**Follow-up to the European Parliament non-legislative resolution on
Competition policy – annual report 2021**

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**3. Date of adoption of the resolution:** 05 May 2022

**4. Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)

**5. Brief analysis/assessment of the resolution and requests made in it:**

The European Parliament resolution concerns the Commission’s Annual Report on Competition Policy 2020 (COM (2021) 373 final) and its accompanying Commission Staff Working Document (SWD (2021) 177 final), adopted on 7 July 2021. These documents together are referred to as the Annual Competition Report 2020 (ACR 2020). The ACR 2020 presents how the Commission implemented its competition policy in 2020, how it contributes to the EU economy and to improving the welfare of EU citizens.

The European Parliament considers that EU competition policy plays a crucial role in ensuring effective competition to encourage innovation, job creation, growth, competitiveness and entrepreneurship, set fair economic conditions, in particular by driving innovation that helps to develop new technologies. These new technologies, as the Parliament says, “can in turn help us to do more, while causing less harm to the environment, and promoting an efficient allocation of resources, provide greater choice and fair prices for consumers as well as increase the resilience of the single market”.

The resolution emphasises that the challenges arising from the COVID-19 pandemic need to be adequately taken into account and that the guiding principle should be the reasonable phasing out of specific support measures in a progressive and proportionate manner.

The European Parliament emphasises that the EU should not be overly dependent on global supply chains, especially in the sectors identified as important for strategic autonomy and for a resilient and sustainable economy, which have proven fragile during the pandemic.

The European Parliament highlights that small and medium-sized enterprises (SMEs) are the backbone of the European economy, representing 99.8 % of all businesses in the EU and notes that the strong contribution to job creation and value added make SMEs crucial to ensuring economic growth and social integration in the EU.

The resolution highlights the need to adequately meet the new challenges by increasing the effectiveness of the investigations with new instruments stemming from computational means in competition policy enforcement.

The resolution welcomes the Commission’s proposal for a new regulation on foreign subsidies with the aim of curtailing potentially distortive effects on the single market, closing the enforcement gap, safeguarding the Union’s interests and levelling the playing field for European companies and all undertakings active in the internal market by using EU competition law instruments and their key building blocks. The European Parliament stresses the importance of promoting a European regulatory framework encouraging foreign investment and business on the part of international companies in the EU.

The resolution welcomes the Parliament’s negotiating mandate on the Digital Markets Act as adopted in plenary and stresses that the Parliament is prepared to work towards the accelerated completion of negotiations of the Digital Markets Act and the entry into force of the new rules. The resolution calls on the Commission to ensure a smooth and rapid implementation of the new regulatory measures, while ensuring synergies and avoiding overlap with or duplications of existing and upcoming measures. The resolution also calls on the Commission to ensure that the regulatory and enforcement tasks are delegated within its services swiftly and in a transparent manner in order to eliminate inefficiencies and administrative burdens.

The European Parliament welcomes the review of EU competition law instruments as outlined in the Commission communication of 18 November 2021 and recalls, however, that this should not exclude the development of new tools where necessary and better use of existing tools.

The European Parliament recalls the European Court of Auditors’ (ECA) recommendations[[1]](#footnote-1), which state that the Commission should follow a more proactive approach by gathering and processing market relevant information in a consistent and cost-efficient manner and select cases for investigation based on clearly weighted criteria, for example by using a scoring system.

The European Parliament believes that mainstreaming green and digital strategies is vital to support the EU’s transition and calls on the Commission to incorporate this approach into the future conditions for State aid through its assessment of the *De Minimis* Regulation[[2]](#footnote-2) upon expiry.

The European Parliament recognises that resources allocated to the Commission’s Directorate General for Competition should be appropriate to its workload and range of tasks and considers it necessary to ensure specific expertise in the context of the digital economy.

The European Parliament urges the Commission to accelerate efforts to deliver on its commitment to review its notice on the definition of relevant market for the purposes of EU competition law.

