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*Plenary sitting*

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**A9-0427/2023**

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# REPORT

on competition policy – annual report 2023  
(2023/2077(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Stéphanie Yon-Courtin

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on competition policy – annual report 2023 (2023/2077(INI))

*The European Parliament,*

- having regard to the Treaty on the Functioning of the European Union, in particular to Articles 101 to 109 thereof,
- having regard to the relevant Commission rules, guidelines, resolutions, public consultations, communications and papers on the subject of competition,
- having regard to the Commission report of 4 April 2023 entitled ‘Report on Competition Policy 2022’ (COM(2023)0184) and to the accompanying Commission staff working document (SWD(2023)0076),
- having regard to its resolution of 13 June 2023 on competition policy – annual report 2022<sup>1</sup>,
- having regard to the Commission communication of 11 December 2019 entitled ‘The European Green Deal’ (COM(2019)0640),
- having regard to the Commission’s revised guidelines on State aid to promote risk finance investments, published on 6 December 2021,
- having regard to the judgment of the Court of Justice of the European Union (CJEU) of 13 July 2022 in Case T-227/21<sup>2</sup>,
- having regard to the Commission communication of 24 March 2022 entitled ‘Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia’<sup>3</sup>,
- having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)<sup>4</sup>,
- having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)<sup>5</sup>,
- having regard to Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to

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<sup>1</sup> Texts adopted, P9\_TA(2023)0227.

<sup>2</sup> Judgment of the General Court of 13 July 2022, *Ilumina, Inc. v European Commission*, T-227/21, ECLI:EU:T:2022:447.

<sup>3</sup> OJ C 131 I, 24.3.2022, p. 1.

<sup>4</sup> OJ L 24, 29.1.2004, p. 1.

<sup>5</sup> OJ L 265, 12.10.2022, p. 1.

be more effective enforcers and to ensure the proper functioning of the internal market<sup>6</sup>,

- having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>7</sup>,
- having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty<sup>8</sup>,
- having regard to the Commission communication of 18 February 2022 entitled ‘Guidelines on State aid for climate, environmental protection and energy 2022’<sup>9</sup>,
- having regard to the Commission communication of 31 January 2023 entitled ‘Guidelines on State aid for broadband networks’<sup>10</sup>,
- having regard to the draft Commission notice on the definition of the relevant market for the purposes of Union competition law,
- having regard to the Commission staff working document of 1 December 2022 entitled ‘Evaluation of the State subsidy rules for health and social services of general economic interest (‘SGEIs’) and of the SGEI de minimis Regulation’ (SWD(2022)0388),
- having regard to the entry into force on 1 September 2023 of the package of measures adopted on 20 April 2023, designed to simplify and streamline the procedures for reviewing certain mergers that do not raise competition concerns (C(2023)2400, C(2023)2401, C(2023)2402),
- having regard to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market<sup>11</sup>,
- having regard to the 2023 State of the Union Address by the President of the European Commission Ursula von der Leyen<sup>12</sup>,
- having regard to the Commission’s decision of 6 September 2023 on the designation of gatekeepers under the Digital Markets Act (DMA),
- having regard to Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004<sup>13</sup>,
- having regard to the joint European Declaration on Digital Rights and Principles for the Digital Decade of 23 January 2023 by the European Parliament, the Council and the

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<sup>6</sup> OJ L 11, 14.1.2019, p. 3.

<sup>7</sup> OJ L 1, 4.1.2003, p. 1.

<sup>8</sup> OJ L 123, 27.4.2004, p. 18.

<sup>9</sup> OJ C 80, 18.2.2022, p. 1.

<sup>10</sup> OJ C 36, 31.1.2023, p. 1.

<sup>11</sup> OJ L 330, 23.12.2022, p. 1.

<sup>12</sup> European Commission, ‘[State of the Union address](#)’, 13 September 2023.

<sup>13</sup> OJ L 119, 5.5.2023, p. 22.

