



**INT/912**  
**Report on Competition Policy 2019**

## **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 2019**

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Section responsible	Section for the Single Market, Production and Consumption
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## 1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee (EESC) welcomes the European Commission's (EC) report on Competition Policy 2019, in which the EC develops an approach aimed at strengthening the single market, and promoting economic development and social policy objectives that are essential for the European development process.
- 1.2 As it has pointed out in several previous documents, the EESC considers an effective and principled competition policy to be one of the pillars of the European Union and an essential tool in achieving the internal market, pursuant to the Treaty on the Functioning of the European Union, and in line with the Sustainable Development Goals (SDGs), the construction of a social market economy and the implementation of the European Pillar of Social Rights<sup>1</sup>. These points remain current.
- 1.3 The EESC agrees that the EC should take measures to boost fair competition in markets that are important to EU citizens and businesses, such as the digital and telecommunications sectors, energy and the environment, manufacturing, financial services, taxation, agriculture, food and transport. These measures should provide confidence to consumers and clearly define the proper conditions for companies to operate. The pace of economic and social change is very swift. Continuous adjustment to a modern, sustainable, green and digital economy is urgent and necessary and competition policy is key to this achievement.
- 1.4 The new and constant challenges arising from the use of data, algorithms and markets are evolving rapidly in an increasingly digital environment. As a result, cooperation networks between the Member State authorities and the EC need to be made more robust in order to uphold fair competition in the single market. The EU must therefore be in line with the digital age, and the EESC is aware of the need for changes: it urges the necessary adaptation to be made. The EESC strongly believes that the digital market and online platforms are part of a new economy that is crucial for Europe but that there is also a need to set clear and fair rules for all stakeholders.
- 1.5 The EESC draws the attention of the EC to the need to continuously create the economic and political conditions to boost the growth of SMEs on a level playing field that also allows the participation of big companies in the economic process. Europe must be perceived as a strong economic area that permits fair competition and clear rules for all players.
- 1.6 The EESC calls for the same social and environmental rules to be guaranteed where competition with companies from outside the EU is concerned, in order to ensure a level playing field. Europe cannot have different approaches to the same challenges. And Europe cannot be "naive" regarding competition policy.
- 1.7 The EESC supports the coordinated measures put in place by the EC for the manufacturing sector but would like the EU to go further and propose a permanent solution to boost the level playing field in close cooperation with the Member States. The temporary measures regarding

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<sup>1</sup> Articles 7, 9, 11 and 12 TFEU.

the supply of specific products from non-EU markets must be made permanent, especially regarding the importing of vital medical equipment and other key products. This pandemic has shown up all the weaknesses of a hesitant policy. A strong and resilient manufacturing sector should be one of the pillars of the competition policy.

- 1.8 In the sector of agriculture and food, it is important to protect products of European designation of origin from imitations or "copies". The seeds and pesticides sector is essential for farmers and consumers, but also raises concerns that go beyond consumer protection, food safety and ensuring compliance with environmental and climate standards.
- 1.9 Transport remains one of the most difficult service sectors regarding competition among Member States in the internal market. Clear rules and the need for balance must be a constant priority not only for the companies but also for the end users.

## 2. **General comments**

- 2.1 Competition policy is critical to the aim of an efficient and fair single market that can boost Europe's values and the European project. Bearing this in mind, it is essential to better clarify the entire policy and guidelines in order to ensure that the single market is perceived as bringing added value to globalisation and that Europe's leadership towards sustainable and fair trade not only provides opportunities but also tangible outcomes that can have an impact in other economic regions.
- 2.2 While the launch of the "fitness check" of State aid rules was a major achievement in 2019, its implementation and monitoring seem to be far from perfect and swift. These processes, including public consultations, must be accurate and faster. The EESC believes that civil society organisations can be involved in the process in order to facilitate the contact with the right stakeholders.
- 2.3 The existence of the "eLeniency" online tool makes it easy and less burdensome to submit statements and documents to the EC, including leniency applications in cartel cases. Lessons must be learned to understand the relevance of the procedure regarding the need to ensure fair public participation, easily accessible tools and procedures, as well as benchmarking with other tools.
- 2.4 The EESC shares the EC's concern regarding the need to tackle the effects of the distortion caused by foreign subsidies and public ownership, and considers that additional instruments are needed to prevent harmful effects. These can be effectively identified by, firstly, making proper use of the European Competition Network and, secondly, tackling selective aid systems.
- 2.5 The EESC advocates developing and strengthening services of general interest within the EU as an effective means of safeguarding the "European way of life". If services of general interest are to be provided properly, it must be accepted that digital infrastructure is a key factor in digitalisation. Proper broadband infrastructure must therefore be put in place. The EESC advocates adopting a State aid system that stimulates investment in introducing all of these new technologies, while addressing territorial imbalances at national level.

