

# 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

Anna

\* Surname

Mazgal

\* Email (this won't be published)

anna@wikimedia.be

\* Organisation name

*255 character(s) maximum*

Free Knowledge Advocacy Group (Wikimedia)

\* Organisation size

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

\* Web address

https://meta.wikimedia.org/wiki/EU\_policy

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*

The Free Knowledge Advocacy Group EU unites the European Wikimedia chapters and communities so they can have a clear and coherent position on major legislative and political changes affecting the vision, mission and values of the Wikimedia movement. Currently our policy work encompasses the following dossiers:

- TERREG (how to tackle terrorist content online)
- DSA (rules and liability for online platforms like Wikipedia)
- Competition Rules for Online Services
- e-Evidence & Europol Regulations
- Disinformation (fact-checking, reliable sources, tools for moderation, advertising on "fake news")
- Data Strategy for Europe (open government data, open data, business to business data, data hubs)
- AI/ML (liability for AI systems, IPR on AI produced content, open source for AI systems)
- CDSM Transposition (Copyright Directive transposition into national law in the Member States?)

**\* 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*

Wikimedia movement revolves around a group of inter-related projects, including Wikipedia, Wiktionary, Wikiquote and others, which aim to use the collaborative power of the Internet, and the wiki concept, to create and share free knowledge of all kinds.

**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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
D - High fixed operating costs (i.e. costs that do not change with an increase or decrease in the amount of goods or services produced or sold)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
E - Regulatory barriers ('Regulatory barriers' refer to regulatory rules that make market entry or expansion more cumbersome or extensively expensive)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F - Importance of patents or copyrights that may prevent entry	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
G - Information asymmetry on the customer side ('Information asymmetry' occurs when customers (consumers or businesses) in an economic transaction possess substantially less knowledge than the other party so that they cannot make informed decisions)	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>

J - Extreme economies of scale and scope ('Extreme economies of scale' occur when the cost of producing a product or service decreases as the volume of output (i.e. the scale of production) increases. For instance serving an additional consumer on a platform comes at practically zero cost. 'Economies of scope' occur when the production of one good or the provision of a service reduces the cost of producing another related good or service)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
O - Significant financial strength	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
P - Zero-pricing markets ('Zero-price markets' refer to markets in which companies offer their goods/services such as content, software, search functions, social media platforms, mobile applications, travel booking, navigation and mapping systems to consumers at a zero price and monetise via other means, typically via advertising (i.e. consumers pay with their time and attention)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Q - Data dependency ('Data dependency' refers to scenarios where the operation of companies are largely based on big datasets)	<input type="radio"/>	<input type="radio"/>	<input 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*

Explained in further parts of the consultation part C under relevant sections/topics.

**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

**6.2. Please indicate which are these other market features/elements that can be a source or part of the reasons for a structural competition problem in a given market 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).**

In the case of platforms hosting user-generated content, and especially social media, lack of transparency is an important factor (3). It is related to point G above, but broader. Transparency is also a matter of proactive oversight that is performed by an independent body and provides public scrutiny over how the algorithmic data management actually works, how it can be modified according to user profiles and by whom. Since these processes are opaque, companies that act unethically may gain a commercial advantage through questionable practices, at the expense of those actors who are ethical.



**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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Gatekeeper scenarios: situations where customers typically predominantly use one service provider/platform (single-home) and therefore the market dynamics are only determined by the gatekeeper.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Tipping (or 'winner takes most') markets ('Tipping markets' refer e.g. to markets where the number of customers is a key element for business success: if a firm reaches a critical threshold of customers, it gets a disproportionate advantage in capturing remaining customers. Therefore, due to certain characteristics of that market, only one or very few companies will remain on those markets in the long term.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

*5000 character(s) maximum*

From the perspective of platforms hosting user-generated content, the alignment of pricing is not relevant, which of course is different in the case of online marketplaces. In case of those market actors, not only is the gatekeeping role influencing the market dynamics commercially but also it plays a pivotal role in creating industry standards in terms of technology, stifling innovation. For example, API made accessible by a gatekeeping platform forces others to adapt to this technology at the expense of developing other solutions and innovating on them.

