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PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

A competition policy fit for new challenges

1. INTRODUCTION

Since the creation of the European Union, competition policy has contributed to preserving and fostering the **Union's economic prosperity**. Vigorous competition enforcement has served European consumers and customers – citizens and businesses – by empowering them to make choices in the market place and benefit from innovative products and services at affordable prices¹. It has helped nurture the dynamic and vibrant fabric of our European economy, made up of entrepreneurs, start-ups and global industry leaders of all sizes, from small and medium-sized enterprises (SMEs) to multinational conglomerates.

The COVID-19 pandemic has proven once more how the European economy can take the lead thanks to its resilience and innovative capabilities: European industry raced to develop, brought to market effective COVID-19 vaccines in record time, and supplied them to the world. It was able to adapt to the needs of the crisis by converting manufacturing lines to produce masks and personal protective equipment to the benefit of all Europeans. European companies swiftly changed business models and many made the shift to e-commerce overnight. This would not have been possible without the flexibility, drive for innovation and incentives to succeed instilled in the European economy through decades of competition enforcement and regulation.

Competition policy has also played an important role in the Union's crisis response toolbox, demonstrating its in-built ability to react swiftly to sudden changes in the economy. The **State aid Temporary Framework**, adopted by the Commission in March 2020, has enabled necessary and proportionate support by Member States to businesses in need, while ensuring equal treatment and limiting undue distortions to competition that would undermine the Single Market². The **Antitrust Temporary Framework** adopted in April 2020 has provided guidance and legal certainty to companies, e.g. when cooperating to preserve supply chains amidst border closures or to address shortages of critical hospital medicines and medical equipment or bottlenecks in vaccine production³. Across different areas, competition policy has worked seamlessly with other social and economic policies of the Union to support the most affected sectors and workers and cushioned the impact of the crisis for companies, including SMEs and start-ups⁴.

Thanks to the success of vaccination campaigns and the progressive re-opening of social and economic activities, the European economy is now on track to bounce back strongly, albeit still at varying speeds and subject to risks due to the increasing tensions in the supply chains, the rise of energy prices and resurgence in COVID-19 infections across certain Member States⁵. While we have witnessed the resilience, ingenuity and adaptability of the EU

¹ In 2020, the total estimated customer savings from cartel prohibitions and merger interventions lie between EUR 14 and 23.3 billion (see DG Competition's Annual Activity Report 2020). In 2019, State aid rules have helped channel 51% of all aid provided by Member States to environmental protection and energy savings and 10% on R&D.

² C/2020/1863, OJ C 91I, 20.3.2020, p. 1–9.

³ C/2020/3200, OJ C 116I, 8.4.2020, p. 7–10.

⁴ E.g. the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE), the Coronavirus Virus Response Investment Initiatives (CRII and CRII+), the activation of the General Escape Clause of the Stability and Growth Pact and the Green Lanes initiative.

⁵ According to the Commission's autumn 2021 economic forecast, GDP is expected to grow by 5% in 2021, 4.3% in 2022 and 2.5% in 2023 in the EU. Growth rates for the euro area are projected to be identical to those for the EU in 2021 and 2022, and 2.4% in 2023.

industry, we have also been exposed to new vulnerabilities and older dependencies, as well as socio-economic and territorial inequalities that need to be addressed. The crisis revealed the interdependence of global value chains and the value of a globally integrated Single Market. The task ahead can seem daunting: to climb the steep path of recovery from the COVID-19 crisis and draw the lessons from vulnerabilities observed, while enabling European industries to strengthen their resilience and to lead the twin green and digital transitions, making sure that no one is left behind.

Indeed, the European economy is at a remarkable crossroads – with the need for an economic recovery from a deep crisis marked by extreme variations in both supply and demand, within and beyond Europe; as well as with the need for profound changes in business practices and models, and for massive long-term investments, to secure the green and digital transitions and its future competitiveness and open strategic autonomy in a global context. The 2021-2027 long-term EU budget and NextGenerationEU, notably through the Recovery and Resilience Facility⁶ and the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) package, provide a once in a lifetime opportunity to invest in a truly future-proof economy. However, public support alone cannot secure sufficient change on the ground – while it can help to provide the means, businesses must also feel the need to innovate, to come up with new, more efficient solutions, and to invest at scale. **Competition contributes to that drive, stimulating businesses to innovate and invest to succeed in the market place, while ensuring fair conditions for European businesses of all sizes and that EU consumers continue to benefit from the competitive process.**

To deliver on these objectives, **Europe needs a strong and resilient Single Market** that supports entrepreneurship at all its stages, enables businesses of all sizes to get the most out of Europe's scale and achieve scale themselves to better compete in a globalised economy. It needs competitive markets sending the right price signals to drive investments to enable and deploy breakthrough innovation for greener products, services and value chains, more advanced digital infrastructure and tools (e.g. cloud, microprocessors, Artificial Intelligence) and less polluting and more efficient manufacturing technologies. It needs a fair labour market, with concrete actions to address the existing and emerging skills gaps and inequalities in the workforce. It needs a choice of products and services, contributing to reliable and diverse supply chains, and to meeting demand of European businesses and consumers in a timely fashion. In addition, it needs these choices to be affordable for all, to the benefit in particular of households and SMEs. And it needs to preserve cohesion in the Single Market, so that its strengthening does not lead to increasing economic, social and territorial disparities.

All this calls for strong and effective competition policy and enforcement, to give the European economy the agility to mount the recovery path and meet its twin green and digital ambitions in a sustainable, socially and territorially inclusive manner. To achieve this in the European Union, the Commission works hand in hand with Member States' national competition authorities and under the scrutiny of Union Courts.

Currently, the Commission is pursuing a **review of competition policy tools with unprecedented scope and ambition**: to make sure all competition instruments (merger, antitrust and State aid control) remain fit for purpose. In parallel, the Commission also seeks

⁶ Through the Technical Support Instrument, Member States can ask for support to design and put in place reforms and investments, among others, to ensure compliance with State aid rules in the implementation of the national Recovery and Resilience Plans (see Regulation (EU) 2021/240 of 10 February 2021 establishing a Technical Support Instrument).

to equip itself with new instruments aimed at tackling emerging challenges in the Single Market, such as digital gatekeepers or the distortive effects of foreign subsidies. This review, combined with continued strong enforcement of competition rules, aims at enabling EU industries to lead the twin transitions, and fostering the resilience of the Single Market. The details and timeframes of this work are set out in the Annex to the present Communication.

At the same time, beyond European borders, there is **momentum for strengthened enforcement and international convergence in competition policy and enforcement practices** across an increasing number of jurisdictions. This is important to ensure fair competition in all sectors and to enable European firms to reach efficient scale. In 2024, 85% of the world's GDP growth is expected to come from outside the EU. The International Monetary Fund has recently underlined the important role of competition in preventing excessive market concentration, fostering innovation and supporting a healthy recovery⁷. Similar discussions have taken place at G7 level⁸, and like-minded partners are taking an “all-government” approach to promote competition across their economy⁹. However, this is unlikely to be the case in all jurisdictions. Thus, such international competition advocacy and cooperation complements the tools of EU trade policy designed to secure free and fair trade at global and bilateral level; it also complements the EU initiatives to foster international development and cooperation, such as international partnerships to address strategic supply-chain vulnerabilities.

