

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

Daniel

* Surname

Martin Brennan

* Email (this won't be published)

daniel.martinbrennan@europeanbooksellers.eu

* Organisation name

255 character(s) maximum

European and International Booksellers Federation

* Organisation size

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

* Web address

https://europeanbooksellers.eu/

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

*** 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

The European & International Booksellers Federation (EIBF) is a non-commercial umbrella organisation representing national Booksellers Associations within the EU, the EEA and outside of Europe. Through its members, EIBF speaks on behalf of more than 25,000 individual booksellers. Depending on the country, booksellers represented include independent booksellers, national bookshop chains, supermarkets, internet retailers and other cultural or general outlets selling books.

EIBF's mission is to further the interests of booksellers vis-à-vis the European institutions and other international organisations. EIBF provides decision-makers with professional information about the role of booksellers as economic and cultural stakeholders and advocates for book-friendly policies, for the benefit of all readers.

By strengthening the link between booksellers' associations from across Europe and worldwide, EIBF also fosters the exchange of best practice between its members and acts as a forum for discussion and cooperation between the representative bodies of booksellers throughout Europe and beyond.

*** 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

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

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

As we have explained in the parallel consultation on the Digital Services Act, over the years, an increasing number of booksellers have felt compelled to sell books in different formats (physical books, e-books and audiobooks) on Amazon's marketplace, given that many consumers now look for books nowhere else online. Figures show that more than half of Americans who want to buy something online start their product search on Amazon, rather than a search engine (<https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>). This means that Amazon has become essential for retailers to reach a bigger market, making its third-party sellers completely dependent and reliant on its marketplace.

This situation becomes an issue when Amazon not only acts as an e-commerce marketplace but also as an e-retailer. Given that Amazon is an active player on its own marketplace, it will always give itself an advantage and prioritise its own products over other third-party sellers on its marketplace. This already shows a clear conflict of interest and a threat to fair competition.

Third-party sellers often have to pay exorbitant fees and subscribe to additional advertisement services to gain more visibility on the marketplace. They also have to comply with abusive and discriminatory terms and conditions in their contractual agreements, forcing them to remain 'locked in' the marketplace and weakening them as competitors. Additionally, a report from the Wall Street Journal confirmed that Amazon has accessed sales data from independent sellers on their marketplace to help the company develop competing private-label products. In this way, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable for the company. (<https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>).

In sum, all of this makes it nearly impossible for sellers to sustain a profitable business on Amazon's marketplace, given that sellers are competing against the company in its own territory (in which it can set its own rules), while Amazon profits from sellers that are their direct competitors. In spite of this situation, Amazon has no risk of running out of sellers; its monopoly ensures there's an endless stream of people around the world willing to try. As for other online market place competitors they aren't able to offer more competitive prices and have to align to market standards.

For those booksellers who can choose not to sell on Amazon's marketplace but still wish to sell online, they often create their own e-commerce platforms. However, this is not an easy task, given the administrative burden and lack of resources to compete with Amazon and other digital giants in the digital sphere.

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

We will focus on examples experienced in the book trade, specifically when trading on large e-commerce marketplaces, such as Amazon.

- Dual role of online marketplace and e-retailer (row N):

One of EIBF's main concerns is Amazon's dual role of online marketplace and e-retailer. Given that Amazon is an active player on its own marketplace, it will always prioritise and give its own products an advantage over other third-party sellers. This already shows a clear conflict of interest and a threat to fair competition. With its dual role, Amazon is free to set the rules of the game and there is no competition between the company and the third-party sellers on its own marketplace. To put it metaphorically, it is like playing a football game where the opposite team also acts as the referee. Therefore, no matter how third-party sellers manage their business on the platform, no matter how many Amazon services they subscribe to in order to have a higher visibility or perform better, they will always lose the fight when competing with the company on its own ground. To put it simply: "selling on Amazon is like going to a casino: you might win a hand or two, but, in the end, only the house actually makes money". (https://ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf)

- Market monopoly (rows A, K, L, M and O):

Marketplaces in general are growing rapidly as platforms through which customers are reached and products are found and sold. However, the sector of online marketplaces is fully dominated by Amazon, whose revenue stream through the marketplace is higher than the one of its direct e-commerce sales (<https://www.oberlo.com/blog/amazon-statistics>). As explained above, an increasing number of booksellers have felt compelled to sell books in different formats (physical books, e-books and audiobooks) on Amazon's marketplace, given that many consumers now look for books nowhere else online. This means that Amazon has become essential for retailers to reach a bigger market, making its third-party sellers completely dependent and reliant on its marketplace.

- High start-up and operating costs (rows C, D and E):

As introduced above, we believe that Amazon exploits its gatekeeper power to extract a growing cut of the revenue earned by its marketplace sellers. According to a report from the Institute for Local Self-Reliance ("Amazon's Monopoly Tollbooth": https://ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf), Amazon is levying a hefty tax on their trade, enabling it to profit from their businesses at the same time that it saddles them with more costs and thus weakens them as rivals. More specifically, since 2014, Amazon's revenue from seller fees has grown almost twice as fast as its overall sales. Seller fees now account for 21% of Amazon's total revenue. Additionally, Amazon keeps an average of 30 % of each sale made by independent sellers on its site, up from 19 % just five years ago. Amazon's fees make it nearly impossible for sellers to sustain a profitable business, given that competitors must pay Amazon in order to compete against the company, while Amazon profits from sellers.

- Pricing algorithms (row R):

Amazon uses third-party sellers to provide low volume specialty items it does not want to hold in stock so that it can deliver maximum selection. However, if that product line starts selling well, then Amazon realises which product it should stock next. Through this strategy, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable. On top of this, once these categories have been identified, Amazon uses its dominance over the market to lower their price and to eliminate any competition.

