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on competition policy – annual report 2022
(2022/2060(INI))

Committee on Economic and Monetary Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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The European Parliament,

- having regard to the Treaty on the Functioning of the European Union, in particular to 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 14 July 2022 entitled ‘Report on Competition Policy 2021’ (COM(2022)0337) and to the accompanying Commission staff working document (SWD(2022)0188),
- having regard to its resolution of 5 May 2022 on competition policy – annual report 2021¹,
- having regard to the Commission communication of 11 December 2019 entitled ‘The European Green Deal’ (COM(2019)0640),
- having regard to the Flash Eurobarometer 510 report of October 2022 entitled ‘SMEs’ expectations for an effective competition policy’,
- having regard to the Flash Eurobarometer 511 report of October 2022 entitled ‘Citizens’ perceptions about competition policy’,
- having regard to the judgment of the Court of Justice of the European Union (CJEU) in Case T-791/19²,
- having regard to the judgment of the CJEU in Case T-227/21³,
- having regard to the Commission communication entitled ‘Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia’⁴,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)⁵,
- having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and

¹ OJ C 465, 6.12.2022, p. 124.

² Judgment of 9 February 2022, *Sped-Pro S.A. v European Commission*, T-791/19, EU:T:2022:67.

³ Judgment of 13 July 2022, *Ilumina, Inc. v European Commission*, T-227/21, EU:T:2022:447.

⁴ OJ C 131I, 24.3.2022, p. 1.

⁵ OJ L 24, 29.1.2004, p. 1.

amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)⁶,

- 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 market⁷,
- having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty⁸,
- having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty⁹,
- having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007¹⁰,
- having regard to the Commission communication entitled ‘Guidelines on State aid for climate, environmental protection and energy 2022’¹¹,
- having regard to the Commission communication of 12 December 2022 entitled ‘Guidelines on State aid for broadband networks’¹²,
- having regard to the draft Commission notice on the definition of the relevant market for the purposes of Union competition law,
- having regard to the draft Commission guidelines on the application of the exclusion from Article 101 TFEU for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation 1308/2013,
- having regard to the Commission staff working document of 1 December 2022 entitled ‘Evaluation of the State subsidy rules for health and social services of general economic interest (‘SGEIs’) and of the SGEI de minimis Regulation (SWD(2022)0388),
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs (A[9-0033/2019]),

A. whereas recent Eurobarometer surveys¹³ dedicated to EU competition policy show strong support among citizens and small and medium-sized enterprises for competition

⁶ OJ L 265, 12.10.2022, p. 1.

⁷ OJ L 11, 14.1.2019, p. 3.

⁸ OJ L 1, 4.1.2003, p. 1.

⁹ OJ L 123, 27.4.2004, p. 18.

¹⁰ OJ L 347, 20.12.2013, p. 671.

¹¹ OJ C 80, 18.2.2022, p. 1.

¹² OJ C 36, 31.1.2023, p. 1.

¹³ Flash Eurobarometer 510 and Flash Eurobarometer 511.

policy and its enforcement;

B. whereas competition policy should aim to support the European Green Deal;

General considerations

1. Considers that EU competition policy protects market structures against concentrations and accumulations of market power, just as it advances consumer welfare;
2. Reiterates that competition policy cannot be pursued in isolation, as an end in itself, without reference to the legal, economic, political and social context;
3. Welcomes the General Court's judgment in *Sped-Pro* (Case T-791/19), which confirms that the protection of the rule of law is a relevant factor for competition law;

Policy response to the war in Ukraine and the Inflation Reduction Act

4. Welcomes the quick adoption of the Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, and the subsequent prolongations thereof;
5. Calls on the Commission to safeguard the integrity of the internal market and is deeply concerned about the risk of increasing fragmentation within the internal market due to excessive use of subsidies in response to the US Inflation Reduction Act; understands the need for additional public investments; considers the introduction of dedicated permanent, if necessary debt-financed, European investment funds to be a better policy response;
6. Considers rising energy and food prices to be the main drivers of the current hike in inflation; deplores some undertakings' freeriding in the context of rising energy and food prices and reiterates that the Commission must make use of all the available tools under competition law to tackle market distortions and unfair price manipulation in the energy and food markets; calls for consumer vulnerability to be taken into consideration when assessing the abusiveness of a dominant undertaking's conduct;
7. Calls for a permanent market investigation mechanism, which should be triggered automatically upon the fulfilment of certain conditions, such as a specific rise in prices, in order to prevent any future freeriding effects;

