



Brussels, 4.6.2015  
COM(2015) 247 final

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

**Report on Competition Policy 2014**

{SWD(2015) 113 final}

## 1. INTRODUCTION

2014 marked a new start for Europe. Following the European elections, the European Parliament gave its green light to the new European Commission on the basis of the priorities outlined in President Juncker's Political Guidelines<sup>1</sup>. The mission letter addressed to Margrethe Vestager, Commissioner for Competition, states that competition policy would “*contribute, as appropriate, to our jobs and growth agenda, including in areas such as the digital single market, energy policy, financial services, industrial policy and the fight against tax evasion*”<sup>2</sup>. Indeed, competition policy encompassed all these areas in 2014 and provided a sound foundation to build upon in supporting the overall policymaking of the European Commission.

Competition policy can help building a genuine Digital Single Market. In the knowledge-based sectors, vibrant competition is essential to stimulate innovation and spread the benefits of technological development among Europe's citizens. In addition, effective enforcement of antitrust and merger policy makes it easier for small businesses to thrive and gain access to markets in sectors dominated by network effects. Finally, the application of State aid rules to the broadband sector helps to provide good coverage at affordable prices.

In the energy sector, competition policy ensures that companies do not maintain or re-erect barriers to protect themselves from competition, hampering the establishment of a European Energy Union. Competition enforcement also helps to ensure fair and non-discriminatory access to energy infrastructure, removes obstacles to market integration, and fosters competition between and within Member States. Moreover, the revised State aid rules on energy and environment assist Member States to better target their support for example to renewable energy sources, infrastructure investments, generation capacity or relief of electro-intensive users from the financing of renewables support.

The Commission has been particularly vigilant in financial services with the main goal of bringing a stable and fairer financial sector back to its core function of lending to the real economy. The creation of the Banking Union is increasing the confidence of European citizens and markets in the European banking system. Enforcement actions coupled with regulatory efforts also focused on tackling anticompetitive practices in financial derivatives and in the payments sector.

Industrial policy is centred on a competitive and open internal market as a springboard for the global success of EU businesses. The new State aid framework is designed to channel government support where it matters most for growth and competitiveness. In addition, in 2014 the Commission investigated and punished several cartels concerning input and intermediate products. Antitrust enforcement reduces and – thanks to its deterrent effect – prevents the harm that cartels cause along the supply chain to the detriment of EU's international competitiveness.

The new Commission will continue to focus on the fight against tax avoidance and tax evasion. In 2014, the Commission has tightened its control of fiscal State aid, by using EU

---

<sup>1</sup> Jean-Claude Juncker, "A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change" Political Guidelines for the next European Commission, Opening Statement in the European Parliament Plenary Session, 15 July 2014: [http://ec.europa.eu/about/juncker-commission/docs/pg\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf)

<sup>2</sup> Jean-Claude Juncker, Mission Letter to Margrethe Vestager, Commissioner for Competition, 1 November 2014, available at [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/vestager\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf)

competition tools to make sure that EU countries do not help selected multinational companies avoid paying their fair share of taxes.

One major achievement in the field competition policy in 2014 was the adoption of the Directive on antitrust damages actions<sup>3</sup>. Presented by the Commission in June 2013, the Directive was adopted and entered into force in 2014. Member States now have until 27 December 2016 to implement it. Thanks to the Directive, it will be easier for European citizens and companies to receive effective compensation for the harm caused by antitrust violations, such as cartels and abuses of dominant market positions. The Directive is the first legislative initiative adopted via the ordinary legislative procedure in the area of competition policy, and it sets a milestone for the competition dialogue between the Commission and the other EU institutions.

## **2. TOWARDS A CONNECTED DIGITAL SINGLE MARKET**

The digital economy is of paramount importance for Europe's future growth and competitiveness. Completing the Digital Single Market would drive innovation and growth in many other sectors, such as energy, transportation, public services, health and education<sup>4</sup>. A genuine Digital Single Market would also generate growth in new sectors and create high-quality jobs. The more the integration of the Digital Single Market progresses, the greater the need for EU competition policy to ensure a fair and level digital playing field across the EU.

*Laying the foundation of the Digital Single Market: Promoting infrastructure development and competitive markets for broadband and telecoms networks*

The digitalization of our economy requires substantial investment in high speed ("Next Generation") networks. Competition and consumer demand have been important drivers of investment, and Member State schemes have added support for infrastructure renewal and upgrading. Since a market failure exists as regards the uniform roll out of broadband networks across territories, State aid will continue to play an important role in this sector. Over the last three years, the Commission approved over EUR 10 billion of broadband State aid. This amount, however, does not include all government support to the sector, as not all State measures fall under the definition of State aid pursuant to Article 107(1) TFUE. On top of Member State funding, additional funding is provided by the EU.

However, such public investment needs to be channelled carefully to those areas which are not served by the market; otherwise, it risks crowding out private investment. State aid control also needs to ensure that the principle of technological neutrality is respected, namely, that the successful technology should not be pre-determined by public intervention but be chosen by users on the merits – i.e. by competition in the market. State aid rules have recently been reviewed to provide an appropriate analytical setting. The new State aid framework includes the 2013 Broadband Guidelines<sup>5</sup>, which align the State aid rules on aid for broadband with the

---

<sup>3</sup> European Parliament and Council Directive 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1 available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_2014\\_349\\_R\\_0001&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2014_349_R_0001&from=EN)

<sup>4</sup> See, e.g., the study "*Unlocking the ICT Growth Potential in Europe: Enabling people and businesses*" (2013) prepared by The Conference Board for the European Commission, available at <http://ec.europa.eu/digital-agenda/en/news/new-study-unlocking-ict-growth-potential-europe-enabling-people-and-businesses>

<sup>5</sup> Communication from the Commission, *EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*, OJ 2013 C 25, 26.1.2013, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:en:PDF>

objectives of the Digital Agenda, and the General Block Exemption Regulation<sup>6</sup> (GBER) adopted in 2014, which includes certain aid to broadband infrastructures.

The Commission also ensures that broadband and mobile networks remain open and competitive, a *sine qua non* for building a vibrant Digital Single Market. After an in-depth investigation, in October the Commission imposed a fine close to EUR 39 million jointly and severally on Slovak Telekom and its parent company, Deutsche Telekom, for having pursued during more than five years an abusive strategy to shut out competitors from the Slovak market for broadband services, in breach of EU antitrust rules<sup>7</sup>. In particular, the Commission concluded that Slovak Telekom refused to supply unbundled access to its local loops to competitors, and imposed a margin squeeze on alternative operators. Deutsche Telekom also received an additional fine of EUR 31 million to ensure sufficient deterrence as well as to punish for its repeated abusive behaviour (recidivism), as it had already been fined in 2003 for a margin squeeze in broadband markets in Germany<sup>8</sup>.

