Subject: Reply to the main issues for discussion in the Impact Assessment Quality Checklist for the Regulatory Scrutiny Board opinion

Dear Ms Gaffey,

Please find below the answers to the main issues identified in the Impact Assessment Quality Checklist (“IAQC”) for the Regulatory Scrutiny Board (“RSB”) opinion on the draft Impact Assessment (“IA”) on the proposal for a Digital Markets Act (“DMA”).

The aim of the DMA is to ensure the proper functioning of the internal market by promoting effective competition in digital markets, in particular a fair and contestable online platform environment. To this end, the proposal suggests a holistic approach, combining clearly identified prohibitions and obligations for gatekeepers to address unfair business practices and promote contestability of digital markets (“Pillar I”) with harmonised rules for investigations into digital markets prone to market failures, including related to gatekeepers, in order to ensure the future-proofing of the ex ante rules and the contestability of digital markets where gatekeepers may emerge (“Pillar II”).

We thank the RSB for the thorough and constructive feedback in the IAQC, which has been helpful to further clarifying and substantiating the line of reasoning put forward in the draft IA. We are working on a revised version of the draft IA where the elements discussed below will be described and explained in more detail. We look forward to further discussing the main issues with the RSB.

1. Why is the initiative limited to digital markets? Are the problem drivers more acute for digital markets, and the proposed instruments less needed for non-digital markets? Which gatekeepers does this initiative target? (boxes 1, 2 and 5)

Digital markets vs. non-digital markets

Digital markets present a number of unique features such as data driven network effects or extreme economies of scale and of scope. These features are exacerbated by the fact that digital markets are typically two- or multi-sided markets and that expanding a service into neighbouring digital markets benefits from access to the user base of the core
service and key inputs such as data. Whilst some of these features may also be present in other markets, their magnitude and effects are much more pronounced in digital markets, in particular those with existing or emerging gatekeepers. The resulting negative effects on effective competition and the contestability of the markets concerned together with the fast evolving nature of digital markets therefore require urgent action to ensure the proper functioning of the internal market.

This is also reflected in the ample evidence presented in Section 2 of the draft IA, including research by renowned academics underpinning regulatory initiatives in different jurisdictions across the world and stakeholder feedback gathered during the impact assessment phase.

First, the Special Advisers Report concludes that a “consequence of these characteristics is the presence of strong economies of scope, which favour the development of ecosystems and give incumbents a strong competitive advantage. Indeed, experience shows that large incumbent digital players are very difficult to dislodge.” Similar reflections around the need for action in digital markets are also taking place in some of the EU’s major trading partners, including the US, Japan, the UK, and Australia, including calls for a new regulatory framework for platforms with “significant and durable market power” (US House of Representatives Majority Staff report), “substantial market power” (ACCC report), “strategic market status” (Furman report) and “bottleneck power” (Stigler Center report).

Second, the stakeholder feedback gathered during the impact assessment phase points to a pressing need to address market failures in digital markets. Whilst stakeholders’ views are more thoroughly explained in Question 4 below, for the purposes of this Question it is worth noting that the open public consultation and the targeted consultation of European National Competition Authorities (“NCAs”) have largely shown that the most salient examples of market failures stem from the digital arena, and are related in particular to problems involving gatekeepers. Moreover, consumer organisations like BEUC have also prominently flagged the special concerns surrounding digital markets. These views were conveyed to the Commission both during a workshop with BEUC members1 and also in BEUC’s reply to the open public consultations feeding into the draft IA, which states that the “challenges posed in particular by large players in digital markets require new instruments in addition to traditional competition law enforcement in order to protect consumers’ interests in an effective and timely manner.”2 Likewise, digital markets featured prominently in the expert reports commissioned for the IA and which can be found in Annex 5 to the draft IA.

