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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 (https://ec.europa.eu/eusurvey/runner/Digital_Services_Act).

About you

*Language of my contribution

English

*I am giving my contribution as

Non-governmental organisation (NGO)

*First name

Gabrielle

*Surname

Guillemain

*Email (this won't be published)

gabrielle@article19.org

*Organisation name

255 character(s) maximum

ARTICLE 19

*Organisation size

Large (250 or more)

*Web address

ww.article19.org

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>). It's a voluntary database for organisations seeking to influence EU decision-making.

594787238502-76

Country of origin

Please add your country of origin, or that of your organisation.

United Kingdom

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 (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

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 (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>).

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 (mailto:EC-CENTRAL-HELPDESK@ec.europa.eu).

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.

3,000 character(s) maximum

Founded in 1987, ARTICLE 19 is an international organization defending freedom of expression and information around the world. We work for a world where all people everywhere can freely express themselves and actively engage in public life without fear of discrimination. ARTICLE 19 works on five interacting areas: civic space, digital, media, protection, and transparency, all of which are underpinned by a focus on equality, and our local to global theory of change. More information about our organisation can be found here: <https://www.article19.org/about-us/>

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

3,000 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.

3,000 character(s) maximum

I am not a business operator/representative of businesses

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

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	Some what important	Important	Very important
A - One or few large players on the market (i.e. concentrated market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B - High degree of vertical integration ('Vertical integration' relates to scenarios where the same company owns activities at upstream and downstream levels of the supply chain)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C - High start-up costs (i.e. non-recurring costs associated with setting up a business)	<input type="radio"/>	<input type="radio"/>	<input 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F - Importance of patents or copyrights that may prevent entry	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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 checked="" type="radio"/>
J - Extreme economies of scale and scope ('Extreme economies of scale' occur when the cost of producing a product or service decreases as the volume of output (i.e. the scale of production) increases. For instance serving an additional consumer on a platform comes at practically zero cost. 'Economies of scope' occur when the production of one good or the provision of a service reduces the cost of producing another related good or service)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
K - Strong direct network effects (Where network effects are present, the value of a service increases according to the number of others using it. For instance in case of a social network, a greater number of users increases the value of the network for each user. The more persons are on a given social network, the more persons will join it. The same applies e.g. to phone networks)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
L - Strong indirect network effects (Indirect network effects, also known as cross-side effects, typically occur in case of platforms which link at least two user groups and where the value of a good or service for a user of one group increases according to the number of users of the other group. For instance, the more sellers offer goods on an electronic marketplace, the more customers will the marketplace attract and vice versa)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
M - Customers typically use one platform (i.e. they predominantly single-home) and cannot easily switch	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
N - The platform owner is competing with the business users on the platform (so-called dual role situations, for instance the owner of the e-commerce platform that itself sells on the platform)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
O - Significant financial strength	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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.)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.
5,000 character(s) maximum

As a general remark, ARTICLE 19 notes that most of the time there is the combination of more than one of the above market features and elements that creates structural competition problems, rather than each of them taken individually. This aspect does not seem to be adequately taken into account by this public consultation, which rather seems to focus on the various features taken in isolation. We strongly recommend giving more attention to coexistence and interplay.

For example, vertical integration (B) has a substantially stronger effect on competition dynamics if realised in highly concentrated markets (A), which show extreme economies of scale (J).

Similarly, to adequately assess the effects of the information asymmetry on the customer side (G), the authority has to consider also its impact on the independence of decision-making of consumers, which is a key element of undistorted competition.

Moreover, it is not clear why the table keeps high consumer switching costs (H) and single-homing (M) separated. (M) is usually caused by (H) and to keep them separated excessively dilutes the causality nexus between the two.

Similar comments can be made for vertical integration (B) and dual role situation (N). The latter is a sub-segment of the former, therefore the Commission should better explain the reasons to keep the two separated, and if and why it considers that they have different roles to play in the creation of structural competition problems. ARTICLE 19 notes that both concepts are also strictly interlinked with the concept of 'ecosystems' or 'structuring digital platforms' as defined by ARCEP. Again, the proper understanding of the impact of these features on competition dynamics in the market would gain from an inclusive assessment, rather than one that considers them in silos.

Finally, the majority of zero-pricing markets is based on data extractive business models. Competition authorities should assess the impact of these business models by looking also at their legality under the GDPR and other fundamental rights rules. As these business models land in a shared regulatory space, enforcement should be coordinated, and decision-making should be informed by the various authorities involved.

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).

