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

Report on Competition Policy 2020

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Report on Competition Policy 2020

1. Introduction

This report is the first account of the competition policy developments under the Commission led by President von der Leyen¹. Covering the developments in EU competition policy in 2020, it also is the 50th report addressed by the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

The legitimacy of EU competition policy is grounded in the Treaties that have entrusted the Union with an exclusive competence in this area as a necessary tool to support the functioning of the internal market². For more than 60 years, EU competition enforcement has been paramount to preserve and foster the European economy based on European values such as fairness, rule of law and trust. Competition policy also evolves in tandem with societal, economic and regulatory changes. Today – when the EU faces one of its biggest crises ever – a robust competition policy in the EU is more important than ever to contribute to economic dynamism, essential for a faster recovery.

Throughout the first year of the Von der Leyen Commission, EU competition policy played a key role in the Commission's efforts to respond to and overcome the health and economic crisis caused by the COVID-19 outbreak. Competition policy also was paramount to facilitate the path to recovery while bearing in mind the green and digital transitions of the EU economy. In line with the mission letter addressed by President von der Leyen to Executive Vice-President Vestager³, the Commission continued to ensure that competition rules remain fit for the modern economy, vigorously enforced and contribute to a strong European industry, both within the EU and on the global stage.

In 2020, the competition policy toolkit proved to be relevant, agile and rapidly adjustable to the exceptional circumstances of the health and economic crisis. By responding and adjusting quickly, the Commission's competition policy helped to meet the needs of EU industry and citizens while preserving competitive markets. This became particularly prominent in a series of actions which allowed for quick support from public sources to flow to the real economy or were part of the broader policy agenda aiming at restoring sustainable growth, while avoiding unnecessary market distortions.

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

² Article 3 TFEU.

³ Mission letter to Executive Vice-President Vestager, 1.12.2019. See: https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-margrethe-vestager_2019_en.pdf.

On 13 March 2020, the Commission set out in its Communication on a coordinated economic response to the COVID-19 outbreak⁴ the various options available to Member States outside the scope of the EU State aid control and which they could put in place without the involvement of the Commission. These included measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the operators concerned.

On 19 March 2020, the Commission adopted a [Temporary Framework for State aid measures](#) to support the economy and revised it several times as the COVID-19 crisis progressed⁵. Moreover, on 8 April 2020, the Commission adopted a [Temporary Framework Communication](#), setting out the main criteria that the Commission will follow when assessing [cooperation projects](#) aimed at addressing a shortage of supply of essential products and services during the Coronavirus outbreak⁶. At the same time, the Commission put in place a number of measures to ensure business continuity and continued to ensure the implementation of the EU merger rules, to avoid market power growing on the back of the crisis.

To ensure that competition rules remain fit for purpose and fully able to deal with challenges such as structural problems in digital markets and foreign subsidies distorting competition in EU markets, the Commission took major policy initiatives in 2020. For example, it tabled a proposal for a [Digital Markets Act](#) and published a [White Paper on foreign subsidies](#), to kick start the reflection on how to address the distortive effects on the Internal Market that foreign subsidies may have.

The Commission showed its readiness to use competition policy to contribute to the preparation of the implementation of the [Recovery and Resilience Facility](#)⁷. The Commission has assisted the Member States preparing Recovery and Resilience Plans, including from a competition policy point of view, and has published a number of [guiding templates](#) to assist Member States in the design of their national Recovery and Resilience Plans to ensure that they are in line with EU State aid rules.

While addressing the immediate challenges posed by the pandemic, EU competition enforcement in 2020 contributed to the longer term objectives of the 2019-2024 Commission such as “[A Europe fit for the digital age](#)”, “[A European Green Deal](#)”, and “[An economy that works for people](#)”. The Commission proposal for the Multiannual Financial Framework 2021-2027 included an important change in including a dedicated component for competition policy within the [Single Market Programme](#). This will provide stable financing of measures

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup: Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final.

⁵ Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

⁶ Communication from the Commission: Communication from the Commission Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, OJ C 116, 8.4.2020, p. 7.

⁷ Proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility, COM(2020) 408 final, 28.5.2020.

enhancing the Commission’s enforcement capacity, for instance the development of advanced intelligence and investigative methodologies. The funding will also allow the Commission to strengthen its cooperation with public administrations in the EU and elsewhere⁸.

2. EU Competition policy mobilised to alleviate the impact of the COVID-19 pandemic

2.1. State aid policy facilitated COVID-19 support by the Member States

In 2020, with the rapid spread of the COVID-19 pandemic and its profound adverse impact on the EU economy, national and EU policymakers were forced to react quickly and on various fronts to address this unprecedented threat. Decisive action included notably the EUR 750 billion [NextGenerationEU recovery instrument](#)⁹, the activation of the general escape clause of the Stability and Growth Pact¹⁰, and the joint procurement of different medical devices, such as ventilators, masks, and, finally, of vaccines.

In this context, the EU competition policy became an important component of the crisis response stabilising the economy. This applied in particular to State aid policy. Well-targeted public support was crucial to counter the damage inflicted on healthy undertakings and to preserve the continuity of economic activity. At the same time, the Commission ensured that public support could reach companies in need and that harmful subsidy races were avoided.

[The Temporary Framework](#) adopted at the beginning of the crisis set out the conditions the Commission would apply to declare aid compatible with Article 107(3)(b) TFEU (aid to “remedy a serious disturbance in the economy of a Member State”)¹¹. The Temporary Framework was amended several times in 2020, demonstrating the Commission’s ability to adapt the rules to the changing nature of the crisis.

In April 2020, it was extended to cover support to companies that develop, test and manufacture much needed products to fight the Coronavirus such as vaccines, medicines, medical devices, disinfectants and protective equipment, as well as wage support and tax deferral schemes¹². The second amendment adopted in May 2020 set out the criteria how Member States could carry out recapitalisations and provide subordinated debt to companies

⁸ Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014, OJ L 153, 3.5.2021, p. 1-47.

⁹ NextGenerationEU – part of the Multiannual Financial Framework 2021-2027 - is a EUR 750 billion temporary recovery instrument to help repair the immediate economic and social damage brought about by the Coronavirus pandemic. The Recovery and Resilience Facility is the centrepiece of NextGenerationEU with EUR 672.5 billion in loans and grants available to support reforms and investments undertaken by EU countries. See: Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I, 22.12.2020, p. 11–22.

¹⁰ Articles 121 and 126 TFEU.

¹¹ 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.

¹² This extension of the Temporary Framework sets out the conditions the Commission would apply to declare aid compatible with Article 107(3)(c) TFEU (“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”).

in need. A third amendment in June 2020 extended the Temporary Framework to enable Member States to provide public support to all micro and small companies, even if they were already in financial difficulty on 31 December 2019. A fourth amendment was adopted in October 2020, prolonging the scope of the Temporary Framework by six months until 30 June 2021 and enabling recapitalisation support until 30 September 2021. In view of the second wave of the COVID-19 outbreak and the longer than initially expected duration of the crisis, the fifth amendment in January 2021 prolonged all measures set out in the Temporary Framework, including recapitalisation measures, until 31 December 2021 and expanded the scope of the Temporary Framework by increasing the ceilings set out in it, and by allowing the conversion of certain repayable instruments into direct grants until the end of 2021.

In a very short time, the Commission adopted a large number of State aid decisions under the Temporary Framework allowing Member States to adopt measures alleviating the economic effects of the COVID-19 pandemic. In 2020, the Commission adopted 598 COVID-19 related State aid decisions¹³. In this period, the Commission authorised State aid that can be estimated to EUR 3.08 trillion¹⁴. A number of these aid measures have been co-financed by cohesion policy, notably thanks to the two emergency response packages proposed by the Commission, and approved by the European Parliament and the European Council in 2020: the Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+).

Several Member States notified “umbrella schemes” covering different sectors of the economy through different types of aid, including support targeted at small and medium-sized enterprises (SMEs). For example, France notified a EUR 7 billion umbrella scheme supporting SMEs in particular. The scheme included several types of support, such as direct grants, loans with favorable interest rates and state guarantees for loans¹⁵. A number of Member States, including Denmark, Bulgaria, Greece, Italy, Romania, Belgium and Slovakia, notified aid specifically in support of SMEs. Aid to SMEs was provided in various forms such as tax deferrals (Denmark)¹⁶, public guarantee schemes (Bulgaria)¹⁷ and grants covering interest on existing debt obligations (Greece)¹⁸.

¹³ The figure includes decisions, adopted under the exceptional legal basis supporting the Temporary Framework as well as under State aid rules applying in non-exceptional circumstances. It also includes subsequent amendments to previously adopted decisions.

¹⁴ The amount includes State aid measures adopted under the Temporary Framework, all COVID-19 related State aid approved under other sets of State aid rules and adjusted amounts included in subsequent amendment decisions.

¹⁵ Case SA.56985 (2020/N) France – COVID-19: Régime cadre temporaire pour le soutien aux entreprises, Commission Decision of 20.4.2020.

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

¹⁶ Case SA.57027 (2020/N) Denmark COVID-19: Credit facility and tax deferrals linked to VAT and payroll tax, Commission Decision of 30.4.2020. See:

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

¹⁷ Case SA.56933 (2020/N) Bulgaria COVID-19: intermediate SME loan guarantee program, Commission Decision of 8.4.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202015/285460_2146849_41_2.pdf.

¹⁸ Case SA.56839 (2020/N) Greece COVID-19: Support to SME loan obligations in the form of grants under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, Commission Decision of 8.4.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202016/285303_2147455_84_2.pdf.

Several Member States notified aid to support research, development, testing infrastructures and production of [Coronavirus-related products](#)¹⁹. For example, Germany notified an umbrella scheme to support research, development, testing and production of Coronavirus-relevant products²⁰.

