



OPINION

European Economic and Social Committee

Report on Competition Policy

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 2021
[COM(2022) 337 final]

INT/995

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Referral	European Commission, 27/10/2022
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	10/11/2022
Outcome of vote (for/against/abstentions)	51/0/3
Adopted at plenary	14/12/2022
Plenary session No	574
Outcome of vote (for/against/abstentions)	206/0/2

1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee (EESC) calls for continued dialogue with the Commission on the further action required to strengthen the operation of the Single Market.
- 1.2 The EESC urges DG Competition to continuously monitor the schemes approved by the Commission itself and launched by Member States in response to COVID-19 and the war in Ukraine, in order to avoid funds being diverted to companies that are not economically viable.
- 1.3 That said, the EESC calls on the Commission to use the maximum flexibility permitted within State aid rules to enable Member States to enact schemes that provide effective aid to firms affected by the war in Ukraine.
- 1.4 The EESC welcomes the Commission's new guidelines on State aid rules in the areas of climate, environment protection and energy and deems them to be a step in the right direction.
- 1.5 The EESC supports investigations into non-competitive practices by tech giants; this is in line with the position adopted by the EESC on the Digital Markets Act.
- 1.6 The EESC calls for stronger cooperation between national authorities within the European Competition Network in order to further enforce EU competition law against companies that engage in cross-border business practices that restrict competition and are harmful to customers.
- 1.7 The EESC calls for competition on equal terms across the aviation sector. However, it would caution against the development of an aviation market that might in time be dominated by a small number of airline companies.
- 1.8 The EESC supports the Commission's proposed regulation on market-distorting foreign subsidies granted to non-EU firms operating in the EU, but calls on the Commission to also focus its attention on market-distorting subsidies and other anti-competitive practices in both State-run and private companies outside the EU.
- 1.9 The EESC warns against possible anti-competitive agreements or abuses of a dominant position in the hypermarket and grocery store industry, impacting consumers by way of higher prices, and producers by way of lower supply prices.
- 1.10 The EESC welcomes the Commission's proposal on the new Single Market Emergency Instrument, which complements other EU legislative measures for crisis management.
- 1.11 The EESC calls for further steps to strengthen competition and the Single Market at a time when economies are continuing to face challenges caused by high energy prices, supply-side constraints and economic uncertainty.
- 1.12 The EESC firmly believes that the EU's agenda for a green and digital economy based on the foundations of a social market economy should not change because of the war in Ukraine.

1.13 Finally, the EESC recommends the application of State aid as allowed under EU legislation to counteract the socio-economic consequences of the war in Ukraine, with special attention given to gender equality and the broader gender perspective, particularly in the case of refugees in Member States that neighbour Ukraine.

2. Background

2.1 The 2021 Report on Competition Policy presents the key policy developments and legislative initiatives undertaken last year, as well as a selection of enforcement actions. In 2021 the Commission carried out its review of key competition regulations, guidelines and notices, as set out in its Communication on a competition policy fit for new challenges¹, which frames the role of competition policy for Europe's path towards recovery, for the green and digital transitions, and for a resilient Single Market.

2.2 The Commission also adopted a proposal for a new regulation to address distortions caused by market-distorting foreign subsidies granted by third countries to companies active in the Single Market², following the 2020 proposals on the Digital Markets Act (DMA) and Digital Services Act, both aimed at addressing a wide range of digital challenges³. The DMA in particular put obligations into place that act as gatekeepers for businesses and consumers in the Single Market.

2.3 Antitrust and merger rules and guidance were updated to address challenges. This included a review of rules on vertical supply and horizontal cooperation, the latter in particular aimed at making it easier for firms to cooperate in ways that enhance economic efficiency. The Commission in addition published the results of its evaluation of the Market Definition Notice, which provides guidance on how competition is enforced in product and geographic markets.