- 2.6 Projects of common European interest play an important part in research and technological development, and in applying innovation. Their development should be fostered on account of the added value they bring, and the EESC hopes that the Communication on important projects of common European interest (IPCEI) can serve as an effective instrument for implementing them properly. It is important to supervise corrections to the application of the criteria under which the Member States may support transnational projects of strategic importance to the EU.
- 2.7 The EESC believes that the EU's competition policy should adopt a more forward-looking approach in order to be able to adjust to both the digital challenge and the competition it faces on the global stage. The EESC therefore calls on the Commission to put competition policy high on the list of priorities for the work programme of the Fit for Future Platform.

### 3. **Specific comments**

#### 3.1 **Further enhancing the effectiveness of EU competition policy and enforcement**

- 3.1.1 EU competition policy should be designed and implemented in a more comprehensive framework, considering its close links with other key policy areas and the need for a coherent approach. EU competition rules should go hand in hand with tax law (with fair taxation including in the digital sector), consumer, social protection and labour law. Harmonisation in the field of unfair competition is needed to achieve tangible results.
- 3.1.2 In order to fight effectively against unfair competition practices, the EESC suggests addressing the issue of market dominance through a new method: not only by assessing the dominant conduct or abuse but also by monitoring the whole economic presence of an employer across different sectors, not just sector per sector.
- 3.1.3 The EU should also focus on other anticompetitive practices such as predatory expansions and monopolisation; tacit collusions; and lock-in effects (preventing workers from being active simultaneously on multiple platforms) that can undermine the balance of the market.
- 3.1.4 SMEs are the pillar of the European economy and therefore need to be taken more into consideration in the design and implementation of competition policy. State supports are a useful tool but not all SMEs are aware of their existence. The EESC recommends improving communication towards SMEs in order to better support their activities.
- 3.1.5 The EC must remain alert as regards the detection and prosecution of cartels and abusive positions on the market. Two EC investigations have particular significance for the protection of consumers, who were greatly affected:
- a) the ongoing cartel investigation into BMW, Daimler and the Volkswagen Group, in which the EC sent a Statement of Objections setting out its preliminary findings that the EU's competition rules were breached between 2006 and 2014 by collusion aimed at obstructing rules in developing technology to reduce the emissions of diesel and petrol cars;

- b) the Mastercard decision, in which the EC fined the card company for preventing traders from accessing cross-border card payment services, breaching the EU's competition rules. The cross-border rules that produced higher prices for traders and consumers have been abolished, doing away with restricted cross-border competition and artificial market segmentation. As a result of this and other steps, the financial sector has been strengthened in the context of the Banking Union, thanks to a number of EC decisions.

### 3.2 **Tackling new challenges in the digital, telecoms and media sphere**

- 3.2.1 The EESC considers the digital economy and in particular the position of the GAFAs as a serious challenge to the EU's competition law. Since these companies do not abide by the same rules as European companies, the updated EU competition rules should propose new efficient tools acknowledging this situation.
- 3.2.2 Although it is still early, we must be alert to the impact of applying Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019, which introduced new EU rules on transparency for business users of online platforms<sup>2</sup>. The widespread use of online platforms on the market means the arrival of new players and a new context on the internal market, the consequences of which are still not entirely clear. For the greater security of market players and citizens, especially during the current pandemic, proper competition rules must be applied and if they are not sufficient, new solutions must be envisaged.
- 3.2.3 The EESC welcomes the fact that the Digital Services Act will not be in conflict with the possible legal framework to address the issue of working conditions on online platforms.
- 3.2.4 Competition rules designed for traditional business are not a good fit for online platforms. There is an urgent need to adapt methodologies and objectives with a view to adapting to the changing business landscape.
- 3.2.5 The EESC believes that the digital market and online platforms are part of a new economy that is crucial for Europe but that there is also a need to set clear and fair rules. Oligopolistic market structures are underpinned by many of the features that also characterise monopolisation practices and the aggregate effects of ecosystems mobilised by online platforms as well as by dominant corporations. Characteristics such as vertical integration, lack of transparency for users, lock-in and network effects coupled with high concentration levels result in structural competition problems, affecting both consumers and workers.
- 3.2.6 Platforms can build their market dominance on user-generated content, be it consumer data and behaviour or services performed by individual providers of labour. Users experience a lack of access to information and cannot influence the conditions under which they operate. Similarly, recommendations and rankings on platforms are characterised by a lack of transparency. Unfair and discriminatory ranking practices must be considered as unfair competition practices.