The European Parliament supports a substantial review of the current regime on vertical agreements, in particular the fine-tuning of the safe harbour rules and the adoption of rules to match the needs of e-commerce and platform businesses. In this context, the resolution also notes that the Vertical Block Exemption Regulation (VBER)[[3]](#footnote-3) and related Vertical Guidelines[[4]](#footnote-4) have been inadequately adapted to recent market developments, notably the growth of online sales and online platforms.

The European Parliament considers that it should play an active role in the political debate on competition policy and notes that it should be more involved as an observer in the activity of working parties and expert groups, such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD).

The European Parliament calls on the Commission to closely monitor the situation and, if appropriate, to use the necessary flexibility of the EU’s State aid framework to enable Member States to provide support to the companies and sectors most severely affected by the ongoing Russian military aggression against Ukraine and which will be hurt by the sanctions imposed on Russia.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The Commission agrees with the European Parliament that COVID-19-specific State aid measures should be phased out in a progressive and proportionate manner (**paragraph 1**).

The sixth amendment to the Temporary State Aid Framework requires a progressive phase-out of the support. The permissible periods for the different measures will expire progressively, allowing a smooth transition from immediate crisis response to more long-term recovery support. On 12 May 2022, the Commission announced that the Temporary Framework will not be extended beyond the current expiry date. However, developments will continue to be constantly monitored. The main sections of the Temporary Framework (liquidity measures, research and development, COVID-19 products) expired on 30 June 2022 whereas the rules on investment support will expire on 31 December 2022. The options for conversion and loan restructuring will expire on 30 June 2023 and the rules on solvency support will expire on 31 December 2023.

The Commission agrees with the European Parliament that the EU should not be overly dependent on global supply chains, especially in the sectors identified as important for strategic autonomy and for a resilient and sustainable economy (**paragraph 3**).

The Commission is committed to increase the effectiveness of its investigations by digitally transforming its working methods (**paragraph 13**).

In line with the Commission’s Digital Strategy, the Commission aims to further digitise business processes, modernise digital solutions to make the Directorate-General for Competition an increasingly data-driven organisation. In 2021, a new corporate case management platform - CASE@EC – was rolled out for State aid case management as well as document registration and document management processes for all competition enforcement instruments. Work continued to prepare the implementation of CASE@EC for other business domains as well as to migrate to a new, container-based secure hosting environment in the Commission’s data centre, which is necessary for the evolution of the CASE@EC platform.

Furthermore, the Commission continues to improve existing digital solutions to enhance and fully digitise communications with external stakeholders such as National Competition Authorities, businesses and law firms. This work included for example a new solution digitising parties’ confidentiality claims producing non-confidential versions of documents (eConfidentiality). Moreover, a pilot project for a new digital solution supporting requests for information investigations (eRFI) has been launched, improving the handling of large volumes of case-related electronic submissions including through investments in state-of–the-art hardware and software solutions for forensic IT activities.

In addition, further improve cybersecurity of its information systems remains a priority.

**Competition policy on enforcement and globalisation**

As the European Parliament states, the aim of the Commission’s proposal for a new Regulation on Foreign Subsidies is to address the distortive effects of foreign subsidies on the Single Market (**paragraph 28**).

While aid granted by Member States is closely scrutinised, subsidies granted by countries outside the EU to companies active in the EU go largely unchecked. The new rules would tackle foreign subsidies that distort competition in the Single Market. Under the proposed regulation, the Commission would be able to investigate subsidies granted by third countries to firms active in the EU and redress – when appropriate – their distortive effects. Adopting this regulation to tackle distortive foreign subsidies will therefore close a substantial regulatory gap. The Commission is fully committed to assist the co-legislators in order to ensure a successful conclusion of the trilogue negotiations.

**Competition policy and State aid fit for the new challenges**

The Commission agrees with the European Parliament that it is important that the Digital Markets Act is implemented smoothly and rapidly (**paragraph 36**), and that it constitutes a key regulation for digital markets to inform future proposals (**paragraph 63**).

