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on competition policy – annual report 2022
(2022/2060(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on competition policy – annual report 2022 (2022/2060(INI))

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union, in particular to Articles 101 to 109 thereof,
- having regard to the relevant Commission rules, guidelines, resolutions, public consultations, communications and papers on the subject of competition,
- having regard to the Commission report of 14 July 2022 entitled ‘Report on Competition Policy 2021’ (COM(2022)0337) and to the accompanying Commission staff working document (SWD(2022)0188),
- having regard to its resolution of 5 May 2022 on competition policy – annual report 2021¹,
- having regard to the Commission communication of 11 December 2019 entitled ‘The European Green Deal’ (COM(2019)0640),
- having regard to Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality², which sets the target of economy-wide climate neutrality by 2050 and establishes a binding EU greenhouse gas emissions reduction commitment of at least 55 per cent below 1990 levels by 2030,
- having regard to the Commission communication of 6 December 2021 on revised Guidelines on State aid to promote risk finance investments³,
- having regard to the Flash Eurobarometer 510 report of October 2022 entitled ‘SMEs’ expectations for an effective competition policy’,
- having regard to the Flash Eurobarometer 511 report of October 2022 entitled ‘Citizens’ perceptions about competition policy’,
- having regard to the judgment of the Court of Justice of the European Union (CJEU) in Case T-791/19⁴,
- having regard to the judgment of the CJEU in Case T-227/21⁵,

¹ OJ C 465, 6.12.2022, p. 124.

² OJ L 243, 9.7.2021, p. 1.

³ OJ C 508, 16.12.2021, p. 1.

⁴ Judgment of 9 February 2022, *Sped-Pro S.A. v European Commission*, T-791/19, EU:T:2022:67.

⁵ Judgment of 13 July 2022, *Ilumina, Inc. v European Commission*, T-227/21, EU:T:2022:447.

- having regard to the Commission communication entitled ‘Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia’⁶,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)⁷,
- having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)⁸,
- having regard to Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market⁹,
- having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹⁰,
- having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty¹¹,
- having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007¹²,
- having regard to the Commission Guidelines of 29 September 2022 on the application of EU competition law to collective agreements,
- having regard to the European Securities and Markets Authority (ESMA), ‘Report on CRA Market Share Calculation’ of 15 December 2022,
- having regard to the Commission communication entitled ‘Guidelines on State aid for climate, environmental protection and energy 2022’¹³,
- having regard to the Commission communication of 12 December 2022 entitled ‘Guidelines on State aid for broadband networks’¹⁴,
- having regard to the draft Commission notice on the definition of the relevant market

⁶ OJ C 131I, 24.3.2022, p. 1.

⁷ OJ L 24, 29.1.2004, p. 1.

⁸ OJ L 265, 12.10.2022, p. 1.

⁹ OJ L 11, 14.1.2019, p. 3.

¹⁰ OJ L 1, 4.1.2003, p. 1.

¹¹ OJ L 123, 27.4.2004, p. 18.

¹² OJ L 347, 20.12.2013, p. 671.

¹³ OJ C 80, 18.2.2022, p. 1.

¹⁴ OJ C 36, 31.1.2023, p. 1.

for the purposes of Union competition law,

- having regard to the draft Commission guidelines on the application of the exclusion from Article 101 TFEU for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation 1308/2013,
 - having regard to the Commission staff working document of 1 December 2022 entitled ‘Evaluation of the State subsidy rules for health and social services of general economic interest (‘SGEIs’) and of the SGEI de minimis Regulation’ (SWD(2022)0388),
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the Competition State aid Brief, Issue 1/2022¹⁵,
 - having regard to the opinion of the Committee on the Internal Market and Consumer Protection,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0183/2023),
- A. whereas recent Eurobarometer surveys¹⁶ on EU competition policy show strong support among citizens and small and medium-sized enterprises for competition policy and its enforcement;
- B. whereas competition policy should aim to support the objectives of the European Green Deal and the Digital Compass goals, and to build the resilience of the EU internal market; stresses the need for a global level playing field, including in the case of the Fit for 55 proposals;
- C. whereas competition policy should bring legal certainty and regimes allowing more flexibility should be temporary, targeted and not jeopardise the integrity of the internal market;
- D. whereas international collaboration and cooperation are vital to attaining a viable global level playing field and bringing about the green and digital transitions; whereas European dependencies on third countries and global powers in areas such as energy, medicines, technology or raw materials create vulnerabilities and may reduce the European Union’s ability to act;

General considerations

1. Considers that EU competition policy protects market structures against anti-competitive behaviour, cartels and accumulations of market power, just as it advances efficient market structures and consumer and general welfare with a view to fostering innovation, keeping prices at fair and competitive levels and ensuring consumer choice; emphasises that the global strength and importance of the EU single market derives

¹⁵ [Competition State aid brief. Issue 1/2022 – February 2022.](#)

¹⁶ [Flash Eurobarometer 510](#) and [Flash Eurobarometer 511](#).

from its internal competitiveness and level playing field;

