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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland regarding cooperation on the application of their competition laws

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Trade and Cooperation Agreement between the European Union ('EU') and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland ('UK'), of the other part, of 30 December 2020 (the 'TCA') provides for rules on cooperation and coordination in the field of competition law and enforcement. Article 361(4) TCA states that the parties may enter into a separate agreement on cooperation and coordination in competition matters. That supplementing agreement on competition cooperation will provide a framework for the existing cooperation.

On 8 June 2023, the Council authorised the Commission to open negotiations towards an agreement with the UK on cooperation and exchange of information in competition matters. The negotiations were concluded, at technical level, in October 2024.

The competition cooperation agreement is a supplementing agreement to the TCA, pursuant to Article 2 TCA. The TCA's governance structure and territorial scope will therefore apply, with the exception of the dispute settlement mechanism which is not applicable to competition matters under the TCA.

The purpose of the competition cooperation agreement is to promote cooperation and coordination in competition matters between the competition authorities of the EU and its Member States, of the one part, and of the UK, of the other part, with a view to the more effective enforcement of the competition laws of the EU and of the UK. The competition cooperation agreement thus allows not only the Commission but also the national competition authorities of the EU Member States enforcing EU competition law, to directly cooperate with the competition authority of the UK (the Competition and Markets Authority).

The EU and the UK pursue the effective enforcement of their respective competition laws, including in order to tackle anti-competitive practices with an international dimension, with a view to ensuring the efficient operation of their respective markets and of trade between them. The competition cooperation agreement provides a framework for the existing cooperation, with a view to strengthening the EU and its Member States' relationship with the UK. The attached proposal for a Council Decision authorises the conclusion of the competition cooperation agreement.

• Compatibility with existing policy provisions in the policy area

The EU has concluded bilateral cooperation agreements in the area of competition policy with a view to structuring and facilitating the cooperation between the Commission and foreign competition authorities. Examples of competition cooperation agreements include those with the US¹ (1991), Canada² (1999), Japan³ (2003) and South Korea (2009)⁴. These agreements

¹ Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, OJ L 95, 27.4.95, p. 47 as corrected by OJ L 131, 15.6.95, p. 38.

² Agreement between the European Communities and the Government of Canada regarding the application of their competition laws, OJ L 175, 10.07.1999, p.49.

³ Agreement between the European Community and the Government of Japan concerning cooperation on anticompetitive activities, OJ L 183, 22.7.2003, p. 12.

contain various cooperation instruments in the area of competition policy and are considered to have been a success. Their main benefit is that they provide case-related cooperation with a structured framework and thereby contribute to the more efficient enforcement of competition law.

- **Compatibility with other EU policies**

The aim of competition policy is to ensure that markets deliver more benefits to consumers, businesses and society as a whole. Competition policy therefore contributes to EU's wider objectives, in particular to boost jobs, growth and investment. The Commission pursues this objective by enforcing competition rules, sanctioning infringements and promoting a culture of competition internationally.

Consumers in the EU and the UK will ultimately benefit from the better detection and sanctioning of infringements of competition rules, which will also act as a greater deterrent. More effective enforcement of competition rules creates more open and competitive markets, where companies compete more freely on their merits, enabling them to generate wealth and create jobs. It also offers consumers a better choice of products at lower prices.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for EU action is provided by Articles 103 and 352 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 218(6)(a)(v) TFEU. Article 103 TFEU provides the legal basis for the implementation of Articles 101 and 102 TFEU. Article 352 provides a legal basis for Regulation (EC) No 139/2004 (the Merger Regulation), as the competition cooperation agreement also covers cooperation in merger investigations. Article 218(6)(a)(v) TFEU provides the legal basis for the Council to adopt the decision concluding the competition cooperation agreement, after having obtained the European Parliament's consent.

- **Subsidiarity (for non-exclusive competence)**

The competition cooperation agreement falls within the EU's exclusive competence in accordance with Article 3(1)(b) TFEU as it relates to competition rules that are necessary for the functioning of the internal market. The subsidiarity principle does not therefore apply.

