



European Economic and Social Committee

INT/829
Report on Competition Policy 2016

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 on Competition Policy 2016
[COM(2017) 285 final]

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1. **Conclusions and recommendations**

- 1.1 The EESC welcomes the content of the Report on Competition Policy 2016¹ and is supportive of it on the whole. However, the Committee has some concerns regarding the current context and what it believes European competition policy could be.
- 1.2 The EESC is pleased to note the efforts made by the Commission to promote compliance with the rules, thereby contributing to an environment of fair and free competition, as well as to the development of international cooperation.
- 1.3 The EESC believes that EU competition policy requires better definition and that it is often out of step with other EU policies that influence it. Businesses and consumers experience various problems other than those covered by the Commission under competition policy, which also influence the internal market. The problems deriving from taxation are one example of this.
- 1.4 The Commission's powers are limited but it does hold the power of initiative and it could take more ambitious steps in to coordinate competition policy both with the various European policies and with the activities of national competition authorities (NCAs). European and national competition policies must be perfectly aligned if the Commission and the NCAs are to be able to work more effectively.
- 1.5 On a daily basis, competition has negative effects on certain groups, particularly SMEs and consumers: the business practices of large retail groups destroy smaller companies – as a result of aggressive negotiations – and limit consumer choices; unclear pricing formulas, for example in relation to energy and fuel prices, affect businesses and consumers; and dumping practices continue – particularly in the transport and distribution sector. These issues should be subject to continual monitoring and tackled by the NCAs and the Commission.
- 1.6 Although it is known that the power of large groups may lead to distortions of competition, the Commission has been supporting mergers and concentrations that create sectoral giants. The EESC calls on the Commission to establish genuinely effective corrective measures as part of these processes and to closely monitor the activities of large groups, safeguarding compliance with the rules as well as consumer and SMEs' interests.
- 1.7 It is not possible to harmonise tax policies, according to the Treaty. Differences in direct and indirect taxation sometimes affect businesses and consumers and worsen asymmetries. The EESC reiterates that competition policy must mitigate distortions stemming from taxation, for as long as Europe reserves this area as a national competence.
- 1.8 International cooperation has developed with several agreements being negotiated. The EESC advocates that real partnerships should be sought out and that the agreements reached should reflect the extensive ongoing discussions on the content of the trade agreements.

¹ COM(2017) 285 final.

2. **Gist of the 2016 Report on competition policy**

- 2.1 The report gives a general outline of the measures adopted by the Commission in the field of competition policy summarising the broader working document on the action taken in 2016².
- 2.2 The President of the European Commission, Jean-Claude Juncker, highlighted the importance of competition policy in his 2016 State of the Union address, stating that: "*A fair playing field also means that in Europe, consumers are protected against cartels and abuses by powerful companies. [...] The Commission watches over this fairness. This is the social side of competition law.*"
- 2.3 The report is organised into six parts: the Introduction; Ensuring a true level playing field for all: how State aid control helps tackle the challenge; Boosting competition and innovation across the Digital Single Market; Delivering a Single Market that empowers EU citizens and businesses; Unlocking the potential of the European Energy Union and Circular Economy; and Shaping a European and global competition culture.
- 2.4 Broadly speaking, the EESC supports the content of the report. However, the Committee takes of a critical view of the assertion, under the section entitled "Upholding a fruitful inter-institutional dialogue "that" the State aid rules also preserve a level playing field between banks that receive State aid and banks that do not". A number of conditions were indeed imposed on the banks that receive state aid, but it cannot be claimed that they have preserved a level playing field between those receiving state aid and others. There is a distortion of competition and the corrective measures imposed do little to rectify it.

3. **General comments**

- 3.1 The EESC welcomes the 2016 Report on competition policy, which addresses areas that are of great importance to the lives of companies and citizens.
- 3.2 The European industrial base is made up mainly of SMEs. These businesses are the backbone of the European economy, while also being the most vulnerable to unfair competition due to their size.
- 3.3 In the large-scale retail sector, SMEs are particularly affected by abuses of dominant positions by large retailers which, in taking advantage of their greater bargaining power and acting against all competition rules, use abusive negotiating practices which continue to destroy small producers and businesses and to influence consumer choices and interests. The EESC recommends that the Commission include an analysis of the functioning of the food distribution chain in future competition policy reports.
- 3.4 When dealing with the abuse of dominant positions and other practices that limit competition, action by NCAs is of the utmost importance. The capacity of NCAs in terms of resources, powers and the independence of their activities has been examined by the Commission and

² SWD(2017) 175 final.

measures are due to be adopted in response to the finding that their effectiveness could be further enhanced. The EESC reiterates that the NCAs can and should take a more preventative approach rather than a reactive one, following complaints from operators or consumers – in particular with regard to practices that constitute an abuse of a dominant position, which occur constantly during negotiation meetings. Monitoring negotiations may help to prevent some instances of abuse of dominant powers, thereby protecting small operators and consumers.

