17 November 2014

European Commission
Directorate-General for Competition
State aid Registry
1049 Brussels
Belgium
Fax No: + 32 22961242
E-mail: stateaidgreffe@ec.europa.eu

Re: SA.38373 - Alleged aid to Apple

Dear Sirs:

These comments are submitted to the European Commission ("Commission") by the undersigned independent trade associations, described in the attached statements, which together include hundreds of companies as members, in response to the Commission's invitation to submit comments in relation to the decision to initiate the in-depth investigation in case SA.38373 - Alleged aid to Apple, published in the Official Journal of the European Union on 17 October 2014 (OJ C 369/22).

Our member companies are committed to meeting their legal obligations to pay the correct amount of tax. We invest heavily in the EU, significantly contribute to economic well-being in the EU, and are substantial contributors of both direct and indirect tax revenues across the EU. We do not desire to comment on the specificities of this particular case, especially because we do not have the full picture. Our comments are applicable and relevant to all the announced cases in which the Commission is investigating advance tax rulings provided by tax authorities to individual companies.

Our comments address the wider worrying implications of the opening decision for stakeholders and some important new enforcement trends that the opening decision in this case seems to suggest, both of which impact companies and countries far beyond the individual taxpayers and countries involved in these announced cases. An important prerequisite for economic investment is a stable legal and tax environment. The opening decision creates legal and tax uncertainty for all taxpayers. Such uncertainty adversely impacts the attractiveness of the EU for economic investment.

We are concerned at the prospect that the State aid mechanism might be used to seek recovery from companies that have relied upon tax rulings issued by Member States under circumstances where both the taxpayer and tax authority involved were operating in good faith, trying to arrive at a proper application of the governing rules of the relevant national tax law as those rules were reasonably interpreted at the time, without any intention to seek or grant selective benefits based on deviations from those rules. A taxpayer should be able to rely on such rulings. Accordingly, we believe that care must be exercised to ensure that the Commission's pursuit of its State aid policy does not unduly undermine the legitimate goals of efficient tax administration and taxpayer certainty which depend upon the ability of tax authorities and taxpayers to come to common resolutions of questions about the proper application of tax laws to particular facts, whether through advance ruling programs or other administrative measures. This is particularly the case in the field of transfer pricing, which by its nature is fact specific and can result in a range of acceptable outcomes.

We believe the Commission should refrain from asserting unprecedented State aid claims on a retroactive basis, particularly where that would undermine the legitimate expectations of taxpayers who made investment decisions in good faith reliance upon the validity of rulings they obtained from Member State tax authorities.

Our concerns are explained in more detail in the Appendix to this letter.

We would be pleased to engage in a dialogue with Commission staff so as to assist, if possible, the Commission to refine its approach.

We also request the opportunity of a meeting to discuss the concerns expressed in this letter.

Respectfully submitted,

Information Technology Industry Council (ITI)
www.itic.org

National Foreign Trade Council (NFTC)
www.nftc.org

Semiconductor Industry Association (SIA)
www.semiconductors.org

Silicon Valley Tax Directors Group (SVTDG)
www.svtdg.org

Software Coalition

Software Finance and Tax Executives Council (SoFTEC)

TechAmerica
www.techamerica.org

TechNet
www.technet.org

Cc: Commissioner M. Vestager, DGCOMP

APPENDIX

THE COMMISSION'S STATE AID APPROACH PRESENTS CONSIDERABLE PROBLEMS

1. We acknowledge the importance of the State aid concept to the proper functioning of the Union's Internal Market and recognize that State aid principles extend to aid provided through tax systems, potentially including grants of aid in the form of tax rulings and other tax administrative actions. As such, we do not question the legal entitlement of the Commission to review Member States' tax rulings, Advance Pricing Arrangements ("APAs"), and other tax administrative practices against the requirements of the State aid principles.

2. That being said, State aid rules may be employed legitimately only to remedy distortions of competition as a result of a Member State's granting, in derogation of its general taxation policy and practice, a particular advantage to certain taxpayers. State aid rules do not authorize the Commission to impose its own views on the application of national tax rules (including those relating to transfer pricing) that are part of the normal practice of a Member State. To the contrary, the Treaty on the Functioning of the European Union prohibits precisely such intervention and guarantees the freedom of Member States with respect to direct taxation, and the Commission cannot use State aid rules to interfere with this freedom.

