

Thursday 19 April 2018

P8_TA(2018)0187

Annual report on Competition policy

European Parliament resolution of 19 April 2018 on the Annual Report on Competition Policy (2017/2191(INI))

(2019/C 390/19)

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 39, 42, 101 to 109, and 174 thereof,
- having regard to the Commission report of 31 May 2017 on Competition Policy 2016 (COM(2017)0285) and to the Commission staff working document published as a supporting document on the same date (SWD(2017)0175),
- having regard to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ⁽¹⁾,
- having regard to the White Paper of 9 July 2014 entitled ‘Towards more effective EU merger control’ (COM(2014)0449),
- having regard to Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs ⁽²⁾,
- having regard to the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (COM(2017)0142),
- having regard to the Commission Notice of 19 July 2016 on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union ⁽³⁾,
- having regard to its resolution of 5 February 2014 on EU cooperation agreements on competition policy enforcement – the way forward ⁽⁴⁾,
- having regard to its resolution of 4 February 2016 on the special situation of islands ⁽⁵⁾,
- having regard to its resolution of 22 November 2016 on the Green Paper on Retail Financial Services ⁽⁶⁾,
- having regard to its resolution of 14 February 2017 on the Annual Report on EU Competition Policy ⁽⁷⁾ and to its resolutions of previous years on the subject,
- having regard to its resolution of 14 November 2017 on the Action Plan on Retail Financial Services ⁽⁸⁾,
- having regard to the relevant Commission rules, guidelines, decisions, resolutions, communications and papers on the subject of competition,
- having regard to the opinion of the European Economic and Social Committee on the Report on Competition Policy 2016,
- having regard to the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁹⁾,

⁽¹⁾ OJ L 187, 26.6.2014, p. 1.

⁽²⁾ OJ L 156, 20.6.2017, p. 1.

⁽³⁾ OJ C 262, 19.7.2016, p. 1.

⁽⁴⁾ OJ C 93, 24.3.2017, p. 71.

⁽⁵⁾ OJ C 35, 31.1.2018, p. 71.

⁽⁶⁾ Texts adopted, P8_TA(2016)0434.

⁽⁷⁾ Texts adopted, P8_TA(2017)0027.

⁽⁸⁾ Texts adopted, P8_TA(2017)0428.

⁽⁹⁾ OJ L 123, 12.5.2016, p. 1.

Thursday 19 April 2018

- having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on International Trade, the Committee on the Internal Market and Consumer Protection and the Committee on Agriculture and Rural Development (A8-0049/2018),
1. Welcomes the Commission report of 31 May 2017 on Competition Policy 2016, which shows that, in a fair competitive environment, investment and innovation are key for the future of Europe;
 2. Strongly supports the independence of the Commission and national competition authorities (NCAs) in their mission to shape and enforce effectively EU competition rules for the benefit of all EU citizens and undertakings operating in the EU;
 3. Welcomes and further encourages the efforts of the Commission to maintain, in addition to the structured dialogue with the Commissioner for Competition, Margrethe Vestager, regular contact with the members of Parliament's competent committee and its Working Group on Competition Policy; is convinced that the Commission's Annual Report on Competition Policy is a key exercise in terms of democratic scrutiny, and welcomes the Commission's feedback on all the specific requests adopted by Parliament;
 4. Calls on the Commission to ensure regular information and exchanges with Parliament on the preparation and implementation of EU legislation, international agreements and other soft law concerning competition policy, as provided for by the Interinstitutional Agreement (IIA) between the Commission and Parliament; notes that this is not happening in a satisfactory manner, for example, in the consultations on the EU-Canada agreement on the exchange of information in competition proceedings; calls on the Council to ratify the EU-Canada agreement as soon as possible; intends to promote regular exchanges of views in the responsible committee with the European Competition Network (ECN) and NCAs;
 5. Calls on the Commission to monitor the implementation of legislation linked to the completion of the single market, such as in the energy (including self-consumption) and transport sectors, the digital market, and retail financial services, in order to improve the enforcement of EU competition rules and achieve a consistent application thereof in the Member States;
 6. Notes that state aid can be an indispensable tool to secure the necessary infrastructure and supply for both the energy and transport sectors, particularly in Europe, where a transition towards cleaner and more climate friendly energy supply and transportation systems is taking place;
 7. Notes that state aid can be necessary to ensure the delivery of services of general economic interest (SGEI), including energy, transport and telecommunications; emphasises that state intervention is often the best policy tool to deliver services that are crucial for supporting isolated, remote or peripheral regions and islands in the Union;
 8. Considers it important to guarantee competition which entails safeguarding the possibility of cross-border acquisitions in the intra-European market in financial services, including insurance;
 9. Emphasises that the connectivity of peripheral regions and islands is essential for sustaining and developing acceptable levels of economic and social initiative by maintaining vital business connections;
 10. Stresses that accessing cash from ATMs is an essential public service that must be provided without any discriminatory, anti-competitive or unfair practices and must not, therefore, incur excessive costs;
 11. Welcomes the efforts made by DG Competition to continue to build a stable and balanced workforce throughout 2016; welcomes, moreover, the improvement in human resources management in DG Competition, and the fact that staff turnover fell to its lowest level since records began (from 13,9 % in 2015 to 10,8 % in 2016 ⁽¹⁰⁾); asks the Commission to reallocate adequate financial and human resources to DG Competition and to ensure stable finances for modernising the directorate's electronic and informatics tools, in order to cope with increasing workload and technological progress; calls, once again, for a strict separation between the departments that draw up guidelines and those responsible for applying them;

