EU competition policy in action

COMP in ACTION
Europe Direct is a service to help you find answers to your questions about the European Union.

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Photo credit and Illustration credits:
ccvision.de, page 30;
European Union, page 6, 8;
iStock.com/akindo, cover and pages 3, 17;
iStock.com/Askold Romanov, page 27;
iStock.com/AzmanL, page 19;
iStock.com/Betelgezie, page 3;
iStock.com/bluebearry, cover and pages 2, 10, 15, 17, 18, 19, 32, 41, 49;
iStock.com/MuchMania, page 37;
iStock.com/Noam Kahalany, page 29;
iStock.com/Peshkova, page 9;
iStock.com/tanda_V, page 21;
iStock.com/Tarik Kizilkaya, page 13;
iStock.com/Tcmake_photo, page 28;
Phovoir, page 16;
Spike Mafford/Photodisc/Getty Images, page 39;
Stockbyte/Getty Images, page 11;
Tom Grill/Corbis, page 31;
Trine Søndergaard, pages 4, 7.


© European Union, 2016
Reproduction is authorised provided the source is acknowledged.

Printed in Belgium

Printed on elemental chlorine-free bleached paper (ECF)
Contents

10 most important takeaways about DG Competition .........................2
Interview with Margrethe Vestager, Commissioner for Competition ....4
Strategy of DG Competition .................................................................6
Interview with Johannes Laitenberger, Director-General for Competition ..................................................................................8
Why competition policy is good value for money ..............................10
Acting against tax advantages to ensure a level playing field ..........12
Preserving innovation in internet search services ............................14
Using competition policy to break down online barriers ................16
Towards a borderless market for digital content:
the pay-TV case ....................................................................................18
Supporting competition, investment and consumer benefits in the telecom sector .................................................................20
Ensuring that dominant gas suppliers in Central and Eastern Europe play by the rules .................................................................22
Making the most of taxpayers’ money to keep the lights on ............24
Coping with overcapacity in the steel sector ..................................26
State aid control: a tool for a safer and sounder banking sector in Europe .....................................................................................28
Pushing for lower charges in the payment card market ..................32
Overhauling State aid rules to unlock the EU’s growth potential ......34
State aid: a lever facilitating good investment ................................36
Tackling the challenge of boosting innovation ...............................38
Breaking cartels to protect EU consumers .....................................40
Enforcing EU antitrust rules in the European Competition Network ..........................................................................................42
Taking the world as it is: defining markets in the age of globalisation .........................................................................................44
Cooperating across the globe ............................................................46
Citizens’ opinions matter .................................................................48
1. OUR MISSION
• More benefits to consumers, businesses and society as a whole by protecting competition in the market and fostering a competition culture in the EU and worldwide

2. OUR MANDATE
• Competition policy is one of the areas where the EU has exclusive competences and where the Commission can take decisions directly affecting companies or Member States
• The principal competition rules are contained in the Treaty on the Functioning of the European Union (TFEU).
• Together with the national competition authorities and national courts, the Commission enforces EU competition rules to make EU markets work better, by ensuring that all companies compete equally and fairly on the merits in the internal market. This benefits consumers, businesses and the European economy as a whole

3. OUR RESPONSIBILITIES
Within the Commission, DG Competition is primarily responsible for:
• Antitrust and cartel policy
• Merger control
• State aid control
• Promoting competition culture and international cooperation in the area of competition policy

4. OUR LEADERSHIP TEAM
• EU Commissioner for Competition Margrethe Vestager
• Director-General of DG Competition Johannes Laitenberger

5. OUR VALUES
• Relevance
• Quality
• Speed and efficiency
• Impartiality
• Highest standards
• Effective communication
6. FACTS IN BRIEF (2015)

• Five cartel decisions (EUR 365 million in fines) and six Statements of Objections adopted
• Two antitrust commitment decisions and eight Statements of Objections adopted
• 691 State aid decisions, 17 recovery decisions, ordering the Member States concerned to recover about EUR 1.8 billion unlawful and incompatible aid from beneficiary undertakings
• 318 final decisions in merger cases, 20 subject to commitments

7. OUR ONGOING WORK

• E-Commerce sector inquiry
• Important antitrust investigations
• Tax ruling investigations
• State aid sector inquiry into national measures to ensure sufficient electricity supply
• Partnership with the Member States in the field of State aid and empowering national competition authorities
• Effective merger control

8. OUR PARTNERS

• The national competition authorities (NCAs) are essential partners of DG Competition. Together with the NCAs, the Commission enforces the EU competition rules. We have adopted together more than 1000 decisions since 2004
• Structured dialogue with the European Parliament and engagement with the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR)

9. CUSTOMER BENEFITS IN 2015

In 2015, the estimated customer benefits resulting from Commission cartel prohibition decisions amounted to between EUR 0.99 billion and EUR 1.49 billion. The same year, the customer benefits resulting from horizontal merger interventions were estimated to fall within the range of EUR 1.08 billion and EUR 2.69 billion.

10. OUR STAFF AND WHERE WE ARE

802 staff members. DG Competition, one of the services (Directorate Generals) of the European Commission, is located in Brussels.
Interview with Margrethe Vestager, Commissioner for Competition

INTRODUCTION

Q You have been Commissioner for Competition since November 2014. What were your first impressions?

The way our direct work affects people’s lives. Just a few weeks after I started, we fined a cartel of envelope producers nearly EUR 20 million. It might just be a small household item, but people were paying more than they should because of a cartel. And we were able to put a stop to that.

Another thing that impressed me was the sheer range of issues that we deal with. Last year, for example, we reviewed more than 300 mergers, dealing with industries from fencing systems to data centres. Far from all of them made the headlines, but they were all important for the companies involved.

THE VALUES

Q You often say that ultimately your work is all about people. Could you expand on this?

For me, competition policy is about giving everyone a fair chance to reach their potential – businesses as well as people. It shouldn’t only be big companies that can succeed, but whoever has the best ideas – even the smallest start-up.

Competition drives companies to be more productive and innovative. So I see competition as one of the keys to growth. And it’s growth that gives our governments the resources to provide better opportunities for everyone.

Of course, sometimes the effect is even more direct. When we deal with cartels between suppliers of car parts – and we’ve dealt with several
of those – we help to bring down the price that people have to pay for a new car. So that’s about helping people too.

Q A mantra of yours is speed, quality and relevance. How do you reconcile these imperatives?

It’s not easy.

Speed is important, because every day that a breach of our rules goes on is a day that consumers are paying more than they should. In some cases, like merger reviews, we have very short deadlines that we have to meet.

But of course, we can never sacrifice quality for speed. If we were ever tempted to do that, I don’t think it would take the European courts very long to remind us that we have a duty to take well-reasoned decisions.

THE STRATEGIC APPROACH

Q You launched two sector inquiries in 2015, in energy and digital markets. Is this a sign that competition policy is tied in with the objectives of the Commission’s priorities as a whole, such as the Energy Union and the Digital Single Market?

Yes, and I think that’s absolutely natural. Those objectives were chosen because they’re the areas where the Commission can do the most to improve people’s lives. That’s as true of competition enforcement as of any other part of our work. We neither live nor work in a vacuum.

Of course, when I say that competition policy supports the Commission’s priorities, I don’t mean that those priorities influence our decisions in particular cases. We always decide strictly in line with the evidence and the law. But when we decide which cases to prioritise, one of the questions we ask is whether they’re relevant to the Commission’s objectives.

Our sector inquiries are a good example of how we can contribute. The information we get from them can help us to enforce the competition rules. It can also be very useful to the Commission when it comes to designing new rules on energy markets and geoblocking, for example.

COMP ACTION IN 2015-2016

Q What are your hopes for the project to empower national competition authorities launched last year?

The national competition authorities play a vital role in enforcing the EU competition rules. Since 2004, they’ve taken 85% of all the decisions that have applied EU competition law. So it’s essential that they have all the tools they need to enforce the rules effectively. Otherwise, consumers risk not being equally well protected throughout the EU.

National competition authorities should have the powers they need to find evidence, and to impose fines that are big enough to dissuade companies from even thinking about breaking the law. We want to be sure that national competition authorities’ independence is guaranteed, so they can take the right decisions.

Competition authorities, as well as business and consumer groups, have told us that they think we need to act. Right now, we’re looking at what form that action should take.

Q Likewise, what do you expect to achieve through the Partnership with the Member States in the State aid area?

We’ve just finished a major review of the State aid rules. That should make it a lot easier for companies to get support that doesn’t harm competition, for things like research and training. In fact, with our new General Block Exemption Regulation, less than one out of ten State aid measures need to be notified to us for approval.

But of course, adopting new rules is just the start. You also need to help people make the most of the new opportunities. So it’s important to work together with EU governments to help make the shift to the new rules as smooth as we can.

A good partnership can also help to make sure that State support is in line with the rules. We’re working with individual countries to understand why there are sometimes problems with this, and to find solutions that suit each country.

Q You recently travelled to China and Japan. What challenges does globalisation pose for competition policy?

When companies operate globally, then the competition issues we have to deal with become global too. For example, in 2014 we approved a merger between two cement companies, Holcim and Lafarge, which created a business with operations in ninety different countries.

We deal with those challenges by cooperating very closely with competition authorities around the world. To approve Holcim’s purchase of Lafarge, we cooperated with seven other authorities on five continents.

That’s why it’s so important that we keep developing our relationships with other authorities. In China, for example, I discussed cooperation on competition issues with my counterparts in the Chinese administration. In Japan, I agreed with the chairman of the Japan Fair Trade Commission to work on upgrading our existing cooperation agreement, so we can exchange evidence during investigations.

We work together with more than 130 different authorities worldwide through the International Competition Network. So although the challenges of globalisation are substantial, I think we’re ready to deal with them.
**Strategy of DG Competition**

*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. Every effort should be made to maximise the positive contribution of our competition policy in support of our overall priorities and to explain and demonstrate its benefits to citizens and stakeholders at all levels.

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 world-wide and promoting international cooperation in this area.”

---

<table>
<thead>
<tr>
<th><strong>The 10 Juncker Priorities</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mission letter to the Commissioner for Competition</strong></td>
</tr>
<tr>
<td><strong>DG Competition’s Strategic Plan for 2016-2020</strong></td>
</tr>
<tr>
<td><strong>PRESIDENT JUNCKER’S 10 PRIORITIES FOR HIS COMMISSION</strong></td>
</tr>
<tr>
<td><strong>New Boost for Jobs, Growth and Investment</strong></td>
</tr>
<tr>
<td><strong>Connected Digital Single Market</strong></td>
</tr>
<tr>
<td><strong>Resilient Energy Union with a Forward Looking Climate Change Policy</strong></td>
</tr>
<tr>
<td><strong>Deeper and Fairer Internal Market with a Strengthened Industrial Base</strong></td>
</tr>
<tr>
<td><strong>Deeper and Fairer Economic and Monetary Union</strong></td>
</tr>
<tr>
<td><strong>Reasonable and Balanced Free Trade Agreement with the U.S.</strong></td>
</tr>
<tr>
<td><strong>Area of Justice and Fundamental Rights based on Mutual Trust</strong></td>
</tr>
<tr>
<td><strong>Towards a New Policy on Migration</strong></td>
</tr>
<tr>
<td><strong>A Stronger Global Actor</strong></td>
</tr>
<tr>
<td><strong>A Union of Democratic Change</strong></td>
</tr>
</tbody>
</table>
innovation, a better choice of products and services, lower prices, higher quality and greater productivity in the economy as a whole. EU competition policy thus contributes to the wider Commission objectives, for example, 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.

"The European Union is based on the Rule of Law, and competition policy is implemented within our Union of Law.

When we look at individual cases and the Commission takes decisions on them, competition enforcement follows its own principles and rules – and they are cast in stone: it must be impartial; it must be blind to the nationality of the companies we investigate; and it must be impeccable – our decisions are subject to very close scrutiny – internally and by the Union courts – on the facts, on process and on the law.

The Commission’s decisions can be challenged both by the parties – when they think our decisions are too strict – and by third parties – when they think our decisions are too soft.

All that contributes to independence and fairness.

But decisions also have to be seen as independent and fair”.

..."This means that impartiality is simply non-negotiable. Because we know our legitimacy, our credibility and – ultimately – the impact of our action depend on it”.

(Speech given by Commissioner Vestager at CEPS Breakfast entitled “One year in office”, 13 October 2015)

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 Competition’s mission and strategy for the next five years.

What is DG Competition’s mission?
The mission of the Directorate-General for Competition is to enable the Commission to make markets deliver more benefits to consumers, businesses and society as a whole. Competition policy is an indispensable element of a functioning internal market ensuring that all companies compete equally and fairly on their merits.

