



## **Developers Alliance<sup>1</sup> feedback on the inception impact assessment (IIA) on the New Competition Tool ('NCT')**

Businesses, no matter the size and the market they're active in, need a balanced and predictable environment. Obviously, software developers feel no different. They need to know the rules of the game, and have confidence that they won't change arbitrarily. But a predictable business environment doesn't necessitate government intervention, forced modification of the market, dismantling of profitable and innovative companies, or "directing" the successful business models and their number. In these situations one cannot consider that companies compete on the merits in a free market.

A new instrument for competition policy should not be used to distort markets on purpose (for example to ensure more players or lower profits), according to an industrial policy agenda. That will only create an incentive for European entrepreneurs and innovators to do business elsewhere; where a more flexible environment which fosters and rewards the "successful mix" of hard work, innovation and investment exists. Winners in free markets are picked by consumers, not governments.

With that said, case-by-case assessment and interventions against anti-competitive behavior should remain the sound basis for competition enforcement. As we mention in our contribution on the IIA on ex-ante regulation for large online platforms (part of the Digital Services Act package), the problems described seem specific to certain sub-sectors, markets, or companies, which could potentially call for targeted versus horizontal intervention. Existing competition policy is still the best answer for these problems.

An ex-ante intervention could be effective if it is principles-based, hence future proof, tailored to each market. In this sense, an approach in the form of a code of conduct, complementary to the Platform-to-Business Regulation, would provide principle-based solutions and useful flexibility to encourage companies to adjust their behaviour. Codes of conduct should involve all affected players participating in the market under scrutiny. This approach, recommended by the UK Report of the Digital Competition Expert Panel, could be complemented by specific ex ante-guidance for digital and other fast-moving markets, as proposed by the Joint Memorandum of the Benelux competition authorities.

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<sup>1</sup> *Developers Alliance* advocates on behalf of developers and the companies invested in their success, to support the industry's continued growth, and promote innovation. Alliance members include industry leaders in consumer, enterprise, industrial, and emerging software development, and a global network of more than 70,000 developers.

The coherent enforcement of such measures across the Single Market should be ensured by a central presence of DG COMP, supported by enhanced cooperation with and between Member States competition authorities and other national authorities (especially on data protection and consumer protection).

Regarding the proposed policy options, all converge in the same direction. The distinction between the four options is illusory, since the tool could be applied in a discretionary way simply by re-defining industry segments in order to achieve whatever outcome political policy requires. We strongly recommend considering the approaches mentioned above instead.

We will provide our input to the public consultation and we stand ready to contribute with our developer membership perspective further on. We suggest that the targeted stakeholder workshops should include a broad range of participants such as consumer organisations, and a broad range of representative industry players - including software developers.