

# Questionnaire for the public consultation on a New Competition Tool

Fields marked with \* are mandatory.

## Introduction

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### 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

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\* 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**

IT for Change

**\* Surname**

India

**\* Email (this won't be published)**

anushka@itforchange.net

**\* Organisation name**

*255 character(s) maximum*

IT for Change

**\* Organisation size**

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

**\* Web address**

https://itforchange.net/

**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?

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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](mailto: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*

IT for Change is an NGO based in Bengaluru, India. We aim for a society in which digital technologies contribute to human rights, social justice and equity. Most mainstream approaches to digital technologies for development are either techno-utopic or promote a market-fundamentalist approach, often both together. A digital makeover of economies and societies has become a convenient opportunity for wholesale corporatisation of social systems, displacing the cornerstone ethics of democratic participation, commons, social justice and gender equality from development discourse.

Progressive actors from all sectors, we believe, must come together to influence the techno-social changes that are redefining our societies in all areas. They need to begin with framing the discourse, and then advocate for appropriate policies and demonstrate working models on the ground. Therefore, even as our own strategies span all these three areas, we also seek to build bridges across different sectors, in the global struggle towards an equitable digital society.

Our work in the areas of education, gender, governance, community informatics and internet/digital policies push the boundaries of existing vocabulary and practice, exploring new development and social change frameworks. Network building is key to our work.

IT for Change is in Special Consultative Status with the Economic and Social Council of the United Nations.

**\* 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*

No, however our advocacy initiatives are spread through the reach of social media and the search services. Thus, we use zero price platforms for outreach and to release our work product.

**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**

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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 type="radio"/>            | <input checked="" 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 type="radio"/>            | <input checked="" 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 type="radio"/> | <input type="radio"/>            | <input checked="" 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 type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            |
| F - Importance of patents or copyrights that may prevent entry  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/> | <input type="radio"/>            | <input checked="" 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 type="radio"/> | <input type="radio"/>            | <input checked="" 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 type="radio"/> | <input type="radio"/>            | <input checked="" 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 type="radio"/>            | <input checked="" 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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" type="radio"/> |
| O - Significant financial strength   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" 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 type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" 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 type="radio"/> | <input type="radio"/> | <input checked="" 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*

**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 type="radio"/>       | <input type="radio"/> | <input type="radio"/> | <input checked="" 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 global list of top ten companies by market capitalization was dominated in 2009 by oil corporations, the industrial era giants. Ten years later, seven of the top ten have data-centric business models. These digital corporations built their multi-billion fortunes in a fraction of the time taken by their predecessors.

Facebook is an example of a tipping market as well as platform in a concentrated market with a few players and complete alignment of business practices. It provides social networking services on one side, and advertisement services on the other – to very different users. Such a ‘market’ tends to subsidize its users on one side employing revenues from the other side. It is aimed at rapidly enhancing the user base on the subsidized side. Such an increased user base enhances the value of the platform for the other side as well, thus establishing a virtuous cycle. The platform seeks to quickly establish a dominant, hopefully monopoly, position in a sector, as its default ‘go to’ place. Such cross subsidy, often resulting even in free services to consumers, can create considerable entry barriers. This obviously has a strong anti-competitive impact. Similarly, e-commerce platforms like Amazon dealing in consumer goods represent the case of businesses not dominant but with market power that allows it to expand in developing countries as well (Amazon has not been declared a monopoly in India by the Competition Commission of India). Such platforms do tend to enter both the

upstream elements of the value chain – getting into manufacturing and trading – as well as downstream ones of branding/marketing, and delivery. This however is not much different from what offline retail chains like Walmart do as well.

Venturing of e-commerce platforms especially in upstream activities of manufacturing and trading may in fact be temporary. Use of ICTs to maintain close process and quality control over remote centres of manufacturing enabled IP based lead global firms to outsource manufacturing. With even better remote controls possible through advanced data based digital technologies, there should prima facie be no reason for digital p-latforms to in-source manufacturing. The motivation, it appears, may be to force the pace of digitalization of the whole ecosystem. This is undertaken by disrupting activities in different parts of the value chain by setting up own competing businesses. The latter are designed to be much more data driven and, as importantly, integrated into the data and intelligence systems of the platform company. Because of the immense efficiencies of close data- and intelligence-based integration, platform owned competing businesses are expected to out-perform the productivity of third-party businesses that are less datafied and less integrated with the platform’s systems. This puts competitive pressure on these other businesses (even without a platform discriminating in favour of its own products in any obvious manner), forcing them towards digitalization/datafication and integration into the platform’s data-intelligence systems. As the whole ecology gets suitably datafied and integrated into the platform’s data-intelligence systems, it may actually be better for platforms to pull out of the physical elements of manufacturing (and perhaps also trading), as IP based firms do. They would prefer to focus on their core competency of intelligent management of the entire ‘digital ecosystem’ and extract profit and rent from it.