- Mass storage and use of sellers' data (row Q):

A report from the Wall Street Journal from April 2020 (https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015?mod=hp_lead_pos2) concluded that, contrary to Amazon's testimony in the US Congress, their employees accessed sales data from independent sellers on their marketplace to help the company develop competing private-label products.

Through this strategy, Amazon uses third-party merchants to provide low volume specialty items it does not want to hold in stock so that it can deliver maximum selection. However, if that product line starts selling well, then Amazon realises which product it should produce and stock next. In this way, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable for the company.

This use of sensitive data from independent retailers for purposes designed to expand its market dominance results in a serious conflict of interest with their dual role of marketplace platform and online retailer. It also seriously hinders any chance for third-party sellers to sustain a profitable business on their platform.

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).

- Lack of interoperability (rows H and M - 4: very important):

One of Amazon's flagship products, the Kindle e-reader, has the particularity of locking customers in a closed ecosystem. Kindle e-books use a specific file format (AZW), unique to this particular e-reader other than Kindle, a Kindle also doesn't allow them to open another file format than AZW. The Kindle e-reader does not support the EPUB format, a file format used by most other e-book providers. The same goes for audiobook format, bought on the Amazon audio platform Audible. This impossibility for the customer to change platform and provider at will, locks him in a closed ecosystem and reduces his freedom of choice.

In 2013 EIBF commissioned a study on interoperability to the Johannes Gutenberg-Universität Mainz to assess the different file formats available on the market, as well as the possibility of establishing interoperability across all devices. The study demonstrated that, with EPUB as a standard format, interoperability across devices is completely possible. This is even truer now that the EPUB file format has evolved and has become a standard within the book industry. The Executive summary and the full study are joined to this paper. (https://europeanbooksellers.eu/system/files/2020-02/On%20the%20interoperability%20of%20e-books%20formats_2020-02-19.pdf)

EIBF calls for access to e-books and audiobooks across all devices.

Additionally, this would provide freedom for consumers to choose the ecosystem they want to read their digital book in without being locked into proprietary systems, as well as the possibility to change ecosystem whenever the consumer feels like it.

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 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

Again, using Amazon as a prime case, we have several examples of the above cases:

- Anti-competitive monopolisation, market tipping and highly concentrated markets:

We have explained above that the sector of online marketplaces is fully dominated by Amazon. Figures show that more than half of Americans who want to buy something online start their product search on Amazon, rather than a search engine (<https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>). Booksellers are, therefore, compelled to use the marketplace to sell goods because customers increasingly use Amazon's marketplace instead of search engines to find products they wish to purchase.

This means that Amazon has become essential for retailers to reach a bigger market, making its third-party sellers completely dependent and reliant on its marketplace. In doing so, they become "locked-in" through unfair, abusive and discriminatory contractual agreements and rules, until they are weakened as competitors. However, Amazon has no risk of running out of sellers; its monopoly ensures there's an endless stream of people around the world willing to try.

- Amazon as gatekeeper:

Amazon is known to have a role as an online marketplace gatekeeper with significant network effects. However, there are countless examples of how Amazon abuses its gatekeeper power to extract a growing cut of the revenue earned by its marketplace sellers ("Amazon's Monopoly Tollbooth": https://ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf) and examples of how it fails to identify and take down counterfeit goods, such as books (<https://www.nytimes.com/2019/06/23/technology/amazon-domination-bookstore-books.html>), which is their responsibility and hugely damages our sector, and also consumers. There are also countless examples of how it has access to huge amounts of data, which once again, it uses to its own advantage and to the detriment of independent seller... And the list goes on.

- Algorithmic pricing:

As explained above, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable. Once these categories have been identified, Amazon uses this data and its dominance over the market to lower its price and to eliminate any competition.

Additionally, Amazon is known to have a built in algorithm that recognises any change in price. It is this algorithm that allows Amazon to dynamically adjust product rankings quickly and effectively, so their own competitors can't keep up.

*** 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, Amazon began its operations online many years ago through the offering and sales of books in its aim to develop an international e-commerce platform, marketplace and closed-loop digital ecosystem.

Having started as an online retailer of books, Amazon has been using books as a loss leader product for over two decades in order to develop its customer base, make profits on bigger ticket items in different market, capture an increasing market share and eventually establish itself on the online market. The evolution of its status from an online retailer of books to an international e-commerce platform and marketplace unparalleled in scope and scale, is a worrying situation for the entire retail sector, but also for consumers.

Another strategy used by Amazon is accessing sales data from independent sellers on their marketplace to help the company develop competing private-label products. (Wall Street Journal report from April 2020). Through this strategy, Amazon uses third-party merchants to provide low volume specialty items it does not want to hold in stock so that it can deliver maximum selection. However, if that product line starts selling well, then Amazon realises which product it should produce and stock next. In this way, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable for the company.

This use of sensitive data from independent retailers for purposes designed to expand its market dominance results in a serious conflict of interest and a threat to fair competition.

* 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

See answer to above question.

