



Meeting with DG COMP on a New Competition Tool

21 October 2020



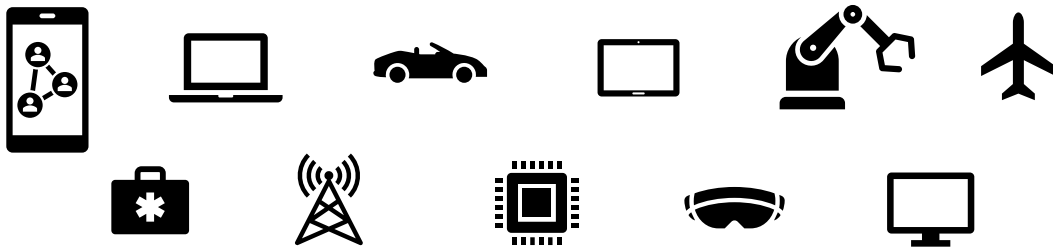


Introduction



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List of participants

- [redacted] Vodafone
- [redacted] Telenor
- [redacted] Bouygues Europe
- [redacted] Orange
- [redacted] ETNO
- [redacted] TIM
- [redacted] Telia
- [redacted] DT
- [redacted] Proximus
- [redacted] ETNO
- [redacted] GSMA
- [redacted] Telefonica
- [redacted] GSMA
- [redacted] KPN

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

Scope of a potential New Competition Tool

- 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