European Commission<sup>14</sup>,

- having regard to the judgment of the CJEU of 4 July 2023 in Case C-252/21<sup>15</sup>,
  - having regard to the document entitled ‘DG COMP Code of good practices for a transparent, inclusive, faster design and assessment of IPCEIs’ of 17 May 2023<sup>16</sup>,
  - having regard to the report of the European Securities and Markets Authority (ESMA), entitled ‘Report on CRA Market Share Calculation’ of 15 December 2022,
  - having regard to the Commission notice of 27 April 2004 on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters)<sup>17</sup>,
  - having regard to the Commission communication of 21 July 2023 entitled ‘Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements’<sup>18</sup>,
  - having regard to the Commission decision of 25 September 2023 prohibiting the proposed acquisition of Flugo Group Holdings AB (‘eTraveli’) by Booking Holdings (‘Booking’),
  - having regard to the opinion of the European Economic and Social Committee<sup>19</sup>,
  - having regard to Rule 54 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0427/2023),
- A. whereas EU competition policy plays an important role in setting fair conditions for doing business in the single market in order to protect markets against concentrations and the undue accumulation of market power and to encourage innovation and growth for the companies – especially small and medium-sized enterprises (SMEs) – within the single market and, consequently, advancing consumer welfare and providing greater choice for consumers and businesses;
- B. whereas a fruitful interplay between competition policy and other sectoral policies is necessary; whereas competition policy could contribute to bolstering the resilience, integrity and competitiveness of the internal market, as well as achieving the goals of the European Green Deal and the Digital Compass and the EU’s objectives as enshrined in Article 3 of the Treaty on European Union (TEU);
- C. whereas international exchange and cooperation are essential to achieving a global and competitive level playing field and tackling the challenges of the twin digital and green

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<sup>14</sup> OJ C 23, 23.1.2023, p. 1.

<sup>15</sup> Judgment of the Court (Grand Chamber) of 4 July 2023, *Meta Platforms Inc and Others v Bundeskartellamt*, C-252/21, ECLI:EU:C:2023:537.

<sup>16</sup> [DG COMP Code of good practices for a transparent, inclusive, faster design and assessment of IPCEIs](#).

<sup>17</sup> OJ C 101, 27.4.2004, p. 78.

<sup>18</sup> OJ C 259, 21.7.2023, p. 1.

<sup>19</sup> European Economic and Social Committee, ‘[Report on Competition Policy 2022](#)’, 25 October 2023.

transitions in a coordinated manner;

- D. whereas the global geopolitical circumstances also require responsible, competitive solutions in the field of competition policy; whereas the EU should use all the political and legislative tools at its disposal to defend the integrity, resilience and competitiveness of its internal market in view of the challenges posed by the increasing number of conflicts around the world, trade tensions among competing countries, the climate change crisis and the pressure of inflation and low levels of economic growth; whereas there is a need to reduce the EU's harmful dependencies on non-EU countries and global powers in areas such as energy, medicines, technology or raw materials;
- E. whereas the Commission and national competition authorities need to act in an impartial and objective way in order to preserve the credibility of the EU's competition policy;
- F. whereas the global strength and importance of the EU single market derives from its internal competitiveness and equalised level playing field;

***The role of competition and the policy response to the war in Ukraine, the US Inflation Reduction Act and the continuing challenges resulting from the COVID-19 pandemic***

1. Calls on the Commission to safeguard the integrity of the single market; recalls that the response to the US Inflation Reduction Act must not be solely based on the use of State aid, but also on creating a more favourable environment for doing business and a renewed competition framework, providing speed and flexibility for companies investing and competing fairly in Europe, while complying with the EU's climate goals;
2. 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; upholds that State aid should be consistent with EU policy objectives such as the Green Deal and the European Pillar of Social Rights; calls on the Commission to investigate the lack of harmonisation of clawback mechanisms in the Member States;
3. Calls on the Commission to ensure that all temporary State aid instruments are sufficiently targeted to avoid fragmentation of the single market;
4. Stresses that additional public and private investment will be needed to face new challenges; underlines that the EU budget needs to be properly equipped to address the challenges of the future, including the fragmentation of the internal market, supporting the EU's industrial strategy, reducing our critical dependencies and ensuring our open strategic autonomy; highlights that these challenges cannot be addressed by public spending alone;
5. 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;

6. Calls on the Commission to look into how inflation impacts competition by creating incentives for companies to cooperate with competitors to coordinate prices<sup>20</sup>, as well as its consequences for markets and consumers' welfare; highlights the need to improve the data on profits in order to efficiently address potential consequences, as research by the European Central Bank and the International Monetary Fund suggests that corporate profits have been important temporary drivers of inflation; calls on the Commission to closely monitor, along with the national competition authorities, the consequences of anticompetitive conduct and its role in inflation developments; reiterates that the Commission must make use of all the available tools under competition law to tackle the cost-of-living crisis;
7. Welcomes competition authorities' initiatives across several Member States<sup>21</sup> to introduce new market investigation powers as long as they do not lead to the fragmentation of the internal market; calls on the Commission to introduce a similar market investigation tool to avoid enforcement gaps where the practices occur across national borders within the EU and to adopt sector-wide remedies when necessary to effectively address anticompetitive behaviours; recalls the Commission's initiative for a 'New Competition Tool', which aimed to address gaps between EU competition rules and intervention tools against structural competition problems across markets; notes that, with the new competition tool, the Commission would be able to investigate competition issues across entire sectors; calls on the Commission to reassess the 'New Competition Tool';
8. 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 SMEs; calls on the Commission and Member States ensure that any notification is completed within six months at the latest; stresses that IPCEIs should have genuine European added value;
9. Calls on the Commission to assess how EU competition principles have affected the supply of services of general economic interest (SGEI), also in the light of the COVID-19 crisis and increased costs of living; calls on the Commission to assess the position of social services of general interest and an SGEI exemption for affordable housing;
10. Welcomes the Commission's 'Guidelines on the application of EU competition law to collective agreements', clarifying that EU competition law does not prevent solo self-employed workers from engaging in collective bargaining; recalls that self-employed workers often have limited or no access to collective bargaining, which may lead to precarious working conditions;
11. Recalls the integral connection between competition policy and the internal market, which is clear from the text itself of Articles 101 and 102 TFEU governing EU competition policy; welcomes the fact that the Commission, in both its legislative and policy work, has recognised the need to integrate competition policy with the internal market objectives which frame it;

