REPORT

on competition policy – annual report 2019 (2019/2131(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on competition policy – annual report 2019
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The European Parliament,

– having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Article 101 to Article 109 thereof,

– having regard to the relevant Commission rules, guidelines, resolutions, public consultations, communications and papers on the subject of competition,

– having regard to the Commission report of 15 July 2019 on Competition Policy 2018 (COM(2019)0339) and to the Commission staff working document published as a supporting document on the same date,

– having regard to its resolution of 31 January 2019 on the Annual Report on EU Competition Policy1,

– having regard to the mission letter of 10 September 2019 from President-elect Ursula von der Leyen to Margrethe Vestager,

– having regard to the written and oral replies given by Commissioner-designate Margrethe Vestager at the hearing by the European Parliament on 8 October 2019,

– having regard to the Commission Communication on the recovery of unlawful and incompatible State aid (2019/C 247/01),

– having regard to Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market2,


– having regard to the opinion of the European Economic and Social Committee of 11 December 2019 on the Commission report of 15 July 2019 on Competition Policy 2018,

– having regard to the opinion of the Committee of the Regions of 5 December 2019 on the Commission report of 15 July 2019 on Competition Policy 2018,

– having regard to the report of 4 April 2019 entitled ‘Competition policy for the digital era’ by high-level experts from the Commission,

– having regard to the Preliminary Opinion of 26 March 2014 from the European Data

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Protection Supervisor on ‘Privacy and competitiveness in the age of big data: The interplay between data protection, competition law and consumer protection in the Digital Economy’ and the Opinion 8/2016 of 23 September 2016 from the European Data Protection Opinion on ‘Coherent enforcement of fundamental rights in the age of big data’,

- having regard to the Statement of 29 August 2018 from the European Data Protection f 29 August 2018 on the data protection impacts of economic concentration,
- having regard to the letter of 4 February 2020 sent to Commissioner Margrethe Vestager by France, Germany, Italy and Poland’s Economic and Finance,
- having regard to the proposal of 4 July 2019 by France, Germany and Poland entitled ‘For a modernised European Competition Policy’,
- having regard to the 2019 report by the European Consumers’ Organisation (BEUC) on ‘The Role of Competition Policy in Protecting Consumers’ Wellbeing in the Digital Era’,
- having regard to the Commission's decision of 7 January 2019 to prolong seven sets of EU State aid rules (State aid modernisation initiative for 2014-2020) until the end of 2022 and to launch evaluations in the meantime,
- having regard to the Council conclusions of 22 March and 27 May 2019,
- having regard to the statement of 18 December 2018 issued by 18 Member States at the 6th Friends of Industry ministerial meeting,
- having regard to the report from report of the Strategic Forum for Important Projects of Common European Interest entitled ‘Strengthening strategic value chains for a future-ready EU industry’,
- having regard to the ongoing revision of the guidelines on horizontal cooperation,
- having regard to the public consultation on horizontal block exemption regulations,
- having regard to the opinion of the European Economic and Social Committee of 12 July 2018 entitled ‘Towards an appropriate European legal framework for social economy enterprises’ (INT871),
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the opinions of the Committee on International Trade and the Committee on Agriculture and Rural Development,
- having regard to the letter from the Committee on the Internal Market and Consumer Protection,
- having regard to the report of the Committee on Economic and Monetary Affairs (A9-0022/2020),
A. whereas competition and effective enforcement of competition policy must benefit all EU citizens, especially those in a weak consumer position, while promoting innovation and fair competition among businesses operating in the single market, in particular by ensuring that small and medium-sized enterprises (SMEs) have the opportunity to compete on a fair basis;

B. whereas competition policy must be adapted to tackle digital, ecological, geopolitical, industrial and social challenges, and must be in line with the priorities outlined in the European Green Deal and the objectives of the Paris Agreement, in order to ensure a level playing field in all sectors as a cornerstone of the EU social market economy, while taking into account social economy enterprises;

C. whereas global cooperation on competition enforcement helps to avoid inconsistencies in remedies and in outcomes of enforcement actions and helps businesses to reduce their compliance costs;

D. whereas in fast-moving digital markets, competition policy could in some cases be excessively slow and therefore be at risk of being ineffective when it comes to remedying systemic market failures and reinstating competition; whereas complementary ex-ante regulation and monitoring could prove beneficial to ensure more effective oversight;

E. whereas European competition authorities should be equally attentive in order to avoid under-enforcement in digital markets, as the latter are wary of over-enforcement;

F. whereas the primary objective of EU competition policy is to prevent the distortion of competition in order to preserve the integrity of the internal market and to protect consumers;

G. whereas given that recent data scandals, investigations and evidence have shown how personal data is being collected, used and sold to third parties by platforms and how dominant technology players and platforms have been tracking consumers online systematically;

The role of competition policy in globalised markets

1. Points out that, in a globalised world, international cooperation is crucial to ensure effective competition enforcement; calls on the Commission to further develop the influence of EU competition policy in the world, in particular by continuing pertinent dialogue and stepping up cooperation with the USA, China, Japan and other third countries, where possible, via second-generation cooperation agreements that allow for a more effective exchange of information between competition authorities; supports the active participation of the Commission and the national competition authorities in the International Competition Network; encourages the Commission to seek at all times the inclusion of competition rules (covering also State aid) in EU free trade agreements (FTAs) and in the World Trade Organisation (WTO), in order to ensure mutual respect for fair competition; notes with regret the negative effect on the Commission of the paralysis within the WTO’s Dispute Settlement Body;

2. Calls on the Commission to develop tools to facilitate better monitoring of foreign
direct investment (FDI) in all Member States, to ensure a rapid implementation of the screening mechanism for FDIs and to propose a tool to strengthen the current mechanism, while ensuring that the European Union remains open and attractive for FDI; draws the Commission’s attention to the fact that companies in third countries benefit from favourable treatment in their home market, which may distort competition when investing in the single market;

3. Calls on the Commission to ensure reciprocity with third countries in public procurement, State aid and in investment policy including taking into account social and environmental dumping; recalls the need to open up public procurement markets in third countries to which access does not yet exist; urges the Commission to work towards the accession of key third countries, such as China, to the WTO Agreement on Government Procurement with an acceptable initial offer; stresses that any instrument aimed at improving international market opening, such as the EU’s International Procurement Instrument that are to be finalised by 2021 must avoid additional bureaucracy and new market distortions that have adverse effects on EU companies;

4. Calls on the Commission to guarantee fair competition between the European Union and the United Kingdom following its departure from the EU in order to ensure a level playing field and avoid dumping;

5. Fully supports the implementation of Important Projects of Common European Interest (IPCEI) such as the European Battery Alliance; calls on the Commission to further promote major IPCEIs in disruptive technologies, to simplify the relevant provisions and to streamline its requirements so that smaller industrial research projects are also approved;

6. Recalls the need for the Commission to apply State aid control equally to EU and non-EU operators to avoid asymmetries with foreign competitors and pay increased attention to foreign-based state-owned companies that are subsidised by their governments in ways that the EU single market rules prohibit for EU entities; invites the Commission to look at the recent proposal of the Dutch Government and investigate the option to add a pillar to EU competition law that gives the Commission appropriate investigative tools in cases where a company is deemed to have engaged in distortionary behaviour due to government subsidies or to have made excessive profits based on a dominant market position in its home country (e.g. by introducing state-aid checks on companies from third countries in EU public procurement rules);

7. Reiterates its request for the Commission to examine whether possible distortions of competition arise from the corporate support purchase programme, especially between SMEs and multinational corporations;