2. Considers that treaty-based competition rules must be interpreted in the light of the wider European values underpinning the EU's highly competitive social market economy; reiterates that competition policy cannot be pursued in isolation, as an end in itself, without reference to the legal, international, economic or political context, nor without interaction and complementarity with other strategic EU policy objectives, or to the new competitive market dynamics and that it is committed to achieving the EU's objectives as enshrined in Article 3 TEU;
3. Calls on the Commission to ensure that the regulatory framework is fit to respond to technological developments and to the EU's digital connectivity objectives by making sure that funding for critical infrastructure is adequate and effective without jeopardising competition rules;
4. Welcomes the General Court's judgment in *Sped-Pro* (Case T-791/19), which confirms that safeguarding the rule of law is a relevant factor for competition law;
5. Takes note of the draft Commission notice on the definition of the relevant market for the purposes of EU competition law; welcomes the Commission's clarification in this draft notice that the definition of the relevant market should not rely solely on a product's price but also the level of innovation it embodies; welcomes the forthcoming adoption of the draft notice, which is scheduled for the third quarter of 2023; considers innovation competition to be an essential factor in the determination of the relevant market and asks the Commission to take into account a longer-term vision encompassing the global dimension and potential future competition in its competitive assessments; underlines the need to include an analysis of consumer behaviour when defining the relevant product market; in particular, appreciates all the new contributions to addressing key market definition issues concerning certain fast-moving sectors such as the digital sector;
6. Notes that the three largest credit rating agencies hold a market share of over 90 %; regrets the continued high degree of market concentration for credit rating agencies; concludes that existing measures to enhance competition in this market are insufficient;
7. Takes note of the Commission's Temporary Crisis and Transition Framework as part of the Green Deal Industrial Plan for the Net-Zero Age; welcomes the Commission's approach whereby approval of State aid for individual companies under this framework can only be granted for cross-border investments or investment in assisted areas; considers that notifiable national subsidies should have EU added value; reiterates the vital role of critical raw materials in retaining Europe's industrial base; believes that proposals for a European critical raw materials act¹⁷ and a net zero industry act¹⁸, and the revision of the EU's internal electricity market offer an opportunity to support the competitiveness of EU industry; notes the opportunities for the EU to utilise its domestic sources of critical raw materials while upholding its environmental standards;

¹⁷ COM(2023)0160.

¹⁸ COM(2023)0161.

welcomes the revision of the General Block Exemption Regulation¹⁹ to enable Member States to invest more in key sectors for the transition to a net-zero economy such as low-carbon hydrogen and research and development (R&D), as well as in accompanying measures to facilitate the digital transition for all sectors;

8. Underlines that a balanced reconciliation of the Union's competition rules with its industrial and international trade policies is essential for re-shoring value chain activities and bolstering global competitiveness;
9. Points out that a robust competition policy will improve the resilience of the EU's single market, particularly for small and medium-sized enterprises (SMEs); notes that the strong contribution to job creation and value added make SMEs crucial to ensuring economic growth and social integration in the EU; welcomes in this regard the revised Guidelines on State aid to promote risk finance investments, which clarify and simplify the rules under which Member States can support SMEs' access to finance;
10. Believes that securing reciprocal market access for EU exports rather than protectionist measures would promote recovery and sustainable growth in the single market;

Policy response to the war in Ukraine and the Inflation Reduction Act

11. Welcomes the rapid adoption of the Temporary Crisis Framework for State Aid measures to support the economy following Russia's aggression against Ukraine, and the subsequent prolongations thereof; stresses the importance of coordinating actions under the Temporary Crisis Frameworks put in place over the last three years; notes the Commission's proposal to transform this into a Temporary Crisis and Transition Framework (TCTF), by enlarging its scope to support all possible renewable sources of energy; stresses that any flexibility should be targeted, temporary, proportionate and consistent with EU policy objectives and not create permanent distortions in the internal market; considers that the aim of the TCTF is to shape conditions for companies to be competitive in the service of the public interest;
12. Highlights that court cases have specified that State aid cannot be granted if the recipient infringes environmental rules²⁰ and stresses that the Commission should only permit State aid by Member States if it pursues an objective of common interest; encourages Member States to introduce further binding conditions for the receipt of State aid;
13. Understands the need for additional public and private investments to fight social and regional inequality, decarbonise and digitalise industry and bolster autonomy in key economic sectors; calls on the Commission to safeguard the integrity of the internal market and ensure a level playing field; is deeply concerned about the risk of increasing fragmentation within the internal market due to excessive relaxation of State aid rules and the use of subsidies in response to the US Inflation Reduction Act; warns the

¹⁹ Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

²⁰ Judgment of the Court of Justice of the EU of 22 September 2020 *Austria v Commission* (C-594/18 P) EU:C:2020:742. para. 45.

Commission against international subsidy competition and calls upon the Commission to use the tools at its disposal to prevent and sanction unfair subsidy competition; calls on the Commission to pay particular attention to the differing levels of fiscal space available to Member States to provide support and monitor potential distortionary effects; highlights that new political initiatives, objectives and tasks funded through the EU budget, including both EU-wide and cross-border projects, must be financed with additional fresh money; calls on the Commission to investigate the lack of harmonisation of clawback mechanisms in Member States;

