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REPORT FROM THE COMMISSION

Report on Competition Policy 2023

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CONTENTS

INTRODUCTION

The present Staff Working Document (SWD) is composed of two parts. The first part presents the main legislative and policy developments in 2023 across the three competition instruments: State aid, antitrust (including cartels) and mergers as well developments related to the modernisation of the organisation to optimise its enforcement capacity. In the second part, specific enforcement actions are detailed in a sectoral overview. Annexes 1 to 4 encompass the Commission decisions taken in the State aid area pursuant to the State aid rules adopted to mitigate economic impact due on the COVID-19 pandemic and following Russia's war of aggression against Ukraine.

I. LEGISLATION AND POLICY DEVELOPMENTS

1. ANTITRUST AND CARTELS

Articles 101, 102 and 106 TFEU

According to Article 101 of the Treaty on the Functioning of the European Union (TFEU), anti-competitive agreements are prohibited as incompatible with the internal market. Article 101 TFEU prohibits agreements with an anti-competitive object or effects where companies coordinate their behaviour instead of competing independently. However, an agreement that restricts competition may be exempted from the prohibition under Article 101(3) TFEU if it ultimately fosters competition (for example by promoting technical progress or by improving distribution)

Article 102 TFEU prohibits abuse of a dominant position. It is not in itself illegal for an undertaking to be in a dominant position or to acquire such a position. Dominant undertakings, as any other undertaking in the market, are entitled to compete on the merits. However, Article 102 TFEU prohibits the abusive behaviour by dominant undertakings that, for example, directly or indirectly impose unfair purchase- or selling prices or other unfair trading conditions, or limit production, markets or technical development.

Finally, in relation to public undertakings and undertakings to which Member States grant special or exclusive rights, Article 106 TFEU prevents Member States from enacting or maintaining in force measures contrary to the Treaty rules.

Preserving market discipline by effective enforcement of the EU competition rules is of vital importance to the green and digital transformation of the EU economy and a resilient recovery following the COVID-19 pandemic and Russia's war of aggression against Ukraine; antitrust enforcement can contribute in tearing down remaining barriers to the Single Market and eliminating restrictions in the development of clean technologies and the free flow of resources necessary for the circular economy and the Green Deal's objectives.

The present SWD highlights the recent antitrust and cartel decisions, while the graphs below give an overview of antitrust enforcement activity in the past ten years, including also decisions rejecting complaints.

Alongside enforcement, reforms are also crucial to ensure competition policy is fully effective: the Commission continued with its review agenda encompassing a large number of its key block exemption regulations, guidelines and notices as well as moved forward the work on a number of ongoing initiatives to ensure fair competition in the single market.

Figure 1: Antitrust and cartel decisions 2014-2023

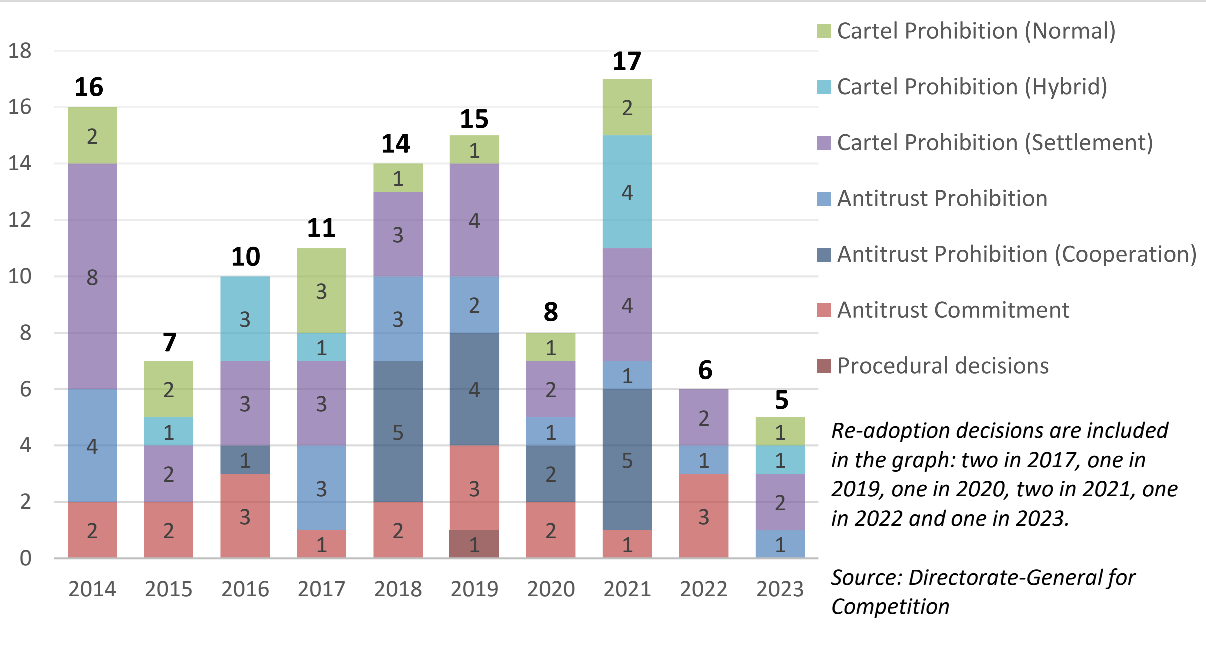
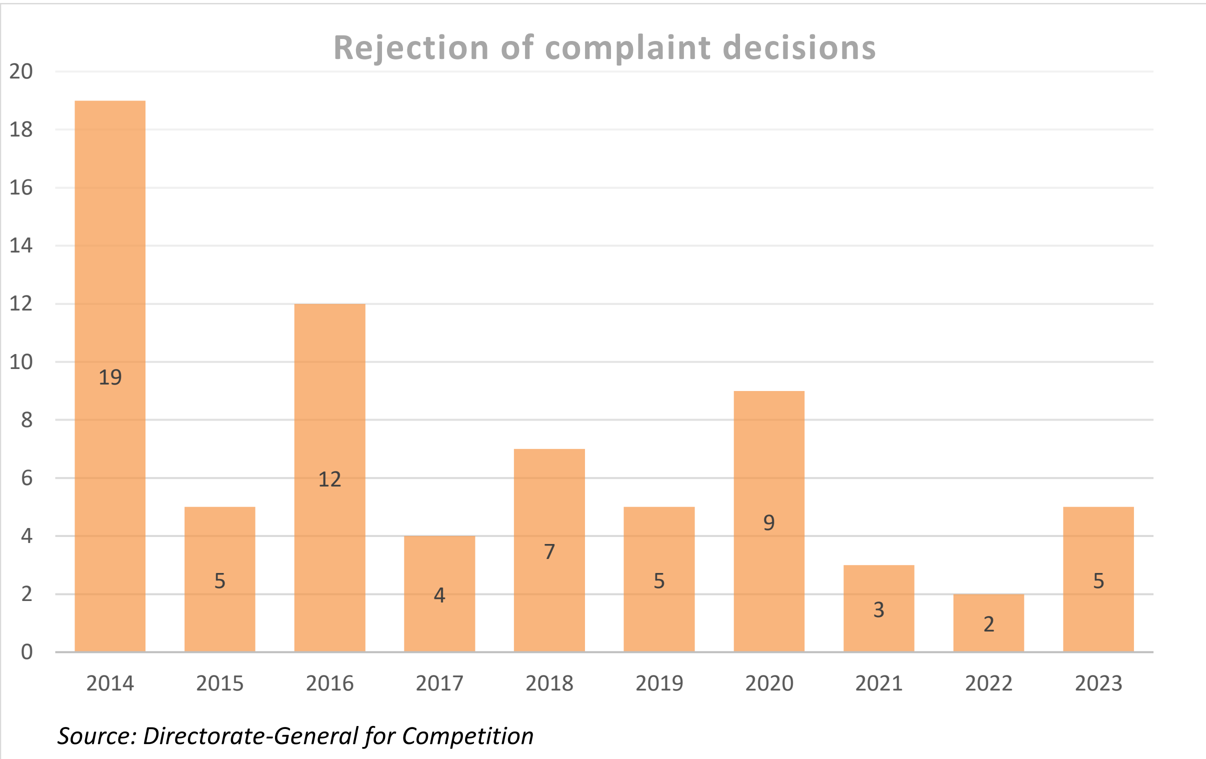


Figure 2: Rejection of complaints decisions 2014-2023



1.1. Review of antitrust rules and guidance

1.1.1. Rules on horizontal cooperation agreements: Revised Horizontal Block Exemption Regulations on Research and Development and Specialisation agreements, and revised Horizontal Guidelines adopted

In June 2023, the Commission adopted revised block exemption regulations on research and development agreements (R&D BER)[1] and on specialisation agreements (Specialisation BER)[2] (together HBERs), and on 21 July 2023, it adopted revised guidelines on horizontal cooperation agreements[3] (Horizontal Guidelines). The HBERs entered into force in July 2023.

The HBERs provide a legal safe harbour for R&D and specialisation agreements that meet certain conditions, by exempting them from the prohibition of Article 101(1) TFEU. The HBERs continue to be based on a market share threshold, but they simplify and add flexibility to the rules for calculating market shares compared to the previous horizontal block exemption regulations. In addition, the scope of the Specialisation BER has been expanded to cover more types of multi-party production agreements.

Competition rules play an important role in supporting the European economy to achieve the goals of the European Green Deal[4]. For that reason, the revised Horizontal Guidelines have been updated to reflect market developments, recent case law and enforcement practice, and to provide guidance on the assessment of sustainability agreements under Article 101 TFEU. The new chapter on sustainability agreements identifies types of sustainability agreement that fall outside the scope of Article 101 (1) TFEU, provides a safe harbour for sustainability standardisation agreements that meet certain conditions, and explains under what circumstances sustainability agreements may satisfy the conditions for exemption under Article 101(3) TFEU in particular by referring to three categories of sustainability benefits.

The revised Horizontal Guidelines now also include guidance on joint bidding consortia and mobile telecoms infrastructure network sharing agreements, as well as an in-depth revision of the guidance on information exchange, taking into account digitalisation.

1.1.2. Motor Vehicle Block Exemption Regulation prolonged

In April 2023, the Commission prolonged the Motor Vehicle Block Exemption Regulation[5] (MVBER) for 5 years until 31 May 2028[6]. On the same day, the Commission updated the

[1] Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, OJ L 143, 2.6.2023, p. 9.

[2] Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ L 143, 2.6.2023, p. 20.

[3] Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 259, 21.7.2023, p. 1.

[4] European Commission, Directorate-General for Competition, Competition policy brief 2021-01, September 2021, see: https://data.europa.eu/doi/10.2763/962262

[5] Commission Regulation (EU) No 461/2010 of 27.5.2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, OJ L 129, 28.5.2010, p. 52 as amended by Commission Regulation (EU) 2023/822 of 17 April 2023 on amending Regulation (EU) No 461/2010 as regards its period of application, OJ L 102I, 17.4.2023, p. 1.

corresponding supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (Supplementary Guidelines)[7].

The MVBER specifies the conditions under which motor vehicle spare parts distribution and repair and maintenance service agreements are exempted from the application of Article 101(1) TFEU. The Supplementary Guidelines provide detailed guidance on the interpretation of the MVBER.

1.1.3. Evaluation of Regulation 1/2003 continued

In 2023, the Commission progressed with the evaluation of its antitrust procedural rules, Regulation 1/2003[8] and its implementing regulation, Regulation 773/2004[9], that was initiated in March 2022. The evaluation aims at assessing the pertinence of the antitrust procedural framework considering the changes to the economic landscape that have taken place over the past 20 years, such as the digitalisation of the global economy.

As part of the evaluation process, the Commission organised a public consultation that ran from 30 June to 6 October 2022 and commissioned an evaluation support study in 2023. The Commission also organised a conference reflecting on the 20 years of Regulation 1/2003 in June 2023 and an interactive workshop on 12 October 2023[10]. Throughout the evaluation process, the Commission is also engaging with the national competition authorities (NCAs).

1.1.4. New initiative regarding Article 102 TFEU

In March 2023, the Commission announced the launch of an initiative aiming at adopting Guidelines on exclusionary abuses of dominance. Considering the importance of the enforcement against abuses of dominance to ensure that competition in the internal market remains undistorted and the number of judgments of the Courts of the European Union (EU Courts) dealing with exclusionary conduct, the Commission decided to start the process that will lead to the adoption of guidelines to systematise and clarify the case law. On the same day, the Commission amended the 2008 guidance on enforcement priorities [11].

The Article 102 TFEU Package[12] includes: (i) a Call for Evidence[13] launching the initiative that will lead to the adoption of Guidelines on exclusionary abuses of dominance under

[6] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2248

[7] Commission Notice on supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles, OJ C 138, 28.5.2010, p. 16 as amended by Communication from the Commission Amendments to the Commission Notice – Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles 2023/C 133 I/01, OJ C 133I , 17.4.2023, p. 1.

[8] Council Regulation (EC) No 1/2003 of 16.12.2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L, 4.1.2003, p. 1.

[9] Commission Regulation (EC) No 773/2004 of 7.4.2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18.

[10] See: https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/regulation-12003_en

[11] Communication from the Commission: Guidance on its enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45, 24.2.2009, p. 7.

[12] See: https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/application-article-102-tfeu_en

Article 102 TFEU, and (ii) a Communication amending parts of the 2008 Guidance on enforcement priorities that were no longer in line with the case law and the Commission's enforcement practice (Amending Communication)[14]. The stakeholders will be consulted on a draft Guidelines on exclusionary abuses.

1.1.5 Evaluation of the rules on technology transfer agreements

Technology transfer agreements are agreements by which a company authorises another one to use certain technology rights (for example patents, design rights, software copyrights and know-how) to produce goods or services. The Technology Transfer Block Exemption Regulation (TTBER)[15] exempts certain technology transfer agreements from the prohibition of Article 101(1) TFEU, subject to certain conditions. The TTBER will expire on 30 April 2026.

In November 2022, the Commission launched an evaluation of the TTBER and the accompanying guidelines (Technology Transfer Guidelines)[16], to inform the decision on whether the TTBER should be allowed to expire, be prolonged, or revised, to take account of market developments that have occurred since its adoption in 2014.

In April 2023, the Commission launched a public consultation inviting stakeholders to give their views on the effectiveness, efficiency, relevance, coherence, and EU added value of the TTBER and Technology Transfer Guidelines. This consultation closed in July 2023. As part of the evaluation process, the Commission commissioned an evaluation study and organised a workshop on 6 December 2023 which delved further on certain topics on which the Commission received feedback during the public consultation[17].

1.2. Significant judgments by EU Courts in antitrust enforcement

In 2023, the EU Courts rendered significant judgments regarding the enforcement of antitrust rules.

1.2.1 Anticompetitive agreements under Article 101 TFEU

[13] See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13796-EU-competition-law-guidelines-on-exclusionary-abuses-by-dominant-undertakings_en

[14] Communication from the Commission: Amendments to the Communication from the Commission - Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings ("Amending Communication") and Annex to the Amending Communication, OJ C/2023 116/01. See: https://competition-policy.ec.europa.eu/system/files/2023-03/kdak23001enn_competition_policy_brief_1_2023_Article102_0.pdf , which provides more details on the changes to the Guidance on enforcement priorities made by the Amending Communication and additional background on the case law of the Union Courts and the Commission's enforcement experience.

[15] Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) TFEU to categories of technology transfer agreements, OJ L 93, 28.3.2014, p. 17.

[16] Communication from the Commission — Guidelines on the application of Article 101 TFEU to technology transfer agreements, OJ C 89, 28.3.2014, p. 3.

[17] See further on the evaluation of the TTBER: https://competition-policy.ec.europa.eu/public-consultations/2023-technology-transfer_en

On 29 June 2023, the Court of Justice delivered its judgment in *Super Bock Bebidas*,[18] a preliminary reference from the Lisbon Court of Appeals concerning an alleged resale price maintenance scheme set up by Super Bock for the distribution of its beverages in some areas of Portugal. In the judgment, the Court of Justice confirmed that a vertical agreement fixing minimum resale prices can be a restriction by object if it reveals a sufficient degree of harm, taking into account the content of its provisions, its objectives and the economic and legal context . In this context, the Court of Justice also clarified that a restriction that is categorised as 'hardcore' in a block exemption regulation cannot be automatically considered a restriction by object, but that is necessary to examine such restriction on a case-by-case basis under Article 101(1) TFEU[19].

Valve case

On 27 September 2023, the General Court fully upheld the Commission's prohibition decision against Valve in the *Videogames* case, in which the Commission found that Valve and five publishers of videogames had entered into anticompetitive agreements/concerted practices restricting parallel imports of certain PC video games through the geoblocking of activation keys on the Steam platform[20]. The General Court confirmed the Commission's assessment in relation to the existence of anticompetitive agreements/concerted practices between Valve and the video game publishers and their by object nature in so far as they were intended to restrict parallel imports and that the legal and economic context was not such as to call this into question. In this context, the General Court confirmed that Article 101(1) TFEU refers generally to all agreements and concerted practices that distort competition, irrespective of the market on which the parties operate. Only the commercial conduct of one of the parties need to be affected by the terms of the arrangements in question. Active contribution of an undertaking to a restriction of competition is caught even if that contribution does not relate to an economic activity forming part of the relevant market on which that restriction comes about or is intended to come about[21]. The General Court also clarified the relationship between EU competition law and copyright. In this respect it confirmed that while the very grant of licences, including exclusive licences, is not contrary to Article 101 TFEU, additional measures aimed at ensuring compliance with the territorial limitations on the exploitation of those licences, and in particular the obligation to take measures making it impossible to access the protected subject matter from outside the territory covered by the licence agreement concerned, may have an anti-competitive object and be caught by Article 101 TFEU[22]. It also observed that copyright is intended only to ensure for the right holders concerned protection of the right to exploit commercially the protected subject matter, by the grant of licences in return for payment of remuneration, but it does not guarantee them the possibility to demand the highest possible remuneration or to engage in conduct such as to lead to artificial price differences between the partitioned national markets.

On 26 October 2023, the Court of Justice delivered its judgment in *EDP/Modelo*,[23] another preliminary reference from the Lisbon Court of Appeals concerning a reciprocal non-compete clause found in a marketing scheme entered into by EDP (active in the energy sector) and

[18] Judgment of the Court of Justice of 29.6.2023 in Case C-211/22, *Super Bock Bebidas SA and Others* v *Autoridade da Concorrência*, ECLI:EU:C:2023:529.

[19] See C-211/22, *Super Bock Bebidas SA*, paras. 27-43.

[20] Judgment of the General Court of 27.9.2023 in Case T-172/21, *Valve* v *European Commission*, ECLI:EU:T:2023:587.

[21] See T-172/21, *Valve*, paras. 45-47.

[22] See T-172/21, *Valve*, para 199.

[23] Judgment of the Court of Justice of 26.10.2023, in Case C-331/22, *EDP – Energias de Portugal SA and Others v Autoridade da Concorrência*, ECLI:EU:C:2023:812.

Modelo (active in the food distribution and consumer products sector) with the goal of attracting new clients by granting reciprocal discounts to consumers. The Court of Justice clarified that an agreement concluded between two undertakings active on different product markets, which are not upstream or downstream of each other, does not fall within the category of a 'vertical agreement' or of an 'agency agreement', where it consists in promoting the development of sales of the undertakings' products through cross-discounts and where each of those undertakings bears a part of the costs[24]. Moreover, in relation to the concept of 'potential competition', the Court of Justice ruled that the legal test set in the *Generics* judgment[25] is not to be applied generally to all markets[26].

On 18 October 2023, the General Court also fully upheld the Commission's decision in *Teva/Cephalon*[27][28].

1.2.2 Abuses of dominance under Article 102 TFUE

On 12 January 2023, the Court of Justice dismissed the appeal lodged by Lietuvos geležinkeliai AB (*Lithuanian Railways*) against the General Court judgment upholding a Commission decision that fined Lithuanian Railways for an abuse of dominance position in rail freight market[29]. The abusive conduct consisted in the removal of a section of track connecting Lithuania and Latvia. In its judgment, the Court of Justice held that the destruction of infrastructure must be distinguished from a refusal of access and must be analysed as an independent form of abuse, with the consequence that the criteria established by the case law for a finding of refusal of access are not applicable[30].

On 19 January 2023, the Court of Justice delivered its judgment in *Unilever*, a preliminary reference from the Italian Council of State dealing with an alleged abuse of dominance in the ice cream sector[31]. First, the Court of Justice explained that the actions of distributors of a producer in a dominant position may be imputed to that producer if those actions were not adopted independently by those distributors, but formed part of a policy that is decided unilaterally by that producer[32]. Second, the Court of Justice confirmed that the competition authorities are not under an obligation to use the so-called 'as-efficient competitor' (AEC) test to find an abuse, and explained that such test may be inappropriate in the case of certain non-pricing practices or where the relevant market is protected by significant barriers. Even in those cases, however, the relevance of the AEC test cannot be ruled out as it may prove useful

[24] See C-331/22, *EDP*, paras. 78-86.
[25] Judgment of the Court of Justice of 30.1.2020 in Case C-307/18, *Generics (UK) and Others*, EU:C:2020:52.
[26] See C-331/22, *EDP*, paras. 59-77.
[27] Judgement of the General Court of 18.10.2023 in Case T-74/21, *Teva and Cephalon v Commission*, ECLI:EU:T:2023:651.
[28] See below Part II, section 7.2.1.
[29] Judgment of the Court of Justice of 12.1.2023 in Case C-42/21 P, *Lietuvos geležinkeliai AB*, ECLI:EU:C:2023:12.
[30] See C-42/21 P, paras. 73-93.
[31] Judgment of the Court of Justice of 19.1.2023 in Case C-680/20, *Unilever Italia Mkt operations Srl v AGCM*, ECLI:EU:C:2023:33.
[32] See C-680/20, *Unilever*, paras. 23-33.

where the consequences of the practice in question can be quantified. Lastly, the Court of Justice clarified that, even when dealing with exclusivity clauses, competition authorities are required to examine the evidence submitted by the dominant undertaking and cannot exclude the relevance of their economic studies without providing an explanation[33].

On 4 July 2023, the Court of Justice delivered its judgment in *Meta/Bundeskartellamt*,[34] a preliminary reference from the Higher Regional Court of Düsseldorf concerning the possibility for national competition authorities to review the processing of personal data under the General Data Protection Regulation (GDPR).[35] In this regard, the Court of Justice concluded that a competition authority can find, when assessing an alleged abuse of a dominant position by an undertaking, that that undertaking's terms of use relating to the processing of personal data are not consistent with the GDPR, where that finding is necessary to establish the existence of such abuse. In this context, competition authorities are required to consult and cooperate sincerely with the national supervisory authorities concerned and, if the latter have already issued a decision on the conduct under exam, to adhere to their findings[36].

On 25 October 2023, the General Court delivered is judgment in *BEH* annulling, on substantive and procedural grounds, a decision adopted by the Commission concerning an alleged abuse of dominance position by the BEH Group[37]. In relation to the substance of the alleged abuse,[38] the General Court concluded that the Commission has not established, to the requisite legal standard, that there was a refusal of the BEH Group to grant access to the relevant infrastructures capable of infringing Article 102 TFEU.

1.2.3 Rules concerning organisation of sports

On 21 December 2023, the Court of Justice delivered three judgments regarding rules concerning the organisation of sports.

In *International Skating Union*[39], the Court of Justice dismissed the International Skating Union's (ISU) appeal against the General Court's judgment, thereby confirming the Commission's decision that found that certain rules enacted by ISU restricted competition, as they limited athletes' commercial freedom to participate in international speed skating events organised by third parties and prevented potential competitors from organising and commercially exploiting such events. The Court of Justice confirmed that the organisation of sporting competitions constitutes an economic activity that must comply with competition rules. Sports federations may adopt and ensure compliance with rules relating to the

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[33] See C-680/20, *Unilever,* paras. 34-62.

[34] Judgment of the Court of Justice of 4.7.2023 in Case C-252/21, *Meta Platforms Inc. and Others* v. *Bundeskartellamt*, ECLI:EU:C:2023:537.

[35] Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, OJ L 119, p. 1.

[36] See C-252/21, Meta, paras 36-63.

[37] Judgment of the General Court of 25.10.2023 in Case T-136/19, *Bulgarian Energy Holding EAD and Others v. Commission*, ECLI:EU:T:2023:669. The Commission has appealed this judgment.

[38] See below Part I, section 1.2.4.

[39] Judgment of the Court of Justice of 21.12.2023 in Case C-124/21 P, *International Skating Union v Commission,* ECLI:EU:C:2023:1012.

organisation of competitions, provided that such rules are transparent, objective, non-discriminatory and proportionate. Otherwise, such rules may exclude competitors and restrict the organisation of new competitions, preventing athletes from participating in those competitions and audiences from watching them.

In *European Superleague Company*, the Court of Justice delivered its judgment on a prelimany reference from the Commercial Court of Madrid concerning FIFA's and UEFA's rules on prior approval of interclub football competition[40]. The Court of Justice first confirmed that the organisation of interclub football competitions and the exploitation of the media rights are economic activities subject to the rules of competition law. It then explained that undertakings that have a dominant position and that have the power to determine the conditions under which potential competitors may enter the market, must exercise that power subject to criteria which are transparent, objective, non discriminatory and proportionate. The Court of Justice held that FIFA's and UEFA's rules are not in line with any such criteria.

In *Royal Antwerp*, the Court of Justice addressed a preliminary ruling by the Court of First Instance of Brussels concerning UEFA's and the Belgian Football Association's rules requiring a minimum number of 'home-grown players' to be included in football teams[41]. The Court of Justice confirmed that such rules must comply with competition rules and provided some clarifications on how the 'home-grown players' rule may impact competition between professional football clubs. The Court also examined in what circumstances such rules can be exempted under Article 101(3) TFEU[42].

1.2.4 Antitrust procedure

On 9 March 2023, the Court of Justice[43] in *Les Mousquetaires and ITM Enterprises; Casino, Guichard-Perrachon and Intermarché Casino Achats* held *inter alia* that the Commission's obligation to record interviews conducted pursuant to Regulation 1/2003 extends to interviews conducted before a formal investigation has been opened.

On 24 May 2023, the General Court delivered its judgment in *Meta (RFI)* where it examined the lawfulness of a Commission's request for information using search terms under Regulation 1/2003, as well as the lawfulness of a virtual data room procedure for the processing of documents containing sensitive personal data[44]. The General Court confirmed that the procedural safeguards applied by the Commission – including the choice of the search terms – are fully compliant with the Commission's obligations under European data

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[40] Judgment of the Court of Justice of 21.12.2023 in Case C-333/21, *European Superleague Company SL v FIFA and Others*, ECLI:EU:C:2023:1011.

[41] Judgment of the Court of Justice of 21.12.2023 in Case C-680/21, *UL and SA Royal Antwerp Football Club v. URBFA and UEFA*, ECLI:EU:C:2023:1010.

[42] See C-680/21, *Royal Antwerp*, paras. 76-135.

[43] Judgments of the Court of Justice of 9.3.2023 in Cases C-682/20 P, *Les Mousquetaires and ITM Entreprises v Commission*, EU:C:2023:170, C-690/20 P, Casino, *Guichard-Perrachon and Achats Marchandises Casino v Commission*, ECLI:EU:C:2023:171, and C-693/20 P, *Intermarché Casino Achats v Commission*, EU:C:2023:172.

[44] Judgment of the General Court of 24.5.2023 in Case T-451/20, *Meta Platforms Ireland v Commission*, EU: T:2023:276, paras. 219 – 222.

protection rules and that the Commission did not infringe Meta's right to privacy and to good administration, and respected the principle of proportionality.

In the *BEH* judgment of 25 October 2023, the General Court found that the Commission has infringed the principle of good administration and, thus, BEH Group's rights of defence[45]. In particular, the Commission did not properly record and include in the investigation file the minutes of meetings with a complainant (an obligation that extends to meetings that occur post Statement of Objections) and wrongly concluded that some pieces of information were confidential.

1.3. Significant judgments by EU Courts in cartel enforcement

In 2023, the EU Courts largely confirmed the Commission's cartel enforcement practice including its fining policy. In particular, in its judgment of 12 January 2023 in *HSBC*, the Court of Justice confirmed the procedural guarantees applicable in staggered hybrid procedures[46]. In the judgment, the Court of Justice also clarified important aspects concerning the analysis of pro-competitive effects of unlawful conducts in the context of by object restriction of competition and upheld the Commission's decision on substance[47]. These principles were applied by the General Court in December 2023 in parallel separate appeals against the same cartel decision (the *Euribor* cartel)[48].

In its judgment of 18 October 2023 in *Clariant* (*Ethylene* cartel)[49], the General Court dealt with an appeal by one of the addressees of a cartel settlement decision. The General Court fully upheld the Commission's fining decision, recognizing the Commission's broad discretion to increase the fine to reflect the fact that Clariant was a repeat infringer[50] and to ensure sufficient deterrence when fines in buyer cartels are based on the Value of Purchase (without the need to analyse the actual effects)[51]. The Commission had in a cross-appeal asked the Court to increase the fine by 10%, arguing that Clariant's appeal on points that were known to it when it introduced its settlement submission had frustrated the efficiencies gained in the settlement procedure that were rewarded with the 10% settlement reduction. The General Court, however, found that the Commission had in this case not demonstrated that Clariant's agreement to pay the maximum amount of the fine range disclosed during the

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[45] Judgment of the General Court of 25.10.23 in Case T-136/19, *Bulgarian Energy Holding and Others* v *Commission*, EU:T:2023:669. The Commission has appealed this judgment.

[46] Judgment of the Court of Justice of 12.1.2023 in Case C-883/19 P, *HSBC Holdings and Others v Commission*, EU:C:2023:11. Staggered hybrids are where the Commission adopts a decision against the settling parties under the settlement procedure and subsequently adopts a decision against the non-settling parties under the standard procedure.

[47] Judgment of the Court of Justice of 12.1.2023 in Case C-883/19 P, *HSBC Holdings and Others v Commission*, EU:C:2023:11, paragraphs 139 – 143.

[48] Judgements of the General Court of 20.12.2023 in Cases T-106/17, *JPMorgan Chase and Others v Commission*, EU:T:2023:832, and T-113/17, *Crédit Agricole and Crédit Agricole Corporate and Investment Bank v Commission*, EU:T :2023 :847.

[49] Judgment of the General Court of 18.10.2023 in Case T-590/20, *Clariant et Clariant International* v *Commission*, EU:T:2023:650.

[50] Idem, paragraphs 66-106.

[51] Idem, paragraphs 107-141.

settlement discussions meant that it had also understood and finally accepted the two uplifts in the fine that it had disputed during the settlement discussions[52].

1.4. The fight against cartels remains a top priority

Cartels cause immense damage to the EU economy and harm affected companies and consumers. The detection and sanction of cartels therefore remains a core mission for the Commission. Cartel enforcement is even more important at a time when companies are facing various crisis scenarios, since the temptation to collude risks to increase.

In 2023, the Commission continued to build up new streams of cartel cases, relying on information from leniency applicants as well as leads obtained from its own *ex officio* efforts. Unannounced inspections have been carried out in several sectors[53], based on different triggers and tackling different types of behaviour. By aiming for a diversified portfolio of detection tools and investigations in different sectors, the Commission intends to send deterrent signals to a wider audience and trigger compliance efforts.

In 2023, the Commission continued to develop its *ex officio* strategy to detect new cartel cases also outside the leniency regime. It consists of several elements seeking to encourage the reporting of suspicious behaviours (including whistleblower tools and outreach activities with external stakeholders) and detecting leads through market monitoring exercises and close investigative cooperation with other non-competition authorities. Such strategy benefits from the support of the dedicated forensic/intelligence Unit 'Data Analysis and Technology' (Chief Technology Officer (CTO) team)[54]. Thanks to this investment, a growing number of investigations is initiated based on the Commission's *ex-officio* work. As a visible signal of its closer cooperation with other cartel enforcers, the Commission coordinated in 2023 several of its evidence-gathering actions, including inspections, with other competition authorities[55].

The Commission also continued to invest in strengthening its *leniency policy*. In 2023, the number of leniency applications continued to rise for the third year in a row. Stakeholders welcomed the Frequently Asked Questions published in 2022[56], and the new practical arrangements, such as the possibility to contact designated Leniency Officers for informal advice and guidance, and the willingness to discuss potential leniency applications on a 'no-name' basis were used.

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[52] Idem, paragraphs 220-230.

[53] See the press releases of unannounced antitrust inspections in the construction chemicals sector: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5061; fragrance sector: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1532; fashion sector: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2352 and online food delivery sector: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4345

[54] See below Part I, section 5.1.

[55] See for example the inter-agency contacts that took place with the US Department of Justice, the UK Competition and Market Authority and the Swiss Competition Commission before the inspections in the Consumer Fragrance sector in March 2023, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1532. See the coordinated inspections with two other non-EU jurisdictions in October 2023: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5061

[56] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6373

The Commission has also continued to reinforce its *eLeniency* tool to ensure that leniency submissions can be filed in a secure online environment 24/7, and to facilitate an efficient and safe two-way interaction with parties including in the context of settlement procedures.

In September 2023, the Commission sanctioned for the first time a cartel in the defence sector, and imposed a fine on *Diehl* of EUR 1.2 million for participating in a cartel concerning the sale of military hand grenades together with its competitor *RUAG*[57]. RUAG was not fined as it revealed the cartel to the Commission under the leniency programme. The Commission found that the companies split national markets across the EEA between themselves during almost 14 years. Both companies admitted their involvement in the cartel and agreed to settle the case. This is one of the quickest cartel investigations that the Commission has carried out to date.

In October 2023, the Commission fined *Alkaloids of Australia*, *Alkaloids Corporation*, *Boehringer*, *Linnea* and *Transo-Pharm* a total of EUR 13.4 million in a settlement procedure for participating in a cartel concerning a pharmaceutical ingredient (N-Butylbromide Scopolamine/ Hyoscine - SNBB) necessary to produce abdominal antispasmodic drugs [58]. C2 PHARMA was not fined as it revealed the cartel to the Commission under the leniency programme. The Commission established that the six companies coordinated and agreed to fix the minimum sales price of SNBB to customers (i.e. distributors and generic drug manufacturers) and to allocate quotas. In addition, the companies exchanged commercially sensitive information. All companies admitted their involvement in the cartel and agreed to settle the case. This is the first time that the Commission sanctions a cartel in the pharmaceutical sector and in relation to an active pharmaceutical ingredient. The Commission cooperated and coordinated certain investigative activities with the Swiss and Australian competition authorities.

Building on its strong enforcement record in the financial sector, the Commission also adopted a decision in November 2023 in the bond trading area[59], and imposed a fine on *Rabobank* of EUR 26.6 million for participating in a cartel concerning the trading of Euro-denominated bonds, together with *Deutsche Bank*. Deutsche Bank was not fined as it revealed the cartel to the Commission under the leniency programme. The investigation revealed that between 2006 and 2016 the two banks exchanged, through some of their traders, commercially sensitive information and coordinated their trading and pricing strategies. This included inter alia coordination on prices to be offered and displayed on Bloomberg AllQ (all quotes for bonds) screens, which is a dealer-to-client electronic trading platform, and mutual warnings when the other bank's indicative price on screen was considered to be too low or too high.

In December 2023, the Commission fined *Lantmännen ek för and its subsidiary Lantmännen Biorefineries AB (formerly named Lantmännen Agroetanol AB)* a total of EUR 47.7 million

[57] Case AT.40760, *Hand grenades.*

[58] Case AT.40636, *SNBB.*

[59] Case AT.40512, *Euro-denominated bonds (EDB).*

for colluding to influence the price formation mechanism for ethanol in Europe. It closed its investigation against the other suspected undertaking[60].

Furthermore, in November 2023, the Commission informed six manufacturers of automotive starter batteries *Banner, Clarios (former JC Autobatterie), Exide Technologies, FIAMM Energy Technology (*and its predecessor *Elettra)* and *Rombat* as well as the trade association *Eurobat* and its service provider *Kellen* of its preliminary view that they have breached antitrust rules by colluding to increase the prices of automotive starter batteries sold to car producers in the EEA[61].