8. Calls on the Commission to adopt a more favourable approach for strong EU industrial policy to ensure and maintain high competitiveness in global markets; stresses that the Commission and the Member States should promote and support EU projects of strategic interest and remove barriers and obstacles to enable the emergence of innovative EU leaders in specific priority sectors for the EU, while respecting the independent application of competition rules that safeguard a level playing field; clarifies that this approach should not be to the detriment of SMEs and consumers
interests, should focus on the transition towards a more sustainable economy and a competitive EU data industry and digital infrastructure, such as the development of 5G;

9. Calls on the Commission to seize the opportunity of the revision of the guidelines on horizontal cooperation agreements to create a more flexible framework and increase legal certainty for companies; calls on the Commission to communicate more timely and efficiently to the holders of cooperation projects of a certain magnitude, and allow for the possibility of asking new questions as part of a voluntary fast-track notification procedure;

10. Welcomes the Commission’s commitment set out in its notice of 9 December 1997\(^4\) to review its definition of the relevant market so as to take into account a longer-term vision encompassing the global dimension, digitalisation and potential future competition; invites the Commission to continue to rely on sound economic and legal principles in its investigations, by following proportionality principles and due process, when looking into new types of markets;

11. Emphasises that an international level playing field in a rules-based multilateral trading system safeguarding states’ policy-making scope is key for Europe, including European companies and in particular SMEs, as well as for workers and consumers; considers that it contributes to boosting sustainable economic development, ensuring a stable and predictable environment, pursuing enhanced competitiveness and reciprocity, securing and creating decent jobs in the EU and third countries, and ensuring high labour and environmental standards, since an increasing number of jobs are dependent on global value chains; stresses in this regard the importance of increased transparency, sustainability and corporate accountability in global value chains, and calls on the EU to consider, among other measures, establishing a legal framework for mandatory due diligence in global value chains as a necessary step for achieving this;

12. Invites the Commission, in the light of the growing debate, to reconcile the EU competition rules, industrial policy and international trade, which must go hand in hand with sustainability and respect for the environment; underlines the specific need for research funding as the basis of innovation and development for European businesses and as a key element for boosting trade and competitiveness;

13. Underlines that SMEs play a vital role in international trade, accounting for an estimated 30% of the EU’s goods exports to the rest of the world\(^5\); considers that the internal market continues to be, by far, the most important market for SMEs; recalls that, in order to help SMEs cope with the greater challenges of entering new markets and enable them to compete on their own merits, EU trade and competition policy should contribute to economic diversity and an SME-friendly trade environment, and that this should include considering modernising the EU’s definition of SMEs, in particular by adding qualitative criteria;

14. Fully supports the Commission’s efforts in the context of the ongoing reform of the WTO, including its Appellate Body, to update and make effectively enforceable the

multilateral rules on subsidies or sectoral initiatives in order to adequately address the issue of subsidies at international level, with particular reference to industrial subsidies, state-owned enterprises and forced technology transfers, and to act to counter non-market-oriented policies and practices of third countries; calls on the Commission to fully involve Parliament and the Member States in this area;

15. Stresses that effective enforcement of the sustainable development provisions of trade agreements is important for ensuring fair competition and environmental and social standards; welcomes, in this perspective, the introduction of environmental and social criteria in the reform of anti-subsidy and anti-dumping measures; considers that the possible inclusion of precise, justiciable International Law Organisation (ILO) core standards under WTO law could also be explored in the context of the ongoing WTO reform and in order to contribute to a global level playing field;

16. Welcomes, in this context, the ongoing plurilateral WTO negotiations on e-commerce, and calls for a comprehensive and ambitious set of rules that will address digital trade barriers, ensure that companies can compete worldwide in a level playing field, and enhance consumer trust in the online environment without detriment to European data protection standards; emphasises that the EU should take a leading role in these international negotiations, with close consultations that involve the European Parliament, Member States and stakeholders, including civil society;

17. Considers that access to the EU internal market is to be contingent on compliance with sanitary, phytosanitary and environmental standards; calls on the Commission to ensure the EU trade and competition policy doesn’t undermine the respect of EU social and ecological standards or undermine the development of more ambition standards;

18. Welcomes the modernisation of trade defence instruments (TDIs) and the development of new instruments to protect European companies from unfair competition arising from difference of social and environmental standards with third countries; points out, however, that there are inconsistencies between these defence instruments and EU trade policy – in particular the Commission’s signature of an FTA with Japan, even though Japan has not ratified two of the eight ILO conventions; calls on the Commission to examine whether the TDIs are consistent with EU trade policy, and with FTAs in particular;

19. Calls on the Commission to properly analyse and study the public procurement markets of the third countries with which it has or is negotiating a free trade agreement, in order to negotiate the best access conditions for European companies;

20. Calls on the Commission to coordinate the necessary action by the Directorates-General involved – DG Trade and DG Competition – to ensure that the competition rules and their implementation guarantee fair competition for European companies in third-country markets, and vice versa;

21. Calls on the Commission to pay particular attention to the role of international standard-setting for fair competition; insists that the EU should strengthen its multilateral approach to standard-setting, in particular in the context of the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC); warns against the nationalisation of standard-setting approaches,
particularly in the context of China’s Belt and Road Initiative and other connectivity-enhancing strategies; calls on the Commission to establish a high-level coordinator for standardisation policy in this context;

22. Highlights the importance of incorporating a gender-based perspective both at multilateral and bilateral level, including gender chapters in trade agreements and designing gender-sensitive measures (e.g. ensuring that both ex ante and ex post impact assessments include the gender impact of EU trade policy and agreements), in order to boost competition and promote inclusive economic growth;

Adapting competition to the digital age

23. Calls on the Commission to review merger and acquisition rules and strengthen antitrust action and to take into account the effects of market and network power associated with both personal and financial data; calls, in particular, on the Commission to adjudge the control of such data as a proxy for the existence of market power under its guidance on Article 102 of the TFEU; invites the Commission to learn from the merger between Facebook and WhatsApp and adapt its criteria accordingly; proposes, therefore, that every merger in the market for such data should be subject to prior informal declaration;

24. Calls on the Commission to review the notion of ‘abuse of a dominant position’ and the ‘essential facilities’ doctrine to ensure that they are fit for purpose in the digital age; suggests a broader analysis of market power in connection to conglomerate and gatekeeper effects to fight the abuse of dominance of large operators and lack of interoperability; calls on the Commission to carry out a stakeholder consultation to reflect the evolution of the digital economy, including its multi-sided nature;

25. Calls on the Commission to consider revising the thresholds for a merger review in order to include factors such as the number of consumers affected and the value of the related transactions as part of its ongoing evaluation of the Merger Regulation;

26. Calls on the Commission to assess higher levels of concentration due to horizontal ownership by large asset management companies in its ongoing evaluation of the Merger Regulation and consider providing guidelines on the use of Article 101 and Article 102 of the TFEU in this respect;

27. Notes that in several specific markets for financial data (e.g. equity trading, ratings and benchmarks), oligopolistic concentration may lead to cases of abuse of dominant positions by suppliers with investors and consumers of financial data; calls on the Commission to take resolute action against such abuses of dominant positions, which are harmful to the fluidity of financial markets and run counter to the interests of sustainable development;

28. Stresses that, while a number of start-ups are created in the hope of an acquisition by a larger firm, the buying-out of start-ups by dominant players, including big technology companies and platforms, might stifle innovation and threaten sovereignty; calls on the Commission and the national competition authorities to look into the practices of such acquisitions and their effects on competition, especially with regard to ‘killer

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acquisitions’, as defined in its high-level expert report of 4 April 2019 entitled ‘Competition policy for the digital era’; calls on the Commission to conduct a study on the reversal of burden of proof as per the Act on Digitalisation of German Competition Law (‘GWB-Digitalisierungsgesetz’) published in October 2019;

29. Asks the Commission to assess how more demanding regimes of data access, including data interoperability, can be imposed in particular when data access opens up secondary markets for complementary services or when data is confined to dominant firms;