14. Reiterates that the EU response to the US Inflation Reduction Act should not be built solely on State aid, but should also include other areas of competition policy such as scrutiny over mergers; welcomes the latest conclusions of the European Council calling for the modernisation of public procurement rules to help foster greener industry and promote European standards to facilitate the fast roll-out of key technologies; underlines that a renewed competition framework should create a predictable and simplified regulatory framework, leading to greater trust, speed and flexibility and a lower administrative burden for companies investing and competing fairly in Europe; stresses the importance of a coordinated response that avoids distorting the EU internal energy market; calls on the Commission to improve the transparency of the State aid assessment process and stresses the need for ex post monitoring of the effective implementation of State aid adopted; calls on the European Commission to take into account the sustainability and European sovereignty criteria for public procurement rules; recalls that extraordinary levels of public support must not become the new normal and should not benefit solely large companies and their shareholders; emphasises that tax credits should not serve the sole purpose of lowering the tax obligations of large companies; urges Member States to design tax incentives carefully to promote strategic autonomy without disproportionately increasing the cost to the public coffers;
15. Notes that EU competition policy should take into account the ability of European companies to compete in global markets; stresses the importance of a structural global dialogue and cooperation on competition policy enforcement with our like-minded partners; highlights the potential of cooperation agreements with third countries; welcomes the implementation of the Foreign Subsidies Regulation; underlines that all companies operating in the EU single market must abide by the same rules; invites the Commission to pursue more dedicated competition agreements that allow for a better exchange of information between competition authorities;
16. Believes that competition is likely to assist rather than impede recovery from the crisis and improve the resilience of the Single market, stresses that a recent study²¹ rejected the argument that relaxation of EU competition policy would promote economic recovery; regrets that, according to analysis from the pre-crisis period²², State aid in the EU was ineffective in promoting economic growth and investments; urges the Commission to assess the contribution of State aid in the EU to economic and

²¹ Massey, P. and McDowell, M., [EU Competition Law: An Unaffordable Luxury in Times of Crisis?](#) World Competition.

²² Tunali, C. and Fidrmuc, J., [State Aid Policy in the European Union](#). Journal of common market studies, Wiley, 2015.

productivity growth based on measurable indicators and systematically review its results and impact;

17. Recalls that we should learn from previous crises if we want to achieve real measurable results and impact, recovery and level playing field; recalls the lesson from the financial crisis that actions in response to urgent needs are a poor substitute for policy intervention based on sound economic analysis; regrets that several proposals were not accompanied by impact assessments due to the urgency based on the Commission's explanation; calls on the Commission to refrain from using urgency as a justification for not preparing impact assessments for legislative proposals; calls on the Commission to prepare an in-depth analysis of impacts on competition, productivity and efficient investments for each proposal;
18. Underlines that a new European Sovereignty Fund could support EU industrial strategy; considers the use of European investment funds alongside changes to State aid rules to offer a means of avoiding internal market fragmentation;
19. Considers rising energy and food prices, leading to excessive corporate profits, to be the main drivers of the current hike in inflation; emphasises that rising energy costs relative to those in other parts of the world have been one of the key factors adversely impacting EU industry's ability to compete on the global market; reiterates that the Commission must make use of all the available tools under competition law to tackle market distortions and unfair pricing in the energy and food markets in an impartial manner; calls for consumer vulnerability to be taken into consideration when assessing whether a dominant undertaking's conduct is abusive;
20. Calls on the Commission to provide an effective set of instruments, including those needed for a permanent market investigation mechanism, which should be triggered automatically when certain conditions are met, such as a specific rise in prices, in order to prevent any future free-rider effects; calls in particular for the monitoring of the price differentials between wholesale and retail prices of food, feed and fertilisers; is deeply concerned by the excessive concentration in certain parts of the food supply chain, to the detriment of consumers and farmers;

Merger control

21. Points out that even when products or services are supplied free of charge, consumers may still have to endure unfair behaviour, such as a degradation in quality or exploitative practices; calls therefore for the formulation of a 'theory of harm', which should transcend price-centric approaches and account for broader considerations such as the impact on citizens' privacy; considers that merger thresholds based on turnover are not fit for the digital economy in which value is often represented by other factors, and equally believes that merger assessments by the Commission should not merely focus on prices; stresses that a product's 'fair price' is not the lowest price possible for the consumer;
22. Supports the introduction of a rebuttable presumption that effective competition is significantly impeded by any concentration leading to a business holding a dominant position in a relevant market or any concentration involving a dominant market player or a gatekeeper as defined in the Digital Markets Act; notes that there is scope for

Member States to intervene on ‘non-competitive grounds’, and asks for the Commission to be given the same possibility when examining the impact of concentration on the internal market; calls on the Commission to revise the merger guidelines to adopt a more comprehensive assessment of efficiencies in merger control and cooperation; notes that the assessment of horizontal cooperation should also recognise the importance of collaboration in markets dominated by digital gatekeepers; recognises the need to foster cooperation among players in traditional as well as digital markets, by giving the right relevance to the positive effects, such as efficiencies and benefits, in the relevant antitrust analysis; calls for the inclusion of review clauses in decisions approving a concentration with a view to introducing more appropriate conditions, without affecting the decision as such; urges the European Commission to take a broader view when evaluating digital mergers and assess the damaging effects of data concentration; points out that the ‘internet of things’ (IoT) is a growing market in which a vast amount of consumer data is collected;