3. The Commission is taking an unprecedented approach to transfer pricing inconsistent with these foundational principles. If it interferes with the margin of discretion that national tax authorities have by substituting its own views as to what the transfer pricing should be in any given case, and without showing selectivity, it would be usurping the sovereign powers of the Member States in the area of direct taxation.

4. If the Commission wishes to establish a policy in the area of direct taxation, it should not do so by attempting to use the application of State aid law for that purpose and on a retrospective basis, but rather should do so in the appropriate, legislative manner in accordance with the Union's founding treaties.

5. In addition, there are other Internal Market policy considerations that should be taken into consideration in determining how to advance State aid objectives.

6. In particular, care should be taken not to undermine unduly the legal certainty and predictability that are the key goals of tax ruling and similar administrative mechanisms, particularly in the challenging area of transfer pricing and profit allocation.

7. As the Commission's own website acknowledges, its study entitled "*Company Taxation in the Internal Market*" (SEC(2001) 1681):

> *identified the increasing importance of transfer pricing tax problems as an Internal Market issue: although all Member States apply and recognise the merits of the OECD "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations", the different interpretations given to these Guidelines often give rise to cross border disputes which are detrimental to the smooth functioning of the Internal Market and which create additional costs both for business and national tax administrations.*

8. Both the OECD and the European Commission encourage certainty in transfer pricing through the conclusion of APAs. See OECD Transfer Pricing Guidelines Chapter IV, Section F and Annex to Chapter IV. In a Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee (COM(2007) 71 final), the Commission indicated that:

> *The existence within the EU of different sets of national transfer pricing rules laying down that transactions between taxpayers under common shareholder control should be taxed as if they had taken place between independent taxpayers undermines the proper functioning of the internal market and represents a large administrative burden on taxpayers . […] This […] Communication therefore has as its main objective to prevent transfer pricing disputes and associated double taxation from arising in the first place by introducing Guidelines for Advance Pricing Agreements (hereafter: "APAs") within the EU. […] The [EU Joint Transfer Pricing Forum] examined the pros and cons of APAs in depth and concluded that there were significant advantages for taxpayers and tax administrations that can arise from APAs. First amongst these are the certainty over the taxation treatment of the transactions in the APA – a certainty enjoyed by both the tax administrations (which no longer have to conduct an audit to establish the correct transfer pricing; it is only the correct application of the APA that has to be checked) and the taxpayers (who know how to establish the correct transfer pricing since this has been agreed between the tax administrations involved.)*

9. More than 40 countries around the world now have APA programs in place, including the majority of EU Member States.[1] Many of these countries (including a number of EU Member States as well as Australia, China, Mexico, the United States, and others) offer unilateral APAs to provide certainty where bilateral or multilateral APA negotiations would not be

[1] For example, APA programs exist in Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and the United Kingdom.

possible or feasible within a reasonable timeframe. APA programs encourage open discussion between taxpayers and tax authorities and result in agreements only when there is mutual satisfaction with the facts and analysis. APAs have been a major source of amicable resolution of difficult transfer pricing issues in many countries, and governments tend to value the incentive they give to taxpayers to come forward and disclose their facts in order to arrive at a mutual agreement on the transfer pricing for that particular fact pattern. Using the State aid process to challenge such agreements undermines that incentive.

Importance of Legitimate Expectations and Legal Certainty

10. Legitimate expectations and legal certainty and predictability are at the heart of every tax regime, and APAs and similar mechanisms are critical to achieving those objectives. Uncertainty discourages investment, especially where investments are not recouped within a short period of time (as in the case of manufacturing and supply chain investments, R&D investments, shared service centres, etc.). State aid policy should not be applied to undermine the certainty and predictability provided by such programs.

