



European  
Commission

# EU competition policy in action

COMP in ACTION



Competition

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# DG COMPETITION AT A GLANCE

## 30 seconds to understand DG COMP

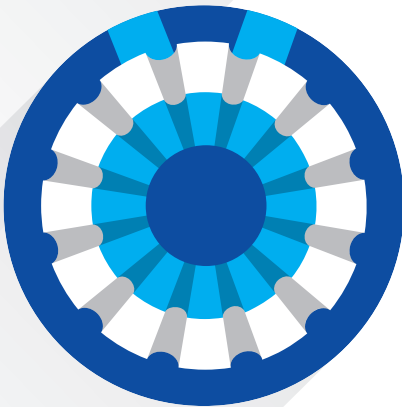


### WHO WE ARE:

- European Commission's Directorate-General for Competition, located in Brussels
- Leadership team: EU Commissioner for Competition Margrethe Vestager, and Director-General for Competition Johannes Laitenberger
- 798 staff members

### OUR MISSION:

Making markets work better - enabling the Commission to make markets deliver more benefits to consumers, businesses and society as a whole.



### OUR VALUES:

- Relevance
- Quality
- Speed & efficiency
- Impartiality
- Highest standards
- Effective communication

### OUR MANDATE:

Enforcing EU competition rules, as contained in the Treaty on the Functioning of the European Union (TFEU), to make EU markets work better, and to the benefit of consumers, businesses, and the European economy.



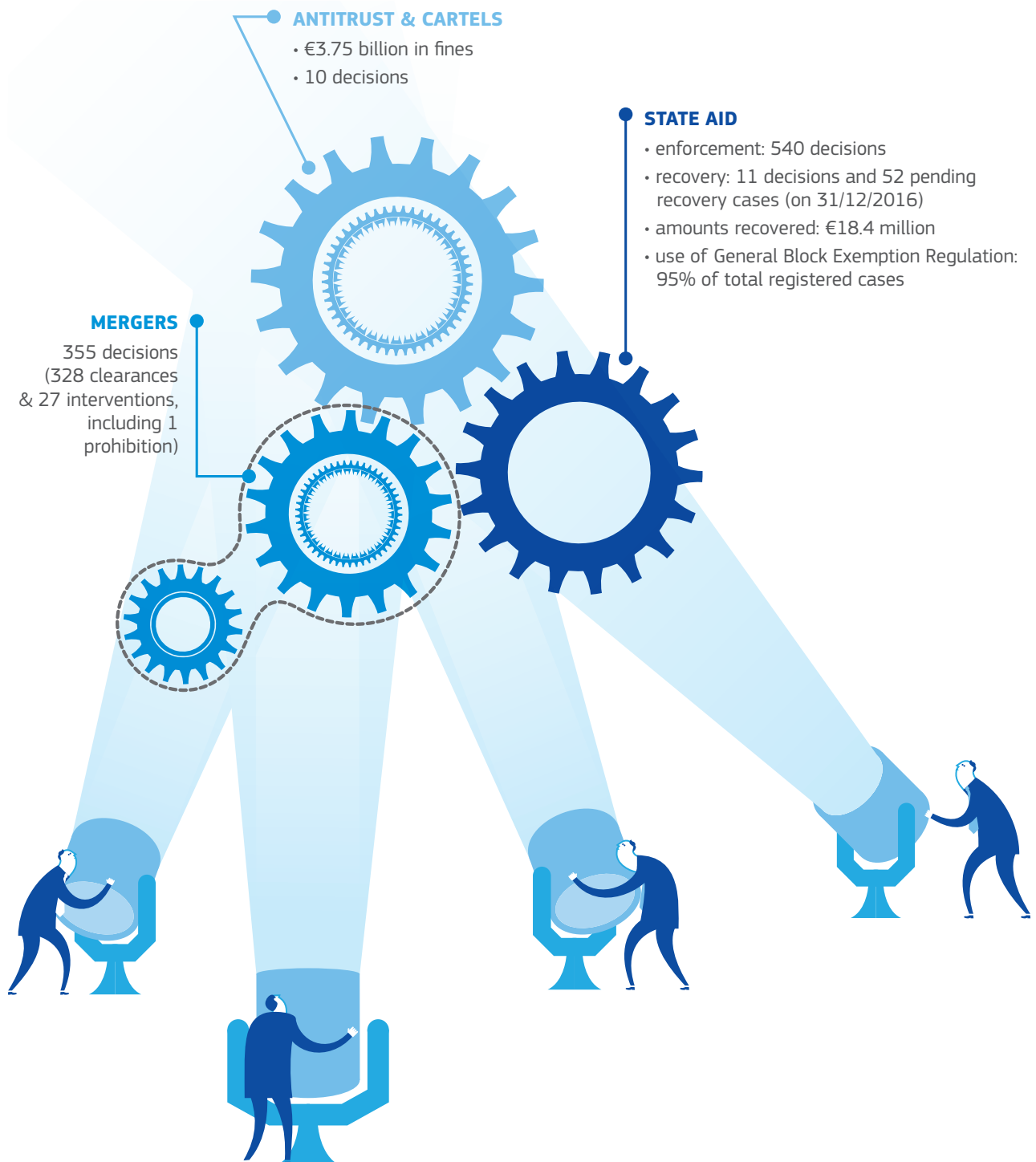
### OUR RESPONSIBILITIES:

- antitrust and cartel policy
- merger control
- State aid control
- promoting competition culture and international cooperation in the area of competition policy

## EU competition policy and enforcement



## Enforcement in 2016



## Customer benefits in 2016

The observable customer savings from cartel prohibition decisions ranged between €6.8 and 10.2 billion, while those resulting from horizontal merger interventions were in the range of €7.4-18.5 billion.

## Partnerships

### National Competition Authorities (NCAs) in EU Member States:

- together with the NCAs, the Commission enforces the EU competition rules (1000+ decisions since 2004)

### State Aid Modernisation programme implementation:

- High Level Forum between the Commission and the Member States, with the objective of streamlining rules and making faster decisions to foster growth and focus enforcement on cases with the biggest impact on the internal market

### Inter-institutional:

- structured dialogue with the European Parliament (ECON, Committee on Economic and Monetary Affairs), and engagement with the European Economic and Social Committee and the Committee of the Regions

### International:

- the Commission is active in all international fora devoted to competition, including the ICN (founding member), OECD, UNCTAD, the WTO, and the World Bank

### Bilateral:

- dedicated agreements with competition agencies in USA, Canada, Switzerland, Japan, and Korea
- competition chapters as part of free trade agreements, in last two years in particular with competition agencies in Tunisia, Japan, Armenia, Azerbaijan, Mexico, Indonesia, Philippines
- re-opening dialogue with Mercosur
- monitoring the implementation of the EU competition acquis, including the State aid rules, in countries like Ukraine and Moldova
- Memoranda of Understanding with the Russian Federation, India, Brazil, China and South Africa

## Our strategy

## PRESIDENT JUNCKER'S 10 PRIORITIES FOR HIS COMMISSION

- New Boost for Jobs, Growth and Investment
- Connected Digital Single Market
- Resilient Energy Union with a Forward- Looking Climate Change Policy
- Deeper and Fairer Internal Market with a Strengthened Industrial Base
- Deeper and Fairer Economic and Monetary Union
- Reasonable and Balanced Free Trade Agreement with the USA
- Area of Justice and Fundamental Rights based on Mutual Trust
- Towards a New Policy on Migration
- A Stronger Global Actor
- A Union of Democratic Change

### The 10 Juncker Priorities

President Juncker's mission letter to the Commissioner for Competition

DG Competition's Strategic Plan 2016-2020





“Dear Margrethe,

[...] Competition policy is one of the areas where the Commission has exclusive competence and action in this field will be key to the success of our jobs and growth agenda. It should contribute to steering innovation and making markets deliver clear benefits to consumers, businesses and society as a whole.

[...]

During our mandate, I would like you to focus on the following:

- Mobilising competition policy tools and market expertise so that they contribute, as appropriate, to our jobs and growth agenda, including in areas such as the digital single market, energy policy, financial services, industrial policy, and the

fight against tax evasion. In this context it will be important to keep developing an economic as well as a legal approach to the assessment of competition issues and to further develop market monitoring in support of the broader activities of the Commission.

- Pursuing an effective enforcement of competition rules in the areas of antitrust and cartels, mergers and State aid, maintaining competition instruments aligned with market developments, as well as promoting a competition culture in the EU and worldwide.
- Maintaining and strengthening the Commission’s reputation worldwide and promoting international cooperation in this area.”

## DG COMPETITION’S STRATEGIC PLAN FOR 2016-2020



In line with the President’s Political Priorities and the Mission Letter, the **Strategic Plan** sets out DG COMP’s mission and strategy for the next five years.

### How is DG Competition’s mission accomplished?

EU competition policy aims to protect the efficient functioning of markets from competition distortions, whether originating from Member States (distortive State aid), market players (distortive unilateral or coordinated behaviour), or mergers that would significantly impede effective competition. This is done by enforcing competition rules, namely antitrust/cartels, merger control and State aid control when the Commission finds evidence of unlawful behaviour, and through actions aimed at ensuring that regulation takes competition duly into account among other public policy interests.

However, competition is not an end in itself. It contributes to the efficient use of society’s scarce res, technological development and innovation, a better choice of products and services, lower prices, higher quality and greater

productivity in the economy as a whole. EU competition policy actively contributes to the wider Commission objectives, such as boosting jobs, growth and investment, a connected Digital Single Market, a resilient Energy Union with a forward-looking climate change policy, a deeper and fairer Internal Market with a strengthened industrial base and a deeper and fairer Economic and Monetary Union.

### Who are DG Competition’s key stakeholders?

The main beneficiaries of EU competition policy are European citizens, businesses operating in the EU and society as a whole.

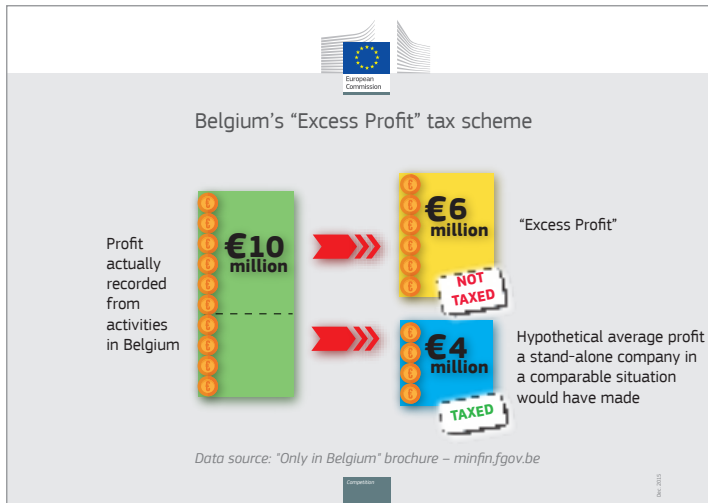


# Monthly top tweets

January 2016

**EU Competition** @EU\_Competition • 11 Jan 2016

State aid: @EU\_Commission concludes **Belgian Excess Profit** tax scheme illegal <http://europa.eu/IPN69rf>



2 replies, 39 retweets, 8 likes

February 2016

**Top Tweet** earned 3,833 impressions

'Setting priorities in antitrust', speech by Commissioner @vestager today in Brussels: [europa.eu/!yN43pq](http://europa.eu/!yN43pq)

11 retweets, 4 likes

March 2016

**Top Tweet** earned 23.5K impressions

State aid: @EU\_Commission authorises support for Metsä Fibre bio-product pulp mill in Finland [europa.eu/!wj86WB](http://europa.eu/!wj86WB)

8 retweets, 11 likes

April 2016

**Top Tweet** earned 15.9K impressions

Antitrust: @EU\_Commission informs Google of Android Concerns

[europa.eu/!MP64hp](http://europa.eu/!MP64hp)  
[europa.eu/!jc66JG](http://europa.eu/!jc66JG)  
[pic.twitter.com/VZkPzfAbaK](http://pic.twitter.com/VZkPzfAbaK)



2 replies, 82 retweets, 12 likes

May 2016

**Top Tweet** earned 33.7K impressions

State aid: @EU\_Commission gives final approval to existing guarantee celling for German HSH Nordbank [europa.eu/!Cu39un](http://europa.eu/!Cu39un)

15 retweets, 10 likes

June 2016

**Top Tweet** earned 12.3K impressions

State aid: @EU\_Commission clears closure of lignite-fired power plants in Germany [europa.eu/!Hm63Ty](http://europa.eu/!Hm63Ty)

8 retweets, 11 likes





### July 2016

**Top Tweet** earned 31.3K impressions

**@EU\_Commission** orders Spain to recover incompatible State aid for high speed train test centre from operator ADIF

[europa.eu/fy84DV](http://europa.eu/fy84DV)

4 49 28

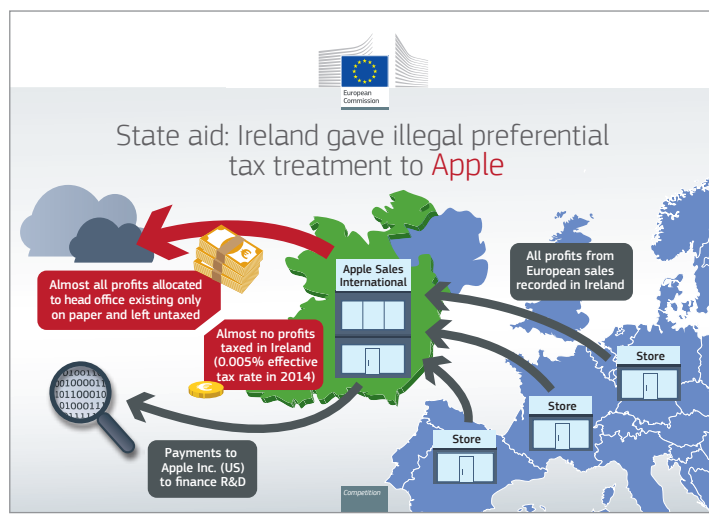
### August 2016

**Top Tweet** earned 33.4K impressions

**State aid:**  
Ireland gave illegal tax benefits to Apple worth up to €13 billion

<http://europa.eu/!NQ66FV>  
[pic.twitter.com/!sFnxaXpHC](http://pic.twitter.com/!sFnxaXpHC)

5 242 96



### September 2016

**Top Tweet** earned 19.8K impressions

**Mergers:**

**@EU\_Commission** opens in-depth investigation into proposed Deutsche Börse/London Stock Exchange merger  
[europa.eu/!ct68Qh](http://europa.eu/!ct68Qh)

2 17 6

### October 2016

**Top Tweet** earned 19.8K impressions

**'E-commerce: a fair deal for consumers online'**  
Speech by Commissioner **@vestager** at the **#eCommerceinquiry** conference  
[europa.eu/!KU47mb](http://europa.eu/!KU47mb)

19 5 5

### November 2016

**Top Tweet** earned 19.8K impressions

**State aid:**  
**@EU\_Commission** finds Hungarian advertisement tax in breach of EU rules  
[europa.eu/!xt73tq](http://europa.eu/!xt73tq)

1 12 4

### December 2016

**Top Tweet** earned 22.6K impressions

**Antitrust:** **@EU\_Commission** fines Crédit Agricole, HSBC and JPMorgan Chase €485 million  
[europa.eu/!Xq73qm](http://europa.eu/!Xq73qm)

2 36 11



### January 2017

**Top Tweet** earned 25.2K impressions

Mergers: @EU\_Commission clears acquisition of Morpho Detection by Smiths, subject to conditions [europa.eu/!vu89vx](http://europa.eu/!vu89vx)

13 88 9

### February 2017

**Top Tweet** earned 17.4K impressions

Antitrust: @EU\_Commission opens three investigations into suspected anticompetitive practices in e-commerce [europa.eu/!TV47rM](http://europa.eu/!TV47rM)

1 59 24

### March 2017

.@EU\_Commission Dow/DuPont merger approval conditional on divestiture of almost all DuPont's global R&D organisation [europa.eu/rapid/press-re...](http://europa.eu/rapid/press-re...)