Against this background, this Communication sets out:

- the path for a progressive phase-out of crisis measures under the State aid Temporary Framework, accompanied by measures to kick-start and crowd-in private investment in the recovery phase (**Section 2**); and
- the contribution of the ongoing, far-reaching review of competition policy and competition enforcement to the Union's efforts to deliver on the green and digital transitions in a resilient Single Market (**Section 3**).

2. THE STATE AID TEMPORARY FRAMEWORK'S CONTRIBUTION TO ACCELERATING RECOVERY

When the COVID-19 pandemic hit in March 2020, the social and economic lives of people in the EU ground to an abrupt halt: they were asked to stay home, schools, shops and offices closed, factories stopped operating. Without extraordinary public support, otherwise viable companies would have had to exit the market and countless livelihoods would have been lost.

⁷ “Rising Market Power—A Threat to the Recovery?” (<https://blogs.imf.org/2021/03/15/rising-market-power-a-threat-to-the-recovery/>). See also Competition policy brief “Industry concentration and competition policy” (https://ec.europa.eu/competition-policy/system/files/2021-11/Competition%20Policy%20Brief%20-%20Industry%20concentration%20and%20competition%20policy%202-2021_1.pdf).

⁸ G7 Digital and Technology Ministerial Declaration of 28 April 2021 (<https://www.gov.uk/government/publications/g7-digital-and-technology-ministerial-declaration>) and Carbis Bay G7 Summit Communiqué (<https://www.consilium.europa.eu/media/50361/carbis-bay-g7-summit-communication.pdf>).

⁹ For example, in the US President Biden's Executive Order of 9 July 2021, increasing resources of US competition agencies and establishing a new approach to promote competition throughout the US economy to reduce the power of monopolies and concentrated markets in major industries (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>). See also the of the CANARI unit on Digital Enforcement in Canada (https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00018.html#DigitalEnforcement).

The Commission used the full flexibility of State aid rules for exceptional circumstances to adopt the **State aid Temporary Framework** to provide Member States with a tailor-made toolbox to support the economy during these challenging times. Over the past 18 months, the Commission has continued to adapt the rules to the developing needs of Member States and businesses through five amendments to the framework¹⁰, enabling Member States to take a wide variety of support measures. Until today, the Commission has adopted more than 670 decisions approving over EUR 3 trillion of State aid in all 27 Member States¹¹ and covering different sectors of the economy through different types of aid, including support targeted at SMEs. These decisions have been adopted in record time, thanks to special adoption procedures and close cooperation between the Commission and Member States.

The State aid Temporary Framework contains **safeguards to ensure that public support does not distort the level playing field in the Single Market**¹². Nevertheless, the Commission has remained vigilant as to the **impact of the extraordinary support**, in view of the significant differences in the ability of national budgets of Member States to respond to the crisis and provide support¹³. The Commission will also evaluate *ex post* the application of the State aid Temporary Framework and draw lessons for the future from its implementation, as regards both procedural aspects and the impact of the various types of aid it allowed, e.g. for SMEs, on competition in the Single Market.

Progressive phase-out of the State aid Temporary Framework on the path to recovery

As already set out in the Update to the Industrial Strategy¹⁴, crisis support measures need to be progressively phased out when the economic situation allows it, while avoiding cliff-edge effects. This is to avoid an asymmetric recovery and the risk of an even greater economic divergence within the Single Market. **The EU economy can only recover strongly, if we recover together.**

This is the background against which, today, the Commission is adopting the **sixth amendment of the State aid Temporary Framework**, with two objectives:

First, it sets out the path towards a **progressive phase-out of crisis measures** in view of the observed economic recovery, and subject to the evolution of the pandemic. The six-month prolongation of existing measures under the State aid Temporary Framework until 30 June 2022 will avoid that businesses are suddenly cut-off from still necessary public support, at a time when the serious disturbance affecting the economies of the Member States has not yet ended. It will enable a coordinated phase-out of the level of support in light of the different

¹⁰ C(2020) 2215 of 3 April 2020, C(2020) 3156 of 8 May 2020, C(2020) 4509 of 29 June 2020, C(2020) 7127 of 13 October 2020, and C(2021) 564 of 28 January 2021.

¹¹ This covers only public support that required a notification to the Commission under EU State aid rules.

¹² For example, by setting ceilings to aid per beneficiary and by requiring measures to address competition distortions for large recapitalisations of companies with significant market power.

¹³ Based on data submitted by Member States, in the period between mid-March and end of December 2020, of EUR 2.96 trillion in aid approved by then, around EUR 544 billion was actually used. At EU 27 level, this amounts to around 3.9% of EU GDP. In absolute terms during this period, France accounts for more than a fourth of the total aid provided (EUR 155.36 billion), followed by Italy with 19.8% of the total aid provided (EUR 107.9 billion), Germany with 19.1% of the total aid provided (EUR 104.25 billion) and Spain at 16.7% (EUR 90.8 billion). In relative terms, Spain has provided aid of 7.3% compared to its own GDP, 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%).

¹⁴ C(2021) 350 of 5 May 2021.

speeds of recovery, with specific sectors in different Member States still lagging behind others.

Second, the amendment introduces two **new tools to kick-start and crowd-in private investment for a faster, greener and more digital recovery**:

- **Investment support towards a sustainable recovery** (until 31 December 2022): This tool enables Member States to **create direct incentives for private investments** to kick-start the economy. Member States may use this tool to support sectors or types of companies in order to help fill the investment gap left by the COVID-19 pandemic. To avoid undue competition distortions, safeguards are put in place, for example to ensure that Member States set up schemes which benefit a significant number of companies, and to ensure sufficient own contribution by companies. This tool can be used by Member States to accelerate the green and digital transitions by enabling support to any investments that Member States consider to be important to speed up the recovery of their economy following the devastating effects of the pandemic in a sustainable and future-proof way. In general, investments that do significant harm to environmental objectives are unlikely to have sufficient positive effects to outweigh their negative effects on competition and trade. Depending on the different needs in Member State economies, it is up to Member States to set priorities and design support schemes that leverage private investments

These may include as non-exhaustive examples:

- roll-out or upgrade of digital infrastructure needed to digitalise companies;
 - re-tooling of production lines for new products (e.g. digitalisation equipment, electric vehicles);
 - investments into new production lines or machinery to extend production to overcome supply shortages;
 - replacement of old machinery or equipment with more efficient or less polluting equipment;
 - investments in equipment needed to improve circular economy / recycling and sustainable access to resources;
 - support for increasing energy efficiency of buildings;
 - support for companies that want to acquire e-bikes, electric vehicles or other types of clean means of transportation; and/or
 - support to re-/up-skilling programmes to secure access of industry to skilled workforce.
- **Solvency support** (until 31 December 2023): This measure enables Member States to **leverage private funds** and make them available for investments in **SMEs, including start-ups, and small midcaps**. This tool is particularly relevant in light of increasing indebtedness levels during the crisis, in particular of smaller companies. It provides access to equity financing that is often difficult for these companies to attract individually. For example, Member States can give guarantees to dedicated investment funds that will reduce risks for private investors and make it more attractive to invest in SMEs, start-ups and small midcaps.