* 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

Again, we will use Amazon's strategies as a "case-study":

- Example 1:

As shoe-retailer Zappos soared in popularity, doubling its sales between 2004 and 2007, Amazon offered to buy it. When Zappos executives refused to sell, Amazon debuted a competing shoe site and started selling shoes at a loss, offering free overnight shipping and, later, a \$5 rebate on every purchase. Straining to keep its customers, Zappos matched Amazon's express shipping and began to lose money itself on every pair of shoes it sold. All told, Amazon lost \$150 million on the gambit, and it prevailed: in 2009, hemmed in by financial constraints, the Zappos board voted to sell.' (Institute for Local Self-Reliance: https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf)

- Example 2:

Another example, in 2009, Quidsi - an e-commerce company that oversaw subsidiaries including Diapers.com, Soap.com, and BeautyBar.com -- declined an offer from Amazon to acquire the company. Soon after, Amazon cut its prices for diapers and other baby products by up to 30 percent. By experimentally changing their prices, Quidsi executives were able to determine that Amazon was using pricing software to monitor Diapers.com's prices and undersell them accordingly. Additionally, in September 2010, Amazon introduced Amazon Mom, a new service that offered a year of free two-day shipping. Another offer allowed customers who signed up for a subscription service with Amazon to receive 30 percent off of diapers.

Over time, as Amazon continued pricing baby products below cost, Diapers.com's growth slowed and investors became wary of further funding the startup, in light of the competition from Amazon. Quidsi executives calculated that they were on track to lose \$100 million over three months in the diaper category alone. Quidsi ultimately accepted Amazon's offer to acquire the company --despite a better counter-offer from Walmart -- "largely out of fear." Quidsi founders were told that Amazon would drive diaper prices to zero if they sold to Walmart.

The first two examples are specific to certain markets (shoes, diapers, beauty products etc). However, parallels can be drawn and lessons should be learned. These strategies both employ below-cost pricing and commercial pressure to suppress competition that lead to killer acquisitions, which can be applied to any market Amazon wishes to expand to.

- Example 3:

Through the strategy of accessing sales data from independent sellers on their marketplace to help the company develop competing private-label products (Wall Street Journal report), Amazon uses third-party merchants to provide low volume specialty items it does not want to hold in stock so that it can deliver maximum selection. Then, if that product line starts selling well, Amazon realises which product it should produce and stock next. In this way, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable.

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

Strategies that involve employing aggressive below-cost pricing, access and storage of seller data to make profit at the expense of third-party sellers on your e-commerce platform, commercial pressure to suppress competition and buying out potential competitors in "killer acquisitions", are all very concerning for fair competition.

As shown in resources included throughout this consultation, Amazon has employed the aforementioned strategies in numerous occasions, which has contributed to its increasing market dominance.

*** 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

As indicated in the answers to questions 8.5, 8.6 and 8.7, Amazon has consistently employed strategies that involve aggressive below-cost pricing, exploitation of independent seller's data to expand its market dominance, commercial pressure to suppress competition and buying out potential competitors in "killer acquisitions".

All of these are hugely damaging, given that they are very likely to increase a company's dominance, contribute to market tipping and to the abuse of gatekeeper roles with significant network effects.

This is why there is a need for a New Competition Tool as well as "ex-ante" rules in the Digital Services Act package, which will help prevent market distortions rather than address anticompetitive practices "ex-post" through anti-trust charges and remedies.

The New Competition Tool and 'ex-ante' dedicated rules should be designed to impose obligations,

prohibitions and fair conditions on all platforms, with a careful supervision of large online dominant platforms. They should be flexible, adaptable and reviewable.

*** 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

While Articles 101 and 102 of the TFEU are suitable to address market distortions and anticompetitive practices, they are unfortunately insufficient and not always effective.

For instance, Article 102 of the TFEU specifies that "any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;"

Amazon began its operations as an online retailer of books. However, for over two decades it has been aggressively under-pricing books, using them as a loss leader product in order to attract and develop its customer base, focus on bigger ticket items in different markets that might be more profitable and capture an increasing market share. We believe that this strategy is at odds with Article 102 a), given that it sets unfair trading conditions in the book market, severely hindering the industry's capacity to compete.

Additionally, Article 102 TFEU states that such abuse may also consist in:

- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Amazon's use of "most-favoured-nation-clauses" (MFNs) and other parity provisions to eliminate the ability of rivals or new entrants to gain any competitive advantage are well documented. These MFNs often required sellers to a) offer Amazon similar or better economic terms and conditions as those offered to any competing distributors; b) inform Amazon about more favorable or alternative terms given to competitors; and c) restrict pricing discounts to consumers unfair terms and conditions on its third-party sellers is extensively documented. (https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1223)

Amazon is also known for the abusive self-preferencing of its own products in its marketplace to the detriment of third-party sellers' goods (Amazon's Buy Box system) and for unfair and discriminatory terms and conditions, such as blocking and terminating sellers arbitrarily, abusive liability provisions to the disadvantage of sellers, withholding or delaying payment, rules on product reviews, all of which we believe are at odds with sections c) and d) of Article 102 TFEU.

Some of these examples have led to fines and antitrust charges, for example: Italian Competition Authority (AGCM) antitrust investigation into five Amazon companies in 2019). However, these actions should not be remedied "ex post" through charges; they should be entirely prevented from occurring.

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

We argue that book sector has suffered extensively due to Amazon's strategies and practices of anti-competitive monopolisation.

- Online marketplace monopolisation of book sector:

Marketplaces in general are growing rapidly as platforms through which customers are reached and products are found and sold. However, the sector of online marketplaces is fully dominated by Amazon, whose revenue stream through the marketplace is higher than the one of its direct ecommerce sales (<https://www.oberlo.com/blog/amazon-statistics>).

Over the years, an increasing number of booksellers have felt compelled to sell books on Amazon, given that many consumers now look for books nowhere else online. Figures show that more than half of Americans who want to buy something online start their product search on Amazon, rather than a search engine (<https://www.bloomberg.com/news/articles/2016-09-27/more-than-50-of-shoppers-turn-first-to-amazon-in-product-search>). This means that Amazon has become essential for retailers to reach a bigger market, making its third-party sellers completely dependent on its marketplace.