23. Urges the Commission to take decisive action, under Article 22 of the EC Merger Regulation, against ‘killer acquisitions’ that must be reported to the Commission under the Digital Markets Act (DMA) and for mergers in other strategic sectors; welcomes the General Court’s judgment in the *Ilumina/Grail* case (Case T-227/21) confirming the European Commission’s Guidance on the application of the referral mechanism set out in Article 22 of Regulation No 139/2004²³ to certain categories of cases, which enables the Commission to examine and possibly to prevent mergers below the quantitative jurisdictional thresholds defined by the EC Merger Regulation; urges the Commission to initiate a revision of the EC Merger Regulation in the event that the Court of Justice revokes the General Court’s judgment upon appeal and declares the Commission’s guidance void; welcomes the new guidance from the European Commission on the use of Article 22 of the EC Merger Regulation by Member States to review transactions; underlines the importance of the confirmation of this new application by the European Court of Justice to address ‘killer acquisitions’ effectively;
24. Calls for the Commission’s procedure for examining a concentration to be shortened by making full use of digitalisation;
25. Recalls that the current *de minimis* Regulation on State aid²⁴ expires at the end of 2023; notes the call for evidence by the Commission on its review of the services of general economic interest (SGEI) *de minimis* Regulation (Regulation 360/2012²⁵); recalls that services of general economic interest (SGEI) are subject to specific rules to protect citizens’ access to basic public services below a clear threshold; calls on the Commission to assess how EU competition principles have affected the supply of services of general economic interest, also in the light of the Covid crisis and increased costs of living and asks attention for the socio-economic realities of the various EU

²³ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

²⁴ [Commission Regulation \(EU\) No 1407/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352/1, 24.12.2013, p. 1).

²⁵ [Commission Regulation \(EU\) 360/2012](#) of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

regions, especially in the context of state support to peripheral and island regions in the EU; believes that EU policies should be better geared towards improving regional productive specialisation while avoiding any counterproductive impacts, such as support for inefficient firms;

Antitrust

26. Welcomes the Commission's willingness to take into account the effects on labour markets and wages when determining the anti-competitiveness of collusive behaviour under Article 101(1) TFEU, as demonstrated by its reference to 'no-poach' agreements²⁶; calls on the Commission to carefully balance the potential effects on wages with the need to ensure a competitive market;
27. Welcomes the Commission's guidelines on the application of EU competition law to collective agreements²⁷, clarifying that EU competition law does not prevent solo self-employed workers from engaging in collective bargaining; recalls that self-employed workers often have limited or no access to collective bargaining, which may lead to precarious working conditions;
28. Welcomes the evaluation of Regulation (EC) No 1/2003 and Regulation (EC) No 773/2004 initiated by the Commission; considers a legislative review of these regulations necessary; calls for stronger use of structural remedies, and therefore for the primacy of behavioural remedies to be removed from Regulation (EC) No 1/2003; calls on the Commission to speed up antitrust procedures and introduce time limits to ensure the functioning of the internal market;
29. Acknowledges the existence of a legal basis for structural separation; calls on the Commission to analyse the merits of the legal base for the unbundling of undertakings as a structural remedy of last resort for antitrust violations; regrets the reluctance of the Commission to address market dominance through structural separation; considers unbundling also to be a structural remedy in situations where abuse of a dominant position on a relevant market cannot be ascertained, but where conditions for competition would improve significantly if unbundling measures were applied;
30. Points out that addressing the existing regulatory barriers and cutting red-tape to ease the entry for new competitors can often be a more effective way to address market distortions²⁸;
31. Underlines the importance of adopting interim measures in the enforcement of competition law to stop any practice that would seriously harm competition, particularly in relation to dynamic and fast-developing markets such as digital markets; therefore supports the Commission in enhancing the use of interim measures under the existing Regulation (EC) No 1/2003; calls for legislative action to lower the burden associated

²⁶ [Speech by Commission Executive Vice President Margrethe Vestager](#), 22 October 2021.

²⁷ Communication from the commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (OJ C 374, 30.9.2022, p. 2).

²⁸ For example, academic research suggests that privacy regulations, such as GDPR, can function as nonpecuniary barriers to trade, especially if enacted by a large economic area. See Peukert, C. et al., [Regulatory export and spillovers: How GDPR affects global markets for data](#), VoxEU, 2020.

with the use of interim measures for the Commission and for national competition authorities;

32. Calls on the Commission to establish a publicly accessible database of all European and national competition law cases, including summaries in English; stresses the need for, and importance of, the independence of the national authorities while reiterating the increasing need to ensure more cooperation and sharing of information on best practices between the national authorities, so as to ensure transparency;
33. Underlines the importance of damages for infringements of competition law; considers it necessary to alleviate the burden on injured parties to successfully claim damages by introducing an obligation of the competent competition authority to state the extent of the damages in the public enforcement decision or by introducing a presumption of a minimum amount of damages calculated in relation to the infringement of competition law;
34. Deplores the fact that seven Member States have still not yet completed the implementation of Directive (EU) 2019/1²⁹ (ECN+ Directive) despite the transposition period having already expired on 4 February 2021; calls on the Commission to assess the degree of implementation of the Unfair Commercial Practices Directive in the Member States and to report on the results of its application; stresses the important role of national competition authorities in enforcing competition law and in adopting interim measures;

