



**European Committee
of the Regions**

ECON-VI/023

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OPINION

The European Commission Report on Competition Policy 2016

THE EUROPEAN COMMITTEE OF THE REGIONS

- calls for the resourcing of Competition policy enforcement to have due consideration for national and regional Member State industrial policies for investment, particularly for those industrial policies which rely on national competences outside the scope of EU treaties;
- believes that the economic disruption caused to other EU Member States as a result of Brexit should result in an expansion of General Block Exemption Regulations and a temporary relaxation or suspension of state aid rules for certain industries likely to be most affected insofar as it does not constitute selective aid which would be contrary to the objective of applying EU rules fairly to all companies;
- notes the important role played by National Competition Authorities (NCAs) in key competition areas and recommends better resourcing of different Member States National Competition Authorities. Would also be supportive of a legislative proposal by the Commission on strengthening the enforcement and sanctioning tools available to the national competition authorities, the so-called ECN+, which would ensure that the full potential of the decentralised system of EU competition enforcement can be realised;
- stresses the vulnerability of farmers and SMEs, which represent 79% of EU farms, due to their weaker bargaining position and to unfair trading practices in the food supply chain; highlights, in the same vein, that farmers are the main shock absorber in the supply chain and calls on the Commission to help farmers to counter-balance the effects of increasing concentration at the processing and retailing stages of the chain.

Rapporteur

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Reference document

European Commission Report on Competition Policy 2016
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**Opinion of the European Committee of the Regions –
The European Commission Report on Competition Policy 2016**

I. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. welcomes the annual report by the Commission on competition policy for 2016, especially its recognition of the fact that competition policy has a direct impact on people's lives; highlights, in this context, that effective competition policy is an essential element in the efficient working of the Single Market and it brings important benefits to the consumer by encouraging enterprise, innovation, efficiency and a widening of choice for the citizens of the European Union;
2. is of the view that the globalised economy requires an open and fair competition environment and therefore the regulation of competition and not just a competition "culture". Supports at the same time that the European Commission is committed to engage with other EU institutions, international organisations and competition enforcers all over the world;
3. applauds the Commission's work in enforcing competition rules but calls for the resourcing of Competition policy enforcement to have due consideration for national and regional Member State industrial policies for investment, particularly for those industrial policies which rely on national competences outside the scope of EU treaties;
4. emphasises that there should be greater transparency surrounding how the decisions are taken by the Commission to resource major competition investigations at an EU level, and to ensure that those decisions are always associated with identifiable outcomes that enhance the Single Market;
5. argues that it is up to the Commission to ensure a comprehensive response to the challenges emanating from international competition and global markets, through enhanced coordination of EU policies and instruments and through a better recognition of the regional dimension;
6. stresses that the United Kingdom will remain subject to the EU's competition rules until at least 31 March 2019 and that investigations opened before that date, such as the one opened on 26 October 2017 on UK exemptions granted to multinationals to protect them from tax avoidance rules, may be concluded only after that date but would still have to be applied;
7. agrees that Brexit must not be misused as a vehicle for the complete abandonment of all state aid controls but believes that the economic disruption caused to other EU Member states as a result of BREXIT should result in an expansion of General Block Exemption Regulations and a temporary relaxation or suspension of state aid rules for certain industries likely to be most affected insofar as it does not constitute selective aid which would be contrary to the objective of applying EU rules fairly to all companies;