2.4 The Commission also updated State aid rules and guidance to help address changing circumstances and support the green and digital transitions. Particularly relevant is the need to enhance the resilience of the Single Market in the face of economic uncertainty. This the Commission is doing by monitoring market developments. The Temporary Framework for State aid measures was especially timely and relevant to provide support to firms across the EU. Developments caused by the Russian aggression in Ukraine require further policy adjustment on the part of the Commission. In the meantime, the Commission introduced investment support up to the end of the 2022 and solvency support up to 31 December 2023, enabling Member States to leverage private funds and make them available to SMEs.

2.5 Likewise important was the review of the Guidelines on State aid for climate, environmental protection and the decarbonisation of economic activities. It was necessary to widen the scope of these guidelines to cover new economic activities such as clean mobility and the decarbonisation of industry. The revised guidelines therefore support the European Green Deal.

¹ A competition policy fit for new challenges, COM(2021) 713 final.

² COM(2021) 223 final.

³ COM(2020) 842 final.

- 2.6 Moreover, the Commission revised the Vertical Block Exemption Regulation and Vertical Guidelines. The aim is to update previous rules that were deemed not to be fit for purpose, given market developments such as the growth of online sales.
- 2.7 The scope of the General Block Exemption was also extended to facilitate EU-funded programmes. In essence, this helps streamline the State aid rules as applied to national funding and in connection with specific EU programmes.
- 2.8 Moreover, revised Regional Aid Guidelines were adopted to allow Member States to support less-favoured regions as well regions facing structural challenges.
- 2.9 An important development was the Commission's adjustment to current and future enforcement in relation to the challenges caused by the digital transformation. The efficiency and effectiveness with which the Commission can respond to anti-competitive practices by the likes of Apple, Amazon or Facebook, was deemed critical.
- 2.10 In the same vein, the Commission carried out a re-organisation to deal with Important Projects of Common European Interest. Also relevant was the creation of a Task Force to support implementation of the Digital Markets Act.
- 2.11 To strengthen the operation of the Single Market, a budget of EUR 4.2 billion has been provided for what is known as the Single Market Programme, aimed at enforcing EU competition policy.
- 2.12 Effective enforcement of EU competition rules and regulatory reforms are critical for the digital transformation of the EU economy and for greater resilience of the Single Market in very challenging times.
- 2.13 In this connection, the relevance of antitrust investigations and abusive practices by large multi-national corporations is of utmost importance. Merger control by the Commission also ensures that consolidation takes place in a way that allows competition in markets and addresses market dominance. The number of merger decisions was an impressive 396 in various sectors.
- 2.14 Another important development was the direction provided on broadband infrastructure that meets the needs for very exacting digital speeds, as set out in the EU 2025 Gigabit Society and the Digital Strategy, as well as in the targets referred to in the 2030 Digital Compass. State aid supports broadband infrastructures across the EU in addressing situations where there is no incentive for private operators to provide adequate broadband coverage.
- 2.15 The Commission's activities likewise contributed to environmental objectives, especially with regard to the decarbonisation of economies and the gradual but steady shift in the transport sector from fossil to alternative fuels. Avoiding distortions of competition is critical in supporting the European Green Deal and in this connection too, the Commission approved a number of State aid measures aimed at facilitating the EU's green transition.

- 2.16 Also relevant was the antitrust enforcement and merger control in the automobile industry, which help contribute to the green transition. This Commission action involved the imposition of fines running into hundreds of millions of euros.
- 2.17 Hugely important is the fact that the Commission's role in furthering competition policy relates to how competition works for consumers across the EU. As the report rightly points out, the social market economy is one of the mainstays of the EU and enforcing competition rules and protecting competition at all times supports further development of the social market economy.
- 2.18 The same rationale applies to financial services, where the Commission tackled potential cartels in the financial services sector with the imposition of hefty fines on a number of financial institutions.
- 2.19 Equally important was the Commission's response to the economic and social fall-out from COVID-19 by applying the flexibility allowed in the State aid rules via the Temporary Framework for State aid measures. This enabled Member States to provide schemes for businesses such as loan guarantees. The Commission approved a number of schemes running into billions of euros under the Temporary Framework in a number of sectors impacted by COVID-19 restrictions, including the aviation sector, to address liquidity and capital needs.
- 2.20 An important role fulfilled by the Commission was the guidance and support provided to facilitate the Recovery and Resilience Plans submitted by Member States. This was necessary to ensure that the plans were compatible with State aid rules.
- 2.20.1 In 2021 the Commission continued to ensure that Articles 101 and 102 of the Treaty of the Functioning of the European Union were applied consistently. Also, the Commission monitored and assisted Member States in their efforts to transpose the ECN+ Directive into national law. This directive empowers the competition authorities across the EU to enforce competition rules more effectively and to ensure the proper operation of the Single Market.
- 2.21 Finally, the Commission remained active in the OECD Competition Committee, the International Competition Network and the United Nations Conference on Trade and Development.

