



OPINION

European Economic and Social Committee

Report on Competition Policy 2020

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 2020
[COM(2021) 373 final]

INT/959

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Referral	European Commission, 28/10/2021
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	18/11/2021
Adopted at plenary	08/12/2021
Plenary session No	565
Outcome of vote (for/against/abstentions)	225/0/7

1. **Conclusions and recommendations**

- 1.1 The EESC underlines the importance of adapting and reshaping EU competition policy in line with the rapid social and economic changes we are witnessing. It is imperative to continuously adjust the regulatory framework and enforcement priorities to keep them up to date.
- 1.2 The EESC appreciates the fact that, thanks to the flexibility granted by the Commission in the area of State aid, the European economy has been able to cope with the COVID-19 crisis by relying on significant public support at state level.
- 1.3 The EESC considers that the Commission managed to strike a good compromise between the unprecedented urgent need to make State aid rules flexible and the concurrent necessity to ensure a minimum base layer of regulation, as well as overall Commission oversight to curb excessive disparities in the internal market, arising from Member States' differing capacities to provide financial support to their national economies.
- 1.4 With reference to the interaction between the antitrust rules (Article 101 TFEU) and the pandemic crisis, the EESC welcomes the fact that the Commission swiftly adopted a communication encouraging cooperation projects between companies aimed at reducing the shortage of supply of essential products and services during the pandemic. That was an example of a quick and useful adaptation of the Commission guidelines on horizontal cooperation agreements to the specific social, economic and health context that emerged in 2020.
- 1.5 The EESC also welcomes the fact that the European Competition Network (ECN), which seeks to coordinate the actions of the national competition authorities and DG COMP, was able to express a common position on the application of competition rules during the COVID-19 health crisis, in order to prevent possible opportunistic and exploitative behaviour, especially harmful in times of crisis.
- 1.6 The EESC considers the Commission's legislative proposals regarding competition on digital markets to be very useful in terms of achieving harmonised rules that are able to instil confidence in citizens, consumers and SMEs (especially micro-enterprises) with regard to proper safeguarding of the competitive structure of the markets, on the one hand, and the protection of personal data, on the other. Such data and their use should be understood both in terms of the protection of individuals and their freedoms, and as competitive factors of crucial strategic importance.
- 1.7 The EESC welcomes the Commission's intention to clarify whether or not competition rules apply to collective bargaining by service providers involved in the digital economy and digital platforms, which do not always fall within the categories of employment traditionally developed by labour law. This clarification is required in order to prevent possible adverse outcomes for service providers stemming from the application of competition law.
- 1.8 With reference to the judgment of the Court of Justice of the European Union in the Tercas case, the EESC points out that guarantee schemes for privately funded banks not subject to the dominant influence of the state must be regarded as exempt from EU State aid rules, since they

do not constitute intervention by the state in the economy, but rather the manifestation of a private scheme of mutual solidarity between credit institutions involving private funds and not State resources.

- 1.9 The EESC hopes that the Commission might coordinate its competition policy with other policies strategically relevant to European businesses, such as international trade policies. That would be a positive development, since third country companies often enjoy a competitive advantage over European businesses, stemming from unfair State subsidies and from the adoption of production models incompatible with the values and principles enshrined in the EU Treaties and legislation.

2. **Introduction**

- 2.1 The European Commission's 50th annual report on competition policy, covering the year 2020, focuses heavily on the initiatives taken to curb the social and economic impact of the global COVID-19 pandemic.
- 2.2 This is the first competition policy report following the renewal of the European Parliament and the completion of Brexit, as well as the first report published by the Commission led by President Ursula Von der Leyen.
- 2.3 Enforcement of EU competition rules has made a decisive contribution over the years to the pursuit of a social market economy, as provided for in the founding Treaties of the EU, which is thus capable of combining the European values of growth and competitiveness with the equally important values of fairness and solidarity within a single market that is both competitive and inclusive.
- 2.4 The rapid and unexpected changes in the health, social, technological and economic spheres in recent years underline the importance of having competition policy that can be constantly updated and evolve in line with changes, adjusting the regulatory framework and enforcement priorities to keep them up to date.
- 2.5 2020 saw one of the worst global crises in history and it is now clear that the action taken by the EU and its capacity to respond helped European businesses and individuals to cope with an unprecedented crisis by relying on significant public support at state level, thanks to the flexibility granted by the Commission in the area of State aid. Competition policy thus showed a considerable ability to adapt to unexpected and extreme circumstances.
- 2.6 The EU also managed to put in place a proper stimulus plan to spur national economies towards robust recovery conducive to restoring confidence in the markets, combining the injection of resources into states with close monitoring aimed at avoiding excessive market distortions and detrimental effects on the economy.

- 2.7 With a view to ensuring effective and responsive competition policy in the future, the European Economic and Social Committee (EESC) welcomes the strengthening of private antitrust enforcement highlighted in the Commission's report, which follows the adoption of the 2014 directive.
- 2.8 The EESC also supports the Commission's ongoing assessment of the case for revising the State aid rules applicable to services of general economic interest (SGEIs), with particular regard to health and social services of vital importance for social cohesion across the EU.
- 2.9 The EESC hopes that the Commission might coordinate its competition policy and enforcement of State aid rules with other policies impacting European businesses, such as international trade policies. That could be particularly useful considering that third country companies often derive competitive advantages over European businesses from unfair State subsidies, and production models that are incompatible with the European values and sustainability principles expressed in the Treaties.