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

- Yes
- No

**\* 7.3. Please indicate which are these other market scenarios that in your view qualify as structural competition problems and rate them according to their importance from 0 to 4 (0 = no knowledge/no experience; 1 = no importance /no relevance; 2 = somewhat important; 3 = important; 4 = very important).**

*3000 character(s) maximum*

1. Gatekeeping access to key resources such as Data.

Digital corporations' presence in various sectors is currently at different levels, but the prognosis and trends are telling for almost all of them. In some places digital corporations are entering into partnerships with traditional players; at others the traditional players are themselves seeking to become data-centric. In any case, it is owning and controlling data, and data-based intelligence, that is emerging as the main business advantage. It is likely to exceed the advantage of owning key intellectual property in any sector. It is this shift that can be considered as denoting the advent of a digital economy. In a digital economy, companies that have a sector's key data, and possess the highest data competencies, will digitally re-organize every sector. Such digital corporations will thus lead the respective sector's value chains, hitherto led by companies holding important intellectual property or IP.

2. Nexus of free capital

Most of these companies survive, thrive and expand even if loss making (as has been seen in developing and newer markets) through the exorbitant funds provided by venture capital firms to 'burn'. This is a significantly different element as compared to the extant competitors of these companies. This should be part of the competition analysis as a significant entry barrier as well as the ex-post analysis of the market structure, impact on prices with the eventual loss of competition etc. by the competition authorities.

**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*

A key facet of digital power is in how digital corporations exercise deep and granular real-time control over all activities and actors in a value chain. Such unprecedented micro-control is mediated not so much by market power or legal contracts – as with industrial era value chains, but through employing intelligence derived from data.

For example, Uber plans to control the entire transportation sector and not just the cab business. In that sense, it is able to exert its power and influence on the entire supply chain which may be considered the related market for such goods or services.

Uber's new financial services for drivers, based on their data, could trap them in never-ending loan cycles, thus enslaving them forever. With Uber Money, consumption and expenditure by Uber drivers could also be cycled within Uber's systems. Caught in Uber's 360 degree data-based watch and control, drivers risk becoming a veritable appendage of the Uber.

**\* 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*

Google's approach to dominating various sectors comes from its exceptional data competencies. Google's sister automobile company, Waymo, is tipped in ten years to be bigger than Ford, GM, Fiat, Honda and Tesla combined. Didi in China began by organising taxi drivers on a digital platform. It now advises global car-makers on designing cars, since it holds the data about how cars get actually used. Apple, Google and Amazon are getting into the health sector. Becoming the sector's main technology provider is not their real objective; it is to control its key data. And, based on the insights or intelligence so obtained to fundamentally transform the health sector.

Food delivery companies present an interesting case of going very quickly from being delivery partners of restaurants into 'manufacturing'/trading themselves. This is done by developing 'cloud kitchens', where centralized 'manufacturing' takes place. The longer term goal is to fundamentally disrupt the food business, including by expanding into new unexplored markets. Once such a system matures, it is likely, and makes business sense, for digital food companies to outsource the kitchen or 'manufacturing' part to closely controlled partners. They will focus on their cardinal role of data and intelligence based digital orchestration of the entire food value chain. (Restaurants too will have a new role in this digitalized food sector, while also preserving their traditional attractions.) This evidently is what the dominant digital business, normally understood as platforms, is about.

**\* 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*

All of the above examples cited are blurring the lines between digital and non-digital. These sectors are health, consumer goods and services, transportation, finance, media. Therefore, a digital sector is not restricted to the online space anymore. It has an impact on all key economic as well as employment generating activities and dependencies of an economy. In fact, the thought process linked to a fourth industrial revolution implies that all digital businesses make forays into areas, previously not covered by digitization and datafication. Thus, all aspects of economies and societies are being covered.