- Lack of interoperability: 4.
As recently emphasized by Executive Vice-President Vestager with regard to the launch of the IoT sector enquiry: "[i]nteroperability is of the essence if we want to make this market accessible". Interoperability, indeed, is key for keeping markets open to competition and innovation.
- High information asymmetry between platforms and regulators: 4.
Without proper information, informed and sound regulation is difficult when not impossible.
- Lack of adequate governance frameworks for standardisation: 4.
The inability of the EU to choose governance frameworks for standardization is a serious impediment for remedying competition problems in a number of digital markets.

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

5,000 character(s) maximum

Preliminarily, ARTICLE 19 observes that the difference between 'market features/elements' and 'market scenarios' is not explained by the Commission. For example, in our understanding, tipping, anti-competitive monopolisation, leveraging of market powers are all elements that can be qualified as 'source or part of the reasons for a structural competition problem', and thus fall in the Commission's description of market features/elements under question 6.

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

8.2. In which sectors/markets did you experience repeated strategies to extend market power to related markets?

3,000 character(s) maximum

Typical examples would be:

- OS that leverage market power in App stores or browsing markets.
- Amazon that leverages its market power on the retailers' markets.

ARTICLE 19 is particularly concerned by the first example (operating systems leveraging market power in the app stores' market or in the search engines' market) because of the negative impact this practice can have on consumers' freedom of expression and information. Indeed, a number of apps constitute essential tools to communicate, and to access and share information. Search engines also have a strong impact on what information and content consumers see and have access to. With this premise, if operating systems expand their power into apps stores or search engines markets, they might be able to strongly influence the way users enjoy their right to freedom of expression and information. For example, they might be able to exclude from app stores certain communication apps, or to impose on app developers technical requirements that impact the privacy and security of the app itself. Equally, operating systems might promote the use of search engines that work with algorithms that dispose results based on criteria that are profit-oriented, and strongly limit users' diversity of exposure.

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.

3,000 character(s) maximum

See our answer to question 8.2.

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.

3,000 character(s) maximum

Among others, social media markets and search engines markets.

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.

3,000 character(s) maximum

See our answer to question 8.2.

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.

3,000 character(s) maximum

Cross border, effective competition is one of the main EU values and a grounding pillar of the digital single market's objective. As a guardian of competition in the EU, the Commission should be able to intervene every time there is a structural competition problem that raises obstacles to the delivery of the consumer welfare outcomes that competition rules are supposed to guarantee.

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.

3,000 character(s) maximum

Sometimes, for example where there are demand-side or hold-up problems in markets, these features can create market power that can be exploited by platforms without necessarily incurring in the conducts sanctioned by Articles 101 and 102 TFEU (for example, excessive pricing or exploitative abuses). Therefore, there might be a gap there, which the Commission should be able to fill with different instruments to make markets work effectively.

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

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

3,000 character(s) maximum

Social media markets are a typical example of tipping markets.

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

3,000 character(s) maximum

Direct and indirect network effects are key factors in reaching critical threshold, and can constitute either a strong advantage (when they are exploited) or a substantial barrier to entry (for alternative competitors that try to access the market once the incumbent has already established its market power).

ARTICLE 19 believes that the fact that users are predominantly single-home is more a consequence of the lack of viable alternatives than users' deliberate choice. In other words, we believe that single-homing might be more supply-driven than demand-driven. Multi-homing should be encouraged by policies that go in the direction of more user empowerment, and that support interoperability. Indeed, (the lack of) interoperability has an important role to play in tipping dynamics. If players adopt interoperable solutions, it is significantly easier for users to multi-home and for alternative players to enter the market, exploit direct and indirect network effects and reach scale.

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.

3,000 character(s) maximum

See our answer to question 16.2.

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

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

3,000 character(s) maximum

With regard to the lack of sufficient competition, ARTICLE 19 believes that this circumstance will realize in the short and medium run too, not only in the long term; therefore intervention should be timely.

We also note that innovation, competition, choice and quality are the main goals of EU competition rules and policies. As tipping risks to frustrate them all, the EU Commission and national competition authorities should intervene to avoid tipping from happening, not only ex post, when it has already taken place.

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.

3,000 character(s) maximum

See our answer to question 16.8

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.

3,000 character(s) maximum

While Articles 101 and 102 TFEU are usually effective in curbing anti-competitive behaviors in the market, they are unquestionably less effective in addressing the problems that might arise where competition is essentially for the market. In this case, in fact, the market has already tipped before intervention was possible.

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.

3,000 character(s) maximum

Among others:

- Facebook is a gatekeeper in social media market
- Google is a gatekeeper in search engines market
- Apple and Google are gatekeepers in app stores market

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.