This allows Amazon to set unfair contractual terms with independent booksellers on their platform, impose high entry fees, gather and store their data for the company's own profit and even suspend or terminate of contracts without notice at the company's sole discretion. All of this essentially weakens Amazon's competitors, who are unable to compete. In spite of this situation, Amazon has no risk of running out of sellers; its monopoly ensures there's an endless stream of people around the world willing to try, which strengthens Amazon's monopoly of the online marketplace world, and especially in the book sector.

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

3000 character(s) maximum

As explained above, Amazon's market power and increasing monopolisation as the world's main online marketplace, allows the company to set unfair contractual terms with independent booksellers using their

platform, to impose them high entry fees, gather and store their data for their own profit (https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015?mod=hp_lead_pos2_) and even suspend or terminate of contracts without notice at their sole discretion

*** 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

While we have focused on Amazon, it is often associated together with other equally concerning dominant online platforms: Google, Apple and Facebook (and some would argue Microsoft). Together they are referred to as the GAFA(M), thus grouping together the largest and most dominant companies in the digital sphere.

All of the above tech giants have been involved and charged with anticompetitive practices that lead them to increasing monopolisation of digital markets, in areas such as e-commerce, social media, search engines, cloud computing etc.

The GAFA have become the centre of antitrust attention both in the US and in the EU, which is extremely telling. Some examples are Google ("Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine": https://ec.europa.eu/commission/presscorner/detail/en/IP_18_458) and Amazon ("Commission opens investigation into possible anti-competitive conduct of Amazon": https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291).

However, "ex-post" fines and charges are insufficient to deter their anti-competitive practices. More legislation is needed to prevent these digital giants from increasingly heading towards the monopolisation of digital markets.

*** 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

The answer seems self-evident to us. Anticompetitive monopolisation evidently raises competition concerns; it is anticompetitive by definition.

*** 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

Yes, there is a need for the Commission to actively intervene in cases of structural market concerns. This is evident, given the nature of this consultation and the importance of discussing the introduction of a New Competition Tool.

The New Competition Tool and 'ex-ante' dedicated rules should be designed to impose obligations, prohibitions and fair conditions on all platforms. They should be flexible, adaptable and reviewable.

*** 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

As explained above (in response to questions 9.2 and 9.3), they are suitable but not sufficiently effective, as we see many digital platforms failing to comply with EU law and heading towards anti-competitive monopolisation of certain markets.

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

*** 12.2. Please identify the markets concerned and explain those market situations.**

3000 character(s) maximum

The GAFA are arguably an example of an oligopoly that controls much of the tech industry market. They dominate the online digital market through harmful practices (eg: Google: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_458) and Amazon: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291), and an ever-increasing socio-economic power. They essentially cannot be avoided when doing business online. Additionally, they often behave in a parallel manner and in some cases, they explicitly make agreements and practices that are deemed anti-competitive.

For instance, on Wednesday 22nd July 2020, Italy's antitrust authority (AGCM) informed it had opened an investigation into whether Apple Inc. and Amazon Inc. had engaged in anti-competitive cooperation in the sale of Apple products and Beats headphones. The investigation aims at establishing whether Apple and Amazon reached an anti-competitive agreement to prevent electronics retailers not included in Apple's official programme to sell the products.

The antitrust authority stressed that "the agreement to exclude some subjects from the marketplace appears potentially suitable to reduce competition by raising barriers to the outlet of online sales markets to the detriment of unofficial retailers, usually consisting of small and medium-sized enterprises." ("Reuters – Italy opens antitrust probe into Amazon, Apple over sale of Beats headphones": <https://www.reuters.com/article/us-apple-italy-antitrust/italy-opens-antitrust-probe-into-amazon-apple-over-sale-of-beats-headphones-idUSKCN24N1A6>).

12.3. In your experience, what are the main features of an oligopolistic market with a high/substantial risk of tacit collusion?

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High concentration levels	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Competitors can monitor each other's behaviour	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Oligopolists competing against each other in several markets	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Homogeneity of products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* High barriers to enter (e.g., access to intellectual property rights, high marketing costs, global distribution footprint, strong incumbency advantages, network effects...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Strong incumbency advantages due to customers' switching costs and/or inertia	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Lack of transparency for customers on best offers available in the markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Vertical integration into key assets of the vertical supply chain	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Existence of a clear price leader, resulting in leader-follower behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

*** Please explain your answer and your rating above.**

3000 character(s) maximum

No further explanation needed.

*** 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

*** 13.1. Please explain your answer.**

3000 character(s) maximum

The big technology companies hold significant market share in their fields of expertise. As indicated in response to other questions, they apply commercial pressure on companies that trade with them to ensure the profitability of their own businesses, supported by the power of their oligopoly. (<https://www.thestar.com.my/tech/tech-news/2019/12/09/gafas-shadow-online-sellers-say-no-choice-but-to-obey-oligopoly>)

Therefore, both national antitrust authorities as well as an EU-level antitrust authority need to be able to intervene in oligopolistic markets prone to tacit collusion in order to preserve/improve competition

*** 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.

*** 14.2. Please list and explain those situations and in which markets you encountered them.**

3000 character(s) maximum

Amazon is known to have a built in algorithm that recognises any change in price. Whether the change is to the item itself, or to another factor such as shipping, it is this algorithm that allows Amazon to dynamically adjust product rankings quickly and effectively, so their own competitors can't keep up. (source: <https://www.datafeedwatch.com/blog/quick-introduction-to-amazon-pricing-strategies#:~:text=Amazon%20has%20a%20built%20in,competitors%20can't%20keep%20up.>)

Furthermore, Amazon uses third-party merchants to provide low volume specialty items it does not want to hold in stock so that it can deliver maximum selection. However, if that product line starts selling well, then Amazon realises which product it should stock next. Through this strategy, third-party sellers help Amazon to identify new niches and categories to enter which can be profitable. On top of this, and once these categories have been identified, Amazon uses its dominance over the market to lower its price and to eliminate any competition.