The Commission also remains committed to investigating possible anticompetitive conduct affecting the achievement of the green and digital transitions. Following unannounced inspections in June 2023[62], the Commission continued its investigation into the synthetic turf industry in several Member State to determine whether the companies active in this sector have infringed EU antitrust rules. The Commission also continued its investigation into a possible collusion in the recycling of end-of-life passenger vehicles (launched through unannounced inspections in several Member States in March 2022)[63].

1.5. Cooperation within the European Competition Network and with national Courts

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

Since 2004, the Commission and the NCAs in all EU Member States cooperate through the European Competition Network (ECN)[64]. The objective of the ECN is to ensure that EU antitrust rules are applied in an effective and coherent manner against companies engaging in business practices that restrict competition and that are liable to affect trade between EU Member States.

In 2023, the Commission continued to safeguard the coherent application of Articles 101 and 102 TFEU through the ECN. Two of the key supporting cooperation mechanisms provided in Regulation 1/2003 are the obligations of NCAs: (i) to inform the Commission about a new investigation at the stage of the first formal investigative measure, and (ii) to consult the Commission on certain types of envisaged decisions. In 2023, 140 new investigations were launched within the network and 88 envisaged decisions were submitted.

In addition to those cooperation mechanisms, other ECN cooperation work streams ensure a coherent enforcement of the EU competition rules. The ECN members meet regularly to discuss cases, policy issues and matters of strategic importance. In 2023, 48 meetings across horizontal working groups and sector-specific sub-groups took place where competition experts from the various authorities exchanged views and explored best practices.

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[60] Case AT.40054, *Ethanol benchmarks*.
[61] Case AT.40545, *Automotive starter batteries*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6146
[62] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3133
[63] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1765
[64] Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, p. 43 and OJ C 374, 13.10.2016, p. 10.

1.5.2. ECN+ Directive

The ECN+ Directive[65] which came into force in February 2019, aims to ensure that when applying the same legal provisions – the EU antitrust rules – the NCAs have effective enforcement tools and the resources necessary to detect and sanction companies infringing those rules. It also aims to ensure that the NCAs can take their decisions in full independence, based on the facts and the law. The changes introduced by the ECN+ Directive contribute to the objective of a genuine Single Market, promoting the overall goal of an open, competitive and innovative internal market creating jobs and growth.

Member States had to transpose the ECN+ Directive into national law by 4 February 2021. In March 2021, the Commission sent Letters of Formal Notice, opening infringement procedures against 22 Member States for non-communicating the transposing measures by the deadline. In September 2022, the Commission sent a Reasoned Opinion, the second step of the infringement procedure, to four Member States that by then had not notified any transposing measures. In July 2023, the Commission sent a Reasoned Opinion to another Member State for a partial failure to transpose and referred another Member State to the Court of Justice for a lack of transposition. By the end of 2023, 26 Member States had notified full transposition of the Directive. The Commission is checking the completeness and conformity of their national transposition measures. In the last quarter of 2023, the Commission closed six of the infringement procedures out of the 22 that had been opened against certain Member States[66].

1.5.3. Cooperation with national courts

In addition to its cooperation with the NCAs in the context of the ECN, the Commission also continued in 2023 its cooperation with national courts. The Commission supports national courts in enforcing the EU competition rules in an effective and coherent manner by providing case-related information or opinions on matters of substance, or by intervening as *amicus curiae* in proceedings pending before the national courts.

1.5.4. Private enforcement

The Damages Directive[67] aims in particular to make it easier for anyone harmed by infringements of the EU antitrust rules to avail of the right to compensation before national courts. Since the adoption of the Damages Directive in 2014, the number of damages actions before national courts has increased significantly and actions for damages have become much more widespread in the EU. This has resulted in an increasing number of references for a preliminary ruling to the Court of Justice under Article 267 TFEU. These contribute to the further clarification of central aspects of private enforcement of EU competition law as well as to the consistent interpretation of the Damages Directive. A significant number of damages

[65] Directive (EU) 2019/1 of the European Parliament and of the Council of 11.12.2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3.

[66] The procedures opened against Belgium, Italy, Bulgaria, Malta, Sweden and Slovenia were closed.

[67] Directive 2014/104/EU of the European Parliament and of the Council of 26.11.2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L 349, 5.12.2014, p. 1.

actions are follow-on actions, where the person harmed by a competition law infringement claims damages following a final decision of a competition authority identifying an infringement of the EU antitrust rules. 'Stand-alone' actions that do not rely on such decisions are also being brought before national courts. By the end of 2023, more damages claims fell fully within the scope of the Damages directive and experience was beginning to be gained in practice regarding all provisions of the directive.

The Commission continues to monitor the application by the national courts of the Member States of the Damages Directive.

2. MERGER CONTROL

The purpose of **EU merger control** is to ensure that market structures remain competitive while enabling smooth restructuring of the industry. This applies not only to EU-based companies, but also to any company active on the EU markets. Industry restructuring is an important way of fostering efficient allocation of production assets. However, there are also situations where industry consolidation can give rise to harmful effects on competition, taking into account the merging companies' degree of market power and other market features. EU merger control ensures that changes in the market structure which lead to harmful effects on competition do not occur.

EU merger control ensures that companies active in EU markets can compete on fair and equal terms. Proposed transactions which may distort competition are subject to close scrutiny by the Commission under the EU Merger Regulation (EUMR)[68]. If necessary to protect competition, the Commission can give merging companies the possibility to dispel competition concerns by offering commitments. If sufficient commitments cannot be found or agreed upon, the Commission may prohibit the transaction. In its assessment, the Commission considers the efficiencies brought about by mergers. Efficiencies may have positive effects on costs and innovation, for example, if they are verifiable, merger-specific and likely to be passed on to consumers.

2.1. Recent enforcement trends

The Commission's enforcement activity remained at a high level with a total number of 333 merger decisions adopted in 2023 (356 notifications). Moreover, in 2023 the Commission received 25 reasoned submissions by notifying parties in pre-notification, requesting a referral of a case from the Commission to a NCA or vice versa. The Commission accepted to examine three transactions following a referral pursuant to Article 22 EUMR and referred one transaction pursuant to Article 9 EUMR to be examined by NCAs.

The vast majority of mergers notified in 2023 did not raise competition concerns and were speedily reviewed. Nevertheless, in 2023, the Commission's merger enforcement was intensive due to the large number of notified transactions as well as the complexity of a significant number of cases. Moreover, the Commission intervened in 11 cases. An increasing number of notified transactions concerned already concentrated industries. Reviewing such

[68] Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1.

transactions required the Commission to carefully assess their potential impact on competition, employing sophisticated quantitative techniques and comprehensive qualitative investigative tools.

In 2023, the Commission opened in-depth investigations (Phase II) in five cases. These cases concerned diverse sectors of the economy, including passenger and cargo air transport, satellite-based communication services, telecommunications, manufacture of consumer electronics, interactive product design software.

In line with the trends of recent years, the Commission in 2023 assessed six mergers involving digital issues. For example, the Commission, following an in-depth assessment, adopted a clearance with commitments decision in *Microsoft*'s acquisition of *Activision Blizzard* [69].

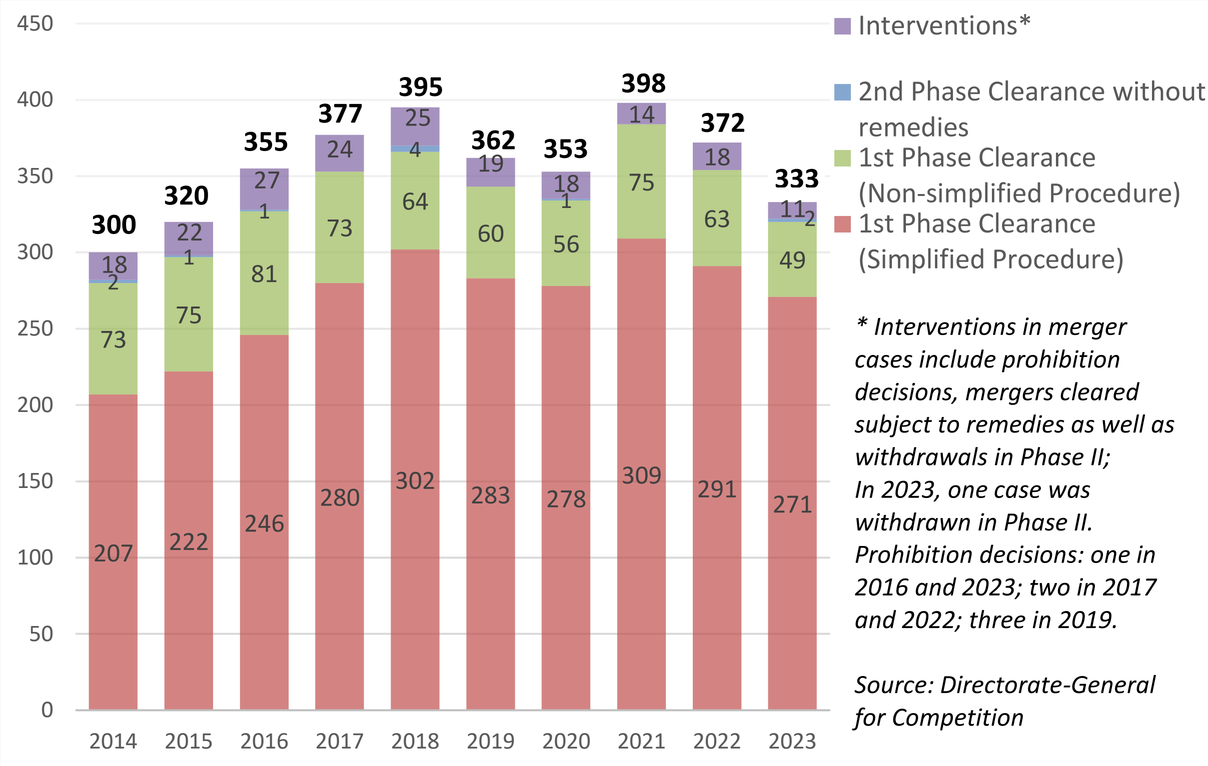
The Commission's merger enforcement activities slightly decreased in comparison to the most recent years. In 2023, the Commission adopted 333 merger decisions in various sectors of which 271 were approved following a simplified procedure (82% of all notified transactions in 2023 were treated under the simplified procedure). Among the 11 proposed acquisitions in which the Commission intervened, 9 transactions were approved subject to conditions. One notified transaction was abandoned by the parties and withdrawn in Phase II during the in-depth investigation[70]. Finally, the Commission prohibited one transaction in 2023[71].

Figure 3: Merger outcome 2014-2023

[69] Case M.10646, *Microsoft/Activision Blizzard,* see below, Part II, section 2.2.5. For more information on mergers involving digital issues, see below, Part II, section 2.2.

[70]Case M.11033, *Adobe/Figma*, see:https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_23_6715. See below, Part II, Section 2.2.3.

[71] Case M.10615, *Booking holdings/eTraveli Group*, see below, Part II, section 8.2.13.



Most remedies accepted by the Commission in 2023 consisted of divestitures of tangible or intangible assets. This confirms the Commission's general preference for structural remedies in merger cases as they are best suited to address competition concerns arising from a concentration in a durable manner.

In addition to remedies offered in Phase II investigations, in 2023, the Commission also cleared transactions subject to remedies where the notifying parties offered comprehensive remedy packages already in Phase I, including in some complex transactions such as the acquisition by *Hitachi Rail* of *Thales*' ground transportation business[72].

2.2. Review of merger control rules and guidance

On 20 April 2023, the Commission adopted the *Merger Simplification Package* aimed at simplifying its procedures for reviewing concentrations under the EUMR[73].

The core of this package is a revised *Notice on a Simplified Procedure*[74]. This Notice expands the number of categories of cases that can benefit from simplified treatment, by two. These are cases where under all plausible market definitions, (i) the individual or combined upstream market share of the merging parties is below 30% and their combined purchasing share is below 30%, and (ii) the individual or combined upstream and downstream market shares of the merging parties are below 50%, the market concentration index ('HHI delta') is

[72] Case M.10507, *Hitachi Rail/Ground transportation business of Thales*. See below, Part II, section 5.2.2.

[73] See: https://competition-policy.ec.europa.eu/mergers/publications/simplification-merger-control-procedures_en#background

[74] Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 160, 5.5.2023, p. 1.

below 150, and the company with the smallest market share is the same in the upstream and downstream markets.

In addition, the Notice also grants the Commission discretion to treat certain cases under the simplified procedure even if they do not fall under any of the default categories for such treatment (the so-called: flexibility clauses). There is now (i) a flexibility clause for horizontal overlaps where the combined market share of the parties to the concentration is 20-25% and for vertical relationships where the individual or combined upstream and downstream market shares of the parties are 30-35%; (ii) a flexibility clause for joint ventures with turnover and assets between EUR 100 and 150 million in the EEA; and (iii) a flexibility clause for vertical relationships where the individual or combined market shares of the parties to the concentration do not exceed 50% in one market and 10% in the other vertically related market. The Notice also includes a clearer and more detailed list of safeguards, i.e. circumstances when a concentration that technically qualifies for simplified treatment nevertheless could be investigated under the normal procedure.

The package further includes a revised *Implementing Regulation*[75] which, among others, includes revised notification forms. The new notification form under the Simplified Procedure can be completed easier and faster by using a tick-the-box approach. Lastly, the Commission introduced via this package electronic notifications of mergers by default[76].

Moreover in 2023, the Commission continued working on a new *Market Definition Notice* to bring its guidance in line with new market realities.

2.3. Significant judgments by EU Courts in merger control

In *Towercast*, the Court of Justice stated in a preliminary ruling of 16 March 2023 that Article 102 TFEU could under certain circumstances be applied by national competition authorities to concentrations. National authorities can apply Article 102 TFEU directly, by recourse to their own procedural rules, to a concentration that falls below the merger control thresholds under EU and national law[77].

On 17 July 2023, the Court of Justice annulled the judgment by the General Court in *CK Telecoms*[78]. At the origin of this dispute was a decision by the Commission in 2016, in which it prohibited the takeover of Telefonica Europe by Hutchison 3G UK (now CK Telecoms UK). The judgment of the Court of Justice is important in many aspects, as it supports the

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[75] Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 (Text with EEA relevance), OJ L 119, 5.5.2023, p. 22.

[76] Communication from the Commission – Communication pursuant to Articles 3(2), 13(3), 20, and 22 of Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ C 160, 5.5.2023, p. 1.

[77] Judgment of the Court of Justice of 16.3.2023 in Case C-449/21, *Towercast* v *Autorité de la concurrence and Ministère de l'Économie*, ECLI:EU:C:2023:207.

[78] Judgment of the Court of Justice of 13.7.2023 in Case C-376/20 P, *Commission* v *CK Telecoms UK Investments*, ECLI:EU:C:2023:561.

Commission's approach in so-called 'gap cases'[79]. In particular, the Court confirmed the Commission's interpretation that the test is symmetrical, i.e. the Commission has to show that it is 'more likely than not' that the concentration concerned would or would not significantly impede effective competition. The General Court had decided on a higher standard of 'strong probability'. The judgment contains further useful clarifications concerning closeness of competition, where the Court of Justice set the bar back to 'close' instead of 'particularly close' as interpreted by the General Court, the concept of an important competitive force, as well as the limits of the jurisdictional review.

In *Altice*, the Court of Justice decided on 9 November 2023, that the Commission had correctly found that Altice had breached both the notification requirement and the standstill obligation laid down in the EUMR by implementing its acquisition of the Portuguese telecommunications operator PT Portugal prior to notification and approval by the Commission.[80] In its judgment, the Court of Justice fully upheld the Commission's finding that certain provisions of the purchase agreement resulted in Altice acquiring the legal right to exercise decisive influence over PT Portugal and that in certain instances the company actually exercised such influence, in breach of the EUMR.

On 21 December 2023, the Court of Justice dismissed an appeal by *UPS* and upheld the judgment of the General Court regarding claims for damages totalling EUR 1.7 billion allegedly caused by the decision of the Commission in January 2013 prohibiting the proposed takeover of TNT by UPS[81]. The Court of Justice concluded that the General Court had correctly found that there was no causal link between the alleged damages suffered and the procedural failure of the Commission.

3. STATE AID CONTROL

State aid control is an integral part of EU competition policy and a necessary safeguard to preserve effective competition and free trade in the single market.

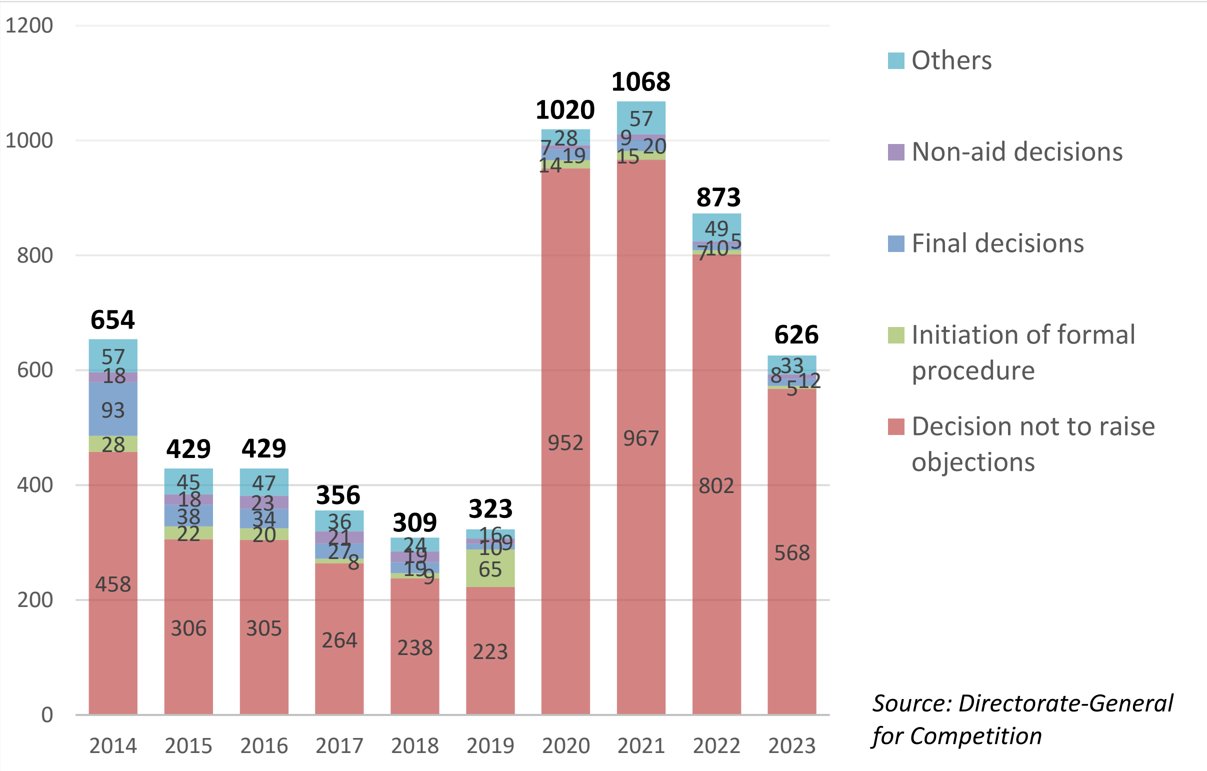
The Treaty establishes the principle that State aid which distorts or threatens to distort competition is prohibited in so far as it affects trade between Member States (Article 107(1) TFEU). However, certain types of State aid may be considered compatible with the internal market (under Article 107(3) TFEU).

The objectives of the Commission's control of State aid are to ensure that aid is growth-enhancing, efficient and effective, and better targeted in times of budgetary constraints and that aid does not unduly restrict competition. In addition to this, the Commission acts to prevent and recover State aid which is incompatible with the internal market.

[79] Gap cases are cases in which a merger between actual or potential competitors falls short of creating or strengthening a dominant position but nevertheless could lead to a significant impediment to effective competition through so-called non-coordinated effects.
[80] Judgment of the Court of Justice of 9.11.2023 in Case C-746/21 P, *Altice Group Lux Sàrl* v *European Commission and Council of the European Union*, ECLI:EU:C:2023:836.
[81] Judgment of the Court of Justice of 21.12.2023 in Case C-297/22 P, *UPC Inc* v *European Commission*, ECLI:EU:C:2023:1027.

Although there was a decrease in the number of State aid decisions in 2023, compared to the previous 3 years, the number remains almost double of the level existing pre-crisis.

Figure 4: State aid decisions 2014-2023



3.1. Temporary Crisis and Transition Framework to further support transition towards a net-zero economy

In March 2022, the Commission adopted a Temporary Crisis Framework for State Aid measures to support the economy following Russia's war of aggression against Ukraine (TCF)[82]. The TCF allowed liquidity support for all undertakings directly or indirectly affected by the crisis and aid to undertakings, in particular energy-intensive commercial consumers, to compensate for part of their increase in energy costs due to the price shock since the Russian agression, while including a number of safeguards to minimise distortions to competition in the Single Market.

In July 2022, the TCF was amended[83] to complement the Winter Preparedness Package[84] and in line with the objectives of the REPowerEU plan[85]. In October 2022, the Commission

[82] Communication from the Commission – Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 131I, 24.3.2022, p. 1.
[83] Communication from the Commission – Amendment to the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 280, 21.7.2022, p. 1. This first amendment included provisions for Member States to provide support to accelerate the rollout of renewable energy and to facilitate the decarbonisation of industrial processes.
[84] Proposal for a Council Regulation on coordinated demand reduction measures for gas, COM/2022/361 final, 20.7.2022.

adopted a Communication replacing the previous TCF with an updated TCF[86], setting the main principles for potential recapitalisations, especially for energy companies, increasing the maximum allowed aid levels for small aid amounts, and providing additional flexibility for guarantees for energy companies to cover their liquidity needs. It also simplified and adjusted the rules for aid granted in view of increased energy costs.

On 17 March 2023 the Commission adopted a new Temporary Crisis and Transition Framework (TCTF)[87], amending and prolonging in part the TCF and adding possibilities to foster support measures in sectors which are key for the transition to a net-zero economy considering the Green Deal Industrial Plan.

The TCTF prolonged the possibility for Member States to further support measures needed for the transition towards a net-zero industry, in particular schemes for accelerating the rollout of renewable energy and energy storage and schemes for the decarbonisation of industrial production processes which Member States may set up until 31 December 2025; amended the scope of such measures to make schemes to support renewable energy, energy storage and decarbonisation of industrial production processes even easier to design and more effective; and introduced criteria for authorising new measures, applicable until 31 December 2025, to further accelerate investments in key sectors for the transition towards a net-zero economy, enabling investment support for the manufacturing of strategic equipment, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers and carbon capture usage and storage as well as for production of key components and for production and recycling of related critical raw materials, through schemes or individual aid up to the amount of subsidy which the beneficiary could receive for an equivalent investment in a third country jurisdiction outside the EEA, or the amount needed to incentivise the company to locate the investment in the EEA (the so-called ‘funding gap’) whichever is the lowest. The energy transition-related sections of the TCTF (sections 2.5, 2.6 and 2.8) apply until 31 December 2025.

On 20 November 2023, the Commission adopted a limited prolongation until 30 June 2024 of the TCTF sections enabling Member States to continue to grant limited amounts of aid, together with a proportionate increase in the aid ceilings to cover the winter heating period (section 2.1 TCTF), and aid to compensate for high energy prices (section 2.4 TCTF) notably in view of the remaining vulnerability of energy markets to which energy intensive industries

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[85] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, COM(2022) 230, 18.5.2022.

[86] Communication from the Commission - Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 426, 9.11.2022, p. 1. This Temporary Crisis Framework replaced the Temporary Crisis Framework adopted on 23 March 2022, as amended on 20 July 2022 (‘previous Temporary Crisis Framework’). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

[87] Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C 101, 17.3.2023, p. 3. This TCTF replaced the TCF adopted on 28 October 2022, which had already replaced the previous TCF adopted on 23 March 2022, as amended on 20 July 2022. The TCF was withdrawn with effect from 9 March 2023.

are particularly sensitive[88]. The other sections of the Framework remained unchanged: sections 2.5, 2.6 and 2.8 of the TCTF remain in force until the end of 2025, and sections 2.2, 2.3 and 2.7 were phased out on 31 December 2023.

In 2023, the Commission adopted 220 decisions (of which 91 amendment decisions) under the TCF and TCTF, approving 147 national measures notified by 27 Member States. The overall budget that Member States notified to the Commission under such State aid measures amounted to around EUR 77.94 billion.

3.2. Phasing out of the Temporary Framework for State aid measures to support the economy during the COVID-19 pandemic

In March 2020, the Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (COVID Temporary Framework)[89] to enable Member States to use the full flexibility foreseen under State aid rules to support the economy. The aim of the Temporary Framework was to allow Member States to tackle the difficulties undertakings were encountering as a result of the pandemic whilst maintaining the integrity of the EU internal market and ensuring free and fair competition.

Most of the provisions of the COVID Temporary Framework phased out on 30 June 2022. Investment and solvency support measures could still be put in place until 31 December 2023. In addition, the Temporary Framework enabled a flexible transition, under clear safeguards, in particular for the conversion and restructuring options of loans and guarantees into direct grants, until 30 June 2023.

In 2023, the Commission adopted two decisions approving one new national measure under the COVID Temporary Framework. The total budget notified to the Commission under such State aid measures was around EUR 40.3 million[90].

3.3. Recovery and Resilience Facility (RRF)

The implementation of the approved national Recovery and Resilience Plans (RRPs) under the Recovery and Resilience Facility (RRF) progressed well. Moreover, most Member States were complementing their RRPs with new REPowerEU chapters covering additional measures[91]. State aid control continues to ensure that any competition distortions that

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[88] Communication from the Commission – Amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C, C/2023/1188, 21.11.2023, see: https://competition-policy.ec.europa.eu/state-aid/temporary-crisis-and-transition-framework_en

[89] Communication from the Commission: Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91 I, 20.3.2020, p. 1, as amended by Commission Communications C(2020) 2215, OJ C 112I, 4.4.2020, p. 1; C(2020) 3156, OJ C 164, 13.5.2020, p. 3; C(2020) 4509, OJ C 218, 2.7.2020, p. 3; C(2020) 7127, OJ C 340I, 13.10.2020, p. 1 and C(2021) 564, OJ C 34, 1.2.2021, p. 6, C(2021) 8442, OJ C 473, 24.11.2021, p. 1 and C(2022) 7902 of 28 October 2022.

[90] In addition, the Commission adopted two decisions concerning the recapitalisation of SAS following the annulment by the General Court of the Commission decisions in May 2023, See below, Part II, section 8.2.4.

[91] See Article 21c of Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, as amended on 27 February 2023, OJ L 63, 28.2.2023, p. 1.

measures included in the RRPs may cause are limited to the minimum necessary. In 2023, the Commission adopted decisions in at least 55 RRF cases[92].

To facilitate work for Member States, the Commission provided early on guidance on State aid legislation and procedures in the RRF context, which was made available at DG Competition's website. Given that many relevant legal texts such as the Guidelines on State aid for climate, environmental protection and energy (CEEAG)[93], TCTF and the General Block Exemption Regulation (GBER)[94] were updated in 2022 and 2023, DG Competition revised the guiding templates in Spring 2023[95]. The updated guidance was notably relevant for the design of measures under the new REPowerEU chapters.

3.4. State aid for horizontal objectives

Over the years, the architecture of State aid control has evolved. Today, a substantial part of aid is awarded under block-exempted schemes. State aid for horizontal objectives generally accounts for most of all aid. The Block Exemption Regulations (GBER, Agriculture Block Exemption Regulation (ABER)[96], and Fisheries Block Exemption Regulation (FIBER)[97]) allow Member States to implement a wide range of public support measures in areas such as research and development, environmental protection, broadband connectivity, regional development, or support to SMEs, without prior notification if certain conditions are fulfilled. As illustrated by the graphs below, much of horizontal aid falls under the GBER.

Figure 5: State aid expenditure 2012-2022

[92] For more information on RRF cases, see below in the sectoral sections.

[93] Communication from the Commission, Guidelines on State aid for climate, environmental protection and energy 2023, OJ C 80, 18.2.2022, p. 1.

[94] Commission Regulation (EU) No 651/2014 of 17.6.2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

[95] See: https://competition-policy.ec.europa.eu/state-aid/legislation/rrf-guiding-templates_en

[96] Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European, OJ L 327, 21.12.2022, p. 1.

[97] Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p. 82. Both the ABER and FIBER were revised (see below, Part II, section 6.2.2).

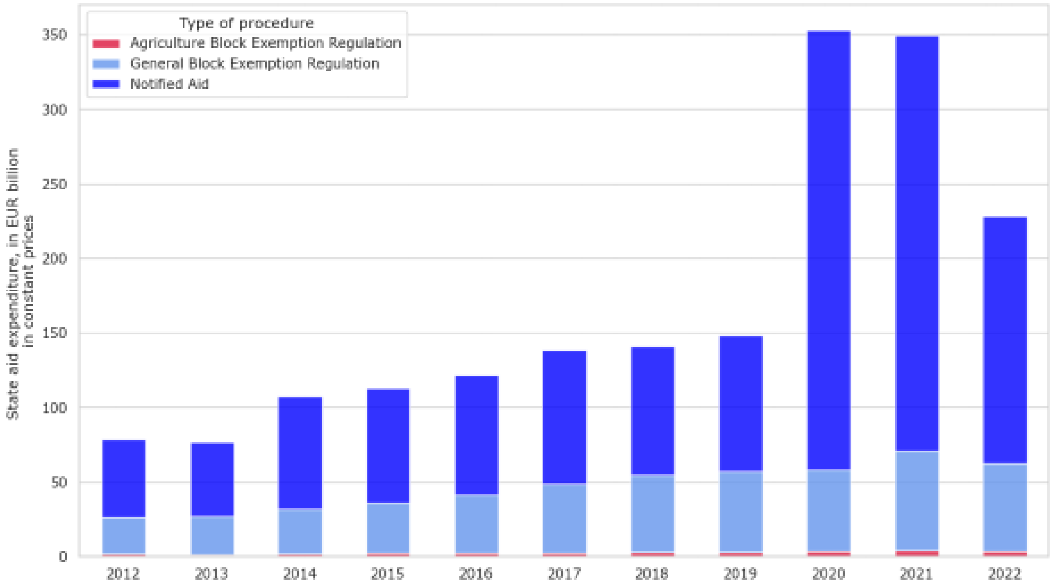
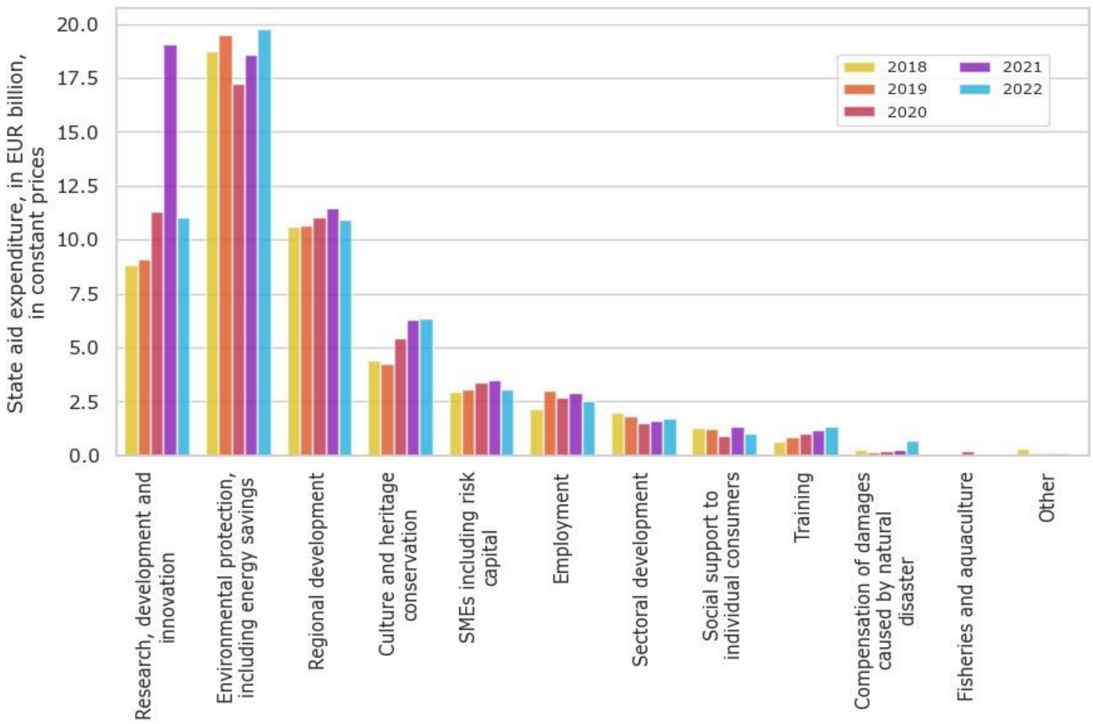


Figure 6: GBER State aid expenditure by objective in the EU



3.4.1. Evaluation of aid schemes

The evaluation of aid schemes was introduced by the 2012 State Aid Modernisation (SAM)[98]. The aim is to gather the necessary evidence to better identify the impact, positive and negative, of the aid and to provide input for future policy-making by the Member States and the Commission. Since 1 July 2014, evaluation is required for large GBER schemes in certain

[98] See: https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation_en

aid categories[99] as well as for a selection of notified schemes under the new generation of State aid guidelines[100].

By the end of 2023, the Commission had approved evaluation plans covering 129 State aid schemes. Ten additional schemes were still under analysis, covering a total of 20 Member States[101] and the United Kingdom. Most of these decisions concerned either large regional aid projects or Research, Development and Innovation (RDI) aid schemes under GBER or notified energy and broadband schemes. In total, these schemes account for over EUR 70 billion in annual State aid budget. By the end of 2023, the Member States had delivered to the Commission 36 and interim, 43 final evaluation reports. They were assessed by the Commission services and considered to be of average to good quality[102].

In 2023, the Commission continued to harmonise the evaluation requirement across legal bases. This process was started in 2021 to take into account the experience maturated over the course of the previous years as well as the 2020 fitness check and fact-finding study to assess the implementation of the evaluation requirement as foreseen by the GBER and relevant guidelines. The revised version of the evaluation requirement features already in the recently approved guidelines on Regional aid[103], Risk Finance[104], Broadband[105], Climate, Environmental protection and Energy (CEEAG), R&D, Agriculture, Fisheries and ETS[106] as well as in the new ABER and FIBER.

The current priority of the Commission is to assess evaluation reports, both intermediate and final ones, in order to: (i) give appropriate feedback to Member States, (ii) make sure that results are used for better policy-making, and (iii) provide evidence to assist Member States when reflecting on future legal developments.

3.4.2. General Block Exemption Regulation amended to facilitate the Green and Digital transitions

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[99] Schemes with an average annual State aid budget above EUR 150 million in the fields of regional aid, aid for SMEs and access to finance, aid for research and development and innovation, energy and environmental aid and aid for broadband infrastructures.

[100] Evaluation can apply to notified aid schemes with large budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.

[101] Austria, Croatia, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

[102] All the submitted evaluation reports are reviewed by the JRC within the framework of the Administrative Arrangement established between DG Competition and the JRC on the: ‘Support to the quality assessment of evaluation reports in the area of State Aid, 2018-2020’. The JRC has continued to support DG Competition under the new Administrative Arrangement for the ‘Support to the quality assessment of evaluation plans and reports in the area of State Aid, 2021-2023 (EVALSA II)’.

[103] Communication from the Commission, Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.

[104] Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

[105] Communication from the Commission, Guidelines on State aid for broadband networks 2023/C 36/01, OJ C 36, 31.1.2023, p. 1.

[106] Communication from the Commission, Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021, OJ C 317, 25.9.2020, p. 5.