- **Proportionality**

The EU's action goes no further than what is necessary to achieve the policy objective of improving existing international cooperation between the Commission and the UK Competition and Markets Authority. This improved cooperation can be better achieved through a binding agreement supplementing the TCA, concluded between the EU and the UK.

The competition cooperation agreement regulates administrative cooperation between the competition authorities of the EU and its Member States, of the one part, and that of the UK, of the other part. As far as the EU Member States are concerned, the agreement only applies to cooperation in the context of their enforcement of EU competition law, and not of their national laws.

⁴ Agreement between the European Community and the Government of the Republic of Korea concerning cooperation on anticompetitive activities, OJ L 202, 4.8.2009, p. 36.

- **Choice of instrument**

The choice of instrument is mandated by the TCA and the Council Decision authorising the negotiation of the competition cooperation agreement.

3. RESULTS OF *EX-POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex-post* evaluations / fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The EU Member States have been consulted regularly during the negotiation process via the Council Working Party on the UK. The Commission has also held exchanges with the national competition authorities forming the European Competition Network.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

An impact assessment was not needed. The competition cooperation agreement follows the instructions of the Council mandate, which did not provide for any other options for implementing that mandate.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

In the context of the cooperation covered by this agreement, personal data are protected by Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, and by Schedule 21 to the Data Protection Act 2018, as inserted by the UK Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, which relates to the adequate protection of personal data by the EU.

Furthermore, the competition cooperation agreement provides that personal data may only be shared for the purpose of investigations into the subject-matter for which those data were initially obtained.

4. BUDGETARY IMPLICATIONS

The proposed agreement has no budgetary implications.

5. OTHER ASPECTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Member States will, where relevant, take the necessary measures to give full effect to the agreement.

- **Detailed explanation of the specific provisions of the proposal**

The competition cooperation agreement provides for the notification of enforcement activities which significantly affect the important interests of the other party and for rules on negative comity. Furthermore, the competition cooperation agreement contains provisions on practical cooperation between the Commission, the national competition authorities and the UK Competition and Markets Authority.

The competition cooperation agreement also empowers the Commission and the national competition authorities of the Member States when they apply EU competition law to discuss information with, transmit information to and receive information from the UK Competition and Markets Authority, and to use such information in evidence. The agreement allows for exchanges of information between the competition authorities to the extent permitted under the domestic law applicable to them. If used in evidence, information exchanged must only be used in respect of the subject-matter for which it was collected by the transmitting authority. The agreement also provides for rules on the confidentiality of the information shared under its provisions.

Furthermore, no change to existing domestic law, or any action by a competition authority that is inconsistent with existing domestic law, can be required on the basis of the agreement.

The competition cooperation agreement also governs how the parties exchange information on technical matters relating to the functioning of the agreement, how they communicate under the agreement and how they handle any accidental use or disclosure of information.

According to the agreement, at the request of a party, the parties will carry out a joint review of its implementation within two years of its entry into force.

Finally, the agreement contains rules regarding its approval by the parties, its entry into force and its termination.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 103 and 352, in conjunction with Article 218(6)(a)(v) thereof.

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision 2025/XXX of [...] the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland regarding cooperation on the application of their competition laws ('Agreement') was signed on [...], subject to its conclusion at a later date.
- (2) The purpose of the Agreement is to promote and provide a framework for the existing cooperation and coordination in competition matters between the competition authorities of the Union and its Member States, of the one part, and of the United Kingdom of Great Britain and Northern Ireland ('United Kingdom'), of the other part, with a view to the more effective enforcement of the competition laws of the Union and the United Kingdom. While the competition authorities of the Union and the United Kingdom cooperate on the basis of Article 361(2) of the 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, of 30 December 2020 (the 'Trade and Cooperation Agreement'), Article 361(4) states that the parties may enter into a separate agreement on cooperation and coordination in competition matters. The Agreement constitutes such a supplementing agreement to the Trade and Cooperation Agreement.
- (3) The Agreement should be approved on behalf of the Union.
- (4) In accordance with the Treaties, the Commission must ensure that the notification to the United Kingdom provided for in Article 14 of the Agreement is carried out on behalf of the Union to express the Union's consent to be bound by the Agreement,
- (5) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered an opinion on [...],

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland regarding cooperation on the application of their competition laws is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*