These two new tools may also contribute to the implementation of the Recovery and Resilience Facility.

3. COMPETITION POLICY'S CONTRIBUTION FOR A GREEN, DIGITAL AND RESILIENT SINGLE MARKET

The Union's prosperity is deeply rooted in its **commitment to the principles of a social market economy** as enshrined in the Treaty of Lisbon. Competition policy is part of a broad regulatory and enforcement toolbox to ensure that the markets work to the benefit of customers and consumers. By keeping markets open and competitive and ensuring a level playing field, competition policy helps achieving the Union's wider priorities as set in its regulatory policies.

More concretely, the purpose of competition policy is to prevent and remedy market distortions through effective public intervention. Merger control allows companies to grow by acquiring other undertakings, including competitors, suppliers or customers, while ensuring that there are enough other companies still operating in the relevant market that can offer alternatives, thereby contributing to reliable and diverse supply chains. Antitrust enforcement ensures that partnerships between companies bring benefits, without leading to harmful cartels or other anticompetitive agreements that limit product availability or hike prices. It also makes sure dominant companies do not use their market power to exclude competitors or exploit customers. State aid control regulates the use of limited public resources by Member States to support public policy objectives, contributing to achieving optimal levels of investments in the European economy, without crowding out private investment or engaging in harmful subsidy races that undermine the Single Market. The vast majority of public spending is not State aid, and almost all of the spending that falls within the scope of State aid control is directly granted by Member States to companies without the need of prior notification to and approval by the Commission¹⁵.

In this context, **competition policy has a proven track record of remaining effective by reacting to new market developments and changing policy objectives of the Union.** Competition rules have an inherent ability to adapt, as they are applied to individual cases, taking account of the specificities of the businesses and markets at the time of the assessment, based on up-to-date information provided by market economy actors regarding current conditions and foreseeable market developments. The case experience feeds into the continuous review of competition rules. Over the years, such reviews have led to several rounds of adaptations of competition rules where necessary¹⁶, as well as to the creation of new tools¹⁷. These adaptations have ensured that competition policy continues to spur innovation and preserve, in line with the Treaties, a highly competitive social market economy that ultimately benefits EU citizens.

The ongoing review of all competition instruments (merger, antitrust and State aid control) will enable EU industries to lead the twin transitions, and foster the resilience of the Single Market, while allowing customers and consumers a fair share of the resulting benefits, as will be explained in the following sub-sections. Competition policy preserves well-functioning markets, while addressing relevant market failures, thereby contributing to the twin green and digital transition and the resilience of the Single Market. In its case practice, the Commission

¹⁵ Among others, the General Block Exemption Regulation (C/2021/5336, OJ L 270, 29.7.2021, p. 39–75) significantly facilitates disbursement of aid by enabling Member States to directly implement aid based on clear upfront criteria, without having to notify such measures to the Commission and wait for its approval. Block-exempted aid amounted to more than 96% of total State aid granted in the EU since 2015.

¹⁶ For example, COM/2012/0209 “EU State Aid Modernisation” or SWD/2021/66 Evaluation of procedural and jurisdictional aspects of EU merger control.

¹⁷ For example, OJ L 349, 5.12.2014, p. 1–19 “Antitrust Damages Directive”.

will continue to take account of green, digital and resilience aspects to the extent relevant to the competition assessment.

The ongoing review includes the review of horizontal competition tools, of relevance across sectors and instruments. In particular, the Commission will **update its 1997 Market Definition Notice**, taking into account the significant developments of the past twenty years, in particular digitalisation and new ways of offering goods and services, and to reflect the increasingly interconnected and globalised nature of commercial exchanges¹⁸. In this context, market definition is an important step in the Commission's assessment in merger and antitrust cases, to understand the competitive environment in which firms operate, both at a given time and more dynamically. Since markets are not static, this analysis needs to be repeated for each case, to take account of changes in production processes, consumer preferences, and other market specificities, such as innovation cycles, supply chains, the specificities of digital markets and related business models, and ease of access to new suppliers, or in response to regulatory changes. Similarly, the geographical scope of a market is also subject to a fresh assessment in every case, which can lead to markets being defined from local to global, depending on how they actually work in practice, in particular from the perspective of consumers and customers. The Commission does not decide on how markets *should* look like. Based on evidence provided by market participants, the Commission examines how a given market functions in practice as a basis for its competition assessment.

In the individual assessment of cases, Commission will continuously enhance its analytical tools to account likely future market trends and developments, including in terms of business models, technologies, and trade patterns, as part of its competitive assessment of antitrust and merger cases, in terms of potential competition, as well as likelihood of entry and/or expansion of competitors, including from outside the EU. Ultimately, EU competition policy and enforcement responds to the current and foreseeable market conditions.

Moreover, the Commission is currently reviewing the State aid framework on **Important Projects of Common European Interest** (IPCEI). This framework enables Member States and industry to jointly overcome market failures or societal challenges, by setting up ambitious pan-European projects in a transparent and inclusive manner, while ensuring positive spill-over effects for the EU economy at large. The evaluation of the existing framework showed that it works well. Some targeted adjustments are nonetheless appropriate¹⁹, while maintaining the existing scope of the framework to enable breakthrough innovation up to first industrial deployment and infrastructure investments where public intervention is necessary.

3.1 SUPPORTING THE GREEN TRANSITION

Fighting climate change and environmental degradation are the main challenge faced by our generation. The Union has placed the European Green Deal at the core of its vision and growth strategy as it has embarked on a journey to ensure environmental sustainability and to become climate neutral by 2050. The emissions reduction target of at least 55% by 2030, compared to 1990 levels, has become a legally binding commitment with the entry into force

¹⁸ OJ C 372, 9.12.1997, p. 5–13.

¹⁹ These include to further enhance the openness of IPCEIs, facilitate participation of SMEs and to clarify the criteria to pool funds from national budgets and EU programmes.

of the European Climate Law²⁰. Delivering on these objectives requires a solid and conducive regulatory framework, to set binding standards, increase ambition and incentivise stakeholders to adapt their behaviour. Last July, the Commission adopted the “Fit for 55” package – a set of proposals to make the EU’s climate, energy, land use, transport and taxation policies²¹ fit for reducing net greenhouse gas emissions by at least 55% by 2030. A range of other strategies²² under the Green Deal aim at addressing the wider environmental crisis and achieving a resource efficient, clean and circular economy.

