European Commission - Speech
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Remarks by Executive Vice-President Vestager following the Court of Justice rulings on the Apple tax State aid and Google Shopping antitrust cases

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Today is a big win for European citizens and for tax justice.

The Court of Justice confirms the decision from 2016 by the European Commission: Ireland granted Apple unlawful aid which Ireland now has to recover. And this judgement is final.

The Court also confirms the Commission's decision in the Google Shopping antitrust case. And also this is a final judgment.

Let me first talk about Apple case and the judgment in itself. It is a win for the Commission. It is also a win for the level playing field in the Single Market, and for tax justice.

At the start of my first mandate as Commissioner for Competition, aggressive tax planning was already catching public attention. Multinationals were brought before parliamentary committees in the US and the UK to explain their hidden tax arrangements.

A seismic shift was occurring. Corporate tax avoidances were put in the spotlight by investigative journalists, as the consortium that brought us LuxLeaks. They revealed that some corporations paid almost no tax in Europe by abusing loopholes and asymmetries between different tax systems. And that few Member States were relying on tax rulings and aggressive tax planning arrangements to become a more attractive destination for multinational investments. This harmed other Member States and the European taxpayer.

State aid granted in the form of fiscal advantages was and is nothing new. Still, the investigations into tax rulings led the Commission into uncharted territory. We were supported in our action by the European Parliament, civil society and European citizens who were demanding a public response. But of course, this implied that there were legal risks.

The Commission investigated several of these tax rulings and aggressive tax planning measures under State aid rules in the Belgian Excess Profit, Amazon, Fiat, and Apple cases. There were more. These are just a few of them. Today, the Court of Justice confirmed our decision in the Apple case.

In its decision in 2016, the Commission concluded that two Irish tax rulings constituted illegal State aid. They had artificially lowered taxes paid by Apple in Ireland since 1991. The Commission considered this to be a misapplication of Irish tax rules and ordered Ireland to recover up to 13 billion euros from Apple.

These tax rulings attributed the bulk of taxable profits - of two Irish subsidiaries of Apple - to stateless "head offices". These head offices existed only on paper. No tables, no chairs, no activities. The profits were thus not taxed anywhere. As an example, in 2011, one of Apple's Irish subsidiaries recorded profits of approximately 16 billion euros. Of these, thanks to the tax rulings, only around 50 million euros were taxable in Ireland. So, this subsidiary paid less than 10 million euros of taxes in Ireland in 2011 - an effective tax rate of about 0.05% of these overall annual profits. 0.05%.

More concretely, today the Court of Justice confirmed the Commission's approach that the intellectual property licences held by Apple's Irish subsidiaries and related profits should have been allocated to the Irish branches. And that Apple should have paid taxes worth 13 billion euros on all related profits in Ireland.

This means that the recovered taxes, which have been in an escrow account for quite some years in Ireland during the ongoing court proceedings, now must be released to the Irish State.

From the judgments that we have had already, some we have lost, and the little time we had to study today's decision, I see two main take-aways:

- First, even though the tax rulings do not escape EU State aid control, Member States have the exclusive competence to define their corporate taxation system.

- Second, the Commission can exercise control to avoid that undertakings receive unfair tax advantages through rulings that derogate from national law, domestic case law or administrative practice.
- Once Member States have exercised their fiscal sovereignty, the tax administration needs to abide by its own rules. The Commission carries the burden of proving that Member States deviated from their own parameters. This is what the Court has confirmed today in Apple case.

There is a bigger picture. Our investigations have decisively contributed to a mind shift, a change of attitudes among Member States. They have helped to trigger or accelerate regulatory and legislative reforms.

Take Ireland: Today, the Apple case could no longer occur. Ireland changed its corporate tax residence rules to prevent Irish incorporated companies from being stateless for tax purposes. But others also changed course.

In the wake of the Fiat investigation, Luxembourg adopted substantial changes to its legislation to ensure compliance with the arm's length principle. They also clarified the tax treatment of financing companies. Therefore, also the Fiat case could not reappear today.

In the Netherlands, tax ruling policy changed: Since 2019, the Netherlands adopted legislation to counter the use of shell companies to avoid or evade taxes. A company is now required to have a meaningful economic presence in the Netherlands to obtain a tax ruling.

In Cyprus, changes were made in 2013 and 2017 in the transfer pricing area: clearer rules as regards certain financial transactions, and the introduction of general transfer pricing principles, inspired by the OECD.

Beyond the specific legislative changes implemented by certain Member States, a set of more wide-ranging legislative initiatives have been taken in the last decade. These initiatives were pushed by the Commission and spurred by the momentum of the State aid investigations.