Competition is not an end in itself. It contributes to an efficient use of society’s scarce resources, 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 thus contributes to the wider Commission objectives, for example, 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.

How is this 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.
Interview with Johannes Laitenberger, Director-General for Competition

You were appointed Director-General of DG Competition in September 2015. What were your first impressions? How do you see your role?

I was struck by DG Competition’s intense work culture. I see my role as essentially maintaining and improving a proactive and forward-looking organisation in any way I can.

In every organisation there is scope for improvement and – as in any other Commission department – we need to make an effort to work smarter and be even more efficient; not least in view of the political imperatives that the EU is facing. In driving reforms, I also believe that close and continuous engagement with staff at all levels is a must. We do this to make markets work better, so that they can provide better outcomes for consumers.

How does DG Competition’s strategy relate to the Commission’s overall strategy?

We cooperate very closely with colleagues across the Commission. We need to understand how our enforcement fits with sector regulation. And we need to consider the implications that initiatives taken by other DGs have for competition policy.

Cooperation goes both ways: it allows us to learn from sectoral expertise in other parts of the Commission, and to share general and public market knowledge that we gain as we apply competition rules.

It goes without saying that in these interactions we are guided by the President’s Political Guidelines and his Mission Letter to Commissioner Vestager. DG Competition’s Strategy for 2016-2020 breaks down these overall guidelines into more detailed steps.

When I say that competition enforcement takes into account the broader policy context, I am not referring to politics. Our work is legally and economically objective. I am referring to the contribution that competition enforcement can bring to the Commission’s objectives.

Can you give some concrete examples of how DG Competition’s work interacts with other parts of the Commission?

To take one example relevant to the Energy Union, one of the priority areas in the President’s Guidelines and Mission Letter, last spring we launched a sector inquiry into State aid for capacity mechanisms. The aim is to examine if capacity mechanisms ensure sufficient electricity supply without distorting competition or trade in the Single Market. DG Energy is associated to our work and the results of the inquiry feed into DG Energy’s Market Design Initiative aimed at making energy markets work better.

DG Competition’s enforcement has also contributed to the Banking Union. During the past eight years, State aid control has played a major role in restructuring the European banking sector, while ensuring a level playing field for banks in the internal market. That intense experience was instrumental in the establishment of the Banking Union, of which State aid control remains an integral part. In this way, competition enforcement helped ensure financial stability, which is crucial for economic operators and citizens.

To the extent that it is possible to prioritise your enforcement action, which types of cases take precedence? Is there a strategic preference for attention-grabbing and spectacular cases that make headlines?

There is no such bias. What matters is the impact that a case may have on the market and, by extension, the protection of consumers’ and citizens’ interests. Sometimes a case can be a priority regardless of the sector. And even a small case might set a precedent with a significant impact on market behaviour.

Can you give some examples of such precedent-setting cases?

Before the Commission’s Motorola and Samsung decisions there was uncertainty as to how competition law applied to injunctions based on standard-essential patents (SEPs) – which are necessary to build smartphones and other devices – or even whether competition law had any role to play at all.

In 2014 the Commission decided that Motorola had abused its dominance by asking for court injunctions against a company that was willing to pay a fair price to use its SEPs. In the same year, Samsung decided not to ask for such injunctions against willing licensees in Europe and entered into commitments which the Commission made legally binding.
In 2015 the Court of Justice – in a case involving Huawei and ZTE – effectively confirmed the Commission’s approach in the Motorola and Samsung cases. Partly thanks to the Commission’s precedent-setting work, the role of competition law and the balance between SEP-holders’ rights and the rights of firms willing to enter into patent licence agreements on fair terms have become much clearer.

Pharmaceutical cases can also raise complex and novel issues at the interface between competition and patent law. Here, too, the Commission may have to lead the way, as it did in a 2005 decision (later upheld by the Court of Justice) involving the multinational pharmaceutical company AstraZeneca and its abuses of the patent and drug-approval systems designed to extend protection for its bestselling anti-ulcer drug Losec.

**Q. What is the strategic approach to fines?**

The ultimate aim of our cartels and antitrust policies is not to levy fines. In a perfect world, there would be no need for fines at all because everyone would follow the rules. But until that degree of compliance is achieved, the Commission and national authorities in the European Competition Network will have to use fines to sanction infringers. Fines must deter others from engaging in anti-competitive conduct and they should of course also be proportionate.

**Q. What is the strategy in merger control? Is the merger control system in need of an overhaul?**

Overall the system works very well – both in substantive and in procedural terms. But there may be room for incremental improvement.

Commissioner Vestager has asked us to examine – based on our case experience – whether transactions that are unlikely to do much harm to competition could go through even more quickly and simply than they do now. Another issue under examination is whether value (and not just turnover) should be built into the notification requirements – for instance, capturing digital markets where firms with low turnover may be highly valued.

In merger control – as in all the other instruments of competition policy and enforcement – a respected competition authority such as DG Competition must never be complacent and never rest on its laurels. Our system must remain nimble. We must be on the lookout for new market realities and emerging business models at all times. We must continue to adapt, evolve and even anticipate change as we have done throughout our history.
WHY COMPETITION POLICY IS GOOD VALUE FOR MONEY

First, competition encourages entry of more efficient firms at the expense of less efficient firms (‘between firm effect’ or allocative efficiency).

Second, it also pushes management to perform better (‘within firm effect’ or productive efficiency).

And, third, it increases innovation (dynamic efficiency).

Researchers at the OECD and the Commission (1) have summarised existing evidence linking competition to efficiency, productivity and growth (2). The graph below illustrates their findings.

Competition policy delivers concrete consumer benefits

In recent years certain competition authorities – in the US, the UK, the Netherlands and the Commission – have begun measuring customer benefits resulting from competition law enforcement in concrete cases.

To take one example: for 2015 the Commission estimated that the benefits for consumers from its cartel decisions amounted to between EUR 0.99 billion and EUR 1.49 billion. Customer savings from merger decisions were found to be between EUR 1.08 billion and EUR 2.69 billion. However, this offers only a partial view of the impact of competition policy.

How does competition translate into higher productivity and growth?

It has also long been known that competition drives growth. It does so because competition raises productivity - the main growth driver in developed economies.

As shown by the graph, there is evidence that removing regulatory barriers leads to more competition, productivity and growth. (3)

But the OECD report also concludes that competition authorities contribute to growth when their action leads to greater competition as a result of competition law enforcement.

The evidence base that competition policy increases growth is growing. This means that competition authorities and competition law not only favour consumers and customers but the economy as a whole.

Last year, staff at the Commission carried out a study based on a macroeconomic model (4) which illustrates how its actions against cartels and anti-competitive mergers lead not only to consumer benefits but may also have positive macroeconomic impacts (5).

In brief, the consumer savings corresponded to a direct impact resulting in lower prices which contributed to growth.

The deterrent effect of actions against cartels and anti-competitive mergers added to the positive impact.

Lower prices combined with deterrence could result not only in higher growth, consumption, employment and labour productivity increasing over time (see figure below) but might also contribute to reducing the income gap between high and low income households.

---

(4) The QUEST model which is often used by the European Commission.

---

**GDP, consumption and labour productivity effect of competition policy measures (percent deviation from baseline)**

![GDP, consumption and labour productivity effect of competition policy measures](image-url)
Opening an investigation into the tax treatment of McDonald's in Luxembourg

On 21 October 2015 the Commission found that Luxembourg and the Netherlands had granted illegal State aid to Fiat Finance and Trade and Starbucks, respectively. The illegal aid was granted following tax rulings providing selective tax advantages. Tax rulings are comfort letters issued by tax authorities clarifying to a company how its corporate tax will be calculated or how special tax provisions are to be interpreted. Tax rulings are as such perfectly legal.

What was problematic about the Fiat and Starbucks tax rulings?

But the specific tax rulings favouring Fiat and Starbucks did not reflect economic reality. Prices for goods and services sold between companies within the Fiat and Starbucks groups (so-called “transfer prices”) did not correspond to market conditions. Nor can the use of complex methods justify prices that depart from a reliable approximation of a market-based outcome. This means that most of the profits earned by Starbucks’ coffee roasting company were shifted abroad, escaping taxation in the Netherlands, while Fiat’s financing company in Luxembourg paid taxes on profits that were underestimated. Luxembourg and the Netherlands must each thus recover EUR 20 - EUR 30 million.

Multinational groups ordered to pay back EUR 700 million to the Belgian State

On 11 January 2016 the Commission found the Belgian Excess Profit tax scheme to be illegal, requiring some 35 multinational companies to pay around EUR 700 million back to the Belgian State. The Belgian Excess Profit tax scheme was established in 2005. It allowed certain multinational group companies to pay substantially less tax, reducing their corporate tax base by between 50% and 90%. The scheme operated to the exclusive benefit of certain multinational groups, while preventing stand-alone companies (i.e. those which did not form part of groups) from claiming similar treatment. Nor did the scheme respect the arm's length principle under which profits should be shared between group companies in accordance with economic reality.

Corporations competing on uneven ground due to reduced tax bills

According to conservative estimates by the OECD, every year USD 100 to 240 billion is lost due to global profit shifting – the equivalent of 4-10% of global corporate tax receipts.

The European Parliamentary Research Service put the revenue lost to corporate avoidance at around EUR 50-70 billion a year in the EU.

The Commission launches investigations into tax rulings

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 Member States. Accordingly, tax rulings that serve to artificially reduce a company’s tax burden are illegal under the EU’s State aid rules.

Against that background, since June 2013 the Commission has investigated the tax ruling practices of some Member States. In December 2014 it extended its investigation to the whole of the EU.

October 2015: the Commission rules that tax advantages granted by Luxembourg and the Netherlands are illegal

On 21 October 2015 the Commission found that Luxembourg and the Netherlands had granted illegal State aid to Fiat Finance and Trade and Starbucks, respectively. The illegal aid was granted following tax rulings providing selective tax advantages. Tax rulings are comfort letters issued by tax authorities clarifying to a company how its corporate tax will be calculated or how special tax provisions are to be interpreted. Tax rulings are as such perfectly legal.

What was problematic about the Fiat and Starbucks tax rulings?

But the specific tax rulings favouring Fiat and Starbucks did not reflect economic reality. Prices for goods and services sold between companies within the Fiat and Starbucks groups (so-called “transfer prices”) did not correspond to market conditions. Nor can the use of complex methods justify prices that depart from a reliable approximation of a market-based outcome. This means that most of the profits earned by Starbucks’ coffee roasting company were shifted abroad, escaping taxation in the Netherlands, while Fiat’s financing company in Luxembourg paid taxes on profits that were underestimated. Luxembourg and the Netherlands must each thus recover EUR 20 - EUR 30 million.

Commissioner Vestager:

“Belgium has given a select number of multinationals substantial tax advantages that break EU State aid rules. It distorts competition on the merits by putting smaller competitors who are not multinational on an unequal footing.”


Opening an investigation into the tax treatment of McDonald’s in Luxembourg

On 3 December 2015 the Commission also opened a formal probe into Luxembourg’s tax treatment of McDonald’s. Its preliminary view is that a tax ruling granted by Luxembourg may have granted McDonald’s advantageous tax treatment in breach of EU State aid rules.

The focus of the investigation is whether the Luxembourg authorities selectively derogated from the provisions of their national tax law and the Luxembourg-US Double Taxation Treaty and thereby gave McDonald’s an advantage not available to other companies in a comparable factual and legal situation.

The European Parliamentary Research Service put the revenue lost to corporate avoidance at around EUR 50-70 billion a year in the EU.

The Commission launches investigations into tax rulings

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 Member States. Accordingly, tax rulings that serve to artificially reduce a company’s tax burden are illegal under the EU’s State aid rules.

Against that background, since June 2013 the Commission has investigated the tax ruling practices of some Member States. In December 2014 it extended its investigation to the whole of the EU.

October 2015: the Commission rules that tax advantages granted by Luxembourg and the Netherlands are illegal

On 21 October 2015 the Commission found that Luxembourg and the Netherlands had granted illegal State aid to Fiat Finance and Trade and Starbucks, respectively. The illegal aid was granted following tax rulings providing selective tax advantages. Tax rulings are comfort letters issued by tax authorities clarifying to a company how its corporate tax will be calculated or how special tax provisions are to be interpreted. Tax rulings are as such perfectly legal.
Other investigations under way

The Commission is also pursuing in-depth investigations into concerns that tax rulings may involve State aid as regards Apple in Ireland and Amazon in Luxembourg.

Commissioner Vestager:

"A tax ruling that agrees to McDonald’s paying no tax on their European royalties either in Luxembourg or in the US has to be looked at very carefully under EU State aid rules. The purpose of Double Taxation treaties between countries is to avoid double taxation – not to justify double non-taxation."


