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**COMPETITION COMMITTEE**

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

-- 2022 --

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

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# European Union

This 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 2022. More information can be found in the European Commission Report on Competition Policy 2022 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

1. In 2022, the Digital Markets Act and the Foreign Subsidies Regulation entered into force and will become applicable as of 2023. Moreover, 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. Digital Markets Act

2. The Digital Markets Act ('DMA')<sup>2</sup> entered into force in November 2022 and is now in the implementation phase<sup>3</sup>. The DMA is an *ex-ante* regulation that aims to make the digital sector fairer and more contestable. Companies designated as 'gatekeepers' will have to comply with a pre-defined set of obligations and prohibitions. Enforcement of the DMA combined with the *ex-post* enforcement of the EU competition rules will result in fairer and more competitive market conditions for businesses and for consumers of digital services in the Single Market. As the central enforcer of the DMA, the Commission will work in close cooperation with authorities in EU Member States. The new rules are without prejudice to the enforcement of the EU competition rules and national competition rules for unilateral conduct.

3. The DMA addresses systemic practices that may arise in digital markets. A firm with a gatekeeper position in a digital market may be able to act as a *de-facto* private rule-maker, creating bottlenecks between businesses and between businesses and end-users. The DMA defines a set of criteria for identifying gatekeepers falling under the Regulation. When an online digital platform meets the quantitative thresholds, it will be presumed to be a gatekeeper. The quantitative criteria include for example the number of yearly active business users and the number of monthly active end users. Firms exceeding the thresholds

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

<sup>2</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1.

<sup>3</sup> The DMA will apply as of 2 May 2023. In 2022, the Commission prepared for enforcing the DMA, for example by drafting implementing acts, developing decision templates and setting up internal procedures for the operation of registries and IT systems.

set by the Regulation are considered as gatekeepers with an entrenched market position. This typically allows them to influence market dynamics negatively. The Commission will be able to designate gatekeepers individually by making qualitative assessments. Designated gatekeepers will have to comply with a set of harmonised rules designed to keep core platform services markets contestable and restrict unfair conduct. To address potential non-compliance with the obligations, fines of up to 10% of the undertaking's worldwide turnover may be imposed. Moreover, in case of systematic non-compliance, proportionate behavioural or structural remedies may be imposed on such firms.

### ***1.1.2. Regulation on Foreign Subsidies***

4. In November 2022, the European Parliament and the Council adopted the Regulation on foreign subsidies distorting the internal market<sup>4</sup> ('FSR'). The Regulation closes a regulatory gap, tackling foreign subsidies that distort competition in the Single Market. The Commission will soon be able to investigate and redress, when appropriate, the distortive effects caused by such foreign State support. The Regulation includes three tools: (i.) proposed concentrations where at least one of the merging undertakings, the joint venture or the acquired undertaking have an EU turnover of at least EUR 500 million and the foreign financial contribution exceeds EUR 50 million, will 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 will have to be notified to the Commission; and (iii.) the Commission will be empowered to investigate ex-officio other market situations. The Commission will have the exclusive competence to enforce the FSR. When the negative effects of the foreign subsidy outweigh its positive effects, the Commission will have the power to impose redressive measures or accept commitments to remedy the distortion. Such measures and commitments may 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.

5. The regulation will apply from 12 July 2023 and the notifications will become mandatory from 12 October 2023.

### ***1.1.3. New Vertical Block Exemption Regulation and Vertical Guidelines adopted***

6. In May 2022, the Commission adopted the new Vertical Block Exemption Regulation ('VBER')<sup>5</sup>, accompanied by the new Vertical Guidelines<sup>6</sup>, which help businesses assess the compatibility of their supply and distribution agreements with EU competition rules. The new rules take into account market developments such as the increase in online sales and emergence of new actors such as platforms. Increased clarity and greater transparency can help businesses achieve compliance at lower cost - this is especially beneficial to small and medium-sized enterprises (SMEs).

<sup>4</sup> Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L330, 23.12.2022, p. 1.

<sup>5</sup> Commission Regulation (EU) No 2022/720 of 10 May 2022 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 (VBER), OJ L 134, 11.5.2022, p. 4.

<sup>6</sup> Commission Notice: Guidelines on vertical restraints, OJ C 248, 30.6.2022, p. 1.

#### ***1.1.4. Draft rules on horizontal cooperation agreements published***

7. To ensure that the rules on horizontal cooperation agreements remain fit for purpose and in particular to address the challenges of digitalisation and the green transition, the Commission launched, in March 2022, a stakeholder consultation on the draft revised Horizontal Block Exemption Regulations on Research & Development and Specialisation agreements and on the draft revised Horizontal Guidelines<sup>7</sup>. The proposed rules include new guidance aimed to make it easier for companies to cooperate to pursue sustainability objectives. The proposed rules also provide additional guidance and legal certainty to companies in areas such as data sharing, mobile infrastructure sharing agreements and bidding consortia. In December 2022, the Commission adopted two regulations extending the validity of horizontal block exemption regulations regarding research and development and specialisation agreements<sup>8</sup>. The block exemption regulations were due to expire on 31 December 2022 and the Commission extended them until 30 June 2023.

#### ***1.1.5. Draft Motor Vehicle Block Exemption Regulation and Supplementary Guidelines published***

8. The Commission has a specific regime for certain vertical agreements in the motor vehicle sector<sup>9</sup>. In July 2022, the Commission consulted stakeholders on a draft Regulation extending the period of validity of Motor Vehicle Block Exemption Regulation<sup>10</sup>, together with a draft Communication amending the Commission Notice containing the Supplementary Guidelines<sup>11</sup> to address the fact that vehicle-generated data is becoming an increasingly important factor of competition for repair and maintenance operators. The proposed changes will provide clarity for companies concerning the way the Commission views issues related to access to data generated by the cars' sensors when assessing vertical agreements between vehicle manufacturers and their authorised networks under EU competition rules. The aim is to keep the framework in place for five additional years until 31 May 2028, and extend the existing principles for the provision of technical information, tools and training necessary for the provision of repair and maintenance services to explicitly cover vehicle-generated data.

#### ***1.1.6. Guidelines on collective agreements to improve working conditions of solo self-employed people adopted***

9. In September 2022, the Commission adopted Guidelines on the application of EU competition law to collective agreements regarding the working conditions of the solo self-

<sup>7</sup> Public consultation on the draft revised Horizontal Block Exemption Regulations and Horizontal Guidelines, from 1.3.2022 to 26.4.2022. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-hbers\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en)

<sup>8</sup> Commission Regulation (EU) 2022/2455 of 8 December 2022 amending Regulation (EU) No 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 321, 15.12.2022, p. 1; and Commission Regulation (EU) 2022/2456 of 8 December 2022 amending Regulation (EU) No 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 321, 15.12.2022, p. 3.

<sup>9</sup> The Motor Vehicle Block Exemption Regulation ('MVBBER') regime consists of: (i) the Vertical Block Exemption Regulation ('VBER') and the Guidelines on Vertical Restraints ('VGL'); and (ii) the sector-specific block exemption provisions, as provided for in the MVBBER and the Supplementary Guidelines ('SGL'), applicable to the distribution of spare parts and repair and maintenance services for motor vehicles.

<sup>10</sup> Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52.

<sup>11</sup> Commission Notice: Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, OJ C 138, 28.5.2010, p. 16.

employed people<sup>12</sup>. The purpose of the Guidelines is to explain in which circumstances EU competition law does not stand in the way of collective agreements to improve working conditions. Based on established case-law of the Court of Justice of the European Union<sup>13</sup>, the Guidelines describe situations where solo self-employed persons may be comparable to workers and clarify that their collective agreements then fall outside the scope of Article 101 TFEU. This covers economically dependent solo self-employed persons, those working side-by-side with workers and those providing their services through digital labour platforms. Furthermore, the Guidelines clarify that in certain cases, where self-employed persons who are not in a situation comparable to that of workers have difficulties in influencing their working conditions because of a weak negotiating position, the Commission will not intervene against certain categories of collective agreements.

#### ***1.1.7. Revised Informal Guidance Notice adopted***

10. In order to allow businesses to seek informal guidance on the application of EU competition rules to novel or unresolved questions, the Commission adopted, in October 2022, a revised Informal Guidance Notice<sup>14</sup>. The revised Informal Guidance Notice aims to increase legal certainty, to the benefit of businesses seeking the guidance when assessing the legality of their actions under EU competition rules.