In line with these findings, the draft IA focuses on digital markets and reflects the need for a holistic approach combining ex ante rules addressing currently clearly identified problems related to gatekeepers (Pillar I) with a dynamic market investigation regime (Pillar II), allowing the Commission to identify and investigate market failures beyond the gatekeepers falling under Pillar I. This structure is explained below.

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Scope of the DMA

Since the submission of the draft IA, further reflection and work on the scoping of the DMA has taken place. On the basis of the evidence available, we have mapped a number of core platform services and core platforms (i.e. online intermediation services; online search engines; operating systems; cloud computing services; and related advertising services to these core platform services or core platforms) where the negative effects of the problem drivers are most egregious and have developed objective evidence-supported criteria to identify those providers which act as gateways for a large number of business users and customers (i.e. gatekeepers). The magnitude of such economic dependence is further strengthened if the position of gatekeepers is durable and entrenched.

The three criteria characterising the gatekeeper power that have been since established are the following:

- Size and impact on the single market, based on turnover and activity of the provider of core platform services across the EU;
- Operation of an unavoidable gateway to business users and customers, based on an active user base on different sides of the two- or multi-sided core platform services;
- Entrenched and durable operations by the provider of core platforms services, based on the duration of the provision of core platform services and its presence in several of them.

The work conducted since the submission of the draft IA to the RSB has further shown that we are able to work with a mix of quantitative and qualitative criteria to determine when a given provider of core platform services should be considered to enjoy gatekeeper power. This approach of combining quantitative and qualitative criteria is also advocated for and broadly supported by stakeholders in the open public consultation.

These quantitative and qualitative criteria are objective, non-discriminatory and apply to any platform irrespective of the jurisdiction in which it is established. They allow for a swift and reliable identification of those gatekeepers that have a pivotal role in many digital markets and which make them unavoidable partners for their business users and customers.

Only those gatekeepers designated as such after assessing the relevant criteria presented above would be subject to the clearly defined obligations or prohibitions for identified unfair practices under the DMA. Because of their pivotal gateway position and gatekeeper power, such unfair behaviour by these gatekeepers has a major negative impact on the system as a whole, is not corrected by market mechanisms and undermines the contestability and competitiveness of these digital markets. The considered obligations and prohibitions would ensure that gatekeepers engage with their business users or customers on the basis of conditions similar to those existing under normal market circumstances, thus increasing the fairness in their business relationship and safeguarding the contestability of the digital markets where these gatekeepers are present or seek to expand to. These new rules would also enhance contestability for potential new business users or customers.

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3 As defined in Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services.
entrants – precisely to incentivise innovation by the gatekeepers, rather than to “clip their wings”.

The definition of ‘gatekeepers’ in the DMA is different in nature and scope from the definition of ‘very large platforms’ falling within the scope of the asymmetric obligations under the Digital Services Act (DSA). The DMA seeks to tackle primarily specific economic risks associated with gatekeeper power, which enables a small number of gatekeepers to undermine fair commercial conditions and contestability of digital markets concerned. The DSA, on the other hand, seeks to address primarily societal risks, including some economic risks that are however very different from the ones related to gatekeeper power, associated with the fact that some very large platforms represent a higher level of societal risk because they have become de facto public spaces, playing a systemic role for millions of citizens and businesses.

Irrespective of the different objectives pursued by the DMA and the DSA, there will be a certain overlap between these two categories. Very large platforms in the DSA are determined based on the number of their users. At the same time also in the DMA a provider of core platform services or core platforms needs to have a minimum number of active users to be considered as a gatekeeper. However, contrary to the determination of very large platform under the DSA, the number of active users is just one of the criteria determining a gatekeeper, conglomeration and durable economic power setting the latter firms apart from the DSA’s services that are simply large conduits of information. As the criteria will be different not all very large platforms will be (part of) gatekeepers, and vice versa.