Unfortunately, not only companies are subjected to this - legislators also follow these developments and are keen to reflect this in legislation. For example, in the case of copyright reform, content filtering technologies that are pioneered and by gatekeeper platforms have been framed implicitly into the legislation (article 17 of Directive 2019/790). In consequence, such reliance on dominant standards reinforces further the position of those actors whose technologies are considered cutting-edge, even if the objective of the legislation is to weaken those of their practices that are considered unfair.

**\* 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*

4 = very important: The tipping point in the digital market is not only based on the critical threshold of customers, but also on the (technical and customary) ability to create shadow profiles of customers based on the activities they carry out online outside of the core services of the firm in question (cookies of a social media platform embedded in the news website, etc.). Moreover, these tracking activities collect shadow profiles of people that do not use the services of a platform by being a registered user of the social networking platform for example, but are simply visiting websites that happen to use analytical tools or engagement buttons from that platform. In both cases, the tipping point relies not only on the ability to attract customers but also on the practices of these firms to extract data by offering services to third parties.

**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*

The digital market. It is hard to pinpoint the exact sector as some of the companies such as Google/Alphabet or Amazon have reached out across so many sectors it is now unclear which is the original one they started from. In case of social media platforms such as Facebook it is a bit clearer, as their product development and acquisitions were either about diminishing competition from other social media (acquiring Instagram for example) or expanding into private messaging (that is not inherently a part of a social media platform. Many of them offer it, however, we can imagine one that only provides an opportunity for a public expression).

**\* 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*

The aforementioned expansion of Facebook into private messaging; first developing Facebook Messenger, then acquiring WhatsApp, along with an attempt to acquire Snapchat. As a result, WhatsApp started sharing user account information with Facebook, which users can opt out from but it requires awareness and an effort to do so - meanwhile data is being collected and processed. Facebook has been planning to integrate Messenger, Instagram messaging functions and WhatsApp into one messaging service, and the process has started with testing of the merger of the first two in July 2020. This feature will allow users to message other across the platforms, however, that is also more centralisation and more access to user data - even if the chats are end-to-end encrypted (on WhatsApp for example), user account information and potentially the networking across these services may be registered and help Facebook gather even more data.

Each of the platforms that may be considered a gatekeeper for a number of reasons has a history of such expansions, also into the physical realm: Amazon running their own e-commerce platform, offering other companies such services (AWS platform) and opening physical grocery shops on one hand. On the other, expanding onto the streaming market with their own production of entertainment (TV series, etc.). Google developing hardware and software, and creating music streaming services, on top of many other functionalities, services and aggregators they offer to consumers already. For both Amazon and Google additional streams of data come from expanding into the market of voice assistants, basing their services on access to Wikidata, a free and open knowledge base that can be read and edited by both humans and machines, developed entirely by volunteers with support of Wikimedia. The data is free to use, but the companies build proprietary systems backed with investments that are unmatched by anybody willing to develop such services in a free/open source model.

**\* 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

To some extent, because these opportunities are not available to all companies in the digital market (please see 8.7 for details). In addition to what has been already explained in 8.3, it seems that the major digital intermediaries (be it providing access to content or online marketplaces) seem to expand into markets offering other services that are possible to purchase/benefit from online (other than communication and/or sales of goods) - from commercial corporate cloud/e-commerce solutions, through price comparison services, booking and reservation of various services (from restaurants to flights and hotels), deliveries of goods sold via their platforms or by others (Deliveroo, Uber Eats) etc. Some offer hardware and software that extends the use of their online services and brings new applications of their core products (smartphones, voice assistants). Some take over whole supply chains from offering products under their own brand (AmazonBasics), selling them through their e-commerce platform using own warehouse and delivery services to offering some of their products in their own physical stores (Amazon Go, currently only in the US but the company is rolling out these services so expansion to Europe is possible).

