



Competing at Scale

EU Competition Policy fit for
the Global Stage

Foreword



October 2019

After launching its strategic position paper 'Strengthening Europe's Place in the World' in April this year, the European Round Table of Industrialists (ERT) is putting forward a series of proposals on the priorities defined by its Members, 55 CEOs and Chairs of Europe's largest companies, on how European competitiveness could be increased.

This publication represents our first set of suggestions, focused on the theme of European competition policy. ERT wishes to make a constructive contribution to the ongoing discussion in Europe on how competition policy rules could be modernised.

Our current competition policy and enforcement has served us well and played a vital role in securing fairer markets and strong competition and has been fundamental to the functioning of the internal market and to the benefit of EU consumers. However, it is no longer fully fit to respond to the realities that the EU and its industrial base face in a globally competitive world.

We are currently witnessing rapid and unprecedented changes to the global corporate landscape, driven by technological progress and new markets dynamics. We are seeing the rise of a multipolar world where geopolitical tensions and protectionism are accelerating, and where competitors view industrial development as key to national advancement.

ERT Member companies are committed to creating jobs and prosperity in Europe but call on policymakers to create the required framework conditions for European companies to compete successfully and at scale globally. A key objective in designing a smarter competition policy should be to ensure a global level playing field, on which European companies can compete on equal terms as global competitors.

European decision makers should put the industrial agenda at the top of the EU's priorities, with competition policy forming a critical part of that agenda.

Jacob Wallenberg

Chairman, ERT Competition Policy Working Group
Chairman, Investor AB

ERT Position Paper

Competing at Scale: EU Competition Policy fit for the Global Stage

Executive summary

Fair markets and strong competition are critical to the European Union meeting the challenges of the 21st century. As the global economy changes, and in particular as it digitises, we must strive to deliver the optimal competition policy for Europe: one that benefits consumers, while also allowing European firms to compete on the global stage.

In this paper, the European Round Table of Industrialists (ERT) has specifically examined merger control and antitrust policy in the context of the new challenges presented by the ever-transforming digital age – including the challenge of ensuring European industries' global competitiveness.

Key conclusions

- The ERT strongly believes in the potential for competition policy and enforcement to secure fairer markets and strong competition, and to protect the interests of EU consumers.
- To preserve European competitiveness and enable European companies to compete successfully at scale in today's globalised and fast-moving economy, they need to operate in markets governed by smarter competition policies which seek to create a global level playing field and which are responsive to changing global market conditions.
- ERT does not believe there should be greater political involvement in merger control decisions, or that merger control decisions by DG Competition should be referred to other bodies. Such suggestions have formed part of the debate on EU merger policy, but ERT does not agree such changes would be positive ones.

Key recommendations

A. Align competition enforcement with the demands of the modern digitised economy

1. The EU does not need to change its competition laws in relation to digital markets, but a smarter and faster approach to enforcement is needed. The rapid digitisation of most sectors of the economy calls for a more dynamic, forward-looking and pragmatic approach to the assessment of markets and market power, which in particular takes into account non-price factors and the commercial realities and potential customer benefits of inter-company relationships.
2. Potential competitive harm beyond mere price effects should be considered by taking into account, for example, the role of data, innovation, quality and choice. This should be part of a broader assessment of the impact on overall consumer welfare.
3. DG Competition should launch investigations promptly, setting and keeping to clear timetables for antitrust proceedings, and make an increased use of interim measures in the right types of cases to avoid markets “tipping”.

B. Implement a smarter, leaner merger control regime

1. There is consensus across different industries on the need for a broader, more dynamic and forward-looking substantive assessment which takes greater account of potential competition and non-price effects.
2. The application of EU merger control rules should differentiate more clearly between simple and complex transactions. In general, the procedure should be streamlined and simplified.
3. DG Competition should simplify and clarify the requirements for a successful efficiencies defence and ensure that sufficient importance is given to efficiencies in the analysis.
4. Strengthen checks and balances within DG Competition, including by clearly separating investigation and decision teams in complex cases.
5. The timeline of judicial review proceedings should be significantly reduced, and a specialised competition law chamber be installed at the General Court, empowered with the right of full merits review.