Competition policy in the digital age

35. Welcomes the creation of new Commission directorates for the enforcement of the DMA; highlights the difference by nature between the *ex-post* enforcement of antitrust rules and the *ex ante* enforcement of the DMA; in this respect stresses the importance of keeping the resources for these two instruments within the Commission apart, although coordination between them is essential; calls on the Member States to make available additional financial resources to enable more behavioural economists, algorithms specialists, data-science and technology staff to be hired by the Commission; asks the Member States, furthermore, to second additional staff and national experts to the Commission for this task; urges the Commission to allocate a larger budget for the proper implementation and enforcement of this Regulation; welcomes the strong cooperation with the national competition authorities (NCAs) on the DMAs enforcement;
36. Highlights that the global market for app stores is dominated by two providers, each of which effectively operates as the sole gatekeeper for their customers; notes that app stores can use their position as gatekeepers to impose unfair and anticompetitive conditions on their business users; calls on the Commission to ensure swift and effective enforcement against anti-competitive practices by gatekeeping app stores, in the context of open antitrust cases and of the application of the DMA; emphasises that the DMA

²⁹ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ L 11, 14.1.2019, p. 3).

offers an opportunity to overcome the difficulties encountered with those antitrust cases –which served as the basis for Articles 5 and 6 of the DMA– where, firm strong decisions by the Commission, have still not led to effective remedies;

37. Stresses that competition law remains relevant to digital markets despite the entry into force of the DMA, particularly in antitrust procedures against gatekeepers, which need to be sped up; considers that violations of privacy rights can constitute abusive practices; recalls that some undertakings likely to be designated as gatekeepers have been subject to previous antitrust rulings, which have not led to effective behavioural changes, especially regarding self-preferencing, and should be taken into account when enforcing the DMA;
38. Calls on the Commission to build on existing initiatives to increase collaboration between antitrust and data privacy regulators to both control corporate data misuse and prevent companies from using consumer data to gain an unfair competitive advantage; calls upon the Commission to include the consideration of personal data and its potential value as an obligatory criterion in the evaluation of merger and acquisition approvals in the digital sector and, where relevant, look at acquisitions below the EC Merger Regulation's thresholds under Article 14 of the DMA; further stresses that data consolidation through mergers and acquisitions can strengthen a dominant position;
39. Notes with concern that gatekeepers that develop an advantage over rivals based on the amount of data they control can achieve critical economies of scale, which contribute to the further tilting of competitive balances in digital markets and stifle innovation; expects the DMA to address these situations;

Sectoral policies

40. Welcomes the extension of the period of validity of the horizontal block exemption regulations on research and development agreements and on specialisation agreements; welcomes the revision of the Vertical Block Exemption Regulation;
41. Welcomes the presentation by the Commission of draft guidelines for sustainability agreements; underlines the need for a broad understanding of consumer welfare, which should include not only price levels, but also sustainability considerations; underlines in this respect that EU competition rules should encourage horizontal coordination in order to improve the environmental and social sustainability of supply chains; points out that the efficiencies generated by such agreements in a relevant market must be sufficient to outweigh any anti-competitive effects they produce in either the same or an unrelated geographical market;
42. Stresses that competition policy aims to encourage job creation, sustainable growth as pursued by the Green Deal, innovation, consumer welfare and the integrity of the internal market; is of the opinion that sustainability is not only pursued by derogations from competition law provisions, but also by the application of competition law provisions in order to promote sustainability; calls for the presentation of draft guidelines on abusive practices, in particular with regard to achieving sustainability goals;
43. Notes that banks remain major beneficiaries of State aid; urges the Commission to bring

forward its long overdue revision of the 2013 Banking Communication³⁰;

44. Is of the opinion that the economic sustainability of telecom networks is essential to achieving the 2030 Digital Compass connectivity targets and high performance connectivity for all citizens within the EU without jeopardising competition rules; urges the Commission to address and mitigate persistent asymmetries in bargaining power as set out by the European Declaration on Digital Rights and Principles for the Digital Decade³¹; calls for the establishment of a policy framework where large traffic generators contribute fairly to the adequate funding of telecom networks;
45. Believes that the time required for the Important Projects of Common European Interest (IPCEI) process must be significantly shortened by setting a six-month time limit once an adequate proposal has been submitted and likewise, it should be made easier for SMEs to participate in such projects;

State aid fit for purpose

46. Deplores the distortive effects of aggressive tax planning and of tax systems of certain Member States on fair competition, as it may stifle innovation and jeopardise contestability of markets, especially for SMEs; calls for companies that engage in tax avoidance using third-country tax havens to be excluded public procurement procedures and barred from receiving State aid, as these companies are competing under unfair conditions with companies established in non-tax havens; welcomes the Commission's recommendation³² of 14 July 2020 to not grant financial support to companies with links to tax havens while protecting honest taxpayers; calls on the Commission to examine the effects of tax advantages for fossil fuels;

Parliamentary involvement

47. Stresses that Parliament should be adequately involved in shaping competition policy; considers that Parliament should make use of its right to intervene in judicial proceedings concerning competition law when major legal concerns that are also relevant to Parliament are at stake, in legislation as well as in scrutinising the Commission's decisions; notes that Parliament should be more closely involved in the activity of working parties and expert groups, such as the International Competition Network (ICN) and the Organisation for Economic Cooperation and Development (OECD) as an observer to get a better knowledge of the issues and keep abreast of developments; notes the importance of the Competition Working Group; calls on the Commission to enter into negotiations for an interinstitutional agreement on competition policy; calls on the European Council to adopt a decision under Article 48(7), second subparagraph, TEU allowing for the adoption of legislative acts in

³⁰ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ C 216, 30.7.2013, p. 1).

³¹ OJ C 23, 23.1.2023, p. 1.

