



9/7/2020

## **New Competition Tool**

### **Comments from the Technology Industries of Finland**

The Technology Industries of Finland (TIF) is an association for companies in the metals industry, the mechanical engineering and metal products industry, the electronics and electrotechnical industry, the information technology industry and consulting engineering. Technology Industries of Finland has over 1,600 member companies. We promote competitiveness and the operational preconditions for the largest and most important export sector in Finland.

### **General comments on competition**

To support the economic well-being in Europe, the legislation must nurture and protect effective and dynamic competition between the market players. It is important to ensure equal preconditions for companies to access markets and operate there without threat of other market actors abusing their market power and distorting competition. Fragmentation of legislation is not desirable, instead the competition rules should be examined comprehensively. Otherwise, there is a risk of non-uniform and unjust enforcement and consequently inequal operating possibilities for companies.

Concerning fragmentation, we would like to emphasize that there is at the moment several initiatives connected to competition law. Of these, Digital Service Act consultation with its ex ante rules is also referred to in the NCT consultation.

### **Present situation**

The EU Treaty articles 101 and 102 referred to in the consultation questionnaire have proven well-functioning and applicable in different markets. Introducing new rules without robust evidence of the need should be avoided. TIF considers that the structural problems brought forward in the consultation are solvable with the present rules. These rules can be further reinforced and particularised e.g. with updated guidelines. It is of utmost importance to secure the SMEs' scope of operation against unfair competition. However, the suggested rules of the New Competition Tool might instead curb the healthy growth of European companies.

### **Legal security of companies**

All options presented by the Commission (re Inception Impact Assessment) will significantly increase the powers of the competition authority. It is necessary to define beforehand clearly and openly the contents and limits of the rights and powers of the Authority. The safeguards for the companies, who would be targets for the Authority's measures, must be defined. In this respect, the Commission proposal is clearly lacking.

The definition and criteria for the structural competition problems are vague. The use of Authority imposed structural remedies without evidence of competition infringement is highly questionable. From the company point of view, this procedure should include the possibility for appeal which again would slow down the process. If the Competition Tool is to be taken into use, the structural remedies should be excluded as a sanction.

In the Inception Impact Assessment, a new market structure test is mentioned as a basis for Tool application. The test, however, is not described in any detail. For companies, it would be essential to know beforehand the contents and criteria used in the test.

### **Conclusions**

The Technology Industries of Finland finds the evidence for the need of a New Competition Tool inadequate. The present legislation works well, even though the processes might be time-consuming. The proper market investigation on the other hand gives the companies legal security. If needed, the present legislation can be updated and complemented with new guidelines.

The impact and interaction of several competition-linked initiatives must be studied. The proposed New Competition Tool and its relationship with the DSA ex ante rules and the traditional EU Treaty articles 101 and 102 should be clarified as to their possible legal consequences and their interlinkages.

If the New Competition Tool is implemented, the clear descriptions of market tests and powers of the Competition Authority as well as definitions for structural competition problems and gatekeepers should be made. The Tool needs to be foreseeable, just, proportional and uniformly applied in the Single Market.

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