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**Market Studies and other Market Analysis Tools for Competition Authorities – Note by
the European Union**

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1. Introduction

1. Ensuring that markets function well for consumers and businesses alike is a central tenet of European Commission (Commission) competition policy. In an increasingly complex global economy, the ability to understand and respond to dynamic market forces has never been more crucial for competition authorities and policymakers. Alongside the enforcement of the European Union's (EU) competition rules, the Commission relies on a number of complementary instruments to analyse how markets operate and to identify structural or behavioural concerns that may not fully be addressed through case-specific proceedings.

2. EU competition enforcement has two instruments that allow the Commission to study particular sectors of the economy, market studies and sector inquiries. Market studies use softer powers to examine the particular features of an industry that may give rise to competition concerns. These market studies may be done by the Commission or can be contracted out to external consultants.

3. This submission presents the main tool available to the Commission to examine markets outside the context of individual antitrust or merger investigations, namely sector inquiries under Article 17 of Regulation 1/2003,¹ which allow the Commission to carry out in-depth analyses of sectors where competition appears restricted or distorted. It also touches upon the more limited use of market studies, which can provide additional insights into market dynamics.

4. In addition, the submission discusses the use of market investigations in the context of the Digital Markets Act (DMA),² which equips the Commission with new powers to assess and address structural contestability and fairness issues in digital markets. Finally, the paper summarises the Commission's earlier reflections on a possible New Competition Tool that would have allowed the Commission to impose remedies to address structural competition issues without finding an infringement; ultimately, the Commission decided not to pursue such an instrument, considering that the most pressing competition problems related to large digital platforms for which the DMA provided a more effective framework.

5. Through this contribution, the Commission seeks to share its experience with these tools, underline their respective strengths and limitations, and contribute to the broader international debate on how best to design and deploy market analysis instruments in support of effective competition enforcement and policy.

¹ Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

² Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector.

2. Sector inquiries and market studies

2.1. Sector inquiries

6. The main tool to analyse markets available to the Commission's Directorate-General for Competition (DG COMP) outside the context of individual antitrust or merger investigations is the power to conduct sector inquiries under Article 17 of Regulation 1/2003. The provision allows the Commission to study a particular sector of the economy or a particular type of agreements where it considers that competition is malfunctioning.

7. Since the entry into force of Regulation 1/2003 in May 2004, the Commission has carried out a total of seven sector inquiries in the following sectors: Media (2004-2005), Retail Banking (2005-2007), Business Insurance (2005-2007), Energy (2005-2007), Pharmaceuticals (2008-2009), E-commerce (2015-2017) and Internet of things (IoT) for consumer related products and services (2020-2022).³ The typical duration of a sector inquiry is between 18 and 24 months.

8. The Commission's decision to launch a sector inquiry must be based on objective indications that competition may be restricted or distorted within the internal market. Article 17(1) of Regulation 1/2003 lists the rigidity of prices or the trends of trade between Member States as examples of circumstances indicating that this may be the case. However, there may be many other circumstances that the Commission may consider as the list in Article 17(1) of Regulation 1/2003 is not exhaustive. Indicators may include persistently high prices, limited innovation, lack of new entrants on the market, foreclosure concerns, exclusivity arrangements, data accumulation, or the emergence of gatekeeper positions.

9. The primary purpose of a sector inquiry is to better understand specific markets or types of agreements with regard to competition policy. The information obtained allows the Commission to deepen its knowledge and understanding and identify specific competition concerns. Article 17 of Regulation 1/2003 does not confer remedial powers on the Commission. While sector inquiries may highlight where enforcement action is required, they must clearly be distinguished from investigations into the conduct of specific companies. The aim of sector inquiries is not to establish infringements of Articles 101 or 102 TFEU and to collect the required evidence to do so. At the same time, if the Commission becomes aware of potential infringements in the context of a sector inquiry, it can separately open company specific investigative proceedings into potential infringements of Articles 101 or 102 TFEU.