The [transport sector](#) was severely hit by the global pandemic. In 2020, the Commission adopted 42 decisions allowing State aid to airlines, airports and ground handling companies to address their liquidity and capital needs caused by the COVID-19 pandemic. A number of airlines benefitted from aid approved under the Temporary Framework (Article 107(3)(b) TFEU), including Air France, Lufthansa, SAS, Austrian Airlines, airBaltic, Blue Air, KLM, Nordica, Alitalia and Brussels Airlines²¹. Aid to airlines was also authorised under Article 107(3)(c) TFEU and the Guidelines on rescue and restructuring aid²². For example, the Commission approved State aid to French airline Corsair. The airline's existing financial difficulties were aggravated by the Coronavirus outbreak. Therefore, the State aid consisted of two separate measures; EUR 106.7 million in restructuring aid and EUR 30.2 million to compensate Corsair for damage caused by the Coronavirus outbreak²³. Portuguese airline TAP did not qualify for aid under the Temporary Framework because the company was already in financial difficulty before 31 December 2019. The Commission approved a EUR 1.2 billion rescue loan to TAP²⁴. The Commission also approved schemes to compensate regional and local public transport companies for the damage suffered as a result of lockdowns and other measures²⁵. In addition to transport, the Commission approved under Article 107(3)(b) TFEU measures adopted by Member States for undertakings particularly hit by the outbreak, for example in the tourism, culture, hospitality and retail sectors²⁶. The Commission also adopted a number of decisions under Article 107(2)(b) TFEU (aid to make good the damage caused by natural disasters or exceptional occurrences), for example to

¹⁹ For instance Italy (SA.56786), Belgium (SA.57173 and SA.57057), France (SA.57367), Malta (SA.57204 and SA.57075) and Czechia (SA.56961 and SA.57071).

²⁰ Case SA.57100 Germany – COVID-19: Federal Framework Aid for COVID-19 related R&D, investments in testing infrastructures and production, Commission Decision of 28.4.2021. See:

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

²¹ See respectively cases SA.57082, SA.57153, SA.57369, SA.57543 and SA.58342, SA.57539, SA.58101, SA.57026, SA.56943, SA.57116, SA.57586, SA.58114, SA.57544.

²² Communication from the Commission: Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1-28.

²³ Case SA.58463 France – Restructuring aid for Corsair, Commission Decision of 11.12.2020. See:

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

²⁴ Case SA.57369 COVID-19 – Aid to TAP, Commission Decision of 10.6.2020. See:

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

²⁵ For example Case SA.57675 (2020/N) Germany COVID-19 – scheme for regional and local public passenger transport, Commission Decision of 7.8.2020. See:

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

²⁶ For example case SA.58214 Ireland – COVID-19 Adaptation Fund for the Re-Opening of Tourism and Hospitality businesses, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58214;

Case SA.57595 Croatia – State Aid Programme of the Ministry of Culture to Support the Economy in the Current COVID-19 Outbreak, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57595;

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

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

compensate damages to the self-employed, to subsidise companies' fixed costs and to compensate losses due to the cancellation of sports events²⁷.

The Commission also approved under Article 107(3)(b) TFEU a range of State aid measures destined for specific areas of Member States. Germany, for instance, notified a EUR 46 billion fund ('BayernFonds') in the forms of guarantees, recapitalisation instruments and subsidised debt instruments for Bavaria to provide liquidity and capital support to enterprises²⁸. State aid measures were also approved for Wallonia and Brussels regions of Belgium and the regions of Friuli Venezia Giulia and the South of Italy²⁹.

As regards the amounts approved by the Commission, there were very large differences between Member States. These differences are partially explained by the diverging sizes of the Member States' economies.

More specifically, around 51.5% of State aid approved was notified by Germany. Italy notified measures that represent around 14.7% of the entire amount of State aid approved, while the aid notified by France represented 13.9% of this amount. The aid notified by Spain represented 4.8% of the entire amount of State aid approved, while the aid notified by Poland and Belgium corresponded to around 2% and 1.8% respectively. Aid notified by other Member States is estimated to be between 0.01% and 1.5% of the total estimated amount of EUR 3.08 trillion. The actual economic impact of the State aid measures depends on their implementation, not on budgets. This is why the Commission is monitoring the implementation of COVID-19 related State aid measures and adapting its State aid strategy to the evolution of the situation on the internal market.

Based on the replies of all 27 Member States to two consecutive surveys carried out by the European Commission, in the period between mid-March and end of December 2020, EUR 2.96 trillion in aid approved by then, around 544 billion euros was actually spent. In absolute terms, according to the preliminary data sent by Member States, France has granted more than a fourth of the total aid paid out (EUR 155.36 billion), followed by Italy with 19.8% of the total aid paid out (EUR 107.9 billion), Germany with 19.1% of the total aid paid out (EUR 104.25 billion) and Spain at 16.7% (EUR 90.8 billion). In relative terms, according to the preliminary data sent by Member States, Spain is the country that has disbursed the most as compared to its own GDP (7.3%), followed by France (6.4%), Italy (6.0%), Greece (4.4%), Malta (3.9%), Hungary (3.7%), Portugal (3.6%), Poland (3.6%) and Cyprus (3.5%). At EU 27 level, the Coronavirus related State aid spending corresponds to around 3.9% of EU GDP.

²⁷ Case SA.56791 Temporary compensation scheme for self-employed financially affected by the COVID-19, Commission Decision of 25.3.2021, see:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56791; Case SA.57291 COVID-19 Compensation Scheme: Directive for fixed cost subsidies, Commission Decision of 23.5.2020, see:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57291; Case SA.57614 Compensation scheme for sport organisations, facilities and cancellation of sport events related to COVID-19 (the "COVID – Sport Programme") – Czechia, Commission Decision of 22.7.2020. See:

https://ec.europa.eu/competition/state_aid/cases1/202030/286956_2175432_128_2.pdf.

²⁸ Case SA.57447 Germany – COVID-19 measures of the BayernFonds. See:

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

²⁹ Cases SA.57083, SA.57056, SA.58802 and SA.57005.

Beyond aid notified under the Temporary Framework, Member States are entitled to adopt measures that fall outside the scope of EU State aid control. State aid considered less distortive, for example aid based on the *de minimis* regulations³⁰ or under certain block exemption regulations³¹ can be adopted without prior approval of the Commission. These included notably measures such as wage subsidies, payment suspensions of corporate taxes and VAT and social welfare contributions.

2.2. Guidance to market participants in antitrust and merger control

Preserving market discipline to secure the functioning of the Single Market becomes even more important in times of crisis. At the same time, it is necessary to facilitate cooperation between companies when needed to fight the effects of the pandemic.

In the area of **antitrust**, the Commission swiftly adopted a series of measures covering various areas.

The Commission provided guidance to market participants in a **Communication**³² and in an **ad-hoc comfort letter**, setting out the main criteria it uses when assessing cooperation projects aimed at addressing supply shortages of products and services essential during the COVID-19 outbreak, such as medicines and medical equipment. Moreover, the Commission engaged with companies, for instance in the automotive sector, providing informal guidance for the types of cooperation that are likely to be unproblematic, and identified the necessary safeguards for such cooperation.

On 30 April 2020, the Commission issued three implementing regulations temporarily relaxing the scope of competition law rules in **three agricultural sectors** severely affected by the COVID-19 pandemic³³. The Implementing Regulations allowed farmers and recognised Inter-Branch Organisations to take temporary collective actions to stabilise certain sectors.

³⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1; Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector, OJ L 352, 24.12.2013 p. 9; Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45; and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

³¹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 187 26.6.2014, p. 1; Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, 20.6.2017, p. 1.

³² Communication from the Commission: Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak, OJ C 116, 8.4.2020, p. 7.

³³ Commission Implementing Regulation (EU) 2020/593 of 30 April 2020 authorising agreements and decisions on market stabilisation measures in the potatoes sector, OJ L 140, 4.5.2020, p. 13; Commission Implementing Regulation (EU) 2020/594 of 30 April 2020 authorising agreements and decisions on market stabilisation measures in the live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage sector, OJ L 140, 4.5.2020, p. 17; Commission Implementing Regulation (EU) 2020/599 of 30 April 2020 authorising agreements and decisions on the

In addition, the European Competition Network (ECN) issued a joint statement on the application of the antitrust rules during the COVID-19 crisis and cooperated closely on COVID-19 related competition issues. In the [Joint Statement](#)³⁴, the members of the ECN expressed their understanding that the extraordinary situation may trigger the need for companies to cooperate to ensure the supply and fair distribution of scarce products to all consumers. They stated that they would not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply. At the same time, it was of utmost importance to ensure that products considered essential to protect the health of consumers in the current situation (e.g. face masks and sanitising gel) remain available at competitive prices. The ECN stated that it would therefore not hesitate to take action against companies taking advantage of the current situation by cartelising or abusing their dominant position. Following the joint statement, the Commission and the national competition authorities have worked together to ensure that the supply of essential goods and services during the pandemic is not disrupted and that competition rules are applied coherently, both in the case of enforcement and in guiding companies' cooperation initiatives during the crisis. Thanks to the close cooperation and coordination of COVID-19 related antitrust cases and guidance, the ECN was able to speak with one voice to companies seeking to design antitrust compliant initiatives.

In [merger control](#), the Commission was able to continue its activities while fully respecting its legal obligations and deadlines³⁵. Despite the pandemic, 361 transactions were notified to the Commission in 2020. Like in previous years, most notified mergers did not raise competition concerns and could be processed speedily. The Commission adopted 352 merger decisions and intervened in 18 cases. In the latter category, 13 mergers were cleared subject to commitments in first phase³⁶, three³⁷ were cleared with remedies after a second phase investigation and one merger³⁸ was cleared unconditionally in second phase. The simplified procedure was used in 76% of all notified transactions in 2020.

2.3. Preparing for the recovery and the exit from the crisis

With funds of EUR 672.5 billion, the Recovery and Resilience Facility (RRF)³⁹ accounts for the largest part by far of the EUR 750 billion [NextGenerationEU](#) recovery package⁴⁰. The

planning of production in the milk and milk products sector, OJ L 140, 4.5.2020, p. 37. These Commission Implementing Regulations were followed by the adoption of Commission Implementing Regulation (EU) 2020/975 of 6 July 2020 authorising agreements and decisions on market stabilisation measures in the wine sector, OJ L 215, 7.7.2020, p. 13.