**\* 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

Please see answer to 8.3 and 8.5 In addition, these and other market expansions are possible due to a feedback loop that allows the companies to invest and experiment in different markets with lowered risk, as their core businesses based on data extraction and management allow them to leverage costs and invest in new projects long enough for them to become economically viable. This in turn provides them with access to more data on existing and new customers, coming from different modes of interactions these customers have with a variety of their products and services. That creates an exponentially growing market leverage coupled with the fact that users/customers, whether they pay for the services or not, are in addition paying with their behavioral data.

That breeds an enormous source of knowledge about consumer behaviours, whose extent and patterns exploitation are unknown and unavailable for public scrutiny, not to mention the possibility to be leveraged by competitors. The competitors cannot possibly afford such experimentation, and may also experience the loss of customers that move on to one-stop-shops where a variety of services are not only single-homed but also promoted by the platform offering them. Locking consumers in almost complete supply chains, harvesting even more data, and offering new services to create even more lock-in is highly disruptive to markets. It is a method to weaken competitors offering services matching not only the core business of the company applying such a strategy, but also those competitors offering services in markets that are interesting to expand into and who do not have such a capital and leverage to invest and compete with the data-behavioral lock-in.

\*

**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*

The objective of such intervention would be to investigate according to a set of criteria when a in given market discrepancies of market power between companies that exhibit gatekeeping behaviour on that market and other actors on the market, which seems to be a condition priming the former to expand beyond their core market. Just as well, interventions such as probes and investigations should be considered on a case-by-case basis concerning those companies whose gatekeeping role is unclear but who expand to other markets in a way that may bring about an exponential reinforcement of a lock-in effect.

**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

**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*

This is a twofold problem. For online marketplaces, the companies operating these platforms get a lot of information about the customers and their behaviours as they engage with multiple third-party offers essentially through exploring and buying products from vendors who are business clients of the platform. If such platform decides to a) sell their own branded products and/or b) leverage that information to run their business better, its business clients as well as competing online marketplaces are at a disadvantage. They will not be able to amass and leverage the same amount of data, as they have limited or fragmented access to it.

In general, data-based market dominance is pervasive on the digital market, be it social media, online marketplaces or “collaborative economy” services. Success stories of the greatest companies also heavily shape startup culture, where many businesses are established to explore new opportunities of consumers’ attention capture, to generate new data, only to be sold to a more powerful market player with a good profit. In this distorted market a startup is not designed to be a “stay-up” - its destiny is to be an object of market speculation that is sooner or later incorporated into a bigger structure and doesn’t grow or flourish on its own. Therefore very few new initiatives pose any real competition to market incumbents, on the contrary, the dominant actors can externalise some costs of experimentation by acquiring startup “survivors” who already tested the market to accept their product and built their position on their own.

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

*3000 character(s) maximum*

As much as many call data the new oil, from the perspective of consumers, (personal) data is more "the new glitter", in the sense that it is easily spread and once spread can be found in unexpected places pretty much forever. From the perspective of the businesses that experience the competitive disadvantage it would be better that the anti-competitive monopolies share more data. From the perspective of the consumers, whose data has been excessively collected, used in intransparent way (and sometimes unethically) and entered into dataset that inform secret market strategies to target whole cohorts of the population, not only is it better that this data is not further shared; it is also better if it is not collected at all.

In other words, there can be two strategies to tackle dominance based on data monopoly, one to open the datasets to others (under a high standard data-protection model), and another to limit the data that is extracted from users'/consumers' attention and engagement and morphed into metadata containing population-wide market characteristics and behavioral patterns. It needs to be reiterated, that from the perspective of users/consumers the latter is the better option as it ensures greater self-determination and at the same time curbs the competitive advantages coming from any data-driven monopoly position.

**\* 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*

Please see answer to 10.3.

**\* 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*

Yes, however, it should not be dealt with giving more access to an ever growing pool of data to others. Even if the data in question is aggregated and anonymous, it still influences the whole cohorts of the population, regardless if they actively engage with the platform in question or not (please see answer to 7.3 on shadow profiles for explanation).