3. Competition policy and the pandemic crisis

- 3.1 The EESC welcomes the flexibility provided by the European Commission with regard to the State aid rules after the emergence of COVID-19, with the approval of a special Temporary Framework (March 2020), which was revised five times up to January 2021 as the pandemic crisis progressed.
- 3.2 The EESC appreciates the fact that the Commission first clarified what measures could be taken without prior notification on the basis of the current rules, while at the same time implementing a temporary and flexible regulatory framework, which has allowed unprecedented State aid to be granted within a simplified procedural framework.
- 3.3 Under that legal framework, the Commission's Directorate-General for Competition (DG COMP) authorised a remarkable number of national aid schemes in a very short time frame, as required by the pandemic emergency, demonstrating extraordinary operational capacity.
- 3.4 The EESC believes that the Commission managed to strike a good compromise between the unprecedented urgent need to make State aid rules flexible and the simultaneous need to ensure a minimum base layer of regulation, as well as overall Commission oversight, both aimed at curbing excessive disparities in the internal market arising from Member States' differing capacities to provide financial support to their national economies.
- 3.5 The range of aid measures for businesses governed by the Temporary Framework – including direct grants, public guarantees for bank credit, subsidised loans and equity investments in companies – and the considerable generosity of the permitted aid ceilings, particularly following the Commission's most recent corrective measure in January 2021, proved up to the task of dealing with the crisis and have constituted a leap forward in quality compared to the previous temporary framework adopted in the wake of the 2008 financial crisis.

- 3.6 With regard to the interaction between public intervention in the economy and State aid rules, the EESC stresses the importance that competition rules may assume when it comes to Member States using the EU funds made available to them and properly implementing the national recovery and resilience plans, without creating distortions.
- 3.7 With regard to the interaction between the antitrust rules laid down in Article 101 TFEU and the pandemic crisis, the EESC welcomes the fact that the Commission swiftly adopted a communication encouraging cooperation projects between companies aimed at reducing the shortage of supply of essential products and services during the pandemic, adapting its traditional guidelines on horizontal cooperation agreements to the specific social, economic and health context that emerged in 2020.
- 3.8 At the same time, the EESC deems particularly useful the implementing regulations approved by the Commission in April 2020 temporarily relaxing the scope of competition rules in the agricultural sectors most severely affected by the COVID-19 pandemic. The regulations allowed farmers and inter-branch organisations to take temporary collective actions to stabilise certain agricultural sectors.
- 3.9 The Report on Competition Policy 2020 also describes the Commission's merger control activities, with 361 notified transactions and 352 decisions adopted, resulting in significant interventions in 18 cases. This means that 76% of all transactions notified in 2020 were authorised by means of a simplified procedure in "phase 1", demonstrating that the procedural rules are working well, which is particularly helpful given the upturn in merger and acquisition activities globally, facilitated by the current high level of liquidity.
- 3.10 Finally, the EESC considers it very significant that the European Competition Network (ECN), which seeks to coordinate the actions of the national competition authorities and DG COMP, was able to express a strong common position on the application of competition rules during the COVID-19 health crisis, with a view to preventing possible opportunistic and exploitative behaviour that would be particularly reprehensible and harmful in times of crisis.

4. The digital transition and competition

- 4.1 The digital transition and the development of the economy based on new information and communication technologies are bringing to the fore new and important issues from the point of view of competition. For this reason, the EESC considers it important for the European institutions to intervene with suitable rules.
- 4.2 The EESC has already commented on the three main legislative proposals adopted by the Commission proposing regulatory measures for the digital economy: on the proposal for a regulation of the European Parliament and of the Council on fair and contestable markets in the digital sector (Digital Markets Act)¹; on the proposal for a regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act)²;

¹ [OJ C 286, 16.7.2021, p. 64.](#)

² [OJ C 286, 16.7.2021, p. 70.](#)

and on the proposal for a regulation of the European Parliament and of the Council on European data governance (Data Governance Act)³.

- 4.3 The common theme running through the three EESC opinions on these issues is the need for the EU to adopt harmonised rules that can instil confidence in citizens, consumers and SMEs (especially micro-enterprises) as regards proper safeguarding of the competitive structure of the markets, on the one hand, and the protection of personal data, on the other. Such data and their use should be understood in two ways, i.e. both in terms of the protection of individuals and their freedoms, and as competitive factors of crucial strategic importance.
- 4.4 In this respect, properly competitive and effectively contestable markets are crucial to avoid abuses of market power by digital platforms acting as gatekeepers in order to ensure the development of new and future digital companies, benefiting innovation, growth and ultimately consumer welfare.
- 4.5 The EESC believes that the legislative proposals put forward by the Commission in 2020 constitute an appropriate starting point on which to build a legislative framework that will need to be improved over the years by constantly updating the regulation of the sector and the competition rules in relation to the market structure that is gradually emerging with the development of the digital economy.
- 4.6 In this regard, it is essential to ensure a level playing field in terms of access and ability to compete for the various players active in digital markets both to enable a better functioning of the single market and to avoid distortions of competition in order to protect European consumers and businesses, while also taking due and greater account of the social implications of the regulatory framework applicable to the digital economy.
- 4.7 With this in mind, the EESC particularly welcomes the following passage on page 30 of the Commission's report: "The social market economy is a foundation the EU is built upon and EU competition policy underpins it. Individuals and businesses thrive when the economy works for them." It would like to see this principle play out tangibly in the analysis and evaluation involved in implementing competition policy.