#### ***1.1.8. Draft Market Definition Notice published***

11. In November 2022, the Commission published a draft revised Market Definition Notice for public consultation.<sup>15</sup> The draft revised Market Definition Notice builds on the conclusions of the evaluation published in July 2021. The revised draft Notice is the outcome of a thorough review process first launched in April 2020. The draft updates the 1997 Notice currently in force taking into account the significant developments of the intervening years, in particular digitalisation and new ways of offering goods and services, and also reflecting the interconnected and globalised nature of commercial exchanges. On the basis of the evidence gathered during the consultation, the Commission will revise and finalise the draft with a view to adopt a new Market Definition Notice in 2023.

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<sup>12</sup> Communication from the Commission: Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons, OJ C 374, 30.9.2022, p. 2.

<sup>13</sup> Judgment of the Court of Justice of 4.12.2014, Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, EU:C:2014:2411; judgment of the Court of Justice of 21.12.1999, Case C-67/96, *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, EU:C:1999:430.

<sup>14</sup> Commission Notice on informal guidance relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters) of 3 October 2022, SWD(2022) 326, 3.10.2022. See: [https://competition-policy.ec.europa.eu/system/files/2022-10/coronavirus\\_informal\\_guidance\\_notice\\_antitrust\\_2022.pdf](https://competition-policy.ec.europa.eu/system/files/2022-10/coronavirus_informal_guidance_notice_antitrust_2022.pdf)

<sup>15</sup> See European Commission Communication from the Commission, draft Commission Notice on the definition of the relevant market for the purposes of union competition law. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-market-definition-notice\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-market-definition-notice_en)

### ***1.1.9. Draft Merger Implementing Regulation and the draft revised Notice on Simplified Procedure published***

12. The evaluation<sup>16</sup> of procedural and jurisdictional aspects of EU merger control showed that the 2013 Simplification Package<sup>17</sup> had been effective in increasing the application of simplified procedures to unproblematic mergers and in reducing the administrative burden for both businesses and the Commission. The results of the evaluation indicated that there is merit in considering further targeting of EU merger control, by expanding and clarifying the scope of the Notice on Simplified Procedure<sup>18</sup> and by revising the Merger Implementing Regulation<sup>19</sup>, to further ease the administrative burden on both businesses and the Commission. Following the evaluation, the Commission launched a public consultation on a revised Notice and Merger Implementing Regulation in May 2022.<sup>20</sup> Once adopted, the revised Implementing Regulation and Notice will allow for further simplification through the introduction of new categories of simplified cases, the streamlining of the Commission’s merger procedures, as well as the introduction of electronic notification as the default way of notifying merger transactions.

### ***1.1.10. Preparation of new Guidelines on sustainability agreements in agriculture***

13. The reform of the Common Agricultural Policy (‘CAP’) for the period 2023-2027 introduced a new exclusion to Article 101 TFEU,<sup>21</sup> allowing agricultural producers and other operators in the agri-food supply chain to agree on certain restrictions on prices, output and other elements of competition provided that those restrictions are indispensable to attain sustainability standards going beyond mandatory standards in existing EU and national legislation. This possibility concerns certain environmental, health or animal welfare standards. In 2022, the Commission carried out a public consultation<sup>22</sup> to prepare the draft guidelines to explain this exclusion. The aim is to have the Guidelines in place by the end of December 2023.

<sup>16</sup> Commission Staff Working Document, Executive summary of the evaluation of procedural and jurisdictional aspects of EU merger control of 26 March 2021, SWD(2021) 66, 26.3.2021. See: [https://competition-policy.ec.europa.eu/system/files/2021-04/SWD\\_findings\\_of\\_evaluation\\_summary.pdf](https://competition-policy.ec.europa.eu/system/files/2021-04/SWD_findings_of_evaluation_summary.pdf)

<sup>17</sup> Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 336, 14.12.2013, p. 1.

<sup>18</sup> Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, OJ C 366, 14.12.2013, p. 5.

<sup>19</sup> Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 336, 14.12.2013, p. 1.

<sup>20</sup> Public consultation on the Merger control in the EU – further simplification of procedures, from 6.5.2022 to 3.6.2022. See: [https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-merger-simplification_en)

<sup>21</sup> Article 210(a) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulation (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) 1234/2007, OJ L 347, 20.12.2013, p. 671.

<sup>22</sup> Public consultation on sustainability agreements in agriculture – guidelines on antitrust derogation – evaluation, from 28.2.2022 to 23.5.2022. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13305-Sustainability-agreements-in-agriculture-guidelines-on-antitrust-derogation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13305-Sustainability-agreements-in-agriculture-guidelines-on-antitrust-derogation_en)

### *1.1.11. Evaluation of the Consortia Block Exemption Regulation continued*

14. The Consortia Block Exemption Regulation ('CBER')<sup>23</sup> allows, under certain conditions, liner shipping companies (also known as carriers) to cooperate and provide joint services. As the CBER is due to expire on 25 April 2024, the Commission launched an evaluation process to assess whether the Regulation is still fit-for-purpose. The evaluation will inform the Commission's decision whether to further extend the CBER, extend it with changes or repeal it.

### *1.1.12. Evaluation of the Regulation 1/2003 launched*

15. Regulation 1/2003<sup>24</sup> and its implementing act, Regulation 773/2004<sup>25</sup> establish a procedural framework aimed at ensuring the effective and uniform application of Articles 101 and 102 TFEU in the EU. New challenges for the enforcement of competition rules have emerged over time, for example the digitalisation of the economy and the increasing complexity of antitrust investigations. In June 2022 the Commission launched a public consultation seeking feedback on how the Regulations have performed since their entry into force<sup>26</sup>. The aim of the consultation is to collect evidence and views on the procedures applied in the antitrust investigations. This consultation closed on 6 October, 2022. As a part of the evaluation process, the Commission also commissioned an evaluation support study and will be organising workshops on specific topics. Throughout the process, the Commission will engage with NCAs. The objective is to publish a Staff Working Document with the results of the evaluation process by mid-2024.

## **1.2. Other relevant measures, including new guidelines**

16. In 2022, DG Competition continued to modernise its working methods to fit current and future enforcement needs.

17. This included efforts to make its investigatory processes and other activities more efficient, by using digital tools in line with its Digital Strategy. DG Competition reduced the regulatory burden for parties that continue to use the State Aid Reporting Interactive ('SARI2'), 'eConfidentiality' and 'eRFI' tools. Moreover, DG Competition upgraded its 'eLeniency' platform to provide companies involved in cartel and antitrust proceedings easy and secure access to documents online. EU competition law enforcement was facilitated further by continued investment in state-of-the-art digital solutions, including the CASE@EC case management system. Given the sensitive and confidential nature of the information it handles, DG Competition continued to update IT security plans for new as well as existing digital solutions. Moreover, DG Competition put in place additional safety and monitoring measures to ensure continued cyber security and cyber resilience in

<sup>23</sup> Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256, 29.9.2009, p. 31.

<sup>24</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1.

<sup>25</sup> Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18.

<sup>26</sup> Public consultation on the EU antitrust procedural rules - evaluation, from 30.6.2022 to 6.10.2022. See: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13431-EU-antitrust-procedural-rules-evaluation_en)



2022 and beyond. DG Competition's internal Digital Strategy is anchored in the European Commission's Next Generation Digital Strategy adopted in 2022.<sup>27</sup>

18. In 2022, DG Competition further developed its digital investigation tools by using corporate intelligence, data and machine learning services. A dedicated unit conducting intelligence and investigative analyses as well as providing forensic IT support was renamed 'Data Analysis and Technology'. The unit will report to the Chief Technology Officer, a newly created post attached to the Director General. The Chief Technology officer will support increasingly data-driven enforcement and market monitoring tasks, working in close collaboration with many other departments within DG Competition. In December 2022, a new Directorate was created which will be responsible for the implementation of the DMA.