**\* 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*

There definitely is a role for the Commission in tackling this issue. As explained in answer to 10.3 above, these fair competition concerns resulting from data access asymmetries should be solved by regulating how much data the companies may actually collect, ensuring that they do not collect more than justified by the core commercial interest, and making the processing of data more transparent, if not to the public, then at least to a designated regulator.

**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

**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*

Definitely, the digital market has been structured by and around oligopolies, that not only derive benefits from high concentration in the market where their core business, but also in a spillover to other markets driven by the economy of scale within which they operate.

Platforms hosting user-generated content accessible to the public are the prime example, especially social media. They do not operate on a market as much as they create their own market by being on the forefront of digital innovation that aims at building what we now call the “attention economy”. It is worth noting that nominally these services are free to use by the consumers, but in practice consumers pay with their data, which generate income for these platforms, on the granular level (an ad that is a source of profit to the platform is being shown to a consumer with a specific behavioral profile) through the enterprise level (a platform uses big data streaming from users’ behaviour to profile key characteristics of a given population cohort and create custom-made algorithms to maximise the accuracy of advertising) to the market level (various datasets are made available to third parties to offer goods and services and possibly converged with data coming from third-party services through shadow-profiling and data trading).

Along with the above, tacit collusion practices are present beyond content-hosting platforms and extend to online marketplaces, platforms aggregating access to other services (booking of services, transportation, price comparisons, etc.). They are supported by the presence of concentration of power, barriers of entry, price adjusting practices, resulting with homogeneity of offer (even if not of products, which also happens,



but of standards of service and ways in which risks such as consumer dissatisfaction with handling complaints are managed).

### 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*3000 character(s) maximum*

Digital economy oligopolists compete with each other in other markets by extending their range and services to either an offer supplementing their initial offer (social media developing/buying messaging services as described in answer 8.3; the same practices Google developing Hangouts and Google Meet). Facebook developing Workspace - communication tools for businesses on one hand, and Google experimenting with Google+, a social network. Both Google and Facebook investing in hardware, for example in Google Glass and in Oculus, respectively (for the latter, a Facebook account will be soon required to login which is a breach of the promise made to users at the acquisition of the company). These and many more examples show that companies align strategies and directions of development in an attempt to strengthen one's own network effect at the detriment of consumer's choice.

This is exacerbated into a vertical integration into key assets, described in answer 8.5 (beyond content hosting platforms), and the result is the customers' switching costs that are to do with the network effect, even if the services are offered for free. In case of social media, the resignation from one service (or many) may bring about a range of consequences detrimental to one's ability to fully function in the society, such as exclusion from public debate, through loss of access to services that require the use logins through social media profile, to lower credit scores as bank tend to analyse social media presence of potential clients to evaluate spending patterns and risks.

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

- Yes
- No

**\* 12.5. Please indicate which are these other features of an oligopolistic market with a high/substantial risk of tacit collusion 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*

please see answer 12.2

**\* 12.6. In your experience, what are the main competition concerns that arise in oligopolistic markets prone to tacit collusion?**

*3000 character(s) maximum*

Capital aggregated on data and the constant inflation of data market value stemming from the proprietary and opaque character of tools used for behavioral advertising (which effectiveness has been disputed especially for small businesses) fuels further innovation of the algorithmic tools, which (among others) creates high barriers of entry as the costs of creating these solutions are high. This combined with high purchase power of services that may potentially compete, further add to the decreased variety of entities at a given part of a digital market.

\*

**12.7. Do you consider that oligopolistic market structures are common in digital sectors/markets?**

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

**\* 12.8. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

Please see answers to the questions from 12.2 to 12.6 as they concern digital sectors/markets.

**\* 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*

The role of the Commission would be to create a new competition tool to address structural issues that are pervasive on markets plagued by oligopolies. This tool would enable a better, expeditious intervention on a case-by-case basis when on a given market (digital market being our key concern) there is proof of one or more features mentioned in question 8.3.

**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

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

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

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

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

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

\* 15.1. Please explain your answer.

