



# OPINION

European Economic and Social Committee

## **A competition policy fit for new challenges**

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions –**

**A competition policy fit for new challenges**

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**EN**

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## 1. **Conclusions and recommendations**

- 1.1 The communication highlights the ability of competition policy to adapt to new market circumstances, policy priorities and the needs of consumers. The European Economic and Social Committee (EESC) recognises that competition policy has helped to preserve and foster the economic prosperity of the EU, which is deeply committed to the principles of the social market economy.
- 1.2 The EESC welcomes the European Commission's decision to prolong the State aid Temporary Framework stemming from the pandemic. It recognises, however, that these measures are too exceptional for them to be extended to the general framework and therefore become permanent.
- 1.3 In 2022, while the Commission has again moved rapidly in adopting a temporary framework in relation to the war in Ukraine, it is imperative to ensure that businesses are actually able to benefit from it. The Temporary Crisis Framework must be able to complement the State aid instruments that are already available to the Member States, as well as the existing schemes under the national recovery and resilience plans. The EESC calls upon the Commission to provide guidelines in order to facilitate fast support by Member States' governments to sectors that are seriously impacted by emergency situations, for instance through national aid measures such as guaranteed trade credit insurance or other financial instruments. The EESC also stresses that the need to ensure that the EU's businesses can access the temporary measures hinges primarily on having accessible, non-restrictive eligibility conditions for the most impacted businesses.
- 1.4 At this time of major uncertainty, the EESC wants to see a competition policy that is particularly geared towards delivering the transitions embarked on by the EU, which will require ambitious trade and investment policies, extraordinary public and private investments, innovation and a well-functioning single market. The EU and the Member States must now put in place a legal and financial framework that ensures a level playing field in the market for all stakeholders, regions and citizens. In this regard, the EESC stresses the need to achieve genuine equality of treatment between European players and vis-à-vis global players. The integrity of our internal market and its non-fragmentation are crucial here.
- 1.5 The EESC believes that competition law must continue to be underpinned by rules and facts and that the independence of the Commission must be guaranteed. However, the policies adopted by the EU to ensure a just transition should be more clearly reflected in the competition rules and in their enforcement by the relevant officials in particular. The EESC calls on the Commission to gear its efforts as far as possible towards facilitating the dual transition of our economy and the competitiveness of our industry in a particularly unstable global market.
- 1.6 Against this backdrop, achieving our strategic autonomy has never been more important. The EESC takes the view that the changes to competition law currently being considered should be assessed in the light of the needs identified in the Commission's work on the 14 strategic European ecosystems.

1.7 The EESC believes that further reforms are needed to incorporate sustainability, digital and resilience issues more specifically. Both the key concepts of EU competition law (e.g. relevant market) and the specific frameworks (such as *de minimis* and the GBER), as well as the implementation of these rules, should be adapted to the policy direction taken by the EU. Moreover, the EESC calls on the Commission to equip itself with the necessary tools to enable all sections of Europe's economy, and in particular SMEs and services, to finance this dual transition.

## 2. **General comments**

2.1 The EESC and all stakeholders agree that schemes providing exemptions from the general competition law framework have proved their worth since 2019 and the COVID-19 crisis. The speed with which DG COMP has taken decisions to avoid, as far as possible, distortions in the internal market should also be highlighted.

2.2 We also support the approach taken by the European Commission aimed at avoiding a cliff edge for businesses, notably by extending the temporary framework to include recovery measures.

2.3 The EESC welcomes the new temporary framework adopted by the Commission to address the major ramifications of the war in Ukraine caused by Russian aggression. It also wonders about the impact of this new crisis on both the review of the Stability Pact and the requirements of a new recovery plan.

2.4 The EESC also recognises the value of the Commission communication in that it sets out the general framework for reviewing competition rules and the overall and strategic path to be followed in this exercise.

2.5 But right now, the EU is facing the consequences of its strategic dependence on non-EU countries. We have to revitalise our internal market after the COVID-19 crisis and enable European businesses to strengthen their resilience and lead the dual transition, at a time when we will also have to deal with the multifaceted and uncertain fallout from the war in Ukraine caused by Russian aggression.