19 5 5

### April 2017

**Top Tweet** earned 10.4K impressions

State aid: @EU\_Commission endorses reform of UK Levy scheme on horserace betting <http://europa.eu/rapid/press-re...>

19 10

### May 2017

**Top Tweet** earned 34.7K impressions

Antitrust: @EU\_Commission opens formal investigation into Aspen Pharma's pricing practices for cancer medicines <http://europa.eu/rapid/press-re...>

2 88 47

### June 2017

**Top Tweet** earned 11.1K impressions

Fines go into Community budget, so €2.4 billion less for European taxpayers to pay [#google](https://twitter.com/google)

3 33 28

### July 2017

**Top Tweet** earned 5,823K impressions

#Antitrust: @EU\_Commission confirms unannounced inspections in the motor insurance market in Ireland <http://europa.eu/rapid/press-re...>

29 9

### August 2017

**Top Tweet** earned 37.1K impressions

Bayer/Monsanto merger: @EU\_Commission identified preliminary concerns in 3 areas: pesticides, seeds and traits <http://europa.eu/rapid/press-re...>

6 78 63

## Interview with Margrethe Vestager, Commissioner for Competition



**Q • Many people are fearful of globalisation and call for protectionist solutions. Given your portfolio, what can you do to address these concerns?**

Competition enforcement can make a difference but cannot provide all the answers on its own. Competition makes

companies cut prices and compete on quality, service and innovation, so we all get a share of the benefits of free trade.

Competition law enforcement shall make sure that companies compete on the merits of their products. Because people don't think about politics all the time. But they do have to deal with the

market every day. And every time they buy food or clothes for their families the way the market treats them affects their view of whether their whole society is fair. We should make sure businesses know that they have to follow the rules.

**Q • How to keep up with increasingly powerful and large multinational companies?**

Companies are increasingly global. In all kinds of businesses, from pesticides and seeds to cement, a few big companies are market leaders throughout the world. For many people, these huge companies are the most visible sign of our open markets. Some fear that they are now so big that governments cannot control them. We need to prove that fear wrong. As companies go global, so must competition enforcers. The good news is that this is already happening. By working together, we can hold multinationals to the same high standards as any other business. We work together on cartels which raise prices by an average of 10% or even 20%, so there is a lot at stake for consumers.

**Q • Why has the Commission proposed to use EU law to strengthen the EU's national competition authorities?**

From 2004 till 2014, over 85% of all the decisions that applied EU antitrust rules were taken by national competition authorities. We want all national competition authorities to be able to take decisions fully independently and have effective tools at their disposal to stop and sanction infringements like secret cartels. Since 2004, the Commission has shared the job of enforcing the EU competition rules with national competition authorities. Over these past

13 years, the Commission and national competition authorities have adopted over 1000 decisions, investigating a broad range of cases in all sectors of the economy. EU antitrust rules make markets work better, with Member States' competition authorities and the Commission working hand in hand.

**Q • What about Big Data collected by large multinational companies. To what extent is Big Data a problem for competition enforcers?**

We do not want to discourage companies from putting in the effort to collect big data. After all, it might not be difficult for other companies to get hold of the same data, by collecting it from their own users or even buying it. Or the data we are talking about might not be all that important in order to compete. Of course, the competition rules were not written with big data in mind. But the issues that concern us have not changed. Europe's competition enforcers need to work together on big data. Our French colleagues have launched a sector inquiry into big data. And the German authority is looking at whether Facebook may have misused its power to impose unfair privacy terms. So competition authorities also have a part to play in the Big Data era. We can show people that companies that use big data have to follow the competition rules. So I will keep a close eye on how companies use data.

**Q • Big Data feeds into algorithms. Do algorithms pose a threat to fair competition?**

Our sector inquiry into e-commerce showed that two thirds of retailers who track their competitors' prices use automatic systems to do that. Some of them also use that software to adjust prices automatically. So the effect of an algorithm depends very much on how you set it up. If you want to help consumers find the lowest prices, you can design an algorithm to do that. In fact, there are many applications like in air fares. That is why I do not think competition enforcers need to be suspicious of everyone who uses an

automated system for pricing. But when an algorithm makes it harder to find rivals' products, that could deny those rivals the chance to compete. And the result could be higher prices, and less choice, for consumers.

That is precisely the issue in our case with Google Shopping, where the Commission found that the way Google used its algorithms has given its own comparison shopping service more prominent treatment than it gives to competitors.

To take another example. A few years ago, the operator of a Lithuanian travel booking system sent an electronic message to its travel agents, which proposed to limit discounts to no more than 3%. And the European Court made clear that travel agents who saw that message and did not distance themselves from that proposal could have found themselves caught up in a cartel.

So illegal collusion does not always take place in smoke-filled back rooms. There are many ways that collusion can happen, and some of them also within the capacity of automated systems.

**Q • In 2016 the Commission required Ireland to claw back EUR 13bn from Apple. How is your work on such tax ruling cases progressing?**

First of all, when it comes to State aid, our cases on tax rulings show that companies cannot avoid paying a fair share of tax. We have taken



five final decisions so far that deal with illegal State aid given through tax rulings. Like all our decisions, they were based purely on the evidence and the law. And we will take forward our open cases in exactly the same spirit. At the same time, we will continue our investigations into tax rulings in every Member State. It is good to see that Luxembourg and Cyprus have brought in stricter rules on the taxation of financing companies. We had very constructive discussions on how to bring about these changes with the national authorities. These are very positive developments. In order to achieve that all companies pay their fair share of tax, we also need Member States to be on board and review their national rules and practice. And my door is always open to any Member State that wants to discuss this sort of change.



## SHAPING THE EU'S COMPETITION POLICY: VIEWS FROM DG COMPETITION'S MANAGEMENT



**Johannes Laitenberger**

Director General

**Q • How do DG Competition's enforcement activities fit with President Juncker's current overall Political Guidelines?**

Embedding the competition perspective in the Commission's overall priorities is precisely one of the key goals that President Juncker assigned to Commissioner Vestager when he took office. While our work on antitrust, merger and State aid cases must remain totally focussed on the merits of each case, independent and neutral, EU competition law can and does do a great deal to support the broader priorities of the Commission, from the creation of the Digital Single Market to the Energy Union, to name but a few areas. Our cases on standard essential patents give guidance to industry and facilitate an open and efficient standardisation environment. Cases such as the Bulgarian BEH Electricity case help build an efficient Energy Union.

**Q • What is the role of EU competition policy in the reflections on the Future of Europe?**

The feeling that the time has come for a rethink and relaunch of the European project is shared by many.

The Commission – as guardian of the Treaties – has made its contribution in the form of President Juncker's White Paper on the Future of Europe adopted in March 2017. EU competition policy is one of the main levers we have to shape a fairer and more prosperous future, not least by defending and strengthening the Single Market. The Treaty's competition rules – which have remained virtually unchanged for 60 years – provide the Commission with tools to make sure that anti-competitive practices do not fragment the Single Market through the backdoor. And that responsibility covers both private business practices as well as government subsidies.

**Q • The EU's antitrust cases often take several years to wrap up. What measures are you taking to speed things up?**

Indeed, cases should proceed without undue delay, because – as the phrase goes – justice delayed is justice denied. We tackle this issue at different levels. One has to do with the way we give companies access to the information we possess. Access to file is a vital component of a company's rights of defence, but it is also time-consuming for everyone. To make access to file more efficient we have introduced a range of measures. We published best practices on data rooms. We amended the Access to File Notice to allow for the return of documents unrelated to the case. We have also used voluntary confidentiality rings – an arrangement to protect confidential documents – in several cases and I am happy to report a growing interest among the parties.

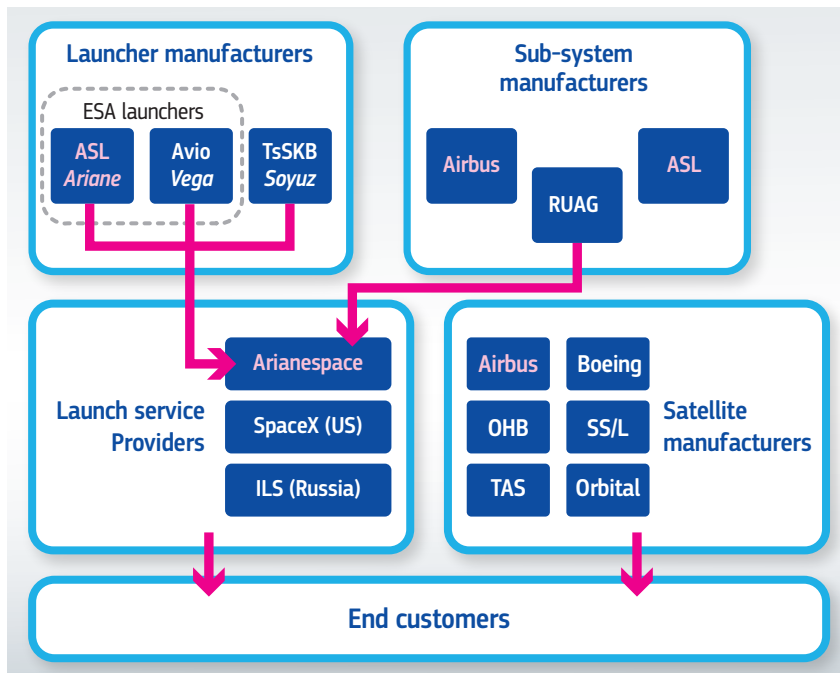
Offering companies the right incentives while maintaining deterrence is another promising way to speed up antitrust proceedings. The settlement option has been open to companies involved in our cartel investigations for a long time. Now we are reviving cooperation procedures also in other antitrust cases.

Finally, the Commission has to be selective with respect to the 40 to 50 new antitrust complaints we receive on average every year. The Court of Justice has made it clear that the Commission needs to set its priorities and that we need to use our resources wisely. To do this, we can assess whether a complaint concerns a large enough market – in the same way we only review large mergers. We can decline to investigate a complaint if we conclude it does not point to a substantial likelihood of infringement. When this happens, complainants in all cases get a chance to discuss the reasons with us. And they can appeal the decision before the European Union courts. This being said, let me be very clear. Complaints are extremely important for us – about one third of our antitrust cases start this way – and we strongly encourage complainants to come forward.

The quest for speed comes with a big caveat. We cannot compromise on the need to make sure that the decisions we take are of the highest quality.

**Q • It is sometimes argued that EU merger control and State aid policy prevent the creation of European champions such as Airbus. What is your view?**

That claim is unfounded. Mergers are only prohibited in a very small number of cases. The vast majority of mergers scrutinised by the Commission are cleared, sometimes with commitments which normally involve disposal of activities to ensure that the merger does not harm competition to the detriment of consumers. Take one recent example which in fact concerned a planned acquisition of ArianeSpace by Airbus Safran Launchers (ASL, joint venture between Airbus and Safran). The Commission approved the merger in July 2016 after ArianeSpace offered commitments ensuring that the



transaction would not result in less competitive tenders and less innovation, so that European companies in the satellite and launcher industry and other institutions can gain access to space on competitive terms.

As to State aid policy, as part of the State aid modernisation effort the Commission extended the possibilities to grant aid to any sector in the economy for so-called important projects of common European interest (IPCEIs), which are transnational projects of strategic significance for the EU. Where private initiatives fail to materialise because of the significant risks and the transnational cooperation such projects entail, Member States may fill the funding gap to overcome such market failures and boost the realisation of projects that otherwise would not have taken off.



## Cecilio Madero Villarejo

Deputy Director-General Antitrust

**Q • Many companies are going almost completely digital. As an enforcer, how does DG Competition cope with this transformational development when it comes to collecting evidence of wrongdoing?**

Fair and even enforcement also depends on keeping pace with technological change. For DG Competition, this means adopting new technologies to carry out our work and closely monitoring those that can be used to gain illegal advantage out there in the markets. To take one recent example, in March

2017 we introduced a clever new tool – a simple web application – that opens a two-way channel that whistle-blowers can use to talk with our staff without revealing their identity. We want individuals with knowledge of anti-competitive practices to approach us without fear of retribution, to report on practices typically shrouded in secrecy, especially cartels. I should make clear that this whistle-blower channel is in addition to the existing leniency programme, which has helped us to uncover numerous cartels by allowing companies to escape a fine if they are the first to tell us about a cartel. In 2016 the Commission fined five truck makers nearly €3 billion, for a cartel that lasted fourteen years. We found out about that cartel because one of the companies came forward to avoid a fine.

**Q • The Commission has imposed high fines not least in cartel cases in recent years. Is the business community taking notice?**

The recognition of the need for an effective compliance strategy is growing stronger in the “competition community” and rightly so. Compliance with competition law should be in the self-interest of every company. The

most effective way to stop a violation is to ensure it never starts, and effective corporate compliance programs are an important part of that effort. As enforcers, we are seldom in a position to stop antitrust violations such as cartels before they start. We must rely on deterrence. This means that we seek high fines for companies infringing the EU antitrust rules. In the period 2013-2017 the aggregate amount of cartel fines exceeded €8 billion. We are convinced that fines are an effective tool for putting an end to illegal practices that harm consumers, businesses and the economy as a whole and to bring this message to everyone’s attention.

Compliance is not just about a piece of paper. It has to be embedded in a company and fully endorsed by senior management. It starts at the top. And in an increasingly digitised context, as Commissioner Vestager has pointed out, firms may not always know exactly how an automated system will use its algorithms to take decisions. What businesses can – and must – do is to ensure antitrust compliance by design. That means pricing algorithms need to be built in a way that does not allow them to collude.



## Carles Esteva Mosso

Deputy Director-General Mergers

**Q • In recent years the Commission has focused on innovation issues on top of price effects in its merger enforcement practice. Why is it essential to assess the effects of mergers on innovation?**

Competitive dynamics change across industries and, in many of them, innovation is a key component of competition. The majority of cases concerned the pharmaceutical and medical devices industry, where competition concerns arose not only

with regard to current products but also with regard to products still in the development phase. But innovation concerns were also identified in other sectors, for example in the GE/Alstom case with regard to gas turbines for powerplants. The Commission concluded that the merger, as notified, would have led to the elimination of a strong innovator in a very concentrated market. The Commission cleared the transaction subject to a comprehensive remedies package that ensures that competition and innovation will continue in this sector.

For instance, innovation issues featured in our investigation in 2017 of the merger between Dow and DuPont - two major worldwide agro-chemical players. The investigation revealed that the two merging parties were close competitors with regard to actual products and pipeline products in development, as well as at earlier stages of R&D, focussed on so-called "innovation spaces". The Commission finally approved the merger subject to the divestiture of a substantial part of DuPont's pesticides business, including its R&D facilities. Addressing the impact of the merger on innovation will ensure better and safer products in the future to the benefit of European farmers and consumers.

The Court has recognised the importance of assessing the impact of mergers on innovation and confirmed the Commission's approach to carrying out this assessment in its judgment in the Deutsche Börse/New York Stock Exchange case. Other jurisdictions, such as the US, also examine these issues regularly. And the matter is also clearly relevant from a macroeconomic policy perspective: fostering innovation and productivity growth is one of the most pressing issues today within the EU. You can therefore expect that the Commission will continue to pursue these issues in the context of merger assessment.

**Q • Is the level of market concentration in Europe becoming a problem as is apparently the case in the US?**

Indeed, it is true that in 2016 the then White House Council of Economic Advisers reported a decline in competition in many industries within the US economy. In Europe the pattern is less clear. We should not be alarmist, but neither can we be complacent. We will keep following these trends with open eyes and remain alert. We will not wait for competitive conditions to deteriorate irrevocably to carry out our statutory duties and enforce the law.



