

Questionnaire for the public consultation on a New Competition Tool

Fields marked with * are mandatory.

Introduction

Objectives of the public consultation

The proposal for a New Competition Tool is one of the measures aimed at making sure that competition policy and rules are fit for the modern economy. It is meant to address gaps in the current EU competition rules, which have been identified based on the Commission's enforcement experience in digital and other markets, as well as the worldwide reflection process about the need for changes to the current competition law framework to allow for enforcement action preserving the competitiveness of markets.

EU competition law can address (i) anti-competitive agreements and concerted practices between companies pursuant to Article 101 of the Treaty on the Functioning of the European Union ("the EU Treaty") and (ii) the abuse by a company of its dominant position pursuant to Article 102 of the EU Treaty. The enforcement experience of the Commission and national competition authorities, as well as the worldwide reflection process on the fitness of the existing competition rules to tackle today's challenges have helped to identify certain structural competition problems that these rules cannot tackle (e.g. monopolisation strategies by non-dominant companies with market power) or cannot address in the most effective manner (e.g. strategies by companies with market power to extend their market position into multiple related markets).

The objective of this consultation is to collect stakeholder views on two aspects. First, stakeholders are asked to provide their views on whether there is a need for a new competition tool to ensure fair and competitive markets with a view to delivering lower prices and higher quality, as well as more choice and innovation to European consumers. Second, stakeholders are asked to provide their views on the characteristics that such a new competition tool should have in order to address structural competition problems in a timely and effective manner.

In parallel, the Commission is also engaged in a process of exploring, in the context of the Digital Services Act package, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants. As part of that process, the Commission has launched a consultation to seek views on the framing, on the scope, the specific perceived problems, and the implications, definition and parameters for addressing possible issues deriving from the economic power of large, digital gatekeeper platforms. As such, the work on a proposed New Competition Tool and on the ex ante rules complement each other. The work on the two impact assessments will be conducted in parallel in order to ensure a coherent outcome. In

this context, the Commission will take into consideration the feedback received from both consultations. We would therefore invite you, in preparing your responses to the questions below, to also consider your response to the parallel consultation on ex ante rules for large, digital gatekeeper platforms, which can be found at [Digital Services Act survey](#).

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association

- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Alex

* Surname

Petros

* Email (this won't be published)

alexpetros@publicknowledge.org

* Organisation name

255 character(s) maximum

Public Knowledge & The Consumer Federation of America

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

* Web address

www.publicknowledge.org, www.consumerfed.org

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|--|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |
| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
| <input type="radio"/> Aruba | <input type="radio"/> Faroe Islands | <input type="radio"/> Martinique | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
| <input type="radio"/> Austria | <input type="radio"/> Finland | <input type="radio"/> Mauritius | <input type="radio"/> Slovenia |
| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen

- Czechia
- Lebanon
- Saint Helena
Ascension and
Tristan da
Cunha
- Zambia
- Democratic
Republic of the
Congo
- Lesotho
- Saint Kitts and
Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

A. How to answer?

You are invited to reply to this public consultation **by 8 September 2020** by filling out the eSurvey questionnaire online. The questionnaire consists of four main sections:

1. General information on the respondent
2. Structural competition problems: this section aims to gather the experience and views of stakeholders on scenarios resulting in a structural lack of competition and structural risks for competition, as well as about whether the current EU competition rules can deal with them.
3. Assessment of policy options: this section aims to gather the views of stakeholders on the four policy options outlined in the Inception Impact Assessment.
4. Institutional set-up of a new competition tool: the section aims to gather the views of stakeholders about how the new competition tool should be shaped in order to address structural competition problems in a timely and effective manner.

The Commission will summarise the **results in a report**, which will be made publicly available on the Commission's [Better Regulation Portal](#).

In the interest of time, the questionnaire is available in English only during the first two weeks. Thereafter the questionnaire will also be available in all official EU languages. You may respond to the questionnaire in any official EU language.

To facilitate the analysis of your reply, we would kindly ask you to **keep your answers concise** and to the point. You may include documents and URLs for relevant online content in your replies. **You are not required to answer every question.** You may respond 'not applicable/no relevant experience or knowledge' to questions on topics where you do not have particular knowledge, experience or opinion. Where applicable, this is strongly encouraged in order to allow the Commission to gather solid evidence on the different aspects covered by this questionnaire.

You are invited to read **the privacy statement attached** to this consultation for information on how your personal data and contribution will be dealt with.

You have the option of saving your questionnaire as a 'draft' and finalising your response later. In order to do this you have to click on 'Save as Draft' and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access the draft again and continue replying to your questionnaire. Once you have submitted your response, you will be able to download a copy of your completed questionnaire.

Whenever there is a text field for a short description, you may answer in **maximum 3000 characters**.

Questions marked with an asterisk (*) are **mandatory**.

Digital markets in this questionnaire refer to markets largely relying on digital technologies with certain specific characteristics, such as extreme economies of scale and scope, strong network effects, zero pricing and data dependency.

No statements, definitions, or questions in this public consultation may be interpreted as an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to definitions the Commission may use under current or future EU law or in decisions.

In case you have questions, you can contact us via the following functional mailbox: COMP-NEW-COMPETITION-TOOL@EC.EUROPA.EU;

If you encounter technical problems, please contact the Commission's [CENTRAL HELPDESK](#).