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<sup>20</sup> OECD, '[Competition and Inflation: OECD Competition Policy Roundtable Background Note](#)', 2022.

<sup>21</sup> Greece, Germany.

12. Points out the need to effectively address market distortions and market failures, and to enhance competition by removing existing unjustified regulatory barriers and reducing unnecessary administrative burdens to facilitate entry for new competitors;
13. Stresses the relevance of the CJEU's judgments in cases C-555/21 (UniCredit Bank Austria) and C-383/18 (Lexitor sp. z o.o.) for ensuring a level playing field in the consumer credit market and avoiding its competitive distortion;

### ***Competition policy enforcement and global trends***

14. Welcomes the Commission's announcement that it will launch an anti-subsidy investigation into Chinese electric vehicles under Regulation EU 2016/1037 on protection against subsidised imports from countries not members of the European Union<sup>22</sup>; underlines the importance of the effective implementation of EU instruments on foreign subsidies, including 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 eight full-time equivalents (FTEs) within the Commission;
15. Calls on the Commission to modernise public procurement rules in order to deal with new priorities and operational challenges, with a view to helping foster greener industry and European standards;
16. Stresses that EU competition rules should contribute to the EU's objective as defined in Article 3 TEU; stresses that the 'fair price' of products is not the lowest price possible for the consumer, but a price that allows for the fair remuneration of all parties along the supply chain, while not resulting in negative externalities; underlines that enforcing competition policy to the benefit of consumers should not only include considerations on price levels, but also sustainability considerations and impacts on citizens' privacy;
17. Underlines the key role of the European Competition Network (ECN) as a forum to foster collaboration and cooperation among European competition authorities; calls on the Commission to strive for continued constructive dialogue and cooperation at international level; underlines the need to increase collaboration between antitrust and other sectoral regulators, such as those dealing with data privacy, to both supervise corporate data misuse and prevent companies from using consumer data to gain an unfair competitive advantage; welcomes the relevant role of national competent authorities (NCAs) in enforcing the 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;
18. Points out that in a globalised world, international cooperation is crucial to ensure effective competition enforcement; stresses that dedicated cooperation agreements with non-EU countries in the area of competition policy can meaningfully contribute to its effectiveness; calls on the Commission to develop the influence of competition policy in

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<sup>22</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, OJ L 176, 30.6.2016, p. 55.



the world, in particular by stepping up cooperation with non-EU countries via second generation cooperation agreements that allow for a more effective exchange of information between competition authorities;

19. Calls on the Commission to make greater use of additional evidential tools such as behavioural insights and financial analytics, as well as greater use of data, computer and AI scientists, and behavioural economists in competition law enforcement;
20. Notes the continued high degree of market concentration for credit rating agencies given that the three largest credit rating agencies hold a market share of over 90 %<sup>23</sup>; reiterates the need to enhance competition in this market so as to ensure impartiality and trust;
21. Regrets the decision of Ernst & Young to stop the separation process of its audit and advisory businesses; notes that the combination of audit and advisory businesses can lead to conflicts of interest and can enhance the market dominance of each of the Big Four firms; calls on the Commission to investigate the audit and advisory business combination and to possibly present measures to prevent conflicts of interest and market dominance;

### ***Merger control***

22. Notes that the buying out of start-ups by dominant players might dry up innovation and, eventually, competition; underlines the importance of the Commission paying close attention to the phenomenon of ‘killer acquisitions’ in the digital sector that must be reported under the DMA, and taking decisive action under Article 22 of the EC Merger Regulation where appropriate;
23. Welcomes the Commission’s recent decisions on merger cases<sup>24</sup>; underlines the importance of structural remedies in merger decisions; notes that the largest and most influential online platforms affect the daily operations of tens of thousands of SMEs; stresses that an acquisition cannot lead to the strengthening of the dominant position of a company in the hotel market by allowing it to cross-sell its various services;
24. 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;
25. Is concerned by the far reaching concentration in certain parts of the food supply chain,

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<sup>23</sup> European Securities and Markets Authority, ‘[Report on CRA Market Share Calculation](#)’, 15 December 2022.