Concern: McDonald’s Europe paid tax neither in EU nor US
Google now has the opportunity to convince the Commission to the contrary. However, if the investigation confirms our concerns, Google would have to face the legal consequences and change the way it does business in Europe.”


THE STATEMENT OF OBJECTIONS TO GOOGLE ON COMPARISON SHOPPING

On 15 April 2015, the Commission sent a Statement of Objections to Google alleging that the company had abused its dominant position in the market for general internet search services in the European Economic Area.

Google is not accused because of its size

For many years and in most Member States, Google’s market share in general internet search exceeds 90%. Holding a dominant position in a market is – as such – not a problem under EU competition law. But dominant companies have a special responsibility not to abuse their powerful market position by restricting competition, either in the market where they are dominant or in neighbouring markets.

What abuse is Google suspected of?

The Commission suspects that Google systematically favours its own comparison shopping product in its general search results pages. The Commission’s preliminary view is that such conduct infringes EU antitrust rules because it stifles competition and harms consumers.

What is a comparison shopping product?

Comparison shopping products allow consumers to search for products on online shopping websites and compare prices among different vendors.

Concern: Google might be favouring ‘Google Shopping’ when displaying general search results

Consumers might not see more relevant results

Other comparison shopping services might not be displayed as prominently and so can’t compete on merit

Does a Statement of Objections involve sanctions?

Sending a Statement of Objections does not prejudge the outcome of the investigation.

Commissioner Vestager: “In the case of Google I am concerned that the company has given an unfair advantage to its own comparison shopping service, in breach of EU antitrust rules.

Google now has the opportunity to convince the Commission to the contrary. However, if the investigation confirmed our concerns, Google would have to face the legal consequences and change the way it does business in Europe.”

How is Google suspected of favouring its own comparison shopping products?

The preliminary conclusion of the Commission’s investigation is that Google systematically favours its own comparison shopping product (currently called “Google Shopping”) in its general search results pages, for example by displaying Google Shopping more prominently on the screen.

In other words, the allegation is that Google artificially diverts traffic from rival comparison shopping services and hinders competitors from competing on the merits.

The Commission is concerned that users do not necessarily see the most relevant results in response to queries – to the detriment of consumers and innovation.

THE STATEMENT OF OBJECTIONS TO GOOGLE ON ANDROID

On 20 April 2016, the Commission informed Google that its preliminary view is that Google has breached EU antitrust rules by:
• requiring manufacturers to pre-install Google Search and Google’s Chrome browser and requiring them to set Google Search as default search service on their devices, as a condition to license certain Google proprietary apps;
• preventing manufacturers from selling smart mobile devices running on competing operating systems based on the Android open source code;
• giving financial incentives to manufacturers and mobile network operators on condition that they exclusively pre-install Google Search on their devices.

In the Commission’s preliminary view, these practices lead to Google Search being pre-installed and set as the default, or exclusive, search service on most Android devices sold in Europe. These practices appear to close off ways for rival search engines to access the market, via competing mobile browsers and operating systems, and harm consumers by stifling competition and restricting innovation in the wider mobile space.

Commissioner Vestager:
“A competitive mobile internet sector is increasingly important for consumers and businesses in Europe. Based on our investigation thus far, we believe that Google’s behaviour denies consumers a wider choice of mobile apps and services and stands in the way of innovation by other players, in breach of EU antitrust rules. These rules apply to all companies active in Europe. Google now has the opportunity to reply to the Commission’s concerns.”


Commission concern:
Google’s Android strategy to protect its search engine on mobile

Most smart mobile devices in Europe and the world run on Android

Smartphones and tablets account for more than half of global internet traffic, and are expected to account for even more in the future. About 80% of smart mobile devices in Europe and in the world run on Android, the mobile operating system developed by Google. Google licenses its Android mobile operating system to third party manufacturers of smart mobile devices.
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 to national borders. The economic potential of breaking down barriers to online activity – EUR 400 billion – exceeds the annual GDP of 19 EU Member States.

To reap these gains, on 6 May 2015 the Commission unveiled its ambitious Digital Single Market Strategy.

As one of many building blocks of that Strategy, the Commission launched – at the same time – an inquiry to find out if companies may be erecting barriers to e-commerce in violation of EU competition rules.

What are the problems in the area of e-commerce?

While one in two Europeans shops online, only 15% shop online across borders. And only 7% of SMEs sell beyond the borders of their own Member State.

Some barriers to shopping across borders are due to factors such as language, differing national laws and consumer preferences. But at least part of the problem is caused by companies signing agreements that stop retailers selling cross-border through refusals to deliver abroad, refusal to accept payments, rerouting and website access blocks.

The importance of e-commerce in Europe

E-commerce is linked to close to 2.5 million jobs and it is growing fast. In 2013 alone, e-commerce expanded by 17%, reaching a turnover of EUR 352 billion. If suppliers’ restrictions were removed, cross-border e-commerce would – according to some studies – likely increase by 10% by value and 6% by volume. In 2014, Europeans spent almost EUR 1.5 billion on online TV and video subscriptions. In 2020 that figure is expected to climb to about EUR 5 billion. Online delivery of digital content to individuals, such as films, TV series, broadcasts of sport events and music, is one of the biggest e-commerce sectors in the EU.
Q What practical findings have you found most relevant from the perspective of EU consumers?

In mid-March 2016 the Commission published a first analysis of so-called geo-blocking, whereby online shoppers are prevented from purchasing consumer goods or accessing and using digital content services because of the shopper’s location or country of residence. This is one factor hindering cross-border e-commerce by EU consumers.

Geo-blocking takes different forms. Consumers may be blocked from accessing a certain website based on the IP addresses or from purchasing a certain product on the basis of the credit card details.

The results of the sector inquiry show that geo-blocking is widespread. 38% of the responding retailers selling consumer goods and 68% of digital content providers replied that they geo-block consumers that are located in other EU Member States than those in which they are established or operate.

In some cases, geo-blocking stems from agreements between suppliers and distributors. Such agreements may restrict competition in the single market in breach of EU antitrust rules. This however needs to be assessed on a case-by-case basis.

A more detailed analysis of all findings will be presented in a Preliminary Report due to be published for public consultation in mid-2016. It will not only cover geo-blocking but also any other potential competition concerns affecting European e-commerce markets. The Final Report is scheduled for the first quarter of 2017.

Q How do you see the results feeding into the Commission’s Digital Single Market Strategy?

The sector inquiry is closely linked and complementary to the DSM strategy. Its results may lead to enforcement in order to remove restrictions on cross-border e-commerce and may also provide additional information in support of legislative initiatives in the context of the Digital Single Market strategy to tackle barriers to cross-border e-commerce more generally.
TOWARDS A BORDERLESS MARKET FOR DIGITAL CONTENT: THE PAY-TV CASE

Online barriers remain

There is no better place for trade in the single market than the internet, where physical location is irrelevant.

But looking at online trade across national borders in the EU single market the situation is still far from ideal: there is a whole series of barriers – linguistic, regulatory and contractual – that keep the online world fragmented along national boundaries in Europe. The promise of the digital revolution in the single market was precisely to tear down those barriers.

With its Digital Single Market Strategy, the Commission launched a coordinated drive to reach this goal. Competition policy is playing its part.

Competition procedures explained: the Statement of Objections

A Statement of Objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them and the parties can reply in writing to the objections raised against them. The addressees can examine the documents in the Commission’s investigation file, reply in writing and request an oral hearing to present their comments before representatives of the Commission and national competition authorities. The Commission takes a final decision only after the parties have exercised their rights of defence.

Tearing down national barriers: the pay-TV investigation

In July 2015, the Commission sent a Statement of Objections to Sky UK and six major US film studios: Disney, NBC Universal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros, which may have erected anti-competitive barriers that restrict consumers from watching popular films of their choice.

In that Statement, the Commission preliminarily concluded that the agreements signed between the studios and Sky included clauses that prevent Sky UK from allowing consumers in other EU countries to access its pay-TV services available in the UK and Ireland, which is where Sky promotes and advertises its services.

Some agreements also contain clauses requiring the studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland, which is where Sky promotes and advertises its services.

The Commission’s concerns

Audiovisual content, such as popular films, is licensed by the US film studios to pay-TV broadcasters on an exclusive and territorial basis, i.e. typically to a single pay-TV broadcaster in each Member State (or a few Member States with a common language).

The studios’ ability to grant broadcasters the exclusive rights to broadcast content in a certain territory only – in other words, territorial exclusivity as such – is not an issue in this case.

What the Commission is concerned about is the absolute territorial protection consisting of explicit contractual restrictions. Those restrictions are preventing broadcasters from providing their services across an EU national border to viewers who wish to access such services and are willing to pay for them.

They are effectively eliminating cross-border competition between pay-TV broadcasters and partitioning the single market along national borders. The Commission’s preliminary conclusion is that, in the absence of convincing justification, those
restrictions constitute a serious violation of EU rules that prohibit anti-competitive agreements.

To address the Commission’s competition concerns, Paramount Pictures has offered a number of commitments, which would cover both online services and satellite broadcast services and would apply for a period of five years. The Commission has published the full text of the commitments and interested parties can submit comments within one month from the date of publication (so-called ‘market test’). If the market test indicates that the commitments are a satisfactory way of addressing the Commission’s competition concerns, the Commission may adopt a decision making the commitments legally binding on Paramount Pictures.

**Enabling European consumers to watch TV anywhere on the continent**

Prior to this Statement of Objections, the Commission had also set out concerns as regards licensing agreements between the film studios and other major European broadcasters (Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain). The Commission continues to examine cross-border access to pay-TV services in these Member States.

These investigations have exposed the use of “geo-blocking”, the practice of restricting access to content based on geographical location. The vision behind creating a Digital Single Market is that any creative content, whether film, music or television, should be available across the EU.

**Two types of antitrust decisions**

When the Commission decides to pursue an antitrust case, it will most likely adopt one of two types of decision.

The first is formally to find an infringement pursuant to Article 7 of Regulation (EC) No 1/2003 on the implementation of Articles 101 and 102 of the Treaty ("Regulation 1/2003"). The Commission may require the company concerned to stop the infringement, impose remedies, and/or impose a fine ("prohibition decision" or "Article 7 decision").

Alternatively, the Commission may take a “commitment decision” (or “Article 9 decision”) based on Article 9 of Regulation 1/2003. That provision allows companies to offer commitments that are intended to address the competition concerns identified by the Commission. If the Commission accepts these commitments, it adopts a commitment decision making them binding on the parties without, however, establishing an infringement.
20

TeliaSonera’s and Telenor’s attempt to merge in Denmark

On 11 September 2015, before the Commission issued a formal decision on a proposed joint venture between the Danish operations of two Scandinavian telecom operators – the Swedish-Finnish TeliaSonera and the Norwegian Telenor – the parties abandoned the transaction. The merger would have created the largest mobile network operator in Denmark, giving rise to a highly concentrated market structure. The Commission’s view was that only the creation of a fourth mobile network operator would prevent harm to competition in Danish mobile markets.

TeliaSonera’s and Telenor’s attempted merger in Denmark

On 11 September 2015, before the Commission issued a formal decision on a proposed joint venture between the Danish operations of two Scandinavian telecom operators – the Swedish-Finnish TeliaSonera and the Norwegian Telenor – the parties abandoned the transaction. The merger would have created the largest mobile network operator in Denmark, giving rise to a highly concentrated market structure. The Commission’s view was that only the creation of a fourth mobile network operator would prevent harm to competition in Danish mobile markets.

Commissioner Vestager on the aborted deal:

“...If the deal had materialised, there would have been two large mobile operators – the merged entity and the former national monopolist, TDC. Between them, they would have had around 80% of the market. The third, smaller player would have been Hi3G ... And while the companies claimed that the merger would lead to greater investments, our investigation did not show how these investments would materialise. And in any event, even if the investments did materialise, we could not see how the benefits for consumers would outweigh the expected price increases induced by the loss of competition.”

(Speech at Fordham, “Competition in telecom markets”, 2 October 2015)

The key role of competition in the liberalisation of former telecoms monopolies

In the 1990s the EU’s telecom industry moved from monopoly towards competition. To ensure competition, the incumbents – i.e. the ex-monopolists – were made subject to so-called ex-ante regulation. This meant they had to provide access to their fixed networks to alternative operators.

Competition law enforcement plays a key role in ensuring the success of the liberalisation process. The European Commission took action against incumbents such as Telefónica of Spain, Deutsche Telekom, Slovak Telekom, and Telekomunikacja Polska, who were trying to use anti-competitive means to protect their domestic market positions.

Absence of a genuine pan-European telecoms market

As the names of these firms suggest, a pan-European telecoms market is yet to come into being.

While the biggest companies in the EU are present in multiple territories, consumers in each territory are tied in national markets. They cannot access the same offerings as their neighbours across national borders.