C. Antitrust: Increase legal certainty for competitive collaboration

1. A smarter competition policy should provide a more welcome environment for pro-competitive cooperation, including by:
 - I. Broadening the scope of permissible **horizontal agreements** that are pro-competitive and needed to meet EU policy goals. Update the horizontal guidelines and/or introduce new horizontal block exemptions for data sharing agreements, sustainability or innovation projects between competitors, and broaden the scope of the R&D block exemption.
 - II. Allowing **vertical agreements** that require an integrated approach to meet the demands of consumers. Update the Vertical Block Exemption Regulation (VBER) to exempt distribution models common in the modern economy (such as the widespread use of intermediaries who technically buy and (re-)sell).
2. Maintain, update or develop block exemption regulations and guidelines to reflect new business models and provide guidance quickly, for example through informal guidance or “comfort” letters provided by the Commission and National Competition Authorities (NCAs).
3. Clarify the extent to which Joint Ventures (JVs) and their parents can be considered as part of the same group for antitrust purposes.
4. Ensure that the Commission and NCAs apply a harmonised approach towards competition rules, including on the development of block exemptions and use of informal guidance.

D. Adopt a holistic viewpoint to safeguard global competitiveness

1. Adopt a broader view of market practices and market power held by foreign state-owned and/or state-supported companies whenever they operate in Europe.
2. ERT supports a stronger European stance towards unfair State aid and state-supported market practices in order to achieve a greater level of reciprocity in trading and investment relationships.
3. When European industries are faced with competition from companies outside the EU which have an advantage of state support and are not subject to similar regulatory obligations as in the EU, DG Competition must take into account the effect on EU industries’ global competitiveness when evaluating state aid schemes or deciding on exemptions from or reductions of regulatory costs.
4. Introduce greater flexibility in State aid rules/guidelines to reduce global competitive disadvantages and to foster more EU research and first-market deployment of breakthrough innovations, especially in key strategic areas.

Introduction

- 1.1 Europe's leading industrialists representing global companies of European parentage across a range of sectors welcome the EU's efforts to explore how competition law may need to evolve to reflect changing global market conditions. As a leading competition authority, DG Competition sets an important global example, and its messages carry significant weight.
- 1.2 The ERT strongly believes in competition policy and enforcement to secure fairer markets and strong competition. These are fundamental to the functioning of the internal market and to the benefit of EU consumers. The ERT also welcomes the increasing focus in Europe (at both the Commission and NCA level) on the challenges posed by changing market demands, including the digitisation of all parts of the economy.
- 1.3 However, European companies are continuing to face major challenges which call for a smarter approach.
- 1.4 The global corporate landscape is changing rapidly as technological progress accelerates and emerging economies climb up the value chain. Meanwhile, geopolitical tensions and protectionism are rising. A more assertive China has become a major competitor in high-tech and growth sectors, using all available instruments to rapidly develop its industrial capabilities and following a clear strategic vision. A more inward-looking United States has prioritised industrial policy in order to revive its manufacturing base.
- 1.5 In light of these developments, Europe and European industries are facing unprecedented challenges. As outlined in ERT's strategic paper launched in April 2019 entitled "Strengthening Europe's Place in the world", ERT Member companies are committed to creating jobs and prosperity in Europe but call on policymakers to create the required framework conditions for European companies to compete successfully and at scale globally.
- 1.6 The ERT has closely followed the political debate around industrial and competition policy, in particular suggestions that certain merger control decisions taken by DG Competition should be referable to other bodies. However, the ERT is not convinced that such a development or greater political involvement in competition decision-making would be positive, and therefore does not support such proposals.
- 1.7 European decision makers should put the industrial agenda at the top of the EU's priorities, with competition policy forming a critical part of that agenda. A key objective in designing a smarter competition policy should be to ensure a global level playing field, enhancing European competitiveness worldwide. Competition policy can play an important role in achieving the EU's stated ambition of remaining an industrial power.