<sup>24</sup> European Commission, ‘[Booking Holdings/Etraveli Group](#)’, decision date 25 September 2023.

to the detriment of consumers, farmers, the environment and biodiversity alike;

26. Recalls that, under the EC Merger Regulation, Member States can take appropriate measures to protect matters of public interest, such as climate protection, sustainability and the rule of law and asks for the Commission to be given the same possibility when examining the impact of concentration on the internal market;

### ***Antitrust and cartels***

27. Calls on the Commission to make better use of the instrument of interim measures to stop any practice which would seriously harm competition, particularly in relation to dynamic and rapidly developing markets such as digital markets;
28. Welcomes the new approach in the latest antitrust cases where the Commission, for the first time, and, under certain conditions, provides for the imposition of structural remedies to stop anticompetitive conduct, especially when the anticompetitive practice in question has been reiterated in other market segments by the same company over the years; encourages the Commission, in this regard, to continue in this direction for an effective *ex post* antitrust enforcement;
29. Calls on the Commission to speed up antitrust procedures, set appropriate time limits for the procedures and ensure an effective follow-through of decisions in order to avoid lengthy procedures, such as in the case of Spotify, which filed a complaint against Apple in 2019, and wherein, in spite of the Commission having issued a statement of objections, no concrete actions have been taken to address Apple's restrictions, preventing app developers from freely communicating with their own users;
30. Welcomes the launch of the initiative on the guidelines on exclusionary abuses of dominance, which will be drafted in 2024 and adopted in 2025, and the Commission's commitment to a vigorous, effective and prompt application of Article 102 TFEU in the area of exclusionary abuses; calls on the Commission to concretely confirm the effect-based enforcement of antitrust rules and, in particular, the relevance of the economic evidence in appropriate cases; calls for consumer vulnerability to be taken into account when assessing exploitative abuses such as excessive prices and unfair terms;
31. Notes the opening of a formal investigation into possible anticompetitive practices by a gatekeeper by tying or bundling a communication and collaboration platform to its own dominant and popular software<sup>25</sup>; calls on the Commission to carefully assess the concessions, unilaterally offered by the gatekeeper, with the undertakings involved, in order to ensure that they address the concerns of market players with regard to new and existing users, as well as interoperability and pricing issues;
32. Insists on effective remedies which may require greater coordination between enforcers and further dialogue with third parties, as well as appropriate enforcement; recalls that undertakings designated as gatekeepers have been subject to previous antitrust rulings, which have not led to effective behavioural changes, especially regarding self-preferencing in digital markets; invites the Commission to make better use of structural remedies as a matter of last resort; reiterates its call on the Commission to end the

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<sup>25</sup> European Commission, '[Antitrust: Commission opens investigation into possible anticompetitive practices by Microsoft regarding Teams](#)', 27 July 2023.

primacy of behavioural remedies in EU law;

33. Reiterates its call on the Commission to address the anticompetitive effect of territorial supply constraints with a view to ensuring a fully functional single market and harnessing its potential benefit for consumers;
34. Reiterates, furthermore, its call on the Commission to continue actively monitoring and removing unjustified geo-blocking and other restrictions on cross-border online sales, having at its core a pro-consumer approach to allow consumers access to a greater choice of products and services across the EU;

### ***Competition policy in the digital age***

35. Welcomes the designation of six gatekeepers – Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft<sup>26</sup> – for 22 core platform services under the DMA, the four market investigations for the rebuttal as well as the first market investigation under Article 3(8) DMA; encourages the Commission to promptly adopt delegated acts in order to expand the modalities of application or to specify the modalities of implementation of the obligations laid down in Articles 5, 6, 7 and 12 DMA; calls on the Commission to rigorously assess whether the gatekeepers are complying with the DMA obligations before 6 March 2024 and to seek feedback from third parties as to whether the compliance solutions offered by gatekeepers lead to fairer and more contestable digital markets; calls on the Commission to ensure that gatekeepers' measures on the security and integrity of their platforms, which could impact compliance with the DMA, are vetted by independent third parties and not solely based on the gatekeepers' own assessment;
36. Points out that the Commission study on 'the impact of recent developments in digital advertising on privacy, publishers and advertisers' concludes that the large-scale collection and processing of personal data for advertising purposes and the opaqueness of the digital advertisement market could be fuelling ad fraud<sup>27</sup>; calls on the Commission, in line with the study's recommendations, to further analyse legislative options for future policy interventions, including the imposition of structural remedies, to address anticompetitive conduct, by complementing the DMA and the Digital Services Act (DSA)<sup>28</sup> in this regard;
37. Notes the market investigations into Microsoft's Edge and Bing<sup>29</sup> and Apple's iOS and iMessage<sup>30</sup> in order to assess their role as gateways and their entrenched positions in the market, as per the decision to designate Apple and Microsoft as gatekeepers under the DMA; 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

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<sup>26</sup> [See official decisions](#) DMA. 100044, 100040, 100035, 100027, 100026, 100025, 100024, 100020, 100018, 100017, 100016, 100013, 100011.