Mergers must still be assessed Member State by Member State

The current market conditions mean that mobile mergers are assessed on the basis of national geographic market definitions. The past few years have seen a number of mobile mergers in Europe in countries such as Austria, Ireland and Germany. These recent examples involved mergers which reduced the number of market players from four to three. Each was approved subject to conditions.

SUPPORTING COMPETITION, INVESTMENT AND CONSUMER BENEFITS IN THE TELECOM SECTOR

The key role of competition in the liberalisation of former telecoms monopolies

In the 1990s the EU’s telecoms industry moved from monopoly towards competition. To ensure competition, the incumbents – i.e. the ex-monopolists – were made subject to so-called ex-ante regulation. This meant they had to provide access to their fixed networks to alternative operators.

Competition law enforcement plays a key role in ensuring the success of the liberalisation process. The European Commission took action against incumbents such as Telefónica of Spain, Deutsche Telekom, Slovak Telekom, and Telekomunikacja Polska, who were trying to use anti-competitive means to protect their domestic market positions.

Absence of a genuine pan-European telecoms market

As the names of these firms suggest, a pan-European telecoms market is yet to come into being.

While the biggest companies in the EU are present in multiple territories, consumers in each territory are tied in national markets. They cannot access the same offerings as their neighbours across national borders.

Mergers must still be assessed Member State by Member State

The current market conditions mean that mobile mergers are assessed on the basis of national geographic market definitions. The past few years have seen a number of mobile mergers in Europe in countries such as Austria, Ireland and Germany. These recent examples involved mergers which reduced the number of market players from four to three. Each was approved subject to conditions.
Commissioner Vestager:
"Why should a company invest and innovate if there is no competitor to provide the impetus? I can still remember the days of national telecom monopolies in the EU: high prices, low service quality and less innovative products ... So far, I have not seen compelling evidence that would support the existence of a trade-off between competition and investment. Research seems to suggest that a reduction of the number of players from four to three in a national mobile market in the EU can lead to higher prices for consumers. But not that it leads to more investment per subscriber. In other words, it does not seem to lead to significantly higher overall investment by carriers."

(Speech at the 42nd Annual Conference on International Antitrust Law and Policy at Fordham University, "Competition in telecom markets", 2 October 2015.)

**THREE LESSONS LEARNED FROM THE ATTEMPTED DANISH MERGER**

**Lesson one: no magic number**
There is no magic number of mobile network operators in a given country. Thus, the Commission has not laid down a general rule saying that three or four network operators are necessary. Each market is different and must be assessed individually.

**Lesson two: it is competition that drives the right type of investment**
It is competition that stimulates the right kind of investment. This is so because in competitive markets companies have strong incentives to invest and innovate to offer superior products, winning business from their competitors.

What really matters is the impact of investment on quality and price. When the Commission assesses telecoms mergers it is thus not only about low prices for customers. It is also about choice and innovation. In each case, the Commission carefully assesses any claims that the merger would lead to increased investment to the benefit of consumers – for example in terms of increased coverage. But only a fraction of such efficiency claims that the Commission has looked into so far has met that standard.

Mobile network operators can also achieve efficiencies by sharing mobile networks without the need for outright mergers.

**Lesson three: the need to create an extra mobile network operator depends on the facts of each case**
An effective remedy in the Danish case would have been the creation of a fourth mobile network operator (MNO). This would have replaced the competitive pressure eliminated by the merger.

Some have questioned whether this means that the Commission is having second thoughts about the remedies in the merger cases cleared in Austria in 2012 and in Ireland and Germany in 2014. In those cases, the Commission considered that the establishment of new mobile virtual network operators (MVNO), which is a less structural solution than creating a new MNO, was sufficient to resolve the competition concerns.

In general, the more structural the remedy (i.e. the conditions imposed on the merging parties when needed to safeguard competition) the better. That preference for structural remedies applies across the board, not just to telecoms.

The decision follows an in-depth investigation by the Commission of the deal, which would have combined Telefónica UK’s “O2” and Hutchison 3G UK’s “Three”, creating a new market leader in the UK mobile market. The takeover would have removed an important competitor, leaving only two mobile network operators, Vodafone and BT’s Everything Everywhere (EE), to challenge the merged entity. The significantly reduced competition in the market would likely have resulted in higher prices for mobile services in the UK and less choice for consumers than without the deal. The takeover would also likely have had a negative impact on quality of service for UK consumers by hampering the development of mobile network infrastructure in the UK. Finally, the takeover would have reduced the number of mobile network operators willing to host other mobile operators on their networks.

**THE COMMISSION PROHIBITS HUTCHISON’S PROPOSED ACQUISITION OF TELEFÓNICA UK**

On 11 May 2016 the Commission blocked the proposed acquisition of O2 by Hutchison under the EU Merger Regulation. It had strong concerns that UK mobile customers would have had less choice and paid higher prices as a result of the takeover, and that the deal would have harmed innovation in the mobile sector.

(Commissioner Vestager: “Why should a company invest and innovate if there is no competitor to provide the impetus? I can still remember the days of national telecom monopolies in the EU: high prices, low service quality and less innovative products … So far, I have not seen compelling evidence that would support the existence of a trade-off between competition and investment. Research seems to suggest that a reduction of the number of players from four to three in a national mobile market in the EU can lead to higher prices for consumers. But not that it leads to more investment per subscriber. In other words, it does not seem to lead to significantly higher overall investment by carriers.”

(Speech at the 42nd Annual Conference on International Antitrust Law and Policy at Fordham University, “Competition in telecom markets”, 2 October 2015.)
ENSURING THAT DOMINANT GAS SUPPLIERS IN CENTRAL AND EASTERN EUROPE PLAY BY THE RULES

The Commission’s preliminary view: Gazprom may be abusing its dominance in Central and Eastern Europe

Gazprom is the dominant gas supplier in a number of Central and Eastern European countries, where it has a market share well above 50% and in some cases even up to 100%.

On 22 April 2015 the Commission sent a Statement of Objections to Gazprom. It alleges that some of the Russian gas firm’s business practices in Central and Eastern Europe fragment the EU’s single market.

The Statement of Objections is based on a thorough and in-depth investigation, including on-site inspections at Gazprom’s premises in September 2011.

Summary of the three suspected abuses

In summary, the Commission’s initial view is that Gazprom broke EU antitrust rules through a strategy to partition 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:

1. hindering cross-border gas sales
2. charging unfair prices
3. making gas supplies conditional on obtaining unrelated commitments

The Commission is now analysing Gazprom’s response to the Statement of Objections, in order to assess whether the Commission should proceed to a formal prohibition decision. At the same time Gazprom has indicated its willingness to offer commitments to resolve the Commission’s antitrust concerns. Both possible outcomes are being considered.

Lithuania and Poland – which is unfair when compared for instance to benchmark prices.

3) Third, Gazprom may have made gas supplies to Poland and Bulgaria conditional on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure.

GAZPROM may be abusing its dominant position in Central and Eastern Europe

- by preventing cross-border flows of gas
- by charging unfairly high prices
- by extracting commitments, in return for gas, to keep control over pipelines
The Energy Union

The Commission’s enforcement action in cases involving partitioning of the single market in electricity and gas supports one of the top priorities in the President’s Political Guidelines from July 2015 – the creation of an Energy Union. Reinforcing and expanding the degree of interconnection and removing barriers to trade between national gas and electricity markets is one of the objectives of the Energy Union.

Connecting gas markets

Number of supply sources a country may access through infrastructure
(at least 5% share)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

Presence of Liquefied Natural Gas Terminal(s)

Today

After 2022

BREAKING DOWN BARRIERS TO CROSS-BORDER ELECTRICITY FLOWS IN THE SINGLE MARKET

The Commission accepted commitments by Bulgarian Energy Holding to open up Bulgaria’s wholesale electricity market.

On 10 December 2015 the Commission ensured that commitments made by Bulgarian Energy Holding (BEH) became legally binding. BEH undertook to end its territorial restrictions dividing electricity markets along national lines and to set up a power exchange in Bulgaria on which it sells electricity.


Commissioner Vestager:

“What we outline in the Statement of Objections is our preliminary view that Gazprom’s overall strategy is abusive. Gazprom has adopted a strategy to partition the EU Single Market, through different territorial restrictions, including in contracts with its customers and also through other measures. We consider that in contracts supplying the eight different countries, in different forms, Gazprom has been partitioning the market. For example, one of the measures under investigation would be that a customer of Gazprom in one country is contractually bound not to re-export gas to another Member State. All these clauses lead to one result and appear to have one purpose: Gas purchased in one country cannot be sold to customers in another country, which means that purchasers do not have access to gas in other territories at potentially more competitive prices.”

The aim of capacity mechanisms: to prevent electricity blackouts

The term “capacity mechanism” sounds technical and abstract. But it is about something very concrete: it is taxpayers’ money that EU Member States spend to keep the lights on. Capacity mechanisms potentially affect every home and organisation in Europe. The subsidies Member States pay for them do not mean paying for electricity as such. Instead they 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 in critical hours if they are willing and able to do so.

Some EU countries already support capacity mechanisms out of concern that they may have insufficient electricity capacity in the coming years. In other words, they fear that the electricity supply to some consumers would have to be reduced or cut during critical hours. Today one EU Member State in two has such a capacity mechanism in place or is planning to introduce one. And they come in all shapes and sizes. They range from market-wide schemes including all possible types of capacity providers to measures designed to help build just one power plant. Other capacity mechanisms merely keep existing plants on the grid. Those existing capacity mechanisms have sprung up without much coordination between Member States and sometimes even without coordination within the Member State concerned. One EU Member State even subsidises four types of capacity mechanisms in parallel.

Why did the Commission launch an inquiry?

To address the significant uncertainty caused by the novelty of capacity mechanisms, in April 2015 the Commission launched a sector inquiry into Member States’ existing and planned capacity mechanisms.

Governments have a legitimate interest in ensuring secure electricity supplies. But the Commission’s job under the EU Treaties is to ensure that public measures to support investment do not unfairly favour some producers or technologies over others, and that trade in electricity across the single market is not hindered.

To take one example: improving electricity grid connections between EU Member States may address the problem more efficiently than building new power stations.

Stakeholder feedback

The Commission received responses from, among others, producers using renewable and conventional sources, traders, electricity exchanges, network operators and regulators.

The link between renewable energy use and capacity mechanisms

Capacity mechanisms are intimately linked to the rise in electricity produced from renewable sources. Renewable electricity plays a crucial role in transitioning to a sustainable and decarbonised economy in Europe, as energy makes up 60% of all CO₂ emissions. Indeed, the rollout of renewables in the EU over the past decade contributed to clinching the Paris COP21 climate deal by helping to convince other countries – notably developing countries – that decarbonisation is achievable.

But the expanding use of renewables poses challenges. As wind and solar energy are directly dependent on changing weather conditions, they cannot by definition provide consistent levels of power to the electricity grid. That in turn has a knock-on effect on the existing electricity system. Conventional electricity generation technology – such as gas and coal fired plants – typically incur higher operating costs than renewables. Investment costs for such conventional plants are mostly recovered when demand peaks or when renewables are not available, making long-term investment decisions more difficult. Indeed, fewer conventional generation plants are being built as a result.

The sector inquiry focuses on eleven Member States

The sector inquiry covers a representative sample of Member States that have capacity mechanisms in place or are considering them, namely Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain, and Sweden.
The findings have also been fed into the Commission’s legislative work with a view to improving the design of the EU’s electricity markets. The information gathered may also be useful for State aid enforcement in individual cases.

Key findings of the inquiry

The inquiry confirmed that capacity mechanisms may sometimes be necessary to deliver security of supply in the short to medium term. The Commission’s State aid rules recognise this – provided there is a real and demonstrated need.

But it also suggests that capacity mechanisms are at times used as quick fixes to avoid real reforms. If, for example, consumers were given a stronger incentive to respond to price increases and demand peaks, they would reduce their consumption and there would be less need to introduce a mechanism to support peak power plants.

The inquiry confirmed that the fundamental answer to security of electricity supply is a well-functioning internal EU energy market. Europe’s grids need to be better connected. When clouds cover the solar power plants in Spain, the wind turbines off the coast of Scotland may still be spinning.

Finally, the inquiry has found that many of the existing and planned capacity mechanisms appear to be ill-designed. For example, they do not include all types of generation technologies that can help solve the problem. This disadvantages certain capacity providers and makes the mechanisms more expensive for consumers. In particular, in most Member States, the contribution of capacity by Member States to security of supply is not properly taken into account.

Making energy flow in Europe

INTERCONNECTORS allow energy to flow between countries

CLEAR TARGETS

Last October, European leaders set clear targets. By 2020, every Member State should have interconnection capacity of at least 10% of the installed electricity capacity in place.