The Commission agrees that appropriate resources are provided in relation to the workload, range of tasks and expertise needed for implementation, supervision and enforcement of the Digital Markets Act and monitoring of the developments the digital economy (**paragraphs 37 and 54**). The Commission notes that substantial resources will have to be dedicated to the enforcement of the Digital Markets Act within the near future, which must be considered in the global context of a stable staffing and pressure on the administrative expenditure.

The Commission is currently engaged in an unprecedented review of the competition rules **(paragraph 40**) with several sets of revised rules already in place. The objective is to make the competition rules fit for the future in markets undergoing profound change caused by not only the digital and green transitions but also other drivers for change. Solid research, extensive analysis and careful design of new or amended rules are crucial to achieve a good end-result. The Commission has swiftly introduced new rules when necessary and adapted its rules to changing circumstances. The COVID-19 Temporary Framework and the Temporary Crisis Framework to support the economy following the aggression against Ukraine by Russia as well as the proposal for a Digital Markets Act and the proposal for a Regulation for Foreign subsidies serve as examples.

In its reply to the European Court of Auditors’ recommendation concerning the gathering and processing of market-relevant information in a consistent and cost efficient manner (**paragraph 42**), the Commission accepted the recommendation but noted that further investments in pro-active ex-officio information and processing capabilities would require making available sufficient resources.

In relation to the European Court of Auditors’ recommendation that the Commission should select cases for investigation on the basis on clearly weighted criteria by using a scoring system (**paragraph 42**), the Commission considers that its methodology for priority-setting in antitrust, including a review of a number of essential criteria, is well balanced to grant priority to those potential infringements that have a significant impact on the internal market.

The Commission takes note of the European Parliament view that there is a need to improve the reporting of the results of its enforcement activities instead of reporting on the activities themselves (**paragraph 42**).

The Commission welcomes the European Parliament’s opinion that environmentally sustainable State aid is key to meeting the EU climate, energy, and environmental protection objectives, while ensuring a just transition (**paragraph 47**).

The Commission continues its review of the State aid rules to make them fit for purpose and aligned with the climate goals of the EU. The Commission considers that its State aid initiatives are fully consistent with and support the Commission’s Digital and Green Deal objectives.

The Commission welcomes the European Parliament’s support for the new chapter in the revised Climate, Environmental Protection and Energy Aid Guidelines (CEEAG) on aid for the early closure of coal, oil shale and peat activities (**paragraph 49**).

The Commission agrees with the European Parliament that the phasing out of coal is one of the most important drivers of decarbonisation. The Climate, Environmental Protection and Energy Aid Guidelines adopted by the Commission in January 2022 will ensure a coherent, future-oriented and flexible framework to enable Member States to provide the necessary support to make the Green Deal happen. The new Climate, Environmental Protection and Energy Aid Guidelines would allow Member States to support the decarbonisation efforts of industry based on any technology that can deliver the green transition, using instruments such as carbon contracts for the supply of low-carbon hydrogen. The new Climate, Environmental Protection and Energy Aid Guidelines support the phasing out of fossil fuels. For example the Guidelines clarify that State support for projects involving the most polluting fossil fuels, is unlikely to be compatible with State aid rules. One of the main drivers for the revision of the guidelines was to widen their scope to cover new areas such as clean mobility and decarbonisation and all technologies that can deliver the Green Deal, including support for renewable energy.

The Commission notes that the European Parliament believes that mainstreaming green and digital strategies is vital to support the EU’s green and digital transitions (**paragraph 50**). The Commission notes the call of the European Parliament to monitor and apply measures to avoid lock-in effects where possible, in a way that is fully in line with the Union’s climate objectives, while safeguarding the recovery from the COVID-19 crisis, job creation in the EU and competitiveness **(paragraph 49)**.