*3000 character(s) maximum*

The Commission is in a position to expand the notion of consumer protection beyond the understanding that the consumer harm does not exist if a service does not charge them for what it offers. Despite the fact that nominally many of online services are free to use by the consumers, in practice consumers pay with their data, which generate income for these platforms, on the granular level (an ad that is a source of profit to the platform is being shown to a consumer with a specific behavioral profile) through the enterprise level (a platform uses big data streaming from users' behaviour to profile key characteristics of a given population cohort and create custom-made algorithms to maximise the accuracy of advertising) to the market level (various datasets are made available to third parties to offer goods and services and possibly converged with data coming from third-party services through shadow-profiling and data trading). These harms cannot be ignored any longer and a redefinition of this narrow understanding that focuses on the existence of a price and how it is being adjusted needs to happen.

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

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

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

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

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

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

*3000 character(s) maximum*

Digital markets are a feature example of this phenomenon. Many of the companies do not operate on a market as much as they create their own market by being on the forefront of digital innovation that aims at building what we now call the “attention economy”. Just for social media we observe how many of those predating the rise of giants (Youtube, Facebook, Twitter) or in response to their growing success either collapsed or remain active without any comparable market power, either to their own past or to the gatekeeping giants. As much as some of it may be ascribed to factors such as insufficient capital to invest and innovate or a decision not to expand into a single-home platform for social interactions, there are examples of platforms that enjoyed popularity and experienced a sudden migration of users to Facebook, that exacerbated the demise to a weak market position while reinforcing the competitor. This concerns for example globally known Myspace (that at its peak in 2008 enjoyed almost 76 million unique visitors per month) as well a Polish Nasza Klasa (NK) that in 2010 reportedly had 14 mil. active user accounts (in a population of ca 30 mil. people). Both platforms exist today but they serve either users in a diminished capacity.

**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*

The tipping point in the digital market is not only based on the critical threshold of customers, but also on the (technical and customary) ability to create shadow profiles of customers based on the activities they carry out online outside of the core services of the firm in question (cookies of a social media platform embedded in the news website, etc.). Moreover, these tracking activities collect shadow profiles of people that do not use the services of a platform by being a registered user of the social networking platform for example, but are simply visiting websites that happen to use analytical tools or engagement buttons from that platform. In both cases, the tipping point relies not only on the ability to attract customers but also on the practices of these firms to extract data by offering services to third parties.

**\* 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*

Please see answer to 16.2 and 16.4

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

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

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

*3000 character(s) maximum*

Higher prices are only somewhat important as on the digital market they only relate to services that either are online marketplaces or offer access to their services at a remuneration. The lack of competition and effects on innovation are indeed key long-term results. The other is concentration of enormous amount of personal data and metadata, that amount to identity profile including predictions of future behaviour and choices of individuals and groups, combined with an ability to influence that behaviour to either benefit the company or those who pay to exert such an influence (Cambridge analytica scandal being an example of such behaviour).

**\* 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 role of the Commission would be to create a new competition tool to address structural issues that are pervasive on tipping markets, especially on the digital market where this situation is pervasive. This tool would enable a better, expeditious intervention on a case-by-case basis when on a given market (digital market being our key concern) there is proof of one or more features mentioned in question 16.7

**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

**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*

Digital market, due to its high concentration, tipping, and the capital digital giants have at their disposal is a convincing example of a space dominated by gatekeepers that drive the innovation pace, dictate dominating business model (data extraction and exploitation), and pushing the race beyond ethical boundaries with careless approach to privacy/data protection and employing technologies that raise grave ethical concerns (unconsented and pervasive facial recognition for example) and/or take their origin on the military sphere and are subsequently deployed on European citizens (for example advanced discreet tracking and surveillance technologies).

Pointing to GAFAM (Google, Amazon, Facebook, Apple, Microsoft) is quite obvious. It needs to be emphasised that both their dominance and the danger of having more gatekeepers in emerging services and technologies is enabled by the very structure of the market, where the winner does take it all. Therefore solely regulating companies case-by-case is a never ending chase on the market that is stacked against the small and the average and does not encourage decentralisation based on interoperability of services and portability of user experience.

