ASOCIACIÓN ESPAÑOLA PARA LA DEFENSA DE LA COMPETENCIA – AEDC –

CONTRIBUTION TO THE CONSULTATION ON THE REVISION OF EU ANTITRUST PROCEDURAL RULES[1]

The AEDC welcomes the consultation launched by the European Commission (EC) and its willingness to engage with all relevant stakeholders on a constructive dialogue about how proceedings in Regulation 1/2003 should be modified to ensure the effective and uniform application of EU competition rules in strict compliance of the rights and guarantees afforded to investigated undertakings.

A) IMPROVING THE EFFECTIVENESS, INCLUDING THE SPEED, OF CERTAIN ASPECTS OF THE COMMISSION'S PROCEDURES IN DIGITISED AND COMPLEX INVESTIGATIONS

i) Adapting the Commission's investigative tools to the digital world

Costs of Requests for Information (RFIs):

Responding to an RFI under Regulation 1/2003 represents a significant share (30-40%) of total costs of an investigation. Economic costs include employee hours, legal fees, economic consultants, IT providers, and project management services. In addition to costs, replying to RFIs requires substantial allocation of internal and external resources, often diverting key staff and disrupting normal operations.

Regarding timing, responding to RFIs can go from several weeks to months, depending on the complexity of the request. Timing is significantly longer when responding to RFIs based on search terms. Companies would very much welcome proactive planning management from the EC and constructive dialogue with the undertakings, in particular in case of multiple RFIs, in order to minimise overlaps and operational disruption to the extent possible. RFIs should be always guided by the necessity and proportionality principles, not only on substantial points, but also in terms of process.

Granting the EC power to issue evidence preservation orders:

[1] This contribution has been prepared on behalf of the Asociación Española para la Defensa de la Competencia (AEDC) by Belén Irissarry, Patricia Vidal, Ainhoa Veiga, Alfonso Lamadrid, Inés Falquina, Ignacio García, Borja Chastang , Rafael Piqueras, Javier Torrecilla and Yolanda Martínez.

Compliance with preservation orders would increase compliance costs and legal risks without clear additional benefits. Article 26 of the DMA already grants this power to the EC in relation to most data-intensive companies (gatekeepers). For the rest of companies, the general rule to actively cooperate with the EC, which is already subject to fines, already exists and should suffice.

In particular, this new power may improperly shift the burden of proof regarding the infringement of the duty to cooperate with the EC: failing to provide a document covered by a preservation order may risk being automatically considered a breach.

Inspections of digital business records without inspection of physical premises:

Allowing inspections of digital business records without on-site presence of the EC could raise costs and compliance risks for companies. If ultimately contemplated in the reform, the investigative boundaries of this power of inspection should be defined as clearly as possible and robust mechanisms in terms of process should be in place to ensure those boundaries are not exceeded.

- These inspections should be the exception and should be subject to the same (if not stricter) rules as physical inspections (clear object, scope and duration of the inspection, as well as companies and locations affected). The EC should justify the necessity - compared to an inspection in the physical premise of the investigated company – and the proportionality of such a measure in its authorization decision.
- The inspections should take place expeditiously and should not become in practice an RFI based on search terms.
- As digital business records may be located anywhere in the world, clear rules on how specific documents held outside the EU should be allocated to the addressee of the Decision should be set out from the beginning to fully comply with the territoriality principle.
- Clear mechanisms should be established to avoid that the inspection exceeds the scope of the investigation order (for instance, cooperation with the company to determine the units/files to be investigated)

Power to conduct compulsory interviews:

This possibility is welcomed. Granting the EC compulsory powers under Regulation 1/2003 to interview a broad range of individuals and representatives in possession of relevant information would improve the fact-finding process, allow for more targeted subsequent information requests, and potentially shorten investigation timelines, reducing stakeholder costs. This power would also be aligned with those under the DMA (article 22) and the ECN Directive (article 9), which has already been incorporated into in article 39.bis) of the Spanish Competition Law).

This power would be particularly helpful for interviewing natural persons who are no longer employees of the investigated company. The investigated company should also be able to request the EC to order these natural persons to attend the interview.

