OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Economic and Monetary Affairs

on competition policy – annual report 2021
(2021/2185(INI))

Rapporteur for opinion: Andrea Caroppo
SUGGESTIONS

The Committee on the Internal Market and Consumer Protection 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. Recalls that competition policy is vital to strengthening and ensuring the proper functioning of the single market in that it provides a fair and level playing field for all market participants – especially micro-, small- and medium-sized enterprises (SMEs) –, prevents the distortion of competition, enables the growth of innovative businesses and guarantees a high level of consumer protection, lower prices, better quality and more choice between suppliers and products; stresses further that consumer welfare must remain a key objective of competition policy and that negative externalities associated with certain types of production must not be ignored;

2. Stresses that EU competition rules should contribute to the Union’s objectives as defined in Article 3 of the Treaty on European Union; considers that competition rules should not hamper, but contribute to sustainability goals; underlines that competition rules and sustainability policies should work together; welcomes the Commission’s approach according to which State aid, antitrust enforcement and merger control can contribute to the objectives of the European Green Deal and the Paris Agreement; underlines, in this context, the important role of the services sector in transitioning to a circular economy and implementing those objectives;

3. Welcomes the 2021 OECD recommendations on competitive neutrality and calls on the Commission to maintain competitive neutrality in the regulatory environment of the internal market;

4. Welcomes the process launched by the Commission to reflect on the role that competition policy can play to support the green and digital transitions, as well as the EU industrial strategy; highlights in this regard the adoption of the guidelines on State aid for climate, environmental protection and energy 2022\(^1\) in December 2021;

Improving competition in the services sector

5. Recalls that services represent the largest economic sector of activity in the EU in terms of gross added value and that the single market for services lags well behind the single market for goods; highlights the need to address the remaining unjustified barriers to the development of the single market for services, including through the enforcement of competition rules; welcomes, in this context, the Joint Initiative on Services Domestic Regulation, adopted by the WTO in order to cut red tape in services trade;

6. Underlines that services of general economic interest (SGEI) may be subject to specific rules to protect citizens’ access to basic public services; takes note of the ongoing assessment by the Commission of those rules for healthcare and social services; reiterates its call on the Commission to adapt the target group definition of social

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\(^1\) OJ C 80, 18.2.2022, p. 1.
housing in the rules on SGEIs;

7. Highlights that legislative proposals should be based on multiple elements such as data and best practices; calls on the Commission to continue working on the notification procedure under the Services Directive\(^2\), which could be improved;

8. Welcomes the Commission’s efforts to improve the enforcement of the single market rules of the Directive on a proportionality test for regulated professions\(^3\) by initiating infringement procedures; calls on the Member States to properly implement the proportionality test when imposing national rules; stresses that the lack of proper implementation of the EU rules on proportionality test could ultimately disadvantage consumers in the form of excessive prices, undermine the development of innovative services or even lead to lower access to services;

**Competition rules in the digital single market**

9. Recalls the importance of the EU digital single market in enabling tech companies to reach new customers easily and compete internationally;

10. Underlines the importance of ensuring efficient regulation of digital markets and highlights, in this context, the ongoing negotiations on the Digital Markets Act\(^4\) (DMA); notes in this regard that *ex ante* regulatory intervention aims to address the gaps in *ex post* competition law enforcement; highlights that consumer rights and consumer welfare must be preserved and, if possible, strengthened both online and offline;

11. Recalls that data is a source of considerable economic power and leverage; welcomes the evaluation of the market definition notice to better assess digital markets and considers that non-monetary factors should be taken into account when defining digital markets;

12. Notes that bigger digital players may have access to larger amounts of data concentration, which could affect competition with smaller players; asks the Commission to take this factor into account when assessing dominant positions in markets;

13. Stresses the importance of proceeding swiftly with the negotiations on the Digital Services Act\(^5\) to ensure harmonisation of the EU digital single market and avoid barriers to trade;

**Killer acquisitions**

14. Underlines that merger control rules should take so-called ‘killer acquisitions’ by

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dominant players in the single market, including digital markets, into account; welcomes the Commission’s Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases⁶, which aims to close the loophole related to killer acquisitions in merger control; stresses the fact that killer acquisitions may also affect the contestability and fairness of the digital single market and have a detrimental effect on consumer choice; underlines in this regard the importance of the DMA in preventing, killer acquisitions by companies designated as ‘gatekeepers’ and also that merger control should be assessed by the rules of the Merger Regulation⁷; agrees that optimal policy should also take into account its effect on innovation rates;

