

WORKSHOP WITH BEUC MEMBERS
NOTES ON THE ONGOING EVALUATION OF THE MARKET DEFINITION NOTICE

- Video call on 2 March 2021-

Participants:

DG Competition's project team

BEUC (European Consumer Organisation)

Test Achats (BE)

vzbv (DE)

Danish Consumer Council (DK)

Swedish Consumer Organisation (SE)

Norwegian Consumer Council (NO)

BEUC and the Commission's project team (the "project team") discussed the evaluation of the Market Definition Notice.

DG Competition's project team presented the main elements and the state of play of the evaluation.

BEUC welcomed the review of the Market Definition Notice and welcomed the opportunity to get involved in the public consultations leading to it.

BEUC encouraged the Commission to broaden its toolbox by taking into account the findings of behavioural economics on consumer behaviour and by relying on consumer surveys, including potentially Eurobarometer data, in its antitrust and merger procedures. It was agreed that consumer surveys could be useful for competition investigations, including for questions of market definition, but that it was important to be aware of the limitations as well. The Commission may be limited in carrying out such surveys due to applicable time limits in the investigations and the rules on public procurement. Conversely, consumer surveys not carried out by the Commission are at times not suitable as they may not be specifically targeted to the questions arising in the cases. It was agreed to consider whether pre-notification talks in merger control could be used to better plan for obtaining on-point surveys and a higher involvement of consumer organisations that may have access to relevant information. BEUC and the project team agreed to remain in contact and to intensify their dialogue to boost the participation of consumer organisations in the Commission's market investigations.

BEUC and the project team also discussed the potential consequences on consumers of the calls for defining broader geographic markets. While it was agreed that there has been further integration in the internal market and that some markets are becoming broader, BEUC indicated that this was a debate often led by large companies where consumers' voices were not sufficiently represented. BEUC maintained that the methodology followed by the Commission and set out in the market definition is appropriate and should be applied in the same way regardless of whether the candidate markets are narrower or broader. There should be no assumptions on markets now being

global or widening across the board. Rather, geographic markets should continue to be defined based on the underlying evidence after a thorough investigation in the specific case. BEUC also explained that the creation of “European champions” is not necessarily beneficial for consumers as it may lead to undue concentration and ensuing adverse effects on consumers, such as higher prices.

BEUC and the project team further discussed the issue of market definition in dynamic markets that are undergoing changes in competitive conditions. BEUC underlined that it was important to take into account dynamic developments in fast-changing markets, such as those characterised by significant technological developments or innovation. The time horizon to consider should be case-specific and in the Commission’s discretion, taking into account the need for strong competition enforcement. A dynamic assessment should ensure that also future consumer harm can be identified and prevented. At the same time, the dynamic assessment should not justify a lack of intervention or a relaxing of competition enforcement to prevent short or medium term consumer harm where the future changes are still too far away. BEUC recalled its [contribution](#) to the Google/Fitbit merger investigation. BEUC found that the Commission’s decision in that merger had been too static because it had not sufficiently taken into account changes in the market.

The project team thanked BEUC for its contributions.

More details on BEUC’s position can be found in its [response](#) submitted to the open public consultation on the Market Definition Notice.