³² Commission Recommendation (EU) 2020/1039 of 14 July 2020 on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions (OJ L 227, 16.7.2020, p. 76).

the area of competition policy in accordance with the ordinary legislative procedure;

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48. Instructs its President to forward this resolution to the Council, the Commission, and the parliaments and competition authorities of the Member States.

6.3.2023

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Economic and Monetary Affairs

on the competition policy - annual report 2022
(2022/2060(INI))

Rapporteur for opinion: Dita Charanzová

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that fair competition is key to a properly functioning single market and economy and creates incentives for providing a diversity of products, better quality, lower prices, higher value, resilience and standards, innovation, research and better services for the consumer; stresses that consumer welfare must remain an essential aspect of competition policy; stresses, furthermore, that a strong and robust competition policy is a fundamental part of the single market, as set out in the Treaties, and is crucial for the development of a fair and level playing field for all market players, particularly small and medium-sized enterprises (SMEs), which ensures and boosts sustainable growth, jobs and competitiveness; calls on the Commission to introduce changes that create a more favourable environment for all, including start-ups and entrepreneurs, while reaffirming that SMEs could benefit from a stricter application of EU competition rules; agrees with an Organisation for Economic Co-operation and Development (OECD) recommendation¹ that active enforcement of competition rules in the European market and openness to international trade and investment should remain policy priorities;
2. Notes that the removal of State aid limits due to the COVID-19 crisis and now Russia's war of aggression against Ukraine has led to Member States providing different amounts of support to the same sectors; underlines that this has led to a playing field that is not level for the same industries within the single market; calls on the Commission to seek ways to offset this problem; notes, in particular, sharp divergences in the level of energy subsidies provided by Member States in response to rising energy prices; stresses the importance of a coordinated response that avoids distortion of the EU internal energy market; calls on the Commission to improve the transparency of the

¹ OECD, *Enhancing regional convergence in the European Union*, OECD Economics Department Working Papers No. 1696, OECD Publishing, Paris, 2021.

State aid assessment process and stresses the need for ex post monitoring of the effective implementation of State aid adopted;

3. Reiterates its call on the Commission to address the anti-competitive effect of territorial supply constraints with a view to ensuring a fully functional single market and harnessing its potential benefit for consumers; reiterates that these types of constraints can take different forms, such as refusals to supply certain products or services, threats to interrupt supply to a particular distributor, limitation of quantities available for sale, unexplained differentiation within product ranges and prices between Member States or limited of language options on product packaging;
4. Underlines that State aid frameworks for responding to the COVID-19 crisis and Russia's war of aggression against Ukraine should remain temporary; believes that the challenges arising from these crises should be duly taken into account in a broad reflection on industrial policy and through the updated EU industrial strategy that could help allocate resources to certain key sectors, taking into account our dependencies in key strategic areas in a way that does not distort competition between firms and can also help to lay the ground for a resilient, competitive and sustainable economy in the long term; considers that competition rules should not hamper sustainability goals but contribute to them;
5. Considers it essential to ensure a consistent application of EU competition rules throughout the single market; stresses that EU legislation should be applied equally in all Member States and that when EU competition legislation is being implemented account should also be taken of whether suitable national funding that can be delivered in a timely manner is available; calls on the Commission to avoid creating monopolies through standardisation;
6. Believes that competition is likely to assist rather than impede recovery from the crisis and improve resilience of the single market, stresses that a recent study² rejected the argument that relaxation of EU competition policy would promote economic recovery; regrets that according to the analysis from times before the crisis³ the State aid in the EU was ineffective in promoting economic growth and investments; urges the Commission to assess the contribution of State aid in the EU to economic and productivity growth based on measurable indicators and systematically review its results and impact;
7. Recalls that we should learn from previous crises if we want to achieve real measurable results and impact, recovery and a level playing field; recalls the lesson from the financial crisis that actions based on immediate needs are a poor substitute for policy interventions based on sound economic analysis; regrets that several proposals were not accompanied by impact assessments due to the urgent nature of the situation according to the Commission's explanation; calls on the Commission to refrain from using urgency as a vindication for not preparing impact assessment for legislative proposals;

² Massey, P., and McDowell, M., *EU Competition Law: An Unaffordable Luxury in Times of Crisis?*. World Competition 44, no. 4, 2021, pp. 405–432.

³ Tunali, C.B. and Fidrmuc, J., [State Aid Policy in the European Union](#). Journal of Common Market Studies (online).

calls on the Commission to prepare an in-depth analysis of impacts on competition, productivity and efficient investments for each proposal;

8. Welcomes the recent adoption of the Digital Markets Act (DMA)⁴ and the Digital Services Act (DSA)⁵ as essential steps towards a harmonised, fair and competitive digital single market; notes that the Commission is making significant efforts to ensure that the DMA and the DSA are fully enforced by providing sufficient additional Commission staff and resources for this task; invites the Commission to increase the resources for effective and robust implementation and enforcement of these Regulations; asks the Member States, furthermore, to second additional staff and national experts to the Commission for this task; asks the Commission to regularly update Parliament on the progress made on the implementation of the DMA and DSA; welcomes the Commission's initiative to organise workshops on various topics related to DMA implementation;
9. Calls on the Commission to assess the degree of implementation of the Unfair Commercial Practices Directive⁶ in the Member States and to report on the results of its application;
10. Welcomes the revision of the Vertical Block Exemption Regulation⁷; encourages the Commission to continue to ensure that selective distribution agreements and other technical issues, such as national model numbers and serial numbers, are not abused to limit the free flow of goods across national borders and to prevent consumers from comparing goods available in other Member States;
11. Believes that net neutrality must be maintained and protected and that competition policy must support it;
12. Reiterates its call on the Commission to continue actively monitoring and removing unjustified geo-blocking and other restrictions on cross-border online sales and having to follow at core a pro-consumer approach to allow them access to a greater choice of products and services across the EU;
13. Welcomes the Commission's proposal for a data act (COM(2022)0068) which aims to address market imbalances arising from the concentration of data and to create fair and competitive market conditions for the internal market in cloud, edge and related services;

⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive) (OJ L 149 11.6.2005, p. 22).