Healthy competition in the mobile telecoms market is especially important for European consumers, who should continue to benefit from improved services at attractive prices. In summer 2014, the Commission conditionally approved two mergers between mobile network operators in Ireland (Hutchison 3G UK/Telefónica Ireland)<sup>9</sup> and Germany (Telefónica Deutschland/E-Plus)<sup>10</sup>, following in-depth investigations. The remedies in these cases ensured that competition between market players is maintained, both through market entry or expansion of so-called mobile virtual network operators – that is operators that do not own a network but use the network of another operator to provide services to their customers – and by keeping the door open for a new network operator to enter the market in the future.

#### *Keeping up with the times: Competition policy actions on smart devices and online services*

Smart mobile devices are becoming increasingly important within the digital economy. In 2014 for the first time more users have accessed the internet through a smart mobile device than through a PC. In this area, the Commission has launched a preliminary investigation regarding Google's business practices with regard to the Android mobile operating system, based on complaints about potential abuses of a dominant position. Google's Android is the leading operating system for smartphones.

In October, the Commission authorised, under the EU Merger Regulation, the proposed acquisition of WhatsApp by Facebook. Facebook (via Facebook Messenger) and WhatsApp both offer applications for smartphones which allow consumers to communicate by sending text, photos, voice and video messages. The merger was approved without conditions, in particular in light of the dynamic nature of the market, low entry barriers and sufficient

---

<sup>6</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.187.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG)

<sup>7</sup> Case AT.39523 *Slovak Telekom*, Commission decision of 15 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39523](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39523)

<sup>8</sup> Cases AT.37451, AT.37578, AT.37579 *Deutsche Telekom AG*, Commission decision of 21 May 2003, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003D0707>

<sup>9</sup> Case M.6992 *Hutchison 3G UK / Telefónica Ireland*, Commission decision of 28 May 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_6992](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_6992)

<sup>10</sup> Case M.7018 *Telefónica Deutschland / E-Plus*, Commission decision of 2 July 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7018](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7018)

remaining competition<sup>11</sup>. The Commission's investigation focused on three areas: consumer communications services, social networking services, and online advertising services.

An important feature of the area of smart mobile devices concern standard-setting procedures and interoperability. In this context, the Commission adopted two important decisions on the enforcement of standard essential patents (SEPs) in April: a prohibition decision against Motorola Mobility<sup>12</sup>, and a commitment decision with regard to Samsung<sup>13</sup>. SEPs are patents essential for the implementation of a specific industry standard. It is technically impossible to make a standard-compliant product, such as a smartphone, without using the technology protected by SEPs. As a *quid pro quo* for the inclusion of their patents into the respective standards, Motorola and Samsung had committed to license them on fair, reasonable and non-discriminatory ("FRAND") terms. The Commission's objective is to make sure that the benefits of standardisation are maximised, while at the same time ensuring fair reward for intellectual-property holders.

#### **Antitrust enforcement in the area of Standard Essential Patents (SEPs)**

In its prohibition decision against Motorola Mobility, the Commission held that Motorola had abused its dominant position by seeking an injunction in Germany against Apple on the basis of a SEP, although Apple was willing to take a license and have the licensing terms determined by a German court.

In a similar case, the Commission rendered legally binding commitments offered by Samsung to address the competition concerns identified by the Commission in a Statement of Objections of December 2012. Under the commitments, Samsung commits for a period of five years not to seek injunctions in the European Economic Area on the basis of any of its SEPs, present and future, that relate to technologies implemented in smartphones and tablets against any potential licensee that agrees to comply with a specified process for determining appropriate FRAND royalty rates by an independent third party.

The decisions provide guidance to all stake-holders as to the interpretation of EU antitrust rules in the area of the interplay between patent law, competition law and standardisation.

On-going investigations in the sector include the alleged abusive practices on the part of Qualcomm, a leading developer of wireless technology products and services. The products concerned are communication chipsets used in mobile handsets and mobile broadband devices. The investigation, still in a preliminary stage, reinforces the Commission's commitment towards ensuring that these markets remain competitive.

In the increasingly important field of online services, the Commission continued carrying out its investigation into certain of Google's business practices<sup>14</sup>. The Commission is investigating concerns that Google may be abusing its dominant position in the markets for web search, online search advertising and online search advertising intermediation (i.e. the display of Google search advertising on partner sites) in the European Economic Area. Allegations related to other aspects linked to search engines, such as privacy and media pluralisms, are not covered by the investigation, which focuses solely on the competition-related issues.

---

<sup>11</sup> Case M.7217 *Facebook / Whatsapp*, Commission decision of 3 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7217](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7217)

<sup>12</sup> Cases AT.39985 *Motorola - Enforcement of GPRS standard essential patents*, Commission decisions of 29 April 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39985](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39985)

<sup>13</sup> Case AT.39939 *Samsung - Enforcement of UMTS standard essential patents*, Commission decision of 29 April 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39939](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39939)

<sup>14</sup> For more details on substance and procedure of the Google investigation, see [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39740](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740)

A Digital Single Market also requires secure and efficient on-line payments. The main means of making on-line payments is currently payment cards, although new methods are starting to enter the markets. For payment cards, the Commission continues its work under competition rules to lower Interchange Fees (see section on financial services below). Also, at the end of 2014, political agreement was reached on an Interchange Fee Regulation that will introduce lower interchange fees for consumer card payments (and mobile and internet payments based on consumer cards) to levels that had also been agreed by the international payment card schemes as commitments in antitrust enforcement proceedings.

*Combining regulation and competition enforcement on intellectual property: Developments on copyright, digital content and technology transfer agreements*

The Commission is examining the EU copyright legislative framework to ensure that it stays fit for purpose in the digital era. Copyright issues are central to the creation of a Digital Single Market: policymakers need to ensure that the system of rights, limitations to rights, and enforcement remains appropriate and is adapted to the new environment. The issues under discussion include territoriality of copyright and possible ways to overcome its negative effects on the Single Market.

In January 2014, the Commission opened formal proceedings against a number of major US film studios and European pay-TV broadcasters. In these proceedings, the Commission is examining whether certain clauses concerning satellite pay-TV broadcasting and online pay-TV services prevent consumers from cross-border access to pay-TV content<sup>15</sup>.