## Gert-Jan Koopman

Deputy Director-General State aid

**Q • Could you give a concrete example of positive impacts on the ground resulting from the State aid modernisation 2012-2014?**

Let me take an example from the Energy Union. In 2014 we overhauled our rules for State aid for energy and the environment, including State aid for

renewable energy which still needs State support. But competition can help to keep down the costs of that help. Since 2016, all new support for large renewable plants has had to be given through a tender. Pilot tenders have already shown how much we could save – in Germany, they have brought down the price of support for solar energy by 25% in the course of a year and a half. Recently, a significant wind park investment has been selected without any aid.

**Q • The State aid modernization strategy extends national policies' scope. What can national governments do to rise to the new levels of responsibility set by the State aid modernisation strategy?**

Obviously, opening new avenues for EU governments entails that they must take responsibility for keeping the playing field level and protecting the single market. We are not starting from scratch. We have ten years of experience with shared responsibilities in antitrust and mergers. Of course there are differences between

State aid and the other instruments – both in structural and institutional terms. On the one hand, State aid control is an exclusive responsibility of the Commission. On the other hand, we have no power to interfere in the organisational set-up of Member States.

But even before the General Block Exemption Regulation was reformed, national State aid authorities were the first instance to assess whether or not a public measure includes State aid, and whether it can be block-exempted. This is why enhancing the competence of national authorities for dealing with these matters is crucial for the success of the State aid modernisation. A quick list would include: developing appropriate administrative and decision-taking structures, according to each country's institutional set-up; acquiring the necessary State aid expertise and sharing it at central, regional, and local levels; ensuring proper ex ante and ex post monitoring and control; and last but not least more transparency.

## SEIZING THE BENEFITS OF VIBRANT COMPETITION



### The world's largest single market

Competition policy is a key pillar of the Single Market, one of the EU's greatest assets with common rules designed to both reduce trading costs and open up markets. Investing in the Single Market gives access to half a billion consumers and more than 20 million businesses at once. The Commission is pushing to make the Single Market broader, stronger and deeper as part of its strategy to boost growth and promote job creation in the EU.

Creating a genuine Single Market not only prevents a single company — or country — from gaining competitive advantages over others by avoiding regulations; it also means that companies across the EU can sell their products and services everywhere throughout the Single Market.

### Tapping the potential of the EU Single Market

But without robust and even-handed competition policy and enforcement, the Single Market would not work in practice. Antitrust enforcement steps in to prevent private barriers to trade and competition from replacing the public barriers that free movement rules have dismantled over the last sixty years. Merger control keeps the Single Market open and competitive. These rules also apply for companies based outside the EU if their actions are implemented or produce effects in the Single Market.

Predictable rules give businesses confidence to reach out beyond national markets. Impartial enforcement provides a level playing field where innovators can thrive.

State aid control also guarantees a level playing field in the Single Market. A company that receives government support gains an advantage over its competitors; therefore, State aid is only allowed when it addresses a market failure and is justified by reasons of general economic development. To ensure that this prohibition is respected

and exemptions are applied equally across the EU, the Commission is in charge of verifying that State aid complies with EU State aid rules.

Pushing for equal and fair competition in the Single Market ensures that companies succeed when they compete on merit.

### Competitive markets attract investment

In addition, effective competition enforcement makes markets more open and competitive, and also more attractive to investors. In a review of earlier studies carried out in 2014, <sup>(1)</sup> a significant relationship was found between the introduction of competition law and annual growth arising mainly from more investment, possibly as a result of more confidence and a lower perceived level of corruption.

The result of sound competition enforcement is a deeper Single Market

<sup>(1)</sup> Gutmann, J., & Voigt, S. (2014). "Lending a Hand to the Invisible Hand? Assessing the Effects of Newly Enacted Competition Laws", (February 8, 2014).





that delivers what it is expected from it: more investment, more jobs, better products at lower prices, and competitive firms that can also go out and compete on a global scale.

**Competition helps shape a fairer society**

Competition policy helps stimulate growth, but it also contributes to important equity and equality objectives.

Competition makes companies cut prices, and that helps especially the least well-off EU citizens. The most vulnerable consumers are often disproportionately affected by higher prices or lower quality and choice resulting from anti-competitive practices.

In his 2016 State of the Union speech, the President of the European Commission Jean-Claude Juncker recalled that “(a) fair playing field also means that in Europe, consumers are protected against cartels and abuses by powerful companies. (...) The Commission watches over this fairness.” (1) Competition distortions normally translate into a transfer of wealth that harms many consumers, while the profits generally go to just a few firms. Sound competition enforcement sends the message that everyone, however rich or powerful, has to play by the rules.

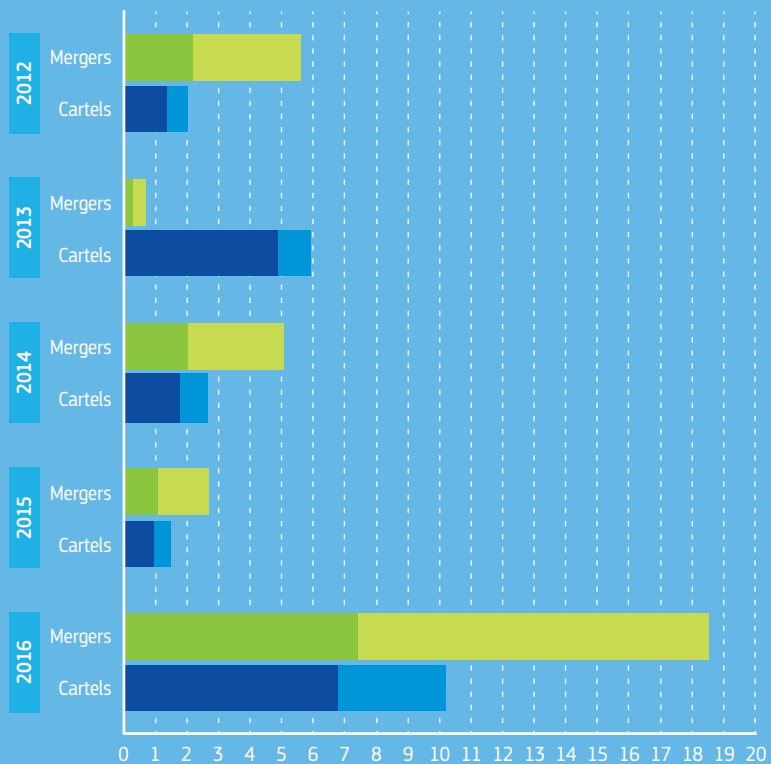
Also, by removing obstacles to doing business and building a level playing field, competition policy promotes a marketplace that is open to newcomers, and where the largest companies do not dictate the rules of the game to others. This supports a fairer society that offers equal opportunities for all.

**Quantifying customer benefits resulting from competition enforcement**

The Commission estimates the direct benefits of its competition policy interventions using the customer savings approach. The main guiding principles and methodologies to calculate customer savings have been endorsed by the Competition Committee of the OECD (2). Customer savings from a given decision account for the size of the affected turnover of the product in question, the price increase avoided and the expected duration of the price effect. Total customer savings are the sum of the customer savings associated with each competition policy intervention.

The customer savings from cartel decisions adopted in 2016 were estimated to range between €6.8 and €10.2 billion. The estimated customer savings resulting from horizontal merger interventions in 2016 were estimated in the range of €7.4-18.5 billion. The estimated overall total amounted to between 0.1% and 0.2% of EU GDP. The lower and upper bounds of the ranges reported reflect different assumptions about the price increases avoided thanks to the merger interventions [3% - 5%] and cartel decisions [10% - 15%] taken in 2016.

**Customer benefits resulting from cartel prohibition decisions and horizontal merger interventions, lower and higher boundary (billion EUR)**



(2) OECD Guide helping competition authorities assess the expected impact of their activities (April 2014)

(1) State of the Union 2016, available at [http://ec.europa.eu/priorities/state-union-2016\\_en](http://ec.europa.eu/priorities/state-union-2016_en)

## “BIG ON BIG, SMALL ON SMALL” – TOWARDS A MORE EFFECTIVE STATE AID POLICY

### Why State aid control matters

EU State aid rules ensure that companies can compete on equal terms in the EU Single Market to the benefit of European consumers. Stronger and better-targeted State aid control can also boost Europe's growth potential by encouraging the design of more effective aid measures to promote economic growth and job creation. The EU Treaty gives the Commission the task of enforcing those rules. The Member States are normally required to notify their plans for State aid to the Commission, and go ahead only if the Commission gives its agreement. This allows the Commission to prevent measures that distort competition, hinder trade across national borders and undermine the EU Single Market. An example would be if a Member State wants to give better tax treatment to its national champion at the expense of more efficient competitors from other EU countries.



### The most ambitious reform of State aid control to date

The Commission recently completed an ambitious reform package called State Aid Modernisation (SAM). SAM is a change in governance of EU State aid policy that allows

#### Commissioner Vestager:

“The modernisation of State Aid rules, which we started in 2012, is benefitting both those that receive State aid and public authorities. More than nine out of ten new aid measures are being paid out without requiring prior authorisation from the Commission. This avoids unnecessary delays and allows us to focus our efforts on State aid more likely to cause competition and trade problems.”

(European Commission – Press release – “State aid: 2016 Scoreboard shows benefits of modernisation for quick implementation of aid measures in Member States”, Brussels, 15 March 2017 - IP/17/624)

better allocation of public resources and promotes higher efficiency and better quality of policy interventions. The revamped State aid framework ensures that the public support helps to mobilise private investments contributing to important objectives of common interest, while minimising distortions of competition.

#### The cornerstone: The extended General Block Exemption Regulation

The General Block Exemption Regulation enables Member States to implement a wide range of State aid measures without prior Commission approval because they are unlikely to cause significant distortion in competition

and trade. As a result, about 95% of State aid measures implemented by Member States (with a combined annual expenditure of about €28 billion) have been exempted. About 43% of all State aid spending for SMEs was granted without prior approval by the Commission. For example, in the area of research, development and innovation the number of State aid notifications has halved since 2014.

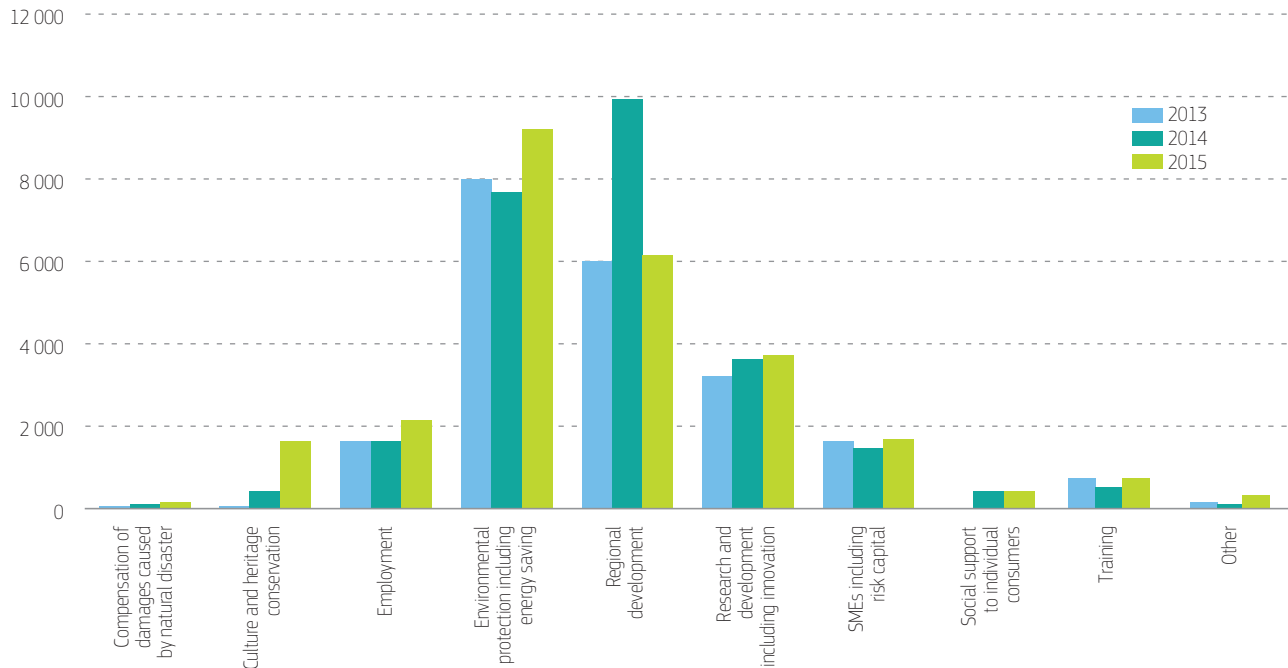
On 17 May 2017, the Commission extended the scope of this Regulation to ports and airports. In addition, the Regulation includes a number of further simplifications in other areas, such as culture projects, multi-purpose sport arenas and compensation for companies operating in the EU's outermost regions. The amended Regulation makes it easier to implement crucial infrastructure investments quicker, and with full legal certainty for project developers and aid-granting authorities.

### Clear guidance and transparency for Member States, undertakings and citizens

In addition, the Commission has undertaken a number of initiatives aiming at providing clear guidance for Member States and undertakings, whilst ensuring that citizens know where their money has gone.

The **Notion of aid Notice** provides general information on all aspects of the definition of State aid, and gives clear guidance on when public investments do not involve State aid because they do not risk distorting the level playing field in the Single Market or crowding out private investment.

### GBER State aid expenditure by objective in the EU, excluding agricultural aid (million EUR)



Source: Directorate-General for Competition

In addition, the Commission provided clear guidance to public authorities whose **purely local investment projects fall outside State aid control**, because they do not affect trade between Member States. If an activity receiving public support has a purely local impact, there may not be an effect on trade across national borders, for example, where the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States, or there is no or at most marginal foreseeable effect on cross-border investments in the sector.

The **new transparency requirements** oblige the Member States since 1 July 2016 to publish the name of the beneficiary and the amount of aid for State aid awards above €500,000. To facilitate encoding and publishing of information by Member States, the Commission has developed a new IT platform – the Transparency Award Module (TAM) (<https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>).

#### Examples of purely local investment projects falling outside State aid control

The Commission found that all these investment projects had purely regional impact, because they were confined to the region and had no or at most marginal foreseeable effect on cross-border investments in the sector:

- Spanish funding scheme of local media micro-companies in the province of Guipúzcoa, which are publishing exclusively in the Basque language.
- The support for constructing the BLSV Sportcamp Nordbayern in the region of Oberfranken in Germany, with about 200 beds and open access mainly for schools, non-profit sports clubs and social or educational activities, without providing classic hotel services.
- The support by Portugal of Santa Casa de Misericórdia de Tomar's assisted living facility for elderly residents with a capacity of 60 beds, operating only in the city of Tomar.
- The public hospitals owned by the *Hradec Králové* Region receiving public funding with the main purpose of ensuring medical emergency services and purchasing the equipment required by these hospitals for the provision of their services.
- The investment project by the Netherlands in the port of Lauwersoog consisting of lengthening the quay in its fishing port, modernising its marina for pleasure boats and constructing a floating platform for recreational fishing without increasing the port's capacity.

# BUILDING A LEVEL PLAYING FIELD BY TACKLING SELECTIVE TAX ADVANTAGES

## Why fair taxation matters

EU State aid rules require that companies, whether large or small, multinational or not, should not enjoy selective tax advantages that distort competition and affect trade between the Member States. Accordingly, tax practices that serve artificially to reduce a company's tax burden are illegal under the EU's State aid rules. Special tax treatment, like any other type of selective unfair advantage, makes it difficult for companies that do pay their taxes to compete on equal terms.

According to conservative estimates by the OECD, every year up to €240 billion is lost due to global profit shifting – the equivalent of around 10% of global corporate tax receipts. The European Parliamentary Research Service put the tax revenue lost to corporate avoidance at around €50-70 billion a year in the EU.