11. Second guessing Member States' rulings and APAs would undercut the ability of companies to obtain certainty up front when making decisions about investments in Europe, particularly where the examination into the rulings occurs years after their issuance. This is especially the case because companies cannot seek approval from the European Commission of any advance tax ruling they obtain. These concerns are particularly acute in the area of transfer pricing, which is acknowledged not to be an "exact science" and the sophistication in the application of which has evolved considerably over time. We note that the European Court of Justice has held that where national tax authorities have a certain margin of discretion that is limited by objective criteria, which is typically the case regarding the conditions under which APAs can be granted, this does not give rise to EU State aid law concerns in the absence of clear advantages being conferred.[2]

12. State aid investigations that call into question the validity of rulings issued under circumstances where both the taxpayers and tax authorities involved were operating in good faith under the best understanding they had at the time of the governing principles of the national law being applied, without any intention to seek or grant selective benefits deviating from those principles, pose a substantial risk of creating a pall over tax ruling processes generally. Moreover, a taxpayer has no capacity to evaluate whether selectivity exists. This

[2] Case C-6/12, *P Oy*, judgment of 18 July 2013, paragraphs 24-27 ("*degree of latitude limited by objective criteria which are not unrelated to the tax system established by the legislation in question*", paragraph 26).

could deal a serious blow to efficient tax administration and to legitimate investment decisions, which should be avoided except where the State aid violations are clear and undeniable. If the Commission wishes to advance State aid precedent in the tax area, it should focus on cases that raise clear State aid problems and should not challenge good faith agreements where the existence of a State aid violation is a matter of legitimate doubt, nor allow its actions to be influenced by extraneous tax policy debates. At a minimum, in the case of a taxpayer who was unaware of selectivity, any measure in response to State aid should be prospective in nature.

13. We also note in this context that the Commission appears to suggest at footnote 23 of the opening decision that taxpayers may be benefitting from State aid in the absence of a tax ruling, which creates additional uncertainty regarding how taxpayers may ascertain whether or not they run the risk of receiving potentially incompatible State aid. Particularly if the Commission intends to push State aid policy boundaries by challenging good faith applications of existing national law in areas like transfer pricing, which require the use of judgment in their application, this statement is a cause for concern, as it suggests that not only rulings but every audit interaction between taxpayers and tax authorities will be potentially subject to second-guessing years later by the Commission. In the absence of clear criteria for what does and does not constitute State aid in such an area, and in the face of concerns that the Commission's State aid actions may themselves be somewhat selective in their application, such statements threaten to seriously undermine the regular functioning of day-to-day tax administration practices, which require routine exercises of discretion by taxpayers and tax authorities to settle questions arising upon audit.

14. The protection of legitimate expectations is a fundamental and integral principle of EU law and essentially requires that the law should not differ from what can reasonably be expected or foreseen. Even if the application of the State aid rules were the appropriate manner to achieve harmonised rules in the area of direct taxation—and under the Treaty on the Functioning of the European Union it plainly is not—the Commission would, on the basis of the principle of protection of legitimate expectations, be precluded from seeking recovery.

15. We believe the finding of illegal State aid should be applied prospectively to annul the agreement and force a renegotiation between the Member State and the company. However, if you find recovery is essential, given the State aid examination is initiated by the Commission against the Member State, any recovery of illegal State aid should be paid by the

offending Member State,[3] not the company which is the subject of the investigation. Otherwise, there would be no repercussions to the offending Member State for issuing rulings that distort competition and have the potential to affect trade between Member States. If Member States are free to issue rulings that result in significant economic benefit to the potential detriment of other Member States and have no risk to repay the illegal State aid, then what would be the deterrent for that Member State, or others for that matter, to issue the same or similar rulings in the future?

16. The conditions for determining whether a measure qualifies as State aid are complex and can be difficult to apply in practice. As a result, considerable uncertainty may remain as to whether a particular measure constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and whether it needs to be notified by the Member State to the Commission for State aid approval. Such uncertainty can give rise to legitimate expectations that the particular measure at issue does not satisfy the criteria for State aid and so does not require notification. This general principle has been recognised by Advocate General Jacobs in his opinion in the *SFEI* case, where he expressed doubt that a diligent businessman ought to have realised that the measure at issue constituted State aid, since it was not one which self-evidently constituted State aid.[4] Furthermore, as noted by the Commission in the *France Télécom* case, "*the doubts with which some undertakings may be assailed, when faced with 'atypical' forms of aid, as to whether notification is necessary should not be made light of.*"[5] In situations where the Commission is pursuing State measures for the first time, which are not, on their face, easily identified as State aid, the Commission has previously determined that recovery would not be appropriate as it would be contrary to the beneficiary's legitimate expectations. For instance in the *France Télécom* decision, the Commission examined for the first time the issue of "*psychological aid*" in the form of declarations designed to restore confidence on the market.[6] The Commission recognised that this was a novel approach and that the proposal of the French Minister to provide a shareholder loan to France Télécom by itself, absent any declarations from the State

3 The repayment of illegal State aid if paid to the EC could be retained to fund further investigations or returned to all the Member States in some equitable fashion.

