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EUROPEAN UNION COMPETITION POLICY

The fundamental provisions of EU competition policy have remained virtually intact for sixty years, attesting to their flexibility and continued relevance. Their enforcement in particular focused on protecting the internal market and —in the case of antitrust and mergers— consumer welfare. They have also served the EU's wider policy goals; for example, they directly support several of the current Commission's top priorities such as jobs, growth and investment and the single market (including the digital single market and the energy union). Increasingly, research demonstrates the macroeconomic benefits of competition policy, such as productivity, growth, employment and inequality reduction.

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The original Treaty provisions on competition policy which prohibit certain anticompetitive agreements and abuses of dominant positions as well as the provisions on State aid entered into effect 60 years ago have remained remarkably unchanged over time, attesting to their inherent ability to be applied in very different circumstances. The third pillar of competition policy —merger control— was established in 1989 in the run-up to the creation of the internal market in 1992.

Two clearly identifiable threads run through the entire history of EU competition policy. First, its contribution to the internal market. Second, its emphasis on consumer welfare, especially over the past two decades in both antitrust and merger policy and enforcement, for example by attaching greater weight to market power and harm to competition and consumers. That shift in focus allowed the Commission to target its limited resources on particularly harmful conduct, such as cartels or on unilateral conduct excluding equally efficient rivals without justification.

Sixty years ago, the EU's State aid regime —a historically unique experiment— was born and had to be developed gradually from scratch; today it has become an essential pillar of the internal market, ensuring that companies are able to compete on equal terms independently of where they are located, and providing safeguards against Member States engaging in mutual subsidy races at the expense of each other and of the general European interest.

Throughout its history, competition policy has also supported the wider interests of the European Communities and, later, the European Union. That is still true today. On 15 July 2014 President Juncker

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issued his Political Guidelines[1], laying down ten priority areas where the EU should deliver concrete results. To that end, the President also issued mission letters to each member of the Commission. I received my letter on 1 November 2014. It is evident from the mission letter that competition policy should be leveraged to the maximum extent in support of the Political Guidelines, in particular jobs, growth and investment but also the internal market.

As envisaged in the mission letter and the President's Political Guidelines[2], our action in the State aid field has focused on unjustified tax advantages, especially those resulting from tax rulings. We have adopted several decisions ordering the recovery of illegal fiscal aids. The decision on 30 August 2016 concerning Ireland's aid to Apple attracted particular attention. In that case, the Commission found that Ireland had granted undue tax benefits of up to €13 billion to Apple, allowing Apple to pay substantially less tax than other businesses. The President's Political Guidelines also call for an internal market with "a strengthened industrial base". That requires efficient supply chains along which EU manufacturing firms can source competitively priced inputs. Cartel overcharges, which are often in the region of 10-20 per cent, harm EU manufacturers, especially in sectors characterised by fierce global competition, such as the automotive industry. In January 2016 the Commission imposed a fine of €137,789,000 on three car part producers whose collusion raised the price of components for manufacturers selling cars in Europe, and ultimately consumers. Later the same year —on 19 July— the Commission imposed a record fine on several major European truck makers for a cartel lasting 14 years, that raised prices and passed on to customers the costs of compliance with stricter emissions rules.

EU industry also benefits when businesses can raise money on competitive financial markets. On 29 March 2017 the Commission prohibited the proposed merger between Deutsche Börse AG and London Stock Exchange Group. The Commission's investigation concluded that combining the activities of the two largest European stock exchange operators — Deutsche Börse AG and London Stock Exchange Group— would have created a de facto monopoly in the markets for clearing fixed income instruments. State aid policy has also defended the internal market in ensuring that the large amounts of aid needed in recent years to protect financial stability by clearing balance sheets of non-performing loans did not do serious harm to competition. As the rules of the Banking Union start to produce their effects, there should be much less need for State aid in the future.

The mission letter also asks me to contribute to the Digital Single Market[3] and "further develop market monitoring" in support of the Commission's overall priorities. To that end, the Commission launched a competition sector inquiry into e-commerce to identify if and to what extent private barriers to a connected Digital Single Market existed. The final report confirmed the existence of certain practices by companies in e-commerce that could limit consumer choice and prevent lower online prices. Innovation and fair competition should drive the Digital Single Market. On 27 June 2017 Commission fined Google €2.42 billion for abusing its dominance by giving illegal advantages to its own comparison shopping service, denying other companies the chance to compete on the merits and to innovate and —by extension— denying European consumers a genuine choice of services.

EU competition policy has also been deployed to further the EU's climate and energy objectives, focusing in particular on the electricity and gas sectors

[1] A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change.