⁽¹⁰⁾ https://ec.europa.eu/info/sites/info/files/file_import/aar-comp-2016_en_0.pdf

Thursday 19 April 2018

12. Welcomes the advances made by DG Competition in the field of equal opportunities, including 36 % female representation in middle management;

13. Emphasises, once again, that corruption in public procurement has serious market-distorting effects on European competitiveness; reiterates that public procurement is one of the government activities most vulnerable to corruption; highlights that in certain Member States, EU-funded procurement bears a greater risk of corruption than nationally funded procurement; calls on the Commission to continue its efforts to prevent the misuse of EU funds and stimulate accountability in public procurement; welcomes, moreover, the establishment of the European Public Prosecutor's Office;

14. Takes note that EU rules do not establish target timeframes for antitrust investigations, which implies that decisions are sometimes made too late, after competitors have been obliged to exit the market;

15. Calls on the Commission to adopt indicative guidelines to shorten the duration of antitrust investigations and proceedings for abuse of a dominant market position, in order to prevent uncertainty and excessive burdens for businesses, and to shape a competitive landscape which is beneficial to consumers; cautions that more flexible timeframes should only be allowed in complex cases where investigations are to be extended with regard to other undertakings;

16. Underlines that while the speed of investigations has to be balanced with the need to adequately preserve the rights of defence and the quality of investigations, indicative timeframes may help the antitrust authorities to make more efficient use of their resources; notes that in order to improve the speed of major antitrust investigations, the Commission and stakeholders could increase the use of streamlined antitrust proceedings and improve access to the relevant files;

17. Takes note that most of the decisions concerning antitrust issues are taken at national level; calls on the Commission to monitor, therefore, while taking into account the principles of subsidiarity and proportionality, the global consistency and independence of competition policy and its enforcement within the internal market, with the support of the ECN; stresses that the independence of NCAs is highly important and therefore welcomes the Commission's ECN+ proposal aimed at strengthening the capacity of the NCAs to ensure more effective enforcement of EU competition law;

18. Believes that the Commission should verify that, in order to be able to perform their work in complete independence, NCAs are adequately equipped in terms of financial, human and technical resources, and that the election or nomination of their directors and senior management is transparent and not politically influenced; stresses that the autonomy of NCAs, including in budgetary terms, is essential to ensure the effective enforcement of EU competition law; calls on the Member States to ensure that NCAs make public annual reports containing statistics and a reasoned synthesis of their activities, and asks that the Commission submits an annual report to Parliament regarding these key points; believes that the NCAs must have procedures in place to ensure that their staff and directors, for a reasonable period after leaving their post, refrain from occupations which may give rise to a conflict of interests in relation to a specific case with which they were involved at the NCA; stresses the importance of the ECN, which provides a platform for regular exchanges between the Commission and the NCAs in order to ensure effective and consistent application of competition rules; calls on the Commission to take into account the opinion of the NCAs;

19. Takes the view that a study on the awareness and understanding among undertakings, particularly SMEs, of EU competition law and state aid rules, could be useful in order to step up the enforcement of EU competition law and could also be helpful for guidance purposes;

20. Takes the view that interim measures can be an important tool, particularly in the digital economy, to ensure that contraventions in the course of an investigation do not severely and irreparably damage competition; calls on the Commission to examine the available options either to speed up proceedings before the competition authorities for the application of Articles 101 and 102 TFEU, or to simplify the adoption of interim measures; calls on the Commission, in this connection, to carry out a study and submit its conclusions, and where appropriate a legislative proposal, to Parliament and the Council;

21. Calls on the Commission, in connection with a possible reform of the Merger Regulation, to examine carefully whether current assessment procedures take sufficient account of circumstances on digital markets; takes the view that an adjustment of the assessment criteria for mergers in the digital economy might be necessary; further emphasises that the independence of the national competition authorities should be guaranteed not only in the application of Articles 101 and 102 TFEU, but also in the enforcement of the European merger rules; therefore stresses the need for equivalent EU-level rules in this area;

