

Suggested amendments for the European Parliament Report on Competition Policy – Annual Report 2023

Introduction

With the implementation of the Foreign Subsidies Regulation (FSR) and the Digital Markets Act (DMA), companies and transactions are under more competition scrutiny than ever before. Although the European Commission has taken steps to use constructive engagement with industry to clarify legal uncertainties that complicate investment, significant risk remains as companies struggle to understand how either tool will be used and how they will interact with other competition rules at the EU and Member State level. This risk adds significant barriers to investment in the European Union.

In 2024, the European Commission must prioritise the focused and efficient implementation of these new competition tools, along with the alignment of these new rules with existing ones at the EU and Member State levels. The DMA and FSR must be unambiguous and aligned across the EU to minimise compliance risks affiliated with unclear relationships between rules, divergent timelines and processes, and authorities. In the case of FSR and more broadly, this can be accomplished through the publication of guidelines, but also through an informed revision of Reg. 1/2003, the EU Merger Regulation, and the FDI Screening Framework.

Finally, constructive engagement with industry is necessary for the workability of these rules and for the attractiveness of Europe as a business and investment destination. We encourage the European Parliament to amend the report to contribute to a healthy relationship between competition enforcers, policy makers and industry by removing one-sided recommendations and focusing more on the fine-tuning and alignment of competition rules, procedures and institutions.

Suggested Amendments

ECON Draft Report	Suggested Amendment
6. Welcomes the Commission’s announcement that it will launch an anti-subsidy investigation into Chinese electric vehicles; underlines the importance of the effective implementation of Regulation (EU) 2022/2560 on foreign subsidies in order to ensure the mitigation of potentially distortive effects on the single market; draws attention to the lack of resources with only five FTE within the Commission;	6. Welcomes the Commission’s announcement that it will launch an anti-subsidy investigation into Chinese electric vehicles; underlines the importance of the effective <i>and proportionate</i> implementation of Regulation (EU) 2022/2560 on foreign subsidies in order to ensure the mitigation of potentially distortive effects

	on the single market; draws attention to the lack of resources with only five FTE within the Commission;
Comment: We support the European Parliament's emphasis of the lack of FTEs within the Commission working on the Foreign Subsidies Regulation. Adequate staffing is necessary to the effective enforcement of the Foreign Subsidies Regulation. Moreover, the effective implementation of the Regulation will require a proportionate approach on the part of the Commission's services.	
9. Underlines the importance of the Commission taking decisive action, under Article 22 of the EC Merger Regulation, against 'killer acquisitions' that must be reported under the Digital Markets Act;	9. Underlines the importance of the Commission taking decisive action, under Article 22 of the EC Merger Regulation, against 'killer acquisitions' that must be reported under the Digital Markets Act;
Justification: The competence to request a referral of a notified transaction pursuant to article 22 of the EC Merger Regulation remains with the Member States, and not with the European Commission.	
<p>The EU institutions should consider refraining using combative language such as 'killer acquisitions' and remain within the framework of the cited legislation. Absent evidence to the contrary, the vast majority of M&A transactions, including those in the technology sector, are pro-competitive: they enable investment, growth and employment in Europe in a sector of significant importance for the European economy.</p> <p>The presumption that a merger may have anti-competitive effects does not contribute constructively to the effectiveness of the development and enforcement of competition policy, or to the attractiveness of Europe as an investment destination.</p>	
12. Calls on the Commission to speed up antitrust procedures and introduce a time limit for antitrust cases in order to ensure the effectiveness of EU rules; underlines that Spotify filed a complaint against Apple in 2019 and that, in spite of the Commission having issued a statement of objections, no concrete actions have been taken thus far to address Apple's restrictions, preventing app developers from freely communicating with their own users;	12. Calls on the Commission to speed up antitrust procedures and introduce a time limit for antitrust cases in order to ensure the effectiveness of EU rules; underlines that Spotify filed a complaint against Apple in 2019 and that, in spite of the Commission having issued a statement of objections, no concrete actions have been taken thus far to address Apple's restrictions, preventing app developers from freely communicating with their own users;
13. Welcomes the opening of a formal investigation into possible anti-competitive practices by Microsoft regarding Teams; calls on the Commission to carefully assess the concessions, unilaterally offered by Microsoft, with the undertakings involved, in order to ensure that they address the concerns of existing consumers, as well as interoperability and pricing issues;	13. Welcomes the opening of a formal investigation into possible anti-competitive practices by Microsoft regarding Teams; calls on the Commission to carefully assess the concessions, unilaterally offered by Microsoft, with the undertakings involved, in order to ensure that they address the concerns of existing consumers, as well as interoperability and pricing issues;
[...]	[...]

16. Welcomes the market investigation into Apple's iMessage in order to assess its role as a gateway; highlights the inclusion by default of iMessage on all iOS devices for more than 144 million users; stresses the importance of smartphones as an essential personal and professional tool; highlights that today's market is dominated by two operating systems, with their own non-interoperable messaging services, which limits the possibility for users and businesses to freely move from one ecosystem to the other;

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Justification: We suggest the European Parliament refrain from commenting on specific cases and instead encourage the European Commission use constructive engagement with industry, along with procedural changes, to improve the effectiveness of enforcing competition law and other laws like the DMA.

Positive engagement with industry is necessary to ensure the successful implementation of new competition tools (like the FSR and DMA) and effective revision of existing tools (like the EUMR, Reg. 1/2003, and the FDI Screening Framework). Open dialogue between the European Commission and industry reduces the regulatory risk inherent to new regulations, encouraging investment and growth, and ensures that that new enforcement tools target only the most harmful behaviours.

Including specific references to ongoing cases in parliamentary reports undermines the independence of the EU's competition law enforcement system and risks damaging the trust necessary to ensuring that competition policy is effective.

New 16a.

16a. Calls on the European Commission to provide guidance on the application of competition law under Reg. 1/2003 and Reg. 773/2004 in fast evolving markets and in the digital sector, especially in parallel to the Digital Markets Act (DMA); encourages the Commission to pre-empt challenges stemming from the parallel enforcement of the DMA through appropriate guidance or a systematic use of existing tools such as comfort letters and non-infringement decisions by the Commission.

Justification: The competition law procedural framework in Reg. 1/2003 and Reg. 773/2004 needs to be adapted to global developments such as digitisation. Even though the DMA states in Recital 10 that it aims to protect 'different legal interests than those [of competition law] rules and should be without prejudice to their application', challenges will likely arise in relation to the parallel enforcement of the DMA – which provides for special procedures – and the general competition law procedural framework of the Regulations. Such challenges should be resolved early on through appropriate guidance or a systematic use of existing tools, such as comfort letters and non-infringement decisions by the Commission. Similar clarifications will likely be required regarding the relationship between the DMA and

regulatory initiatives at EU Member State level (eg the 2021 amendment to the German competition code or recent changes in Italy regarding economic dependence in case of online platforms).