4 Opinion of AG Jacobs in Case C-39/94, *Syndicat français de l'Express international (SFEI) and Others v La Poste and Others*, [1996] ECR I-3547, paragraphs 73-77.

5 Commission Decision 2006/621/EC on the State aid implemented by France for France Télécom [2006] OJ L 257/11, paragraph 263, relying on opinion of AG Darmon in Case C-5/89, *Commission v Germany*, 1990 ECR I-3437.

6 Commission Decision 2006/621/EC on State aid implemented by France for France Télécom [2006] OJ L 257/11. The Commission considered that an (unaccepted) EUR 9 billion loan offer to France Télécom by a French agency qualified as State aid since it reassured the financial markets and created expectations that enabled France Télécom to maintain its credit rating. This decision was recently annulled in the Court's judgment in Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04, *France and Others v Commission*, judgment of 21 May 2010, not yet reported, on account of the Commission not having established an aid in the first place, not on the issue of legitimate expectation or because recovery should have been ordered.

authorities, would "*probably not have constituted aid under the Treaty*".[7] Since the circumstances surrounding this aid were unusual, and it had not previously found that such offers and statements could support a finding of State aid, the Commission decided not to order recovery. It was legitimate for France Télécom to have confidence in its expectation that France's conduct did not constitute State aid.[8]

17. A reasonable and diligent taxpayer could not be expected to have foreseen the Commission finding that lawfully obtained tax rulings obtained pursuant to the generally applicable laws of an EU Member State could give rise to a Commission finding of incompatible State aid. In addition, there is no prior decisional practice or policy of the EU institutions that would have indicated that APAs or similar rulings lawfully obtained under an EU Member State's generally applicable tax law could be later interpreted by the Commission as a measure which infringes the EU State aid rules. As in *France Télécom*, the Commission is seeking to apply the State aid rules to a new type of alleged State aid measure, certain rulings which are not easily identifiable as State aid on their face, and so taxpayers should be considered by the Commission to have legitimate expectations that their rulings are not State aid before the Commission has established its new policy.

18. Recently, the Commission again recognized legitimate expectation and the principle of legal certainty, and it should do so also with respect to APAs and similar rulings. In its decision of 17 July 2013 on the Spanish Tax Lease System,[9] the Commission recognized the principle of legal certainty in the area of State aid. The Commission found that Spain had unlawfully put into effect the aid scheme since 1 January 2002 but explicitly stated that it "*should not order the recovery of aid resulting from [the Spanish Tax Lease system, 'STL'] between the entry into force of the STL in 2002 and 30 April 2007, the date of publication of the Decision concerning Case C-46/2004 France GIE Fiscaux*",[10] as "*in view of the complexity of the measures at hand, the Commission cannot rule out that legal uncertainty may have been created by the 2001 Decision on Brittany Ferries, as alleged by Spain and the recipients, regarding the classification of the STL as aid. But this can only have been the case until the publication in the Official Journal on 30 April 2007 of the Commission Decision on the French GIE Fiscaux, where the Commission established that that scheme constituted State aid*."[11] Accordingly, the Commission only requested recovery of the aid granted after its

7 *Ibid.*, paragraph 263.
8 *Ibid.*, paragraphs 263-264.
9 Commission Decision 2013/4426. SA.21233 C/11 (ex NN/11, ex CP 137/06) concerning an aid scheme implemented by Spain and applicable to certain finance lease agreements ("the Spanish Tax Lease System", [2014] OJ L 114/1.
10 *Ibid.*, paragraph 261.
11 *Ibid.*

Decision of 30 April 2007, as "*beyond that date, ordering the recovery would not breach the general principles of protection of legitimate expectations and legal certainty enshrined in European Union law.*"[12] *A contrario,* should recovery have been ordered of the aid granted before the Commission Decision of 30 April 2007, in a period marked by legal uncertainty regarding the classification of the measures as aid, the protection of legitimate expectation and legal certainty would have been breached.