19. In 2022, the Commission continued with its competition policy advocacy and outreach activities at multiple levels to support the effectiveness of EU competition policy, most prominently with Executive Vice-President Vestager participating in events and press conferences. Dedicated outreach activities at Member State level were organised to complement press releases, policy briefs, newsletters and social media communication channels.<sup>28</sup>

## 2. Enforcement of competition laws and policies

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

#### 2.1.1. Significant cases

##### *Cartels*

20. In July 2022, the Commission fined the metal packaging producers *Crown* and *Silgan* a total of EUR 31.5 million in a settlement procedure for taking part in a cartel concerning metal cans and closures in Germany<sup>29</sup>. *Crown* was granted a reduction of the fine of 50% under the Leniency Notice and both companies were granted a reduction of 10% under the Settlement Notice.

21. In November 2022, the Commission fined *Sunpor*, *Synbra*, *Synthomer*, *Synthos* and *Trinseo* a total of EUR 157 million for participating in a cartel concerning purchases on the styrene monomer merchant market<sup>30</sup>. This most recent purchasing cartel case shows the Commission's intention to pursue a wide range of different types of cartels, including more traditional price- and market fixing cartels as well as e.g. purchasing or labour market cases or collusion on other elements than price and output. The cartel investigations in these cases contribute to clarifying the borderlines of legitimate cooperation between undertakings.

<sup>27</sup> Communication to the Commission: European Commission digital strategy Next generation digital Commission, Brussels, C(2022) 4388, 30.6.2022.

<sup>28</sup> See for example the animation published on YouTube: <https://youtu.be/3yQkOwvdl-Q>

<sup>29</sup> Case T.40522, *Metal packaging*, see also the press release of 12.7.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4483](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4483)

<sup>30</sup> Case AT.40547, *Styrene monomer*; see also the press release of 29.11.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7168](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7168)

22. In June 2022, the Commission informed *České dráhy* and *Österreichische Bundesbahnen*, the Czech and Austrian rail incumbents, of its preliminary view that they have breached EU antitrust rules by colluding in the market for used passenger railway wagons with the aim to distort competition in the rail passenger transport market<sup>31</sup>.

23. In July 2022, the Commission informed *Alcogroup S.A.* and its subsidiary *Alcodis S.A.* (together ‘*Alcogroup*’) as well as *Lantmännen ek för* and its subsidiary *Lantmännen Agroetanol AB* (together ‘*Agroetanol*’) of its preliminary view that, together with *Abengoa S.A.*, which settled the case in December 2021<sup>32</sup>, they had breached EU antitrust rules by colluding to influence the wholesale price formation mechanism for ethanol in Europe<sup>33</sup>.

24. In December 2022, the Commission informed *Deutsche Bank* and *Rabobank* of its preliminary view that the two banks breached EU antitrust rules by exchanging commercially sensitive information and colluding on their pricing and trading strategies with respect to Euro-denominated Sovereign, SSA (Supra-Sovereign, Foreign Sovereign, Sub-Sovereign/Agency), Covered and Government Guaranteed bonds<sup>34</sup>.

### *Abuse of Dominance*

25. In July 2022, the Commission invited comments<sup>35</sup> on commitments offered by *Amazon* to address competition concerns over its use of non-public marketplace seller data and over a possible bias in granting sellers’ access to its Buy Box and its Prime programme. In December 2022, the Commission concluded that the final commitments offered by *Amazon* addressed the Commission's competition concerns and made them legally binding under EU antitrust rules.<sup>36</sup>

26. In December 2022, the Commission informed *Meta* of its preliminary view that the company breached EU antitrust rules by distorting competition in the markets for online classified ads.<sup>37</sup> The Commission is concerned about *Meta* tying its online classified ads service, Facebook Marketplace, to its personal social network, Facebook and about *Meta* imposing unfair trading conditions on Facebook Marketplace's competitors.

27. Mobile payments play a rapidly growing role in our digital economy and consumers should benefit from competitive and innovative payment solutions. In 2022, the Commission continued its investigation<sup>38</sup> to assess whether *Apple's* conduct in connection with Apple Pay violates EU competition rules. In the Statement of Objections<sup>39</sup>, issued in May 2022, the Commission preliminarily found that *Apple* may have restricted competition to the benefit of its own solution, Apple Pay.

<sup>31</sup> See the press release of 10.6.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3585](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3585)

<sup>32</sup> Case AT.40054, *Ethanol benchmarks*, see also the press release of 10.12.2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_6769](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6769)

<sup>33</sup> Case AT.40054, *Ethanol benchmarks*.

<sup>34</sup> Case AT. 40512, *Euro denominated bonds*; see also the press release of 6.12.2022: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7409](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7409)

<sup>35</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commitment proposal. See: [https://ec.europa.eu/competition/antitrust/cases1/202229/AT\\_40462\\_8414012\\_7971\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases1/202229/AT_40462_8414012_7971_3.pdf)

<sup>36</sup> Case AT.40462, *Amazon Marketplace* and Case AT.40703, *Amazon Buy Box*, Commission decision of 20 December 2022. See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7777](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777)

<sup>37</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7728](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728)

<sup>38</sup> Case AT.40452, *Apple – Mobile payments*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40452](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40452).

<sup>39</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2764](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2764)

### 2.1.2. Important judgments by the European Union Courts

28. In 2022, the Courts of the European Union largely confirmed the Commission's cartel enforcement practice. In particular, the Courts confirmed the Commission's jurisdiction to tackle cartels that operate on a worldwide basis, the notion of single and continuous infringement as interpreted by the Commission, the legality of staggered hybrid procedures, as well as the methodology used by the Commission for the calculation of fines. The judgments of the Courts also shed light on important aspects in relation to the application of the Leniency Notice.

#### *The Commission's jurisdiction*

29. In the *Airfreight* cases<sup>40</sup>, the General Court confirmed the Commission's jurisdiction, under Article 101 TFEU and Article 53 EEA, to tackle worldwide cartels that restrict competition within the EEA.

30. The airlines contested the Commission's jurisdiction over their worldwide cartel (consisting of a set of bilateral and multilateral contacts) on the grounds that part of that cartel concerned sales outside the EEA. The General Court first recalled that conduct outside the territory of the EEA falls under the Commission's jurisdiction on the basis of either the implementation test (i.e., when the conduct is implemented in the territory of the EEA) or the qualified effects test (see below), the two tests being alternative<sup>41</sup>.

31. The General Court assessed the worldwide cartel under the qualified effects test and found that the Commission was right to consider that it had jurisdiction over the aspects of the worldwide cartel that affected the EEA, as it was foreseeable that those aspects would have an immediate and substantial effect in the internal market or within the EEA<sup>42</sup>. The Commission therefore did not have to demonstrate the actual effects of the worldwide cartel in the EEA, its probable effects being enough to recognise the Commission's jurisdiction.

32. The General Court also confirmed that the Commission was entitled to apply the qualified effects test to the worldwide cartel taken as a whole because all its aspects served the same anticompetitive objective. As a result, it was not possible for the airlines to escape the application of Article 101(1) TFEU by combining several types of conduct that pursued the same objective, but which, taken individually, were incapable of producing an immediate and substantial effect in that market<sup>43</sup>.

33. In the *Optical Disk Drives* cases, the Court of Justice confirmed the Commission's finding that, although the cartel contacts took place outside the EEA, they were

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<sup>40</sup> Judgments of the General Court of 30.3.2022 in Cases T-323/17, *Martinair Holland v Commission*, EU:T:2022:174; T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175; T-325/17, *Koninklijke Luchtvaart Maatschappij v Commission*, EU:T:2022:176; T-326/17, *Air Canada v Commission*, EU:T:2022:177; T-334/17, *Cargolux Airlines v Commission*, EU:T:2022:178; T-337/17, *Air France-KLM v Commission*, EU:T:2022:179; T-338/17, *Air France v Commission*, EU:T:2022:180; T-340/17, *Japan Airlines v Commission*, EU:T:2022:181; T-341/17, *British Airways v Commission*, EU:T:2022:182; T-342/17, *Deutsche Lufthansa and Others v Commission*, EU:T:2022:183; T-343/17, *Cathay Pacific Airways v Commission*, EU:T:2022:184; T-344/17, *Latam Airlines Group SA and Lan Cargo SA v Commission*, EU:T:2022:185; T-350/17, *Singapore Airlines and Singapore Airlines Cargo v Commission*, EU:T:2022:186.