<sup>27</sup> European Commission, 'Study on the impact of recent developments in digital advertising on privacy, publishers and advertisers', p. 263-264.

<sup>28</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, OJ L 277, 27.10.2022, p. 1.

<sup>29</sup> Decision DMA. 100015; DMA. 100028 and DMA. 100034.

<sup>30</sup> Decision DMA. 100047 and DMA. 100022.

users and businesses to freely move from one ecosystem to the other and to seamlessly communicate with each other regardless of operating system, which is fundamentally against the spirit and the letter of the DMA; calls, therefore, on the Commission to proceed expeditiously in its investigation and its effective implementation to bring the benefits of messaging interoperability to all in a timely manner;

38. Notes the CJEU decision in the *Meta v Bundeskartellamt* case that affirms the competence of national competition authorities to enforce data protection rules under antitrust laws; points out that the CJEU affirms that the protection of personal data is an important consideration when examining an abuse of a dominant position and that it imposes requirements on the use of individuals' personal data for targeted advertising; encourages competition authorities to investigate infringements of the General Data Protection Regulation<sup>31</sup> and data protection authorities to sanction such infringements;
39. Notes the conclusions of the proceedings of the Bundeskartellamt and Alphabet Inc. that gives Google users better choices as to how Google processes their data; asserts that EU consumers must have the choice of whether they allow agglomeration and cross-service data processing of their personal data; encourages the Commission to pursue the coordination of enforcement activities and cooperate with national competition authorities in order to facilitate an effective interplay between competition law and the DMA, especially in the context of the DMA's 'further obligations';
40. Points out that the Internet of Things is a growing market; points out further that smart home devices, such as robot vacuum cleaners, are a major source of consumer data; notes that mergers and acquisitions in this sector can provide major competitive damage; calls on the Commission to include data as a source of market power in the evaluation of merger and acquisition cases in this sector, specifically when these cases involve established big tech companies; calls, furthermore, for conditions to be imposed on the use of data, if needed;
41. Regrets the absence of cloud service providers from the gatekeepers list; calls on the Commission to consider opening market investigations under Article 3(8) DMA (qualitative assessment) in this sector, given, in particular, the concentrated market structure and damaging anti-competitive practices underlined by national competition authorities; highlights that the European cloud market is dominated by a few very large players; calls on the Commission to ensure that all eligible services are designated in order to restore fair and equal competition in the European cloud market;
42. Calls on the Commission to assess the need of launching a market investigation under Article 19 DMA, adding new categories of core platform services under Article 2(2) DMA in the light of the latest technological developments that may lead to new types of services that do not fall within the existing categories such as generative artificial intelligence; recognises that new features powered by generative artificial intelligence can be incorporated into existing digital services, such as online search engines, and can be captured by the existing list of core platform services that could lead to the strengthening of existing gatekeepers;

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<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

43. Notes the joint statement by the G7 competition authorities on competition and artificial intelligence, underlining the importance of cooperation to promote competition in digital markets<sup>32</sup>; calls on the Commission to be vigilant regarding cooperation agreements in the context of developments in artificial intelligence in order to ensure that such cooperation agreements are not potentially hidden mergers or killer acquisitions;
44. Reiterates that the DMA has a different legal basis in contrast to the competition framework; 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;
45. Highlights the EU's future connectivity needs in terms of infrastructure and investments; calls on the Commission to consider a revision of the current competition practice for the telecom market in order to facilitate the creation of a fully integrated single market for telecommunication services; notes that market consolidation might be the only way to avoid selling infrastructure piece by piece to foreign non-EU companies and to compete effectively in a global scenario; points out that the growth of this sector in Europe has been very low over the last decade and that fragmentation is the main reason for this; welcomes, in this regard, Commissioner Breton's announcement of the Commission's work on a new proposal for a Digital Networks Act to address market fragmentation, attracting investment and securing telecom infrastructure and innovation without extra costs for consumers and without jeopardising fair competition on the market between all players;
46. Notes, with concern, that gatekeepers that develop a data advantage over rivals can achieve critical economies of scale, which contribute to the further tilting of competitive balances in digital markets and stifle innovation;
47. Stresses that personal data assets should be considered and assessed in the same way as other traditional assets when deciding on digital mergers and acquisitions; stresses further that data consolidation through mergers and acquisitions can strengthen a dominant position;

