DG Competition
European Commission

Stockholm 08 September 2020

New Competition Tool (NCT) - Public consultation

The Confederation of Swedish Enterprise (Svenskt Näringsliv) is Sweden’s largest and most influential business federation representing 49 member organizations and 60 000 member companies with over 1.6 million employees.

Well-functioning markets are a cornerstone of a prosperous market economy, and necessary to ensure efficient companies, to spur innovation and reward dedicated entrepreneurs who dare to believe in their ideas and work hard. To ensure that, we need rules that are up-to-date, a vigilant supervision by the authorities and in the long run a culture where the rules of fair competition is fundamental and natural to all market players.

The Commission has suggested new rules to tackle what is described as structural competition problems on the markets. **The Confederation of Swedish Enterprise rejects the suggested new competition tool. We fully endorse the views of BusinessEurope on this matter** and would like to add or emphasise a couple of aspects below.

- The statement that concentration and margins have increased in markets throughout Europe is not an established fact. On the opposite, while the Commission only cites one source of this fact, there are others like Gutiérrez and Philippon (2018) and ECB (2019) who concludes that “concentration ratios in the euro area have remained broadly flat in the last ten years”, and “the aggregate euro area mark-up has been fairly stable, varying around a value of 10-15 % and has even declined marginally since late 1990:s/early 2000:s”. (ECB). Therefore, the basis on which this new tool is suggested could be questioned.
- The ECN+ initiative, which grants the national competition authorities’ new powers has not yet been implemented. Once implemented and set in motion, the effects should eventually be evaluated before novel tools can be considered.
- The new tool would entail negative incentives on growth, innovation and risk taking, when a successful business endeavour can be punished just for being successful and managing to take considerable market shares. Negative growth incentives are the last thing that EU needs in these times of economic crisis due to the pandemic.
- The existing rules, based on article 101 and 102, are in most cases sufficient to tackle the competition problems that emerges. These rules are connected with strong sanctions, but also an established process will clear rights and duties for parties involved. In addition, problems related to for instance high entry thresholds and other sector specific problems could be tackled also with sector specific regulations. It should also be emphasized the role of further developing the internal market, as better competition across member state borders could further increase the competition.

Confederation of Swedish Enterprise
Address: SE-114 82 Stockholm   Visitors: Storgatan 19   Phone: +46 (0)8 553 430 00
www.swedishenterprise.se

- The administrative burden of this new proposed tool is also not to be underestimated and will occur both during investigations and any court proceedings that could follow. This is also something that European companies, many of which are struggling to keep afloat right now, don’t need in this crisis.
- Furthermore, it is unclear to what extent individual companies would be targeted by redressive measures, should that be the outcome of an inquiry, or if focus should be on more structural recommendations towards specific markets or member states. If the tool would end up being targeted towards individual companies and implying structural remedies, i.e. divesting or breaking up a company, the question can be raised as to what extent the company in question could be entitled compensation for damages, taking into account the fact that the company has not breached any rules. If the tool on the other hand would be limited to recommendations to member states how to improve market functions, this is something that can be accepted. However the impression so far is that the ambition from the Commission is that the tool should be more interventionistic.