30. Stresses that some entities, which benefit from dual status as both platforms and suppliers, abuse their position to impose unfair terms and conditions on competitors, independently of whether they are active online or offline; calls on the Commission to look into the issue of self-preferencing and enforce the necessary laws and use the instruments required on those entities that practice self-preferencing; calls on the Commission to assess the possibility of imposing \textit{ex ante} regulatory obligations where competition law is not enough to ensure contestability in these markets, therefore avoiding competitors’ foreclosure and ensuring that emerging bottlenecks are not perpetuated by the monopolisation of future innovation;

31. Notes that the Commission is reflecting on the need for targeted \textit{ex ante} regulation on specific systemic issues that may arise in digital markets; calls, therefore, on the Commission to introduce a centralised \textit{ex ante} market monitoring system (while taking into account the results of an impact assessment), to provide EU and national competition and regulatory authorities with the necessary means to gather data anonymously so as to be able to better detect market failures in due time, and – where appropriate – to introduce targeted regulation when practices become systemic;

32. Invites, therefore, the Commission to identify the key digital players and establish a set of indicators to define their systemic nature; stresses that the following indicators could be considered: abuse of practices of certain extensive networks, control of a significant volume of non-replicable data, an unavoidable situation on a multifaceted market or the player’s ability to define market rules themselves;

33. Draws the Commission’s attention to acquisitions carried out by foreign monopolies of digital data operators, including health, financial and educational data, and to the privacy risks involved, which extend far beyond the already damaging effects of transactions of this kind on competition; calls on the Commission to take those aspects into account regarding the upcoming European strategy for data and to investigate the cross-usage of data, where data originating from one service is used to expand the platforms’ offering to new services;

34. Calls on the Commission to draft up EU best practice guidelines on data ethics that companies and businesses can apply to their business models; underlines that such data ethics would complement data protection rules and would increase consumer safety and trust; proposes that these EU guidelines on data ethics include the following as key principles:

a) transparency
   - the consumer is fully informed about and co-controls which data is being used and whether such data is accurate;
- transparency as to whether the company shares data with public authorities or business partners;

b) data safety
- consumers must be reassured that data kept remain safe, meaning that cooperation across the board on data safety needs to be prioritised
- a clause on not selling data to third parties;

35. Stresses that, while intermediation platforms play a major role in providing access to consumers for online services, some abuse their privileged position by acting as gatekeepers, including in closed ecosystems and online marketplaces; calls on the Commission to give explicit attention in its competition policy to these gatekeepers and to conclude its ongoing investigations as soon as possible;

36. Urges the Commission to increase freedom of choice for consumers and to strengthen the role of the European Consumers Centres Network (ECC-Net) in the spirit of the ECN+ Directive, with a view to setting up a proper EU consumers authority; notes, in that context, that competition policy is not only about ensuring fair prices for consumers but also providing quality, variety and innovation;

37. Stresses that it is in the interest of the European Union to have pan-European payment systems; calls on the Commission to support initiatives that meet this objective and to recognise that their success is contingent both on the innovative nature of the system for consumers and businesses and on the viability of its economic model;

**Effectiveness of competition policy instruments**

38. Stresses that fines can have an impact on the reputation of the companies penalised; points out, nevertheless, that even when heavy fines are imposed, they often are not enough of a deterrent and may ultimately be passed on to consumers; calls on the Commission to also make use of alternative behavioural and, if need be, structural remedies in order to fully ensure the effectiveness of EU competition policy; stresses that the cease-and-desist order should be much more prescriptive in upcoming remedies;

39. Recalls that abuse of market power can take place even when products or services are supplied for free; believes that the passing on of private data to third parties for marketing or commercial purposes is frequently done without the consumer’s proper consent, as alternatives to sharing data are often not provided; considers that in the digital economy, the concentration of data in a small number of companies leads to market failures, excessive rent extraction and a blocking of new entrants;

40. Recalls that the online search market is of particular importance when ensuring competitive conditions in the digital single market; notes with regret that one search engine that has over 92% of market share in the online search market in most of the Member States has become a gatekeeper of the Internet; calls for input from all stakeholders, covering the past nine years of antitrust history, to be used to urgently assess if remedies proposed truly benefit consumers, internet users and online businesses in the long term; calls on the Commission to consider a proposal aimed at unbundling search engines –as outlined in Parliament’s resolution of 27 November 2014

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on supporting consumer rights in the digital single market\(^8\) – from their commercial services in order to end the status quo, which could be a potential long-term means of achieving fair and effective competition in the European digital market;

41. Stresses the slowness of the antitrust investigations, such as the Google Shopping case, compared to the fast-moving digital markets; stresses the damaging effect resulting from this situation and the financial and structural risks to which some actors are exposed if they initiate lengthy and costly proceedings; stresses that due process must be respected, but calls on the Commission to make use of fast-track antitrust procedures and to find new incentives, such as the leniency programme, to make companies more cooperative when it comes to tracking down cartels across the EU;

42. Stresses the need to regularly look at the possibility of using interim measures to stop any practice that would seriously harm competition; calls on the Commission to relax the criteria for these measures, while respecting the rule of law, in order to avoid any irreversible damage; calls on the Commission to revise the Notice on Remedies (2008/C 267/01)\(^9\) by taking into account the developments and evolution of the digital sector over the last years;

43. Welcomes the Commission’s continued efforts to address abusive behaviour by large platforms; calls on the Commission to revisit cases where the remedies offered have clearly been ineffective at restoring competition to the market, as in the case of Google Shopping; stresses that, in the absence of targeted and effective behavioural remedies that have been tested in advance with the affected undertaking, a complete structural separation of general and specialised search services, including local search, may be necessary; underlines that compared with structural remedies, behavioural remedies could offer a time-efficient solution, mitigating the possibility that competitors are forced out of the market during prolonged discussions on divestiture;

44. Points out the need for the Commission to allocate adequate resources to be able to effectively enforce EU competition rules; notes the need to ensure specific expertise, especially on growing issues such as dominant positions of online platforms or artificial intelligence;

45. Calls on the Commission to issue guidance on the interpretation of ‘significant impediment to effective competition’, as set out in the Merger Regulation, so that in cases of mergers, the Commission does not only look at prices, output and innovation but also pays attention to the social and environmental costs of such transactions in light of TFEU principles, and to pay particular attention to environment protection;

46. Calls on the Commission to inquire about this new checking account service that will be provided to consumers by some of the world’s biggest tech companies in forthcoming years; urges the Commission to give particular focus to their entry into this new digital financial market and the huge amount of data they will gather from their consumers and the potential use of it;

\(^8\) OJ C 289, 9.8.2016, p.65.
**Competition rules supporting the European Green Deal**

47. Supports the Commission’s review of the State aid guidelines in all relevant sectors, such as in transport, including air and maritime, in line with the objectives of the European Green Deal by applying the just transition principle and acknowledging the complementary role of the Member States’ governments to support investments in decarbonisation and clean energy while ensuring a level playing field and that there is no market distortion; calls on the Commission to examine, in the context of the review of the Energy Taxation Directive\(^\text{10}\), whether the current tax exemptions provide for unfair cross-sector competition conditions;

48. Stresses the need for the Commission to prevent any potential negative side-effects where larger companies use public aid granted in view of ‘greening’ their business models for other objectives such as reinforcing its dominant position in a given sector;

49. Calls on the Commission to provide further guidance and an enabling framework for further investments in energy efficiency and building renovation, as well as on repowering, hybrid projects and electricity storage;

50. Underlines in this regard that in order for the European Green Deal to be successful, European producers of sustainable products and services need to see the advantages of it and not face unfair competition from companies in third countries;

51. Notes that the European Green Deal must ensure policy consistency between agriculture, climate action, environment and trade;

