

Our position

Recommendations for the amendments proposed to the European Parliament Report on Competition Policy – Annual Report 2023

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

With the implementation of the Foreign Subsidies Regulation (FSR) and the Digital Markets Act, 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. 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 Foreign Direct Investment Screening Framework.

The European Parliament should consider the immediate need for cohesive and well-administered competition policy while discussing amendments relating to its own role in competition law proceedings. Amendments proposing a more active role for the Parliament in judicial proceedings risk adding a destabilising political element to competition law that would compound with existing issues with the institutional set-up of the Commission to undermine the legitimacy of competition law.

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. The European Parliament should 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.

Recommendations

1. Remove references to individual cases (para. 12, 13, 16)

ECON: Support amendments 109, 110, 111, 112, 114, 116, 117, 118, 139, 140, 141, 142, 143

ECON: Oppose amendments 113, 121, 122, 133, 146, 147, 148, 149

The European Parliament should bundle and adopt amendments that remove references to specific cases, particularly live market investigations, in order to help foster a culture of constructive engagement between enforcers and industry and avoid the politicisation of competition law enforcement. In the same vein, it should oppose amendments that add references to specific cases.

Positive engagement with industry is necessary to ensure the successful implementation of new open dialogue between the European Commission and industry reduces the regulatory risk inherent to new regulations, which encourages investment and growth, and ensures 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.

2. Remove references to ‘Killer Acquisitions’ (para. 9)

ECON: Oppose amendments 87, 88, 89

The European Parliament should oppose amendments that expand on the combative language used in paragraph 9, and seek to remain within the framework of the cited legislation. Under article 22 of the EC Merger Regulation, Member States retain the competence to request a referral of a notified transaction—not the European Commission.

Absent evidence to the contrary, the vast majority of Merger and Acquisition 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.

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. The European Parliament should oppose amendments that undermine the effective implementation of competition policy and the attractiveness of Europe.

3. Support the independence of the judicial system for competition

ECON: Oppose amendment 174

The European Parliament should oppose the amendment calling for the European Parliament’s more frequent intervention in judicial proceedings.

The current competition law enforcement procedures already lacks sufficient due process by merging its investigative and decision-making functions. Allowing the European Parliament to intervene would add a further political element to competition law enforcement to the detriment of its effectiveness.

Under the current competition law enforcement system, the same Commission case team investigates and prosecutes the case, as well as drafts the final decision. This institutional set-up carries the inherent risk of prosecutorial bias and is incompatible with art. 6 of the European Convention on Human Rights, which requires ‘an independent and impartial tribunal established by law’. This is also a departure from the structure followed by most National Competition Authorities.

More frequent Parliamentary intervention would further degrade the legitimacy of competition law enforcement by the European Commission, and the Single Market’s attractiveness to businesses of all types. This politicisation of the legal system would create further uncertainty and risk for companies investing in Europe and significantly degrade Europe’s attractiveness as an investment destination.