Strict safeguards should be in place to protect the rights of defence, in particular it is essential to guarantee full respect of the prohibition of self-incrimination:

- The interviewee should always be accompanied by a lawyer.
- Interviews (always recorded) need to be included in the file as documentary evidence
- Strict respect for the scope and purpose of the interview

Introducing fines for failing to appear, refusing to answer questions, or providing false or misleading information would increase the effectiveness of investigations. However, companies should not be held liable for actions of individuals no longer in an employment relationship with the investigated company or for actions unilaterally taken by the employee which contravene the instructions received from the company to cooperate with the Commission and not provide misleading information.

ii) Improving decision-making procedures to allow for effective (and faster) enforcement

Suggestions to improve interim measures' (IMs) effectiveness:

a. **Restore the right to request IMs in Complaints** (i.e., departure from current interpretation of Art. 8 of Regulation 1/2003 & new wording for future regulation). Some members of the association consider that the right of the complainant to request IMs should be restored. Current EC interpretation in its Notice is in direct tension with the foundational reasoning articulated by the CJEU in *Camera Care*. *Camera Care* established that the European Commission's ability to adopt decisions that effectively terminate a breach of competition law cannot be procedurally constrained where substantive circumstances justify intervention. The logic articulated in *Camera Care* affirms that the Commission must retain the flexibility to act in order to preserve the integrity and utility of its enforcement powers. *A*pplying this rationale to the Commission's current interpretation, as expressed in its 2004 Notice, the interpretation that Article 8 "makes it clear that interim measures cannot be applied for by complainants" is inconsistent with the broader objective of *Camera Care*. Other members consider that complainants have alternative remedies to ensure their rights and that granting complainants the right to request IMs may ultimately further complicate the process, creating additional burdens to the EC.

b. **Amendments to the Commission's Notice Form.** Linked with the former, currently, the form does not provide any structured pathway for complainants to submit relevant information specifically tailored to the Commission's evaluation of interim measures under Article 8 of Regulation 1/2003. To address this gap, it is proposed that a new Section V – Request for Interim Measures be added to the Form. This new section would invite complainants to submit both legal reasoning and factual evidence relevant to the Commission's determination of whether interim measures are warranted

c. **Adoption of a DG COMP Red Team on IMs.** The mandate of the Red Team would follow a dual-track logic. Where the investigative services intend to propose interim measures, the Red Team would act as an internal safeguard, stress-testing the legal, economic, and procedural robustness of the draft decision. Where the case team opts not to pursue interim measures, the Red Team would operate as a structured challenge function, questioning whether signs of urgency, irreparable harm, or a prima facie infringement have been appropriately assessed.

d. **Adoption of clear enforcement priorities** (via Commission Notice).

e. **Adoption of iuris tantum presumption for claiming damages when IMs are annulled**. The threshold for non-contractual liability of the EU is extremely high, therefore it is worth considering whether responsibility for unwarranted harm should, in certain cases, shift from the Commission to the complainant who triggered the precautionary procedure. It would also help neutralise concerns that easier access to interim measures might invite abusive litigation tactics or vexatious claims. The wording could read as follows: *"It shall be presumed that interim measures adopted at the request of a complainant, but subsequently annulled or where no infringement is found in the main proceedings, cause harm to the alleged infringer. The complainant shall have the right to rebut this presumption"*.

f. **Substantive legal test easement**: Some members of the AEDC advocate for the introduction of a quantitative presumption of urgency based on financial impact, i.e., "*where the monetary impact in a relevant financial metric exceeds 30%"*. Relevant financial metrics could include, among others, overall annual revenue; revenue from a specific product line, channel, or customer segment; capital expenditure or operational expenditure; or R&D and technology investment levels. Other members of the association disagree and consider that the legal substantive test should not be relaxed as it currently reflects the interpretation of the EU Courts.

g. **Establishment of a structured procedural framework for IMs** –similar to those already introduced by some Member States (e.g., Belgium and Spain). Mandatory deadlines for: (a) acknowledgement of receipt; (b) Initial RFI; (c) SO, (d) Hearing; (e) Final Decision.