On 23 June 2023, the Commission adopted a targeted amendment to the GBER to simplify and speed up support for green and digital investments (so-called Green Deal GBER amendment)[107]. This amendment prolongs the GBER until the end of 2026.

The revised GBER reflects the recent changes to various sets of State aid guidelines and includes provisions to tackle some of the economic effects stemming from Russia's war of aggression against Ukraine and contribute to the recovery of Europe's economy, affected also by the coronavirus pandemic and the high energy prices.

Among other changes, the revised rules increase and streamline the possibilities for aid in the area of environmental protection and energy to support the rollout of renewable energy, decarbonisation projects, green mobility and biodiversity, as well as to facilitate investments in renewable hydrogen and to increase energy efficiency. They also facilitate the implementation of certain projects involving beneficiaries in several Member States, meaning projects related to Important Projects of Common European Interest (IPCEI) in the research and development field, by increasing the aid intensities as well as the notification thresholds. Further, they block-exempt aid measures set up by Member States to regulate prices for energy such as electricity, gas and heat produced from natural gas or electricity, and they introduce a significant increase of notification thresholds for environmental aid as well as for Research, Development and Innovation (RDI) aid. Finally, the provisions concerning fixed and mobile broadband networks are also clarified and expanded in key areas, such as the possibility to finance also active mobile equipment and new provisions for backhaul networks.

3.4.3. Revised general de minimis Regulation adopted

On 13 December 2023 the Commission adopted the new general *de minimis* Regulation[108], while the previous *de minimis* Regulation expired on 31 December 2023[109]. The Regulation allows small aid amounts to fall outside the scope of EU State aid control because they are deemed to have no effect on trade between Member States and not to distort or threaten to distort competition. It reduces significantly the administrative burden for companies (in particular SMEs) and Member States. The main changes are an increased ceiling of EUR 300 000 over three years to adjust to inflation and the introduction of a mandatory de minimis register at national or EU level to increase transparency, thereby relieving companies from the obligation to keep record of the *de minimis* aid they received. While under the previous regulation businesses were required to keep track of *de minimis* aid received, the new *de*

[107] Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), OJ L 167, 30.6.2023, p. 1, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1523

[108] Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 2023, 15.12.2023.

[109] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

minimis Regulation includes the obligation for all Member States to provide as from 2026 complete information on *de minimis* aid granted in a central register at national or EU level and to check that any new grant of aid does not exceed the relevant ceiling.

3.4.4. Aid for research, development, and innovation (RDI)

Research, development, and innovation (RDI) are key drivers of economic growth and are necessary to achieve a variety of policy objectives, including those of the European Green Deal and of the Digital Strategy. State support for such risky investments can be necessary to address market failures that may result in a level of RDI activities which is too low from the point of view of society.

In 2023, the Commission approved a EUR 179.5 million Croatian aid measure to support the *development of an urban mobility service based on a fully autonomous electric vehicle* (so-called: robo-taxi)[110]. It also approved two French measures, a EUR 1.5 billion measure and a EUR 659 million measure supporting *research and development in solid-state batteries* (SSB)[111] and *lithium-ion batteries* for electric vehicles[112], respectively. Finally, the Commission approved a EUR 52.3 million Italian measure to support Leonardo S.p.A in *the development of smart aerostructure factory model*[113].

3.4.5. Important Project of Common European Interest (IPCEI)

During 2023 the Commission approved two IPCEI supporting strategic value chains/ecosystems of the EU economy and covering Microelectronics and Cloud information systems.

IPCEI ME/CT

An IPCEI to support research, innovation and the first industrial deployment of advanced microelectronics and communication technologies across the value chain was approved in June 2023[114]. The project, called *IPCEI ME/CT*, was jointly prepared and notified by 14 Member States: Austria, Czechia, Finland, France, Germany, Greece, Ireland, Italy, Malta, the Netherlands, Poland, Romania, Slovakia and Spain[115]. These Member States will provide up to EUR 8.1 billion in public funding, which is expected to unlock additional EUR 13.7 billion in private investments. As part of this IPCEI, 56 companies, including small and medium-sized enterprises (SMEs) and start-ups, will undertake 68 innovative projects. Aid to another 34 associated projects to this IPCEI will be provided by Member States under the GBER.

IPCEI CIS

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[110] Case SA.101759, Croatia - *Development and implementation of a completely new urban mobility system based on new autonomous electric vehicle technology.*

[111] Case SA.106740, France - *Aid to ProLogium for the project 'Prometheus'.*

[112] Case SA.106361, France - *Approval of a €659 million French measure to support Verkor in researching and developing new production processes of lithium-ion batteries for electric vehicles.*

[113] Case SA.104370, Italy - *Aid to Leonardo S.p.A. for the implementation of the research and development project 'NEMESI.*

[114] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3087

[115] Cases SA.101202 (Austria), SA.101141 (Czechia), SA.101143 (Finland), SA.101193 (France), SA.101129 (Germany), SA.101210 (Greece), SA.101151 (Ireland), SA.101186 (Italy), SA.101201 (Malta), SA.101171 (the Netherlands), SA.101175 (Poland), SA.101192 (Romania), SA.101200 (Slovakia) and SA.101150 (Spain).

In December 2023[116], the Commission approved an IPCEI to support research, development and first industrial deployment of advanced cloud and edge computing technologies across multiple providers in Europe (IPCEI CIS). Seven Member States[117] will provide up to EUR 1.2 billion in public funding, which is expected to unlock additional EUR 1.4 billion in private investments. As part of this IPCEI, 19 companies, including small and medium-sized enterprises (SMEs), will undertake 19 highly innovative projects. IPCEI CIS is the first IPCEI in the cloud and edge computing domain. It concerns the development of the first interoperable and openly accessible European data processing ecosystem, the multi-provider cloud to edge continuum.

Following the approval of State aid for the first six integrated IPCEIs, Member States and the Commission had gained experience and knowledge on the assessment of State aid for IPCEI projects. On that basis DG Competition published on 17 May 2023 a *Code of good practices for a transparent, inclusive, faster design and assessment of IPCEIs*[118]. It constitutes a manual of good practices addressed to national authorities, the Coordinator Member State selected by the national authorities, undertakings benefitting from aid based on the IPCEI rules ('IPCEI direct participants'), and the Commission services, for the purpose of facilitating the development and assessment of IPCEI.

In addition, in Autumn 2023, the Commission set up the *Joint European Forum for IPCEIs (JEF-IPCEI)*, which met for the first time on 20 October 2023. The forum, which is a partnership between the Commission and the Member States, covers the entire IPCEI lifecycle and aims to increase the effectiveness of the design, assessment (based on existing State aid rules) and implementation of IPCEI and to identify areas of strategic EU interest for potential future IPCEI. The JEF-IPCEI works towards these objectives by better aligning potential new IPCEIs with the policy objectives of the EU industrial strategy and improving the process, speed and design of IPCEIs[119]. The forum will meet several times per year.

3.4.6. Aid to support the EU semiconductor ecosystem

In line with the principles outlined in the Chips Act Communication[120], the Commission approved in April 2023 a EUR 2.9 billion *French aid measure to support STMicroelectronics and GlobalFoundries in the construction of a new microchips manufacturing facility* in France[121]. The measure will strengthen Europe's security of supply, resilience, and digital sovereignty in semiconductor technologies. Several Member States are in contact with DG Competition on additional projects to further strengthen the EU semiconductor ecosystem.

3.4.7. Regional aid

[116] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6246

[117] Cases SA.102498 (France), SA.102517 (Germany), SA.102520 (Hungary), SA.102519 (Italy), SA.102516 (the Netherlands), SA.102527 (Poland) and SA.102514 (Spain).

[118] Practical information for Important Projects of Common European Interest (IPCEI), see: https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/ipcei/practical-information_en#the-code-of-good-practices

[119] See: https://competition-policy.ec.europa.eu/state-aid/ipcei/joint-european-forum-ipcei_en

[120] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Chips Act for Europe, COM(2022) 45 final.

[121] Case SA.102430, France – *Project Liberty – New semiconductor manufacturing plant by STMicroelectronics and GlobalFoundries*.

The revised Guidelines on regional State aid[122] were adopted in April 2021 and entered into force on 1 January 2022. A regional aid map for each Member State was adopted in the course of 2021 and 2022.

In 2023, the Commission approved several amendments to those regional aid maps, for instance to take account of the identification of certain areas as territories eligible for support from the Just Transition Fund[123]. Furthermore, on 30 May 2023, the Commission adopted a Communication regarding a possible mid-term review of the regional aid maps, taking into account updated statistics[124]. In this context, eight Member States notified an amendment to their map, for which the Commission adopted amendment decisions.

In parallel, the Commission adopted in 2023 several decisions concerning regional aid. For instance, the Commission authorised regional investment aid to *Samsung* for the extension of its battergy cell production facility for electric vehicles in Hungary[125]; to *3Sun* for the extension of its solar panel plant in Italy[126]; and to *Cobre Las Cruces* for the upgrading of its refinery in Spain[127]. The Commission also approved a *Romanian scheme* to promote investments in the field of electric batteries in assisted areas[128], a *Bulgarian scheme* to support investments in high unemployment areas[129] and a *French scheme* to support companies in five outermost regions[130].

3.4.8. Aid to risk finance

Member States can support young SMEs and certain other non-large enterprises, such as start-ups or certain middle-capitalisation firms (mid-caps), typically suffering from limited access to finance through equity, guarantees, loans or fiscal incentives to grow and develop their full potential in the face of asymmetric information available to investors.

The revised Risk Finance Guidelines[131] entered into force on 1 January 2022. Since these Guidelines are the legal basis for the authorisation of risk finance aid schemes that go beyond the GBER, the Commission amended on 23 June 2023 the access to finance section of the GBER (section 3, Articles 21 to 24) to ensure consistency between the two set of rules.

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122 Communication from the Commission, Guidelines on regional State aid, OJ C 153, 29.4.2021, p. 1.

123 Regulation (EU) 2021/1056 of the European Parliament and the Council, establishing the Just Transition Fund, OJ L 231, 30.6.2021, p. 1.

124 Communication from the Commission amending paragraph 188, Annexes I and IV to the Guidelines on regional State aid regarding the mid-term review of the regional aid maps for the period 1 January 2022 to 31 December 2027, OJ C 194, 2.6.2023, p. 13.

125 Case SA.48556, Hungary – LIP – *Regional investment aid to Samsung SDI*.

126 Case SA.104269, Italy – RRF - LIP - *Regional investment aid (RRF) to 3SUN.*

127 Case SA.100238, Spain – LIP – *Regional investment aid to Cobre Las Cruces*.

128 Case SA.102924, Romania – RRF - *Scheme for investments in the industrial chain of production, assembly and/or recycling of batteries and photovoltaic cells and panels*.

129 Case SA.104266, Bulgaria - *Corporate tax exemption under Article 184 in conjunction with Article 189 of the Corporate Income Tax Act – Regional aid scheme 2022-2027*.

130 Case SA.100513, France - *Réductions d'octroi de mer et non assujettissement à l'octroi de mer dans certaines régions ultrapériphériques françaises (2022-2027).*

131 Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

Following this amendment, risk finance aid for SMEs and start-ups, up to EUR 16.5 million (previously EUR 15 million) per beneficiary, can be block-exempted under the GBER; whereas aid to innovative or small mid-caps, or aid that goes beyond the GBER conditions, can be approved by the Commission under the Risk Finance Guidelines[132].

3.4.9. Infrastructure support measures

In 2023, the Commission approved aid for the construction of a *multifunctional hall in Brno, Slovakia*[133]. It also approved the 7th amendment to the Concession Agreement for the financing, construction, operation and maintenance of the *Istrian Y Motorway in Croatia*[134]. Further, the Commission approved a *Czech scheme*[135] and an *Italian scheme*[136] to support the *development of railway sidings*.

3.5. Significant judgments by EU Courts in State aid

In 2023, the EU Courts adopted a number of important judgments in the field of State aid, concerning in particular the notions of imputability and the granting of aid, advantage and selectivity, as well as the compatibility assessment of damage compensation under Article 107(2)(b) TFEU as well as under the Temporary Framework for State aid measures to support the economy during the COVID-19 pandemic.

3.5.1. Imputability and the granting of aid

On 12 January 2023, the Grand Chamber of the Court of Justice clarified in its judment in *DOBELES HES*[137] that, whilst a national court may order that an undertaking must, in accordance with national law, receive an amount which constitutes State aid, that does not mean that that court grants separate State aid. Rather, any legal proceedings before such a court would concern the entitlement to aid and constitute requests for payment of aid rather than requests for granting separate State aid by the court. However, national courts must in principle reject a request for payment of aid that is unlawful; the national court may make the payment order subject to the condition that the competent national authority first receives an approval by the Commission to prevent the granting of unlawful aid.

[132] Other amendments include the restructuring of Article 21 GBER and the introduction of a new Article 21a for tax incentives, a modification of one of the eligibility criteria (giving Member States more flexibility), clarification of certain key concepts, modulating the minimum thresholds for private participation in risk finance investments for particular areas and projects, and increasing both the maximum amounts and eligible forms of start-up aid under Article 22.

[133] Case SA.58891, Slovakia - *Aid for the construction of a multifunctional hall in Brno*.

[134] Case SA.103361, Croatia - *7th amendment to the Concession Agreement for the financing, construction, operation and maintenance of the Istrian Y Motorway*.

[135] Case SA.101579, Czechia – *Development of rail sidings*.

[136] Case SA.102422, Italy – *Support for sustainable development of railway sidings*.

[137] Judgment of the Court of Justice (Grand Chamber) of 12.1.2023 in Joined Cases C-702/20 and C-17/21, *DOBELES HES*, EU:C:2023:1.

In its judgment of 13 September 2023 in *ITD and Danske Fragtmænd*[138], the General Court criticised the Commission's assessment of imputability. In particular, the General Court considered that the Commission should have further investigated the organic links between the parent company PostNord with Denmark and Sweden, as the two Member States together appointed a majority of board members, including one civil servant each. The General Court also highlighted the existence of a 'dialogue on financing' between the States and PostNord, and the fact that the PostNord group provided via its subsidiaries nationwide postal services in Denmark and Sweden, which therefore would likely pay special attention to the capital injection in question to ensure that it did not affect the provision of these services. Among other things, the General Court considered those to be significant indicators of imputability that had not been duly taken into consideration by the Commission. For that reason, the General Court partially annulled the Commission decision on that basis[139].

3.5.2. Advantage and selectivity

In its judgment of 8 February 2023 in *Carpatair*[140], the General Court ruled that for applying the Market Economy Operator Principle (MEOP), the Commission can only rely on information which was available, and the developments which were foreseeable, at the time when the decision to conduct the operation in question was taken. The General Court criticised that the Commission had based its assessment entirely on a report established *ex-post*, even if that report was based on the information which was available and the developments which were foreseeable at the time when the agreements in question had been adopted. According to the General Court, such an *ex-post* report did not represent an *ex-ante* analysis capable of demonstrating compliance with the MEOP. The General Court considered that such a report drawn up *ex-post* could not replace, but only supplement, evidence generated before the conclusion of those agreements. In a later judgment of 12 October 2023 in *Larko*[141], the Court of Justice accepted that in order to determine whether a Member State should have been aware of the financial difficulties of a beneficiary, statements made at a later time but that are reporting events that predate or are contemporary to the decision-making process can be used as evidence by the Commission.

In its judgment of 15 November 2023 in *European Gaming and Betting Association*[142], the General Court took the view that the Commission had failed to examine the potential indirect advantage conferred on the entities to whom licence holders were obliged to remit part of their proceeds generated by gambling activities. The General Court concluded that in the

[138] Judgment of the General Court of 13.9.2023 in Case T-525/20, *ITD and Danske Fragtmænd* v *Commission*, EU:T:2023:542.
[139] The General Court dismissed the remainder of the action by rejecting the applicants' claims on cross-subsidisation.
[140] Judgment of the General Court of 8.2.2023 in Case T-522/20, *Carpatair* v *Commission*, EU:T:2023:51. This judgment is currently under appeal in Joined Cases C-244/23 P, C-245/23 P and C-246/23 P.
[141] Judgment of the Court of Justice of 12.10.2023, Case C-445/22 P *Larko* v *Commission*, EU:C:2023:773.
[142] Judgment of the General Court of 15.11.2023 in Case T-167/21, *European Gaming and Betting Association* v *Commission*, EU:T:2023:723.

absence of such an examination, the Commission had not put itself in a position to rule out the existence of serious difficulties in that regard.

In its judgment of 14 December 2023 in *EDP España* v *Naturgy Energy Group and Commission*[143], the Court of Justice set aside the General Court's judgment[144] and annulled the Opening Decision of the Commission for a breach of the obligation to state reasons as regards the selective nature of the measure. The Court of Justice recalled that the Opening Decision should summarise the relevant issues of fact and law and, therefore, it should include a preliminary assessment of the Commission on the notion of State aid. It noted that although the finding on the existence of aid in the Opening Decision is only provisional, the Commission nevertheless has to disclose in a clear and unequivocal fashion its reasons why the measure in question was liable to constitute State aid. As regards selectivity, this requires the Commission to state, even in a succinct manner, already in the opening decision the reasons why it considers that, within the context of a particular legal regime, that measure has the effect of conferring an advantage on certain undertakings over others which are, in the light of the objective pursued by that regime, in a comparable factual and legal situation.

In 2023, the EU Courts also rendered several significant judgments in the area of taxation[145].

3.5.3. Damage compensation under Article 107(2)(b) TFEU

In its judgments of 28 September 2023 in *Ryanair (SAS I)*[146], the Court of Justice provided important clarifications as regards the assessment of damage compensation. The Court of Justice first confirmed that under Article 107(2)(b) TFEU, Member States are not obliged to grant State aid to all undertakings affected by an exceptional occurrence. However, the choice of the beneficiary of the aid must be consistent with the objective of compensating for the disadvantages caused directly by an exceptional occurrence, referred to in Article 107(2)(b) TFEU and must thus genuinely reflect the concern to attain that objective as opposed to other considerations unrelated to it. The Court of Justice also endorsed the calculation of damage due to the COVID-19 pandemic, which was based on forward-looking estimations provided by Denmark and Sweden; this was considered acceptable as long as there were sufficient safeguards to ensure an *ex-post* assessment of the damage actually suffered by the beneficiary, and a claw-back mechanism to ensure the recovery of any overcompensation. Finally, the Court of Justice clarified that the general principle of non-discrimination in Article 18 TFEU cannot be applied as Article 107(2) and (3) TFEU allows differences in treatment between undertakings, subject to fulfilment of the requirements laid down by those provisions, which must thus be regarded as 'special provisions' within the meaning of Article 18 TFEU.

In 2023, the General Court rendered several further judgments concerning damage compensation granted to airlines.

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[143] Judgment of the Court of Justice of 14.12.2023 in Joined Cases C-693/21 P and C-698/21 P, *EDP España* v *Naturgy Energy Group and Commission*, EU:C:2023:989.

[144] Judgment of the General Court of 8.09.2021 in Case T-328/18, *Naturgy Energy Group / Commission,* EU:T:2021:548.

[145] See below, Part II, section 4.2.

[146] Judgments of the Court of Justice of 28.9.2023 in Cases C-320/21 P, *Ryanair* v *Commission*, EU:C:2023:712, and C-321/21 P *Ryanair* v *Commission*, EU:C:2023:713.

In its judgments of 18 October 2023 in *Ryanair (Alitalia I)*[147], *Wizz Air Hungary (TAROM)*[148] and *Ryanair (Alitalia II)*[149], the General Court confirmed that Member States can grant damage compensation under Article 107(2)(b) TFEU to undertakings in difficulty. As regards the choice of counterfactual for the damage calculation, the General Court considered that as a general rule, it is appropriate to take into account the most recent historical data, unless such data is an unreliable comparison for the case at hand.

In its judgment of 29 March 2023 in *Wizz Air Hungary (Blue Air)*[150], the General Court accepted the calculation of damage due to travel restrictions based on the projected revenues and costs for the relevant period, also taking into account the beneficiary's pre-existing difficulties.

Finally, in its judgment of 24 May 2023 in *Ryanair* on an Italian compensation scheme for airlines[151], the General Court annulled the decision approving the aid as the Commission had failed to explain why it examined the compatibility of the minimum remuneration requirement with EU law solely in the light of Article 8 of the Rome I Regulation, and not in the light, in particular, of the principle of freedom to provide services, enshrined in Article 56 TFEU.

3.5.4. Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

The General Court also had to decide a number of cases related to recapitalisation measures provided to airlines under section 3.11 of the Temporary Framework[152].

In its judgment of 10 May 2023 in Joined Cases *Ryanair and Condor Flugdienst* (Lufthansa)[153], the General Court annulled the Commission decision to raise no objections to a EUR 6 billion recapitalisation of Lufthansa by Germany. As regards the eligibility condition under point 49(c) of the Temporary Framework that the beneficiary must be unable to obtain financing on the markets at affordable terms, the General Court found that the Commission had failed to investigate whether the beneficiary could have raised a non-negligible part of the necessary financing on the markets, in particular given the available collateral. The General Court further held that the discount to the share price provided to Germany could not be considered an alternative step-up mechanism within the meaning of point 61 of the Temporary Framework. Finally, the General Court criticised the assessment of the required

[147] Judgment of the General Court of 18.10.2023 in Case T-225/21, *Ryanair* v *Commission (Alitalia I; COVID-19)*, EU:T:2023:644.
[148] Judgment of the General Court of 18.10.2023 in Case T-332/21, *Wizz Air Hungary* v *Commission (TAROM; Covid-19)*, EU:T:2023:645.
[149] Judgment of the General Court of 18.10.2023 in Case T-333/21, *Ryanair* v *Commission (Alitalia II; COVID-19)*, EU:T:2023:646.
[150] Judgment of the General Court of 29.3.2023 in Case T-142/21, *Wizz Air Hungary* v *Commission*, EU:T:2023:164.
[151] Judgment of the General Court of 24.5.2023 in Case T-268/21, *Ryanair* v *Commission*, EU:T:2023:279.
[152] See also judgments of the EU Courts in the aviation sector, below, Part II, section 8.2.4.
[153] Judgment of the General Court of 10.5.2023 in Joined Cases T-34/21 and T-87/21, *Ryanair and Condor Flugdienst* v *Commission (Lufthansa; COVID-19)*, EU:T:2023:248.

competition measures made by the Commission pursuant to point 72 of the Temporary Framework. In particular, the General Court considered that to assess the significant market power (SMP) condition, the Commission should not have limited its assessment to indicators related to airport capacity but should also have taken into account the respective passenger traffic market shares. Finally, the General Court held that the Commission had not sufficiently justified the scope and modalities of the slot divestitures required to address the identified competition concerns.

In its subsequent judgment of 18 October 2023 in *Ryanair (airBaltic)*[154], the General Court accepted the Commission's SMP assessment, noting that the contested decision also considered airBaltic's (very high) passenger traffic market shares.

Moreover, the General Court clarified in its judgments rendered on the same date in *Ryanair (Nordica)*[155] and *Ryanair (Brussels Airlines)*[156] that the requirement in point 49(b) of the Temporary Framework that an intervention in favour of the beneficiary has to be in the common interest neither requires the Member State to demonstrate that the activities of the beneficiary could not be entirely or partly replaced by other competitors, nor that the exit of the beneficiary would lead to the collapse of an entire sector.

Finally, on 20 December 2023 the General Court annulled in its judgment in *Ryanair and Air Malta (KLM and Air France)*[157] the decision of the Commission of April 2021 raising no objections to a recapitalisation of Air France. The General Court criticised the finding of the Commission regarding the scope of the beneficiary, i.e. that KLM and its subsidiaries could be excluded from the circle of beneficiaries despite the evidence of capital and organic, functional and economic links between Air France and KLM, pointing to the conclusion that there was a single economic entity.

3.6. Monitoring, recovery and cooperation with national courts

3.6.1. Increased monitoring of existing State aid to ensure competition on fair and equal terms

Despite the high number of Commission decisions approving aid schemes put in place due to the Russian war of aggression against Ukraine, 84% of the new State aid measures implemented in 2022 are covered by a block-exemption regulation[158]. Among all the State aid measures active in the same year, approximately 82% are GBER, ABER and FIBER

[154] Judgment of the General Court of 18.10.2023 in Case T-737/20, *Ryanair* v *Commission (airBaltic; COVID-19)*, EU: T:2023:641.
[155] Judgment of the General Court of 18.10.2023 in Case T-769/20, *Ryanair* v *Commission (Nordica; COVID-19)*, EU: T:2023:642.
[156] Judgment of the General Court of 18.10.2023 in Case T-14/21, *Ryanair* v *Commission (Brussels Airlines; COVID-19*), EU: T:2023:643.
[157] Judgment of the General Court of 20.12.2023 in Case T-494/21, *Ryanair and Air Malta v Commission* (KLM and Air France; COVID-19), EU: T:2023:831.
[158] See the State Aid Scoreboard 2023, to be available at: https://competition-policy.ec.europa.eu/state-aid/scoreboard_en

measures[159]. These figures show that it is essential for the Commission to verify that Member States apply State aid schemes correctly and that they only grant aid when all required conditions are met.

Monitoring by the Commission is the counterweight to 'self-assessment' by Member States resulting from the exemption from the notification obligation (for example in the GBER) and also a necessary complement of the approval of State aid schemes by the Commission. It is is a regular *ex-post* control based on a sample of existing aid schemes, both block exempted and approved. In 2022/2023, the Commission performed the monitoring of block exempted and approved aid granted by Member States in 2019 and 2020. The sample of schemes included aid granted to support the economy in the context of the COVID-19 outbreak. The results of this monitoring exercise show that the number of schemes with minor irregularities, resulting in simple recommendations to Member States, remains at high levels and that there are very few cases of severe irregularities resulting into the opening of formal proceedings.

3.6.2. Restoring competition by recovering State aid granted in breach of the rules

To ensure the integrity of the internal market, Member States must take all necessary measures to recover unlawful and incompatible aid. The purpose of recovery is to restore the situation that existed on the internal market prior to the granting of the aid. This is necessary to ensure effective competition in the Single Market.

In 2023 the Commission adopted two new recovery decisions. The amount of aid to be recovered in one of the two cases is EUR 400 million[160]. The amount of aid in the second case has not yet been quantified[161]. 45 recovery cases (resulting from previously adopted negative decisions with recovery) were pending at the end of 2023.

By 31 December 2023, the sum of unlawful and incompatible aid recovered from beneficiaries amounted to EUR 29.7 billion[162]. At the same point in time, the outstanding amount pending recovery was EUR 7 billion[163].

Figure 7: Recovery Decisions 2023

Recovery decisions adopted in 2023	2
Pending recovery cases on 31 December 2023	45

In 2023, the Commission imposed penalties on Greece and Italy based on Court judgments

[159] See the State Aid Scoreboard 2023, to be available available at: https://competition-policy.ec.europa.eu/state-aid/scoreboard_en

[160] Case SA.55678, Italy - *New loan to Alitalia.*

[161] Case SA.20829, Italy - *Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes.* See below Part II, Section 4.2.

[162] The reference period is 1 January 1999 to 31 December 2023. This amount includes also the amount of aid registered in pending insolvency proceedings. In addition, the amount of EUR 4.5 billion could not be recovered from concluded insolvency proceedings because of the lack of mass from the liquidation of assets which did not allow satisfying the State aid claims.

[163] See: https://ec.europa.eu/competition-policy/state-aid/procedures/recovery-unlawful-aid_en

condemning these two Member States for having infringed EU law on State aid[164]. For two cases, the penalties imposed were the last ones since the Commission concluded that the respective infringmeents have ended[165].

3.6.3. Cooperation with national courts to ensure the effectiveness of State aid rules

The Commission can cooperate with national courts under Article 29 of the Procedural Regulation[166] and according to its Notice on the enforcement of State aid rules by national courts[167]. This includes direct case-related assistance to national courts when they apply EU State aid law. National courts and tribunals can ask the Commission to provide case related information, or to provide an opinion on the application of State aid rules. The Commission may also submit *amicus curiae* observations on its own initiative.

In 2023, the Commission received one request for legal opinion from the Supreme Court in Latvia. That request sought guidance on how to determine the date of granting of aid under the COVID Temporary Framework.

In 2023, the Commission continued to intervene in national proceedings as *amicus curiae*[168]. To make its views publicly known, the Commission publishes its opinions and *amicus curiae* observations, as well as observations to other bodies, for example, arbitration tribunals, on its website[169].

4. DEVELOPING THE INTERNATIONAL DIMENSION OF EU COMPETITION POLICY

As world markets continue to integrate and more companies rely on global value chains, competition agencies need to increase their collaboration and agree on common standards and procedures more than ever before. Effectively enforcing competition rules depends to a growing extent on co-operation with other enforcement authorities and having effective tools to ensure a fair business environment in the EU.

[164] Case SA.15525, Greece - *Hellenic Shipyards*; Case SA.34572, Greece - *State aid to Larko General Mining & Metallurgical Company S.A.*; Case SA.9398, Italy - *Employment measures*; Case SA.14895, Italy - *Hotel industry in Sardinia*; Case SA.9440, Italy - *Social security charges reduction and exoneration in Venezia and Chioggia*.

[165] Case SA.14895, Italy, *Hotel industry in Sardinia*; Case SA.9440, *Italy - Social security charges reduction and exoneration in Venezia and Chioggia*.

[166] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU, OJ L 248, 24.9.2015, p. 9.

[167] Communication from the Commission, Commission Notice on the enforcement of State aid rules by national courts, OJ C 305, 30.7.2021, p. 1.

[168] The Commission submitted written observations under Article 29(2) of the Procedural Regulation before the Oberlandsgericht Hamm (Germany), concerning an injunction to prevent RWE from protecting enforcement of an ICSID award based on the Energy Charter Treaty, which would result in circumventing Article 108(3) TFEU. Even outside the scope of Article 29(2) of the Procedural Regulation, the Commission continues to intervene as amicus curiae in State aid-related matters before courts outside the EU and arbitration tribunals inside and outside the EU.

[169] See: https://ec.europa.eu/competition-policy/state-aid/national-courts_en

4.1. The Regulation on Foreign Subsidies distorting competition in the Single Market

The Foreign Subsidies Regulation (FSR)[170] entered into force in January 2023 and started to apply in July 2023. The new Regulation aims at closing a regulatory gap in the Single Market whereby subsidies granted by non-EU governments went largely unchecked, while subsidies granted by Member States are subject to close scrutiny under EU State aid rules.

According to the new rules, companies have to notify financial contributions received from non-EU public authorities in the last three years, before implementing a concentration (merger, acquisition or joint venture) or the award of a contract in a public procurement procedure in the EU above given notification thresholds. The FSR also allows the Commission to conduct *ex-officio* reviews if information indicates the existence of a foreign subsidy distorting the internal market.

4.1.1. Implementing Regulation adopted

The Implementing Regulation to the FSR, which sets out the applicable procedures, and includes notification forms for concentrations and public procurement procedures, was adopted on 10 July 2023[171].

Prior to its adoption, the Commission widely consulted on the draft including the Member States in the Foreign Subsidies Advisory Committee. The feedback received focussed on the reporting obligations laid down in the notification forms. The reporting obligations as set out in the final version of the notification forms strike a careful balance between the need to get the most relevant information for assessing cases and the need to make sure the regulatory burden does not become too onerous for notifying parties.

In July 2023, the Commission also adopted a Communication detailing the arrangements for the conduct of proceedings pursuant to the FSR, in particular the transmission of documents[172].

4.1.2. Enforcement

Since the start of application on 12 July 2023, the Commission has received a number of submissions pursuant to the FSR. These submissions can serve as a basis on which the Commission may decide to *ex-officio* start a preliminary review or request a notification

[170] Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022, p. 1. DG Competition is responsible for enforcing the FSR rules on concentrations and to start *ex-officio* procedures outside public procurement procedures, while DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) is responsible for enforcing the FSR in public procurement.

[171] Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market OJ L 177, 12.7.2023, p. 1.

[172] Communication from the Commission Communication pursuant to Articles 4(2), 8(1), 15, 17(2) and 25 of Implementing Regulation (EU) 2023/1441 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market 2023/C 246/02, OJ C 246, 13.7.2023, p. 2.

under the FSR.

Since the start of the notification obligation on 12 October 2023, DG Competition has entered into pre-notification contacts in 41 cases and has received 11 notifications of concentrations[173].

4.2. Multilateral relations

In 2023, the Commission continued to engaged actively in international competition related fora such as the OECD Competition Committee, the International Competition Network (ICN), and United Nations Conference on Trade and Development (UNCTAD).

At the OECD Competition Committee meeting in June 2023, the Commission contributed to exchanges regarding experimental evidence on the effects of abusive conducts in digital cases, and regarding the assessment and communication of the benefits of competition interventions[174]. The Commission further contributed to discussions on the effectiveness of the leniency programmes[175], algorithmic competition[176], competition in the circular economy[177] and theories of harm for digital mergers[178]. In December 2023, the Commission contributed to the Competition Committee's deliberations on optimal design, organisation and powers of competition authorities[179], role of innovation in enforcement cases[180], out-of-market efficiencies in antitrust enforcement[181], alternatives to leniency programmes[182], serial acquisitions and industry roll-ups[183], and ex-post assessment of merger remedies[184].

In the ICN, the Commission steered the final work on the paper 'Topics on Assessment of Dominance in Digital Markets' in the Unilateral Conduct Working Group (UCWG), which was one of the major projects launched while the Commission was co-chairing the UCWG (until May 2022). The paper was officially adopted by the ICN Steering Group in October 2023[185]. In addition, the Commission continued acting as the co-chair of the Merger Working Group (MWG) (a role it took up since May 2022), co-organised a series of webinars and delivered a report on digital mergers[186]. The Commission also completed a webinar series and

[173] For enforcing the FSR in foreign financial contributions to public procurement procedures, see: https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation_en
[174] See: https://www.oecd.org/competition/assessing-and-communicating-the-benefits-of-competition-interventions.htm
[175] See: https://www.oecd.org/competition/the-future-of-effective-leniency-programmes-advancing-detection-and-deterrence-of-cartels.htm
[176] See: https://www.oecd.org/competition/algorithmic-competition.htm
[177] See: https://www.oecd.org/competition/competition-in-the-circular-economy.htm
[178] See: https://www.oecd.org/competition/theories-of-harm-for-digital-mergers.htm
[179] See: https://www.oecd.org/competition/optimal-design-organisation-and-powers-of-competition-authorities.htm
[180] See: https://www.oecd.org/competition/the-relationship-between-competition-and-innovation.htm
[181] See: https://www.oecd.org/daf/competition/out-of-market-efficiencies-in-competition-enforcement.htm
[182] See: https://www.oecd.org/competition/alternatives-to-leniency-programmes.htm
[183] See: https://www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm
[184] See: https://www.oecd.org/competition/ex-post-assessment-of-merger-remedies.htm
[185] Paper to be published on the ICN website.
[186] Paper to be published on the ICN website.

worked on a new draft chapter on non-horizontal mergers for the ICN Recommended Practices for Merger Analysis.

In October 2023, the Commission also participated in the ICN Annual Conference[187], with Competition Commissioner delivering a keynote speech on international cooperation in competition policy and the assessment of digital and non-horizontal mergers, Director General Guersent speaking on the MWG plenary panel, and other Commission speakers intervening in various conference breakout sessions[188].

In February and April 2023, the Commission participated in the meetings of the UNCTAD Working Group on cross border cartels discussing cases with a jurisdiction issue over conducts taking place abroad. In July 2023, the Commission participated in the 21st meeting of the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy[189], where the discussions focused on competition law enforcement issues raised by monopsonies, interaction between competition and industrial policies, and on competition law and policy and sustainability.

Finally, the Commission continued its endeavours to improve international rules for subsidies. Reforming the subsidy rules is one of the EU’s main priorities for the modernisation of WTO trade rules. To this effect, in 2023 the Commission was engaged in sectoral initiatives addressing subsidies in the international context, such as the G20 Global Forum on steel excess capacity.

4.3. Bilateral relations

In March 2023, the Commission and the US competition authorities held the third high-level meeting of the Joint Technology Competition Policy Dialogue, discussing the progress made on their cooperation efforts to ensure and promote fair competition in the digital sector, while focusing in particular on theories of harm in digital mergers, and the future enforcement priorities in tech markets[190].