**Helping to spread innovation: New antitrust rules on technology transfer agreements**

In March, the Commission adopted new rules for the assessment of technology transfer agreements under EU antitrust rules. It consists of a revised Technology Transfer Block Exemption Regulation (TTBER), which exempts certain licensing agreements from Article 101 TFEU, and the Technology Transfer Guidelines, which provide further guidance on the application of the rules<sup>16</sup>. The new rules replaced the previous TTBER and Guidelines from 1 May 2014.

Licensing agreements can benefit the economy in several ways, since they: (i) help to disseminate innovation, (ii) allow companies to offer new products and services, (iii) encourage follow-on innovation, (iv) strengthen incentives for research and development by creating additional revenue streams to recoup costs. The revised regime continues to reflect that licensing is in most cases pro-competitive. The new rules provide better guidance to firms on how to license in ways that stimulate innovation and preserve a level playing field in the Single Market.

### **3. MAKING ENERGY MARKETS WORK BETTER**

Energy is an essential input to all economic sectors, and a significant item of expenditure for EU households. Energy markets are currently facing very significant challenges: incomplete market integration, high retail prices, decarbonisation and security of supply are among the most important. In his Political Guidelines, President Juncker called for a reform and reorganisation of EU energy policy into a new European Energy Union, focusing on the need

<sup>15</sup> Case AT.40023 *Cross-border access to pay-TV content*, see IP/14/15 of 13 January 2014 available at [http://europa.eu/rapid/press-release\\_IP-14-15\\_en.htm](http://europa.eu/rapid/press-release_IP-14-15_en.htm)

<sup>16</sup> Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements, OJ L 93, 28.3.2014, p. 17, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.093.01.0017.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.093.01.0017.01.ENG) and Communication from the Commission, *Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements*, OJ C 89, 28.3.2014, p. 3, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.089.01.0003.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.089.01.0003.01.ENG)

to diversify EU energy sources, strengthen the share of renewables, enhance energy efficiency and reduce the energy dependency of several EU countries. Competition policy will contribute towards achieving those goals.

#### *Targeting public support to strengthen the internal energy market*

In April 2014 the Commission adopted the new Guidelines on State aid for environmental protection and energy (EEAG)<sup>17</sup>, which entered into force in July.

#### **Upholding climate targets and infrastructure investment: the energy and environmental aid guidelines (EEAG)**

The new guidelines describe how the Commission will assess Member States support measures aiming, *inter alia*, at reaching their 2020 climate and energy targets, while addressing the market distortions that may result for example from subsidies granted to generation of energy from renewable sources. To this end, the guidelines promote a gradual move to market-based support for renewable energy. They also provide criteria on how Member States can relieve energy intensive companies that are particularly exposed to international competition from the financing of renewables support.

Furthermore, the new guidelines include criteria for ensuring that subsidies for energy infrastructure minimise distortions, focusing on projects that improve cross-border energy flows and promote infrastructure in Europe's less developed regions. Another new feature is to permit aid to secure adequate electricity generation when there is a real risk of insufficient electricity generation capacity, in a manner which minimises market distortions.

The Commission also simplified procedures to implement certain State aid measures, by including several categories of environmental and energy measures in the revised General Block Exemption Regulation (GBER)<sup>18</sup>. This will make it easier and quicker for public authorities to implement those measures since they do not need to obtain prior approval by the Commission. The new GBER includes measures such as (under certain conditions) aid for energy infrastructure, energy efficiency projects in buildings, operating aid to the production of energy from renewable energy sources, decontamination of polluted sites, waste recycling and reutilisation.

The new Environmental and Energy Guidelines do not include rules on aid to nuclear energy, which is to be assessed directly under the Treaty State aid provisions. The Commission has examined UK plans to subsidise the construction and operation of a new nuclear power plant at Hinkley Point in Somerset and found them to be in line with Treaty State aid rules<sup>19</sup>. During the in-depth investigation, the UK agreed to significantly modify the terms of the project financing and demonstrated that the support would address a genuine market failure. As a result, the State aid provided remains proportionate to the objective pursued, and minimises the distortion of competition in the Single Market.

#### *Creating a European Energy Union based on affordable energy prices and security of supply*

Antitrust enforcement actions in the energy sector contributed in particular to tackling high energy prices by addressing segmentation of markets and abusive or collusive behaviour,

---

<sup>17</sup> Communication from the Commission, *Guidelines on State aid for environmental protection and energy 2014-2020*, OJ C 200, 28.6.2014, p. 1, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628(01))

<sup>18</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.187.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.187.01.0001.01.ENG)

<sup>19</sup> Case SA.34947 UK – *Support to Hinkley Point C Nuclear Power Station*, see IP/14/1093 of 8 October 2014 available at [http://europa.eu/rapid/press-release\\_IP-14-1093\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1093_en.htm)

especially in Eastern and Central European markets. In March 2014, the Commission adopted two decisions concerning power exchanges, which are organised markets for trading electricity and are central to an efficient functioning of electricity markets.

In the first case, the Commission fined two spot power exchanges, EPEX Spot and Nord Pool Spot (NPS), for having agreed not to compete with one another for their spot electricity trading services in the European Economic Area<sup>20</sup>. Spot trading means trading in the short run, such as within the same day or for the next day. The infringement took place in 2011-2012, ending when the Commission and the EFTA Surveillance Authority carried out unannounced inspections at the companies' premises.

The second case concerned the Romanian power exchange OPCOM. The Commission fined OPCOM for abusing its dominant position in the Romanian market, by preventing EU-based electricity traders from outside Romania from joining the Romanian power exchange's spot markets and creating an artificial barrier to entry for over five years<sup>21</sup>.

On 12 August, the Commission sent a Statement of Objections to Bulgarian Energy Holding (BEH) for suspected abuse of dominance on Bulgarian wholesale electricity market<sup>22</sup>. The Commission had concerns that BEH, the incumbent state-owned vertically-integrated energy company in Bulgaria, might be hindering competition on the non-regulated wholesale electricity market in Bulgaria by imposing territorial restrictions on where the electricity supplied by BEH may be resold. Such behaviour, if established, could potentially have the effect of distorting the allocation of electricity within the Single Market, affecting liquidity and efficiency of electricity markets and raising artificial barriers to trade between Bulgaria and other Member States.

In a separate investigation, the Commission is looking into whether BEH, its gas supply subsidiary Bulgargaz and its gas infrastructure subsidiary Bulgartransgaz might be hindering competitors from accessing key gas infrastructures in Bulgaria, in breach of EU antitrust rules<sup>23</sup>.