Competition policy can complement the regulatory framework by ensuring strong and competitive markets that send the right price signals for the necessary investments to flow into the necessary technologies for transition, while keeping costs down for taxpayers. It can help set the right incentives for companies to use resources efficiently, avoid stranded assets and innovate their production processes towards greater sustainability. Moreover, it can support a just transition that alleviates the socio-economic and regional consequences stemming from the transition towards climate neutral economies.

Against this background, in 2020 the Commission launched a reflection process on the role of competition policy in the green transition²³. This process revealed convergence around the importance of competition policy in accompanying the Union’s environmental, climate and energy policies. Indeed, an effective interplay between the regulatory framework and competition policy is necessary to meet Green Deal objectives.

Filling the green investment gap and enabling a just transition

Reaching the European Green Deal objectives will require large public and private investments, which is why at least 30% of the EUR 1.8 trillion²⁴ from Europe’s new long-term budget and NextGenerationEU will be spent to tackle climate change. Under the NextGenerationEU’s flagship, the Recovery and Resilience Facility, at least 37% of the funds allocated to Member States must be climate measures that contribute to the green transition²⁵. This public funding will also be important to leverage private investments that by necessity will fund the major share of the needed investments.

State aid rules have also already demonstrated their worth: for example, the **Energy and Environmental State aid Guidelines**²⁶ have helped drive well-designed public support programmes towards achieving the 2020 climate targets, injecting over EUR 202 billion into the economy, including to increase the use of renewable energy sources where private investment proved insufficient. They have also contributed to an effective use of limited

²⁰ OJ L 243, 9.7.2021, p. 1–17.

²¹ See Commission’s proposal for Carbon Border Adjustment Mechanism (COM/2021/564 final), proposal for a revised Energy Taxation Directive (COM/2021/563 final) and upcoming proposal for BEFIT (Business in Europe: Framework for Income Taxation).

²² E.g. A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final); A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM/2020/98 final); EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380 final); Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (COM/2021/400 final).

²³ Conference on “Competition policy contributing to the European Green Deal” of February 2021 https://ec.europa.eu/competition-policy/green-gazette/conference-2021_en.

²⁴ In 2018 prices.

²⁵ In addition, cohesion policy will also support climate transition, with a contribution of at least 30 % of the European Regional Development Fund and of 37 % of the Cohesion Fund. Moreover, the Just Transition Fund will contribute to address the economic and social consequences of the climate transition process in the territories most affected.

²⁶ Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01.

public resources: since State aid rules started to require competitive tenders for aid to large renewable energy plants, the cost of that aid has more than halved in several cases, and some offshore wind projects in Europe now happen with no public subsidy at all²⁷.

Going forward, the Commission's extensive review of its State aid rules will further support the ambitious climate, energy and environmental objectives, while also focusing on crowding in private investment. To name just a few examples:

The revised EEAG, also called **Climate, Environmental Protection and Energy Aid Guidelines** (CEEAG), foreseen to apply from 2022, and the revision of the related sections of the **General Block Exemption Regulation** (GBER) aim at ensuring a coherent, future-oriented and flexible framework to enable Member States to provide the necessary support to make the Green Deal happen. To that effect, the Commission envisages that the new CEEAG would²⁸, for example, allow supporting the decarbonisation efforts of industry based on any technology that can deliver the green transition, using instruments such as carbon contracts for difference for example in relation to the supply of low-carbon hydrogen²⁹. Moreover, it proposes, for example, to support measures making zero- or low-carbon production processes economically viable (including by converting existing facilities in a context where increased electrification is needed). To reflect the broad approach needed, the Commission also envisages to facilitate support also in areas such as circular economy and biodiversity as well as clean or zero-emission mobility and energy efficiency of buildings.

The ongoing review of State aid rules also aims at ensuring **consistency with both established and new regulatory principles relevant to the European Green Deal**, such as the “polluter pays” principle. Those rules also pay particular attention to the “Do No Significant Harm” principle within the individualised assessment of positive and negative effects. To that effect, the draft CEEAG would support the phasing out of fossil fuels by clarifying that State support for projects involving such fuels, in particular the most polluting ones such as oil, coal and lignite, is unlikely to be found compatible with State aid rules³⁰. More generally, the Commission may, where relevant, take into account negative externalities as part of the assessment of the negative effects of the aid on competition and trade.

The European Green Deal also requires **appropriate incentives to innovate and provide cleaner products to consumers**. Whereas such efforts mainly pass through regulation, competition policy can help in further stimulating consumer demand for cleaner products and creating the right framework conditions. For example, the draft CEEAG proposes to facilitate aid for the acquisition of zero/low carbon emission vehicles and for investments in the related recharging and refuelling infrastructures and will enable support for greener production processes.

The Commission's Sustainable and Smart Mobility Strategy specifically underlines the contribution of competition law towards the objective of achieving the twin transitions across

²⁷ See “Retrospective evaluation support study on EEAG” available at:

https://ec.europa.eu/competition-policy/document/download/69020dc0-b852-4952-9319-542637228f91_en.

²⁸ See the draft for consultation: https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_en

²⁹ i.e. contracts entitling beneficiaries to a payment equal to the difference between a fixed and a reference price.

³⁰ The same would apply to measures involving new investments in natural gas, unless Member States demonstrate that there is no lock-in effect. Member States must also explain, among other things, how they will ensure that those investments contribute to achieving the Union's 2030 and 2050 climate targets and how they will not create a lock-in effect for the use of natural gas.

all transport modes³¹. In particular, the ongoing review of State aid rules relevant to the **transport sector** will be used to support the sector's sustainable recovery from the COVID-19 pandemic and reinforce its ability to transition to climate neutrality by 2050, namely by giving less polluting modes an increasing opportunity to compete on equal terms³² and providing an enabling framework for green investments. Since 2008, the Commission has approved approximately 130 measures aimed at promoting the efficiency and sustainability of the EU's internal transport market, including by **improving digitisation and increasing the interoperability of rail transport and supporting more sustainable transport solutions than road transport**, such as inland waterway and intermodal transport³³. The review of the State aid rules applicable to rail transport³⁴ will bring them into full alignment with the Union's key priorities. It aims to support further the shift towards more sustainable transport modes, while introducing increased procedural facilitations for aid measures in the field of greener land and intermodal transport via block exemptions. To that purpose, the Commission is also considering adopting a proposal for a Council regulation that enables the Commission to adopt block exemption regulations in the field of land transport, in line with Article 93 of the TFEU.

State aid policy also has an important role to play when it comes to **enabling breakthrough innovation** needed to deliver on the Green Deal, where the risks are too large for a single company or Member State to take alone. With over EUR 6 billion of Member States' funding unlocking an additional EUR 14 billion in private investments, the two IPCEIs in the battery value chain have enabled significant investment in research and innovation as well as first industrial deployment of new battery technologies, while ensuring positive spill-over effects for the European industry at large³⁵. Similarly, the Commission will continue to actively support Member States in the design of **IPCEIs in support of clean hydrogen technologies and systems**.