### ***Taxation***

48. Deplores the distortive effects of aggressive tax planning and of tax systems of certain Member States on fair competition, as they may stifle innovation and jeopardise the contestability of markets, especially for SMEs; calls for companies that engage in tax avoidance using non-EU tax havens to be excluded from public procurement procedures and barred from receiving State aid, as these companies are competing under unfair conditions with companies established in non-tax havens; welcomes the Commission's recommendation of 14 July 2020 to not grant financial support to companies with links to tax havens, while protecting honest taxpayers;
49. Calls on the Commission to look into the possibility of fining countries found to be in

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<sup>32</sup> G7 Hiroshima summit, '[Compendium of approaches to improving competition in digital markets](#)', 8 November 2023.

breach of EU State aid rules; encourages the Commission to pursue its investigations into Member States' tax ruling practices;

50. Notes the commitment of Vice-President Šefčovič and Commissioner-Designate Hoekstra to launch a discussion on phasing out fossil fuel subsidies; recalls its demand to implement concrete policies, timelines and measures to phase out fossil fuel subsidies through tax measures as soon as possible; calls for the reinforcement of a conducive framework by phasing out tax exemptions and subsidies for fossil fuels no later than 2025, by preventing investment in new infrastructure incompatible with the Paris Agreement and, in particular, investment in any new fossil fuel infrastructure; calls on the Council to finally agree on the needed revision of the Energy Taxation Directive<sup>33</sup>; highlights the fact that Member States' subsidies for fossil fuels amount to over EUR 55 billion per year;
51. Welcomes the Commission's vigilance in enforcing State aid rules in the area of taxation; deplores, at the same time, that several recent Commission decisions in high-profile competition cases in the area of taxation have been annulled by the CJEU; calls on the Commission to prepare its competition policy cases more thoroughly so that they can hold up in a court of law;
52. Notes, with concern, that the annulment of fines and the retroactive payment of default interest in annulled cases also pose a budgetary risk for the EU;

#### *Parliamentary involvement*

53. Stresses that Parliament should play an active role in shaping competition policy and should be more involved in the activity of working parties and expert groups; considers that more frequent use should be made of Parliament's right to intervene in judicial proceedings concerning competition law;
  54. Calls on the responsible Commissioner in charge of competition policy to stay in close contact with Parliament's competent Committee and its working group on competition issues;
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55. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and competition authorities of the Member States.

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<sup>33</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51.

## **EXPLANATORY STATEMENT**

This is the Competition policy – annual report 2023.

## **ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

<b>Entity and/or person</b>
BEUC
CloudFare
Google
Salesforce
Kelkoo Group
Forward Global
OVHCloud
CISPE
Mozilla
ETNO

The list above is drawn up under the exclusive responsibility of the rapporteur.



25.10.2023

## **LETTER OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

Ms Irene Tinagli  
Chair  
Committee on Economic and Monetary Affairs  
BRUSSELS

Subject: Opinion on Competition policy – annual report 2023 (2023/2077(INI))

Dear Madam Chair,

Under the procedure referred to above, the Committee on the Internal Market and Consumer Protection has been asked to submit an opinion to your committee. At its meeting of 23 May 2023, the committee decided to send the opinion in the form of a letter.

The Committee on the Internal Market and Consumer Protection considered the matter at its meeting of 25 October 2023. At that meeting<sup>1</sup>, it decided to call on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution.

Yours sincerely,

Anna Cavazzini

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<sup>1</sup> The following were present for the final vote: Anna Cavazzini (Chair), Andrus Ansip (Vice-Chair), Maria Grapini (Vice-Chair), Alex Agius Saliba, Pablo Arias Echeverría, Laura Ballarín Cereza, Alessandra Basso, Brando Benifei, Adam Bielan, Biljana Borzan, Vlad-Marius Botoș, Dita Charanzová, Deirdre Clune, Geoffroy Didier, Malte Gallée, Claude Gruffat, Svenja Hahn, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Kateřina Konečná, Andrey Kovatchev, Maria-Manuel Leitão-Marques, Antonius Manders, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, René Repasi, Catharina Rinzema, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Dominik Tarczyński, Róza Thun und Hohenstein, Tom Vandenkendelaere, Kim Van Sparrentak, Marion Walsmann, Stéphanie Yon-Courtin, Eric Minardi (pursuant to Rule 209(7)).