³⁴ Joint statement by the European Competition Network (ECN) on application of competition law during the Corona-crisis. See: https://www.acceptance.ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf.

³⁵ To ensure business continuity in times of a pandemic, the Commission introduced the eNotifications tool, which allows firms to notify planned mergers online.

³⁶ Cases M.9408 Assa Abloy/Agta Record, M.9434 UTC/Raytheon, M.9461 AbbVie/Allergan, M.9502 Synthomer/Omnova Solutions, M.9517 Mylan/Upjohn, M.9546 Gategroup/LSG European Business, M.9554 Elanco Animal Health/Bayer Animal Health Division, M.9674 Vodafone Italia/Tim/INWIT JV, M.9677 DIC/BASF Colors & Effects, M.9728 Altice/Omers/Allianz/Covage, M.9744 Mastercard/Nets, M.9776 Worldline/Ingenico and M.9779 Alstom/Bombardier Transportation.

³⁷ Case M.9014 PKN Orlen/Grupa Lotos, Case M.9730 FCA/PSA, Case M.9660 Google/Fitbit.

³⁸ Case M.9409 Aurubis/Metallo Group Holding.

³⁹ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17-75; Commission Proposal of 28.5.2020 for a Regulation of the European parliament and of the Council establishing a Recovery and Resilience Facility, op. cit. In December

RRF will support public investments and reforms in Member States, helping them to address the economic and social impact of the COVID-19 pandemic as well as to facilitate the green and digital transitions.

2020 a political agreement was reached in the Council and the European Parliament approved the RRF regulation on 9.2.2021.

⁴⁰ Other instruments to be used are for example the Just Transition Fund, the Digital Europe Programme, rescEU and the new health programme EU4Health.

Review of the Recovery and Resilience Plans of the Member States

To receive grants and low-interest loans under the RRF, Member States must submit Recovery and Resilience Plans (RRPs) to be vetted by the Commission before disbursement of any funds. All projects in the RRP must be assessed under the State aid rules. In the autumn of 2020, a number of Member States submitted draft RRP to the Commission and DG Competition assisted in reviewing and advising on the draft RRP. Moreover, DG Competition together with other Commission services assisted Member States preparing the RRP in compliance with the State aid rules. To this end the Commission published a set of guiding templates in December 2020. The templates were updated in January 2021⁴¹.

3. Ensuring that Competition Rules Remain Fit for Purpose – An Extensive Policy Agenda

In 2020, the Commission continued its comprehensive review of the competition rules to make them fit for a changing market environment, including the accelerating digitalisation of the economy. The review also follows from the input provided by the three independent Special Advisers in their report of April 2019 on digitisation and competition law⁴².

In particular, the Commission advanced on its review agenda encompassing a large number of its key block exemption regulations, guidelines and notices as well as moved forward with a number of ongoing initiatives to ensure fair competition in the Single Market, such as the proposal on the Digital Markets Act and the foreign subsidies initiative. The Commission also finalised in 2020 its “fitness check” of the 2014 State Aid Modernisation package.

3.1. New policy initiative to strengthen the competition policy toolbox

As a center-piece of the European Digital Strategy⁴³, presented by the Commission in February 2020, the Commission put forward two legislative proposals aimed at creating a safer digital space for all users where their fundamental rights are protected and creating competitive conditions allowing innovative digital businesses to grow within the Single Market and compete globally.

In 2020, the Commission adopted a proposal for a Digital Markets Act for contestable and fair digital markets⁴⁴. The proposed regulation aims at addressing structural problems in digital markets, in particular large digital platforms acting as “gatekeepers”, that is to say platforms having an intermediation position linking a large user base to a large number of businesses. As part of the digital package, the Commission also tabled a proposal for a Digital Services

⁴¹ Commission Staff Working Document: Guidance to Member States – Recovery and Resilience Plans, SWD(2021) 12 final, 22.1.2021. See: https://ec.europa.eu/info/sites/info/files/document_travail_service_part2_v3_en.pdf.

⁴² “Competition Policy in the Digital Era”, 2019, See:

<https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

⁴³ Shaping Europe’s Digital Future, Commission publication of 19.2.2020, ISBN 978-92-76-16362-6.

⁴⁴ Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), COM(2020) 842 final, 15.12.2020.

Act⁴⁵. Both Commission proposals are subject to the ordinary legislative procedure and will be discussed in Parliament and Council during 2021.

Digital Markets Act

The Digital Markets Act – proposed regulation to be adopted under Article 114 TFEU – would aim at preventing gatekeepers from imposing unfair conditions on businesses and consumers. Examples of such unfair conditions include prohibiting businesses from accessing their own data, locking users into a particular service and limiting switching to alternative services. Companies would be designated as gatekeepers under the act if three cumulative quantitative criteria are fulfilled⁴⁶. Designated gatekeepers would be subject to a number of obligations and prohibitions to ensure an open online environment that is fair for businesses and consumers, and open to innovation by all. To ensure the effectiveness of the new rules, the possibility of sanctions for non-compliance with the prohibitions and obligations in the Digital Markets Act is foreseen.

3.2. Updating merger and antitrust rules and guidance

3.2.1. Progress in merger evaluation

In 2020, the Commission progressed to the final stages of its evaluation of **selected procedural and jurisdictional aspects of EU merger control**⁴⁷. A Staff Working Document summarising the main findings of the evaluation was published on 26 March 2021⁴⁸. Following the results of the evaluation, the Commission adopted a communication providing guidance on the application of the referral mechanism between Member States set out in Article 22 of the Merger Regulation, and launched an impact assessment on exploring policy options for further targeting and simplification of merger procedures⁴⁹.

3.2.2. Review of rules on vertical supply and horizontal cooperation

With the publication of a Staff Working Document in September 2020⁵⁰, the Commission concluded its evaluation of the **Vertical Block Exemption Regulation (“VBER”)**⁵¹ and the **Vertical Guidelines**⁵². The evaluation assessed to what extent the current regime had achieved

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final, 15.12.2020. The act would introduce rules for online services (intermediary services, hosting services and online platforms). Providers of such services would be subject to among other things transparency and reporting requirements, information obligations, data sharing rules and codes of conduct.

⁴⁶ Some large online platforms act as “gatekeepers” in digital markets. The Digital Markets Act establishes a set of criteria for qualifying a large online platform as a gatekeeper. These criteria will be met if a company: i.) has a strong economic position, significant impact on the internal market and is active in multiple EU countries, ii.) has a strong intermediation position, meaning that it links a large user base to a large number of businesses, and iii.) has (or is about to have) an entrenched and durable position in the market.

⁴⁷ The evaluation focussed on four topics, (i) possible further simplification of EU merger control, (ii) the functioning of the jurisdictional thresholds, (iii) the functioning of the referral system, and (iv) specific technical aspects of the procedural and investigative framework for the assessment of mergers.

⁴⁸ Commission Staff Working Document: Evaluation procedural and jurisdictional aspects of EU merger control, SWD(2021) 66 final, 26.3.2021. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1384

⁴⁹ Communication from the Commission: Commission Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases, C(2021) 1959 final, 26.3.2021.

⁵⁰ Commission Staff Working Document – Evaluation of the Vertical Block Exemption Regulation, SWD(2020) 173 final, 8.9.2020.

⁵¹ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1-7.

⁵² Guidelines on Vertical Restraints, OJ C 130, 19.5.2010, p. 1-46.

its objective of providing a safe harbour for vertical agreements that are on balance efficiency enhancing, creating legal certainty and reducing compliance costs. The aim of the evaluation was also to decide whether these rules should be allowed to lapse, be renewed in their current form or be revised.

The evaluation showed that the VBER and the Vertical Guidelines remain useful tools that facilitate self-assessment by businesses. However, markets have developed and the evaluation identified a number of issues that need to be addressed. The Commission has launched a review with the aim to have revised rules in place by 31 May 2022 when the current rules will expire.

In 2020, the Commission continued its evaluation of the Research & Development Block Exemption Regulation (R&D BER)⁵³ and the Specialisation Block Exemption Regulation (Specialisation BER)⁵⁴, together referred to as the [Horizontal block exemption regulations \(HBERs\)](#). The Commission [Guidelines on horizontal cooperation agreements \(HGL\)](#) provide guidance for the interpretation of the HBERs and for the application of Article 101 TFEU on other horizontal agreements. The HBERs will expire on 31 December 2022. The purpose of these rules is to make it easier for undertakings to cooperate in ways that are economically desirable and without adverse effect from the point of view of competition policy. The evaluation gathers evidence on their functioning and will allow the Commission to determine whether it should let the Horizontal Block Exemption Regulations and the Guidelines lapse, prolong their duration or revise them. A Staff Working Document is foreseen in 2021.

In 2020, the Commission continued the evaluation of the [Motor Vehicle Block Exemption Regulation \(MVBER\)](#) adopted in 2010⁵⁵. The purpose of the evaluation is to gather facts and evidence on the functioning of the motor vehicle block exemption regulation, along with the corresponding Guidelines, notably by verifying the extent to which its objectives are fulfilled. The MVBER expires in May 2023 and requires the Commission to submit an evaluation report to the Parliament and the Council in 2021.

3.2.3 Evaluation of the Market Definition Notice

In 2020, the Commission also initiated an evaluation of [the Market Definition Notice](#)⁵⁶. The Notice provides guidance on the principles and best practices of how the Commission applies the concept of relevant product and geographic market in its enforcement of EU competition law. The objective of the evaluation is to assess whether the notice is still fit for purpose, notably in light of recent market developments across different sectors, including digital markets. The results of the evaluation will be published in 2021.

⁵³ Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 335, 18.12.2010, p. 36-42.