Finally, the new **Regional State aid Guidelines**³⁶ enable Member States to support the least favoured regions, as well as regions facing transition or structural challenges, in particular Just Transition Fund regions, adapt to the green and climate transition while ensuring a level playing field between Member States. This is important as State aid rules must continue to preserve the integrity of the internal market, taking into account the cohesion objectives enshrined in the EU Treaties, which are at the heart of European integration³⁷.

³¹ COM/2020/789 final.

³² COM/2020/789 final, paragraph 76.

³³ In the context of the coronavirus outbreak, EU State aid rules enabled Member States to maintain the competitiveness of rail freight and commercial passenger operators, in line with the EU Green Deal objectives: since the beginning of the pandemic, the Commission has approved 8 measures providing aid to railway undertakings in the form of reduction of track access charges, for a total amount of approximately EUR 1.6 billion approved budget.

³⁴ See : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13154-Rail-transport-revision-of-State-aid-guidelines_en; https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13153-Greener-land-transport-simplified-state-aid-rules-New-Land-Transport-Enabling-Regulation_en

³⁵ Commission's decision of 9 December 2019 in Cases SA.54793, SA.54801, SA.54794, SA.54806, SA.54808, SA.54796 and SA.54809 – *Summer IPCEI Batteries*; and of 26 January 2021 in Cases SA.55855, SA.55840, SA.55844, SA.55846, SA.55858, SA.55831, SA.56665, SA.55813, SA.55859, SA.55819, SA.55896, and SA.55854 – *Autumn IPCEI Batteries*.

³⁶ OJ C 153, 29.4.2021, p. 1–46.

³⁷ See also COM/2020/21 final, Sustainable Europe Investment Plan.

Enforcement and cooperation to further European Green Deal objectives

Beyond enabling necessary public funding, the Commission can also further the European Green Deal objectives through vigorous enforcement of antitrust and merger rules. For example, in July 2021, the Commission imposed a fine of EUR 875 million on five carmakers for colluding to slow down the deployment of technical development with potential to reduce car pollution³⁸.

Competition policy can further contribute to the green transition by **enabling companies to cooperate to pursue genuinely green initiatives jointly, while preventing ‘greenwashing’ that would harm consumers**. Consumer preferences for sustainable products, services and technologies should be taken into account in the competition assessment, whenever appropriate. For example, agreements restricting competition could potentially be exempted from the prohibition of Article 101(1) TFEU, if the benefits that they create for customers offset the harm that they cause to them. These benefits may include, for example, replacing a non-sustainable product with a sustainable one and thus improving its longevity or other features, thereby increasing the value that consumers attribute to that product.³⁹

Moreover, to help European farmers to address pollution, climate change and other sustainability challenges, the reform of the Common Agriculture Policy provides for a new derogation from antitrust rules in relation to agricultural sustainability agreements⁴⁰. The Commission will draft guidelines to help stakeholders implement the new derogation.

The Commission stands ready to respond to companies’ requests for guidance to provide legal certainty, including where companies contemplate agreements to pursue sustainability objectives. In parallel, it is also consulting on the conditions in which cooperation between competitors can contribute to more sustainable products or production processes in the ongoing review of the **Horizontal Block Exemption Regulations and Guidelines**.

3.2 SUPPORTING THE DIGITAL TRANSITION

The COVID-19 crisis has led to a massive acceleration of the digital transformation of the European economy. Almost overnight, working and studying remotely have become the norm, businesses have shifted on an unprecedented scale to e-commerce, and public administrations have rolled out digital apps to provide public services. This shows the innate adaptability and innovation potential present in Europe. However, it should not be a ground

³⁸ Commission’s decision of 8 July 2021 in Case AT.40178 – *Car Emissions*. Another example is the Commission’s approval of the merger between Schwarz Group and Suez Waste Management on condition that the parties would divest assets to ensure that customers would continue benefitting from less polluting lightweight packaging sorting services (decision of 14 April 2021 in Case M.10047).

³⁹ For further examples Competition policy brief “*Competition Policy in Support of Europe’s Green Ambition*” (<https://op.europa.eu/en/publication-detail/-/publication/63c4944f-1698-11ec-b4fe-01aa75ed71a1>).

Similar benefits can be taken into account in the assessment of the effects of mergers, to the extent they are put forward by the parties to the transaction and they are verifiable, merger specific and benefit consumers.

⁴⁰ The provision exempts from the application of Article 101 TFEU sustainability agreements concluded between producers and/or other actors from the food value chain aimed at achieving higher standards than required by law in terms of environmental protection, climate change prevention, animal health and animal welfare. The derogation applies only if the restrictions of competition resulting from the sustainability agreements in place are indispensable for the achievement of the desired standard, i.e. they do not restrict competition more than is necessary. The derogation provides the opportunity for farmers to adopt greener practices in agriculture in exchange for various benefits (higher prices, longer-term supply relationships, etc.).

for complacency – many parts of the European economy and several regions, notably the least developed, still lag behind in terms of digital transformation, from access to the right skills, or the deployment of cutting-edge infrastructures and capacities, to the take-up of digital tools in businesses to enhance productivity. The communication, “2030 Digital Compass: the European way for the Digital Decade”, sets out objectives and targets for the EU’s digital transformation up to 2030, with the aim to craft a digital future for the Union’s citizens and businesses that is human-centred, sustainable and prosperous. On 15 September 2021, the Commission proposed a co-legislative decision establishing a policy programme, the “Path to the Digital Decade”, which embeds the digital objectives and targets and provides concrete tools to achieve them through cooperation between the Commission and the Member States⁴¹. At least 20% of the funds allocated to Member States under the Recovery and Resilience Facility must be used for measures that contribute to the digital transition⁴².

With the growing importance of the digital economy, the EU should not lag behind in the progress of digitisation, while at the same time preserving competitive conditions and level playing field in the digital Single Market. State aid policy can help address the needs for large-scale investments to support the development of the necessary infrastructure as the backbone to the digital economy, without crowding out private investment and contributing to bridge the digital divide. In parallel, a central objective of competition policy remains keeping digital markets competitive. As regards online platforms, which typically feature strong network effects and “winner-takes-all” dynamics, as well as significant economies of scale and close to zero marginal costs, it is paramount to ensure openness, fairness and contestability from the outset. Given the specificities of online platforms, it is necessary to both continue enforcing competition rules and to complement and complete the toolbox to make the most out of online platforms and the data economy.

Filling the digital investment gap

There are different types of digital infrastructure, and major investment gaps persist⁴³. Along these, connectivity networks command particular attention as they are foundation of a digital economy and society, of relevance to virtually all businesses and consumers. Digitisation implies that user needs for download and upload bandwidth are constantly growing. The Digital Compass Communication envisages that by 2030 at the latest, all European households should be covered by a Gigabit network, and all populated areas should be covered by 5G⁴⁴.

The bulk of investments in telecoms infrastructure comes from private investors. To increase the cost-effectiveness of their network roll-out, the Commission encourages private operators to cooperate in so called “**network sharing**”, whilst ensuring that this is done without unduly

⁴¹ COM/2021/574 final.