The European Council also insisted on the need to continue working to reach a 15% interconnection target by 2030, as proposed by the Commission.

Overview of results from interim reports:

Different types of capacity mechanisms

<table>
<thead>
<tr>
<th>Tender for new capacity</th>
<th>Strategic reserve</th>
<th>Targeted capacity payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium**</td>
<td>Belgium</td>
<td>Italy</td>
</tr>
<tr>
<td>France</td>
<td>Denmark</td>
<td>Poland</td>
</tr>
<tr>
<td>Ireland**</td>
<td>Germany</td>
<td>Portugal***</td>
</tr>
<tr>
<td></td>
<td>Poland</td>
<td>Spain***</td>
</tr>
<tr>
<td></td>
<td>Sweden</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Germany (Interruptibility Scheme)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ireland (Interruptibility Scheme)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Italy (Interruptibility Scheme)**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Poland (Interruptibility Scheme)**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Portugal (Interruptibility Scheme)**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Spain (Interruptibility Scheme)**</td>
<td></td>
</tr>
<tr>
<td>Central buyer</td>
<td>De-central obligation</td>
<td></td>
</tr>
<tr>
<td>Ireland*</td>
<td>France</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Italy*</td>
<td></td>
</tr>
</tbody>
</table>

* Planned Mechanism (or being implemented)
** Past Mechanism (or never implemented)
*** Multiple capacity mechanism of the same type

The European Council also insisted on the need to continue working to reach a 15% interconnection target by 2030, as proposed by the Commission.
Overcapacity in steel

The EU’s steel sector forms the basis of many industrial value chains. The steel sector in Europe has an annual turnover of EUR 166 billion and it accounts for 1.5% of EU GDP. In 2015 it provided 328,000 direct jobs with an even greater number of dependent jobs.

The EU is the second steel producer after China, producing on average 170 million tonnes of crude steel per year.

At the same time, world steel markets are suffering from significant overcapacity. The overcapacity in China alone has been estimated at around 350 million tonnes, almost double the EU’s annual production.

The EU protects the steel sector against unfair competition from abroad

The overcapacity has given rise to an unprecedented wave of unfair trading practices. In 2015 and early 2016 alone, the Commission had to launch ten new investigations against unfair trading practices relating to steel.

Supporting the steel industry to make it more competitive

The EU supports the industrial competitiveness of its firms in many ways. The EUR 315 billion Investment Plan for Europe, the Commission’s Single Market Strategy and the High Level Group on Energy-Intensive Industries are just some examples.

The EU is competitive in high value added steel

Steel qualities span a wide range. High-value steel prices may exceed commodity steel prices by a factor of ten.

The European steel industry remains a world leader in the highly technologically specialised product segment. Mainly due to its strong position in high quality products, the EU’s overall trade balance in steel is positive.

The Commission encourages Member States to make the best of the modernised State aid framework

State aid rules are geared towards promoting excellence through aid in areas such as Research, Development and Innovation, and the environment.

Indeed, on 16 March 2016 in its Communication ‘Steel: Preserving sustainable jobs and growth in Europe’, the Commission encouraged Member States to make the best use of the modernised State aid framework to support the steel industry, in particular:

- More support allowed for cross-border industry research or technology projects of common European interest (IPCEI).
- State aid rules for R&D&I allow public support to incentivise energy-intensive users to develop innovative solutions, such as carbon capture and use (CCU) technologies.
- In respect of energy costs faced by energy-intensive industries, Member States can decide to compensate indirect financing costs of renewable energy support schemes.
- The Emission Trading System (ETS) guidelines allow Member States to offset higher electricity costs faced by some energy-intensive industries.
**HELPING EU WORKERS AFFECTED BY GLOBALISATION**

The European Globalisation Adjustment Fund (EGF) can co-fund up to 60% of the total cost of active labour market measures helping workers finding new jobs where major redundancies have occurred. Approximately 5000 workers have already been targeted by EGF assistance in the whole basic metals sector.

**Due to chronic overcapacity failing steel firms cannot be bailed out**

Already in the mid-1990s – against the background of chronic overcapacity plaguing the EU’s steel sector – the Member States and the Commission agreed not to bail out failing steel firms. Indeed, experience shows that in general bailouts of failing firms undermines competition in the single market and risks causing harmful escalating subsidy races between Member States. It is certainly no long-term cure.

Commissioner Vestager in charge of competition policy, stated:

“Steelmakers across the EU are struggling with worldwide overcapacity and strong imports – the response to this challenge must be to improve the sector’s long-term global competitiveness. Therefore, EU State aid rules enable Member States to for example support research activities or relieve energy costs of steel companies, and the Commission tackles international trade distortions using anti-dumping or anti-subsidy measures. It is also why EU countries and the Commission have put in place strict safeguards against State aid to rescue and restructure steel companies in difficulty. This avoids harmful subsidy races between EU countries and that uncontrolled State aid in one EU country can unfairly put at risk thousands of jobs across the EU.”


**Steel product markets are highly heterogeneous**

- **Chemical composition**
- **Finishing**
- **Shape**

- Commodity: 500€/ton
- High value: 5000€+/ton
From bail-out to bail-in

In January 2015 the Bank Recovery and Resolution Directive (BRRD) entered into force, setting out the rules for the resolution of banks and large investment firms in all EU Member States. The co-legislators decided in the BRRD that, when a bank is in need of State aid, such aid notified to the Commission after 1 January 2015 can only be granted if the bank is put into resolution, in compliance with the provisions of the BRRD that apply in the event of a bank resolution in addition to EU State aid rules.

State aid rules have been used to coordinate the response of Member States and to preserve the level playing field in the banking sector. They also played a key role in preparing the transition to the Banking Union, of which they remain an integral part, guaranteeing equal treatment between the Member States that are in the Banking Union and those that are not.

State aid rules need to strike a careful and difficult balance: on one hand, to preserve financial stability, and on the other hand, to minimise the cost for the taxpayers and distortions of competition between banks and across Member States in the single market. But they also have to make sure that aided banks restructure and return to long-term viability (and if not, exit the market in an orderly manner), to be able to resume their pivotal role in supporting the real economy.
Supporting the restructuring of the banking sector in Greece, Cyprus and Portugal

State aid rules have been playing a key role in supporting the Commission’s effort, together with the International Monetary Fund (IMF) and the European Central Bank (ECB), in the financial sector programs in the countries which have received international financial assistance.

The Commission approved the resolution plans of the four banks in separate decisions under EU State aid rules, finding the resolution measures in line with the overarching objective of preserving financial stability. Existing shareholders and subordinated debt holders contributed to the costs.

The Commission’s decisions enabled the four banks’ orderly exit from the market in a way that minimises both the use of public funds and any competition distortions resulting from the measures. Customer deposits remained fully protected.

In November 2015, the Italian authorities decided to use the bank resolution tools for the first time in Italy, when four small banks (combined market share of about 1% in Italy), all of which had already been under special administration, were put into resolution by the Bank of Italy in line with the BRRD.
Between November and December 2015, the Commission approved State aid measures for the recapitalisation of two of the four largest Greek banks, in order to address capital shortfalls identified by the European banking supervisor. The banks submitted restructuring plans aimed at ensuring long-term viability, which would allow them to refocus on lending to Greek businesses and support the recovery of the Greek economy.

The Commission is also ensuring consistent application of State aid rules to the banking sector in the framework of the Economic Adjustment Programme in Cyprus. In particular, in December 2015 the Commission assessed a capital injection in favour of the Cypriot Cooperative Central Bank and its subsidiaries and found it to be in line with EU State aid rules. To the Commission, it was crucial that the bank restructured so that it now can cover potential capital needs by raising money from private investors, thereby contributing to the recovery of the Cypriot economy on a sustainable basis.

As regards Portugal, which exited its adjustment programme in 2014, the Commission approved under EU State aid rules a prolongation of Portuguese State guarantees on bonds issued by the bridge bank Novo Banco, and State aid to support the resolution of Banif. In particular, as Banif’s return to viability could not be demonstrated since Portugal granted aid for its rescue in early 2013, Portugal decided to resolve the bank, thus allowing with the approved measures Banif’s orderly exit from the market and the take-over of a significant part of its activities for the benefit of its customers, to help underpin the financial stability of the Portuguese banking sector.

In the period 2008-2015, the Commission took almost 500 State aid decisions, determining the restructuring or orderly liquidation of 117 European banking institutions.

In other words, as a result of the crisis, around 30% of the European banking sector is or has been under State aid control.

In 2008-2014 the aid provided in capital-like instruments (recapitalisations and impaired asset measures) was around EUR 640 billion. The maximum outstanding amount of guarantees and other liquidity measures such as loans was around EUR 1,300 billion (more than 9% of the EU’s GDP in 2014).
List of State aid temporary rules established in response to the economic and financial crisis

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 July 2013</td>
<td>Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (&quot;Banking Communication&quot;) - This Communication replaces the 2008 Banking Communication and supplements the remaining crisis rules</td>
</tr>
<tr>
<td>1 December 2011</td>
<td>Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis</td>
</tr>
<tr>
<td>1 June 2011</td>
<td>DG Competition Staff Working Document - The application of State aid rules to government guarantee schemes covering bank debt issued after 30 June 2011</td>
</tr>
<tr>
<td>1 December 2010</td>
<td>Communication from the Commission on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis.</td>
</tr>
<tr>
<td>23 July 2009</td>
<td>Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules.</td>
</tr>
<tr>
<td>25 February 2009</td>
<td>Communication from the Commission on the Treatment of Impaired Assets in the Community Banking sector</td>
</tr>
<tr>
<td>5 December 2008</td>
<td>Communication from the Commission on Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition.</td>
</tr>
</tbody>
</table>
Charges for card payments affect all consumers – online and offline

Every day, when shopping for food, clothes or purchasing anything online, consumers use payment cards. Payments by card play a key role in the single market, both for domestic purchases and for purchases across borders or through the internet. European consumers and businesses make more than 40% of their non-cash payments per year through payment cards.

Each time a consumer uses a payment card in a shop or online, the bank of the retailer (the ‘acquiring bank’) pays a fee called an ‘interchange fee’ to the cardholder’s bank (the ‘issuing bank’). The acquiring bank passes the interchange fee on to the retailer who includes it, like any other cost, in the final price he charges consumers for his products or services. Interchange fees are thus passed on to all consumers, even to those who do not use cards but pay in cash.

**Creating a more competitive card payment market: the MasterCard investigation**

The Commission has been fighting competition distortions in the market for payment cards for almost a decade. The most recent effort is the Statement of Objections sent to MasterCard in July 2015.

The Commission is concerned that MasterCard may be artificially raising the costs of card payments, harming consumers and retailers in the EU. The Commission’s concerns focus both on the rules that MasterCard applies to cross-border transactions within the EU, as well as the fees charged to retailers for receiving payments made with cards issued outside Europe.

Following the Statement of Objections, MasterCard had the opportunity to respond to the Commission’s charges. If its preliminary view is confirmed, the Commission can impose a fine on MasterCard.

**The Commission’s two concerns vis-à-vis Mastercard**

The Statement of Objections raises two concerns:

- Interchange fees still vary considerably from one EU Member State to another. MasterCard’s rules prevent retailers in a country with high-interchange fees from benefitting from lower interchange fees offered by an acquiring bank located in another Member State. These rules may be limiting banks’ possibilities to compete cross-border on price for services to receive card payments, thus restricting competition and leading to higher prices for retailers and consumers alike.
These fees have been challenged by national competition authorities and ultimately lowered in several countries. Building on existing antitrust case-law in the payment sector, in April 2015 the Council of the EU and the European Parliament adopted the Interchange Fee Regulation, which has put a cap on interchange fees for cards issued and used in Europe (a maximum of 0.20% for debit cards and 0.30% for credit cards). The Interchange Fee Regulation will lead to lower costs for EU retailers and establish a level playing field for the card payment market as a whole. However, the caps in the Regulation do not apply to inter-regional transactions, one of the two issues relevant in the current MasterCard investigation.

The high levels of MasterCard’s “inter-regional interchange fees” may not be justified. These fees are paid by an acquiring bank for transactions made in the EU with MasterCard cards issued in other regions of the world. For example, the fees paid by an acquiring bank when a Chinese tourist uses his card to pay his restaurant bill in Brussels are up to five times higher than those paid when a consumer uses a card issued in Europe. These inter-regional fees represent hundreds of millions of euros each year. By increasing prices for retailers, they may in turn lead to higher prices for products and services for all consumers, and not only those using cards issued outside the EU or paying with cards.

Combining competition enforcement with EU legislation

Most EU transactions are domestic (i.e., when a consumer uses his card in his own country), and there are wide variations in interchange fees between countries.

These fees have been challenged by national competition authorities and ultimately lowered in several countries.