**Sectoral policies**

52. Calls on the Commission to make more systematic use of investigations in sectors that are essential to the everyday life of citizens, such as health, mobility, online advertising, energy, tourism, including monitoring price caps of online accommodation platforms, culture, financial and payment services, and the media, in the digital age, while maintaining the EU’s high standards;

53. Calls on the Commission to take note of the presence of national monopolies and oligopolies as a potential signal of the existence of weaknesses in the single market or barriers to fair competition;

54. Requests that the Commission carry out a preliminary study on the concentration of media ownership in Europe, also in the context of multinational corporations buying out European media providers;

55. Reiterates that taxation is sometimes used to grant indirect State aid, creating an uneven playing field in the internal market; calls on the Commission to update its existing guidelines on the notion of State aid to ensure that the Member States do not grant State aid in the form of a tax advantage; deplores the abuse of tax rulings and welcomes the recent judgments of the General Court confirming that examination by the Commission of a tax ruling under a State aid point of view does not constitute tax harmonisation; observes that Commission rulings are often challenged in court and therefore need to be

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\(^{10}\) OJ L 283, 31.10.2003, p.51.
thoroughly prepared; insists that the Commission have access to the information exchanged between the Member States’ tax authorities so as to better detect violations of competition rules; calls for the adoption of the proposal on the Common Consolidated Corporate Tax Base (CCCTB) and the public country-by-country reporting;

56. Calls on the Commission to look into the possibility to fine countries found in breach of State aid rules;

57. Calls on the Commission to examine swiftly the discrepancies between the rules on State aid in the area of liquidation aid and the resolution regime under the Bank Recovery and Resolution Directive\textsuperscript{11}, and to revise its Banking Communication of 30 July 2013\textsuperscript{12} accordingly, including in light of recent cases, taking into account the need to protect taxpayers;

58. Calls the Commission to have a close look at cases in the banking sector with potential competitive relevance in certain Member States where consumers currently face high interest rates\textsuperscript{13} and a lack of transparency when it comes to loans, potentially due to concentration of ownership in the banking sector, which could lead to deceptive selling practices of mortgages;

59. Calls on the Commission to re-evaluate on an annual basis whether the requirements for the application of Article 107(3)(b) of the TFEU in the financial sector continue to be fulfilled;

60. Calls, further, on the Commission to follow the example of the UK Competition and Markets Authority to investigate thoroughly and to propose further measures to address the quasi monopoly of the ‘Big Four’ accountancy companies auditing the largest listed companies; highlights, in this respect, the recommendations of the UK Competition and Markets authority recommending for the separation of audit from consulting services, as well as the setting up of mandatory ‘joint audit’ to enable firms outside the Big Four to develop the capacity needed to review the biggest companies;

61. Calls on the Commission to guarantee fair competition and greater transparency in offline platforms’ commercial practices, including supermarket and hypermarkets, so as to ensure that EU producers receive fair conditions and prices for their products; calls on the Commission to continue its in-depth analysis on the extent and effect of buying alliances, related to both pricing and non-pricing strategies, on the economic functioning of the agricultural and food supply chain, taking particular account of the effects on small-scale suppliers and farmers; regrets the fact that selling at a loss is not on the list of practices that are prohibited at EU level; highlights that the Farm to Fork strategy and EU competition law must recognise the important contribution made by primary producers in supplying high-quality food and delivering public goods to society,

62. Calls for a clearer, more flexible and more predictable application of competition rules

\textsuperscript{12} OJ C 216, 30.7.2013, p. 1.
\textsuperscript{13} https://data.worldbank.org/indicator/FR.INR.LNDP?locations=RO&most_recent_value_desc=false
to producers and producer organisations (POs) so as to increase legal certainty; calls, therefore, on the Commission to assess the implementation and clarify the provisions of Single Common Organisation of the Markets (CMO) Regulation\textsuperscript{14}, in particular with regard to the exceptions to competition rules granted to certain agreements and practices of farmers in association; encourages the establishment of more POs as a way for farmers to strengthen their position and effectively negotiate on price and tackle the imbalances in power within the food supply chain;

63. Calls on the Commission to exempt from State aid rules tax provisions specifically introduced by Member States to encourage farmers to set up voluntary precautionary savings with a view to coping better with the upsurge in climate-driven and health risks, as well as economic crises; welcomes the completion of the review of the De Minimis Regulation\textsuperscript{15}, which will help farmers to address climate challenges while preventing any market distortions; highlights the particular need for clear guidelines for the agricultural sector owing to the environmental and sustainability requirements; welcomes the ongoing fitness check of the 2012 State aid modernisation package and the ongoing revision of the Agricultural Block Exemption Regulation\textsuperscript{16};

64. Calls on the Commission to assess the implementation and clarify the scope of Article 209 of the Single CMO Regulation, specifically with regard to the exceptions to competition rules granted to certain agreements and practices of farmers in associations, in order to provide those concerned with greater clarity and legal certainty when this article is implemented, and to give the Commission greater flexibility in implementing this article;

65. Recognises the role of interbranch organisations in the chain, which serve as a platform for dialogue, research and development, best practices and market transparency;

66. Calls for the role of interbranch organisations to be strengthened in order to promote more balanced relationships in the food chain, and supports the extension of the value-sharing clause to cover all operators rather than just the first purchaser, in line with the draft report adopted in April 2019 by Parliament’s Committee on Agriculture and Rural Development on the new common organisation of the markets in agricultural products as part of the next reform of the common agricultural policy (CAP);

67. Calls for an automatic express exemption from Article 101 of the TFEU to be provided under Article 210 of the Single CMO Regulation, subject to the principles of necessity and proportionality, allowing agricultural interbranch organisations to accomplish the tasks assigned to them by the Single CMO Regulation, with a view to furthering the aims of Article 39 of the TFEU;

68. Calls on the Commission to ensure that the provisions of Article 222 of the Single CMO Regulation are activated swiftly in order to address serious market distortions;

69. Welcomes the success of the supply management measures introduced for quality cheese and ham at the request of POs, interbranch organisations and groups of

operators; calls for the provisions of the Single CMO Regulation authorising the introduction of supply control rules to be extended to cover all products benefiting from a protected designation of origin (PDO) or a protected geographical indication (PGI) in order to achieve a better balance between supply and demand;

70. Asks the Commission to engage in dialogue with all relevant stakeholders on the functioning of the agricultural and food supply chain, and to adapt EU competition policy in line with the most recent developments in the trading environment;

71. Welcomes the adoption of Directive (EU) 2019/633 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which represents an important first step in ensuring fairness between operators and in addressing the imbalance of the bargaining power within the food supply chain; urges Member States to transpose the directive without delay and calls on the Commission to monitor the progress of transposition closely and to promote the sharing of best practices between Member States; encourages Member States to list further unfair practices as prohibited and set higher standards;

72. Recalls that significant horizontal and vertical restructuring has taken place, which has led to further consolidation in the already concentrated seed, agro-chemical, fertiliser, animal genetics and farm machinery sectors, as well as in processing and retailing; calls on the Commission, when assessing mergers in these sectors, to consider impacts beyond consumer prices; stresses that the interests of EU farmers, citizens and the environment must be protected, by comprehensively and holistically assessing the impact, at farm level, of mergers and acquisitions among agricultural input suppliers, including producers of plant protection products;

73. Considers it essential that the Commission continue its detailed monitoring of the EU market for pesticides, seeds and traits, and monitor the impact of digitalisation on the agricultural sector;

74. Urges the Commission to set up a permanent EU-level information platform on risk management tools to help farmers cope with the uncertainty of climate, market volatility and other risks where stakeholders can exchange best practices, as set out in its communication on the future of food and farming from November 2017;

75. Points out that large disparities in direct payments hamper sustainable farmers’ initiatives for the climate and the environment and distort competition in the EU; recalls the commitment made by the European Council on 7-8 February 2013 to harmonise payments throughout the EU by 2013;