## SUGGESTIONS

1. Recalls the integral connection between competition policy and the internal market, which is clear from the text itself of the Treaty articles governing EU competition policy, Articles 101 and 102 TFEU; welcomes the fact that the Commission, in both its legislative and policy work, has recognised the need to integrate competition policy with the internal market objectives which frame it; notes, in this regard, that the foreword of Executive Vice-President Vestager to the Commission's Annual Competition Report 2022 (COM(2023)184) starts from the 30th anniversary of the single market;
2. Further recalls the fundamental orientation of competition policy towards strengthening the single market and empowering businesses to foster the green and digital transitions; recalls that competition policy is designed to maintain an open market economy with free, fair and effective competition favouring an efficient allocation of resources in order to enhance consumer welfare by not only delivering affordable prices and greater choice of innovative and more sustainable products and services, but also better quality production, guaranteeing a high level of consumer protection;
3. Points out the need to effectively address market distortions and boost competition by removing existing unjustified regulatory barriers and reducing unnecessary administrative burdens to facilitate entry for new competitors; stresses that increased product market competition coupled with eliminating unjustified regulatory barriers reduces profit margins and price levels;
4. Considers that competition rules should align with the overall goals of a sustainable and fair transition, including by supporting the objectives of the European Green Deal and Climate Paris Agreement;
5. Recalls the adoption of the Digital Markets Act (DMA)<sup>1</sup> and the Digital Services Act (DSA) as essential steps towards a harmonised, fair and competitive digital single market;
6. Reiterates the need for full and timely implementation of the DMA, so as to deliver on the potential which open markets can bring for businesses and consumers; encourages the Commission, in this regard, to pay particular attention to full and timely enforcement of the interoperability obligations for gatekeepers under Article 7, including the possibility of extension of the scope of this provision to cover social networking services, as foreseen in the DMA's review clause; looks forward to a transparent and successful conclusion of the process for designation of gatekeepers not only on the basis of the quantitative criteria in Article 3(2), but also on the basis of the qualitative assessment in Article 3(8);
7. Invites the Commission to envisage already now launching a market investigation under Article 19 DMA with the aim of examining whether there are new services in the digital sector that should be added to the list of Article 2(2) DMA in the light of the latest technological developments; encourages the Commission to adopt delegated acts soon in order to extend the modalities of application or to specify the modalities of implementation of the obligations laid down in Articles 5, 6 and 7 as set out in Article 12 DMA in the light of what has been learnt -

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<sup>1</sup> Regulation (EU) 2022/2065.

also- from the workshops organised over the past year;

8. To this end, acknowledges the significant work the Commission has done so far in providing the necessary resources for implementation; nevertheless emphasises the urgent need for the Commission to deploy as many resources, both financial and human, as possible and as efficiently as possible to ensure successful implementation of the DMA;

9. Welcomes the recent adoption of the delegated act specifying the very large online platforms and very large search engines under the DSA; underlines that such platforms and search engines must identify, analyse, and assess systemic risks and put in place effective mitigation measure; encourages the Commission to pay particular attention to the enforcement of these requirements alongside the enforcement of the DSA as a whole;

10. Insists on the need for the Commission to continue to pursue, as a fundamental approach, a policy of active enforcement of the competition rules as regards the digital single market, which is crucial if consumers are to feel the benefits of such important markets in terms of greater choice and lower prices and to boosting business competitiveness; in this regard, welcomes the Commission's active case management over the past few years concerning several players in digital markets, although sometimes the decision-making process both to open new investigations and to close open ones still takes too long; calls for such robust and impartial enforcement of the competition rules to be continued and for enforcement proceedings which have been opened to be brought to a conclusion as quickly as possible, with the greatest regard for the full maintenance of competition on the EU's digital markets;

11. Insists also on the need for the Commission to coordinate its on-going enforcement in relation to digital markets under the traditional competition rules laid down in the Treaty, i.e. Articles 101 and 102 TFEU, which represents down-stream *ex post* enforcement, with upstream, *ex ante* enforcement in relation to the same markets as now is possible under the DMA, especially in those market areas that do not (yet) fall within the scope of the Regulation; calls for the Commission to be vigilant in this regard with regard to the legal effects of the different enforcement routes, and to ensure coherence in its approach as regards policy outcomes and strength of enforcement across the board;

12. Calls on the Commission to strengthen merger control rules addressing so-called "killer acquisitions" in order to guarantee a level playing field for SMEs in Europe and the economy as a whole; adds that particular attention should be given to the impact of data concentration resulting from the concentration on the right to privacy and data protection; urges the Commission to take the aforementioned factors and non-monetary factors into account when defining digital markets and positions of power on such markets;

