

SUMMARY OF DT ANSWER TO DG COMP CONSULTATION ON A POTENTIAL NCT

Deutsche Telekom welcomes the opportunity to comment on the Commissions initiatives to make its rules fit for the digitized and globalized economy, consisting of the 3 pillars:

- (1) continued vigorous enforcement of the existing competition rules
- (2) possible ex-ante regulation of digital platforms
- (3) possible new competition tool (NCT)

In our opinion the first two pillars are necessary and effective means to address the identified gaps regarding structural competition problems of gatekeepers and tipping markets. As regards a potential NCT, the starting point of the consultation has a similar objective aimed at tackling gaps deriving from the characteristics of new, digital, platform based, data driven markets. However, the NCT options being put forward risk going beyond this scope by extending the application beyond digital gatekeepers. Rather than focusing on the core of the problem, a wider application to basically all digitally enabled industries is envisaged. This would create an additional regulatory framework with unclear procedural safeguards.

We believe that the focus should rather be on advancing the existing competition law framework to tackle the general structural issues addressed in this consultation. On the substantial side this should entail:

- improving the process of market definition and reanalysing its role in digital markets
- finding new measures/thresholds for assessment of market power of gatekeepers in digital markets
- adapting the theories of harm and respective remedies to ensure contestability
- more dynamic approach in merger control and reverse burden of proof for killer acquisitions

On the procedural side the dynamics of the digital markets call for a better use of interim measures and a pre-defined timeline for antitrust investigations.

The adaption of the existing competition tools and their application as well as a new targeted ex ante regulation under the DSA framework limited to systemic platforms appears to us as a sufficient means to tackle the most severe competition issues that currently may not be effectively covered by competition law and other legal provisions.

A new competition tool also raises two additional challenges:

If the tool is designed along the lines of the CMA's Market Investigation Instrument it would have to coincide with a change to the EU competition institutional structure. The UK tool builds on strong governance provisions with numerous checks and balances, for example a clear split between the decision for a market for investigation taken by the CMA Board, and on the other hand the final decision that is taken by an external panel of independent experts who are not CMA staff. Beyond that the UK system includes a highly transparent process and allows for a fast and effective judicial redress.

Should the European Commission aim at additionally introducing a new competition law tool, it needs to be carefully defined under the principle of proportionality to tackle only the identified enforcement gaps and avoid inconsistencies with the ex ante regulatory instrument to be implemented as part of the DSA package and with other regulation such as applicable to Electronic Communication Networks and Services. In any case it would need to be equipped with the necessary safeguards. For one the threshold for using such a pervasive tool should be high, meaning that it should only be applicable in situations where competition problems arise on a Europe-wide level and are of a certain magnitude. Beyond that it should be a means of last resort and therefore only used in situations where other options such as the traditional competition law investigation are not effective.