

**Opinion of the European Committee of the Regions — European Commission Report on
Competition Policy in 2020**

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POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

Introduction

1. considers that the European Single Market (ESM) is one of the greatest achievements of the European Union (EU), and that EU competition policy aims to maintain an open market economy with free, fair and effective competition, conducive to an efficient allocation of resources and promoting innovation;
2. appreciates the efforts made so far by the European Commission (EC) and the European Parliament (EP) to establish a clear, transparent and effective EU competition policy;
3. stresses that reconciling the EU's competition rules with its industrial, digital, environmental, climate, social and international trade policies is essential for ensuring a level playing field in all sectors and in this way ensuring global competitiveness, thus contributing to the development of SMEs;
4. welcomes Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union, and also the Commission's White Paper on levelling the playing field as regards foreign subsidies;
5. agrees with the statements highlighting the limited access of consumers to full online information on products and services due to the limited number of available digital ecosystems and platforms, with low availability of translations into national languages;
6. welcomes the Commission's attention to the 'Important Projects of Common European Interest' (IPCEI) initiative;
7. points out that the objectives of EU competition policy should take particular account of the needs of SMEs, including the ones from rural and less developed areas, and create a fair and level playing field for the benefit of all EU citizens;
8. stresses that it is particularly important for local and regional authorities to ensure that EU competition policy is improved, as equal treatment of companies is key, in addition to being one of the priorities of the functioning of the internal market;

EU competitiveness and pandemic support for businesses

9. considers that any COVID-19-related aid must be granted only to businesses that are experiencing the immediate financial impact of the pandemic, and where this is making them unprofitable;
10. points out that temporary financial measures to respond to the pandemic should not be used by unprofitable companies that are not committed to the EU's climate goals or are in the process of bankruptcy or major restructuring, or require restructuring, so long as these processes had already begun before the pandemic;

11. draws attention to the broad lines of a global corporate tax reform agreed by the OECD/G20 Inclusive Framework in October 2021; calls on the European Commission to propose concrete measures to implement the new rules in the EU as soon as the negotiations are concluded, urgently calls for efforts to further develop global tax law, taking into account businesses of all sizes;
12. recognises that public aid should be designed and granted in a manner that is both transparent and socially, economically and environmentally responsible;
13. welcomes the restrictions already put in place by the Commission concerning, inter alia, the payment of dividends and bonuses, or the redemption of shares of businesses in receipt of aid;
14. encourages the creation of mechanisms to facilitate functioning in times of economic downturn as a result of economic and non-economic crises (as in the case of the COVID-19 pandemic), but reducing the share of direct funding that artificially disrupts market relations;
15. points out that the disruption of the operating environment caused, inter alia, by various types of crisis encourages businesses to reorganise the market contrary to EU competition policy, leading, for example, to the conclusion of production volume agreements and/or to increased profitability; however, this is prohibited by EU competition rules and ultimately leads to the costs of the crisis being passed on to consumers;
16. stresses that the primary objective, even in crisis conditions, remains to ensure that consumers benefit from competitive markets only if these offer fair prices and a wide choice of high-quality products;
17. believes that ensuring a level playing field for businesses in the Single Market is crucial especially for SMEs, including for the creation of innovation, the development of new green technologies and the creation of sustainable jobs in the EU;
18. calls on the EC to monitor the use and distribution of various EU funds in response to the COVID-19 crisis, including through Member States' national recovery and resilience plans, which must comply with EU competition and state aid rules;
19. expects *ex ante* action on crisis strategies; competition policy planning must be coherent and consistent within a long-term decision-making horizon.

