

## **Copa and Cogeca contribution**

### **Questionnaire for the public consultation on a New Competition Tool**

Copa and Cogeca express their strong concerns about the New Competition Tool (NCT) initiative.

We do not see a gap in the current EU competition rules as argued by the European Commission. We are not of the opinion that there are structural competition problems in the agricultural and food sector that the current competition rules cannot tackle.

Therefore, there is no justification for the immense impact that the introduction of an NCT would have on EU competition law and for companies affected by these rules.

Furthermore, we believe that the situations in which the Commission would intervene within the framework of this tool are not clear. This applies, in particular, to the demarcation between digital and non-digital markets. We strongly encourage an attentive consideration and further clarification of the main aspects of the NCT.

The current discussions and suggested changes to EU competition law are certain due to the behaviour of very few, very large and dominant companies, that all have a direct relation to consumers. This is a very specific area – best dealt with under the current article 102 TFEU tool box - and the issues arising in this setting cannot immediately be transferred to other realities.

The introduction of a NCT instrument would create significant legal uncertainty. If an additional instrument was to be introduced at all, it should be very limited in its application. Any such specific rules should be clearly defined and limited as much as possible.

Moreover, there is a risk of a differentiated implementation of this tool across the EU. At minima, it will not take into consideration how the business structures, at the level of Member States, have been established and evolve.

We would also like to underline also the need to prevent overlaps between traditional competition enforcement, ex ante regulatory framework and the NCT. Therefore, the Commission should make clear in the impact assessment potential overlaps and where these exist.

Competition policy is about applying rules to make sure companies compete fairly with each other. This encourages entrepreneurship and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality. The exclusive focus on consumers that is customary under classical competition law pursuant to article 101(3) TFEU cannot be the only yardstick for the assessment of cooperation among producers in the agricultural sector.

In this context, we are clearly concerned about the narrowness of the competition test envisaged by this tool, which considers the well-being of the consumer as dependent only on the low price. As far as agri-food products are concerned, this policy has led very clearly to a deflation of the prices of agricultural raw material since these markets have been opened to competition.

Establishing the NCT is worrying for Copa and Cogeca as it would not be efficient for a better functioning of the food chain.