In 2023, the Commission also continued its work on bilateral cooperation with the United Kingdom as foreseen in the EU/UK Trade Cooperation Agreement[191]. The Commission work focused on control of potentially competition distorting subsidy schemes in the United Kingdom as well as monitoring and reporting on subsidy and competition legisltion and enforcement.

Moreover, the Commission continued its cooperation on competition policy and case review with China's State Administration for Market Regulation, as well as with the Korean and the

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[187] See: https://icn.cnmc.es/

[188] See: 22nd ICN Annual Conference - YouTube

[189] See: https://unctad.org/meeting/intergovernmental-group-experts-competition-law-and-policy-twenty-first-session

[190] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2019

[191] Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 444, 31.12.2020, p. 14.

Japanese Fair Trade Commissions. DG Competition's multilateral technical cooperation with the Chinese, Japanese, Korean, Indian and ASEAN competition authorities also continued[192].

The Commission aims to include provisions on competition and subsidy control when negotiating Free Trade Agreements (FTAs). In 2023, the Commission continued FTA negotiations with Australia, India, Indonesia, Thailand and ESA5[193] and prepared for negotiations with the Philippines and Malaysia.

As regards Competition Cooperation Agreements, the Commission, for example, continued negotiations with Canada, to ensure that the provisions on data protection line up with the standards established by the Opinion of the Court of Justice on the 2014 EU Canada Passenger Name Record Agreement[194].

As regards the candidate countries[195] and potential candidates[196], including Ukraine, Moldova and Georgia, the Commission's main policy objective is to help these countries to create legislative frameworks with well-functioning operationally independent competition and State aid authorities that build up a solid enforcement record. In 2023, the Commission continued to monitor the compliance of the candidate and potential candidate countries with their commitments under the Stabilisation and Association/Deep and Comprehensive Free Trade Agreements and assessed legal alignment of their national rules with the EU acquis. The Commission is also working on the setting up of Support Facilities for Ukraine and for the Western Balkan countries to assist the legal, administrative but also economic integration of the candidate countries with the EU internal market.

In 2023, the Commission has also been actively engaging with several African national and regional authorities to further cooperation in the competition field[197]. The Commission organised for the second time an Africa-EU Competition Week to foster dialogue with African competition authorities at the national and regional level.

5. SUPPORTING EU COMPETITION LAW ENFORCEMENT

5.1. Digital Transformation

Digital transformation is a major political priority for the Commission's current mandate (A Europe fit for the digital age), not only for driving change in markets, but also for enabling public sector modernisation. The implementation of DG Competition's IT strategy to further digitise business processes, modernise digital solutions and transform DG Competition into a

[192] See: https://asia.competitioncooperation.eu/

[193] Five Eastern and Southern Countries: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe.

[194] Opinion of the Court of Justice (Grand Chamber) of 26.7.2017, Opinion 1/15, *Draft agreement between Canada and the EU — Transfer of Passenger Name Record data from the EU to Canada*, EU:C:2016:656.

[195] Countries granted candidate country status by the European Council on the basis of a recommendation by the European Commission: Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

[196] Potential candidate for EU membership: Kosovo.

[197] See: https://africa.competitioncooperation.eu/

more data-driven organisation to support EU competition policy and enforcement, continued throughout 2023 in alignment with the Commission's revised Digital Strategy[198].

5.1.1. Case Management modernisation

In 2023, the CASE@EC programme underwent two major evolutions, first the migration of DG Competition's horizontal projects to CASE@EC in February 2023, and second, the launch of support for the new FSR in October 2023. In parallel, two new sections of the registry were put in place to support the enforcement activity under the Digital Markets Act (DMA)[199] and the FSR which started in 2023.

In parallel, work on replacing the ageing case management system for Antitrust and Cartels with CASE@EC has been progressing well and the replacement is expected to be completed in the course of 2024. Furthermore, the analysis for replacing the ageing case management system for Mergers with CASE@EC started, and the CASE@EC security plan was substantially updated.

5.1.2. Improving digital exchanges with Member states' administrations, business and citizens

During 2023, DG Competition continued improving its range of digital solutions to enhance and fully digitise its communication and collaboration processes with external stakeholders, notably Member State administrations, NCAs, citizens as well as businesses and their legal representatives.

This work stream included the launch of a new digital solution, COMP Cases, fully revamping the publication of competition cases' data on the EUROPA website and helping citizens and external stakeholders to better access, search, and export public data on competition cases.

Moreover, the tool enabling collaboration and communication within the European Competition Network (*ECN2*) was adapted to support exchanges with Member States in the context of the FSR. Furthermore, several upgrades were made on the tools supporting DG Competition's requests for information to investigate markets (*eRFI*), the EC leniency programme (*eLeniency*)[200], the negotiation on confidentiality claims in the context of the access to file procedures (*eConfidentiality*)[201] and the State Aid Notification (*SANI2*)[202] and Reporting (*SARI2*) tools.

[198] Communication of the Commission, European Commission digital strategy - Next generation digital Commission, C(2022) 4388 final, 30.6.2022.

[199] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1.

[200] See: https://competition-policy.ec.europa.eu/antitrust-and-cartels/leniency/eleniency_en

[201] See: https://competition-policy.ec.europa.eu/index/it-tools/econfidentiality_en

[202] See: https://competition-policy.ec.europa.eu/state-aid/legislation/forms-notifications-and-reporting_en

Finally, DG Competition started the initiation phase of two new projects: (i) digitalising the notification of Merger cases and (ii*)* supporting new needs arising from the updated State Aid *de minimis* rules.

5.1.3. Advanced data support and digital solutions for competition investigations

As DG Competition continues facing an exponential increase in the volume of electronic communications with parties as well as in electronic evidence, several projects are ongoing to improve the handling of large volumes of case related submissions and the on-premises access to files by parties by offering a range of digital solutions.

First, the tool used by case teams to review large amounts of documents (eDiscovery) underwent a significant revamp improving functionality and the user experience. A market study was also carried out to assess commercial e-discovery solutions with AI capabilities such as Technology Assisted Review (TAR), to prepare the possible selection and procurement of a new solution.

Case teams also continued to receive support with advanced data services, to assist processing and exploiting non-standard submissions of large volumes of documents.

Moreover, together with the Commission's Directorate-General for Digital Services (DIGIT), work started for configuring a secure cloud environment for data science suitable for handling sensitive data and in line with the relevant Commission guidelines.

Finally, business units as well as the general public were supplied with advanced visual and interactive dashboards based on a corporate data analytics solution.

DG Competition's horizontal unit 'Data Analysis and Technology', (Chief Technology Officer (CTO) team), supports DG Competition with specialist skills to make the most of technological advances for digital investigations, intelligence collection and market monitoring, forensics and *eDiscovery*.

5.2. Single Market Programme

Adapting to an increasingly digital and fast-paced environment is a constant challenge for the enforcement of EU competition policy. New sophisticated digital tools and algorithms used by economic operators, combined with an exponential increase in electronic communications, the sheer quantity of data and the number of documents on case files render many competition investigations increasingly complex. DG Competition therefore identified digital transformation as a key priority and concentrated efforts to put in place innovative and optimised digital solutions to make competition enforcement more effective by working on the implementation of its Digital Solutions Modernisation Plan.

The Multiannual Financial Framework 2021-2027 also responds to these new challenges by including for the first time a dedicated Competition programme as part of the Single Market Programme (SMP) to provide stable financing of measures that enhance the Commission's enforcement capacity, policy initiatives, international cooperation, as well as competition policy advocacy. With an EU budget contribution of EUR 20 million for 2023, the Competition programme channels investment into areas that support effective and up-to-date enforcement of EU competition policy.

In 2023, DG Competition actively pursued a comprehensive plan to implement the Competition programme. It continues investing in the development of digital business solutions dedicated to modernising case management and interactions with external stakeholders and to increase the speed and efficiency of competition enforcement through data and artificial intelligence solutions.

5.3. External Communication and Advocacy

DG Competition reaches out to a variety of stakeholders, including businesses, national courts, lawyers and other advisers, policy makers, academics, students, and civil society more generally. Various channels are being used for this purpose, first and foremost the participation of Executive Vice-President Vestager and Commissioner Reynders in events, press conferences and speeches, complemented by press releases, newsletters, conferences, specialised publications, and an active social media presence. Following DG Competition's October 2022 'Making Markets Work for People'[203], a broad and innovative outreach initiative was launched in 2023 to build on the narrative of maintaining, nourishing, and developing a European social market economy and the role of competition policy. This initiative has brought this debate to non-specialist settings and locations, contributing to the Commission's efforts to engage with the public on the ultimate significance of the EU in general, and of competition policy in particular. Four of these debates took place in 2023, in Modena (IT), Salzburg (AT), Salamanca (ES) and Brno (CZ). In May 2023, DG Competition also launched the 'Let's Talk Competition' series[204] to debate some of the most relevant competition policy developments taken by the DG this year. The topics, debated by senior and well-known experts from the Commission, academia, the legal world, and the Member States, have included, so far, the new guidelines of Art.102 TFEU, the revised HBERs, the DMA and the FSR. More episodes are already in the making for 2024. This format is allowing DG Competition to reach a very significant audience, in comparison to normal conference events. These episodes accumulate more than 1 000 views (for the more recent ones) and above 3 000 views on YouTube.

In 2023, Executive Vice President Vestager and Commissioner Reynders delivered 26 speeches to a variety of audiences, both within and outside Europe. The Director-General of DG Competition also participated in more than 40 international events and, together with other senior managers, actively engaged in outreach efforts towards EU institutions and Member States on the benefits of a strong and effective competition policy and enforcement.

DG Competition posted over 800 times from its 'X' account, along with 200 posts on its LinkedIn account, and reached 11 500 subscribers with its electronic newsletter. Its publications in the EU Bookshop were viewed, downloaded, or ordered as paper copies some 73 000 times. DG Competition issued more than 165 press releases during 2023. Some of the cases and policy initiatives generated broad media coverage, for example the entry into force of the FSR and the launch of the IPCEI on the Hydrogen Value Chain.

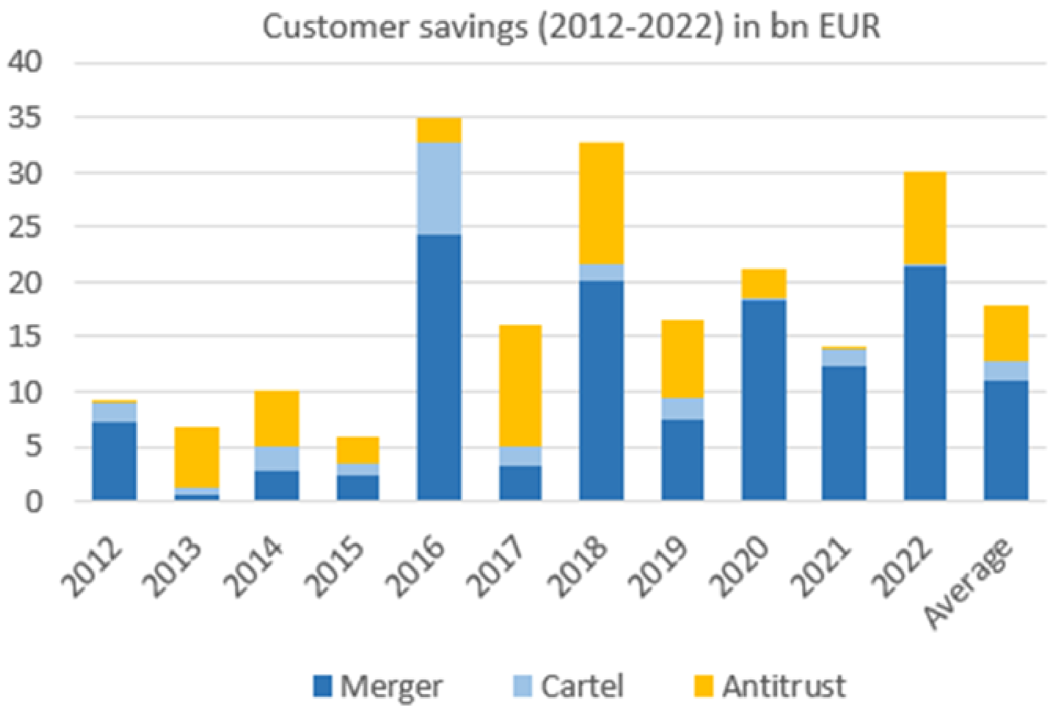
[203] See: https://competition-policy.ec.europa.eu/about/reaching-out/making-markets-work-people_en

[204] See: https://competition-policy.ec.europa.eu/about/reaching-out/lets-talk-competition_en

5.4. Analysis of the benefits of EU Competition Law enforcement for citizens

The Commission's enforcement actions in the fields of antitrust and mergers generate direct benefits for citizens. DG Competition estimates that direct customer savings generated by the Commission's antitrust and merger enforcement over the period 2012-2022 amount to between EUR 145 - 250 billion. On average, antitrust and merger enforcement generated thus around EUR 13 to 23 billion of direct customer benefits per year. In addition to these estimates, overall customer benefits of competition enforcement also include the indirect or deterrent effects of enforcement and positive effects on innovation and quality. While both effects are more difficult to estimate, economists agree that they are likely more significant than the direct customer savings. Complementary recent modelling of the macro-economic effects of competition enforcement suggests that antitrust and merger enforcement of the kind performed by the Commission during the last 10 years is likely to have a positive impact on real EU GDP relative to the baseline in the range of 0,6% - 1.1% (the equivalent of an uplift of EUR 80 - 150 billion in 2019 GDP) in the medium to long term[205].

Figure 8: Customer savings (midpoints) 2012-2022



In 2023, DG Competition continued its work on the 'State of EU Competition' project. The purpose of this project is to explore the evolution of market and industry concentration across different sectors and Member States and identify potentially malfunctioning sectors. It will also assess and document the benefits of competition, inter alia based on price concentration analyses at sector level, macro-economic modelling, and a survey among enterprises. For this

[205] European Commission, Directorate-General for Competition, Directorate-General for Economic and Financial Affairs, Joint Research Centre, Archanskaia, E., Cai, M., Cardani, R., et al., *Modelling the macroeconomic impact of competition policy*: 2021 update and further development, Publications Office of the European Union, 2022.

purpose, DG Competition will be able to draw on the results of two preparatory studies, one conducted by the OECD (final report is expected in 2024) and another by an external consultant which delivered the final report delivered in December 2023.

DG Competition further launched a survey of practitioners on the deterrence effects of EU competition enforcement.

II. SECTORAL OVERVIEW

1. ENERGY & ENVIRONMENT

1.1. Overview of key challenges in the sectors

The continued Russian war of aggression against Ukraine, the persistence of high energy prices and uncertainty in energy markets, the call for increased electrification and reduction of fossil fuels under the REPowerEU Plan and the discussions on the development of a new European Energy Market Design (EMD)[206], continued to dominate the work on energy files in 2023, and triggered additional changes to the TCF, replaced by the TCTF on 9 March 2023.

The TCTF includes simplifications of the way support to renewables and to industrial decarbonisation and energy efficiency is assessed, with a view to accelerating the transition away from fossil fuels (see sections 2.5 and 2.6 TCTF), and includes an additional section for support to strategic parts of the supply chain, key for the transition to a net-zero economy (section 2.8 TCTF). These energy transition-related sections of the TCTF apply until 31 December 2025.

In 2023, the Commission approved eight national schemes to accelerate, in line with the Green Deal Industrial Plan, investments in sectors strategic for the transition towards a net-zero economy (batteries, solar panels, wind turbines, heat pumps, electrolysers and carbon capture and storage equipment) (under section 2.8 TCTF) in Spain (EUR 2.5 billion)[207], Hungary (EUR 2.4 billion)[208], Germany (EUR 3 billion)[209], Slovakia (EUR 1 billion)[210], Italy (EUR 100 million)[211], Austria (EUR 60 million)[212] and Belgium (EUR 50 million)[213].

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[206] Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design, COM/2023/148 final.

[207] Case SA.107094, Spain - RRF – TCTF - *Integrated action line on the industrial value chain – Batteries*; Case SA.108653, Spain - RRF – TCTF - *Scheme for projects of equipment necessary for the transition towards a net-zero economy*.

[208] Case SA.107689, Hungary -TCTF - *Scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy*.

[209] Case SA.108068, Germany -TCTF - *Aid to support the transition to a net-zero economy*.

[210] Case SA.109989, Slovakia -TCTF - *State aid scheme for providing Extraordinary Investment Aid in sectors strategic for the transition to a net-zero economy*.

[211] Case SA.108953, Italy – TCTF - RRF - *Investment aid scheme for the production of electrolysers*.

[212] Case SA.109170, Austria - TCTF – *Scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy*.

[213] Case SA.109169, Belgium - RRF-TCTF - *Decarbonisation of Walloon companies - Enhancing investments in value chains linked to the energy transition*.

On 9 March 2023, together with the adoption of the TCTF, the Green Deal GBER amendment was endorsed by the Commission. This targeted amendment, which was formally adopted by the Commission on 23 June 2023, modifies the section related to energy and environment to further simplify and speed up support for the EU's green transitions, whilst protecting the level playing field in the Single Market[214].

Apart from the TCTF and GBER, the main guidance regarding the work on energy and environmental protection is provided by the CEEAG[215]. Since the adoption of these guidelines in January 2022, 36 cases have been adopted under the CEEAG (12 in 2022, 24 in 2023). The CEEAG continue to be the main framework for the Commission to assess the compatibility of support measures with the internal market, ensuring a level-playing-field, while at the same time reaching the ambitious objectives of the European Green Deal and reducing the EU's dependence on fossil fuel imports.

1.2. Effective competition in the green economy

In 2023, competition enforcement continued to contribute to the EU environmental objectives through the application of the State aid, antitrust and merger rules.

1.2.2. E-Mobility

The shift to zero-emission mobility remains one of the key objectives of the European sustainable and smart mobility strategy and makes an important contribution to the European Green Deal. It can also help reducing dependency on imported fossil fuels. The large-scale deployment of electric charging and hydrogen-refuelling stations under a competitive market is important to ensure the take-up of electric and hydrogen powered vehicles and encourage the shift away from fossil fuels.

In April 2023, the Commission published a Study on the Competition Analysis of the Electric Vehicle Recharging Market across the EU27 and the United Kingdom[216]. The study was undertaken in view of the growing importance of the electric vehicles and recharging sectors in reducing transport emissions and reaching the net zero targets set at EU level. Ensuring healthy competitive conditions in these sectors is vital as they continue to grow and develop, and as most EU Member States provide funding to the e-mobility sector. The study offers insights into the sector's evolution, industry dynamics, and regulatory initiatives, and identifies competition concerns that may arise while these sectors mature, complemented by an in-depth assessment for a number of selected countries (Ireland, Italy, Croatia, and Belgium).

On 10 August 2023, the Commission approved under section 4.3.2 of the CEEAG, a State aid scheme for the deployment of high-power recharging (HPC) infrastructure for electric

[214] See Part I, Section 3.4.

[215] Guidelines on State aid for climate, environmental protection and energy (See part I, Section 3.3.).

[216] See: https://competition-policy.ec.europa.eu/system/files/2023-04/kd0523130enn_electric_vehicles_study_extended_executive_summary.pdf

vehicles along the German motorways[217]. The scheme envisages the deployment of 952 HPC points in approximately 200 locations along the motorways. The beneficiaries will be selected following a competitive bidding process. The Commission also advised Member States on several other schemes to either bring them under the GBER or to ensure that they did not entail State aid in line with published relevant guidance[218].

1.2.3. Reduction of industrial emissions

Reduction and avoidance of industrial greenhouse gas emissions is another important leg of the European Green Deal and is equally important to reduce dependency on fossil fuels.

In 2023, the Commission approved under the CEEAG several State aid measures aiming at the decarbonisation of steel and refining installations through the uptake of hydrogen-based technologies or through electrification of hydrogen production.

Some of these cases were originally selected by the Member States in the context of an open call to form part of an IPCEI on hydrogen technologies and systems, which resulted in the two IPCEI 'Hy2Tech' and IPCEI 'Hy2Use' in the hydrogen value chain approved in 2022. However, given their characteristics and objectives, these cases were better suited for assessment under the CEEAG and were consequently approved by the Commission based on individual notifications. Those cases concerned in particular the construction of electrolysers and several installations for the production of steel[219].

Such measures to decarbonise the industry aim at swiftly abandoning the use of the most polluting fossil fuels such as oil, lignite and coal especially in energy-intensive industrial sectors (steel, refiners, cement, chemicals, fertilisers etc.) and gradually shifting from natural gas to renewable and low-carbon hydrogen to avoid huge quantities of GHG emissions, thereby contributing to the goals of the Green Deal.

The challenge in these cases is the fact that the renewable and low-carbon hydrogen markets in the EU are still in a nascent state, resulting in substantial uncertainties and high risks to economic operators, whether enough renewable hydrogen at affordable prices will be readily available in the medium term. This justifies the intervention of Member States to address such high risks and incentivise the decarbonisation of industrial processes through the shift to clean hydrogen and electrification.

The project with the highest amount of aid concerned a EUR 2.6 billion measure to support *German steel makers AG der Dillinger Hüttenwerke, Saarstahl AG and ROGESA Roheisengesellschaft Saar mbH* in decarbonising their steel production in Völklingen and

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[217] Case SA.105414, Germany - *Aid scheme for High Power Charging infrastructure for electric vehicles along the motorways in Germany*.

[218] See: https://competition-policy.ec.europa.eu/system/files/2023-04/template_RRF_charging_stations_04042023.pdf; and [Premiums acquisition low emission vehicles - updated 4.4.2023.docx (europa.eu)]()

[219] Case SA.105006, Poland - RRF-*Aid to LOTOS Green H2 Sp. z o.o.;* Case SA.104897, Belgium, *Project ArcelorMittal (Ghent)*, Case SA.104904, Spain - *ArcelorMittal Spain (Gijon)*, Case SA.104903, France – *ArcelorMittal France*, Case SA.105244, Germany - *Aid to ThyssenKrupp for project tkH2Steel.*

Dillingen, Saarland. The aid, which was approved on 19 December 2023, will support among other things the construction of a direct reduction plant and two new electric arc furnaces which will replace the existing blast furnaces and basic oxygen converters. Natural gas, initially used in the new direct reduction plant, will gradually be phased out of the steel production processes. Ultimately, the new installation will operate using mainly low-carbon and renewable hydrogen. The new installations are envisioned to start operating in 2026 and are expected to avoid the release of above 53 million tonnes of carbon dioxide[220].

The Commission also approved, on 6 October 2023, a EUR 2.5 billion *Czech scheme to help manufacturing companies in the most emitting sectors* improve their energy efficiency and decarbonise their production processes to foster the transition to a net-zero economy, in line with the Green Deal Industrial Plan. The scheme was approved under the TCTF[221].

The Commission also approved under the CEEAG a scheme notified by *Denmark*, with a total budget of around EUR 1.1 billion (DKK 8.1 billion), aiming at *promoting the roll-out of carbon capture and storage (CCS) technologies used to reduce carbon dioxide (CO2) emission* released in the atmosphere and achieve deeper decarbonisation of industrial processes. The measure will support CCS as a viable and effective tool to mitigate climate change. Under the scheme, the aid will be awarded through a competitive tendering procedure open to companies active in any industrial sectors, including the waste and energy sectors. Under a 20-year contract, the beneficiary will capture and store an annual minimum of 0.4 million tonnes of CO2 as from 2026. The aid will cover the difference between the estimated total costs of capturing and storing a tonne of CO2 over the lifetime of the contract and the return expected by the beneficiary[222].

1.2.4. Renewable energy and other technologies for the reduction and removal of emissions

In 2023, the Commission approved ten State aid measures under the CEEAG to support the development of renewable energy, covering different technologies (solar PV, onshore wind, offshore wind, hydrogen, biomass).

On 13 February 2023, the Commission approved France's measure to support the construction and the operation of a *floating offshore wind farm in the sea off the coast of the South of Brittany*, the first floating offshore wind measure approved under State aid rules[223]. The floating offshore wind farm project will be the first commercial project of this kind in France, where until now only small pilot projects have been developed. The wind farm is expected to have a capacity of 230 to 270 MW, and to generate 1 TWh of renewable electricity per year for a period of 35 years.

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[220] Case SA.105337, Germany – *State aid to AG der Dillinger Hüttenwerke, Saarstahl AG and ROGESA Roheisengesellschaft Saar mbH for project Power4Steel – Phase 1 in Völklingen and Dillingen*.

[221] Case SA.109055, Czechia – TCTF - *Modernisation Fund – Programme ENERG ETS.*

[222] Case SA.102777, Denmark - *State aid scheme for Carbon Capture and Storage in Denmark*.

[223] Case SA.100269 (2022/N), France - *Parc éolien flottant en mer dans une zone au large du sud de la Bretagne*.

On 10 July 2023, the Commission approved modifications to the *Dutch renewables scheme, Stimulering Duurzame Energieproductie (SDE++)*[224]. The scheme, with an overall budget of EUR 30 billion, supports a wide range of projects with different technological approaches, including projects based on renewable electricity and heat, low carbon and renewable gas, including hydrogen, and transport fuels. In 2023, the Netherlands made several amendments to the existing scheme[225], in particular, to guarantee a certain budget for supporting projects in areas with a green potential where decarbonisation is currently relatively expensive, such as (i) low-temperature heat projects (including geothermal, heat pumps and solar thermal), (ii) high-temperature heat projects (electrification options for industry via heat pumps and electric boilers), and (iii) 'molecules' projects (including hydrogen production via electrolysis, production of biomethane, and advanced renewable transport fuels). In addition, the scheme was amended to cover also air water heat pumps for heating buildings, and the possible future electrification of offshore platforms.

On 27 July 2023, the Commission approved another Dutch scheme to support the *production of renewable hydrogen to increase the country's electrolysis capacity*[226]. The scheme will support the construction of at least 60 MW of electrolysis capacity. Beneficiaries will have to prove compliance with EU criteria for the production of renewable fuels of non-biological origin, set out in the Commission Delegated Regulation on renewable hydrogen adopted on 20 June 2023[227]. Moreover, on 17 June 2023, the Commission approved a Danish *scheme to support the upscaling of the production of renewable hydrogen and derivatives*[228], such as renewables-based ammonia, methanol, and e-Kerosene, using PtX technologies[229]. The scheme will support the construction of up to 100-200 MW of electrolysis capacity.

In 2023, the Commission also approved two Italian schemes to promote renewable energy development, one measure supporting the *construction and operation of agrivoltaic installations*[230] and another measure supporting the *production and self-consumption of renewable electricity* within renewable energy communities[231], for an estimated budget of EUR 1.7 billion and EUR 5.7 billion respectively, partly made available through the RRF.

In addition to approving support for renewable energy under the CEEAG, the Commission also approved under section 2.5 of the TCTF, 13 measures for the support of renewables, such as

[224] CaseSA.104448, the Netherlands - *Modification of SDE++ scheme for greenhouse gas reduction projects including renewable*.
[225] The SDE++ scheme has been approved by the Commission in December 2020 (SA.53525) and amended for the first time in December 2021 (SA.100461).
[226] Case SA.101998, the Netherlands - *Hydrogen production through electrolysis*.
[227] See: https://energy.ec.europa.eu/news/renewable-hydrogen-production-new-rules-formally-adopted-2023-06-20_en
[228] Case SA. 103648, Denmark - *Production of PtX in Denmark*.
[229] PtX refers to a group of technologies that turn electricity into carbon-neutral synthetic fuels. The key PtX technology is electrolysis, which uses electricity to decompose water into oxygen and hydrogen gas that can be used as a fuel or in chemical processes.
[230] SA.107161, Italy - RRF- *Support for the promotion of agrivoltaic installations*.
[231] SA.106777, Italy - RRF - *Support for the development of Renewable Energy Communities*.

renewable hydrogen development in Italy[232], modifications to a *renewable energy scheme in Ireland*[233], support for the *production of renewable methane and methanol in Finland*[234], *offshore wind development in Lithuania*[235] and *onshore wind development in France*[236].

Furthermore, on 25 April 2023, the Commission approved the prolongation and amendments of a *Spanish and Portuguese measure aimed at reducing the wholesale electricity prices in the Iberian market (MIBEL*) by lowering the input costs of fossil fuel-fired power stations[237]. The amended measure, in place until 31 December 2023, was approved directly under Article 107(3)(b) TFEU, acknowledging that the Spanish and Portuguese economies are still experiencing a serious disturbance. It complements other measures to mitigate the impact of the energy crisis on electricity consumers adopted by Member States, under sections 2.1 and 2.4 TCF/TCTF. The Commission considered that the measure could be accepted on a temporary basis provided it did not limit the trade of electricity in the internal market.

In parallel, in 2023, the Commission supported EU energy objectives and the European Green Deal through its *antitrust work*. The Commission finalised its investigation into companies suspected of colluding to influence the price formation mechanism for ethanol in Europe by adopting a prohibition decision with fines against *Lantmännen ek för* and its subsidiary *Lantmännen Biorefineries AB* (formerly named Lantmännen Agroetanol AB)[238]. Moreover, following unannounced inspections in June 2023, the Commission continued its investigation into the synthetic turf industry in several Member States to determine whether the companies active in this sector have violated EU competition rules[239]. The Commission also continued its investigation into a possible collusion concerning the recycling of end-of-life passenger vehicles, following the unannounced inspections in 2022 in several Member States at the premises of companies and associations active in the automotive sector[240].

1.2.5 Energy infrastructure

In 2023, the Commission adopted two decisions approving State aid for *LNG terminals to contribute to the security and diversification of energy supplies* and to help end dependence on Russian fossil fuels in line with the REPowerEU Plan. The first measure concerns aid of EUR 40 million for the construction and operation of a new land-based liquefied natural gas terminal in Brunsbüttel, Germany, with an annual capacity of 10 billion cubic meters which is

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232 SA.106007, Italy - TCTF - RRF - *Support for the development of hydrogen valleys*.

233 SA.105135, Ireland - *Amendments to State Aid Approval SA.54683 (2020/N) – Ireland Renewable Electricity Support Scheme (RESS)*.

234 SA.105338, Finland - TCTF – RRF – *Support for the development of renewable methane and renewable methanol production*.

235 SA.102871, Lithuania - TCTF - *Offshore wind support scheme*.

236 SA.107440, France - TCTF - *France - Prolongation de la durée du débridage d'installations éoliennes terrestres*.

237 SA.106095, Spain, and SA.106096, Portugal - *Prolongation of MIBEL fossil-fuel cost adjustment mechanism*.

238 See above Part I, Section 1.4.

239 See above Part I, Section1.4.

240 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1765.

planned to start operating by the end of 2026[241]. The second measure concerns aid of EUR 106 million to support the completion of the construction of the LNG terminal in Alexandroupolis, Greece[242].

On 7 July 2023, the Commission also approved the reintroduction of a Dutch EUR 370 million *scheme to support the filling of the natural gas storage facility Bergermeer*, in the Netherlands[243]. The measure aims to provide incentives to capacity holders of the storage facility to fill the seasonal gas storage, given the price volatility in the market by providing an insurance against negative winter-summer gas price spreads.

On 8 August 2023, the Commission approved a EUR 16 million *Bulgarian measure to support the expansion of Bulgartransgaz's natural gas storage facility in Chiren*, the only natural gas storage facility in Bulgaria[244]. As a result of the measure, the storage capacity of the facility will almost double which will contribute to ensuring the security of gas supply and to enhancing competition in the gas market by facilitating the trading of gas in the region.

Electricity storage facilities can contribute to a smooth integration in the electricity system of an increasing share of renewable energy, in line with the EU's strategic objectives relating to the European Green Deal. In 2023, the Commission adopted a decision on a measure to *support the development of electricity storage facilities in Romania*, which is partially financed under the RRF[245]. In December 2023, it also approved a EUR 17.7 billion Italian scheme[246] to support the construction and operation of a centralised electricity storage system. The measure will be implemented over a 10-year period and will facilitate the development of electricity storage facilities with a joint capacity of more than 9 GW/71 GWh to provide flexibility and facilitate the deployment of renewable sources.

1.2.6. Coal phase-out

In 2023, the Commission continued examining measures taken by Member States to support the phase-out from coal-fired power generation.

Among other measures, the Commission continued its in-depth investigation into the *German lignite phase out*, namely a EUR 2.6 billion measure to compensate RWE Power AG (RWE) and EUR 1.75 billion to compensate Lausitz Energie Kraftwerke AG (LEAG) for phasing out their lignite-fired power plants earlier than foreseen. In March 2023, the Commission extended the scope of its ongoing in-depth inquiry to cover the new elements notified by Germany in December 2022. On 11 December 2023, the Commission adopted a final positive

[241] Case SA.102163, Germany – *LNG -Terminal Brunsbüttel.*
[242] Case SA.105781, Greece - *LNG Alexandroupolis - Independent Natural Gas System - Additional State Aid to SA.55526.*
[243] Case SA.106923, the Netherlands - *Prolongation of gas storage scheme Bergermeer (SA.103012)*.
[244] Case SA. 106120, Bulgaria - *State guarantee to 'Bulgartransgaz' EAD for expansion of the capacity of the 'Chiren' natural gas storage facility.*
[245] Case SA.102761, Romania – RRF - *State aid scheme aimed at developing the electricity storage capacities in Romania*.
[246] Case SA.104106, Italy - *Support for the development of a centralised electricity storage system in Italy*.

decision to allow Germany to grant RWE aid in amount of EUR 2.6 billion[247]. The aid will compensate RWE for the early phase-out of its lignite-fired power plants in the Rheinish mining area.

1.3. Secure energy supply

In December 2022, the Council adopted an emergency Regulation providing a temporary legal basis for better coordination of gas purchases through demand aggregation and joint purchasing of gas (Solidarity Regulation)[248]. The Commission set up the demand aggregation and joint purchasing mechanism in close cooperation with relevant stakeholders, supporting them with informal guidance where needed to ensure compliance with the EU competition rules.

In 2023, the Commission continued providing guidance to Member States regarding measures to ensure security of energy supply.

On 29 September 2023, the Commission approved a revision of the *Belgian Capacity Mechanism* (CM), under section 4.8 of the CEEAG[249]. The revision follows the decision of the Belgian government to extend the lifetime of two nuclear reactors scheduled to be decommissioned at the end of 2025. The Commission ensured that (i) the operation of the CM continues to be based on a competitive process open to all technologies and (ii) auctions are based on updated evidence to avoid over-procurement. The adjusted CM also introduces stricter carbon dioxide emission limits in line with the Green Deal objectives.

1.4. Effective competition in energy markets

In 2023, the Commission continued its *antitrust investigations* in the energy sector.

The Commission continued its investigation into the Greek electricity incumbent *Public Power Corporation* (PPC) for potential predatory behaviour in the wholesale electricity market in the Greek interconnected system (mostly mainland Greece). The investigation focuses on PPC’s alleged strategic bidding behaviour that may have resulted in its thermal units being selected for electricity generation even when they did not cover their average variable costs[250].

The Commission also continued its investigation into whether *Gazprom* may have engaged in anti-competitive conduct contributing to the soaring energy prices in the EEA observed in 2021/2022[251].

With respect to *mergers* in 2023, the energy sector saw a slight increase in the number of cases. Most cases were dealt with under the simplified procedure, spanning across fields such

[247] Case SA.53625, Germany, *Lignite phase-out*.

[248] Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders. OJ L 335, 29.12.2022, p. 1.

[249] Case SA.104336, Belgium - *Amendments to the Capacity Remuneration Mechanism*.

[250] Case AT.40278, *Greek wholesale electricity market*.

[251] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2202

as electricity production (gas powered, nuclear, waste-to-energy, wind, solar), electricity distribution, electricity trading, and gas transport.