The Commission is currently carrying out an unprecedented review of EU competition policy, covering more than 20 sets of rules. The objective of the review is making sure that EU competition policy instruments remain future proof and support the EU’s green and digital transitions, the recovery of the EU economy, the response to economic and innovation developments and strengthens the resilience of the Single Market. In this context, it has, for example reviewed the Communication[[5]](#footnote-5) on Important Projects of Common European Interest (IPCEI), Member State-led ambitious cross-border breakthrough projects that can contribute significantly to the achievement of EU strategies. The Commission highlights the importance of the revision of the State aid rules applicable to the broadband sector and to other digital sectors such as cloud and edge computing to reflect new market realities, which takes into account future and technology and innovation developments as well as the connectivity and computing needs of end-users including governments. High quality, secure and performant fixed and mobile electronic communications, capable of delivering gigabit speeds is crucial for connecting and integrating the Union and its remote regions. Allowing all users to have access to private and public electronic communications and computing services contributes to social cohesion, swifter public service delivery to citizens and businesses and supports a more competitive, innovative and sustainable economy.

**Mergers, antitrust and cartels**

The Commission notes the European Parliament’s emphasis on the review of the Market Definition Notice (**paragraph 57**) and its call for the revised Notice to reflect increased global competition and evolving market characteristics of the digital market ecosystem.

The Commission recalls that the current Market Definition Notice provides important guidance on how the Commission applies the concepts of relevant product and geographic markets in competition enforcement. The results of the evaluation of the Market Definition Notice show that the underlying principles of the Market Definition Notice, based on the case law of the EU courts, remain sound. However, they may not fully reflect recent developments in market definition practice, such as those related to digital era.

On the basis of the findings of the evaluation, the Commission has decided to review the Market Definition Notice and will consult stakeholders on the draft of the revised Market Definition Notice in 2022. The revision will reflect new ways of offering goods and services, as well as the increasingly interconnected and globalised nature of commercial exchanges.

The Commission takes note of the European Parliament’s support for a substantial review of the current regime on vertical agreements (**paragraph 69**) and the need to adapt the Vertical Block Exception Regulation (VBER)[[6]](#footnote-6) and related Vertical Guidelines[[7]](#footnote-7) to recent market developments, notably the growth of online sales and online platforms (**paragraph 74**).

With regard to the concentration in the EC agricultural and food supply chain evoked by the European Parliament (**paragraph 73**), the Commission supports cooperation among farmers in producer organisations that help them become more efficient, innovative and competitive and strengthens farmers’ collective bargaining power. Producer organisations help farmers to reduce transaction costs and collaborate when processing and marketing their products, such as by joint sales, improving marketing, providing technical and logistical assistance to their members, helping with quality management and transferring knowledge. In particular, Article 152 of Regulation (EU) No 1308/2013 (CMO Regulation) provides for a derogation from the competition rules for recognised producer organisations and recognised associations of producer organisation if they fulfil certain conditions, e.g. for production planning and negotiating contracts for the supply of agricultural products. On 13 May 2020, the Commission published a report[[8]](#footnote-8) that explains the activities of retail alliances, the potential benefits for suppliers and consumers and the legal framework that may apply.

The Commission recalls that vertical agreements, such as those between suppliers of goods or services and their distributors, are common across all sectors of the EU economy. On 10 May 2022 the Commission adopted the new Vertical Block Exemption Regulation accompanied by the new Vertical Guidelines, following a thorough evaluation and review of the 2010 rules. The revised rules provide businesses with simpler, clearer and up-to-date rules and guidance. The new rules will help businesses to assess the compatibility of their supply and distribution agreements with EU competition rules in a business environment reshaped by the growth of e-commerce and online sales. In particular, the new rules narrow the scope of the safe harbour as regards dual distribution and parity obligations.

The revised Vertical Block Exception Regulation rules enlarge the scope of the safe harbour as regards certain restrictions of a buyer's ability to actively approach individual customers and certain practices relating to online sales. Finally, the revised Vertical Block Exception Regulation rules have also been clarified and simplified, to make them more accessible to those who use them in their day-to-day business.