**\* 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*

Any leveraging strategy has an impact on the existing market, dependence and employment of people without sufficient compensation or maintenance of the livelihood. These strategies disrupt livelihoods and entrench themselves and the corporations due to deep pockets which cannot be met by those that have been replaced. It has an adverse impact on MSMEs and small traders and businesses. Further, the nexus of venture capitalism to expand and enable the growth of these firms and their ability to leverage it must be analysed when a large company competes and replaces the extant livelihoods and industries.

**\* 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*

Digital power can be considered a sum and culmination of software power, network power and data power. Each of these builds over the earlier kind and subsumes it. We will like to consider 'digital' as the techno-social phenomenon that represents this progression – from software to network to data power – and its incorporation into our economic, social, political and cultural systems.

The key activity segments or layers of data and intelligence value chains are; -

(1) collection of data, (2) data's processing over cloud computing infrastructure, (3) development of digital intelligence and its centralization or networking, and (4) application of such intelligence to socio-physical activities and actors in the relevant sector. Digital power is built and entrenched by digital corporations through vertical integration (including partnerships based) of these four kinds of digital activities. This logic of digital domination is largely sector independent. In fact, digital consolidation of these activities often extends across sectors. Collection of useful data may be cross-sectoral; people's mobility data or commerce data, for instance, may contribute important health intelligence. As intelligence is created, it can also be applied cross sectorally in many ways. AI in visual, voice, natural language processing, and many other such areas, is of a generic kind, employed in almost all sectors.

This explains why digital corporations are able to develop digital presence and power across sectors. Such presence and power can be strengthened through partnerships with existing traditional players in a new sector, at least initially as an entry strategy.

In order to check concentration of digital power, competition regulators, and economic policy makers, need to understand and work on the four key segments of digital value chains involving sourcing of data, its cloud-based processing, data's conversion into digital intelligence, and application of intelligence to real world systems. Various kinds of regulatory interventions and remedies are possible that aim at these key segments of the value chain, including behavioural ones that force certain actions or abstentions on key actors. These would be oriented to ensuring transparency, openness, competition and fairness in each of the key segments of digital value chains. Intervention could be regarding access to data, something that regulators in many countries are actively considering such as the Draft Non Personal Data Committee Report [[https://static.mygov.in/rest/s3fs-public/mygov\\_159453381955063671.pdf](https://static.mygov.in/rest/s3fs-public/mygov_159453381955063671.pdf)]. It could involve expectations of transparency, openness (providing -non-discriminatory access and services) and contractual fairness from cloud service operators, who provide the infrastructure for data storage and processing.

**\* 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

**\* 9.3 Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**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*

In markets where certain companies are held to be dominant such as search and social media exhibit such characteristics and traits. The recent conflict regarding news publishers being sidelined in view of the practices of Google and Facebook and the impact of their dominance is a case in point. This has ended in Australia instituting a code asking digital platforms to share ad revenue with media houses. Similarly, the Google App Store has a 100% market share for Android Operating Software on handheld devices to reach consumers. Google is getting into sectors as diverse as travel, employment, automobiles, health and education.

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

*3000 character(s) maximum*

As answered in 10.2

**\* 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*

It is common for existing and big players in the digital ecosystem due to a certain scale which has been reached. All players in the digital ecosystems are not similarly placed and may not exhibit the same traits and strategies. However, these players are subject to the environment dominated and moulded by the

**\* 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*

E-commerce platforms like Amazon dealing in consumer goods represent the case of businesses not dominant but with market power that allows it to expand in developing countries as well (Amazon has not been declared a monopoly in India by the Competition Commission of India). Such platforms do tend to enter both the upstream elements of the value chain – getting into manufacturing and trading – as well as downstream ones of branding/marketing, and delivery. This however is not much different from what offline retail chains like Walmart do as well.

