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# **DRAFT REPORT**

on the Annual Report on EU Competition Policy  
(2019/2131(INI))

Committee on Economic and Monetary Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Annual Report on EU Competition Policy (2019/2131(INI))

*The European Parliament,*

- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 101 to 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)339) 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 Policy<sup>1</sup>,
- 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 market<sup>2</sup>,
- having regard to the draft opinion of the European Economic and Social Committee of 19 November 2019 on the Commission report of 15 July 2019 on Competition Policy 2018,
- having regard to the draft opinion of the Committee of the Regions of 22 October 2019 on the Commission report of 15 July 2019 on Competition Policy 2018,
- having regard to the report ‘Competition policy for the digital era’ of 2019 by high-level experts from the European Commission,
- 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

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<sup>1</sup> Texts adopted, P8\_TA(2019)0062.

<sup>2</sup> OJ L 11, 14.1.2019, p. 3–33.

- ‘The Role of Competition Policy in Protecting Consumers’ Wellbeing in the Digital Era’,
- having regard to the European Council conclusions of 22 March and 27 May 2019,
  - having regard to the statement issued by 18 Member States at the 6th Friends of Industry ministerial meeting on 18 December 2018,
  - having regard to the ongoing revision of the guidelines on horizontal cooperation,
  - having regard to the ongoing 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 report of the Committee on Economic and Monetary Affairs (A9-0000/2019),
- A. whereas competition policy must benefit the consumer while defending European businesses, in particular SMEs, against unfair competition outside Europe;
- B. whereas competition policy must be tailored to tackle digital, ecological, industrial and social challenges, in line with the objectives of the Paris Agreement;
- C. whereas a more sustainable and solidarity-based economy is important;

***The role of competition policy in globalisation***

1. Calls on the Commission to develop the influence of competition policy in the world, in particular by stepping up cooperation with the USA and China;
2. Calls on the Commission to monitor foreign direct investment and not to limit itself to the screening mechanism;
3. Calls on the Commission to ensure reciprocity with third countries in public procurement and in investment policy;
4. Calls on the Commission to promote major projects of common European interest in disruptive technologies, to simplify the relevant provisions and to streamline its requirements so that smaller industrial research projects are also approved;
5. Calls on the Commission to ensure the balanced application of State aid control to European operators in order to avoid asymmetries with their foreign competitors, who are not subject to it;

6. Calls on the Commission to adopt a more favourable approach to industrial cooperation in order to foster the emergence of European leaders that are globally competitive;
7. Calls for a review of the definition of the relevant market so as to move towards a longer-term vision encompassing the global dimension and potential future competition;

### ***Adapting competition to the digital age***

Calls on the Commission to review merger rules and strengthen antitrust action, taking into account the effects of market and network power associated with both personal and financial data; proposes that every merger in the market for such data should be subject to prior monitoring, regardless of thresholds;

9. Stresses that the buying-out of start-ups by dominant players dries up innovation and threatens sovereignty, and calls on the Commission to reverse the burden of proof with regard to such buy-outs;
10. Stresses that some entities, benefiting from dual status as both platforms and suppliers, abuse their position to impose unfair terms on competitors; calls on the Commission to penalise them;
11. Calls on the Commission to introduce a centralised ex ante market monitoring system, to provide national authorities with the necessary means to gather data anonymously, and to introduce targeted regulation when practices become systemic;
12. Draws the Commission's attention to recent acquisitions by foreign monopolies of digital operators of health data and the privacy risks involved, over and above the damaging effects of these transactions on competition;
13. Stresses that, while intermediation platforms play a major role in access to consumers for online services, some abuse their privileged position by acting as gatekeepers; calls on the Commission to conclude its preliminary investigation into Spotify's complaint about Apple's anticompetitive practices and to launch a formal procedure as soon as possible;
14. Encourages the Commission to increase freedom of choice for consumers and to set up a European consumer protection authority;

### ***Effectiveness of competition policy instruments***

15. Points out that the heavy fines imposed are often discounted in advance by businesses and ultimately passed on to consumers;
16. Stresses the slowness of the application of antitrust rules; stresses the financial and structural risk to which some actors are exposed if they initiate lengthy and costly proceedings; calls on the Commission to consider setting deadlines which take into account the economic timeframe of businesses;
17. Stresses the urgent need to adopt precautionary measures to adapt to the rapid development of new markets and to stop any practice which would seriously harm competition; calls on the Commission to relax the criteria for these measures in order to avoid any irreversible

damage;