Building on existing antitrust case-law in the payment sector, in April 2015 the Council of the EU and the European Parliament adopted the Interchange Fee Regulation, which has put a cap on interchange fees for cards issued and used in Europe (a maximum of 0.20% for debit cards and 0.30% for credit cards). The Interchange Fee Regulation will lead to lower costs for EU retailers and establish a level playing field for the card payment market as a whole. However, the caps in the Regulation do not apply to inter-regional transactions, one of the two issues relevant in the current MasterCard investigation.

Effective implementation of the Interchange Fee Regulation is estimated to reduce hidden fees for consumer cards by around EUR 6 billion a year.

A decade of Commission’s efforts on interchange fees

In December 2007, the Commission found that MasterCard’s interchange fees on cross-border transactions in the European Economic Area (e.g., when a Belgian citizen uses his card to pay in a shop in France) restricted competition between banks. In September 2014, the Commission’s findings in the decision were confirmed by the Court of Justice.

In 2009, to comply with the Commission’s decision, MasterCard capped the (intra-EEA) cross-border interchange fees applied by its member banks to 0.20% for debit cards and 0.30% for credit cards, but did not reduce their other interchange fees.

In December 2010 and February 2014 respectively, the Commission also adopted decisions making legally binding commitments offered by Visa Europe (an association of banks) to cap at the same levels (0.20% and 0.30%) the interchange fees set in the EEA for debit cards and credit cards.
OVERHAULING STATE AID RULES TO UNLOCK THE EU’S GROWTH POTENTIAL

The most ambitious reform of State aid control to date

A well-functioning single market requires effective State aid control, to ensure that the market remains level and open without being distorted by Member States favouring some actors to the detriment of others. Stronger and better-targeted State aid control can boost Europe’s growth potential by encouraging the design of more effective aid measures to promote economic growth and job creation.

To this end, starting in May 2012 the Commission began an ambitious reform package called State Aid Modernisation (SAM), which has now been completed. SAM is a change in governance of EU State aid policy that allows better allocation of public resources and promotes higher efficiency and better quality of policy interventions.

The revamped State aid framework ensures that public support helps mobilise private investment to contribute to important objectives of common interest, while minimising distortions of competition and of well-functioning competitive markets.

The modernised rules on aid for RDI, risk finance, regional development, broadband and energy

- The Research, Development and Innovation (R&D&I) Framework facilitates the granting of aid measures for research, development and innovation activities, as a complement to private funding.
- The Risk Finance State aid guidelines permit more rapid and generous distribution of risk finance aid to innovative and growth-oriented SMEs and mid-caps.
- The Regional Aid Guidelines promote investments in projects that bring real added value for regional development, especially in Europe’s most disadvantaged regions.
- The Broadband Guidelines help Member States tackle funding gaps and market failures when it comes to providing adequate broadband coverage, especially in rural areas.
- The Energy and Environmental Aid Guidelines support Member States in reaching their energy and climate targets at the least possible cost for taxpayers.

The cornerstones of the reform

One of the cornerstones of the reform is the new General Block Exemption Regulation (GBER), which simplifies aid-granting procedures for Member States by authorising, without prior notification to the Commission, a wide range of measures contributing to important objectives of common interest, for example to promote research and innovation activities, as well as new productive investments.

This means that only cases with the biggest potential to distort competition in the single market will need to be notified to the Commission for ex ante assessment.

The Commission has also published a Notion of Aid Notice, which provides guidance on when public spending falls within, and outside, the scope of EU State aid control. This will help public authorities and companies to identify when public support measures can be granted without needing approval under EU State aid rules.

The Notice will in particular facilitate public investment by helping Member States and companies to design public funding in ways which do not distort competition.

Strengthening the partnership with Member States

As part of the State Aid Modernisation, the Commission is reinforcing its partnership with the Member States on the implementation of the reform programme, as Member States now have greater responsibility for deploying
What makes a measure compatible with the internal market?

The State aid modernisation clarifies the criteria for finding an aid measure compatible so that it can be approved:

1) The aid measure must be aimed at an objective of common interest

2) It must be targeted at a situation where aid can bring about material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern

3) It must be an appropriate policy instrument to address the objective of common interest

4) The aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity that it would not carry out without the aid, or it would carry it out in a restricted or different manner or location

5) The aid amount must be limited to the minimum needed to induce the additional investment or activity

6) Negative effects on competition and trade between Member States must remain sufficiently limited

7) The relevant acts and pertinent information about aid awards must be transparent (public)

Member States are now working to implement the new rules on transparency and evaluation. For each state aid award above EUR 500 000, Member States are required to publish the identity of the beneficiary, the amount and objective of the aid and the legal basis. For large aid schemes in specific fields, Member States will perform an evaluation to verify the balance between the aid’s public objective and its impact on competition and trade between Member States. Some Member States have even decided to go beyond the minimum requirements for transparency, and a number of State aid evaluation plans have already been notified.

All of this means that aid measures are deployed more quickly, and that State aid is more targeted at situations where the market cannot deliver and where scarce public resources give best value for money.

Ensuring that taxpayers know where and how their money is used

Two key elements of the State Aid Modernisation reform are particularly important:

- transparency, which lets citizens know where their money has gone
- evaluation, which tells them whether it has been well spent.

Number of evaluation aid schemes per Member State (data from April 2016)
STATE AID: A LEVER FACILITATING GOOD INVESTMENT

State aid policy facilitates investment in the EU’s future

When a Member States decides to support certain projects or firms, State aid rules help to channel that expenditure, verifying that the market alone cannot deliver and that private financing and more viable investments are not crowded out and that taxpayers’ money is put to its best use.

Thus, the EU’s State aid rules require that any aid incentivises additional investment. The four recent examples from different Member States in the box on the following page illustrate how EU State aid policy can facilitate investment in support of the EU’s strategic objectives.

The European Fund for Strategic Investments

Since the global economic and financial crisis, the EU has suffered from low levels of investment. The European Fund for Strategic Investments (EFSI) – at the top of President’s Juncker’s Political Guidelines for this Commission – is a strategic response to the investment challenge. And the EFSI is delivering. In its first six months EFSI mobilised more than EUR 60 billion in investment in 22 Member States, 80% of which was provided on market terms.

State aid and infrastructure

Many infrastructure projects do not involve State aid. Accordingly, such projects do not need to be notified to the Commission.

However, in some cases the public funding of infrastructure investment projects is subject to EU State aid rules. This is so when the infrastructure is to be operated commercially on a competitive market, for example broadband or energy networks. Such projects must be notified to the Commission for prior approval. The General Block Exemption Regulation, however, exempts a large number of non-problematic infrastructure (for example sport, culture, local infrastructure) from this obligation.

Commenting on the approval of investment aid for the expansion of the Port of Calais, Commissioner Vestager stated:

“This is a good example of how Member States can boost infrastructure investments without damaging competition in the single market. This French project has attracted private funding in order to complete a project which could not have been started without this cooperation. Furthermore, this is a trans-European project that will enable a better flow of cross-Channel links and stronger trade exchanges between the UK, Ireland and mainland Europe.”


From investment to job creation

EUR 21 billion

EUR 315 billion

EUR 410 billion

gross domestic product

+ 2.1 million new jobs

Source: European Commission.
EXPANDING THE PORT OF CALAIS
On 2 July 2015 the Commission cleared public funding of EUR 270 million to build a new cross-Channel terminal in the Port of Calais. The project to expand the Port of Calais includes building a new terminal. It will improve cross-Channel sea transport services.

The Commission took account of an in-depth financial analysis by France showing that the terminal operator’s income from the use of the infrastructure would be insufficient to cover the investment costs over a period of 50 years. The project could thus not have been carried out without public funding.

The harm to competition will be limited given the traffic growth forecasts. Other ports and the Eurotunnel will also continue to exert competitive pressure on the Port of Calais.

BUILDING 20 WIND FARMS OFF THE SHORES OF GERMANY
On 16 April 2015 the Commission approved German plans to support the building of 20 offshore wind farms in the North Sea and the Baltic Sea. Aid is granted to the wind farm operators in the form of a premium paid on top of the market price for electricity.

The Commission verified that the premium is limited to just enough to trigger the investment. The project also allows for new electricity providers to enter the electricity generation market in Germany.

CONSTRUCTING FINLAND’S FIRST LIQUID NATURAL GAS (LNG) TERMINAL
On 22 September 2015 the Commission approved Finland’s plans to grant EUR 23 million to construct Finland’s first LNG terminal at Pori on Finland’s west coast.

The project aims to encourage the use of LNG as fuel for ships, in place of fuel oils and liquefied petroleum gases. The project will bring about a significant reduction in CO₂ emissions by providing cleaner fuel for maritime transport. At the same time, the LNG infrastructure will increase the security of supply in Finland, providing local industries with access to gas.

Breaking the energy isolation of the Baltic Sea Region, integrating it fully into the EU energy markets is a key building block of the EU’s Energy Union strategy.

CONVERTING UK POWER STATION FROM COAL TO BIOMASS
On 1 December 2015 the Commission approved UK support to convert coal to biomass at Lynemouth power station.

The Commission found that the project’s contribution to the European renewable energy and CO₂ emissions reduction targets outweighed any potential harm to competition caused by the State support.

Exclusively using wood pellets as feedstock, the plant is capable of generating 420 MW of electricity. The support takes the form of a premium paid on top of the market price of the electricity generated.
In recent years, a lot of antitrust enforcement efforts have been targeted at protecting and stimulating innovation. A case in point is the Amazon investigation, which the Commission formally opened in June 2015.

The Commission’s concern is that many clauses in Amazon’s contracts with publishers appear to shield the company from competition, hampering publishers in offering better conditions and services to Amazon’s rival online booksellers.

The Commission wants to make sure that the contracts publishers sign with Amazon do not prevent rival platforms from bringing smarter, more efficient, and more innovative services to consumers, protecting companies with new ideas from contesting the market. That would hamper innovation, reduce investment and ultimately reduce choice for the final consumer.

**TACKLING THE CHALLENGE OF BOOSTING INNOVATION**

The true foundations of Europe’s future growth need to be built on innovation

Innovation is probably the most important factor contributing to economic growth, and competition policy is vital to maintaining across markets the incentives to invest in innovation and stay ahead of the game. Competitive markets push companies to become more dynamic and to bring new products and services to the market. Without competition there is usually no need to innovate.

Protecting innovation incentives with antitrust enforcement...

One of the main goals of competition enforcers is to encourage all industry participants to innovate, whether start-up or dominant incumbent. Without effective competition rules, there would be higher risks that today’s innovators might hamper tomorrow’s innovations, or that consumers might not benefit from fair access to those innovations.

In recent years, a lot of antitrust enforcement efforts have been targeted at protecting and stimulating innovation.

A case in point is the Amazon investigation, which the Commission formally opened in June 2015.

The Commission’s concern is that many clauses in Amazon’s contracts with publishers appear to shield the company from competition, hampering publishers in offering better conditions and services to Amazon’s rival online booksellers.

The Commission wants to make sure that the contracts publishers sign with Amazon do not prevent rival platforms from bringing smarter, more efficient, and more innovative services to consumers, preventing companies with new ideas from contesting the market. That would hamper innovation, reduce investment and ultimately reduce choice for the final consumer.

**... and with merger control**

EU merger control is also playing its part in boosting innovation. An important part of the Commission’s merger control activities is assessing what will happen to innovation. Will firms after the merger preserve their ability and incentive to innovate? Safeguarding the competitive pressure that drives innovation is at the core of the Commission analysis.

This is especially crucial in areas where innovation is key, such as the pharmaceutical sector. When pharmaceutical companies announce a merger, the Commission has to carefully balance the benefits of pooling their resources with the potential negative impact of eliminating an innovator.

This is something that the Commission looked at when approving Novartis’ acquisition of the oncology business of GlaxoSmithKline in January 2015. Thanks to the deal, Novartis has widened its portfolio of cancer drugs. However, the risk that Novartis would...
State aid rules making the difference in stimulating innovation

Highly innovative activities often carry high risks and may not be implemented due to funding gaps. State aid rules have been designed to target market failures and make it easier to bring innovative products and services to the market and ultimately to consumers.

In the area of research, development and innovation, State aid rules aim at making sure that public funding goes to research projects that would not have happened otherwise, and to projects that truly go beyond the state of the art.

The Commission has also set up a simple, flexible and generous State aid framework for the provision of risk finance to innovative SMEs and midcaps. This will help companies overcome the most critical stages of their life cycle – the so-called “valley of death” they have to cross to bring new products and ideas to the market – and give private investors the right incentives to invest in innovative market players.

Also, a wide range of aid measures for projects supporting innovation can be exempted from notification under the GBER (General Block Exemption Regulation).

