

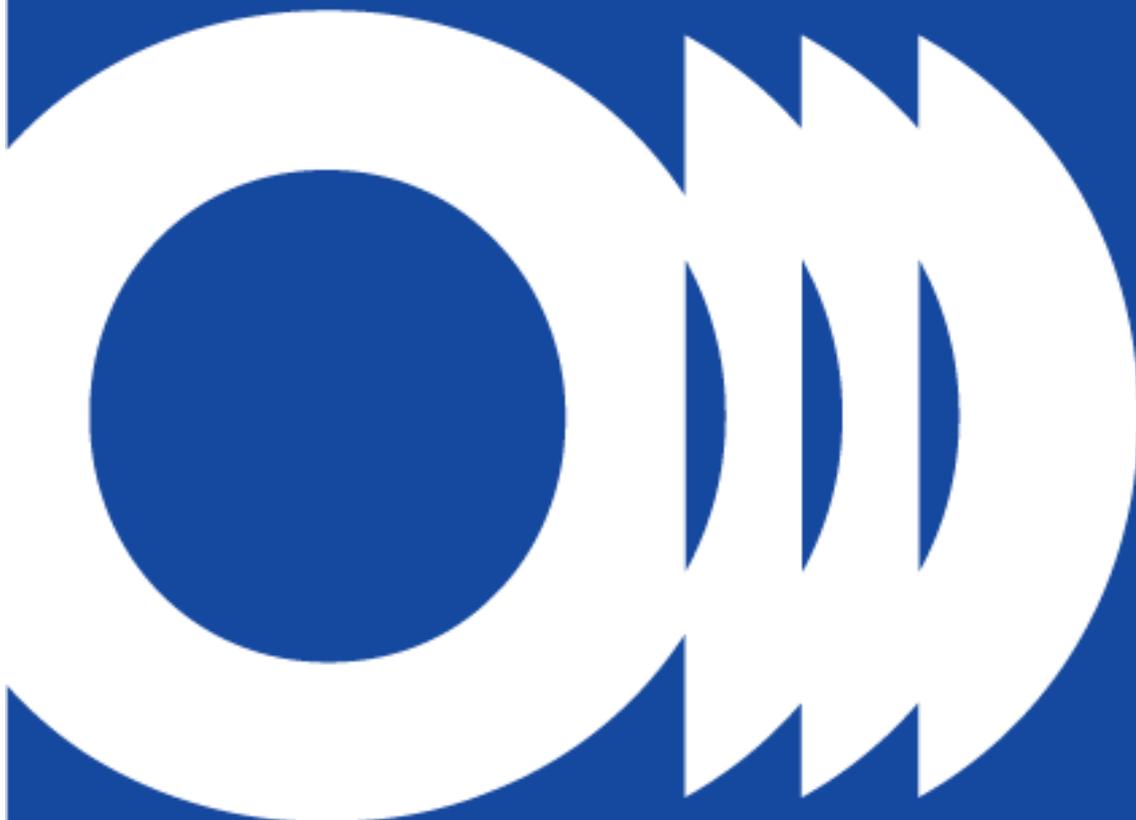
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU responses to the
European Commission's public
consultation on the New
Competition Tool

08 SEPTEMBER 2020



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

KONSTANTINA

* Surname

BANIA

* Email (this won't be published)

bania@ebu.ch

* Organisation name

255 character(s) maximum

EUROPEAN BROADCASTING UNION

* Organisation size

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

* Web address

https://www.ebu.ch/home

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

* Country of origin

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

- | | | | |
|---|--|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |
| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
| <input type="radio"/> Aruba | <input type="radio"/> Faroe Islands | <input type="radio"/> Martinique | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
| <input type="radio"/> Austria | <input type="radio"/> Finland | <input type="radio"/> Mauritius | <input type="radio"/> Slovenia |
| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |

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

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

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

* Publication privacy settings

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

Anonymous

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

Public

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

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

A. How to answer?

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

Please explain.

100 character(s) maximum

The European Broadcasting Union (EBU) is a not-for-profit association of Public Service Media.

*** 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

Public Service Media organizations are entrusted with the performance of a service of general economic interest, which consists of the provision of high-quality content and services that fulfill the cultural and democratic needs of the society they serve.

*** 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

In line with their mission to make public service content and services widely available, PSM organizations deliver digital content and services of high quality to the citizens they are meant to serve. For example, they stream linear radio and television services online, provide catch-up TV/radio and video-on-demand, including online-only content, and develop applications.

*** 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

Please see our reply to Question 4.

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

PSM organizations are bound by 'universality' obligations, which require them to reach all segments of society. Given that a vast amount of content is now consumed on platforms, PSM rely on platforms to reach their audiences. Being present on different platforms is linked to the different purposes which those platforms serve. For example, app stores and smart TVs are used to distribute applications through which PSM content can be accessed; social networks are mainly used for marketing purposes and community building; communications apps are used to make content 'go viral'; audio streaming platforms are used for podcast distribution; and VOD platforms are used for content monetization.

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 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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 checked="" type="radio"/>
F - Importance of patents or copyrights that may prevent entry	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
G - Information asymmetry on the customer side ('Information asymmetry' occurs when customers (consumers or businesses) in an economic transaction possess substantially less knowledge than the other party so that they cannot make informed decisions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
H - High customer switching costs ('Switching costs' are one-time expenses a consumer or business incurs or the inconvenience it experiences in order to switch over from one product to another or from one service provider to another)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
I - Lack of access to a given input/asset which is necessary to compete on the market (e.g. access to data)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
Q - Data dependency ('Data dependency' refers to scenarios where the operation of companies are largely based on big datasets)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

R - Use of pricing algorithms ('Pricing algorithms' are automated tools that allow very frequent changes to prices and other terms, taking into account all or most competing offers on the market.)



Please explain your answers above and give examples of the features/elements you indicated if possible. Please specify the letter of the row of the feature /elements you are referring to.

