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**Opinion of the European Economic and Social Committee on the Commission Report — Report on
Competition Policy 2022**

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(for/against/abstentions)	161/0/2

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) congratulates the European Commission on the publication of the Report on Competition Policy 2022, which provides a comprehensive and up-to-date overview of competition-related activities in the European Union (EU). The report indicates the Commission's ongoing commitment to promoting fair and efficient competition for the benefit of consumers and businesses, demonstrating developments that coincide with a more ambitious vision, as called for by the EESC in the past.

1.2. The EESC stresses the need for the Commission, through its various directorates-general with responsibility in this area, to extend its competition action to cover realities originating outside the European Union, through a multitude of channels, that impact on fair and healthy competition vis-à-vis European businesses and on compliance with the rules to which they are subject. The Commission's action on foreign subsidies constitutes a first step and is welcomed by the EESC, but this needs to be extended to other areas so as to ensure a genuine level playing-field, given the current disadvantages faced by European companies in the face of other international realities that are not subject to the same principles, rules, social and environmental safeguards, etc.

1.3. In the past three years, the Commission has implemented temporary frameworks to enable Member States to support businesses in the context of the coronavirus pandemic and the war in Ukraine. While it has alleviated the economic consequences suffered by EU companies, it has also led to distortions of competition and negative effects on trade between Member States. The analysis conducted by the Commission itself in the 2022 Competition Policy Report (page 4) makes it clear that Member States with greater fiscal capacity could provide more support to their domestic companies compared to Member States with limited resources. We argue that companies based in Member States with more fiscal capacity will have an advantage in the internal market over other EU companies located in different Member States. Consequently, we urge the Commission to address the consequences of the temporary frameworks and to restore competition while enabling significant EU investments, especially in the green and digital transition.

1.4. The EESC recommends that the Commission assess the distortions of competition that have arisen through the implementation of the COVID-19 State Aid Temporary Framework, together with other European funds. The Commission should urge the Member States to correct the mistakes, precipitous measures and unequal treatment that have occurred and that, while understandable in an unprecedented state of emergency, can and should now be corrected in order to restore the

level playing field — and thereby competition — for businesses operating in the same market that were treated unequally during that period. There were cases whereby, based on the Commission Communication *Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* ⁽¹⁾, Member States launched tenders in which they applied the principle (of questionable legality) ‘first come, first served’. This meant that some companies that applied to the tender later, solely because their projects were more complex and time-consuming to develop, ended up with less support than those with projects that were simpler and quicker to develop, even though they were all part of the same public tender.

1.5. The EESC welcomes the entry into force of the Digital Markets Act, aimed at making these markets fairer by tackling unfair practices on the part of gatekeepers. This is a turning point when it comes to addressing digital markets, a challenge that the Commission should respond to with the physical and human resources and expertise required by such an innovative market.

1.6. The EESC welcomes the investment made to modernise working methods, as called for by the EESC in the past. A directorate-general that is better equipped with technical and human resources, that is more digitally advanced and paper-free, and that generates less regulatory burden for those involved, will allow for a more efficient response to the challenges of a constantly changing market that requires timely, secure and easily accessible responses for stakeholders. The EESC hopes that, with this investment, the Commission will be able to step up its action with additional proactive initiatives, in order to study and support critical sectors from the point of view of competition, and to continue to respond rapidly with reactive investigations based on the complaints files.

1.7. The EESC welcomes the adoption of guidelines on the application of competition law to collective agreements on the working conditions of self-employed workers, which make it clear that the competition law does not prevent these workers from engaging in collective bargaining in order to establish equal working conditions between employed workers and self-employed workers. These guidelines contribute to the social values of Europe, something the Commission should pay attention to, and the EESC calls for this issue to be closely monitored.

1.8. The EESC commends the Commission on its antitrust initiatives and the results achieved in 2022. Strict enforcement of the rules in these areas promotes competition and protects consumers, while at the same time stimulating innovation in companies that encounter low barriers to market entry.