The Vertical Guidelines have been updated as regards the assessment of online restrictions, vertical agreements in the platform economy and agreements that pursue sustainability objectives, among other areas. In addition, the guidelines provide detailed guidance on a number of topics, such as selective and exclusive distribution and agency agreements. The revised Vertical Block Exception Regulation and Vertical Guidelines entered into force on 1 June 2022.

The Commission notes that the European Parliament calls for involvement as an observer in the activity of working parties and expert groups, such as the International Competition Network (ICN) and the Organisation for Economic Cooperation and Development (OECD), in order to gain more knowledge in the field and remain up to date on developments to be prepared for its role as co-legislator (**paragraph 82**). The Commission recalls that competition-related discussions in the ICN and OECD are intended to take place at the technical level between competition authorities, and therefore the participation of legislators would not be appropriate. To ensure transparency to the European Parliament, the Commission reports regularly about these ongoing discussions.

The Commission acknowledges the seriousness of the situation in Europe and the importance of monitoring the situation in sectors most severely affected by the Russia’s ongoing invasion of Ukraine and those negatively affected by the sanctions imposed on Russia (**paragraph 84**).

To reduce the negative social and economic impact on the EU caused by Russia’s invasion of Ukraine, the Commission will use the flexibility of the State-aid policy toolbox. It will allow Member States to minimise the negative economic effects without distorting competition in the EU more than strictly necessary. In response to the economic disturbance created by Russia’s invasion of Ukraine the Commission adopted on 23 March 2022 a new Temporary Crisis Framework (TCF). The TCF complements the existing State aid toolbox with many other possibilities already available to Member States, such as measures providing compensation to companies for damages directly suffered due to exceptional circumstances. The new framework enables Member States to grant limited amounts of aid to companies affected by the current crisis or by the related sanctions and countersanctions; ensure that sufficient liquidity remains available to businesses; and compensate companies for the additional costs incurred due to exceptionally high energy prices. The Temporary Crisis Framework will help target support to the economy, while limiting negative consequences to the level playing field in the Single Market. The Temporary Crisis Framework therefore includes a number of safeguards such as a proportionality assessment and eligibility conditions. Member States are also invited to consider, in a non-discriminatory way, setting up requirements related to environmental protection or security of supply when granting aid for additional costs due to exceptionally high gas and electricity prices.

The Temporary Crisis Framework will be in place until 31 December 2022. With a view to ensuring legal certainty, the Commission will assess before that date if it needs to be extended. Moreover, during its period of application, the Commission is keeping the content and scope of the Temporary Crisis Framework under review in the light of developments regarding the energy markets, other input markets and the general economic situation. To that effect, on 31 May the Commission launched a Member State survey to assess whether the Framework would need to be adapted in the light of developments.

1. European Court of Auditors Special Report No 24/2020, The Commission’s EU merger control and antitrust proceedings: a need to scale up market oversight, 19 November 2020 [↑](#footnote-ref-1)
2. OJ L 352, 24.12.2013, p. 1 [↑](#footnote-ref-2)
3. Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1 [↑](#footnote-ref-3)
4. OJ C 130, 19.5.2010, p. 1 [↑](#footnote-ref-4)
5. **Communication** from the Commission - Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest - OJ C 528, 30.12.2021 [↑](#footnote-ref-5)
6. Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102, 23.4.2010, p. 1 [↑](#footnote-ref-6)
7. OJ C 130, 19.5.2010, p. 1 [↑](#footnote-ref-7)
8. [https://ec.europa.eu/info/news/retail-alliances-agri-food-supply-chain-explained-and-their-potential-benefits- consumers-and-suppliers-assessed-2020-may-13\_en](https://ec.europa.eu/info/news/retail-alliances-agri-food-supply-chain-explained-and-their-potential-benefits-consumers-and-suppliers-assessed-2020-may-13_en)) [↑](#footnote-ref-8)