State aid and tax rulings

8. welcomes the Commission's work in tackling illegal State aid granted in the form of selective tax advantages, such work being seen as an effective means of ensuring that EU rules apply in a fair manner to any company that does business in the EU's Single Market regardless of size, sector or nationality and that companies are subject to taxation proportionate to their size and wealth so to contribute to the financing of public services and the fight against inequalities, which are most relevant at local level;
9. insists that, in relation to tax evasion, the question of tax rulings is part of the EU's overall effort to fight tax avoidance by big corporates, i.a. through the Anti-Tax Avoidance Package, the Country-by-country reporting, the Corporate Tax Reform Package and the new transparency rules for tax planning intermediaries. Stresses also that the EU needs to consider whether new regulation rather than enforcement could provide greater certainty on tax rulings within Member States, and consider whether a sanction procedure in favour of EU budget own resources should be adopted as part of any new regulatory regime;
10. takes the view that the EU's exclusive competence enshrined in article 3 TFEU for establishing the competition rules necessary for the functioning of the internal market does not affect the sovereign right of Member States to determine their own corporate tax systems, or to set their own tax rates. Recognises, however, that Member States must respect a fair level playing field for businesses and consumers throughout the EU's internal market¹;
11. notes that the most high profile enforcement decision by DG Competition was made on 30 August of 2016 which found that specific tax rulings issued in Ireland in 1991 and in May 2007 in favour of two Apple companies which were incorporated in Ireland, constituted aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. Acknowledges that the European Commission claim in their decision that Ireland, by issuing the contested tax rulings that enabled Apple Companies to determine their yearly corporation tax liability in Ireland in the years that those rulings were in force, has unlawfully granted State aid to those Apple companies and the Apple group, in breach of Article 108(3) of the Treaty, which Ireland is required to recover by virtue of Article 16 of Regulation (EU) 2015/1589. Stresses that according to the Commission, this decision does not call into question Ireland's general tax system or its corporate tax rate;
12. notes that the implementation at national level of Council Directive 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market is currently causing problems. Article 4(4) of that directive contains a derogation from the interest limitation rule in respect of loans used to fund a long-term public infrastructure project. Even though the directive offers broad scope for a derogation on activities considered to be in the public interest, Member States are not making full use of this possibility;

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Ireland, Netherlands, Luxembourg and Belgium have each faced decisions by the DG Competition that concern tax rulings. Each of those decisions has been challenged by those Member States before the General Court of the European Union.

13. recalls that the Commission calculated that the aid in this form provided by Ireland to these Apple companies amounted to EUR 13 billion and that these monies were to be returned to the Irish exchequer but that the Irish government appealed this decision by the European Commission to the Court of Justice of the European Union. However, since at the time the Commission's decision was made Ireland had four months to recover the illegal State aid, i.e. until January 2017, despite efforts having been made by the Irish government to collect the record amounts of monies to place in escrow pending determination of the court decision, failure to have actually collected the EUR 13 billion within the allotted time caused the European Commission on 4 October 2017 to refer Ireland to the Court of Justice of the EU but both parties hope to avoid court sanction;
14. urges a swift completion of the Apple court cases to provide certainty for the impact Competition law can have on other existing tax rulings;

State aid modernisation initiative

15. supports the Commission's view that enhanced transparency in public spending plays a key role in promoting the optimum use of taxpayers' money, and is of the opinion that transparency is also a way to enhance citizens' trust in the credibility and legitimacy of public authorities;
16. recalls² that EU state aid rules for services of general economic interest (SGEIs) should not be limited in their application to competition principles, but must be fully consistent with the broad discretion granted by the Treaties to the Member States in determining what represents an SGEI, as well as the principles of local and regional self-government, economic, social and territorial cohesion, and neutrality as regards ownership in the Member States (Article 3 TEU, and Articles 14, 106 and 345, and Protocol 26, TFEU). SGEIs must reflect the differences in needs, user preferences and public procurement systems that can result from variations in geographical location, social and cultural situations, and democratic processes in the Member States. State aid scrutiny may only be carried out if national, regional or local regulation or financing of an SGEI has cross-border effects or implications for the internal market;
17. regrets that the Annual Competition Report 2016 gives very little prominence to the issues relating to state aid for SGEI and does in particular not provide clarity on the review of the so-called "Almunia package" and the revision of the regulation on de minimis aid for SGEIs. Recalls in this regard that the CoR had called for:
 - detailed guidelines, with a view to meeting the fourth "Altmark" criterion, as to what a typical, well-run and adequately resourced undertaking is;
 - a revision of the definition of reasonable profit of an SGEI, in particular so as to reflect the fact that, through incentives or an increase in the percentage of recognisable reasonable profit, such profit is often reinvested in SGEIs;
 - the increase of de minimis thresholds in the case of state aid for SGEIs;
 - the increase of the threshold for exemption from the notification obligation under Article 108(3) TFEU of state aid in the form of a public service compensation for companies

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See point 2 of CoR opinion on "State Aid and Services of General Economic Interest" (ECON-VI/013), adopted on 11 October 2016

entrusted with delivering SGEIs to the threshold in effect before 2011, which was EUR 30 million per year;