The Commission also continued its investigation into Gazprom, in relation to pricing practices and potential partitioning of markets in the supply of gas to Central and Eastern Europe<sup>24</sup>. Another current investigation looks into potentially illegal practices related to the oil and biofuels products price benchmarks established by the price reporting agency Platts<sup>25</sup>.

The Commission remains vigilant on energy markets also using its State aid and merger-control tools. In particular, it makes sure that powerful upstream players do not attempt to integrate downstream and thereby excessively strengthen their control over the value chain.

---

<sup>20</sup> Case AT.39952 *Power Exchanges*, Commission decision of 5 March 2014. available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39952](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39952)

<sup>21</sup> Case AT.39984 *OPCOM / Romanian Power Exchange*, Commission decision of 5 March 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39984](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39984)

<sup>22</sup> Case AT.39767 *BEH electricity*, see IP/14/922 of 12 August 2014 available at [http://europa.eu/rapid/press-release\\_IP-14-922\\_en.htm](http://europa.eu/rapid/press-release_IP-14-922_en.htm)

<sup>23</sup> Case AT.39849 *BEH Gas*, see IP/13/656 of 5 July 2013 available at [http://europa.eu/rapid/press-release\\_IP-13-656\\_en.htm](http://europa.eu/rapid/press-release_IP-13-656_en.htm)

<sup>24</sup> Case AT.39816 *Upstream Gas Supplies in Central and Eastern Europe*, see IP/12/937 of 4 September 2012 available at [http://europa.eu/rapid/press-release\\_IP-12-937\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-937_en.htm?locale=en)

<sup>25</sup> Case AT.40054 *Oil and Biofuel Markets*, see MEMO/13/435 of 14 May 2013 available at [http://europa.eu/rapid/press-release\\_MEMO-13-435\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-435_en.htm) and MEMO/14/581 of 9 October 2014 available at [http://europa.eu/rapid/press-release\\_MEMO-14-581\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-581_en.htm)



For example, a thorough investigation was conducted into French electricity incumbent EDF's proposed acquisition of building management and maintenance service provider Dalkia. The Commission unconditionally approved the deal when it was satisfied that EDF would not leverage its dominant position in the supply of electricity into the building management and maintenance markets<sup>26</sup>. In the area of State aid, the Commission approved in July 2014 a UK measure to ensure adequacy of electricity generation by means of a market-wide capacity mechanism<sup>27</sup>.

#### **4. BUILDING A FAIRER AND MORE TRANSPARENT FINANCIAL SECTOR TO UNDERPIN GROWTH**

Competition enforcement in the financial services sector has been a Commission top priority since the onset of the crisis. A great deal of work has been done to improve bank regulation and supervision, and to ensure that the banking sector functions correctly in providing finance for economic activities. Competition policy is playing a central role in achieving a more transparent and stable financial system.

##### *A strengthened and more stable banking sector to support economic recovery*

To address the challenge of restoring financial stability in the euro area, in 2012 the Commission launched the Banking Union.

##### **Completing the Banking Union**

Significant progress was accomplished in 2014. As of 4 November 2014, a Single Supervisory Mechanism (SSM) for euro-area banks has become fully operational. The SSM is a new system of banking supervision for euro-area Member States and for all those that decide to join the Banking Union. The tasks of the SSM are checking that banks comply with EU banking rules and tackling problems early on. The European Central Bank directly supervises the 120 largest banking groups, which represent 82% of the euro-area banking sector by assets. National supervisors continue to monitor the remaining banks in close cooperation with the ECB. The SSM conducted a Comprehensive Assessment, consisting of an Asset Quality Review and a stress test exercise (the latter under the coordination of the European Banking Authority, EBA) to gain a full picture of the banks coming under its supervision.

The SSM is one of the two pillars of the EU Banking Union, along with the Single Resolution Mechanism (SRM). The Regulation establishing the latter was adopted by the European Parliament in April 2014. It is applicable to the euro area and to other countries willing to join, and entered into force on 1 January 2015. The SRM complements the SSM and ensures that, if a bank subject to the SSM faces serious difficulties, its resolution can be managed efficiently with minimal costs to taxpayers and the real economy. State aid rules remain applicable both outside and within resolution, including concerning the use of the national resolution funds and the future Single Resolution Funds, in order to ensure equal treatment and a level playing field in the Single Market.

State aid control continued to secure a consistent policy response to the financial challenges, significantly contributing to limiting distortions of competition within the Single Market, while at the same time reducing the use of taxpayers' money to the minimum necessary.

In 2014, the Commission adopted a number of decisions on individual banks as well as on guarantee and liquidity support schemes. In addition, the Commission continued to assess a number of development banks, which have gained importance in view of the commercial banks' lending constraints in the aftermath of the crisis. State aid rules aim to ensure that

<sup>26</sup> Case M.7137 *EDF/Dalkia en France*, Commission decision of 25 June 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7137](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7137)

<sup>27</sup> Case SA.35980 *UK – UK Capacity market*, see IP/14/865 of 23 July 2014 available at [http://europa.eu/rapid/press-release\\_IP-14-865\\_en.htm](http://europa.eu/rapid/press-release_IP-14-865_en.htm)

development banks fulfil their role of contributing to the EU growth agenda without unduly distorting competition. For instance, in the case of the British Business Bank (BBB), the Commission approved an integrated entity for managing SME access to finance programmes in the United Kingdom<sup>28</sup>. In Portugal, the Commission approved the establishment of the Instituição Financeira de Desenvolvimento (IFD)<sup>29</sup>, the Development Finance Institution, and the first phase of its operations. The IFD will manage and channel European Structural and Investment Funds (ESIF) allocated to Portugal for the 2014-2020 financing period, as well as reimbursements from ESIF-funded programmes.

State aid control was also particularly relevant in the context of the economic and financial programmes in Greece, Cyprus and Portugal (the latter exited the programme in May), as well as in Ireland and Spain, which received financial assistance until 2013.

### *Increasing transparency in the markets of financial instruments: Enforcement actions and regulatory efforts*

In October the Commission adopted two important cartel decisions concerning interest rate derivatives in the Swiss franc. One decision concerned two banks, RBS and JP Morgan, participating in an illegal bilateral cartel aimed at influencing the Swiss franc Libor benchmark interest rate between March 2008 and July 2009<sup>30</sup>. The Commission imposed fines totalling almost EUR 62 million. In the other decision, RBS, UBS, JP Morgan and Crédit Suisse were fined a total of EUR 32 million for operating a cartel on bid-ask spreads of Swiss franc interest rate derivatives in the European Economic Area<sup>31</sup>. In both cases, the banks agreed to settle with the Commission. The Commission had adopted two more cartel decisions related to the manipulation of financial benchmarks in 2013<sup>32</sup>.