⁵⁴ Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 335, 18.12.2010, p. 43-47.

⁵⁵ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52-57.

⁵⁶ Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p. 5.

3.2.4. Collective bargaining for the self-employed

Digital platforms have affected the way people work. They provide access to work and greater flexibility but they can also lead to greater vulnerability for some workers. Those providing services through digital platforms do not always fit into traditional employment categories, and it is not always clear whether EU competition rules act as a barrier to collective bargaining for those that need it. In June 2020, the Commission launched a process to assess whether there is a need for measures at EU level by providing increased legal certainty about the applicability of EU competition law to collective bargaining by self-employed. An initial information gathering process was conducted as part of the consultation on the Digital Services Act. In parallel, DG Competition engaged closely with stakeholders including platforms and social partners. In January 2021, the Commission published an inception impact assessment setting out the initial options for future action⁵⁷.

3.2.5. Private Enforcement – Implementation report on Damages Directive and Communication on protection of confidential information by national courts

The Damages Directive⁵⁸ sets out rules to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association of undertakings before national courts. In December 2020, the Commission submitted an [Implementation Report](#) to the Parliament and the Council as required in the Directive⁵⁹.

The report takes stock of the implementation of some of the core rules of the Directive, such as the right to full compensation, disclosure of evidence, evidentiary value of infringement decisions, limitation periods, passing on of overcharges and estimation of harm. Since the adoption of the Directive in 2014, the number of damages actions before national courts has significantly increased and damages actions have become much more widespread in the EU. The cumulative number of cases, by date of first judgment, was approximately 50 at the beginning of 2014 and, after a sharp increase, amounted to 239 in 2019. These 239 cases came from thirteen Member States⁶⁰. The Commission concluded that the Damages Directive is likely to have enhanced the awareness of victims of EU competition law infringements of their right to effectively claim damages for the harm suffered.

Moreover, the Commission adopted a non-binding [Communication on the protection of confidential information by national courts](#) in proceedings for the private enforcement of EU

⁵⁷ Inception Impact Assessment – Collective bargaining agreements for self-employed – scope of application of EU competition rules, 6.1.2021. See: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12483-Collective-bargaining-agreements-for-self-employed-scope-of-application-EU-competition-rules>.

⁵⁸ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1-19.

⁵⁹ Article 20 Damages Directive.

⁶⁰ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Spain, plus the United Kingdom.

competition law⁶¹. The Communication provides guidance on measures that national courts can impose to protect confidential information throughout and after the closing of proceedings. Examples of such measures are redactions, confidentiality rings, use of experts and hearings.

3.3. Review of the State aid rules

3.3.1. Fitness check of State aid rules concluded

In 2020, the Commission concluded the [fitness check](#)⁶², started in 2019, of the State aid rules adopted as part of the State Aid Modernisation (SAM) package. The [Railway Guidelines](#)⁶³ and the [Short-term export credit Communication \(STEC\)](#)⁶⁴ were also included in the fitness check. The Commission looked into whether the rules are still fit for purpose, also in the light of the European Green Deal⁶⁵, the New Industrial Strategy⁶⁶ and the Digital Strategy⁶⁷ of the Commission.

The results of the fitness check were published in October 2020. The Commission concluded that the rules under evaluation remain largely fit for purpose. However, certain provisions need revisions, including clarifications, further streamlining and simplification, as well as adjustments to reflect recent legislative developments, current priorities, changes in markets and technology developments. To allow sufficient time to amend the rules, the Commission

⁶¹ Communication from the Commission: Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law, OJ C 242, 22.7.2020, p. 1-17.

⁶² The Fitness check covered the following rules, which were adopted as part of the State Aid Modernisation: General Block Exemption Regulation (GBER) (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1-78); De minimis Regulation (Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1-8); Guidelines on regional State aid (Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1-45); Framework for State aid for research and development and innovation (RDI) (Communication from the Commission: Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1-29); Communication on important projects of common European interest (IPCEI) (Communication from the Commission: Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ C 188, 20.6.2014, p. 4-12); Guidelines on State aid to promote risk finance investments (Communication from the Commission: Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4-34); Guidelines on State aid to airports and airlines (Communication from the Commission — Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3-34); Guidelines on State aid for environmental protection and energy (Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55); Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Communication from the Commission: Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1-28). In addition, it also covered the Railways Guidelines from 2008 and the Short term export credit Communication from 2012. Those rules were not revised as part of the State Aid Modernisation, but an evaluation was relevant in the light of developments in EU law and the Commission's case practice.

⁶³ Communication from the Commission: Community guidelines on State aid for railway undertakings OJ C 184, 22.7.2008, p. 13-31.

⁶⁴ Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 392, 19.12.2012, p. 1-7.

⁶⁵ Communication from the Commission to the European Parliament, the European Council, the Council, The European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019) 640 final, 11.12.2019.

⁶⁶ Communication from the Commission to the European Parliament, the European Council, the Council, The European Economic and Social Committee and the Committee of the Regions: A New Industrial Strategy for Europe, COM(2020) 102 final, 10.3.2020.

⁶⁷ Shaping Europe's Digital Future, Commission Communication of 19.2.2020.

has prolonged⁶⁸ the validity of these State aid rules until 31 December 2021⁶⁹. The rules would otherwise have expired at the end of 2020.

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

The State aid rules are a vital part of the green transition. In line with the Commission Communication on the European Green Deal and the principles of the fitness check, the State aid guidelines relevant for the European Green Deal currently undergo a targeted revision to be finished by the end of 2021. These include the [Regional aid Guidelines](#)⁷⁰, [IPCEI Communication](#)⁷¹, [RDI Framework](#)⁷², [Risk Finance Guidelines](#), [Environmental and Energy Guidelines \(EEAG\)](#)⁷³ and relevant provisions of [GBER](#)⁷⁴. The revised ETS Guidelines were adopted in 2020⁷⁵.

The amended ETS guidelines entered into force on 1 January 2021 with the start of the new ETS trading period. The ETS guidelines enable Member States to compensate companies in at-risk sectors for part of the higher electricity prices resulting from the carbon price signals created by the ETS (so-called indirect emission costs).

In November 2020, the Commission invited comments⁷⁶ from stakeholders on certain aspects of the [Guidelines on State aid for environmental protection and energy](#), in view of their planned revision. The Guidelines, whose validity was prolonged until 31 December 2021, were evaluated as part of the fitness check. The evaluation showed that the Guidelines have facilitated a more effective and less distortive deployment of State resources to improve environmental protection and achieve the objectives of the Energy Union. However, they need to be adjusted in light of new technologies and novel support types, as well as recent environmental and energy legislation and policy.

⁶⁸ Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission: Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 224, 8.7.2020, p. 2-4.

⁶⁹ The following State aid rules were prolonged until 31 December 2023: General Block Exemption Regulation (GBER), De minimis Regulation, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. See also Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, OJ L 215, 7.7.2020, p. 3-7.

⁷⁰ Guidelines on regional State aid for 2014-2020, which entered into force on 1 July 2014, OJ C 209, 23.7.2013, p. 1.

⁷¹ Communication from the Commission: Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ C 188, 20.6.2014, p. 4-12.

⁷² Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.

⁷³ Communication from the Commission: Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1-55.

⁷⁴ 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.

⁷⁵ Communication from the Commission: Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021, SEC(2020) 320 final, SWD(2020) 190 final, SWD(2020) 191 final, SWD(2020) 192 final, SWD(2020) 193 final, SWD(2020) 194 final, SWD(2020) 195 final, 21.9.2020.

⁷⁶ Commission statement inviting comments on revision of Guidelines on State aid for environmental protection and energy, 12.11.2020.

In 2020, the Commission finalised the evaluation of the 2014 [Communication on Important Projects of Common European Interest \(IPCEI\)](#)⁷⁷, as part of the fitness check. The results showed that the IPCEI rules are broadly fit for purpose but that some targeted modifications may be warranted in light of the practical experience gained from IPCEI cases (on microelectronics and batteries) and to ensure that the IPCEI rules fully support the Commission priorities, in particular the European Green Deal and the Digital Strategy, and facilitate participation by SMEs. The consultation on a revised IPCEI Communication was launched in February 2021.

3.3.3. Stakeholder consultation on the Broadband State aid guidelines

In September 2020, the Commission launched a public consultation inviting Member States and other stakeholders to provide their views and comments on the existing EU State aid rules on public support for the deployment of broadband networks⁷⁸. The 2013 [Broadband State aid Guidelines](#) enable Member States to provide support for the deployment of broadband networks, subject to certain conditions⁷⁹. The public consultation is part of an overall evaluation with a view to assess whether the guidelines are still fit for purpose or whether they will need to be updated in light of recent technological and market developments.

3.3.4. Evaluation of the SGEI package continued

In 2020, the Commission continued its evaluation of the package for [Services of General Economic Interest \(SGEI\)](#) adopted in 2012. The evaluation, initiated in 2019, covers the SGEI Communication, SGEI Decision, SGEI Framework and SGEI *de minimis* Regulation⁸⁰, insofar as they are applicable to health and social services (except the evaluation of the SGEI *de minimis* Regulation which covers a wider range of sectors). The overall objective of the package is to support Member States' funding of SGEI of key importance to citizens and the society as a whole, while preserving the key aspects of State aid control. The goal of the evaluation is to verify if the SGEI rules applicable to health and social services are still appropriate and still provide EU added value. The results of the evaluation will be published in 2021.

3.3.5. Review of agricultural and fisheries State aid rules

In 2020, the Commission continued its review of the agricultural and fisheries State aid rules. The review comprises the Agricultural Block Exemption Regulation (ABER)⁸¹, the State aid

⁷⁷ Communication from the Commission: Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ C 188, 20.6.2014, p. 4-12.

⁷⁸ Public consultation: Evaluation of State aid rules for broadband infrastructure deployment. See: https://ec.europa.eu/competition/consultations/2020_broadband/index_en.html.

⁷⁹ Communication from the Commission: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ C 25, 26.1.2013, p. 1-25.

