1.5. The Recovery and Resilience Facility became operational - Preparing the exit from the crisis**

69. The Recovery and Resilience Facility (RRF) entered into force on 19 February 2021<sup>81</sup>. It finances reforms and investments in Member States from the start of the pandemic in February 2020 until 31 December 2026. The RRF is the centrepiece of *NextGenerationEU*, a temporary recovery instrument that allows the Commission to raise funds to help repair the immediate economic and social damage brought about by the COVID-19 pandemic.

70. One of the main aims of the RRF<sup>82</sup> is to mitigate the economic and social impact of the COVID-19 pandemic and make the EU more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions. The RRF allows the Commission to raise funds to help Member States implement reforms and investments that are in line with the EU's priorities.

71. To benefit from RRF support, Member States must submit Recovery and Resilience Plans (RRPs) to the Commission. These plans set out the reforms and public investment projects that each Member State plans to implement with the support of the RRF. DG Competition has provided guidance<sup>83</sup> to accompany and facilitate the implementation of the RRP to ensure that supported investment and reform projects are compatible with State aid rules. DG Competition also provided practical guidance to Member States for a swift treatment of State aid notifications within the RRF framework<sup>84</sup>.

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<sup>80</sup> For example, a damage caused by quarantine measures precluding the beneficiary from operating its economic activity. Other kinds of aid, addressing more generally the economic downturn from the coronavirus pandemic, is to be evaluated under the compatibility principles set out in Article 107(3)(b) TFEU and the Temporary Framework for State aid measures.

<sup>81</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, pp. 17–75.

<sup>82</sup> See the Recovery and Resilience Scoreboard, which gives an overview of how the implementation of the Recovery and Resilience Facility (RRF) and the national recovery and resilience plans is progressing: [https://ec.europa.eu/economy\\_finance/recovery-and-resilience-scoreboard/index.html](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html)

<sup>83</sup> See: [https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates\\_en](https://ec.europa.eu/competition-policy/state-aid/coronavirus/rrf-guiding-templates_en)

<sup>84</sup>

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/practical\\_guidance\\_to\\_MS\\_for\\_notifications\\_under\\_RRF.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/practical_guidance_to_MS_for_notifications_under_RRF.pdf)

## 3.2. State aid policy review

### *3.2.1. Updating State aid rules and guidance to make them fit for new challenges*

72. In 2021, the Commission continued the evaluation and revision of existing State aid rules and guidance to further facilitate the green and digital transitions and foster the resilience of the Single Market when recovering from the COVID-19 pandemic. The Commission continued to follow market developments and stands ready to further adjust its policy tools so that the EU can respond swiftly to emerging crises.

### *3.2.2. Adjustments of the State aid Temporary Framework for State aid measures?*

73. In 2021, the Commission consulted Member States on a proposal to prolong until 30 June 2022 the Temporary Framework for State aid measures, while setting out the path for the progressive phase-out of pandemic-related crisis support. After the consultation, the Commission adopted the sixth amendment of the Temporary Framework for State aid measures in November 2021<sup>85</sup> approving the prolongation. The prolongation of existing measures under the Temporary Framework for State aid measures until 30 June 2022 will avoid cliff-edge effects by preventing that businesses are suddenly cut off from targeted public support at a time when serious disturbances affecting Member States' economies have not yet ended. Moreover, the Commission introduced two new tools to kick start and crowd in private investment for a faster, greener and more digital recovery from the pandemic. In particular, the Commission introduced investment support towards a sustainable recovery until 31 December 2022 and solvency support until 31 December 2023, allowing Member States to leverage private funds and make them available for investments in SMEs, including start-ups and small mid-caps.

### *3.2.3. Guidelines on State aid for climate, environmental protection and energy adopted*

74. The Commission carried on with its review of the State aid rules to make them fit for purpose and aligned with the climate goals of the EU. In June 2021, the Commission launched a public consultation<sup>86</sup> inviting all interested parties to comment on the proposed revision of the Energy and Environmental State aid Guidelines. In December 2021, the Commission endorsed the new Climate, Energy and Environmental State aid Guidelines (CEEAG)<sup>87</sup>. The revision widens the scope of the Guidelines to cover new economic areas such as clean mobility and the decarbonisation of industry. It will also provide a flexible framework by allowing support to all technologies that can deliver the European Green Deal. The wider scope of the Guidelines is accompanied by safeguards which ensure that the State aid is efficiently directed to where it is needed and require Member States to

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<sup>85</sup> Communication from the Commission Sixth 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 2021/C 473/01, C/2021/8442, OJ C 473, 24.11.2021, pp. 1–15.