**\* 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*

Please see answer to 18.2

**\* 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*

Specifically from our perspective we can see that because of the spillover to other markets described in the section above on companies with market power to extend their market position into related markets, the gatekeeping behaviours on the digital market are creeping into other sectors of that market and on that market. "Collaborative economy" platforms not only do disrupt the markets they operate in (short-term accommodation rentals, transportation/commute, etc., even labor market) but also become gatekeepers interlocking users and making it difficult to restore balance on the market without a public intervention, such as imposing caps, devising additional obligations, regulating pay of contractors/workers (by law or through litigation), and even organising referenda on the public acceptance of such services operating in a certain area (the Paris referendum on AirBnB for example).

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High number of customers/users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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*

As explained above, in answer to 10.2, another important factor is the ability to buy out competition (to incorporate into the business or to shelve and block its development) and to organise a whole ecosystem in which big companies organise opportunities for new entrants and provide seed funding to then invest, control or takeover promising ideas that have passed initial market tests at their own risks. At the minimum, such practice allows the gatekeeper to closely observe and even steer (with funding) the development of the new venture, even if that venture does not end up in “the belly of the beast”. It resembles a hunting practice of feeding game in the winter to create a pathway for the animals to frequent only to have easy access to shooting prey.

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Gatekeepers determine the dynamics of competition on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* As customers/users cannot easily switch, they have to accept the competitive environment on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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*

It is important to underline the last point and how gatekeeping platforms make companies quit from running their own websites or organise their own services (delivery, booking, etc.), redirecting internet traffic to their own walled garden. It is not good for consumers, even if businesses can cut costs, and not for the low paid workers who work in delivery or in various kinds of "fulfilment centers". Certainly the "free/cheap for business" often means "customers pay with data" and with the valuable kind - on their consumption preferences, life and work habits, and even religious and political views. This feature contributes to an internet in which everything is intermediated, and therefore inspected, valued, classified, sold and often used against consumers and their best interests. All that is done not by the partner in the transaction but an intermediary that makes the business and the customers meet. On such an internet, there are a few private, centralised, prosperous gardens, and the rest of the ecosystem is deprived of key resources and often simply hard to find and make use of.

**\* 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 role of the Commission would be to create a new competition tool to address structural issues that are pervasive in gatekeeping scenarios, especially on the digital market where this situation is pervasive. This tool would enable a better, expeditious intervention on a case-by-case basis when on a given market (digital market being our key concern) there is proof of one or more features mentioned in questions 18.9.

**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

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

- Structural competition problems may occur in all sectors/markets
- Structural competition problems may occur in some specific sectors/markets (including but not only digital sectors/markets).
- Structural competition problems only occur in digital sectors/markets
- Structural competition problems mainly occur in digital sectors/markets
- Not applicable / no relevant experience or knowledge

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

*3000 character(s) maximum*

Structural competition issues pervade many different markets, and defining specific sectors as being “digital” or “non-digital” may create incentives for gamesmanship with sectoral definitions or corporate structuring. Many sectors not typically included in commonplace definitions of “digital” may generate structural competition risks. We therefore recommend the Commission use a horizontal scope in addressing these issues.

**\* 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*

The role of the Commission would be to address structural issues that enable shadow-profiling of users through strengthening personal data protection and e-privacy. In the realm of competition law, including this issue into the mandate created under a new competition tool would enable a better, expeditious intervention on a case-by-case basis when on a digital market market actors there is proof of the problem mentioned in answer to 7.3



**\* 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*

Articles 101 and 102 of the Treaty provide a good basis to address those market situations, however, we believe there is still a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

**\* 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

**\* 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*

There is a need to introduce a New Competition Tool complementing antitrust enforcement. This would concern scenarios, which source is not necessarily market dominance (as outlined in article 102), but that nevertheless threaten market balance.

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

*3000 character(s) maximum*

We describe these situations in various sections of the New Competition Tool consultation.

## **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 structural competition problems that should be addressed are both structural risk of competition and structural lack of competition. It concerns all the problems named in question 7.

