

# ESMA updates its Benchmarks Register

## Background

In accordance with Article 36 of the Benchmarks Regulation, ESMA started publishing the list of benchmark administrators and third country benchmarks on 3 January 2018 (ESMA's first working day of 2018). So far, ESMA has published the latest register information on its website daily (ESMA working days) and has made it available for download in csv format.

As of 7 September 2018, the public register interface has become available under <https://registers.esma.europa.eu/publication/> . As for all ESMA registers, the portal offers [machine-to-machine services](#) to large scale organisations, including a set of web services for retrieval of data maintained in ESMA Registers repositories. For more information, please refer to <https://registers.esma.europa.eu/publication/helpApp>

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## Mergers: Commission clears Apple's acquisition of Shazam

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Data is key in the digital economy. We must therefore carefully review transactions which lead to the acquisition of important sets of data, including potentially commercially sensitive ones, to ensure they do not restrict competition. After thoroughly analysing Shazam's user and music data, we found that their acquisition by Apple would not reduce competition in the digital music streaming market."*

Today's decision follows an [in-depth](#) investigation of Apple's proposed acquisition of Shazam. Apple operates "Apple Music", which is the second largest music streaming service in Europe, after Spotify. Shazam offers a leading music recognition application ("app") in the European Economic Area (EEA) and worldwide.

### **The Commission's investigation**

Apple and Shazam mainly offer complementary services and do not compete with each other. The Commission opened an in-depth investigation to assess:

- whether Apple would obtain access to commercially sensitive data about customers of its competitors for the provision of music streaming services in the EEA, and whether such data could allow Apple to directly target its competitors' customers and encourage them to switch to Apple Music. As a result, competing music streaming services could have been

put at a competitive disadvantage.

- considering Shazam's strong position in the market for music recognition apps, whether Apple Music's competitors would be harmed if Apple, after the transaction, were to discontinue referrals from the Shazam app to them.

The Commission undertook a wide range of investigative measures and received feedback from key market participants in the digital music industry, including providers of music streaming and music recognition services, as well as other stakeholders.

The Commission found that:

- the merged entity would not be able to shut out competing providers of digital music streaming services by accessing commercially sensitive information about their customers. In particular, access to Shazam's data would not materially increase Apple's ability to target music enthusiasts and any conduct aimed at making customers switch would only have a negligible impact. As a result, competing providers of digital music streaming services would not be shut out of the market;
- the merged entity would not be able to shut out competing providers of digital music streaming services by restricting access to the Shazam app. This reflects the fact the app has a limited importance as an entry point to the music streaming services of Apple Music's competitors; and
- the integration of Shazam's and Apple's datasets on user data would not confer a unique advantage to the merged entity in the markets on which it operates. Any concerns in that respect were dismissed because Shazam's data is not unique and Apple's competitors would still have the opportunity to access and use similar databases.

Therefore, the Commission concluded that the transaction would raise no competition concerns in the EEA or any substantial part of it. A merger decision does not release companies from respecting all relevant data protection laws.

## **Companies and products**

**Apple** is a US based global technology company which designs, manufactures and sells mobile communication, media devices, portable digital music players and personal computers. It also sells and delivers digital content online and offers the music and video streaming service "Apple Music".

**Shazam** is a UK based developer and distributor of music recognition applications for smartphones, tablets and PCs. It mainly generates revenues from online advertising, and commissions earned on referrals of users to digital music streaming and download services, such as Apple Music, Spotify and Deezer.

## **Referral request**

On 6 February 2018, the Commission [accepted a request](#) from Austria, France,

Iceland, Italy, Norway, Spain and Sweden to assess the acquisition of Shazam by Apple under the EU Merger Regulation. The proposed transaction was initially notified to Austria for regulatory clearance, as the transaction did not meet the turnover thresholds of the EU Merger Regulation. Austria submitted a referral request to the Commission pursuant to Article 22(1) of the EU Merger Regulation on 21 December 2017.

## **Merger control rules and procedures**

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

There are currently six on-going phase II merger investigations: the proposed [acquisition of Aurubis Rolled Products and Schwermetall by Wieland](#), the proposed [acquisition of MKM by KME](#), the proposed [acquisition of Gemalto by Thales](#), the proposed [acquisition of Alstom by Siemens](#), the proposed [acquisition of Solvay's nylon business by BASF](#) and the proposed [acquisition of Tele2 NL by T-Mobile NL](#).

More information will be available on the [competition](#) website, in the Commission's public [case register](#) under the case number [M.8788](#).