15. Notes that the consumer Internet of Things (IoT) sector will expand significantly in the coming years but recognises that shortcomings still exist in this sector, such as the lack of interoperability, which could reduce competition and consumer choice; calls on the Commission to prepare a thorough analysis of such potential impacts on the internal market, including a cost-benefit analysis of any regulatory intervention; welcomes the Commission’s sector inquiry into the IoT and calls on the Commission, where necessary, to take further action regarding standards, data portability and access;

16. Notes that the Vertical Block Exemption Regulation (VBER)⁸ and related Vertical Guidelines⁹ have been inadequately adapted for recent market developments, notably the growth of online sales and online platforms; also notes that the Commission is currently working on its proposal to better adapt the Regulation and the Guidelines; highlights that there are concerns regarding the durable goods sector, where manufacturers are competing directly with the distribution network by modifying the contractual terms of the vertical distribution relationship, thereby placing distributors at a competitive disadvantage and driving SMEs out of the market; stresses that the digitalisation of the durable goods sector also raises concerns in terms of competition; asks the Commission to ensure that any future revision takes into account the abuse of selective distribution agreements, labelling and other measures to prevent the purchase, distribution and resale of goods across borders;

17. Considers that the distinction made in the draft guidelines to the VBER revision between resale price maintenance (RPM), distorting the market, and minimum advertised price (MAP), which could be allowed under certain circumstances and conditions, could constitute a tool to support SMEs to withstand aggressive price competition on online marketplaces; asks the Commission, to this end, to clarify in the guidelines the conditions under which MAP does not constitute RPM;

18. Underlines, furthermore, the need for General Block Exemption Regulation¹⁰ (GBER) provisions to be aligned with EU policy objectives to ensure policy coherence;

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welcomes the fact that the draft revised GBER further recognises renewable energies and biodiversity protection measures; stresses, however, that clear, stringent and enforceable criteria and targets should be set for allowing State aid for low-carbon hydrogen;

19. Reiterates its call on the Commission to address the anti-competitive effect of territorial supply constraints (TSCs) with a view to achieving a fully functioning single market and its potential benefits for consumers; repeats that TSCs can arise through different practices such as: refusing to supply, threatening to stop supplying a particular distributor, limiting the quantities available for sale, unexplained differentiation of product ranges and prices between Member States or limiting language options for product packaging;

20. Recalls its previous call on the Commission to monitor and remove unjustified geo-blocking and other barriers to cross-border online sales that persist as identified in the first short-term review of the Geo-blocking Regulation$^{11}$; acknowledges in this context the launch of the stakeholder dialogue;

**State aid**

21. Notes the continued impact of the COVID-19 pandemic on the EU economy and the risks and opportunities it poses to the internal market; welcomes the Commission’s decision to prolong the temporary framework for State aid until 30 June 2022; underlines the temporary nature of these measures and that necessary safeguards to preserve the level playing field in the Single Market must be taken into account, whereas these measures should not create cliff-edge effects; asks the Commission to ensure that the measures are proportionate to actual needs, such as promoting competitiveness and safeguarding jobs, and do not call into question consumers’ rights; invites the Commission to consider prolonging these measures until the strong recovery of the European economy overall is confirmed by robust evidence;

22. Calls on the Commission to improve the transparency of the State aid evaluation process, which should include clear reasoning, a State aid description, and measurable indicators allowing for *ex post* monitoring and evaluation; highlights, therefore, the need for *ex post* monitoring of the effective implementation of adopted State aid cases; believes that the outcome of the consultation phase should also be disclosed;

23. Highlights the impact of border controls due to the COVID-19 pandemic, but also those at the national borders of Member States not in the Schengen zone, on the free movement of products, and the risks and the impediments they cause to competition, especially for SMEs; calls on the Commission and the Member States to analyse the situation, remove any barriers and complete the single market;

24. Welcomes the Commission’s efforts at monitoring and assisting Member States in their efforts to incorporate the ECN+ Directive$^{12}$ into national law and urges the Commission


$^{12}$ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the
to further strengthen the role of the European Consumer Centres Network (ECC-Net); reiterates its call on the Commission to conduct a study on whether an EU consumer authority is needed;

25. Calls on the Commission to adapt competition rules and ensure their enforcement in the energy sector to facilitate the achievement of the Energy Union, to promote European players and to protect the security and resilience of energy supplies in the European Union, thus reducing price volatility and combating the rise in energy prices, which accounts for a significant share of the increase in the inflation rate; calls on the Commission to enforce competition rules in the energy sector, taking into account the objectives of the Green Deal, in order to create a level playing field for the different technologies and innovations in the energy sector;