## State aid investigations into tax avoidance practices

**June 2013:** Launch of investigations into the tax practices of some Member States

**June 2014:** Opening of a formal investigation into the tax advantages granted by Luxembourg to Fiat, by the Netherlands to Starbucks and by Ireland to Apple

**October 2014:** Opening of a formal investigation into the tax advantages granted by Luxembourg to Amazon

**December 2014:** Extension of the investigations to all Member States

**February 2015:** Opening of a formal investigation into the tax advantages granted by Belgium to several multinational companies

**October 2015:** The Commission found that Luxembourg and the Netherlands had granted illegal State aid to Fiat Finance and Trade and Starbucks respectively

**December 2015:** Opening of a formal investigation into the tax advantages granted by Luxembourg to McDonald's

**January 2016:** The Commission found the Belgian Excess Profit tax scheme to be illegal, requiring some 35 multinational companies to pay around €700 million back to the Belgian State

**August 2016:** The Commission found that Apple's tax benefits worth up to €13 billion are illegal

**September 2016:** Opening of a formal investigation into tax advantages granted by Luxembourg to GDF Suez (ENGIE)

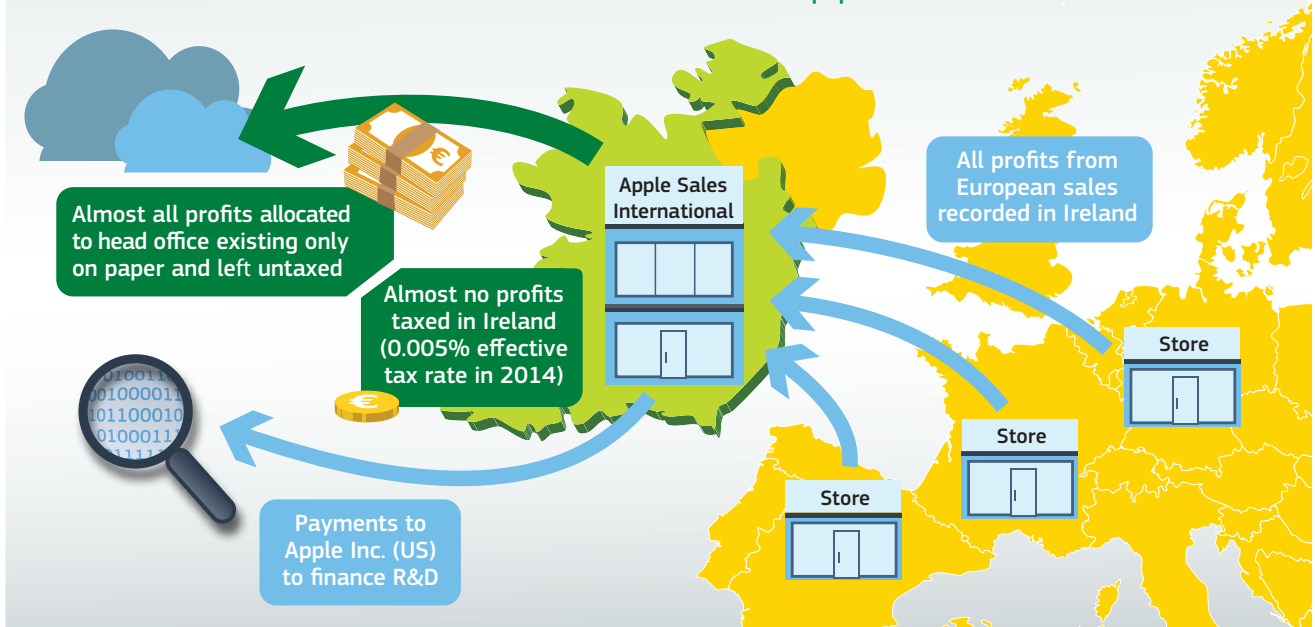
**September 2017:** The Commission found that Luxembourg gave illegal tax benefits to Amazon worth around €250 million

## What are tax rulings?

Tax rulings are comfort letters issued by tax authorities clarifying to a company in advance how it will be taxed. Tax rulings as such are legal and not all tax rulings cause State aid problems. In the past four years the Commission investigated more than a thousand different rulings from all Member

States to see if they gave special treatment to the companies that received them. Most of the rulings are legitimate and are not meant to help avoid tax. The Commission's investigations targeted those tax rulings that were used to grant individual companies a benefit that they would not have received otherwise.

## State aid: Ireland gave illegal preferential tax treatment to Apple



### What was illegal about the Apple tax rulings?

**Profit allocation methods, which do not reflect economic reality:** The tax rulings from 1991 and 2007 endorsed a way to calculate the profits generated by the taxable Irish branches of two Irish incorporated companies of the Apple group (Apple Sales International and Apple Operations Europe), which did not correspond to economic reality. Almost all sales profits recorded by the two companies were internally attributed to a “head office”, which was not liable to tax anywhere in the world. The Commission’s assessment showed that these “head offices” existed only on paper and could not have generated such profits. Those “head offices” had no employees, no premises and no real activities. The tax treatment in Ireland enabled Apple to avoid taxation on almost all profits generated by sales of Apple products in the entire EU Single Market. Ireland is now in the process of recovering the unpaid taxes in Ireland from Apple for the years 2003 to 2014 of up to around €13 billion, plus interest.

#### Commissioner Vestager:

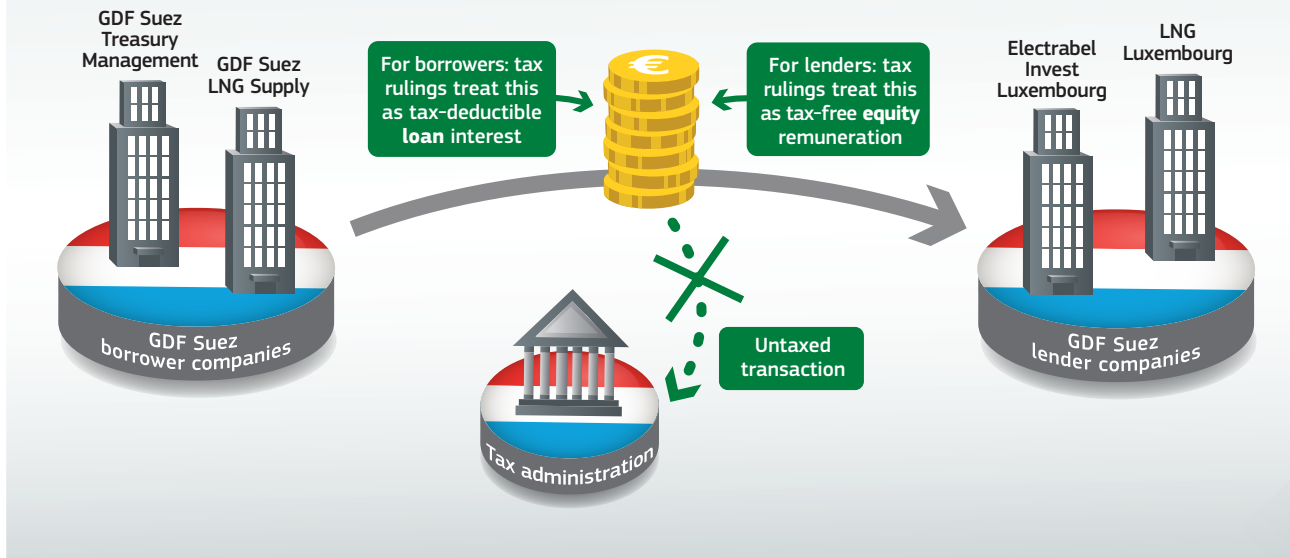
“Member States cannot give tax benefits to selected companies – this is illegal under EU State aid rules. The Commission’s investigation concluded that Ireland granted illegal tax benefits to Apple, which enabled it to pay substantially less tax than other businesses over many years. In fact, this selective treatment allowed Apple to pay an effective corporate tax rate of 1 per cent on its European profits in 2003 down to 0.005 per cent in 2014.”

(European Commission – Press release – “State aid: Ireland gave illegal tax benefit to Apple worth up to EUR 13 billion”, Brussels, 30 August 2016, IP/16/2923)

### Further investigations into inconsistent application of national law, giving rise to discretionary double non-taxation

In September 2016 the European Commission opened a formal investigation into Luxembourg’s tax treatment of the GDF Suez group (now Engie). Luxembourg’s tax treatment of GDF Suez looks into an alleged inconsistency endorsed in those tax rulings, leading to double non-taxation. The Commission also has an ongoing investigation into tax rulings granted by Luxembourg to McDonald’s. These exempt almost all of the group company’s income from taxation in Luxembourg on the basis that they are taxed in the US, despite the Luxembourg tax authorities’ knowledge that they were in fact not taxed in the US.

## State aid: Commission investigates Luxembourg's tax treatment of GDF Suez (now Engie)



### Fair taxation in the internal market

The Commission remains vigilant to ensure that Member States do not use taxes to unduly favour certain companies/sectors, sheltering national companies from measures that heavily hit their foreign competitors in the internal market.

In 2014, Hungary introduced a series of turnover taxes (on advertisement, tobacco, food retail) with progressive rates. The design of those taxes obviously placed companies with a high turnover (mainly foreign companies) at a disadvantage compared to smaller companies (mainly national). These taxes were merely based on turnover; they did not take into account the costs of the companies (and therefore their ability to pay) and were set at such a high level (with rates reaching progressively up to 50% of a company's turnover in one case) that they seriously risked driving several companies out of the market.

In 2016 the Commission prohibited those measures, finding that they were in breach of EU rules. In June 2017, the Commission also found that a Polish retail tax with similar features was in breach of EU State aid rules. The Commission concluded that the progressive tax rates based on turnover gave companies with low turnover an advantage over their competitors.

In all cases, the Commission had taken care, when it started its in-depth investigations, to ask Hungary and Poland to suspend their measures provisionally, thereby preventing payment of most of the tax due. The Commission action is consistent with the EU strategy of ensuring a level playing field in the internal market. It protected competition by preventing European companies from being driven out of business and, most importantly, allowed consumers to keep the benefits of more choice and lower prices.

# ENABLING INNOVATION ACROSS THE DIGITAL SINGLE MARKET



## Going Digital

Going Digital is at the heart of President Juncker's Political Guidelines for this Commission. The digital economy is not only a vital sector in its own right. According to the President's Guidelines it should "become a horizontal policy, covering all sectors of the economy and of the public sector". This requires the completion of the digital single market, which too often remains confined within national borders. The economic potential of breaking down barriers to online activity is €400 billion – exceeding the annual GDP of 19 EU Member States. To reap these gains, the Commission is pursuing its ambitious Digital Single Market Strategy. As one of many building blocks of that Strategy, the Commission launched an inquiry to find out if companies may be erecting barriers to e-commerce in violation of EU competition rules.

## The Commission publishes final report on e-commerce sector inquiry

In May 2015 the Commission launched an e-commerce sector inquiry in the context of its Digital Single Market Strategy. During the inquiry, it gathered evidence from nearly 1 900 companies operating in e-commerce of consumer

goods and digital content and analysed around 8 000 distribution and license contracts.

On 10 May 2017 the Commission published its final report on the inquiry. The report finds that certain practices by companies in e-commerce markets may restrict competition by unduly limiting how products are distributed throughout the EU, potentially limiting consumer choice and preventing lower prices online.

## The inquiry helps to launch antitrust enforcement cases

The findings allow the Commission to target its enforcement of EU antitrust rules in e-commerce markets.

The report confirms that the growth of e-commerce over the last decade and, in particular, online price transparency and price competition, had a significant impact on companies' distribution strategies and consumer behaviour. The final results of the sector inquiry highlight the following market trends:

- A large proportion of manufacturers decided over the last ten years to sell their products directly to consumers through their own online retail shops, thereby competing increasingly with their distributors.
- Increased use of selective distribution systems, where the products can only be sold by pre-selected authorised sellers, allows manufacturers to better control their distribution networks, in particular in terms of the quality of distribution but also price.
- Increased use of contractual restrictions to better control product distribution. Depending on the business model and strategy, such restrictions may take various

forms, such as pricing restrictions, marketplace (platform) bans, restrictions on the use of price comparison tools and exclusion of pure online players from distribution networks.

Some of these practices may be justified, for example, because they improve the quality of product distribution. Others, however, may unduly prevent consumers from benefiting from greater product choice and lower prices in e-commerce and therefore warrant Commission action to ensure compliance with EU competition rules.

With respect to digital content, the results of the sector inquiry confirm that the availability of licences from content copyright holders is essential for digital content providers and are a key factor that determines the level of competition in the market. The report points to certain licensing practices which may make it more difficult for new online business models and services to emerge. Almost 60% of digital content providers who participated in the inquiry have contractually agreed with right holders to "geo-block". Any assessment of such licensing practices under the EU competition rules, however, must consider the characteristics of the content industry.

## Companies already reviewing their commercial practices

The Commission is aware and welcomes that the sector inquiry has also prompted companies in the clothing industry, but also other retail sectors, to review their commercial practices on their own initiative.

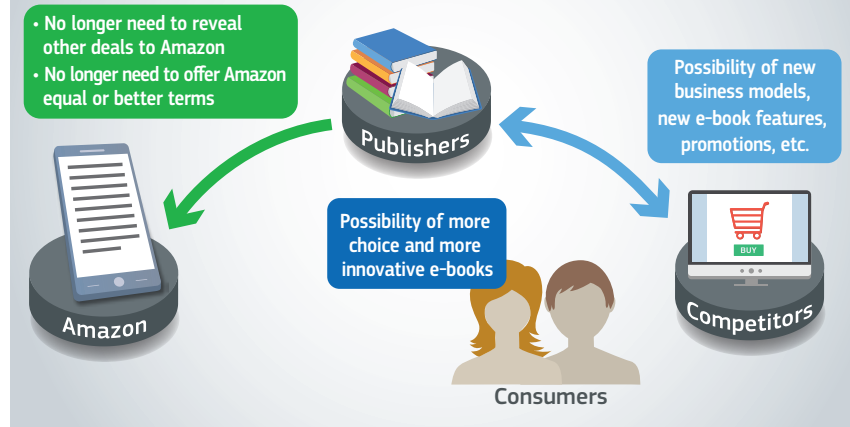
### Commission opens investigations into suspected anti-competitive distribution and licensing practices

In February 2017, the Commission launched three separate investigations to assess if certain online sales practices prevent consumers from enjoying cross-border choice and being able to buy consumer electronics, video games and hotel accommodation at competitive prices. The three investigations aim to tackle the specific issues of retail price restrictions, discrimination on the basis of location and geo-blocking. The preliminary results of the Commission's e-commerce sector inquiry show that the use of these restrictions is widespread throughout the EU.

In June 2017, the Commission opened a formal antitrust investigation into the distribution agreements and practices of clothing manufacturer and retailer Guess. The Commission is examining whether Guess illegally restricts retailers from selling cross-border to consumers within the EU Single Market.

In the same month the Commission also launched three separate antitrust investigations to assess whether certain licensing and distribution practices of Nike, Sanrio and Universal Studios illegally restrict traders from selling licensed merchandise cross-border and online within the EU Single Market.

## Commission accepts commitments from Amazon on e-books



### Commission accepts commitments from Amazon on e-books

On 4 May 2017, the Commission adopted a decision that renders legally binding commitments offered by Amazon to address the Commission's initial competition concerns relating to a number of parity clauses in Amazon's distribution agreements with e-book publishers in the European Economic Area (EEA).

The Commission had concerns about so-called "most-favoured-nation" clauses which required publishers to offer Amazon similar (or better) terms and conditions to those offered to Amazon's competitors, and/or to inform Amazon about more favourable or alternative terms given to competitors. The clauses covered both non-price and price elements, and targeted almost every aspect that a competitor can use to differentiate itself from Amazon.

The Commission took the preliminary view that the clauses may have led to less choice, less innovation and higher prices for consumers due to less overall competition.