Venturing of e-commerce platforms especially in upstream activities of manufacturing and trading may in fact be temporary. Use of ICTs to maintain close process and quality control over remote centres of manufacturing enabled IP based lead global firms to outsource manufacturing. With even better remote controls possible through advanced data based digital technologies, there should prima facie be no reason for digital p-latforms to in-source manufacturing. The motivation, it appears, may be to force the pace of digitalization of the whole ecosystem. This is undertaken by disrupting activities in different parts of the value chain by setting up own competing businesses. The latter are designed to be much more data driven and, as importantly, integrated into the data and intelligence systems of the platform company. Because of the immense efficiencies of close data- and intelligence-based integration, platform owned competing businesses are expected to out-perform the productivity of third-party businesses that are less data-fied and less integrated with the platform's systems. This puts competitive pressure on these other businesses (even without a platform discriminating in favour of its own products in any obvious manner), forcing them towards digitalization/datafication and integration into the platform's data-intelligence systems. As the whole ecology gets suitably datafied and integrated into the platform's data-intelligence systems, it may actually be better for platforms to pull out of the physical elements of manufacturing (and perhaps also trading), as IP based firms do. They would prefer to focus on their core competency of intelligent management of the entire 'digital ecosystem' and extract profit and rent from it.

**\* 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*

The key activity segments or layers of data and intelligence value chains are; - (1) collection of data, (2) data's processing over cloud computing infrastructure, (3) development of digital intelligence and its centralization or networking, and (4) application of such intelligence to socio-physical activities and actors in the relevant sector. Digital power is built and entrenched by digital corporations through vertical integration (including partnerships based) of these four kinds of digital activities. This logic of digital domination is largely sector independent. In fact, digital consolidation of these activities often extends across sectors. Collection of useful data may be cross-sectoral; people's mobility data or commerce data, for instance, may contribute important health intelligence. As intelligence is created, it can also be applied cross sectorally in many ways. AI in visual, voice, natural language processing, and many other such areas, is of a generic kind, employed in almost all sectors. This explains why digital corporations are able to develop digital presence and power across sectors. Such presence and power can be strengthened through partnerships with existing traditional players in a new sector, at least initially as an entry strategy. In order to check concentration of digital power, competition regulators, and economic policy makers, need to understand and work on the four key segments of digital value chains involving sourcing of data, its cloud-based processing, data's conversion into digital intelligence, and application of intelligence to real world systems. Various kinds of regulatory interventions and remedies are possible that aim at these key segments of the value chain, including behavioural ones that force certain actions or abstentions on key actors. These would be oriented to ensuring transparency, openness, competition and fairness in each of the key segments of digital value chains. Intervention could be regarding access to data, something that regulators in many countries are actively considering. It could involve expectations of transparency, openness (providing -non-discriminatory access and services) and contractual fairness from cloud service operators, who provide the infrastructure for data storage and processing. The -processes and economics of how digital intelligence gets developed and then applied to socio-physical systems in different sectors is yet an under-examined area.

**\* 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

**\* 11.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**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*

Most markets have a few big players and exhibit such traits. For example, transportation, social media, e-commerce.

### 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 checked="" type="radio"/> | <input type="radio"/>            |
| * Oligopolists competing against each other in several markets   | <input type="radio"/>       | <input type="radio"/>       | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |
| * Homogeneity of products  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/>            | <input checked="" 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 type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Strong incumbency advantages due to customers' switching costs and/or inertia  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Lack of transparency for customers on best offers available in the markets   | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Vertical integration into key assets of the vertical supply chain  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| * Existence of a clear price leader, resulting in leader-follower behaviour  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |

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

*3000 character(s) maximum*

It must be noted that an oligopoly in a market for businesses and consumers can arise even if competitors cannot or do not necessarily monitor each other's behaviour. Even in the absence of explicit or implicit collusion, the market conditions, effects and impact may be such that it is rendered largely oligopolistic. Similarly, it is not necessary for the same set of firms to compete against each other in multiple markets. The behaviour and conditions in one should be sufficient to require intervention to correct the practices.

**\* 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*

In view of the impact of an oligopoly on various participants in a market, it is important to intervene.

**\* 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

**\* 13.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**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.

**\* 14.2. Please list and explain those situations and in which markets you encountered them.**

*3000 character(s) maximum*

Algorithmic and digital pricing as well as opaque pricing is seen across industries, sectors and markets. Uber holds the power to fix prices to the detriment of drivers based on algorithms and models. It is the intelligence held by the platform which the drivers do not have access to that they latter 'voluntarily' accept the services of Uber to fix the price. While opaque yet dynamic pricing impacts the service provider, the consumers are faced with differential pricing based on past behaviour which is inputted into the algorithm. This renders pricing unfair and arbitrary. The anti-competitive impact of differential pricing should inform the analysis of algorithmic pricing as well.