New areas of the European market

20. welcomes the EC proposal for a Digital Markets Act and stresses the urgency of creating a fair business environment for business users dependent on gatekeepers in order to ensure free competition online too;
21. calls on the EC, the Member States and regions to step up their efforts to promote technology transfer, in order to support the building of EU value-creation chains and to maximise the use of available capital; less developed, peripheral, outermost and island regions should be given particular support;
22. stresses that digitalisation is particularly important for SMEs, as it provides access to wider markets and eliminates spatial problems resulting from geographical disadvantages; EU funds should be granted for SMEs, especially to the ones from rural and less developed areas to digitalise their activities. As well as, information on EU level opportunities in regard to digitalisation should be provided to SMEs. LRAs could play a key role in dissemination;
23. considers that the development of the EU leading to the digital transformation requires action to be taken against monopolistic structures;
24. draws attention to the particular importance of the prohibition of abuse of a dominant position (Article 102 TFEU) relating to the activities of both external and intra-EU entities; this is especially important in poorly formalised or monitored emerging areas of the market with dynamic growth;

25. points out that financial penalties imposed for breaches of competitive conditions are only part of the solution and, in particular, the new Digital Markets Act must stop gatekeepers from engaging in illegal practices to gain a competitive advantage; criticises the fact that the costs incurred from competition penalties are passed on to consumers, ultimately creating a situation where EU citizens are the only victims;

26. stresses that the European Commission's Directorate-General for Competition has its own department for digital affairs, which has carried out a number of sector inquiries in recent years (e.g. the E-commerce Sector Inquiry and the Sector Inquiry into the Consumer Internet of Things), which also led to the proposal for a Digital Markets Act; expects the Directorate-General for Competition to incorporate the results of antitrust investigations into the implementation of the Digital Markets Act;

27. agrees with the EP that the current resources of the EC's Directorate-General for Competition (DG COMP) are insufficient in relation to its workload and challenges;

28. recognises the challenges posed by the creation and implementation of competition policy, especially in the area of the digital market, where concentration, aggregation and use of data in zero-price markets takes place, and unfair pricing algorithms are used, especially by large platforms; in this regard, welcomes the fact that the Digital Markets Act among other things aims to ensure that services and products offered by a gatekeeper platform itself are treated the same as similar services and products offered by third parties on the gatekeeper's platform, thereby guaranteeing free competition;

29. expects the EC to work towards adapting the register on organisations lobbying for specific digital solutions on behalf of non-EU actors and on the transparency of their funding sources;

30. welcomes the EC's assessment of the need for new tools to ensure the effectiveness of EU competition policy, which are particularly necessary in new market areas that are still emerging and not well described;

31. agrees that consumers have too little control over their own data and digital identity, especially as most digital service providers require consent without leaving consumers a choice if they do not want to lose access to certain services;

32. encourages the EC to create legislation obliging data holders to delete data where consumers have not used their services for a certain period of time (e.g. one year);

33. expresses its support for actions in favour of services of general economic interest (SGEI), which remain essential for the survival of a number of communities across Europe, especially in isolated, remote or peripheral regions of the Union;

34. points out that some oligopolistic structures have developed in the area of financial services and that some large technology companies have become important players in the financial services market, which requires control and safeguard arrangements for consumers; in this regard, emphasises the importance of applying Article 102 TFEU to online services too, so that small providers from cities and regions that offer their services/products online do not suffer a competitive disadvantage;

35. calls on the EC to review the Consumer Credit Directive, as existing consumer protection is insufficient and access to information for raising awareness of the impact of various factors on product variability is too low;

36. calls on the Commission to investigate unfair clauses and practices, particularly in banking sector consumer contracts, as the banking sector, despite its considerable importance, must be treated the same as other areas of the market;

37. stresses the need to protect taxpayers and bank customers from the burden of bailing out the financial system.