According to the information submitted by the Member States to the Commission in 2015:

- Member States implemented **603 R&D&I schemes** covered by the new GBER (General Block Exemption Regulation, Articles 25 to 30) with an estimated annual expenditure of **EUR 18.8 billion**

- In view of supporting access to finance for SMEs, Member States implemented under the new GBER (Articles 21 to 24) **161 measures** with an estimated annual budget of **EUR 7 billion**

- The Commission approved **eight evaluation plans covering research and development measures** of which the overall annual budget exceeded **EUR 150 million**, and **four evaluation plans covering risk finance measures** of which the overall annual budget exceeded **EUR 150 million**

Aid measures enabling ground-breaking research

State aid rules help to encourage and spread innovation in the EU, by supporting cutting-edge projects in the most advanced technological fields.

In April, for example, the Commission assessed a GBP 50 million (around EUR 71 million) grant that the UK authorities intended to provide for designing a SABRE space launcher engine, finding to be in line with EU State aid rules. SABRE is a research and development project carried out by UK company Reaction Engines Limited (REL), which aims to develop an engine that would significantly reduce the costs of launching satellites into low Earth orbit. The Commission assessed the project under its R&D&I State aid framework, concluding that the funding raised from private equity sources was insufficient to bring the project to completion. Research in this area can lead to significant technological advances that would benefit consumers using products and services depending on low orbit satellites, such as mobile communications.
Competition investigation reaching beyond EU borders: the optical disc drive cartel decision

In October 2015, the Commission also fined eight optical disc drive suppliers a total of EUR 116 million for having coordinated their behaviour in relation to procurement tenders organised by two computer manufacturers, Dell and Hewlett Packard (HP).

Optical disc drives (ODDs) are used in personal computers, CD and DVD players and video game consoles to read or record data stored on optical discs, such as CDs, DVDs or Blu-ray. The cartel concerned ODDs for desktops and laptops.

The Commission's investigation revealed that between June 2004 and November 2008, the companies participating in the cartel organised a network of parallel bilateral contacts that pursued a single plan to avoid aggressive competition in procurement tenders organised by two computer manufacturers, Dell and Hewlett Packard (HP).

They communicated to each other their intentions regarding bidding strategies, shared the results of procurement tenders and exchanged other commercially sensitive information concerning ODDs used in laptops and desktops.

Although the cartel contacts took place outside Europe, they were implemented on a worldwide basis. The duration of each company’s involvement in the cartel varied and ranged from less than a year to over four years.
Commissioner Vestager:

“Millions of consumers buying food for themselves and their families have potentially been hit by these cartels. The companies concerned carved up the retail food packaging market and agreed on prices rather than competing on their merits (…) This removes the incentive to innovate and will not be tolerated.”


Why is fighting against cartels a Commission’s priority?

Action against cartels is a specific type of antitrust enforcement. A cartel is a group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them. Instead of competing with each other, cartel members rely on each others’ agreed course of action, which reduces their incentives to provide new or better products and services at competitive prices. As a consequence, their clients (consumers or other businesses) end up paying more for less quality.

This is why cartels are illegal under EU competition law and why the European Commission imposes heavy fines on companies involved in a cartel.

Leniency

Interview with Eric Van Ginderachter, Director, Cartels Directorate, DG Competition

Q In practice, how does a company apply for leniency? Companies that wish to report any unlawful practices in which they were involved such as price-fixing, market-sharing or bid-rigging – and thus benefit from leniency – can contact us directly or through their lawyers.

We have a dedicated email address to which leniency applications should be sent (1). All the information is treated with the utmost confidentiality.

The Commission services may also grant a marker protecting an immunity applicant’s place in the queue for a certain period in order to allow for the gathering of the necessary information and evidence.

For this and other issues concerning leniency, it is also possible to call our leniency team beforehand using our dedicated phone numbers (2).

Q How many leniency applications does DG Competition receive on average? The leniency programme is a fundamental investigative tool in our fight against cartels, just as it is for all major competition authorities in the world. The numbers vary. In 2015 we received 32 leniency applications, many of which led us to open new investigations. The general trend of around two immunity applications per month in recent years remains stable.

Not all applications result in a case ultimately leading to a decision imposing fines; certain applications have their focus in one or a few of our Member States, which therefore are better placed to treat such cases.

Q As a leniency applicant, how do you make sure that you get full immunity? This question is perhaps better answered by the companies themselves, and of course, their lawyers!

According to the EU rules, an undertaking could benefit from immunity from fines if it is the first to submit information and evidence that allow us either to carry out targeted inspections at the premises of suspected participants to the cartel or find an infringement of competition rules.

Therefore it is for companies or their counsel to assess if the documents, information and evidence submitted to the Commission meet the clear requirements foreseen by the leniency programme concerning these thresholds for immunity. They must also fully meet all the other conditions provided, as for instance the one concerning their full and continuous cooperation throughout the Commission’s administrative procedure.

(1) The leniency email address is: comp-leniency@ec.europa.eu.
(2) Leniency telephone numbers: +32 2 298 41 90 or +32 2 298 41 91
ENFORCING EU ANTITRUST RULES IN THE EUROPEAN COMPETITION NETWORK

Working as a close-knit team for more than a decade, the Commission and the national competition authorities have successfully enforced the EU antitrust rules

Since 2004 the EU’s national competition authorities (NCAs) and national courts have been empowered to apply in full – alongside the European Commission – the EU rules on anti-competitive agreements and abuses of dominance (often called the antitrust rules). Action at national level is needed as many markets are national, regional or even local.

Working as a team within the European Competition Network, the Commission and the national competition authorities together have adopted more than 1 000 decisions since the creation of the network on 1 May 2004.

Areas for action: the Commission launches the ECN+ project

Despite the success of the network, there is still room for improvement. To take one example: some national competition authorities cannot gather evidence stored on digital devices (such as laptops and tablets) when inspecting the premises of a suspected cartelist.

And certain authorities cannot fine cartelists for the full period of their participation in the cartel. In some Member States fines for similar violations of competition law differ dramatically.

To tackle these areas for action, the Commission launched the ECN+ project. As a first step, the public was consulted between November 2015 and February 2016.

The objectives of the ECN+ project are to ensure the independence of the national competition authorities when they enforce the EU competition rules and that they are:

1) Given the right investigative tools and powers to be able to carry out their mission
2) Well equipped with staff and budgetary resources
3) Empowered to fine rule-breaking companies with sufficient severity
4) Have effective leniency programmes in place which encourage companies to come forward with evidence of illegal cartels and which work effectively across the EU

The feedback

The fact-finding exercise proved fruitful. A wide variety of stakeholders provided over 180 replies.

Almost three-quarters of those stakeholders tell us that action should be taken to make national competition authorities more effective. To achieve this, they support taking a combination of actions at both EU and national level. Stakeholders think that action should take the form of hard law, complemented by soft measures.

To prompt further feedback and dialogue, the Commission and the ECON Committee of the European Parliament co-hosted a Public Hearing on how to boost the powers of the national competition authorities. There was a lively debate:

Next steps

The Commission is carefully reviewing all the input it received. The next steps could include EU legislative action, but only if a good case can be made.
43 years, starting with the 2004 enlargement where 10 new Member States joined the EU, continuing with the accession of Bulgaria and Romania in 2007 as well as Croatia in 2013. Currently, the ECN is made up of 28 Member States and the Commission. The ECN is also very active on policy matters: we produce ECN Recommendations, Resolutions and Reports on specific sectors. For example, a major step forward in the detection of cartels all over Europe was the creation of the ‘ECN Model Leniency programme’. It sets out the common principles which ECN members agree should be found in leniency programmes.

More information on competition enforcement by the ECN members can be found online in the ECN Brief (http://ec.europa.eu/competition/ecn/brief/index.html).

Q How and where do you see the future development(s) of the ECN Network?

The ECN constantly reflects on what can be done to make competition enforcement more effective. The on-going ECN+ initiative is a good example of this. We are also working on making the ECN a better platform for even closer cooperation among our members and on facilitating the early exchange of information on antitrust cases. This should help us to spot cases with cross-border potential with EU-wide implications early and allocate them appropriately within the network. We have ramped up the number of ECN meetings where we engage in in-depth discussions on substance. This should increase the capacity of the ECN to take informed decisions and coordinate action on antitrust infringements within the EU.

More information can be found here: http://ec.europa.eu/competition/ecn/index_en.html.

Commissioner Vestager:
"These days, our personal information lives on smartphones, laptops, even in the cloud. It’s the same for business information. You miss out on a lot of evidence if - like some authorities - you don’t have the power to search that type of device" 

"But fines also need to be based on common principles, so that the same offence carries a comparable level of fine throughout the EU. Unfortunately, we’re not quite there yet. Different principles apply in different countries. That means that the penalty for the same offence can be as much as 25 times higher in one EU country than another"

Market definition: a first step in the assessment of mergers

When the Commission reviews mergers, its task is to ensure that merging firms do not gain market power, enabling them to raise prices or reduce choice or quality for consumers.

Thus, the Commission has to analyse the competitive pressure from rivals that the merging parties face before and after the merger.

In order to do so, the Commission defines the relevant market. Market definition has both a product and a geographic dimension.

In a nutshell, market definition in merger cases identifies alternative products and suppliers that customers could turn to when faced with a price increase.

It is a purely empirical exercise based on facts. It is dynamic: if the facts change, the assessment changes as well.

Market definition is no more than a first step in the Commission’s scrutiny of planned mergers, which focuses on the impact on competition in the single market.

In other words, market definition sets the framework within which analysis of how customers and competitors would react to a merger always includes the question whether additional imports from suppliers located outside the market in question would flow into the market and be able to defeat a price increase.

The way the Commission defines geographic markets reflects globalisation

Sometimes the Commission has been criticised for not taking globalisation sufficiently into account. A recent study commissioned by the Commission found that those concerns are unfounded. The Commission has increasingly found regional and EEA-wide markets rather than national markets.

For example, in 2012-2013, in 61% of its merger decisions, the Commission concluded that the market covered the European Economic Area (EEA) or was even wider. Ten years earlier that figure was 48%.

Several formerly national markets have become wider

When subsequent mergers lead the Commission to revisit the same sector, there are examples of the geographic market having been widened over time. For example, in 2012-2013, in 61% of its merger decisions, the Commission concluded that the market covered the European Economic Area (EEA) or was even wider. Ten years earlier that figure was 48%.

Delimiting geographic markets

For the geographic dimension of a market, the question is whether competitors from other geographic areas could exercise sufficient competitive pressure on the merging companies. The larger the area from which such competitive pressure emanates, the wider the geographic market definition.

Depending on the facts a market may – for example – be worldwide, European or national in scope.

But even in a narrower geographic market, the analysis of how customers and competitors would react to a merger always includes the question whether additional imports from suppliers located outside the market in question would flow into the market and be able to defeat a price increase.

Several formerly national markets have become wider

When subsequent mergers lead the Commission to revisit the same sector, there are examples of the geographic market having been widened over time. The Commission has increasingly been finding regional and EEA-wide markets rather than national markets. This development reflects the deepening of the single market over the past twenty years, which has led to lower barriers to trade, changing business practices, regulatory harmonization and lower transport and business costs at the EU level.

Harmonisation may enlarge the scope of the geographic market

In the telecommunications equipment sector, the Commission’s decisions demonstrate a successive widening of the geographic scope of market definitions. In 1991, the markets for telecommunications equipment were considered to be national in scope.

Greater harmonisation of international standards of telecoms equipment – first at European and then at the global level

Alstom and Areva: an example of a widening market in the rail power systems market

When analysing Alstom’s acquisition of the industrial and electrical equipment businesses of Areva in 2010, the Commission found that the markets for rail power systems had become at least EEA-wide.

In 2005, when looking into deals in that industry, the Commission had found that the market was national.

The widening of the market was largely brought about by the introduction of EU legislation fostering interoperability of rail networks as well as the trend to channel train services running through several Member States.

1 Amelia Fletcher/Bruce Lyons, Geographic Market Definition in European Commission Merger Control, Centre for Competition Policy, University of East Anglia, 2016.
Traditionally, the Commission considered digital distribution of music.

Technological innovation changed the markets and correspondingly EEA-wide agreements with record companies.

Digital music distributors have increasingly offered a pan-European service and correspondingly EEA-wide agreements with record companies.

Already in 2004, the Commission observed that the geographic scope of digital distribution of music was evolving beyond national boundaries. That finding was confirmed, first in 2008 and then in 2012, when the Commission assessed the competitive impact of proposed mergers at both EEA-wide and national levels and concluded that the market for digital distribution of music was evolving towards an EEA-wide market.

The Commission had recognised this trend in its decisions and in 2003 it considered some of the telecommunications system markets to have become at least EEA-wide. That evolution was confirmed in decisions in 2006, where the Commission concluded that telecoms equipment markets were becoming at least EEA-wide, if not global.