19. In the present case, SA.38373, the Commission seeks to apply State aid law to a profit allocation ruling, a national measure of direct company taxation, an area in which EU Member States remain competent. In the absence of harmonised EU rules, it is the sovereign right of the Member States to organise their direct taxation system as deemed fit, provided they act in accordance with EU Law.

20. So should the Commission legitimately decide that a measure of generally applicable direct taxation constitutes State aid where it has not previously done so, the Commission is in fact developing new State aid policy. The Commission should thus accept that its previous consistent *in*action gives rise to legitimate expectations. As was held by the European Court of Justice, inaction or the "*Commission's delay in giving the contested [State aid] decision could (…) establish a legitimate expectation on the applicant's part.*"[13]

21. The principle of legal certainty, also well established in Union law, requires that the "*legal rules be clear and precise and aims to ensure that situations and legal relationships governed by Community law remain foreseeable".*[14] It also militates against recovery of alleged aid potentially arising in the context of APAs and similar rulings unless the Commission has clearly formulated its related policy or established precedents.

22. For instance, as in the *Hungarian Postbank* decision,[15] where the Commission declined to order recovery of the aid in question on the basis that it would contravene the principle of legal certainty, the Commission considered that in the absence of clear and transparent criteria relating to the concept of aid applicable after accession with regard to guarantees and indemnities, operators may not have been in a position to foresee that State indemnities for

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12 *Ibid.*

13 Case C-223/85, *Rijn-schelde-Verolme (RSV) Machinefabrieken en Scheepswerven NV v Commission* [1987] ECR I-04617, para. 17.

14 Case T-177/07, *Mediaset SpA v Commission*, judgment of the General Court of 15 June 2010 (not yet reported), paragraph 179. See also Joined Cases C-74/00 and C-75/00, *Falck SpA and Acciaierie di Bolzano SpA v Commission* [2002] ECR I-7869, paragraph 140; Case C-199/03, *Ireland v Commission*, [2005] ECR I-8027, paragraph 69; and Case T-308/05, *Italian Republic v Commission*, [2007] ECR II-5089, paragraph 158.

15 Commission Decision of 21 October 2008 on measure C 35/04 implemented by Hungary for Postabank and Takarékpénztár Rt./Erste Bank Hungary Nyrt.[2009] O.J. 62/14.

unknown claims granted before accession would be regarded as aid applicable after accession. Furthermore, the guidelines on the concept of applicability after accession with regard to guarantees and indemnity undertakings were only clarified gradually over time.[16] On this basis, the Commission concluded that it would *"seem unreasonable to require recovery in respect of aid that was granted at a time when the Commission's guidelines […] had not fully been clarified and yet may have given the misleading impression of being complete"*.[17]

23. This is analogous to the present case. Given the novel nature of the State aid measure at issue and the fact that there was nothing in the EU institution's prior decisional practice to indicate that APAs or similar rulings could be interpreted as giving rise to incompatible State aid, taxpayers reasonably believed that they could rely on the lawful application of their rulings in the past.

Retroactive Recovery is Very Problematic

24. The Commission is indicating that it thinks "*underpaid tax*" plus interest may have to be recovered by Member States from the individual taxpayers concerned (who have, of course, done no more than comply with validly obtained rulings) in cases such as the present. The exposure is potentially significant, though the Commission gives no indication of how it should be calculated. APAs and similar rulings involve appreciable judgment exercised by the tax authorities concerning the application of transfer pricing principles, which are by no means an exact science and which typically allow for a range of acceptable results (see OECD *Transfer Pricing Guidelines*, paragraphs 1.13 and 3.55-3.66). Although in theory one could conceptualise what the selective advantage could be, it appears very difficult to determine what should be the applicable methodology to calculate the quantum of such advantage, let alone, the quantum of such advantage for the purposes of recovery. It is very difficult and, at the end of the day, not desirable for the Commission to become a tax authority and go back in time so as to, essentially, issue a tax ruling itself. The European Commission does not have the resources or the necessary expertise to do so. It is indeed the case that the Commission is not obliged to determine the precise amount of aid to be recovered where its calculation required factors laid down by national regulation to be taken into account. But the Commission's decision must leave no room for doubt as to the measures which constituted

[16] *Ibid.*, paragraphs 105-112. See also, Commission Decision 2007/256/EC of 20 December 2006 on the aid scheme implemented by France under Article 39 CA of the General Tax Code, [2007] OJ L 112/41, paragraphs 186 et seq., where the Commission declined to seek recovery on the basis that it would contravene legal certainty since prior Commission decisions indicated that the measure at issue would have been lawful.