2.6 A well-functioning single market and competition policy enable businesses to access a vast market in which everyone can compete on a level playing field, stimulating efficiency and innovation and providing an environment in which successful companies can grow and become global champions. The EESC therefore reiterates how important the integrity of the internal market is to our recovery plan. In this regard, we will follow with interest the deployment of the Single Market Emergency Instrument.

2.7 Currently, the EU merger control regime sometimes seems to hinder the creation of world-class European companies capable of competing with US and Chinese businesses, on the pretext of not reducing competition in the internal market. The conditions governing access to public support for European businesses are much stricter than those applicable to our global competitors and thus hinder a genuine policy of supporting economic sectors. Finally, antitrust

enforcement and the ban on abuse of dominant position seem to be still ill-suited to the new challenges posed by the digital economy and green transition.

2.8 The Commission is currently pursuing a review of competition policy tools (merger, antitrust and State aid control) to ensure that they all remain fit for purpose, and complement its existing toolbox. In such turbulent times, our climate and digital objectives must now receive the maximum level of support. The EESC calls on the Commission to go further than ever before in adapting and harnessing the full suite of competition policy tools to the task of supporting the green and digital transitions and to equip itself with the instruments needed to compete globally in this context.

### 3. **Adapting competition rules and enforcement to deliver on our ambitions**

3.1 The EESC believes that we have not gone far enough in the review of the competition framework as regards incorporating the European policy agenda on sustainability and the digital transition. Our competition law should be adapted both with regard to the very definition of the basic principles and in terms of assessing in practice the anti-competitive and positive effects.

3.2 First and foremost, the **key principles** need to be reviewed. Thus, the assessment of whether or not a practice or agreement coming under competition law is legal depends on the market share of the operators in the relevant market. These concepts of "market share" and "relevant market" are key and the EESC calls on stakeholders to be extremely vigilant in their ongoing review as regards ensuring that those concepts reflect the operational realities of our businesses.

3.2.1 Thus, several paths should be explored. "Interchangeability of a product/service" and "level playing field" are concepts that should be adapted to the features of the digital market and the players in it. Moreover, the environmental characteristics of a product could be taken into account when assessing that "interchangeability".

3.3 A second area of action would be to **clarify and strengthen the scope of aid and practices that are compatible or do not affect trade**, and are thus exempt from competition law. Some elements of evaluation need to be reviewed so that as many entities as possible can invest and coordinate with full legal certainty and without having to engage in the European notification procedure. It thus appears that the *de minimis* rule should be revised in order to be able to respond more effectively to the characteristics of each sector, such as land transport and trade.

3.3.1 The EESC also welcomes the amendments proposed by the Commission to the General Block Exemption Regulation (GBER), as they address many of the needs of businesses, and in particular SMEs, when it comes to accessing the financial support needed to thrive in the sustainable transition.

3.4 A final area of focus is **enforcement and monitoring**, whereby DG COMP and particularly the relevant officials should be fully aware of the "transition pathways" established for the 14 strategic European ecosystems selected by the European Commission. It is within this framework that a determination has to be made as to whether a practice or agreement restricts

competition with a likelihood of negative effects on the price, production, innovation, quality or variety of goods and services on the relevant market.

- 3.4.1 The parameters for assessment giving rise to exemption benefits or to merger agreements should also be adapted to those objectives. These conditions focus mainly on the economic advantage and the benefit to the consumer in terms of price, over and above the risk of eliminating competition. The positive effects of restrictions should be more broadly focused on the environmental quality of products and climate-related efficiency gains provided that these elements are uniformly defined at European level.
- 3.4.2 The concept of "quality" should thus reflect our sustainability goals and be defined accordingly at EU level. The concept of a "sustainable product" should also be demarcated at European level with a view to the equal treatment of operators and the end of greenwashing. To this end, the EESC supports the Commission's work on common and transparent scientific methodologies for defining the sustainability of products, services, buildings, etc.
- 3.4.3 Feedback from stakeholders differs on how to take the "innovation" criterion into account. According to DG COMP, innovation is a key parameter of the market test. According to economic operators, this parameter is taken into account very little or is mostly rejected in any event. The EESC calls on the Commission to assess how the policies adopted by the EU have been taken into account in its latest decisions.
- 3.4.4 Finally, cooperation between businesses on environmental projects which, in many cases, require the involvement of the entire value chain must be facilitated and put on a more secure footing. The EESC therefore calls on the Commission to clarify the new CAP derogation from antitrust rules (Article 210), which allows farmers to enter into agreements on matters of sustainability.
- 3.4.5 Furthermore, the rules on both vertical (VBER) and horizontal (HBER) agreements must be adapted to take account of the complexity of the ecosystems to be built around these sustainability objectives. The Commission should indicate, as far as possible, what kind of sustainability-related information can be safely exchanged between competitors.