- 1.8 On mergers, this paper argues that mergers can unlock synergies which are often vital for maintaining competition with low-priced imports (often enabled by subsidies and unfair trade practices and driven by overcapacity in overseas markets) and for accessing non-European markets on more equal terms.
- 1.9 This position paper highlights major challenges, including:
- (i) Certain practices of dominant digital platforms, which may result in (a) competition chilling across key ecosystems, and (b) certain markets “tipping” into total or quasi monopolies.
 - (ii) The fragmentation of competition rules across Europe, including in relation to the digital economy, which threatens legal certainty for European businesses and damages consistency within the single market.
 - (iii) Currently, merger control and antitrust proceedings (and any subsequent judicial review of such cases) do not take sufficient account of the need to ensure a global level playing field and preserve European competitiveness worldwide and are often slow, legalistic and costly. Particularly in the case of antitrust proceedings this means that problems may not be caught before they have an irreversible impact on the market.
 - (iv) Insufficient guidance for companies on how the antitrust rules should be applied to certain business models and ways of working.
 - (v) Too many European companies are held back from pro-consumer cooperation, for example to complement their offerings, promote innovation or to attain sustainability or other pro-consumer goals with other companies, due to the perception of the current legal framework.
 - (vi) Today’s antitrust rules governing horizontal and vertical relationships do not always reflect commercial reality and the need to work with third parties in an integrated manner.
 - (vii) European companies are losing their global competitiveness, because they do not compete on an equal playing field with foreign companies.
- 1.10 This paper sets out the ERT’s proposals for (i) new challenges in the digitised world, (ii) merger control, (iii) antitrust, and (iv) securing European industries’ global competitiveness (which touches on State aid).
- 1.11 In the ERT’s view, a key objective in designing a smarter competition policy should be to ensure a global level playing field and preserve European competitiveness worldwide. This means, for example:
- (i) **Aligning competition enforcement with the demands of the modern digitised economy**. The rapid digitisation of most sectors of the economy calls for a more dynamic, forward-looking and pragmatic approach to the assessment of markets and market power, which in particular takes into account non-price factors and the commercial realities and potential customer benefits of inter-company relationships. It also demands quicker but targeted enforcement against abusive practices of super dominant players, while at the same time creating greater legal certainty for other benign and pro-competitive initiatives.

- (ii) **Implementing a smarter, leaner merger control regime.** There is consensus across different industries on the need for a broader, more dynamic and forward-looking substantive assessment which takes greater account of potential competition and non-price effects. The current EU regime needs to adapt to be more efficient, including by simplifying and shortening the merger control procedure, reducing the overall burden of unnecessary information requests (which can be extensive, even in straightforward cases with minimal competitive overlaps), improving checks and balances within DG Competition and implementing effective judicial review.
- (iii) **Increasing legal certainty for competitive collaboration.** A smarter competition policy should provide a more welcome environment for pro-competitive cooperation, including by broadening the scope of permissible horizontal agreements that are pro-competitive and needed to meet EU policy goals, and vertical agreements that require an integrated approach to meet the demands of consumers. It is also critical for companies that the Commission and NCAs apply a harmonised approach towards competition rules. This may include maintaining, updating or developing block exemption regulations and guidelines to reflect new business models and finding a greater willingness to provide guidance quickly, for example informal guidance or “comfort” letters.
- (iv) **Adopting a holistic viewpoint.** In all contexts, the Commission should adopt a broader view of market practices and market power held by foreign state-owned and/or state-supported companies whenever they operate in Europe.