<u>iii) Improving access to file procedures that are currently resource-intensive and time-consuming</u>

The AEDC recognises the advisability of adopting measures that result in greater efficiency in the procedures for accessing the file, provided that these measures strike an appropriate balance between the right to protection of confidential information of companies and the rights of defence of the companies under investigation.[2]

A priori, and although Option 1 is less restrictive than Option 2, both options put forward in the public consultation would lead to a disproportionate restriction of the right of companies to access the file and could contravene the principle of equality of arms.

Option 1 - A system whereby (a) the addressee or addressees of the statement of objections have access to non-confidential versions of all documents mentioned in the statement of objections; and (b) a limited number of external advisers to the addressees of the statement of objections have access to all accessible documents in the file on a confidential basis

Option 1 would limit access to the file to *'a limited number of external advisers on condition of* confidentiality' and would mean that the undertakings under investigation would only have direct access, without intermediaries, to documents which the Commission considers to be incriminating, even when this restriction is not justified on grounds of confidentiality (i.e. even when the documents in question do not contain confidential information).

In the opinion of the AEDC, it is up to the companies under investigation, and not the Commission, to determine which documents may be useful for their defence,[3] and it is logical to assume that documents not cited in the statement of objections are more likely to be exculpatory in nature. In our members' experience, moreover, in many cases the exculpatory nature of a particular document may not be immediately apparent to external advisers, but it

[2] See judgment of 25 October 2023, Bulgarian Energy Holding v Commission, T-136/19, EU:T:2023:669, paragraph 1207.

[3] Judgment of 15 June 2022, Qualcomm v Commission, T-235/18, EU:T:2022:358, paragraphs 199 and 202-226.

may be apparent to company staff who are more familiar with the reality of the business and markets in question.

On the other hand, our members' experience is that limiting full access to the file to a limited group of external advisers generally requires the latter to draft a non-confidential report on the documents not accessible to the company under investigation and which, after approval by the Commission, sets the limits for any further discussion between the external advisers and their client regarding the content of the file. This entire procedure, which would necessarily take place after the adoption of the statement of objections, would likely require longer response times and could lead to a greater number of disputes over confidentiality, which in turn could compromise the efficiencies that the Commission is seeking to achieve with its proposal.

Finally, the AEDC considers that it would not be appropriate to limit the number of advisers (internal or external) with access to the file, as there may be circumstances that require the involvement of a larger number of advisers, particularly as they would all be subject to strict confidentiality obligations.

Option 2 - A system whereby access is granted by providing all accessible documents in the file to a limited number of external advisers to the addressee or addressees of the statement of objections under conditions of confidentiality.

Like Option 1, Option 2 envisaged by the Commission would involve a significant restriction on the right of access to the file of the company under investigation, which would not result from a balancing of interests between the right to protection of confidential information of companies, but would also affect non-confidential documents and non-confidential versions of documents already in the file.

As also noted in relation to Option 1, in the experience of AEDC members, it is very common for competition files to include documents whose relevance, or even exculpatory nature, can be more easily identified by in-house lawyers or other staff of the company under investigation. In our opinion, any risk relating to the improper flow of confidential information can be addressed by imposing confidentiality obligations. Furthermore, it is the company, and not its external lawyers (who may also change in the course of a given proceeding), that should enjoy the protection of the rights of defence and that is entitled to access the file. At a minimum, we believe that the system should incorporate safeguards allowing lawyers or internal staff or company personnel to access certain documents selected by external advisers.

Finally, we consider that, in general, a system of "confidentiality rings" would be much less restrictive of the rights of defence of the companies under investigation than a system based on access to the file through "data rooms" (originally designed exclusively for the analysis of sensitive economic information).

Notwithstanding all the above, out of the two options proposed by the Commission, Option 1, consisting of the guarantee of basic access to the documents mentioned in the Statement of Objections while creating a mandatory confidentiality ring for access to the rest of the file, would strike a better balance between efficiency, rights of defence, and confidentiality. This option works based on the assumption held in Case 107/82 A*EG-Telefunken v Commission*, that those documents not mentioned in the Statement of Objections are not relevant for the purpose of establishing an infringement. Accordingly, the right of defence would be preserved by granting access to both confidential and non-confidential versions (as determined case by case) of the documents cited in the Statement of Objections, while external counsel of the undertakings would be granted access under confidentiality rings to the remainder of the case file. Option 1 is likely to significantly reduce (only about 10% of the file documents are mentioned in the Statement of Objections) the expenses and allocated work hours for the preparation of non-confidential versions of the relevant documents of the file. However, resources saved by reducing the number of non-confidential versions to only those documents cited in the Statement of Objections may need to be reallocated to legal analysis and factual background reconstruction work.

