**Follow-up to the European Parliament non-legislative resolution on competition policy – annual report 2023**

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**2. Reference numbers:** 2023/2077 (INI) / A9-0427/2023 / P9\_TA(2024)0011

**3. Date of adoption of the resolution:** 16 January 2024

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

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

The European Parliament resolution concerns the Commission’s Annual Report on Competition Policy 2022 (COM(2023) 184) and its accompanying Staff Working Document (SWD(2023) 76), adopted on 4 April 2023. These documents together are referred to as the Annual Competition Report 2022 (ACR 2022). The ACR 2022 presents how the Commission implemented its competition policy in 2022, how it contributes to the EU economy and how it is improving the welfare of EU citizens.

Below, the Commission highlights some of the key paragraphs in the resolution. In section 6, the Commission provides brief comments on each of these paragraphs.

The European Parliament takes note of the Temporary Crisis and Transition Framework (TCTF), as well as of the update of the State aid rulebook that allows investments for the green and digital transitions; takes note of the 2023 adoption and inclusion of the ‘matching clause’; calls on the Commission to carefully avoid creating the conditions for a subsidy race and to use the tools at its disposal to prevent and counteract unfair subsidy competition; stresses that any additional state support must be targeted and temporary in nature [...] (**paragraph 2**).

The European Parliament recalls that a fragmented approach to State aid has the potential to create an uneven playing field within the EU internal market as not all Member States have the same fiscal space to provide support; calls, therefore, for the monitoring of potential distortive effects and for any flexibility of the public support to be applied solely to support provided at EU level (**paragraph 5**).

The Parliament calls on the Commission to look into how inflation impacts competition by creating incentives for companies to cooperate with competitors to coordinate prices, as well as its consequences for markets and consumers’ welfare; [...]; calls on the Commission to closely monitor, along with the national competition authorities, the consequences of anticompetitive conduct and its role in inflation developments [...] (**paragraph 6**).

The European Parliament underlines the importance of the Important Projects of Common European Interest (IPCEIs) for financing large transnational projects and achieving the EU’s strategic priorities; takes note of the specific criteria for IPCEIs for the analysis of the compatibility with the internal market of State aid; deplores that the lengthy and complex procedures required are often too burdensome for small and medium-sized enterprises (SMEs); it calls on the Commission and the Member States to ensure that any notification is completed within six months at the latest; stresses that IPCEIs should have genuine European added value (**paragraph 8**).

The Parliament underlines the key role of the European Competition Network (ECN) as a forum to foster collaboration and cooperation among European competition authorities; [...] welcomes the relevant role of national competent authorities (NCAs) in enforcing the Digital Markets Act (DMA) rules and the national legislative initiatives that are being put in place to tackle the anticompetitive behaviour of large online platforms in digital sectors; stresses, in this regard, the importance of coordinated and homogeneous action that does not undermine the application of the DMA, on the one hand, and national competition rules in the digital sector, on the other hand, as provided for in Article 1(6) DMA (**paragraph 17**).

The European Parliament welcomes the Commission’s initiative to review its notice on the definition of ‘relevant market’ and looks forward to the outcomes of the public consultation; underlines the need to adopt a more dynamic approach that goes beyond the traditional approach, especially for new emerging markets such as in the digital sector, and takes into account a longer-term vision encompassing the global dimension and potential future competition; deplores the fact that, in the past, the Commission sometimes took too narrow a perspective on the relevant market, thus depriving European companies of the opportunity to effectively compete in a globalised arena; supports the Commission in taking into greater account the potential harm to competition when assessing mergers in which expansion into adjacent markets would have the effect of further strengthening market dominance in the acquiring company’s core market (**paragraph 24**).

The European Parliament [...] stresses the need for the effective coexistence of the *ex-post* enforcement of competition law and the *ex-ante* enforcement of the DMA, given their complementary nature; stresses the need to deploy sufficient staffing resources and synergies for an effective implementation of the rules, and to avoid overlaps or duplications of existing structures and measures (**paragraph 44**).