In the area of financial regulation, the Directive on Markets in Financial Instruments (MiFID II)<sup>33</sup> and the Regulation on Markets in Financial Instruments (MiFIR)<sup>34</sup> were adopted in May. Such measures are part of EU Financial Regulation Agenda, which aims to reform the EU financial sector and deliver on the G20 commitments to tackle the less regulated parts of the financial system. The new rules seek to make financial markets more efficient, resilient and transparent. They will also improve conditions for competition in the trading and clearing of financial instruments, by establishing a harmonised EU regime for non-discriminatory access to trading venues, central counterparties and benchmarks for trading and clearing purposes.

---

<sup>28</sup> Case SA.36061 *UK Business Bank*, Commission decision of 15 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_36061](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36061)

<sup>29</sup> Case SA.37824 *Portuguese Development Financial Institution*, Commission decision of 28 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_37824](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37824)

<sup>30</sup> Case AT.39924 *Swiss Franc Interest Rate Derivatives*, Commission decision of 21 October 2014, see IP/14/1189 available at [http://europa.eu/rapid/press-release\\_IP-14-1189\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1189_en.htm)

<sup>31</sup> Case AT.39924 *Swiss Franc Interest Rate Derivatives*, decision of 21 October 2014, see IP/14/1190 available at [http://europa.eu/rapid/press-release\\_IP-14-1190\\_en.htm](http://europa.eu/rapid/press-release_IP-14-1190_en.htm)

<sup>32</sup> In December 2013, the Commission fined 8 banks a total of EUR 1.7 billion for participating in cartels in markets for financial derivatives under the settlement procedure. The Commission had also opened proceedings against Crédit Agricole, HSBC and JPMorgan in March 2013 for suspected participation in a euro interest rate derivatives cartel. This investigation is continuing for them under the standard (non-settlement) procedure. A Statement of Objections was sent to the three banks on 20 May 2014.

<sup>33</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.173.01.0349.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0349.01.ENG)

<sup>34</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.6.2014, p. 84, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600>

### *Promoting healthy competition in the payment sector to the benefit of European consumers*

Payments by card play a key role in ordinary, cross-border, and online purchases. European consumers and businesses are making more than 40% of their non-cash payments through payment cards. Competition distortions in payments may therefore hamper the functioning of the Single Market and harm European consumers significantly. Antitrust enforcement kept tackling anti-competitive business models based on multilateral interchange fees (MIFs). MIFs are inter-bank fees paid by retailers' banks (acquirers) to cardholders' banks (issuers). Acquiring banks normally pass on these charges to retailers and they in turn pass them on to their customers through higher prices for the goods and services they sell.

In February, the Commission rendered legally binding the commitments offered by Visa Europe to significantly cut its MIFs for credit card payments, as well as to reform its rules to facilitate cross-border competition<sup>35</sup>. The cap on credit card MIFs was set at 0.3% for all consumer credit card transactions, which is a reduction between 40 and 60%<sup>36</sup>. Visa Europe also committed to applying reduced cross-border inter-bank fees (0.3% for credit and 0.2% for debit transactions) when acquirers offered their services in other countries. The existing system would require them to apply local rates in the country where they provide the service, which appeared to artificially segment the Single Market. The Commission continues its proceedings against Visa Inc. and Visa International in relation to inter-regional (international) inter-bank fees, which apply when cardholders from outside the Visa Europe territory use their Visa credit cards to make a purchase in the European Economic Area. These fees are set by Visa Inc. and Visa International and not Visa Europe.

The Commission is currently also investigating MasterCard's inter-regional (international) inter-bank fees and its rules relative to cross-border acquiring. Simultaneously, Council and Parliament worked on legislation creating clarity on fee models, business rules and on facilitating market entry by non-banks on the basis of two Commission proposals: one for a Regulation on Interchange Fees for card based payments<sup>37</sup> and a proposal to revise the Directive on Payment Services ("PSD")<sup>38</sup>. After the adoption by the European Parliament of its reports on both proposals in April, the Council adopted its general approach on both texts at the end of 2014.

#### **Case-law on antitrust enforcement: the MasterCard judgment**

In September, the European Court of Justice upheld the Commission's decision in the MasterCard case (Case C-382/12P). The Court confirmed that the MIFs constituted a restriction of competition, in breach of EU antitrust rules. The judgment is particularly important, because it endorses over 20 years' work by the Commission and national competition authorities to create a well-functioning payment cards market in the EU by confirming that the setting of MIFs falls within the scope of the competition rules.

<sup>35</sup> Case AT.39398 *Visa MIF*, Commission decision of 26 February 2014, available at [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39398/39398\\_9728\\_3.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9728_3.pdf)

<sup>36</sup> In December 2010 the Commission made binding the commitments offered by Visa Europe to cut its MIFs for debit card payments and introduce various transparency rules. These commitments expired in December 2014.

<sup>37</sup> Commission Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions, COM(2013) 550 final, 2013/0265 (COD) of 24 July 2013 available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0550:FIN:EN:HTML>

<sup>38</sup> Commission Proposal for a Directive on Payment Services in the Internal Market, COM(2013) 547 final of 24 July 2013, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427290049713&uri=CELEX:52013PC0547>

## 5. BOOSTING COMPETITIVENESS OF EUROPEAN INDUSTRY

Competition policy and industrial policy are two sides of the same coin: both make European firms more efficient and prepare them for domestic and global competition.

*Steering public resources to unlock EU growth potential: The State Aid Modernisation initiative*

New Risk Finance State aid Guidelines were adopted in January, giving EU countries better tools to facilitate access to finance for European SMEs and midcaps in their early development stages<sup>39</sup>. The new Guidelines give Member States more opportunities to grant aid, a wider range of financial instruments, and higher threshold aligned with market realities. The Risk Finance Guidelines are part of the State Aid Modernisation initiative<sup>40</sup>, a comprehensive reform of State aid control aimed at promoting economic growth and contributing to other objectives of common interest.

Promoting research and innovation is one of these objectives, but highly innovative projects often carry high risks and may not be implemented due to funding gaps. In May, the Commission adopted new rules to facilitate the granting of aid in support of research, development and innovation<sup>41</sup>. The new framework will help overcome possible funding gaps, fostering a smarter use of public resources, and cutting red tape by block-exempting a considerable part of this aid. Similarly, eco-innovation projects usually address a double market failure linked to the higher risks of innovation, coupled with the environmental aspect of the project. Such investments may get higher aid intensities and the new Environmental and Energy Aid Guidelines apply it in particular to resource efficiency measures.