On that note, for over two decades, Amazon has used books as loss leaders in the book industry, meaning that Amazon considerably lowers the price of books to make profit in other sectors. This practice has become so normal that readers now expect excessively low book prices from the online retailer.

Amazon uses this aggressive under-pricing strategy to attract consumers to its website, gather their data, make profits on bigger ticket items and eventually capture an increasing market share. This severely damages the health and sustainability of many sectors, including the book industry. More on this in the Washington Post: <https://www.washingtonpost.com/news/the-switch/wp/2015/07/13/the-book-h-is-for-hawk-lists-for-26-amazon-sells-it-for-40-less-is-that-a-problem/>.

14.3. In your view, what are the main features of markets where pricing algorithms are used?

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* The market is highly transparent (i.e. competitors can easily observe and understand the market behaviour of other players, and align their conduct), even without using the pricing algorithms	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The market is not transparent (i.e. without the pricing algorithms, competitors would not be able to observe and understand market behaviour of other players)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*					

Prices might be aligned, without market players explicitly agreeing their prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The goods and services offered in the market where the pricing algorithms are used are digital	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* The goods and services offered in the market where the pricing algorithms are used are not digital	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

*** 14.4. Please explain your answers above. Please also use this space to mention any other features of markets where pricing algorithms are used and rate their importance.**

3000 character(s) maximum

No further explanation needed.

*** 14.5. Do you consider that pricing algorithms are common in digital sectors /markets?**

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

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

3000 character(s) maximum

Large e-commerce platforms, such as Amazon, make use of aggressive pricing strategies and algorithms to prioritise their own products, weaken rival sellers on marketplace and gain an increasing market share. Research has shown that Amazon substantially favours its own products as well as sellers it charges for services, over other sellers. (<https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesnt>).

An example of this is Amazon's Buy Box system, which illustrates the discriminative behaviour amongst its third-party sellers. Giving customers the immediate possibility to add items in their shopping basket, the Buy Box matters when several traders are selling the same products and are thus in competition with each other. Following a given set of criteria, traders "win" the right to be featured in the Buy Box. However, the eligibility to win the Buy Box is at the absolute discretion of Amazon. Even though a few sorting criteria are easily understood by the seller, such as volume of sales and competitive price, what really determines a seller's eligibility remains unknown. Third-party sellers are, therefore, competing against each other, not knowing on what basis.

In this regard, in 2019, the Italian Competition Authority (AGCM) began an antitrust investigation into five

Amazon companies alleging that Amazon have employed practices of discrimination and abusive self-preferencing vis-à-vis third-party sellers, by giving higher visibility, higher search rankings and better access to consumers to third-party sellers that subscribe to its additional logistics services, most notably Amazon FBA (Fulfillment by Amazon), thereby putting other sellers at a significant disadvantage.

Unseen and almost wholly unregulated, pricing algorithms play an increasingly important role. While the math is hidden from public view, the effects of algorithms can be vast for third-party sellers.

14.7. In your experience, what are the main competition concerns that arise in markets where pricing algorithms are used?

[Multiple choice possible]

- Alignment of prices / less competition between market players
- Prices increase
- Less choice for customers
- Others

*** 14.8. Please explain.**

3000 character(s) maximum

Through strategies of pricing algorithms, such as the Buy Box, which often result in self-preferencing, many sellers are put in an unfavourable position given that their products do not have the same visibility. This, in turn, makes their goods less accessible to consumers. This inevitably results also in less choice for customers.

*** 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

*** 15.1. Please explain your answer.**

3000 character(s) maximum

The Commission understands that aggressive pricing algorithm strategies can result in self-preferencing, discrimination to third-party sellers on marketplace (especially when an online marketplace such as Amazon also plays a dual role of e-retailer in its own marketplace) and less choice for consumers.

The Buy Box system, explained in responses to above questions, is an example of this scenario. As far as we are concerned, the Commission's antitrust officials are already investigating the concerns sellers have with this system (<https://www.politico.eu/article/3-things-to-look-out-for-in-the-eus-charges-against-amazon-margrethe-vestager/>)

It is therefore imperative that the Commission continues to be fully able to intervene to prevent such discriminatory and anticompetitive models, both now and in the future.

*** 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

*** 15.3. Please explain your answer.**

3000 character(s) maximum

As explained above (in response to questions 9.2 and 9.3, among others), they are suitable to a certain extent but not sufficiently effective, as we see many digital platforms failing to comply with EU law and using algorithmic pricing to discriminate third-party sellers and gain market dominance.

If online platforms are already capable of this and elude responsibility (antitrust charges and fines take years to become resolved), it is a clear indication that Articles 101 and 102 TFEU are insufficient and more instruments are needed to identify these practices that raise competition issues in advance, rather than "ex post".

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

Amazon is the world's clear dominant online e-commerce marketplace. It has an immense user base both in the EU and abroad, and is present in many countries. As we have highlighted already, reports show that many consumers now look for products, such as books, directly on Amazon instead of on a search engine, which highlights the dependency on the platform and the huge threshold of customers. For instance, there are studies showing that 89% of consumers are more likely to buy products from Amazon than other e-commerce sites (<https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/>).