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

**On paragraphs 2 and 5**: By regularly sending surveys to Member States, the Commission seeks information on the implementation on measures approved under the Temporary Frameworks or directly under the Treaty based on their principles. The Commission refers to the Competition State Aid Brief (2022 and 2023 editions). In addition, the Commission has done a comprehensive overview and analysis of State aid granted under the Temporary Crisis Framework and the Temporary Crisis and Transition Framework and its impact on competition in the Single Market and on EU competitiveness in the Annual Competition Report 2023. The Commission notes the concerns raised that the Temporary Crisis and Transition Framework may possibly distort competition in the Single Market because Member States have diverging financialcapacity to subsidise companies negatively affected by Russia’s war of aggression against Ukraine. However, the Commission only approves measures after careful analysis and when they are considered necessary, appropriate, and proportionate in order to limit competition distortions and maintain the level playing field.

**On paragraph 6**: The Commission agrees that an effective competition policy is important during times of high inflation. An effective enforcement of the competition rules makes it harder for companies to implement unjustified price increases resulting in disproportionate profit margins. Effective competition fosters an environment where companies operate efficiently, innovate, and offer competitive prices to attract and retain consumers. This helps to keep prices in balance and benefits consumers by providing them with choices and reasonable pricing options. Conversely, companies active in markets with inadequate competitive pressure, particularly those exhibiting oligopolistic or non-well-functioning characteristics, may engage in collusion even amidst market conditions characterised by low inflation or even deflation.

**On paragraph 8**: Important Projects of Common European Interest (IPCEI) must aim to contribute to the achievement of EU objectives, for example the green and digital transitions. IPCEIs are, by nature, large, complex projects requiring extensive coordination at the design and implementation phases and involving very large amounts of aid from scarce taxpayer money. The Commission assesses them as a matter of priority. It also has assigned additional resources for the assessment of IPCEIs and set up the Joint European Forum for Important Projects of Common European Interest (JEF-IPCEI) which brings the Commission and the Member States together to identify, design, assess and implement IPCEI.

However, it must be first noted that for a proper assessment of an IPCEI, the Commission requires a complete notification, i.e. a complete set of information. The Commission has devised a comprehensive template for the provision of information for an IPCEI project, and reproduced its experience in a best practice code. Notwithstanding this, the provision of the required information remains a matter for the Member State only. Given that this exercise is out of the Commission’s control, the Commission does not consider that introducing a six-month time limit for ensuring that any notification of an IPCEI is completed would be appropriate.

Second, in order to alleviate the burden of providing information for SME, the IPCEI rules allow for a more flexible approach for SMEs. For example, SMEs are not required to contribute with significant own funds or to justify why they need aid for their projects and normally no claw-back for higher profitability applies to SME projects. The average SME participation rate in IPCEIs so far has reached 17%.

In addition to regionally anchoring IPCEI – for instance by requiring that they involve at least four Member States -, the 2021 IPCEI Communication mentions as a positive indicator the involvement of undertakings of different sizes and, in particular, cooperation between large enterprises and SMEs, including start-ups, in different Member States and supports the development of more disadvantaged regions.

Third, all IPCEIs approved by DG COMP had genuine European added value. The State aid guidance published under the IPCEI Communication considers it as an eligibility requirement for all integrated IPCEI that they “significantly add value in their contribution toward the achievement of the European objectives” (paragraph 13 of the Communication).

**On paragraphs 17 and 44**: The Commission would like to highlight the nature of the Digital Markets Act. It is an internal market instrument and not a competition tool as such. However, as many of the obligations mandated by the DMA have been inspired by, or have a close relationship with, competition enforcement, it provides for a mechanism for close cooperation between the Commission as the sole enforcer of the DMA, and the National Competition Authorities (NCAs) in the enforcement of the DMA.