5. **Competition and collective bargaining**

- 5.1 The development of the digital economy and digital platforms has significant implications, not only on the structure of markets, but also on the contexts and ways in which people work, creating new employment and development opportunities. At the same time, as we know, this also entails possible problems related to the working conditions of service providers who might benefit from the ability to organise themselves and act collectively.
- 5.2 The EESC therefore welcomes the European Commission's intention to clarify effectively whether or not competition rules apply to collective bargaining by service providers involved in

³ [OJ C 286, 16.7.2021, p. 38.](#)

the digital economy and digital platforms, who do not always fall within the categories of employment traditionally developed by labour law.

- 5.3 While the non-applicability of competition rules to collective bargaining between employees and undertakings was clarified some time ago by the case-law of the Court of Justice, there are still a number of uncertainties as to whether and to what extent the competition rules apply to collective bargaining involving self-employed service providers.
- 5.4 It would therefore be helpful to attain greater legal certainty and predictability in this area, in order to remove regulatory uncertainties potentially leading to inefficiencies and compliance costs, while at the same time considering the benefits of service providers organising themselves effectively in order to obtain better conditions and a framework of greater protection in which to conduct their activities.

6. **Competition and the climate and environmental goals**

- 6.1 The ambitious EU climate change agenda and the strategic agenda driven by the European Green Deal will be difficult to pursue unless certain necessary adjustments are made to competition policy, and in particular the rules on State aid, incentive programmes and funding for green innovation.
- 6.2 Competition policy can therefore play an active role in achieving the EU's climate and environmental objectives. The Commission report provides details of its activities in the area of State aid control, whereby it has assessed and authorised state measures promoting the circular economy, renewable energy and energy efficiency, which the EESC welcomes and supports.
- 6.3 The EESC therefore endorses this approach, but at the same time recommends that when assessing the various measures their social impact be taken into account. In many cases, investments in the circular economy and in renewable energy are opportunities to create new jobs, including through instruments that promote inclusion of the weakest and most vulnerable groups.
- 6.4 With regard to the issue of renewable energy, we would like to draw attention here to the role played by energy communities and renewable energy communities promoted by European sectoral directives, which, through the creation of horizontal networks, often in a cooperative form, promote direct participation by individuals in the production and sharing of energy, including renewable energy.
- 6.5 The EESC considers the involvement of these stakeholders to be useful in creating a broader landscape of players with access to energy markets, with a dual function of ensuring business pluralism and generating greater competition in the energy and renewable energy markets.

7. **Competition and banking**

- 7.1 The Report on Competition Policy 2020 states that there were no new cases of State aid to banks and financial institutions. The Commission goes on to report that it extended certain

existing national support schemes, under which Member States may intervene, if necessary, to facilitate the orderly management of difficult situations or crises in small credit institutions.

- 7.2 The EESC points to the importance of local and regional banks in bringing the necessary corporate biodiversity to the banking sector and as market players close to households and businesses in remote areas, and welcomes the Commission's approval of the extension of schemes where it is necessary to manage the orderly market exit of banks of all sizes to protect savers and confidence in the economic and financial framework.
- 7.3 With reference to the judgment of the Court of Justice of the European Union in the Tercas case, which upheld the General Court judgment with similar conclusions, the EESC points out that guarantee schemes for privately funded banks not subject to the dominant influence of the state must be regarded as exempt from EU State aid rules.
- 7.4 Such guarantee schemes do not constitute intervention by the state in the economy, but rather the manifestation of a private scheme of mutual solidarity between credit institutions and self-organisation using their own resources aimed at safeguarding the confidence of depositors and savers in the banking system, including in the event of specific crises.

8. **Competition and tax regimes**

- 8.1 The outcome of the various legal disputes which have seen the European Commission before the Court of Justice of the European Union concerning selective tax advantages and national tax rulings originally considered not to comply with Article 107 TFEU underlines the Commission's rightful desire to ensure that tax rules are effectively harmonised in Europe through all the instruments available, including decisions implementing the State aid rules.
- 8.2 However, the varying outcomes in these decisions before the European courts underline the need to achieve greater effectiveness and harmonisation when it comes to Europe's tax rules by implementing the relevant action plan approved in this area by the Commission in early 2021 and thus by adopting appropriate legislative initiatives in the field of taxation to protect the internal market and its consolidation.

Brussels, 8 December 2021

Christa SCHWENG

The president of the European Economic and Social Committee