Financing large and risky cross-border projects, such as the construction of large-scale infrastructure and the implementation of other ambitious projects, can re-launch investment, growth and jobs in Europe and enhance EU competitiveness. In the framework of the State Aid Modernisation, the Commission adopted a communication on Important Projects of Common European Interests (IPCEI)<sup>42</sup> which opens new avenues for Member States to finance projects where cross-industry, EU level collaboration seems necessary.

In November, President Juncker announced the creation of the European Fund for Strategic Investment (EFSI)<sup>43</sup>, with the objective to enhance investment in Europe by generating EUR 315 billion investment. To maximise the impact of such investments, the Commission

---

<sup>39</sup> Communication from the Commission, *Guidelines on State aid to promote risk finance investments*, OJ C 19, 22.1.2014, p. 4, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04))

<sup>40</sup> For a complete overview, see [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html)

<sup>41</sup> Communication from the Commission, *Framework for State aid for research and development and innovation*, OJ C 198, 27.6.2014, p. 1, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.198.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.198.01.0001.01.ENG)

<sup>42</sup> Communication from the Commission, *Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest*, OJ C 188, 20.6.2014, p. 4, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.188.01.0004.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.188.01.0004.01.ENG)

<sup>43</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic And Social Committee, the Committee of the Regions and the European Investment Bank, *An Investment Plan for Europe*, COM(2014)903 final, 26.11.2014, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427812242523&uri=CELEX:52014DC0903> and Proposal for a Regulation of the European Parliament and of the Council on the European Fund for Strategic Investments and amending Regulation (EU) No 1291/2013 and (EU) No 1316/2013, COM(2015) 10 final, 2015/0009 (COD), 13.1.2015, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1427812320943&uri=CELEX:52015PC0010>

will formulate a set of core principles, for the purpose of state-aid assessments, which a project will have to meet to be eligible for support under the Fund<sup>44</sup>. If a project meets these criteria and receives support from the Fund, any national complementary support will be assessed under a simplified and accelerated State aid assessment whereby the only additional issue to be verified by the Commission will be the proportionality of public support (absence of overcompensation).

In 2014 the Commission also completed the revision of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>45</sup>. The new Guidelines aim to ensure that resources are used more efficiently and with fewer market distortions, targeting State aid at cases when it is really needed.

To ensure that the new guidelines deliver on their promises, State Aid Modernization has also stressed cross-cutting principles and practices. Member States will better understand the cost and benefits of their interventions thanks to the introduction of an ex-post evaluation requirement for large GBER schemes in certain aid categories and for schemes notified under the new guidelines. Finally, stronger transparency requirements were also introduced.

#### **A new General Block Exemption Regulation to support growth-enhancing aid measures**

A milestone of the State Aid Modernisation initiative is the revised General Block Exemption Regulation (GBER), which gives Member States much wider margins to design and implement aid measures. Since 1 July 2014, Member States are able to provide a broader range of measures and higher amounts of aid without having to notify them to the Commission for prior authorisation. It is expected that three-quarters of State aid measures and around two-thirds of aid amounts could be covered by the new GBER, leading to faster access to the aid considered compatible with the internal market.

#### *Ensuring industry's access to fairly-priced input through fighting cartels and preventing competitive harm from mergers*

Well-targeted public support can help to overcome market failures, but access to fairly-priced input is equally essential, especially in the era of global competition. Cartels often concern intermediate products, which can be essential inputs for industry, and thus cartels can affect the competitiveness of European industry. Competition enforcement in 2014 targeted several such cartels.

In the car part sector, the Commission fined two cartels in 2014, following the wire harnesses case in 2013<sup>46</sup>. In January, the Commission fined the four major producers of flexible polyurethane foam for mattresses, sofas and car seats – Vita, Carpenter, Recticel and Eurofoam – a total of EUR 114 million<sup>47</sup>. In March, two European companies (SKF and Schaeffler) and four Japanese companies (JTEKT, NSK, NFC and NTN with its French

<sup>44</sup> To ensure that infrastructure and project investments supported under this initiative are consistent with State aid rules, projects should address unmet needs (e.g. not duplicate existing infrastructure), crowd in private financing to the maximum extent possible and avoid crowding out privately financed projects. Supported projects should generally be open to all users, including competing operators, on fair, reasonable and appropriate conditions so as to avoid the creation of barriers to entry.

<sup>45</sup> Communication from the Commission, *Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty*, OJ C 249, 31.7.2014, p.1, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.249.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.249.01.0001.01.ENG)

<sup>46</sup> Case AT.39748 *Automotive Wire Harnesses*, Commission decision of 10 July 2013, available at [http://ec.europa.eu/competition/eojade/isef/case\\_details.cfm?proc\\_code=1\\_39748](http://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=1_39748)

<sup>47</sup> Case AT.39801 *Polyurethane Foam*, Commission decision of 29 January 2014, available at [http://ec.europa.eu/competition/eojade/isef/case\\_details.cfm?proc\\_code=1\\_39801](http://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=1_39801)

subsidiary NTN-SNR) received a fine totalling EUR 953 million for operating a cartel in the market for automotive bearings<sup>48</sup>. Automotive bearings are used by car, truck and car part manufacturers to reduce friction between moving parts inside a vehicle.

In April, the Commission found that Ervin, Winoa, Metalltechnik Schmidt and Eisenwerk Würth participated in a cartel to coordinate prices for steel abrasives in Europe, imposing fines totalling over EUR 30 million<sup>49</sup>. Steel abrasives are loose steel particles used for cleaning or enhancing metal surfaces in the steel, automotive, metallurgy and petrochemical industries.

The Commission also fined eleven undertakings active in the production of underground and submarine high-voltage power cables a total of almost EUR 302 million, for sharing markets and allocating customers between themselves<sup>50</sup>. Power cables are used for the transmission and distribution of electrical power and are laid either underground or under water. They are typically used to connect generation capacity (in particular capacity based on renewable energy sources) to the electricity grid or to interconnect power grids in different countries. The price of such cables is therefore directly relevant to electricity consumers.

In September, the Commission fined Infineon, Philips, Samsung and Renesas (then a joint venture of Hitachi and Mitsubishi) for their participation in an EEA-wide cartel relating to smart card chips<sup>51</sup>. Smart card chips are used in mobile telephone SIM cards, bank cards, identity cards and passports, pay TV cards, and various other applications. The Commission imposed fines totalling EUR 138 million.