Article 38 of the DMA stipulates that the Commission and the NCAs will cooperate with and inform each other and inform each other about their respective enforcement actions through the European Competition Network. When an NCA based on its national laws referred to in Article 1(6) DMA intends to launch an investigation of a gatekeeper designated under the DMA, it shall inform the Commission of its first formal investigative measure. When an NCA based on its national law within the meaning of Article 1(6) of the DMA intends to impose obligations on designated gatekeepers, it will communicate the draft measures to the Commission at least 30 days before adoption. The Commission may ask the NCAs to support its market investigations under the DMA. The NCAs may on their own initiative investigate possible non-compliance by designated gatekeepers within their territories. The practical terms for the cooperation under Article 38 of the DMA are currently being determined.

As stated in the DMA (for instance, Recitals 10 and 11 and Article 1(6)), competition rules and the DMA are complementary and the enforcement of the DMA is without prejudice to the application of competition law in cases involving firms that have been designated as gatekeepers under the DMA. Even if the Commission’s case practice shows that competition rules are, in some cases, flexible enough to deal with the specific features of digital markets, for example strong network effects, data, zero-pricing, and market tipping, the DMA aims to correct ex ante certain dysfunctions in digital markets.

In this context, it has to be recalled that the Commission, respecting the principles underpinning the current Multiannual Financial Framework (MFF), currently operates under a stable staffing principle. Any increases of the workload will need to be addressed by potential reallocation and redeployment within the services of the Commission.

**On paragraph 41**: The Commission notes the high levels of concentration in cloud computing in Europe where three companies have a combined market share exceeding two-thirds. The Commission shed light on these concentration levels in its 2020 *European Industrial Strategy*. Several National Competition Authorities (NCAs) subsequently conducted their own national cloud market studies. On 27 July 2023, the Commission opened proceedings against Microsoft to investigate if it anti-competitively ties Teams (which is a cloud service) with its dominant productivity software. Such conduct could limit the opportunities for cloud customers to use multiple types of software from different providers. This investigation is ongoing. The Commission is also investigating complaints by mainly European cloud providers that Microsoft leverages its popular products such as Office and Windows to the benefit of Azure and other cloud-based products.

**On paragraph 24**: The Commission is currently engaged in an extensive review of the competition rules, covering all competition tools: antitrust, merger control and State aid control. As part of this review, the Commission has reviewed more than 20 sets of competition rules and guidelines, including the Notice on the definition of the relevant market. All revisions of the competition rules are done according to the Better Regulation rules, after carefully considering relevant aspects, including the regional dimension and the effects on SMEs.

The Commission welcomes the European Parliament’s support for the adoption of the Commission notice on the definition of the relevant market. The Commission notes the European Parliament’s call for a more dynamic approach taking into account in its competitive assessments a longer-term vision and a global dimension.

In February 2024, the Commission adopted a revised Market Definition Notice. The review of the Notice is central to the Commission’s ambition to ensure transparency and predictability in its competition law enforcement. The revised Notice brings the Commission’s guidance in line with new market realities, as well as with developments in the Commission’s case practice and EU case law. It will enhance transparency and legal certainty for businesses, facilitate compliance and contribute to a more efficient competition enforcement. The revised Market Definition Notice offers expanded and up-to-date guidance on the Commission’s approach to market definition. It adapts the definition of markets in antitrust and merger cases to modern circumstances, including principles, methodology, case law and best practices. Some key elements of the revised notice include:

* a recognition of the importance of non-price parameters for market definition, including innovation, quality, reliable supply and sustainability;
* specific guidance on the application of market definition concepts in specific circumstances, such as innovation-intensive industries and digital markets, for instance with respect to multi-sided markets and digital “ecosystems”;
* clarifications on dynamic and forward-looking assessments in markets undergoing structural transitions;
* expanded guidance on geographic market definition focusing on factors that can justify defining markets as global, EEA (European Economic Area)-wide, national, or local, and on the role of imports when defining the relevant geographic market.