10. The Commission generally has a wide discretion as to whether to conduct a sector inquiry. It will usually take into account a number of factors, such as the relevance of the sector for the economy and for consumers, whether a large fact-finding exercise in the form of a sector inquiry is well suited to uncover or clarify the reasons for the malfunctioning of competition in a given sector, and whether other national competition authorities are conducting sector inquiries in the same sector or plan to do so in the future. The decision to launch an inquiry into a particular sector is usually also taken in line with the Commission's overall priorities.

11. In a sector inquiry, the Commission has powers similar to those it possesses in probes into conduct of specific individual companies, except for those relating to inspections of private homes (since Article 21 of Regulation 1/2003 is not referenced in Article 17(2) of Regulation 1/2003). It may therefore send requests for information to

³ More information on sector inquiries is accessible under https://competition-policy.ec.europa.eu/antitrust-and-cartels/sector-inquiries_en.

companies or industry associations (Article 18), conduct interviews/meetings with stakeholders, including national regulators (Article 19), and conduct inspections at business premises (Article 20). This information gathering phase may last from several months to over a year, depending on the complexity of the sector and the responsiveness of the entities involved.

12. The Commission must ensure that its investigative measures are proportionate and consider less intrusive alternatives. For instance, inspections are reserved for cases where requests for information are inadequate, such as when dealing with sensitive, strategic information that could be concealed or destroyed. This approach was followed during the 2008 pharmaceutical sector inquiry, starting with surprise inspections due to the high confidentiality and potential concealment of key documents.

13. According to Article 17(2) of Regulation 1/2003, Articles 23 and 24 apply *mutatis mutandis* to sector inquiries. Companies can thus be fined, e.g. for providing false information or for refusing to comply with inspection decisions. The Commission must respect procedural rights, and companies are only obliged to cooperate within the limits of the privilege against self-incrimination and legal professional privilege.

14. Although not mandated by law, the Commission generally publishes a preliminary report to share its initial findings and thereby promote transparency. Following publication of the preliminary report, the Commission typically launches a public consultation period lasting between six and twelve weeks and inviting feedback from stakeholders, such as businesses, NGOs, national authorities and the public.

15. At the end of the inquiry, the Commission issues a final report setting out its comprehensive findings and conclusions. The final report typically summarises the information gathered and provides an assessment of any market malfunctions identified during the investigation. The report also outlines policy recommendations or proposed enforcement priorities that may follow from the inquiry. The purpose of the final report is to provide transparency, to inform stakeholders about the key findings and policy conclusions, and to serve as a foundation for subsequent regulatory or enforcement action.

16. Following the publication of the final report, the Commission may pursue a range of follow-up measures depending on the nature and severity of the issues identified. These follow-up measures are intended to restore or enhance competition in the market and to ensure the effective functioning of the internal market in line with EU objectives. They consist of the following measures which are not exhaustive and which may vary depending on the sector inquiry:

- Where evidence suggests potential infringements of EU competition law, the Commission may open formal investigations under Articles 101 or 102 TFEU. Sector inquiries can in particular create a momentum for enforcement in sectors where competition interventions were previously challenging as was the case for the energy sector. While early sector inquiries under Article 17 of Regulation 1/2003 (such as the sector inquiries into retail banking and business insurance) were designed as studies to provide a thorough analysis of specific markets with limited chances to lead to specific competition proceedings, subsequent sector inquiries into energy, pharma and e-commerce paved the way for subsequent antitrust decisions in the respective sectors.⁴

⁴ See e.g. cases AT.39315 – ENI, AT.39402 – REW gas foreclosure, AT.39226 – Lundbeck, AT.39685 – Fentanyl, AT.39612 – Perindopril (Servier), AT.40465 – Asus (vertical restraints),