Given that the threshold for very large platforms will be clear in the Regulation, and that the gatekeeper status is going to be either self-executing (i.e. in case a gatekeeper meets quantitative threshold for all three criteria above), or assigned by the Commission on a case-by-case basis based on a clearly defined mix of quantitative and qualitative criteria, there will be no legal uncertainty for platforms and the public about these different categories and associated rules under the DSA and/or DMA. Services falling under both categories will have to comply with both sets of rules because the purpose of those rules are different.

Relationship between the scope of Pillar I and II within the DMA

Figure 1 below shows the “scope” identified for Pillar I and Pillar II of the DMA, respectively, along two dimensions: (1) the undertaking concerned, and (2) the market failures caught by the respective pillar. The circle shaded in dark blue represents the scope for Pillar I: clearly identified and well-evidenced unfair practices by providers of core platform services or core platforms identified as gatekeepers based on the criteria presented above. The obligations and prohibitions foreseen as part of the ex ante rules under Pillar I apply automatically to the gatekeepers falling within the scope of Pillar I. Some of these obligations or prohibitions will be self-executing (i.e. obligations=“whitelist”; prohibitions=‘blacklist’), while others may require more detailed assessment of fairness and appropriate measures that may be required (‘greylist’).
As shown in Figure 1, Pillar II is wider in scope than Pillar I, including market failures beyond the gatekeepers and unfair practices encompassed by Pillar I. More specifically, Pillar II also encompasses (see the light-blue shaded circles in Figure 1):

- existing market failures in core platform services or core platforms and other digital markets to which identified gatekeepers contribute with conduct not falling within the \textit{ex ante} rules in Pillar I, either because they concern new unfair practices or because they affect markets outside the core platform services or core platforms; and

- other existing or emerging market failures in digital markets (i.e. repeat or parallel leveraging, tacit collusion and tipping scenarios).

The wider perimeter for Pillar II follows from the purposes for which it was designed, namely to provide a dynamic market investigation regime to complement the \textit{ex ante} rules in Pillar I, allowing the Commission to identify and investigate market failures in digital markets beyond the gatekeepers falling under Pillar I. The scope of Pillar II is therefore designed to complement and reinforce the \textit{ex ante} rules in Pillar I in way that:

- \textbf{avoids over-regulation}: Pillar I was designed in a parsimonious way, taking into account the currently available experience and evidence about the impact of specific unfair practices by gatekeepers on their business users and customers as well as on the contestability of digital markets. To encompass any further unfair practices by identified or future gatekeepers that currently do not exist or whose harmful impact cannot be clearly established, Pillar I would have to impose further, more onerous prohibition or obligations on gatekeepers. The necessity and proportionality of such rules is currently difficult to assess, in particular since it would not be possible to clearly circumscribe them as it is currently the case for prohibitions or obligations under Pillar I, apart from the current lack of evidence underpinning such a broader
scope. Pillar II therefore serves as a safety valve which can be used to adopt further regulatory measures where this should turn out to be necessary in the future following a market investigation, while keeping the *ex ante* rules circumscribed to clearly identified and well-evidenced unfair practices by identified gatekeepers.

- **ensure future-proofing Pillar I:** Since digital markets evolve at a very fast pace, Pillar II is needed to properly address future developments in terms of other market failures to which the identified or other gatekeepers contribute in core service platforms or core platforms or other digital markets not currently encompassed by Pillar I. The results of an investigation under Pillar II into such other market failures will also feed into the periodic revision of Pillar I, thus ensuring an effective future-proofing of the *ex ante* rules.

