Dear Madame Chair,

Under the procedure referred to above, the Committee on the Internal Market and Consumer Protection asked to submit an opinion to your committee in the form of a letter.

The Committee on the Internal Market and Consumer Protection considered the matter at its meeting of 23 January 2020. At that meeting, it decided to call on the Committee on Economic and Monetary Affairs, as the committee responsible, to annex the following suggestions to its report.

The Committee would also like to express its strong concern as regards a point in the draft ECON report, namely paragraph 14, which proposes the establishment of a European consumer protection authority. AM 199, tabled in ECON, adds that this body should be "encompassing the Consumer Protection Cooperation network".

The IMCO Committee would like to point out that firstly, as a general point, the subject matter of consumer protection is an exclusive competence of the IMCO Committee, and should not,
as such, figure in ECON’s report, which should deal with matters under its exclusive competence. In this regard, I would like to recall that the Consumer Protection Cooperation Regulation (Regulation (EU) 2017/2394) was a file for which the IMCO Committee was competent, and in which the ECON Committee played no role. Secondly, the point is also out of scope in regards to the annual competition policy report, on which the current procedure is based. As a consequence, I call on you to declare paragraph 14 of the draft report and all amendments to it, including AM 199, inadmissible.

I thank you for your attention and I trust in your understanding and cooperation on this important aspect.

Yours sincerely,

Petra De Sutter MD, PhD
Chairwoman

CC:  - Antonio TAJANI, Chair of the Conference of Committee Chairs
SUGGESTIONS

I. Internal market

1. Recalls that competition policy plays a key role in the internal market and that the fundamental objectives of competition law remain inherently linked to achieving the completion of the internal market, namely preventing the distortion of competition, building a fair and level playing field for all market participants to compete based on merit, promoting growth of innovative enterprises, achieving a high level of consumer welfare, and allowing consumers to choose between a variety of suppliers in order to get the best deals in terms of quality and value for money; considers that SMEs could stand to benefit from rigorous application of competition rules, particularly in the digital sphere;

2. Welcomes the Commission’s ongoing fitness checks and future wholesale review of Commission guidelines relating to competition law and policy as announced by the new Commissioner during her confirmation hearing; in this context, looks forward to the outcome of the ongoing revision of the Vertical Block Exemption Regulation and the Vertical Guidelines due by 2022; calls on the Commission to strengthen and accelerate competition enforcement practices in the context of increasingly fast-moving markets; underlines the need for competition policy and Commission and Member States’ decisions in relation to it to be completely independent from other policies and decision-making; stresses that it is this independence that gives competition decisions their weight and value and which ensures that they are respected by companies and governments alike; welcomes the Commission’s use of Art. 114 TFEU and Art. 103 TFEU in competition policy legislative files in the past and calls for a systemic use of the ordinary legislative procedure for future legislative proposals relating to competition;

3. Notes that in an increasingly globalised economy, it is important to acknowledge the potential distortion of competition in the internal market emanating from third-country companies benefitting from State financing, whether in the form of State aid or subsidies; in this regard, calls on the Commission to take appropriate measures to ensure fair market access;

4. Stresses, however, that competition policy decisions should not be used as a form of protectionist measure or non-tariff barrier to trade and should rather, among other things, ensure proportionality and due process and analyse competition on a case-by-case basis within the single market, while seeking remedies to market failures;

5. Underlines that the service sector accounts for the greatest part of the EU economy, but that further development of services in the internal market is hampered by new and existing national legislation limiting competition between companies and consumer choice; regrets that some local regulatory standards still focus on protecting their respective markets from fair competition;

6. Recalls that, in order to fight effectively against anti-competitive practices, all aspects of unfair competition must be taken into consideration;
II. Digital Single Market

7. Stresses the importance for the Commission and Member States’ competition authorities to keep pace with the new challenges of the digital age in terms of their enforcement priorities, enforcement capacities and assessment of harm to consumers;

8. Welcomes the Commission’s investigations into certain anti-competitive practices by companies operating in digital markets; encourages the Commission to close ongoing procedures as soon as possible and to pursue a policy of pro-active and effective enforcement of the competition rules, in order to combat the abuse of dominant positions and thereby foster innovation and innovative business models, as well as enabling consumers to seize all the opportunities of a fully-functioning Digital Single Market;

