

**WORKSHOP WITH BEUC MEMBERS
ON THE ONGOING IMPACT ASSESSMENT FOR A POSSIBLE NEW COMPETITION TOOL**

- Video call on 1 October 2020 -

Participants:

DG Competition's project team

BEUC

Swedish Consumer Organisation

UFC – Que Choisir

Danish Consumer Council

Norwegian Consumer Council

WHICH ?

German Federation of consumer organisations VZBV

Test-Achats

The workshop was organised by BEUC and the Commission's project team with a view to discussing the feedback from consumer organisations across Europe on the Commission's ongoing impact assessment for a possible New Competition Tool ("NCT").

DG Competition's project team presented the main elements and the state of play of the NCT initiative, followed by a discussion about the different elements of initiative.

BEUC members welcomed the NCT initiative, pointing out that competition law enforcement in digital markets, though important, has not been effective enough in dealing with all problems in these markets and consequently not able to remedy, let alone prevent, harm to consumers in a timely manner. It is therefore in the consumers' interests to put in place additional tools to deal with these weaknesses, including by expanding its toolbox to deal with harmful structural competition problems in other markets beyond digital.

The discussion focused in particular on the requisite legal standard to demonstrate the existence of a structural competition problem and the associated burden of proof, notably in tipping scenarios. In this context, BEUC members pointed to the importance of demand-side features such as behavioural biases, which can result in or contribute to a structural competition problem in certain markets. BEUC members also enquired about possible remedies under the NCT and the possible scope of the NCT (i.e. horizontal or limited to digital markets), stressing that all markets are increasingly affected by digitalisation. BEUC members expressed support for the introduction of a market structure-based competition tool with horizontal scope, which would give the Commission the powers not only to investigate situations where problems are suspected, but also to impose and enforce effective remedies if these concerns are substantiated. In this context, BEUC members noted that the legal and evidentiary thresholds, distinguishing the NCT from enforcement of Articles 101 and 102 TFEU, must be clearly set out.

Moreover, BEUC members were interested in understanding better the possible institutional design, notably whether only the Commission or also national competition authorities would be empowered

to enforce the NCT, as well as the interplay with possible proposals as a result of the parallel impact assessment on the Digital Services Act (“DSA”). As regards the latter, BEUC members expressed a preference for a combination of ex ante regulation based on clear-cut prohibitions and obligations and the NCT as a case-by-case assessment tool.

More details on BEUC’s position can be found in its response submitted to the open public consultation on the NCT and the DSA initiatives: https://www.beuc.eu/publications/beuc-x-2020-079_digital_services_act_and_new_competition_tool.pdf.
