

Questionnaire for the public consultation on a New Competition Tool

Fields marked with * are mandatory.

Introduction

Objectives of the public consultation

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

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

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

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

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

About you

* Language of my contribution

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

* I am giving my contribution as

- ☐ Academic/research institution
- ☒ Business association

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

* First name

Monique A.

* Surname

GOESCHL

* Email (this won't be published)

goeschl@vap.cc

* Organisation name

255 character(s) maximum

Verein für Anti-Piraterie der Film- und Videobranche (VAP)

* Organisation size

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

* Web address

www.vap.cc

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

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

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

* Publication privacy settings

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

☐ **Anonymous**

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

☒ **Public**

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

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

A. How to answer?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3000 character(s) maximum

VAP vertritt die Interessen und den Urheberrechtsschutz seiner Mitgliedsunternehmen in der audiovisuellen Branche in Österreich, die auch am EU Binnenmarkt und in Drittländern tätig sind. Die Kerntätigkeit der Unternehmen sind die Produktion, Verwertung und Vermarktung von audiovisuellen Werken.

*** 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

VAP vertritt die Interessen und den Urheberrechtsschutz seiner Mitgliedsunternehmen in der audiovisuellen Branche in Österreich, die auch am EU Binnenmarkt und in Drittländern tätig sind. Die Kerntätigkeit der Unternehmen sind die Produktion, Verwertung und Vermarktung von audiovisuellen Werken.

*** 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

Die Kerntätigkeit der Unternehmen sind die Produktion, Verwertung und Vermarktung von audiovisuellen Werken.

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

Der Markt für die Verwertung und Vermarktung von professionell hergestellten Werken ist sowohl online wie offline.

C. Structural competition problems

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

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

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









































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

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

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

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
A - One or few large players on the market (i.e. concentrated market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>
C - High start-up costs (i.e. non-recurring costs associated with setting up a business)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
D - High fixed operating costs (i.e. costs that do not change with an increase or decrease in the amount of goods or services produced or sold)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
E - Regulatory barriers ('Regulatory barriers' refer to regulatory rules that make market entry or expansion more cumbersome or extensively expensive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
I - Lack of access to a given input/asset which is necessary to compete on the market (e.g. access to data)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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)					
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)					
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)					
M - Customers typically use one platform (i.e. they predominantly single-home) and cannot easily switch					
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)					
O - Significant financial strength					
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))					
Q - Data dependency ('Data dependency' refers to scenarios where the operation of companies are largely based on big datasets)					

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.)



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

- ☐ Yes
- ☐ No

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* A (not necessarily dominant) company with market power in a core market extends that market power to related markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>
* The widespread use of algorithmic pricing that allows easily to align prices.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 type="radio"/>

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

5000 character(s) maximum

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

- ☐ Yes
- ☐ No

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

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

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

*** 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

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

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

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

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

Yes

☐ No

☐ Not applicable /no relevant experience or knowledge

*** 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

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

☐ Yes

☐ No

☐ Not applicable /no relevant experience or knowledge

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

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

☐ Yes

☐ No

☒ Not applicable /no relevant experience or knowledge

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

☐ Yes

☐ No

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

☐ Yes

☐

No

☐ Not applicable /no relevant experience or knowledge

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

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

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

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

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

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

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

*** 15.2. 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

*** 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.

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

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

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

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

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

*** 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

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

- ☐ Yes

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

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

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

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

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

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

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

*** 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

D. Assessment of policy options

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

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

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

*** 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

*** 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

*** 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

*** 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

*** 28.2. 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

*** 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

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

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

- 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Structural remedies (for instance, divestitures or granting access to key infrastructure or inputs)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Hybrid remedies (containing different types of obligations and bans)	<input 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

- * **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

E. Institutional set-up of a new competition tool

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

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

☐

Yes

☐ No

☐ Not applicable /no relevant experience or knowledge

*** 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

*** 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

*** 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

*** 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

*** 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

*** 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

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 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 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 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 type="radio"/>
* 5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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

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

The maximum file size is 1 MB

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

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

3000 character(s) maximum

- * 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