The digitised economy

Key challenges

- 2.1 The global economy is rapidly digitising and bringing about many pro-consumer and pro-competitive innovations. Digitisation has brought enormous benefits, including instantaneous communication, the possibility of doing business more easily across longer distances and with more customers, and greater access to information to consumers and businesses alike.
- 2.2 Although digitisation spans all industries, there are particular features relating to the large digital platforms which have emerged. This platform economy, especially in the Business to Consumer (B2C) environment, is characterised by building large concentrations of user data, network externalities and economies of scale, which may create what are known as “lock-in effects”. In these digital markets, rivalry can be more about competition for the market rather than in the market and market power can arise from conglomerate strength or the intermediary role of platforms.
- 2.3 The ERT believes EU competition laws (i.e. its enforcement mandate under the Treaty on the Functioning of the EU,) do not need to change to address the particularities of digital markets, and is wary of a potential regulatory overreach which could cause severe over-spill effects and thus chill competition without curing the problem. However, in digital markets a smart enforcement approach is needed; one that must intervene fast enough if a market is about to tip due to abusive behaviour.

ERT recommendations

- 2.4 In substantive terms generally, but in particular for the digital economy, **there is a need for a broader and more dynamic assessment of market definition, market power, and potential competitive constraints**, in particular by:
 - (i) replacing the traditional static analysis (which relies too heavily on historic market shares) with a **broader assessment** taking into consideration other factors, for example barriers to entry, and the more conglomerate nature or intermediary role of e.g. online platforms in multi-sided markets;
 - (ii) considering potential competition **from a more dynamic, forward-looking perspective**; and

- (iii) **considering potential competitive harm beyond mere price effects** by taking into account, for example, the role of data, innovation, quality and choice as part of a broader assessment of the impact on overall consumer welfare.

This applies across all of DG Competition's activities, from merger investigations to behavioural rules and State aid.

2.5 DG Competition should address the particularities of digital markets to pre-empt the creation of monopolies. The speed of intervention and enforcement must be accelerated, in particular against super dominant platforms. There could be different ways of achieving this, but in particular, there is a need for:

- (i) **launching investigations promptly;**
- (ii) **making increased use of interim measures** in the right types of cases to avoid markets "tipping"; and
- (iii) consistent with the approach of some NCAs, **setting and keeping to clear timetables for antitrust proceedings.**

Merger Control

Key challenges

- 3.1 The ERT strongly believes that reforming EU merger control is necessary in order for the EU to continue serving as a role model for other authorities around the world.
- 3.2 In ERT's view, a key objective in designing a smarter competition policy should be to ensure a global level playing field and preserve European competitiveness worldwide. There is consensus among all industries (including digital) on the need for a broader, more dynamic and forward-looking substantive assessment which takes greater account of potential competition and non-price effects.
- 3.3 Today, EU merger control can be a bureaucratic and hugely expensive experience for both merging and third parties. This is true not only for complex transactions, but also frequently for simple transactions which raise no competition concerns. The application of EU merger control rules should differentiate more clearly between simple and complex transactions, whilst applying a significantly leaner and more appropriate process to both types which avoids time-consuming "tick box" exercises. Confidence in the EU process needs improved checks and balances during the administrative process, and more expedient and effective judicial review.

ERT recommendations

Substantive Assessment

- 3.4 DG Competition should **extend the timeline over which they assess the impact of mergers**, including increasing the general timeframe for taking account of potential entry to five years (subject to exceptions depending on the specific case and market).
- 3.5 DG Competition should also **take greater account of the potential for pro-competitive effects** (both in-market and out-of-market) that may outweigh potential concerns and provide parties with more clarity on how these will be applied.¹
- 3.6 When considering the competitive landscape, DG Competition should **consider the effect of state subsidies to competitors**.

¹ For example, in-market pro-competitive effects may occur where a merger is likely to lead to superior products and/or lower prices in the market where there are *prima facie* competition concerns (Market A). Out-of-market pro-competitive effects may occur where a merger may lead to superior products/lower prices in a market outside (but sometimes related to) the one where there are *prima facie* competition concerns (Market B). In some cases, the benefits accruing to customers in Market B (e.g. price reductions) may be shown to outweigh any disbenefits accruing to customers in Market A (e.g. price rises).