- 3.5 It is particularly in this area that it is important to ensure effective enforcement of the right to compensation for the victims of anti-competitive practices, as 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 have proved capable of providing the necessary collective redress for the rights of those affected by such infringements.
- 3.6 There have been several mergers and concentrations in various sectors, creating "giants", that may affect the functioning of the market and undermine competition rules. The Commission has been called upon to rule on some of these procedures. In practice, few have been blocked and the corrective measures imposed in exchange for authorisation have fallen short of expectations. On one hand, the Commission justifiably pursues cartels, but on the other, authorises mergers and acquisitions without compensatory measures. The EESC is concerned about the potential danger of creating large groups in some sectors, which may lead to serious distortions of competition, in the destruction of various SMEs and influence consumer choices. The Committee urges the Commission to be vigilant.
- 3.7 The distortions of competition stemming from the EU's external relations affect both its imports and its exports. Indeed, products are entering the European market from countries where social dumping practices, abusive environmental practices and state aid that would be considered illegal under European rules persist. Moreover, European companies that comply with standards see their access to other markets impeded, as it is clearly impossible to match the pricing practices of competitors from countries with more favourable legislation or with ineffective enforcement controls.
- 3.8 However, distortions of competition can also result from the EU's own rules. An example of this is the REACH Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals) which, as of 31 May 2018, will be applicable to companies that make or place chemical substances on the market, on their own or in mixtures or articles, in quantities exceeding one tonne per year. This Regulation requires companies to submit a registration dossier of chemical substances, either on their own or contained in mixtures or articles, in quantities exceeding one tonne per year to the European Chemical Agency (ECHA), accompanied by the relevant fee. The registrant is considered to be the legal holder of the report, thereby allowing the information that it contains to be transformed into a commodity which is traded on the market by the lead registrants, generally larger businesses with greater economic power. In practice, when a company tries to register with ECHA, they are told that they should contact the lead registrant, who will then inform them of the cost of authorising access to the information deposited. This can reach up to tens or hundreds of thousands of Euros per substance. It has been established that registrations submitted under the Regulation at least 12 years previously can be used for the purposes of registration by another manufacturer or

importer. However, in practice, as the date on which the REACH Regulation will apply fully to all substances produced or placed on the market in quantities exceeding one tonne per year approaches, lead registrants require microenterprises and SMES in the sector to pay hefty sums or even a percentage of sales in return for the "letter of access" to the information they have provided to the ECHA. This information should be public and available free of charge to all EU citizens and companies, in order to fulfil the purposes that it was created for: to protect peoples' health and the environment. In this case, the regulation, which was designed to improve the protection of human health and the environment from risks that may arise from the use of chemicals, may create barriers to market entry for new businesses and to the free movement of chemical substances, resulting in restricted competition and the abuse of dominant positions by larger companies. The EESC draws attention to the need to carry out an evaluation and review of the REACH Regulation in order to remove any barriers to competition resulting from the application of this legislation.

3.9 The issue of bank mergers and state aid to the banking system continues to be on the agenda. As a result of the recent financial crisis and its impact on the real economy and market confidence, practices within the sector are subject to constant scrutiny, due to legitimate concerns that serious problems will resurface. Temporary state aid saved the financial sector from collapse. Banks suffered significant losses during the financial crisis and are now seeing their margins reduced, due to the current spread levels. The restructuring of the sector has seen the disappearance of some institutions, as well as mergers that could be worrying, not only in terms of the stability of the financial sector in the event of further crisis situations, but also with regard to the possibility of distortions to competition resulting from the size of these new groups. The EESC calls on the Commission to be attentive and vigilant with regard to potential abuses of dominant positions that could harm consumer interests and financing for companies, in particular SMEs.

4. **Specific comments**

4.1 State aid

4.1.1 State aid is an important tool for development in that it enables less-developed regions to catch up, as well as promoting jobs and the economy. Scarce resources should be used well and should not conflict with good practices in the field of competition.

4.1.2 The EESC reiterates its conviction that the ongoing modernisation of state aid must be in line with the objectives of the Europe 2020 Strategy, cohesion policy and competition policy, while safeguarding levels of state aid in sectors that serve European development and public services that meet social needs.

4.1.3 The EESC has already supported the modernisation of state aid in the past. The Committee now welcomes the obligation on authorities responsible for granting aid to provide information on the aid when it exceeds EUR 500 000³.

³

<https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>

4.1.4 This information will address the difficulty experienced by EU citizens, who do not feel that they are sufficiently informed about state aid that is granted⁴. What must now be done is to make these opportunities for consultation known, together with information on the rules on granting and recovering aid, which promote transparency in the use of public funds.

4.1.5 The EESC supports the measures taken by the Commission to tackle state aid granted through tax rulings and which confer illegal tax benefits. This includes the adoption of the anti-tax-avoidance package, with the aim of ensuring that companies pay taxes in the place where they earn their profits and avoiding aggressive tax planning⁵.

4.2 Digital Single Market

4.2.1 With the growth of the broadband network, the digital services market plays an increasingly important role in the life of European companies and citizens. E-commerce is on the rise and competition policy aims to ensure that the market works, by protecting consumers and guaranteeing that the most powerful companies do not undermine the rules.