- Sector inquiries may inform the reviews of relevant competition rules and guidelines (such as for example the e-commerce sector inquiry whose findings fed into the review of the Vertical Block Exemption Regulation⁵ and the Vertical Guidelines⁶). More generally, the findings of a sector inquiry may also help to promote compliance with competition rules in a given sector. They achieve this by raising awareness of competition rules and the potential unlawfulness of specific behaviour in the sector. Companies typically pay close attention to the findings of sector inquiries and the concerns that the Commission identifies. This may allow them to modify their practices and contractual relationships and bring them in compliance with Articles 101 and 102 TFEU. Following the e-commerce sector inquiry, the Commission welcomed in a public statement the changes the sector inquiry prompted in the commercial practices of several companies, some of which accepted to publicly acknowledge the introduced changes.⁷
- The impact of sector inquiries also extends beyond the realm of competition law itself: the findings may prompt the Commission to propose amendments to existing legislation or to introduce new regulatory initiatives aimed at addressing structural concerns in the market. The information gathered in sector inquiries can inform and pave the way for regulatory initiatives that may be better suited to address systemic issues than pursuing specific individual competition investigations. Sector inquiries can thus constitute an effective tool to identify the right balance between competition policy/enforcement and regulation.⁸

2.2. Market studies

17. Sector inquiries must be distinguished from market studies and other fact-finding exercises which the Commission may carry out or contract out to external consultants. One important difference between those and sector inquiries is that – unlike in sector inquiries under Article 17 of Regulation 1/2003 – they cannot rely on the investigative powers provided under Regulation 1/2003. They are typically narrower in scope and may focus on a particular competition issue. While they may equally facilitate the understanding of specific markets or competition issues, they are typically not informing future enforcement to the same extent as sector inquiries under Article 17 of Regulation 1/2003.

18. For example, in early January 2024, the Commission launched a call for contributions to improve its understanding of Generative AI markets to which it received around 120 contributions and subsequently, it organised a Workshop on competition in

AT.40469 - Denon & Marantz (vertical restraints), AT.40181 - Philips (vertical restraints), AT.40182 - Pioneer (vertical restraints as well as AT.40428 - Guess.

⁵ Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022, p. 4).

⁶ Commission Guidelines on Vertical Restraints, OJ C 248, 30.6.2022, p. 1.

⁷ See Commission press release IP/17/1261.

⁸ The e-commerce sector inquiry, for example, was launched on 6 May 2015 as part of the Commission's Digital Single Market Strategy with its objective to improve access for consumers and businesses to goods and services via e-commerce across the EU. Unlike other parts of the Digital Single Market strategy that aimed at addressing regulatory barriers to cross-border e-commerce, the sector inquiry's aim was to identify contractual barriers to cross-border e-commerce erected by companies. Its early findings on geo-blocking practices were published on 18 March 2016 and fed into the legislative process for the subsequent Geo-blocking Regulation.

Virtual Worlds and Generative AI. The main takeaways from the call and from the workshop were included in a competition policy brief that was published on the website of DG COMP.⁹

19. Examples of recent market studies commissioned by DG COMP are the market study on competition in online payments,¹⁰ the ex-post evaluation study covering “killer acquisitions” in the pharmaceutical sector,¹¹ as well as the ex-post evaluation of the implementation and effectiveness of EU antitrust remedies.¹²

2.3. Cross border cooperation

20. When deciding on the launch of a new sector inquiry, the Commission typically takes into account whether there are recent, parallel or contemplated sector inquiries or market investigations by national competition authorities (NCA) of EU Member States.

21. This is to avoid overlaps and ensure complementarity of efforts, given that the Commission’s sector inquiries typically cover the whole of the EU or at least multiple Member States.

22. Since 2018, there is a central system in place to facilitate the automatic sharing on planned and ongoing sector inquiries between members of the European Competition Network (ECN). The system enables ECN members to identify possible joint inquiries but also to avoid unnecessary overlaps. ECN members strive to share the relevant information as early as possible, at the latest, a few days before they launch the sector inquiry and communicate about it to the wider public.¹³

23. In addition, prior to the adoption of the decision to launch a sector inquiry, the Commission will typically consult the Advisory Committee on Restrictive Practices and Dominant Positions, in which NCAs are represented, although this is, strictly speaking not a formal requirement.