9. Notes that, as regards the Digital Single Market and the manner in which digitisation affects competition, there is an intrinsic complementarity between market regulation and competition policy, as highlighted in the Commission’s Special Advisers’ Report entitled “Competition policy for the digital era”, namely that primary Union law as set out in Articles 101 - 109 TFEU can function as an effective ‘background regime’ to enacting targeted legislation to combat competition-distorting practices in digital markets, based on a thorough case-by-case analysis of relevant markets and market failures;

10. Recalls that, during the eighth legislature, regulation of digital markets constituted the core work of the IMCO Committee; in this context, highlights the importance of careful review of the e-Commerce Directive, particularly in the light of the Commission’s commitment to propose a Digital Services Act;

Data

11. Recalls the core role of data in the global digital economy; draws attention to the emergence of digital market players who control ever larger volumes of data; emphasises the comparability of data to an essential facility in the real economy, as a source of considerable economic power and leverage; urges the Commission to combat unjustified market practices and national regulatory barriers resulting in monopolisation of data collection and restrictions on data flow and access; calls on the Commission to support open data and fair access to data for all companies, in particular SMEs and start-ups, so as to foster a competitive digital environment giving rise to more innovation, higher quality products and better services for consumers;

Platforms

12. Notes that online platforms permit millions of undertakings, including many European SMEs, to exploit the advantages of e-commerce; considers that, in order to create fair conditions of competition, it is necessary to pursue a regulatory policy which includes proposals for targeted, sector-specific legislation in order to remove the imbalances that allow market players to abuse their position, while safeguarding European values; in this regard, highlights that any new regulatory obligations on
platforms must be subject to the principle of proportionality and not give rise to unjustified regulatory burdens for companies capable of stifling innovation and competition;

13. Stresses the importance of continuing the regulatory debate as to the appropriate mechanisms for upholding the integrity of the European market in response to the attainment of dominant positions by a small number of online platforms due to network effects and winner-take-all dynamics; expresses its concern as to the growing trend of involuntarily bestowing rule-setting powers on such platforms in view of current regulatory gaps; calls on the Commission to use all the tools at its disposal to combat emerging types of anti-competitive practices adopted by dominant platforms, such as abusive self-preferencing, and to ensure that the Regulation on promoting fairness and transparency for business users of online intermediations services (2019/1150) is respected by all market players; objects to the negative lock-in effects such anti-competitive practices have on consumer choice as well as market access;

**Remedies**

14. Welcomes the recent use of interim measures by the Commission in the microelectronics sector; regrets, however, the Commission’s reluctance to apply interim measures in the digital sector and asks the Commission to evaluate its use of interim measures as well as other structural and behavioural remedies, in addition to fines, when assessing whether operators can block market entry, restrict consumer choice and information flows and manipulate users’ behaviour, so as to prevent distortions of competition capable of harming European companies, in particular SMEs, and resulting in consumer detriment;

**Geo-blocking**

15. Following the adoption of the Geoblocking Regulation (EU) 2018/302, calls on the Commission to continue actively monitoring all potential competition issues related to unjustified geo-blocking and other restrictions on online sales; encourages the Commission to pursue an ambitious vision for tackling online discrimination against consumers based on harmonised consumer protection rules; calls on the Commission to adopt a forward-looking and pro-consumer approach when conducting the review process of the Geoblocking Regulation, which is foreseen for March 2020;

**III. Consumer welfare**

16. Highlights with satisfaction the Commission’s pursuit of an effects-based approach in its enforcement practices centred on consumer welfare and the prevention of consumer harm as an essential aspect of competition policy; welcomes an expanded interpretation of the concepts of consumer benefit and consumer detriment, especially in digital markets, including the novel approach of considering data protection as a quality criterion when assessing the impacts of mergers on consumer welfare; notes that mergers are not inherently negative for consumers and can lead to innovation and better products, but that consumer welfare should be crucial;
17. Stresses that, in this regard, consumer protection must remain a central policy goal of both current enforcement practices and any future sectoral legislation, especially in the digital sector; welcomes the assertion in the Special Advisers’ Report that the consumer welfare standard must be adapted to the digital age, in terms of the requisite standards of proof when assessing aggressive strategies employed by dominant platforms aimed at reducing competitive pressures, without any demonstrably commensurate consumer welfare gains; recalls that fair competition must ultimately secure a high level of consumer protection and choice.