*** 1. Please indicate your role for the purpose of this consultation.**

- An individual citizen
- An association or trade organisation representing consumers
- An association or trade organisation representing businesses
- An association or trade organisation representing civil society
- A business / economic operator of small size
- A business / economic operator of medium size
- A business / economic operator of large size
- A public authority
- A research institution / Think tank

- Academia (Legal field)
- Academia (Economics)
- Academia (Engineering)
- Academia (Other)
- Law firm / consultancy
- Other: Optional

*** 2. Only for businesses / economic operators: Please identify the markets /sectors in which you provide your services.**

- A - Agriculture, forestry and fishing
- B - Mining and quarrying
- C - Manufacturing
- D - Electricity, gas, steam and air conditioning supply
- E - Water supply; sewerage; waste management and remediation activities
- F - Construction
- G - Wholesale and retail trade; repair of motor vehicles and motorcycles
- H - Transporting and storage
- I - Accommodation and food service activities
- J - Information and communication
- K - Financial and insurance activities
- L - Real estate activities
- M - Professional, scientific and technical activities
- N - Administrative and support service activities
- O - Public administration and defence; compulsory social security
- P - Education
- Q - Human health and social work activities
- R - Arts, entertainment and recreation
- S - Other services
- T - I am not a business/economic operator
- Other

*** 3. Please briefly explain your activities/describe your organisation/company and - if applicable - the main goods/services you provide.**

3000 character(s) maximum

Public Knowledge is a consumer advocacy group that works at the intersection of copyright, telecommunications, and internet law to promote policies that serve the public interest. Public Knowledge advocates for freedom of expression, net neutrality, online privacy, affordable broadband access, digital platform competition, and other policies that benefit the public. In all our work, we endeavor to promote a creative and connected future for all Americans.

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.

*** 4. Only for businesses / economic operators: Does your company provide digital goods or services?**

- I am not a business operator/representative of businesses
- No
- Not applicable
- Yes, I am active as an e-commerce marketplace
- Yes, I operate an app store
- Yes, I develop and provide apps
- Yes, I provide a search engine
- Yes I provide an operating system
- Yes I provide a social network
- Yes, I provide network and/or data infrastructure/cloud services
- Yes, I provide digital identity services
- Other

Please specify

3000 character(s) maximum

*** 4.1. Please explain your answer. Please indicate what types of digital goods or services you provide. If you replied 'no', please indicate if you expect to provide digital goods or services in the next five years.**

3000 character(s) maximum

We have no expectations of providing digital goods or services in the next five years.

5. Only for business / economic operators: As a business user, do you rely on digital services or on digital operators and/or online platforms? (For the purposes of this questionnaire 'online platform' refers to a firm operating in two (or multi)-sided markets, which uses the Internet to enable interactions

between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups.)

- Yes, my business is fully dependent on digital operators and/or online platforms
- Yes, my business is largely dependent on digital operators and/or online platforms
- Yes, my business is somewhat dependent on digital operators and/or online platforms
- No
- Not applicable / no relevant experience or knowledge
- I am not a business operator/representative of businesses

5.1. If yes, please describe those digital services you use. If no, please explain why you do not use digital services, and whether you expect/plan to rely on them in the next five years.

3000 character(s) maximum

C. Structural competition problems

Structural competition problems concern structural market characteristics that have adverse consequences on competition and may ultimately result in inefficient market outcomes in terms of higher prices, lower quality, less choice and innovation. These market characteristics (explained in more detail below) include extreme economies of scale and scope, strong network effects, zero pricing and data dependency, as well as market dynamics favouring sudden and radical decreases in competition ('tipping') and 'winner-takes-most' scenarios. These characteristics can typically be found in digital but also in other markets.

As the Commission has established in some of its competition decisions, these characteristics can make a position of market power or dominance, once acquired, difficult to contest.

While structural competition problems can arise in a broad range of different scenarios, they can be generally grouped into two categories depending on whether harm is about to affect or has already affected the market:

- **Structural risks for competition** refer to scenarios where certain market characteristics (e.g. network and scale effects, lack of multi-homing and lock-in effects) and the conduct of the companies operating in the markets concerned create a threat for competition, arising through the creation of powerful market players with an entrenched market position. This applies notably to tipping markets. The ensuing risks for competition can arise through the creation of powerful market players with an entrenched market and/or gatekeeper position, the emergence of which could be prevented by early intervention. Other scenarios falling under this category include unilateral strategies by non-dominant companies to monopolise a market through anti-competitive means.
- **Structural lack of competition** refers to a scenario where a market is not working well and not delivering competitive outcomes due to its structure (i.e. structural market failures). These include (i) markets displaying systemic failures going beyond the conduct of a particular company due to certain structural features, such as high concentration and entry barriers, customer lock-in, lack of access to data or data accumulation, and (ii) oligopolistic market structures characterised by a risk for tacit

collusion, including markets featuring increased transparency due to algorithm-based technological solutions.

The questions in this section aim to gather information on the types of market characteristics that may result in structural competition problems, and on gaps in Articles 101 and 102 of the EU Treaty, in order to understand the most appropriate scope for a new competition tool. (Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States ('anti-competitive agreements'). These include, for example, price-fixing or market-sharing cartels. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it.)

6. Please indicate to what extent each of the following market features/elements can be a source or part of the reasons for a structural competition problem in a given market in your view.

Please, give examples of sectors/markets or scenarios you are aware of in the follow-up question.

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
A - One or few large players on the market (i.e. concentrated market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B - High degree of vertical integration ('Vertical integration' relates to scenarios where the same company owns activities at upstream and downstream levels of the supply chain)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
C - High start-up costs (i.e. non-recurring costs associated with setting up a business)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
D - High fixed operating costs (i.e. costs that do not change with an increase or decrease in the amount of goods or services produced or sold)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
E - Regulatory barriers ('Regulatory barriers' refer to regulatory rules that make market entry or expansion more cumbersome or extensively expensive)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F - Importance of patents or copyrights that may prevent entry	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
G - Information asymmetry on the customer side ('Information asymmetry' occurs when customers (consumers or businesses) in an economic transaction possess substantially less knowledge than the other party so that they cannot make informed decisions)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
H - High customer switching costs ('Switching costs' are one-time expenses a consumer or business incurs or the inconvenience it experiences in order to switch over from one product to another or from one service provider to another)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
I - Lack of access to a given input/asset which is necessary to compete on the market (e.g. access to data)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