**\* 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 should create a framework to prevent especially anti-competitive monopolisation, high concentration, rise of gatekeepers, tipping of a market, informational asymmetry, high customer switching costs (financial and other), extreme economies of scale, zero-pricing practices, and data dependency. Please see section C on details why this is important and justified.

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

*3000 character(s) maximum*

The tool should create a framework to tackle vertical integration of services, lack of access to necessary assets to compete in the market, strong direct and indirect network effects, single-homing, dual role situations, use of pricing algorithms, transparency issues, and extending power to other markets/sectors. Please see section C on details why this is important and justified.

**\* 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*

In our opinion, structural risks to competition can create the conditions for consumer harms and market inefficiencies even before any particular firms might be recognized as dominant; conditions for structural competition problems can often be diagnosed ex ante. Therefore, we recommend that the Commission use a market structure-based approach.

**\* 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*

Structural competition issues pervade many different markets, and defining specific sectors as being “digital” or “non-digital” may create incentives for gamesmanship with sectoral definitions or corporate structuring. Many sectors not typically included in commonplace definitions of “digital” may generate structural competition risks. We therefore recommend the Commission use a horizontal scope in addressing these issues.

**\* 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*

Structural competition issues pervade many different markets, and defining specific sectors as being “digital” or “non-digital” may create incentives for gamesmanship with sectoral definitions or corporate structuring. As experience shows (please see answers to questions 8 - 9.1) the dominant companies from the digital sector extend their market power to many markets. If we follow the market-type approach, they will eventually find a business model on another market that is not included. Therefore extending market power should be monitored regardless of the market of interest. Extending market powers to other markets does not need to be prohibited, but if it coexists along other market behaviours harmful to competition, such as gatekeeping, monopolisation, tipping, etc., it should be under heightened scrutiny from relevant regulator/authorities.

**\* 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*

The specificities of those markets and existing legislation should be considered and, if necessary, adjusted. Some solutions that are inherent to the digitalisation and not possible to repeat with goods and services existing offline only, may be specific to the digital market. However, as digitisation becomes more and more a feature of many more business operations, this should be considered as well.

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

	Yes	No	Not applicable /no relevant experience or knowledge
* • Make non-binding recommendations to companies (e.g. proposing codes of conducts and best practices)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Inform and make recommendations/proposals to sectorial regulators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Inform and make legislative recommendations	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Impose remedies on companies to deal with identified and demonstrated structural competition problems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*3000 character(s) maximum*

We already built a record of ineffective actions that aim at binding companies in the digital market to adhere to rules better, to fulfill their obligations regarding proper data protection and to behave fairly on the market they now dominate. The new competition tool should be based on those learnings and enable adequate, binding responses to misconduct that will sustainably modify behaviour and respond to challenges we are not yet aware of as they will come with developments of technologies.

Just as well, the experiences from these new processes and the emerging body of knowledge (research, data, etc.) should be used to inform legislative and regulatory proposals that will be based on such invaluable evidence, and subject to consideration to the European Parliament and (when appropriate) to national legislative bodies in Member States.

**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

What we experience with legislation - as much as we should be careful not to overregulate - is that we often are in need to apply legislation describing one reality to the environment that changed significantly (such as the digital revolution being regulated by laws describing solely an offline world). Flexibility of approaches to choose from according to a set of conditions that may determine when moving from a mere prohibition of a practice to an actual fine is adequate for example, is a way to ensure we will not create a legislation that won't respond to future challenges.

**\* 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

On a case-by-case basis it can be justified to effectuate a divestment. It would concern scenarios in which the turnover, revenues, and scale of the business renders one-time financial fines ineffective as they can be quickly recovered and create no lasting effect on harmful/illegal practices. This somewhat nuclear option should be included in the set of structural remedies, as much as it should be applied with care and with appropriate assessment and safeguards.

