

**MEMORANDUM OF UNDERSTANDING ON THE CREATION OF A JOINT INVESTIGATIVE  
TEAM OF THE COMMISSION AND THE NATIONAL COMPETITION AUTHORITY OFFICIALS IN  
INVESTIGATIONS UNDER THE DIGITAL MARKETS ACT**

**(JOINT INVESTIGATIVE TEAM)**

**In accordance with, in particular:**

- *The Treaty on the Functioning of the European Union ('TFEU'), in particular Article 4(3) thereof;*
- *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 and amending Directive (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) ('DMA'),<sup>1</sup> in particular Articles 1(7), 16(5), 21(5), 26, 27, 37 and 38 thereof;*
- *The established practice of the Commission's Directorate-General for Competition ('DG Competition') to accommodate officials of national competition authorities ('NCA(s)') under specifically adjusted conditions to be specified by DG Competition under the "ECN hors session" visitors programme,*

**General goal of joint teams**

**The participating organizations, enter into this Memorandum of Understanding to establish the modalities and conditions for a JOINT INVESTIGATIVE TEAM in Commission investigations under the DMA, with the overall objective to enable effective cooperation, foster culture of continuous learning and improvement, while respecting confidentiality.**

**By engaging in such collaborative investigations, NCAs can make significant contributions to the enforcement of the DMA, while gaining valuable experience and expertise in this field. It is important to note that these efforts do not affect the competences of the Commission as the primary enforcer of DMA.**

**1. Parties to the Agreement**

**DG Competition and the Comisión Nacional de los Mercados y la Competencia ('CNMC') (together, the 'parties')** conclude hereby an agreement on the setting up of a joint investigative team, hereafter referred to as '**JIT**'. The official of the CNMC will become part of the joint DG COMP/DG CNECT DMA team. DG Competition may decide to involve officials of other NCAs in the JIT as well.

**2. Purpose of the JIT**

This agreement shall cover the setting up of a JIT for the following purposes. The Commission is planning to assess notifications of gatekeeping positions and/or launch an investigation into/investigate the conduct of/discussing the implementation of obligations with gatekeepers in accordance with the DMA which are of the Commission and CNMC's mutual interest. The purpose of the JIT is to involve selected officials of the CNMC in the investigation(s)/project(s), and other Commission's workstreams concerning the application of the DMA's obligations which are of mutual interest with the CNMC, in the spirit of contributing to the efficient and effective enforcement of the DMA.

---

<sup>1</sup> OJ L 265, 12.10.2022, page 1.



### **3. Period covered by this agreement**

The parties agree that the officials of the CNMC will carry out their duties in an amount of their working time deemed appropriate by the Commission and the CNMC for the fulfilment of the purposes of the JIT as defined in paragraph 2, starting from 22/05/2024 until 31/12/2026. This period is indicative and can be interrupted and resumed according to the needs of the CNMC and the Commission at any time and can be extended by mutual consent.

### **4. Status of the CNMC officials**

The CNMC officials will be considered as falling under the "Commission visitor program", i.e. they remain employed as officials under the full responsibility of the CNMC.

The place of employment remains that of the CNMC, however, the CNMC officials will visit DG Competition's DMA team in Brussels to ensure integration in the team. For that purpose, the CNMC official should have access to all the information/documentation necessary to carry out the collaborative investigation and will participate in the meetings and trainings that DG Competition organizes for these enforcement actions, like the other members of the team.

Alternatively, the temporary assignment location can be Brussels, Belgium, where the CNMC officials will work in DG Competition's DMA team for the duration of the visit, if agreed by both the DG Competition and the CNMC.

The CNMC officials will be encoded in the Commission's relevant human resource and IT systems, receive a Commission laptop and e-mail address.

When carrying out any tasks or activities in connection with this agreement, the CNMC officials will be subject to obligations of confidentiality and liability as ECN visitors. Furthermore, particular attention should be paid to the "Code on Ethics and Integrity" and the "Security Guidance" for DG COMP Trainees and Visitors. The CNMC officials will sign a version of the Declaration "Confidentiality protocol for officials staying in DG Competition". These documents are attached to this agreement as Annexes I and II.

The CNMC officials can discuss further details about the investigation with specific CNMC colleagues, managers and board members on a need-to-know basis. These CNMC colleagues are bound to guarantee strict confidentiality of non-public information about any element of the investigations. The CNMC officials can share non-confidential information with the CNMC for learning purposes.

All costs in connection with this agreement are to be covered by the CNMC (see in particular section ;Error! No se encuentra el origen de la referencia. further below).

Should the CNMC officials be unable to carry out their duties, a replacing official may be nominated by the CNMC, subject to the common consent of both parties to this agreement.

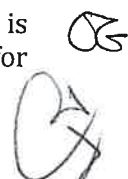
### **5. Specific arrangements related to the activities of CNMC officials part of the JIT**

#### ***5.1. Supervision***

The CNMC officials shall carry out their tasks as member of the JIT under the supervision of the team leader of the investigation and their hierarchical superiors at the Commission. The CNMC officials shall not take any instructions from their employer in relation to the investigation.

#### ***5.2. Accountability and responsibility***

The Commission is not accountable to the CNMC as to its investigations, its strategy or any other aspects of any enforcement actions of the Commission pursuant to the DMA. The Commission is the sole authority empowered to enforce the DMA and, as such, is accountable under EU Law for its investigations and enforcement actions.



As the sole enforcer of the DMA, the Commission is responsible for the organisation of the work in its investigations and enforcement actions. As part of this, the Commission is responsible for the organisation of the JIT's work, including for the CNMC officials involved.

## 6. Communication

As a point of principle, the Commission endeavours to recognise the joint effort in ensuring efficient and effective enforcement of the DMA and make the involvement of the CNMC in the investigations explicit in media appearances linked to those specific investigations.

The CNMC can communicate both internally and externally in general terms that the CNMC officials are part of the JIT without revealing any detail of the investigation.

The Commission and the CNMC will agree on a general common line with regards to timing and content of communication with the media with respect to the existence, functioning and investigative results of the JIT. The CNMC shall follow such agreement and refrain from releasing or confirming any information with regards to the JIT, the investigations covered by it or other aspects of DMA enforcement that goes beyond what has already been agreed with the Commission. The CNMC is authorized to address additional inquiries from the media and other concerned parties, provided that such responses have been previously discussed with the Commission.

## 7. Evaluation

The parties shall assess the performance of the JIT and draw lessons from it. For this purpose, a dedicated meeting will be convened to conduct this evaluation. An internally sharable, non-confidential version of the evaluation report shall be disseminated within the CNMC to facilitate organisational learning from the experience. Interim evaluation may be considered.

## 8. Specific arrangements

### 8.1. *Costs/expenditures/insurance*

All costs associated with the visit of the CNMC official at DG Competition - including the salary, the costs of statutory health and accident insurance and any other relevant costs - will be covered by **the CNMC**.

### 8.2. *Facilities (office accommodation, technical equipment)*

The CNMC official will be encoded in the Commission's relevant human resource and IT systems, receive a Commission laptop and e-mail address.

## 9. Amendments to the agreement

This agreement may be amended and renewed by mutual consent of the parties. Unless otherwise stated in this agreement, amendments can be made in any written form agreed upon by the parties.

[Signatures of all parties]



Place and date BRUSSELS 22/5/24 Place and date Brussels 22/5/2024