J - Extreme economies of scale and scope ('Extreme economies of scale' occur when the cost of producing a product or service decreases as the volume of output (i.e. the scale of production) increases. For instance serving an additional consumer on a platform comes at practically zero cost. 'Economies of scope' occur when the production of one good or the provision of a service reduces the cost of producing another related good or service)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
K - Strong direct network effects (Where network effects are present, the value of a service increases according to the number of others using it. For instance in case of a social network, a greater number of users increases the value of the network for each user. The more persons are on a given social network, the more persons will join it. The same applies e.g. to phone networks)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
L - Strong indirect network effects (Indirect network effects, also known as cross-side effects, typically occur in case of platforms which link at least two user groups and where the value of a good or service for a user of one group increases according to the number of users of the other group. For instance, the more sellers offer goods on an electronic marketplace, the more customers will the marketplace attract and vice versa)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
M - Customers typically use one platform (i.e. they predominantly single-home) and cannot easily switch	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
N - The platform owner is competing with the business users on the platform (so-called dual role situations, for instance the owner of the e-commerce platform that itself sells on the platform)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
O - Significant financial strength	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
P - Zero-pricing markets ('Zero-price markets' refer to markets in which companies offer their goods/services such as content, software, search functions, social media platforms, mobile applications, travel booking, navigation and mapping systems to consumers at a zero price and monetise via other means, typically via advertising (i.e. consumers pay with their time and attention)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Q - Data dependency ('Data dependency' refers to scenarios where the operation of companies are largely based on big datasets)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

R - Use of pricing algorithms ('Pricing algorithms' are automated tools that allow very frequent changes to prices and other terms, taking into account all or most competing offers on the market.)



Please explain your answers above and give examples of the features/elements you indicated if possible. Please specify the letter of the row of the feature /elements you are referring to.

5000 character(s) maximum

Market concentration (A) is among the most important indicators of a competition problem: a concentrated market belies the small number of alternatives for consumers and, by extension, the power of the large players in the market that reduces incentives to innovate and to respect consumer interests. Many of the other features on this list are important in that they encourage or enable market concentration. Network effects—both direct (K) and indirect (L)— and extreme economies of scale and scope (J) make the largest players much more attractive and efficient than smaller competitors, thereby making the big bigger and the small smaller (or non-existent). These effects clearly exist for the dominant digital platforms, where the cost of adding an extra user on top of the existing infrastructure is low and where platforms become more valuable the more people they provide access to. When combined with single-homing (M), which pushes customers to stay put where they are, dominance becomes entrenched and competition becomes difficult to encourage. Other barriers to entry, like high start-up costs (C), lack of access to an essential input (I), or the platform owner competing with business users (N) and potentially exercising their power as a platform to preclude competition, also create structural competition problems that encourage market concentration.

6.1. Can you think of any other market features/elements that could be a source or part of the reasons for a structural competition problem in a given market?

- Yes
- No

7. Please indicate what market scenarios may in your view qualify as structural competition problems and rate them according to their importance.

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* A (not necessarily dominant) company with market power in a core market extends that market power to related markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Anti-competitive monopolisation, where one market player may rapidly acquire market shares due to its capacity to put competitors at a disadvantage in the market unfairly.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Highly concentrated markets where only one or few players are present, which allows to align their market behaviour.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The widespread use of algorithmic pricing that allows easily to align prices.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Gatekeeper scenarios: situations where customers typically predominantly use one service provider/platform (single-home) and therefore the market dynamics are only determined by the gatekeeper.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Tipping (or 'winner takes most') markets ('Tipping markets' refer e.g. to markets where the number of customers is a key element for business success: if a firm reaches a critical threshold of customers, it gets a disproportionate advantage in capturing remaining customers. Therefore, due to certain characteristics of that market, only one or very few companies will remain on those markets in the long term.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 7.1. Please explain your answers above and give examples if possible.**

5000 character(s) maximum

The ability to extend market power from a core market into other markets (for example, Google using its power in the ad market to divert money from other industries through higher prices charged to advertisers) and enact anti-competitive monopolisation (for example, Amazon's willingness to price below cost, potentially in order to acquire market shares in its product markets) allow companies to achieve market power and eliminate competition. Gatekeeper power and tipping entrench this power and make it nearly impossible to reverse course and return to a competitive playing field in the absence of regulation or other government intervention.

*** 7.2. Can you think of any other market scenarios that qualify as structural competition problems?**

- Yes
 No

8. Structural competition problems may arise in markets where a (not necessarily dominant) company with market power in a core market may apply repeated strategies to extend its market position to related markets, for instance, by relying on large amounts of data.

*** 8.1. Do you have knowledge or did you come across such market situation?**

- Yes
 No
 Not applicable /no relevant experience or knowledge

*** 8.2. In which sectors/markets did you experience repeated strategies to extend market power to related markets?**

3000 character(s) maximum

◆ Operating systems, search, digital advertising (search and display)

*** 8.3. Please list and explain instances where a company with market power has used its position to try to enter adjacent/neighbouring markets to expand its market power.**

3000 character(s) maximum

- Microsoft using PC OS dominance to expand its power in media player application market by tying Windows Media Player to Windows OS and in web browser market by tying Internet Explorer to Windows OS
- Apple using iOS market power to extend market power in app stores, using market power in app store to extend market power in particular app markets (for example, screen time monitoring apps, e-reader apps, etc...)
- Google using dominance in general search to expand market power in vertical search and other services (for example, Google Flight Search, Google Scholar, Google Maps, Google shopping...)

*** 8.4. Do you consider that strategies to extend market power to related markets are common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

*** 8.5. Please explain your answer and identify the sectors/markets concerned.**

3000 character(s) maximum

Digital platforms broadly, particularly where platforms occupy strategic market status as a gatekeeper, control access to the digital economy. This enables them to use their platform position to gain market power within various aspects of the digital economy as sellers (like Apple becoming involved in the app market in addition to running an app store, or Amazon becoming involved in product creation and fulfillment in addition to being an online marketplace). Markets concerned include digital marketplaces (e-commerce, app stores), search engines, ads, and social media.

*** 8.6. In your experience, does a repeated strategy by a company with market power to extend its market power to related markets raise competition concerns?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

*** 8.7. Please explain your answer, and indicate the competition concerns that may arise in case of leveraging strategies.**

3000 character(s) maximum

Using market power in a core market to extend into related markets can reduce or foreclose competition in the related market with consequences for consumer choice, consumer welfare, and innovation. To extend into new markets, companies often employ strategies like bundling and tying in which they force consumers to buy a potentially unwanted product in the related market to acquire the product in their core market.