Furthermore, Amazon's Prime membership programme continues to reach an increasing number of online shoppers. There are currently 150 million Prime subscribers (<https://www.oberlo.com/blog/amazon-statistics>), a 50 percent increase from 100 million in April 2018 (VentureBeat, 2020).

In sum, Amazon has become an essential platform for customers in all stages of shopping: from initial research, to reading reviews and checking prices, to an ultimate purchase.

This allows Amazon to increase its market share, as well as to capture and 'lock-in' customers (and sellers), and provides them with a disproportionate advantage in capturing remaining customers.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Users predominantly single-home (i.e. they use typically one platform only)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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

As we understand it, direct network effects means that the value of a service goes up as the number of users goes up. In the case of Amazon, the more consumers on the platform, the more valuable and profitable that platform is.

We have already indicated that Amazon is the world's dominant online e-commerce marketplace, with a huge customer base (the figures in response to the question above prove it). Therefore, direct network effects contribute to Amazon's increasing market power and to market tipping.

As for indirect network effects, we understand it as the value of the service increasing for one user group when a new user of a different user group joins the network or platform. In this sense, the more sellers there are on Amazon's marketplace, the more consumers it attracts and the more profit the company makes. As previously highlighted, Amazon has become essential for retailers to reach a bigger market, making its third-party sellers completely dependent on its marketplace. This allows Amazon to impose unfair and restrictive terms and conditions in contract agreements with them, gather data from independent sellers on their marketplace to help the company develop competing private-label products, to set high fees on sellers using the marketplace and tie sellers' ability to generate sales on its site to their willingness to buy additional Amazon services, including its fulfilment and advertising services. In sum, Amazon's fees make it nearly impossible for sellers to sustain a profitable business. In spite of this situation, Amazon has no risk of running out of sellers; its monopoly ensures there's an endless stream of people around the world willing to try.

Again, indirect network effects also hugely contribute to Amazon's increasing market dominance and to market 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

It is common with dominant online platforms such as the GAFA.

As stressed already, the group dominates the online digital market, often through harmful practices and an ever-increasing socio-economic power. They essentially cannot be avoided when doing business online.

They have all been involved in antitrust cases due to increasing monopolisation of digital markets, in areas such as e-commerce, social media, search engines, cloud computing etc. Increasing monopolisation of

specific markets inevitably leads to market tipping.

As highlighted, the GAFAs have become the centre of antitrust attention both in the US and in the EU, which is extremely telling. However, "ex-post" fines and charges are insufficient to deter their anti-competitive practices. More rules and legislation are needed to prevent these digital giants from increasingly heading towards the monopolisation of digital markets. This is where the 'ex-ante' rules within the Digital Services Act and the New Competition Tool play a key role.

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 checked="" type="radio"/>	<input type="radio"/>
* Customers may face higher prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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

No further comment.

*** 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

The Commission understands that market tipping is an indicator of anticompetitive practices and that the GAFA group's network effects may easily cause to reach a tipping point with the market turning to monopoly.

It is therefore imperative that the Commission continues to be fully able to intervene early in tipping markets to preserve and improve competition, both now and in the future.

*** 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 the same response for this answer as for the similar questions asked in 9.2 and 9.3 and 15.3, among others.

Articles 101/102 TFEU are suitable to a certain extent but not sufficiently effective, as we see many digital platforms failing to comply with EU law, gaining market dominance and becoming monopolies in certain digital markets, which inevitably leads to market tipping.

If online platforms are already capable of this and elude responsibility (antitrust charges and fines are insufficient, given that it take years for them to become resolved), it is a clear indication that Articles 101 and 102 TFEU are insufficient and more instruments are needed to identify these practices that raise competition issues in advance, rather than "ex post".

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

See our contribution in the Digital Services Act consultation. The GAFAs are gatekeepers in their own markets: e-commerce, social media, search engines etc.

We believe Amazon exploits its role as a digital gatekeeper in the e-commerce ecosystem to extract a growing cut of the revenue earned by its marketplace sellers. According to a report from the Institute for Local Self-Reliance ("Amazon's Monopoly Tollbooth": https://ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf), Amazon is levying a hefty tax on their trade, enabling it to profit from their businesses at the same time that it saddles them with more costs and thus weakens them as rivals. More specifically, since 2014, Amazon's revenue from seller fees has grown almost twice as fast as its overall sales. Seller fees now account for 21% of Amazon's total revenue. Additionally, Amazon keeps an average of 30 % of each sale made by independent sellers on its site, up from 19 % just five years ago. As a final note, an analogy made in the report: "Selling on Amazon is like going to a casino: you might win a hand or two, but, in the end, only the house actually makes money".

In sum, Amazon's fees and other strategies make it nearly impossible for sellers to sustain a profitable business, given that competitors must pay Amazon in order to compete against the company, while Amazon profits off sellers that are often their direct competitors. In spite of this situation, Amazon has no risk of running out of sellers; its monopoly ensures there's an endless stream of people around the world willing to try. As for other online market place competitors they aren't able to offer more competitive prices and have to align to market standards.

*** 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

The GAFAs are gatekeepers in their own markets: e-commerce, social media, search engines etc.

Theoretically, online platforms with gatekeeper roles should be seen as something positive. For example a society is a better place with websites prohibiting child pornography and social-media platforms banning people who threaten with violence or racial discrimination.

However, what we see today, and one of the main reasons as to why the Digital Services Act and the New Competition Tool are needed, is that there are increasingly more negative than positive effects resulting from large online platform companies with gatekeeping roles, as they become more powerful, influential and dominant while remaining unchallenged and unregulated.