⁴² Measures to boost the production and distribution of digital content, such as digital media, count towards this target, as part of the efforts to support the recovery and the digital transformation of the news media and audiovisual sectors (see: COM(2020)784 final as well as guiding template on the digitalisation of news media: https://ec.europa.eu/competition/state_aid/what_is_new/template_RFF_digitalisation_of_news_media.pdf)

⁴³ Example of such infrastructure are cloud and microprocessors, in relation to which the Commission is supporting upcoming IPCEIs by Member States; see further in Section 3.3.

⁴⁴ COM/2021/118.

reducing competition in each specific case⁴⁵ The Commission might in future offer further guidance on network sharing in the context of the Horizontal Guidelines review.

State aid policy has a key enabling function in reaching the Digital Decade targets in a way, which helps bridging the digital divide, by ensuring a higher level of broadband coverage, especially in rural and remote areas, and penetration and in supporting higher quality and more affordable services⁴⁶. The **Broadband State aid Guidelines**⁴⁷ and GBER rules facilitate the roll-out of secure and performant networks in a targeted and sustainable manner, where private providers are unlikely to invest or to deliver the adequate level of infrastructure for the fast evolving customers' needs. The ongoing revision of the Guidelines aims to further facilitate the deployment and take-up of broadband network, thereby accelerating the digital transition and increasing connectivity. For example, with the new Guidelines the Commission aims to significantly move the cursor for what types of connectivity investments are ordinarily deemed necessary in order to respond to evolving needs, while remaining open to Member States identifying more advanced needs. Moreover, the Commission envisages that the scope of the Guidelines would extend to investments in mobile infrastructure⁴⁸ and take-up measures such as connectivity and social vouchers, aligning with technological developments and the digital and social goals of the Union.

Finally, the revision of the R&D&I-Framework and corresponding GBER-rules aim to update these rules to reflect recent market and technological developments and thereby facilitate private-sector investments that accelerates the twin transitions.

Keeping the market power of dominant platforms in check

The Commission is a global frontrunner in enforcing antitrust rules in the digital sector. It is currently investigating in several cases whether dominant digital platforms have breached EU antitrust rules, for example by discriminating third party access to data or abusing their gatekeeper roles to distribute content via the app store⁴⁹. If the Commission's concerns are confirmed, it can impose fines and bring the anti-competitive practices to an end, or accept forward looking commitments that change the relevant companies' ways of doing business in the EU.

The Commission has already sanctioned anti-competitive conduct by dominant digital players in several instances in the past. For example, in June 2017, the Commission fined Google EUR 2.42 billion for unlawfully giving preference to its own comparison shopping services

⁴⁵ E.g. the positive stance taken by the Commission in relation to the adjustments to the cooperation between TIM and Vodafone in Italy that those companies made and which seemed *prima facie* appropriate to alleviate possible concerns stemming from the network sharing agreements between those two mobile operators (available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_414). See also ongoing case AT.40305 - *Network sharing - Czech Republic*, where on 1 October 2021 the Commission launched a market test of the commitments offered by T-Mobile CZ, CETIN, and O2 CZ, seeking the feedback all interested parties.

⁴⁶ Cohesion policy will also be mobilised to help less developed areas address market failure affecting digital investments, in particular in remote and less developed areas.

⁴⁷ OJ C25/1 26.01.2013.

⁴⁸ The transition to each new mobile generation is generally incremental. For instance, the transition from 4G to standalone 5G is expected to constitute an appropriate step-change for State Aid purposes.

⁴⁹ For example: ongoing investigations in Cases AT.40652 – *Apple – App Store Practices (e-books/audiobooks)*; AT.40670 – *Google - Adtech and Data-related practices*; AT.40716 – *Apple - App Store Practices*; AT.40684 – *Facebook leveraging*; AT.40703 - *Amazon - Buy Box*; AT.40462 - *Amazon Marketplace*; AT.40437 - *Apple - App Store Practices (music streaming)*.

over those of its competitors⁵⁰. On 10 November 2021 the General Court upheld the Commission's decision, confirming the latter's approach was correct and legally sound. As a result, Google amended the so-called "shopping box" to allow third party comparison shopping services to be advertised therein. As of today, around 75% of all products advertised in this box are from third parties compared to none before the Commission intervened.

In July 2018, the Commission fined Google EUR 4.34 billion for a range of unlawful business practices relating to the Android operating system and apps, which had the aim of protecting and strengthening Google's dominant position in general internet search⁵¹. As a result, Google waived the prohibition for phone manufacturers to launch models using non-Google versions of the Android open source operating system. Google also rolled out a choice screen for new Android devices, under which currently up to eleven rival search providers are presented to users during the set-up of the device.

In view of the importance of **data as a key ingredient for the innovative potential of companies**, competition enforcement complements the Commission's regulatory actions in promoting data sharing and levelling the playing field between gatekeepers and smaller companies. Access to data or data accumulation played a role in a number of recent merger cases⁵² and is central to theories of harm in some pending antitrust cases mentioned above. At the same time, in its enforcement practice the Commission has recognised the relevance of **privacy as parameter of competition** and it has accepted commitments to ensure that, among others, this competitive dimension is preserved⁵³.

Furthermore, the Commission has worked to adapt to the fast-moving nature and the specificities of digital markets. For example, the Commission made use of **interim measures** that required the company Broadcom to cease its practice of imposing exclusivity conditions on its customers of chips for modems and TV set-top boxes⁵⁴ and will continue to use this tool to tackle effectively any risk of serious and irreparable damage to competition. More in general, the Commission will continuously review the effectiveness of its antitrust procedural and analytical tools, in order to ensure that they are fit for the challenges of the digital age.

The Commission has also made use of sector enquiries in order to identify early on and in a comprehensive way potential competition issues in a market. The latest **sector enquiry** was launched in July 2020 **on the Consumer Internet of Things**, a growing sector comprising of products and services connected to a network and that can be controlled remotely by a voice assistant or a mobile device. The June 2021 preliminary report identified potential concerns, such as exclusivity or tying arrangements, interoperability issues, data accumulation, which will feed into the Commission's competition enforcement and ongoing regulatory work.

The Commission's enforcement experience in competition cases contributed to the legislative proposal for the Digital Markets Act⁵⁵, a new regulatory tool setting rules for large digital platforms acting as gatekeepers on digital markets. Once adopted, **the Digital Markets Act and competition enforcement will work in tandem**: the Digital Markets Act will set *ex ante*

⁵⁰ Commission's decision of 27 June 2017 in Case AT.39740 – *Google Search (Shopping)*.

⁵¹ Commission's decision of 18 July 2018 in Case AT.40099 – *Google Android*.

⁵² Commission's decision of 6 September 2018 in Case M.8788 - *Apple/Shazam*; Commission's decision of 17 December 2020 in Case M.9660 - *Google/Fitbit*.

⁵³ Commission's decision of 6 December 2016 in Case M.8124 - *Microsoft/LinkedIn*.

⁵⁴ Commission's interim measures decision of 16 October 2019 in Case AT.40608 – *Broadcom*.