In light of the likely concerns of undertakings regarding a shift to a system based on confidentiality rings, the Commission should have a general power to investigate and sanction undertakings or their advisors in case they breach confidentiality obligations in the context of Commission investigations. The matter of the proportional criteria for the sanctions should be further discussed and remain cohesive with other branches of the Commission's powers.

iv) Simplifying the procedure for the participation of complainants and third parties in competition investigations

Formal complaints and third-party intervention require meeting high standards of proof and legitimate interest. They need to be carefully weighed against the potential infringer's rights of defence and due process and also limited administrative resources from the Commission. Against this backdrop, informal complaints may be an interesting path to bring potentially anticompetitive practices to the attention of the European Commission, especially in cases where the complainant fears commercial retaliation, and thus wishes to avoid submitting a formal complaint or disagreements around confidentiality claims.

However, while informal complaints allow a degree of flexibility, they are also associated to legal uncertainty as regards the investigation of the complaint, its timeframe and the ways of guaranteeing the continued participation of the complainant / third-party intervener. In order to limit this uncertainty, informal complainants could receive a reasoned informal answer from the European Commission within a reasonable time-limit (e.g. maximum one month) on whether the information provided is enough to justify further action from the European Commission.

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In practice, the right to a rejection decision in the case of formal complaints may be substituted by a significant delay in the response (which limits the utility of the complaint) or other disincentives, which complainants tend to accept given the Commission's discretionary powers. Therefore, maintaining the right to a rejection decision within a reasonable timeframe, seems a reasonable guarantee of due process. While few complaints are formally rejected and even fewer are appealed, the existence of this right acts as an important safeguard on the Commission's discretion and ensures transparency.

B) POLICY OPTIONS ADDRESSING RISKS OF FRAGMENTED COMPETITION LAW ENFORCEMENT IN RELATION TO STRICTER NATIONAL LAWS ON UNILATERAL CONDUCT

At the public consultation launched by the Commission on 30 June 2022 and concluded with the SWD(2024), in the contribution to it, the AEDC stated that:

> "*The objective of Regulation 1/2003 should also be to eliminate differing results of the application of national and EU law in situations where Article 102 TFEU may apply. There is no longer any justification for Member States adopting and applying in their territory stricter national laws which prohibit or sanction unilateral conduct.*"

The majority of the members of the working group who have participated in this contribution continues subscribing to the above and support the discontinuation of the partial convergence rule whereby Member States can adopt and apply stricter national laws on unilateral conduct (Option 2). In their view:

- the current system, in which Member States can adopt and apply stricter national laws on unilateral conduct, undermines the benefits of the otherwise harmonised system that applies across the EU;
- the provision in Article 3(2) second sentence of Regulation 1/2003 negatively affects the uniform application of EU competition law as it leads to a patchwork of national rules, to regulatory barriers between EU Member States and to increased costs and other inefficiencies for companies operating across the EU;
- a proliferation of stricter national rules with different legal requirements can lead to diverging outcomes across the internal market and legal uncertainty for undertakings operating cross-border. It also encourages forum shopping;
- by contrast, a fully harmonized approach would (i) reduce complexity (as sought by the Draghi Report); (ii) procure or facilitate the coherent application of Article 102 TFEU across the EU; (iii) reduce legal uncertainty; (iv) reduce administrative and compliance burdens for business, and (v) contributes to a level playing field throughout the EU internal market.