In the context of online marketplaces, if functioning properly, a large online marketplace acting as a gatekeeper would be able to gather a wide range of products from different retailers in one place, giving all retailers fair and equal conditions, visibility and opportunities, while also providing consumers with ample choice. Additionally, malicious, illegal or counterfeit products would not be allowed to be sold.

However, as we see with Amazon, all of these conditions and criteria aren't met. Instead, there is arbitrariness, abusive self-preferencing, storage and use of private data and sale of illegal and counterfeit goods, to name some issues.

Amazon exploits its role as gatekeeper in the online marketplace ecosystem. Given its dominance and influence of online platforms acting as gatekeepers, these must be regulated a lot more strictly.

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

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

18.7. 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

If one looks at a large online platform like Amazon, which has a large user base in the EU, is present in many countries in the continent (and outside), has a huge capacity of storing valuable and sensitive data from sellers and users (which it then exploits and uses to the company's advantage), has a huge impact in the bookselling sector (it started as online marketplace for books) and has the ability to lock-in both consumers and retailers, and imposes unfair and discriminatory terms and conditions for third-party sellers on their own platform, you essentially have a dominant online platform with a gatekeeper role, which can lead to a potential threat to healthy market competition.

Amazon's dominance of online retail means that hundreds of thousands of small businesses, including booksellers, must rely on its marketplace to reach customers. In doing so, Amazon benefits from its gatekeeper power to extract a growing cut of the revenue earned by booksellers on their site (Institute for Local Self-Reliance report: Amazon's Monopoly: <https://ilsr.org/amazons-monopoly/>). At the same time, Amazon 'locks in' sellers and uses their data, which helps them identify new categories of goods that can be profitable for the company. They then use this data to their advantage (and the disadvantage of independent sellers) Source: Wall Street Journal: (<https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>). Essentially, the practice of Amazon to use sensitive data from independent retailers on their marketplace helps the company develop competing private-label products, which in turn, weakens their rivals and increases their dominance.

**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

Same response as to question 18.8.

- * 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

Yes, there is a need for the Commission to actively intervene in cases in which digital platforms abuse their gatekeeper role, which is a structural competition issue.

As explained in answers above, Amazon is an example that illustrates how the combination of some criteria can help identify and pinpoint large online platform companies that abuse their gatekeeper role.

This is why digital platforms who abuse their gatekeeper role should be more strictly regulated by the Commission, through the Digital Services Act and this New Competition Tool.

- * 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

We have the same response for this answer as for the similar questions asked in 9.2 and 9.3, 15.3 and 17.3, among others.

Articles 101/102 TFEU are suitable to a certain extent but not sufficiently effective, as we see many digital platforms failing to comply with EU law, gaining market dominance and abusing their gatekeeper platform role, such as Amazon.

If online platforms are already capable of this and alude responsibility with abusing their role in such manner (antitrust charges and fines are insufficient, given that it take years for them to become resolved), it is a clear indication that Articles 101 and 102 TFEU are insufficient and more instruments are needed to identify and prevent these practices that raise competition issues in advance, rather than "ex post".

By more instruments, we mean the Digital Services Act's 'ex-ante' rules together with the New Competition Tool.

*** 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

We can only speak for the concerns over structural competition issues that we have experienced within the bookselling industry, but there are cases and examples for structural competition problems in many sectors.

The GAFA already cover a large range of (mostly digital) markets in which structural competition problems may (and do) occur, but there have also been structural competition issues in a wide range of other sectors, such as food, agriculture, transport (railway and aviation) and electricity industries, for instance.

*** 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

*** 22.1. Please explain your answer. If you replied 'no', please indicate the types of conduct and situations that in your view, Article 101 of the EU Treaty does not sufficiently or effectively address, and why.**

3000 character(s) maximum

We believe Article 101 is unfortunately insufficient in adequately prohibiting agreements between companies that prevent, restrict or distort competition.

Further above we mentioned an investigation that was recently launched to look into whether Amazon and Apple had engaged in anti-competitive cooperation in the sale of Apple products and Beats headphones. Both companies are included in the big-tech group referred to as GAFA, an oligopoly, which dominates the digital arena and whose members allegedly make and have made agreements with one another to further enhance their market power and dominance (see case of Apple and Amazon mentioned previously in this consultation). While attempts have been made to restrict their activities and to fine them, and while proceedings have been initiated against them, their dominance and market power continues to grow.

This alone is proof that the current rules in place are insufficient and incapable of preventing further abuse by these companies. Hence the need for additional legislation: the New Competition Tool and ex-ante rules in the framework of the Digital Services Act.

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

3000 character(s) maximum

In the bookselling sector, as explained in detail throughout our entire contribution to this consultation.

*** 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

We believe Article 102 is insufficient in adequately addressing the issues highlighted in this consultation, such as online platforms abusing their gatekeeper role, who apply abusive pricing algorithm strategies, discriminatory contractual agreements with sellers, abusive self-preferencing of their own products and store sensitive third-party data from its sellers, among other issues.

There are many examples of large online platforms abusing their dominant market position to further enhance their dominance, and while attempts have been made to fine them, and proceedings have been initiated against them, their dominance and market power continues to grow.

This alone is proof that the current rules in place are only suited to remedy the damage once it's done. They are insufficient and incapable of preventing further abuse by these companies. Hence the need for the New Competition Tool and ex-ante rules.

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

3000 character(s) maximum

We can only speak on behalf of the bookselling sector, as explained in detail throughout this entire consultation.

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

We have indicated in other answers above why we believe Articles 101 and 102 TFEU are insufficient in addressing today's structural competition problems.