5000 character(s) maximum

For the purposes of our reply, we focus on digital markets. The sources of structural competition problems that the Commission identifies are well-documented in research studies and competition decisions.

Most of the above parameters are intertwined. For example, high entry/operating costs and low distribution costs incentivize digital service providers to expand into every possible distribution platform and succeeding and/or preceding levels of the supply chain in order to exploit large economies of scale and scope. By enabling established firms to rationalize resources and reduce transaction costs, large economies of scale and scope stimulate (vertical) integration, leading to very few companies controlling the entire value chain /digital ecosystems. These traits explain the high degree of concentration in digital markets where the conditions of competition are currently dictated by a handful of providers.

Another parameter that leads to concentration is the two (or multi-sided) character of digital markets; the direct and indirect network effects that are created as a result of this characteristic (e.g. the larger the user base of a search engine, the more advertisers it attracts) usually leads to the market 'tipping' towards one or very few providers.

As a result of high concentration, certain platforms have the ability and incentive to engage in practices that harm competition, including competition in downstream markets where platforms compete with content providers, such as Public Service Media (PSM). For example, they refuse to grant access to valuable assets (e.g. data), which drive competition in digital markets. Other examples of unfair/harmful practices that arise from structural competition problems include preferential treatment of platforms' own services and bundling /retaliatory practices (for more information about unfair platform practices, please see our reply to the DSA consultation, Section III., which we attach to this document).

One of the parameters the Commission identifies above concerns regulatory barriers, that is, rules that make market entry or expansion more cumbersome or extensively expensive. We find that the main source of structural competition problems does not concern regulatory barriers. It rather concerns regulatory asymmetries. Compared to other providers, most notably traditional media organizations, which have been subject to structural, content and liability rules, platforms have been subject to some 'light touch' information requirements established in the E-Commerce Directive). This has undoubtedly allowed platforms to expand into a number of markets with very limited -if any- regulatory scrutiny.

Finally, though not in the list of the features the Commission identifies, a parameter that has arguably exacerbated structural competition problems is merger control. As the Furman report notes 'over the last ten years the five largest firms have made over 400 acquisitions globally. None has been blocked and very few have had conditions attached to approval [...] or even been scrutinized by competition authorities' (Furman, J., Diane Coyle, Amelia Fletcher, Derek McAuley, and Philip Marsden (2019). *Unlocking Digital Competition*, 12). We find that merger control should be exercised in a way that takes into account the 'portfolio effects' of the merger, including access to vast amounts of data, with a view to addressing certain issues (e.g. high degree of vertical integration) giving rise to structural competition problems.

Structural competition problems are manifested in a wide range of digital markets/sectors, including:
-Online search;

- Consumer communications apps;
- Social networks;
- E-commerce marketplaces;
- Operating systems for smartphones;
- App stores;
- Provision of audiovisual content Over-The-Top (OTT);
- Provision of content through voice assistants;
- Online advertising (online auctions and ad intermediation platforms).

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).

The elements identified by the Commission focus on the supply side. Though the Commission refers to parameters concerning the demand side, namely information asymmetries and high switching costs, we find that there are other features specific to user behavior that could contribute to the creation of structural competition problems. We would rate 'user behavior' as very important.

One example concerns the lack of multi-homing that is not attributed to customer lock-in. This point is clearly illustrated by the Commission's Google Shopping decision. In its decision, the Commission found that, though it is easy for users to switch from one search engine to another, only a minority of users multi-home (paragraphs 307-311). The Commission relied on experiments showing that a significant number of online users trusted Google to such an extent that they would be highly unlikely to use a different search engine even if Google were to deliver less relevant search results (paragraph 312 and fn. 333). Taking account of user attitude enabled the Commission to gain a more complete understanding of Google's position in the affected market.

Another example is the so-called 'privacy paradox', a term that is used to describe the well-documented phenomenon that, while the majority of users claims to care about data protection, this is not mirrored in their online behavior. Users usually 'agree' with the platforms' Terms of Use without reading them or after only partially reading them [see, for instance, Barth, S. and Menno J.T. de Jong (2017). The privacy paradox – Investigating discrepancies between expressed privacy concerns and actual online behavior – A systematic literature review. *Telematics and Informatics*, 34(7), 1038-1058); European Commission (2015). *Data Protection Report. Special Eurobarometer 431*; Pew Research Center (2014). *What Internet Users Know About Technology and the Web*, p. 3). The 'privacy paradox' reinforces concentration of market power.

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

	No knowledge /No experience	imp rel
* A (not necessarily dominant) company with market power in a core market extends that market power to related markets.	<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"/>	
* Highly concentrated markets where only one or few players are present, which allows to align their market behaviour.	<input type="radio"/>	
* The widespread use of algorithmic pricing that allows easily to align prices.	<input checked="" 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"/>	
* 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"/>	

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

5000 character(s) maximum

Please see our reply to Question 6 for our views on and examples of a. extension of market power into other markets; b. anti-competitive monopolization; and c. tipping. For further information about those three scenarios, please see our replies to Questions 8.2., 10.2, and 16.6. below.

As regards gatekeeper scenarios, please see our reply to the DSA consultation, Section III., which we attach to this document.

*** 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?**

3000 character(s) maximum

As already mentioned above, online platforms have the incentive to extend market power to related markets because this allows them to reap large economies of scale. Ultimately, leveraging strategies allow platforms to control the value chain and those assets that drive competition.

PSM organizations are bound by 'universality' obligations, which require them to reach all segments of society. Given that a vast amount of content is now consumed on platforms, PSM use platforms to reach their audiences. In doing so, they have noticed that leveraging strategies are very common in downstream markets where platforms operate. Such markets are mainly markets for the provision of (e.g. news, audiovisual) content to the consumer/citizen in which a wide range of platforms that are powerful in other segments extend their market power. Those other segments include markets that have existed for several years (e.g. online search, video-sharing, app stores, e-commerce marketplaces, social networks) as well as emerging/nascent markets (e.g. radio/audio content in connected cars, content offered by voice assistants).