76. Draws attention to the growing number of farmers’ protests and notes that the cumulative impact of free trade agreements (FTAs) on the EU’s agri-food sector is one of their concerns; questions whether FTAs leave EU agri-food producers at a competitive disadvantage, given differences in social, health, labour, environmental and animal welfare standards in third countries; therefore calls on the Commission to present, as soon as possible, its latest report on the cumulative impact of ongoing and future trade deals, and calls for the application of the principles of reciprocity and compliance for agricultural products and for the protection of vulnerable sectors in

future and ongoing trade negotiations, ensuring that all necessary inspections are carried out;

77. Welcomes the proposal for a regulation on the single market programme, and, more specifically, the food chain actions supported therein, such as veterinary and phytosanitary measures, to address animal and plant health crises; urges the Council and Parliament to swiftly conclude the negotiations and adopt the regulation;

78. Underlines the importance of timely conclusions to the Commission’s two proposals for transition regulations, in order to avoid delays and complications that could lead to market instability;

79. Considers it essential to keep within DG AGRI all competencies relating to the application of Articles 209 and 210 of the Single CMO Regulation and to State aid for the development of agricultural and forestry sectors and of rural areas, thereby ensuring the expertise needed to address and coordinate matters in this area, which is necessary given the specific nature of these sectors and is fully consistent with the objectives and support provided under the CAP;

80. Calls on the Commission to continue to pay particular attention to the provision of services of general economic interest (SGEI) when applying State aid rules, especially in the context of isolated, remote or peripheral regions and islands in the Union; notes certain difficulties in applying the rules of the Almunia package for certain SGEIs, such as the postal sector, whose public service missions may, in accordance with EU law, be defined and organised at national level;

81. Recalls the need for a roadmap for better-targeted State aid, especially for the delivery of services of general economic interest including energy, transport or telecommunications;

82. Reiterates its call for coal regions to be identified as assisted areas in accordance with Article 107(3) (a) and (c) of the TFEU and for EU aid rules for these special regions to be adapted so as to enable measures to be taken to deal with structural change; insists that coal mining companies and coal power plant operators that have received and still receive public support for mining and burning coal must not be subject to a privileged State-aid treatment, including for traditional corporate responsibility activities such as ground water restoration, landscape refurbishment or other cleaning-up sites related activities; calls on the Commission to provide clear guidance and conditionality in line with EU climate commitments;

83. Welcomes that the Commission has included in its targeted review of the General Block Exemption Regulation (GBER)\(^\text{18}\) the extension of this scheme to European Territorial Cooperation projects (also called Interreg);

84. Is concerned about asymmetric treatment of EU-funded operations depending on whether they are supported on EU side by cohesion policy resources or other EU funds or programmes such as Horizon2020/Horizon Europe or EFSI2.0/InvestEU as proposed by the Commission in its GBER review; believes that a level playing field should be

maintained for projects that are similar in nature, but different in financing sources as this would privilege certain funding schemes while crowding out others;

**A better focus on citizens through Parliament**

85. Calls, without Treaty change, for regular use of the ordinary legislative procedure in competition policy, by analogy with the procedure for the Antitrust Damages Directive\(^{19}\) and the ECN+ Directive;

86. Calls on the Commission to report regularly to Parliament on the implementation and monitoring of cooperation agreements with reference to competition, on the screening of foreign direct investments; calls on the Commission to maintain high transparency standards;

87. Stresses its desire to play a greater role in determining and developing the general framework for competition policy; notes that Parliament should be more involved in the activity of working parties and expert groups, such as the International Competition Network (ICN), as an observer to get a better knowledge of the matter and keep it updated on the developments in order to be more prepared for its role as co-legislator; calls on the Commission to particularly involve Parliament when devising soft-law instruments such as notices and guidelines;

88. Calls on the Commission to organise multisectoral and interinstitutional forums involving industry, national regulators including data protection authorities, consumer groups and other relevant stakeholders to decompartmentalise competition policy;

89. Stresses that the current complaint form for State aid cases requests many specific details on when the State aid had been accorded, which ordinary citizens cannot possibly know; calls, therefore, on the Commission to simplify the complaint form in order to give ordinary citizens the possibility to send in complaints;

90. Notes with regret the lack of information provided during the Commission’s investigation of submitted complaints; calls on the Commission to give the complainant a confirmation of receipt and a notification upon the launch of the investigation, including an expectation of the length of the investigation;

91. Recalls the importance of coordination with national competition authorities and calls on the Commission to present to Parliament an assessment of the implementation of the ECN+ Directive; recalls that in the annex of the ECN+ Directive the Commission identified ‘interim measures’ as ‘a key tool for competition authorities to ensure that competition is not harmed while an investigation is on-going’; recalls the need to assess whether there are means to simplify the adoption of interim measures in the ECN within two years from the date of transposition of the Directive in order to enable competition authorities to deal more effectively with developments in fast-moving markets;

92. Points out that the political independence of competition authorities is of utmost importance to ensure the impartiality and credibility of competition policy; recognises that preventing distortion of competition requires public scrutiny of lobbying efforts in

all EU institutions; reiterates, therefore, its calls for an enhanced EU Transparency Register; insists that there be a more regular exchange with the Commission, in line with the inter-institutional agreement with Parliament; calls on the Executive Vice-President for competition to stay in close contact with the ECON committee and with its Competition Working Group, which is an appropriate place for establishing a more regular dialogue;

93. Recalls the commitment made by the Executive Vice-President of the European Commission for Europe Fit for the Digital Age during her confirmation hearing on 8 October 2019 to keep her digital policy and competition portfolios strictly separate;

94. Instructs its President to forward this resolution to the Council, the Commission, the national parliaments and national competition authorities.
22.1.2020

**OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

for the Committee on Economic and Monetary Affairs

on competition policy – annual report 2019
(2019/2131(INI))

Rapporteur for opinion: Enikő Győri

**SUGGESTIONS**

The Committee on International Trade calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Emphasises that an international level playing field in a rules-based multilateral trading system safeguarding states’ policy-making scope is key for Europe, including European companies and in particular small and medium-sized enterprises (SMEs), as well as for workers and consumers; considers that it contributes to boosting sustainable economic development, ensuring a stable and predictable environment, pursuing enhanced competitiveness and reciprocity, securing and creating decent jobs in the EU and third countries, and ensuring high labour and environmental standards, since an increasing number of jobs are dependent on global value chains; stresses in this regard the importance of increased transparency, sustainability and corporate accountability in global value chains, and calls on the EU to consider, among other measures, establishing a legal framework for mandatory due diligence in global value chains as a necessary step for achieving this;

2. Invites the Commission, in the light of the growing debate, to reconcile the EU competition rules, industrial policy and international trade, which must go hand in hand with sustainability and respect for the environment; underlines the specific need for research funding as the basis of innovation and development for European businesses and as a key element for boosting trade and competitiveness;

3. Underlines that SMEs play a vital role in international trade, accounting for an estimated 30 % of the EU’s goods exports to the rest of the world\(^1\); considers that the internal market continues to be by far the most important market for SMEs; recalls that, in order to help SMEs cope with the greater challenges of entering new markets and enable them to compete on their own merits, EU trade and competition policy should

contribute to economic diversity and an SME-friendly trade environment, and that this should include considering modernising the EU’s definition of SMEs, in particular by adding qualitative criteria;

4. Stresses that EU competition policy should promote fair competition and reciprocal trading conditions in the internal market and at global level, with the further aim of strengthening industry’s efforts to also contribute to innovation and a just transition towards a climate-neutral EU economy; reiterates that EU competition rules apply to all actors active on the internal market; calls, therefore, for unfair trading practices to be addressed effectively through a more coordinated, assertive and integrative approach by making full use of existing and reinforced instruments in such fields as competition, trade, defence and procurement, and by developing new and effective policies and tools and tackling the effects on the internal market of distortions in international markets such as foreign state ownership and subsidies, in particular where EU funding is involved; calls for the strengthening of the anti-subsidy instrument by including a subsidy control mechanism;