The Commission also completed its Phase II investigation of the acquisition of *OMV* Slovenia by *MOL*, and approved, under the EUMR, the proposed acquisition subject to conditions. The Commission found that the acquisition would (i) lead to higher prices for consumers in fuel retail stations, and (ii) facilitate coordination between MOL and its rivals on prices. MOL offered to divest 39 fuel stations. The Commission found that the divestment addresses the concerns raised, by creating a third competitive force and preventing coordination[252].

2. INFORMATION AND COMMUNICATION TECHNOLOGIES AND MEDIA

2.1. Overview of key challenges in the sectors

Markets in the information, communication, technologies and media sectors (ICT) continue to be key drivers for smart, sustainable and inclusive growth. Digital services have increased consumer choice, and improved efficiency and competitiveness. Large platforms in the provision of digital services represent key structural elements of today's economy.

At the same time, certain features of ICT markets, such as network effects and increasing returns to scale render them particularly apt to lock in consumers and entrench positions of dominant firms. ICT companies frequently play a 'dual role', by operating a platform or marketplace for third parties and at the same time offering their own products or services on that platform or marketplace. This can give rise to 'self-preferencing' and other discriminatory practices including vertical foreclosure by 'dual role' platforms.

Moreover, data has become a crucial input when providing digital services. The success and competitiveness of ICT operators increasingly depends on timely access to relevant data. In addition, anti-competitive practices such as data leveraging may raise barriers to entry, discourage small and innovative competitors and restrict consumer choice.

In 2023, the Commission investigated how larger competitors use the data of their smaller competitors. In addition, the Commission investigated business practices that potentially reinforce the position of dominant companies and platform owners, for example imposing unfair contractual conditions or 'self-preferencing'. When reviewing proposed mergers, the Commission focussed on avoiding restrictions to competition within a dynamic sector of the EU economy.

2.2. Contribution of EU competition policy to tackling the challenges

2.2.1. Data and platforms

The exponential growth of the digital economy has enabled the rise of business models based on the collection and processing of data. The use of data has the potential to generate efficiency and productivity gains. However, a small number of large companies enjoys considerable economic power which enables them to leverage their advantages, such as their access to large amounts of data, from one area of activity to another. Contestability is reduced

[252] Case M.10438, *MOL / OMV Slovenija.*

due to the absence of, or reduced access to, some key inputs in the digital economy, such as data. As a result, the likelihood increases that the underlying markets do not function well or will soon fail to function well. Companies increasingly depend on timely access to relevant data.

The potential imbalances in data acquisition and data use remain a concern in digital markets. In 2023, the Commission continued its investigation into *Meta*[253], following up on the Statement of Objections of December 2022[254] in which it preliminarily concluded that Meta breached Article 102 TFEU on the markets for online classified ads by imposing unfair trading conditions on Facebook Marketplace's competitors. The case also covers another objection, namely that Meta ties Facebook Marketplace to its personal social network Facebook to the detriment of other providers of online classified ads. The Commission is currently analysing Meta's reply as regards both allegations.

The Commission also pursued its investigation into *Google's advertising technology and data-related practices*[255]. On 14 June 2023, the Commission sent a Statement of Objections to Google in which it took the preliminary view that the company is favouring its own online display advertising technology services to the detriment of competing providers of advertising technology services, advertisers, and online publishers, thus infringing Article 102 TFEU. The Commission also preliminarily concluded that, in the specific circumstances of this case, a behavioural remedy would be ineffective to prevent the risk that the conducts continue or are repeated and that the only way to avoid the risk of repetition of the abuse is by mandating the divestment by Google of some of those services[256]. The Commission is currently analysing Google's reply.

The Commission is also currently investigating *Apple's* rules for the *distribution of music streaming apps*. In its Statement of Objections of February 2023, the Commission took the preliminary view that the requirements imposed by Apple constitute an abuse of Apple's dominant position in the market for the distribution of music streaming apps to iPhone and iPad users[257]. The Commission is currently analysing Apple's response.

With respect to *mergers*, in July 2023, the Commission opened an in-depth investigation into the proposed acquisition of *iRobot* by *Amazon*[258]. Amazon provides an online marketplace which allows retailers to advertise and sell products to customers and iRobot manufactures robot vacuum cleaners (RVCs) and sells them on Amazon's online marketplace. In its Statement of Objections sent to Amazon in November 2023[259], the Commission took the

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[253] Case AT.40684, *Facebook leveraging*, see:https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848

[254] Case AT.40684, *Facebook leveraging*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728

[255] Case AT.40670, *Google-Adtech and Data-related practices*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143

[256] Case AT.40670, *Google-Adtech and Data-related practices*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207

[257] Case AT.40437, *Apple - App Store Practices (music streaming)*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061

[258] Case M.10920, *Amazon/iRobot*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3702

[259] Case M.10920, *Amazon/iRobot*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5990

preliminary view that Amazon may restrict competition in EU and/or national markets for RVCs by hampering rival suppliers' ability to compete. The Commission concluded that Amazon may have the ability and incentive to foreclose iRobot rivals by preventing them from selling RVCs on Amazon's online marketplace.

2.2.2. Technology markets

In July 2023 the Commission opened a formal investigation into *Microsoft*'s conduct of tying or bundling its communication and collaboration product *Teams* to its popular Office 365 and Microsoft 365 suites[260]. The Commission is concerned that Microsoft may be abusing its market position in productivity software by restricting competition in the EU for communication and collaboration products and that Teams may be granted a distribution advantage by not giving customers the choice whether to include access to Teams when they subscribe to Microsoft's productivity suites. Microsoft may also have limited the interoperability between its productivity suites and competing offerings.

Also in July 2023, the Commission cleared the acquisition of *VMware* by *Broadcom*, subject to conditions[261]. Broadcom is a supplier of hardware that offers, among other products, Fibre Channel Host-Bus Adapters (FC HBAs). VMware is a software supplier offering mainly virtualization software. The Commission carried out an in-depth investigation over concerns that Broadcom could foreclose Marvell, by restricting or degrading the interoperability between VMware's virtualization software and Marvell's hardware. To address the competition concerns, Broadcom offered access and interoperability remedies with a 10-year duration. The Commission concluded that the transaction, as modified by the remedies, would no longer raise competition concerns.

On 18 December 2023, Adobe and Figma announced the termination of their agreement according to which *Adobe* intended to acquire sole control over *Figma*[262]. The abandonment follows the findings of the Commission's in-depth investigation and the sending of a Statement of Objections on 17 November 2023. Before, on 7 August 2023, the Commission opened an in-depth investigation over the proposed acquisition of Figma by Adobe[263]. Adobe is a global software company offering, among others, vector editing tools and raster editing tools (e.g., Illustrator and Photoshop) and an interactive product design tool (Adobe XD). Figma is a provider of a web-based collaborative tool for interactive product design (Figma Design) as well as a whiteboarding tool. The Commission was concerned that the operation may restrict competition in the global markets for: (i) the supply of interactive product design tools; (ii) the supply of vector editing tools; and (iii) the supply of raster editing tools.

[260] Case AT.40721, Microsoft Teams, see : https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3991
[261] Case M.10806, *Broadcom/VMware*.
[262] Case M.11033, *Adobe/Figma*, see: https://ec.europa.eu/commission/presscorner/detail/en/statement_23_6715
[263] Case M.11033, *Adobe/Figma*, see: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_4082

2.2.3. Electronic communications sector

Infrastructure-sharing agreements between mobile telephony operators can be a source of efficiencies. However, this type of agreements can also restrict competition, because they may limit infrastructure competition. The revised Guidelines on horizontal cooperation agreements adopted on 1 June 2023 include a new section on the assessment of mobile infrastructure sharing agreements[264].

In July 2022, following its investigation into infrastructure-sharing agreements between the two largest mobile telephony operators in Czechia *O2/CETIN* and *T-Mobile*, the Commission adopted a Commitments Decision making legally binding the commitments offered by the parties, as well as their parent companies, *Deutsche Telekom* and *PPF Group*[265]. In 2023, the Commission monitored the undertakings' compliance with the commitments through exchanges with and regular reports from the appointed Monitoring Trustee.

In September 2023, the Commission adopted a decision re-imposing on *Intel* a fine of EUR 376.36 million for anti-competitive practices in the market for computer chips after the partial annulment of the initial decision of 13 May 2009 by the General Court in 2022[266]. In 2009, the Commission imposed on Intel a fine of EUR 1.06 billion for an infringement of Article 102 TFEU. Intel was found to have engaged in: (i) conditional rebates: Intel granted wholly or partially hidden rebates to computer manufacturers on condition that they bought all, or almost all, their x86 central processing units (x86 CPUs) from Intel, and (ii) naked restrictions: Intel made direct payments to computer manufacturers to stop or delay the launch of specific products containing competitors' x86 CPUs. Following the judicial proceedings before the EU courts, the unlawfulness of the naked restrictions was confirmed while the part of the 2009 Decision on the conditional rebates was annulled together with the fine in its entirety. The new decision imposes a fine only in relation to the naked restrictions.

With respect to *mergers*, on 20 March 2023, the Commission cleared the acquisition of *VOO and Brutélé* by *Orange*, subject to conditions[267]. Orange provides retail mobile and fixed telecommunication services in Belgium, and VOO and Brutélé are leading providers of retail fixed and mobile telecommunication services in Belgium. The Commission carried out an in-depth investigation over concerns that the proposed transaction would, in certain areas of Belgium: (i) reduce the number of operators from three to two; (ii) reduce competition in the retail markets for the supply of fixed internet services, audio-visual services and multiple-play bundles; and (iii) increase the likelihood of coordination on the affected retail markets between the remaining operators. To address these competition concerns, Orange offered remedies with a 10-year duration which consist of giving Telenet access to: (i) the existing fixed network infrastructure it is acquiring from VOO and Brutélé in the Walloon region and parts of Brussels; and (ii) Orange's future fibre-to-the-Premises network, which it plans to roll out in the coming years, which will make the commitments future proof. The Commission

[264] See Part I, Section 1.1.1.
[265] Case AT.40305, *Network sharing - Czech Republic,* see: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4463
[266] Case AT. 37990, *Intel*, see: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4570
[267] Case M.10663, *Orange/VOO/Brutélé.*

concluded that the transaction, as modified by the remedies, would no longer raise competition concerns.

On 3 April 2023, the Commission opened an in-depth investigation into the proposed creation of a joint venture by *Orange* and *MasMovil*[268]. Orange is a global telecommunications operator active in the Spanish telecommunications market. MasMovil, based in Spain, provides fixed and mobile telecommunications services mainly to residential customers in Spain. The Commission is concerned that the transaction would harm competition in the Spanish markets for the retail supply of: (i) mobile telecommunications services; (ii) fixed broadband access services; and (iii) multiple-play bundles, including fixed mobile convergent services.

In August 2023, the Commission asserted its jurisdiction to assess the proposed acquisition of *Autotalks* by *Qualcomm*, two major suppliers of (vehicles-to-everything ('V2X')) communications semiconductors in the EEA, following the referral request from several Member States. This was the second time that the Commission applied its recalibrated approach to merger referrals under Article 22 EUMR. In line with the Article 22 Guidance[269], this transaction, which was not notifiable in any Member State, reached the Commission after it had invited Member States to make a referral request. The Commission accepted accordingly the initial referral requests submitted by Belgium, France, Italy, the Netherlands, Poland, Spain and Sweden pursuant to Article 22(1) EUMR. Subsequently, Czechia, Denmark, Finland, Ireland, Luxembourg, Portugal, Romania and Slovakia joined the initial referral requests. The Commission is now assessing how the combination of two of the leading suppliers of V2X semiconductors in the EEA, a technology that is key to improving road safety, traffic management and reducing CO2 emissions as well as for the deployment of autonomous vehicles, could affect competition within the territory of the Member States that made the referral requests.

Given the importance of investment in both fibre and 5G infrastructure, the Commission continued in 2023 to monitor market developments in the electronic communications sector as well as national funding measures supporting their deployment. Market developments were also monitored in the field of standard essential patents (SEPs) to ensure that there is no foreclosure of competitors or reduction of innovation by competing companies.

2.2.4. Media

The Commission's activity in the media sector aims at ensuring that consumers can benefit both from a wide choice and unrestricted access to high quality content at competitive prices, as well as from increased technological innovation.

On 15 May 2023, the Commission cleared the acquisition of *Activision Blizzard* by *Microsoft*, subject to conditions[270]. Activision Blizzard publishes and distributes video games, including the popular *Call of Duty*. Microsoft is a technology company that publishes and distributes

[268] Case M. 10896, Orange/Masmovil/JV, see: https://ec.europa.eu/commission/presscorner/detail/sl/ip_23_2101
[269] Communication from the European Commission on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases of 26.3.2021 C(2021) 1959 final.
[270] Case M.10646, *Microsoft/Activision Blizzard*.

video games. It also offers the Xbox gaming console and related services, and the Windows PC operating system. The Commission carried out an in-depth investigation over concerns that Microsoft could harm competition in the distribution of games via cloud game streaming services and that its position in the market for PC operating systems would be strengthened. To address these competition concerns, Microsoft offered license commitments with a 10-year duration. These remedies consist of: (i) a free license to consumers in the EEA that would allow them to stream, via any cloud game streaming services of their choice, all current and future Activision Blizzard PC and console games for which they have a license; and (ii) a corresponding free license to cloud game streaming service providers to allow EEA-based gamers to stream any Activision Blizzard's PC and console games. The Commission concluded that the transaction, as modified by the remedies, would no longer raise competition concerns.

Furthermore, on 9 June 2023, the Commission cleared the acquisition of *Lagardère* by *Vivendi*, subject to conditions[271]. Vivendi and Lagardère are two large French multi-media groups. The Commission carried out an in-depth investigation over concerns that the transaction would harm competition in: (i) book publishing, especially on the markets for the purchasing of authors' rights for French-language books and the distribution, marketing and sales of French-language books to retailers; and (ii) press magazines. To address these competition concerns, Vivendi offered remedies which consist of the full divestment of: (i) Vivendi's publishing business, Editis and its entities, including well-known publishers such as Robert Laffont, Nathan, Le Robert and Pocket; and (ii) Vivendi's celebrity press magazine Gala published in France. The Commission concluded that the transaction, as modified by the remedies, would no longer raise competition concerns.

Moreover, the Commission also dealt in 2023 with several State aid cases in the news media sector, to help the sector recover from the crisis and maintain a healthy competitive environment. Particular attention was paid to the fact that media play a key role for democracy, where support is provided in a way that respects and promotes quality independent journalism, media freedom and pluralism[272]. In this context, the Commission approved a scheme aimed at *fostering the digital transformation and technological innovation of the media industry*[273]. In addition, the Commission approved *aid to film production*[274] and videogames production[275] where appropriate to sustain the cultural diversity of the EU in the audio-visual sector.

2.2.5. Facilitating the Digital Transition

Performant, reliable and secure electronic communications networks are essential enablers for

[271] Case M.10433, *Vivendi/Lagardère*.
[272] See, *inter alia*, Case SA.104446, Denmark - *Reintroduction of aid to production and innovation aid to written media*; Case SA.106115, Italy – *Aid for newspaper and periodical publishers*; Case SA.106019, Sweden - *Media aid scheme.*
[273] Case SA.106114, Italy – *Aid for digital transformation of broadcasters, publishers and press agencies*.
[274] See, *inter alia*, Case SA.105988, Spain – *Spanish tax deduction for cinematographic and audio-visual productions – modification*.
[275] See, *inter alia*, Case SA.109683 - Denmark - *Prolongation of scheme for the development, production and promotion of cultural and educational digital games.*

the digital transformation of the EU. They are a crucial factor to bridge the digital divide and ensure social cohesion as well as a competitive and sustainable economy. State aid control plays an important role in the development of a coordinated investment strategy across the EU and in reaching the digital goals set out in the Digital Decade Policy Programme[276].

Following the review of the 2013 Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, the new Guidelines on State aid for broadband networks were adopted on 12 December 2022 and entered into force on 31 January 2023[277]. The new guidelines are aligned to the latest market and technological developments. The key updates include: (i) a threshold for public support to fixed networks set at 1 Gbps download and 150 Mbps upload speeds under peak time conditions; (ii) conditions to determine if a public investment can take place in areas where two ultrafast networks are already present; (iii) a new assessment framework for the deployment of mobile (including 5G) network and backhaul networks, as well as demand-side measures; and (iv) simplification and clarification of certain rules, including wholesale access obligations and mapping.

In 2023, State aid control also facilitated the implementation of measures under the RRF[278]. For instance, the Commission approved schemes to *support the deployment of high-performing – fixed* (in Portugal)[279] or *mobile* (in Spain)[280] – *networks*, funded by the RRF and/or national financing. In particular, the Commission approved a EUR 680 million Spanish scheme, funded under the RRF, to roll out equipment and infrastructure for high-performing 5G standalone networks in underserved rural areas.

2.3 Digital Markets Act

The Digital Markets Act (DMA) is an internal market legislation harmonising the obligations of so-called gatekeepers across the EU. It contributes to a well-functioning Single Market by laying down rules ensuring contestability and fairness in digital markets and complements the competition policy toolbox. The DMA became applicable in May 2023. The Commission (with DG Competition and DG Communications Networks, Content and Technology (DG CNECT) in the lead) is the central enforcer of the DMA but works in close cooperation with the NCAs within the ECN in accordance with Articles 37 and 38 of the DMA. The rules in the DMA are without prejudice to the enforcement of the EU competition rules and national competition rules for unilateral conduct. In April 2023, the Commission adopted implementing rules making detailed arrangements for the conduct of certain proceedings

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[276] Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030.

[277] Communication from the Commission 'Guidelines on State aid for broadband networks', OJ C 36, 31.1.2023, p.1.

[278] To facilitate the Member States' State aid assessment, the Commission provided guidance in the form of a template on measures to support the deployment and take-up of fixed and mobile networks, see:https://competition-policy.ec.europa.eu/system/files/2021-12/template_RRF_broadband_roll_out_and_demand_side_measures.pdf

[279] Case SA.105187, – Portugal – *Deployment of fixed access networks*.

[280] Case SA.104933, Spain – RRF – Spain – *Support for 5G equipment and infrastructure*, Commission Decision of 21.07.2023, modified through Case SA.108821 – Spain – *Modification of the measure "RRF – Support for 5G equipment and infrastructure"*, Commission Decision of 9.10.2023.

under the DMA[281]. A full report of the activities undertaken by the European Commission in the context of the DMA in 2023 is published in parallel to this report, as foreseen in Article 35 DMA.

The Digital Markets Act

The DMA addresses systemic practices arising in digital markets due to the 'gatekeeper' power of large digital platforms. The DMA establishes criteria for identifying and designating gatekeepers. Where a platform provider meets the quantitative thresholds regarding (i) its size, (ii) its number of active business users and end users, and (iii) its entrenched and durable position, it will be designated as a gatekeeper. The Commission will also be able to designate gatekeepers that do not meet these thresholds upon qualitative assessment. Designated gatekeepers will be obliged to comply with a set of rules, which aim at keeping core platform services contestable and prevent unfair conduct vis-à-vis their users. Gatekeepers must comply with these obligations within six months upon designation as a gatekeeper. If a gatekeeper fails to comply with the obligations, fines of up to 10% of the company's worldwide turnover may be imposed. In case of systematic non-compliance, higher fines and proportionate behavioural or structural remedies may be imposed on such companies.

The DMA entered into force on 1 November 2022 and has been applicable since 2 May 2023. 3 July 2023 was the deadline for potential gatekeepers to notify to the Commission if they met the gatekeeper thresholds. By the end of the deadline, the Commission received notifications from Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Samsung. On 5 September 2023, the Commission designated six gatekeepers – Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft. In total, 22 core platform services provided by gatekeepers were designated. The designated gatekeepers have six months (until 7 March 2024) to ensure full compliance with the DMA obligations for each of their designated core platform services.

In parallel, on 5 September 2023, the Commission opened four market investigations to further assess Microsoft's and Apple's submissions that, despite meeting the thresholds, some of their core platform services do not qualify as gateways (for Microsoft: Bing, Edge and Microsoft Advertising; and for Apple: iMessage). The Commission strives to conclude the investigations by February 2024.

In addition, the Commission opened a market investigation to further assess whether Apple should be designated as a gatekeeper in relation to its operating system iPadOS, despite not meeting the thresholds. Under the DMA, this investigation should be completed within twelve months.

On 15 and 16 November 2023, three of the six gatekeepers designated in September 2023 (Apple[282], ByteDance[283] and Meta[284]) filed appeals against their respective designation decisions. In addition, Apple challenged the opening of the market investigation into iMessage[285]. Finally, ByteDance also applied for interim measures.

3. FINANCIAL SERVICES

3.1. Overview of key challenges in the sector

After more than a decade of low interest rates, 2022-2023 was marked by a sharp increase of interest rates to address the inflationary pressure that has swept over the EU since the COVID-19 pandemic started and was exacerbated by Russia's war of aggression against

[281] Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, OJ L 102, 17.4.2023, p. 6.

[282] Case T-1080/23, *Apple/Commission*.

[283] Case T-1077/23, *ByteDance/Commission*.

[284] Case T-1078/23, *Meta Platforms/Commission*.

[285] Case T-1079/23, *Apple/Commission*.

Ukraine. By raising the cost of credit, central banks try to cool off demand to reduce inflation. Rising interest rates may be beneficial for banks because they are given the opportunity to increase the interest rate 'spread' between lending and borrowing to return to profitability. The overall macro-economic outlook is currently uncertain. Rising interest rates may mean that weaker borrowers find it more difficult to pay off their debts. Their access to financing may also be curtailed. This, in turn, could lead to credit losses for banks, and could affect the resilience of weaker banks. Combined with high interest rate environment, this could lead to an increase of non-performing loans, with negative effects on the 'quality' of a bank's loan portfolios.

The financial services sector is changing rapidly. Digitalisation and the fact that certain firms operating digital platforms now have the ability to leverage the enormous volumes of data in their possession, have fundamentally changed most financial services markets. These markets are characterised by rapid technological innovation and strong network effects. As a result, distortions of competition by companies or Member States can have particularly severe effects, for example by preventing market entry by innovative competitors or pushing them to exit the market. In 2023, the Commission monitored market developments for crypto-assets, digital wallets, cryptocurrency-related payments, and other types of money transfers.

The increasing importance of data possession and digitalisation is reflected in the wave of corporate acquisitions aimed at acquiring data, building data analytics competencies and moving certain data processing activities to the 'cloud'. In the insurance sector, the use of Big Data for risk and damage calculations, digitalisation and automation play a crucial role. Access to data is now at the heart of FinTechs' business models. The Commission's Open Finance initiative[286] contributes to expanding the range of data and data pools available. It does so by making it easier for regulated third parties to access customer financial data in a transparent and non-discriminatory manner, subject to customer permission.

The transition to a more sustainable and decarbonised EU economy influences market developments also in the financial services sector. An increasing number of financial institutions, including banks, insurers, as well as asset owners/managers have committed to net-zero initiatives and the joint setting of CO_2 emission targets. In parallel, the market for environmental, social and corporate governance data (ESG data) is growing rapidly.

3.2. Contribution of EU competition policy to tackling the challenges

EU competition policy and enforcement contribute to more resilient and competitive financial services markets by safeguarding and nurturing competition on fair and equal terms. Competitive markets benefit consumers and stimulate the creation of innovative business models and financial services. In 2023, the Commission investigated market consolidation, anti-competitive unilateral conduct, and coordination between competing firms. The Commission also reviewed State aid granted to banks and other financial institutions with a view to minimising possible distortive effects in the Single Market.

[286] Proposal for a Regulation of the European Parliament and of the Council on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554 (COM/2023/360 final).

3.2.1. Contribution of EU competition policy to innovation in payments

In 2023, the Commission continued to monitor the application of the Interchange Fee Regulation (IFR)[287]. An external study was finalised in December 2023. It covers developments in card-based payment markets related to the application of the IFR. The study examined market trends, including innovative digital solutions such as mobile wallets relying on payment cards. The study also analysed developments in Merchant Service Charges[288].

In June 2023, the Commission published a call for tender for a study on competition in online payment services. By collecting and providing analyses of competitive constraints and practices and the impact of 'Big Tech'[289] payment solutions in the EU, the study will facilitate antitrust enforcement in markets for online payment services.

3.2.2. Antitrust enforcement in the financial services sector

In 2023, the Commission continued its investigation into *Apple's* conduct in the market for *mobile payment services* ('mobile wallets'). In a 2022 Statement of Objections[290], the Commission preliminarily concluded that Apple restricted competition by abusing its dominant position in the mobile wallet market on iOS devices. Apple limited access to the Near Field Communication (NFC) functionality[291] on iPhones for payments in retail outlets. Reserving access to Apple Pay in this manner, may have an exclusionary effect on competitors and may result in less innovation and less choice for consumers for mobile wallets on iPhones.

Furthermore, on 16 February 2023, the Commission closed its preliminary investigation regarding potential access restrictions generated by *Visa's policies regarding staged digital wallets*. The investigation was closed following a joint confirmation by Visa and Curve, that the two parties had settled their antitrust dispute. An update to the Visa rules in January 2023 allows Curve to use its two stage, live-load card fronted transaction model in the EU and United Kingdom.

On 17 July 2023 the Commission closed its preliminary investigation regarding the conduct of the provider of VAT Refund services Global Blue. The Commission examined whether Global Blue would seek to foreclose competing providers of innovative customer centered VAT Refund services, by discouraging merchants from dealing with such providers and by lobbying regulators to block their business model.

[287] Regulation (EU) 2015/751 of the European Parliament and of the Council of 29.4.2015 on interchange fees for card-based payment transactions, OJ L 123, 19.5.2015, p. 1.

[288] Merchant Service Charges (MSC) are fees paid by merchants for services of card acquirers, enabling the merchant to receive payments from payment cards. The MSC is the sum of the interchange fee, the acquirer's scheme fee and the acquiring margin (covering the costs and profit of the acquirer).

[289] BigTechs are large, established technology companies with non-financial core businesses, such as social media platforms or search engines. The largest ten BigTechs by market capitalisation now all offer payment services.

[290] Case AT.40452, *Apple – Mobile payments.*

[291] The NFC 'tap and go' technology enables communication between a mobile phone and payments terminals in stores. NFC is standardised, available in almost all payment terminals in stores and allows for the safest and most seamless mobile payments.

The Commission also continued in 2023 monitoring the commitments made binding on Visa and Mastercard as regards interchange fees for inter regional card transactions[292].

In November 2023, the Commission also adopted a prohibition decision in the *bond trading* sector against a cartel concerning the trading of Euro-denominated SSA bonds and Government Guaranteed bonds in the EEA[293].

In *travel health insurance services*, the Commission investigated an alleged breach of competition law by Czechia. The complainant claimed that the legislation conferring to a public undertaking the exclusive right to operate in the Czech market for travel health insurance services for foreigners could constitute a breach of Article 102 TFEU in conjunction with Article 106 TFEU. The exclusive right granted by the State excluded competing insurance providers. DG Competition's antitrust investigation was closely co-ordinated with the parallel investigation of the DG for Financial Stability, Financial Services and Capital Markets Union (DG FISMA). In July 2023, the Commission issued a Letter of Formal Notice to Czechia concluding that the Czech law infringed Article 56 TFEU and the Solvency II Directive[294]. Following the Commission's intervention, Czechia amended the legislation by abolishing the exclusive right of the public undertaking.

In *retail banking*, the Commission - in cooperation with EU NCAs - closely monitored the stickiness of deposit rates in banks in several Member States. Depositors complained that banks were quick to raise interest rates while being slow to increase interest rates for savings accounts. The Commission and the NCAs remained vigilant throughout 2023 to detect and address at an early stage potential antitrust concerns.

In *motor insurance*, the Commission continued in 2023 to monitor the commitments made binding on *Insurance Ireland* concerning competitor access to its data sharing system[295]. As a result of these commitments, new companies were granted access to Insurance Ireland and to the data sharing system. The commitments apply until 2032.

In the area of *licencing inputs for trading credit default swaps*, the Commission continued in 2023 to monitor compliance of the *International Swaps and Derivatives Association* and the provider of commodity and financial data, *IHS Markit* (now part of S&P Global) with the commitments made binding on them in 2016[296].

3.2.3. Merger enforcement in the financial services sector

In 2023, the Commission reviewed proposed mergers in multiple markets, including the banking, insurance, and payment services sectors as well as other specialised financial services.

[292] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2311
[293] See above Part I, Section 1.4.
[294] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) OJ L 335, 17.12.2009.
[295] Case AT.40511, *Insurance Ireland: Insurance claims database and conditions of access*.
[296] Case AT 39745, *CDS Information Market*.

In May 2023, the Commission unconditionally approved the merger between *Credit Suisse* and *UBS*[297]. Based on its market investigation, the Commission found that the merger would not significantly reduce competition in the markets where the parties' activities overlap within the EEA. The Commission's investigation followed a Commission decision in April 2023 granting the parties a derogation from the standstill obligation which requires merging companies not to implement a merger until it has been cleared by the Commission. Considering the financial difficulties faced by Credit Suisse and the consequent risk for financial instability, the parties requested the derogation to allow UBS to implement certain defined measures, including closing the transaction. The Commission found that the risk for systemic harm to the banking sector caused by the early closing outweighed potential threats to competition resulting from it.

In 2023, the Commission monitored mergers in the *financial services industry*, with a view to find transactions that could warrant a referral to the Commission pursuant to Article 22 EUMR.

In August 2023, the Commission accepted the requests submitted by three Member States and one EFTA Country to assess the proposed acquisition of *Nasdaq*'s *European power trading and clearing business by European Energy Exchange AG (EEX)* under the EUMR[298]. The Commission considered that the transaction met the criteria for referral under Article 22 EUMR. In particular, the transaction appeared to combine the only two providers of services facilitating the on-exchange trading and subsequent clearing of Nordic power contracts. Such services allow long-term energy contracts with set future prices and are therefore key for more stable and predictable energy prices. It is crucial to conserve a strong and competitive trading and clearing ecosystem to support the smooth functioning of energy markets, especially in the current context of energy crisis. The Commission's investigation is ongoing.

3.2.4. State aid investigations in the financial services sector

In October 2022, the Commission approved aid to support the resolution of *Getin Noble Bank*[299], one of the ten largest Polish banks - in line with the rules on State aid to banks in the context of the financial crisis. According to the resolution plan, the main assets and liabilities of the bank were transferred to a newly created bridge bank. The State aid measures were aimed at enabling a prompt sale of the bridge bank in an open, transparent and non-discriminatory sales process, while preserving both financial stability and a level playing field in the Single Market. Existing shareholders and subordinated debt holders contributed to the resolution costs, reducing the need for intervention by the Polish Resolution Fund, in line with burden-sharing principles. In November 2023, the Commission approved an amendment to the support measures approved in 2022 in order to facilitate the ongoing sale process and maximise the recovery value for the Polish Resolution Fund by carving out a portfolio of impaired assets[300].

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[297] Case M.11111, *UBS/Credit Suisse*.

[298] Case M.11241, *EEX/NASDAQ POWER*.

[299] Case SA.100687, Poland - *Liquidation aid to Getin Noble Bank S.A. in resolution*.

[300] Case SA.109418, Poland - *Amendment to the liquidation aid to Getin Noble S.A. in resolution (SA.100687)*.

In 2023, the Commission also authorised the *prolongation* of certain existing State aid schemes under which Member States can provide *aid to foster the restructuring or orderly market exit of entities in distress in case of need*. For instance, for Poland, the Commission authorised the extension of both the scheme for the liquidation of credit unions (in place since February 2014)[301] and the scheme for the resolution of cooperative and small commercial banks (in place since December 2016)[302]. As regards Ireland, the Commission authorised two prolongations of the restructuring scheme for credit unions (in place since October 2014)[303] and the extension of the orderly winding-up scheme for credit unions (in place since December 2011)[304]. For Denmark, the Commission approved the second re-introduction of the winding-up scheme for small banks[305].

On 6 July 2023, the Commission approved an amendment to the liquidation aid for the orderly market exit *of Cyprus Cooperative Bank* (CCB)[306]. The amendment allows Kedipes - the residual entity of CCB - to operate the mortgage-to-rent scheme aimed at protecting the primary residences of socially vulnerable debtors who have been unable to service their debts. The dedicated subsidiary of Kedipes will operate the scheme: it will purchase the properties of those vulnerable debtors from financial institutions and rent them back to the debtors, while the State will subsidize the rent. Ultimately, the debtors will have the possibility to re-purchase the property. The scheme will also help banks reduce their stock of non-performing loans.

On 28 November 2023, the Commission also approved the re-introduction of *Hercules*, an asset protection scheme in Greece[307]. The scheme was first approved in October 2019, and after a prolongation expired in October 2022. The re-introduced scheme will be in place until end of 2024 and it will assist banks in securitising and moving non-performing loans off their balance sheets. Under the scheme, a separate private securitisation vehicle will buy non-performing loans from the banks and sell notes to investors. Greece facilitates the process by granting guarantees on the senior tranche of those notes, in exchange for market conform remuneration.

On 21 September 2023, the Commission adopted a new decision on the FITD (Deposit Guarantee Scheme) measures to support *Banca Tercas*[308]. This new decision follows the

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[301] Case SA.108852, Poland – *Thirteenth prolongation of the Credit Unions Orderly Liquidation Scheme*.

[302] Case SA.108989, Poland - *Eighth prolongation of the resolution scheme for cooperative banks and small commercial banks and amendment of the offered commitments*.

[303] Case SA.106983, Ireland - *17th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*; Case SA.109639, Ireland – *18th Prolongation of the Restructuring and Stabilisation Scheme for the Credit Union Sector*.

[304] Case SA.107306, Ireland - *19th prolongation of the Credit Union Resolution Scheme 2023-2024.*

[305] Case SA.106526, Denmark – *Prolongation of the second re-introduction of the winding-up scheme for small banks*.

[306] Case SA.107455, Cyprus - *Third amendment to the liquidation aid for the orderly market exit of Cyprus Cooperative Bank (CCB) Ltd*.

[307] Case SA.109635, Greece - *Reintroduction of the Hercules scheme*.

[308] Case SA.39451, Italy – *Aid to Banca Tercas*

annulment of the 2015 Commission Decision by the Court of Justice[309]. In its new decision, the Commission concluded, based on the criteria set out by the Court of Justice, that the support granted by the FITD to Banca Tercas was not imputable to Italy and therefore did not constitute illegal State aid.

In the field of *insurance*, the Commission approved on 6 February 2023, a EUR 1.5 billion French State Fund to support protection of travellers in the event of the *insolvency of travel organisers*[310]. The Fund was considered necessary to ensure the consumers' protection in the context of insufficient insurance offered by private insurance providers, following the severe impact of the COVID-19 pandemic on the tourism sector.

In the field of *risk finance*, the revised Guidelines[311], which entered into force on 1 January 2022 and introduced simplified requirements for the assessment of schemes targeting SMEs and certain other non-large enterprises, were applied three times in 2023. Regarding Cyprus, in the context of the prolongation of a tax reduction for investments made by legal persons in innovative SME[312]; for France on the third amendment of the IR-PME scheme of income tax reduction for subscription to the capital of SMEs[313]; and for Germany, on the prolongation and amendment of the incentive scheme for equity investments by private investors in small, young, and innovative companies[314].

Under the Short-term export credit insurance (STEC) communication[315], the Commission approved two schemes in Latvia: a prolongation of the existing scheme until end of 2023[316]; and an amendment and a further prolongation of the scheme until end of 2028.[317] On this basis, the public insurance in Latvia will be covering (i) export related risks incurred by SMEs with an export-related turnover of up to EUR 5 million, and (ii) single risks with a risk period of at least 121 days and up to two years, for all exporters regardless of their size.

[309] Judgment of the Court of Justice of 2.3.2021, in Case C-425/19 P, *European Commission v Italian Republic and Others*, EU:C:2021:154.

[310] SA.104022, France - *State guarantee fund for travel operators*.

[311] Communication from the Commission, Guidelines on State aid to promote risk finance investments, OJ C 508, 16.12.2021, p. 1.

[312] Case SA.107886, Cyprus - *Risk Finance: prolongation of the tax reduction for investments made by legal persons in innovative small and medium-sized enterprises*.