*

8.3. Please list and explain instances where a company with market power has used its position to try to enter adjacent/neighbouring markets to expand its market power.

3000 character(s) maximum

Please see our reply to 8.2. above.

*** 8.4. Do you consider that strategies to extend market power to related markets are common in digital sectors/markets?**

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

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

3000 character(s) maximum

Please see our reply to Question 8.2. above.

*** 8.6. In your experience, does a repeated strategy by a company with market power to extend its market power to related markets raise competition concerns?**

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

*** 8.7. Please explain your answer, and indicate the competition concerns that may arise in case of leveraging strategies.**

3000 character(s) maximum

Several concerns arise from leveraging strategies. Where platforms that hold market power in one market attempt to extend to other markets, they have the incentive to:

-Grant preferential treatment to their own services (self-preferencing). Self-preferencing can take various forms (e.g. prominent display, demotion of competing content, access to data). The effects of self-preferencing on competition are illustrated by the Commission's Google Shopping decision.

-Refuse to share information about how they work in practice. Lack of transparency prevents business users from gaining an adequate understanding of the parameters that determine content consumption (e.g. in the case of voice assistants, it is not clear which parameters determine the result of the user's query). Though the P2B Regulation has introduced certain transparency obligations, we are concerned that such obligations are not sufficient to address issues arising from the significant information asymmetries between platforms and their business users. For example, under the P2B Regulation, platforms are not required to disclose whether they engage in 'retaliatory' practices (i.e. practices whereby, in order to expand into another market

through the creation of a new platform, they retaliate against business users that wish to offer their content only on the existing platform).

-Refuse to share data with business users that compete in downstream markets in order to grant to their own subsidiaries a strong competitive advantage. This is recognized in the Commission's Communication on A European Strategy for Data where it is noted that 'a small number of players may accumulate large amounts of data [...]. The high degree of market power resulting from the "data advantage" can [...] allow leveraging of such "power advantage" when developing new services and expanding towards new markets' (pp. 7-8).

-Engage in other data-related practices that limit access to data, including:

-Practices to limit the possibilities of data processing by business users on their own applications, even if such processing is carried out in compliance with applicable data protection regulation. For example, a platform may impede in-app tracking (even when it is compatible with the GDPR and the e-privacy rules) to prevent the transmission of data to the app owner. In the case of PSM, this practice impedes the ability to engage in audience measurement.

-Practices related to the consent granted by online users. Platforms may impose a mechanism of 'double' consent to trackers, which reduces the quality of the user's experience. This practice, which may lead to users refusing permission, is not a standard required by law in the EU.

-Remove logos and/or other distinctive features of their business users, including content providers . As a result, the user is not in the position to assess who offers the content she consumes and the content provider cannot establish a relationship with its audiences.

*** 9. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to repeated strategies by companies with market power to extend their market position into related markets?**

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

*** 9.1. Please explain your answer. If you replied yes, please also indicate the type of intervention that would be needed.**

3000 character(s) maximum

We have already explained why we find that repeated strategies by companies with market power to extend their market position into related markets raise competition concerns. Based on the remarks we have already made, we believe that the Commission should intervene in cases such as those described above. One measure we would support is the establishment of reporting obligations on platforms to inform the Commission about their intention to expand their activities into other markets. The Commission could then examine the potential effects on competition and decide whether further action (e.g. the imposition of remedies) is needed.

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

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

*** 9.3 Please explain your answer.**

3000 character(s) maximum

Though Article 102 TFEU is sufficiently flexible to capture leveraging strategies, it only applies ex post facto. Since digital markets move at a very fast pace and have a tendency to concentration, ex post intervention may not manage to restore the competitive process. Moreover, Article 102 TFEU only applies to single firm behavior. In view of the above, we find that intervention under the New Competition Tool will enable the Commission to prevent a handful of providers from controlling the entire value chain. This would be to the benefit of competition and consumers alike as it would result in a wider variety of services/content to choose from, higher quality products and more innovation.

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

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

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

*** 10.2. In which sectors/markets did you experience anti-competitive monopolisation strategies?**

3000 character(s) maximum

Please see our reply to Questions 6 and 8.2. above.

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

3000 character(s) maximum

The main source of the issues we have encountered in dealing with platforms is lack of bargaining power. Combined with the large user base platforms control and to which we need access, lack of bargaining power translates into a need to accept unfair contractual terms (on a 'take it or leave it' basis) and being subject to unfair practices.

For example, in many cases, PSM organizations are forced to grant a non-exclusive, sublicensable and royalty-free worldwide licence of their content.

Another example concerns retaliatory and bundling practices. Certain platforms bundle subscription-based and free services. If PSM do not agree to the distribution of their content through the subscription-based channel, they are not allowed to distribute their content for free.

Another issue concerns unilateral (and often unannounced) modifications to the T&Cs imposed by platforms. Such modifications concern a range of issues, including the prices that platforms charge for their services and de-referencing of PSM sub-domains that led to a significant decline in audiences.

Other practices which we have experienced and consider unfair include:

-Platforms' refusal to grant access to data and other data-related practices;

-Platforms' self-preferencing;

-Lack of transparency regarding ranking and, in the case of voice assistants, lack of transparency regarding the parameters that determine the outcome of the user's query.

-Lack of brand attribution: Platforms may remove logos or other distinctive features of their business users, including content providers. As a result, the user is not in the position to assess who offers the content she consumes and the content provider cannot establish a relationship with its audiences.

-Practices concerning monetization, including:

-Refusal to apply to buyers of ad space the general conditions of sale of their business users. As a result, the latter are prevented from setting their standards of compliance with advertising ethics. Moreover, the control exercised by platforms is generally insufficient, rendering it possible to publish unsuitable advertisements on the sites of content providers.

-Practices raising barriers to monetizing content offered on platforms. Certain platforms require the use of their own ad tools. Such a requirement requires a content provider to either entrust the platform with carrying out the ad campaign or implement the technical solution chosen by the platform. In such cases, the sales process becomes lengthier and the content provider must cope with the difficulties involved in the installation of the tools required by the platforms, the optimization of targeted advertising, etc.