Although not agreeing with the Commission's preliminary findings, Amazon offered commitments. The main effect of these is that Amazon is banned from enforcing or introducing the relevant clauses requiring publishers (i) to offer Amazon similar price and

non-price terms and conditions as those offered to Amazon's competitors, and (ii) to inform Amazon about such terms and conditions. The commitments will apply for a period of five years and to any e-book in any language distributed by Amazon in the EEA.

### Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service

On 27 June 2017, the Commission took a decision finding that Google had breached EU antitrust rules. Google abused its market dominance as a search engine by giving illegal advantages to another Google product, its comparison shopping service. The fine of €2.4 billion reflects the serious and sustained nature of Google's violation of EU antitrust rules. The Commission took the decision after a thorough investigation and many exchanges with Google and its customers and competitors.

Google has come up with many innovative products and services that have made a positive difference to the lives of consumers. Market dominance, as such, is not a problem under EU antitrust rules. However, under EU antitrust rules dominant companies are not allowed to abuse their power in one market to give



themselves an advantage in another. Google was found to have abused its market dominance as a search engine by using its algorithms to promote its own comparison shopping service in its search results and demoting those of competitors. This is illegal under EU antitrust rules. By its actions Google denied other companies the chance to compete on the merits and to innovate, and denied European consumers the benefits of competition, genuine choice of services and innovation.

Google implemented illegal practices where it offers comparison shopping services in the EU (Germany, the United Kingdom, France, Italy, the Netherlands, Spain, the Czech Republic, Austria, Belgium, Denmark, Norway, Poland and Sweden). 418 million citizens live in these 13 countries.



**Google’s comparison shopping service (Google shopping):**  
 Google’s flagship product is the Google search engine. It provides search results to consumers, who pay for the service with their data. Every year, Google makes almost 80 billion US dollars worldwide from adverts, such as those it shows consumers in response to search queries. So the more consumers see and click on the adverts, the more revenue Google generates.  
 In 2004, Google entered the separate market for comparison shopping (later Google Shopping) allowing consumers to compare products and prices online and find deals from various retailers. In 2008 Google, by using its algorithms, started to give its own product (Google Shopping) more prominent placement in the search results than to its rivals. Google also demoted rival comparison shopping services, resulting in a lower ranking in generic search results. This meant that Google Shopping was more visible and other comparison shopping services were less visible to consumers and less likely to be clicked on. The Commission’s investigation assessed whether these practices breached EU antitrust rules.

The decision has no impact on the Commission’s October 2014 decision to authorise the transaction under the EU Merger Regulation. The decision is unrelated to either ongoing national antitrust procedures or privacy, data protection or consumer protection issues, which may arise following the August 2016 update of WhatsApp terms of service and privacy policy.

**The two pending Google inquiries: the Android and search advertising cases**

The Commission also continues to investigate certain practices by Google concerning Android as well as search advertising. The Commission’s preliminary conclusion in relation to both practices is that they breach EU antitrust rules, but this does not prejudice the outcome of the investigation.

**Commission fines Facebook €110 million for providing misleading information about WhatsApp takeover**

On 18 May 2017, the Commission fined Facebook €110 million for providing incorrect or misleading information during the Commission’s 2014 investigation under the EU Merger Regulation of Facebook’s acquisition of WhatsApp.

**Commissioner Vestager:**  
 “The decision sends a clear signal to companies that they must comply with all aspects of EU merger rules, including the obligation to provide correct information. And it imposes a proportionate and deterrent fine on Facebook. The Commission must be able to take decisions about mergers’ effects on competition in full knowledge of accurate facts”.  
 (European Commission - Press release – “Mergers: Commission fines Facebook €110 million for providing misleading information about WhatsApp takeover”, Brussels, 18 May 2017 - IP/17/1369)

## ENSURING COMPETITION AND INVESTMENT IN THE TELECOMS SECTOR FOR THE BENEFIT OF CONSUMERS



### French broadband scheme (Plan Très Haut Débit) approved

The Commission's State aid assessment ensures, among other things, that public funding does not take the place of private investment. On 7 November 2016 the Commission approved a French national broadband scheme. The scheme involves investments of €13 billion. It aims to bring very high speed broadband everywhere in France without unduly distorting competition. The Commission's assessment also ensures that other service providers can use the publicly funded infrastructure

on a non-discriminatory basis. This protects effective competition, which is a key driver for investment and better prices and quality for consumers and businesses.

With these plans, all French households and businesses will have access to high speed broadband by 2022. The plans also enable more choice in terms of suppliers. This is good news for citizens and for small- and medium-sized companies in France. Access to high speed broadband is also a key priority of the Commission's Digital Single Market Strategy.

As part of its Digital Single Market (DSM) Strategy, the Commission encourages broadband rollout and access to high speed connections, especially in underserved areas, to ensure a high level of connectivity in the EU. Most Member States have gradually adopted and even updated national and/or regional broadband strategies. While their content differs, many of them provide for measures to support supply through the use of public funds.

Extensive national broadband schemes have been approved by the Commission during 2016, in particular for the United Kingdom, Italy and France. Over a longer period 2009-2016, the Commission approved State aid for broadband totalling €34.9 billion. During the same period, Member States adopted 69 broadband State aid measures benefitting from the General Block Exemption Regulation.



This scheme will fund local authorities' infrastructure projects, mainly to deploy Next Generation Access (NGA) networks. These are networks that ensure connection speeds of at least 30 megabits per second (Mbps).

**No evidence that telecoms consolidation in Europe is necessary for network investment**

It is often said that telecoms consolidation in Europe is necessary to ensure network operators are profitable to allow them to invest in networks. The Commission has not seen compelling evidence to support those claims in the

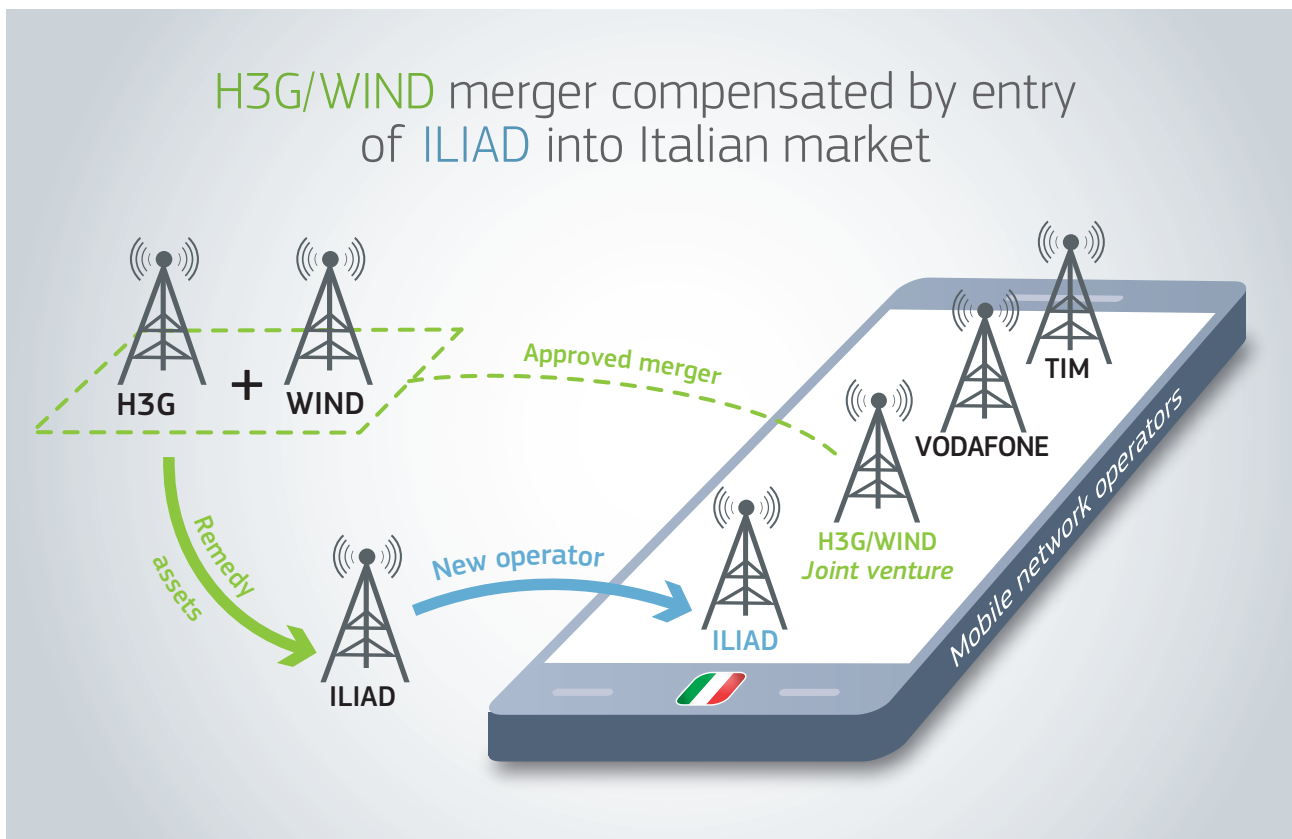
cases it has assessed. In particular, the UK mobile market shows the opposite. In recent years, UK mobile operators have been investing billions to roll out 4G, while remaining profitable. Competition, not consolidation, has promoted investment.

**Commission decision ensures cross-border competition in Italian mobile telecoms market**

On 1 September 2016 the Commission approved a proposed telecommunications joint venture between VimpelCom's subsidiary WIND and Hutchison's subsidiary H3G, respectively the third and fourth largest

operators in the Italian retail mobile market. The approval is conditional on the divestment of sufficient assets that will allow a new operator to enter the market.

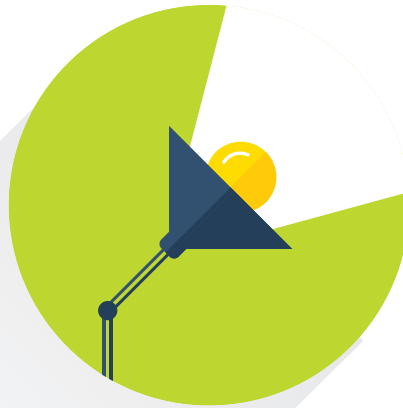
The Commission could approve the deal because Hutchison and VimpelCom offered a strong remedy that enables the French mobile network operator, Iliad, to enter the Italian market. This case shows that telecom companies in Europe can grow by consolidation within the same country, provided effective competition is preserved. It also shows they can grow by cross-border expansion, such as Iliad in this case.



## UNLOCKING THE POTENTIAL OF THE EUROPEAN ENERGY UNION

### Making the most of taxpayers' money to keep the lights on

As one of the Commission's ten priorities, the European Energy Union will ensure that Europe has secure, affordable and green energy. This requires better links between national energy networks and a new way for electricity markets to work. Competition enforcement plays an important role, especially when it comes to keeping prices down and supporting the drive to decarbonise our economy.



### Capacity mechanism sector inquiry - Final Report published on 30 November 2016

Capacity mechanisms are measures taken by Member States using taxpayers' money to keep the lights on. Therefore, they potentially affect every home and organisation in Europe. Typically, capacity mechanisms reward electricity providers for standing ready to deliver electricity at short notice when the need arises. They may also reward consumers by reducing their electricity consumption in critical hours if they are willing and able to do so. An increasing number of Member States are introducing capacity mechanisms to encourage investment in power plants or provide incentives for power plants to continue to operate, with the purpose of ensuring that the supply of electricity meets demand at all times.

The Report concludes that Member States need to assess better the need for capacity mechanisms and indicates how to improve their design to ensure security of supply while minimising competition distortions. The Report also concludes that many Member States have yet to implement market reforms that are indispensable to address security of supply issues. In those cases where a capacity mechanism is truly necessary, the Report indicates

which types of capacity mechanisms may be most suitable to solve the identified problem. In particular, the Report concludes that the price paid for capacity must be determined by means of a competitive process, in which all types of capacities that can help address the security of supply problem (not only existing power plants but also demand response providers, new capacities, storage facilities, interconnectors and foreign capacities) should be allowed to participate.

Since the inquiry has found that a number of existing capacity mechanisms have major shortcomings, the Commission will continue to work with the Member States concerned to bring these schemes in line with State aid rules.

### Ensuring that all suppliers play by the rules

The Commission has been investigating the business practices of Gazprom in Central and Eastern Europe.

The Gazprom case is an example of the Commission's effort to ensure that the Energy Union functions properly by opening markets, facilitating cross-border gas flows and ensuring competitive gas pricing. The case sends an important signal that all market players, regardless of their nationality, must abide by EU competition rules when doing business in the EU. The same principles are driving similar antitrust investigations in the Energy Sector.



**Commissioner Vestager:**

“We believe that Gazprom’s commitments will enable the free flow of gas in Central and Eastern Europe at competitive prices. They address our competition concerns and provide a forward looking solution in line with EU rules. In fact, they help to better integrate gas markets in the region. This matters to millions of Europeans that rely on gas to heat their homes and fuel their businesses. We now want to hear the views of customers and other stakeholders and will carefully consider them before taking any decision”

(European Commission – Press release – “Antitrust: Commission invites comments on Gazprom commitments concerning Central and Eastern European gas markets”, Brussels, 13 March 2017 – IP/17/555)

The Commission’s initial view is that Gazprom is in breach of EU antitrust rules by pursuing a strategy of fragmenting the Central and Eastern European gas markets, aimed at maintaining an unfair pricing policy in several EU Member States. Gazprom, according to the Commission’s preliminary assessment, implemented this strategy by hindering cross-border gas sales, charging unfair prices and making gas supplies conditional on obtaining unrelated infrastructure commitments.

Gazprom has offered commitments to resolve the Commission’s competition concerns. In the Commission’s view the commitments offered by Gazprom were capable of addressing its competition concerns. In March 2017, the Commission invited all interested parties to submit their views on the commitments offered by Gazprom.






The Commission is now analysing carefully those responses in order to take a final view as to whether commitments from Gazprom can be

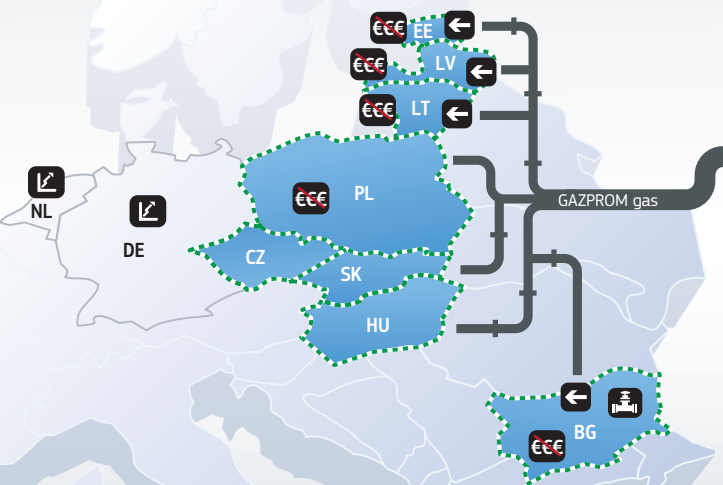
an effective way of addressing its competition concerns and enable the free flow of gas at competitive prices across Central and Eastern Europe. If this is the case, the Commission may adopt a decision making the commitments legally binding on Gazprom. If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company’s worldwide turnover, without having to prove an infringement of the EU antitrust rules.

**Ensuring that technology providers compete on equal grounds**

A sound Energy Union requires strong and innovative technology providers which should be able to compete on equal grounds. This is why in 2016/17, the Commission investigated the restructuring of nuclear technology provider Areva. The Commission analysed whether the planned injections of public capital into the company would not unduly favour

**GAZPROM’s proposed measures to remedy competition concerns**

-  Allowing cross-border flows of gas
-  Ensuring competitive prices, linked e.g. to liquid hubs 
-  Enabling interconnections
-  Providing flexibility to divert gas to this delivery point



Areva over its competitors by giving it access to finance at terms not available on the market, and whether the divestiture of Areva's reactor business to French utility EDF would not lead to EDF unduly favouring Areva over its competitors as a supplier to EDF or restricting access of its competitors to Areva's reactor products and services.