Thursday 19 April 2018

22. Welcomes the sustained efforts of the Commission to clarify the different aspects of the definition of state aid, as demonstrated by its Notice on the notion of State aid as referred to in Article 107(1) TFEU, which constitutes an important building block of the State Aid Modernisation initiative; notes in particular the Commission's efforts to clarify the notions of 'undertaking' and 'economic activity'; observes, nonetheless, that it remains difficult, especially in the field of social affairs, to draw the line between economic and non-economic activities; further points out that it is the role of the European Court of Justice to ensure the proper interpretation of the Treaty;
23. Reiterates that fair tax competition is important for the integrity of the internal market and that all market players, including digital companies, should pay their fair share of taxes where their profit is generated and compete on equal terms; welcomes the Commission's in-depth investigations in this regard and stresses that tackling tax fraud and aggressive tax planning is necessary to ensure a level playing field across the single market and to consolidate sound public budgets; stresses that state aid rules also apply to tax exemptions and that it is essential to eliminate distortive anti-competitive practices, such as selective tax advantages; invites the Member States to ensure that the Commission has access to all the relevant information exchanged between the national tax authorities, in order to assess the compatibility of their tax rulings and arrangements with EU competition rules;
24. Expresses its concern at competition authorities' failure to take action against the retroactive elimination of support schemes to renewable energy; underlines that this inaction has further distorted competition, since international investors have been able to obtain redress while local investors have not; calls on the Commission to investigate the distorting effects of existing capacity payments and nuclear moratorium payments in electricity markets;
25. Calls for state aid guidelines on taxation to be revised so as to cover cases of unfair competition, going beyond tax rulings and transfer pricing;
26. Underlines the need for simple and transparent tax policies and regulations;
27. Strongly welcomes the Commission's decision against the illegal tax benefits granted to Amazon and its previous landmark decisions on illegal selective tax advantages, and stresses that the timely recovery of illegal aid is essential; notes that Luxembourg announced its intention to appeal the Amazon decision, just as Ireland did for the Apple case; calls on the Commission to continue to monitor the situation in all Member States and take decisions against any illegal state aid in all comparable cases in order to guarantee equal treatment and restore a level playing field;
28. Underlines the need to tax digital companies on the basis of their genuine activity in Member States by capturing turnover generated through digital platforms, thus preventing a competitive disadvantage for those companies conducting business by means of a permanent physical presence;
29. Considers that fair competition in the internal market can be hampered by tax planning, as new entrants and SMEs doing business only in one country are penalised as compared to multinational corporations, which can shift profits or implement other forms of aggressive tax planning through a variety of decisions and instruments only available to them; notes with concern that the resulting lower tax liabilities leave multinational corporations with a higher post-tax profit and create an uneven playing field with their competitors on the single market, which have no recourse to aggressive tax planning and keep the connection between where they generate profit and their place of taxation;
30. Asks the Commission to enter into negotiations with all states and territories that enjoy good access to the common market and lack effective state aid controls against unfair tax competition;
31. Takes note of the possibility of using public funds to bail out banks that are important in their region; calls on the Commission to explain under which conditions this is possible, particularly with regard to EU state aid and bail-in rules; believes that the current legal framework is unclear and calls on the Commission to improve it;
32. Recalls that according to the Deposit Guarantee Schemes Directive, the use of deposit guarantee schemes to prevent the failure of a credit institution should be carried out within a clearly defined framework and should in any event comply with state aid rules;
33. Calls on the Commission to re-evaluate on an annual basis whether the requirements for the application of Article 107(3)(b) TFEU in the financial sector continue to be fulfilled;

Thursday 19 April 2018

34. Believes that, following the financial crisis, concentration in the banking sector has increased and, in some cases, has been encouraged by the European and national supervision authorities; calls on the Commission to monitor this phenomenon and carry out a country-by-country study at European level to examine its effects on competition;

35. Welcomes the commitments made by Commissioner Vestager in the structured dialogue with the Committee for Economic and Monetary Affairs on 21 November 2017 to reflect on possible distortions of competition arising from the European Central Bank's Corporate Sector Purchase Programme and to report back with a qualitative answer; emphasises, in this regard, that the notion of selectivity in state aid is an essential criterion that needs to be investigated thoroughly; further points in this regard to Article 4(3) of the Treaty on European Union, which contains the so-called principle of loyalty;

36. Calls on the Commission to closely monitor activities in the retail banking sector and financial services sector for any breaches of antitrust rules and cartel activity and to work closely with national competition authorities to enforce EU antitrust rules;

37. Considers it a priority to ensure that state aid rules are strictly and impartially adhered to when dealing with future banking crises, so that taxpayers are protected against the burden of bank rescues;

38. Supports the finding of the Commission's sector inquiry into e-commerce that cross-border e-commerce can contribute to the further integration of the single market, and can bring competitive advantages for businesses and increase consumer choice, but that geo-blocking measures constitute a significant impediment to this; reiterates that this may be found to be contrary to Article 101 in certain circumstances; welcomes the Commission's commitment to target enforcement of EU competition rules which were either established or became more widespread as a result of the emergence and growing significance of the digital economy; equally welcomes the Commission's aim to broaden dialogue with national competition authorities in order to ensure a consistent application of EU competition rules with regard to e-commerce practices;

39. Invites the European Chief Negotiator for Brexit, in cooperation with Commissioner Vestager, to initiate as soon as possible a fair and transparent discussion on the future of EU-UK relations in terms of competition;

40. Believes that all ongoing investigations⁽¹¹⁾ into potential breaches of EU competition law by the UK or by companies based in the UK should not be threatened by the Brexit agenda, and that any final decision taken by the Commission after 29 March 2019 should continue to be binding;

41. Takes note of the Commission's statement of objections and its preliminary conclusion that Google has abused its market dominance as a search engine by giving an illegal advantage to another of its products: its comparison shopping service; calls on the Commission to ensure that the company implements the remedy effectively and promptly to prevent further abuse of a dominant position; stress the need for the Commission to carry out an in-depth analysis and to monitor how the Google proposal would work in practice in order to restore the level playing field required for competition and innovation to thrive; notes that without a full-blown structural separation between the company's general and specialised search services, an auction-based approach might not deliver equal treatment; invites the Commission and the Google CEO to attend a joint public hearing of the Committees on Economic and Monetary Affairs and on the Internal Market and Consumer Protection; is of the opinion that all companies, including in the digital sector, should closely cooperate with Parliament, including by attending public hearings;

42. Calls on the Commission to take more ambitious steps to eliminate illegitimate obstacles to online competition, in order to ensure barrier-free online shopping for EU consumers purchasing from sellers who are based in another Member State, while at the same time not creating new barriers caused by existing variations in consumer law;

⁽¹¹⁾ For example, the Commission's in-depth investigation into a potential state aid scheme regarding UK CFC Group Financing Exemption (SA.44896).