2. How far are the “market features” part of the problem drivers? Could the identified types of behaviour presented in figure 3 (p21) be the basis for a more integrated problem description for both Pillars of the impact assessment? To what extent are issues like common shareholding and tacit collusion particularly pertinent in digital markets? (box 2)

**Market features and problem drivers**

The market features listed in Section 2.1 of the IA describe a set of characteristics that are common to digital markets, although not every digital market will exhibit all these features to the same extent. Some of them (such as economies of scale and scope, switching costs or behavioural biases) may arise also in non-digital markets, while others (in particular network effects and data dependency) arise primarily in digital markets. It is important to underline that these market features are not in themselves problematic, even though they are linked to and may exacerbate the problems identified in Section 2.2 of the draft IA and the problem drivers identified in Sections 2.5 and 2.6 of the draft IA, as further explained in the relevant sections of the draft IA. Therefore, these market features cannot be considered by themselves as problem drivers, but they may facilitate the emergence of gatekeepers or other market failures in digital markets and could therefore be, at least indirectly, tackled by *ex ante* regulatory measures as part of the solution to identified unfair practices and remedies as part of the solution to the identified existing or emerging market failures.

**Towards a more integrated problem description**

Since the submission of the draft IA, we have further advanced our work on a more integrated problem definition for both pillars. Also based on your helpful suggestions in this regard, we have developed a more integrated problem tree identifying the different problem drivers. Taking Figure 3 (on p. 21 of the draft IA) representing the problem drivers for Pillar II as a starting point, we propose the following revised graphic representation on problem drivers, integrating also the three problem drivers for Pillar I which were previously discussed in a separate section.
As can be seen from Figure 2, fragmented regulation and oversight is an overarching problem driver that feeds into both emerging and existing market failures. The problem drivers which fall under the category of “existing market failures” include:

- Economic dependence of business users and customers on a limited number of gatekeepers, leading to imbalanced relations between gatekeepers and their business users or customers;

- Identified unfair practices by gatekeepers, the impact of which is further exacerbated by features of digital markets, limiting contestability of one or more digital markets;

- Repeat or parallel leveraging in digital markets involving notably conduct not covered by Pillar I, where Pillar II would allow a more holistic analysis of all markets concerned and principle-based remedies, including the source market; and

- Tacit collusion in digital markets.

The problem drivers for “emerging market failures” are identified as tipping scenarios where an undertaking’s advantage affects the contestability of the digital market concerned, irrespective of whether or not the underlying market features are exacerbated by the conduct of the undertaking enjoying the advantage. The tipping market may either be the market on which the relevant undertaking enjoys an advantage, or an adjacent market where such an advantage has not yet materialized.

**Common shareholding and tacit collusion**

Common shareholding – although widely present also in digital markets, and in particular as regards gatekeepers – is indeed not a feature that is particular pertinent in those markets as compared with more traditional markets. We have thus decided to
exclude common and cross shareholding from the list of specific market failures described in the draft IA.

In contrast, tacit collusion is a particularly pertinent scenario in digital markets often as a result of the use of algorithms by many players in the market leading to a homogenisation of prices and to the effective deterioration of price competition. This will be further clarified in the draft IA by elaborating on the widespread use of algorithms in digital markets and the risk of tacit collusion in such markets. As explained in Section 2.6.3.4 of the draft IA, the widespread use of algorithms in digital markets is corroborated e.g. by the e-commerce sector inquiry that the Commission ran between 2015 and 2017, where it established that more than half of the respondent retailers tracked the online prices of competitors and more than three quarters of these retailers subsequently adjusted their own prices to those of their competitors. The risks of tacit collusion as a result of the use of algorithms in digital markets was confirmed by the large majority of the NCAs and the respondents to the open public consultation as well as by the studies from different national competition authorities, including France, Germany, Portugal and the UK, cited in footnote 138 of the draft IA.

3. How and based on which evidence will the precise content of the policy options be fixed? How are unfair practices (Pillar I) more easily identified and countermeasures specified ex ante? To what extent is Pillar II an alternative to normal regulation to tackle market failures? How would the design of remedies take into account wider societal objectives? (Box 5)

Substantiation of the precise content of policy options

The precise content of the preferred policy option (Pillars I and II) is corroborated by both an extensive academic literature and research conducted over the past years across all jurisdictions and extensive consultation and research activities conducted for the purposes of the draft IA.