As regards the divestiture of the reactor business to EDF, the Commission found that the transaction would not raise competition concerns in the markets for the design and construction of new reactors, the markets for services to existing plants and for instrumentation and control systems, and the market for nuclear fuel assemblies, all strategic markets for the nuclear sector.

As regards the planned injection of public capital, the Commission authorised the State to intervene in exchange for commitments aimed at minimising competition distortions in the markets of nuclear fuel. For instance, Areva is not allowed to increase its production capacity of enriched nuclear fuel during the time of its restructuring. It is also not allowed to acquire companies during the restructuring period.

In such complex restructurings, competition tools such as merger and State aid control contribute to ensuring that markets continue delivering incentives for companies to be efficient and innovative, to the benefit of customers and the EU consumer.

### Making recycling affordable for consumers

Effective waste management is an important part of the circular economy. In September 2016, the Commission fined Altstoff Recycling Austria (ARA) €6 million for blocking competitors from entering the Austrian market for waste management.

### Clearing investments in nuclear plants whilst limiting distortions of competition

In March 2017 the Commission cleared Hungary's financial support for the construction of two new nuclear reactors in Paks (Paks II). The new reactors will replace the four reactors currently operating at the Paks site, which were constructed in the 1980s and currently account for approximately 50% of Hungary's domestic electricity production.

Under the EU Treaties, Member States are free to determine their energy mix and have the choice to invest in nuclear technology. The Commission's role is to ensure that the distortion of competition on the energy market as a result of the State support is limited to a minimum. During the investigation carried out by the Commission, the Hungarian Government made substantial commitments, which allowed the Commission to approve the investment under EU State aid rules:

- To avoid overcompensation of the operator of Paks II, any potential profits will either be used to pay back Hungary

for its investment or to cover normal costs for the operation of Paks II.

- To avoid market concentration, Paks II will be functionally and legally separated from the operator of the Paks nuclear power plant
- To ensure market liquidity, Paks II will sell at least 30% of its total electricity output on the open power exchange and the rest of Paks II's total electricity output will be sold by Paks II on objective, transparent and non-discriminatory terms by way of auctions.



ARA has been the dominant provider of services for household packaging waste in Austria. From 2008 to 2012 ARA refused to competitors access to the Austrian waste collection infrastructure controlled or owned by it, thereby excluding all competition in the market. Such abusive behavior is in breach of the EU antitrust rules.

After the Commission started its investigation, Austria adopted a new waste law in 2013 and ARA began granting access to its household

waste collection infrastructure. Several competitors have since entered the market.

ARA cooperated with the Commission by acknowledging the infringement. ARA also offered to divest the part of the household collection infrastructure that it owns to make sure that this infringement cannot be repeated in the future. The Commission took account of ARA's cooperation by reducing the fine by 30%.

## PROMOTING A COMPETITIVE FOOD SUPPLY CHAIN



Food is not just about what people put on their plates: it affects many other areas, such as employment, health and the environment. The food supply chain connects three important sectors of the European economy – agriculture, the food processing industry and distribution. The way the food supply chain functions is key to providing quality and safe food products at affordable prices. EU competition rules apply to the whole food supply chain.

### The importance of competition in concentrated markets

The global industries for pesticides and seeds are being transformed. These products lie at the beginning of the food chain and they matter to farmers, to consumers and eventually to the environment. Effective competition in this sector allows farmers to choose from a range of products at affordable prices. It also pushes companies to continue developing new products that meet the high regulatory standards in Europe. Innovation is particularly important in the agro-chemical industry. It aims at discovering and developing new products that are less toxic or more efficient, and helps to deal with the fact that pests adapt and may become resistant to existing products over time.

The Commission has recently cleared two important deals in this sector: the merger between Dow and DuPont and the acquisition of Syngenta by ChemChina. All these companies sell pesticides, i.e. products used by farmers to control pests that can harm their crops.

Both mergers were assessed on their own merits and were allowed to proceed only when the parties offered remedies which convinced the Commission that they would not pose any impediment to effective competition.

### Two important mergers in the agro-chemical sector

When assessing the Dow/DuPont merger, the Commission had concerns that the merger could have reduced competition on price and choice in a number of markets for existing pesticides. Furthermore, the merger would have reduced innovation.

To address the Commission's competition concerns, Dow and DuPont agreed to divest all of DuPont's pesticides in the areas the Commission was concerned about. The sale included a number of new products that DuPont was developing, and also its worldwide research and development organization for pesticides. The Commission concluded that the divestment package enabled a buyer sustainably to replace DuPont's competitive effect in these markets and continue to innovate. This way, farmers and other customers will continue to benefit from the competitive race that brings them lower pesticide prices and better and safer products for the future.

### How the Commission's two decisions helped to preserve effective competition

While the Syngenta and ChemChina transaction affected the same types of markets as the Dow and DuPont transaction, the Commission did not have the same concerns as in the Dow/DuPont case about loss of competition among innovators. Instead, the focus in this case was on competition on the market of existing pesticides.

The Commission analyzed the potential effects of the merger on every type of pesticide in each of the Member States. In all, the Commission had to look closely at more than 450 markets, where the parties held relatively high combined market shares. In response to the Commission's concerns that the transaction would reduce competition in a number of markets, the parties offered to sell off a major share of their overlapping business. This includes a significant part of ChemChina's business for pesticides and plant growth regulators, as well as some pesticides owned by Syngenta. They also agreed to sell 29 products that are under development by Adama, a ChemChina subsidiary. The remedy also includes access to all the assets the buyer will need to run the business – including all the necessary data to maintain and renew regulatory approvals.

The two Commission decisions allow price and innovation competition in pesticides markets to be preserved and maintained, to the benefit of European farmers and ultimately consumers.

**Dealing with global mergers**

Merger cases have become more complex, also in terms of reviews in different jurisdictions. For example, the merger between AB InBev and SAB Miller was notified to 28 authorities on six different continents. The Dow/Dupont acquisition was notified to 24 jurisdictions and the transaction between Syngenta and ChemChina to 19.

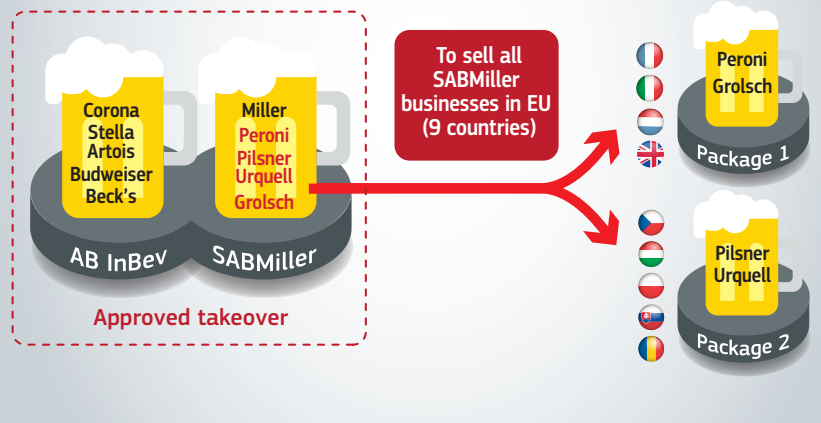
**Assessing the merger between the two world's largest brewers**

The Commission not only defends competition in markets that farmers depend on, but also where it directly matters for European consumers. On 24 May 2016, the Commission cleared a transaction bringing together SABMiller, the world's second largest brewer, and AB InBev, the world's largest brewer. After this merger, the entity will sell twice as much beer and earn four times more profit than the second largest brewer, and five times more beer and 12 times more profit than the third largest brewer.

The acquisition involved a complex investigation. The Commission's concern was that the transaction would have removed an important competitor in many European countries and likely facilitated tacit price coordination among brewers in the European Economic Area.

Europeans buy around €125 billion worth of beer every year, so even a relatively small price increase could cause considerable harm to consumers. It was therefore very important to ensure that AB InBev's takeover of SABMiller did not reduce competition on European beer markets. As a remedy the parties offered to divest practically the whole of SABMiller's beer business in Europe, which convinced the Commission that customers would not lose out.

Commission ensures **AB InBev/SABMiller** takeover will not harm consumers in €125 bn EU beer markets



**The 2015 Antitrust Guidelines in the agricultural sector**

Farmers are frequently dispersed and often need to cooperate to achieve efficiency in production, marketing and distribution. Today, they can cooperate in many ways to make their farms operate more profitably.

Competition policy and agriculture have a special relationship. Special rules allow farmers to work together when that meets the goals of the EU agricultural policy set out in Article 39 TFEU. Cooperation among farmers can help them to become more efficient, competitive and innovative in a globalised world and to acquire more value in the food chain.

In 2015, the Commission issued guidelines to help farmers who produce olive oil, beef and arable crops to get together and become more efficient. The Commissioners for Agriculture and for Competition are working closely together to understand what else the Commission can do to make the competition rules simpler and better for farmers.

At the same time, the Commission is also committed to protecting the integrity of the internal market for farmers and to ensure that consumers can continue to find high-quality food at competitive prices.



## PRESERVING FAIR COMPETITION IN THE PHARMACEUTICAL SECTOR

### A key sector for citizens

European citizens need access to innovative, safe and affordable pharmaceutical products. When pharmaceutical companies, medical device companies or other health-related companies are deterred from unfair practices, citizens win. New, better products are developed. Prices go down. Health budgets are spared. In the EU, national authorities are free to adopt pricing rules for medicines and to decide on treatments they wish to reimburse under their social security systems. Each country has different pharmaceutical pricing and reimbursement policies, adapted to its own economic and health needs; nonetheless, all pharmaceutical companies operating in the EU internal market must respect competition rules.

In the pharmaceutical sector, the key challenge for competition enforcement is to strike the right balance between, on the one hand, rewarding companies for successful R&D investment activities, and, on the other, enabling a competitive environment which promotes access to less expensive quality medicines.



### The General Court's Lundbeck judgment confirmed the Commission's findings

On 8 September 2016, the General Court upheld the Commission's Lundbeck decision and ruled for the first time that pharma pay-for-delay agreements breach EU antitrust rules. The Commission's decision found that the Danish pharmaceutical company Lundbeck and four generics competitors had concluded agreements that delayed the generics' entry into the market for antidepressant medicines and thereby harmed patients and health care systems.

Before the agreements were concluded, Lundbeck's basic patent for the blockbuster antidepressant medicine citalopram had expired. Lundbeck still held a number of process patents that provided limited protection. Generics producers were preparing for market entry with much cheaper generic versions of citalopram. Lundbeck paid the generics competitors for their promise to delay entry into the citalopram market. That way, Lundbeck was certain to avoid competition from the four companies for the entire duration of the agreements. As a result, Lundbeck protected its high prices, and the generic companies got their payoff. It was health systems that paid for these high prices. Competition enforcement stepped in to redress competition.

### Looking into pricing practices for cancer medicines

On 15 May 2017, the Commission opened a formal investigation against Aspen Pharma, a global pharmaceutical company headquartered in South Africa. Aspen has several subsidiaries in the EEA. The Commission will investigate whether Aspen has abused a dominant market position in breach of EU antitrust rules by charging excessive prices for five life-saving cancer medicines.

The investigation concerns Aspen's alleged pricing practices for niche medicines containing the active pharmaceutical ingredients chlorambucil, melphalan, mercaptopurine, tioguanine and busulfan. The medicines in question are used for treating cancer, such as hematologic tumours. They are sold with different formulations and under multiple brand names. Aspen acquired these medicines after their patent protection had expired.

The Commission will investigate information as to whether Aspen may have imposed very significant and unjustified price increases of up to several hundred percent, so-called 'price gouging', in exchange for continuing to market the medicines in question in some Member States. The investigation covers all of the EEA except Italy, where the Italian competition authority already adopted an infringement decision against Aspen on 29 September 2016.

This is the Commission's first investigation into concerns about excessive pricing practices in the pharmaceutical industry. The Commission will now carry out its in-depth investigation as a matter of priority. The opening of formal proceedings does not prejudice the outcome of the investigation.

### Follow-up to the pharmaceuticals sector inquiry

As a response to indications that competition in Europe's pharmaceuticals markets might not be working well, the Commission undertook a sector inquiry into the pharmaceuticals sector in 2008 and 2009. Since then, the Commission has been monitoring patent settlements between originator and generic companies and so far has published seven annual monitoring reports. The seventh report published on 13 December 2016 confirmed the continued use of settlement agreements, which reached 125 in total in 2015, the year covered by the seventh

monitoring exercise. The portion of settlements that could be potentially problematic for competition (i.e. those containing a limitation on generic entry and a value transfer from the originator to the generic company) remained low, at 10% of all settlements concluded in 2015.

On 17 June 2016, the Council of the European Union published conclusions on strengthening the balance in the pharmaceutical systems in the EU and its Member States. In particular, it invited Member States to cooperate voluntarily, for example, on exchange of information with respect to pricing and reimbursement and it invited the Commission to "continue and where possible intensify, including

*through a report on recent competition cases following the pharma sector inquiry of 2008/2009, the merger enforcement pursuant to the EC Merger Regulation (Regulation 139/2004) and the monitoring, methods development and investigation - in cooperation with national competition authorities in the European Competition Network (ECN) - of potential cases of market abuse, excessive pricing as well as other market restrictions specifically relevant to the pharmaceutical companies operating within the EU, such in accordance with Articles 101 and 102 of the Treaty on the Functioning of the European Union".*



### The Statement of Objections to Teva on 'pay-for-delay' pharma agreement

In July 2017, the Commission sent a Statement of Objections to pharmaceutical company Teva. The Commission informed Teva of its preliminary view that an agreement concluded with Cephalon was in breach of EU antitrust rules. Under the agreement, Teva committed not to market a cheaper generic version of Cephalon's drug for sleep disorders, modafinil.

Market entry and competition by generic drugs is an essential element to improve the affordability of healthcare. The Statement of Objections alleges that the patent settlement agreement between Cephalon and Teva may have caused substantial harm to EU patients and health service budgets. This is because they may have delayed the entry of a cheaper generic medicine, leading to higher prices for modafinil. The sending of a Statement of Objections does not prejudice the outcome of the investigation.

### Merger control in the pharmaceutical sector

Effective competition between generic pharmaceutical manufacturers is essential to drive down prices for patients and healthcare systems. The Commission's merger control ensures that consolidation of the industry does not lead to market distortions.

In March 2016, the Commission approved under the EU Merger Regulation the proposed acquisition of the generics business of Allergan of Ireland, by Teva of Israel. Both companies are among the top four generic pharmaceutical manufacturers worldwide. The decision is conditional upon the divestment of a number of assets, including the great majority of Allergan Generics' business in the UK and Ireland.

The Commission had concerns that the merged entity would have faced insufficient competition from the remaining players for a number of generic pharmaceuticals, as well as regarding the overall generics business in the UK, Ireland and Iceland. The commitments offered by the companies address these concerns, ensuring effective competition in all European countries.

## PROTECTING COMPETITION IN FINANCIAL MARKETS

### Extract from Commissioner Vestager's speech ("Supporting growth through competition in financial markets") at the SKAGEN Funds New Year's Conference (Copenhagen, 12 January 2017)

This year – 2017 - it will be a decade since the subprime crisis started to undermine trust between banks. Since the collapse of Northern Rock set the scene for the crisis. [State aid rules] make sure that in the rush to support banks, the interests of competition and taxpayers aren't forgotten. And the Commission applies them in exactly the same way to every bank, in every country.

That means that taxpayers aren't left to shoulder the burden on their own. The shareholders and

bondholders that profited in good times have to take part of the hit when things go wrong.

It means that banks have to come up with a restructuring plan that can make them viable in the long term. They need to take a hard look at their businesses, and get out of unprofitable ones.