EU competition policy vis-à-vis third countries

38. joins the EP's call to strengthen trade defence instruments to combat unfair trading practices and safeguard the competitiveness of European industry;

39. expects work to be undertaken on the bi-directionality of EU competitiveness policy so that within the framework of the Single Market there are guarantees of freedom and mechanisms to prevent concentration, including the creation of monopolies, and that a balance is built between the market power of buyers and sellers, along with, in relation to third countries (e.g. China, United States), mechanisms equivalent to export promotion models;

40. points out that in the fight against monopolisation of the European market the same effort must be made in relation to both EU and non-EU operators; today, especially in the area of e-commerce, there are numerous dysfunctions resulting from the monopolisation of advanced digital technologies by US and Chinese corporations;

41. expects industrial policy to be developed in such a way that it works as a tool for the convergence of regions and supports an efficient spatial reallocation of resources without distorting competition;

42. calls on the Commission to draw attention to the role of foreign state-owned enterprises, which are supported and subsidised by their governments in a way that EU Single Market rules prohibit for EU operators;

43. demands equal treatment of the EU's trading partners, and therefore expects the Commission to formalise rules guaranteeing uniform conditions in relation to market access, competition and state aid; any breach of the conditions should entail the suspension of trade on special terms, so that the threat of sanctions has an incentive dimension;

44. notes that current activities favouring competition show that non-EU actors are not following the same rules and are receiving strong state support, amongst other things, including financial support. This requires European competition law to be more flexible, particularly with regard to state aid, as it does not take sufficient account of the nature of competition faced by European companies in third countries where the same rules are not respected;

45. calls for work on EU trade policy to be strengthened rather than following other markets such as the United States, as the formula used so far is consistent with the convictions of EU citizens and traditions of entrepreneurship; the EU needs to strengthen its trade policy in order to be more assertive in terms of reciprocity in market access and control of industrial subsidies;

46. encourages the extension of the control model for capital concentration; attention should be paid to its increasing expansion, which leads not only to the creation of market monopolies, but also increases the vertical and horizontal occupation of the market, which has a negative impact on the deconcentration of value chains;

47. achieving the objectives of tackling social inequalities and the climate crisis, raising environmental standards, improving implementation of the UN Sustainable Development Goals, implementing climate and consumer protection policies, all requires actions strictly treating any breach of applicable conditions on production, employment, the environment, etc. by suppliers outside the EU.

The future of EU competition policy

48. points out that the provisions of the EU-UK Trade and Cooperation Agreement governing oversight of state aid/subsidies impose significant restrictions on both parties with regard to public subsidies; while the provisions ensure that EU competition law continues to set standards for a level playing field, Articles 3.4.2 and 3.5 of the agreement stipulate that certain types of subsidies must not be granted by the parties if they have or could have a 'material' effect on trade or investment between the parties; therefore calls on the Commission to closely monitor the UK's compliance with these provisions to avoid any subsidy dumping by the UK;

49. encourages more radical action against the boycotting, falsification and imitation for fraudulent marketing of Member States' products and services on the global market; SMEs must have clear support from the European institutions in foreign markets;

50. draws attention to the need for a clear demarcation between the objectives of competition policy, which should be applied first and foremost in the European Single Market, and an industrial policy aimed at supporting entities undertaking competition in the global market;

51. considers that long-term action under EU competition policy should strengthen the resilience of value-added chains in order to reduce dependence on third-country operators and, where this is not possible, to guarantee a high degree of diversification of suppliers;

52. stresses that EU competition and state aid rules must be consistent with the European Green Deal, the EU Digital Strategy, the European Pillar of Social Rights and the UN Sustainable Development Goals; emphasises that the Member States are responsible for determining the energy mix, but finds it regrettable that a number of Member States do not make state aid conditional on such goals;

53. welcomes the fact that the recent study prepared for the Commission on market trends in healthcare and social housing and EU state aid implications, carried out as part of an ongoing evaluation of the implications of the 2012 Services of General Economic Interest (SGEI) package for health care and social housing ⁽¹⁾, largely supports the calls made by the CoR in its October 2016 opinion on state aid and services of general economic interest ⁽²⁾, and in particular the following two points: 1) the de minimis threshold of EUR 500 000 is easily reached and, given the overall increase in state aid support for these sectors, consideration should be given to increasing the threshold, in order to ensure proportionality; 2) we consider the definition of social housing to be unclear, as there is no single definition of social housing in the EU Member States. Furthermore, the current definition would appear to be outdated, as the population's needs for affordable housing are increasing. The CoR therefore reiterates its call for the overly restrictive reference to 'disadvantaged citizens or socially less advantaged groups' to be removed from the definition;