18. reiterates³ its call for a widening of the definition of social housing contained in the Commission Decision of 20 December 2011: to give the Member States more discretion in planning, delivering, financing and organising the construction of social housing and guarantee the democratic right to choose, the restriction of social housing to "disadvantaged citizens or socially less advantaged groups" should be removed. The right to adequate and affordable accommodation should be given more priority, because the inability of the housing market to meet everybody's accommodation needs affects not just people who have no access to housing at all, but also the occupants of housing that is hazardous to health, inadequate or overcrowded, as well as people who are paying most of their income on rent or their monthly mortgage payments;
19. draws attention to the study published by the CoR on 9 June 2017 on the "Implementation of the Decision and the Framework on SGEIs: involvement of LRAs in the reporting exercise and state of play as regards the assessment of social services as economic activities" and its conclusions whereby:
 - in 22 of the national reports on the implementation of the Almunia package local and regional authorities were directly or indirectly involved in the drafting;and its recommendations whereby:
 - clarifications are needed in relation to the qualification of a social service as economic activity, in particular in the social and health sector, the calculation of the compensation including reasonable profit, and possible inconsistencies between different documents to be taken into account;
 - the reporting obligations should be simplified;
 - the exchange of best practices should be further promoted;
20. argues, therefore, that the role of local and regional authorities as SGEI providers in ensuring and reinforcing the social dimension of the Single Market is even more important in a context of high levels of unemployment, ageing populations, social unrest and fragile economic conditions; that benefits generated by services of this kind are directly felt by citizens and contribute, in that respect, to improving and enhancing citizens' trust in public institutions;
21. emphasises the collective responsibility of all levels of government to ensure sustainable public services for every EU citizen and is of the opinion that the Commission must base its State aid control in the field of SGEIs on the principle of trustworthiness so as to help relevant authorities and stakeholders instead of taking, from the outset, the view that local and regional authorities are breaching the rules when providing SGEIs;

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See point 41 of CoR opinion on "State Aid and Services of General Economic Interest" (ECON-VI/013), adopted on 11 October 2016

22. welcomes the Commission's efforts to simplify the application of State aid rules, namely the Notice on the notion of aid, and the fact that the Competition Report acknowledges that *it is particularly important to facilitate public investment and maximise the effect of investments on economic growth and jobs*, which echoes, in a way, the CoR demand for further simplification and exemptions in the field of SGEIs;
23. challenges, however, the degree of legal certainty achieved through the Notice as in the field of SGEIs in particular relevant stakeholders point at the complexity and possible inconsistencies between different documents to be taken into account, making it difficult for them to assess which rule is to be applied in a specific case⁴;
24. also expresses concerns in respect of the administrative burden triggered by the reporting requirements pursuant to the Decision and the Framework on SGEIs as stated in some of those country reports;

Digital Single Market

25. has been consistently supportive of efforts to use the Digital Single Market strategy as a vehicle for inclusive growth in all regions within the EU since improving access to broadband and ICT services, especially in peripheral and remote regions, or in regions with geographically dispersed populations, can facilitate access to services (e.g. eHealth and eGovernment), leading to efficiency gains for the public administration, help ensure low prices and wider choices for consumers irrespective of their location, and can open up new economic possibilities for local businesses, ultimately improving the quality of life of citizens and enhancing cohesion;
26. refers in this context to its opinion COTER-VI/012 on Simplification of ESIF from the perspective of Local and Regional Authorities, in which it discusses the impact of the application of state aid rules on the implementation of ESIF and draws attention inter alia to the existence of a significant inconsistency in the application of state aid rules. The Committee of the Regions notes that while programmes managed centrally by the European Commission (such as Horizon 2020, CEF and the European Fund for Strategic Investment) are exempt from state aid procedures, funding under the EU's cohesion policy is not exempt. In terms of state aid, then, projects are not in practice judged on their merits but according to whether it is the Commission or the Member State that grants the funds and the source of their funding;
27. is particularly concerned about barriers to cross-border online trade that businesses may themselves establish, about geo-blocking and about potential competitors being artificially excluded from certain business opportunities by dominant players;
28. stresses, moreover, again in the light of opinion COTER-VI/012 on Simplification of ESIF from the perspective of Local and Regional Authorities, that particular attention should be paid to the use of state aid under European Territorial Cooperation programmes. Generally speaking, in the case of these programmes, the effort needed to comply with state aid rules is disproportionate to the risk of distortion of competition. Moreover, state aid is often subject to different

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See [Member States Reports on the application of the SGEI decision during 2012-2016](#).