The unfair practices of gatekeepers subject to clearly defined prohibitions and obligations under Pillar I have been identified on the basis of:

- the existing enforcement experience under competition rules, both within the EU and beyond, and other areas of law (e.g. protection of personal data);

- the numerous expert studies and reports both within the EU as well as internationally (see references above), which not only identified specific group of service providers as gateways, but also number of harmful practices by such gateways;

- the complaints by business users and customers of gatekeepers as well as several on-going regulatory (e.g. Australia; Japan) or enforcement interventions (e.g. US);

- the reports and support studies for the Observatory on the Online Platform Economy drawn up by the independent Observatory Expert Group and external contractors respectively;

- the impact assessment support study by the ICF Consortium, which provided both quantitative (e.g. data analysis; case studies) and qualitative input; and

- the broad consultation across stakeholder groups. Such consultation took place through targeted formal and informal exchanges with stakeholders and the open public
consultation, of which the results were analysed and reported by a team of experts of the College of Europe.

To limit any risk of overregulation and ensure an appropriate and proportionate intervention, the clearly defined prohibitions and obligations under Pillar I will be limited solely to tackling those unfair practices by gatekeepers for whose egregiousness there is a broad evidence and consensus across stakeholders and experts. Examples include unfair practices such as:

- gatekeepers using for the purpose of their own commercial activities any aggregated or non-aggregated data that is not publicly available and which is generated or provided by business users of their core platform services or core platforms or by the customers of these business users,

- gatekeepers prohibiting business users from advertising their services outside its core platform services or core platforms thus further deepening the dependency of such business users on these platforms,

- gatekeepers treating differently its own services and third party services in terms of display, selection, ranking, rating or linking in relation to content, goods or services offered through any core platform services of the gatekeeper platform concerned.

Since the submission of the draft IA, we have further worked on the details of the design of the envisaged market investigation regime under Pillar II and how it complements the rules envisaged under Pillar I. We can provide more details in the revised draft IA, in particular in relation to the objectives, the legal test for intervention, the pre-defined scope of remedies and remedial actions, the legal deadlines as well as the investigative and enforcement powers.

As explained in Annex 5.1.3 to the draft IA, which also contains a more detailed description of the content of Pillar II, the preferred policy option under Pillar II received strong support from the large majority of the NCAs and the respondents to the open public consultation, including businesses and business associations, research institutions, and even more strongly by public authorities, NGOs, consumer associations and EU citizens and trade unions. The studies contracted by the Commission to renowned experts also confirmed the main elements of the envisaged design of Pillar II.

**The complementarity of Pillar I and Pillar II in addressing harmful practices**

Since the submission of the draft IA, we have worked on a closer integration of both pillars as two complementary elements of a holistic regulatory solution aimed at promoting effective competition in digital markets and in particular a fair and contestable online platform environment. This initiative would be rooted in Article 114 TFEU as a single legal base. Consequently, Pillar II cannot be considered an alternative to normal regulation to tackle market failures, but is rather an inherent element of an effective and future-proof regulatory solution to the problems identified.

The way in which both pillars are meant to complement each other is described in detail reply to Question 1 above (see in particular Figure 1 above). In this context, it should be noted that existing regulation (such as the regulatory framework on short selling)\(^4\)

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follows a similar structure by combining clear-cut rules (e.g. concerning restrictions on natural or legal persons in relation to uncovered short sales in shares or on uncovered sovereign credit default swaps) with a case-by-case tool allowing for individual measures for specific cases (e.g. relating to a specific product or class of products where necessary).

**Design of remedies**

The remedies to be adopted under both pillars would, in broad terms, aim at achieving the objectives described in the draft IA, namely (i) address identified unfair conducts by gatekeepers, (ii) promote contestability of platform markets, (iii) enhance coherence and legal certainty in the online platform environment to preserve the internal market and (iv) ensure contestable and competitive markets by preventing the emergence of, and addressing existing, market failures in digital markets. These objectives have a positive impact on other societal objectives, such as promotion of internal market, growth and productivity, innovation, etc. as explained in the Section 6 of the draft IA.