3. **General Comments**

- 3.1 The EESC notes the constructive work carried out by the Commission in continuing to strengthen the Single Market by enforcing competition rules and protecting competition across the EU.
- 3.2 The EESC also notes the efficiency with which the Commission responded to mitigate the impact of COVID-19 restrictions by adopting a temporary framework for State aid measures to allow the necessary Member State support to businesses, while at the same time preserving the integrity of the Single Market.

- 3.3 The same level of efficiency has been applied in response to the crisis that has unfolded following Russia's invasion of Ukraine. The EESC is of the view that the swift adoption of the State aid Temporary Crisis Framework was just as critical as the action taken in relation to COVID-19 restrictions. The EESC therefore urges the Commission to apply all the flexibility permitted under the State aid rules when Member States are faced with economic shocks.
- 3.4 The EESC also notes the work carried out by the Commission in its review of key regulations, guidelines and notices to ensure they remain fit for purpose, especially in the revision of the Vertical Block Exemption Regulation and Vertical Guidelines.
- 3.5 The EESC considers the adoption of a regulation extending the scope of the General Block Exemption Regulation and the publication of Guidelines on State aid for climate, environmental protection and energy as important steps in support of the EU's main policy objectives. The adoption of a revised Communication for Important Projects of Common European Interest (IPCEI) is also deemed relevant.
- 3.6 The EESC notes the efforts undertaken to move towards adoption of the Digital Market Act. The EESC considers this piece of legislation to be a huge step towards enforcing competition and protecting customers in the use of digital services.
- 3.7 The EESC also notes that the proposal for a regulation on foreign subsidies that distort the internal market is in the process of being adopted. In a number of its opinions, the EESC has argued against market-distorting foreign subsidies being given to firms active in the EU; the proposed regulation would give the Commission new powers to investigate such foreign subsidies and take redress measures whenever necessary. This, the EESC believes, is compatible with the principle of fair competition on equal terms.
- 3.8 The EESC takes note of the antitrust action as well as action taken on the control of mergers. Such action is necessary to preserve the integrity of the Single Market and protect EU citizens, particularly against decisions taken by tech giants.
- 3.9 The Commission's approval of a number of State aid measures in support of the EU's green transition, including measures to support renewable energy and clean mobility, paves the way for further positive action in the future.

4. **Specific Recommendations**

- 4.1 The EESC calls for continued dialogue with the Commission on the further action required to strengthen the operation of the Single Market. In this connection, the EESC would highlight its recent opinion identifying shortcomings in the EU's Single Market.
- 4.2 Whereas the EESC has commended the speed at which the Commission responded to the COVID-19 restrictions and, more recently, to the economic effects caused by the war in Ukraine, it calls for continuous monitoring of schemes approved by the Commission itself and launched by Member States in response to COVID-19 and the war in Ukraine, in order to avoid funds being diverted to companies that are not economically viable. The level of support

needed, as well as the pressures faced by governments across the EU to provide State aid, is extraordinary and may result in such situations.