<sup>41</sup> See, for example, the judgment of the General Court of 30.3.2022 in Case T-323/17, *Martinair Holland v Commission*, EU:T:2022:174, paragraphs 102-103.

<sup>42</sup> See, among others, the judgment of the General Court of 30.3.2022 in Case T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175, paragraph 161.

<sup>43</sup> See, among others, the judgment of the General Court of 30.3.2022 in Case T-340/17, *Japan Airlines Co. Ltd v Commission*, EU:T:2022:181, paragraphs 154-155.

implemented on a worldwide basis, including the EEA, and that, as a result, the Commission had jurisdiction<sup>44</sup>.

### *Single and continuous infringement*

34. In litigation relating to the *Trucks cartel*, a cartel relating to the coordination of prices and the timing and pricing related to the introduction of emission technologies to comply with the European emissions standards<sup>45</sup>, the General Court confirmed that, in order to find a single and continuous infringement, the Commission is not required to demonstrate that each of the various instances of a conduct falls within Article 101 TFEU. Instead, there is a single and continuous infringement when there is a demonstration that the various instances of a conduct form part of an overall plan designed to achieve a single anti-competitive objective<sup>46</sup>.

35. In the *Airfreight* cases, the General Court confirmed the qualification of a worldwide cartel (consisting of a set of bilateral and multilateral contacts) as a single and continuous infringement in so far it affected the EEA. It nonetheless reduced the fines imposed on specific carriers due to the inability of the Commission to prove their participations in certain elements of the single and continuous infringement<sup>47</sup>.

36. In the *Optical Disk Drives* cases, in which the parties concerned coordinated their behaviour through a network of bilateral contacts, the Court of Justice confirmed that the participation of an undertaking in a single and continuous infringement does not require its direct participation in all the anticompetitive conduct of which that infringement is comprised<sup>48</sup>.

37. The *Optical Disk Drives* cases were also the opportunity for the Court of Justice to confirm that the Commission is entitled to find that an undertaking participated in a single and continuous infringement when it participated only passively (i.e., by merely being in copy of emails) in that infringement<sup>49</sup>.

38. Finally, in the *Optical Disk Drives* cases, the Court of Justice also ruled on the issue of the dual characterisation of an infringement. According to the Court of Justice, where a single and continuous infringement consists of separate practices that are, taken in isolation, also characterised as individual infringements of Article 101(1) TFEU, the Commission is required to identify and legally characterise each of those separate infringements. As a consequence, the Court of Justice concluded that the mere mention in a statement of

<sup>44</sup> Judgments of the Court of Justice of 16.6.2022 in Cases C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478; C-698/19 P, *Sony Optiarc and Sony Optiarc America v Commission*, EU:C:2022:480; C-699/19 P, *Quanta Storage v Commission*, EU:C:2022:483; and C-700/19 P, *Toshiba Samsung Storage Technology and Toshiba Samsung Storage Technology Korea v Commission*, EU:2022:484.

<sup>45</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48. More specifically, as regards the emission technologies, the truck manufacturers agreed to (i) coordinate the timing for the introduction of emission technologies; and (ii) pass on to customers the costs for the emissions technologies required in order to comply with the European emissions standards.

<sup>46</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48, paragraph 208.

<sup>47</sup> Namely *Air Canada, British Airways, LAN and SAS*. See, among others, the judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraphs 514-543 and 582-587.

<sup>48</sup> See, among others, the judgments of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraph 64; C-698/19 P, *Sony Optiarc and Sony Optiarc America v Commission*, EU:C:2022:480, paragraph 61.

<sup>49</sup> See, among others, the judgment of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraphs 128-130.

objections of the possibility to qualify the single and continuous infringement as separate infringements was not sufficient to observe the parties' rights of defence<sup>50</sup>.

### *Staggered hybrid procedures*

39. In a judgment concerning the *Trucks cartel*<sup>51</sup>, the General Court confirmed the legality of 'staggered hybrid procedures' in cartel matters<sup>52</sup>.

40. In that case, the Commission had adopted first a settlement decision in respect of the undertakings which had submitted a formal request for settlement. The Commission continued its investigation concerning the applicant, who had withdrawn from the settlement procedure and addressed to it a prohibition decision with fines. The applicant claimed that the Commission had breached the presumption of innocence and its right of defence by adopting the settlement decision before the decision addressed to it. However, the General Court confirmed that the Commission was entitled to follow such a staggered hybrid procedure in the context of the application of Article 101 TFEU.

41. The General Court emphasised that the Commission's decision not to follow the settlement procedure does not, in itself, entail an infringement of the presumption of innocence, the rights of the defence or the duty of impartiality<sup>53</sup>. The General Court further examined the precise circumstances of the case and recognised that the Commission had observed those principles, thereby fully upholding the Commission's decision and the amount of the fine.

### *The calculation of cartel fines*

42. In the *Airfreight* cases, the General Court confirmed the methodology used by the Commission regarding the calculation of the fines and its application of the 2006 Fining Guidelines<sup>54</sup>.

43. First, the General Court recognised that the Commission was entitled, in order to determine the basic amount of the fines, to take into account the entire amount of sales linked to the airfreight services, without being required to split that amount into its component elements<sup>55</sup>. The General Court thus dismissed the argument from the airlines according to which the basic amount of the fines should have been calculated by reference to the revenues derived specifically from the surcharges that constituted the single and continuous infringement.

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<sup>50</sup> See, among others, the judgment of the Court of Justice of 16.6.2022 in Case C-697/19 P, *Sony Corporation and Sony Electronics v Commission*, EU:C:2022:478, paragraphs 67-79.

<sup>51</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48.

<sup>52</sup> See also the judgment adopted by the Court of Justice in 2021 regarding staggered hybrid procedure in Case C-440/19 P, *Pometon v Commission*, EU:C:2021:214.

<sup>53</sup> Judgment of the General Court of 2.2.2022 in Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48, paragraphs 99-105.

<sup>54</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.

<sup>55</sup> Judgments of the General Court of 30.3.2022 in Cases T-325/17, *Koninklijke Luchtvaart Maatschappij v Commission*, EU:T:2022:176, paragraph 306; T-337/17, *Air France-KLM v Commission*, EU:T:2022:179, paragraphs 404-408; T-338/17, *Air France v Commission*, EU:T:2022:180, paragraph 296 ; T-340/17, *Japan Airlines v Commission*, EU:T:2022:181, paragraph 307.

44. Second, the General Court confirmed that the “sales in the EEA” also covered sales to customers outside the EEA, as these sales have a link with the EEA<sup>56</sup>.

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

45. In the *Airfreight* cases – and more specifically in the *Air Canada* case –, the General Court held that the Commission did not breach the right of defence of *Air Canada* when it refused its request to withdraw its leniency application and accompanying documents at a late stage of the administrative proceedings.

46. The General Court recalled that any statement made vis-à-vis the Commission in connection with a leniency application forms an integral part of its file, since the Commission may use such statements as evidence<sup>57</sup>.

47. In addition, the General Court ruled that removing from the file evidence that was originally provided by an undertaking that ultimately terminated its cooperation before the adoption of the Commission’s decision would undermine the effectiveness of the leniency procedure. This is because the Commission would be deprived of evidence that is essential to establish the infringement at a stage where the possibility of making up for that lack of evidence would be considerably reduced, and because this would leave the Commission to the goodwill of the leniency applicant<sup>58</sup>.

#### *The duration of proceedings*

48. In the *Reinforcing steel bars* cartel, the General Court confirmed that the Commission was entitled to impose fines on undertakings for their participation in the cartel even though it had started 30 years before the Commission adopted its final decision<sup>59</sup>.

49. The Commission had originally adopted two infringement decisions against the applicants in 2002<sup>60</sup> and in 2009<sup>61</sup> that were subsequently both annulled on procedural grounds, namely the use of the wrong legal basis for the 2002 decision<sup>62</sup>, and the insufficient consultation of representatives from EU Member States for the 2009 decision<sup>63</sup>. The Commission ultimately adopted a final decision in 2019 and granted a 50% reduction of the amount of the fines due to the length of the procedure<sup>64</sup>.