54. calls on the EC to monitor and thoroughly investigate the impact of financial actors, especially digital platforms, on market competition and consumer decisions;

55. points out that the EU's state aid framework to support the gradual transformation of energy-intensive primary industries dependent on foreign trade into low-carbon and carbon-neutral processes needs to be fundamentally revised. Support needs to be provided not just for investments but also for operating costs. European and national funding programmes must therefore have sufficient resources and be able to be combined. Project-based climate contracts that include a long-term government CO₂ price guarantee can also make significant contributions to industrial transformation;

56. draws attention to the need to create and apply effective tools to put pressure on internal and external actors that do not comply with competition rules;

57. considers that strict and impartial enforcement of EU competition rules by independent competition authorities is crucial for European businesses operating in the internal market and at international level, in particular for SMEs, and therefore encourages greater firmness when imposing sanctions on those who breach the expected order;

⁽¹⁾ https://ec.europa.eu/competition-policy/system/files/2021-09/kd0621047enn_SGEI_evaluation.pdf.

⁽²⁾ <https://webapi2016.COR.europa.eu/v1/documents/cor-2016-01460-00-00-ac-tra-en.docx/content>

58. reiterates its call for greater ambition when implementing new solutions, particularly those that concern climate neutrality of the European economy, and for boldness when directly strengthening the uniformity of the Single Market;
59. encourages measures linking cohesion policy and competition policy, so that eventual support is associated with the harmonisation of rules and principles for operators in the Single Market; in this regard, welcomes the flexibility introduced in relation to the COVID-19 pandemic in terms of state aid for regional policy; draws attention to the CoR COTER Commission's survey among managing authorities of the Structural Funds on the implementation of accompanying measures for the CRII and CRII + programmes, which showed that the majority of Structural Funds managing authorities supported a temporary increase in the de minimis threshold for state aid;
60. while recognising that European businesses must be able to compete in global markets on an equal footing, calls on the EC to adapt EU competition policy and state aid in order to promote industrial development, particularly in areas with the highest level of technical and technological excellence, and to strongly support the expansion of European businesses outside the Single Market;
61. welcomes the European Commission's initiative to propose amendments to the General Block Exemption Regulation (GBER), in order to further facilitate public support for the EU's green and digital transition ⁽³⁾; stresses that exempting certain categories of aid from the notification requirement makes it much easier for Member States to grant aid quickly if the conditions for limiting distortions of competition in the internal market are met;
62. underlines that it is important for the EU to remain an open economy and continue to promote free, fair, sustainable international trade that is of benefit to all trade partners; to this end, supports the European Commission's efforts to reform the WTO, the aim of which must be to revitalise and strengthen the WTO, inter alia by modernising the way it works and filling gaps in its regulatory framework so that it can respond adequately to current trade policy challenges;
63. reiterates its call on the European Commission to develop more flexible and more effective public aid rules to provide regional airports with financial assistance in line with ERDF and RRF provisions in peripheral, island or outermost or less developed regions where a more efficient and sustainable alternative does not exist ⁽⁴⁾.

Brussels, 2 December 2021.

The President
of the European Committee of the Regions
Apostolos TZITZIKOSTAS

⁽³⁾ European Commission consultation of 6 October 2021 with a view to adopting the revised GBER in the first half of 2022.

⁽⁴⁾ COTER-VII-010, COR-2021-00471-00-00 Opinion of the European Committee of the Regions on The future of regional airports — Challenges and opportunities.