interpretations in different Member States and it is therefore not possible to apply these rules with adequate legal certainty, which often makes it quite impossible to carry out high-quality projects. One measure that could be implemented quickly in order to simplify ESIF would be to remove European Territorial Cooperation from the field of application of state aid rules, as is the case for the Horizon 2020 programme, for example;

29. welcomes, in this context, the initiatives of the Commission to better enforce competition law in the digital world, namely the e-commerce sector inquiry and the recently opened investigations aimed at tackling the specific issues of retail price restrictions, discrimination on the basis of location and unjustified geo-blocking⁵;
30. encourages the Commission to implement competition enforcement in the Single Digital Economy on a level global playing field with similar competition authority counterparts around the world, to ensure that innovation is not hampered and calls on the Commission to help bring about closer cooperation between NCAs, the European Commission and international organisations such as the OECD;
31. also supports the European Commission's efforts to rebalance the effective taxation rate paid by traditional companies and those in the digital sector, as a Commission communication on the taxation of the digital sector presented on 21 September 2017 states that the effective rate paid by the international internet companies is 10.1%, compared to 23.2% for traditional international businesses. Expects therefore the Commission to examine the possibility of introducing specific taxes on turnover and/or on digital transactions and consider proposing within the common consolidated corporate tax base (CCCTB) the concept of "virtual permanent establishment";

Single Market

32. notes the important role played by National Competition Authorities (NCAs) in key competition areas⁶ and recommends better resourcing of different Member States National Competition Authorities and improved European coordination of NCAs through the European Competition Network (ECN). Would also be supportive of a legislative proposal by the Commission on strengthening the enforcement and sanctioning tools available to the national competition authorities, the so-called ECN+, which would ensure that the full potential of the decentralised system of EU competition enforcement can be realised;
33. welcomes in this respect the Commission's initiative to make national competition authorities even more effective enforcers since for some levels of the market, the national authorities are better placed to deal with the enforcement of EU competition rules while respecting national specificities;

⁵ European Commission, *Antitrust: Commission opens three investigations into suspected anticompetitive practices in e-commerce*, available [here](#).

⁶ The sector inquiry into data processing in the on-line advertising sector opened by the French Competition Authority, the fine imposed on WhatsApp by the Italian Competition Authority for allegedly obliging users to agree to share their personal data with Facebook, the fine imposed by the Italian Competition Authority on Aspen Pharma (Aspen Case), and the fine imposed by the UK's Competition Market Authority on Pfizer and Flynn Pharma (Pfizer/Flynn Pharma case);

34. insists that where dominant businesses are exploiting their customers, by charging excessive prices or imposing unfair terms, competition authorities need to intervene in order to deal with those excessive prices, in particular when it comes to pharmaceuticals with a view to guaranteeing patients access to effective and affordable essential medicines and promoting the best possible outcome for patients and society;
35. expresses its concerns in relation to the unprecedented wave of corporate consolidation which is taking place in the already highly concentrated market of the world's seeds, chemicals and pesticides and GM crop genetic traits as this is likely to reduce competition and lead to oligopolistic structures;
36. points out the risks of a substantial vertical integration between traits, seeds and chemicals resulting from the unprecedented global market dominance in this sensitive area which would grant the dominant companies in this industry even greater influence over policy, compromising independent science and the public interest by abusing their position on the market;
37. emphasises the important role of small farmers in the sustainability of regional ecosystems, and calls on the Commission to ensure that the mergers underway will not raise entry barriers for smaller innovators, will not increase the risk that smaller innovators are excluded from access to technology and other resources needed to compete effectively, and will not result in higher agricultural input prices and less choice for farmers;
38. stresses the vulnerability of farmers and SMEs, which represent 79% of EU farms, due to their weaker bargaining position and to unfair trading practices in the food supply chain; highlights, in the same vein, that farmers are the main shock absorber in the supply chain as regards market risks such as price volatility or prolonged periods of low prices and calls on the Commission to help farmers to counter-balance the effects of increasing concentration at the processing and retailing stages of the chain;
39. urges the Agriculture and Competition Commissioners to work more closely to simplify the application of state aid rules in the area of rural development, including by providing for an integrated procedure for the simultaneous approval of an RDP and state aid relating to funding for the forestry sector and agricultural diversification, which have been excluded from simplification efforts in the agricultural sector. This would support efforts towards market diversification for the agri-food sector; particularly for agri-food industries in Member States most affected by BREXIT;
40. reiterates its call, as explained in its opinion on the CAP after 2020, for a review of EU competition law so as to allow all stakeholders in a given sector, including consumers and public authorities, to decide on a fair distribution of the added value and profit margins along the value chain and to allow farmers to strengthen their position on the market;
41. reiterates its call for a review of EU law on awarding public contracts in the mass catering sector that introduces incentives for supply of EU food products and/or km 0 food products

through short supply chains, with a view to promoting the internal market and the safety of the product used;