#### **4. Having the right tools to deliver the transitions and compete globally**

- 4.1 As the EESC has already argued<sup>1</sup>, increasing open strategic autonomy involves strengthening the resilience of the single market, investing in the EU's own competences and technological capacity and increasing resources for R&D, greening production and supply chains, securing digital sovereignty, ensuring strategic stockpiling, fostering and attracting investments and sustainable production in Europe by improving the conditions in which businesses operate, exploring alternative solutions and circular economy models, promoting broad industrial cooperation across Member States, and aiming for technological leadership as stated by the Competitiveness Council in November 2020.

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<sup>1</sup> Exploratory opinion requested by the French presidency of the Council of the EU: *How will the identified industrial ecosystems contribute to the strategic autonomy of the EU and the well-being of Europeans?*, adopted on 19 January 2022, [OJ C 194, 12.5.2022, p. 34](#).

- 4.2 The EESC raises the question of the measures proposed to facilitate the investments needed for the climate and digital transitions in a resilient market and in such uncertain times. Achieving these transitions will require considerable investment, both public and private, at a time when the economic and political situation is particularly unstable. We must facilitate the major investments facing our strategic ecosystems and, more generally, the whole business world; this should also be done with a view to creating players that are able to grow on the global market.
- 4.3 While major investment plans have already been drawn up in certain sectors, the EESC wonders here about the deployment of measures for the service sectors, and generally, for the wider European economy, which is made up predominantly of SMEs. EU State aid rules will play an important role in ensuring that the transitions are successful.
- 4.4 Businesses also need support for their investments in digitalisation and particularly for upgrading their IT systems, and for automation, robotics and artificial intelligence. SMEs in particular need support to develop their digital presence. Another example is that State aid for broadband roll-out will be a pivotal element of territorial cohesion policy. We call on the Commission to include further amendments to the GBER to support the digitalisation of businesses and transactions.
- 4.5 Similarly, "important projects of common European interest" (IPCEI) as well as industrial alliances, whether for batteries, semiconductors or health, must help develop innovative value chains in Europe. The initial applications of this tool are interesting. The EESC will look closely at whether the IPCEIs are actually open to SMEs, as envisaged in the draft guidelines.
- 4.6 There also needs to be a level playing field with third country players; the control of foreign subsidies is a major challenge in this area.

Non-European companies receive massive state support. The EESC accordingly considers that the Commission proposal<sup>2</sup> tackling foreign state funding for companies operating in the EU market, a market that such subsidies are likely to distort, is a useful and appropriate instrument. That said, some aspects of the intrinsically complex and far-reaching legislative mechanism need to be further refined.

- 4.7 The EESC also welcomes the adoption of the Digital Markets Act (DMA) as it aims to ensure contestable and fair digital markets through ex ante regulation. European governance is crucial here to ensure that the DMA regulation is applied in a uniform way across the European Union and that it is effective. Furthermore, while the DMA regulates the issues of data-sharing and access to data for gatekeepers, the situation regarding data in competition assessment remains to be clarified.

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<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market, COM(2021) 223 final – 2021/0114(COD).

4.8 Finally, in its transnational and global alliances, the EU must be able to identify violations of human rights, fundamental freedoms and the health and safety of both people and the environment, throughout value and supply chains. The EESC takes note of the initiatives taken to this end, in particular with regard to mirror clauses.

Brussels, 19 May 2022

Christa Schweng  
The President of the European Economic and Social Committee

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