[313] Case SA.104703, France – *3ème modification du dispositif IR-PME pour les investissements dans les FCPI et FIP*.

[314] Case SA.105224, Germany - *INVEST Scheme – Direct grants for risk capital investments – Prolongation and Amendment of the INVEST Guidelines*.

[315] Communication from the Commission on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance, C(2021) 8705 final, OJ C, C/497, 10.12.2021, p. 5.

[316] Case SA.104979, Latvia - *Amendment to SA.47233: Temporary non-marketable risks of short-term export-credit guarantees provided by "Development finance institution Altum" in the Republic of Latvia*.

[317] Case SA.105152, Latvia - *Prolongation and amendment of short-term export credit scheme* (SA.47233),

Regarding *State aid in the form of public guarantees*, the Commission adopted two decisions in 2023[318] under the Guarantee Notice, in which it approved methodologies used to determine the market conform guarantee premiums, which in turn serve as a reference to calculate the aid element included in public guarantees.

Furthermore, the Commission also adopted a decision concerning the remit of the *Danish national development bank*, ensuring that there is no undue competition distortion through safeguards against crowding out of private investors, should they be willing to finance the target companies[319].

3.2.5. Evaluation of the State aid rules in the financial sector

In 2023, the Commission continued its evaluation of the State aid rules for banks to assess how the rules have functioned and the role of State aid control in preserving financial stability in the EU single market while ensuring a level-playing field by mitigating competition distortions. In 2022, the Commission had carried out a public consultation and published the summary of the replies to this consultation on 11 October 2022[320]. An econometric analysis of State aid approved in the period 2008-2022 was carried out by an external consultant. The final report was submitted to the Commission in November 2023. This analysis, along with the input received through the public consultation, will feed into a Staff Working Document (SWD) on the evaluation.

In the ongoing evaluation of the *Guarantee Notice*[321], the Commission published in February 2023 a summary of replies and contributions to the public consultation on the effectiveness, efficiency, relevance, coherence, and added value of the Notice[322].

4. TAXATION AND STATE AID

4.1. Overview of key challenges on tax evasion and avoidance and fiscal aid

The Commission enforces State aid rules in certain fiscal matters, such as State measures favouring aggressive tax planning practices that distort or threaten to distort competition as well as those leading to discriminatory treatment of companies.

Direct taxation is a competence of the Member States. Outside the spheres in which EU tax law has been harmonised, Member States can decide on their own how to tax economic activities, which ones to tax, which rates to use, and which tax base to take into account. But Member States' fiscal sovereignty is not absolute: this competence must be exercised in accordance with Union law, including the State aid rules. The recent judgments of both the

[318] Case SA.109147 – Slovakia - *Calculation of aid elements in the provision of guarantees to SMEs*; Case SA.109413, Denmark - *Prolongation and amendment of calculation method for Danish guarantee scheme* (SA.60070).
[319] Case SA.105087, Denmark – *Establishment of Denmark's Export and Investment Fund*.
[320] See: https://competition-policy.ec.europa.eu/public-consultations/2022-sa-banking-rules_en#policy-field
[321] Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.
[322] See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13466-State-aid-rules-for-assessing-State-guarantees-on-loans-evaluation_en

Court of Justice and the General Court have confirmed the Commission's power to assess the existence of selective advantages in direct tax matters.

In the context of *fiscal measures*, the key aspect for the finding of State aid relates to the existence of a selective advantage, with a particular focus on the selective nature of the measure. It is for the Commission to assess whether fiscal measures selectively favour certain undertakings or certain sectors of activity[323]. However, the Court of Justice has clarified that, for the identification of the reference system (in direct taxation), the Commission must rely on national law[324].

Aggressive tax planning strategies can take a variety of forms. Companies may strike individual 'sweetheart deals' with tax authorities, by which they achieve a lower level of taxation than what would apply to other taxpayers. They may also benefit from broader schemes that offer fiscal advantages and are available by legislation or administrative practice. Either way, such practices have distortive effects on the internal market, as they unduly reinforce the competitive position of certain companies, as opposed to others. They also reduce public funding that would otherwise be available for investments, which are particularly needed in the current context of Europe's economic recovery.

Whereas legislative initiatives have been launched and elaborated at global level and recently adopted at EU level to address aggressive tax planning[325], the Commission's State aid enforcement activities may also contribute to tackling tax base erosion and profit shifting, in particular where a favourable tax treatment is granted to internationally mobile activities. Relevant developments took place in the case law of the EU Courts in 2023 as discussed below.

4.2. Contribution of EU competition policy to tackling the challenges

In 2023, the Commission continued to enforce State aid rules in both direct and indirect tax matters, by assessing measures that can potentially involve State aid.

4.2.1. State aid investigations and decisions concerning aggressive tax planning

The Commission continued the investigation of pending cases on alleged aid granted by the Netherlands to *Inter Ikea*[326], to *Starbucks*[327] and to *Nike*[328], as well as on alleged State aid

[323] See the Judgments of the Court of Justice of 4.6.2015 in Case C-15/14 P, *Commission* v *MOL*, EU:C:2015:362, and of 30.6. 2016 in Case C-270/15 P, *Belgium v Commission*, EU:C:2016:489.

[324] Judgment of the Court (Grand Chamber) of 8.11.2022, Joined Cases C-885/19 P and C-898/19 P, *Fiat Chrysler Finance Europe and Ireland v European Commission*, EU:C:2022:859.

[325] See for example Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, p. 1. See also the Commission's proposals for directives to simplify tax rules and reduce costs for cross-border businesses, including the BEFIT proposal ('Business in Europe: Framework for Income Taxation') and a proposal aimed at harmonising transfer pricing rules within the EU (see more information on https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4405).

[326] Case SA.46470, Netherlands – *Netherlands Potential aid to IKEA – NL*, see: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5343

[327] The investigation was resumed in 2022 after the final decision was annulled by the General Court in Joined Cases T-760/15, T-636/16, Kingdom of the Netherlands and Others v European Commission, ECLI:EU:T:2019:669.

granted by Luxembourg to *Huhtamäki*[329], *and by Gibraltar to the Mead Johnson Nutrition group*[330].

At the same time, the Commission continued its investigation into some Member States' tax rulings legislation and practice. So far, the Commission has looked into more than a thousand rulings and continues to thoroughly examine the information put forward by the Member States.

4.2.2. Important judgments in relation to aggressive tax planning

In 2023, the EU courts rendered several important judgments in relation to tax aggressive planning.

The Belgian Excess Profit cases

In its judgments of 20 September 2023, the General Court confirmed the Commission Decision of January 2016 that declared the Belgian practice of granting excess profit rulings an aid scheme that infringed the EU rules on State aid[331]. The Excess profit scheme relied on the consistent misapplication of a provision of Belgian tax law. While the General Court confirmed that that provision itself forms part of the reference framework, it concluded that the consistent misapplication of that provision must be considered a derogation from the reference system. The exemption of excess profits under that scheme was therefore not provided by law and constituted an advantage. The General Court agreed that the advantage was selective because it was only available to certain multinational companies eligible under the scheme, and not to comparable undertakings. Since there was no valid justification, the General Court agreed that the Excess profit scheme qualified as unlawful aid. As regards the finding of a selective advantage, the Decision based its assessment on two separate lines of reasoning. Under the primary line of reasoning, the Decision argued that the excess profit exemption derogated from (misapplied) the ordinary Belgian corporate income tax system. Under the subsidiary line of reasoning, the Decision argued that the excess profit exemption derogated from the arm's length principle. The General Court upheld the Commission's primary line of reasoning, and therefore considered it not necessary to examine Belgium's arguments on the subsidiary line of reasoning.

Engie

On 5 December 2023, the Court of Justice set aside the judgment of the General Court and annulled the Commission decision, which found that Luxembourg had granted State aid to the Engie group in connection with tax rulings on intra-group financing transactions[332]. The Court found that the Commission made errors in determining the reference system constituting the starting point for the comparative examination to be carried out in the assessment of the selectivity of those tax measures. In the Court's view, the reference system or the 'normal' tax regime, on the basis of which the selectivity of a tax ruling must be analysed, must, in the setting of the case, include the provisions laying down the exemptions which the national tax authorities considered to be

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[328] Case SA.51284, the Netherlands – *Alleged aid to Nike*, see: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_322. State aid: investigation into Dutch tax treatment of Nike (europa.eu)

[329] Case SA.50400, Luxembourg – *Huhtamäki*, see: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1591

[330] SA.34914, United Kingdom – *Gibraltar Corporate Income Tax Regime*.

[331] Judgments of the General Court of 20.9.2023 in Case T-131/16 RENV, *Belgium* v *Commission* and 9 other cases and joined cases EU:T:2023:561 up to EU:T:2023:570. These judgments were appealed by a number of beneficiaries of the scheme.

[332] Judgment of the Court of Justice of 5.12.2023, in Joined cases C-451/21 P and C-454/21 P, *Luxembourg*, *Engie* v *Commission*, ECLI:EU:C:2023:948.

applicable, where those provisions do not, in themselves, confer a selective advantage. The Court notes that the Commission is in principle required, in such setting, to accept the interpretation of provisions of national law given by the Member State during an exchange of arguments, provided that that interpretation is compatible with the wording of those provisions.

Amazon

On 14 December 2023, the Court of Justice upheld the judgment of the General Court which had annulled the Commission decision of 2017 ordering recovery of State aid granted by the Luxembourg authorities to Amazon subsidiaries in the form of a tax ruling[333]. According to the Commission, the ruling artificially diminished the tax base of the subsidiary at stake and, ultimately, that of the Amazon group in Luxembourg and in Europe.

In May 2021, the General Court held that the Commission had not demonstrated to the requisite legal standard that the Amazon group subsidiary concerned had benefited from an undue reduction in its tax burden and therefore annulled the Commission decision.

In its judgment rejecting the appeal brought by the Commission, the Court of Justice considers that the arm's length principle has, at this stage, no autonomous existence in EU law. The Court considers therefore that the Commission may rely on this principle only if it is incorporated into the national tax law concerned. According to the Court, this principle had not been incorporated in national law in Luxemburg before 2017. Likewise, contrary to the General Court's finding, the Organisation for Economic Co-operation and Development (OECD) Guidelines on those transactions could be of practical importance in the case only if the Luxembourg tax system refer to them. The Court of Justice concluded therefore that the Commission had relied on an autonomous arm's length principle and wrongly determined the 'reference system'.

4.2.3. Important cases in relation to tax schemes

The recent case law confirms the method usually applied to assess selectivity in relation to tax measures, that is the so-called three-step test: (i) Determination of the reference system; (ii) Identification of a derogation, and (iii) Justification by the logic of the tax system, and continues stressing the importance of appropriate motivation and correct definition of the reference framework as the existence of a selective advantage may be established only when compared with 'normal' taxation[334].

Amongst other issues, the General Court in its judgment of 27 September 2023 in the joined cases *Banco Santander and Santusa v Commission*[335] questioned the relevance of administrative guidance in determining the reference system for the selectivity assessment of a Spanish tax measure. According to the General Court, the correct interpretation of the national legal provisions in question establishing the measure was a matter for the national courts; it could not be modified by mere administrative guidance issued by the tax administration, which is only binding on the tax administration itself.

[333] Judgment of the Court of Justice of 14.12.2023, in Case C-457/21 P, *Commission* v *Amazon.com and Others*, ECLI:EU:C:2023:985.

[334] See Judgments of the Court of 16.3.2021 in Cases C-562/19 P, *Commission v Poland*, EU:C:2021:201 and C-596/19 P, *Commission v Hungary*, EU:C:2021:202; see also Judgments of the Court of 6.10.2021 in Case C-50/19 P, *Sigma Alimentos Exterior SL*, EU:C:2021:792; Joined cases C-51/19 and C-64/19 P, *World Duty Free Group SA and others v Commission*, EU:C:2021:793; Case C-52/19 P, *Banco Santander SA v Commission*, EU:C:2021:794; Joined cases C-53/19 P and C-65/19 P, *Banco Santander and Santusa v Commission*, EU:C:2021:795.

[335] Judgment of the General Court of 27.9.2023 in Joined Cases T-12/15, T-158/15 and T-258/15 *Banco Santander and Santusa* v *Commission*, EU:T:2023:583.

Spanish Tax Lease

On 2 February 2023, the Court of Justice generally upheld – but also annuled in part – the Commission's decision concerning the application of the Spanish Tax Lease (STL) system to certain finance lease agreements[336]. In the decision adopted in July 2013, the Commission had found that three of the five tax measures comprising the STL system were State aid, within the meaning of Article 107(1) TFEU, which took the form of a selective tax advantage and was partially incompatible with the internal market.

In its judgment, the Court confirmed the selective nature of the STL system, as the Spanish tax administration enjoyed discretionary powers to select the beneficiaries of the scheme. Indeed, the Court of Justice recalled that a system of authorisation may involve selectivity where the competent authority has a broad discretion to determine the beneficiaries and pointed out in particular, the imprecise nature of the criteria relied on for the authorization and the lack of a framework for their interpretation. The Commission therefore did not have to conduct the three-step test for the assessment of selectivity.

However, with regard to the recovery of the aid at issue, the Court found that the Commission had erred in designating the economic interest groups and their investors as sole beneficiaries of the scheme and in ordering recovery of the full amount of aid solely from these beneficiaries. The Court considered that, under contracts concluded with the shipping companies, the economic interest groups were obliged to transfer part of the advantage to shipping companies and that these contracts were subject to the review of the fiscal administration. A number of applications for annulment in relation to the same Commission decision are still pending before the General Court - as only two of the 60 applications were selected by the General court and resulted in judgments by the General Court and the Court of Justice (on appeal).

Spanish Goodwill III

The case relates to a corporate income tax scheme introduced in 2002 allowing the tax amortisation of acquisitions of shares in foreign companies to the exclusion of domestic companies. The position of the Spanish tax administration at the time was to consider that the scope was limited to direct acquisitions, rejecting indirect transactions. The scheme was found to constitute illegal and incompatible aid in the 2009 (Goodwill I) and 2011 (Goodwil II) negative final decisions. Those decisions, which acknowledged the existence of legitimate expectations, were upheld by the ECJ in 2021 landmark judgments (case C-51/19 P and others).

In 2012, Spain issued new administrative guidance accepting indirect transactions (carried out via a holding company), but only retroactively and within the period of time where legitimate expectations had already been accepted by the Commission. This resulted in the adoption of the 2014 decision (Goodwill III) where the Commission found that the new administrative guidance of 2012 constituted a new measure extending the scope of the scheme, for which the legitimate expectations recognised in the previous decisions were not applicable.

On 27 September 2023, the General Court issued a number of judgments annulling the 2014 decision[337]. The General Court considered that the Commission was wrong to order recovery from indirect transactions, given that the General Court interpreted that the previous 2009 and 2011 decisions had already covered both direct and indirect transactions. Furthermore, the General Court found that the scope of the legal provision for the scheme cannot be modified by mere administrative guidance, which is not binding on beneficiaries/taxpayers. In this context, the General Court concluded that the Commission was not entitled to adopt the 2014 decision, as such adoption would equate to a withdrawal of legal acts (the 2009 and 2011 decisions) that had granted subjective rights both to Spain and to the beneficiaries concerned. Furthermore and regardless of the interpretation of the 2009 and 2011 decisions, the General also found that indirect transactions should enjoy the same legitimate expectations as direct transactions.

In the above context, the Commission continued its investigative activities in relation to fiscal

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[336] Judgment of the Court of Justice of 2.2.2023 in Joined Cases C-649/20 P *Spain v Commission*, C-658/20 P *Lico Leasing and Pequeños y Medianos Astilleros Sociedad de Reconversión v Commission*, and C-662/20 P *Caixabank and Others v Commission*, EU:C:2023:60.

[337] Judgment of the General Court of 27.9.2023 in Cases T-826/14, T-12/15, T-158/15, T-252/15, T-253/15, T-256/15, T-257/15, T-258/15 and T-260/15, *Spain* v *Commission, Banco Santander and Santusa* v *Commission, Abertis Infraestructuras and Abertis Telecom Satélites* v*Commission, Ferrovial and Others* v *Commission, Sociedad General de Aguas de Barcelona* v *Commission, Telefónica* v *Commission, Arcelormittal Spain Holding* v *Commission, Axa Mediterranean* v *Commission and Iberdrola v Commission*. The Commission appealed those judgments.

State aid in 2023.

In particular, the Commission adopted on 3 March 2023 a decision concerning a real estate tax exemption granted by Italy to certain non-commercial entities[338], following the partial annulment of the 2012 Decision by the Court of Justice. In the decision of December 2012, the Commission found that an Italian real estate tax exemption (*imposta comunale sugli immobili*) for non-commercial entities engaged in certain social activities of economic nature between 2006 and 2011 was incompatible with EU State aid rules. At the time, the Commission did not order Italy to recover the illegal aid from the beneficiaries on the basis of an absolute impossibility to carry out the recovery derived from the lack of available information in the tax and cadastral databases to allow for the identification of the beneficiaries. However, in 2018, the Court of Justice partly annulled the 2012 Commission decision, finding that the Commission should have examined whether there were alternative methods for the recovery of the aid, even if only partial. On 3 March 2023, the Commission adopted a new final decision concerning the said Italian real estate tax exemption ordering Italy to recover the illegal aid to the extent that the exempted individual real estate properties were employed in economic activities. While acknowledging the existence of difficulties for the Italian authorities in identifying the beneficiaries of the illegal aid, the Commission concluded that those difficulties are insufficient to rule out the possibility of achieving at least a partial recovery of the aid by relying on several alternative recovery methods, despite the lack of available information in the tax and cadastral databases.

5. BASIC INDUSTRIES AND MANUFACTURING

5.1. Overview of key challenges in the sector

Making up almost one-fifth of the EU's economy, manufacturing is a driver of growth and innovation and employs around 30 million people (approximately 15% of the EU workforce). European businesses active in the sector face substantial challenges in the form of energy price increases, trade tensions, the introduction of advanced technologies and the need to adapt their practices and processes to make their products climate-friendly. This was exacerbated by the COVID-19 pandemic and the Russian war of aggression against Ukraine. Both events negatively impacted supply chains and led to price increases for energy, raw materials and components, which persisted into and throughout 2023. The RRF and the REPowerEU Plan aim to address these challenges by continuing to boost investment during the recovery from the pandemic and the transition to a digitalised and clean economy independent of Russian fossil fuels.

Enforcing antitrust and merger rules in the manufacturing and basic industries sectors facilitates these transformations in the spirit of the single market goals, by ensuring that innovation is not hampered and that companies can compete on fair and equal terms. Meanwhile, the application of State aid rules ensures that purely national interests do not distort competition.

[338] Case SA.20829, Italy - *Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes.*

5.2 Contribution of EU competition policy to tackling the challenges

5.2.1. Antitrust enforcement in the basic industries and manufacturing sector

In 2023, the Commission continued enforcing antitrust rules in the basic industries and manufacturing sectors.

For instance, in July 2023, the Commission sent a Statement of Objections to the fashion house *Pierre Cardin* and its licensee *Ahlers* in which it took the preliminary view that the companies had breached EU antitrust rules by restricting parallel trade and sales of Pierre Cardin-licensed products to specific customers in the EEA[339].

5.2.2. Merger enforcement in the basic industries and manufacturing sector

EU merger control is making a significant contribution to achieving the European Green Deal's sustainability policies, including carbon neutrality in Europe. In 2023, sustainability issues featured prominently in the Commission's competitive assessment of recent mergers, particularly in the sectors of basic industries and manufacturing. These issues include, for instance: (i) the need to take into account consumer preferences, e.g. for 'green products' as a differentiating factor in general and in market definition in particular; (ii) the importance of enforcing and pursuing innovation theories of harm as a means of preventing the loss of 'green innovation'; (iii) the importance of taking into account social and environmental benefits and thus accepting them as efficiencies stemming from a merger; and (iv) the need to stay vigilant with regard to 'green' killer acquisitions, especially given the fact that 'green innovation' is often coming from smaller players representing a threat for incumbent companies and that such concentrations may well fall below the notification thresholds at EU and national levels.

There is therefore a clear trend towards the sustainability-related aspects of the Commission's merger review becoming increasingly important, as demonstrated by several investigations carried out in 2023 under the EUMR[340].

In February 2023, the Commission conditionally approved the acquisition of *MBCC* by *Sika*[341]. Both companies produce a broad range of construction materials, including chemical admixtures for concrete mixes. In its investigation, the Commission focused on the impact of the transaction on the industry's efforts to reduce carbon emissions from concrete production. In particular, the innovative chemical admixtures produced by the parties can help minimize the content of carbon intensive materials – such as cement – in concrete mixes. The Commission found that both Sika and MBCC are global industry leaders in R&D on chemical admixtures and their ability to develop innovative products and solutions puts them ahead of their competitors. The combination of the two companies could have caused competitive harm by reducing their incentives to innovate in this area. To address these concerns, Sika

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[339] Case AT.40642, *Pierre Cardin*. See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4031

[340] See Competition merger brief: https://op.europa.eu/en/publication-detail/-/publication/597b5940-5ceb-11ee-9220-01aa75ed71a1/language-en/format-PDF/source-293456857

[341] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_598

committed to divest MBCC's admixture assets in Europe and in other jurisdictions across the world, including the business's global R&D centre.

In October 2023, the Commission approved the proposed acquisition of *Thales GTS* by *Hitachi Rail*, subject to conditions[342]. Both companies are suppliers of interlockings and automated train protection wayside systems (overlay and resignalling). The Commission found that the merger would lead to higher prices, lower quality and less innovation, to the detriment of infrastructure managers, and ultimately customers. The decision is conditional upon Hitachi Rail's divestment of the entirety of its mainline signalling platforms in France and Germany for interlockings, overlay and resignalling projects, in order to enable an independent player to act as a new competitive constraint in the market on a lasting basis.

In May 2023, following the opening of an in-depth investigation, the Commission unconditionally approved the acquisition of *Alumetal* by *Norsk Hydro*, both major European producers of aluminium foundry alloys, a semi-finished aluminium product used mainly by the automotive industry to cast auto parts[343]. Alumetal makes these from recycled material, while Norsk Hydro uses non-recycled material and relies on renewable energy for its production. In its in-depth investigation, the Commission assessed whether the transaction might: (i) reinforce Norsk Hydro's leading position as a supplier of aluminium foundry alloys; and (ii) eliminate important competition from a growing supplier able to bring cheaper and advanced recycled aluminium products to the market and to automotive customers. In order to assess these concerns, the Commission carried out a specific assessment to analyse whether, post transaction, sufficient low-carbon producers would remain, besides the Parties. The Commission ultimately found that the parties' combined market shares in the EEA market for solid advanced aluminium foundry alloys are moderate and there are a number of sizeable alternative suppliers, including green players. Moreover, the Commission concluded that the parties are not close competitors in the market for solid advanced aluminium foundry alloys.

5.2.3. State aid enforcement in the basic industries and manufacturing sector

On 7 July 2023, the Commission approved an amendment to an already approved aid measure for the re-construction and upgrading of a *multimodal platform in the Romanian port of Galati*[344]. The investment project aims to improve port and access infrastructure and increase modal shift in transportation. The aid provided in the form of grants amounts to EUR 112.28 million.

On 13 October 2023, the Commission approved under the TCTF a Romanian aid scheme to meet immediate *investment needs in sea and inland ports*. This scheme, with a budget of up to EUR 24 million, aims to help operators process significantly increased flows of cereals and other goods that are piling up in Romanian ports in the context of the Russian war of aggression against Ukraine, the sanctions imposed by the EU and its international partners, and the countermeasures taken by Russia, which have disrupted trade flows and supply chains

[342] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_5323
[343] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2566
[344] Case SA.101033, Romania - *Amendment to State Aid SA. 40926 – Galati multimodal platform.*

worldwide[345]. The scheme is part of a broader effort, designed to contribute to the EU Solidarity Lanes action plan[346]. The second leg of that broader effort (up to EUR 126 million) will also be used to contribute to overcoming capacity shortcomings, among others in short-distance transport of freight and temporary storage[347].

On 17 November 2023, the Commission approved aid in the amount of SEK 1 675 million (approximately EUR 143 million) to be granted by Sweden in the form of a non-repayable grant for an investment project in the port of Gothenburg[348]. The objective of the measure is to increase the fluidity of traffic and safety in the fairway leading to and through the port of Gothenburg as well as to improve the port infrastructure.

6. AGRI-FOOD SECTOR

6.1. Overview of key challenges in the sector

In 2023, the agri-food sector continued to be affected by Russia's war of aggression against Ukraine and its effects on the energy, fertiliser and feed prices, as well as by the resulting food price inflation across the EU[349]. Although 2023 saw a decline in energy and fertiliser prices as compared to 2022, the lower commodity prices and input costs still remained above the long-term average[350]. Because of high food inflation, consumers showed a tendency to switch to more basic, and cheaper food items[351]. This supported also a switch to retailer own-brands or a substitution with relatively cheaper products within the same category (e.g. meats and oils) or between categories (e.g. less fresh fruit and vegetables)[352].

In the summer of 2023, the EU food inflation showed first signs of stabilisation since January 2021 but remained high and above the general inflation level[353]. In the autumn of 2023 energy, fertiliser and feed prices continued declining, which also led to a slowing down of the increases of consumer prices[354]. Towards the end of 2023, the EU food inflation stopped increasing, but remained at historically high levels and represent the highest rate of overall inflation[355]. Prices remain a big concern for consumers, as the cost of living remains elevated, and prices might further evolve depending on the future harvest and uncertain developments in international markets.

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[345] Case SA.107101, Romania - TCTF - *Romanian ports - EU - Ukraine Solidarity lanes.*
[346] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions for an action plan for EU-Ukraine Solidarity Lanes to facilitate Ukraine's agricultural export and bilateral trade with the EU.
[347] Case SA.109965, Romania - *Romanian ports - EU - Ukraine Solidarity lanes.*
[348] Case SA.103466, Sweden - *Dredging and port infrastructure at the port of Gothenburg*.
[349] See: https://agriculture.ec.europa.eu/system/files/2023-04/short-term-outlook-spring-2023_en.pdf
[350] See: https://agriculture.ec.europa.eu/system/files/2023-07/short-term-outlook-summer-2023_en.pdf
[351] See: https://agriculture.ec.europa.eu/system/files/2023-04/short-term-outlook-spring-2023_en.pdf
[352] See: https://agriculture.ec.europa.eu/system/files/2023-07/short-term-outlook-summer-2023_en.pdf
[353] See: https://agriculture.ec.europa.eu/system/files/2023-07/short-term-outlook-summer-2023_en.pdf
[354] See: https://agriculture.ec.europa.eu/system/files/2023-10/short-term-outlook-autumn-2023_en.pdf
[355] See: https://ec.europa.eu/eurostat/documents/2995521/17766951/2-31102023-AP-EN.pdf/e9580ea0-3933-6700-41ad-4bd54f4b9ce0?version=1.0&t=1698672837709

6.2. Contribution of EU competition policy to tackling the challenges

6.2.1. Guidelines on sustainability agreements in agriculture

On 7 December 2023 the Commission adopted the Guidelines on Article 210a of the Regulation (EU) No 1308/2013 (CMO Regulation) providing an exclusion from the application of Article 101 TFEU for sustainability agreements in agriculture[356]. Article 210a of the CMO Regulation allows agricultural producers and other operators in the agri-food supply chain to implement sustainability standards that go beyond what is currently required by existing EU and national legislation provided that the higher standards pursue certain sustainability objectives (environmental, reduced use of pesticides and antimicrobials, animal health, or animal welfare). The new Guidelines aim to facilitate the adoption of such sustainability agreements by explaining how to fulfill the conditions of the exclusion and providing concrete examples. From 8 December 2023 onwards producers may request an opinion from the Commission concerning the compatibility of sustainability agreements with Article 210a.

The adoption of the Guidelines followed a public consultation in the first half of 2023[357] and a conference held on 12 June 2023 to further discuss the issues raised by the consultation with stakeholders[358].

6.2.2. Revised State aid rules for the agricultural, forestry, fishery and aquaculture sectors entered into force

On 1 January 2023 the revised Agricultural Block Exemption Regulation (ABER)[359], the revised Fishery Block Exemption Regulation (FIBER)[360], and the revised Guidelines for State aid in the agricultural and forestry sectors and in rural areas (Agricultural Guidelines)[361], entered into force.

The ABER and FIBER declare specific categories of aid compatible with EU State aid rules and exempt them from the requirement of prior notification and approval by the Commission

[356] Communication from the Commission, Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013, see: https://competition-policy.ec.europa.eu/system/files/2023-12/2023_EC_guidelines_for_sustainability_agreements_of_agricultural_producers.pdf

[357] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_102

[358] See: https://competition-policy.ec.europa.eu/about/reaching-out/sustainability-guidelines-agri-food-supply-chain_en

[359] Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European, OJ L 327, 21.12.2022, p. 1.

[360] Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 327, 21.12.2022, p. 82.

[361] Communication from the Commission Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2022/C 485/01, OJ C 485, 21.12.2022, p. 1.

if they fulfil certain conditions. The main changes to the ABER and the FIBER include a significant extension of scope of block-exempted measures. Based on the experience gained by the Commission, the new rules block-exempt up to 50% of cases which before were subject to notification.

The main changes in the revised Guidelines include: (i) a new, simplified procedure for the authorisation of State aid for measures co-financed under the CAP; (ii) an enlarged scope of measures targeting animal diseases and plant pests, allowing for aid to be granted for emerging animal diseases and certain invasive alien species; and, (iii) new incentives for farmers to commit to schemes under which they respect stricter environmental standards than what is required by law.

6.2.3. Revised Fisheries Guidelines adopted

In March 2023, the Commission adopted the revised Fisheries State aid Guidelines[362] which apply as from 1 April 2023.

The revised Fisheries Guidelines include a broader scope of measures targeting animal diseases in aquaculture, allowing for aid to be granted for emerging animal diseases and certain invasive alien species, and introduce new categories of aid, such as aid for fleet and cessation measures (in line with the EMFAF), and aid for investments in equipment that contributes to safety of fishing vessels in the Union's outermost regions.

6.2.4. Revised Fisheries de minimis Regulation adopted

On 4 October 2023, the Commission adopted an amendment to the *de minimis* regulation for the fishery and aquaculture sector[363].

The revised regulation, which entered into force on 25 October 2023, introduced an increase of the *de minimis* aid ceiling per company over three years, from EUR 30 000 to EUR 40 000, subject to the establishment of a central national register.

Other changes include among other the fact that the processing and marketing of fishery and aquaculture products are no longer covered by the Fishery *de minimis* Regulation but by the General *de minimis* Regulation.

The revised Fishery *de minimis* Regulation will remain valid until 31 December 2029.

6.2.5. Antitrust enforcement in the agri-food sector

In 2023, the Commission investigated manufacturers of drinks, chocolate, biscuits and coffee products, grocery retailers and of online food platforms.

[362] Communication from the Commission Guidelines for State aid in the fishery and aquaculture sector, OJ C 107, 23.3.2023, p. 1.

[363] Commission Regulation (EU) 2023/2391 of 4 October 2023 amending Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 360/2012 as regards de minimis aid for the processing and marketing of fishery and aquaculture products, and Regulation (EU) No 717/2014 as regards the total amount of de minimis aid granted to a single undertaking, its period of application and other matters, OJ L 2391, 05.10.2023, p.1.

The Commission continued its investigation into possible restrictions by *Mondelez* of parallel trade in the markets for chocolate, biscuits and coffee products[364].

Moreover, the Commission continued its ex-officio investigation in the market for *online ordering and delivery of food, groceries and other consumer goods*. In November 2023 it carried out inspections concerning possible no-poach agreements and exchanges of commercially sensitive information[365] in the context of the initial investigation regarding an alleged agreement or concerted practice to share geographical markets in the EU[366].

In 2023, the Commission also initiated an investigation into alleged practices of foreclosing energy drinks markets. In March 2023, the Commission conducted unannounced inspections at *Red Bull*, active in the production and wholesale distribution of energy drinks[367]. Redbull applied for the annulment of the inspection decision to the General Court, and in parallel filed a request for interim measures to stop the continued inspections until the court rules on the main appeal.

Furthermore, the Commission closed its preliminary investigations into the practices of two international grocery retail alliances *AgeCore* and *Coopernic* and their members[368]. The Commission had concerns that AgeCore and Coopernic may have negotiated trading terms with manufacturers in breach of EU antitrust rules, and also investigated whether such negotiations restricted competition by harming innovation or consumers either in terms of choice or price. The preliminary investigations of the Commission identified no evidence of anticompetitive effects stemming from such negotiations. In particular, the Commission found that (i) the specific contracts signed by international retail alliances were intrinsically linked to the purchase of goods by retailers from manufacturers and were similar to some of the terms used at national level for the same transactions; (ii) retailers exerted a higher bargaining power negotiating through the alliances; and (iii) the rebates contributed to the retailers' overall pricing strategies allowing them to reduce retail prices to match or undercut competitors' pricing. The extent of such price reductions depended notably on the degree of competition existing in the relevant downstream retail markets. Maintaining the capacity of retailers to reduce prices to consumers as well as ensuring competition between retailers are key objectives of competition policy and are particularly important in the current context of high inflation.

The Commission also closed its preliminary investigation into potential anticompetitive practices by *The Coca-Cola Company* and its bottlers, *Coca-Cola Europacific Partners* and *Coca-Cola Hellenic*. The Commission had concerns that Coca-Cola and its bottlers could have abused their dominant position by granting a series of conditional rebates to retailers in a number of Member States to foreclose the entry or hinder the expansion of new drinks into

[364] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_281
[365] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5944
[366] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4345
[367] See https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1802
[368] See: https://ec.europa.eu/commission/presscorner/detail/en/mex_23_3847

the market. Based on the evidence collected, the Commission concluded that there is insufficient ground to further pursue the investigation[369].

6.2.6. State aid enforcement in the agriculture and fisheries sectors

State aid to promote economic development of the agriculture and fisheries sectors is embedded in the broader common agricultural policy (CAP) and common fisheries policy (CFP). State aid plays an important role in facilitating the economic activities in those sectors with the objective of enhancing food security and accompanying farmers and fishers in the green and digital transition also in line with the Farm to Fork strategy.

In 2023, Member States adopted 1238 schemes under the sectorial block exemption regulations (1119 under the ABER, and 119 under the FIBER) and the Commission approved 132 aid measures in these sectors (104 in the agricultural sector and 28 in the fisheries sector), out of which 65 under the TCTF (mainly under section 2.1)[370].

In the agriculture sector, the Commission approved State aid granted for a wide range of objectives. For instance, aid has been granted to achieve *environmental and climate objectives*[371] and to *allow farmers to move to more sustainable agricultural practices*[372].

Aid granted to support the use of renewable energy in the agriculture sector was also approved by the Commission: in particular, an amendment to the *Italian scheme under RRF to support investments in photovoltaic panel*s to be installed on buildings for productive use in the agricultural, livestock and agro-industrial sector[373], as well as aid to *promote energy saving investments in glasshouse horticulture*[374].

Moreover, the Commission approved aid granted *to compensate for damages provoked by protected animals* (such as wolves, beavers and lynxes[375]), *to prevent plant pests*[376] or *animal diseases*[377], as well as to *make good damages provoked by natural disaster and adverse climatic events*[378].

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[369] See: https://ec.europa.eu/commission/presscorner/detail/en/MEX_23_1281

[370] For example, aid for grain producers (SA.107274), for the livestock sector (SA.107895), or to compensate for the increase of the price of fertilisers (SA.106431).

[371] For example, the Commission approved aid to close pig stables in Belgium (SA.103681) and livestock farm production capacity in the Netherlands (SA.106555 and SA.106559).

[372] See for instance, SA.107268, Germany - *Hamburg - Directive for the grant of funding for contractual nature conservation and compensation for disadvantages in Natura 2000 areas*.

[373] See for example SA.107302, Italy - RRF - *Construction of photovoltaic installations to be installed on buildings for productive use in the agricultural, livestock and agro-industrial sectors to be financed under the NRRP, Mission 2, Component 1, Investment 2.2* (Parco Agrisolare).