In designing the regulatory measures under *ex ante* rules and additional regulatory remedies following a market investigation, several risks have been considered:

- the scope of the prohibitions in Pillar I in order to ensure that they are appropriate and proportionate to the well-defined and evidenced problem (i.e. only gatekeepers; clearly defined and circumscribed prohibitions and obligations);

- the level of legal certainty for market players (notably identified or other gatekeepers) covered by Pillar II in order to ensure that any additional regulatory measures following a market investigation are suitable and proportionate to the existing or emerging market failure identified; and

- coherence and complementarity between Pillar I and Pillar II.

The regulatory measures implemented under Pillar I in the form of clearly defined prohibitions and obligations addressed to gatekeepers designated on the basis of clearly identified criteria are based on careful considerations of the existing enforcement experience and evidence gathering (see above) to ensure that *ex ante* rules do not lead to over-regulation.

The regulatory measures implemented under Pillar II would be designed on a case-by-case basis following a clearly defined intervention threshold (i.e. market failures leading to inefficient market outcomes in terms of innovation, quality, fair and competitive prices, choice or an unfair online business environment) in order to ensure that they are suitable and proportionate to market failure identified.

4. **What risks are attached to the retained policy options? Would some of them risk reducing the benefits of the platforms for consumers or sellers? What do stakeholders think about the policy options? How coherent and future proof is the preferred option (for Pillar II) from a horizontal competition policy perspective? (boxes 2 and 6)**

**Risks of retained options**

The Commission is fully conscious and supportive of the many positive effects that platforms have brought to consumers and businesses alike. It has therefore very carefully
designed its intervention under this initiative. The clearly defined prohibitions and obligations laid down in Pillar I target the unfair practices by specific gatekeepers. If those were designed too broadly (i.e. going beyond clearly defined prohibitions and obligations, such as for example wider-principle based rules) this would raise a risk of over-regulation, in particular given the dynamics of the digital markets.

That is why the list of intervention triggers is restricted to those unfair practices by gatekeepers that are clearly identified and well-evidenced. In addition, targeted companies (i.e. gatekeepers) are those that were already shown to engage in such systemic and recurrent unfair practices through their core platform services or core platforms.

It was carefully assessed whether and to what extent the intervention under Pillar I may require changes to the existing business models or affect gatekeepers’ ability to offer new services to consumers. However, evidence from the supra-normal profits that gatekeepers are accruing, their ability to obtain conditions that would not be possible under normal market circumstances as well as their ability to act independently from competitors, business users or customers indicates that in the long term business users and customers will benefit from fairer conditions and have the ability to contest gatekeepers in their core platform services or core platforms and beyond, while consumers will not be harmed. This is especially the case since platforms in general and gatekeepers in particular will continue to depend on a large user base and since they will be subject to higher contestability their incentive to innovate and offer low prices will rather increase and not reduce due to the intervention. It should be stressed that the prohibitions and obligations under Pillar I will neither ban specific monetisation models (such as ad-based models) nor prevent the uptake of new services by gatekeepers - they prevent them from acting unfairly in their operations. The revised IA will feature a dedicated annex where the practices addressed under Pillar I will be assessed individually for their impacts on gatekeepers, businesses and consumers.

In the case of Pillar II, any intervention (including remedies) can only take place after a thorough market investigation into a suspected existing or emerging market failure in digital markets, subject to a clear legal test and a transparent procedure. Any risk of type I errors is mitigated by the fact that remedies under Pillar II can only be imposed if a market failure has been proven to the requisite legal standard and their suitability/proportionality is subject to judicial scrutiny.