And of course, it means protecting competition. Bailing out a bank shouldn't mean giving it money that it can use to compete unfairly with rivals that didn't need help from government.

In the last ten years, we've applied those rules in more than 450 decisions. More than 65 banks have been restructured, and another 40 banks have been liquidated in a managed and orderly way.

insolvency rules apply and it is for the responsible national authorities to wind up the institution under national insolvency law.

From a competition perspective, it is important that non-viable banks are not artificially kept alive, but exit the market. At the same time, in such situation State aid can be granted to cushion repercussions on the real economy of the regions in which such banks mainly operate. In the two specific cases, the aid granted for this specific goal facilitated the transfer of some activities of the liquidated banks to the best offer available from the market, with full integration and downsizing by the acquiring bank. Nonetheless, the aid was limited under State aid rules by full burden sharing from shareholders and subordinated creditors.

### The Commission blocks proposed stock exchange merger

Clearing services are provided by so-called clearing houses which operate between the two trading parties – the seller and the buyer. What they do is assume the risk of default of each trading party vis-à-vis the other. Thus, clearing houses are essential for the stability of financial markets. They avoid a domino effect if one party defaults.

On 29 March 2017 the Commission decided to prohibit the proposed merger between Deutsche Börse and the London Stock Exchange Group. The proposed merger would have combined the activities of the two largest European stock exchange operators.

The main concern raised by the merger was clearing for fixed-income instruments, namely government bonds and repurchase agreements. Repurchasing agreements are important instruments for short-term refinancing of market participants. These

### Protecting competition through the market exit of banks in national insolvency proceedings

In June 2017, the Commission approved, under EU State aid rules, Italian measures to facilitate the liquidation of Banca Popolare di Vicenza (BPVI) and Veneto Banca under national insolvency law.

The decision followed the declaration by the European Central Bank (ECB), in its capacity as supervisory authority, that BPVI and Veneto Banca were failing or likely to fail and the decisions by the Single Resolution Board (SRB), the competent resolution authority, that resolution action was not warranted in the public interest in either case. This means that the banks were not put in



resolution, because they did not have a critical function at the national or EU level, or would have created risks for financial stability. EU law provides that, in such circumstances, national

instruments have grown in importance since the financial crisis, as they are a secure way of obtaining financing at short notice. In addition, the merger raised concerns in trading and clearing of single stock equity derivatives – contracts whose value is linked to the price of an underlying share.

Deutsche Börse and the London Stock Exchange are basically the only companies that provide fixed income clearing services in Europe. Last year, €3.4 trillion worth of bond trades alone were cleared in the EEA. Almost all of that was cleared by the clearing houses of Deutsche Börse and the London Stock Exchange Group.

#### The Commission fines Crédit Agricole, HSBC and JPMorgan Chase €485 million for euro interest rate derivatives cartel

On 7 December 2016 the Commission decided to fine three banks a total of over €485 million for their participation in what has become known as the EURIBOR cartel. The three banks are Crédit Agricole, HSBC and JPMorgan Chase. They colluded on a financial product called euro interest rate derivatives together with four other banks that had chosen to settle the case with the Commission in December 2013. These four banks were Barclays, Deutsche Bank, the Royal Bank of Scotland and Société Générale.

Financial markets need to be competitive. The financial products concerned by this cartel, euro interest rate derivatives, are highly important not only for banks but for many businesses in the EU. They are traded globally on international money markets worth trillions of euros. Companies use them to manage their interest rate risks and reduce uncertainty in the business environment. Therefore, rigging this market to benefit only a few has immense consequences. This is exactly what happened in this case.

#### What exactly did the seven banks do?

The aim of the cartel was to distort a pricing component for euro interest rate derivatives, the so-called EURIBOR rate. The EURIBOR rate is set based on quotes submitted daily by a panel of banks. The seven cartelists were part of this panel and agreed to submit quotes that would allow them to move the EURIBOR on the day either up or down, depending on what benefitted them. On days when a trader received money calculated on the basis of EURIBOR, the trader had an interest in a high EURIBOR rate. On days when he needed to pay, the trader would want a low EURIBOR rate.

This decision marks the end of several investigations the Commission carried out into cartels set up by major international banks to manipulate the trading of derivatives. Over the past three years the Commission has taken six decisions on cartels imposing fines of just above €2 billion.

#### Entry into force of new rules to boost card payment transparency

Many consumers use payment cards every day when they buy in shops or online. For years, the fees charged by the banks for these card payments were largely non-transparent even though the costs are ultimately paid by consumers.

On 9 June 2016, new rules set out in the Interchange Fee Regulation made the costs of payments with debit or credit cards more transparent to retailers and consumers and allowed them to make efficient choices. The Interchange Fee Regulation has capped the fees. This means lower costs to the benefit of millions of European consumers and retailers. All elements of the Interchange Fee Regulation are now fully applicable.



## FOSTERING EFFICIENCY ACROSS TRANSPORT MODES

A competitive and efficient transport sector is important for both a well-functioning internal market and an open economy integrated into the global markets. The Commission has actively promoted vibrant competition across all transport modes.



### Towards a more competitive railway sector

In November 2016, the Commission opened an investigation into the Czech railway incumbent České dráhy, a.s. (ČD), following the inspections carried out at the premises of ČD in April. ČD is the main railway operator in the Czech Republic and until 2011 it was the only rail company active on the Prague – Ostrava route. After the market entries of competing rail passenger companies RegioJet in 2011 and LEO Express in 2012 on the Prague – Ostrava route, ČD seems to have significantly decreased the prices it charged to passengers on the route. While the Commission welcomes vigorous price competition to the benefit of passengers, it has currently concerns that ČD may have charged prices that are so low that it could not cover the costs of the service. The Commission's initial view is that such practices can hinder competitors from remaining in the market to the detriment of passengers and would be in breach of EU antitrust rules on the abuse of a dominant position.

### An example of successful market opening

In December 2013, the Commission accepted commitments offered by the German railway incumbent Deutsche Bahn regarding its pricing system for traction current (i.e. the electricity used for powering locomotives in Germany). The main purpose of the commitments was to enable electricity providers not belonging to the Deutsche Bahn Group to enter the previously monopolised market for the supply of traction current to railway undertakings. While the commitments were originally due to apply for five years, the decision provided that they could end earlier if in one calendar year over 25% of the total traction current demand of non-Deutsche Bahn railway undertakings would be supplied by alternative energy providers.

As this threshold was reached in 2015, in April 2016 the Commission relieved Deutsche Bahn from the commitments. The growth in the level of competition in the German railway power supply market confirms that the commitments were successful at remedying the Commission's competition concerns.

In June 2017, the Commission concluded that Greek measures to support the restructuring of OSE, the national rail infrastructure manager, and TRAINOSE, the passenger and freight rail transport operator, are in line with EU State aid rules. In particular,

the Commission took into account the difficulties the Greek railway sector is facing and the importance of a well-functioning railway service for the population. The measures will help the two public rail companies become more efficient and provide better service to Greek passengers and business customers, facilitating the future privatisation of the companies and the opening of the Greek railway sector to competition.

### Ensuring competition among air carriers

In October 2016, the Commission sent a Statement of Objections to Brussels Airlines and TAP Portugal on their codeshare cooperation of 2009 on passenger services between Brussels and Lisbon. The Commission's objections relate to the first three years of the agreement.

### What is a codeshare agreement?

A codeshare agreement is a commercial agreement whereby the airline operating a flight allows another airline to market the flight and issue tickets for it, as if it were operating the flight itself.

Codeshare partners also agree on how they will compensate each other for the seats they sell on their partner's flights. Codesharing can bring benefits for passengers in terms of wider network coverage and better connections.

The Commission has concerns that in this particular case Brussels Airlines and TAP Portugal may have used their codesharing to restrict competition and harm passengers' interests on the Brussels-Lisbon route.

Under their codeshare agreement, the two airlines granted each other the right to sell an unlimited number of seats in almost all categories (Business, Economy) on each other's flights on the Brussels-Lisbon route. Prior to the agreement, Brussels Airlines and TAP Portugal had operated competing services on the route and were in fact the only two airlines flying this route. The Commission's preliminary conclusion is that the agreement eliminated competition on prices and

### Simplified State aid rules for public investment in ports and airports

In May 2017, the Commission extended the scope of the General Block Exemption Regulation (GBER) to ports and airports.

As regards airports, Member States can now make public investments in regional airports handling up to 3 million passengers per year without prior control by the Commission. This will facilitate public investment in more than 420 airports across the EU (which account for about 13% of air traffic). The Regulation also allows public authorities to cover operating costs of small airports handling up to 200 000 passengers per year. These small airports account for almost half of all airports in the EU but only 0.75% of air traffic.

With regard to ports, Member States can now make public investments of up to €150 million in sea ports and up to €50 million in inland ports without prior approval by the Commission.

capacity between the two airlines on the Brussels-Lisbon route and led to higher prices and less choice for consumers. The sending of a Statement of Objections does not prejudice the final outcome of the investigation.

### Recent competition policy's developments in the maritime transport sector

Container liners shipping is the transport of containers by ship according to a fixed time schedule on a specific route between a range of ports at one end (e.g. Shanghai - Hong Kong - Singapore) and another range of ports at the other end (e.g. Rotterdam - Hamburg - Southampton). More than half of EU imports and exports are carried by sea, of which around 40% is shipped in containers.

In July 2016, the Commission adopted a decision that renders legally binding the commitments offered by fourteen container liner shipping companies. The commitments addressed the Commission's concerns that the companies' practice of publishing their intentions on future price increases may have harmed competition and customers. The commitments offered by the carriers aim to make prices for these services more transparent and increase competition.

Under the EU Merger Regulation, in April 2017 the Commission cleared the proposed acquisition of container liner shipping company HSDG of Germany by Maersk Line A/S of Denmark, subject to conditions. The transaction concerned two leading container liner shipping companies. Maersk Line is the largest container shipping company, while HSDG is number nine worldwide. Like several other carriers, Maersk Line and HSDG offer their services on trade routes through cooperation agreements with other shipping companies, known as "consortia" or "alliances". These are based on vessel sharing agreements where members decide jointly on capacity setting, scheduling and ports of call, which are all important parameters of competition.

The clearance is conditional upon the withdrawal of HSDG from five consortia on trade routes. Such measures will maintain a healthy level of competition in the market, to the benefit of the many EU companies that depend on these container shipping services. The Commission examined the effects of the merger on competition in this specific market for container liner shipping on seventeen trade routes connecting Europe with the Americas, Asia, the Middle East, Africa and Australia/New Zealand.



## PROTECTING COMPETITION IN A CHANGING MANUFACTURING SECTOR



Basic industries and manufacturing are key to the European economy. To ensure an economy and a society where manufacturers, distributors and consumers alike reap a fair share of the benefits of a modern specialised economy, the entire value chain of such products is subject to scrutiny under EU competition rules. Where unfair restrictions on the manufacturing or distribution of these products to certain customers or in certain areas within the EU lead to a reduction in efficiency and to unfair accrual of the benefits to one particular part of the value chain, to the detriment of consumers in particular, the role of the Commission is to remove these unfair restrictions to the benefit of all.

### The Commission imposes the highest ever fine for a single cartel

On 19 July 2016 the Commission adopted a decision imposing fines of over €2.9 billion on leading truck producers. They participated in a cartel concerning medium and heavy trucks. The producers concerned are MAN, Daimler, DAF, Iveco and Volvo/Renault. These five producers together account for around nine out of every ten medium and heavy trucks sold in Europe.

The Commission found out about this cartel from MAN, which received full immunity from fines as a result. The fines for the other firms will go into the EU budget and reduce the contributions due from EU countries for membership in the EU.

Trucks are a key means of inland transport in Europe. In all, there are some 30 million trucks on our roads. So this cartel concerned an important part of our economy. The cartel began in 1997 and continued for fourteen years, until the Commission inspected the companies in 2011.

### The Commission prohibits HeidelbergCement and Schwenk's proposed takeover of Cemex Croatia

On 5 April 2017 the Commission prohibited the proposed takeover of Cemex's assets in Croatia by HeidelbergCement and Schwenk. Had the merger gone ahead, a bit less than half of all cement bought in Croatia would have come from the parties.

When it comes to cement, distance matters. It is expensive to transport over long distances. And it is harder for distant suppliers to guarantee that it will always be there when it is needed. That is why the effect of the transaction would have varied in different parts of Croatia. The Commission looked at the effect of the takeover on the regional cement markets.

The investigation showed that, after the merger, prices would have gone up. The Commission reached this conclusion after having spoken with customers and competitors, and reviewing internal documents from the parties about what they expected after the merger, and after having done an in-depth analysis of the supply patterns in the market.





The Commission also concluded that other competitors would not be able



### What exactly did the truck manufacturers do?

The truck producers coordinated increases in the gross list prices of trucks, which are the basis for pricing in the trucks manufacturing industry. The truck producers also held discussions on how to respond to the increasingly strict European emissions standards reducing the acceptable limits for exhaust emissions from trucks. They coordinated the pricing for the new technologies that were needed to meet the stricter standards, thereby shifting the costs of the emission technologies required to comply with the emissions standards to the consumers. The truck producers also coordinated the timing on when to introduce new technologies; in other words, delaying the launch of environmentally-friendly technology in agreement with competitors.

### Navigating the next industrial revolution

Revolution	Year	What happened?
1 	1784	Steam, water, mechanical production equipment
2 	1870	Division of labour, electricity, mass production
3 	1969	The computer, electronics and the internet
4 	?	The barriers between man and machine dissolve

There is some consensus that four industrial revolutions can be associated with new technological waves. Innovations related to steam power, cotton, steel, and railways helped to give us the first industrial revolution of mass production and mechanisation. The second was triggered by the introduction of electricity, heavy and mechanical engineering and synthetic chemistry. The third was triggered by innovations in electronics and computers, petrochemicals and aerospace. ... And what about the fourth? Right now, a host of new technologies are driving a wave of innovation that takes us into a new age. Think of the internet, nanotechnology, bioscience, electronics, photonics, advanced materials and renewable energies.

We see new technologies initiating new sectors or upgrading old ones. Core to this is the symbiosis between traditional manufacturing and services, through processes of “servitisation” ... Manufacturing firms increasingly use services in their production process, and the distinction between manufacturing and service activities has become increasingly blurry.

Source: World Economic Forum

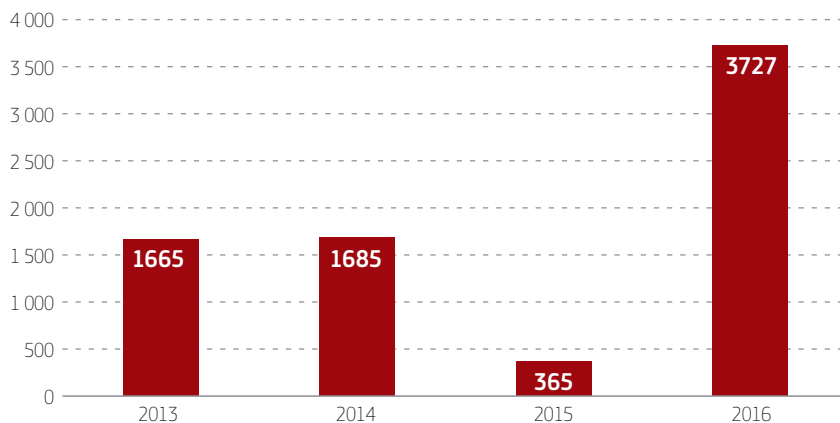
to replace the competition that would be lost. Either the competitors would be located too far away or would face other difficulties in ramping up cement sales in the relevant parts of Croatia. So, the merger would have led to higher prices for customers. And that is precisely what the EU merger rules are there to prevent. The Commission could not allow the merger to go ahead unless these serious problems were resolved.