An important ongoing investigation concerns the sector of duty trucks. The Commission has concerns that certain heavy and medium duty truck producers may have agreed or coordinated their pricing behaviour in the European Economic Area. A Statement of Objections was sent to the companies involved in November<sup>52</sup>.

Furthermore, enforcing EU antitrust rules prevents dominant firms from excluding competitors from the market, and this is especially important for small players such as SMEs. SMEs may also benefit from specific provisions, which take into account their specificities and their important contribution to growth and jobs. In June, the Commission adopted a revised notice on agreements of minor importance (“De Minimis Notice”)<sup>53</sup>, which provides a safe harbour for non-hard-core agreements between companies below certain market share thresholds. Such agreements are considered to have no appreciable effect on competition. To facilitate companies’ assessment of whether their agreements benefit or not from the safe harbour of the De Minimis Notice, the Commission has also published a guidance paper.

---

<sup>48</sup> Case AT.39922 *Automotive bearings*, Commission decision of 19 March 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39922](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39922)

<sup>49</sup> Case AT.39792 *Steel Abrasives*, Commission decision of 2 April 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39792](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39792)

<sup>50</sup> Case AT.39610 *Power cables*, Commission decision of 2 April 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39610](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39610)

<sup>51</sup> Case AT.39574 *Smart card chips*, Commission decision of 3 September 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_39574](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39574)

<sup>52</sup> Case AT.39824 *Trucks*, see IP/14/2002 of 20 November 2014 available at [http://europa.eu/rapid/press-release\\_IP-14-2002\\_en.htm](http://europa.eu/rapid/press-release_IP-14-2002_en.htm)

<sup>53</sup> Communication from the Commission, *Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)*, OJ C 291, 30.8.2014, p. 1, available at [http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:52014XC0830\(01\)](http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:52014XC0830(01))

The Commission has also been vigilant that manufacturers of important input products do not acquire the power to raise prices above competitive levels through mergers. Following an in-depth investigation, the Commission approved the proposed joint venture between Ineos and Solvay in the highly concentrated PVC market, but it imposed the condition that the parties divest a substantial package of production assets to a competitor<sup>54</sup>.

## **6. STATE AID CONTROL CONTRIBUTING TO ENSURING A FAIR TAX BURDEN FOR ALL**

Tax revenue in the EU accounts for about 90% of total government revenue<sup>55</sup>. In the current economic context, it is more important than ever that all taxpayers contribute their due. Fair tax competition is also essential for the integrity of the Single Market and for keeping the playing field level for European companies. President Juncker's Political Guidelines state that *"while recognising the competence of Member States for their taxation systems, we should step up our efforts to combat tax evasion and tax fraud, so that all contribute their fair share"*.

The EU does not have direct authority over national tax systems, but the Commission can investigate whether certain tax regimes would constitute unlawful State aid to companies by granting selective tax advantages. Under the State aid framework, the Commission is raising doubts about the compatibility of some tax practices adopted by large multinational companies in the context of aggressive tax planning.

Aggressive tax planning consists in taking advantage of the technicalities of a tax system – or of mismatches between tax systems – to reduce tax liability. Aggressive tax planning can take many forms, including the use of individual tax rulings. Tax rulings as such are not problematic: they are written opinions by tax administrations clarifying how corporate taxes will be calculated at the request of individual companies.

Tax rulings are used in particular to confirm transfer pricing arrangements. Transfer pricing refers to the prices charged for commercial transactions between different entities of the same group of companies, in particular prices set for goods sold or services provided by one entity of a corporate group to another entity of the same group. In this way, transfer pricing influences the allocation of taxable profit between a group's subsidiaries located in different countries.

Tax rulings that are limited to clarifying the application of general rules to specific cases do not raise issues. However, tax rulings may involve State aid if they are used to provide selective advantage to specific companies or groups. If the remuneration received by an entity is not based on remuneration on market terms under normal conditions of competition, this could lead to a lower taxable profit for the group as a whole. Other companies which would buy and sell goods or services from the market rather than within the group would be disadvantaged.

---

<sup>54</sup> Case M.6905 *Ineos/Solvay/JV*, Commission decision of 8 May 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_6905](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_6905)

<sup>55</sup> Source: Eurostat.

In June, the Commission opened formal investigations in three cases: Apple in Ireland<sup>56</sup>, Starbucks in the Netherlands<sup>57</sup> and Fiat Finance & Trade in Luxembourg<sup>58</sup>. Another investigation regarding Amazon in Luxembourg<sup>59</sup> was opened in October. The Commission raised doubts that the individual tax rulings constitute State aid pursuant to Article 107(1) TFEU. In parallel to these four formal investigations, the Commission will continue its wider inquiry into tax rulings, which now covers all Member States.

## **7. PROMOTING COMPETITION CULTURE, IN THE EU AND BEYOND**

Fostering a competition culture directly contributes to better functioning markets for the benefit of consumers and businesses. To this end, the Commission promotes convergence and cooperation between competition authorities in the EU and worldwide.

### *10 years of Regulation 1/2003: Taking stock and looking ahead*

Ten years ago, the Commission adopted Regulation 1/2003<sup>60</sup>, a landmark reform which overhauled the procedures for the application of EU competition rules and more specifically Articles 101 and 102 TFEU. Besides introducing an enforcement system that is based on the direct application of the EU competition rules in their entirety, Regulation 1/2003 empowered Member States' competition authorities ("NCAs") and national courts to apply all aspects of EU competition rules, in addition to the European Commission.

In July, the Commission adopted a Communication on "Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives"<sup>61</sup>. The Communication takes stock of the enforcement record by the Commission and the NCAs, and identifies areas in which further progress can be made. The Communication focuses on guaranteeing independence and sufficient resources to the NCAs for the exercise of their tasks, ensuring a complete set of effective investigative and decision-making powers and making sure that powers to impose effective and proportionate fines and well-designed leniency programmes are in place in all Member States.