**EU response to foreign subsidies**

26. Highlights the importance of tackling distortive foreign subsidies that are harming the level playing field in the EU’s internal market and welcomes the proposed regulation on foreign subsidies\(^{13}\), which is relevant in cases where, for example, a subsidised company intends to participate in EU public procurement procedures; underlines that non-EU companies benefitting from State aid or other subsidies might potentially distort competition in the internal market and weaken its service level and consumer protection standards; calls on the Commission, in this regard, to ensure fair market access and a level playing field in every sector concerned, including aviation;

27. Expresses concern over retaliation measures against EU companies at global level, including the risk of mirroring of the anti-subsidy principle directed at EU companies, for example in public procurement; stresses the key importance of creating transparent and measurable indicators and investigation procedures to establish a clear framework for the assessment of the distortive effect of foreign subsidies;

28. Recalls that the empirical analysis conducted for the OECD’s 2021 study found that below-market finance may have been a contributor to excess capacity in a number of sectors, and that subsidies also appear to be negatively correlated with firm productivity; notes that the OECD’s findings also raised significant concerns about a lack of transparency in relation to below-market finance; believes that the EU should target these negative consequences of foreign subsidies on the internal market effectively, considering the potential negative effects of regulation, including the administrative and regulatory burden, retaliation measures and impacts on investment and growth;

**Review of competition policy and enforcement rules**

29. Recalls the European Court of Auditors’ (ECA) recommendations\(^{14}\), which state that the Commission should follow a more proactive approach by gathering and processing competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. OJ L 11, 14.1.2019, p. 3.

\(^{13}\) Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market. COM(2021)0223.

market relevant information in a consistent and cost-efficient manner and select cases for investigation based on clearly weighted criteria, for example by using a scoring system; highlights the need, in line with the ECA’s recommendations, for the new rules to improve reporting of the results of enforcement actions, instead of focusing on reporting of activities;

30. Urges the Commission to carry out an *ex post* evaluation of its enforcement decisions, including the impact of the fines and sanctions given for anti-competitive conduct in the internal market, whether they were effective and whether they delivered the intended results;

31. Recalls that profit-seeking behaviour should be accepted and should not be accused of being anti-competitive without objective and fact-based reasons; recalls that anti-competitive behaviour is prohibited and hyper-competitive behaviour is not; points out that the fact that particular offering attracts many consumers because of its convenience is not in itself a sufficient ground for concern; calls on the Commission to distinguish between these behaviours for the purposes of antitrust enforcement;

32. Notes that in 1980, China accounted for 2.3 % of the global economy, the US 21.3 % and the current EU-27 almost 26 %; notes, however, that in 2020, China had reached 18.3 %, the US had fallen to 15.8 % and the EU to 15 %; stresses that without economic growth, the EU cannot expect to improve healthcare, education, research or environmental protection on the internal market; calls on the Commission to analyse the key shortcomings in competition policy, including the impacts of excessive administrative burdens and of a lack of legal certainty and protectionist measures at EU and national levels;

33. Regrets that the number of EU unicorns is rather limited compared to other developed regions or countries; urges the Commission to analyse the regulatory environment in the most successful countries and to publish best practices; further calls on the Commission to introduce changes to improve competition policy in the internal market to create a more favourable environment for companies, including start-ups, entrepreneurs and innovators;

34. Recalls the 2021 report of the International Monetary Fund on competition, innovation and inclusive growth, which states that competition and innovation-led growth are critical to drive productivity gains and support broad-based growth; notes that the report also states that policies to support innovation could also improve business dynamism and reduce market power.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Result of final vote | +: 38  
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| Members present for the final vote | Alex Agius Saliba, Andrus Ansip, Brando Benifei, Markus Buchheit, Andrea Caroppo, Anna Cavazzini, Dita Charanzová, Deirdre Clune, David Cormand, Alexandra Geese, Sandro Gozi, Maria Grapini, Svenja Hahn, Krzysztof Hetman, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Kateřina Konečná, Andrey Kovatchev, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Morten Løkkegaard, Antonius Manders, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, René Repasi, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Róża Thun und Hohenstein, Tom Vandenkendelaere, Marion Walsmann, Marco Zullo |
| Substitutes present for the final vote | Clara Aguilera, Marc Angel, Marco Campomenosi, Malte Gallée, Francisco Guerreiro, Barbara Thaler, Kosma Złotowski |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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