18. Deplores the fact that, despite repeated requests, the Commission has still not completed the investigation into Google Shopping which began in 2010; stresses that, in the absence of targeted and effective behavioural remedies that have been tested in advance with the undertaking which is the victim, a complete structural separation of general and specialised research services may be necessary;

### ***Sectoral policies***

19. Calls on the Commission to make more systematic use of investigations in sectors that are essential to the everyday life of citizens, such as transport and the media, in the digital age;
20. Reiterates that taxation is sometimes used to grant indirect State aid, creating an uneven playing field in the internal market;
21. Calls on the Commission to fully mobilise the state aid modernisation strategy, in particular for the energy transition;
22. Calls on the Commission to examine 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, and following that to revise its 2013 Banking Communication accordingly;

### ***A better focus on citizens through Parliament***

23. Calls, without Treaty change, for regular use of the ordinary legislative procedure in competition policy, by analogy with the procedure for the ‘non-life insurance’ and ‘ECN+’ directives;
24. Calls on the Commission to report regularly to Parliament on the implementation and monitoring of cooperation agreements with reference to competition and to involve it in its international activity;
25. Stresses the desire for a greater role for Parliament in determining and developing competition policy, along the lines of that played by the US Congress, which even has the power to launch investigations;
26. Calls on the Commission to systematically involve it in the work of working parties and expert groups, particularly when devising soft-law instruments;
27. Calls on the Commission to organise multisectoral and interinstitutional forums involving national regulators and national consumer groups and to decompartmentalise competition policy;
28. Recalls the importance of coordination with national competition authorities and calls on the Commission to present to Parliament an assessment of the conditions for the implementation of the ‘ECN+ Directive’;
29. Instructs its President to forward this resolution to the Council, the Commission, the national parliaments and national competition authorities.

## EXPLANATORY STATEMENT

European competition policy is recognised far beyond the borders of the European Union for its effectiveness, credibility, usefulness and good coordination with the national policies of the EU Member States. Its credibility is rooted in the establishment and application of rules that remain stable over time and are not subject to changes arising from the political expediency of the day. European competition policy has also proved its worth by not being an end in itself but a tool that serves the interests of European consumers. **The rapporteur calls for these fundamentals to be strengthened.**

The European Union is now facing major **geopolitical, digital, climate and democratic challenges**. Competition policy cannot be the only tool available to address these challenges. Nevertheless, the rapporteur aims to identify and propose a number of avenues for improvement that will allow competition policy to play its role in full. Thus, rather than being structured around the different branches of competition policy, the report will focus on these key challenges.

The rapporteur is of the opinion that the Commission should put in place a number of actions in line with the stated intention to become a Commission with geopolitical ambitions and to assert **Europe's place in the world**. Specifically, these actions should concern the relationship of the European Union with its partners, in particular in the fields of international cooperation over competition policies, control of foreign direct investment or public procurement. They can also entail a competition policy that encourages the emergence and rise of European leaders in key sectors and responsiveness to competition issues raised by new markets for the sovereignty of Europe, such as the environment, artificial intelligence or urban mobility.

The rapporteur also wants to call on the Commission to act strongly to **adapt competition to the digital age**. This requires account to be taken of the market power of 'data aggregators' for the purpose of identifying abuses of dominant positions and in the context of mergers. It also implies strong and decisive action on intermediation platforms. The establishment of systemic control of digital markets should also be explored.

The rapporteur suggests a number of ways of bringing competition policy into line with the challenges of **global warming**. For example, the state aid regime should be aligned with the Paris Agreement and the energy transition. In this latter area, it is essential that the revision of the relevant guidelines should be taken as an opportunity to adopt strict requirements regarding types of energy that are incompatible with the Paris Agreement.

The rapporteur stresses the need for a **more effective and inclusive** policy. Procedures are sometimes too long and costly. The remedies proposed are still too often limited to strictly financial measures which in some cases do not sufficiently act as disincentives. The rapporteur considers there to be an urgent need to increase the range of possible remedies. In addition, competition policy needs to take greater account of citizens, in particular by more closely involving the assembly that represents them, the European Parliament. This would result in a number of measures presented in this report.

Finally, the rapporteur would like the Commission to provide **concrete responses to the European Parliament's reports**. In this regard, the rapporteur deliberately reiterates – sometimes in full – calls made in previous reports, to which the answers provided do not seem to have been sufficient. It is crucial that this report, like the previous and the following ones, should be rigorously followed up.