1.9. The EESC calls for constant support and monitoring of different markets as part of antitrust policy. All markets should be open and competitive, in the interests of all, economic operators and consumers, which, in an inflationary period like the one we are currently witnessing, is important in order to allow supply chains to function properly. The Commission can and should intervene in this context, both in the context of transactions at European level as well as in supporting and guiding national competition authorities.

1.10. The EESC highlights the importance of ensuring fair competition in all sectors, especially those that have a direct impact on the well-being of consumers and SMEs. Abuses of dominant positions and unfair commercial practices can negatively affect thousands of small businesses (especially in the most sensitive sectors already identified in previous EESC opinions). SMEs need to be strengthened as they are crucial to local development and well-being, providing jobs, paying taxes to communities and strengthening regions. The EESC also calls for the implementation of financially effective instruments, such as fair tax rules between Member States. The Commission can and should play a more active role in these matters, directly within the scope of its competences, or indirectly through interaction with national competition authorities.

1.11. The EESC calls for a continued commitment to promoting healthy competition in the single market, through ongoing dialogue between the various institutions and by strengthening the EU competition network, in cooperation that enhances the functioning of the single market.

⁽¹⁾ OJ C 112 I, 4.4.2020, p. 1.

1.12. Tax competition resulting from the granting of tax advantages by each Member State is a challenge to which the Commission does not have the power to respond, owing to the limitations of the Treaty. The EESC calls on the Commission to maintain its focus on preventing the distortion of competition arising from the granting of tax advantages insofar as it is allowed to do so, either through the application of State aid rules, or by raising awareness or publishing guidelines on good practices in this area.

1.13. The EESC calls on the Commission to use State aid rules to support the green and digital transition. While State aid can play an important role in this transition, when temporarily relaxing EU State aid rules, the EU must find the right balance to avoid a subsidy race and preserve a level-playing field within the Single Market. Further, the granting of State aid should have at its origin the contractualisation of strict targets which, if not achieved, mean that, based on clear rules, any benefit received could be returned. However, the EESC calls for State aid not to be granted to entities for which there is legal proof that they do not comply with the existing environmental rules, whether in their activities carried out on EU territory or in other regions of the world.

2. Background

2.1. Each year, the Commission prepares the Report on Competition Policy, which sets out the main policy developments as well as the legislative initiatives and the results achieved through measures undertaken in the area of competition action.

2.2. The year 2022 was particularly challenging, with Europe facing a new crisis rather than experiencing the expected economic recovery following the COVID-19 pandemic. The effects of the war between Russian and Ukraine have led the Commission to take a number of measures to ensure economic and financial stability, ensure the security of supply chains, and tackle inflation, which has reached very high levels.

2.3. With the COVID-19 pandemic subsiding, the COVID-19 State Aid Temporary Framework was phased out, the Commission having decided not to extend this temporary framework beyond 30 June 2022, with the exception of measures to support investment and the solvency of companies, which will remain in place until the end of December 2023.

2.4. To address the impacts of the Russia-Ukraine war, the Commission adopted a State Aid Temporary Crisis Framework to support companies heavily affected by the spill-over effects of this conflict.

2.5. In response to the energy crisis, in May it adopted the REPowerEU plan to tackle high energy prices and reduce Europe's energy dependency. In July, it amended the State Aid Temporary Crisis Framework to facilitate the creation of favourable schemes for the decarbonisation of industry and the transition to renewable energy. In the field of energy, sector-specific schemes were accepted for Denmark, Belgium and Finland due to the need to support solvency in the energy sector. In December, the recapitalisation of two German companies was approved.

2.6. This was followed by the implementation of the Recovery and Resilience Facility (RRF) to promote cohesion, mitigate the effects of the pandemic, and prepare Europe for the green and digital transition. Most RRF measures are not considered State aid and, when they are, a majority of these can be implemented directly by the Member State under a block exemption regulation or a *de minimis* regulation.

2.7. In 2022, the Commission continued to take a number of legislative initiatives to ensure that competition rules were fit for purpose and for the future. Particularly noteworthy here is the publication of the Digital Markets Act, aimed at making the digital sector fairer and more competitive for businesses and consumers; this Act prohibits unfair competition practices and sets out a number of criteria for identifying market gatekeepers that could negatively influence that market.

