



*European Economic and Social Committee*

**INT/800**  
**Report on Competition Policy 2015**

## **OPINION**

European Economic and Social Committee

**Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Report on Competition Policy 2015**  
[COM(2016) 393 final – SWD(2016) 198 final]

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Section responsible	Section for the Single Market, Production and Consumption
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Adopted at plenary	19/10/2016
Plenary session No	520
Outcome of vote (for/against/abstentions)	211/1/4

## **1. Conclusions and recommendations**

- 1.1 The EESC welcomes the 2015 Report, as it considers it fundamental to the EU's social market economy that competition policy is on an equal footing in all sectors.
- 1.2 Imports based on unfair competition constitute a danger to European businesses. Anti-dumping measures are essential to save jobs and protect those economic sectors that are affected.
- 1.3 The EESC shares the concerns of SMEs, trade unions and EU employers' associations over the possibility that China will be granted market-economy status.
- 1.4 SMEs, which are fundamental to economic recovery, are the most vulnerable to abuses of a dominant position.
- 1.5 State aid control ensures a more efficient use of resources and improves public finances. However, such aid can be essential in guaranteeing the provision of services of general economic interest.
- 1.6 The EESC recommends that information about state aid awards should be improved in order to ensure greater publicity and transparency.
- 1.7 A small number of third country global actors control digital innovation and it is fundamental for Europe to ensure its leading position thanks to its Digital Single Market.
- 1.8 The major challenge for European competition policy in a sector dominated by technology giants is to ensure that consumers have access to the best products and prices and that all companies, whether big or small, compete in an open market and based on the merit of their products. The EESC considers that, despite some of the criticisms it receives, the EU's actions are, in general, balanced and in compliance with legislation.
- 1.9 The European Energy Union has enjoyed significant success in ensuring security of supply (a strategic success), reducing greenhouse gases, promoting renewable energy and increasing consumer choice. Nevertheless, it faces significant challenges relating to the cost of energy, the greater interconnection of networks and leadership with regard to implementing the Paris Agreement.
- 1.10 In the energy sector, merger control must be made compatible with expected mergers and acquisitions aimed at lowering production costs, which will reduce the number of businesses.
- 1.11 Regulation No 1/2003 has strengthened national competition authorities (NCAs) and has helped to consolidate the international standing of EU competition policy. Coordination among NCAs, as well as between NCAs and the Commission, make measures related to cross-border transactions more effective.

- 1.12 Regarding the financial crisis, the EESC reiterates that the exposure of taxpayers to the costs of bailing out the banks should be reduced.
- 1.13 The EESC calls for the EU regulations limiting interchange fees on credit and debit cards to be applied irrespective of the country in which the card issuer has its head office. Likewise, banks should not be prevented from offering interchange fees that are lower than those offered by retailers based in another country of the European Economic Area (EEA).
- 1.14 The EESC would like to underline the need for the Commission to continue its work to promote competition by reducing tax induced distortions resulting from misalignment of the 28 tax systems.
- 1.15 The widespread introduction of competition systems as a result of globalisation makes international co-operation vital. In the face of growing demands and a range of forums in which to participate (OECD, UNCTAD, International Competition Network), the EESC highlights the fact that the EU needs sufficient resources to continue speaking with one EU voice, which at present is listened to and respected.

## **2. Competition Report 2015**

- 2.1 The Commission states that "strong and effective EU competition policy has always been a cornerstone of the European project".
- 2.2 The key elements of the Report are grouped into three chapters:
- competition policy boosts innovation and investment across the EU,
  - seizing the opportunities of the Digital Single Market, and
  - building an integrated and climate-friendly European Energy Union.
- 2.3 The Commission reports on its specific activities in these areas, noting that, when enacting legislation, its guiding principles have been to safeguard impartiality, apply the rule of law and serve the common European interest.
- 2.4 In the past twenty-five years, the number of competition regimes around the world has risen spectacularly, from around twenty in the early 1990s to about 130 in 2015, covering 85% of the world's population.

## **3. General comments**

### **3.1 The EU's competition policy**

- 3.1.1 The EESC appreciates the 2015 Report, which addresses fundamental areas for economic development and the well-being of EU citizens.
- 3.1.2 A competition policy based on a level playing field in all sectors is a cornerstone of the social market economy in Europe. It is also an essential tool for ensuring the proper functioning of a

dynamic, efficient, sustainable and innovative internal market, boosting economic growth, creating jobs and increasing competitiveness in the global arena.