⁷ Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022, p. 4).

14. Calls on the Commission to assess, in relation to the recent Regulation (EU) 2022/612 on roaming on public mobile communications networks in the EU⁸, whether the doubtful concept of ‘fair use policy’ applied by telecom companies respects consumers’ right not to pay additional surcharges for using their mobile phone when travelling within the EU and their right to receive appropriate prior information to be able to take decisions according to their needs;
15. Notes that by its nature, competition can be local/regional, EU-European Economic Area and global; encourages the Commission, therefore, in the case of global competition, to use all tools provided for in the Union’s trade agreements and the Union’s Customs Code to counter unfair commercial trading practices, including by addressing environmental and social dumping, and unfair competition from non-EU companies which could affect the single market in order to maintain a level playing field in the single market and attract more investments;
16. Calls on the Commission to continue assisting and supporting Member States in the transposition of the ECN+ Directive⁹ into national law in order to ensure that national competition authorities cooperate and work together to enforce EU competition rules;
17. Believes that securing reciprocal market access for EU exports rather than protectionist measures would promote recovery and sustainable growth in the single market;
18. Notes that consumers are facing rising energy prices in general, while the number of energy producers in some markets has collapsed; asks the Commission to help ensure the availability of a suitable and informed choice of providers for consumers; asks the Commission to work with Member States to facilitate boosting the availability of renewable energy, including through energy community schemes;
19. Calls on the Commission to ensure that Member States correctly apply the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia in order to ensure that support for energy costs reaches those that require it, such as the retail and wholesale sectors, which are being hit by the current crisis but are not traditionally thought of as energy intensive; calls on the Commission, furthermore, to closely monitor compliance with the Temporary Crisis Framework;
20. Observes that the uptake of electric vehicles will lead to higher electricity consumption in the future and new ways for consumers to charge their vehicles; asks the Commission and Member States to ensure interoperability, competition and price transparency between energy providers for electric vehicle charging stations; notes that a lack of competition may lead to consumers paying higher rates than necessary for charging their vehicles; calls on the Commission to undertake a cost-benefit analysis of EU and national public spending on the building of charging stations infrastructure;

⁸ OJ L 115, 13.4.2022, p. 1.

⁹ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ L 11, 14.1.2019, p. 3).

21. Notes the risks of anti-competitive behaviour in the roll-out of artificial intelligence (AI), which could adversely affect the market for this; points out that the Commission needs to be equipped with the technical and human resources to research and investigate the potential impact of AI on competition; notes at the same time the benefits to consumers of AI solutions, should they reach their pro-competitive potential; calls on the Commission to consider these risks, the likelihood of them materialising and how they can be solved, and to include any relevant conclusions in the Union's analyses of this and, if indispensable, in competition rules;
22. Stresses the importance of helping consumers and users gain greater control over the use of their data and calls for a high level of protection of personal data and emphasises that the lack of enforcement of the General Data Protection Regulation¹⁰ can have significant anti-competitive effects;
23. Believes that current merger control rules should be assessed with a view to determining if they are fit to deal with so-called killer acquisitions and ensure fair competition, both online and offline;
24. Recalls that services are the largest economic activity in the European Union in terms of gross added value, that they have still not yet reached their competitive potential and that the single market for services lags far behind the single market for goods; believes that the work to remove remaining obstacles should be accelerated and a single market for services fully established, including through the enforcement of competition rules; calls on the Commission and the Member States to effectively target unnecessary restrictions and to diminish unjustified barriers in the services sector, as effective regulation is beneficial for both consumers and professionals and has a positive impact on the productivity and competitiveness of the EU economy; recalls that empirical analyses have shown that restrictions on the services sector have an impact on trade and stresses that a fragmented services market hampers productivity growth in services;
25. Underlines that services of general economic interest (SGEI) are subject to specific rules to protect citizens' access to basic public services below a clear threshold; recalls the need for better targeted and properly justified State aid, especially for SGEI, including energy, transport, telecommunication, health and social housing; calls on the Commission to swiftly follow up on the recent publication of its staff working document entitled 'Evaluation of the State subsidy rules for health and social services of general economic interest (SGEIs) and of the SGEI de minimis Regulation' (SWD(2022)0388), which includes a proposal for the revision of SGEI rules;
26. Notes with satisfaction that an agreement has been reached on a regulation on foreign subsidies distorting the internal market; calls on the Commission and the Member States to ensure full implementation of this new EU instrument to ensure a level playing field¹¹ for all companies operating in the single market so that non-EU subsidies can be

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

¹¹ Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market (COM(2021)0223).

thoroughly examined and distortions can be adequately addressed; notes the lack of transparent criteria on how the Commission will assess distortions of the internal market and thus impose remedies; calls on the Commission to publish these criteria;

27. Asks the Commission to further strengthen the role of the European Consumer Centres Network (ECC-Net);
28. Stresses the role of competition policy in also enhancing regional convergence in the EU; believes that EU policies should be better geared towards improving regional productive specialisation while avoiding any counterproductive impacts, such as support to inefficient firms; stresses that industrial policy should not conflict with competition policy; agrees with OECD¹² that providing support to new activities should be time-limited in order to avoid ending up supporting inefficient, rent-seeking activities; urges the Commission to carry out an ex post evaluation of the EU legislation and enforcement decisions, focused on their results and impact including effectiveness of the fines and sanctions imposed for anti-competitive conduct in the internal market.