5. Calls on the Commission, in this context, also to consider whether it is appropriate to modernise or update the interpretation of targeted competition rules while not hampering competition on relevant markets in the EU, also reforming the state aid guidelines and including state subsidies and government ownership as criteria in the EU’s public procurement directives in order to safeguard the long-term viability of Europe’s industrial base and to the benefit of European consumers; welcomes, against this backdrop, the new Commission’s intention to strengthen the foreign direct investment screening mechanism as soon as sufficient experience with the present legislation has been collected;

6. Points out the need to reduce persisting asymmetries in international public procurement markets, and calls on the Commission to show ambition in opening foreign markets to EU companies, especially SMEs; welcomes the renewed discussions on the EU’s international procurement instrument (IPI), and asks for it to be adopted by 2020 in order to guarantee reciprocity where trade partners restrict their access to their procurement markets;

7. Calls, moreover, on the Commission to further enhance global cooperation on competition matters, including pertinent dialogue with the US, Japan and other partners; calls on the Commission to ensure an international level playing field and to agree on common standards and procedures via bilateral trade agreements and in international fora such as the Organisation for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organisation (WTO), the International Labour Organisation (ILO) and the World Bank; asks the Commission to be active in strengthening the International Competition Network (ICN), and highlights the importance of effective cooperation with third-country national competition authorities in order to increase the effectiveness of specific investigations;

8. Fully supports the Commission’s efforts in the context of the ongoing reform of the WTO, including its Appellate Body, to update and make effectively enforceable the multilateral rules on subsidies or sectoral initiatives, in order to adequately address the
issue of subsidies at international level, with particular reference to industrial subsidies, state-owned enterprises and forced technology transfers, and to act to counter non-market-oriented policies and practices of third countries; calls on the Commission to fully involve the European Parliament and the Member States in this area;

9. Welcomes the presence of specific competition chapters in recently concluded bilateral trade and investment agreements, and calls on the Commission to continue negotiating modern, ambitious and enforceable provisions on competition and state aid in all future trade agreements, as part of a holistic and ambitious EU trade policy;

10 Stresses that effective enforcement of the sustainable development provisions of trade agreements is important for ensuring fair competition and environmental and social standards; welcomes, in this perspective, the introduction of environmental and social criteria in the reform of anti-subsidy and anti-dumping measures; considers that the possible inclusion of precise, justiciable ILO core standards under WTO law could also be explored in the context of the ongoing WTO reform and in order to contribute to a global level playing field;

11. Calls on the Commission to ensure that competition rules are compatible with a fast-changing global economy and best serve European consumers, workers and businesses by fully taking into account the impact of the digitisation of the economy on how global markets operate; calls on the Commission to address the impact of global e-commerce in terms of increasing competition within retail markets, enhancement of consumer choice and impact on product distribution and jobs; acknowledges that online platforms are key enablers of digital trade, but highlights in particular that the emergence of the digital economy has led to excessive concentration of markets and power; stresses the need to focus on key issues such as access to and portability of data, role and presence of platforms in the markets, and technological neutrality;

12 Welcomes, in this context, the ongoing plurilateral WTO negotiations on e-commerce, and calls for a comprehensive and ambitious set of rules that will address digital trade barriers, ensure that companies can compete worldwide in a level playing field, and enhance consumer trust in the online environment without detriment to European data protection standards; emphasises that the EU should take a leading role in these international negotiations, with close consultations that involve the European Parliament, Member States and stakeholders, including civil society;

13. Calls on the Commission to properly analyse and study the public procurement markets of the third countries with which it has or is negotiating a free trade agreement, in order to negotiate the best access conditions for European companies;

14. Calls on the Commission to coordinate the necessary action by the Directorates-General involved - DG Trade and DG Competence - to ensure that the competition rules and their implementation guarantee fair competition for European companies in third-country markets, and vice versa;

15. Calls on the Commission to pay particular attention to the role of international standard-setting for fair competition; insists that the EU should strengthen its multilateral approach to standard-setting, in particular in the context of ISO and IEC; warns against the nationalisation of standard-setting approaches, particularly in the context of China’s
Belt and Road Initiative and other connectivity-enhancing strategies; calls on the Commission to establish a high-level coordinator for standardisation policy in this context;

16. Highlights the importance of incorporating a gender-based perspective both at multilateral and bilateral level, including gender chapters in trade agreements and designing gender-sensitive measures (e.g. ensuring that both ex ante and ex post impact assessments include the gender impact of EU trade policy and agreements), in order to boost competition and promote inclusive economic growth.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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**Members present for the final vote**

**Substitutes present for the final vote**
Angelika Winzig
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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| GUE/NGL | Emmanuel Maurel, Helmut Scholz |
| NI | James Wells |

| **1** | **0** |
| ID | Maximilian Krah |

**Key to symbols:**
- **+**: in favour
- **-**: against
- **0**: abstention
28.1.2020

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on Economic and Monetary Affairs

on competition policy – annual report 2019
(2019/2131(INI))

Rapporteur for opinion: Isabel Carvalhais

SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas Article 42 of the Treaty on the Functioning of the European Union (TFEU) states that rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council and taking into account the objectives set out for the common agricultural policy (CAP) in Article 39 of the TFEU;

B. whereas one of the CAP objectives set out in Article 39 of the TFEU is to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

C. whereas the Court of Justice in its judgment of 14 November 20171 (‘the Endives Case’) confirmed that the CAP takes precedence over competition rules; whereas the Court ruled that practices related to a concertation on prices or quantities put on the market or exchanges of strategic information may escape the prohibition of agreements, decisions and concerted practices laid down in Article 101(1) of the TFEU if they are agreed between the members of the same producer organisation (POs) or the same association of producer organisations (APOs) recognised by a Member State and are strictly necessary for the pursuit of one or more of the objectives assigned to these organisations, in compliance with EU legislation;

D. whereas Regulation (EU) No 2017/23932 (the ‘Omnibus Regulation’) contains exemptions from the application of Article 101 of the TFEU, establishing, namely, that

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1 Judgment of the Court of Justice of 14 November 2017, President de l'Autorité de la concurrence v Association des producteurs vendeurs d'endives (APVE) and Others.

the collective activities of POs and their APOs are necessary to attain the CAP objectives as defined in Article 39 of the TFEU provided that the joint activities are genuinely exercised and help to improve farmers’ competitiveness; whereas, as a result, activities such as production planning and contract negotiation are exempt from the provisions established in Article 101 of the TFEU;

E. whereas the specific nature and structural features of the EU agricultural sector, mainly composed of small farms in economic terms, results in fragmented production and difficulties and challenges facing some farmers in responding and adapting to market changes and demands; whereas this contrasts with the high level of concentration of the other operators in the food supply chain, resulting in serious disadvantages in terms of farmers’ negotiating power and should be taken into account by the Commission and the national authorities when enforcing competition rules;

F. whereas the future CAP should focus on supporting small and family farms while ensuring that sustainable farming practices are being implemented; whereas such goals can be achieved only by taking a uniform approach across all EU policies, including competition policy;

G. whereas unforeseeable natural disasters and unpredictable production circumstances, such as adverse weather conditions and disease outbreaks, are likely to make the market for agricultural products even more volatile, subject to crisis, and further weaken the bargaining position of farmers vis-à-vis buyers; whereas access to exceptional measures that aim to preserve market stability is important in this regard;