- 4.3 That said, the EESC calls on the Commission to use the maximum flexibility permitted within State aid rules to enable Member States to enact schemes that provide effective aid to firms and communities impacted by the war in Ukraine. At the same time, the EESC stresses that such aid should be allowed with minimal distortions to competition.
- 4.4 The EESC highlights the efforts made to support the EU's green agenda through competition policy. This is vital, and the Commission's new guidelines on State aid rules in the areas of climate, environment protection and energy are a step in the right direction. As the three sectors are inter-related, the EESC believes that the new guidelines provide a solid basis for effective support for the European Green Deal.
- 4.5 The EESC points to the investigations carried out by the Commission into a number of tech giants for non-competitive practices and fully supports such investigations, as they are in line with the position adopted by the EESC on the Digital Markets Act, especially its relevance in allowing for competition in digital services and for protecting EU citizens from abusive practices by tech giants. This proves that the Commission now has more leverage with regard to its aim of moving towards a more regulated digital market.
- 4.6 The EESC calls for stronger cooperation between national authorities within the European Competition Network to further enforce EU competition law against companies that engage in cross-border business practices that restrict competition and are harmful to customers. The EESC considers the coordination of investigations to be vital.
- 4.7 The EESC has noted the importance of Commission decisions regarding the aviation sector, particularly during the pandemic, and calls for competition on equal terms across the sector. However, it would caution against the development of an aviation sector and market that in time could be dominated by a small number of airline companies.
- 4.8 The EESC fully supports the Commission's proposed regulation on market-distorting foreign subsidies granted to non-EU firms operating in the EU. This has obvious distorting effects on competition, and foreign firms may also be benefiting from tax advantages, creating further competitive distortions. The EESC also calls on the Commission to take appropriate action on market-distorting subsidies and other anti-competitive practices in companies (State-run or private) outside the EU. This would also help to achieve the objectives of the European industrial strategy.
- 4.9 The EESC notes that the Commission and national competition authorities are monitoring the situation of food supply chains in Europe. The EESC warns against possible anti-competitive agreements or abuses of dominant position impacting consumers by way of higher prices. The EESC also cautions against the hypermarket and grocery store industry assuming a dominant role in the food market to the detriment of consumers in terms of higher prices and to the detriment of producers in terms of lower supply prices. The EESC is aware that the onus is on Member States to ensure implementation of the directive on unfair trading practices in order to

address situations where there are imbalances in individual business relations.⁴ The EESC therefore urges the Commission to continuously monitor the effectiveness of market analysis and action being undertaken by national authorities.

- 4.10 The EESC welcomes the Commission's proposal on the new Single Market Emergency Instrument, which complements other EU legislative measures for crisis management such as the Union Civil Protection Mechanism, as well as EU rules for specific sectors, supply chains and products like health, semiconductors and food security, which already provide for targeted crisis response measures. It is the EESC's view that this provides a well-balanced crisis management framework to identify different threats to the Single Market and ensure its smooth operation by: creating a crisis governance architecture; proposing new measures to offset negative impacts on the Single Market; and allowing last-resort measures in an emergency.
- 4.11 The EESC calls for further steps to strengthen competition and the Single Market at a time when economies continue to face challenges caused by high energy prices, supply-side constraints and economic uncertainty.
- 4.12 The EESC firmly believes that the EU's agenda for a green and digital economy based on the foundations of a social market economy should not change because of the crisis unfolding in Ukraine. Markets delivering competitive and fair prices to EU citizens should remain the EU's objective, by means of action by the Commission and national authorities across the EU. In this connection, it is pertinent to refer to the Commission's recent proposal on joint procurement of natural gas as a temporary but effective solution to stabilise energy prices.
- 4.13 The last point refers to the application of State aid, as allowed under EU rules, to support measures to counteract the socio-economic consequences of the war in Ukraine, including the refugee crisis affecting Member States bordering Ukraine, and the need to give particular attention to gender equality and the broader gender perspective.

Brussels, 14 December 2022

Christa SCHWENG

The president of the European Economic and Social Committee

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The directive was amended by Directive (EU) 2019/2161 of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules – part of the "Review of EU consumer law".