*** 9. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to repeated strategies by companies with market power to extend their market position into related markets?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*

9.1. Please explain your answer. If you replied yes, please also indicate the type of intervention that would be needed.

3000 character(s) maximum

It is important for the Commission to intervene to preserve competition across sectors and prevent the largest companies from cannibalizing power across the economy. Some interventions might include strong merger review for non-horizontal mergers, prohibitions on tying and bundling

*** 9.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective to address those market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

10. Anti-competitive monopolisation refers to scenarios where one market player may rapidly acquire market shares due to its capacity to put competitors at a disadvantage in the market unfairly, for instance, by imposing unfair business practices or by limiting access to key inputs, such as data.

*** 10.1. Do you have knowledge or did you come across such market situation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 10.2. In which sectors/markets did you experience anti-competitive monopolisation strategies?**

3000 character(s) maximum

E-commerce, app stores, & social media

*** 10.3. Please provide examples and explain them.**

3000 character(s) maximum

Amazon employing below-cost pricing, in the process undercutting competitor diapers.com and then acquiring its parent company, Quidsi
Apple removing screen-time-monitoring apps from its app store after releasing its own competitor app
Facebook restricting access to its APIs

*** 10.4. Do you consider that anti-competitive monopolisation is common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No

- Yes, to some extent
- Yes, common
- Yes, very common

*** 10.5. Please explain your answer and identify the sectors/markets concerned.**

3000 character(s) maximum

Dominant digital platforms have substantial abilities and incentives to use anti-competitive monopolisation strategies to earn market power. They can use their position and technology to restrict their competitors' access to key inputs (data, customer access through the platform) and to surveil their competitors. These digital platforms span e-commerce, app stores, search, web services, and social media.

*** 10.6. In your experience, does anti-competitive monopolisation raise competition concerns?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

*** 10.7. Please explain your answer and indicate the competition concerns that may arise in case of anticompetitive monopolisation.**

3000 character(s) maximum

Anti-competitive monopolisation allows companies to eliminate competition and acquire market power that they can later abuse. This market power is not earned through superior products or innovation, but through strategies that unfairly disadvantage competitors that may have otherwise provided competitive pressure or desirable alternatives for consumers.

*** 11. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to anti-competitive monopolisation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 11.1. Please explain your answer. If you replied yes, please also indicate the type of intervention that would be needed.**

3000 character(s) maximum

Preventing anti-competitive monopolisation before market power becomes entrenched is crucial for preserving a fair, competitive, and consumer-friendly market place. Some solutions might include guardrails around self-preferencing for companies who occupy a gatekeeper role, strong nondiscrimination rules, regulation of data (for example, make platform data and APIs available under fair, reasonable, and non-

discriminatory terms), banning certain uses of proprietary third-party data, and new restrictions around anti-competitive pricing.

*** 11.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective to address anti-competitive monopolisation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

12. An oligopoly is a highly concentrated market structure, where a few sizeable firms operate. Oligopolists may be able to behave in a parallel manner and derive benefits from their collective market power without necessarily entering into an agreement or concerted practice of the kind generally prohibited by competition law. In those situations rivals often ‘move together’ to e.g. raise prices or limit production at the same time and to the same extent, without having an explicit agreement. Such so-called coordinated behaviour can have the same outcome as a cartel for customers, e.g. price increases are aligned.

*** 12.1. Do you have knowledge or did you come across such market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 12.2. Please identify the markets concerned and explain those market situations.**

3000 character(s) maximum

Wireless, broadband, business data services, food delivery, ridesharing, and operating systems all have a few dominant players. These players often don't compete head-to-head, instead choosing to dominate their respective customer-bases (by geography, product differentiation, etc.)

12.3. In your experience, what are the main features of an oligopolistic market with a high/substantial risk of tacit collusion?

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High concentration levels	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Competitors can monitor each other's behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Oligopolists competing against each other in several markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Homogeneity of products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* High barriers to enter (e.g., access to intellectual property rights, high marketing costs, global distribution footprint, strong incumbency advantages, network effects...)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Strong incumbency advantages due to customers' switching costs and/or inertia	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Lack of transparency for customers on best offers available in the markets	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Vertical integration into key assets of the vertical supply chain	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Existence of a clear price leader, resulting in leader-follower behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*** Please explain your answer and your rating above.**

3000 character(s) maximum

High concentration levels and the ability to monitor behavior make coordination between firms easier. Segmentation of the market between competitors (often geographic separation or product segmentation) and repeated contact in several markets also increase oligopolists' incentives and ability to collude.

*** 12.4. Can you think of any other features of an oligopolistic market with a high /substantial risk of tacit collusion?**

- Yes
 No

*** 13. Do you consider that there is a need for the Commission to be able to intervene in oligopolistic markets prone to tacit collusion in order to preserve /improve competition?**

- Yes
 No
 Not applicable /no relevant experience or knowledge

*** 13.1. Please explain your answer.**

3000 character(s) maximum

Tacit and parallel collusion should be prevented. Because it is often difficult to identify tacit collusion, special attention should be given to markets with conditions that facilitate such behavior: tight oligopolies, particularly where they are reinforced by multi-market contact, technological specialization, product segmentation, and geographic separation. A tight oligopoly exists where the top four firms have a 60% (or more) market share, and all firms that could constitute this market share should be well regulated. One remedy would be to move to ex-ante regulation for these firms, placing the burden on them to show that rate or term changes are fair, reasonable, and non-discriminatory (FRAND) and that mergers will not harm competition.

However, four or more firms does not necessarily ensure competition and the commission should take care to extend scrutiny beyond firms who constitute a tight oligopoly. Scrutiny of higher numbers of firms (4-10) should be subject to complaint and might shift the burden to complaining firms.

*** 13.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address oligopolistic market situations prone to tacit collusion?**

- Yes
 No
 Not applicable /no relevant experience or knowledge

14. Relying on digital tools, companies may easily align their behaviour, in particular retail prices via pricing algorithms. (Pricing algorithms are automated tools that allow very frequent changes to prices and other terms taking into account all or most competing offers on the market.)