- 3.7 DG Competition should **simplify and clarify the requirements for a successful efficiencies defence**, and ensure that sufficient importance is given to efficiencies in the analysis. This revision would not require a lengthy process but could notably be done by adapting the current high standard of proof applied to demonstrate efficiencies towards a more flexible approach, more aligned with the approach adopted by the Commission to evidence anti-competitive effects and extending the timeline for efficiencies to be considered.
- 3.8 DG Competition should be **more willing to accept behavioural (rather than structural) remedies**.² These can be an effective and proportionate way to alleviate competition concerns and are often less burdensome for the parties involved.

Jurisdiction and procedure

- 3.9 Simplify and streamline the notification procedure by:
- (i) **making pre-notification optional** and allowing immediate notification for simple cases;
 - (ii) making it best practice to **limit the pre-notification period for more complex transactions to a maximum of three months** (and up to six months only in truly exceptional cases);
 - (iii) allowing merging parties to decide **whether or not to use the prescribed “Form CO” template** in order to give full flexibility to focus on the actual needs of a case;³
 - (iv) establishing as best practice **a kick-off meeting (or call)** with the notifying parties to flush out key subjects and agree on the availability of data and information to be provided; and
 - (v) **reducing the number and scope of information requests**, including by replacing them with more meetings and calls with merging parties and market participants throughout the process.
- 3.10 **Amend the rules on notifiability of JVs** which will not operate in the EU in the short to medium term. These JVs are often notifiable to the Commission on account of their parents’ turnover, despite having no activities in the EU at all.
- 3.11 **Strengthen checks and balances within DG Competition** by:
- (i) allowing early and rolling access to file;
 - (ii) strengthening the role of the hearing officer.
 - (iii) transparently separating investigation and decision team in complex cases.

² Unlike structural (i.e. divestment) remedies, behavioural remedies are those designed to regulate the future conduct of the merged entity (for example, a requirement to licence particular IP to competitors, or to observe a price cap).

³ Currently, parties notifying a merger to the Commission must use a prescribed template, referred to as a “Form CO”, which sets out the specific information required for the notification.

Competencies

- 3.12 Although the underlying concerns are not limited to merger cases, two particular improvements would be particularly welcome in the merger field:
- (i) Restructure internal policies with the aim that **more officials stay with DG Competition longer and can rise in the hierarchy**. Ensure junior personnel are properly supervised by colleagues with a firm grasp on the key issues in the relevant case, especially when sending out questionnaires. This would also improve the management of information gathering and the proportionality of requests.
 - (ii) **Encourage more movement of personnel between DG Competition and private practice/companies** (for example by two-way secondments and exchanges) to generate a greater practical understanding within DG Competition of how businesses and markets work and to build up in-depth industry knowledge.

Appeal

- 3.13 The timeline of **judicial review proceedings should be significantly reduced to a target duration of 6-12 months** (the current length of judicial review proceedings, which often last over 18 months, makes any appeal from a merger decision largely ineffective in practice).⁴
- 3.14 A **specialised competition law chamber should be installed** at the General Court, empowered with the right of full merits review.
- 3.15 Successful appeals of cleared decisions should lead to a **second review by the Commission** on the facts which prevailed at the time of the original clearance.

⁴ At the end of 2018, the average duration of proceedings before the General Court (where competition law cases are generally held at first instance) was 20 months (see the ECJ's *Annual Report 2018 – The Year in Review*, p.45). Including preparation time and appeals to the ECJ, judicial review proceedings can exceed 2-3 years in duration.