- 3.1.3 Competition policy should not hinder the emergence of industrial champions in the European economy. In order to be effective and credible, it should not be directed exclusively at bringing down prices for consumers, but should also promote the development and competitiveness of European businesses in world markets.
- 3.1.4 A strong industrial base is vital to prosperity and growth. Bearing in mind the threat that unfair competition poses to European businesses, the EESC points out that anti-dumping measures safeguard tens of thousands of direct and indirect jobs and protect economic sectors from unfair import policies.
- 3.1.5 Imports under conditions of dumping, which put thousands of jobs in the EU at risk, amount to unfair competition. The EESC feels that China can hardly be said to operate in market conditions since it fails to comply with four of the five criteria established in the Commission's practice and in Regulation (EC) No 1225/2009<sup>1</sup>.
- 3.1.6 EU Structural Funds should not be used to support, directly or indirectly, the relocation of services or production to other Member States.
- 3.1.7 SMEs are the backbone for Europe's economic recovery. Because of their size, however, they are also the most vulnerable to practices involving the abuse of dominant market positions, which in many cases means they are likely to disappear. Competition policy should focus specifically on such practices, especially on the part of large business groups.
- 3.1.8 Once again, the EESC draws attention to the lack of a genuine legal mechanism for collective actions that would provide effective enforcement of the right to compensation for the victims of abuses of dominant position, and it remains of the view that neither Directive 2014/104/EU of 26 November 2014 nor the Recommendation on common principles for collective redress mechanisms in disputes concerning infringements of competition law are capable of providing the necessary collective redress for the rights of those affected by such infringements.

## 3.2 State aid

- 3.2.1 Modernising state aid enables the EU to use resources in a more efficient way and improve the quality of public finances. It also helps Member States comply with the Europe 2020 strategy for growth and budgetary consolidation.
- 3.2.2 However, state aid can be essential to ensuring the delivery of services of general economic interest, including energy, transport and telecommunications. Likewise, it is often the most effective policy tool for guaranteeing the provision of services that are vital when it comes to

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<sup>1</sup>

[OJ C 389, 21.10.2016, p. 13](#). See also: *ETUC – BusinessEurope joint declaration on China's Market Economy Status* (19.7.2016) and *Granting of Market Economy Status to China*, European Parliament, December 2015.

safeguarding economic and social conditions in isolated, remote or peripheral areas and in island regions of the Union.

3.2.3 The EESC considers it necessary to maintain coherence between competition policy and other EU policies, especially in the case of investments aimed at boosting innovation and research, such as RDI, risk financing and universal broadband.

3.2.4 EU citizens do not consider themselves to be sufficiently informed about the complex state aid system and highlight the difficulty of accessing information about which companies receive such assistance<sup>2</sup>. In order to achieve greater publicity and transparency, the EESC recommends that Member States should in every case publish details of aid recipients, the amount of funding received and its objective.

### 3.3 Competition in the Digital Single Market

3.3.1 The Digital Single Market is a fundamental EU strategy for ending the fragmentation of multiple national markets and merging them into a pan-European approach<sup>3</sup>. A small number of third country global actors control digital innovation and it is fundamental for Europe to ensure its leading position thanks to its Digital Single Market.

3.3.2 The major challenge for European competition policy in a sector dominated by technology giants is to ensure that consumers have access to the best products at the best prices and that all companies, whether big or small, compete in an open market and based on the merit of their products.

3.3.3 Cases that the Commission is investigating:

- Internet search engines. The Commission's statement of objections is based on the fact that Google systematically favours its own price comparison products. Three other concerns have been raised that are also being investigated.
- E-books. Amazon imposes clauses that may prevent competition, for example, the right to be informed about more favourable conditions or alternatives offered by its competitors.
- Cross-border provision of pay-TV services in the United Kingdom and Ireland. The licence agreements between Sky UK and six large film studios in the USA require Sky UK to block access outside of its licensed territory.
- Mobile devices such as smart phones and tablets. Among other practices, Android requires manufacturers to pre-install Google Search and the Google Chrome browser, and obliges them to select Google Search as the default search engine for their devices as a prerequisite for granting them licences to certain applications that are exclusive to Google.
- Baseband chipsets that are used in electronic devices. Qualcomm, the main worldwide supplier, is being investigated to see whether it has offered financial incentives to a

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<sup>2</sup> *Perception and awareness about transparency of state aid*, Eurobarometer, July 2016.

<sup>3</sup> [OJ C 71, 24.2.2016, p. 65.](#)

prominent manufacturer of smart phones and tablets on condition that they only use Qualcomm's products.