-The placement of ads next to PSM content. In many cases, PSM are legally required to offer online content that is ad-free. However, platforms may place advertisements next to it without the authorization of the PSM organization concerned and in breach of applicable media regulation

*** 10.4. Do you consider that anti-competitive monopolisation is common in digital sectors/markets?**

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

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

3000 character(s) maximum

Please see our reply to 10.3. above.

*** 10.6. In your experience, does anti-competitive monopolisation raise competition concerns?**

- Yes
- No
-

Not applicable / no relevant experience or knowledge

*** 10.7. Please explain your answer and indicate the competition concerns that may arise in case of anticompetitive monopolisation.**

3000 character(s) maximum

Based on our experience, anti-competitive monopolization may amount to exploitative abuse under Article 102 TFEU. As already mentioned, PSM organizations rely on platforms to reach their audiences, especially younger generations. In many cases, PSM are presented with 'take-it-or-leave-it' offers which affect their ability to compete effectively.

*** 11. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to anti-competitive monopolisation?**

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

*** 11.1. Please explain your answer. If you replied yes, please also indicate the type of intervention that would be needed.**

3000 character(s) maximum

Though in recent years the Commission has focused on exclusionary practices, the increasing dependence on platforms has illustrated why exploitative practices that are harmful to competition should also be condemned. The type of intervention that would be needed to address competition concerns in such cases depends on the practice under consideration. For example, in the case of exploitative Terms and Conditions, the Commission could intervene to impose an obligation to modify the Terms and Conditions concerned.

NB: Though we believe that unfair practices in which platforms engage could, to a certain extent be addressed by competition enforcement, we also find that regulation is needed to resolve issues arising from exploitative practices/abuses of economic dependence (for more information, please see our reply to the DSA Consultation, Section III., which we attach to this document).

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

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

*** 11.3. Please explain your answer.**

3000 character(s) maximum

Article 102 TFEU applies to 'dominant' companies only. However, in many cases, platforms engaging in practices that prevent PSM from competing effectively would not be caught by current measures of 'dominant'. This does not mean that those platforms cannot harm competition. For example, they may impose unfair practices because they control a specific segment of the audience that PSM organizations need to reach. By imposing unfair practices, such platforms may subsequently become dominant (but harm has already occurred), in which case the effects on competition become more acute and perhaps irreversible. This is why, under certain circumstances, action against non-dominant platforms under the New Competition Tool may be needed.

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.

3000 character(s) maximum

Please see our reply to Question 8.2. above.

16.3. Please indicate what are in your view, the main market features of a tipping market. Please rate each of the listed competition concerns according to its importance.

	No knowledge/No experience	No importance/No relevance	Somewhat important	Important	Very important
* Direct network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Indirect network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Economies of scale	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Users predominantly single-home (i.e. they use typically one platform only)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 16.4. Please explain your answer, indicating why you consider the above features relevant for a tipping market and describe any other feature that you consider important.**

3000 character(s) maximum

Please see our reply to Question 6 above. The remarks we make on why digital markets have high concentration ratios are inextricably linked to 'tipping'.

*** 16.5. In your view, is tipping common in digital sectors/markets?**

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

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

3000 character(s) maximum

Please see our reply to Question 6 above.

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

*

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

3000 character(s) maximum

The importance to attract a large user base in order to be able to compete in digital markets cannot be overstated.

As regards commercial providers, not only is a large user base essential to attract revenues, it is also key to improving the quality of the service offered. No matter how efficient or innovative a provider is, if it does not attract a sustainable user base, it will exit the market eventually.

As regards PSM organizations, attracting a large user base to their content is the core of the public service mission. As already mentioned, PSM organizations are bound by 'universality' obligations whereby they are required to reach a high proportion of the population with high quality/public value content.

'Tipping' does not only reduce the incentive to innovate or the amount of competitors in a given market. It further reduces choice. Many platforms argue that, due the resources they have at their disposal, they offer a wide range of services to the consumer/citizen. However, we find that 'tipping' deprives the user of choice. Choice must be understood as a wide range of services offered by different providers. This may include services that offer a higher level of data protection or higher quality content/services than those offered by the platform concerned.

Finally, another competition concern which is not referred to above, concerns leveraging. Where the market 'tips' towards a single provider, that provider has the ability to leverage its market power into other markets.

*** 17. Do you consider that there is a need for the Commission to be able to intervene early in tipping markets to preserve/improve competition?**

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

*** 17.1. Please explain your answer.**

3000 character(s) maximum

As already explained above, 'tipping' may create irreversible effects on competition. The Commission should be able to intervene early in order to ensure that the market remains competitive. For example, where 'tipping' occurs in markets that heavily depend on data, the Commission may need to intervene to ensure that competitors have access to data.

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



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

*** 17.3. Please explain your answer.**

3000 character(s) maximum

We have already explained that Article 102 TFEU applies only ex post and to ‘dominant’ companies. As a result, it does not capture companies that are in the process of becoming dominant as a result of tipping nor is it enforced before the harm materializes.

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

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

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

*** 18.2. Please list which companies you consider to be ‘gatekeepers’ and in which markets.**

3000 character(s) maximum

PSM organizations are bound by ‘universality’ obligations, which require them to reach all segments of society. Given that a vast amount of content is now consumed on platforms, PSM rely on platforms to reach their audiences. In other words, such platforms are the gateways through which users access audiences. Being present on different platforms is linked to the different purposes which those platforms serve. For example, app stores and smart TVs are used to distribute applications; social networks are mainly used for marketing purposes and community building; communications apps are used to make content ‘go viral’; audio streaming platforms are used for podcast distribution; and VOD platforms are used for content monetization.

In addition to very large platforms, we find that certain smaller platforms should also be regarded as important gateways for accessing content despite the fact that their user base is not on the same global scale as some of the current tech giants; gatekeeping can occur regardless of size and the impact on business users and citizens can be significant.