<sup>86</sup> Public consultations from 7.6.2021 to 2.8.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_en)

<sup>87</sup> Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, 27.1.2022, C(2022) 481 final.

consult stakeholders when designing large State aid measures. The CEEAG support EU efforts towards decarbonisation, a circular economy, biodiversity, clean or zero-emission mobility and buildings' energy efficiency and performance, with a view to meet the EU climate and energy targets for 2030 and 2050. The CEEAG entered into force in January 2022<sup>88</sup>.

### ***3.2.4. Revised IPCEI Communication adopted***

75. Important Projects of Common European Interest (IPCEI) bring together knowledge, expertise, financial resources and economic actors throughout the EU with a view to overcome important market failures, systemic failures and societal challenges which could not otherwise be addressed. They contribute to sustainable economic growth, jobs, competitiveness and strengthen the open strategic autonomy of the EU. To avoid that they distort competition in the Single Market, IPCEIs require the approval of the Commission under the State aid rules. IPCEIs enable breakthrough innovations up to the first industrial deployment and infrastructure investments of great importance where public intervention is necessary.<sup>89</sup> IPCEIs boost entrepreneurship in the EU, facilitate the green and digital transitions and increase the resilience of the Single Market. Following an evaluation and after an extensive consultation<sup>90</sup> of all interested parties on the proposed revised communication, the Commission adopted a revised Communication on State aid rules for Important Projects of Common European Interest (IPCEI Communication)<sup>91</sup> in November 2021. The revised IPCEI Communication applies as of 1 January 2022.

### ***3.2.5. Public consultation on the State aid Framework for research, development and innovation***

76. The State aid Framework for research, development and innovation (the RDI Framework)<sup>92</sup> incentivises risky research, development and innovation (RDI) activities, which would not occur in the absence of public support. The Commission launched a public consultation in April 2021 with a view to simplify the existing State aid Framework<sup>93</sup>. The objective is to make it easier for Member States to support research, development and innovation, including for SMEs and innovation clusters, while ensuring that possible competition distortions are kept to the minimum as well as providing the right incentives to enable the green and digital transition of the EU. Following the public consultation and the contributions received, the Commission continues its reflections on how to modernise the RDI Framework and make it future proof. Given the importance of the green and digital transitions and the resilience of the Single Market, these reflections on RDI Framework modernisation include for example areas such as testing and experimenting infrastructure

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<sup>88</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_566](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_566)

<sup>89</sup> In the past, funding under the IPCEI Communication has been approved to projects related to batteries, microprocessors and certain infrastructures.

<sup>90</sup> Public consultations from 23.2.2021 to 20.4.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-ipcei\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-ipcei_en)

<sup>91</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, C(2021) 8481 final.

<sup>92</sup> Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.

<sup>93</sup> Public consultations from 8.4.2021 to 3.6.2021. See: [https://ec.europa.eu/competition-policy/public-consultations/2021-rdi\\_en](https://ec.europa.eu/competition-policy/public-consultations/2021-rdi_en)

as well as developing and delivering breakthrough technologies. The Commission expects the revised RDI Framework to be adopted in 2022.

### ***3.2.6. Public consultation on the State aid Broadband Guidelines***

77. The State aid rules for the deployment of broadband networks (Broadband Guidelines)<sup>94</sup> facilitate the deployment and take-up of broadband networks in areas with insufficient connectivity, such as remote and sparsely populated regions. The Guidelines enable Member States to support modern infrastructure providing end-users with high-quality and affordable broadband services in areas where commercial operators have limited incentives to invest.

78. In July 2021, the Commission published its findings of the evaluation of the Broadband Guidelines<sup>95</sup>. It concluded that, overall, the existing rules work well and are fit for purpose but that some adjustments would be necessary to adapt the current rules to recent technological progress. Adequate investments are needed to meet the current EU policy objectives, in particular the EU 2025 Gigabit Society<sup>96</sup> and the 2030 Digital Compass<sup>97</sup>. In November 2021, the Commission submitted for public consultation the proposed revised Broadband Guidelines<sup>98</sup>. The public consultation remained open until 11 February 2022. The draft Guidelines aim to make it easier for Member States to stimulate the deployment of high-performing broadband networks, including Gigabit and 5G networks, while limiting competition distortions.

### ***3.2.7. Scope of the General Block Exemption Regulation extended to facilitate EU programmes***

79. With the aim of improving the interplay between EU funding rules and EU State aid rules under the new Multiannual Financial Framework<sup>99</sup>, the Commission adopted in July 2021 amendments to the General Block Exemption Regulation (GBER)<sup>100</sup>. These

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<sup>94</sup> Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, pp. 1-26.