* 14.1. Do you have knowledge or did you come across such market situations?

- Yes
- No
- Not applicable /no relevant experience or knowledge.

* 15. Do you consider that there is a need for the Commission to be able to intervene in markets where pricing algorithms are prevalent in order to preserve/improve competition?

- Yes
- No
- Not applicable /no relevant experience or knowledge

* 15.1. Please explain your answer.

3000 character(s) maximum

Pricing algorithms are not fundamentally different to other forms of collusion and do not require special regulations.

* 15.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address all scenarios where algorithmic pricing can raise competition issues?

- Yes
- No
- Not applicable /no relevant experience or knowledge

16. So-called tipping (or 'winner takes most') markets are markets where the number of users is a key element for business success: if a firm reaches a critical threshold of customers, it gets a disproportionate advantage in capturing remaining customers. Therefore, due to certain characteristics of that market, only one or very few companies will remain on those markets in the long term.

* 16.1. Do you have knowledge or did you come across such market situations?

- Yes
- No
- Not applicable /no relevant experience or knowledge

*

16.2. Please list and explain those situations and in which markets you encountered them.

3000 character(s) maximum

Digital platforms in general are prone to tipping. Some examples include e-commerce platforms and app stores (where sellers feel pressured to sell on the dominant platform in order to access the online marketplace), social media (where users are most likely to single-home where their friends are), food delivery apps, ridesharing apps, etc.

16.3. Please indicate what are in your view, the main market features of a tipping market. Please rate each of the listed competition concerns according to its importance.

	No knowledge/No experience	No importance/No relevance	Somewhat important	Important	Very important
* Direct network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Indirect network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Economies of scale	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Users predominantly single-home (i.e. they use typically one platform only)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 16.4. Please explain your answer, indicating why you consider the above features relevant for a tipping market and describe any other feature that you consider important.**

3000 character(s) maximum

Economies of scale alone are not enough to tip a market. However, network effects, both direct and indirect, as well as extreme economies of scale give dominant companies large advantages which encourages competition for the market rather than in the market early on, but results in huge advantages for incumbents once the market has tipped. Single-homing further entrenches these advantages by making customers less likely to leave incumbents for new entrants.

*** 16.5. In your view, is tipping common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

*** 16.6. Please explain your answer and identify the sectors/markets concerned.**

3000 character(s) maximum

Most digital platforms, from social media to ad exchanges to e-commerce services, are prone to tipping. Because fixed costs play such an important role in digital markets, digital markets feature especially large returns to scale. Additionally, digital platforms are driven by network effects that strengthen large incumbents and weaken new entrants.

16.7. In your experience, what are the main competition concerns that arise in tipping markets? Please rate each of the listed competition concerns according to its importance.

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Efficient or innovative market players will disappear	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* There will not be sufficient competition on the market in the long run	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Customers will not have enough choice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*					

Customers may face insufficient innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Customers may face higher prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*** 16.8. Please explain your answers above. Please also use this space to mention any other competition concerns that arise in tipping markets and rate their importance.**

3000 character(s) maximum

The key concern with tipping markets is that it precludes competition in the long run. In order to compete new entrants can only overcome incumbency advantages through significant innovation or through existing scale or installed base. This leads to the typical concerns for markets that lack competition: abuse of market power, lack of consumer choice, insufficient innovation, higher prices, and lower quality. These harms arise when there is a lack of competitive pressure on dominant players and consumers lose the ability to “vote with their feet”.

*** 17. Do you consider that there is a need for the Commission to be able to intervene early in tipping markets to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge.

*** 17.1. Please explain your answer.**

3000 character(s) maximum

The Commission must be able to intervene early to preserve competition. Once markets have tipped it is very difficult to restore the market’s initial competitive conditions because of incumbency advantages in tipping markets.

*** 17.2. Do you consider that Articles 101/102 of the EU Treaty are suitable and sufficiently effective instruments to intervene early in ‘tipping markets’, to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

18. So-called ‘gatekeepers’ control access to a number of customers (and/or to a given input /service such as data) that – at least in the medium term – cannot be reached otherwise. Typically, customers of gatekeepers cannot switch easily (‘single-homing’). A gatekeeper may not necessarily be ‘dominant’ within the meaning of Article 102 of the EU Treaty.

*

18.1. Have you encountered or are you aware of markets characterised by ‘gatekeepers’?

- Yes
- No
- Not applicable / no relevant experience or knowledge

*** 18.2. Please list which companies you consider to be ‘gatekeepers’ and in which markets.**

3000 character(s) maximum

Google (search, advertising, mobile apps)
Facebook (publishing, display advertising)
Apple (mobile apps)
Amazon (e-commerce)

*** 18.3. Do you consider that gatekeeper scenarios are common in digital sectors/markets**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

*** 18.4. Please explain your answer and identify the sectors/markets concerned.**

3000 character(s) maximum

Gatekeeper scenarios are common in digital platform markets because these platforms often act as an intermediary between consumers and other businesses online, thus controlling access to the digital marketplace for these businesses. This arises in advertising, e-commerce, app distribution, and publishing.

*** 18.5. Do you consider that gatekeeper scenarios also occur in non-digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes

18.7. Please indicate what are, in your view, the features that qualify a company as a ‘gatekeeper’. Please rate each of the listed features according to its importance.(0 = no knowledge/no experience; 1 = no importance/no relevance; 2 = somewhat important; 3 = important; 4 = very important).

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High number of customers/users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Customers cannot easily switch (lack of multi-homing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Business operators need to accept the conditions of competition of the platform - including its business environment - to reach the customers that use the specific platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 18.8. Please explain your answer, indicating why you consider the indicated features relevant for qualifying a company as a gatekeeper. Please also add any other relevant features that qualify a company as a gatekeeper and rate their importance.**

3000 character(s) maximum

The most important thing for gatekeepers is that other business operators must go through them to access customers or key infrastructure. Typically this need is driven by gatekeepers controlling access to a large number of customers and by a lack of alternatives for businesses, which is exacerbated by a lack of multi-homing on the customer end (for example, app developers must go through Apple's app store to reach iPhone users because iPhone users can't multi-home on multiple app stores).