¹² OECD, [Enhancing regional convergence in the European Union](#), OECD Economics Department Working Papers No. 1696, OECD Publishing, Paris, 2021.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	2.3.2023
Result of final vote	+: 35 -: 0 0: 2
Members present for the final vote	Alex Agius Saliba, Andrus Ansip, Adam Bielan, Anna Cavazzini, Deirdre Clune, David Cormand, Maria Grapini, Svenja Hahn, Krzysztof Hetman, Eugen Jurzyca, Arba Kokalari, Andrey Kovatchev, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Beata Mazurek, Leszek Miller, Anne-Sophie Pelletier, René Repasi, Andreas Schwab, Tomislav Sokol, Róza Thun und Hohenstein, Marion Walsmann, Marco Zullo
Substitutes present for the final vote	Clara Aguilera, Marc Angel, Vlad-Marius Botoș, Jordi Cañas, Christian Doleschal, Malte Gallée, Ivars Ijabs, Katrin Langensiepen, Tsvetelina Penkova, Romana Tomc, Kosma Złotowski
Substitutes under Rule 209(7) present for the final vote	Patrick Breyer, José Manuel Fernandes, Ljudmila Novak

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

35	+
ECR	Adam Bielan, Beata Mazurek, Kosma Złotowski
PPE	Deirdre Clune, Christian Doleschal, José Manuel Fernandes, Krzysztof Hetman, Arba Kokalari, Andrey Kovatchev, Ljudmila Novak, Andreas Schwab, Tomislav Sokol, Romana Tomc, Marion Walsmann
Renew	Andrus Ansip, Vlad-Marius Botoș, Jordi Cañas, Svenja Hahn, Ivars Ijabs, Róza Thun und Hohenstein, Marco Zullo
S&D	Alex Agius Saliba, Clara Aguilera, Marc Angel, Maria Grapini, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Leszek Miller, Tsvetelina Penkova, René Repasi
Verts/ALE	Patrick Breyer, Anna Cavazzini, David Cormand, Malte Gallée, Katrin Langensiepen

0	-

2	0
ECR	Eugen Jurzyca
The Left	Anne-Sophie Pelletier

Key to symbols:

+ : in favour

- : against

0 : abstention

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	25.4.2023
Result of final vote	+: 39 -: 8 0: 3
Members present for the final vote	Anna-Michelle Asimakopoulou, Marek Belka, Stefan Berger, Gilles Boyer, Jonás Fernández, Frances Fitzgerald, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtos, Aurore Lalucq, Aušra Maldeikienė, Costas Mavrides, Csaba Molnár, Siegfried Mureşan, Caroline Nagtegaal, Dimitrios Papadimoulis, Eva Maria Poptcheva, Evelyn Regner, Antonio Maria Rinaldi, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Ernest Urtaşun, Inese Vaidere, Johan Van Overtveldt, Marco Zanni
Substitutes present for the final vote	Bas Eickhout, Eugen Jurzyca, Chris MacManus, Tonino Picula, Dragos Pîslaru, Jessica Polfjård, Erik Poulsen, René Repasi
Substitutes under Rule 209(7) present for the final vote	Margrete Auken, Viola von Cramon-Taubadel, Maria Walsh, Juan Ignacio Zoido Álvarez

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

39	+
PPE	Anna-Michelle Asimakopoulou, Stefan Berger, Frances Fitzgerald, Danuta Maria Hübner, Othmar Karas, Aušra Maldeikienė, Siegfried Mureşan, Jessica Polfjård, Ralf Seekatz, Inese Vaidere, Maria Walsh, Juan Ignacio Zoido Álvarez
Renew	Gilles Boyer, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtzos, Caroline Nagtegaal, Dragoş Pîslaru, Eva Maria Poptcheva, Erik Poulsen
S&D	Marek Belka, Jonás Fernández, Eero Heinäluoma, Aurore Lalucq, Costas Mavrides, Csaba Molnár, Tonino Picula, Evelyn Regner, René Repasi, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang
Verts/ALE	Margrete Auken, Bas Eickhout, Claude Gruffat, Stasys Jakeliūnas, Ernest Urtasun, Viola von Cramon-Taubadel

8	-
ECR	Michiel Hoogeveen, Eugen Jurzyca, Dorien Rookmaker, Johan Van Overtveldt
ID	France Jamet, Antonio Maria Rinaldi, Marco Zanni
The Left	José Gusmão

3	0
NI	Enikő Győri
The Left	Chris MacManus, Dimitrios Papadimoulis

Key to symbols:

+ : in favour

- : against

0 : abstention