



## Press Release

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### European Commission needs to scale up antitrust and merger control to fit a more globalised world

The European Commission, the enforcer of EU competition rules, has generally made good use of its powers in antitrust proceedings and merger control, and addressed competition concerns with its decisions. But according to a new report by the European Court of Auditors (ECA) published today, it has not yet fully addressed the complex new enforcement challenges in digital markets, the ever-increasing amount of data to be analysed or the limitations of existing enforcement tools. The auditors also found that the Commission has limited capacity to monitor markets, proactively detect antitrust infringements and check the accuracy of merger information.

EU competition rules are aimed at preventing companies from indulging in anticompetitive practices such as secret cartels, or abusing a dominant position. The Commission can impose fines on companies that infringe these rules. In the last 10 years, competition enforcement has had to come to terms with significant changes in market dynamics due to the emergence of digital markets, big data and price-fixing algorithms. The auditors examined whether the Commission had properly enforced the rules in merger control and antitrust proceedings. They assessed how effectively the Commission had been able to detect and investigate infringements, and how well it had cooperated with national competition authorities (NCAs).

*“In the last decade, the Commission has been using its powers in merger control and antitrust proceedings effectively,” said Alex Brenninkmeijer, the ECA Member responsible for the report. “But it now needs to scale up market oversight to be fit for a more global and digital world. It needs to get better at proactively detecting infringements and select its investigations more judiciously. Together with stronger cooperation from NCAs, this will result in better competition enforcement in the EU internal market, protecting businesses and consumers.”*

The auditors found that the level of resources at the Commission’s disposal for monitoring markets for potential problems and for own detection of antitrust cases, which it does in addition to reacting to external complaints – was relatively limited. Sector enquiries are resource-intensive: for example, the Commission’s 2015 inquiry into e-commerce required a 15-person full-time team working for two years. The auditors observed that the number of own-initiative cases had fallen since 2015. A similar reduction also affected the leniency programme for companies that volunteer insider information on anticompetitive practices in return for immunity or reduced fines. The Commission also has to decide which cases to

*The purpose of this press release is to convey the main messages of the European Court of Auditors’ special report. The full report is available at [eca.europa.eu](https://eca.europa.eu).*

## ECA Press

12, rue Alcide De Gasperi - L-1615 Luxembourg

E: [press@eca.europa.eu](mailto:press@eca.europa.eu) @EUAuditors [eca.europa.eu](https://eca.europa.eu)

prioritise in its investigations. It did so based on criteria which were not clearly weighted to ensure the selection of cases with the highest risk. In the field of merger control, the Commission faces further challenges: the amount of data to be verified is always increasing, as is the number of mergers to be analysed. The Commission has already simplified its procedures for some less risky mergers to some degree, but it needs to carry on that simplification work. The auditors also found that some significant transactions fell outside the Commission's scrutiny because companies did not have to notify them to the Commission according to the turnover thresholds set out in EU legislation.

The Commission took all merger decisions within the legal deadlines, but its antitrust proceedings remain lengthy (up to eight years). This can reduce the effectiveness of its enforcement decisions. This is particularly true in rapidly evolving digital markets, where the Commission has to cope with complex investigations. Meanwhile, the legal tools at its disposal may no longer be fully adequate to deal with these new types of competition problems. The auditors also noted that the Commission had imposed record-breaking fines on companies, but had never evaluated their deterrent effect.

The Commission generally cooperated well with NCAs, but it did not know very much about the NCAs' own enforcement priorities. At the same time, the Commission and NCAs did not closely coordinate their market monitoring, and cases were only rarely reallocated from the NCAs to the Commission. An early warning mechanism is intended to optimise case allocation and to prevent many NCAs from needing to examine similar instances of behaviour by the same company, but the NCAs did not use it extensively. Finally, the Commission did not evaluate the effectiveness of its decisions on a regular basis, although this would have helped its future decision-making and resource allocation.

The auditors make recommendations aimed at improving the Commission's capacity to proactively detect infringements, render its competition enforcement more effective, help it coordinate better with NCAs through the European Competition Network, and report better on its own performance.

### **Background information**

The Commission can prohibit anticompetitive agreements between companies and abuses of dominant position ("antitrust proceedings"), and review significant concentrations of companies to determine their impact on competition in the EU's internal market ("merger control"). Both the Commission and the NCAs can directly enforce EU competition rules in antitrust cases affecting trade between Member States.

Every year, the Commission examines over 300 merger notifications and around 200 antitrust cases. From 2010 to 2019, it imposed fines amounting to €28.5 billion for infringements. Due to limited resources, it has conducted only four own-initiative sector inquiries since 2005, which helped to detect infringements.

The auditors examined a risk-based sample of 50 antitrust cases and proposed mergers launched between 2010 and 2017, as well as a sample of notifications of antitrust investigations made by NCAs. They visited the NCAs of Bulgaria, France, the Netherlands and Poland.

ECA special report No 24/2020, "The Commission's EU merger control and antitrust proceedings: a need to scale up market oversight", is available in 23 EU languages at [eca.europa.eu](https://eca.europa.eu). The ECA recently published reports on [state aid control](#) and [trade defence instruments](#).

### **Press contact for this special report**

Damijan Fišer – E: [damijan.fiser@eca.europa.eu](mailto:damijan.fiser@eca.europa.eu) T: (+352) 4398 45510 / M: (+352) 621 552 224