**18.9. In your experience, what are the main competition concerns that arise in markets featuring a gatekeeper?
Please rate each of the listed competition concerns according to its relevance.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Gatekeepers determine the dynamics of competition on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* As customers/users cannot easily switch, they have to accept the competitive environment on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Business operators can only reach the customers that use the specific platform /aftermarket by adapting their business model and accepting their terms and conditions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

- * 18.10. Please explain your answers above. Please also use this space to mention any other competition concerns that arise in markets featuring a gatekeeper and rate them in importance.**

3000 character(s) maximum

If gatekeepers determine the dynamics of competition on the platform, which all competitors must go through to achieve scale, they have the ability (and incentive) to foreclose competition. This entrenches their gatekeeper power and can lead to abuse of such power in the long run, resulting in consumer harms and giving consumers little recourse.

- * 19. Do you consider that there is a need for the Commission to be able to intervene in gatekeeper scenarios to prevent/address structural competition problems?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

- * 19.1. Please explain your answer.**

3000 character(s) maximum

Gatekeeper scenarios deserve special attention from competition authorities because of the particular power gatekeepers hold over their rivals and the potential for anti-competitive conduct. In the absence of regulation and oversight, gatekeepers have every incentive to abuse their status in order to harm competitors. The Commission, and not a handful of gatekeepers, should maintain ultimate control over the competitive conditions in the marketplace. One step toward this would involve requiring fair, reasonable, and non-discriminatory access to crucial infrastructure, including data and APIs.

- * 19.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to intervene in markets characterised by ‘gatekeeper platforms’ in order to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

- * 20. In which sectors/markets do you consider that structural competition problems may occur?**

- Structural competition problems may occur in all sectors/markets
- Structural competition problems may occur in some specific sectors/markets (including but not only digital sectors/markets).
- Structural competition problems only occur in digital sectors/markets
-

Structural competition problems mainly occur in digital sectors/markets

- Not applicable / no relevant experience or knowledge

*** 20.1. Please explain your answer and identify the sectors/markets your reply refers to.**

3000 character(s) maximum

Structural competition problems are not unique to digital sectors, but are common in digital markets because of significant economies of scale and scope, large fixed costs, and prevalent network effects in these markets. These problems span across digital communication, digital advertising, social media, and e-commerce. The competition problems in these digital markets may resemble those in telecommunications and other infrastructure industries, which contain many of the same characteristics and structural competition problems.

*** 21. If in response to question 7 you indicated that other forms of structural competition problems in addition to the ones listed above exist, do you consider that there is a need for the Commission to be able to intervene in order to address these other forms of structural competition problems in order to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 22. Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States (anti-competitive agreements). These include, for example, price-fixing or market-sharing cartels. Is Article 101 of the EU Treaty, in your view, a suitable and sufficiently effective instrument to address structural competition problems?**

- Yes
- No
- Not applicable/no relevant experience or knowledge

*** 22.1. Please explain your answer. If you replied 'no', please indicate the types of conduct and situations that in your view, Article 101 of the EU Treaty does not sufficiently or effectively address, and why.**

3000 character(s) maximum

This only appears to address explicit collusion. In highly concentrated markets, tacit collusion can occur and even non-cooperative behavior can still result in non-competitive outcomes.

*** 22.2. Please explain in which markets the market situations and problematic conducts you have identified manifest themselves.**

3000 character(s) maximum

In the communications sector, tacit collusion has been a major problem, with companies often refusing to compete head-to-head thus maintaining dominance in their smaller markets. Similar patterns have emerged in food delivery apps where different apps dominate in different geographies. Even if there is no explicit agreement between companies, it is easy to coordinate these types of market power-preserving behaviors and the risk of abuse of this market power is an important concern.

*** 23. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it. Is Article 102 of the Treaty, in your view, suitable and sufficiently effective to address structural competition problems?**

- Yes
- No
- Not applicable/no relevant experience or knowledge

*** 23.1. Please explain your answer. If you replied 'no', please indicate the type of conduct and situations that in your view, Article 102 of the EU Treaty does not sufficiently or effectively address, and why.**

3000 character(s) maximum

In markets prone to tipping, market power can be achieved even in the absence of traditionally anti-competitive conduct. Other intervention is needed to protect competition in such markets so that market power cannot be abused once the market has "tipped" and restoring competitive conditions is all but impossible. Especially where early intervention is needed, it is not enough to address anti-competitive harms after the fact.

This also fails to address dominant players in one market expanding into new markets, or non-dominant players who still exercise market power.

*** 23.2. Please explain in which markets the market situations and problematic conducts you have identified manifest themselves.**

3000 character(s) maximum

Many digital markets are prone to tipping (see question 16.2). Expansion into new markets is also common (see 8.3 and 8.5). Non-dominant players can still exercise market power particularly where single-homing is an issue (for example in Apple's App Store, ridesharing apps, food delivery apps). All of these issues can hurt competition and reduce consumer choice, leading to harms like limited privacy options, higher fees, excessive ad targeting, and poor content moderation on digital platforms.

D. Assessment of policy options

The questions in this section seek to gather feedback on the policy options outlined in the [Inception Impact Assessment](#).

*** 24. In light of your responses to the questions of Section C, do you think that there is a need for a new competition tool to deal with structural competition problems that Articles 101 and 102 of the EU Treaty (on which current competition law enforcement is based) cannot tackle conceptually or cannot address in the most effective manner? (Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States (anti-competitive agreements). These include, for example, price-fixing or market-sharing cartels. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it.)**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 24.1. Please explain your answer. Please indicate which structural competition problems the new tool should tackle or address.**

3000 character(s) maximum

The new competition tool can be a key element in addressing structural competition problems in digital markets. The tool can address all the structural competition problems previously elucidated in Part C of the survey.

*** 25. Do you think that such a new competition tool (that would not establish an infringement by a company and would not result in fines) should also be able to prevent structural competition problems from arising and thus allow for early intervention in the markets concerned?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 25.1. Please explain your answer. Please indicate which structural competition problems the new tool should prevent.**

3000 character(s) maximum

The new competition should be allowed to be proactive in protecting competition. In markets with only a few competitors, market exit can be a deathblow for competition in the entire market. The tool should pay

particular attention to acquisitions by already dominant platforms as tools to further entrench market power or disrupt competition in adjacent markets.