[374] See for example SA.106646, the Netherlands - *NL_LNV_AGRO_PAV- Energy-efficiency glasshouse horticulture*.

[375] See for example SA.108078, Germany - *Saxony – Natural heritage – projects to prevent damage by wolf, beaver and lynx*.

[376] See for example SA.108775, France - *Aide à l'arrachage sanitaire préventif de vignes dans le cadre d'un programme de dé-densification et d'enrayement de la flavescence dorée dans* le vignoble de Gironde.

[377] See for example SA.106787, France - *Indemnisation sanitaire des grandes entreprises ayant une activité d'élevage dont les animaux ont été abattus sur ordre de l'administration dans le cadre de la lutte contre l'influenza aviaire pour la période 2023-2025*.

The Commission has also approved *quality schemes*[379], aid in favour of *promotion and information actions related to agriculture products*[380] or in favour of the *agricultural sector in the Outermost regions*[381].

In the *fisheries sector*, the Commission approved aid also granted to facilitate the economic development of the sector. For example, Member States notified aid measures to *support their fisheries sector to facilitate a transition to the post-Brexit scenario*[382] and aid schemes have also been approved for the *fleet renewal* in the outermost regions to address safety concerns due to the obsolescence of fleets as well as high exposure to extreme weather events[383].

6.2.7. State aid enforcement in the forestry sector

The new EU forest strategy for 2030[384] is one of the flagship initiatives of the European Green Deal and builds on the EU biodiversity strategy for 2030[385]. The strategy will contribute to achieving the EU's biodiversity objectives as well as greenhouse gas emission reduction target of at least 55% by 2030 and climate neutrality by 2050.

In 2023, the Commission also approved State aid granted for the protection and maintenance of EU forest, for example: two Irish State aid schemes part of the *Irish Forestry Programme 2023-2027*[386], as well as a *Finish scheme*[387] and *Czech forestry aid scheme* designed to enhance the adaptation of forests to the adverse effects of climate change and to support the sustainable forest management[388].

7. PHARMACEUTICAL AND HEALTH SERVICES SECTORS

7.1. Overview of key challenges in the sector

The access of patients to innovative and affordable medicines forms one of the pillars of the Commission's Pharmaceutical Strategy for Europe[389].

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378 See for example: SA.108744, Greece - *State Aid Regulation (damage compensation scheme due to natural disasters and adverse climatic events)*.

379 See for example: SA.107099, Austria - *AMA quality schemes*.

380 See for example: SA.108359, Slovenia - *Aid in favour of promotion and information activities related to fruit sector*.

381 See for example: SA.107610, France - *Modification du régime SA.45273 (2016/N) "Allégement des cotisations et contributions des exploitants agricoles non-salariés dans les départements d'Outre-mer (DOM)"*.

382 See for example, SA.108160, Ireland - *Brexit Specific Scallop Fleet Transition Support Scheme*.

383 See for example SA.106493, France - *Aid for the renewal of the fishing fleet of vessels between 12 and 40 meters from Réunion.*

384 See: Forest strategy (europa.eu)

385 See: Biodiversity strategy for 2030 (europa.eu)

386 See for example, SA.107220, Ireland - *Forestry Programme 2023 - 2027* and SA.104922, Ireland, *Ireland Forestry Programme 2023-2027 comprising the following sub-schemes: Woodland Improvement – Deer Tree Shelter and Deer Hare Fencing – Forest Management Plans – Native Woodland Conservation – Environmental Enhancement – Open Forest – Climate Resilient Reforestation*.

387 SA.106581, Finland - *Temporary incentive scheme for the forestry sector*.

388 SA.103979, Czechia - *Aid in favour of adaptation of forests to climate change*.

389 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Pharmaceutical Strategy for Europe COM (2020) 761 final.

Contributing to these objectives, the Commission and the NCAs have continued to vigorously enforce EU competition rules in the pharmaceutical and healthcare sectors in 2023. Such enforcement complements the regulatory frameworks in these sectors[390], and fosters both dynamic competition, which leads to more innovative medicines, and effective price competition, which in turn contributes to more affordable and accessible medicines and treatments.

7.2. Contribution of EU competition policy to tackling the challenges

7.2.1. Antitrust enforcement in the pharmaceutical sector

In 2023, the Commission continued its investigations into potential anticompetitive behaviours by *Teva* and *Vifor Pharma*. In its 2022 Statement of Objections against Teva, the Commission took the preliminary view that Teva had abused its dominant position since February 2015[391]. The Commission preliminarily found that, after the expiry of the original, basic patent for Copaxone, Teva created multiple divisional patents with overlapping content, intentionally staggered their filing and repeatedly and strategically withdrew them to avoid a reasoned decision on their validity. Teva thus may have obstructed effective legal review and prolonged legal uncertainty concerning its remaining patents (a conduct called in the industry the 'divisionals game'), all while aggressively enforcing these patents against a competitor. The Commission also preliminarily found that Teva implemented a systematic disparagement campaign, targeting healthcare professionals and casting doubts about the safety and efficacy of a competing glatiramer acetate medicine and its therapeutic equivalence with Copaxone.

The Commission also continued its in-depth investigation to assess whether *Vifor Pharma* has restricted competition by illegally disparaging its closest competitor in Europe, *Pharmacosmos*, and thereby hindered competition against Vifor Pharma's blockbuster high-dose intravenous iron treatment medicine, Ferinject[392].

Furthermore, after completing inspections in the *animal health* and *medical devices sectors*[393], the Commission continued its preliminary investigations into these cases.

Teva v Commission (Cephalon pay-for-delay case)

On 18 November 2023, the General Court[394] fully upheld Commission's decision of 26 November 2020[395] finding that Teva and Cephalon had infringed Article 101 TFEU by concluding a settlement agreement under which Teva agreed to delay the entry of its generic product in exchange for a value transfer from Cephalon.

[390] On 26 April 2023 the Commission adopted a proposal for a new Directive and a new Regulation, which revise and replace the existing general pharmaceutical legislation; see https://health.ec.europa.eu/medicinal-products/pharmaceutical-strategy-europe/reform-eu-pharmaceutical-legislation_en

[391] Case AT.40577, *Teva Copaxone*. See: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6062

[392] Case AT.40577, *Vifor (IV iron products).* See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3882

[393] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5543 and https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4517

[394] Judgment of the General Court of 18.11.2023, T-74/21, *Teva Pharmaceutical Industries and Cephalon* v *Commission*, ECLI:EU:T:2023:651.

[395] Case AT.39686, *Cephalon*.

Unlike in previous pay-for-delay cases (Fentanyl[396], Lundbeck[397] and Servier[398]), the payment (value transfer) to Teva was made predominantly through a package of commercial deals, which were all very lucrative for Teva, rather than as a straightforward cash payment. By establishing that these side deals would not have been concluded (or at least not on the same terms) under normal market conditions, i.e. had Teva not agreed to the non-compete and no-challenge clauses in the settlement agreement, the Commission had concluded that the side deals indeed represented an illegal value transfer. The Court rejected the appeal in its entirety thus confirming the Commission's decision that the settlement agreement represented an infringement of Article 101 TFEU by both object and effect.

7.2.2. Merger enforcement in the pharmaceutical sector

In 2023, the Commission continued to ensure that concentrations in the pharmaceutical sector do not lead to consumers paying higher prices, having less choice or reduced innovation.

Illumina / Grail

On 6 September 2022, the Commission prohibited the acquisition of *GRAIL* by *Illumina* over concerns that the merger would have stifled innovation and reduced choice in the emerging market for blood-based early cancer detection tests[399]. However, the parties unlawfully completed the merger during the Commission's in-depth investigation, in breach of EU merger control rules and the standstill obligation which is one of the procedural cornerstones of the ex-ante EU merger control regime.

On 12 July 2023, the Commission therefore fined Illumina and GRAIL approximately EUR 432 million and EUR 1 000 respectively: both companies knowingly and intentionally infringed the standstill obligation during the Commission's in-depth investigation[400].This was the first time the Commission imposed a fine for gun-jumping on a target company[401].

On 12 October 2023, the Commission adopted a restorative measures decision under Article 8(4)(a) EUMR requiring Illumina to divest GRAIL and restore the situation prevailing before the completion of the acquisition[402]. In this decision, the Commission ordered divestment measures requiring Illumina to unwind the transaction with GRAIL; as well as transitional measures that Illumina and GRAIL need to comply with until Illumina has dissolved the transaction.

Regarding the *divestment measures:* Illumina is free to determine the divestment methods, *e.g.*, via a trade sale or a capital market transaction, provided that it follows all the following principles: (i) the dissolution of the transaction must restore GRAIL's independence from Illumina to the level enjoyed by GRAIL prior to the acquisition; (ii) GRAIL must be as viable and competitive after the divestment as it was before Illumina's acquisition, which will ensure that the innovation race between GRAIL and its rivals can continue in conditions similar to those in place before the transaction; and (iii) the divestment must be executable within strict deadlines and with sufficient certainty, so that the pre-transaction situation can be restored in a timely manner. Illumina is required to submit a concrete divestment plan, to be approved by the Commission.

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[396] Case AT.39685, *Fentanyl*.

[397] Case AT.39226, *Lundbeck*.

[398] Case AT.39612, *Perindopril (Servier)*.

[399] Case M.10188, *Illumina / GRAIL*,see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10188 On 15 December 2022, an action for the annulment of the Commission decision prohibiting the acquisition was brought before the Court of Justice, which is still pending.

[400] Case M.10438, *Illumina / GRAIL*,see: https://competition-cases.ec.europa.eu/cases/M.10483

[401] In July 2023, the Commission opened an investigation into another potential breach of the standstill obligation by *Vivendi* when acquiring *Lagardère*, together with a potential breach of the notification requirement and clearance conditions and obligations. In November 2023, the Court of Justice largely confirmed the Commission's decision to impose fines for a breach of procedural EU merger control rules in another case – Altice's breach of the notification requirement and standstill obligation.

[402] Case M.10939 – *Illumina / GRAIL*,see: https://competition-cases.ec.europa.eu/cases/M.10939

The *transitional measures*: (i) aim to ensure that Illumina and GRAIL remain separate until the transaction is unwound in order to prevent further integration of GRAIL into Illumina's business and subsequently irreparable harm to competition; (ii) oblige Illumina to maintain GRAIL's viability by continuing to fund GRAIL's cash needs on an ongoing basis to allow it to further develop and launch its early cancer detection test Galleri and (iii) replace the interim measures adopted by the Commission on 28 October 2022 and in force at the time[403].

In 2023, the Commission reviewed several other transactions in the pharmaceutical sector, some of which were cleared under the simplified procedure, whereas two transactions were cleared unconditionally following a Phase I market investigation[404].

For instance, on 19 October 2023, the Commission approved unconditionally under the EUMR the proposed acquisition of *Seagen* by *Pfizer*, both US pharmaceutical companies active in the research, manufacturing and commercialization of drugs in the oncology space[405]. Based on its market investigation, the Commission found that the merger would not significantly reduce competition in the markets where Seagen's and Pfizer's activities overlap within the EEA. In addition, the Commission focused its investigation on potential competition between the parties' marketed and pipeline products and it found that the transaction would not lead to either (i) the discontinuation, delay or re-orientation of the parties' ongoing and overlapping lines of research or pipeline projects, because their activities are not substitutable as they target different types of patients and lines of treatment and have different modes of action; or (ii) the loss of innovation resulting from a structural reduction of the overall level of innovation, given that there is a significant number of players engaged in research and development activities in the broader oncology space and, more specifically, in anti-body drug conjugates, an area in which Seagen was strong and Pfizer wishes to grow. Finally, the Commission found that the transaction was unlikely to have a negative impact on prices, given that the parties' offerings are differentiated and complementary and that the markets for the treatment of the various cancer types examined are sufficiently competitive. The Commission therefore concluded that the proposed merger would not raise competition concerns and cleared the transaction unconditionally.

7.2.3. State aid enforcement in the health and social services sectors

Through enforcing State aid rules in the health and social services sectors, the Commission aims to ensure that aid to health and social service providers does not unduly disadvantage their competitors.

On 27 July 2023, the Commission approved a EUR 28.8 million Austrian aid measure to support the *modernisation of Sandoz GmbH penicillin production site in Tyrol*[406]. The

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[403] On 29 October 2021, the Commission put in place interim measures to restore and maintain the conditions of effective competition for the duration of 12 months, namely ordering to hold GRAIL separate from Illumina; on 28 October 2022, the Commission issued a new decision thereby renewing and reinforcing the existing interim measures that remained applicable until the adoption of the restorative measures (decision on 12 October 2023). Case M.10938 – *Illumina/GRAIL*, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_10938

[404] See for instance, Case M.10997, *NB / ARDIAN / MEDIOLANUM / NEOPHARMED*, see: https://competition-cases.ec.europa.eu/cases/M.10997

[405] Case M.11177, *Pfizer/Seagen*, see: https://competition-cases.ec.europa.eu/cases/M.11177

[406] Case SA.62915, Austria - *Aid for maintaining Sandoz penicillin production in Kundl (Tyrol).*

measure will help to maintain in the EU the last fully integrated production of amoxicillin, contributing to the security of supply of essential and life-saving medicines[407]. The measure will contribute to strengthening the continuity and security of supply of medicines in line with the Pharmaceutical Strategy for Europe.

In 2023, the Commission also approved State aid measures providing emergency support to operators in the health services sector under the TCT and TCTF. In particular, the Commission approved a *Walloon scheme*[408] and a *Danish scheme*[409] *compensating certain types of operators in the healthcare sector* for the sharp price increase of natural gas, electricity, fuel and raw materials due to Russia's war of aggression against Ukraine.

Furthermore, the Commission enforced State aid rules in the housing sector with the aim of preventing distortions of competition, ensuring that State support does not excessively favour certain market players, and that private investment is not deterred, while taking into account the particular characteristics of the sector in various Member States. On 6 February 2023, the Commission approved an Irish aid scheme under Article 107(3)(c) TFEU to support the building of apartments in several Irish cities with the objective of increasing the supply of apartments and stimulate ownership of housing. In this context, the Irish authorities explained that current market prices are not sufficient to cover the increasing delivery costs of apartments which resulted in a housing shortage[410].

8. TRANSPORT, POST AND OTHER SERVICES

8.1. Overview of key challenges in the sectors

Transport, post and other services, such as travel, play a key role in the EU economy. In particular, transport is the key both to an integrated internal market and to an open economy integrated into the world economy, as demonstrated by the supply chain disruptions observed during the COVID-19 pandemic. Mobility is an enabler of the economic and social life of EU citizens. As set out in the Sustainable and Smart Mobility Strategy,[411] the greening of transport is essential for achieving the EU's transition to climate neutrality while digitalisation represents a significant challenge and opportunity for the transport sector. Postal services have a significant economic and social value.

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[407] Amoxicillin is the worldwide most widely used antibiotic for the treatment of bacterial infections, and is included in the World Health Organisation's list of essential medicines that satisfy priority health care needs. There have been repeatedly shortages across many EU Member States due to manufacturing delays and production capacity issues, among other things.

[408] Case SA.103842, Belgium - TCF - *Walloon schemes of temporary limited amounts of aid, public guarantees and subsidized loans for Walloon undertakings affected by the conflict in Ukraine*.

[409] Case SA.107407, Denmark - TCTF - *Danish aid measure to ensure sufficient supply of critical medicines*.

[410] Case SA.102927, Ireland - *Croí Cónaithe (Cities) Scheme*.

[411] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Sustainable and Smart Mobility Strategy- putting European transport on track for the future, COM(2020) 789 final.

8.2. Contribution of EU competition policy to tackling the challenges

8.2.1. State aid to the aviation sector

The aviation sector, which was hit very hard by the COVID-19 pandemic, recovered strongly during 2023. While recovery is not homogeneous across the industry, in terms of passenger numbers, the aviation sector is almost back to where it was in 2019.

In 2023, the Commission approved six measures allowing State aid in favour of companies active in the aviation sector[412]. These aid measures were approved under the TCF, Article 107(2)(b) TFEU as compensation for damage suffered due to the COVID-19 pandemic as a result of the COVID-19 travel restrictions, as well as under under Article 107(3)(c) TFEU in connection with the Guidelines on State aid to airports and airlines (2014 Aviation Guidelines)[413].

Moreover, on 27 March 2023, the Commission adopted a final decision regarding unlawful state aid to the Italian airline *Alitalia*[414]. Following the opening of a formal investigation in February 2020 regarding a state loan of EUR 400 million granted to Alitalia in 2019 in the context of the airline's insolvency proceedings, the Commission concluded that, by granting that loan, Italy had not acted as a private investor would have done under market conditions, but aimed at ensuring the uninterrupted service of Alitalia's domestic and international flights without carrying out an adequate economic and financial assessment. Moreover, the Commission found that the 2019 loan was not in line with EU rules on State aid to companies in difficulty. Indeed, Alitalia had already benefitted from two loans in 2017 - which the Commission found unlawful and incompatible aid in a decision of September 2021[415] -, and the 2019 loan was therefore in breach of the one-time-last-time principle under the Rescue and Restructuring Guidelines (R&R Guidelines)[416].

8.2.2. Prolongation of the transitional period for operating aid to regional airports under the 2014 Aviation Guidelines

The 2014 Aviation Guidelines include a transitional period (expiring in April 2024), during which operating aid to airports with less than 3 million passengers can be allowed. The COVID-19 pandemic heavily affected the aviation sector and resulted in a sharp decrease in traffic at EU airports. Therefore, on 7 July 2023, the Commission decided to prolong the operating aid provisions under the Aviation Guidelines until 4 April 2027, to allow airports to

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[412] Cases SA.57543 and SA.58324, Denmark and Sweden - COVID-19: *Recapitalisation of SAS*; SA.62161, Lithuania – *Aid to Vilnius airport*; SA.104639, Italy - COVID-19: *Damage compensation scheme for ground-handling providers operating at Sardinian airports*; SA.105331, Slovenia – *State aid scheme to ensure enhanced air connectivity in Slovenia*; SA.104957, France - *Aide sous forme de compensation à la société Air France*; SA.105987, Bulgaria - TCF: *Concession fee deferral for Burgas and Varna airports.*

[413] Communication from the Commission, Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3.

[414] Case SA.55678, Italy – *New loan to Alitalia.*

[415] Case SA.48171, Italy – *Complaints against alleged State aid to Alitalia*.

[416] Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1.

adapt to the changed market realities, including in the post-Covid phase. The remainder of the Aviation Guidelines remains applicable without further changes[417].

8.2.3. Revision of the 2014 Aviation Guidelines

In August 2023, the Commission launched a revision of the 2014 Aviation Guidelines. The Commission's Fitness Check of the 2012 State aid modernisation package conducted in 2019- 2020 had identified the need to amend the Aviation Guidelines in the medium term to ensure they are fully aligned with the Green Deal Objectives and the Sustainable and Smart Mobility Strategy.

8.2.4. Selected Court Judgments in aviation aid cases

In 2023, the General Court decided on several cases related to recapitalisation measures provided to airlines under the Temporary Framework[418].

In particular, in May 2023, the General Court annulled the Commission's decision approving the EUR 1billion *recapitalisation by Denmark and Sweden of SAS*[419]. In its judgment, the General Court upheld Ryanair's claim that the measure lacked a step-up mechanism for the equity instrument[420]. Following the judgment, the Commission requested additional information from Denmark and Sweden. Subsequently, the Commission approved in November 2023 under the COVID Temporary Framework the EUR 833 million recapitalisation under the condition that the mechanism is put in place within the two months from the notification of that decision[421].

8.2.5. Merger enforcement in the aviation sector

In January 2023, the Commission received a notification of the proposed acquisition of *Asiana Airlines (Asiana)* by *Korean Air Lines (Korean Air)*[422]. Following the opening of an in-depth investigation, the Commission informed Korean Air on 17 May 2023 of its preliminary view that the proposed transaction could reduce competition in the provision of passenger transport services on four routes between the whole of the EU and South Korea as well as in the provision of cargo transport services between the EU and South Korea. The Commission investigation showed that Korean Air and Asiana compete head-to-head in both the passenger and cargo markets between the EU and South Korea, and other airlines may be unlikely to exert sufficient competitive pressure on the merged entity due to various barriers. Korean Air submitted commitments to the Commission in November 2023.

In December 2023, the Commission received two additional notifications in the aviation sector. Those concerned, first, the acquisition of joint control over the previously 100% state-owned Italian network carrier *Italia Trasporto Aereo (ITA)* by the German network carrier

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[417] Communication from the Commission extending the transitional period provided for in the Guidelines on State aid to airports and airlines concerning regional airports, OJ C 244, 11.7.2023, p. 1.

[418] See above Part I, section 3.5.

[419] Cases SA.57543 and SA.58324, Denmark and Sweden - COVID-19 - *Recapitalisation of SAS*

[420] Judgment of 10.5.2023, Case T-238/21, *Ryanair* v *Commission*, ECLI:EU:T:2023:247.

[421] See: https://ec.europa.eu/commission/presscorner/detail/en/IP_23_6096

[422] Case M.10149, *Korean Air Lines/Asiana Airlines*.

Deutsche Lufthansa AG and the Italian government. The second notification concerned the acquisition by the *International Airlines Group*, which includes the Spanish network carrier Iberia, of its Spanish network carrier rival *Air Europa*. That notification follows an earlier assessment of the same deal by the Commission in 2021 which resulted in an abandonment of the concentration in the light of the competition concerns raised by the Commission and the lack of suitable remedies.

8.2.6. Antitrust rules in the maritime sector - Decision on the expiry of the Consortia Block Exemption Regulation

On 10 October 2023, the Commission decided not to extend the EU legal framework which exempts liner shipping consortia from EU antitrust rules (Consortia Block Exemption Regulation or CBER)[423]. The Commission considered that the CBER no longer promotes competition in the shipping sector and therefore it will let it expire on 25 April 2024[424].

The decision followed a review process launched in August 2022, aimed at gathering evidence on the functioning of the CBER since 2020. The CBER allows shipping lines, under certain conditions, to enter into cooperation agreements to provide joint cargo transport services, also known as ‘consortia’, and the regulation was set to expire in 2024.

Also on 10 October 2023, a Staff Working Document summarising the findings of the evaluation was published. Overall, the evidence collected from the stakeholders points towards a low or limited effectiveness and efficiency of the CBER throughout the 2020-2023 evaluation period.

The expiry of the CBER does not mean that cooperation between shipping lines becomes unlawful under EU antitrust rules. Instead, carriers operating to or from the EU will assess the compatibility of their co-operation agreements with EU antitrust rules based on the extensive guidance provided in the Horizontal Block Exemption Regulation and the Specialisation Block Exemption Regulation.

8.2.7. State aid enforcement in the maritime transport sector

In 2023, the Commission approved State aid measures under the TCTF granting emergency support to *ferry companies providing transport services between Malta and the island of Gozo*[425], as well as between mainland *Sweden and the island of Gotland*[426]. These measures aim to remedy the liquidity shortage suffered by those companies caused by the sharp price increase of fuel because of Russia’s war of aggression against Ukraine.

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[423] Communication to the Commission - Expiry of Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81 (3) of the Treaty of the certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), 10.10.2023, C(2023) 6700 final.

[424] See: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4742

[425] Case SA.108217, Malta – TCTF - *State aid measure to support undertakings involved in the maritime transport of persons and goods by high-speed craft between Malta and Sicily (Amendment to SA.104238, as amended by SA.104983).*

[426] Case SA.109577, Sweden – TCTF - *State aid measure to support companies operating ferry transport between mainland Sweden and Gotland*.

8.2.8. Antitrust enforcement in the rail sector

The rail sector has been subject to several antitrust interventions in recent years and the Commission continued its antitrust investigations in this sector in 2023.

On 28 April 2023, the Commission opened proceedings against *Renfe-Operadora*, *E.P.E.* and its subsidiary *Renfe Viajeros, S.M.E., S.A.* (together Renfe), the Spanish state-owned rail incumbent operator, for an alleged infringement of Article 102 TFEU in the form of a refusal to supply all Renfe content and real-time data (RTD) to third-party ticketing platforms (TPTPs)[427]. The Commission sent to Renfe its Preliminary Assessment on the same day[428]. On 30 May 2023, Renfe submitted formal commitments to solve the competition concerns identified by the Commission in its Preliminary Assessment. The draft commitments were market tested between June and August 2023.

8.2.9. State aid enforcement in the rail and intermodal transport sector

In 2023, the Commission continued to enforce State aid rules applicable to the rail and intermodal transport sector. The Commission approved 25 aid measures for the coordination of transport for a total amount of approved aid of EUR 6.8 billion, out of which 13[429] on the basis of the 2008 State aid Railway Guidelines[430] and 12[431] directly under Article 93 TFEU,

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[427] TPTPs are companies that display offers from different rail carriers and provide online ticketing services to customers (for example, searching, comparison, booking and payment services) through apps or websites. To provide their services in a competitive manner, TPTPs need to have access to Renfe's full content (tickets, discounts and features) and RTD (pre-journey, on-journey, and post-journey).

[428] See: [Antitrust: Commission opens investigation (europa.eu)]()

[429] Cases SA.107235, Slovenia – *Prolongation of an aid scheme for the promotion of rail freight transport in Slovenia*; SA.102707, Italy - *Italian scheme to support the ERTMS upgrade*; SA.103325, Czechia - *Ensuring interoperability in rail transport 2023-2028*; SA.103967, Bulgaria - RRF - *Support for the installation of ERTMS equipment in zero-emission rolling stock*; SA.104642, the Netherlands - *Amendment of ERTMS scheme*; SA.104723, Spain - *Amendments to the existing scheme*; SA.100486- Spain – RRF *TRTEL: Support Programme for Sustainable and Digital Transport – co-incentive to boost rail freight transport based on environmental and socio-economic merit*; SA.104781, Hungary - *Scheme on excise duty exemptions and refunds for fuel used in railway and inland waterway transportation 2023-2029*; SA.104980, Italy - *Reintroduction of a State aid scheme for combined transport in the Province of Trento*; SA.105120, Germany - *Electricity brake for rail - Temporary cost containment of electricity price increases – rail transport operators*; SA.105221, Germany - *Prolongation of aid scheme for the promotion of rail freight transport*; SA.105477, Belgique - *Loi portant soutien au transport de voyageurs par trains de nuit*; SA.105511, Italy - *Reintroduction of a State aid scheme in support of combined transport in the Province of Bolzano*; SA.109261, Germany - *Guideline for the promotion of long-distance passenger rail services through track access charges reduction.*

[430] Communication from the Commission — Community guidelines on State aid for railway undertakings, OJ C 184, 22.7.2008, p. 13.

[431] Cases SA.109419, Slovakia - *Amendment of the Slovak combined transport support scheme (SA.64465)*; SA.109142, France - *Aide à l'investissement pour la création d'un terminal multimodal marchandises (autoroute ferroviaire) à Bayonne-Mouguerre*; SA.105210, Poland - *Construction of a multimodal terminal in Zduńska Wola Karsznicach*; SA.104156, Italy - *Sea Modal Shift incentive*; SA.104357, France - *Plan d'Aide à la Modernisation et à l'Innovation (PAMI) de la flotte fluviale 2023 – 2027*; SA.104364, France - *Plan d'aide au report modal (PARM) pour les années 2023-2027*; SA.104987, Austria - *Reintroduction of a programme supporting the development of connecting railways and transfer terminals in intermodal transport 2023-2027*; SA.106393, Germany - *Intermodal service centre Horb-Heiligenfeld [BW, Germany]*; SA.106519 – Germany - *Amendment and prolongation of the State aid scheme for modernisation of inland waterway fleet*; SA.64726,

encompassing aid for rail infrastructure use, aid for the reduction of external costs or aid for interoperability, in particular to support the deployment of the European Rail Traffic Management System (ERTMS) as well as aid to promote the renewal of freight rolling stock.

All these measures support the modal shift from road to rail, inland waterways or sea transport as the safer and more environmentally-friendly transport modes, which constitutes a priority to implement the European Green Deal and is in line with the Commission's Sustainable and Smart Mobility Strategy.

On 18 January 2023, the Commission also opened a formal investigation against *Fret SNCF*, a 100% subsidiary of the State-owned French rail operator SNCF SA. The investigation focusses on potential aid stemming from a intra-group financing concluded between Fret SNCF and SNCF SA, the cancellation of the financial debt of Fret SNCF as well as capital injection[432].

In June 2023, the Commission adopted revised Interpretative Guidelines on Regulation 1370/2007 on public passenger transport services by rail and by road[433], to reflect the updates brought by the 4th Railway Package and the relevant case law on compliance of compensation for public service obligations with State aid rules. While the transition period for allowing direct award of public service contracts, including with compensation, in the railway sector under Regulation 1370/2007[434] came to an end in December 2023, the Commission continued to pursue advocacy and discussions with Member States regarding the application of that Regulation.

8.2.10. Revision of the State aid Railway Guidelines

In 2023, the Commission continued the revision of the State aid Railway Guidelines. The revision aims to put the objective of modal shift and multimodality into focus, clarify and increase support possibilities throughout the sustainable land transport value chain, and simplify procedures by introducing for the first time a block exemption for the land and multimodal transport sector following the adoption of the Council Regulation (EU) 2022/2586 of 19 December 2022 on the application of Articles 93, 107 and 108 TFEU to certain categories of State aid in the rail, inland waterway, and multimodal transport sector.

8.2.11. State aid enforcement in the road transport sector

Through enforcement of State aid rules in the road transport sector, the Commission ensures inter alia that compensation granted to companies entrusted with public passenger transport

Italy - *Aid scheme to promote the renewal of freight rolling stock*; SA.32179, Italy - *State aid measures in favour of Trenitalia and FS Logistica (Ferrovie dello Stato), under the form of transfers of infrastructure assets*; SA.32953, Italy - *State aid to Trenitalia in form of compensation for a public service obligation in the rail freight sector*.

[432] Case SA.61880, France – *Alleged State aid to Fret SNCF*.

[433] Commission notice on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road, OJ C 222, 26.6.2023, p. 1.

[434] Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315 3.12.2007, p. 1.

services does not go beyond what is necessary for the performance of their obligations, also in line with Regulation 1370/2007 where applicable.

In 2023, the Commission adopted several decisions concerning emergency support to road transport operators under the TCTF. The measures aim to remedy the liquidity shortage suffered by those companies caused by the sharp price increase of natural gas, electricity, fuel and raw materials due to Russia's war of aggression against Ukraine.

For instance, the Commission adopted decisions concerning *liquidity support to passenger bus transport operators and road haulage operators in Italy*[435], to *road haulage operators in Ireland*[436], and *passenger bus transport operators in Greece*[437]. The Commission also approved the reintroduction with amendments of two aid measures supporting *passenger bus transport operators in Italy*[438].

In addition, on 30 November 2023, the Commission adopted a decision approving aid to *RATP* under Article 107(2)(b) TFEU as compensation for the damages suffered in Île de France due to the restrictions put in place during the COVID-19 pandemic [439].[440]

8.2.12. State aid enforcement in the postal services sector

The enforcement of State aid rules by the Commission in the sector for postal services ensures that providers in this sector, in particular those entrusted with the provision of the universal postal service, compete fairly with other market participants, that State aid beneficiaries are not shielded from market developments and competitive pressure, and that incentives exist to foster innovation, productivity, and efficiency in the sector.

On 7 December 2023, the Commission approved a compensation for *La Poste for the provision of the Universal Service Obligation* (USO) in France for the period 2021-2025[441]. This aid aims to ensure that La Poste performs the USO in the period concerned, including the delivery, at every citizen's domicile, six days a week, of postal items up to two kilograms, postal packages up to 20 kilograms, and registered letters.

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[435] Case SA.108572, Italy - TCTF - *Emergency Support Scheme for Haulage Operators (amendment to SA.103480, as amended by SA.103966).*

[436] Case SA.106873, Ireland - *Forest Road Scheme Aid for investments in infrastructure related to the development, modernisation or adaptation of the forestry sector* (Article 49).

[437] Case SA.107565, Greece - TCTF - *Aid to KTEL and KTEL SA bus companies and individual carriers operating unprofitable island routes due to the rise in diesel fuel prices*.

[438] Case SA.107706, Italy - TCTF - *Emergency support to bus transport operators (2nd Reintroduction of Scheme SA.104566).*

[439] Case SA.108576, France - COVID-19 - *Compensation for the damages incurred by RATP due to the COVID-19 pandemic.*

[440] For further decisions, see Part 2, Section 1.2.2. *e-mobility*.

[441] Case SA.100746, France – *Aide d'État à La Poste en contrepartie du service universel postal au titre des années 2021 – 2025*.

8.2.13. Merger enforcement in the travel industry

On 25 September 2023, the Commission prohibited the proposed acquisition of *Flugo Group Holdings AB (eTraveli*) by *Booking Holdings (Booking*)[442]. Both companies are leading online travel agencies (OTAs). OTAs provide an important intermediation service, matching demand and supply for travel services, which include accommodation, flights, car rentals, and attractions. Booking is mainly a hotel OTA while eTraveli is focused on flights.

The Commission found that the acquisition of eTraveli would have allowed Booking to strengthen its dominant position on the market for hotel OTA services in the EEA, and to acquire a main customer acquisition channel because flight OTAs generate a significant amount of traffic and are often the first step in the planning of a trip. This would have allowed Booking to benefit to a greater extent from customer inertia because a significant share of these additional consumers would have stayed on Booking's platforms. Consequently, the transaction would have allowed Booking to expand its ecosystem of services, reinforced network effects and increased barriers to entry and expansion, making it harder for competing OTAs to develop a customer base capable of supporting a hotel OTA business. The strengthening of Booking's dominant position would have further increased its bargaining position towards hotels and diverted demand from cheaper sales channels to Booking. This could have resulted in higher cost for hotels and, possibly, consumers.

8.2.14. Merger enforcement in the market research industry

In July 2023, the Commission approved the acquisition of *GfK SE* (GfK) by its US rival, *NielsenIQ*, subject to conditions[443]. NielsenIQ and GfK are two of the main market research companies in the EEA. NielsenIQ is controlled by Advent International, an investment fund based in the United States.

During its phase I investigation, the Commission identified: (i) horizontal concerns with regard to Germany and Italy, where the transaction would have created a monopoly in consumer panel services; (ii) vertical concerns in relation to Germany, Italy and the Netherlands where NielsenIQ would have had the possibility to foreclose its rivals from the supply of consumer panel data regarding consumer purchases at certain discounters which constitutes an important input for the retail measurement services of these rivals; and, (iii) conglomerate concerns, as NielsenIQ would have had the ability and incentive following the transaction to offer retail measurement and consumer panel services as a bundled offer, particularly to large multinational customers, either within the same or across various Member States throughout the EEA, so as to foreclose its rivals from access to large multinational customers.

The clearance was conditional on the divestment of GfK's worldwide consumer panel services business (with an exception for Russia to facilitate the divestiture). The divestment included all GfK consumer panels and relevant data, know how, personnel, and offices thereby solving all concerns identified by the Commission.

[442] Case M.10615, *Booking Holdings / eTraveli Group*.
[443] Case M.10860, *Advent / GFK.*

8.2.15. Revised SGEI de minimis Regulation adopted

On 13 December 2023, the Commission adopted Regulation (EU) 2023/2832 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (SGEI)[444]. This Regulation entered into force on 1 January 2024 and replaced Regulation (EC) No 360/2012[445], which expired on 31 December 2023.

With the adoption of new regulation, the Commission increased the SGEI *de minimis* threshold that a single undertaking may receive per Member State over any period of 3 years from EUR 500 000 to EUR 750 000, to reflect the inflation that has taken place since the entry into force of Regulation No 360/2012.

In addition, the Commission aligned certain concepts with the general *de minimis* Regulation[446] to ensure consistency between the general and the SGEI *de minimis* Regulations and to simplify the enforcement of both Regulations. Finally, the Commission strengthened the transparency requirements by introducing a mandatory public register at national or EU level.

8.2.16. State aid enforcement in the education sector

Through the enforcement of State aid rules in the education sector, the Commission ensures that competition between private and public educational services providers is not distorted, while allowing for Member States to support the establishment and development of educational institutions throughout their territory and enhance the level of educational services provided.