Technological development may also widen markets

Technological innovation changed the geographic scope of the market for digital distribution of music. Traditionally, the Commission considered the market for the wholesale of physical recorded music to be national.

But the advent of the internet and the possibility of digitally distributing music fundamentally changed the way the music industry operates.

Digital music distributors have increasingly offered a pan-European service and correspondingly EEA-wide agreements with record companies.

The Chief Economist Team (CET) was perfectly synchronised the timing of the two procedures. EU and US concerns, as well as remedy solutions for both the case. This allowed us to devise mutually satisfactory and aligned remedy solutions for both the EU and US concerns, as well as perfectly synchronise the timing of the two procedures.

Q How in practice did you investigate the case?
First, we organised two site visits at both GE and Alstom’s facilities to see a HDGT, understand the production process and have a sense of the underlying technological complexity. We also organised a series of “educational” meetings with the Parties on specific topics and products. We then conducted an extensive market investigation, which encompassed the review of 85,000 internal documents and more than 550 questionnaires, 45 interviews of market participants and 60 requests for information to the Parties. Finally, we conducted a comprehensive economic analysis of bids for HDGT tenders over the last 5 years, including the reconstruction of market shares on the basis of that data.

Q Why is this case and the remedies provided by the parties important for the environment and innovation in a key technology?
Modern HDGTs are a very research and capital intensive technology, as well as the most environmentally-friendly fossil fuel power generation technology (in terms of efficiency and emissions). HDGTs, mainly used in gas-fired power plants, are an important complement to renewable energy sources for their ability to come on stream almost instantaneously to meet temporary supply shortfalls. Vibrant technology and price competition in the markets for HDGTs is essential for Europe (and the world) to meet climate and energy savings objectives.

The commitments offered by GE allow replicating Alstom’s role in the HDGT market, by preserving a fourth advanced technology player and maintaining choice and innovation competition on the market.

Q How did the economists of DG Competition’s Chief Economist Team contribute to the case?
The Chief Economist Team (CET) was closely involved with the case team, and contributed to almost all parts of the case, including, for example, the analysis of market shares, the evolution of energy demand, the competitive assessment, and the assessment of efficiencies. The CET also provided an extensive analysis of merger effects in bidding markets by developing the conceptual and empirical frameworks. The economic annex on the analysis of bidding data, which is more than 150 pages, is a good reference for future merger cases in bidding markets.

Q In this case you cooperated with the US Department of Justice (DoJ) – how did this cooperation contribute to the result?
Since the very beginning of the procedure, the team established a solid cooperation with the DoJ team. This entailed regular weekly discussions and the sharing of findings and evidence. The team flew over to Washington in order to understand the different context of the case on both sides of the Atlantic and to prevent any divergence in the assessment of the case. This allowed us to devise mutually satisfactory and aligned remedy solutions for both the EU and US concerns, as well as perfectly synchronise the timing of the two procedures.
Addressing the challenges of globalisation

Globalisation has major implications for the work of competition enforcers, as companies increasingly operate across national borders. A growing number of merger transactions have an international dimension and affect markets in several countries, and often different continents. Companies are able to organise cartels and other anti-competitive practices on an international basis. At the same time governments may grant undue advantages, such as subsidies to privately or State owned companies, which may distort the global level playing field.

The progressive integration of the world economy requires intensive and close cooperation with competition authorities, both inside and outside the European Union. Today this cooperation not only includes cooperation with the mature competition agencies of EU’s main trading partners, but also encompasses building up relations with the emerging economies including the BRICS (1) countries and seeking alignment of competition rules in enlargement and neighbouring countries. As a culture of competition spreads around the globe, the Commission’s main objective is to promote the convergence of competition policy instruments and practices across jurisdictions, to facilitate cooperation in enforcement activities and to actively address distortions of the global level playing field.

The Commission is stepping up international cooperation with traditional and emerging economic players, both multilaterally and bilaterally.

Multilateral cooperation in international fora

The Commission actively engages with the Competition Committee of the Organisation for Economic Co-Operation and Development (OECD), the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD). The Commission is also a leading member of the International Competition Network (ICN), the main global forum of competition agencies, with 132 members. At the OECD, the Commission recently contributed to the revision of the Recommendation on international cooperation (2014) and actively contributed to two sessions on competitive neutrality (2015) and the update of the OECD Guidelines on State Owned Enterprises (2015). In June 2015, the Commission contributed to the discussion on the current state of private enforcement, which has been less prominent in the European Union than public enforcement, leading to the conclusion that private enforcement can substantially improve the functioning of a competition regime.

As co-chair of the ICN Merger Working Group, the Commission contributed to developing the Practical Guide for International Enforcement Cooperation in Mergers (3), adopted in 2015. It provides direct and case-based guidance to ICN members as to how agencies can align timetables, share information and cooperate on substance and on remedies so as to avoid inconsistencies.

In 2016, the Commission also contributed to the ICN Merger Remedies Guide.

Bilateral cooperation

The Commission strengthened cooperation agreements, with China, Japan and Canada

In October 2015, under the cooperation programme EUCTP II (4), the Commission and the Ministry of Commerce (Mofcom) of the People’s Republic of China signed the Practical Guidance for Cooperation on Reviewing Merger Cases. The Practical Guidance creates a dedicated framework to strengthen cooperation and coordination between the Commission and China’s merger review authority, by increasing the efficiency of investigations and reducing the burden on the merging parties. The document allows greater transparency on the timing and content of the discussions between the authorities, and leads to more efficient, consistent and non-conflicting reviews when a merger is to be assessed both in the EU and in China.

This agreement reflects the ambition of enhanced cooperation on competition policy matters between the two authorities, which started in 2004 when the Commission concluded with Mofcom Terms of Reference on the EU-China Competition Policy Dialogue.

In March 2016, the Commissioner for Competition Margrethe Vestager and the Japan Fair Trade Commission Chairman Kazuyuki Sugimoto agreed to prepare the upgrading of the 2003 EU/Japan Cooperation Agreement on Anti-competitive Activities, in order to allow for the exchange of evidence during investigations.

(1) Brazil, Russia, India, China, South Africa.


(4) EU-China Trade Project II
Significant progress has been made during the negotiations between the Commission and Canada to include similar provisions on the exchange of information in the existing EU-Canada Cooperation Agreement.

The Commission works on the inclusion of competition and State aid provisions in the context of negotiations on Free Trade Agreements

In 2015, significant progress was made concerning the competition provisions in the FTA with Japan, and in the FTA with Vietnam, which was concluded in December 2015. The Commission has helped implement the competition provisions included in recent FTAs with neighbouring countries, including Tunisia, Morocco, Ukraine and Moldova.

DG Competition also participated in the negotiations for a competition chapter in the Transatlantic Trade and Investment Partnership Agreement which is being negotiated with the United States, and submitted textual proposals on Antitrust and Mergers, State-Owned Enterprises and Subsidies. The TTIP is an opportunity for the EU and the United States to underline their shared values in adopting and enforcing competition laws, and to affirm their existing high standards.

Convergence in merger control across the world

Interview with Carles ESTEVA MOSSO, Deputy Director-General with special responsibility for mergers

Q Ever increasing and rapid globalisation – what does it mean for your work?

Today, we face global players that are active in various countries around the world and we see value chains that span across the globe. Some markets that used to be national or regional in scope have broadened and competitive dynamics may have changed. Of course, in merger control, we have to take those changes into account when assessing a notified transaction.

Q Are there any developments in merger control policy reflecting those changes?

Indeed, with an increasing number of states that have opted for a market economy and the globalisation of the economy, there has also been a stark proliferation of competition law regimes around the world. According to statistics of the OECD, at the end of the 1970s only nine jurisdictions had a competition law. By October 2013, this number had increased to around 130, including many emerging and developing economies.

Q At first glance, this appears very positive – what are the challenges?

The challenge is twofold. Companies with global activities see their mergers and acquisitions activities subject to merger control procedures in a multitude of jurisdictions with different and sometimes diverging features. Competition authorities on the other hand increasingly have to cooperate with their counterparts in other jurisdictions. This is part of my daily work: during the period 2010-2015, the Commission has cooperated with other agencies in more than half of the complex cases.

Q So, how do you go about those challenges?

Already for a long time, we have been engaging with other competition jurisdictions, both bilaterally and at fora provided by international organisations, such as the OECD and UNCTAD, and within the International Competition Network. The most recent bilateral cooperation document I personally had the pleasure to sign on behalf of DG Competition in October 2015, is a Practical Guidance document for Cooperation on Reviewing Merger Cases between China’s Ministry of Commerce and DG Competition. We engage with other competition jurisdictions through such bilateral agreements and in multilateral fora in order to foster mutual understanding of how the various merger control regimes work and to achieve some convergence by means of best practices and recommendations. In fact, a considerable level of convergence in merger control has already been achieved through those soft tools.

Q Can you give any concrete examples of achievements in the international fora you are referring to?

Take the International Competition Network (ICN), an informal network of competition authorities worldwide. It has a working group specifically dedicated to the field of merger control. As former co-chair of the merger working group, DG Competition had taken the lead in authoring the “Practical Guide to International Enforcement Cooperation” that was adopted at the ICN Annual Conference in Sydney in 2015. The “Practical Guide” provides useful guidance to agencies and merging parties on multilateral merger enforcement cooperation. It was disseminated in the ICN merger workshop, which we hosted in September 2015 here in Brussels, and which around 250 participants from more than 50 jurisdictions attended. Particular aspects of multilateral merger enforcement were again discussed at this year’s ICN annual conference in Singapore.

Q What are the concrete benefits of international merger enforcement cooperation?

In fact, both private and public stakeholders benefit tremendously from such cooperation in that it may minimise the burdens, costs and potential risks associated with multiple merger reviews of the same transaction. Indeed, such cooperation may prove beneficial not only in promoting consistent outcomes in individual cases and convergence in relation to merger assessment principles in general, but also in increased investigative efficiency by reducing duplication of work, delays and burdens for the merging parties, third parties and the agencies.
EU citizens say that problems resulting from a lack of competition are most likely to have occurred in the energy sector (28%), followed by transport services (23%) and pharmaceutical products (21%). Other sectors identified are telecommunications and internet (18%), food distribution (14%) and financial services (12%).

In which sector?

- Energy
- Transport
- Pharma
- ICT
- Food
- Finance

What impact does effective competition have on you as a consumer?

- Very positive impact, 15%
- Fairly positive impact, 59%
- Fairly negative impact, 14%
- Very negative impact, 7%
- Don’t know, 7%

Have you experienced a lack of competition?

74% of EU citizens respond that effective competition has a positive impact on them as consumers.

68% of EU citizens say that they have experienced a lack of competition in at least one sector that resulted in higher prices, less product or supplier choice, or lower quality in at least one sector.

• More than 80% of EU citizens believe that competition among companies can lead to better prices, more choice, innovation and economic growth.

How do EU citizens’ views match our priorities?

EU citizens identified competition concerns in sectors that largely correspond to several of DG Competition’s priority sectors in 2015:

**Energy Union and Climate Change**
- Commitment decision to Bulgarian Energy Holding BEH (electricity)
- Statement of Objections to Gazprom concerning upstream gas supplies in central and Eastern Europe
- Approval of merger between General Electric and Alstom subject to commitments
- Launch of a State aid sector inquiry into national measures to ensure sufficient electricity supply ("capacity mechanisms")
- Launch of investigations into Austrian waste packaging and oil and biofuels products price benchmarks

**Digital Single Market**
- A Statement of Objections to Google regarding its search services
- Two Statements of Objections to Qualcomm regarding predation and exclusivity payments
- A Statement of Objections sent to Sky UK and six US film studios regarding cross-border access to pay-TV content
- Several merger investigations in the telecommunication sector (e.g. Orange/Jazztel, Liberty Global/BASE and Altice/Portugal PT)
- Launch of sector inquiry into e-commerce
- Launch of an investigation into Amazon e-books

**Internal Market**
- Five cartel prohibition decisions concerning financial services, parking heaters, retail food packaging, block trains and optical disc drives
- Commitment decision in the transport sector concerning Air France/KLM, Alitalia and Delta
- Statement of Objections in on-going investigations concerning Baltic Rail transport, mushrooms, car battery recycling, capacitors and MasterCard II
- Tax ruling investigations (e.g. Fiat, Starbucks and McDonald’s)

---

**Does more competition between companies lead to...?**

- More choice
- Better prices
- Better quality
- More innovation

- don’t know
- totally disagree
- tend to disagree
- tend to agree
- totally agree

---

**More**

**Better**

**Quality**

**Innovation**

**7th_proof.indd** 49

20/06/2016 16:37:52