For more information, please see our reply to Section III. of the DSA consultation, which we attach to this document (see in particular our replies under ‘Main features of gatekeeper online platform companies and main relevant criteria for assessing their economic power’ and ‘Emerging issues’).

*** 18.3. Do you consider that gatekeeper scenarios are common in digital sectors/markets**

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

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

3000 character(s) maximum

Please see our reply to Section III. of the DSA consultation, which we attach to this document (see in particular our replies under 'Main features of gatekeeper online platform companies and main relevant criteria for assessing their economic power' and 'Emerging issues').

*** 18.5. Do you consider that gatekeeper scenarios also occur in non-digital sectors/markets?**

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

18.6. Please explain your answer and identify the sectors/markets concerned.

3000 character(s) maximum

Gatekeeper scenarios can arise in a wide range of markets, including especially in markets that have a natural tendency to concentration. One example concerns telecommunications network providers, which are often vertically integrated. More particularly, over the past few decades, several telecommunications network providers have engaged in aggressive acquisition strategies that have had a profound impact on European content markets (e.g. Telia/Bonnier, LG/Ziggo, LG/De Vijver, LG/Discovery/All3Media).

Vertically integrated providers have the ability and incentive to engage in practices that prevent competing content providers, including PSM, from reaching their audiences.

For example, in many cases, PSM organizations are not protected by 'must-carry' rules. As a result, telecoms providers may deny them access to the network in order to favor their own services. Related to the above, some providers have tried to block cross-border access to the network in some countries (the 'must-carry' rules often only apply to the domestic PSM only). Overall, vertically integrated network providers will have the strong incentive to discriminate against competing content providers.

Discrimination can manifest in many different ways (e.g. by providing lower quality service, by ensuring a prominent position of their own channels on the Electronic Program Guide).

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High number of customers/users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Customers cannot easily switch (lack of multi-homing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Business operators need to accept the conditions of competition of the platform - including its business environment - to reach the customers that use the specific platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

3000 character(s) maximum

Please see our reply to the DSA consultation Section III. of the DSA consultation, which we attach to this document (see in particular our replies under 'Main features of gatekeeper online platform companies and main relevant criteria for assessing their economic power' and 'Emerging issues') where we explain why the above features could determine whether a company acts as a gatekeeper.

In our reply to the DSA consultation, we also explain why other parameters identified by the Commission could also indicate that a platform qualifies as a 'gatekeeper'. These parameters include:

- Building on and exploiting strong network effects;
- Leveraging assets for entering new areas of activity;
- Raising barriers to entry for competitors;
- Accumulating valuable and diverse data and information;
- The existence of very few, if any, alternative services available on the market.

In addition to the above, we explain in our reply to the DSA consultation that there are other features that are relevant for qualifying a company as a gatekeeper. More particularly, we find that an assessment of whether a large online platform is a gatekeeper must not be restricted to supply-side considerations. It should further consider how users behave (for more information, please see our reply to Question 6.2. above). However, it is not only the absolute number, but the quantity of users relative to the target group of a service. In fact, special interest platforms with a small target audience may acquire a gatekeeper status very quickly. Target groups are not present on 'large' platforms only. In other words, platforms that are being used to a significant extent by their target groups could also be important gateways through which users access content if those target groups cannot be effectively accessed any other way.

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

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Gatekeepers determine the dynamics of competition on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* As customers/users cannot easily switch, they have to accept the competitive environment on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Business operators can only reach the customers that use the specific platform /aftermarket by adapting their business model and accepting their terms and conditions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 18.10. Please explain your answers above. Please also use this space to mention any other competition concerns that arise in markets featuring a gatekeeper and rate them in importance.**

3000 character(s) maximum

Please see our reply to the DSA consultation Section III. of the DSA consultation, which we attach to this document (see in particular our replies under 'Emerging issues') where we explain why we find that the above factors raise competition concerns.

For the purposes of this consultation, we note that the first (gatekeepers determine the dynamics of competition) and third (business operators can only reach the customers that use the specific platform /aftermarket by adapting their business model and accepting their terms and conditions) factors identified above are intertwined. More particularly, the main source of the issues we have encountered in dealing with platforms is lack of bargaining power. Combined with the large user base platforms control and to which we need access, lack of bargaining power translates into a need to accept unfair contractual terms on a take it or leave it basis. This clearly affects the dynamics of competition in the market concerned.

The second factor identified above (as customers/users cannot easily switch, they have to accept the competitive environment on the aftermarket/platform) is very important in markets where there is consumer lock-in. However, as mentioned in our reply to Question 6.2., in many cases, users do not multi-home not because they encounter technical difficulties but for other reasons (e.g. users' trust in the platform). User behavior should also be taken into account in dealing with gatekeeping issues; where users do not multi-home, the gatekeeper platform has the ability and incentive to act anti-competitively.

Other issues, which we consider 'very important' are:

- Platforms' refusal to grant access to data;
- Other data-related practices (please see our reply to Q8.7. above);
- Platforms' preferential treatment of own services or services offered by business users that pay for such preferential treatment;
- Lack of transparency regarding ranking (and, more broadly, recommendation mechanisms) and, in the case of voice assistants, lack of transparency regarding the parameters that determine the outcome of the user's query.

*** 19. Do you consider that there is a need for the Commission to be able to intervene in gatekeeper scenarios to prevent/address structural competition problems?**

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

*** 19.1. Please explain your answer.**

3000 character(s) maximum

We find that there is a need for the Commission to be able to intervene in gatekeeper scenarios to prevent

structural competition problems. For example, competition concerns may arise as a result of:

-The creation of a powerful (but not necessarily 'dominant') player with a gatekeeper position. In many cases, the emergence of such a player should be prevented by early intervention in order to avoid structural competition problems, such as those experienced today by certain platforms' business users, including PSM.