All of the issues highlighted throughout this entire contribution indicate that the rules currently in place are insufficient. Large companies continue to abuse their dominant market position to further enhance their dominance, often through harmful behaviour, sometimes leading to breach of EU and national law, for example: Google ("Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine": https://ec.europa.eu/commission/presscorner/detail/en/IP_18_458) and Amazon ("Commission opens investigation into possible anti-competitive conduct of Amazon": https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291).

There is an urgent need for additional legislation: the New Competition Tool, to address structural competition issues, and ex-ante rules in the Digital Services Act, to prevent online platforms abusing their gatekeeper role, rather than addressing the damage 'ex-post'.

*** 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

Ex-ante rules and measures are essential to prevent structural competition problems from arising. Too many of the current rules in place focus on the consequences of anticompetitive behaviour, rather than prevention.

The new structural competition tool should help prevent all of the structural competition risks and problems indicated throughout this consultation, such as: market tipping, aggressive pricing algorithms, oligopolistic market structures, high concentration and entry barriers, customer and seller lock-in and data accumulation, to name a few.

*** 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

All of the problems and risks mentioned in response to question 25.1.

However, out of all of these, the main issue for EIBF is Amazon's dual role of online marketplace and e-retailer. Given that Amazon is an active player on its own marketplace, it will always prioritise and give its own products an advantage over other third-party sellers on the marketplace. This already shows a clear conflict of interest and a threat to fair competition. With its dual role of online marketplace and e-retailer, Amazon is free to set the rules of the game and there is no competition between the company and the third-party sellers on its own marketplace.

To put it metaphorically, it is like playing a football game where the opposite team also acts as the referee. Therefore, no matter how third-party sellers manage their business on the platform and no matter how many Amazon services they subscribe to in order to have a higher visibility or perform better, they will always lose the fight when competing with the company on its own ground.

*** 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

The tool should be potentially applicable to all undertakings in a market, although with a special focus on dominant companies with gatekeeper role and significant network effects, given the higher chance of anticompetitive behaviour and market tipping.

*** 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

There are sectors/markets where structural competition problems are more prevalent and noticeable these days, such as the digital sphere, given the increasing priority given to processes of digitization. However, structural competition concerns and risks can affect all markets. Therefore, the scope of the new competition tool should be horizontal.

*** 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

There are, indeed, structural competition concerns and risks to markets/sectors affected by digitisation (GAFA); in fact, increasingly so. However, structural competition concerns also affect many groups and sectors not affected by the digital world, as explained in response to question 20.1.

*** 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

N/A

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

No further comment.

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 Commission should be able to impose appropriate and proportionate remedies on companies, be it structural, non-structural or hybrid.

*** 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

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

Effective supervision and enforcement of the New Competition Tool can only be achieved by means of adequate and appropriate investigative powers.

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

All of the above type of investigative powers would be adequate and appropriate to ensure the effectiveness of the new competition tool.

No further clarification is needed.

*** 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

The New Competition Tool should provide with a simple and concise roadmap to allow timely enforcement of legal obligations and avoid delays in achieving the goals it seeks to achieve.

*** 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

As we understand, in cases in which a company's existence is threatened by a potentially anti-competitive conduct of another company, they can request the Commission to investigate the matter under competition law, and in addition ask the Commission to prohibit the conduct in question until the investigation is terminated by a formal decision. Additionally, the Commission can also take interim measures in merger cases in order to prevent the implementation of concentrations before the Commission has cleared them. (<https://www.concurrences.com/en/glossary/Interim-measures>).

This would be beneficial for smaller businesses who might be threatened by a large anti-competitive company or is at serious risk. We, therefore, believe that the new competition tool should include the possibility to impose interim measures in order to pre-empt irreparable harm

*

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

N/A

*** 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

Companies or suppliers and customers of those companies concerned in proceedings should always have the possibility to comment on the findings of the existence of a structural competition problem before the final decision.

The comments, however, should be provided within the legal realm and conditionality of said proceedings.

*** 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

Companies or suppliers and customers of those companies concerned in proceedings should always have the possibility to comment on the appropriateness and proportionality of the envisaged remedies.

The comments, however, should be provided within the legal realm and conditionality of said proceedings.

*** 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

Due to the constant evolving nature of the modern economy and its markets (digital or not), it should be possible to regularly review and revise the new competition tool.

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

3000 character(s) maximum

N/A

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

A combination of options 2, 3 and 4 would provide the EU with an adequate regulatory framework and enforcement to prevent and adequately address the negative socio-economic effects of online platforms with the gatekeeper role and significant network effects.

More specifically, all platforms should abide by the same rules (option 2). At the same time, however, tailored remedies should also be applied in specific circumstances on a case-by-case basis to individual large online platforms with gatekeeper power (option 3). Additionally, there is a need for a New Competition Tool allowing to address structural risks and lack of competition in markets on a case-by-case basis (option 4), given increasing structural competition issues and risks, such as monopolisation of markets and market tipping.

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

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

3000 character(s) maximum

Please see also EIBF's contribution to the Digital Services Act consultation.

You can find EIBF's Book Charter, which highlights our long-term political priorities and the main areas of our policy work, here: <https://europeanbooksellers.eu/book-charter>.

For clarification purposes, although Amazon is not the only tech giant from the United States with an ever increasing power in the digital world, it is the only company worldwide with such an impact on the book sector. From authors to libraries and from publishers to booksellers and readers, Amazon's growing monopoly is affecting the whole book ecosystem, hence our strong emphasis on Amazon's activities in our contribution to the consultation.

EIBF has used some cases and examples from Amazon's activity in the United States as they remain issues and sources of concern, given that they might be replicated in Europe.

As for cases of Amazon's operations in the EU, it has proven to be more difficult to gather comprehensive data on how Amazon operates, given that it does so across several different markets.

*** 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