Thursday 19 April 2018

43. Calls on the Commission to diligently conduct and conclude as soon as possible all other pending antitrust investigations, such as Android, AdSense, and investigations in the travel and local search sectors, where Google is allegedly abusing its dominance at the expense of existing and potential competitors, which have been prevented from entering and developing in this area; stresses the need for the Commission to be well prepared and equipped for the first big data case, which represents around 5,2 terabytes of data; stresses, in this connection, that big tech companies' use of personal data is unprecedented and consumers are often not aware or informed of the extent to which their data is being used, for example in profiling or targeted advertising; believes that digital companies constitute a specific challenge for the competition and fiscal authorities, notably when it comes to algorithms, artificial intelligence or the value of data; encourages the Commission to develop policy and enforcement instruments dealing with the emergence of digital economies, ensuring that it has a full complement of high-tech in-house engineers and specialists in cutting-edge technologies available to monitor and take action against anti-competitive situations concerning the digital and platform economy;

44. Highlights the importance of ongoing investigations in the pharmaceutical sector, given the build-up of evidence of market distortions in the field, including quantity restrictions, manipulated prices and barriers to the availability of generic medicines;

45. Welcomes the Commission's fact sheet of 6 October 2017 confirming its performance of unannounced inspections concerning access to bank account information by competing services; invites the Commission to remain vigilant on this issue, especially when the Regulatory Technical Standards on strong customer authentication and secure communication enters into force;

46. Welcomes the Commission's investigation on the trucks cartel and its conclusions;

47. Asks the Commission to clarify state aid rules for European and non-European airlines, with a view to establishing a level playing field between their operations targeting European and non-European markets; believes that restructuring aid could be distortive in certain scenarios; believes that the same competition rules should be applied to all air carriers when flying to or from the EU and to both national and low-cost carriers, while taking into account the situation of carriers whose operations have no significant impact on the market; notes that the Commission approved Lufthansa's acquisition of the Air Berlin subsidiary LGW, subject to compliance with certain commitments to avoid distortions in competition; calls on the Commission to monitor the situation in the medium-long term and to tackle all anti-competitive practices in the aviation industry which undermine consumer protection legislation;

48. Asks the Commission to investigate the hegemony enjoyed by low-cost airlines over different air routes in Europe and the pricing patterns for those routes; notes that such a position is often obtained through aggressive or even predatory behaviour on the market, eliminating competition and leaving consumers to shoulder the burden of higher tariffs and costs;

49. Requests that the Commission carefully assesses all airline merger deals in accordance with the EU's merger control procedure, including their impact on market competition and the potential harm that they may cause to consumers, most notably through higher prices and restrictions to direct access of destinations;

50. Urges the Commission to complete the implementation of the Single European Railway Area, to ensure full transparency in the flows of money between infrastructure managers and railway undertakings, and to verify that every Member State has a strong and independent national antitrust regulator;

51. Is concerned at the anti-competitive effects of common ownership by large institutional investors; believes that the fact that these investors hold a significant part of the shares of direct competitors in the same sector, such as airlines companies for example, creates a quasi-oligopoly and adverse effects for consumers and the economy as a whole by limiting competition; calls on the Commission to take all necessary measures to deal with the possible anti-competitive effects of common ownership; calls on the Commission, furthermore, to investigate common ownership and draw up a report, to be presented to Parliament, on the effects of common ownership on European markets, particularly on prices and innovation;

Thursday 19 April 2018

52. Welcomes the revision of Regulation (EC) No 868/2004 to safeguard fair competition, ensure reciprocity and eliminate unfair practices, including alleged state aid to airlines from certain third countries, and to address regulatory issues, including labour conditions, and environmental issues; agrees with the Commission that the best course of action would be the adoption of a new, comprehensive legal instrument to address market distortion in international transport, the encouragement of the involvement of the International Civil Aviation Organisation (ICAO) on regional airline competition, and fair competition based on air service agreements; believes that transparency in the fair competition clause is an essential element to guarantee a level playing field; is of the opinion that this regulation, or other appropriate legislative vehicles, should prevent anti-competitive behaviour in ticket distribution, such as the imposition by certain airlines of surcharges or restricted access to information for those using booking channels other than their own;

53. Reiterates that aviation makes a vital contribution to the connectivity of the EU, both between Member States themselves and with third countries, plays a crucial role in EU integration and competitiveness, and makes a vital contribution to economic growth and employment; notes that the overall connectivity of the EU relies, to a great extent, on air services performed by EU air carriers;

54. Welcomes the Commission's simplification of rules for public investment in ports and airports, culture and the outermost regions; stresses that, taking into account the connectivity needs of outermost and peripheral regions and in line with the current Commission Guidelines, all airports financed by the EU budget or the European Investment Bank should be based on a positive cost-benefit analysis and medium- to long-term operational and economic viability in order to avoid the financing of ghost airports in Europe;

55. Stresses the importance of safeguarding the transparency and neutrality of flight information, of ensuring a level playing field in the market and ultimately protecting the ability of European consumers to make informed choices; calls on the Commission, therefore, to abide by these principles when reviewing the Code of Conduct on computerised reservation systems and the Air Services Regulation;