-Markets displaying systemic failures due to certain structural features, such as high concentration and entry barriers, customer lock-in, and lack of access to data. In such cases, the Commission may need to intervene to allow the markets to develop in a competitive manner.

However, while we believe that there is a need for the Commission to be able to intervene in gatekeeper scenarios to prevent/address structural competition problems, we also find that there are issues concerning gatekeeper platforms that would be best addressed by regulation (please see our reply to Question 19.3. below).

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

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

*** 19.3. Please explain your answer.**

3000 character(s) maximum

One of the reasons why platforms must be regulated is that, as a result of the large user base they control, they have the ability and incentive to engage in harmful practices, exploiting firms that have come to depend on them. This is the problem the P2B Regulation seeks to address. The Regulation lays down that: 'Given that increasing dependence, [platforms] often have superior bargaining power, which enables them to, in effect behave unilaterally in a way that can be unfair and harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union' (Recital (2)). However, the P2B Regulation focuses on promoting transparency.

Competition law is also insufficient to address concerns arising from an increasing dependence on platforms. The goal of competition law is to protect competition. The goal of competition law is not to protect individual competitors. At best, competition authorities may intervene to protect competitors that are 'as efficient' as the dominant company under investigation. However, the 'as efficient competitor test' is made complicated in the digital space by other effects that favor declining costs like the existence of economies of scale and scope, learning curve effects, or first mover advantages.

In view of the above, we find that the current legal framework is not adequate to protect platforms' business users against abuses of economic dependence. Given the fast-moving character of platform markets, we would encourage the Commission to consider an 'umbrella provision' prohibiting the abuse of economic dependence, which could set out a non-exhaustive list of abusive practices, such as self-preferencing, refusal to grant access to data, and lack of interoperability. This is an approach adopted in several Member States (e.g. Greece, Belgium, Germany) in order to fill the lacunae of the legal framework described above.

Since the problem we are considering here is pan-European and the criteria set by the relevant national laws have limited the effectiveness of such 'umbrella provisions', a well-designed obligation prohibiting the abuse of economic dependence that is established in an EU instrument could address concerns arising from harmful platform practices.

Another solution is to adopt an approach similar to the Directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which includes a non-exhaustive list of unfair trading practices that are prohibited. This is similar to proposals made in a report recently published by the UK Consumer and Markets Authority (CMA). The CMA proposes the establishment of an enforceable code of conduct for platforms that would be based around three high-level objectives. One of those objectives is fair trading, which 'is intended to address concerns around the potential for exploitative behavior on the part of the [...] platform' (CMA (2020). Online platforms and digital advertising, 7.76)

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

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

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

3000 character(s) maximum

As mentioned above, in addition to digital markets, we find that structural competition problems may also arise in the telecommunications/media sectors (especially in the case of vertically integrated telecommunications network providers). However, we cannot exclude that structural competition problems may arise in other sectors/markets, including especially in sectors/markets that may have a natural tendency to concentration.

*** 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

*** 23.1. Please explain your answer. If you replied 'no', please indicate the type of conduct and situations that in your view, Article 102 of the EU Treaty does not sufficiently or effectively address, and why.**

3000 character(s) maximum

The Commission currently takes action under Article 102 TFEU in order to address competition concerns arising from the conduct of a 'dominant' company. However, as already explained above (and as the Commission seems to acknowledge), problems may arise from the conduct of a non-dominant platform that qualifies as a gatekeeper. As a result, we find that there is a gap in the enforcement of Article 102 TFEU.

Moreover, intervention under Article 102 TFEU takes place ex post facto and is targeted at firm-specific behavior. However, in the case of markets that display systemic failures going beyond the conduct of a particular company due to certain structural characteristics (e.g. high concentration and entry barriers, customer lock-in, and lack of access to data), intervention may be needed to ensure that the consumer /citizen is not deprived of the benefits of competition.

Finally, based on the Commission's Guidance on Article 102 TFEU (and the relevant case law), it is our understanding that the Commission would intervene under Article 102 TFEU 'where the conduct concerned has already been or is capable of hampering competition from competitors which are considered to be as efficient as the dominant undertaking' (Guidance on Article 102 TFEU, paragraph 21). However, as mentioned above, the 'as efficient competitor test' is made complicated in the digital space by other effects that favor declining costs like the existence of economies of scale and scope, learning curve effects, or first mover advantages.

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

3000 character(s) maximum

Please see our reply to Questions 8.2. and 18.10 above.

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

- * **24.1. Please explain your answer. Please indicate which structural competition problems the new tool should tackle or address.**

3000 character(s) maximum

Please see our replies to Questions 19.1. and 23.1. above.

- * **25. Do you think that such a new competition tool (that would not establish an infringement by a company and would not result in fines) should also be able to prevent structural competition problems from arising and thus allow for early intervention in the markets concerned?**

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

*** 25.1. Please explain your answer. Please indicate which structural competition problems the new tool should prevent.**

3000 character(s) maximum

Please see our replies to Questions 19.1. and 23.1. above.

*** 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

Please see our reply to Question 19.1. above.

*** 27. In your view, what should be the basis for intervention for the new competition tool?**

- The tool should be dominance-based (i.e. it shall only be applicable to dominant companies within the meaning of Article 102 of the EU Treaty)
- The tool should focus on structural competition problems and thus be potentially applicable to all undertakings in a market (i.e. including dominant but also non-dominant companies).
- Other
- Not applicable /no relevant experience or knowledge

*** 27.1. Please explain your answer. Please indicate what type of situations would be covered by the scope of application you suggested.**

3000 character(s) maximum

Please see our replies to Questions 19.1. and 23.1. above.