<sup>95</sup> Commission Staff Working Document – Evaluation of the State Aid rules for broadband infrastructure deployment, SWD(2021) 194 final, 7.7.2021.

<sup>96</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society, COM (2016) 0587 final.

<sup>97</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Digital Compass: the European way for the Digital Decade, COM (2021) 118 final, 9.3.2021.

<sup>98</sup> Draft Communication from the Commission Guidelines on State aid for broadband networks, of 19.11.2021,

<sup>99</sup> See: [https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027\\_en](https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_en)

<sup>100</sup> Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 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 270, 29.7.2021, p.39. Public funding that fulfils the conditions of State aid as defined in Article 107(1) of the TFEU must normally be notified to the Commission and approved before it is put into effect, in order to ensure that public spending does not cause unfair competition for companies operating within the EU's internal market. However, Member States are not obliged to notify State aid to the Commission, if the aid in question meets all the relevant criteria set out in the GBER.



amendments extend the scope of the regulation and streamline the State aid rules applicable to national funding falling within the scope of certain recently adopted EU programmes<sup>101</sup>.

80. With the amendment of the GBER, State aid granted by national authorities for projects funded by programmes managed at EU level can be directly implemented by the Member States without prior notification to the Commission. However, Member States have to inform the Commission about the aid measures after they have been adopted. In addition, the updated GBER allows Member States to provide State aid for the digital and green transitions. It allows a degree of flexibility to rapidly support companies needing assistance due to negative economic effects caused by unexpected external shocks. Exempting broad categories of State aid from prior notification is a major simplification and facilitates swift implementation by the Member States.

### **3.2.8. Green Deal GBER revision**

81. In 2021 and continuing in 2022, the GBER is undergoing a targeted revision that has the objective to allow Member States to mobilise quickly more aid for green projects, without the need for prior approval from the Commission. The revision aims to widen the scope of the GBER to cover aid for investments in new technologies such as hydrogen and carbon capture, storage or usage, which are essential to address strategic dependencies. The scope of the GBER will be extended to areas that are key to achieve the objectives of the European Green Deal, for example resource efficiency and biodiversity. Moreover, the GBER revision aims to refine the provisions on aid for investments in key policy areas such as the energy performance of buildings and the recharging and refuelling of infrastructure for clean mobility. Finally, the rules for defining eligible costs and eligible aid intensities will be made more flexible.

### **3.2.9. Revision of the Risk Finance Guidelines adopted**

82. In December 2021, the Commission adopted revised Guidelines on State aid promoting risk finance investments<sup>102</sup>. The revised Guidelines provide a number of improvements which will ease the application of the Guidelines, consolidate existing requirements for *ex-ante* assessment and limit the requirement to provide a funding gap analysis to the largest risk finance schemes. Moreover, the revised Guidelines introduce simplified conditions for the assessment of schemes aimed exclusively at start-ups and SMEs that have not yet made their first commercial sales. To ensure consistency, certain definitions included in the Guidelines are aligned with those in the GBER<sup>103</sup>. The revised Guidelines apply from 1 January 2022.

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<sup>101</sup> The concerned national funds are those relating to: Financing and investment operations supported by the InvestEU Fund; Research, Development and Innovation (RDI) projects having received a “Seal of Excellence” under Horizon 2020 or Horizon Europe, as well as co-funded research and development projects or Teaming actions under Horizon 2020 or Horizon Europe; certain trans-European digital connectivity infrastructure projects funded or having received a “Seal of Excellence” under the Connecting Europe Facility; European Territorial Cooperation (ETC) projects, also known as Interreg.

<sup>102</sup> Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, pp. 1–36.

<sup>103</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, pp. 1-78.

### ***3.2.10. Revised Communication on the Short-term export credit insurance adopted***

83. In December 2021, the Commission adopted a revised Communication on short-term export credit insurance (STEC Communication)<sup>104</sup>. The Communication includes a limited number of amendments. For example, the Communication modifies the eligibility criteria for SMEs, which under certain circumstances may benefit from State insurance. Under the previous rules, the threshold for SMEs was an annual export turnover of maximum EUR 2 million. The revised STEC Communication increases this threshold to EUR 2.5 million. The revised STEC Communication entered into force on 1 January 2022.