2.8. In addition, the Regulation on foreign subsidies distorting the internal market was published, giving the Commission the power to investigate and potentially correct the distortions identified by imposing remedies or accepting commitments to eliminate the distortion of competition. The obligation to notify when certain thresholds are exceeded will be mandatory as of October 2023.

2.9. The Commission updated the antitrust and merger rules, updated the State aid rules and guidelines to make them fit for tackling new challenges, and continued its efforts to modernise the working methods of the Directorate-General for Competition.

3. General comments

3.1. The EESC considers the Report on Competition Policy 2022 to be a comprehensive and well-structured document that provides a clear overview of the main achievements, challenges and future priorities in the field of competition policy in the EU.

3.2. The EESC welcomes the emphasis on strict enforcement of EU competition rules and cooperation between the European Commission and national competition authorities. Such cooperation is key to ensuring a consistent and effective approach across the single market.

3.3. The war in Ukraine has greatly impacted the European market, increasing energy prices and disrupting supply chains. The EESC supports the adoption of the State Aid Temporary Framework to address market disruptions. However, it draws attention to the possibility whereby this could lead to distortions of competition and that structural measures need to be put in place to protect the EU from such events, making the economy more resilient and less dependent on third parties.

3.4. The EU should invest heavily in REPowerEU measures to decrease energy dependency and make the economy less vulnerable to fluctuations in the global energy market that severely impact the lives of businesses and households.

3.5. The year 2022 was challenging in terms of inflation, the impacts of which the State Aid Temporary Framework sought to mitigate. The EESC stresses the importance of healthy competition in inflationary periods. Competition can help contain inflation by putting downward pressure on profit margins. A competitive economy is more responsive to changes.

3.6. As well as competition in the private sector, it is also important to promote competition in public procurement by combating collusion in public procurement that distorts the market.

3.7. The EESC welcomes the phasing out of the COVID-19 State Aid Temporary Framework, now that the public health emergency has abated. However, the Committee warns that the EU should learn lessons, in particular from the experiences of 2020, which saw serious problems in the supply chain of medical products and devices. In a major joint effort involving both private and public human and financial resources, the EU has succeeded in setting up various structures that have ensured the supply of these products; these structures should be maintained at levels that can withstand disruptions in the supply chain of Asian markets, from which these products have been mainly sourced in the past.

3.8. The adoption of temporary frameworks to allow Member States to support their business sectors over the last three years is, as recognised by the Commission itself, a source of competition distortion, with varying degrees depending on the Member State's capacity. The EESC is concerned about the consequences for competition and calls for initiatives to rectify any situations that may arise.

3.9. With regard to the COVID-19 measures, the EESC also calls for consideration to be given to distortions of competition that may have been caused by the granting of State aid and other subsidies during the state of emergency, when responses had to be found in good time without the usual consideration that exists in normal times, in order that injustices that were inadvertently committed can now be remedied.

3.10. The EESC welcomes the entry into force of the Digital Markets Act, and stresses the importance of having an *ex ante* mechanism in place to enforce a set of obligations and prohibit practices that distort competition. In an increasingly global and digital market, the EESC calls for these practices to be combined effectively with the *ex post* application of competition rules. Indeed, the growth of online trade, such as marketplace sales, may promote vertical agreements that restrict competition.

3.11. The EESC welcomes the adoption of the Regulation on foreign subsidies distorting the internal market and hopes that its implementation from July 2023 onward will succeed in reducing the competition risks introduced through practices that put certain companies in a position of advantage. This is an ambitious Regulation; however, it could still omit businesses that receive support in an undetectable way.

3.12. The EESC calls for effective measures and monitoring to reinstall fair competition in all sectors as part of antitrust policy. Unfair advantages can arise through abuses of dominant positions, unfair commercial practices and creative and international tax strategies, which SMEs do not have the human resources and financial possibilities to address. At the same time, SMEs (especially in the most sensitive sectors already identified in previous EESC opinions) need to be strengthened, because they play a unique role for local development and welfare by providing jobs, paying taxes to communities and strengthening regions. As small and medium-sized enterprises usually face difficulties to compete on such a basis, EU competition rules should call for strong and coordinated measures like support for regional production and the implementation of financially effective instruments such as fair tax rules among Member States. In an inflationary period like the one we are currently witnessing, this is all the more important. The Commission can and should intervene urgently in this important context, with regard to transactions at European level by providing support and guidance to national competition authorities.