⁵⁵ COM/2020/842 final.

rules applicable to designated gatekeepers to ensure contestable and fair digital markets, while competition rules will continue to be enforceable *ex post* on a case-by-case basis.

Competition rules to reflect the specificities of digital markets

To strengthen its ability to tackle all potentially anti-competitive acquisitions, the Commission has issued guidance on the application of Article 22 of the Merger Regulation to encourage, where appropriate, Member States to refer for its review potentially problematic transactions, even if those do not meet national notification thresholds. Notably, this could be the case for certain acquisitions of innovative digital companies having competitive potential beyond what their turnover would indicate. The Commission's proposal for a Digital Markets Act contains a provision that should allow the Commission to receive information from digital gatekeepers about acquisitions of companies providing digital services, thereby increasing its knowledge about these transactions and of their business rationale, and thus improving its analytical tools and its ability to detect those which may have a negative impact on competition.

In this new business environment where data has become the engine of innovation and growth, companies need to know when and what type of data they can share with competitors, suppliers or customers. Predictability on compliance with competition rules will be paramount to allow increased data sharing as promoted by the Commission's initiatives on data, such as the Data Governance Act and the upcoming Data Act. In response to this need, the ongoing revision of the **Horizontal Guidelines** will provide updated guidance on data sharing, to ensure that companies can take the most out of data without undermining competition and allowing the Data Governance Act and the Data Act to fulfil their full potential on that aspect. Similarly, with the growth of online commerce and online platforms, firms need to know which restrictions they can legally include in contracts with their suppliers or online distributors. With the aim of answering to this call, the revision of the **Vertical Block Exemption Regulation and Guidelines** will provide companies with up-to-date guidance including on new supply and distribution models.

Undertakings might need to cooperate to bring to market innovative, more efficient solutions contributing to the digital transition. Given the fast-moving nature and the specificities of the digital markets, where appropriate, the Commission stands ready to provide guidance to facilitate pro-competitive agreements, under which any potential harm to customers is outweighed by benefits that would not otherwise be obtained. For example, the Commission recently issued a letter to Gaia-X, an organisation whose aim is to promote and facilitate the development of an open software and data sharing infrastructure and federated cloud services in Europe, providing feedback on how to assess compliance with antitrust rules with respect to the membership and working rules of the organisation.

The rise of digital platforms has increased the flexibility and accessibility of labour markets but it has led in some cases to difficult working conditions in the platform economy and beyond. In parallel to the Commission legislative initiative to improve the working conditions in the platform economy, the Commission has launched an initiative **to clarify the circumstances in which competition rules do not stand in the way of collective bargaining agreements by solo self-employed** in a weak position to improve their working conditions.

3.3 INCREASING THE RESILIENCE OF THE SINGLE MARKET

The last few months have also reminded us of the Single Market's role as major contributor to growth, competitiveness and employment in the Union, and as a key asset to building a stronger, more balanced and fairer economy. The COVID-19 crisis made clear that, to withstand crises, the **Single Market needs to be resilient and agile to swiftly adapt to changing circumstances**. It also illustrated the threats to the Single Market posed by limitations to the free movement of persons, goods, services and capital, disruptions in supply chains and lack of essential products.

To ensure better preparedness in future crises, the Commission has also announced its intention to propose a **Single Market Emergency Instrument** to provide a structural solution to safeguard the resilience, level playing field and well-functioning of the Single Market and its supply chains in the context of possible future crises. Being a crisis response tool, the Single Market Emergency Instrument proposal depends on continued efforts to preserve and further deepen the Single Market.

In most cases, industry itself is best placed, through its business decisions, to improve resilience and reduce any dependencies that may lead to vulnerabilities, including through diversification of suppliers, increased use of secondary raw materials and substitution with other input materials. If this is not possible, in situations where concentration of production or sourcing limits the availability of alternative suppliers, the Commission has presented in its Update to the New Industrial Strategy a policy toolbox to support industry efforts to address these dependencies and to develop strategic capacity in light of needs: diversifying supply and demand, relying on different trading partners whenever possible, but also stockpiling and acting autonomously, whenever necessary.

Competition policy and enforcement complement these objectives as a key pillar of the resilience of the Single Market as they **ensure that markets remain open and dynamic**. They set predictable market conditions for companies to thrive in, with special attention to SMEs and start-ups⁵⁶, enable strong and diversified supply chains, and tackle behaviours that lead to the fragmentation of the Single Market, such as agreements preventing the free flow of goods across national borders. At the same time, competitive conditions and distortions beyond the Union's borders, including actions by governments, will often be relevant to the competitiveness of European firms and our overall resilience.

Specifically, **European merger control can contribute to preventing dependencies and increasing the resilience of the EU economy** by making sure the supply chains remain diversified. It allows companies to grow and gain necessary scale to compete, subject to sufficient competition and choice remaining in the market to drive continued innovation and investment⁵⁷. Similarly, in case of mergers between companies operating at different levels of

⁵⁶ Delayed payments from large businesses to SMEs originate in unfair payment practices and asymmetries in the size of businesses, to the detriment of SMEs. To foster prompt payment in the business environment, the Commission will continue implementing the actions announced in the SME Strategy to support the Member States in enforcing the Late Payment Directive. Member States are free to decide to make the granting of aid subject to conditions such as the payment record of the beneficiaries.

⁵⁷ For example, in December 2020 the Commission approved the merger between Fiat Chrysler Automobiles and Peugeot, leading to the creation of the fourth largest automotive group in the world, "Stellantis". The approval was subject to a remedy to make it easier for new competitors to enter and grow in the market for small commercial vans so to ensure that the European businesses have alternative suppliers (Commission's decision of 21 December 2020 in Case M.9730 – FCA / PSA). Likewise, in March 2021 the Commission approved the

the supply chain, merger control makes sure that access to crucial inputs for downstream competitors remain available at competitive conditions for all companies in the Single Market or that upstream competitors are not foreclosed access to a sufficient number of customers downstream. For its assessment of mergers, the Commission takes a number of factors into account such as price, quality, choice and innovation. Parameters of quality as valued by customers may vary, such as for example the reliability of supply or predictable lead times.

At the same time, competition policy **allows businesses in the EU to join forces** to advance their research and development efforts, to design, produce and commercialise products, or to jointly purchase products or services they may need for their operations. This can contribute to reducing dependencies and increasing the resilience of the economy. The Antitrust Temporary Framework, for example, allowed companies to cooperate to prevent shortages of critical medicines for the hospital treatment of COVID-19 patients or to address bottlenecks in the production of vaccines⁵⁸. Companies can engage in joint production agreements where the cooperation allows them to combine their capabilities in order to launch a new product or service. Moreover, companies can engage in R&D agreements, for instance when they combine complementary skills and assets, which may result in improved or new products and technologies being developed and marketed more rapidly than would otherwise be the case, ensuring the resilience of the EU economy.