Merger control

8. Calls for the quantitative jurisdictional thresholds in the EC Merger Regulation to be reviewed and lowered; calls for the introduction of a rebuttable presumption that effective competition is significantly impeded by any concentration leading to a dominant position in a relevant market or any concentration involving a very large market operator or a gatekeeper; calls for matters of public interest, such as climate protection, sustainability and the rule of law, to be taken into account when examining the impact of a concentration on the internal market; calls for the inclusion of review clauses in decisions approving a concentration with a view to introducing more stringent conditions;

9. Urges the Commission to take decisive action, under Article 22 of the EC Merger Regulation, against ‘killer acquisitions’ that must be reported to the Commission under the Digital Markets Act (‘DMA’);
10. Calls for the Commission’s procedure for examining a concentration to be shortened by making full use of digitalisation;

Antitrust

11. Welcomes the Commission’s willingness to take into account the effects on labour markets and wages when determining the anti-competitiveness of collusive behaviour under Article 101(1) TFEU, as demonstrated by its reference to ‘no-poach’ agreements¹⁴; calls on the Commission to use the effects on wages as a benchmark when establishing infringements of competition law;
12. Welcomes the evaluation of Regulation (EC) No 1/2003 and Regulation (EC) No 773/2004 initiated by the Commission; considers a legislative review of these regulations necessary; calls for stronger use of structural remedies, and therefore for the primacy of behavioural remedies to be removed from Regulation (EC) No 1/2003;
13. Calls for the introduction of an explicit legal base for the unbundling of undertakings as a structural remedy for antitrust violations; considers unbundling to also be a structural remedy in situations where abuse of a dominant position on a relevant market cannot be ascertained, but conditions for competition would improve significantly if unbundling measures were applied;
14. Underlines the importance of adopting interim measures in the enforcement of competition law, particularly in relation to dynamic and fast-developing markets such as digital markets; therefore supports the Commission in enhancing the use of interim measures under the existing Regulation (EC) No 1/2003; calls for legislative action to lower the burden associated with the use of interim measures for the Commission and for national competition authorities;
15. Calls on the Commission to establish a publicly accessible database of all European and national competition law cases, including summaries in English;

Competition policy in the digital age

16. Welcomes the creation of a new Commission directorate for the enforcement of the DMA; deplores the Member States’ unwillingness to make available additional financial resources to enable more data-science and technology staff to be hired for the Commission;
17. Stresses that competition law remains relevant to digital markets despite the entry into force of the DMA; considers that violations of privacy rights can constitute abusive practices;

¹⁴ Speech by Commission Executive Vice President Margrethe Vestager, 22 October 2021, https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/speech-evp-m-vestager-italian-antitrust-association-annual-conference-new-era-cartel-enforcement_en.

Sectoral policies

18. Welcomes the extension of the period of validity of the horizontal block exemption regulations on research and development agreements and on specialisation agreements;
19. Welcomes the presentation by the Commission of draft guidelines for sustainability agreements; underlines the need for a broad understanding of consumer welfare, which should include not only price levels, but also sustainability considerations; considers that similar authorisations should be extended to agreements that improve animal welfare, prevent deforestation, or provide for living wages;
20. Is of the opinion that sustainability is not only pursued by derogations from competition law provisions, but also by the application of competition law provisions in order to promote sustainability; calls for the presentation of draft guidelines on abusive practices, in particular with regard to achieving sustainability goals;

State aid fit for purpose

21. Deplores the distortive effects of aggressive tax planning on fair competition; calls for companies that use third-country tax havens to be excluded from receiving State aid;

Parliamentary involvement

22. Stresses that Parliament should be adequately involved in shaping competition policy; considers that more frequent use should be made of Parliament's right to intervene in judicial proceedings concerning competition law; calls on the Commission to enter into negotiations for an interinstitutional agreement on competition policy;

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23. Instructs its President to forward this resolution to the Council, the Commission, and the parliaments and competition authorities of the Member States.