3.3.4 In general, these cases involve potentially monopolistic practices and abuse of a dominant position. The technical complexity and high impact of the cases under investigation have led to criticism that, among other things, the EU has "declared war on Silicon Valley". The EESC does not agree with this criticism and supports the actions of the Commission, which it considers to be balanced and in compliance with legislation.

3.3.5 Google – which in 2015 earned USD 74.5 billion in revenue – has a dominant position in the EEA of above 90% in markets for general internet search services, operating systems with licences for smart phones, and application stores for the mobile operating system Android. It has been claimed that the Commission's investigation has undermined the possibility of the EU transforming itself into a centre for innovative ideas and is based upon incorrect technical evidence. Nevertheless, in 2012 the technical services of the United States Federal Trade Commission concluded that Google, which controls two thirds of the North American market, was using anticompetitive tactics and abusing its dominant position to the detriment of its users and competitors<sup>4</sup>. An investigation carried out in that country reached the same conclusion<sup>5</sup>.

#### 3.4 A European Energy Union that respects the climate

3.4.1 The European Energy Union has achieved major successes:

- Security of supply: the EU has achieved a strategic success and is currently much better prepared to face a crisis such as that which took place in 2009. European dependency on gas supplied by Russia has fallen to a third, and infrastructure for the internal distribution of gas, possibilities for external supply and storage capacity have all improved substantially.
- Targets set for reducing greenhouse gas emissions and increasing the use of renewable energy sources (20-20-20 by 2020) could be met ahead of time and energy efficiency seems to be developing almost to target, albeit partly due to the economic downturn.
- Markets have been opened up and consumer choice has increased.

3.4.2 However, the EESC – which has already expressed its support for the 2015 Framework Strategy<sup>6</sup> – feels that particular emphasis must be placed on the major challenges that the EU will face over the coming years:

- reducing the cost of energy, which is still very high for European consumers and has an impact on the following areas: social (risk of energy poverty), economic (seriously affects SMEs) and external competitiveness of businesses (energy is much cheaper in other markets, such as the United States),
- improving the integration of markets, increasing the interconnection of networks, and

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<sup>4</sup> <http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274..>

<sup>5</sup> *Does Google content degrade Google search? Experimental evidence*, Harvard Business School, 2015.

<sup>6</sup> [OJ C 383, 17.11.2015, p. 84.](#)

- assuming a leadership role in implementing the Paris COP21 objectives, so that the radical shift involved in the gradual, profitable transition towards a low-carbon economy will be a success.
- 3.4.3 The EESC supports the Commission in its efforts to apply antitrust legislation strictly, as this is fundamental to addressing the abusive practices of the dominant operators in the market. The legally binding agreement between the Commission and Bulgarian Energy Holding should be noted.
- 3.4.4 In 2012 the energy sector received public support amounting to EUR 122 billion (EU-28)<sup>7</sup>. Without this support, consumers would be unable to pay already-high energy prices. When applying state aid policies<sup>8</sup>, the Commission should take into account the fact that certain kinds of renewable energy – which receives the most aid (EUR 44 billion) – have high production costs, making it difficult for suppliers to be competitive in the market.
- 3.4.5 The EESC notes that the acquisition of Alstom's energy business by the US company General Electric (GE) has been approved by the Commission<sup>9</sup>.
- 3.4.6 The Commission states that "merger control continued to be an effective tool for keeping the EU energy market open". This needs to be made compatible with the fact that low oil prices could make business mergers to reduce production costs inevitable. Some forecasts indicate that the number of oil and gas producers will fall by a third.

#### 4. **Strengthening the EU's internal market**

##### 4.1 Taxation

- 4.1.1 The EESC agrees that transparency and a fair distribution of the tax burden are essential to the existence of the single market. Evasion, fraud and tax havens cost European taxpayers dearly and at the same time distort competition. It is estimated that the EU loses between EUR 50 and 70 billion of tax revenue every year due to tax evasion, which represents just over 16% of public investment in the EU. If we add to this the loss of income from legal – or supposedly legal – tax engineering practices, the damage becomes even worse<sup>10</sup>.
- 4.1.2 The action plan for applying a fair and efficient corporate tax system is an important step in reducing aggressive tax planning, a practice that erodes Member States' tax bases and promotes unfair competition<sup>11</sup>.

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<sup>7</sup> *Subsidies and costs of EU energy*, 11 November 2014. <http://ec.europa.eu/energy/en/content/final-report-ecofys>.

<sup>8</sup> [OJ C 200, 28.6.2014, p. 1.](#)

<sup>9</sup> GE has announced that – between 2016 and 2017 – it will cut 6 500 jobs in Europe, including 765 in France. *Le Monde* 14.1.2016.