⁸⁰ Evaluation of State aid rules for health and social services of general economic interest (SGEI) and of the SGEI *de minimis* Regulation. See: https://ec.europa.eu/competition/state_aid/legislation/evaluation_sgei_en.html.

⁸¹ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

Guidelines for agriculture, forestry and rural areas⁸², the Fisheries Block Exemption Regulation (FIBER)⁸³, the Regulation on de minimis aid in the fishery and aquaculture sector⁸⁴ and the State aid Guidelines for fishery and aquaculture⁸⁵. Those instruments were prolonged in 2020, will expire now at the end of 2022 and are currently under evaluation. The evaluations should be finalised in 2021 and followed by impact assessments, in line with Better Regulation requirements. The Commission carries out its revision with the objective to establish new sets of agricultural and fisheries State aid rules, which should start to apply in 2023.

4. EU competition policy contribution to digital transition and reinforcing the Single Market

Through the headline ambition “A Europe fit for the digital age”, President Von der Leyen defined the digital area as one of her top priorities for the Commission mandate. In competitive markets firms must innovate and become more efficient to prosper. This applies in particular to innovation-driven and fast-moving digital markets. Effective enforcement of the EU competition rules and regulatory reforms are of vital importance in the digital transformation of the EU economy contributing to a resilient recovery in the EU. By enforcing the EU competition rules, the Commission continues to tear down remaining barriers to the Single Market.

4.1. Enforcement in antitrust contributed to the digital transition and strengthening of the Single Market

In the markets for systems-on-chips (SoCs), the Commission imposed interim measures on *Broadcom*⁸⁶, the world’s leading supplier of chipsets used for TV set-top boxes and modems, for having – in the Commission’s preliminary view – abused its dominant position in the markets of SoCs for (i) TV set-top boxes, (ii) fibre modems, and (iii) xDSL modems by entering into agreements with manufacturers of TV set-top boxes and modems that contained exclusivity-inducing provisions. In October 2020, the Commission decided to make legally binding a number of commitments offered by *Broadcom*⁸⁷. *Broadcom* committed to suspend existing exclusivity or quasi-exclusivity arrangements and leveraging provisions concerning SoCs for TV set-top boxes and Internet modems contained in agreements with original equipment manufacturers. *Broadcom* agreed not to enter into similar agreements in the future.

⁸² Commission Communication: European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014-2020, OJ C 204, 1.7.2014, p. 1.

⁸³ Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 369, 24.12.2014, p. 37.

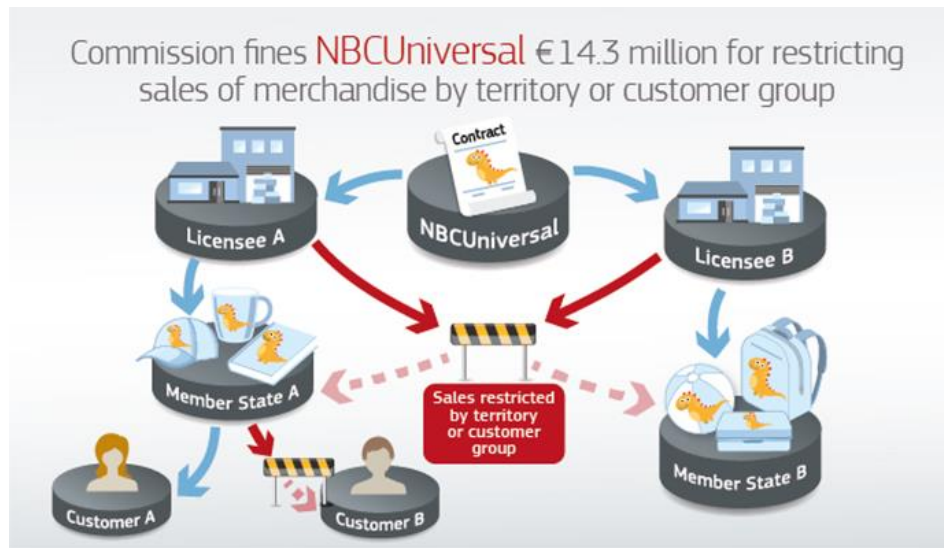
⁸⁴ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

⁸⁵ Commission Communication: Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C 217, 2.7.2015, p. 1.

⁸⁶ Case AT.40608 *Broadcom*, Commission Decision of 16.10.2019. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40608/40608_2791_11.pdf.

⁸⁷ Case AT.40608 *Broadcom* – Commitments under Article 9 of Regulation 1/2003, 7.10.2020. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40608/40608_2794_3.pdf.

The Commission concluded the final probe in relation to the sale of licensed merchandise in January 2020. The Commission fined several companies belonging to Comcast Corporation, including *NBCUniversal*, EUR 14.3 million for breaching EU antitrust rules⁸⁸. *NBCUniversal* included clauses in licensing agreements for film merchandise prohibiting licensees from selling online, selling outside specific territories or to other than specified customers. These clauses partitioned the Single Market to the detriment of consumers.



In February 2020, in the hotel accommodation services sector, the Spanish hotel group *Meliá* was fined EUR 6.7 million for including clauses in its agreements with tour operators according to which those contracts were valid only for reservations of consumers who were resident in specified countries⁸⁹. The Commission found that this partitioned the Single Market by restricting the ability of the tour operators to sell freely the hotel accommodation in all EEA countries and to respond to direct requests from consumers who were residents outside the defined countries.

In 2020, the Commission made progress in its investigations in ongoing cases and launched several major antitrust investigations in the digital sphere.

In November 2020, the Commission issued a Statement of Objections to *Amazon* provisionally finding that Amazon had abused its dominant position in breach of EU antitrust rules⁹⁰. Amazon acts as a retailer on its own marketplace and at the same time allows third-party sellers to sell via that same platform. Amazon has access to important non-public data of those third party sellers. Amazon feeds this data into its retail business algorithms and uses it to calibrate Amazon's own retail offers to the detriment of the other sellers on the marketplace. In the Commission's preliminary view, this behaviour allows Amazon to

⁸⁸ Case AT.40433 Film merchandise, Commission Decision of 30.1.2020. See:

https://ec.europa.eu/competition/antitrust/cases/dec_docs/40433/40433_734_3.pdf.

⁸⁹ Case AT.40528 Meliá (Holiday Pricing), Commission Decision of 21.2.2020. See:

https://ec.europa.eu/competition/antitrust/cases/dec_docs/40528/40528_418_3.pdf.

⁹⁰ Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices, Commission press release of 10.11.2020. See:

https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077.

leverage its dominance in the market for the provision of marketplaces services in France and Germany.

Also in November 2020, the Commission opened a second formal antitrust investigation into Amazon's business practices⁹¹. The investigation concerns potential self-preferencing and discriminatory practices on the marketplace run by Amazon. The Commission suspects that Amazon may favour its own retail offers on the Amazon marketplace as well as offers made by sellers that use Amazon's logistics and delivery services (so-called fulfilment by Amazon sellers). In particular, the Commission is investigating the criteria that Amazon sets to select the winner of the "Buy box" on its marketplace. The Commission is also looking into the selection criteria that enable sellers to offer products to customers that use Amazon Prime, the company's loyalty programme. These criteria may also lead to preferential treatment of Amazon's retail business or of FBA sellers. For sellers to generate sales on the Amazon marketplace, it is crucial to win the Buy box and to reach Amazon Prime customers.

In June 2020, the Commission opened four formal investigations against *Apple*. The Commission investigates whether Apple's terms, conditions and other measures for integrating Apple Pay in merchant apps and websites on iPhones and iPads breach EU antitrust rules. The Commission is also investigating Apple's limitation of access to the Near Field Communication (NFC) functionality (tap and go) on iPhones for payments in stores and alleged refusals of access to Apple Pay⁹².

In addition, two investigations follow up on separate complaints by Spotify and by an e-book/audiobook distributor on the impact of the App Store rules on competition in music streaming and e-books/audiobooks. In these probes the Commission investigates whether Apple's rules for app developers on the distribution of apps via the App Store violate EU competition rules⁹³. The investigations concern in particular the mandatory use of Apple's own proprietary in-app purchase system (which involves Apple charging app developers a 30% commission on subscription fees) and restrictions on the ability of developers to inform iPhone and iPad users of alternative cheaper purchasing possibilities outside of apps. The conduct in question may also dis-intermediate developers of competing apps from important customer data, while Apple may obtain valuable data about the activities and offers of its competitors.

To allow the Commission to gain a more comprehensive understanding of competition issues, market dynamics and business challenges in the consumer-oriented "Internet of Things" sector, the Commission launched a sector inquiry into the Internet of Things in July 2020⁹⁴. The Commission will examine conduct that could restrict or distort competition and which could merit early intervention. The final report will be issued in 2022.

⁹¹ Case AT.40703 Amazon – Buy Box, Commission Decision of 10 November 2020. See: https://ec.europa.eu/competition/antitrust/cases/dec_docs/40703/40703_67_4.pdf.

⁹² Antitrust: Commission opens investigation into Apple practices regarding Apple Pay, Commission press release of 16.6.2020. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1075.

⁹³ Antitrust: Commission opens investigations into Apple's App Store rules, Commission press release of 16.6.2020. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073.

⁹⁴ Commission Decision of 16.7.2020 initiating an inquiry into the sector for consumer Internet of Things related products and services pursuant to Article 17 of Council Regulation (EC) No 1/2003, COM (2020) 4754 final. See: https://ec.europa.eu/competition/antitrust/IoT_decision_initiating_inquiry_en.pdf.

In July 2020, the Commission fined three energy suppliers (*Orbia*, *Clariant* and *Celanese*) a total of EUR 260 million for colluding to buy ethylene at the lowest possible price to the detriment of ethylene sellers⁹⁵. Ethylene is a flammable chemical, primarily used to make polyethylene, the most common plastic in use today. All companies admitted their involvement, assisted the Commission with its investigation and agreed to settle the case. A fourth cartel member, *Westlake*, was not fined because it revealed the cartel to the Commission.