56. Calls on the Commission to ensure fair competition in the transport sector in order to complete the single market, taking account of the public interest and environmental considerations and safeguarding the connectivity of insular and peripheral regions; call on the Commission to monitor cases of public port and airport networks being managed through a monopoly;

57. Emphasises that international cooperation is essential for the effective enforcement of the principles of competition law in an era of globalisation; supports, in this context, the permanent engagement of the Commission and NCAs in multilateral fora such as the International Competition Network, the Competition Committee of the Organisation for Economic Cooperation and Development (OECD), the World Bank and the UN Conference on Trade and Development (UNCTAD); asks the Commission to include competition sections in international trade and investment agreements; invites the Commission to continue to promote convergence of competition policy tools and practices, including through bilateral cooperation with third countries, along the lines of the 2013 second-generation cooperation agreement between the EU and Switzerland; welcomes the opening of dialogue between the Commission and China on state aid control and is carefully following China's adoption of a fair competition review system designed to ensure state measures do not adversely affect market entry and exit and the free movement of goods; reiterates its request to Commissioner Vestager to effectively ensure that the Commission informs and regularly updates Parliament's competent committee on its external activity in the area of competition policy;

58. Stresses that it is the consumer who chiefly benefits from functional competition in the European single market; believes that a strict and impartial enforcement of competition policy can make a significant contribution to key political priorities, such as a deeper and fairer internal market, a connected Digital Single Market, and an integrated and climate-friendly Energy Union; reiterates that traditional market models of competition policy may not always be suitable for the digital market, as platform-based business models or multi-sided markets;

59. Points out that a single set of rules for calculating the corporate tax base could eliminate unfair tax competition, such as the conclusion of tax agreements between certain multinationals and Member States; takes note of the ongoing negotiations on the common consolidated corporate tax base (CCCTB);

Thursday 19 April 2018

60. Notes the importance of a favourable regulatory framework for airports to attract and mobilise private investment; considers that the Commission's evaluation of the Airport Charges Directive, in conjunction with effective airline/airport consultation, should help clarify whether the existing provisions are an effective tool to promote competition and to further the interests of European consumers, or whether reform is needed;
61. Welcomes the fact that the Spanish Government is ready to open up the air agreement between Spain and Russia, allowing direct flights between Barcelona and Tokyo;
62. Invites the Commission to examine the bilateral aviation agreements between Member States and third countries in order to ensure fair competition;
63. Calls on the Commission to consider and address the potential effects of Brexit on competition in the aviation sector, and in particular where UK membership to the European Common Aviation Area (ECAA) Agreement would be affected, consequently restricting access to all EU destinations and vice versa;
64. Considers that ensuring a level playing field for companies in the internal market also depends on efforts to decisively combat social dumping;
65. Calls on the Commission to further address the long-term effects of the interrupted discussions on future legislation under the EU Aviation Strategy;
66. Welcomes the Commission's inception impact assessment and public consultation on the food supply chain; points out that Parliament has already called on the Commission and the national competition authorities to respond to the concerns raised by the combined impact, on both the upstream part of the food supply chain and distributors and consumers, of the rapid concentration of the distribution sector at national level on the one hand, and the alliances being formed among large-scale distributors at European and international level on the other; believes that this structural change raises concerns about possible strategic alignments, a fall-off in competition, and reduced scope for investment in innovation within the food supply chain, the proper functioning of producers' organisations, especially small-scale farmers, and the choice of adapted varieties to agro-ecological conditions; calls on the Commission to put in place a binding regulatory framework at EU level to combat unfair commercial practices in the food supply chain that adversely affect farmers;
67. Welcomes the Commission's in-depth investigation into the Monsanto-Bayer merger; is deeply alarmed at the fact that if the Monsanto-Bayer merger is approved, three companies (ChemChina-Syngenta, Du Pont-Dow and Bayer-Monsanto) will own and sell up to 60 % of the world's patented seeds and 64 % of the world's pesticides and herbicides; points out that such a level of concentration will undoubtedly lead to price rises, will increase farmers' technological and economic dependence on a few global integrated one-stop shop platforms, will result in limited seed diversity and the re-direction of innovation activity away from the adoption of a production model which is respectful of the environment and biodiversity and, ultimately, to less innovation, as a result of reduced competition; asks the Commission, therefore, to give careful consideration to the fact that several mergers are taking place simultaneously in the sector, when looking at the level of concentration and the competitive effects of the merger on the various markets affected;
68. Is deeply concerned about the Commission's approval of the Bayer-Monsanto merger, as in spite of the proposed divestment of Bayer's assets, the merger exacerbates the already far-reaching concentration of the agribusiness sector and effectively impedes a transition away from chemical-dependent agriculture towards genuinely sustainable farming; calls for a revision of competition law to enable effective opposition of mergers of this kind in the future; strongly urges the Commission, therefore, to assess whether mergers in the agricultural sector could lead to 'a significant impediment of effective competition', not by means of a test with a limited scope that merely focuses on the effects of a merger on prices, output and innovation, but by evaluating the full social costs of such mergers, taking into account their broader impact on environmental protection, and international biodiversity obligations, as required by virtue of Article 11 TFEU;
69. Considers that trade subsidies and preferences, such as GSP and GSP+, which are given to non-EU states to promote human and labour rights but which have also been shown as instrumental in promoting the EU's competitiveness on the international stage, must be adequately monitored and applied with attention given to the impact on EU industries; calls on the Commission, therefore, to suspend the grant or preference if non-EU countries abuse them;