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<sup>2</sup> [OJ L 186, 11.7.2019, p. 57.](#)

- 3.2.7 Economies of scale are a fundamental source of market domination for digital platforms. Marginal costs for expanding a business are close to zero, compared to traditional companies, as those platforms providing labour-intensive services through abusive practices shift a large part of the costs and risks onto individual providers of labour. Platforms sometimes claim that the economies of scale are limited to the physical capacities of individual drivers/riders/workers, but the "recruiting" (or "disconnecting") of additional labour providers to expand the market requires no investment.
- 3.2.8 The current EU competition legal framework does not adequately take into account competition concerns impacting the labour market, such as employer monopsony power, undercutting social standards, which also has harmful consequences both for employers, who are subject to unsustainable competitive pressure, and for Member States, who forego tax revenue and social security contributions<sup>3</sup>. Competition rules should not be an obstacle to collective bargaining for all workers, including platform workers, in order to negotiate innovative tools and agreements, as various examples at national level show.
- 3.2.9 Assessment of market power in the digital economy must take greater account of aggregated activities in different markets and their total impact on relevant online as well as offline markets. Similarly, access to user-data-feeding algorithms for the purpose of personalising products, offers, advertising and pricing must also be taken into consideration, with due respect for the fundamental rights of data subjects.

### **3.3 Competition policy in support of the EU's low-carbon energy and environment objectives**

- 3.3.1 The EESC shares the EC's aim of ensuring the long-term competitiveness of the European Union by means of sustainability and the transition towards an economy that is secure, climate-neutral and more resource-efficient, and by fostering and strengthening the circular economy.
- 3.3.2 The EESC calls for the Green Deal to be strengthened, as a major European agreement to achieve the zero greenhouse gas emissions target for 2050. The role of civil society organisations and the social partners can be decisive in this regard. A "fitness check" of the environmental directives would be appropriate in order to meet EU commitments.
- 3.3.3 The EESC favours promoting State aid measures in relation to the post-2012 greenhouse gas emissions trading system (ETS Directives). It supports the revision of this State aid system and its adaptation to the new EU emissions trading system for 2021-2030, in which much hope has been placed.
- 3.3.4 The EESC advocates striving to meet the "zero pollution principle" in the EU and adopting and implementing all the planned energy efficiency measures. Sustainable investment in the EU must be facilitated. To this end, the criteria for determining whether an economic activity is

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<sup>3</sup> [OJ C 429, 11.12.2020, p. 173.](#)

considered environmentally sustainable should be applied as soon as possible for the purpose of establishing the degree of environmental sustainability of investments<sup>4</sup>.

3.3.5 As it has said in previous opinions, the EESC sees support for introducing renewable energies as necessary. While guaranteeing security of supply, State aid should be directed to supporting renewable energy, maximising the environmental, social and economic benefits of public funds.

### 3.4 **Protecting competition in the manufacturing sector**

3.4.1 The COVID-19 crisis has revealed the weaknesses of the EU manufacturing system, especially in the health sector where the EU has been dependent on non-EU sources for medical equipment including personal protection equipment such as masks and artificial respiratory equipment and other crucial products in the fight against the pandemic. The EU needs a strong manufacturing sector where European companies feed the internal market, especially in vital sectors. The EESC supports the coordinated measures put in place by the EC but would like the EU to go further and propose a permanent solution to this issue in close cooperation with the Member States. The temporary measures regarding the supply of specific products from non-EU markets need to be replaced by a permanent solution, especially regarding the importing of vital medical equipment. A strong and resilient manufacturing sector should be one of the pillars of the competition policy.