*** 26. What are in your view the most important structural competition problems that should be tackled with such a new competition tool?**

3000 character(s) maximum

The new competition tool should address the unique problems posed by dominant digital platforms. The first is network effects. The users of many digital platforms benefit from other users using the same platform. For example, a social network becomes more useful for an individual user as more of her friends join the same network. A seller posting their goods for sale prefers a marketplace with more potential buyers on it. Next, is the nature of data in economies of scope and scale. Data is a non-rivalrous good whose utility to a platform exponentially increases as the platform both collects data on more users and more data on an individual user. This gives platforms with a wide user base and maximum data exploitative policies a large advantage over newer rivals. Finally, digital platforms take advantage of consumer behavior “stickiness.” Many consumers are unlikely to change the default offerings and have a tendency to “single home” with one provider—not constantly checking whether a superior option has entered the market. The new competition tool must take account of and counteract these structural competition problems if it is to be as effective as possible.

*** 27. In your view, what should be the basis for intervention for the new competition tool?**

- The tool should be dominance-based (i.e. it shall only be applicable to dominant companies within the meaning of Article 102 of the EU Treaty)
- The tool should focus on structural competition problems and thus be potentially applicable to all undertakings in a market (i.e. including dominant but also non-dominant companies).
- Other
- Not applicable /no relevant experience or knowledge

*** 27.1. Please explain your answer. Please indicate what type of situations would be covered by the scope of application you suggested.**

3000 character(s) maximum

The tool should focus on dominant digital platforms. Proper regulation should focus on the main bad actors who endanger competition as a whole.

*** 28. In your view, what shall be the scope of the new competition tool?**

- It shall be applicable to all markets (i.e. it should be horizontal in nature)
- It shall be limited in scope to sectors/markets where structural competition problems are the most prevalent and/or most likely to arise
- Other
- Not applicable / no relevant experience or knowledge

*

28.1. Please explain your answer. If you indicated ‘limited in scope’, please indicate what sectors/markets should be covered by the new competition tool, and why.

3000 character(s) maximum

The tool should be limited to digital platform markets. This should ensure smooth interaction with existing regulation and a focus on these competition problems.

*** 28.2. Do you consider that the new competition tool should apply only to markets/sectors affected by digitisation?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

*** 28.3. Please explain your answer, indicating what markets/sectors you would consider as affected by digitisation.**

3000 character(s) maximum

As digital platforms expand out into other markets, the tool should follow their actions there. We would consider markets where the use of the Internet is a key component in the business model as those markets affected by digitisation.

*** 29. If a new competition tool were to be introduced, how should a smooth interaction with existing sector specific legislation (e.g. telecom services, financial services) be ensured?**

3000 character(s) maximum

Clear and thoughtful guidance from the beginning is essential to a smooth interaction with existing sector-specific legislation. The tool’s mandate should clearly state from Day 1 exactly what kind of companies fall under its purview and which are still regulated under other pieces of legislation. Agency “turf wars” ultimately end up hurting consumers and should be avoided at all costs. The new tool should also not be afraid to adapt legislative or regulatory solutions that have worked in other industries to tackle digital market problems. For example, Public Knowledge has advocated for adapting the “Customer Proprietary Network Information” (CPNI) standard from US telecom regulation to solve the problem of third-party seller data stealing by large digital marketplaces such as Amazon. The new tool should strike the right balance between taking account of the unique nature of digital markets and applying lessons learned from other legislative and regulatory areas.

30. Do you consider that under the new competition tool the Commission should be able to:

	Yes	No	Not applicable /no relevant experience or knowledge

* • Make non-binding recommendations to companies (e.g. proposing codes of conducts and best practices)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
• Inform and make recommendations/proposals to sectorial regulators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Inform and make legislative recommendations	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Impose remedies on companies to deal with identified and demonstrated structural competition problems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

*** 30.1. Please explain your answers indicating why you consider that the new competition tool should include or not include the options above.**

3000 character(s) maximum

The new competition tool should include a wide array of tools to combat structural competition problems. The companies under the domain of the tool have immense political and financial power and have thus far mostly resisted regulatory efforts. The tool should couple recommendations with some degree of legal force, otherwise they risk being ignored by the dominant platforms. The ability to recommend to sectorial regulators will ensure the best fit with the incumbent regulators and allow the various regulators to specialize in what they know best. The tool will have a first-hand view of digital platforms and will thus be best poised to give legislative recommendations. If the tool cannot impose remedies on demonstrated structural competition problems, one wonders if there should be a tool at all.

31. Do you consider that in order to address the aforementioned structural competition problems, the Commission should be able to impose appropriate and proportionate remedies on companies? If yes, which?

	Yes	No	Not applicable /no relevant experience or knowledge
* • Non-structural remedies (such as obligation to abstain from certain commercial behaviour)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Structural remedies (for instance, divestitures or granting access to key infrastructure or inputs)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Hybrid remedies (containing different types of obligations and bans)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

*** 31.1. Please explain your answer and why you indicated or not indicated the remedies listed above.**

3000 character(s) maximum

As above, a wide array of potential tools is essential if the Commission is to be effective in regulating dominant digital platforms. In many cases, non-structural regulatory remedies will be sufficient to solve many of the problems in these markets. However, the threat of structural remedies can force compliance and could be the best option in some other cases. Finally, hybrid remedies would give the Commission needed flexibility in regulating digital platforms. If the new competition tool is handicapped from the outset, there will

be immediate questions about its efficacy. The Commission can avoid that with an endowment of a wide range of powerful potential remedies.

*** 32. Do you consider that certain structural competition problems can only be dealt with by structural remedies, such as the divestment of a business?**

- Yes
- No
- Not applicable /no relevant experience or knowledge
- Other

*** If you indicated "Other", please explain.**

3000 character(s) maximum

In some markets, structural remedies can be the only answer. However, in the digital markets in question, strong regulatory remedies may very well be sufficient.