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## **Daily News 06 / 09 / 2018**

### **Pologne: l'UE investit 320 millions d'euros dans les infrastructures routières**

Plus de 255 millions d'euros du Fonds européen de développement régional (FEDER) vont être investis dans la construction d'un tronçon autoroutier entre les villes de Nowe Marzy, Świecie et Bydgoszcz, situées dans la partie centre nord de la Pologne, le long de l'autoroute S5. En outre, 64,6 millions d'euros du Fonds de cohésion vont permettre la construction d'une section d'autoroute entre les jonctions de Zakręt et de Lubelska de la route express S17 reliant Varsovie à Garwolin. La commissaire chargée de la politique régionale, Corina **Crețu**, a déclaré: *«Une fois achevées, ces autoroutes offriront de nouvelles opportunités économiques aux citoyens et aux entreprises en Pologne, stimulant l'industrie, le tourisme et les échanges commerciaux. Les citoyens polonais pourront ainsi bénéficier de temps de*

*parcours plus courts et d'une sécurité routière renforcée.» Les travaux dans le cadre des deux projets devraient être achevés en 2020. Des investissements européens sur ces deux routes ont déjà été faits: sur l'autoroute S5 – un élément central du réseau transeuropéen de transport [RTE-T](#), l'Union européenne a déjà investi plus de 740 millions d'euros pour la période 2014-2020, tandis que les travaux sur l'autoroute S17 sont entrepris dans le cadre d'un investissement global de plus de 480 millions d'euros. (Pour plus d'informations: Johannes Bahrke – Tél.: +32 229 58615, Andreana Stankova – Tél.: +32 229 57857)*

### **Mergers: Commission clears acquisition of Pret A Manger by JAB**

The European Commission has approved, under the EU Merger Regulation, the acquisition of PAM Group Limited (“Pret A Manger”) of the UK, by JAB Holdings B.V., controlled by JAB Holding Company S.à r.l. (“JAB”), of Luxembourg. Pret A Manger is a food and drink retailer. JAB holds interests in tea and coffee brands (including Jacobs, Douwe Egberts and Tassimo) and coffee and doughnut retailers (including Krispy Kreme Doughnuts, Espresso House and Balzac Coffee). The Commission concluded that the proposed acquisition would raise no competition concerns in the UK, Denmark and the Netherlands, given the companies’ limited overlap in food and drink retail, the fact that they are not close competitors, and the presence of a large number of competitors. The potential vertical relation between JAB’s wholesale and Pret A Manger’s retail coffee sales does not raise competition concerns either, due to the minimal presence of Pret A Manger in countries where JAB is strong. The transaction was examined under the normal merger review procedure. More information is available on the Commission’s [competition](#) website, in the public [case register](#) under the case number [M.9010](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Giulia Astuti – Tel.: +32 229 55344)

### **Preparation of the Eurogroup and informal ECOFIN meetings, 7-8 September 2018**

Vice-President Valdis **Dombrovskis**, Vice-President Jyrki **Katainen** and Commissioner Pierre **Moscovici** will represent the Commission at the Eurogroup and informal ECOFIN meeting taking place this Friday and Saturday in Vienna. Tomorrow’s Eurogroup meeting will give ministers the opportunity to have an exchange of views with the Chair of the European Parliament’s Committee on Economic and Monetary Affairs, Roberto Gualtieri MEP. They will also have a thematic discussion on allocative efficiency in labour and product markets. Ministers will then be updated on the 8<sup>th</sup> post-programme surveillance of Portugal. Finally, the Eurogroup will meet in an inclusive format to discuss the deepening of Europe’s Economic and Monetary Union – in particular the proposed common backstop to the Single Resolution Fund. Commissioner **Moscovici** will participate in the press conference following the meeting. The first item on the agenda of the ECOFIN starting on Friday afternoon, will be a debate on the achievements and future of the European Investment Bank. This will be followed by a discussion on the implications of increasing interest rates on financial stability as well as the economic potential and risks of cryptoassets and cryptocurrencies. A press conference with Vice-President **Dombrovskis** will follow this first session. The informal ECOFIN meeting continues on Saturday morning where the agenda starts with a discussion on the relevant aspects of the Commission’s recent proposals for the next EU

budget. In particular, ministers will discuss in the presence of Vice-President **Katainen** the [InvestEU programme](#) which aims to bring together under one roof the multitude of EU financial programmes currently available, triggering investment of more than €650 billion, as well as the Commission's proposal to support structural reforms in Member States. Finally, finance ministers will discuss the way forward on the Commission's proposals [to ensure that digital business activities are taxed](#) in a fair and growth-friendly way in the EU. A press conference with Vice-President **Dombrovskis** also follows this second session of the meeting. (*For more information: Christian Spahr – Tel.: +32 229 50055; Johannes Bahrke – Tel.: +32 229 58615; Annikky Lamp– Tel.: +32 229 56151; Letizia Lupini – Tel.: +32 229 51958; Patrick McCullough – Tel.: +32 229 87183*)

[Upcoming events](#) of the European Commission (ex-Top News)

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## [Volatility spikes underline fragilities and risks to EU securities markets and investors](#)

The TRV, which covers the first half of 2018, finds that overall risk levels for the EU's securities markets remained stable but at high levels for most risk categories. Equity and bond volatility spikes in February and May reflected the growing sensitivities. ESMA also sees a deterioration in outstanding corporate debt ratings, and in corporate and sovereign bond liquidity.