### ***3.2.11. Revised Regional Aid Guidelines adopted***

84. The Regional Aid Guidelines allow Member States to support least favoured regions as well as regions facing transitional or structural challenges. The Guidelines also ensure the integrity of the Single Market while taking into account the EU cohesion objectives. Following the evaluation of the current rules in 2019<sup>105</sup> and an extensive consultation of stakeholders on the draft text, the Commission adopted the revised Regional Aid Guidelines in April 2021<sup>106</sup>. The revised guidelines include a number of targeted adjustments reflecting the experience gained from the application of the previous rules. They also take into account new policy priorities related to the European Green Deal and the European Industrial and Digital Strategies. The revised Regional Aid Guidelines entered into force on 1 January 2022.

### ***3.2.12. Evaluation of the Agricultural Block Exemption Regulation and Guidelines published***

85. In May 2021, the Commission published an evaluation of the Agricultural Block Exemption Regulation and the Guidelines for State aid in the agricultural and forestry sectors and in rural areas<sup>107</sup>. The evaluation concluded that overall these rules are fit for purpose and meet the needs of the sectors concerned<sup>108</sup>. However, certain targeted revisions may be needed, including clarifications of some concepts, further streamlining and simplification, alignment to the reform of the Common Agricultural Policy<sup>109</sup> as well as

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<sup>104</sup> 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 497, 10.12.2021, pp.5-13.

<sup>105</sup> Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1.

<sup>106</sup> Communication from the Commission: Guidelines on regional State aid, OJ C 153, 29.4.2021, pp. 1-46.

<sup>107</sup> The validity of these rules was previously extended until 31 December 2022. See: Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 as regards their period of application and making temporary adaptations to take into account the impact of the COVID-19 pandemic (Text with EEA relevance), OJ 424, 8.12.2020, pp. 30-31.

<sup>108</sup> The evaluation assessed how the current rules and have performed, in light of their main objectives: minimising distortions of competition and trade in the agricultural and forestry sector; ensuring the consistency of the agricultural State aid rules with the Common Agricultural Policy (CAP), in particular rural development objectives under the CAP; and simplifying procedures and reducing administrative costs. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2089-Agricultural-State-aid-guidelines-review_en)

<sup>109</sup> See: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/new-cap-2023-27_en)

adjustments to reflect the current priorities of the EU, in particular the European Green Deal<sup>110</sup>. The Commission expects to have the revised rules adopted by 31 December 2022 when the current ones will expire.

### 3.3. Fostering a global competition culture

#### 3.3.1. Multilateral and bilateral relations

86. In 2021, the Commission continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), and United Nations Conference on Trade and Development (UNCTAD).

87. At the OECD Competition Committee meetings of 2021, the Commission contributed to discussions on competition enforcement and regulatory alternatives, competition compliance programmes, potential competition, methodologies to measure market competition, environmental considerations in competition enforcement and the promotion of competitive neutrality by competition authorities. As co-chair of the ICN Unilateral Conduct Working Group, the Commission continued a multi-annual project assessing dominance and market power in digital markets. In 2021, the Commission participated in the 19th meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy.

88. The Commission continued its endeavours to improve international subsidy rules. Reforming the subsidy rules is one of the EU's main priorities when reviewing the World Trade Organization trade rules, as confirmed in the joint statement of the EU, US and Japan<sup>111</sup>.

89. In December 2021, the Commission and the US competition authorities launched the EU-US Joint Technology Competition Policy Dialogue to develop common approaches and strengthen the cooperation on competition policy and competition policy enforcement in the technology sectors<sup>112</sup>. The Commission remained in close contact with the Korean Fair Trade Commission and the Japanese Fair Trade Commission under the respective cooperation agreements<sup>113</sup>. In 2021, the Commission continued the negotiations with Japan on a Second Generation Competition Cooperation Agreement<sup>114</sup>. 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 standards in Canada that are consistent with the standards established by the Opinion of the Court of Justice on the 2014 EU-Canada Passenger Name Record Agreement<sup>115</sup>. Finally, the Commission continued its close competition policy cooperation

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<sup>110</sup> See: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>111</sup> See: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2330>

<sup>112</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_6671](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6671)

<sup>113</sup> See: [https://ec.europa.eu/competition-policy/international/bilateral-relations/korea\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/korea_en); [https://ec.europa.eu/competition-policy/international/bilateral-relations/japan\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/japan_en).

<sup>114</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>115</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.

with China's State Administration for Market Regulation under the 2019 cooperation agreements<sup>116</sup>.

90. The Commission aims at including provisions on competition and State aid control when negotiating Free Trade Agreements (FTAs). In 2021, the Commission continued FTA negotiations with Australia, Azerbaijan, Chile, Indonesia, New Zealand and Uzbekistan.

91. For the candidate countries and the potential candidates, the Commission's main policy objective is to assist them when adopting legal frameworks for competition policy, creating well-functioning operationally independent competition authorities and building up solid enforcement records. In 2021, the Commission continued to monitor candidate countries' and potential candidates' compliance with their commitments under the Stabilisation and Association agreements.