<sup>56</sup> Judgments of the General Court of 30.3.2022 in Cases T-324/17, *SAS Cargo Group and Others v Commission*, EU:T:2022:175, paragraph 778; T-340/17, *Japan Airlines Co. Ltd v Commission*, EU:T:2022:181, paragraph 369; T-343/17, *Cathay Pacific Airways v Commission*, EU:T:2022:184, paragraph 557.

<sup>57</sup> Judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraph 547.

<sup>58</sup> Judgment of the General Court of 30.3.2022 in Case T-326/17, *Air Canada v Commission*, EU:T:2022:177, paragraph 552.

<sup>59</sup> Judgments of the General Court of 9.11.2022 in Cases T-655/19, *Ferriera Valsabbia and Valsabbia Investimenti v Commission*, EU:T:2022:689; T-656/19, *Alfa Acciai v Commission*, EU:T:2022:690; T-657/19, *Feralpi v Commission*, EU:T:2022:691 and T-667/19, *Ferriere Nord v Commission*, EU:T:667/19.

<sup>60</sup> Decision C(2002) 5087 final of 17.12.2002.

<sup>61</sup> Decision C(2009) 7492 final of 30.9.2009 as amended by Decision C(2009) 9912 final of 8.12.2009.

<sup>62</sup> Judgment of the Court of First Instance of 25.10.2007 in Joined Cases T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, *SP SpA t. al. v Commission*, EU:T:2007:317.

<sup>63</sup> Judgments of the Court of Justice of 21.9.2017 in Cases C-85/15 P, C-86/15 P, C-87/15 P, C-88/15 P und C-89/15 P, *Feralpi Holding SpA et. al. v Commission*, EU:C:2017:709; EU:C:2017:717; EU:C:2017:716; EU:C:2017:713.

<sup>64</sup> Decision C(2019) 4969 final of 4.7.2019.

50. The General Court dismissed the argument of the applicants according to which the duration of the proceedings was excessive and that the Commission no longer had the power to impose sanctions<sup>65</sup>. The General Court fully confirmed the Commission's decision and considered that the duration of the proceedings was not unreasonable given the number of appeals lodged and the complexity of the case<sup>66</sup>.

### *The right of defence*

51. In the *Qualcomm* case, the General Court annulled the Commission's decision, finding inter alia a number of procedural irregularities which affected Qualcomm's rights of defence<sup>67</sup>. In 2018, the Commission imposed a EUR 997 million fine on Qualcomm, finding that the firm had abused its dominant position on the worldwide market for chipsets compatible with the Long Term Evolution (LTE) standard. Qualcomm agreed to make 'significant payments' to Apple on condition that Apple would exclusively use Qualcomm chipsets in its devices. The Commission found these exclusivity payments capable of having anticompetitive effects by reducing Apple's incentives to switch to competing LTE chipset providers. Qualcomm challenged the decision, arguing that the Commission had made procedural errors and that its assessment of anticompetitive effects was insufficient. The General Court annulled the Commission's decision in its entirety, finding a number of procedural irregularities, which - according to the General Court - affected Qualcomm's rights of defence.

### *As efficient competitor test*

52. In the *Intel* case<sup>68</sup>, the General Court annulled in part the Commission's decision from 2009 which imposed a EUR 1.06 billion fine on Intel for alleged abuse of its dominant position by offering loyalty rebate schemes and other exclusivity payments. The judgment applied the judgment of the Court of Justice on appeal against the General Court's 2014 judgment in *Intel*, which held that the General Court had erred in not taking account of the economic analysis relied on by Intel to show that its rebates were not capable of restricting competition. The General Court found that the 'as efficient competitor test' applied in the Decision to confirm the capability of Intel's rebates to foreclose competition was flawed, and that the Commission had not sufficiently examined other indicators of capability to foreclose. The Commission has appealed the General Court judgment.

### *The Google Android Case*

53. In September 2022, the General Court largely confirmed<sup>69</sup> the Commission's 2018 decision<sup>70</sup>, concluding that Google had imposed illegal restrictions on Android device manufacturers and mobile network operators to preserve its dominant position in general internet search. The Court decreased the fine from EUR 4.34 billion to EUR 4.125 billion. Specifically, the Court upheld the Commission's finding that Android and iOS belonged in

<sup>65</sup> See, among others, the Judgment of the General Court of 9.11.2022 in Case T-667/19, *Ferriere Nord v Commission*, EU:T:2022:692, paragraph 229.

<sup>66</sup> See, among others, the Judgment of the General Court of 9.11.2022 in Case T-667/19, *Ferriere Nord v Commission*, EU:T:2022:692, paragraph 252.

<sup>67</sup> Judgment of the General Court of 15.6.2022 in Case T-235/18, *Qualcomm v Commission*, EU:T:2022:358.

<sup>68</sup> Judgment of the General Court of 26.1.2022, Case T-286/09 RENV, *Intel Corporation v Commission*, EU:T:2022:19.

<sup>69</sup> Judgment of the General Court of 14.9.2022, Case T-604/18, *Google LLC and Alphabet, Inc. v European Commission*, EU:T:2022:54.

<sup>70</sup> Case AT.40099, *Google Android*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_AT\\_40099](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_AT_40099)

separate relevant product markets. It also upheld the Commission's findings that Google had restricted competition both from competing general search services and browsers via the pre-installation conditions Google imposed on manufacturers of mobile devices and from alternative versions of Android and competing general search services via its anti-fragmentation agreements.

## 2.2. Mergers and acquisitions

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

54. In 2022, the Commission's merger control activities remained at a high level. The Commission adopted 368 merger decisions in various sectors (in 2021 the Commission adopted 396 merger decisions) of which 291 were approved following a simplified procedure. The Commission intervened in 14 proposed acquisitions, of which 12 transactions were approved subject to conditions and two were prohibited. Four notified transactions were abandoned by the parties and withdrawn in Phase II.

55. Moreover, in 2022 the Commission received 26 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a NCA 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>71</sup> and referred one transaction pursuant to Article 9 of the EU Merger Regulation to be examined by NCAs.

56. The vast majority of mergers notified in 2022 did not raise competition concerns and were speedily reviewed. The simplified procedure was applied in 78 % of all notified transactions under the EU Merger Regulation in 2022. Nevertheless, in 2022, 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. Moreover, the Commission intervened in 14 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. Significant cases

57. In January 2022, the Commission prohibited the acquisition of *Daewoo Shipbuilding & Marine Engineering CO., Ltd* by *Hyundai Heavy Industries Holdings*<sup>72</sup>. According to the Commission, the merger between the two shipbuilders would have created a dominant position by the newly merged company and reduced competition in the worldwide market for the construction of large liquefied gas (LNG) carriers. Given that no remedies were submitted, the merger would have led to fewer suppliers and higher prices.

58. In January 2022, following an in-depth investigation and subject to conditions, the Commission approved the acquisition of *Kustomer* by *Meta*<sup>73</sup>. To address the competition concerns identified by the Commission, Meta offered comprehensive access commitments to the application programming interfaces for Meta's messaging channels with a ten-year

<sup>71</sup> Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1.

<sup>72</sup> Case M.9343, *Hyundai Heavy Industries Holdings/Daewoo Shipbuilding & Marine Engineering*. See: [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_9343](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9343)

<sup>73</sup> Case M.10262, *Meta (Formerly Facebook)/Kustomer*. See: [https://ec.europa.eu/competition/mergers/cases1/202242/M\\_10262\\_8559915\\_3054\\_3.pdf](https://ec.europa.eu/competition/mergers/cases1/202242/M_10262_8559915_3054_3.pdf)



duration<sup>74</sup>. The Commission carefully reviewed the acquisition because transactions such as this one could further strengthen large players that increasingly dominate the digital economy, irrespective of the target company's size. The commitments offered by Meta ensure that its rivals will continue to have free and comparable access to Meta's important messaging channels.

59. In June 2022, the Commission approved the acquisition of *Welbilt* by *Ali Group* subject to conditions<sup>75</sup>. *Ali Group* and *Welbilt* are global suppliers of professional kitchen equipment, including ice-making machines used in the hospitality and industrial sectors. The commitments offered in this case include the divestment of *Welbilt*'s entire ice-making machines business. This will ensure that a new player on the market will continue to exert competitive pressure on the merged entity, while customers will retain a choice of suppliers.