The Commission concluded another two car parts cartel investigations in September 2020⁹⁶. It fined manufacturers *Brose* and *Kiekert* EUR 18 million in total. *Magna* and *Brose* took part in a bilateral cartel concerning door modules and window regulators⁹⁷, while *Magna* and *Kiekert* colluded in relation to latches and strikers. In both cartels, the companies fixed prices and exchanged commercially sensitive information. *Magna* was not fined because the company revealed both cartels to the Commission.

The Teva-Cephalon pay-for-delay agreement

In November 2020, the Commission fined⁹⁸ the pharmaceutical companies *Teva* and *Cephalon* EUR 60.5 million for agreeing to delay for several years the market entry of a less expensive generic version of *Cephalon*'s drug for sleep disorders, modafinil, after *Cephalon*'s main patents had expired. The agreement was concluded well before *Cephalon* was acquired by *Teva*. The agreement violated EU antitrust rules and caused substantial harm to EU patients and healthcare systems by artificially keeping prices high for modafinil.

The decision concerns a patent settlement agreement whereby *Cephalon* induced *Teva* not to enter the market with a generic version of modafinil, in exchange for a package of commercial transactions that were beneficial to *Teva* and some cash payments. *Teva* held its own patents relating to modafinil's production process and was ready to enter the modafinil market with its own generic version, which it had already started selling in the United Kingdom. Then, it agreed with *Cephalon* to withdraw from the market and not to challenge *Cephalon*'s patents. The Commission's investigation found that for several years, this "pay-for-delay" agreement had the object and the effect of eliminating *Teva* as a competitor and allowing *Cephalon* to continue charging high prices even if its main modafinil patents had long expired.

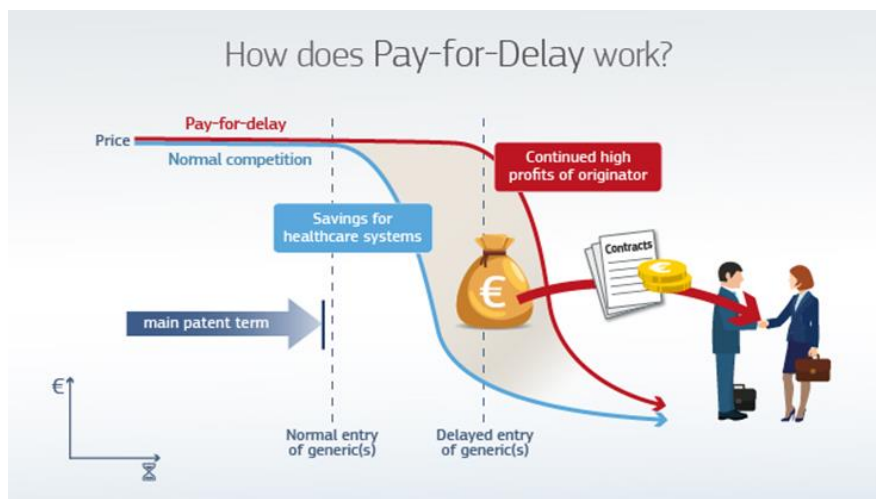
⁹⁵ Case AT.40410 Ethylene, Commission Decision of 14.7.2020. See:

https://ec.europa.eu/competition/antitrust/cases/dec_docs/40410/40410_1654_6.pdf.

⁹⁶ In recent years, the Commission has fined for cartel activities suppliers of automotive bearings, wire harnesses in cars, flexible foam used in car seats, parking heaters in cars and trucks, alternators and starters, air conditioning and engine cooling systems, lighting systems, occupant safety systems, and spark plugs, braking systems, seatbelts, airbags and steering wheels.

⁹⁷ Case AT.40299 Closure Systems, Commission Decision of 29.9.2020, public version not yet available.

⁹⁸ See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2220.



4.2. Merger control contributed to the digital transition and reinforced the Single Market

In May 2020, the General Court annulled the 2016 Commission decision prohibiting the merger between *Hutchinson 3G* and *Telefonica UK*⁹⁹. The Commission had found that the four-to-three merger would have led to an increase in prices and restriction of choice for consumers in the mobile telephony market in the United Kingdom. The General Court confirmed that the Commission can prohibit concentrations which do not create or strengthen a dominant position, but only if the merger would be liable to affect competition to an extent equivalent to the effect of dominance. The General Court found that the Commission had failed to demonstrate that the concentration would eliminate an important competitive constraint, thus giving rise to a significant impediment to effective competition. The Commission has appealed the judgment to the Court of Justice.

In November 2020, the Commission approved, subject to commitments, the proposed acquisition of *Covage* by *SFR FTTH*, a company jointly controlled by Altice, Allianz and Omers¹⁰⁰. SFR FTTH and Covage are major fibre network operators in France. Covage sells fibre network accesses at the wholesale level while Altice is active both at the wholesale and retail levels. The Commission found that the transaction would have given the merged firms a very strong position in the market for wholesale FTTO (fibre-to-the-office) services. As a result, alternative retailers would have fewer alternative suppliers. Since Covage would become vertically integrated in SFR's retail activities, the merged entity would have both the ability and the incentive to prevent retail competitors from accessing Covage's fibre capacity at wholesale level. SFR offered to divest 95% of Covage's FTTO business and offered to conclude a transitional service agreement to enable the divested business to become fully independent.

The Commission conditionally approved the acquisition of *Fitbit* by *Google* in December 2020¹⁰¹. Fitbit develops, manufactures and distributes smartwatches and fitness trackers. The

⁹⁹ Case T-399/16 *CK Telecoms UK Investments Ltd v European Commission*, Judgment of the General Court of 28.5.2020. See: <http://curia.europa.eu/juris/liste.jsf?num=T-399/16>.

¹⁰⁰ Case M.9728 *Altice/Omers/Allianz/Covage*, Commission Decision of 27.11.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9728.

¹⁰¹ Case M.9660 *Google/Fitbit*, Commission Decision of 17.12.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9660.

Commission had concerns that Google could use Fitbit's databases to increase the already vast amount of data Google possesses to personalise ads. Google would also be able to restrict competitors' access to the Fitbit Web Application Programming Interface (API) and put competing manufacturers of wrist-worn devices at a disadvantage by degrading their interoperability with Android smartphones. To obtain clearance, Google committed not to use Fitbit data for Google ads and to maintain such data separate in data silos. Google also committed to continue allowing relevant third parties to obtain access to users' health and fitness data to software applications through the Fitbit Web API without charges and subject to user consent. The company also committed to continue allowing interoperability with Android smartphones to competing wrist-worn devices. Finally, the commitments include a fast track dispute resolution mechanism that can be invoked by third parties.

In the supply of motor fuels and related products, the European Commission conditionally approved in July 2020 the acquisition of *Grupa Lotos* by *PKN Orlen*, two large Polish integrated oil and gas companies¹⁰². The Commission had concerns that the transaction, as initially notified, would have harmed competition for motor fuels in Poland, jet fuel in Poland and Czechia and related products such as different types of bitumen in Poland. PKN Orlen offered a package of divestments and other commitments. The package included divestments of a stake in a refinery, storage depots, retail fuel stations and bitumen production facilities. The Commission concluded that these remedies would allow competitors to compete effectively with the merged entity.

In the rail transportation sector, the Commission conditionally approved *Alstom's* acquisition of *Bombardier Transportation*, in July 2020¹⁰³. Alstom and Bombardier are global leaders in rail transportation and compete in the manufacturing and supply of very high speed trains ('very high speed rolling stock') and railway signaling solutions. The Commission concluded that the transaction would have raised serious competition concerns. Alstom would have become the undisputed market leader in very high speed rolling stock and mainline rolling stock as well as in mainline signaling. The Commission accepted a comprehensive commitments package offered by the merging firms, divesting train platforms and production facilities for very high speed rolling stock and mainline rolling stock. Alstom and Bombardier also offered to supply to signaling competitors legacy on-board-units, necessary interfacing information and support.

¹⁰² Case M.9014 PKN Orlen/Grupa Lotos, Commission Decision of 14.7.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9014.

¹⁰³ Case M.9779 Alstom/Bombardier Transportation, Commission Decision of 31.7.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9779.

The Fiat Chrysler / Peugeot merger

In the automotive sector, the Commission approved, following an in-depth investigation and subject to conditions, the merger between Fiat Chrysler Automobiles (FCA) and Peugeot SA (PSA)¹⁰⁴. The transaction created the world's fourth largest automotive group, named Stellantis. The Commission concluded that the merger would have harmed competition in the market for small light commercial vehicles (LCVs) in several Member States. The merging firms committed to extend the current cooperation agreement between PSA and Toyota for small LCVs. PSA produces Toyota vehicles for sale in the EU. The extended agreement will increase the production capacity available for Toyota and transfer prices will be reduced for vehicles and associated spare parts and accessories. These measures allow Toyota to compete effectively with Stellantis and expand in the EU market for small LCVs. Moreover, FCA and PSA agreed to amend repair and maintenance agreements concluded with their repairer networks. Access to the repairer networks will be facilitated, allowing competitors and new entrants to compete in the market for small LCVs.

4.3. State aid facilitated the digital transition and safeguarding the Single Market

Broadband infrastructure that meets the needs for very high digital speeds, capacities, and quality is key to meeting the EU 2025 connectivity objectives set out in the Digital Strategy¹⁰⁵. State aid contributes to the rollout of high performance broadband networks in the EU in addressing market failures, that is to say situations and areas where there is no incentive for commercial operators to provide sufficient broadband coverage.

In August 2020, the Commission approved a EUR 200 million voucher scheme to help low-income families in Italy access high-speed broadband services¹⁰⁶. The State aid scheme will reduce the digital divide in Italy while limiting possible distortions of competition. The Commission also approved in December 2020 a EUR 20 million voucher scheme to help students in Greece access broadband services and benefit from remote online learning¹⁰⁷.