13. Reiterates furthermore its call to the Commission to continue actively monitoring and removing unjustified geo-blocking and other restrictions on cross-border online sales, having at core a pro-consumer approach to allow consumers access to a greater choice of products and services across the EU;

14. Welcomes the new approach in the latest antitrust cases, where the Commission for the first time and under certain conditions foresees the imposition of structural remedies to stop anti-competitive conducts, especially when the anti-competitive practice in question has been reiterated in other market segments by the same company over the years; in this regard

encourages the Commission to continue in this direction for an effective ex-post antitrust enforcement;

15. Reiterates its call on the Commission to address the anti-competitive effect of territorial supply constraints with a view to ensuring a fully functional single market and harnessing its potential benefit for consumers; reiterates that these types of constraints can take different forms, such as refusals to supply certain products or services, threats to interrupt supply to a particular distributor, limitation of quantities available for sale, unexplained differentiation within product ranges and prices between Member States or limited of language options on product packaging; recalls that product differentiation and price discrimination do not automatically constitute territorial supply constraints and, as long as they are compliant with applicable Union law, might be based on reasonable and justifiable practices or business decisions;

16. Recalls, globally, the need for efficient allocation of sufficient public funding, and access to affordable private financing, on a yearly and on-going basis, to ensure the fulfilment of the objectives of the Single Market Programme,<sup>2</sup> including its competition policy component, namely improving the functioning of the internal market and protecting and empowering citizens, consumers and businesses, in particular SMEs;

17. Notes that in March 2022 the Commission adopted a Temporary Crisis Framework, now prolonged until the end of 2023, to reduce the negative social and economic impact on the EU by Russia's war of aggression against Ukraine; calls on the Commission to monitor closely any developments in this field and assess whether further temporary changes to the State aid rules are called for, while ensuring that these temporary measures do not create permanent distortions in the internal market;

18. Notes that mobilising investments at the scale needed to meet the 2030 emissions reduction targets will require in certain appropriate cases the provision of State aid as recognised by the Commission; calls therefore on the Commission to align State aid rules with the EU's efforts towards decarbonisation, in particular for the energy transition; deplores that, as a general rule, no green conditioning is attached to the approval of State aid; calls for State aid rules to be aligned with the overall goals of a sustainable and fair transition;

19. Emphasises that competition rules in the area of services of general economic interest (SGEI) should protect citizens' access to basic public services; recalls the need for better-targeted State aid for SGEI, including energy, transport, telecommunication, health and housing.

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<sup>2</sup> Regulation (EU) 2021/690.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	4.12.2023
<b>Result of final vote</b>	+: 36 -: 0 0: 1
<b>Members present for the final vote</b>	Rasmus Andresen, Anna-Michelle Asimakopoulou, Isabel Benjumea Benjumea, Gilles Boyer, Jonás Fernández, Claude Gruffat, Michiel Hoogeveen, Stasys Jakeliūnas, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Csaba Molnár, Caroline Nagtegaal, Denis Nesci, Luděk Niedermayer, Lídia Pereira, Eva Maria Poptcheva, Evelyn Regner, Dorien Rookmaker, Alfred Sant, Paul Tang, Irene Tinagli, Stéphanie Yon-Courtin
<b>Substitutes present for the final vote</b>	Herbert Dorfmann, Eider Gardiazabal Rubial, Eugen Jurzyca, Martine Kemp, René Repasi, Laurence Sailliet, Eleni Stavrou
<b>Substitutes under Rule 209(7) present for the final vote</b>	Christophe Clergeau, Ibán García Del Blanco, Ska Keller, Andrius Kubilius, Pierre Larroustou, Morten Løkkegaard, Pernille Weiss

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

36	+
ECR	Michiel Hoogeveen, Denis Nesci, Dorien Rookmaker
PPE	Anna-Michelle Asimakopoulou, Isabel Benjumea Benjumea, Herbert Dorfmann, Martine Kemp, Andrius Kubilius, Luděk Niedermayer, Lídia Pereira, Laurence Sailliet, Eleni Stavrou, Pernille Weiss
Renew	Gilles Boyer, Morten Løkkegaard, Caroline Nagtegaal, Eva Maria Poptcheva, Stéphanie Yon-Courtin
S&D	Christophe Clergeau, Jonás Fernández, Ibán García Del Blanco, Eider Gardiazabal Rubial, Aurore Lalucq, Pierre Larrouturnou, Pedro Marques, Csaba Molnár, Evelyn Regner, René Repasi, Alfred Sant, Paul Tang, Irene Tinagli
Verts/ALE	Rasmus Andresen, Claude Gruffat, Stasys Jakeliūnas, Ska Keller, Philippe Lamberts

0	-

1	0
ECR	Eugen Jurzyca

Key to symbols:

+ : in favour

- : against

0 : abstention