**14.3. In your view, what are the main features of markets where pricing algorithms are used?**

|   | No knowledge /No experience | No importance /No relevance      | Somewhat important    | Important             | Very important                   |
|---|-----------------------------|----------------------------------|-----------------------|-----------------------|----------------------------------|
| * The market is highly transparent (i.e. competitors can easily observe and understand the market behaviour of other players, and align their conduct), even without using the pricing algorithms | <input type="radio"/>       | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| * The market is not transparent (i.e. without the pricing algorithms, competitors would not be able to observe and understand market behaviour of other players)                                  | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| * Prices might be aligned, without market players explicitly agreeing their prices  | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| * The goods and services offered in the market where the pricing algorithms are used are digital  | <input type="radio"/>       | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            |

|   |                       |                       |                       |                       |                                  |
|---|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| <p>* The goods and services offered in the market where the pricing algorithms are used are not digital</p> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
|---|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|

**\* 14.4. Please explain your answers above. Please also use this space to mention any other features of markets where pricing algorithms are used and rate their importance.**

*3000 character(s) maximum*

Pricing algorithms can be used in collusion even in opaque markets because of the ability of competing firms to collect data, find patterns and input it into the algorithm. Thus, it can exist in all sorts of markets. Similarly, it is not restricted to services which are digital. The condition is that the provision of goods or services should be digitally mediated. For example, Uber provides transportation service which is not a digital service. The price setting does not impact the mediation service provided by it but the transportation used by consumers and service provided by drivers.

**\* 14.5. Do you consider that pricing algorithms are common in digital sectors /markets?**

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

**\* 14.6. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

As identified above.

**14.7. In your experience, what are the main competition concerns that arise in markets where pricing algorithms are used?**

**[Multiple choice possible]**

- Alignment of prices / less competition between market players
- Prices increase
- Less choice for customers
- Others

**\* 14.8. Please explain.**

*3000 character(s) maximum*

Apart from the effects mentioned above, there is a possibility of arbitrary price setting for different consumers based on behavioural aspects picked up by the cookies and other tools on websites. This has a further impact of distorting consumer markets, experience, placement of products [<http://competitionlawblog.kluwercompetitionlaw.com/2019/11/01/antitrust-concerns-of-personalized-output/>] and even any subsequent competition analysis.

**\* 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*

Yes, such pricing tools should be reviewed by the Commission to inform and alert the market participants. Based on inequities observed, it should be changed. Such pricing algorithms must require a prior approval of the Commission.

**\* 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

**\* 15.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**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*

As seen in 10.2 and 8.3 above.



**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 type="radio"/> | <input type="radio"/> | <input checked="" 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*

These traits, individually or collectively, can lead markets to tip.

**\* 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*

It is common for existing and big players in the digital ecosystem due to a certain scale which has been reached. All players in the digital ecosystems are not similarly placed and may not exhibit the same traits and strategies. However, these smaller players are subject to the environment dominated and moulded by the bigger players which must be rectified. The natural trajectory, aiming to replacing the bigger players, should not be the incentives for new businesses in a digital ecosystem.

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

Customers may face higher prices



- \* 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*

Tipping markets lead to effective dominance of a firm. The impacts as identified above arise in such cases.

- \* 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 should conduct periodic studies to determine if tipping markets exist and how they can be corrected. A separate market analysis for tipping markets should be undertaken and published.

- \* 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

- \* 17.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**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*

Every platform functions as a gatekeeper. Thus, all platforms identified in 10.2 and 8.3 above are gatekeepers. Further, they occur as closed digital ecosystems as they move into and diversify into various sectors. Another example is the Apple App Store ecosystem where many other companies like Spotify and Epic Inc. have complained against the arbitrariness of its gatekeeping.

**\* 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*

All platforms function as gatekeepers, right from the point of access given to participants on both sides such as consumer and business logins to laying down the norms, prices and rules for the functioning of such players. It enters into standard contracts with both sides of the market.

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

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

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

*3000 character(s) maximum*

Depending on the size, it may occur for other sectors like shopping complexes.

**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 checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| * Customers cannot easily switch (lack of multi-homing)  | <input type="radio"/>       | <input type="radio"/>       | <input type="radio"/>            | <input type="radio"/> | <input checked="" 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*

It is not necessary that there must be a significant number of customers for a company to qualify as a gatekeeper. Structurally, a platform shall always function like one. In view of its ability to set terms, it becomes an unconscionable bargain.