The Commission approved, under EU State aid rules, a German scheme to support the deployment of very high capacity broadband networks in Germany¹⁰⁸. The scheme aims at developing a new, publicly financed very high capacity connectivity infrastructure that will deliver a faster internet for households, companies and public institutions in Germany. Germany will prioritise households that have access to speeds of less than 100 Megabit per second to contribute to reduce the digital divide between rural and urban areas in Germany. Under the scheme, Germany aims to make Gigabit networks available for all citizens by the end of 2025.

¹⁰⁴ Case M.9730 FCA/PSA, Commission Decision of 21.12.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_9730.

¹⁰⁵ Commission Communication Shaping Europe's Digital Future, 19.2.2020. See:

https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

¹⁰⁶ Case SA.57495 Italy – Broadband vouchers for certain categories of families, COM(2020) 5269 final, Commission Decision of 4.8.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202037/286902_2187163_119_2.pdf.

¹⁰⁷ Case SA.57357 Greece – Broadband voucher scheme for students, COM(2020) 8441 final, Commission Decision of 3.12.2020. See: https://ec.europa.eu/competition/state_aid/cases1/20212/288333_2230042_140_2.pdf.

¹⁰⁸ Case SA.52732 Germany – National gigabit scheme, COM(2020) 7859 final, Commission Decision of 13.11.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202048/288295_2213478_121_2.pdf.

5. EU competition policy contribution to green transition

The EU has a firm ambition to tackle climate change and environmental degradation and to drive forward the European Green Deal as Europe's growth strategy. Green innovation is not only at the core of the EU's political ambition, but also reflected in its regulatory proposals and funding priorities. EU competition policy is well placed to contribute to the EU's environmental objectives and climate targets, including the decarbonisation of the economy and the shift in the transport sector from polluting fossil fuels to alternative fuels in accordance with the Commission's mobility policy.

In this context, the Commission issued, in October 2020, a [call for contributions on how competition rules and sustainability policies work together](#)¹⁰⁹. The Commission invited various stakeholders, including competition experts, academia, industry, environmental groups and consumer organisations to provide their views and input on how antitrust policy, merger policy and State aid policy work together with environmental and climate policies. The contributions fed into a [conference](#) held in February 2021. A report on reflections from the consultation process is scheduled for mid-2021.

5.1. State aid facilitating green transition

In the area of State aid control, the Commission assessed and authorised State measures promoting the deployment of renewables, improving energy efficiency, supporting where necessary the rollout of zero/low emission mobility infrastructure, stimulating demand for zero/low emission vehicles for public and private transport, and reducing CO₂ and other emissions (including decarbonisation measures) or improving circularity.

In July 2020, the Commission approved a scheme to support electricity production from renewable sources in Ireland, the Renewable Electricity Support Scheme (RESS)¹¹⁰. The RESS will help Ireland reach its national target to transition away from fossil fuels and reach a share of 70% of renewables in its electricity mix by 2030. The Commission found that the aid is necessary, has an incentive effect and is proportionate and limited to the minimum necessary, as the amount of aid will be set through competitive auctions. The case also shows how to support projects developed by renewable energy communities and for communities that host projects supported by the RESS in line with State aid rules.

The Commission concluded in May 2020 that the compensation of EUR 52.5 million granted by the Netherlands for early closure of the coal power plant Hemweg was in line with EU State aid rules¹¹¹. The measure will contribute to reducing CO₂ without unduly distorting

¹⁰⁹ Competition Policy supporting the Green Deal – Call for contributions, Commission memorandum of 13 October 2020. See: https://ec.europa.eu/competition/information/green_deal/call_for_contributions_en.pdf.

¹¹⁰ Case SA.54683 Irish RES electricity support, Commission Decision of 20.7.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54683.

¹¹¹ Case SA.54537 Netherlands – Prohibition of coal for the production of electricity in the Netherlands, Commission Decision of 12.5.2020. See: https://ec.europa.eu/competition/state_aid/cases1/202025/284556_2165085_151_2.pdf.

competition in the Single Market. The Commission reached a similar decision in relation to compensations for early closures of coal-fired plants in Germany¹¹².

In November 2020, the Commission approved a Romanian scheme to support the construction and/or upgrade of district heating systems, based exclusively on renewable energy sources¹¹³. The measure will enable a switch from fossil fuel energy production to heat production from renewable energy sources. The State aid rules allow Member States to support district heating generation and distribution, subject to certain conditions set out in the Commission's Guidelines on State aid for environmental protection and energy. The European Green Deal Investment Plan published by the Commission in January 2020 allow Member States to increase the maximum support amount for generating district heating.

In December 2020, the Commission approved a EUR 30 billion Dutch scheme to support projects reducing greenhouse gas emissions in the Netherlands¹¹⁴. The scheme (Stimulerend Duurzame Energieproductie (SDE++)) will contribute to the EU environmental objectives without unduly distorting competition. This innovative scheme will be open to projects based on various technologies (renewable electricity, gas and heat, the use of industrial waste heat and heat pumps, the electrification of industrial heat processes and electrification of hydrogen production, and carbon capture and storage for industrial processes, including hydrogen production and waste incineration), which will bid for support on the basis of tons of CO₂ emissions abated compared to a baseline.

Second important project of common European interest (IPCEI) on batteries

Throughout 2020 discussions took place between 12 Member States and the Commission for a second IPCEI on the battery value chain. In December 2020, Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Poland, Slovakia, Spain and Sweden jointly notified the second IPCEI on batteries for e-mobility and energy storage. The project, called European Battery Innovation, will support research and innovation in the battery value chain. The twelve Member States will provide up to EUR 2.9 billion in funding in the coming years. The public funding is expected to unlock an additional EUR 9 billion in private investments. The project complements the first IPCEI in the battery value chain that the Commission approved in December 2019. The project is consistent with the Commission's policies to shift from the use of environmentally harmful fossil fuels to alternative fuel technologies and the twin transition of the EU economy under the European Green Deal and the Digital Strategy¹¹⁵. In January 2021 the Commission adopted a decision authorising this IPCEI¹¹⁶.

¹¹² Case SA.58181 Tender mechanism for the phase-out of hard coal in Germany, Commission Decision of 25.11.2020. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2208.

¹¹³ Case SA.55433 Romania – RES District heating projects, Commission Decision of 6.11.2020. See: https://ec.europa.eu/competition/state_aid/cases/2021/287759_2235900_143_2.pdf.

¹¹⁴ Case SA.53525 the Netherlands – SDE++ scheme for greenhouse gas reduction projects, including renewable energy, Commission Decision of 14.12.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_53525.

¹¹⁵ Commission Communication Shaping Europe's Digital Future, 19.2.2020. See: https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf.

¹¹⁶ State aid: Commission approves EUR 2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain, Commission press release of 26.1.2021. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_226. The non-confidential version of the decision will be made available under the case numbers SA.55855 (Austria), SA.55840 (Belgium), SA.55844 (Croatia), SA.55846 (Finland), SA.55858 (France), SA.55831 (Germany), SA.56665 (Greece), SA.55813 (Italy), SA.55859 (Poland), SA.55819 (Slovakia), SA.55896 (Spain), and SA.55854 (Sweden) in the State aid Register on the competition website. See: https://ec.europa.eu/competition/state_aid/register/.

During 2020 discussions continued between the Commission, Member States and industry for possible new IPCEIs in the areas of hydrogen technologies, low carbon industries microelectronics and batteries.

5.2. Antitrust enforcement and merger control contribute to the green transition

Antitrust enforcement can target not only company behaviour potentially aimed at restricting competition in the development of clean technologies but also deter conduct aimed at foreclosing access to essential infrastructures or to the free flow of resources that are necessary for the circular economy and the European Green Deal's objectives.

In 2020, the Commission continued its investigation against BMW, Daimler and VW (Volkswagen, Audi, and Porsche) for a suspected restriction of competition on emission cleaning technology¹¹⁷.

Antitrust enforcement action can also play a role in supporting the European Green Deal objective of developing a competitive and attractive passenger rail transport sector. In that context, the Commission continued its ongoing investigations¹¹⁸. In the Czech Rail case, the incumbent railway operator České dráhy (ČD) is suspected of predatory pricing on the Prague-Ostrava passenger railway route, the backbone of the Czech rail network. In October 2020, the Commission sent a Statement of Objections to České dráhy¹¹⁹.

6. An Economy that works for people – EU competition policy contribution to a deeper and fairer economic and monetary union

The social market economy is a foundation the EU is built upon and EU competition policy underpins it. Individuals and businesses thrive when the economy works for them. In 2020, the Commission supported this Commission headline ambition by promoting a pro-competition, level playing field and digital narrative in actions aimed at implementing the recovery package in the context of the European Semester, the Capital Markets Union, the Banking Union, and effective taxation¹²⁰.

6.1. Ensuring sustainability in the banking sector

In 2020, there were no new individual cases of State aid to financial institutions. Nevertheless, the Commission authorised the prolongation of already existing schemes under which Member States can assist, should the need arise in a concrete case, the orderly market exit of very small financial institutions or credit unions in distress. The Commission approved such schemes in Poland, Italy and Ireland¹²¹. The Commission also approved liquidity support

¹¹⁷ Case AT.40178 Car emissions, Statement of Objections of the Commission of 5 April 2019, See:

https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2008.

¹¹⁸ The Commission will continue its antitrust investigations, including in case concerning suspected predatory pricing on the Prague-Ostrava passenger railway route, which is the backbone of the Czech rail network.

¹¹⁹ Case AT.40156 Czech Rail. The Commission sent a Statement of Objections to České dráhy for alleged predatory pricing, See: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2017.

¹²⁰ Communication from the Commission: Action Plan to fight tax evasion and to make taxation simple and easy (Q2 2020) included in the Adjusted Commission Work Programme 2020 COM(2020) 440 final Annex 1 and 2, 27.5.2020.