60. In September 2022, the Commission, prohibited *Illumina's* prematurely implemented acquisition of *GRAIL* following an in-depth investigation<sup>76</sup>. *Illumina* is the dominant supplier of NGS systems for genetic and genomic analysis. *GRAIL* is a customer of *Illumina*, using its NGS systems to develop cancer detection tests. The Commission found that with the transaction, *Illumina* would have an incentive to cut off *GRAIL's* rivals from accessing its technology, or otherwise disadvantage them and thereby stifle innovation competition in the nascent market for NGS-based cancer detection tests.

### 2.2.3. Important judgments by the European Union Courts

61. On 23 February 2022, the General Court dismissed the actions by *UPS* and *ASL* for damages totalling EUR 2 billion<sup>77</sup>. According to the Court, the conditions for non-contractual liability pursuant to Article 340 TFEU were not fulfilled in the *UPS* case. However, the Court ordered the Commission to pay 1/3 of the costs of *UPS*, as a compensation for the Commission's sufficiently serious breach of its due process rights during the administrative procedure leading to the prohibition decision in 2013. *UPS* appealed the judgment. In the *ASL* case, the Court ruled that a simple general reference to *UPS'* claims as the basis for its own claims was inadmissible.

62. In an important judgment on 'gun jumping', the Union Courts confirmed the Commission's approach. On 18 May 2022, the General Court upheld in its entirety the Commission decision in *Canon*<sup>78</sup>. The General Court ruled that a partial implementation of a concentration via a parking structure contributes to the envisaged ultimate change of control and can be fined concurrently for breaches of Articles 4(1) and 7(1) of the EU Merger Regulation.

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<sup>74</sup> A public API access commitment: Meta commits to guarantee non-discriminatory access, without charge to its publicly available APIs for its messaging channels to competing customer service CRM software providers and new entrants. A core API access-parity commitment: To the extent any features or functionalities of Messenger, Instagram messaging or WhatsApp that are used by Kustomer's customers today may be improved or updated, Meta commits to also make available equivalent improvements to Kustomer's rivals and new entrants. This would also hold for any new features or functionalities of Meta messaging channels in the future if used by a sizeable proportion of Kustomer's customers.

<sup>75</sup> Case M.10431, *Ali Group/Welbilt*, OJ C 469, 9.12.2022, p. 16.

<sup>76</sup> Case M.10188, *Illumina/GRAIL*. See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_5364](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5364)

<sup>77</sup> Judgments of the General Court of 23.2.2022 in parallel Cases T-834/17, *UPS v Commission*, EU:T:2022:84 and T-540/18, *ASL v Commission*, EU:T:2022:85. The judgment in T-834/17 was appealed by UPS.

<sup>78</sup> Judgment of the General Court of 18.5.2022, Case T-609/19, *Canon Inc. v European Commission*, EU:T:2022:299.

63. On the same day, the General Court also dismissed the appeal brought by *Wieland* against the 2019 Commission's decision prohibiting the acquisition by *Wieland* of *Aurubis Rolled Products* and *Aurubis'* stake in *Schwermetall*<sup>79</sup>. In its judgment, the General Court confirmed that the Commission's approach to market definition of copper products was appropriate and reflected market reality. It also upheld the Commission's assessment of the risk of creation of a significant impediment to effective competition in the markets for rolled copper products in the EEA. Furthermore the General Court confirmed the Commission's rejection of the commitments proposed by *Wieland* as neither effective nor comprehensive.

64. On 22 June 2022 the General Court upheld the Commission's 2019 decision prohibiting the creation of a joint venture by *Tata Steel* and *thyssenkrupp*<sup>80</sup>. In its judgment, the General Court fully upheld the Commission's assessment and confirmed the finding of a significant impediment to effective competition in the European Economic Area markets for certain automotive steel products, where the merger was found to eliminate an important competitive constraint, and packaging steel products where the merged entity would achieve dominance in certain segments of the market. The General Court further found that the Commission correctly concluded that the remedies offered by the parties were insufficient to eliminate the identified significant impediments to effective competition.

65. Finally, the General Court upheld the Commission's referral decisions under Article 22 of the EU Merger Regulation in the *Illumina/GRAIL* case, which marked the first time that the Commission applied its recalibrated approach to merger referrals under Article 22 of the EU Merger Regulation. It followed the announcement by EVP Vestager that the Commission would no longer discourage Member States from requesting a referral of cases which are not notifiable in that Member State, to ensure that mergers involving companies whose (low) turnover does not appropriately reflect their importance for competition can be subject to merger review. In March 2021, the Commission published guidance in that respect. *Illumina* supported by *GRAIL* challenged the Commission's decisions of 19 April 2021 to accept jurisdiction over the case after such a referral. On 13 July 2022, the General Court dismissed the action<sup>81</sup>. The impact of this judgment is very significant, as the General Court confirmed, *inter alia*, that transactions referred under Article 22 of the EU Merger Regulation do not need to fall within the scope of the merger control rules of the Member State requesting the referral. The judgment of the General Court is currently under appeal before the Court of Justice.

### **3. The role of DG Competition in the formulation and implementation of other policies** **The crucial role of the DG Competition in mitigating external economic shocks in times of disruption**

#### ***3.1.1. Adoption of the Temporary Crisis Framework to support the economy following Russia's invasion of Ukraine and Emergency Energy Communication***

66. To reduce the negative social and economic impact on the EU and its Member States caused by Russia's war of aggression against Ukraine – among other policy

<sup>79</sup> Judgment of the General Court of 18.5.2022, Case T-251/19, *Wieland-Werke AG v European Commission*, EU:T:2022:296.

<sup>80</sup> Judgment of the General Court of 22.6.2022, Case T-584/19, *thyssenkrupp AG v European Commission*, EU:T:2022:386.

<sup>81</sup> Judgment of the General Court of 13.7.2022, Case T-227/21, *Illumina, Inc. v European Commission*, EU:T:2022:447.

instruments - the Commission again used the flexibility of the State aid rules. The Commission adopted the Temporary Crisis Framework<sup>82</sup> making it possible for Member States to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance in the economy created by the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed by the Union and its international partners and the counter-measures taken by Russia.

67. The EU also needs to expedite the rollout of renewable energy sources and speed up the decarbonisation of its energy supply in line with the objectives of the REPowerEU initiative<sup>83</sup>. This is why the Commission amended the Temporary Crisis Framework in July 2022 to facilitate for Member States to set up schemes for renewable energy and the decarbonisation of industry. In October 2022, the Commission prolonged the Framework<sup>84</sup> until 31 December 2023, and amended it to address the evolving needs of Member States to support the economy following Russia's continued aggression against Ukraine.

68. Due to the crisis in Ukraine, a particular need for solvency support has emerged in the energy sector, in particular an increased need for financial collaterals for trading activities on the energy market. Therefore, the Temporary Crisis Framework contains an amended regime for this type of solvency support.

69. In 2022, several Member States notified umbrella schemes namely crosscutting support to economic sectors where companies have been negatively impacted by the war in Ukraine. These umbrella schemes<sup>85</sup> were approved under the Temporary Crisis Framework, in accordance with Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU').

70. In 2022, the Commission adopted 195 decisions, approving 182 national measures notified by 27 Member States. The overall budget that Member States notified to the Commission for such State aid measures amounted to around EUR 670 billion. Some 53% of the approved aid had been notified by Germany, 24% by France and 7% by Italy<sup>86</sup>, which however do not represent the amounts paid out.

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<sup>82</sup> Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 28. 10.2022, p. 1). This Temporary Crisis Framework replaced the Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1).

<sup>83</sup> REPowerEU is the Commission's plan to make Europe independent from Russian fossil fuels before 2030, in light of Russia's invasion of Ukraine. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM(2022) 230, 18.5.2022.

<sup>84</sup> Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ, C 426, 9.11.2022, p. 1.