3,000 character(s) maximum

See our answer to question 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

18.7. 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 checked="" type="radio"/>	<input type="radio"/>
Customers cannot easily switch (lack of multi-homing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Business operators need to accept the conditions of competition of the platform - including its business environment - to reach the customers that use the specific platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

18.8. Please explain your answer, indicating why you consider the indicated features relevant for qualifying a company as a gatekeeper. Please also add any other relevant features that qualify a company as a gatekeeper and rate their importance.

3,000 character(s) maximum

ARTICLE 19 believes that gatekeepers are companies/entities that can control access to a group of users to some goods or another group of users. As such, they have the capacity to exclude rivals or impede entry. For example, a social media network acting as gatekeeper controls access by third-party firms (online advertisers) to its users and controls access by users of online content via its ranking algorithm. Similarly, a search engine acting as gatekeeper controls access of users to online content, products or services via its ranking algorithm; and a music streaming service controls access to its large catalogue of music titles through its system of personalised recommendations.

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



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.

3,000 character(s) maximum

With regard to social media markets, ARTICLE 19 is particularly concerned by the fact that a social media gatekeeper acts not only as "economic" gatekeeper, but also as "human rights" gatekeeper, with particular impact on the right to freedom of expression and information, and the right to privacy. This does not only manifest itself in this company's ability to dictate standard ToS for its users, but it also raises concerns where governments are able to pressure these gatekeepers into changing their ToS in way which is not compliant with human rights.

Social media platforms represent one of the main channels through which EU citizens can freely express themselves, exchange opinions and ideas and get access to information. Therefore, allowing a single player to foreclose the market negatively affects the ability of citizens to exercise their freedom of expression.

Moreover, at community level social media platforms with high market power can exert decisive influence on public debate, which raises issues in relation to diversity and pluralisms in the online environment. It is of utmost importance that media freedom and media pluralism are guaranteed online as they are offline.

While positive developments are following in the wake of the General Data Protection Regulation, such as standardisation of data portability requirements, substantial work remains to be done (see more in our previous submission to DG COMP <https://www.article19.org/wp-content/uploads/2018/11/A19-DG-Comp-submission-September-2018.pdf>)

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.

3,000 character(s) maximum

See our answers to questions 9.1 and 18.10

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.

3,000 character(s) maximum

The concept of gatekeeper is closely aligned with the idea of dominance and market power, but there is yet no jurisprudential foundation for it to constitute a self-standing legal test under Article 102 TFEU.

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

21.1. Please explain your answer.

3,000 character(s) maximum

See our answer to question 21.3

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.

3,000 character(s) maximum

ARTICLE 19 considers that Article 102 TFEU is not necessarily suitable and sufficient to impose interoperability obligations on large platforms where the lack of interoperability falls outside exclusionary or exploitative conducts.

Similarly, we believe that Article 102 TFEU is not an adequate tool for the Commission to impose more transparency on large platforms where the lack of it constitutes a generalised feature in the market rather than a specific abusive conduct.

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.

3,000 character(s) maximum

See our answer to questions 21.3; 19.3; 17.3; 9.3.

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

3,000 character(s) maximum

See our answer to questions 21.3; 19.3; 17.3; 9.3.

D. Assessment of policy options

The questions in this section seek to gather feedback on the policy options outlined in the Inception Impact Assessment (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>).

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.

3,000 character(s) maximum

See our answer to questions 23.1.

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.

3,000 character(s) maximum

See our answer to questions 23.1.

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

3,000 character(s) maximum

See our answer to questions 23.1.

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

If you indicated "Other", please explain.

3,000 character(s) maximum

Intervention should focus on market failure and those sources of market power that are not necessarily linked to abusive behaviours.

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.

3,000 character(s) maximum

We do not see any sufficient reason to call for a non-horizontal tool.

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.

3,000 character(s) maximum

Structural competition problems can arise in markets that are not affected by digitisation. We thus do not see any specific reason why the European Commission should limit its possibilities of intervention to the latter only. Articles 101 and 102 TFE are applicable horizontally to all markers/sectors, and so should the new competition tool.

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?

3,000 character(s) maximum

Insofar as supervision of digital platforms is likely to fall in a shared regulatory space, and thus within the remit of various regulatory authorities (e.g. competition, consumer protection, data protection, media, telecoms, anti-discrimination etc.), we believe that each competent national authority should deal with aspects that are relevant and consistent with its experience and overall expertise. However, from an enforcement perspective, cooperation mechanisms should be put in place to take advantage of synergies, eliminate wasteful duplications, better inform decisions and avoid conflicting ones, and to avoid fragmentation, capture and under enforcement. Various coordination tools could be put in place to guarantee that when the competition authority enforces the new competition tool, it does so in a way that smoothly interacts with the enforcement of existing legal frameworks, and among others:

- Consultations (in the form of advices, opinions etc.), either by law or agreed by the authorities;
- Joint work, for example at the stage of investigation to secure information or at the stage of designing remedies;
- Joint policy making, to guarantee that the standards applied and the policies pursued are aligned.