¹²¹ Case SA.58389 Fifth prolongation of the resolution scheme for cooperative banks and small commercial banks, Commission Decision of 29.10.2020. See:

schemes for viable banks with temporary liquidity issues, should the need arise in a concrete case, in Greece and Italy¹²².

Member States continued to promote the creation or expansion of development banks. From a State aid perspective, publicly funded development banks can be active within a well-defined remit that addresses market failures and provided that they do not crowd out commercial financial institutions. In 2020, the Commission approved funding for Invest International, a new development finance institution in the Netherlands¹²³. The Commission also authorised funding for the setup of the Scottish National Investment Bank¹²⁴. Finally, the Commission approved the setting up of a new national development bank in Portugal, Banco Português de Fomento¹²⁵. During the year 2020, no-aid schemes continued to apply in Italy (“GACS”) and Greece (“Hercules”), which have been introduced to address the legacy issue of high levels of non-performing loans (NPLs). These schemes represent successful examples of how Member States can help banks clean up their balance sheets without granting aid or distorting competition.

6.2. Taking action against selective tax advantages

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

In July 2020, the General Court annulled the Commission’s decision of 2016, where the Commission found that two Irish tax rulings in favour of *Apple*, constituted incompatible State aid. The General Court held that the Commission did not show to the requisite legal

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58389; Case SA.56635 Tenth prolongation of the Credit Unions Orderly Liquidation Scheme, Commission Decision of 8.6.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56635; Case SA.57053 11th prolongation of the Credit Union restructuring and stabilisation scheme, Commission Decision of 8.5.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57053; Case SA.58819 12th prolongation of Credit Union restructuring and stabilisation scheme, Commission Decision of 30.10.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58819; Case SA.57378 16th prolongation of the Credit Union Resolution Scheme 2020-2021, Commission Decision of 12.6.2020. See: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57378; Case SA.57516 Italian orderly liquidation scheme for small banks. See:

https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3

¹²² Case SA.57262 Prolongation of the Greek State Guarantee Scheme for banks 01.06.2020-30.11.2020 (Art. 2 of Law 3723/2008), Commission Decision of 16.6.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57262; Case SA.57515 COVID-19 – Italian bank liquidity support scheme, Commission Decision of 10.11.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_57515.

¹²³ Case SA.55465 Invest International, Commission Decision of 29.5.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55465.

¹²⁴ Case SA.54780 Scottish National Investment Bank, Commission Decision of 5.11.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54780.

¹²⁵ Case SA.55719 Banco Português de Fomento, Commission Decision of 4.8.2020. See:

https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55719.

standard that Apple had been granted a selective economic advantage¹²⁶. The General Court considered that the Commission did not prove that the contested tax rulings were the result of discretion exercised by the Irish tax authorities. Moreover, the General Court considered that the Commission did not succeed in demonstrating methodological errors in the contested tax rulings which would have led to a reduction in Apple's chargeable profits in Ireland. The Commission has appealed the judgment to the Court of Justice¹²⁷.

7. Joining forces in fostering a European and global competition culture

7.1. Cooperation with national competition authorities within the European Competition Network

In 2020, the Commission and the national competition authorities in all EU Member States continued to cooperate and ensure the coherent application of Articles 101 and 102 TFEU through the European Competition Network (ECN)¹²⁸. The objective of the ECN is to build an effective legal framework to enforce EU competition law against companies who engage in cross-border business practices which restrict competition.

In 2020, 139 new investigations were launched within the network and 97 envisaged decisions were submitted. These figures include Commission investigations and decisions, respectively. On top of these cooperation mechanisms set out in Regulation 1/2003, other ECN cooperation work streams also ensure a coherent enforcement of the EU competition rules. The network met regularly to discuss cases at early stages, policy issues, as well as matters of strategic importance. In 2020, 24 meetings across horizontal working groups and sector-specific sub-groups were organised, where officials from EU competition authorities exchanged views. As described in Section 2.2. above, the ECN issued a joint statement on the application of the antitrust rules during the COVID-19 crisis and cooperated closely on COVID-19 related competition issues.

In 2020, the Commission monitored and assisted Member States in their efforts in incorporating the ECN+ Directive into national law by 4 February 2021¹²⁹. The Directive will ensure that when applying the same legal provisions – the EU antitrust rules – national competition authorities have the effective enforcement tools and the resources necessary to detect and sanction companies that infringe Articles 101 and 102 TFEU. It will also ensure that they can take their decisions in full independence, based on the facts and the law.

¹²⁶ Cases T- 778/16 and T- 892/16 State aid – Aid implemented by Ireland – Decision declaring the aid incompatible with the internal market and unlawful and ordering recovery of the aid – Advance tax decisions (tax rulings) – Selective tax advantages – Arm's length principle), judgments of 15.7.2020. See: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=228621&doclang=en>.

¹²⁷ Statement by Executive Vice-President Margrethe Vestager on the Commission's decision to appeal the General Court's judgment on the Apple tax State aid case in Ireland, Commission statement of 25.9.2020. See: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1746.

¹²⁸ Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43-53 and OJ C 374, 13.10.2016, p. 10. See:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004XC0427%2802%29>.

¹²⁹ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3-33.

7.2. New policy initiative to strengthen the Commission toolbox in the global context

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

To launch a debate on new tools to address this regulatory gap, the Commission adopted a [White Paper on foreign subsidies](#)¹³⁰ in June 2020. An extensive consultation of stakeholders was carried out in 2020. The Commission will present a legislative proposal on levelling the playing field for foreign subsidies in 2021.

White Paper on levelling the playing field as regards foreign subsidies

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

Module 1 proposes the establishment of a general market scrutiny instrument to capture all possible market situations in which foreign subsidies may cause distortions in the Single Market. The proposed supervisory authority could act upon any indication or information that a company active in the EU benefits from a foreign subsidy and impose measures to remedy the likely distortive impact, such as redressive payments and structural or behavioural remedies. It could also consider that the subsidised activity or investment has a positive impact, which outweighs the distortion and not pursue the investigation further (the "EU Interest Test").

Module 2, aims at ensuring that foreign subsidies do not confer an unfair benefit on their recipients when acquiring (stakes in) EU companies. Companies benefitting from financial support of a non-EU government would need to notify their acquisitions of EU companies above a given threshold to the competent supervisory authority. It could either accept commitments by the notifying party that effectively remedy the distortion or prohibit the acquisition.

Module 3 The White Paper proposes a mechanism where tenderers in public procurement procedures would have to notify financial contributions received from non-EU countries. The competent authorities would then assess whether there is a foreign subsidy and whether it distorts the awarding of the public procurement. In such a case, the tenderer could be excluded from the procurement procedure.

7.3. Multilateral and bilateral cooperation across the world

The Commission continued to maintain active international cooperation¹³¹ in the competition field, both on the multilateral and bilateral levels, despite the constraints of the pandemic.

The EU believes firmly in the strength and value of cooperating and also reforming international organisations, like the World Trade Organisation (WTO) and other multilateral organisations to make them fit for today's world. Reforming the subsidy rules is one of the EU's main priorities for the modernisation of WTO trade rules. To this effect, the EU, the US and Japan agreed in a common statement in January 2020 to strengthen the existing rules on

¹³⁰ White Paper on levelling the playing field as regards foreign subsidies, COM(2020) 253 final, 17.6.2020.

¹³¹ See the Mission letter https://ec.europa.eu/commission/commissioners/sites/default/files/2019/11/mission_letters/mission-letter-margrethe-vestager_2019_en.pdf.

industrial subsidies¹³². In 2020, the Commission continued its active engagement in competition-related international fora such as the OECD Competition Committee, the International Competition Network (ICN), the World Bank, and United Nations Conference on Trade and Development (UNCTAD).

In 2020, the Withdrawal Agreement between the European Union and the United Kingdom¹³³ was applicable, including the provisions for State aid and competition cases. The Commission issued guidance concerning the application of the Withdrawal Agreement in competition matters¹³⁴. In December 2020, the negotiations on the EU-UK Trade and Cooperation Agreement (TCA)¹³⁵ were finalised. The agreement provisionally applies from 1 January 2021. It includes comprehensive competition and subsidies chapters ensuring that competition between the EU and the UK is not distorted after the UK has left the EU.

In December 2020, the EU and China concluded in principle the negotiations for a Comprehensive Agreement on Investment (CAI)¹³⁶. China committed to a greater level of market access for EU investors, including some new important market openings. China also made commitments to ensure fair treatment for EU companies, so they can compete on a better level playing field in China, including in terms of disciplines for state owned enterprises, transparency of subsidies and rules against the forced transfer of technologies.

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

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

7.4. Upholding a regular and constructive inter-institutional dialogue

The European Parliament, the Council the Economic and Social Committee and the Committee of the Regions, with their specific roles vis-à-vis European citizens and stakeholders, are key partners in the dialogue on competition policy. Despite the pandemic, this dialogue successfully continued throughout 2020 through modern means of communication.

¹³² Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, 14.1.2020. See: https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158567.pdf

¹³³ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7.

¹³⁴ Notice to Stakeholders – Withdrawal of the United Kingdom and EU rules in the field of competition, Commission Notice of 2.12.2020. See: https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/eu-competition-law_en_0.pdf.

¹³⁵ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part, OJ L 444, 31.12.2020, p. 14-1462. See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG.

¹³⁶ EU-China Comprehensive Agreement on Investment – Agreement in Principle, 30.12.2020 See: https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159242.pdf.

In September 2020, in response to the Parliament's resolution of 18 June 2020 on the Commission's Report on Competition Policy 2018 (rapporteur Ms. Yon-Courtin (Renew/FR)), the Commission highlighted, among other things, the adoption of the White Paper on foreign subsidies, reflections to increase the use of the merger referral system to capture transactions currently not falling within the EU's jurisdiction, and the need for a comprehensive policy response for digital platforms through continued vigorous enforcement of the competition rules, including the possible ex ante regulation of digital platforms. In 2020, Executive Vice-President Vestager made several appearances in the other institutions, including the Parliament, the Council and the Economic and Social Committee.