92. To develop cooperation in the competition field, the Commission also continued to engage with a number of national and regional authorities in Africa. In 2021, the Commission hosted joint workshops with the South African Competition Commission on digital aspects of competition policy and on cooperation between competition authorities.

### ***3.3.2. Policy Cohesion through the European Competition Network***

93. In 2021, the Commission continued to ensure the coherent application of Articles 101 and 102 through the ECN<sup>117</sup>. Two of the key cooperation and support mechanisms in Regulation 1/2003 are first, the national competition authorities' (NCAs) obligation to inform the Commission about new investigations already at the stage of the first formal investigative measure and second, to consult the Commission on envisaged decisions. In 2021, 145 new investigations were launched within the network and 84 planned decisions were submitted.

94. In addition to the cooperation mechanisms set out in Regulation 1/2003, other ECN cooperation mechanisms ensure a coherent enforcement of the EU competition rules across jurisdictions. ECN members meet regularly to discuss recently opened cases, policy issues and matters of strategic importance. In 2021, horizontal working groups and sector-specific sub-groups held 37 meetings where NCA officials exchanged views and experience.

95. In 2021, the Commission monitored and assisted Member States in their efforts to incorporate the ECN+ Directive<sup>118</sup> into national law. This had to be done by 4 February 2021. In March 2021, the Commission opened infringement procedures against 22 Member States because they had failed to notify that they had implemented the ECN+ Directive before the deadline. Of the 22 Member States, 14 subsequently notified implementation before the end of 2021. Before closing the infringement proceedings, the Commission will verify that the ECN+ Directive has been correctly implemented. In 2021, the Commission continued to assist the remaining Member States when finalizing the implementation of the Directive.

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<sup>116</sup> See: [https://ec.europa.eu/competition-policy/international/bilateral-relations/china\\_en](https://ec.europa.eu/competition-policy/international/bilateral-relations/china_en)

<sup>117</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.04.2004, pp. 43-53 and OJ C 374, 13.10.2016, p. 10. See: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0427%2802%29>.

<sup>118</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.01.2019, pp. 3–33.

## 4. Resources of competition authorities

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

#### 4.1.1. Annual budget

96. In 2021, the total budget for competition law enforcement by EUR 38.5 million to EUR 154.8 million.

#### 4.1.2. Number of employees (person-years):

97. On 31 December 2021, DG Competition employed 809 permanent staff members (including officials, temporary agents and administrative staff, excluding trainees and external service providers) and 85 staff members on fixed-term contracts compared to 798 and 84 staff members respectively at the end of 2020. Out of the 809 permanent staff members, 533 officials and temporary agents (that is to say excluding contractual agents) worked in competition enforcement compared to 524 at the end of 2020. 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:

98. In 2021, 101 officials and temporary agents worked on dominance cases<sup>119</sup>, 27 worked on anti-cartel cases, 67 worked in merger enforcement and 169 worked in State aid control. Moreover, 169 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. “Internet of Things” sector enquiry

99. Following the launch of the antitrust inquiry into the sector of the consumer *Internet of Things* (IoT) in 2020<sup>120</sup>, the Commission published a preliminary report for consultation in June 2021<sup>121</sup>. The sector inquiry focussed on products and services related to digital voice assistants, smart home devices and wearable devices. The final report and its accompanying Staff Working Document were published in January 2022<sup>122</sup>. The report concluded that this sector is growing rapidly and there is increasing demand for voice assistants as user interfaces for interacting with other smart devices and consumer IoT services. A number of potential competition issues were identified, such as exclusivity and tying practices for voice assistants, limiting the possibility to use different voice assistants on the same smart device, lack of interoperability and limiting functionalities on third-party

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<sup>119</sup> These officials and temporary agents are assigned to units dealing with antitrust-cases in specific sectors. This means that they may work on anti-cartel cases as well as dominance cases in their assigned sectors.

<sup>120</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1326](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1326).

<sup>121</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_2884](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2884).

<sup>122</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_402](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402).

smart devices and consumer IoT services. The complex standardisation landscape and complex proprietary technologies may adversely affect the growth potential of consumer IoT products. Limiting out-of-the-box features available to users was another concern. Other potential competition restraints were pre-installations, default-settings and prominent placement of consumer IoT services on smart devices or in relation to voice assistants. The information collected in the sector inquiry on the consumer IoT will provide guidance for the Commission's future enforcement and regulatory activities. It also contributes to the legislative debate on the Commission's proposal for the Digital Markets Act.