### The sixth cartel decision in the car components sector since the Commission’s investigations in this sector began in 2012

On 8 March 2017 the Commission decided to fine six suppliers of car parts around €155 million for their participation in four cartels. These suppliers are Denso, Valeo, Behr, Sanden, Panasonic and Calsonic. The cartels concerned air conditioning and engine cooling components for cars. More specifically, they concerned main parts needed in a car to maintain the right temperature for both the passengers and the engine.

Specifically, these six suppliers coordinated prices or markets, and exchanged sensitive information on the sale of the components they supplied to car manufacturers in Europe. As a result, car manufacturers may have been harmed directly, and final consumers may have been harmed indirectly when buying cars. Coordination between the six suppliers took place in Europe but also in Asia.

Cartel fines imposed by the Commission (total amount in million euros per year)



Amounts corrected for changes (incl. corrections following amendment decisions) and judgments of the Courts (General Court and European Court of Justice) and only considering cartel infringements under Article 101 TFEU.

Source: Directorate-General for Competition.



## DEVELOPING A GLOBAL COMPETITION CULTURE

Competition enforcers face new challenges and a special responsibility in the age of globalisation. The liberalisation of trade and the global economy have improved living conditions and prospects for countless people across the world. At the same time, this historic change has created a number of unprecedented challenges. Policymakers need to make sure that everyone can get a fair share of the benefits of global trade.

Sound competition enforcement protects the interests of the many against the wrongdoings of the few. Also, it can show to the people that fair and open markets can be managed well, thanks to action by public authorities. The value chains that span the globe can work to the benefit of all and be sustainable only thanks to commonly agreed and peacefully enforced rules.

### The importance of cooperation

As world markets continue to integrate and more and more companies rely on global value chains, competition agencies need to agree on common standards and procedures more than ever before. Effectively enforcing competition rules depends to a growing extent on cooperation with other

enforcers. When the business practices of a company or group of companies harm competition in different countries and continents, fair and level market conditions can only be restored by authorities playing as a team.

#### Commissioner Vestager:

(A)s competition enforcers, we have an important role to play. We need to help make sure that free trade and open markets work for everyone. (...) We all know that among competitors, too much cooperation can get you in trouble. For us as enforcers, the opposite is true. We will get into trouble if we don't cooperate.

"Meeting the challenges of globalisation together" – Speech given at the International Competition Network Annual Conference, Porto, 10 May 2017: [https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/meeting-challenges-globalisation-together\\_en](https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/meeting-challenges-globalisation-together_en)

### Competition authorities across the world playing as a team

Playing as a team is particularly important when large multinational corporations decide to join forces and seek the green light from a number of competition authorities. For instance, a merger like the one between AB InBev and SAB Miller was notified in 2016 to 28 authorities on six different continents. Detecting and fining the cartels in the car parts industry, one of the largest global cartel investigations, also required worldwide coordination efforts: from the timing of the investigations, so that a dawn raid in one country could not give the signal for companies in another country to destroy evidence, to issues such as how to determine the volume of sales affected by the cartels. Between 2010 and 2015, the Commission cooperated with non-EU authorities in over half of all decisions taken.

The Commission has been at the forefront of international cooperation in the competition field, both on the multilateral and bilateral levels. Back in 2001, the Commission was among the 14 founding members of the International Competition Network (ICN), which now counts more than 130 members. The Commission is also active in all international fora devoted to competition, including the OECD, UNCTAD, the WTO, and the World Bank.

As to bilateral cooperation, the formal agreement with the US dates back more than two decades. In the course of the years, agreements have been signed with Canada, Switzerland, Japan, and Korea. Concerning Canada, in particular, in June 2016 the Commission submitted to the Council its proposal for a second generation agreement to share evidence and information in competition proceedings and requested the Council to authorise the Commission to sign the agreement.

Working together to make competition rules and policies more consistent – what is often called 'convergence' – does not entail a so-called 'do as I do' approach, nor is it a goal in itself. Convergence is a means to minimise the risk of conflicting outcomes.



The possibility to exchange such evidence would improve cooperation between the two competition authorities in all competition cases which affect both markets. Negotiations for a similar agreement with Japan will start soon, as the Commission has received the Council's authorisation to start the formal negotiations.

**Cooperation efforts do not only cover established agencies, but also new and emerging ones**

The Commission also has signed Memoranda of Understanding with the Russian Federation, India, Brazil, China and – since last year – with South Africa. In 2016/17 additional work strands concern the establishment of cooperation channels as part of free trade agreements with the agencies of Tunisia, Japan, Armenia, Azerbaijan, Mexico and Indonesia, opening of new channels with the Philippines and re-opening of the dialogue with Mercosur. In June 2017 the Commission signed a Memorandum of Understanding with China's National Development and Reform Commission. This will start a dialogue on State aid control and will be used to share with China the Commission's experience on enforcing State aid rules.

Looking at Europe's neighbourhood, the Commission assists in preparing potential candidate and candidate countries to join the EU and in the implementation of the competition provisions included in recent free trade agreements with neighbouring countries. It is involved in negotiating the necessary implementing rules to this effect with Tunisia and Morocco, as well as monitoring the implementation of the EU competition acquis, including the State aid rules, in countries such as Serbia and Montenegro as well as Ukraine and Moldova.

**Upholding a constructive inter-institutional dialogue**

The Commission's efforts to promote a competition culture focus both outside and inside European borders. The Commission, including the Commissioner for Competition, is fully committed to fruitful and constructive dialogue with the other European institutions. The European Parliament, the Council and the consultative committees, with their specific roles vis-à-vis European citizens and stakeholders, are important partners in the dialogue on competition policy.

On 14 February 2017, the European Parliament adopted a Resolution on the Annual Report on EU Competition Policy (2016/2110(INI)). The Resolution confirms the overall support of the Parliament for competition policy, recognizing competition policy as an essential instrument for the integrity of the internal market and a means of safeguarding European democracy.

The Resolution includes a number of requests for the Commission to act and/or provide specific information on a wide range of subjects, giving special attention to the Commission's

activities in the area of taxation, digital economy, banking sector, agriculture and food supply chain, energy, transport and other sectors, as well as on the international dimension of competition policy.

As part of her structured dialogue with Parliament, Commissioner Vestager had exchanges with the Committee on Economic and Monetary Affairs (ECON) in October 2016 and in March 2017.

The Commission also welcomes the interest of the European Economic and Social Committee and the Committee of the Regions in competition policy. The Economic and Social Committee adopted an Opinion on the Report on Competition Policy 2015 (INT/800 - CESE 04505-2016) in October 2016, and an Opinion on the Enforcement of competition rules in July 2017. Commissioner Vestager participated in the plenary meeting of the Economic and Social Committee on 14 July 2016.

The Committee of the Regions adopted an Opinion on State Aid and Services of General Economic Interest (CDR 1460/2016) in October 2016.



## LEARNING FROM THE PAST AND REACHING OUT TO THE FUTURE

### Evidence-based competition policy-making

In recent years, the Commission has considerably strengthened its ex post evaluation function in the competition field, in order better to document the impact of competition policy enforcement on market functioning and consumer welfare, as well as to improve the quality and transparency of evidence-based decision-making.

The Commission also publishes several studies concerning sector-specific and instrument-specific aspects of EU competition policy.

In addition, the Commission has also published several studies investigating the effects of its competition policy interventions at the micro-, sector, policy and macro-levels. The micro-studies include ex post evaluations of individual merger, antitrust and State aid decisions. The sector studies take a somewhat wider perspective and assess the impact of Commission decisions in selected sectors (i.e. energy and telecoms). The policy studies focus on the effective application of certain policy concepts (e.g. geographic market definition in mergers or the passing-on of overcharges in antitrust), while the

macro studies look into the broader impact of EU competition policy at the macroeconomic level. <sup>(1)</sup>

### Listening to citizens and stakeholders

The Commission wants to hear citizens' and stakeholders' views and reflect them in its decisions when it makes and updates EU laws. This is an important goal of the better regulation agenda. There are various opportunities to contribute to EU law-making as it evolves – from the preparation phase through to proposals for new laws and evaluations of how existing laws are performing.

Through open public consultations, anyone can express views on specific aspects of a policy initiative before the Commission finalises its work. Some public consultations concern the impact assessments of Commission proposals, which cover the issues to be tackled, whether action should be taken at EU level, and the potential effects of different solutions outlined. Through open public consultations it is also possible to contribute to evaluations on how existing rules are performing in practice.

<sup>(1)</sup> See e.g. Journal of Competition Law & Economics, Volume 13, Issue 2, 1 June 2017, Pages 225–260, <https://doi.org/10.1093/joclec/nhx015>.



### Communicating in 2016

6 public consultations open to citizens and stakeholders  
<http://ec.europa.eu/competition/consultations/open.html>

7 studies on competition policy aspects  
[http://ec.europa.eu/competition/publications/reports\\_en.html](http://ec.europa.eu/competition/publications/reports_en.html)

23 speeches by Commissioner Margrethe Vestager  
[https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements\\_en](https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements_en)



192 Tweets

2 035 900 Impressions (number of tweets delivered to accounts)

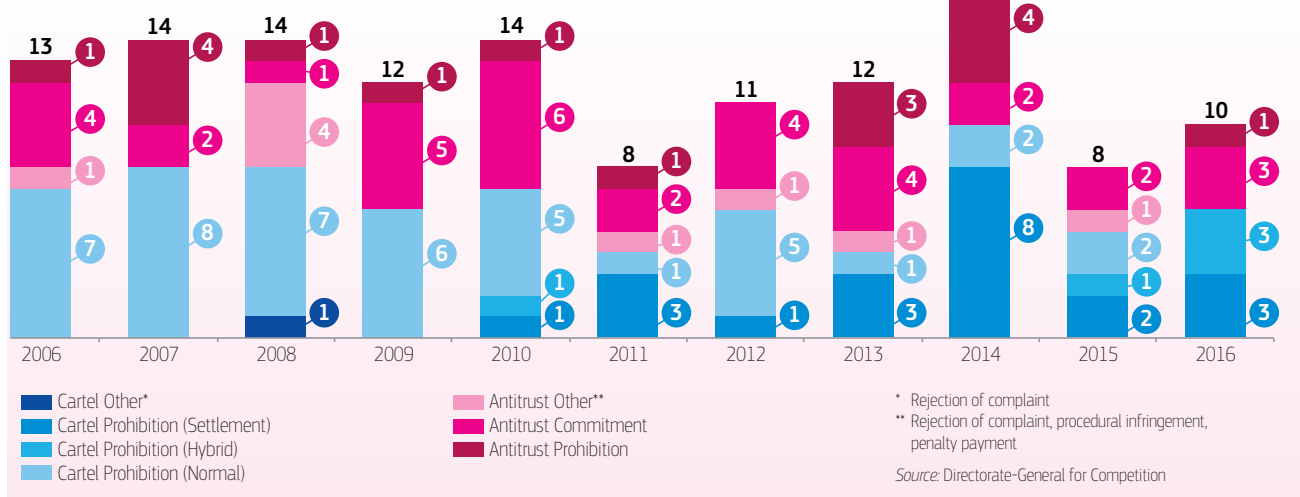
70 570 Profile Visits

2 595 Mentions

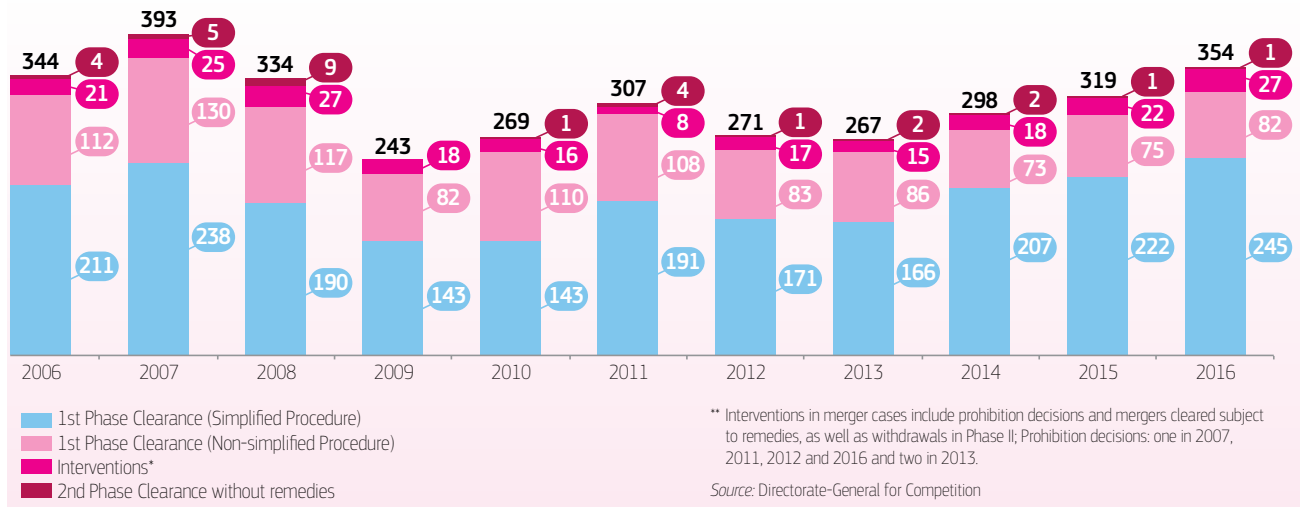


Competition policy figures – 2006-2016

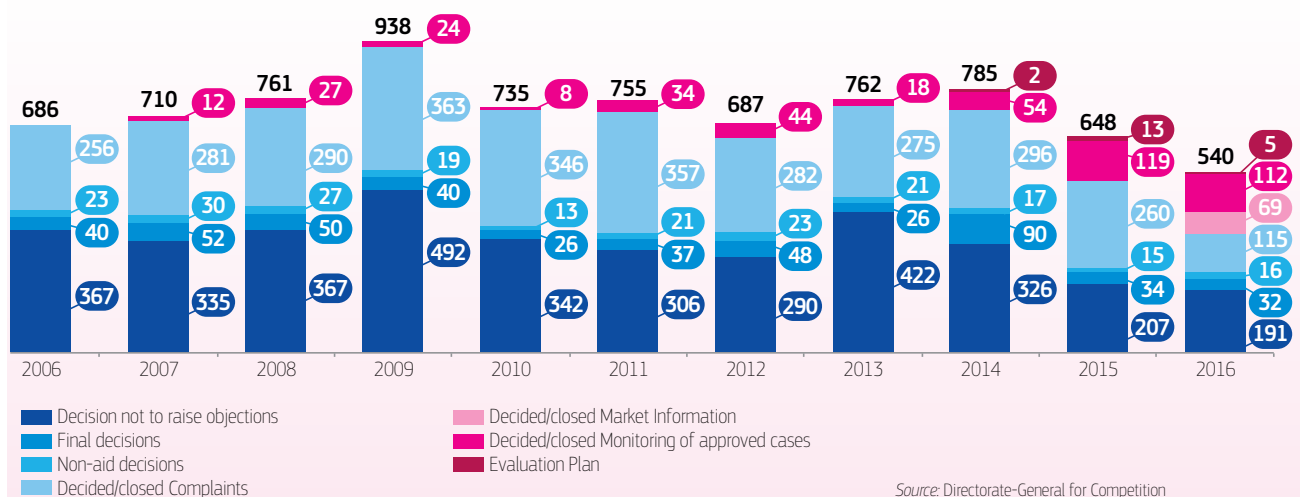
Antitrust and cartels output, 2006-2016



Merger decisions, 2006-2016



State aid enforcement (Commission decisions, monitoring and Member States' Evaluation Plans), 2006-2016





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### Open data from the EU

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### **WHISTLEBLOWING:**

Report anonymously uncompetitive practices and cartels

Phone: +32-2-29 74800 (Mo-Fr 9:00 – 17:00)

E-Mail: [comp-whistleblower@ec.europa.eu](mailto:comp-whistleblower@ec.europa.eu)

Online: <http://ec.europa.eu/competition/cartels/whistleblower/index.html>