4.2.2 The EESC calls on the Commission to continue work on the geographical obstacles to e-commerce, which could form a barrier to the establishment of a genuine Digital Single Market. In a global market there cannot be any form of discriminatory treatment towards customers based on their location.

4.2.3 The digital market is dominated by a handful of technology giants. Ensuring that consumers have access to the best products at the best prices, and that new products and new competitor companies can enter the market is a challenge.

4.2.4 Some online booking platforms are currently of great concern to hoteliers, due to their abuse of the dominant position that they hold over travel reservations. These platforms charge considerably higher commissions than travel agencies and even require hoteliers to charge the same prices for the same type of room across all sales channels. The EESC calls on the Commission to investigate the parity clauses and commissions applied which put free competition in the sector at risk.

4.2.5 The Commission continued its investigation into Google (the workings of search engines, restrictions imposed on the ability of certain third-party websites to display advertisements related to searching for Google's competitors, the restrictive conditions imposed on manufacturers of Android devices and mobile network operators) and Amazon's practices (agreements with publishers), which may amount to violations of antitrust rules. Google was recently fined a record EUR 2.4 billion for abusing its dominant position on the search-engine market by granting an illegal advantage to another Google product, its own price comparison service.

⁴ "Perception and Awareness about transparency of State Aid". Eurobarometer - July 2016.

⁵ http://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en

- 4.2.6 Google occupies a dominant position on the search engine market and the Commission must ensure that its search results are not limited, in such a way as to restrict user's choice of information. The Commission's efforts should also focus on practices by the "Booking" website, which influences search results on European tourism, thus abusing its dominant position and having a particularly detrimental effect on smaller markets and businesses.
- 4.2.7 The telecommunications sector is especially important to the lives of consumers and companies. The EESC draws the Commission's attention to the fact that an open and competitive market still does not exist in this area. Indeed, telecommunications operators continue to adopt practices at odds with free competition, by increasing their prices during the course of a contract without providing the customer with any prior information on this that would enable them to terminate the said contract, as stipulated by law. This price increase was felt particularly when roaming services came to an end. In practice, this has led to a general increase in tariffs that affects those who do not travel.
- 4.3 The energy market and the circular economy
- 4.3.1 Despite the work carried out in recent years, the single energy market is still to be completed. High energy prices – particularly in certain countries – have a significant bearing on household and company budgets, as market liberalisation has not led to a genuine reduction in tariffs. These prices keep Europe at a disadvantage in terms of energy costs, in comparison with its many competitors worldwide.
- 4.3.2 Increasing energy efficiency and investment in renewable energies must continue to be central ideas for a more competitive and sustainable Europe, despite the environmental concerns surrounding the treatment of waste resulting from the use of these technologies (such as solar energy cells and batteries). Renewable energies, despite technological advances, are not yet developed enough to be able to compete with fossil fuels and nuclear energy and they therefore deserve continued support to compete on a fairer market.
- 4.3.3 Renewables are not only a source of clean energy. They should also be viewed as an opportunity to develop local communities, allowing them to become both energy consumers and producers, as part of a decentralised energy production model that benefits local communities.
- 4.3.4 Technology has developed and solar photovoltaic energy has become more accessible to businesses and households that wish to install panels to cover their own consumption, but the granting of licences to install these power stations is limited to a certain level of power. This may limit the attractiveness of this investment for operators of a certain size that could see their energy bills significantly reduced or diminished to almost nothing during months with the highest sun exposure.
- 4.3.5 Moreover, Europe must continue to ensure its energy independence by strengthening its connections so as to reduce its vulnerability and increase competition.

4.3.6 The EESC stresses that particular emphasis must be given to the major challenges facing the EU, namely:

- reducing the energy costs for households and businesses, with clear social and economic benefits and benefits in terms of the external competitiveness of European companies;
- promoting the establishment of a genuine European energy policy;
- improving the integration of energy markets by encouraging European connections;
- taking a leading role in implementing the Paris Agreement to reduce greenhouse gas emissions in the context of sustainable development.

4.4 International cooperation

4.4.1 In a global marketplace, Europe continues to endure unfair competition from countries that employ abusive environmental and social practices. In addition to important social aspects, distortions of competition resulting from the EU's external relations require a strong international diplomacy effort to protect businesses and consumers from existing distortions that affect imports and exports.

4.4.2 The EESC welcomes the Commission's commitment to actively participating in international competition bodies, such as the OECD Competition Committee, the World Bank, the United Nations Conference on Trade and Development and the International Competition Network.

4.4.3 The EESC also welcomes the Commission's efforts in the negotiations on free trade agreements with Armenia, Mexico, Indonesia, the Philippines and Japan, as well as in the area of technical cooperation with emerging economies. There is only one mention of the need for these agreements not only ensure a balance of competition, thereby protecting businesses and consumers, but also to contribute to economic and social cohesion in Europe.

Brussels, 18 October 2017.

Georges DASSIS

The president of the European Economic and Social Committee