[17] Commission Decision of 21 October 2008 on measure C 35/04 implemented by Hungary for Postabank and Takarékpénztár Rt./Erste Bank Hungary Nyrt.[2009] O.J. 62/14, paragraph 111.

the aid in question, as to the period in which those measures were taken, and as to the parameters for establishing the aid amount. In the case of APAs and similar rulings it is difficult to see how the Commission can leave no doubt without replacing the exercise of judgment by the national tax authorities with its own. This is inappropriate and shows that what is needed, first and foremost, is that the Commission clearly establish its State aid policy in this area, so that EU Member States, national tax authorities and taxpayers understand how to issue and obtain APAs and similar rulings that do not run a risk of entailing incompatible State aid.

25. An order for recovery of some alleged benefit from a ruling of the type that underpins much of international tax compliance is more than business as usual – it is a coach and horses through legal and tax certainty.

26. Given the legitimate expectations created by such rulings and broader policy choices of a given Member State, recovery cannot cover periods before a final decision which sets out the way taxes should properly be calculated. In other words, before it can begin to seek recovery, the Commission must issue a decision which clearly and unequivocally lays down the new law of the land, at least according to the Commission, and explains when the Commission considers APAs and similar rulings to be objectionable under its new EU State aid policy.

Concluding observations

27. As a final comment, we are troubled that the Commission is attempting to expand State aid challenges into the direct tax area. We note that the European Court of Justice has consistently held that direct taxation falls within the competence of the EU Member States. This also logically follows from the Treaty on European Union and the Treaty on the Functioning of the European Union.[18] Direct taxation is thus a competence not conferred on the Union but resting within the sovereign competence of the Member States.

28. If the Commission wishes to establish a policy in the area of direct company taxation, it should do so in the appropriate, legislative manner on a prospective basis and in accordance with the Union's founding treaties,[19] and not by attempting to use the application of State aid law for that purpose.

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[18] Article 4 Treaty on European Union stipulates that "*competences not conferred upon the Union in the Treaties remain with the Member States.*" Neither Article 3 or Article 4 of the Treaty on the Functioning of the European Union, nor Article 6 of the Treaty on European Union mentions direct taxation as a competence of the European Union.

[19] See, Article 115 or Article 352 of the Treaty on the Functioning of the European Union.

Information Technology Industry Council

November 17, 2014

The Information Technology Industry Council (ITI) is the premier advocacy and policy organization for the world's leading innovation companies. ITI navigates the constantly changing relationships between policymakers, companies, and non-governmental organizations. ITI engages in policy advocacy and provides creative solutions that advance the development and use of technology around the world. ITI matches its members' breakthrough innovations with cutting-edge approaches to help people and governments better understand our members and the work they do.

The Information Technology Industry Council shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Miguel A. Martínez Jr.
Director of Government Affairs & Tax Counsel
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NATIONAL FOREIGN TRADE COUNCIL, INC.

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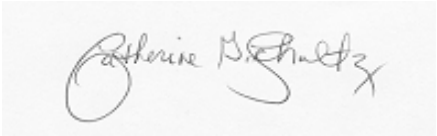
November 17, 2014
National Foreign Trade Council

The NFTC, founded in 1914, is the oldest U.S. business association dedicated to international tax, trade, and human resource matters. The NFTC's approximately 250 members, representing the largest U.S. companies, are active advocates of free trade and a rules-based economy. The NFTC's emphasis is to encourage policies that will expand U.S. exports and enhance the competitiveness of U.S. companies by eliminating major tax inequities in the treatment of U.S. companies operating abroad.

The National Foreign Trade Council shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,



Catherine G. Schultz
Vice President for Tax Policy
cschultz@nftc.org

SIA SEMICONDUCTOR INDUSTRY ASSOCIATION

November 17, 2014

The Semiconductor Industry Association, SIA, is the voice of the U.S. semiconductor industry, one of America's top export industries and a bellwether measurement of the U.S. economy. Semiconductor innovations form the foundation of America's $1.1 trillion technology industry affecting a U.S. workforce of nearly 6 million.

