Meeting with DG COMP on a New Competition Tool

21 October 2020
Introduction

GSMA

More than 750 operators & 400 companies in the broader mobile ecosystem

ETNO

ETNO is the European Telecommunications Network Operator’s Association. We proudly represent Europe’s main telecom operators, who innovate and invest in the continent’s digital backbone. Our companies are the providers of Europe’s most advanced digital networks and services. ETNO’s mission is to develop a positive Policy and regulatory environment empowering the delivery of World-class services for European citizens and businesses.

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List of participants

- Belinda Ampah, Senior Solicitor Competition Law, Vodafone
- Krisztina Baracsi, Vice President EU Affairs, Telenor
- Anna Bigot, European Affairs advisor, Bouygues Europe
- Chloé Cluzel, Legal Counsel, Competition and Regulatory, Orange
- Sara Ghazanfari, Regulation and Economics Manager, ETNO
- Simona Girolamo, Head of International and European Affairs, TIM
- Frida Håglin, Senior Legal Counsel, Telia
- Grania Holzwarth, Competition Policy Legal Counsel, DT
- Peter Lepoutre, Expert Legal Counsel, Group Corporate Affairs / Group Legal, Proximus
- Maarit Palovirta, Director of Regulatory Affairs, ETNO
- Pierantonio Rizzo, Public Policy Manager, GSMA
- Monica Sanchez Soliva, Expert – Competition, Data & Consumer Policy, Telefonica
- Maria Sendin Valle, Antitrust Counsel, GSMA
- Gera van Duijvenvoorde, Advocaat Competition Counsel, KPN
Joint response – main positions

Competition framework

- The existing competition framework is fit for purpose but requires updating to be able to address the challenges brought by the digital economy
- Invite DG COMP to:
  - continue with the ongoing review of current rules before introducing additional tools;
  - increase use of its existing powers (for example sector inquiries and interim measures)

New Competition Tool

- We do not consider the NCT is necessary, however any potential tool should:
  - be limited to address the structural problems deriving from large online platforms acting as gatekeepers (limited in scope);
  - include an adequate system of checks and balances to ensure procedural fairness, certainty and adequate rights of appeal
Pillar 1 (enforcement of competition law regime) and Pilar 2 (ex-ante regulation of platforms) should be sufficient to tackle the identified problems.

Pillar 3 (case by case market investigation tool), if necessary, should be carefully defined under the principle of proportionality to tackle the identified enforcement gaps posed by large online platforms acting as gatekeepers across markets characterised by:

- Highly integrated ecosystems
- Strong network effects and economies of scale & scope
- Importance of access to and leveraging of key inputs, like data

Given the broad reach of such a tool the intervention threshold should be high:

- It should be used as last resort where sector specific regulation and existing competition tools are not effective
- On the substantial dimension it should have a certain magnitude
- On the geographic dimension of markets in the scope it should be European dimension on a cross-border level
Questions

- Will the potential NCT apply only to the services covered by ex-ante regulation or have a broader scope?
- How would DG COMP define “gatekeepers”?
- What are the timings for presenting a proposal for an NCT?
Check & balances and proportionate remedies are crucial

- Need to consider existing sector-specific regulation **before triggering a market investigation**
- **Need for additional controls on the trigger of a market investigation tool** to avoid legal uncertainty and controversial cases
- **Possibility for the targeted company to express views during the whole process** (mirroring the CMA MI tool)
- **The decision-making panel** should be independent from the investigation team
- Remedies focused on **voluntary remedies (including recommendations to policymakers and sectoral regulators in regulated sectors)**, rather than the imposition of structural and behavioral remedies should be considered
- **Quick appeal procedure before the Courts** to reduce uncertainty and reputational impact
Questions

- Which requirements would trigger the application of an NCT?
- How the NCT would be triggered in the interplay with the DSA?
- How would a DSA/DMA interplay with sector specific regulation? In particular, telecoms regulation?
- Which authority(ies) will have powers to intervene under an NCT leg of the DMA?
- How will EC ensure the independence of the decision-making body?
Thank you