3.13. The EESC supports the steps taken to facilitate the green and digital transition. The Commission should support investments with this objective in mind, while maintaining a close eye on the efficiency of the measures and the functioning of markets, which should remain competitive for the benefit of businesses and households. The challenges of climate and environmental protection and the energy transition require the regulatory framework to be aligned with these objectives, and the Committee therefore welcomes the adoption of special measures to accelerate this transition, in line with competition policy rules, while preserving the integrity of the Single Market.

3.14. The EESC underlines the importance of fair market conditions for social enterprises and the non-for-profit sector — essential services of general interest. Social and health services provided by private or social enterprises as parts of the social and health systems of Member States need adequate general exemptions from state aid rules.

4. Specific comments/specific recommendations

4.1. The EESC supports the adoption of temporary crisis frameworks for State aid, but reiterates its call for these schemes to be closely monitored in order to avoid distortions of competition. The EESC recommends that the Commission study the impacts of temporary frameworks that have already come to an end, in order to draw lessons from them that could improve how such frameworks function in the event of future crisis.

4.2. The Commission has launched a number of legislative initiatives in the area of competition, including the Digital Markets Act. The EESC highlights the fact that both the Commission and national competition authorities should have investigative and evidence-gathering powers that respect European and national law, to enable them to intervene in a highly innovative and constantly changing market with a view to protecting the market and consumers.

4.3. The EESC supports the adoption of the Regulation on foreign subsidies distorting the internal market, as all companies operating in the EU market should follow the same rules. The EESC calls for continuous dialogue and cooperation with third countries and for other mechanisms that could protect the internal market from hidden subsidies to be assessed and developed. The EU could envisage creating barriers to the participation of certain companies in public procurement that are likely to provide unfair competition, by imposing obligations to comply with ethical and labour rules. Another barrier could be imposed by introducing penalties based on distance to the place of delivery, in order to help reduce the carbon footprint.

4.4. The EESC welcomes the publication of new vertical guidelines to support companies in assessing the compatibility of their supply and distribution agreements, as well as the launch of a stakeholder consultation on the draft revised Horizontal Block Exemption Regulations on research and development agreements. The rules on vertical and horizontal cooperation agreements should evolve with the market and should allow potential gains to reach consumers and contribute to the digital and green transition.

4.5. The EESC supports the adoption of guidelines on the application of competition law to collective agreements on the working conditions of self-employed workers, clarifying that competition rules do not prevent self-employed workers from participating in collective bargaining with a view to their working conditions being assimilated to those of employed workers.

4.6. The EESC considers the draft revised Market Definition Notice, which aims to update the 1997 Notice, to be relevant. Since market definition is the tool used by the Commission to identify and determine the boundaries of competition between companies, its concept needs to be updated and adapted to a market that has evolved to a very significant extent. The EESC supports including in the market definition aspects that extend far beyond price, such as sustainability and innovation, or even the security of supply chains.

4.7. In the field of mergers, the EESC suggests that the thresholds for notifying mergers could include not only turnover, but also the possibility of a downgrade in service quality or consumer safety.

4.8. The EESC considers it important that State aid rules pursue the objectives of decarbonisation and the green and digital transition. The challenges of climate and environmental protection and the energy transition, call for the regulatory framework to be aligned with these objectives, and the EESC therefore welcomes the adoption of special measures to accelerate this transition, in line with competition policy rules and while preserving the integrity of the Single Market.

4.9. The EESC commends the Commission on its efforts in the area of antitrust and merger control. The Committee congratulates the Commission on the judgment of the General Court confirming the Commission's decision, which found that Google had imposed illegal restrictions on Android device manufacturers and mobile network operators. It also calls on the Commission to continue pursuing this aim, despite the unfavourable rulings in the Qualcomm and Intel cases, and to learn from the mistakes made, in order to better defend other cases in the future.

Brussels, 25 October 2023.

*The President
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