Founded in 1977 by five microelectronics pioneers, SIA unites both manufacturers and designers, accounting for over 80 percent of U.S. semiconductor production. SIA seeks to strengthen U.S. leadership of semiconductor design and manufacturing by working with Congress, the Administration and other key industry groups to promote policies and regulations that fuel innovation, propel business and drive international competition in order to maintain a thriving semiconductor industry in the United States.

SIA shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Joe Pasetti
Director, Government Affairs
jpasetti@semiconductors.org

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TAX DIRECTORS GROUP

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November 17, 2014

The SVTDG is composed of leading high-technology companies with corporate offices predominantly located in the area between San Francisco and San Jose, California (widely known as the "Silicon Valley"). The SVTDG was formed in 1981 and now has 78 companies as members (a list is available at http://www.svtdg.org/members.php). The members of SVTDG have over $1 trillion in annual revenue.

The purpose of the SVTDG is to promote sound long-term tax policies that support competitiveness. Members of this group believe that tax policies should enhance opportunities for investment, productivity, and growth by encouraging and rewarding enterprises that innovate and develop goods and services that meet global market standards. The companies represented by the group are dependent on research and development in order to remain on the cutting edge of technology innovation and compete in the global market place.

The SVTDG shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Jeffrey K. Bergmann
Co-Chair, Silicon Valley Director's Group

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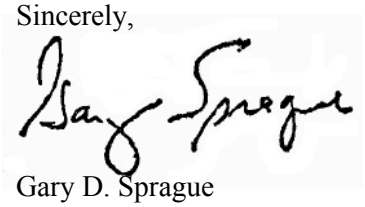
November 17, 2014

The Software Coalition is the leading software industry group dealing with domestic and international tax policy matters. The Coalition was formed in 1990 and now comprises 25 companies which operate in the software and e-commerce sectors, with headquarters both inside and outside the United States. Software Coalition members account for approximately $400 billion per year in total gross revenue and $50 billion per year in total R&D spend. Member companies employ over 1.1 million individuals around the globe.

From its inception, the Coalition has provided analysis and support to its members, national tax administrations and international organizations on matters of international tax policy of importance to the software and e-commerce industries. The Coalition has been involved over the years in commenting on the development of transfer pricing policy and practices around the world, in particular through work with the OECD.

The Software Coalition shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,



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SoFTEC

Software Finance & Tax Executives Council

www.softwarefinance.org

November 17, 2014

European Commission
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Re: SA.38373 - Alleged aid to Apple

To whom it may concern:

The Software Finance and Tax Executives Counsel ("SoFTEC") is a trade association providing software industry focused public policy advocacy in the areas of tax, finance and accounting. Because its member companies sell their products worldwide and thus have tax liabilities in many countries, they have an interest in certainty and predictability regarding advance tax agreements they may reach with tax administrators in those countries.

SoFTEC shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Mark E. Nebergall
President
Software Finance and Tax Executives Council

TechAmerica
Powered by CompTIA

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Washington, DC 20002

TechAmerica.org
CompTIA.org

November 17, 2014

TechAmerica is the public sector and public policy department of CompTIA, advocating before decision-makers at the state, federal and international levels of government. Representing technology companies of all sizes, TechAmerica is committed to expanding market opportunities and driving the competitiveness of the U.S. technology industry around the world. With offices on Capitol Hill and in Northern Virginia, Silicon Valley and Europe, as well as regional offices around the U.S., we deliver our members top-tier business intelligence and networking opportunities on a global scale.

TechAmerica shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Executive Vice President, Public Advocacy
TechAmerica, powered by CompTIA

TechNet

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November 17, 2014

TechNet is the national, bipartisan network of CEOs and senior executives that promotes the growth of the technology industry by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership of over 60 companies includes dynamic startups to the most iconic companies on the planet and represents more than two million employees in the fields of information technology, biotechnology, green tech, e-commerce, venture capital and finance. TechNet has offices in Washington, D.C., Silicon Valley, Sacramento, Seattle, Boston and Austin.

TechNet shares the views concerning the EC's state aid investigation in case SA.38373 set out in the attached letter and urges that they be given consideration.

Sincerely,

Michael Ward

Michael Ward
Vice President, Federal Policy and Government Relations
mward@technet.org