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However, other minority members of the working group see reasons to maintain Article 3(2), second sentence of Regulation 1/2003 and to reinforce the existing coordination and information exchange mechanisms (Option 1). These members of the AEDC consider that:

- In view of the application of Article 102 TFEU during these 20 years, there are reasons to question whether it is desirable that Article 102 TFEU is transformed into a maximum standard (Option 2) where there might be undesirable gaps (unilateral conduct below the threshold of dominance could be left unchecked). At EU level, gaps have long been recognized at the time discussions started on a "New Competition Tool". Over the last 20 years, we have observed how Article 102 TFEU has set higher thresholds for intervention that have triggered the adoption of "new competition tools" in some Member States.
- Also, allowing NCAs and courts to apply stricter laws on unilateral conduct makes sense when enforcement has to be tailored to specific context.
- Actually, it has not been until this public consultation that the Commission has raised its concerns on the partial convergence. The concerns that have led the Commission to decry the loss of a level playing field have to do with the increased emergence of stricter national laws or other competition instruments at national level that, it is alleged, have led to inconsistent application of these rules in relation to EU competition law and to legal uncertainty.
- Initiatives at Member State level, on the basis of factual developments and economic insights into new theories of harm, have considered the need for more than merely Articles 101 and 102 TFUE enforcement (or under enforcement). While there is uncertainty on the best approach to these new developments, full convergence might be premature.
- Because of the partial convergence rule, it is understood that Article 102 TFEU constitutes the minimum standard for the examination of unilateral conduct by NCAs and courts. This means that, for instance, the prohibition of abuse of economic dependence in Article 16 of the Spanish Unfair Competition Law 3/1991[4] or, generally, the concept of relative market power for measuring power imbalances between companies that also exist in other Member States (e.g., Germany, Austria, France, Italy, Portugal or Greece), are compatible with EU competition law.[5]
- More generally, it is understood that under Article 3(2), second sentence of Regulation 1/2003, there is scope both for prohibiting abusive practices by dominant undertakings that are not covered by Article 102 TFEU and for unilateral conduct by undertakings

[4] Pursuant to Article 16(2) of the Unfair Competition Law 3/1991, it is considered unfair for a Company to exploit the economic dependence in which its customers or suppliers may find themselves if they have not equivalent alternative. Such a situation is presumed to exist if a supplier is obliged to grant its customers, in addition to the usual discounts or conditions, regular additional advantages that are not granted to comparable customers.

[5] Unlike other jurisdictions, particularly Germany, Spain has no lower threshold for market dominance neither provisions applicable to companies with overriding cross-market significance for Competition.

that are not dominant. In that understanding, it is reasonable to see how stricter national regulations may pose a serious challenge to companies operating across borders and for the integration of the internal market in general.

- Notwithstanding the above, at this stage, the implementation of Option 2 could be challenging because of the unclear scope of Article 3(2), second sentence of Regulation 1/2003 due to a lack of case law and the lack of overview of the applicable stricter national rules for 20 years.[6]
- For instance, in Spain the situation would be as follows:
  - In Spain, the allegedly stricter national provision within the meaning of Article 3(2), sentence 2, of Regulation 1/2003, is Article 3 of the Spanish Competition Act.[7]
  - Article 3 of the Spanish Competition Act empowers the Spanish NCA (the CNMC) as well as the public enforcers of the Autonomous Communities to enforce the Spanish Unfair Competition Law 3/1991, which prohibits undertakings from distorting competition through unfair acts that affect public interest. So far, Article 3 of the Spanish Competition Act has not been used frequently although, recently and in the digital sector, the CNMC has been conducting investigations of certain unilateral practices under this provision.[8]
- one could question whether under full convergence, a Spanish court should no longer apply Article 16(2) (abuse of economic dependence) of the Spanish Unfair Competition Law 3/1991 if it is found that the relevant unilateral conduct might have cross-border effects. This question might well arise as regards other allegedly "stricter" laws that are

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[6] Although the primarily intended field of application of the unilateral conduct exception was that of economic dependency cases (see Recital 8 of Regulation 1/2003), legal uncertainty has remained for 20 years due to the lack of a uniform system for recording the existing stricter national laws. See SWD 2024, Annex V. Stakeholder Consultation – Synopsis Report, pp. 148, 236.

[7] See footnote 385 to the Commission Staff Working Document Evaluation of Regulations 1/2003 and 773/2004, SWD (2024) 217 final of September 5, 2024. p. 235 (the SWD 2024). See the final report of the support study where, as regards the information collected by NCAs on national rules falling within Articles 3(2) and 3(3) of Regulation 1/2003, the Spanish NCA (i.e., the Comisión Nacional de los Mercados y la Competencia or CNMC) reported Article 3 of the Spanish Competition Act (Law 15/2007, de 3 de julio, de Defensa de la Competencia – "*General provision on unfair competitive conduct, affecting the public interest (including the abuse of economic dependence)-no specific market targeted*) (par. 79 of the support study). The CNMC did not report any national rule to the effects of Article 3(3) of Regulation 1/2003.