[2] Priority No 4 of the Political Guidelines ("A Deeper and Fairer Internal Market with a Strengthened Industrial Base").

[3] Priority No 2 of the Political Guidelines ("A Connected Digital Single Market").

which are critical to the creation of the Energy Union[4]. On 24 May 2018 the Commission imposed binding obligations on Gazprom, putting an end to its overall strategy of partitioning gas markets along national borders in eight Member States[5], which may have enabled it to charge higher gas prices in five of those Member States. Under the decision, Gazprom must, among other things, remove any restrictions placed on customers to re-sell gas cross-border, and the relevant Gazprom customers are also given an effective tool to make sure their gas price reflects the price level in competitive Western European gas markets.

The Political Guidelines call for concrete measures to improve the investment environment to stimulate private investment[6]. In May 2016 the Commission adopted the Notion of Aid Notice to clarify what type of investment and other public support measures fall outside the scope of EU State aid control, for example because they do not distort the level playing field in the Single Market or risk crowding out private investment. The Notice confirms that public investments in roads, inland waterways, rail, and water distribution networks can typically be carried out without prior scrutiny by the Commission. Concretely, the Commission has taken a number of decisions that helps to clarify when support for local infrastructure and services is not considered to be State aid[7]. This will help maximise the effect of investments on economic growth and jobs, in line with the Commission's Investment Plan for Europe to mobilise at least €315 billion over three years in private and public investment across the EU.

As a result of the modernisation of State aid policy which was concluded in 2014, only 3 per cent of all newly implemented State aid measures have needed the Commission's approval in advance. The Commission also extended the list of types of aid exempted from the obligation on Member States to notify plans for aid to airports and ports. The reforms thus allow the Commission to focus on measures that have the biggest impact on competition, to be "big on big things and small on small things" in line with the President's Political Guidelines.

The mission letter asked me to maintain "competition instruments aligned with market developments". Since the modernisation of antitrust and cartel rules in 2004, the Commission and the national competition authorities have adopted 1,000 decisions, covering a broad range of sectors. Of those decisions, 85 per cent were taken by national competition authorities within the European Competition Network (ECN). To entrench the success of the ECN, in March 2017, the Commission put forward a proposal for the ECN+ directive, aimed at making sure that all national competition authorities are able to take decisions fully independently and have effective tools at their disposal to stop and sanction infringements. In the same month the Commission launched introduced a new anonymous whistleblower tool to make it easier for individuals to alert the Commission to secret cartels and other antitrust and cartel violations while maintaining their anonymity.

In May and June 2018, the Commission adopted proposals for 37 spending programmes for the next Multiannual Financial Framework (2021-2027), including for the first time a Single Market Programme. Another novelty is that the proposed Programme would allow the Commission to directly support competition policy with an indicative budget of €140 million over the next MFF. One core priority of the competition part of the Single Market Programme is to help the Commission enhance its IT tools and expertise to continue to effectively enforce our rules in an increasingly data driven economy and environment. More concretely, this would help the Commission to be able to detect infringements in a virtually paperless world powered

[4] Priority No 3 of the Political Guidelines ("A Resilient Energy Union with a Forward-Looking Climate Change Policy").

[5] Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia.

[6] Priority No 3 of the Political Guidelines ("A New Boost for Jobs, Growth and Investment").

[7] Such as regional sports facilities, local medical centres, small ports and assisted living facilities, media in local languages and advice services for people in disadvantaged urban areas.

by algorithms. As well as to manage casefiles and data amounts of ever growing proportions.

There has long been ample evidence testifying to the positive macroeconomic impact of procompetitive product and service market reforms. Increasingly, research also demonstrates that competition enforcement has an impact of a similar magnitude in terms of productivity, growth and jobs, but also in the reduction of inequality[8]. The President's Political Guidelines acknowledged that EU's handling of the crisis placed insufficient focus on social fairness. Competition policy is one of the tools to help to address that imbalance in concrete ways. Competition policy is ultimately about fairness.

[8] DIERX, A.; ILZKOVITZ, F.; PATARACCHIA, B.; RATTO, M.; THUM-THYSEN, A. and VARGAM, J. (2017). 'Does EU competition policy support inclusive growth?', *Oxford Journal of Competition Law & Economics*, Vol. 13, No. 2, June 2017, pp. 225-260, Oxford. ENNIS, S.F.; GONZAGA, P. and PIKE, C. (2017). 'The Effects of Market Power on Inequality', *Competition Policy International Antitrust Chronicle*, October 2017, pp.1-7, available at: *https://www.competitionpolicyinternational.com/wp-content/uploads/2017/10/CPI-Ennis-Gonzaga-Pike.pdf* (accessed 29/06/2018).