<sup>10</sup> See: *Bringing transparency, coordination and convergence to corporate tax policies in the European Union*, September 2015.

<sup>11</sup> [OJ C 71, 24.2.2016, p. 42.](#)



4.1.3 The EESC would like to underline the need for the Commission to continue its work to promote competition by reducing tax induced distortions resulting from misalignment of the 28 tax systems. The complicated transfer pricing system which is currently in place for intra-group transactions is particularly expensive and burdensome for businesses operating within the EU, and leads to disputes between Member State administrations and results in double taxation of companies. Setting up a common corporate consolidated tax base (CCCTB) for businesses with cross-border activities is appropriate.

4.1.4 The Commission is investigating the tax agreements between certain Member States and large multinational companies: Luxembourg (Fiat, Starbucks, McDonald's, Amazon); the Netherlands (Starbucks). In the case of Apple, the Commission considers that, because of the tax treatment applied to it, this company was able to avoid paying tax on the sale of practically all of its products in the EEA, as a result of which it must reimburse an estimated EUR 13 billion to Ireland. Without prejudice to the final decision, the Committee supports the Commission in its investigation of tax agreements that can be detrimental to competition.

#### 4.2 National Competition Authorities

4.2.1 Regulation No 1/2003<sup>12</sup> has strengthened national competition authorities and has helped the international prestige of EU competition policy. The Commission has proposed that National Competition Authorities (NCAs), which currently deal with the greatest number of cases, should be strengthened. The proposal has been put forward for public consultation. Coordination among NCAs, as well as between NCAs and the Commission, make measures related to cross-border transactions more effective.

#### 4.3 Card payments

4.3.1 Although use of the various electronic payment systems has become widespread, globally, consumers pay for 85% of their purchases in cash. In the EU, the situation is similar in several Member States, although in Scandinavian countries only 10% of purchases are made in cash. In any event, card payments are key to the operation of trade and are very important for consumers. Regulation (EU) 2015/751 imposes a cap on the size of interchange fees<sup>13</sup>.

4.3.2 The statement of objections against MasterCard is based on the fact that it has prevented banks from offering lower interchange fees to retailers based in another European Economic Area (EEA) country as well as charging higher fees to cards issued in other parts of the world. European consumers' associations have repeatedly reported abusive practices on the part of card companies such as Visa and MasterCard, facilitated by their dominance of the market. The EESC hopes that this prohibition will be eliminated as a result of the investigations and that the limits in interchange fees established in the EU will be applied independently of the country that produces the cards.

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<sup>12</sup> Communication from the Commission to the European Parliament and the Council: *Ten Years of Antitrust Enforcement under Regulation (EC) 1/2003: Achievements and Future Perspectives*.  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0453>.

<sup>13</sup> [OJ L 123, 19.5.2015, p. 1.](#)

#### 4.4 State aid for banks

4.4.1 The Commission makes reference to the state aid approved for various banks in a number of Member States. To date, the crisis has cost European taxpayers dearly. In order to avoid the total collapse of the banking system, governments bailed out their banks with urgent assistance on an unprecedented scale. In the Euro area, between 2008 and 2014, government assistance to financial institutions amounted to 8% of GDP, of which 3.3% has been recovered<sup>14</sup>.

4.4.2 Aside from the great cost to the public purse, bailouts of the banks – which should be resolved by applying the legislation in force as of 1 January 2015<sup>15</sup> – could lead to distortion of competition.

The EESC maintains that it is necessary to:

- reduce taxpayers' exposure to the costs of bailing out banks,
- assign public authorities the necessary powers to take preventive measures, and
- grant resolution authorities the power to write down the claims of unsecured creditors of a failing institution and to convert debt claims to equity<sup>16</sup>.

#### 5. **Competition in the era of globalisation**

5.1 The widespread introduction of competition systems as a result of globalisation makes international cooperation vital. The EESC enthusiastically supports the Commission's active participation in forums such as the Competition Committee of the OECD, the United Nations Conference on Trade and Development (UNCTAD) and the International Competition Network (ICN).

5.2 At present, the EU's voice is heard and respected in these forums. The Committee stresses the need to maintain human and material resources in accordance with this responsibility.

Brussels, 19 October 2016

Georges DASSIS

President of the European Economic and Social Committee

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<sup>14</sup> ECB Bulletin.

<sup>15</sup> [OJ L 173, 12.6.2014, p. 190.](#)

<sup>16</sup> [OJ C 44, 15.2.2013, p. 68.](#)