24. Collaboration with other competition authorities working on specific important topics/sectors may also take place beyond the ECN.¹⁴

⁹ European Commission, *Competition in Generative AI and Virtual Worlds*, Competition Policy Brief No 3/2024.

¹⁰ Market study in competition in online payments – Final report, Publications Office of the European Union, 2025.

¹¹ Ex-post evaluation: EU competition enforcement and acquisitions of innovative competitors in the pharma sector leading to the discontinuation of overlapping drug research and development projects – Final report and appendices, Publications Office of the European Union, 2024.

¹² Ex post evaluation of the implementation and effectiveness of EU antitrust remedies, Final Report, Publications Office of the European Union, 2025.

¹³ At the time of drafting, this ECN database contains reference to approximately 100 sector inquiries introduced by NCAs and the Commission since November 2018.

¹⁴ For example, in relation to the issue of AI, some convergence on principles was achieved in the case of the [Joint Statement on Competition in Generative AI Foundation Models and AI Products](#), in cooperation with the US Department of Justice (DoJ), US Federal Trade Commission (FTC), and the UK Competition and Markets Authority (CMA), which these competition authorities issued on 23 July 2024.

3. Market investigations under the DMA and the New Competition Tool

3.1. Market investigations under the DMA

25. The DMA, which seeks to make markets in the digital sector fairer and more contestable, incorporates market investigation powers. Under the DMA, undertakings designated as gatekeepers by the European Commission must comply with certain obligations relating to the core platform services¹⁵ listed in their gatekeeper designation decision. The DMA has been in force since November 2022 and its obligations have been fully applicable since March 2024. As an internal market regulatory instrument, it complements but does not change EU competition rules, which continue to apply fully.

26. The DMA provides the Commission with the possibility to conduct market investigations in three specific circumstances, namely for the purpose of: (i) examining whether an undertaking providing core platform services should be designated as a gatekeeper under Article 17 of the DMA, (ii) examining systemic non-compliance under Article 18 of the DMA, and (iii) investigations into new services and new practices under Article 19 of the DMA. When the Commission intends to carry out a market investigation with a view to the possible adoption of decisions pursuant to these Articles, it must adopt a decision opening a market investigation.¹⁶ The DMA specifies timeframes for the completion of market investigations under each of these provisions, as well as where applicable for the communication of preliminary findings during market investigations, which start from the date the market investigation was opened.¹⁷ The Commission is equipped with investigative powers for the purposes of carrying out such market investigations, and may ask one or more national competent authorities to assist it in its market investigations.¹⁸ Additionally, Member States may request the Commission to open such market investigations.¹⁹

27. In 2024, the Commission concluded several market investigations under Article 17 of the DMA relating to the designation of gatekeepers. Such market investigations were concluded both in instances where rebuttals were submitted by undertakings alongside designation notifications asserting that, despite meeting the quantitative designation

¹⁵ Core platform services include for instance online search engines, operating systems and web browsers. The full list of core platform services is laid down in Article 2, point (2) of the DMA.

¹⁶ Article 16(1) of the DMA.

¹⁷ For instance, in the context of market investigations conducted under Article 17(1), the Commission has a best endeavours deadline of 12 months to conclude its market investigation, and a best endeavours deadline of 6 months to communicate its preliminary findings.

¹⁸ Article 16(5) of the DMA. See also Article 38 of the DMA.

¹⁹ Article 41 of the DMA.

thresholds, they did not meet the requirements for being designated as gatekeepers,²⁰ as well as in the context of the designation of a gatekeeper based on qualitative criteria.²¹

28. Under Article 18 of the DMA, the Commission's market investigation powers can be used to determine whether a gatekeeper has systematically infringed certain DMA obligations and has maintained, strengthened or extended its gatekeeper position. The Commission may in such a scenario impose behavioural or structural remedies which are proportionate and necessary to ensure effective compliance with the DMA. Interested third parties are entitled to provide comments on a non-confidential summary of the case and the remedies that the Commission is considering imposing, or the commitments it is considering making binding. Additionally, the Commission is entitled to modify remedies if, following a new market investigation, it finds that they are not effective.²²