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 checked="" type="radio"/>
• Inform and make recommendations/proposals to sectorial regulators	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
• Inform and make legislative recommendations	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

3,000 character(s) maximum

We believe that all the options under Q30 might have their merits, but we consider the possibility to impose remedies as the essential tool the Commission should have.

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

3,000 character(s) maximum

ARTICLE 19 is particularly concerned with structural competition problems in social media markets and suggests the unbundling of hosting and content moderation activities as a remedy to be imposed on large platforms. For details about our unbundling proposal, see the Annex attached to our response to question 41.

In general, we believe that suitable remedies to address structural competition problems in digital markets include interoperability obligations and vertical and functional separation obligations. Both strongly contribute to maintaining markets open to new entries, promote innovation and increase choices for consumers. For a discussion about interoperability as a tool for competition regulation please see: Ian Brown (2020), Interoperability as a tool for competition regulation, available at <https://osf.io/preprints/lawarxiv/fbvxd>; Vittorio Bertola (2020), A Technical and Policy Analysis of Interoperable Internet Messaging, available at: https://www.open-xchange.com/fileadmin/user_upload/Resources/Pages/Analysis_of_Interoperable_Messaging_-_Version_1.pdf

Finally, we note that we do not consider 'structural remedy' the granting access to key infrastructure or inputs. We rather adopt a narrower definition of structural remedy, which refers to a one-off solution that modifies the allocation of property rights and creates new firms. In other words, in our understanding a structural remedy implies the divestiture of an entire ongoing business, or partial divestiture (see Motta et al. 2003). Our reply to question 31 refers to this understanding of structural remedy.

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.

3,000 character(s) maximum

ARTICLE 19 believes that forms of functional separation, coupled with access obligations based on FRAND terms are better suited to deal with structural competition problems than divestment of a business. They can achieve the same outcome (i.e. make markets open and competitive again) with a less invasive instrument, and therefore better comply with the principle of proportionality.

However, we believe that with regard to mergers, the Commission should be able to block a merger that would be a source of market power likely to raise structural competition problems in a market.

E. Institutional set-up of a new competition tool

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

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

- Yes
 No
 Not applicable /no relevant experience or knowledge

33.1. Please explain your answer.

3,000 character(s) maximum

ARTICLE 19 believes that markets that show structural competition problems are often, if not always, characterised by huge information asymmetry between economic actors and regulators. To overtake this information asymmetry, the Commission would need adequate and appropriate investigative powers.

33.2. Please indicate what type of investigative powers would be adequate and appropriate to ensure the effectiveness of the new competition tool. Please rate each of the listed investigative powers according to its importance.

	No knowledge/No experience	No importance/No relevance	Somewhat important	Important	Very important
Addressing requests for information to companies, including an obligation to reply	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Imposing penalties for not replying to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Imposing penalties for providing incomplete or misleading information in reply to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The power to interview company management and personnel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Imposing penalties for not submitting to interviews	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Imposing penalties for not submitting to inspections at companies	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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.

3,000 character(s) maximum

In general, the investigative powers we suggest should all go in the direction of diminishing information asymmetry and allowing properly informed decision-making.

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

39.1. Please explain your answer.

3,000 character(s) maximum

Procedural safeguards, and in particular judicial review, are fundamental to guarantee that the actions of the Commission are in line with the principles of legality, necessity and proportionality and more in general with the rule of law and the principles and values in the EU Charter of Fundamental Rights as well as the European Convention on Human Rights.

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

3,000 character(s) maximum

See our answer to question 39.1

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 (https://ec.europa.eu/eusurvey/runner/Digital_Services_Act) for ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers remain fair and contestable for innovators, businesses, and new market entrants, please rate the suitability of each option below to address market issues raised by online platform ecosystems.

	Not applicable /No relevant experience or knowledge	Not effective	Somewhat effective	Sufficiently effective	Very effective	Most effective
1.Current competition rules are enough to address issues raised in digital markets	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all online platforms with gatekeeper power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
3. There is a need for an additional regulatory framework allowing for the possibility to impose tailored remedies on individual large online platforms with gatekeeper power on a case-by-case basis.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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 checked="" type="radio"/>

40.1. Please explain which of the options, or combination of these, in your view would be suitable and sufficient to address the contestability issues arising in the online platforms ecosystems.

3,000 character(s) maximum

We believe that the combination of options 2, 3 and 4 is the more effective to address contestability issues arising in the online platforms ecosystems.

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.

[A19_Unbundling_brief_pdf_Sept2020.pdf](#)

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

3,000 character(s) maximum

No further comments

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