H. whereas cooperation between farmers plays an essential role in strengthening their position in the food supply chain, contributes to the CAP objectives and helps farmers to respond to increasing societal demands; whereas many EU farmers are not yet able to benefit from membership of producers’ organisations, thereby making their position within the food supply chain highly vulnerable and weakening their bargaining power; whereas there is therefore a need to strengthen POs, including through consolidation, and APOs;

I. whereas the competitiveness of EU farmers greatly depends on the proper and fair functioning of the internal market as well as on the clear interpretation and enforcement of State aid and competition policy rules governing all agri-food chain operators and, in particular, POs, APOs, and on other forms of cooperation between producers in the agricultural sector;

J. whereas abusive practices and the increasing consolidation trend in the input and retail sectors of the agricultural and food supply chain distort competition and innovation, thereby directly and indirectly affecting both producers and consumers;

K. whereas digital technologies can help European farmers to provide safe, sustainable and quality food and help reduce the environmental impact of agriculture, improve working conditions for farmers and increase rural attractiveness, in particular for younger generations; whereas there is less of an incentive for the private sector to invest in broadband provision in these areas;

I. Calls on the Commission to take specific account of the fact that, as the Court of Justice
has ruled, CAP goals must be given priority over those relating to competition policy, by an application of competition rules to producers and POs which is clearer, more flexible and more predictable POs;

2. Stresses that, because of its specific nature and long production cycles, farming cannot be compared to any other activity as far as elasticity of supply is concerned, and that the logic of the market cannot therefore be applied to the farming sector in the same way as it is applied to other sectors;

3. Welcomes the 2018 study undertaken on behalf of the Commission on POs and their activities in the olive oil, beef and veal, and arable crops sectors, which reaffirms the importance of these organisations and their associations in strengthening the position of primary producers in the food chain and in contributing positively to the CAP objectives set out in Article 39 of the TFEU; notes the study’s findings that there are five times more non-recognised POs/APOs than those formally recognised and that the lack of support from governments poses a challenge for the establishment of POs and APOs; regrets the fact that POs are not developed to the same extent throughout the Member States and calls for the elimination of remaining hurdles in the recognition process and for the guarantee of legal certainty; calls on the Commission, in this regard, to raise awareness of the benefits of having POs recognised under Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products (Single CMO Regulation) and encourages the establishment of more POs as a way for farmers to strengthen their position and effectively negotiate on price and tackle the imbalances in power within the food supply chain, among their other roles;

4. Considers it essential to clarify the provisions governing POs, APOs and interbranch organisations in the Single CMO Regulation within the framework of the ongoing CAP reform, particularly as regards competition policy, building on the progress made by the Omnibus Regulation, and in line with the Court of Justice’s ruling in the Endives Case, thereby providing greater legal certainty and improving the position of farmers in the food chain;

5. Calls on the Commission to assess the implementation and clarify the scope of Article 209 of the Single CMO Regulation, specifically with regard to the exceptions to competition rules granted to certain agreements and practices of farmers in associations, in order to provide those concerned with greater clarity and legal certainty when this article is implemented, and to give the Commission greater flexibility in implementing this article;

6. Welcomes the study compiled for the Commission on the best ways for POs to be formed, carry out their activities and be supported, which recognises the contribution that POs and APOs make to the economic, technical and social development of their members, with potential indirect beneficial effects for farmers who are not members of POs and positive externalities for other operators in the food supply chain; highlights the need to ensure legal certainty for POs, notably with regard to recognition criteria and activities;

7. Recognises the role of interbranch organisations in the chain, which serve as a platform
for dialogue, research and development, best practices and market transparency;

8. Calls for the role of interbranch organisations to be strengthened in order to promote more balanced relationships in the food chain, and supports the extension of the value-sharing clause to cover all operators rather than just the first purchaser, in line with the draft report adopted in April 2019 by Parliament’s Committee on Agriculture and Rural Development on the new common organisation of the markets in agricultural products as part of the next CAP reform;

9. Calls for an automatic express exemption from Article 101 of the TFEU to be provided under Article 210 of the Single CMO Regulation, subject to the principles of necessity and proportionality, allowing agricultural interbranch organisations to accomplish the tasks assigned to them by the Single CMO Regulation, with a view to furthering the aims of Article 39 of the TFEU;

10. Calls on the Commission to ensure that the provisions of Article 222 of the Single CMO Regulation are activated swiftly in order to address serious market distortions;

11. Welcomes the success of the supply management measures introduced for quality cheese and ham at the request of POs, interbranch organisations and groups of operators; calls for the provisions of the Single CMO Regulation authorising the introduction of supply control rules to be extended to cover all products benefiting from a protected designation of origin (PDO) or a protected geographical indication (PGI) in order to achieve a better balance between supply and demand;

12. Asks the Commission to engage in dialogue with all relevant stakeholders on the functioning of the agricultural and food supply chain, and to adapt EU competition policy in line with the most recent developments in the trading environment;

13. Welcomes the adoption of Directive (EU) 2019/633 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which represents an important first step in ensuring fairness between operators and in addressing the imbalance of the bargaining power within the food supply chain; urges Member States to transpose the directive without delay and calls on the Commission to monitor the progress of transposition closely and to promote the sharing of best practices between Member States; encourages Member States to list further unfair practices as prohibited and set higher standards;

14. Regrets the fact, however, that the scope of the directive on unfair practices in the food supply chain does not cover all suppliers, as it excludes those that are not SMEs, and the fact that selling at a loss is not on the list of practices that are prohibited at EU level;

15. Expresses concern about unsustainable downward pressure on farm prices as a result of excessive processor or buyer power downstream in agricultural supply chains; encourages the Commission to revise its approach in assessing the abuse of dominant market positions, to include cases which place unsustainable downward pressure on farm prices, regardless of whether they result in higher consumer prices; considers that broader consumer interest includes support for fair incomes for farmers by securing a

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fair share of the value generated along the food supply chain, in order to ensure an economically and environmentally sustainable agricultural sector;

16. Reiterates that CAP support is designed, inter alia, to ensure the sustainability of farms and encourage farmers to produce quality food at reasonable prices; expresses its concern about the ever-widening disparity between the production price and sale price in the food sector; calls on the Commission to identify and implement effective market measures that will narrow this gap and establish a balanced and sustainable correlation between the two;

17. Acknowledges the possible role that buying alliances plays in creating economic efficiencies in the agricultural and food supply chain; stresses, however, that the current lack of information does not allow for an evaluation of the economic effects of such buying alliances on the functioning of the supply chain, particularly on possible strategic alignments, which can result in reduced competition and smaller margins for investment and innovation; calls on the Commission to continue its in-depth analysis on the extent and effect of buying alliances on the economic functioning of the agricultural and food supply chain, in particular for farmers, small producers and suppliers and SMEs;

18. Welcomes the publication of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services; takes note of the opening by the Commission of a formal antitrust investigation to assess Amazon’s use of sensitive data from independent retailers and possible abuses of its dual role as retailer and marketplace, and expresses concerns about possible parallels in European supermarket platforms; stresses that possible differentiated or discriminatory treatment between own brands and other retail goods might distort competition in the market and reduce innovation and product choice for consumers; stresses that the Commission and national competition authorities must play their roles in ensuring that such situations do not arise;

19. Welcomes the publication of the Commission’s report on the application of competition rules in the agricultural sector; notes that a significant part of competition law infringements in the agricultural sector are committed by processors of agricultural products while most of the complaints originate from farmers; calls for the effective supervision by the Commission of the companies active in the market of food processing;

20. Recalls that significant horizontal and vertical restructuring has taken place, which has led to further consolidation in the already concentrated seed, agro-chemical, fertiliser, animal genetics and farm machinery sectors, as well as in processing and retailing; calls on the Commission, when assessing mergers in these sectors, to consider impacts beyond consumer prices; stresses that the interests of EU farmers, citizens and the environment must be protected, by comprehensively and holistically assessing the impact, at farm level, of mergers and acquisitions among agricultural input suppliers, including producers of plant protection products;