Thursday 19 April 2018

70. Recalls that the Commission has been looking into Luxembourg's tax treatment of McDonald's since June 2014 and took the decision to initiate a formal investigation procedure in December 2015, but that no final decision has been taken so far; asks the Commission to make every effort to reach a final decision on this case soon;

71. Calls on the Commission to regularly assess the effectiveness of Member States' protection of intellectual property rights, which is an essential element of health competition policies; stresses that trademark protection is essential for the purposes of identifying and distinguishing products in the marketplace; and that without trademarks and the ability to enable people to differentiate between their products, it becomes very difficult, if not impossible, for manufacturers to enter new markets; considers, moreover, that by focusing competition on price, it makes it difficult for manufacturers with small market shares to strengthen their market position; emphasises, therefore, that the removal of trademarks or limitations on their use creates a significant barrier to market entry and undermines an essential aspect of free and fair competition in the EU;

72. Strongly supports the Commission's statement in the Annual Report on Competition Policy 2016 that 'as companies go global, so must competition enforcers'; believes that global rules on competition, transparency and the highest level of coordination between competition authorities, including with respect to exchange of information during the course of competition proceedings, are preconditions for the development of global fair trade; points out that combating unfair trading practices, including through competition policy, is necessary to ensure a global level playing field which benefits workers, consumers and businesses and is one of the priorities of the EU's commercial strategy; emphasises that the reflection paper on harnessing globalisation states that the Union must take steps to restore fair conditions of competition, and asks the Commission to propose concrete policies in this respect;

73. Calls for trade defence instruments to be updated to make them stronger, faster and more effective; welcomes the new method of calculating anti-dumping duties by assessing market distortions in third countries, which must succeed in safeguarding at least the same level of effectiveness as previously imposed anti-dumping measures in full compliance with our WTO obligations; recalls the importance of monitoring its effective implementation; emphasises, furthermore, the particular importance of the anti-subsidy instrument in tackling unfair global competition, and establishing a level playing field with EU state aid rules;

74. Emphasises that reciprocity must be one of the key principles underpinning Union commercial policy, with a view to ensuring a level playing field for EU firms, in particular in the area of public procurement; stresses that efforts aimed at securing greater access to foreign public procurement markets must not undermine the development of EU rules in relation to social and environmental criteria; emphasises the importance for the Union of an international instrument on public procurement which establishes the needed reciprocity in cases where trade partners restrict access to their procurement markets; recalls the benefits of foreign direct investment and takes the view that the Commission proposal on the monitoring of foreign investment should make for greater reciprocity in the area of access to markets;

75. Calls on the Commission to take account of the needs of SMEs when conducting negotiations and trade with a view to ensuring better access to markets and making the firms in question more competitive; acknowledges, in this respect, the Commission's effort to combat unfair competition in high-profile cases, but stresses that the enforcement of fair competition in the case of SMEs is also of the utmost importance;

76. Stresses that EU trade policy and trade agreements can have a role to play in the fight against corruption;

77. Draws attention to the importance of effective, harmonised EU customs checks in combating unfair competition;

78. Calls on the Commission to explain further how unfair trading practices can be addressed under current competition policy;

79. Welcomes, therefore, the Commission's proposal on the European Competition Network (ECN+), including the importance of deterrent fines to competition policy; stresses, furthermore, that the refusal of the requested authority to enforce a decision imposing fines should always be duly justified, and that a system should be set up whereby potential disputes between authorities in such cases could be resolved;

Thursday 19 April 2018

80. Takes note of the e-commerce sector inquiry and its final report, which shows that in the e-commerce sector there are some business practices which negatively affect fair competition and limit consumer choice; believes that, within the context of the Digital Single Market Strategy, the inquiry should be part of a greater enforcement effort by the Commission to apply competition policy in full to online retailers;

81. Supports the Commission's intention to target enforcement of the EU competition rules at widespread business practices that have emerged or evolved as a result of the growth of e-commerce, and stresses that the Commission must put increased effort into ensuring the consistent application of the EU competition rules in all Member States, also with regard to e-commerce-related business practices; underlines that, given the asymmetrical relationship between large online retailers and their suppliers, the Commission and national competition authorities should actively enforce the competition rules as suppliers, especially SMEs, may not always have cost-effective access to means of redress;

82. Calls for the strengthening of the freedom of choice for consumers in the Digital Single Market; considers that the enshrined right to data portability in the General Data Protection Regulation (Regulation (EU) 2016/679) is a good approach to strengthening the rights of consumers and competition;

83. Is of the view that effective competition policy can complement regulatory initiatives in the area of the Digital Single Market, and considers that where the impetus for regulatory action is primarily in response to market actions by some players, harm could be addressed through competition measures to tackle anti-competitive practices, without holding back those who seek to compete;

84. Is concerned by the increased use of contractual restrictions by manufacturers on online sales, as confirmed by the e-commerce inquiry, and calls on the Commission to further review such clauses to ensure that they do not create unjustified restrictions of competition; at the same time, asks the Commission to review the Guidelines on Vertical Restraints and Commission Regulation (EU) No 330/2010 in light of these changes;

85. Takes note of the Opinion of Advocate-General Wahl of 26 July 2017 in case C-230/16 *Coty Germany GmbH v Parfümerie Akzente GmbH* that a restriction on online marketplace sales contained in a distribution agreement should not be considered as a hardcore restriction under Commission Regulation (EU) No 330/2010;