E. Institutional set-up of a new competition tool

The questions in this section seek feedback on what features and set-up the new competition tool should have.

*** 33. Do you consider that enforcement of the new competition tool by the Commission would require adequate and appropriate investigative powers in order to be effective?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 33.1. Please explain your answer.**

3000 character(s) maximum

Without investigatory powers it would be difficult for the new competition tool to be effective. The first step in solving competition problems is studying the market to learn about the problem and investigatory powers are the key component in that.

33.2. Please indicate what type of investigative powers would be adequate and appropriate to ensure the effectiveness of the new competition tool. Please rate each of the listed investigative powers according to its importance.

	No knowledge	No importance			
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	/No experience	/No relevance	Somewhat important	Important	Very important
* Addressing requests for information to companies, including an obligation to reply	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Imposing penalties for not replying to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Imposing penalties for providing incomplete or misleading information in reply to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The power to interview company management and personnel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Imposing penalties for not submitting to interviews	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The power to obtain expert opinions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The power to carry out inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Imposing penalties for not submitting to inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*** 33.3. Please explain your answer. Please also list here any other investigative powers that you would consider appropriate to ensure the effectiveness of the new competition tool.**

3000 character(s) maximum

All of the above investigatory powers would be appropriate for the new competition tool. It is important that there are penalties for companies refusing to comply with the tool's investigations as otherwise the tool risks being ignored and ineffective.

*** 34. Do you consider that the new competition tool should be subject to binding legal deadlines?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 34.1. Please explain your answer, including the resulting benefits and drawbacks. If you replied yes, please specify the type of deadlines.**

3000 character(s) maximum

Companies under regulation can draw out investigations to tire out regulators, all the while collecting rents from their outside market power. Binding legal deadlines ensure that the investigation will proceed apace and consumers will see real relief in an efficient manner. Companies should be given deadlines to respond to the tool's investigations and the tool should also have deadlines in deciding whether to bring enforcement actions and what remedies to use.

*** 35. Do you consider that the new competition tool should include the possibility to impose interim measures in order to pre-empt irreparable harm?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 35.1. Please explain your answer.**

3000 character(s) maximum

Digital platform markets can be incredibly complex and thus investigations can take several years. Once competitors impacted by anti-competitive behavior leave the market, it can be difficult to get them back. Competition should be protected while investigations are ongoing, thus the need for interim measures.

*** 36. Do you consider that the new competition tool should include the possibility to accept voluntary commitments by the companies operating in the markets concerned to address identified and demonstrated structural competition problems?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 36.1. Please explain your answer.**

3000 character(s) maximum

While voluntary commitments can be a tool in the toolbox, it should not be the default. Companies have a duty to shareholders to maximize profits, not to safeguard competition in their markets. The tool needs to make it in a company's best interest to comply with the remedies proposed, and thus some degree of legal force is needed to ensure compliance.

*** 37. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the findings of the existence of a structural competition problem before the final decision?**

- Yes
-

No

- Not applicable /no relevant experience or knowledge

*** 37.1. Please explain your answer.**

3000 character(s) maximum

An opportunity to comment before final decision can certainly be helpful to reaching the most informed decision. However, the tool should be wary of taking everything in a regulated company's comment at face value and instead rigorously investigate the claims made. Other participants in the market would be an excellent source of information about potential anti-competitive conduct on the part of major platforms.

*** 38. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the appropriateness and proportionality of the envisaged remedies?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 38.1. Please explain your answer.**

3000 character(s) maximum

As above, the opportunity for comment here would be a good thing so long as a company's complaints about the heavy-handedness of a remedy is not given outside importance.

*** 39. Do you consider that the new competition tool should be subject to adequate procedural safeguards, including judicial review?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

*** 39.1. Please explain your answer.**

3000 character(s) maximum

The Commission must strike the right balance when it comes to procedural safeguards. Dominant digital platforms pose novel competition problems and existing law can sometimes fail to capture the full gravity of their harms to competition. Updates to the law should work in tandem, not in conflict, with the new competition tool.

*** 39.2. Please indicate which further procedural safeguards you would consider necessary.**

3000 character(s) maximum

Judicial review would certainly be an important procedural safeguard. We have no further proposed safeguards.

F. Concluding questions and document upload

40. Taking into consideration the parallel consultation on a proposal in the context of the [Digital Services Act package](#) for ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers remain fair and contestable for innovators, businesses, and new market entrants, please rate the suitability of each option below to address market issues raised by online platform ecosystems.

	Not applicable /No relevant experience or knowledge	Not effective	Somewhat effective	Sufficiently effective	Very effective	Most effective
* 1.Current competition rules are enough to address issues raised in digital markets	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 2.There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all online platforms with gatekeeper power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* 3. There is a need for an additional regulatory framework allowing for the possibility to impose tailored remedies on individual large online platforms with gatekeeper power on a case-by-case basis.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* 4. There is a need for a New Competition Tool allowing to address structural risks and lack of competition in (digital) markets on a case-by-case basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* 5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 40.1. Please explain which of the options, or combination of these, in your view would be suitable and sufficient to address the contestability issues arising in the online platforms ecosystems.**

3000 character(s) maximum

Case-by-case enforcement is not enough to combat structural obstacles to competition. When markets are prone to tipping (as in the case of digital markets), the status quo of remedying individual violations may be insufficient to protect competitive markets. We recommend a New Competition Tool that can conduct market-wide investigations and impose industry-wide structural remedies where necessary. Additionally, special attention should be paid to gatekeepers, who occupy an important strategic position and can exert power over the competitive landscape in the absence of regulation and oversight. Some of these remedies may apply to all gatekeepers, while others may be market-specific.

41. Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

81ee7ab6-9d15-4827-a3ce-ed5c218e934f/CFA_PK_Additional_Background_.pdf

*** 42. Do you have any further comments on this initiative on aspects not covered by the previous questions?**

3000 character(s) maximum

We do not.

*** 43. Please indicate whether the Commission services may contact you for further details on the information submitted, if required.**

- Yes
- No

Contact

COMP-NEW-COMPETITION-TOOL@EC.EUROPA.EU

