

From: [GROW ex-E4](#)
To: [xxxxxx@xxxx.xxx](#)
Cc: [REDACTED]
Subject: FW: AFEP's positions on a new competition tool for competition (NCT) and the Digital Services Act
Date: mercoledì 28 ottobre 2020 15:43:50
Attachments: [image001.png](#)
[image002.png](#)

Dear Sirs,

Many thanks for your request to meet and discuss the Digital Services act. Unfortunately, as you can imagine, the team is now fully focused on delivering on time for a proposal by the Commission. Please remain reassured that the Commission will take your submission and views into account for the mandatory impact assessment.

Please feel free to submit any further position paper or document that you would like us to be aware of.

Best regards,



European Commission

GROW-E4 mailbox

DG for Internal Market, Industry, Entrepreneurship and SMEs
GROW E – Services in the Single Market and Digitalisation

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From: Afep Europe <[xxxxxxx@xxxx.xxx](#)>
Sent: Wednesday, September 30, 2020 10:46 AM
To: [REDACTED]
Subject: AFEP's positions on a new competition tool for competition (NCT) and the Digital Services Act

Dear [REDACTED],

You will find [here](#) the position of the French Association of Large Companies (AFEP) on the New Competition Tool ("NCT") and [here](#) its position on the revision of the e-commerce directive in the context of the Digital Services Act, following the two consultations of the European Commission on these topics.

- *New competition tool and ex-ante regulation of gatekeeper platforms:*

AFEP member companies **have strong reservations** on the Commission's project:

- **There is no demonstration** of an "enforcement gap" that would be overcome by the creation of an NCT: the existing tools have generally demonstrated their capacity to adapt to economic development.

- This project provides a vast and worrying scope, which targets non-dominant companies without abuse and does not clearly define the targeted market.

Companies have a strong preference for **the introduction of an ex ante regulation** which would have the double advantage of offering the Commission a tool applicable to the **most structuring players in the digital sector**, provided that this concept is clearly defined, and maintaining the legal framework known to companies operating in other economic sectors.

- *Revision of the e-commerce directive in the context of the Digital Services Act:*

AFEP supports an **update of this text** to strengthen its legal certainty while preserving some of its most structuring principles. For this purpose, AFEP supports the **drafting of a regulation** to harmonise these new provisions and to reinforce consumer confidence within the single market, which must be equivalent to that known in physical trade.

This review should be an opportunity to **clarify the conditions** that must be met by digital players to **qualify as active or passive hosts**. The criteria from European case-law allowing to define an active host should be integrated into the future legislative proposal. AFEP proposes that the responsibility of active hosts would not be determined on the basis of the existence of illegal content on their websites, but of the lack of implementation of a **vigilance plan**, including ex-ante control measures and responsiveness after notification. In the event of litigation, it would be up to the judge to assess the implementation of this vigilance plan regarding the content in question.

We remain at your disposal to discuss these proposals in more details.

Best regards,

[Redacted signature]

[Redacted name and title]

Intellectual Property



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