42. stresses that State aid control has played a key role in ensuring a safer and sounder banking sector in the EU throughout the crisis;
43. notes, however, that the lack of uniformity in the application of the BRRD (Bank Recovery and Resolution Directive) poses greater uncertainty for State aid control for measures taken to resolve or provide temporary recapitalisation of Financial Institutions;
44. believes that there should be much greater certainty on the role of bail-in versus bailout and how that corresponds to different sized financial institutions, where there would be a clear level playing field for the application of state aid control for the entire European banking system without Member State exemptions;
45. is of the opinion that more efficient deposit guarantee arrangements are needed at the level of the Banking Union to ensure sufficient financial means to underpin the confidence of all depositors and thereby safeguard financial stability;
46. welcomes the fact that State aid rules are flexible enough to allow Member States to help vulnerable citizens, struggling small companies and savers without that help being considered as State aid as the Commission confirmed with its decisions on the Cyprus State grant Scheme to borrowers and micro-companies⁷ and on the Resolution of the Cooperative Bank of Peloponnese (Greece)⁸;

Climate-friendly Energy Union

47. welcomes the Commission's inquiry into the capacity mechanism⁹ while stressing that the first priority guiding EU action in this field must be to promote sustainable energy (renewables and further energy efficiency efforts) as a means to achieve reduced CO₂ emissions in accordance with the UNFCCC Paris agreement as well as fighting energy poverty, securing energy supply, and enhancing territorial cohesion;
48. highlights also that the availability of energy at affordable prices is a key condition for regional competitiveness, in particular for less favoured and peripheral regions, and that regions which have a strong industrial base, which is a sector energy-intensive per se, are highly influenced by taxes and charges on energy and depend on an affordable and secure energy supply;
49. notes that energy prices on the retail market have increased in recent years despite lower wholesale prices and agrees with the Commission's view that the clean energy transition should

⁷ Case SA.45004 (2016/N).

⁸ Case number SA.43886.

⁹ Capacity mechanisms are designed to support investment to fill the expected capacity gap and ensure security of supply. Typically, capacity mechanisms offer additional rewards to capacity providers, on top of income obtained by selling electricity on the market, in return for maintaining existing capacity or investing in new capacity needed to guarantee security of electricity supplies.

be fair and take into account its transformative impact on stakeholders, including industries and workers¹⁰;

50. calls on the Commission to optimise its support to the structural transition in coal and carbon-intensive regions, in compliance with competition rules, and to work in partnership with the stakeholders of these regions, to better target European Union support, encouraging exchange of good practices, including discussions on industrial roadmaps and re-skilling needs and promoting synergies/joint cooperation;

Global Competition Culture

51. underlines that fiscal and social dumping, abusive tax planning and tax evasion all constitute obstacles to fair competition;
52. strongly believes that EU trade policy plays a key role in promoting convergence of competition policy instruments and practices across jurisdictions while establishing a world based on values;
53. Welcomes the State Aid Memorandum of Understanding between the Commission and China's National Development and Reform Commission. The CoR expects that this memorandum will contribute substantially to the Commission's broader strategy to address the distortion that national subsidies policies put on global trade¹¹.

Brussels, 1 December 2017

The President
of the European Committee of the Regions

Karl-Heinz Lambertz

The Secretary-General
of the European Committee of the Regions

Jiří Buriánek

¹⁰ European Commission *Second Report on the State of the Energy Union*, COM(2017) 53 final, Brussels, 1 February 2017, available [here](#).

¹¹ http://europa.eu/rapid/press-release_IP-17-1520_en.htm.

II. PROCEDURE

Title	The European Commission Report on Competition Policy 2016
Reference(s)	European Commission Report on Competition Policy 2016 COM(2017) 285 final
Legal basis	Article 307(4) TFEU
Procedural basis	Rule 41 b) i)
Date of Council/EP referral Date of Commission letter	/
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Previous Committee opinions	
Date of subsidiarity monitoring consultation	