The TRV identifies the following key risks in EU securities markets:

- **Market risk** remains at a very high level accompanied by very high risk in securities markets and elevated risk for investors, infrastructures and services. The outcome of the Brexit negotiations remains at this stage the most important political risk for the EU;
- **Credit risk** and **liquidity risk** remains high with a deterioration in outstanding corporate debt ratings, and deteriorating measures of corporate and sovereign bond liquidity; and
- **Operational risk** continues to be elevated with negative outlook, as cyber threats and Brexit-related risks to business operations remain major concerns.
- **Outlook:** Going forward, EU financial markets can be expected to become increasingly sensitive to mounting economic and political uncertainty from diverse sources, such as weakening economic fundamentals, transatlantic trade relations, emerging market capital flows, Brexit negotiations, and others.

Assessing business exposures and ensuring adequate hedging against these risks will be a key concern for market participants in the coming months.

Finally, investor risks persist across a range of products. Under the MiFIR product intervention powers, ESMA restricted the provision of contracts for differences (CFDs) and prohibited the provision of binary options to retail investors. The new measures started to apply from 1 August 2018 and 2 July 2018, respectively.

### **Next steps**

The TRV is published biannually, and examines the performance of securities markets, assessing both trends and risks in order to develop a comprehensive picture of systemic and macro-prudential risks in the EU, to assist both national and EU bodies in their risk assessments. ESMA also updates its Risk Dashboard every quarter.


ESMA's TRV contributes to promoting financial stability and enhancing consumer protection by regularly looking into cross-border and cross-sector trends, risks and vulnerabilities, both at the wholesale and retail level.

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## **[European travel information and authorisation system \(ETIAS\): Council adopts regulation](#)**

European Travel Information and Authorisation System

### **Infographic – Security controls when arriving and leaving the Schengen area**

 [See full infographic](#)

On 5 September 2018 the Council adopted a regulation establishing a European travel information and authorisation system (ETIAS).

ETIAS is an important tool to reinforce the control of the EU's external border and the protection of our citizens. It will allow to identify those who may pose a security threat before they reach the European Union and deny them the authorisation to travel.

*Herbert Kickl, Minister of the Interior of Austria*

ETIAS will allow for advance checks and, if necessary, deny travel

authorisation to visa-exempt third-country nationals travelling to the Schengen area. It will help improve internal security, prevent illegal immigration, protect public health and reduce delays at the borders by identifying persons who may pose a risk in one of these areas before they arrive at the external borders.

## **Functioning of the system**

The system will apply to visa-exempt third country nationals. They will need to obtain a travel authorisation before their trip, via an online application. For each application, the applicant will be required to pay a travel authorisation fee of 7 euros.

The information submitted in each application will be automatically processed against EU and relevant Interpol databases to determine whether there are grounds to refuse a travel authorisation. If no hits or elements requiring further analysis are identified, the travel authorisation will be issued automatically and quickly. This is expected to be the case for most applications.

If there is a hit or an element requiring analysis, the application will be handled manually by the competent authorities. In this case, the ETIAS central unit will first check that the data recorded in the application file corresponds to the data triggering a hit. When it does or where doubts remain, the application will be processed manually by the ETIAS national unit of the responsible member state. The issuing or refusal of an application which has triggered a hit will take place no later than 96 hours after the application is submitted or, if additional information has been requested, 96 hours after this information has been received.

Before boarding, air carriers and sea carriers will need to check whether third country nationals subject to the travel authorisation requirement are in possession of a valid travel authorisation. From three years after the entry into operations of ETIAS this obligation will also apply to international carriers transporting groups overland by coach.

The travel authorisation will not provide an automatic right of entry or stay; it is the border guard who will take the final decision.

A travel authorisation will be valid for three years or until the end of validity of the travel document registered during application, whichever comes first.

## **Next steps**

The Council and the European Parliament now need to sign the adopted regulation. The signed text will be published in the EU Official Journal and will enter into force 20 days later. eu-LISA, is expected to start building the new system, which should be operational by 2021.

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