In a decision of 10 July 2023, the Commission concluded that public funding granted to the *Merz-Akademie*, a Stuttgart-based *private higher education institute for art, design, and media*, does not constitute State aid in the sense of Article 107(1) TFEU[447]. The Commission found that the Merz-Akademie was not an undertaking performing economic activities, since its activities are predominantly financed by public funds rather than by user fees or other commercial means and since it forms part of the public higher education system and is under supervision of the State.

On 20 July 2023, the Commission approved based on Article 107(3)(c) TFEU, a *Slovak scheme aiming at providing investment aid to non-State educational institutions* operating kindergartens and primary schools listed in certain areas, to enable them to develop their economic activities and create additional capacity that complements the educational services

[444] Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L, 2023/2832, 15.12.2023.
[445] Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest Text with EEA relevance, OJ L 114, 26.4.2012, p. 8.
[446] Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L, 2023/2831, 15.12.2023.
[447] Case SA.53750, Germany - *Alleged aid to the Merz Akademie in Baden-Württemberg*.

provided by the State[448]. All funding earmarked for the scheme in the State budget is made available through the RRF.

[448] Case SA.104356, Slovakia - RRF - *Aid to infrastructure, equipment and facilities of kindergartens and primary schools*.

ANNEX 1

Temporary Framework for State aid measures to support the economy during the COVID -19 pandemic: Decisions adopted by the Commission in 2023, by country

Nr.	Member State	Case number	Title	Decision date
1	Denmark	SA.103141	COVID-19 - DK - State guarantee for travel operators of the Travel Guarantee Fund	12/01/2023
2	Denmark	SA.57543	Denmark – COVID19 recapitalisation of SAS	29/11/2023
3	Romania	SA.106181	COVID-19: Prolongation of the scheme SA.103503 (2022/N), as already amended	13/02/2023
4	Sweden	SA.58342	Sweden – COVID19 recapitalisation of SAS	29/11/2023

ANNEX 2

State aid decisions adopted in 2023 directly under the Treaty to support the economy during the COVID -19 pandemic, by country

Nr.	Member State	Case number	Title	Decision date
1	Austria	SA.108173	COVID-19: Damage Compensation Scheme under Article 107(2)(b) TFEU	10/08/2023
2	France	SA.104957	SA.104957 - Aide sous forme de compensation à la société Air France	16/02/2023
3	France	SA.103744	Air Austral - Compensation pour les dommages causés par la pandémie COVID-19	02/05/2023
4	France	SA.108576	RATP - Aide visant à compenser les dommages liés à la pandémie de COVID-19	20/11/2023
5	France	SA.109142	Aide à l'investissement pour la création d’un terminal multimodal marchandises (autoroute ferroviaire) à Bayonne-Mouguerre	11/12/2023
6	Italy	SA.104639	COVID-19: Damage	05/04/2023

			compensation scheme for ground-handling providers operating at Sardinian airports	
7	Italy	SA.104304	COVID-19: Aid to travel agencies and tour operators	24/11/2023
8	Netherlands	SA.105783	COVID-19: Amendment to the Guaranteed Compensation Scheme for Annulled Events (amendment to SA.62743 and SA.100223)	27/01/2023

ANNEX 3

Temporary Crisis Framework/Temporary Crisis and Transition Framework for State Aid measures to support the economy following Russia's war of aggression against Ukraine: Decisions adopted by the Commission in 2023, by country

Nr	Member State	Case number	Title	Decision date
1	Austria	SA.105069	TCF - Austria: Aid for the reduction of electricity consumption	19/01/2023
2	Austria	SA.105348	TCF/TCTF: Credit line agreements between Wiener Stadtwerke GmbH and the City of Vienna	04/04/2023
3	Austria	SA.106782	TCTF: Special directive on electricity cost subsidy for agriculture and aquaculture sectors	04/04/2023
4	Austria	SA.106615	TCTF – Austria - Amendment to SA.104439 - Energy cost subsidy for enterprises	24/04/2023
5	Austria	SA.107960	TCTF - Austria - Second amendment to SA.104439 - Energy cost subsidy for enterprises	10/07/2023
6	Austria	SA.108877	TCTF 2.2: Bridging guarantees for energy costs under the SME Promotion Act	18/10/2023
7	Austria	SA.109170	TCTF - Scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy	03/11/2023
8	Austria	SA.109223	TCTF – Austria –Third amendment to SA.104439 - Energy cost subsidy for enterprises (as previously amended by SA.106615 and SA.107960)	17/11/2023

9	Austria	SA.109337	TCTF - Austria - Energy cost subsidy for enterprises II (for costs incurred in 2023)	17/11/2023
10	Austria	SA.110312	TCTF - Austria - Energy cost subsidy for enterprises I and II - Fourth amendment to SA.104439 (2022/N) (as previously amended by SA.106615 (2023/N), SA.107960 (2023/N) and SA.109223 (2023/N)) and amendment to SA.109337 (2023/N)	20/12/2023
11	Belgium	SA.106234	TCF – Brussels-Capital Region aid scheme for energy costs to enterprises affected by the direct and indirect economic consequences of Russia's aggression against Ukraine	13/02/2023
12	Belgium	SA.105315	Belgium - TCF - Support measures in response to rising energy prices for the health and social work sectors in Wallonia.	15/02/2023
13	Belgium	SA.105513	TCF: aid for undertakings in the framework of the energy crisis in the fourth quarter of 2022 in the Walloon region	17/02/2023
14	Belgium	SA.106461	TCF - Brussels grant scheme for energy-saving investments	02/03/2023
15	Belgium	SA.106390	TCTF - AMENDMENT - Belgium - Aid to undertakings confronted with increased energy costs	31/03/2023
16	Belgium	SA.106960	TCTF: Reintroduction of the scheme SA.103842 (2022/N) “TCF: Walloon schemes of limited amounts of aid, guarantees and subsidised loans”	08/05/2023
17	Belgium	SA.107275	TCTF: aid for undertakings in the framework of the energy crisis in the Walloon region	26/05/2023
18	Belgium	SA.109169	TCTF-RRF-Décarbonation des entreprises wallonnes - Renforcement des investissements dans les chaînes de valeur liées à la transition énergétique.	15/12/2023
19	Bulgaria	SA.105987	TCF: Concession fee deferral for Burgas and Varna airports	08/02/2023
20	Bulgaria	SA.106681	TCTF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against	24/03/2023

			Ukraine	
21	Bulgaria	SA.107863	TCTF: Aid to support costs of water for irrigation in the cultivation of agricultural crops	14/06/2023
22	Bulgaria	SA.109279	TCTF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against Ukraine (amendment to SA.106681 (2023/N))	20/09/2023
23	Bulgaria	SA.109409	TCTF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against Ukraine (amendment to SA.106681 (2023/N))	27/09/2023
24	Bulgaria	SA.107425	TCF: Granting of a loan to Bulgargaz EAD for the purchase of natural gas and for the provision of working capital	10/10/2023
25	Bulgaria	SA.110212	TCTF: Aid to support the liquidity of farmers to overcome the negative economic impact of Russian aggression against Ukraine (amendments to SA.106681 (2023/N))	29/11/2023
26	Bulgaria	SA.109910	TCTF: State guarantees to secure loans in favour of Bulgargaz	19/12/2023
27	Cyprus	SA.105732	TCF: State aid scheme for the citrus sector	16/01/2023
28	Cyprus	SA.107895	TCTF: State Aid Scheme for sheep and goat sector	20/06/2023
29	Cyprus	SA.109516	TCTF: State Aid Scheme for the support of farmers in West Nicosia area due to the increase cost of production	16/10/2023
30	Czechia	SA.106203	TCF: Opex – Food producers – Loan Principal Reduction	16/02/2023
31	Czechia	SA.106204	TCF: Reintroduction of the scheme SA.103619 (2022/N) "TCF: Opex 2022 – Loan Principal Reduction"	24/02/2023
32	Czechia	SA.106657	TCTF - Czechia: Extension of the aid in relation to additional costs due to exceptionally severe increases in natural gas and electricity prices (amendments to SA.104342)	27/03/2023

33	Czechia	SA.107597	TCTF: The program to support customers in the heating industry related to the high price of heat energy under the Temporary Crisis Framework for State aid measures to support the economy after Russia's aggression against Ukraine	19/06/2023
34	Czechia	SA.103703	TCF: Loan scheme to support Producers Operating on the Energy Market	26/07/2023
35	Czechia	SA.107138	Czechia - TCTF: Temporary price scheme to reduce impact of natural gas and electricity price increases on undertakings	23/08/2023
36	Czechia	SA.109055	TCTF: Modernisation Fund – Programme ENERG ETS	06/10/2023
37	Germany	SA.108068	TCTF: aid to support the transition to a net-zero economy	19/07/2023
38	Germany	SA.110452	TCTF: Prolongation of and amendments to the scheme SA.102542 (amended by SA.104019 and SA.104756)	12/12/2023
39	Germany	SA.108499	TCTF - Germany: Production of green hydrogen in JTF regions	19/12/2023
40	Denmark	SA.107801	TCTF: Limited amounts of aid to end-users faced with high administrative costs related to the payment deferral scheme for electricity, gas and heating	31/07/2023
41	Denmark	SA.108195	TCTF: Amendment to SA.104461 (2022/N) - Payment deferral scheme for electricity, gas, and heating consumers	31/07/2023
42	Denmark	SA.107407	TCTF - Danish aid measure to ensure sufficient supply of critical medicines	21/09/2023
43	Estonia	SA.106614	TCTF: Exceptional support for agricultural and food producers	07/07/2023
44	Estonia	SA.108671	TCTF: Support for investments in the food industry to ensure security of energy supply 2023	31/07/2023
45	Estonia	SA.109165	TCTF: Support for the investments to ensure security of energy supply (EBIA)	18/09/2023
46	Estonia	SA.110542	TCTF-RRF: Support for the investments to ensure security of energy supply (EBIA)	15/12/2023
47	Greece	SA.105295	TCF: State Aid Grants to agricultural undertakings due to the energy crisis and the increase in the cost of fertilisers	31/01/2023

48	Greece	SA.105829	TCF - Aid to newspaper publishers (amendments to SA.104056)	02/02/2023
49	Greece	SA.106710	TCTF: Grants in the agricultural sector and in particular in the sectors of apples and chestnuts nationwide	31/03/2023
50	Greece	SA.107303	TCTF: State Aid Grants in the agricultural sector, in particular in the sectors of pears, Krokos (safran), tobaccos, Corinthian raisins, asparagus and apiculture products (notably honey products) nationwide	12/05/2023
51	Greece	SA.106574	TCTF - Greece: Re-introduction of aid scheme to non-household electricity consumers up to 35 kVA, operating as bakeries or on an agricultural tariff	16/05/2023
52	Greece	SA.107565	TCTF -Aid to KTEL and KTEL SA bus companies and individual carriers operating unprofitable island routes due to the rise in diesel fuel prices	24/07/2023
53	Greece	SA.107301	TCTF - Financial support scheme for providers of nationwide free-to-air digital terrestrial television broadcasting	16/10/2023
54	Greece	SA.109792	TCTF: Re-introduction of subsidy to companies affected by Russia's aggression on Ukraine and international sanctions imposed	01/12/2023
55	Greece	SA.107915	TCTF - Support scheme for energy-intensive consumers	19/12/2023
56	Spain	SA.106281	Third amendment to the National Guarantee Scheme (SA.102711)	17/02/2023
57	Spain	SA.106016	TCTF - Spain - Aid scheme for compensation of additional costs due to exceptionally severe increases in natural gas prices	24/04/2023
58	Spain	SA.107094	RRF - TCTF: INTEGRATED ACTION LINE ON THE INDUSTRIAL VALUE CHAIN – BATTERIES	11/05/2023
59	Spain	SA.108920	TCTF-RRF-Amendment to SA.107094 (Spanish 2.8 TCTF scheme)	21/09/2023
60	Spain	SA.108653	TCTF - RRF - Reinforcement of the value chain of renewable energy and storage	28/11/2023

61	Spain	SA.110430	TCTF: Modifications to State aid case SA.102771 “TCF: Umbrella Scheme” (as amended by SA.104884 and SA.103941)	12/12/2023
62	Spain	SA.110744	RRF-TCTF: Integrated action line on the industrial value chain – batteries (PERTE: electric and connected vehicles) (prolongation of SA.107094)	19/12/2023
63	Spain	SA.110472	TCTF: Fourth Amendment to the National Guarantee Scheme (SA.102711)	20/12/2023
64	Finland	SA.105251	TCF: Modifications to SA.103159, SA.103386 and SA.104224	06/01/2023
65	Finland	SA.105915	TCF: Support in the form of guarantees for electricity trading companies in the Åland region	07/02/2023
66	Finland	SA.106431	TCF: Temporary aid for agriculture and aquaculture for increased electricity and fertilizer costs	01/03/2023
67	Finland	SA.106260	TCTF measures to support final customers of electricity	23/03/2023
68	Finland	SA.108296	TCTF: Temporary cost compensation aid to undertakings active in the agricultural and aquaculture sectors	26/07/2023
69	Finland	SA.105338	SA.105338 TCTF-RRF: Support for the development of renewable methane and renewable mathanol production	30/10/2023
70	Finland	SA.110320	TCTF: Temporary emergency support for dairy producers in response to the cost crisis in agriculture caused by Russia's invasion of Ukraine	21/12/2023
71	France	SA.105134	TCF: Exceptional tax credit to support the elimination of glyphosate in connection with the difficulties encountered by the agricultural sector due to Russian aggression against Ukraine	10/01/2023
72	France	SA.106481	TCF: Régime cadre temporaire relatif aux mesures d’aides pour limiter la hausse des prix de l’électricité pour les PME en France en 2023 ("amortisseur électrique")	04/04/2023

73	France	SA.106802	TCTF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine (amendments to SA.102839 (2022/N))	14/04/2023
74	France	SA.107474	TCTF: Exceptional scheme to cover the economic losses of the lavender sector caused by the consequences of Russia's military aggression against Ukraine	23/05/2023
75	France	SA.107440	TCTF - France: Prolongation de la durée du débridage d'installations éoliennes terrestres	13/06/2023
76	France	SA.108091	TCTF: Exceptional scheme to cover the additional costs of inputs for farms producing starch potatoes	06/07/2023
77	France	SA.108694	TCTF: Exceptional scheme for covering the economic losses of agricultural sectors specialised in organic production	03/08/2023
78	France	SA.108916	TCTF: Exceptional scheme for fruit and vegetables farms in the French outermost regions due to the price increases of fertilizers and soil conditioners	28/08/2023
79	France	SA.107668	TCTF - France: Régime temporaire relatif aux aides visant à accélérer le déploiement des énergies renouvelables grâce aux investissements en faveur de l'utilisation de combustibles solides de récupération (CSR)	06/10/2023
80	France	SA.109672	TCTF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine (amendments to SA.102839 (2022/N))	20/10/2023
81	France	SA.109962	TCTF: Exceptional scheme for fruit and vegetables farms in the French outermost regions due to the price increases of fertilisers and soil conditioners (amendment to SA.108916 (2023/N))	14/11/2023

82	France	SA.105381	France – TCTF – Régime de soutien à deux parcs éoliens flottants en mer dans le golfe du Lion	07/12/2023
83	France	SA.110282	Dispositif exceptionnel de prise en charge des pertes économiques des exploitations filières agricoles spécialisées dans la production biologique	08/12/2023
84	France	SA.110574	TCTF: Exceptional scheme for fruit and vegetables farms in the French outermost regions due to the price increases of fertilisers and soil conditioners (amendments to SA.108916 (2023/N))	13/12/2023
85	France	SA.110576	TCTF: Exceptional scheme for the reduction of the social security contributions in favour of undertakings in the agriculture, forestry and aquaculture sectors strongly affected by the consequences of the Russian aggression against Ukraine (amendments to SA.102783 (2022/N))	13/12/2023
86	France	SA.110526	TCTF: Support scheme for fishing companies to cope with the increase in the prices of raw materials and in particular energy linked to the Russian aggression against Ukraine (amendment to SA.102839 (2022/N))	20/12/2023
87	France	SA.110832	TCTF: : Prolongation et amendement du régime SA.106481	21/12/2023
88	Croatia	SA.104708	TCF: State aid programme for compensation of energy price growth in sectors for processing of agricultural products.	12/01/2023
89	Croatia	SA.107858	TCTF: State aid Programme for compensation of increase in production costs in the livestock and crop production sectors	12/06/2023
90	Croatia	SA.107869	TCTF: Portfolio and individual insurance policy of liquidity and investment loans for exporters (amendments to SA.103167 and SA.105227)	30/06/2023
91	Croatia	SA.108270	TCTF - HR - State aid programme for compensation of milk collection costs for small capacity dairies	25/07/2023

92	Hungary	SA.106542	TCF: Amendments to SA.103089 (as amended) and SA.104515 (as amended)	09/03/2023
93	Hungary	SA.104385	TCTF - Hungary - Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices	13/04/2023
94	Hungary	SA.107379	Amendment request of the Hungarian TCTF umbrella scheme SA.103089 (as amended)	13/06/2023
95	Hungary	SA.102428	TCTF - RRF: Aid for energy storage facilities for the integration of weather variable renewable energy sources	21/06/2023
96	Hungary	SA.107772	TCTF: Hungarian Development Bank agricultural, fishing and food industry working capital loan scheme in the form of subsidized loans	26/06/2023
97	Hungary	SA.107689	TCTF: Hungarian TCTF scheme for accelerated investments in sectors strategic for the transition towards a net-zero economy	28/07/2023
98	Hungary	SA.110218	Block-notification TCTF: amendment request to SA.103089 (amended by SA.104009, SA.104850, SA.106542, SA.107379) and SA.104385 TCTF schemes to support companies in context of Russia's invasion of Ukraine	06/12/2023
99	Ireland	SA.106462	TCF: Licensed Road Haulage Operators Emergency Support Scheme (re-introduction of scheme SA.102559)	09/03/2023
100	Ireland	SA.105803	Microelectronics Manufacturers Ukraine Enterprise Crisis Scheme	20/03/2023
101	Ireland	SA.106523	TCTF - Ireland: Modification of the Temporary Business Energy Support Scheme	31/03/2023
102	Ireland	SA.105135	TCTF - Amendments to State Aid Approval SA.54683 (2020/N) – Ireland Renewable Electricity Support Scheme (RESS)	13/06/2023
103	Ireland	SA.107951	TCTF: Tillage Incentive Support Scheme 2023	12/07/2023
104	Ireland	SA.108461	TCTF: Business Users Support Scheme for Kerosene	26/07/2023

105	Ireland	SA.110813	TCTF: Prolongation of schemes SA.103569, as already amended, SA.105803 and SA.107951	20/12/2023
106	Italy	SA.105254	TCF: Amendments to scheme SA.103947 (2022/N) “Italy. TCF: Scheme to support undertakings active in Lombardy affected by the Russian aggression against Ukraine”	13/01/2023
107	Italy	SA.105350	Support to the productive system in Campania Region	23/01/2023
108	Italy	SA.105118	SA.105118 - Italy - TCF - Support to tourist transport operators by covered buses (non PSO)	31/01/2023
109	Italy	SA.105004	TCF: Framework scheme FVG (Re-introduction of SA.102721)	02/02/2023
110	Italy	SA.105509	TCF: Emilia-Romagna Regional draft framework scheme under section 2.1 of the TCF	16/02/2023
111	Italy	SA.106254	TCF - Limited amounts of aid to artistic ceramic and crystal producers of Murano	01/03/2023
112	Italy	SA.106575	TCTF - Emergency support to bus transport operators (Reintroduction of Scheme SA.104566)	31/03/2023
113	Italy	SA.106007	TCTF - RRF - Italy: Support for the development of hydrogen valleys	03/04/2023
114	Italy	SA.106008	TCTF: exemption from the payment of social contributions for the hiring of women	19/06/2023
115	Italy	SA.106009	TCTF: Exemption from the payment of social security contributions for hiring young workers	19/06/2023
116	Italy	SA.107149	TCTF: DIRECT GRANTS TO COMPANIES WITH COMMERCIAL RELATIONSHIPS IN UKRAINE, RUSSIA AND BELARUS AFFECTED BY THE CURRENT CRISIS – 2023	19/06/2023
117	Italy	SA.107150	TCTF: DIRECT GRANTS TO COMPANIES RELYING ON SUPPLY FROM URKAINE, RUSSIA AND BELARUS AFFECTED BY THE CURRENT CRISIS – 2023	19/06/2023

118	Italy	SA.107706	TCTF - Italy TCTF: Emergency support to bus transport operators (2nd Reintroduction of Scheme SA.104566)	17/07/2023
119	Italy	SA.108624	TCTF: Support to the productive system in Campania Region (amendments to SA.105350)	27/07/2023
120	Italy	SA.108084	TCTF: Guarantees on credits granted to agricultural and fishing companies for the construction of plants for the production of renewable energy	31/07/2023
121	Italy	SA.108490	TCTF: Abruzzo – Regional Framework scheme	01/08/2023
122	Italy	SA.108572	TCTF: Emergency Support Scheme for Haulage Operators (amendment to SA.103480, as amended by SA.103966 and SA.105007)	03/08/2023
123	Italy	SA.107711	TCTF: Sardinia – Regional Framework Scheme	08/08/2023
124	Italy	SA.107640	TCTF - Italy - Sicilian Energy Bonus	09/08/2023
125	Italy	SA.108573	TCTF: Aid to undertakings performing own-account road haulage transport of goods	07/09/2023
126	Italy	SA.108575	TCTF: Emergency support to bus transport operators for the purchase of fuel	08/09/2023
127	Italy	SA.108953	TCTF - RRF- Investment aid scheme for the production of electrolysers	09/10/2023
128	Italy	SA.108571	TCTF - Italy - Reintroduction of the incentive measure SA.103752 - Emergency Support Scheme for Haulage Operators using liquefied natural gas (LNG) as fuel	12/10/2023
129	Italy	SA.108803	TCTF: Measures to support businesses to mitigate the effects of the energy crisis	16/10/2023
130	Italy	SA.108654	TCTF: Exemption from social contributions for the hiring of beneficiaries of the Citizens' Income	31/10/2023
131	Italy	SA.108579	TCTF - Measure to support the spa sector in Trento due to the increase in energy costs	10/11/2023
132	Italy	SA.110322	TCTF: Umbrella scheme for the agricultural, forestry and fisheries and aquaculture sectors (Third amendment to SA.102522 (2022/N))	07/12/2023

133	Italy	SA.110474	TCTF: Umbrella scheme for the measures to support undertakings active in the agricultural, forestry, fishery and aquaculture sectors in compliance with Section 2.1 of the Temporary Crisis and Transition Framework, as amended (Third amendment to SA.102896 (2022/N))	12/12/2023
134	Italy	SA.110596	TCTF: Prolongation of and amendments to the scheme SA.103289 as amended by SA.104962	15/12/2023
135	Italy	SA.110637	TCTF: Prolongation of and amendments to the scheme SA.103947 as amended by SA.105254	15/12/2023
136	Italy	SA.110658	TCTF: Prolongation of scheme SA.107711	15/12/2023
137	Italy	SA.110664	TCTF: Amendments to SA.103166 and SA.108084	18/12/2023
138	Italy	SA.110511	TCTF: RRF - Italy: Support for the development of hydrogen valleys (prolongation of SA.106007)	18/12/2023
139	Italy	SA.110893	TCTF: Prolongation of SA.105509	21/12/2023
140	Italy	SA.110606	TCTF: Amendments to SA.105004, SA.107640, SA.108571	21/12/2023
141	Italy	SA.110726	TCTF: Amendments to SA.105004, SA.107640, SA.108571	21/12/2023
142	Italy	SA.110741	TCTF: Amendments to SA.105004, SA.107640, SA.108571	21/12/2023
143	Lithuania	SA.104926	TCF: Tax aid measures for taxpayers affected by the energy crisis following Russia‘s aggression against Ukraine	16/01/2023
144	Lithuania	SA.106380	TCTF: Rules on the granting of State aid by the State Social Insurance Fund to policyholders in financial difficulties as a result of the energy crisis	23/03/2023
145	Lithuania	SA.106672	TCTF: The Incentive Financial Instrument “Direct Loans to Business Operators Affected by War” ((amendments to SA.104109 (2022/N) and SA.104854 (2022/N))	30/03/2023

146	Lithuania	SA.107127	TCTF: Reintroduction of the scheme SA.104975 (2022/N) "TCF: Temporary State Aid for Apple Producers"	25/04/2023
147	Lithuania	SA.107831	TCTF: Loans to support economic entities (amendments to SA.103706 and SA.105108)	29/06/2023
148	Lithuania	SA.107620	TCTF: The Introduction of Alternative Fuels in Industrial Enterprises in Kaunas, Šiauliai and Telšiai regions	03/07/2023
149	Lithuania	SA.102871	SA.102871 (2023/N) – Lithuania – TCTF: Offshore wind support scheme	04/10/2023
150	Lithuania	SA.110851	TCTF: Prolongation of scheme SA.107620	20/12/2023
151	Luxembourg	SA.105084	TCF: Second amendment to the aid scheme for companies particularly affected by the rise in energy prices caused by Russia's aggression against Ukraine (amendments to SA.103096 and SA.104396)	17/02/2023
152	Luxembourg	SA.107873	TCTF - Luxembourg - Third amendment to the aid scheme (SA.103096) for companies particularly affected by the rise in energy prices caused by Russia's aggression against Ukraine	02/08/2023
153	Latvia	SA.105243	TCF: Amendment of loans and leases guarantee scheme SA.103400	06/01/2023
154	Latvia	SA.105247	TCF: Amendment of subsidised loan scheme SA.103359	06/01/2023
155	Malta	SA.108217	State aid measure to support undertakings involved in the maritime transport of persons and goods by high-speed craft between Malta and Sicily (Amendment to SA.104238, as amended by SA.104983)	06/07/2023
156	Malta	SA.109527	TCTF: Temporary State Aid Scheme to the Dairy Sector intended to compensate farmers for the losses experienced due to market disturbances brought about by the invasion of Ukraine by Russia	18/10/2023
157	Malta	SA.110819	State aid measure to support undertakings involved in fast ferry passenger sea transport (amendment to SA.104238, as amended by SA.104983, and	21/12/2023

			SA.108217)	
158	Malta	SA.110829	TCTF: Amendments to SA.103449 and SA.103223	21/12/2023
159	Netherlands	SA.106250	TCTF: Guarantee scheme working capital for greenhouse horticulture SMEs	04/04/2023
160	Netherlands	SA.106377	TCTF - Netherlands - Scheme for the reduction of energy costs	13/04/2023
161	Netherlands	SA.108788	NL - TCTF - Temporary aid scheme for undertakings having implemented renewable heat projects	09/11/2023
162	Netherlands	SA.110788	NL - TCTF: Modification to SA.108788	20/12/2023
163	Poland	SA.106480	TCTF: The aid to wheat and maize producers who have incurred turnover loss due to disruptions in supply chains caused by the aggression of Russia against Ukraine.	27/03/2023
164	Poland	SA.107266	TCTF: Aid to wheat and maize producers (amendments to SA.106480)	04/05/2023
165	Poland	SA.107274	TCTF: Aid to wheat producers	05/05/2023
166	Poland	SA.107291	TCTF: Aid to reduce the cost of purchasing diesel oil used for agricultural production	15/05/2023
167	Poland	SA.107307	TCTF: Subsidy for mineral fertilizers	23/05/2023
168	Poland	SA.107273	TCTF: Subsidies for interest rate on bank loans granted to agricultural producers at risk of losing financial liquidity due to the Russian aggression against Ukraine	05/06/2023
169	Poland	SA.107687	TCTF: Aid to wheat and buckwheat producers (amendmets to SA.107274)	05/06/2023
170	Poland	SA.107696	TCTF: Subsidy for mineral fertilisers (amendments to SA.107307 (2023/N))	06/06/2023
171	Poland	SA.107506	TCTF: Payment of compensation from the Agricultural Protection Fund for non-payment for agricultural products sold to a purchasing entity that has become insolvent	08/06/2023
172	Poland	SA.107670	TCTF: Aid to wheat, buckwheat and maize producers (amendments to SA.106480	08/06/2023

			(2023/N))	
173	Poland	SA.108358	TCTF: Subsidies to the interest rate on bank loans granted to agricultural producers who are at risk of losing financial liquidity due to restrictions on the agricultural market caused by the aggression of the Russian Federation against Ukraine (amendments to SA.107273 (2023/N)))	19/07/2023
174	Poland	SA.108198	TCTF: Subsidies to the area of arable land sown or planted with basic or certified seed in the main crop for agricultural producers	24/07/2023
175	Poland	SA.108164	TCTF: Aid for pig producers	27/07/2023
176	Poland	SA.108595	TCTF: Aid to wheat and buckwheat producers (amendment to SA.107274 (2023/N))	27/07/2023
177	Poland	SA.108596	TCTF: Subsidy for mineral fertilisers (amendments to SA.107307 (2023/N))	27/07/2023
178	Poland	SA.108355	TCTF: Subsidies to the interest rate of bank loans granted to entities operating in the field of cereals trading or grain purchase, or agricultural plant seed trading, referred to in the provisions on seed production, or buying or freezing soft fruit	04/08/2023
179	Poland	SA.109217	TCTF: Aid for an agricultural producer who in 2022 or in 2023 did not receive payment for sold corn at least once from entities purchasing and trading in cereals	15/09/2023
180	Poland	SA.107269	SA.107269 TCTF: Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices in Poland incurred in 2023	06/10/2023
181	Poland	SA.109486	TCTF: Aid for producers of cereals and oilseeds	06/10/2023
182	Poland	SA.108721	TCTF: Subsidies for entities operating in the field of corn trading or purchase	13/10/2023
183	Poland	SA.109775	TCTF: Aid for agricultural producers of raspberries	13/11/2023

184	Poland	SA.109734	TCTF: Aid for cauliflower and broccoli producers	16/11/2023
185	Poland	SA.110956	TCTF: Subsidies to the interest rate on bank loans granted to agricultural producers who are at risk of losing financial liquidity due to restrictions on the agricultural market caused by the current crisis (amendment to SA.107273 (2023/N))	21/12/2023
186	Portugal	SA.106278	TCF: Liquidity support system for enterprises in the Outermost Region of Madeira following the aggression against Ukraine by Russia (Measure called “Apoiar + Liquidez”)	24/02/2023
187	Portugal	SA.107232	TCTF: National exceptional measure to support agricultural production due to the invasion of Ukraine	05/05/2023
188	Portugal	SA.109042	TCTF - Portugal: Centralized purchase of renewable hydrogen and biomethane	15/12/2023
189	Romania	SA.105163	TCF: Support of the activity of cattle breeders in 2022 in the context of the crisis caused by Russia's aggression against Ukraine	19/01/2023
190	Romania	SA.105503	TCF:Re-introduction of the IMM Invest Plus State aid scheme	26/01/2023
191	Romania	SA.106229	TCF: Amendment to the Framework State aid scheme	09/03/2023
192	Romania	SA.108327	TCTF: Support for the activity of cattle breeders in 2022 in the context of the crisis caused by Russia's aggression against Ukraine (amendments to SA.105163 (2023/N))	10/07/2023
193	Romania	SA.107101	Romanian ports - EU - Ukraine solidarity lanes - TCTF	13/10/2023
194	Sweden	SA.105268	TCF - Sweden: Procurement of reduction of electricity consumption	06/02/2023
195	Sweden	SA.105491	TCF - Electricity cost aid to certain particularly affected undertakings	15/02/2023
196	Sweden	SA.106512	TCTF - Sweden - Liquidity support due to increased costs of electricity	05/05/2023

197	Sweden	SA.109577	TCTF: State aid measure to support companies operating ferry transport between mainland Sweden and Gotland	17/11/2023
198	Slovenia	SA.105176	TCF: Modification of the Protocol of SID bank on state aid in the form of soft loans (amendments to SA.102841)	05/01/2023
199	Slovenia	SA.105498	TCF: Aid scheme to support the economy and preserve jobs	06/02/2023
200	Slovenia	SA.106274	TCF: Exceptional temporary support to farmers and SMEs particularly affected by the impact of Russia's invasion of Ukraine under section 2.1 of the TCF	01/03/2023
201	Slovenia	SA.106497	TCTF: Temporary Aid to apple and pear producers	15/03/2023
202	Slovenia	SA.105405	TCF - Slovenia: Aid to the economy to mitigate the consequences of the energy crisis	16/03/2023
203	Slovenia	SA.107580	TCTF: Financial compensation to apple and pear growers due to high production costs following Russia's aggression against Ukraine	31/05/2023
204	Slovenia	SA.106613	TCTF - Slovenia: Investment aid for accelerating the introduction of energy from renewable sources, storage and heat from renewable sources	09/06/2023
205	Slovenia	SA.108352	TCTF: Aid to hop growers after Russia's invasion of Ukraine	10/07/2023
206	Slovenia	SA.108604	TCTF: Aid to the livestock sector	04/08/2023
207	Slovenia	SA.109166	TCTF: Soft loans for SMEs - tackling the energy crisis and costliness	10/10/2023
208	Slovenia	SA.110877	TCTF: Aid to the livestock sector (amendments to SA.108604 (2023/N))	21/12/2023
209	Slovakia	SA.105458	TCF - Slovakia: Support scheme for enterprises as a result of the energy crisis emergency following Russia's aggression against Ukraine	31/01/2023
210	Slovakia	SA.109113	State aid scheme to support the food and the feed compound production sector following Russia's aggression against Ukraine	08/09/2023

211	Slovakia	SA.109076	Reduction of social contributions due by employers in the agriculture and food industry	14/09/2023
212	Slovakia	SA.106554	TCTF/RRF - Slovakia: Investment support for electricity storage	03/11/2023
213	Slovakia	SA.109597	TCTF 2.1 and 2.2: Aid to undertakings in the form of a guarantee, guarantee fee waiver and part of the principal (SME Guarantee Facility and other selected priorities 2)	17/11/2023
214	Slovakia	SA.109598	TCTF 2.1 Aid to undertakings in the form of guarantee and remission of part of the principal (SME Guarantee Facility and other selected priorities 1)	17/11/2023
215	Slovakia	SA.109989	TCTF: State aid scheme to provide exceptional investment aid in sectors of strategic for the transition to a climate-neutral economy	14/12/2023
216	Slovakia	SA.110524	TCTF: Prolongation of and amendment to the scheme SA.109076	15/12/2023
217	Slovakia	SA.110622	TCTF: Prolongation of and amendment to the scheme SA.104846	15/12/2023
218	Slovakia	SA.110523	Schéma štátnej pomoci podľa oddielu 2.1. Dočasného krízového a prechodného rámca na poskytnutie pomoci podnikom vo forme záruky a odpustenia časti istiny (záručný nástroj na podporu MSP a ďalších vybraných priorít 1Scheme of State Aid pursuant to section 2.1 Temporary Crisis and Transition Framework for State Aid Measures to Undertakings in the Form of Guarantee and Partial Rebate on Loan Principal (Guarantee Instrument for Aiding SMEs and Other Selected Priorities 1	19/12/2023
219	Slovakia	SA.110895	Slovakia - TCTF: Modifications to SA.105458	21/12/2023
220	United Kingdom	SA.106689	TCTF - Subsidy for Energy and Trade Intensive Industries (ETIIs) located in Northern Ireland (NI).	12/12/2023

ANNEX 4

State aid decisions adopted in 2023 directly under the Treaty in the context of Russia's war of aggression against Ukraine, by country

Nr	Member State	Case	Title	Decision date
1	Spain	SA.106095	Spain – Prolongation of MIBEL fossil-fuel cost adjustment mechanism	25/04/2023
2	France	SA.106197	TCF: Guarantee scheme for collaterals for electricity and gas supply contracts	01/03/2023
3	Italy	SA.106335	TCF: Modifications to SA.103757 (SACE Reinsurance)	06/03/2023
4	Portugal	SA.106096	Portugal – Prolongation of MIBEL fossil-fuel cost adjustment mechanism	25/04/2023