*** 28. In your view, what shall be the scope of the new competition tool?**

- It shall be applicable to all markets (i.e. it should be horizontal in nature)
- It shall be limited in scope to sectors/markets where structural competition problems are the most prevalent and/or most likely to arise
- Other
- Not applicable / no relevant experience or knowledge

*** 28.1. Please explain your answer. If you indicated ‘limited in scope’, please indicate what sectors/markets should be covered by the new competition tool, and why.**

3000 character(s) maximum

Though we cannot exclude that the New Competition Tool would be useful if it were horizontal in nature (i.e. if it applied to all sectors/markets), we find that it is mostly needed in markets/sectors that possess the

characteristics the Commission identifies (e.g. high concentration ratios). As mentioned above, we have experienced structural competition problems in telecommunications and digital markets and we find that such markets should be covered by the 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.**

3000 character(s) maximum

We replied 'no' to the above question because, as already mentioned, we have experienced structural competition problems in telecommunications markets, which regulatory policy has treated as distinct from digital/platform markets.

The Commission asks whether the New Competition Tool should only apply to digital markets. The Commission defines the term 'digital markets' as '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'. We find that that the overwhelming majority of markets are affected by the process of digitization and have to a certain extent the characteristics described above. For those reasons, if the Commission intends to limit the application of the new tool to 'digital markets', we would strongly encourage it to define the term in a manner that is precise in order to ensure legal certainty.

*** 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

Ensuring a smooth interaction between the New Competition Tool and existing sector-specific regulation would depend on the specificities of the markets and issues under scrutiny. Provided that action under the New Competition is targeted and well-designed, no tension between the applicable instruments should arise. For example, under Article 70 of the European Electronic Communications Code, a national regulatory authority may impose obligations of non-discrimination on providers with 'Significant Market Power' (a position equivalent to dominance under Article 102 TFEU) in relation to interconnection or access to the network. Under the New Competition Tool, obligations of non-discrimination could be imposed on gatekeeper (but not necessarily dominant) providers concerning issues other than interconnection or access to the network, such as access to 'premium content'. Clearly, where tensions arise, sector-specific rules should prevail.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Impose remedies on companies to deal with identified and demonstrated structural competition problems	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

3000 character(s) maximum

We find that, while non-binding recommendations to companies could be an instrument the Commission could use in the context of an inquiry under the New Competition Tool, proposing codes of conduct and best practices may not deliver the desired outcome. Drafting voluntary codes of conduct and best practices would be a lengthy exercise and entail high monitoring costs. Moreover, there would also need to be a mechanism ensuring effective enforcement of such codes and practices. However, certain markets with structural competition problems, such as digital markets, are moving at a fast pace, rendering non-binding recommendations to companies inadequate to resolve the structural competition problems identified by the Commission (e.g. ‘tipping’).

As regards the second option, though we do not exclude that recommendations/proposals to sectorial regulators could be useful to address certain issues that would arise from an inquiry under the New Competition Tool, the Commission would need to provide further information about this option. To our understanding, the New Competition Tool would be used by the Commission only. Would that option imply that the Commission would identify structural competition problems and subsequently ask sectorial regulators to oversee the implementation of the remedies the Commission would impose on platforms operating in certain markets? Or would the New Competition Tool also be used by National Competition Authorities?

We find that the last two options identified above (inform and make legislative recommendations and impose remedies on companies to deal with identified and demonstrated structural competition problems) would render the New Competition Tool an effective instrument.

More particularly, following a thorough investigation under the New Competition Tool, which would enable it to gain a deep understanding of the market under scrutiny, the Commission may find that certain issues would be best addressed by regulation. It must be noted that many competition authorities across the EU have the power to make legislative recommendations where they find that regulation (or lack thereof) may prevent competition from flourishing.

Finally, for the reasons set out above, we find that imposing remedies on companies to deal with identified

structural competition problems would be more effective than non-binding recommendations and proposals to those same companies. However, the Commission must ensure that such remedies are well-designed and that an effective monitoring mechanism exists to ensure that they are implemented in an effective manner (see also our replies to Questions 31 et seq. below).

31. Do you consider that in order to address the aforementioned structural competition problems, the Commission should be able to impose appropriate and proportionate remedies on companies? If yes, which?

	Yes	No	Not applicable /no relevant experience or knowledge
* • Non-structural remedies (such as obligation to abstain from certain commercial behaviour)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Structural remedies (for instance, divestitures or granting access to key infrastructure or inputs)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Hybrid remedies (containing different types of obligations and bans)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

*** 31.1. Please explain your answer and why you indicated or not indicated the remedies listed above.**

3000 character(s) maximum

The markets where we experienced structural competition problems are very complex. As a result, where it decides to apply the New Competition Tool, the Commission should not be restricted to one or the other type of remedies it may impose under the current competition rules.

However, we note that behavioral remedies, such as remedies to grant access to a valuable input on objective criteria and fair, reasonable and non-discriminatory terms, have not proved to be very successful. We would therefore encourage the Commission to conduct extensive research into the drawbacks of such remedies (e.g. scope, temporal application, monitoring mechanism) in order to ensure that they address the problems they seek to resolve. Related to the above, we note that, under Article 9(2) of Regulation 1/2003, the Commission may, upon request or on its own initiative, reopen the commitments proceedings where there has been a material change in any of the facts on which the decision was based; where the undertakings concerned act contrary to their commitments; or where the decision was based on incomplete, incorrect or misleading information provided by the parties. We find that the Commission should have the same powers when it imposes remedies under the New Competition Tool (as we also find that the Commission can make more extensive use of Article 9(2) of Regulation 1/2003).

*** 32. Do you consider that certain structural competition problems can only be dealt with by structural remedies, such as the divestment of a business?**

- Yes
- No

- Not applicable /no relevant experience or knowledge
- Other

32.1. Please explain your answer.

3000 character(s) maximum

Broadly speaking, behavioral remedies do not reduce the incentive to act anti-competitively. This may explain why, in its Merger Remedies Study, the Commission found that, compared to behavioral remedies, structural solutions were more effective. More particularly, the Commission found that in the cases where structural remedies were imposed on the merging parties, '94% of the divested businesses were still operating and therefore exercising some degree of competitive constraint on the merged entity' Commission (2005). Merger Remedies Study, 128). That same study finds that behavioral remedies aiming to grant access to IPRs or know-how have deterred rather than encouraged market entry, the prices charged by the wholesaler being 'the single most essential element affecting the effectiveness of licensing remedies' (ibid., p. 220). Without excluding the potential of behavioral remedies to address structural competition problems, more research is needed to identify why behavioral remedies imposed on companies operating in digital markets (or markets with similar characteristics) have not delivered the desired results (see also our reply to Question 31.1.).