29. Under Article 19 of the DMA, the Commission can use its market investigation powers to examine whether additional services within the digital sector should be added to the list of core platform services, or for the purpose of detecting practices that limit the contestability of core platform services or that are unfair and which are not effectively addressed by the DMA. To do so, it may consult third parties, including business users and end users of services within the digital sector that are being investigated and business users and end users who are subject to practices under investigation.²³ Ultimately, the Commission's findings have to be published in a report to be submitted to the European Parliament and Council, and where appropriate be accompanied by a legislative proposal or draft delegated act containing, as specified in further detail under Article 19(3) of the DMA, proposed changes to the list of core platform services or to the obligations of Chapter III of the DMA.

30. At the time of drafting, the Commission's experience in applying the market investigation powers contained in the DMA are limited to market investigations under Article 17 of the DMA which are linked to the designation of gatekeepers/core platform services. With one exception these investigations concerned the short five-months procedure pursuant to Article 17(3) of the DMA following a rebuttal request by an undertaking that fulfils the quantitative thresholds. Given that the Commission is expected to communicate preliminary findings within three months of opening such investigations, these investigations have been rather targeted.²⁴ In addition, the Commission has carried out one market investigation under Article 17(1) of the DMA in relation to a qualitative

²⁰ Undertakings that satisfy the quantitative criteria of Article 3(2) of the DMA are presumed to satisfy the requirements for designation as gatekeepers under Article 3(1) of the DMA but have the opportunity to rebut this presumption and submit substantiated arguments to demonstrate that due to exceptional circumstances they should not be designated as a gatekeeper despite meeting all the thresholds. See cases DMA.100041- X - Online social networking service, DMA.100022 Apple – number-independent interpersonal communications services, DMA.100015 - Microsoft Online search engines, DMA.100028 Microsoft Web browsers and DMA.100034 - Microsoft Online advertising services.

²¹ The DMA empowers the Commission to launch a market investigation and designate an undertaking as a gatekeeper on the basis of a qualitative assessment, even if it does not meet the quantitative thresholds of Article 3(2) of the DMA. See case DMA.100047 - Apple – iPadOS.

²² Article 18(8) of the DMA.

²³ Article 19(2) of the DMA.

²⁴ Given the grounds of appeal raised by Opera in its challenge of the Commission's non-designation of Microsoft Edge, the scope of the Commission's duty to investigate in this type of procedure could be further specified by the General Court in Case T-357/24 *Opera Norway v Commission*.

gatekeeper designation. The twelve-month deadline for this type of investigation gives investigation teams more time to explore different designation points. However, the long list of possibly relevant criteria contained in Article 3(8) of the DMA also make this kind of investigation an intense exercise. In light of the tight deadlines of the DMA and the amount of investigative work needed, any preparatory steps – if these can be done in advance prior to opening proceedings – are particularly valuable for a thorough investigation.

3.2. The New Competition Tool

31. In 2020, the Commission consulted on the possibility of adopting a New Competition Tool that would address structural competition issues that Articles 101 and 102 TFEU were arguably not able to address, or not able to address effectively. Such a tool would have allowed the Commission to conduct market investigations and impose behavioural and/or structural remedies without a finding of infringement nor the possibility to impose fines, and without creating rights to launch damage claims.

32. In its [Inception Impact Assessment](#) on the New Competition Tool,²⁵ the Commission distinguished between two types of structural competition problems that such a tool would aim to tackle, namely (i) structural risks for competition, i.e. scenarios where certain market characteristics (e.g. network and scale effects, lack of multi-homing and lock-in effects) and the conduct of the companies operating in the markets concerned create a threat for competition²⁶ and (ii) a structural lack of competition, where markets are not working well and not delivering competitive outcomes due to their structure, i.e. structural market failures.²⁷

33. In term of the tool's scope, the Commission initially considered four possible policy options: (i) a dominance-based tool with a horizontal scope, (ii) a dominance-based tool with a limited sectoral scope,²⁸ (iii) a market structure-based competition tool (not limited