The ongoing revision of the **Horizontal and Vertical Block Exemption Regulations and Guidelines** will update the antitrust tools to support such pro-competitive agreements⁵⁹. Similarly, the Commission has developed a **competition compliance programme to guide the set-up of industrial alliances** in key strategic areas such as batteries, semiconductors, cloud and edge computing. This will facilitate stronger cooperation and joint action between all interested partners in an open and transparent manner, without undermining effective competition, taking into account the possible global dimension.

In order to achieve sufficient scale for financing large-scale research and infrastructure projects, there is a need to combine public and private efforts. One of the instruments available is the IPCEI framework, which encourages a combination of national funds with EU funding or private funding. For example, the Commission is ready to enable co-financing of a possible health IPCEI with EU funds that can contribute to the achievement of the EU health and resilience objectives by designing new generations of medical countermeasures or breakthrough manufacturing technologies⁶⁰.

Furthermore, EU State aid rules also provide a number of tools to ensure **preparedness for and response to possible future health emergencies** in terms of manufacturing capacities. Member States could, as one example, coordinate their efforts to ensure security of supply of vaccines to limit the risk of shortages in times of crisis, in line with the conditions of the framework on Services of General Economic Interest (SGEI), under which Member States

acquisition of Eaton Hydraulics by Danfoss, both leading global suppliers of hydraulic components used to make hydraulic systems for various kinds of machinery. The approval was subject to a targeted divestment to ensure that downstream manufacturers of machinery – a sector in which European firms excel – can continue to benefit from competitive prices and have choice of innovative components for their products (Commission’s decision of 18 March 2021 in case M.9820 - *Danfoss / Eaton Hydraulics*).

⁵⁸ See footnote 3.

⁵⁹ For example, the Commission is exploring ways to encourage companies to engage in cooperation agreements for R&D and production by giving them greater legal certainty, and it seeks to give suppliers greater possibilities to design distribution systems according to business needs, while avoiding a fragmentation of the Single Market.

⁶⁰ See also Pharmaceutical Strategy for Europe (COM/2020/761 final).

enjoy a wide margin of discretion in defining SGEI objectives⁶¹. Such projects could be entrusted to companies following a European-wide open tender and complement EU efforts to establish a European Health Emergency Preparedness and Response Authority (HERA).

State aid rules also provide a number of possibilities to strengthen the resilience of the EU **microprocessors sector**. For example, **building on the success of the first IPCEI in microelectronics** to enable support to develop innovative microelectronics technologies and components and their first industrial deployment⁶², the Commission is actively supporting ongoing Member States efforts to design a second IPCEI. Moreover, with a recent amendment to the GBER⁶³ the Commission has streamlined the State aid rules applicable to national funding for projects or financial instruments falling under Horizon Europe, the EU's central research and innovation funding programme, and InvestEU, which is designed to mobilise public and private investment to achieve EU-policy objectives. This enhances synergies between national and EU-funding policies with a view to enhancing the EU's future competitiveness, including in the field of semiconductors.

Furthermore, the **European Chips Act** was announced against the backdrop of the global semiconductor shortage, which has exposed the extraordinary relevance of this industry across a broad range of the European industrial footprint, from automotive to healthcare. This relevance will increase exponentially in the future in view of the connectivity, cybersecurity and energy efficiency demands as the twin transition accelerates. Achieving a resilient and secure supply of semiconductors for European industry is a pre-requisite for achieving the aims of the Digital Decade and its 2030 targets, as endorsed by the European Council⁶⁴. It has also exposed European dependency on supply from a limited number of companies and geographies, and its vulnerability to third country export restrictions and other disruptions in the present geopolitical context. Furthermore, this dependency is exacerbated by the extremely high barriers to entry and capital intensity of the sector, as well as its particular relevance for existing and future security and defence applications⁶⁵. All factors considered, the Commission may envisage **approving public support to fill possible funding gaps in the semiconductor ecosystem for the establishment in particular of European first-of-a-kind facilities** in the Union, based on Article 107(3) TFEU. Such aid would have to be subject to strong safeguards to ensure aid is necessary, appropriate and proportionate, undue competition distortions are minimised, and that benefits are shared widely and without discrimination across the European economy. All cases regarding supply of such a critical product must be rigorously examined based on their own respective merits.

In a globalised world with international value chains, European resilience is not possible without **well-functioning multilateral and bilateral trade regimes**. The Single Market's openness to trade and investment is a strength and source of growth and resilience for the Union, as a major importer and exporter. However, the scale and level playing field that the

⁶¹ OJ C8, 11.01.2012, p. 15-22. Alternatively, the SGEI Decision rules (OJ L7, 11.01.2012, p. 3-10), SGEI de minimis threshold (OJ L 114 of 26.4.2012, p. 8), or compliance with the conditions set out by the Court of Justice in *Altmark* (ECLI:EU:C:2003:415) may also be taken into account.

⁶² Commission's decision of 18 December 2018 in Cases SA.46705, SA.46578, SA.46595 and SA.46590, and decision of 23 March 2021 in case SA.56606.

⁶³ OJ L 270, 29.7.2021, p.39-75.

⁶⁴ In the Digital Decade communication (COM/2021/118 final), the EU expressed the ambition to increase its position in the production of cutting-edge and sustainable semiconductors in Europe including processors to at least 20% of world production in value by 2030.

⁶⁵ For further analysis, see e.g. the Staff Working Document "Strategic Dependencies and Capacities", SWD(2021) 352 final.

Single Market offers may not secure European firms' competitiveness if fair competition is not also assured on the global stage. Openness requires fairness abroad as well as at home. On 5 May 2021, the Commission proposed a new regulation to address distortive effects of **foreign subsidies** in the Single Market⁶⁶. It aims at filling a regulatory gap by complementing the various existing Single Market and competition instruments, contributing to making European markets fairer and more contestable, and complementing existing trade policy tools.

4. CONCLUSION

Since the creation of the Union, competition policy has played a central role to stimulate growth, create jobs and investments in the technologies of tomorrow, help the Union's industries become stronger and globally competitive and ensure that EU citizens are the ultimate beneficiaries of a highly competitive social market economy. Rules-based competition law enforcement provides legal certainty and predictability to all businesses striving to make the best of Europe's Single Market. These are core principles and standards that the Commission promotes worldwide.

The success of competition policy is owed in part to the stability of its core principles, which ensure fair treatment for all businesses operating in Europe and for European customers and consumers, and in part to its flexibility, both in-built and through systematic and regular review. The recent pandemic experience is the latest example of this flexibility in action.

The ongoing extensive review of the EU competition framework will yet again serve to demonstrate the ability of those rules to adapt to key developments and support important Union priorities, in particular the European Green Deal, the digital transition and a resilient internal market as set out in the European Industrial Strategy and its update. New regulatory tools, such as the Digital Markets Act and the Foreign Subsidies Regulation will complement this review and address gaps in the Commission's overall toolbox.

Ultimately, competition policy remains a tool that serves the needs of people living in the EU - as consumers who benefit from lower prices, wider available choice and higher quality; as workers who benefit from a vibrant, job-rich labour market; and as business owners who benefit from the availability of innovative, diverse and reliable inputs, and a level playing field.

⁶⁶ COM/2021/223 final.