86. Stresses that access to justice, which may also include the availability of collective redress, is essential for the achievement of the objectives of EU competition policy; underlines that the absence of such opportunities weakens competition, the functioning of the internal market and consumer rights;

87. Recalls that if anti-competitive practices are to be fought effectively, Member States must adopt an economic policy that is consistent with the principles of an open market economy based on fair competition, as purely protectionist measures harm the functioning of the single market; underlines that all aspects of unfair competition must be eliminated, including unregistered work and circumventing rules on the posting of workers, without prejudice to the free movement of labour as one of the fundamental freedoms of the internal market;

88. Considers the consultation carried out by the Commission on the possible improvement of EU merger control to be very important; believes that steps must be taken to ensure, in particular in the digital sphere, that mergers do not restrict competition in the internal market; calls again on the Commission, therefore, to examine carefully whether current assessment procedures take sufficient account of the circumstances of digital markets and of the internationalisation of markets; calls, furthermore, on the Commission to take into account the role of access to data and information when assessing market power, whether merging data and customer information during a merger distorts competition, and to what extent an enterprise's access to exclusive analytical methods and patents excludes competitors; reiterates its request to the Commission to explain how it defines the minimum number of market players necessary for fair competition, and how it retains the possibility for new companies, in particular start-ups, to enter highly concentrated markets;

89. Calls on Member States to ensure the proper enforcement of EU public procurement rules in order to tackle distortions of competition, including by means of social, environmental and consumer protection criteria where appropriate, and to promote good practice in public authorities' processes; considers that the development of electronic public procurement procedures will make it easier for SMEs to access public procurement, will increase transparency, and will ensure more effective monitoring of infringements of the competition rules; calls, furthermore, on the Commission to promote market access opportunities for SMEs through smaller contracts where compatible with key procurement objectives, and to carefully monitor the enforcement of rules as regards centralisation of purchases in public procurement markets;

Thursday 19 April 2018

90. Welcomes the adoption of rules on the portability of pre-paid services under the Single Digital Market Strategy that will improve competition in the internal market and ensure greater consumer rights;

91. Believes that criteria to join a selective distribution or franchising network should be transparent in order to ensure that such criteria do not violate competition policy and the free functioning of the single market; underlines that such criteria must be objective, qualitative and non-discriminatory, and must not go beyond what is strictly necessary; calls on the Commission to take measures to ensure this transparency;

92. Notes the increased risk of collusion between competitors due to, among other things, price monitoring software; considers that concerted practices may emerge despite contact between competitors being weaker than required under current norms, perhaps even automated, as algorithms interact with each other independent of the direction of one or more market players; asks the Commission to be vigilant about such new challenges to free competition;

93. Welcomes the Commission's efforts to connect with its international partners and multilateral fora in the area of competition policy; believes that international cooperation is increasingly essential where companies subject to enforcement operate across multiple jurisdictions;

94. Believes that increasing the network of free trade agreements involving the European Union will benefit the enforcement of competition law globally; encourages the Commission in this regard to seek further trade agreement opportunities, and to include strong antitrust and State aid rules in any such future agreements;

95. Believes that the specific nature of the agriculture sector must be taken into account in competition policy; recalls that Article 42 TFEU gives special status to the agricultural sector as regards competition law, affirmed in the last reform of the common agricultural policy (CAP) by allowing a series of derogations and exemptions from the provisions of Article 101 TFEU; notes that the CAP aims to ensure a fair standard of living for the agricultural community in the face of constant economic and climate-related hazard; recalls that competition policy mainly defends consumers' interests and takes insufficient account of agricultural producers' specific interests and difficulties; stresses that competition policy must defend the interests of agricultural producers and consumers' in the same way by ensuring that the conditions for competition and for access to the internal market are fair, in order to foster investment and innovation, for employment, viability of agricultural businesses and balanced development of rural areas in the EU, while promoting transparency for market participants;

96. Insists that the concept of 'fair price' should not be regarded as the lowest price possible for the consumer, but instead must be reasonable and allow fair remuneration of each party within the food supply chain;

97. Considers that the collective activities of producer organisations and their associations – including production planning and the negotiation of sales and of the terms of contracts – are necessary to achieve the CAP objectives as defined in Article 39 TFEU and should therefore be exempted from the application of Article 101 TFEU, when those joint activities are genuinely exercised, thereby contributing to improving the competitiveness of farmers; notes that the derogations under Regulation (EU) No 1308/2013 (Single CMO Regulation) have not been used to their full extent, and that the lack of clarity of these derogations, the difficulties in implementing them and the lack of uniform application by national competition authorities have not given farmers and their organisations enough legal certainty; welcomes the fact that Regulation (EU) 2017/2393⁽¹²⁾ will simplify the rules on farmers' organising collectively, and will clarify the role and powers of producer organisations pursuing economic activities in relation to competition law, so as to strengthen their bargaining power while safeguarding the principles set out in Article 39 TFEU;

⁽¹²⁾ Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ L 350, 29.12.2017, p. 15).