First, more fiscal transparency has been achieved through various amendments of the Directive on administrative cooperation in the field of taxation. Since 2017, the automatic exchange of tax rulings between Member States has decreased the use such arrangements for tax advantage purposes. Coordination of tax policies and more transparency help restore a level playing field for all companies.

Second, the OECD's anti-Base Erosion and Profit Shifting measures have been implemented by EU Member States thanks to the EU Anti-Tax Avoidance Directives. Right now, the Commission is in the process of checking the implementation of these Directives by Member States.

Third, the EU adopted the Directive on global minimum effective level of taxation (so-called "pillar 2", if one speaks OECD). Building on the work done at the OECD, this Directive introduced a minimum effective corporate tax rate of 15%.

Finally, the Commission adopted two legislative proposals: the first one aimed at fighting the use of shell entities and other arrangements for tax purposes. And more recently, one aiming to harmonise transfer pricing rules within the EU to ensure a common approach and a level playing field. Sadly, but maybe not too surprising, the discussions in the Council on these proposals are not progressing well.

As part of the European Semester and the implementation of the Recovery and Resilience Facility, the Commission is also discussing with certain Member States legislative reforms to tackle aggressive tax planning measures and harmful tax competition. For example, we do that with Malta and Cyprus.

Despite these efforts, and as you can hear this is quite a lot, the unfortunate side is that aggressive tax planning practices are still widespread. According to the Commission's Annual Reports on taxation but also according to other studies, few Member States (Ireland, the Netherlands, Luxembourg and Belgium) seem to be central when it comes to profit shifting. In 2022, multinationals' global corporate profits amounted to about 16 trillion US dollars. 2.8 trillion dollars of these profits were made outside of their headquarters, in other tax jurisdictions. And about half of that was shifted to low-tax countries – including countries within the European Union. The cost is high for European citizens.

Today marks a step forward. And it's encouraging. It is encouraging for us to do more. The Commission will continue its work on harmful tax competition and aggressive tax planning. Both in terms of legislative proposals and enforcement. We will implement what we have decided. I also invite Member States to advance on the Commission proposals on transfer pricing and the use of

shell companies. The Member States now hold the right of initiative to push this forward.

Our collective efforts in this field derive from one simple principle: fairness.

- *Fairness between small and big players*. All companies, whether big or small, whether digital or brick-and-mortar, they must all pay their fair share of taxes in proportion to their European profits.
- *Fairness between European countries*. It cannot be that some Member States allow "special deals" to attract certain companies by offering effective low corporate tax rates, whereas in other countries all companies pay their taxes.
- *And most importantly, social fairness*. Because when big businesses do not pay their share, the public purse is deprived of much needed funds. They are needed for our social security systems, our education systems, and our public infrastructure, to name just a few. These necessary public expenditures serve in part to foster market conditions that create prosperity for all. It is unfair if some companies, often those who derive the most profits from these market conditions, can then siphon these profits out and avoid contributing to the expenditures.

Our efforts in defending these principles need to continue at all levels – be it national, European or international.

Let me now turn to today's Google Shopping judgment – which we also won.

This judgment by the Court of Justice upholds the Commission's Google Shopping Decision. In that Decision, the Commission found that Google favoured, within its general search results, its own comparison-shopping service "Google Shopping", over those services provided by its rivals.

The Court of Justice confirms that, in certain circumstances, the favourable treatment of its own services by a dominant company can be a breach of Article 102 TFEU.

This important judgment validates the Commission's approach to such practices. We call them "self-preferencing".

Dominant companies, as any other companies, are of course free to innovate in all fields, but in doing so, they should compete on the merits. However, they cannot lean on the competitive advantage that they hold because of their market power. Going forward, the Commission will make sure that the principles enshrined in this judgement – which is now final – are upheld for the benefit of all European consumers.

The Google Shopping case is a landmark in the history of regulatory actions against big tech companies. It was one of the first significant antitrust cases brought by a competition agency against a major digital company. And I think this case marked a pivotal shift in how digital companies were regulated and also perceived.

Before this case, the prevailing belief was that digital companies should be left to operate freely. They were seen as innovators driving positive change and growth. However, the European Commission's decision to investigate and subsequently fine Google for abusing its market dominance in the comparison-shopping service sector challenged this notion.

This case was symbolic because it demonstrated that even the most powerful tech companies could be held accountable. No one is above the law. It inspired regulators and policymakers worldwide to scrutinize the activities of digital giants more closely. The Google Shopping case set a precedent and paved the way for further regulatory actions, including the Digital Markets Act (DMA) of the European Union.

In essence, the Google Shopping case was a catalyst for change, inspiring a more vigilant and proactive approach to regulating big tech and ensuring a fairer digital marketplace.

Thank you very much.

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