21. Considers it essential that the Commission continue its detailed monitoring of the EU  

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market for pesticides, seeds and traits, and monitor the impact of digitalisation on the agricultural sector;

22. Considers that the costs of production must be taken fully into account when agreeing prices in contracts between producers and retailers/processors, and that prices should also provide a fair remuneration for farmers; stresses the need for greater market transparency to contribute to fairer price transmission along the supply chain; calls on the Commission to improve market observatory data on volumes, prices and margins, particularly in the organic sector; calls on the Commission to develop indicators for production costs and margins which can then serve as references in contracts that take better account of cost of production and remuneration; requests that the Commission ensure clear guidelines on value sharing along the supply chain to enable price transmission at levels that are fair for both the consumer and the producer;

23. Urges the Commission to set up a permanent EU-level information platform on risk management tools to help farmers cope with the uncertainty of climate, market volatility and other risks where stakeholders can exchange best practices, as set out in its communication on the future of food and farming from November 2017;

24. Points out that large disparities in direct payments hamper sustainable farmers’ initiatives for the climate and the environment and distort competition in the EU; recalls the commitment made by the European Council on 7-8 February 2013 to harmonise payments throughout the EU by 2013;

25. Draws attention to the growing number of farmers’ protests and notes that the cumulative impact of free trade agreements (FTAs) on the EU’s agri-food sector is one of their concerns; questions whether FTAs leave EU agri-food producers at a competitive disadvantage, given differences in social, health, labour, environmental and animal welfare standards in third countries; therefore calls on the Commission to present, as soon as possible, its latest report on the cumulative impact of ongoing and future trade deals, and calls for the application of the principles of reciprocity and compliance for agricultural products and for the protection of vulnerable sectors in future and ongoing trade negotiations, ensuring that all necessary inspections are carried out;

26. Considers that the public demand for more sustainable food systems needs to be addressed in competition policy in order to better integrate the value of public goods in food pricing, taking into account social, environmental and animal welfare concerns; calls on the Commission to clarify for producers and national competition authorities the conditions under which agreements between operators in the same sector aimed at improving the sustainability of the food supply chain can be made without breaching competition law, thereby recognising the contribution of sustainability agreements towards improving the production of agricultural products, while benefiting consumers and society as a whole, notably in the framework of the current review of the Horizontal Block Exemption Regulations and related guidelines; considers that clear guidelines are particularly relevant to the agricultural sector owing to the environmental challenges it must face and the sustainability requirements it must meet;

27. Notes that the European Green Deal must ensure policy coherence between agriculture,
climate action, environment and trade policy;

28. Highlights that the Farm to Fork (F2F) strategy and EU competition law must recognise the important contribution made by primary producers in supplying high-quality food and delivering public goods to society, for which they are currently insufficiently rewarded, and must aim to achieve sustainability across the whole food supply chain; notes that the F2F strategy would require a uniform approach encompassing all EU policies, safeguarding fair competition and ensuring a level playing field for all businesses, and must take account of the impact of climate change on the functioning and sustainability of the food supply chain and on food security;

29. Welcomes the ongoing fitness check of the 2012 State aid modernisation package and, more specifically, the ongoing revision of the Agricultural Block Exemption Regulation (ABER) and the European Union guidelines for State aid in the agricultural and forestry sectors and in rural areas, which will cease to apply on 31 December 2020;

30. Considers that public funding is essential to ensure the deployment of broadband networks in rural and remote areas; calls on the Commission to promote and support public sector decision-makers in better exploring the possibilities of public support on the basis of the EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, with a view to making broadband infrastructure deployment faster and easier and ensuring that rural areas are not left behind;

31. Calls on the Commission to exempt from State aid rules the tax provisions applying specifically to the agricultural sector that the Member States introduced to encourage farmers to set up voluntary precautionary savings with a view to coping better with the upsurge in climate-driven and health risks, as well as economic crises;

32. Welcomes the completion of the Agricultural de minimis Regulation review; points out that the increase in the maximum amount of aid per single undertaking and in the national cap, combined with the application of a sector cap, will help farms to cope with climate challenges while preventing any market distortions;

33. Welcomes the proposal for a regulation on the single market programme, and, more specifically, the food chain actions supported therein, such as veterinary and phytosanitary measures, to address animal and plant health crises; urges the Council and Parliament to swiftly conclude the negotiations and adopt the regulation;

34. Underlines the importance of timely conclusions to the Commission’s two proposals for transition regulations, in order to avoid delays and complications that could lead to market instability;

35. Considers it essential to keep within DG AGRI all competencies relating to the application of Articles 209 and 210 of the Single CMO Regulation and to State aid for the development of agricultural and forestry sectors and of rural areas, thereby ensuring the expertise needed to address and coordinate matters in this area, which is necessary given the specific nature of these sectors and is fully consistent with the objectives and support provided under the CAP.
## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| **Members present for the final vote** | Mazaly Aguilar, Clara Aguilera, Álvaro Amaro, Eric Andrieu, Attila Ara-Kovács, Carmen Avram, Adrian-Dragoş Benea, Benoît Biteau, Mara Bizzotto, Daniel Buda, Isabel Carvalhais, Asger Christensen, Angelo Ciocca, Ivan David, Paolo De Castro, Jérémy Decerle, Herbert Dorfmann, Luke Ming Flanagan, Dino Giarrusso, Martin Häusling, Martin Hlaváček, Krzysztof Jurgiel, Jarosław Kalinowski, Gilles Lebreton, Norbert Lins, Mairead McGuinness, Marlene Mortler, Ulrike Müller, Juozas Olekas, Pina Picierno, Maxette Pirbakas, Sheila Ritchie, Bronis Ropė, Bert-Jan Ruissen, Anne Sander, Simone Schmiedtbauer, Annie Schreijer-Pierik, Veronika Vrecionová, Sarah Wiener, Juan Ignacio Zoido Álvarez |
| **Substitutes present for the final vote** | Atidzhe Alieva-Veli, Franc Bogović, Balázs Hidvéghi, Pär Holmgren, Peter Jahr, Petros Kokkalis, Zbigniew Kuźmiuk, Ivan Vilibor Sinčić, Massimiliano Smeriglio |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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**Key to symbols:**

+ : in favour  
- : against  
0 : abstention
LETTER OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

Ms Irene Tinagli  
Chair  
Committee on Economic and Monetary Affairs  
ASP 15G306  
BRUSSELS

Subject: Opinion on Competition Policy – Annual Report 2019 (2019/2131(INI))

Dear Madam 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

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1 The following were present for the final vote: Petra De Sutter (Chair, Rapporteur for the Opinion), Pierre Karleskind (Vice-Chair), Maria Grapini (Vice-Chair), Róża Thun und Hohenstein (Vice-Chair), Maria Manuel Leitão Marques (Vice-Chair), Adam Bielan, Carlo Fidanza, Eugen Jurzyca, Beata Mazurek, Marco Zullo, Pablo Arias Echeverría, Andrey Kovatchev, Antonius Manders, Dan-Ştefan Motreanu, Kris Peeters, Andreas Schwab, Tomislav Sokol, Ivan Štefánek, Edina Tóth, Marion Walsmann, Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Dinesh Dhamija, Svenja Hahn, Morten Lokkegaard, Anne-Sophie Pelletier, Martin Schirdewan, Alessandra Basso, Lars Patrick Berg, Hynek Blaško, Virginie Joron, Alex Agius Saliba, Brando Benifei, Biljana Borzan, Evelyne Gebhardt, Adriana Maldonado López, Leszek Miller, Christel Schaldemose, Rasmus Andresen, Anna Cavazzini, Alexandra Geese, Marcel Kolaja.
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.

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.
### INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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