## **E. Institutional set-up of a new competition tool**

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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

On the digital market we see that actors that are practically governing public communications, monopolising many spheres of our commercial activity online, and basically running surveillance capitalism which value exceeds value of other markets by an order of magnitude (U.S. tech stocks are now worth more than the entire European stock market) can do so with no supervision, and face no remedies or consequences

applicable to their scale and wealth in existing regulation. Moreover, there is no dedicated body at the EU level that could intervene to prohibit harmful behaviour other than Data Protection authorities - who sometimes do not have adequate means of correcting the undesired behaviour (for example cannot impose fines adequate to the scale of wealth of the fined company). This important infrastructure will not sufficiently self-regulate, as any changes that could benefit users, consumers, citizens, and other business actors would need to modify data extractivism, so the companies would need to act against their commercial interests. We need an independent regulator on this market.

**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 checked="" type="radio"/>	<input type="radio"/>
* Imposing penalties for providing incomplete or misleading information in reply to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The power to interview company management and personnel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Imposing penalties for not submitting to interviews	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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

All of this is important, but being able to carry out inspections may turn out to be more important than just asking questions and letting companies phrase answers around the angle that benefits them. Inspections can open new perspectives to investigators, as “you cannot ask about what you don’t know exists” - and it can help leverage the spin companies create to benefit them.

\* **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

There is no point in creating a tool that has no legally binding deadlines and frames as it will not be respected just based on a free will of companies that may want to defer or stall in order to avoid consequences of their actions.

\* **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 also is a part of the necessary flexibility described in answer to 31.1

\* **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

Yes, but with a clear set of objectives, actionable plans to do better, binding deadlines and transparent reporting on progress, and a failure to implement the plan or maintain its results would prompt a process to establish whether any legally binding measures should be imposed. Also, such plans should not be too stretched in time, as it is feasible to the company to plan a big change spanning across 15 years and then produce evidence towards achieving such an abstract objective, while stalling any meaningful formal process counteracting their wrongdoing. Voluntary actions, to be recognised as carried out in good faith and possibly stopping any formal action on behalf of a regulator, should be achievable and constrained in time to enable meaningful monitoring and evaluation.

**\* 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

All these actors are part of the market in which companies under scrutiny operate in, they are affected by the problem and have a potential to become a part of the solution. They can provide not only opinions, but also evidence, supporting expertise, research, or data that can support informed decision-making in the proceedings.

**\* 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

In our opinion, seeking input is an important part of civil debate and can happen at any stage of the process. Depending on the structure and setting of the new competition tool, these comments do not necessarily need to be taken into account against evidence - after all, we won't be voting on what is legal.

\*

**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*

Depending on the structure and setting of the new competition tool, this should be definitely taken into consideration.

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

*3000 character(s) maximum*

There is a need to proactively scrutinise the conduct of the gatekeeping platforms in the digital market in their everyday functioning through oversight of the Terms of Services and scrutiny over introducing changes. The legibility of the documents to consumers should be a subject of evaluation, along with whether there any misleading stipulations that create harm for users, but that are formulated in a way obscuring this. There could be a registrar of such stipulations and of construct clauses that are forbidden, similarly to the practice in the banking sector regarding loans.

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**F. Concluding questions and document upload**

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

	Not applicable /No relevant experience or knowledge	Not effective	Somewhat effective	Sufficiently effective	Very effective	Most effective
* 1.Current competition rules are enough to address issues raised in digital markets	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 2.There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all online platforms with gatekeeper power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" type="radio"/>	<input 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*

There are significant overlaps between the requirements for regulating gatekeeping platforms as potential threats to fair competition in the understanding of articles 101 and 102 of the Lisbon Treaty as actors in the Digital Single Market. The two issues should therefore be considered jointly. For how FKAGEU envisions the regulatory environment (rules and authorities) regarding issues deriving from the gatekeeper power of digital platforms, please see our contribution to the consultation on the Digital Services package.

**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

**87143bc7-8b58-4a94-a9a9-dbb710aac935/FKAGEU\_links\_supporting\_arguments\_to\_NTC\_consultation.pdf**

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

*3000 character(s) maximum*

At the moment of filing the consultation response we have no further comments. We will take liberty to share new insights with the Commission should there be such need, withing the existing public communication process.

**\* 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