Antitrust

Key challenges

- 4.1 Cooperation between companies is becoming increasingly necessary to generate efficiencies and benefits to society at large. For example:
- (i) It is increasingly necessary for companies to cooperate to meet sustainability and other public policy goals and satisfy related regulatory requirements, including those set out by the EU. If companies are not able to cooperate to share the burden of the costs of these projects, or to liaise with one another to establish a common understanding of the optimum approach, or even jointly to challenge a given regulator's interpretation, they may be disincentivised from pursuing these valuable projects.
 - (ii) Horizontal cooperation agreements can also be pro-competitive when they result in cost savings and efficiencies that for instance enable the companies concerned to invest in innovative new products and services (e.g. telecoms network sharing deals and recycling schemes), and/or if they enable the companies to compete more effectively with major global digital players.
 - (iii) In the digital world it is increasingly necessary for companies to collaborate in so-called ecosystems to provide customers with complete solutions. Infrastructure, domain know-how, specific software and applications have come together to create real customer value. The companies concerned sometimes have both horizontal and vertical relationships with each other. More clarity is needed on the interplay between the rules on horizontal and vertical cooperation to ensure that companies are able to cooperate in this scenario to satisfy customer needs because single companies alone rarely have all these capabilities so have to team up with others.
 - (iv) Cooperation between a parent company and its JV may be efficient and bring significant benefits, however today there is insufficient guidance on the extent of permissible horizontal or vertical cooperation between a parent company and its JV.
- 4.2 Companies are often uncertain as to whether the Commission and NCAs recognise these significant benefits and are therefore reluctant to engage in pro-competitive initiatives.

- 4.3 From a purely vertical perspective, the VBER offers a welcome safe harbour for certain types of vertical agreements, but its criteria are not always clear, and it does not succeed in exempting some types of agreements which bring about significant efficiencies, and which do no harm to consumers or to the economy in general.⁵

ERT recommendations

- 4.4 **Update the horizontal guidelines allowing for more flexibility and introduce new horizontal block exemptions for data sharing agreements**, sustainability or innovation projects between competitors, and broaden the scope of the R&D block exemption to reflect developments in the digitised economy and provide comfort on horizontal collaborations necessary to meet sustainability goals and discuss regulatory developments/requirements. Competition policy should be better coordinated with other EU policies. For example, Article 3 of the Treaty on the European Union refers to sustainable development and environmental protection as two of the EU's objectives.
- 4.5 **Encourage companies to approach the Commission and NCAs informally or formally to obtain informal guidance or "comfort" letters** on new legal challenges in a safe manner and to work together in order to deliver benefits to society.
- 4.6 Update the horizontal and vertical guidelines and the VBER to **provide greater clarity on legitimate agreements between companies** which have both horizontal and vertical relationships.
- 4.7 Clarify that **arrangements between JVs and their parent companies should be treated as intra-group and should therefore be outside VBER's restrictions** (e.g. supply or service arrangements, or distribution arrangements containing resale price maintenance ("RPM") provisions) as well as the applicable horizontal rules (e.g. joint purchasing, benchmarking, joint selling, share services, etc.).
- 4.8 Update the VBER to:
- (i) **exempt distribution models common in the modern economy** (such as the widespread use of intermediaries who technically buy and (re-)sell, but who have no commercial freedom as they are fully controlled by the buyer (or the vendor) and only perform logistic or administrative services); and
 - (ii) **reflect the development of digital markets**, including by allowing sellers greater flexibility to prohibit buyers from selling online to certain territories/customers where there is a legitimate commercial reason for doing so, and to acknowledge the blurring of the distinction between "active" and "passive" sales in online markets.

⁵ For example, the VBER currently applies to territorial/customer restrictions only to the extent that a seller has reserved all other territories/customers to itself or other buyers, therefore treating as "hardcore restrictions" the same restrictions where a seller has failed to reserve all other territories/customers to itself or other buyers. There is no obvious justification for this.

- 4.9 **Apply a more adaptive approach to the analysis of market definition and market power in the antitrust context**, where precedents applied in merger control cases are not always suitable (for example where “step changes” in technology create new markets where the technology developers are immediately dominant).
- 4.10 DG Competition **should set a standard for enforcement against certain practices** to avoid (further) fragmentation at the NCA level (observable, for example, in the *Stihl* case, where a safety-based sales restriction was approved by the German NCA but deemed an infringement by the French NCA).