<sup>85</sup> For example, Germany notified an umbrella scheme with a EUR 11 billion budget. The German scheme included State guarantees for loans and subsidised loans, ensuring capital liquidity for companies in need. Case SA.102631, *Germany TCF: Umbrella schemes for guarantees on loans and subsidised loans*, OJ C 337, 2.9.2022, p. 18. Spain notified a EUR 1.3 billion umbrella scheme. The Spanish umbrella scheme included liquidity support in the form of loan guarantees and loans with subsidised interest rates. Case SA. 102771 *Spain TCF: Umbrella Scheme*, OJ C 348, 9.9.2022, p. 9. Italy notified an umbrella scheme amounting to EUR 1.2 billion. The support was targeted to the agricultural, forestry, fishery and aquaculture sectors, including direct grants, tax or payment advantages, repayable advances and reduction or exemption from making social security and welfare contributions. Case SA. 102896, *Italy – TCF – Umbrella scheme for the measures to support undertakings active in the agricultural, forestry, fishery, and aquaculture sectors in compliance with the Temporary Crisis Framework*, OJ C 337, 2.9.2022, p. 17.

<sup>86</sup> Source: DG Competition internal database.

### 3.1.2. Phasing out the State Aid Covid Temporary Framework supporting the economy in the context of the coronavirus outbreak

71. The Commission continued to assess aid measures directly under Article 107(3)(b) TFEU, Article 107(3)(c) TFEU as well as under the Temporary Framework supporting the economy in the context of the coronavirus outbreak ('COVID-19 Temporary Framework for State aid measures')<sup>87</sup>. By the end of 2022, the Commission had adopted 217 COVID-19-related decisions in all Member States, including decisions under the COVID-19 Temporary Framework for State aid measures<sup>88</sup>. This is a significant decrease compared to 2021, when 1180 COVID-19-related decisions were adopted.

72. As the public health measures taken in light of Covid-19 health crisis situation were eased, the Commission decided not to prolong the COVID-19 Temporary Framework for State aid measures beyond 30 June 2022 except for investment support and solvency support measures, which are allowed until 31 December 2023<sup>89</sup>. The COVID-19 Temporary Framework for State aid measures allows until 30 June 2023 a flexible transition under clear safeguards for converting and restructuring debt instruments such as loans and guarantees into other forms of aid, for example direct grants.

### 3.1.3. Implementing the Recovery and Resilience Facility

73. Implementation of the Recovery and Resilience Facility ('RRF')<sup>90</sup> - the centrepiece of the NextGenerationEU initiative - continued in 2022<sup>91</sup>. It aims to promote cohesion among Member States by mitigating the social and economic fallout of the COVID-19 pandemic and to better prepare the EU for future challenges, notably by supporting the green and digital transitions. Most of the measures financed by the RRF do not constitute State aid. Out of those that do qualify as State aid, the majority can be implemented directly by the Member States, either under a block-exemption regulation<sup>92</sup> or under a *de minimis* regulation<sup>93</sup>. However, a number of measures have been notified for the Commission's prior authorisation. During 2022, the Commission adopted State aid decisions on nearly 80 RRF-funded measures.

<sup>87</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>88</sup> See Staff Working Document, Annex 1 and Annex 2 for a complete list of COVID-related Commission decisions.

<sup>89</sup> Communication from the Commission: Amendment to the Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 423, 7.11.2022, p. 9.

<sup>90</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3131](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3131)

<sup>91</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?lang=en](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html?lang=en)

<sup>92</sup> Mainly Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, as last amended by Commission Regulation (EU) 2021/1237, OJ L 270, 29.7.2021, p. 39.

<sup>93</sup> Mainly Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1.

## 3.2. sUpdating EU State aid rules and guidance to make them fit for new challenges

### *3.2.1. Guidelines on State aid for climate, environmental protection and energy entered into force*

74. The Climate, Environmental protection and Energy aid Guidelines ('CEEAG')<sup>94</sup> were adopted and became applicable in January 2022. They replaced the previously applicable Environmental protection and Energy Aid Guidelines<sup>95</sup>, to bring the framework in line with the EU objectives set out in the European Green Deal and with the climate and energy targets for 2030 and 2050. The CEEAG<sup>96</sup> allow Member States to support efforts towards decarbonisation, the circular economy, biodiversity, clean or zero-emission mobility and energy efficiency.

### *3.2.2. Revised State aid Framework for research, development and innovation adopted*

75. The Commission supports the swift development and deployment of cutting edge and breakthrough technologies, facilitating the green and digital transitions of the EU economy while contributing to the new European Innovation Agenda<sup>97</sup>. In October 2022, the Commission adopted a revised Communication on State aid rules for research, development and innovation<sup>98</sup>, which sets out the rules under which Member States can grant State aid to companies for research, development and innovation activities.

### *3.2.3. State aid rules in the agriculture and forestry sectors and in rural areas fit for the green transition adopted*

76. With the focus on aligning the State aid rules with current EU strategic priorities, in particular the Common Agricultural Policy Strategic Plans<sup>99</sup>, the European Green Deal and Farm to Fork Strategy in 2022, the Commission has adopted a new set of State aid rules for the agriculture and forestry sectors and rural areas: the State aid Guidelines in the agricultural and forestry sectors and in rural areas and the Agricultural Block Exemption Regulation. In January 2022, the Commission launched a public consultation on the proposed revision of the rules, which ran until March 2022. The proposed revision would make it easier and faster for Member States to provide funding to agriculture and forestry sectors and in rural areas, without causing undue distortions of competition in the Single Market.

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<sup>94</sup> Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, OJ C 80, 18.2.2022, p. 1.

<sup>95</sup> Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

<sup>96</sup> Communication from the Commission: Guidelines on State aid for climate, environmental protection and energy, OJ C 80, 18.2.2022, p. 1.

<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 – A New European Innovation Agenda, COM(2022)332, 5.7.2022.

<sup>98</sup> Communication from the Commission: Framework for State aid for research and development and innovation, OJ C 7388, 19.10.2022, p. 1.

<sup>99</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund ('EAGF') and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435, 6.12.2021, p. 1.

### 3.2.4. State aid rules in the fishery and aquaculture sectors

77. In 2022, the Commission adopted a new block exemption regulation for the fishery and aquaculture sectors<sup>100</sup> and issued new Guidelines for State aid in the fishery and aquaculture sectors<sup>101</sup>. The revised Guidelines aim to ensure that the economic development in fisheries and aquaculture takes place in full respect of the Common Fisheries Policy ('CFP'), in particular the protection of fish stocks and the environment. The Guidelines take into account important policy and regulatory developments in these sectors, in particular the entry into force of the Regulation creating a European Maritime, Fisheries and Aquaculture Fund, a component of the CFP<sup>102</sup>. Finally, the Commission prolonged the current Fishery De Minimis Regulation until 31 December 2023<sup>103</sup>.

### 3.2.5. Revision of the State Aid General Block Exemption Regulation continued

78. **The General Block Exemption Regulation ('GBER')** for State aid<sup>104</sup> is being prolonged and revised to facilitate the green and digital transition. These amendments will complement the revisions of the Guidelines on regional aid<sup>105</sup>, on aid for research and development and innovation, on risk finance aid, on aid for the deployment of broadband networks and on aid for environmental protection and energy. The Commission has already endorsed and plans to formally adopt the amendment to the GBER in 2023.

### 3.2.6. Commission revised State aid rules for Broadband Networks

79. Following a public consultation<sup>106</sup>, the Commission adopted a revised Communication on State aid for broadband networks<sup>107</sup> ('Broadband Guidelines') in December 2022. The revised Broadband Guidelines describes how the Commission will assess State aid measures notified by Member States to support the deployment and take-up of broadband networks in the EU. The new rules contribute to the EU's strategic objectives of ensuring gigabit connectivity and 5G coverage for everyone<sup>108</sup>.

<sup>100</sup> Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p. 82.

<sup>101</sup> Communication from the Commission: Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

<sup>102</sup> Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, OJ L 247, 13.7.2022, p. 1.

<sup>103</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

<sup>104</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.

<sup>105</sup> Communication from the Commission Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.

<sup>106</sup> Draft Communication from the Commission Guidelines on State aid for broadband networks, 19.11.2021.

<sup>107</sup> Communication from the Commission: Guidelines on State aid for broadband networks, COM(2022) 9343 final, 12.12.2022.