In addition, the possible scenarios considered by the Commission as the focus of its intervention under Pillar II (i.e. the market failures described in Section 2.6 of the draft IA) are scenarios where it is likely that consumers and business users would be harmed by the lack of competition between alternative market players, which results in less choice and innovation and in some cases in higher prices, as mentioned by a large majority of respondents to the open public consultation. In the case of early intervention scenarios, namely when there is an emerging market failure that can result in a market tipping, the remedies foreseen would not prevent a market player with an incumbency advantage from enjoying network effects and economies of scale and scope, instead they would ensure that other market players can also benefit from those features and thus would be able to compete under fair terms and innovate.

**Stakeholders’ views**

The objective of the two consultations leading to the draft IA was to consult as widely as possible in order to deliver an in-depth impact assessment of the different policy options
and their perceived impact on the Commission’s objective and ability to ensure fair commercial conditions and contestability of platform markets, while improving effective competition in digital markets overall. This objective was largely met.

First, the open public consultations received over 3,000 respondents from all relevant stakeholder groups. Stakeholders expressed a strong agreement as regards the need for intervention. For example, among respondents to the open public consultation regarding Pillar I, the vast majority fully agreed (71%) and agreed to a certain extent (20%) that there is a need to consider dedicated regulatory rules to address negative societal and economic effects of gatekeeper power of large platforms. A similar support transpired in the open public consultation regarding Pillar II, where around 70% of the respondents were business actors. In this consultation, those advocating for new rules almost doubled the number of those against. All consumer organisations replying to the consultation – including BEUC – also supported the introduction of new tools.

Moreover, the consultation evidenced general support for the introduction of legislation to address issues in digital markets raised by gatekeepers. A majority of respondents in both consultations also flagged that, in order to effectively address contestability issues in digital markets, there was a need for a combined holistic approach, consisting of ex ante rules and an enforcement regime allowing for a case-by-case assessment in order to capture other problematic issues. Stakeholders disagreeing with this view considered that before introducing new instruments, the Commission should conduct a review of existing tools – including competition tools – and make full use of the toolbox available.

Second, in addition to the open public consultations, the Commission also ran a targeted consultation among NCAs which indicated that an ex ante regulation regarding gatekeepers would in itself not be sufficient to address structural issues in digital markets and advocated for the inclusion of a case-by-case assessment mechanism complementing such ex ante rules.

Third, the European Parliament adopted a resolution on competition policy on 18 June 2020, where it “calls on the Commission to assess the possibility of imposing ex ante regulatory obligations where competition law is not enough to ensure contestability in these markets”. The Council of the European Union (‘Council’) also “supports the Commission’s intention to collect evidence of the issue and further explore ex ante rules to ensure that markets characterised by large platforms with significant network effects, acting as gate-keepers, remain fair and contestable for innovators, businesses and new market entrants”.

A more detailed analysis of stakeholders’ views – including Member States’ individual calls for new gatekeeper rules – is reflected in the Annex 2 to the draft IA as well as in the dedicated website to the New Competition Tool. The draft IA is being redrafted to reflect these points more prominently and address the RSB’s comments in this respect.

**Coherence and future-proofing of Pillar II from an horizontal competition perspective**

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Pillar II is part of a regulatory solution that aims at tackling market failures in digital markets. It is thus coherent with a normal EU regulatory act that targets specific sectors/areas where competition and unfairness problems have been identified and addressed through regulatory intervention. A good example of such type of regulation would be the Regulation on short selling and certain aspects of credit default swaps mentioned in reply to Question 3 or the European Electronic Communications Code (and the preceding Telecommunications package) both of which specify the promotion of competition as one of their core objectives. As part of a regulatory solution, Pillar II (and Pillar I) complement continued competition law enforcement in the same way as other sector-specific regulations do.

At the hearing, our services will be at your disposal to further elaborate or clarify the above responses.

(e-signed)

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Enclosure: IAQC

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