3.4.2 The EESC calls for the same social and environmental rules to be guaranteed where competition with companies from outside the EU is concerned, in order to ensure a level playing field.

### 3.5 **Ensuring a level playing field in the area of taxation**

3.5.1 In the area of taxation, the EESC welcomes the measures put in place by the EC in 2019. At the same time, it is important that fair competition between different countries also be ensured in this area too. In particular, greater vigilance is needed with regard to tax rulings and unfair competitive advantages gained through agreements between certain countries and "big players". This behaviour can distort the free market, is damaging to SMEs and creates unfair competition between countries<sup>5</sup>.

3.5.2 The regulation of digital services is a key issue that the EC should focus on.

3.5.3 It is necessary to adopt a new approach with the GAFAs to ensure a level playing field and promote a fair distribution of the tax revenue that is provided by these companies.

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<sup>4</sup> [OJ L 198, 22.6.2020, p. 13.](#)

<sup>5</sup> [OJ C 97, 24.3.2020, p. 62.](#)



### **3.6 Making the financial sector more resilient in a Banking Union context**

As a result of the 2008 financial crisis and its impact on the real economy and market confidence, practices within the banking sector are subject to constant scrutiny, due to legitimate concerns that serious problems will resurface. Temporary state aid saved the financial sector from collapse. 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 EC to be attentive and vigilant with regard to potential abuses of dominant position that could harm consumer interests and financing for companies, in particular SMEs.

### **3.7 Ensuring fair competition in the food, consumer and health sectors**

3.7.1 In the sector of agriculture and food, it is important to protect products of European designation of origin. The seeds and pesticides sector is essential for farmers and consumers, but also raises concerns that go beyond consumer protection, food safety and ensuring compliance with environmental and climate standards.

3.7.2 Consumer protection must be balanced with action to support and promote innovative companies and SMEs, in ways that do not adversely affect dynamic competition on the market. This is the main way to create quality jobs and to ensure the dynamic sustainability of the production system.

### **3.8 Transport and postal services**

The EESC recognises the importance of transport and postal services and the need to create a level playing field to allow the sectors to support the community. In relation to transport, it is recommended that the EC examine whether and to what extent the kerosene tax exemption may constitute undue aid to airlines compared with rail transport.

## **4. Joining forces in fostering a global competition culture**

4.1 The international dimension of competition policy should be key in defining and enforcing the rules. Competition policy evolves in an international arena where the definitions and principles of competition laws are very diverse, putting EU companies at a disadvantage.

4.2 Many SMEs suffer from the inadequacy of EU rules compared to their international competitors. Unfair competition is an issue that needs to be tackled in order to defend EU standards. There are numerous complaints from companies in Europe (lack of flexibility). In some manufacturing areas in third countries, the lack of implementation of EU environmental and social standards creates market distortions to the detriment of European businesses, mainly SMEs. Europe should be concerned about this.

4.3 The EU's competition model needs to be promoted internationally. The EU must lead the way with a global competition culture that provides a system protecting both companies and

workers. We need a thorough discussion about the concept of competition law in Europe, in comparison to other economic areas namely the USA and China, for example with regard to sustainable and environmental issues.

- 4.4 In order to strike a balance between the freedom of the market and concentrations, it is not enough to refer to competition from other major global players, especially if they come from countries that are closed to competition from foreign companies. The Committee underlines the importance of the EU having a consistent approach aimed at linking up the respect of human and labour rights, the implementation of the SDGs, and the promotion of environmental standards and sustainable investments in business operations across the world. The preferential trade and tariff schemes granted to various third countries should be revised and made more conditional on the effective implementation of sustainable development standards, in order to create a fair, competitive level playing field for European businesses. In this regard, the Committee suggests, that as an alternative to company mergers that weaken competition, measures should be put in place aimed at supporting businesses in developing sustainable investments in third markets. These measures could include tax incentives for R&D and encouraging agreements between European producers to coordinate export and investment strategies abroad in line with the EU's economic, social and environmental standards.

Brussels, 27 January 2021.

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The president of the European Economic and Social Committee

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