<sup>108</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7595](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7595)

### ***3.2.7. Commission proposed rules to simplify procedures for State aid to green transport***

80. In 2022, the Commission adopted a proposal for a new Council Regulation<sup>109</sup>. The Council adopted the Regulation in December 2022. The Regulation enables the Commission to adopt regulations exempting from prior notification aid measures for rail, inland waterway and multimodal transport in line with Article 93 TFEU. The aim of the Commission's initiative is to simplify procedures for State aid supporting green transport modes, such as rail, inland waterway and multimodal transport. It goes hand in hand with the review of the Railway Guidelines on which the Commission continued to work in parallel in 2022. Those Guidelines aim at promoting the modal shift from road to rail transport and thus contribute to achieving the climate objectives.

### ***3.2.8. Roadmap for a possible prolongation of the Aviation Guidelines***

81. In July 2022, the Commission published a Roadmap informing stakeholders and other interested parties about the possibilities to prolong by one to three years the rules on operating aid contained in the Aviation Guidelines<sup>110</sup>. The purpose of such a prolongation would be to avoid potential failure of regional airports due to the impact of the COVID-19 crisis before a complete review of the Aviation Guidelines has been carried out.

## **4. DG Competition's contribution to fostering a global competition culture**

### **4.1. Multilateral and bilateral relations**

82. In 2022, the Commission continued its active engagement in international competition fora such as the OECD Competition Committee, the International Competition Network ('ICN'), where the Commission took up a three-year co-chair role in the Merger Working Group, and the United Nations Conference on Trade and Development ('UNCTAD'). The Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules.

83. In October 2022, the Commission and the U.S. Competition Authorities held the second meeting of the Joint Technology Competition Policy Dialogue, discussing cooperation efforts to ensure and promote fair competition in the digital sector<sup>111</sup>. Two ministerial meetings took place in May and December 2022 in the EU-U.S. Trade and Technology Council. The meetings led to an administrative arrangement on a common mechanism for reciprocal information sharing about public support provided by the EU and the U.S. to the semiconductor industry<sup>112</sup>.

84. In 2022, the Commission continued its cooperation in competition policy with third countries, including technical cooperation programmes with several Asian<sup>113</sup> and African<sup>114</sup> countries. In 2022, the Commission continued negotiations to conclude Free Trade

<sup>109</sup> Proposal for a Council Regulation on the application of Articles 93, 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of State aid in the rail, inland waterway and multimodal transport sector, COM(2022) 327 final, 6.7.2022.

<sup>110</sup> Communication from the Commission: Guidelines on State aid to airports and airlines, of 4 April 2014, OJ C 99, 4.4.2014, p. 3.

<sup>111</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_6167](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6167)

<sup>112</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7433](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7433)

<sup>113</sup> See: <https://asia.competitioncooperation.eu>

<sup>114</sup> See: <https://africa.competitioncooperation.eu>

Agreements ('FTA') with Australia, India, Indonesia, and concluded the FTA negotiations with New Zealand and Uzbekistan. As regards candidate countries<sup>115</sup> and potential candidates<sup>116</sup>, the Commission's main policy objective is to assist these countries to create legislative frameworks with well-functioning and operationally independent competition authorities.

## 4.2. Policy Cohesion through the European Competition Network

85. In 2022, 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 moment of the first formal investigative measure and, second, their obligation to consult the Commission on envisaged decisions. In 2022, 148 new investigations were launched within the network and 78 envisaged decisions were submitted.

86. In addition to the cooperation 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 2022, horizontal working groups and sector-specific sub-groups held 45 meetings where NCA officials exchanged views and experience.

## 5. Resources

### 5.1. Resources overall

#### 5.1.1. Annual budget

87. In 2022, the total budget for competition law enforcement increased by EUR 9.0 million to EUR 163.8 million.

#### 5.1.2. Number of employees (person-years)

88. On 31 December 2022, DG Competition employed 820 permanent staff members (including officials, temporary agents and administrative staff, excluding trainees and external service providers) and 83 staff members on fixed-term contracts compared to 809 and 85 staff members respectively at the end of 2021. Out of the 820 permanent staff members, 550 officials and temporary agents (that is to say excluding contractual agents) worked in competition enforcement compared to 533 at the end of 2021. Of the total staff 50% were lawyers, 30% economists, 10% lawyers and economists with mixed profiles. A further 10% have other education backgrounds.

<sup>115</sup> Countries granted candidate country status by the European Council on the basis of a recommendation by the European Commission: Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

<sup>116</sup> Potential candidates for EU membership: Georgia and Kosovo.

<sup>117</sup> Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43 and OJ C 374, 13.10.2016, p. 10.



## 5.2. Human resources (person-years)

89. In 2022, 111 officials and temporary agents worked on dominance cases, 31 worked on anti-cartel cases, 68 worked in merger enforcement and 170 worked in State aid control. Moreover, 170 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.

## 6. Summaries of our references to new reports and studies on competition policy issues

### 6.1. “Internet of things” sector enquiry

90. In January 2022, the Commission published the final report<sup>118</sup> and its accompanying Staff Working Document<sup>119</sup> in its sector inquiry on the consumer Internet of Things (“IoT”) launched in July 2020, based on Article 17 of Regulation 1/2003<sup>120</sup>. The report presents the findings, including a number of potential competition concerns, raised by stakeholders, in particular in relation to voice assistants and smart device operating systems, the access to and accumulation of large amounts of data and a lack of interoperability.

### 6.2. Study on the markets for publicly accessible recharging infrastructure

91. To ensure that competition policy enforcement assist the green transition, preparing the way to green mobility the Commission commissioned in 2022 a study analysing the competitive dynamics in the markets for publicly accessible recharging infrastructure. The study will be finalised in 2023<sup>121</sup>.

### 6.3. Study on markets for card-based payments

92. In 2022, the Commission launched a study on new developments in card-based payment markets mostly, but not only, related to the application of the Interchange Fee Regulation (‘IFR’)<sup>122</sup>. This study will examine market trends, including the ones related to digital solutions such as mobile wallets that rely on cards for payment transactions. The study will also provide a detailed assessment of trends in Merchant Service Charges and their components including scheme fees, their transparency and negotiability as well as choice of card-based payment applications.

<sup>118</sup> Report from the Commission to the Council and the European Parliament - Final report - sector inquiry into consumer Internet of Things COM (2022) 19 final, 20.1.2022, available at: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_en.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf)

<sup>119</sup> Commission Staff Working Document – Report from the Commission to the Council and the European Parliament: Final report - Sector inquiry into consumer Internet of Things, SWD (2022) 10 final, 20.1.2022, available at: [https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things\\_final\\_report\\_2022\\_staff\\_working\\_document\\_0.pdf](https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_staff_working_document_0.pdf)

<sup>120</sup> Commission decision of 16.7.2020 initiating an inquiry into the sector for consumer Internet of Things related products and services pursuant to Article 17 of Council Regulation (EC) No 1/2003, available at: [https://ec.europa.eu/competition/antitrust/IoT\\_decision\\_initiating\\_inquiry\\_en.pdf](https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf)

<sup>121</sup> See: [https://competition-policy.ec.europa.eu/single-market-programme-smp/calls-tenders-contracts/ex-ante-publicity-low-and-middle-value-contracts\\_en](https://competition-policy.ec.europa.eu/single-market-programme-smp/calls-tenders-contracts/ex-ante-publicity-low-and-middle-value-contracts_en)

<sup>122</sup> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p. 1.

#### 6.4. Market study on hotel distribution practices

93. In 2022, the Commission published the results of an external market study on the distribution practices of hotels in the EU, covering the period between 2017 and 2021<sup>123</sup>. The study focused on a representative sample of six Member States (Austria, Belgium, Cyprus, Poland, Spain and Sweden) and notably aimed at identifying any changes in hotels' distribution practices, as compared to the results of the monitoring exercise carried out by the European Competition Network in 2016, and to find out whether laws banning the use of wide and narrow parity clauses by online travel agents in Austria and Belgium have led to changes in hotels' distribution practices in those Member States.

94. The results of the study will be taken into account by the Commission and NCAs in their ongoing monitoring and enforcement work in the hotel accommodation distribution sector, notwithstanding the possible impact of the DMA on competition in this sector.

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<sup>123</sup> See: [https://competition-policy.ec.europa.eu/document/download/1551a94d-e3c0-4175-bdff-d54aef2f6606\\_en](https://competition-policy.ec.europa.eu/document/download/1551a94d-e3c0-4175-bdff-d54aef2f6606_en)