Thursday 19 April 2018

98. Welcomes the fact, taking into account the encouraging implementation reviews ⁽¹³⁾ and the way in which it is helping to strengthen the position of dairy farmers within the food supply chain, that the 2012 ‘Milk Package’ is due to be extended in time under Regulation (EU) 2017/2393; calls on the Commission, however, to carry out an impact assessment to determine whether the provisions on contractual negotiations in the milk and milk products sector should be extended in scope to cover other agricultural sectors, as farmers and producers’ organisations would have more freedom to plan production, the right to collective bargaining and the negotiation of sales and of the terms of contracts that set prices and volumes clearly;

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

100. Proposes that the provisions of the Single CMO Regulation enabling supply regulation measures to be adopted for cheeses with a protected designation of origin or a protected geographical indication (Article 150), for PDO or PGI ham (Article 172), or for wines (Article 167) to be extended to cover quality-labelled products in order to increase the possibilities of matching supply with demand;

101. Welcomes the fact that Regulation (EU) 2017/2393 establishes a procedure whereby a grouping of farmers may seek a non-binding opinion from the Commission in order to determine whether given collective action is compatible with the general exception to competition rules under Article 209 of the Single CMO Regulation; calls, nonetheless, on the Commission, in the light of the recommendation of the Agricultural Markets Task Force, to clarify the scope of the general derogation for agriculture in order to specify the exception in such a way as to make the non-application of Article 101 TFEU – where this is provided for – enforceable and workable;

102. Points out that in periods of severe market imbalances, when the agricultural sector is at risk and all citizens are affected by the potential damage to essential food supplies, a market-oriented CAP needs to provide support to farmers and grant additional, time-limited and fully justified exemptions from competition rules; welcomes the fact that, as a result of changes made with Regulation (EU) 2017/2393, it will be easier to trigger the provisions of Article 222 of the Single CMO Regulation, which allows such temporary derogations from competition law;

103. Calls for further development of the European Food Prices Monitoring Tool to improve the detection of crises in the agri-food sector by means of better and more disaggregated data; highlights, in this regard, the need to engage farmers’ organisations in the definition and collection of data;

104. Points to the Commission’s recognition that agricultural producers form the least concentrated level in the food supply chain while their input suppliers and customers are often much larger and more concentrated, resulting in an imbalanced relationship and to negative and unfair practices (UTPs) – on the part of some large distribution chains, processors and retail operators – that cannot be resolved by competition policy alone, and so coherence with other policies is necessary; calls, therefore, on the Commission to define more clearly a ‘dominant position’ and the abuse of such a position, taking into consideration the degree of concentration and negotiating strength of the input, processing and retail sectors; notes, furthermore, that Regulation (EU) 2017/2393 establishes certain provisions on the right to written contracts, and to negotiation of contractual terms for improved value-sharing along the supply chain, to help calm relations between stakeholders, combat unfair trading practices, make farmers more responsive to market signals, improve price reporting and transmission, and gear supply more readily to demand; calls, moreover, on the Commission and on the national competition authorities to ensure that commodities are properly classified and priced and that abuses and unfair trading practices affecting farmers are monitored and tackled through binding actions, and are penalised; believes that existing national schemes should be examined to determine the best practice to be applied;

⁽¹³⁾ Reports on ‘Development of the dairy market situation and the operation of the “Milk Package” provisions’ (COM(2016)0724 and COM(2014)0354).

Thursday 19 April 2018

105. Acknowledges that, so far, competition law has not been applied to tackle unfair trading practices in the food chain at either the European or the national level; notes that specific national rules have been implemented in this regard, but they have not proved fully effective in addressing the endemic problem of unfair trading practices and the imbalance of power in the food supply chain; calls on the Commission to publish and approve without delay the announced EU legislative proposal on unfair trading practices, provide a harmonised legal framework that better protects producers and farmers from unfair trading practices, and ensure further consolidation of the internal market;

106. Points out that Parliament has already called on the Commission and the national competition authorities to respond effectively to the anxieties being caused by the combined impact which the rapid concentration of the distribution sector at national level and the alliances being formed among large-scale distributors at European and international level is having both on the upstream part of the food supply chain and on distributors and consumers; believes that this structural change raises concerns about possible strategic alignments, a fall-off in competition, and reduced scope for investment in innovation within the food supply chain;

107. Calls on the Member States and the EU institutions to prioritise the strengthening of the post-Brexit single market by ensuring full compliance with EU competition laws and its derogations, as well as other standards, in order to ensure legal certainty and a level playing field between Member States;

108. Notes that the individual ceiling for *de minimis* aid in the agricultural sector was doubled in 2013 (from EUR 7 500 to EUR 15 000) in order to cope with the upsurge in climate-driven, health, and economic crises; points out that the national *de minimis* ceiling was at that time adjusted only marginally (from 0,75 % to 1 % of the value of national agricultural production), thus reducing the latitude for Member States to assist farms in difficulties; calls, therefore, for the national *de minimis* ceiling to be raised to 1,25 % of national agricultural production to alleviate the difficult economic situation of farmers; notes that coherent rules on *de minimis* aid should serve to improve the position for farmers without entailing the re-nationalisation of agricultural policy;

109. Stresses the importance of funds aimed at enabling access to high-speed broadband networks in order to keep up with technological advancement and boost competition, especially in rural and remote areas;

110. Stresses that opening up the EU market to very competitive trade partners and major exporters of agricultural products subject to various different standards may constitute a risk to the most sensitive farm sectors in the EU; calls on the Commission to take fully into account the effect of possible market distortions, resulting from trade agreements with third countries, on agricultural producers in Europe, given their delicate financial situation and their fundamental role in our society;

111. Instructs its President to forward this resolution to the Council, the Commission, and the national and, where applicable, regional competition authorities.