**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<br>knowledge<br>/No<br>experience | No<br>importance<br>/No<br>relevance | Somewhat<br>important | Important             | Very<br>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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" 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*

These are all valid concerns, gatekeepers may also function with illegitimate authority because the governance structure may not be arrived at democratically. For example, there can be no assurance that any discriminatory treatment to a participant will be adjudged judicially. Thus, the private law setup governing such ecosystems must also be accompanied with strong public interest guarantees.

- \* **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*

The Commission must ex-ante approve the governance mechanisms of the gatekeepers at all times and must adjudicate in the case of a dispute.

- \* **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

- \* **19.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

- \* **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*

These structural issues have arisen in the past as well, neither at a scale as seen today and nor with the impact as seen today. Thus, it can arise in different kinds of sectors and not just the digital economy.

**\* 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

**\* 21.1. Please explain your answer.**

*3000 character(s) maximum*

As the Commission creates a new toolkit, it must involve itself with all conditions and issues raised here and identified as a response to question 7.

**\* 21.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address these other forms of structural competition problems?**

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

**\* 21.3. Please explain your answer.**

*3000 character(s) maximum*

The market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed

keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

**\* 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*

Article 101 cannot address algorithmic pricing, algorithmic placement, dual role played by platforms as competitors and the creation of ecosystems through involvement in all sectors.

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

*3000 character(s) maximum*

As identified in 22.1

**\* 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*

It cannot deal with tipping markets which may or may not be characterised by wholly dominant firms, as the criteria is narrowly understood. Similarly, it may not account for the impact on MSMEs and traders accurately or the existence of venture funds which allow the emergence of these platforms, as an entry barrier.

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

*3000 character(s) maximum*

As identified in 23.1

## **D. Assessment of policy options**

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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 market conditions and remedies that the existing competition tools cover is largely minimal, narrow and incomplete to cover the developments in the digital sector, as a whole. It is also a set of tools developed keeping in mind the industrial era conditions which have undergone a massive shift in terms of business practices. Thus, radically new approaches are needed and a new set of regulations, specifically covering this sector must be devised.

\*

**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 tool has a strong focus on ex-ante regulation and assessment of the market. Thus, it should address all the problems identified above.

**\* 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*

Tipping markets, algorithmic pricing, Gatekeeping, Access to Data, Creation of ecosystems

**\* 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 would be effective if it is applicable to a large number of players. If it is applied only to dominant companies then the same situation as seen with the use and enforcement of Article 101, 102 of TFEU may arise.

**\* 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*

It should be applicable to all markets with standards laid down that the Commission uses to undertake the assessment.

**\* 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*

It should be horizontal in nature since the line between digital and non-digital markets is increasingly blurring.

**\* 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*

Through consultations and sectoral priority laid down.

**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 type="radio"/>            | <input checked="" 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*

If its role is restricted to non-binding recommendations then it will be largely powerless. Thus, it should have a broader and all encompassing role.

**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*

It should have broad powers which must be exercised through reasoned orders and wide consultation.

**\* 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

**32.1. Please explain your answer.**

*3000 character(s) maximum*

## 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*

It should have broad powers which should be exercised with due process. Thus, it should have investigative powers as well.

**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 experience | No importance /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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" type="radio"/> |
| * The power to carry out inspections at companies                   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| * Imposing penalties for not submitting to inspections at companies | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" 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*

These powers are necessary to require the compliance by companies and must be granted to the Commission through the tool.

**\* 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*

To foster accountability, it should be bound by deadlines which should be determined and modelled on the timelines for anti-trust investigations.

**\* 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*

It should be devised in a judicial and quasi-judicial manner. Thus, this remedy should be provided.

\*



**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*

A voluntary commitment allows big companies to comply in letter and not the spirit. For effective change, this remedy should not be included.

**\* 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*

The consultations and remedies should be widened and the scope should be broadened as other market participants have key information.

**\* 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*

The players on the platforms and ecosystems should have a say for any effective remedies.

\* **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*

As it works with broad powers, it should be open for judicial review.

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

*3000 character(s) maximum*

Adequate notice should be provided.  
Transparency should be assured at all stages.

## **F. Concluding questions and document upload**

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**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 checked="" type="radio"/> | <input 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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" 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 type="radio"/> | <input checked="" 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*

As indicated, a new toolkit must be developed.

**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

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

*3000 character(s) maximum*

NA

- \* 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