Moreover, in the case of online platforms, which are often vertically and/or diagonally integrated, structural remedies may be more effective than behavioral remedies. For example, as the study on 'Online Platforms and Digital Advertising' recently published by the UK CMA notes, 'following structural separation, independently-owned firms would not have the incentive to trade in a way that favors their own businesses, and will have independent incentives to innovate in new products or new technologies' CMA (2020). Online platforms and digital advertising, paragraph 7.118). The CMA further discusses other forms of separation, such as operational separation, which would include management separation and 'firewalls' between different businesses under common ownership (ibid., paragraphs 8.197 et seq.), and we would strongly encourage the Commission to consider such solutions as they could address concerns relevant to digital markets/markets that tend to 'tip' towards a single winner.

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.

3000 character(s) maximum

Please see our reply to Question 33.3. below.

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The power to obtain expert opinions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The power to carry out inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Imposing penalties for not submitting to inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*** 33.3. Please explain your answer. Please also list here any other investigative powers that you would consider appropriate to ensure the effectiveness of the new competition tool.**

3000 character(s) maximum

The above investigative powers are similar to those the Commission has under Regulation 1/2003 (see Articles 18 et seq.). Given that investigations under the New Competition Tool and investigations under Regulation 1/2003, including sector inquiries, would have many similarities, granting to the Commission the

above powers would make the New Competition Tool more effective and ensure consistency in competition enforcement.

*** 34. Do you consider that the new competition tool should be subject to binding legal deadlines?**

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

*** 34.1. Please explain your answer, including the resulting benefits and drawbacks. If you replied yes, please specify the type of deadlines.**

3000 character(s) maximum

Though we understand that gathering the relevant information and finding appropriate solutions is a time-consuming exercise, we find that the New Competition Tool should be subject to binding legal deadlines. Striking the balance between sound decision-making and quick resolution of the matter concerned might be challenging, but recent antitrust investigations that have lasted several years illustrate why the lack of deadlines may harm competition and the consumer. As already mentioned above, digital markets move fast and tend to 'tip' towards a single company (or very few companies). In the absence of any binding deadlines, any action taken under the New Competition Tool, such as behavioral remedies, may not manage to address the issues it seeks to resolve.

*** 35. Do you consider that the new competition tool should include the possibility to impose interim measures in order to pre-empt irreparable harm?**

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

*** 35.1. Please explain your answer.**

3000 character(s) maximum

Under Article 8 of Regulation 1/2003, in cases of urgency due to the risk of serious and irreparable damage to competition, the Commission may, on the basis of a prima facie finding of infringement, order interim measures. We do not see why the Commission should not be equipped with the same tool when it attempts to address structural competition problems. For example, interim measures may be necessary in the case of unilateral strategies by non-dominant companies to monopolize a market through anti-competitive means.

*** 36. Do you consider that the new competition tool should include the possibility to accept voluntary commitments by the companies operating in the markets concerned to address identified and demonstrated structural competition problems?**

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

*** 36.1. Please explain your answer.**

3000 character(s) maximum

Acceptance of voluntary commitments may resolve the issue under consideration more quickly. However, prior to making such commitments legally binding, the Commission would arguably need to have gathered enough information to be able to assess whether they are appropriate to address the issues they seek to resolve.

Related to the above, such commitments would need to be market-tested (i.e. competitors, suppliers and customers of the companies concerned should be given the opportunity to give their views on their potential effectiveness).

Where safeguards such as those described above exist, the New Competition Tool would ensure that the companies under investigation are not unduly penalized and that the proposed commitments are adequate to achieve the objective they pursue.

*** 37. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the findings of the existence of a structural competition problem before the final decision?**

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

*** 37.1. Please explain your answer.**

3000 character(s) maximum

Similar to our reply to Question 36.1. above, we find that competitors, suppliers or customers of the companies under investigation should be given the opportunity to comment on the findings of the existence of a structural competition problem before the adoption of the final decision. The companies under investigation may provide inaccurate/misleading information and the Commission would need to gather as much information as possible to ensure that its decision is sound. This remark does not only concern the finding of the existence of a structural competition problem, but also the remedies that the Commission would consider imposing on the companies under scrutiny.

*** 38. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the appropriateness and proportionality of the envisaged remedies?**

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

*** 38.1. Please explain your answer.**

3000 character(s) maximum

Please see our reply to Question 37.1. above.

*** 39. Do you consider that the new competition tool should be subject to adequate procedural safeguards, including judicial review?**

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

*** 39.1. Please explain your answer.**

3000 character(s) maximum

We understand that the New Competition Tool will be what its name suggests, that is, a new tool that will seek to resolve issues that may not be satisfactorily addressed under the current legal framework. Application of the New Competition Tool will impact on the activities of a wide range of stakeholders. As a result of the above, we are of the view that it must be subject to appropriate procedural safeguards.

We would strongly encourage the Commission to consider the relevant safeguards that exist in the UK regime, which envisages precise timescales, the publication of reports/working papers, hearings with affected stakeholders, and consultations on any proposed commitments.

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

3000 character(s) maximum

Please see our reply to Question 39.1. above.

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 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 type="radio"/>	<input checked="" type="radio"/>
* 4. There is a need for a New Competition Tool allowing to address structural risks and lack of competition in (digital) markets on a case-by-case basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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.**

3000 character(s) maximum

Please see our reply to Section III. of the DSA consultation, which we attach to this document (see in particular our replies under 'Emerging issues' and 'Regulation of large online platform companies acting as gatekeepers').

- 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

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

3000 character(s) maximum

No.

- * 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

