

Mr Didier Reynders
Commissioner for Justice

European Commission

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Ref.: BEUC-X-2023-140/MGO/UPA/ARE/hbu

06 November 2023

Subject: Commission must resist pressure to dilute enforcement of EU merger rules.

Dear Commissioner Reynders,

We are writing to you on behalf of BEUC, the European Consumer Organisation, to express our serious concerns about the intense political pressure being exerted by some vested interests to dilute, weaken or neutralise enforcement of the EU's merger control rules in the name of boosting the competitiveness of European industry.

Well-functioning competition is essential for consumers in terms of ensuring value for money, choice, product quality and innovation. However, we are alarmed by the fact that concentration levels have risen across many sectors and that, at least in some cases, this has led to increased prices and to reduced consumer choice and innovation.

In order to prevent further market concentration that allows companies to become so powerful that they can harm consumers, it is essential that the Commission takes a strict approach to merger control rather than relaxing enforcement of the rules. In particular, the Commission must apply theories of harm that consider the reality of consumer markets rather than hypothetical models that fit the incumbents' narratives.

We were therefore encouraged by the Commission's recent decision to block Booking.com's takeover of eTraveli. BEUC has consistently urged the Commission to take more account of the potential harm to competition in digital markets, including ecosystem effects, where expansion into adjacent markets would have the effect of further strengthening market dominance in the acquiring company's core market.

However, the Commission must continue to ensure effective enforcement of merger control rules not only in digital platforms markets but also in more traditional markets such as telecoms, airlines and groceries.

In the case of telecoms, we are concerned about calls from the telecoms industry to relax EU merger control rules so as to enable "in-market consolidation as a fundamental stepping stone to ensure that European telecom operators can be globally competitive". Their argument is based on the premise that investment would be fostered "by tackling low returns for service providers".¹

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¹ Statement by Daniel Pataki, Vice President, Policy and Regulation & Head of Europe and CIS, GSMA on Monday 23 October, 2023.

In contrast, the Court of Justice of the EU emphatically confirmed the approach taken by the Commission in its 2016 decision to block the acquisition of Telefónica Europe ('O2') by Hutchison 3G UK ('Three') in the UK.

The European Commission as the primary merger and antitrust enforcer in the EU must ensure that its enforcement activities deliver for consumers in all sectors of the economy.

It is because of Europe's pro-competition telecommunications framework that consumers benefit today from more choice and better prices for mobile and internet services than in other parts of the globe where concentration has led to poorer services and higher prices².

As consumer organisations, we consider that it is effective competition between service providers that constitutes the greatest incentive to invest in infrastructure that can offer customers improved services and that renders service providers more competitive on global markets. Less competition on the EU's Single Market reduces the incentive for companies to be competitive and serve better consumers.

We would welcome an opportunity to meet you to discuss these concerns further, as well as the importance of keeping a strong consumer focus on competition law enforcement and policy.

Yours sincerely,

Monique Goyens
Director General

Ursula Pachtl
Deputy Director General

² Germán Gutiérrez and Thomas Philippon, How EU Markets Became More Competitive Than US Markets: A Study of Institutional Drift, https://fnce.wharton.upenn.edu/wp-content/uploads/2018/10/Philippon_Europe_v2.5.pdf and Thomas Philippon, How Expensive Are U.S. Broadband and Wireless Services?, NYU Stern School of Business, <http://dx.doi.org/10.2139/ssrn.3836281>