European industries' global competitiveness

Key challenges

- 5.1 Bringing greater balance to Europe's global trade relationships has traditionally not been part of DG Competition's assessment in State aid cases. However, the ERT supports a stronger European stance towards unfair third-country State aid and state-supported market practices. Such an approach should aim to achieve a greater level of reciprocity in trading and investment relationships while minimising protectionism. The ERT believes competition policy can and should play a role, and that DG Competition should work closely alongside other directorates and Member States to level the global playing field and secure the global competitiveness of European industries.
- 5.2 In particular, a smarter competition policy requires the inclusion of a broader number of factors when assessing practices and market power on European markets in which foreign state-owned and/or state supported companies operate and carry out aspirations of the state. European companies are sometimes unable to compete effectively on the merits against companies from outside Europe that benefit from state assistance (and sometimes ownership) which would be prohibited under EU rules, and may even constitute infringements of existing bilateral free trade agreements. As trade procedures, may be lengthy and inefficient to effectively and timely deal with unfair state and market practices, the ERT encourages the Commission to take such economic realities into account when assessing practices and market power on European markets in a competition law context.
- 5.3 There is currently insufficient scope in both DG Competition and NCA investigations to take account of the level of foreign state support that a company receives. A greater understanding of this issue would ensure that competition decisions are better able to deliver on the promise of securing effective competition in the EU. Such an understanding could be achieved by obtaining information on market practices in Member States.

ERT recommendations

- 5.4 European industries are increasingly faced with competition from companies outside the EU which have an advantage in state support and are not subject to similar regulatory obligations as in the EU. When assessing aid schemes in Europe, **DG Competition must take into account the challenges facing European industry at the global level** – in particular when executing impact assessments on state aid schemes or deciding on exemptions from or reductions of regulatory costs in concrete cases. State aid schemes/guidelines should not depart from the principle of ensuring a level playing field in the internal market.

- 5.5 **Introduce greater flexibility in State aid rules/guidelines to reduce global competitive disadvantages and to open up for even more research and first-market deployment of breakthrough innovations**, especially in key strategic areas (e.g. climate-neutral technologies), including by allowing for faster and simpler access to exemptions for temporary state support (i.e. faster and simpler than the current IPCEI) and by encouraging the implementation of national instruments.
- 5.6 **Allow beneficiaries of State aid to be part of notification proceedings from their initiation** (i.e. including the pre-notification and preliminary two-month investigation phase). The current procedure unfairly prejudices the rights of defence of beneficiaries as they are only formally involved in the process if a formal, in-depth investigation into the notified aid is launched, and therefore have only indirect (and often minimal) influence over the important pre-notification and preliminary investigation phase.
- 5.7 Introduce changes (e.g. through new guidelines) **making clear where unfair and/or market-distorting practices enabled by foreign state funding can constitute an abuse under Article 102**, for example by widening the concept of dominance for those exceptional circumstances.

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The European Round Table of Industrialists (ERT) is a forum bringing together 55 Chief Executives and Chairmen of major multinational companies of European parentage covering a wide range of industrial and technological sectors.

ERT strives for a strong, open and competitive Europe, with the EU, including its Single Market, as a driver for inclusive growth and sustainable prosperity. Companies of ERT Members are widely situated across Europe, with combined revenues exceeding €2,250 billion. They invest more than €50 billion annually in R&D, largely in Europe and are collectively responsible for around five million jobs globally as well as supporting many others.



European Round Table of Industrialists

Boulevard Brand Whitlocklaan 165, 1200 Brussels, Belgium

Phone: +32 2 534 31 00

E-mail: contact@ert.eu

www.ert.eu

Twitter: [@ert_eu](https://twitter.com/ert_eu)