---

<sup>56</sup> Case SA.38373 *Alleged aid to Apple*, Commission decision to initiate the formal investigation procedure on 11 June 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38373](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38373)

<sup>57</sup> Case SA.38374 *Alleged aid to Starbucks*, Commission decision to initiate the formal investigation procedure on 11 June 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38374](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38374)

<sup>58</sup> Case SA.38375 *Alleged aid to FFT*, Commission decision to initiate the formal investigation procedure on 11 June 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38375](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38375)

<sup>59</sup> Case SA.38944 *Alleged aid to Amazon – Luxembourg*, Commission decision to initiate formal investigation on 7 October 2014, available at [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_38944](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38944)

<sup>60</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1, available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32003R0001>

<sup>61</sup> Communication from the Commission of 9 July 2014, *Ten Years Of Antitrust Enforcement Under Regulation 1/2003: Achievements And Future Perspectives*, COM/2014/0453 available at [http://ec.europa.eu/competition/antitrust/legislation/antitrust\\_enforcement\\_10\\_years\\_en.pdf](http://ec.europa.eu/competition/antitrust/legislation/antitrust_enforcement_10_years_en.pdf)



### *Making EU merger control more effective and streamlined*

In July 2014, the Commission also looked back at ten years of merger control since the latest overhaul of EU Merger Regulation in 2004<sup>62</sup>, launching a public consultation on proposals to improve merger control at EU level in the White Paper “Towards More Effective EU Merger Control”<sup>63</sup>. The key proposals of the White paper include: (i) a light and tailor-made review of acquisitions of non-controlling minority shareholdings, (ii) making case referrals between Member States and the Commission more business-friendly and effective, (iii) making procedures simpler, (iv) fostering coherence and convergence between Member States and the Commission and among Member States to enhance cooperation and avoid inconsistent outcomes.

### *International cooperation fit for globalization*

Commission’s efforts to ensure robust competition enforcement and foster competition culture extend way beyond the EU borders. Globalisation makes it imperative that competition authorities across the world commit in making global markets a genuine level playing field.

The steep increase of competition regimes around the world has broadened the need to find a global common ground. In this context, the Commission’s ability to protect competition and ensure effective enforcement depends on the capacity to establish a common set of principles and goals. International competition-related fora on which the Commission proactively engages to this purpose include the Competition Committee of the OECD, the International Competition Network and UNCTAD.

In addition, competition agencies – including the Commission – have to respond to anti-competitive conduct and mergers whose effects are increasingly cross-border. The Commission currently works with agencies outside the EU in 64% of its abuse of dominant position cases, 58% of its complex merger investigations, and 78% of cartel decisions. Besides co-ordinating efforts in individual cases, the Commission will continue to extend and intensify multilateral co-operation with sister organisations, including in emerging markets.

#### **Developing cooperation with emerging economies**

In recent years, the Commission has signed Memorandums of Understandings with most BRICS countries and it has also engaged in technical cooperation with these countries to varying degrees. An important step in this area is the technical cooperation with the Chinese competition authorities, which continues in 2015 under the on-going cooperation programme (EUCTP II). As for India, a significant programme for technical cooperation with the Indian competition authorities, CITD, started in 2014 and will run until 2018.

The Commission also focused on the negotiations with the US on a Transatlantic Trade and Investment Partnership Agreement (TTIP), which will include a competition chapter. The negotiation process started in July 2013 and it progressed in the course of 2014.

---

<sup>62</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1, available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004R0139>

<sup>63</sup> White Paper “Towards more effective EU merger control”, COM(2014) 449 final, available at [http://ec.europa.eu/competition/consultations/2014\\_merger\\_control/mergers\\_white\\_paper\\_en.pdf](http://ec.europa.eu/competition/consultations/2014_merger_control/mergers_white_paper_en.pdf)

### *Strengthening relations with other European countries*

Accession preparations for candidate countries and potential candidates have proven to be a good tool to promote competition culture. Through the stringent obligations in the competition field under the Association Agreements, enlargement countries have been progressively adjusting their competition legal framework and practices well before accession. As regards accession negotiations, work continued in 2014 with the screening of Serbian legislation and the assistance provided to the Montenegrin authorities.

Furthermore, the Cooperation Agreement signed between the EU and Switzerland in 2013 was ratified in October and entered into force on 1 December. This is an innovative second-generation agreement, enabling both competition agencies to exchange evidence they have obtained in their respective investigations.

## **8. COMPETITION DIALOGUE WITH OTHER INSTITUTIONS**

### *Structured dialogue with the European Parliament*

In 2014 DG Competition continued to engage in a continuous structured dialogue with the European Parliament, and its Economic and Monetary Affairs (ECON) Committee in particular. At her confirmation hearing, Commissioner Vestager stressed the importance of close cooperation between the European Parliament and the Commission.

Former Commission Vice-President Almunia visited ECON twice – in March and September – in the context of the structured dialogue. On 11 November, Commissionaire Vestager paid her first formal visit to the ECON committee.

### *Damages actions*

Directive 2014/104/EU of 26 November 2014 on antitrust damages actions was published in the Official Journal of the European Union on 5 December 2014. This has been the first Directive for DG Competition under the Ordinary Legislative procedure. Vice-President Almunia welcomed the Directive's adoption as an example of close cooperation between the EU institutions.

### *Swiss Agreement*

In November 2010 DG Competition had informed the European Parliament about the negotiations conducted with the Swiss competition authority concerning a cooperation agreement on the application of their respective competition laws. Afterwards the Council formally requested the Parliament's consent to that agreement. The Parliament gave its formal consent to the agreement on 5 February 2014 and welcomed this first “second-generation agreement”. The Parliament also gave recommendations for future agreements.

DG Competition worked closely with Parliament throughout this process.

### *Interchange fees for card-based payment transactions*

Following the Commission proposal for a Regulation on interchange fees for card-based payment transactions from 27 July 2013, the European Parliament and the Council reached political agreement on 17 December 2014. The legislation agreed by Parliament and Council under the Italian Presidency aims at creating clarity on interchange fees between EU

countries, which the Court of Justice confirmed to be in violation of EU antitrust rules in its MasterCard judgment of 11 September of 2014.

*Continuing to strengthen DG Competition's communication with the ECON Committee*

DG Competition's regular briefing seminar for ECON assistants and political advisers covering the main themes in the 2013 Report on Competition took place on 17 October. DG Competition continued the practice of regularly informing the relevant Parliamentary committees of public consultations and the adoption of new guidelines and policy documents.

DG Competition was chef de file for 327 written Parliamentary questions and 24 petitions prepared by Commission services.

*DG Competition's engagement with the EESC and the CoR*

The Commission also informed the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) about major policy initiatives and participated in study groups and section meetings. In turn, the EESC issued opinions on the Affordability of Services of General Economic Interest (SGEIs) on 21 January (own-initiative opinion), on the Review of the Community Guidelines on State aid for airports and airlines on 9 July, on the Commission Report on competition policy 2013 on 15 October, and on the Commission White Paper – Towards more effective EU merger control on 10 December. The CoR issued an opinion on New Guidelines for State aid for energy on 2 April (own-initiative opinion).