²⁵ In addition to this Inception Impact Assessment, the Commission also held an Open Public Consultation on the New Competition Tool, consulted EU National Competition Authorities on the initiative, and commissioned various expert reports. See Motta, M. and Peitz, M. (2020), *Intervention triggers and underlying theories of harm - Expert advice for the impact assessment of a new competition tool*, Larouche, P. and De Streel, A. (2020), *Interplay between the New Competition Tool and Sector-Specific Regulation in the EU*, Schweitzer, H. (2020), *The New Competition Tool - Its institutional set up and procedural design*, Whish, R. (2020), *New Competition Tool: Legal comparative study of existing competition tools aimed at addressing structural competition problems with a particular focus on the UK's market investigation tool*.

²⁶ The Inception Impact Assessment specified that this would notably apply to tipping markets, and that risks for competition arise through the creation of powerful market players with an entrenched market and/or gatekeeper position, the emergence of which could be prevented by early intervention. Other scenarios falling under this category could include unilateral strategies by non-dominant companies to monopolise a market through anti-competitive means.

²⁷ According to the Inception Impact Assessment this would include (i) markets displaying systemic failures going beyond the conduct of a particular company with market power due to certain structural features, such as high concentration and entry barriers, consumer lock-in, lack of access to data or data accumulation, and (ii) oligopolistic market structures with an increased risk for tacit collusion, including markets featuring increased transparency due to algorithm-based technological solutions (which are becoming increasingly prevalent across sectors).

²⁸ Limited to certain sectors such as certain digital or digitally-enabled markets, and/or other sectors identified as being especially prone to such concerns due to entrenched dominance, high entry barriers, etc.

to dominant companies) with a horizontal scope, and (iv) a market structure-based competition tool (not limited to dominant companies) with a sectoral scope.²⁹

34. Based on the results of the consultations, most of the examples of likely use cases for such a tool related to the digital sector, putting in question the need for a horizontal tool. At the same time, the feedback and evidence collected pointed to an urgent need to act in the digital sector, due to the particular features of digital markets (e.g. economies of scale and scope, data accumulation and dependency, network effects, lock-in, zero pricing). The Commission was in parallel consulting on an ex-ante regulatory instrument of very large online platforms acting as gatekeepers, and it was ultimately decided to combine these initiatives into a single instrument, the aforementioned DMA.

35. Whilst the EU's initiative relating to a New Competition Tool was eventually folded into the DMA, some EU Member States have introduced tools allowing remedies to be imposed to fix market structure issues, without requiring a finding of a violation of competition rules.³⁰ While the Commission is following the introduction of such tools and their implementation with great interest, its immediate focus is in vigorously enforcing the full range of its existing instruments, including the DMA. The experience gained with such tools at Member State level will feed into broader reflections at the EU level on the usefulness of market investigation tools.

4. Conclusion

36. The various instruments available to the Commission for analysing markets outside individual case proceedings, such as sector inquiries, market studies or market investigations under the DMA, provide valuable tools to identify structural or behavioural concerns that may not fully be addressed through case-specific proceedings or, in the case of the DMA, to tailor designations following a more detailed assessment of the designation requirements, assess systemic non-compliance or extend the DMA's application to new services or practices.

37. At the same time, it is important to recognise the limitations of some of these tools and their resource implications as conducting comprehensive sector inquiries involves substantial time and efforts.

38. The importance of coordination and learning from best practices cannot be overstated. Collaborative efforts within the ECN allow for a more efficient sharing of information and help avoid redundancy and overlap in investigations or sector inquiries.

39. While the Commission is monitoring the introduction of new competition instruments in other jurisdictions with interest, its immediate focus is on enforcing its existing instruments.

²⁹ Ibid.

³⁰ The following Member States have recently introduced such powers: Denmark, Germany, Italy and Romania. Other Member States such as Belgium, Czechia, the Netherlands and Sweden have recently considered or are considering the introduction of such tools, or have seen calls for the introduction of such tools.