[8] See, in particular, the case "Booking.com" (S/0005/21), which has resulted in an infringement decision under Article 102 TFEU and, its counterpart, Article 2 of the Spanish Competition Act. Although the CNMC's infringement decision finally excluded the application of Article 3, certain Booking's conditions on hotels and commercial policies were also investigated under this provision as unfair competition acts (alleged abuses of hotels' economic dependence). Also, it is worth mentioning the ongoing investigation in the case "Google related rights" (S/0013/22), where the CNMC is looking under Article 102 TFEU/Article 2 Spanish Competition Act as well as under Article 3 of the Spanish Competition Act a series of practices consisting, on the one hand, of the imposition of unfair commercial conditions on publishers of press publications and news agencies established in Spain for the exploitation of their copyrighted content and, on the other hand, the possible exploitation of the situation of economic dependence on Google suffered by press publishers and news agencies by allegedly infringing certain rights protected by the Spanish IP Law.

not clear cut "competition tools". Furthermore, replacing partial convergence by full convergence could be more complex than it would appear considering that under Article 3(3) of Regulation 1/2003 functional equivalents of competition rules that pursue "predominantly a different purpose" would still be there.Some members of the working group favoring Option 2 believe the way to avoid inadvertently subjecting unfair competition rules (like the Spanish Law 3/1991), which are primarily used in private lawsuits, to the full scope of convergence is to expressly define "competition rules" in this context. This definition should be limited to laws that aim to protect market structure and are subject to public enforcement and exclude private unfair competition rules from the full convergence rule. This would mean that a company's unilateral conduct or actions that are not caught by Article 102 TFEU could still be challenged in civil court via the Unfair Competition Act, although this unilateral conduct or actions could not be prosecuted neither under Article 2 of the Spanish competition Act (the equivalent to Article 102 TFEU) nor under Article 3 of the Spanish Competition Act (where such conduct may result in the exercise of some degree of market power but still would not constitute and infringement under Article 102 TFUE).

In any event, should the Commission decide to keep the actual system (i.e. Option 1), there is **unanimity at the AEDC that reinforced cooperation between the Commission and the NCAs is desirable**:

- Eventually, Option 1 could be further elaborated by reformulating Article 11(6) of Regulation 1/2003 and pre-empt in certain cases NCAs' interventions. Thus, it could be considered that, when the EU Commission had decided to initiate proceedings under Article 102 TFEU as regards a given unilateral conduct or practice with cross-border effects, NCAs could no longer act, either under the same legal basis against the same unilateral practices or under stricter laws within the sense of Article 3(2), second sentence of Regulation 1/2003.
- The NCAs should have to notify the Commission and other NCAs the initiation of formal investigations into unilateral conduct under a "recorded" stricter national law that involve companies which practices have cross-border effects.
- Additional or new criteria for case allocation when confronting these cases, such as whether an NCA is the best placed to investigate conduct that primarily affects its domestic market, even if the legal basis is a stricter national law.
- The information exchange mechanisms between NCAs and the Commission could be adapted to ensure information can be shared for cases based on stricter national laws. To these effects, as long as the relevant conduct or practices fall within the ambit of competition law and has an effect on trade between Member States, the legal basis for information exchange would have to be widened to cover investigations under stricter national laws.
- Additional mechanisms supported by the members of the working group who primarily support Option 2 could be the following: (a) Member States would be required to notify

the Commission for approval of any stricter national laws on unilateral conduct; and (b) NCAs would be required to notify the Commission for approval, draft decisions applying such stricter national rules (for instance, along the lines of Article 11(4) of Regulation 1/2003). This would be similar to the procedure under the Merger Regulation (Regulation 139/2004, Article 21(4)), pursuant to which Member States must communicate to the Commission public interests they wish to protect that fall outside the scope of that Regulation, and the Commission must assess their compatibility with the general principles and other provisions of EU Law before they can be protected.

On a side note, this may also be considered for actions taken at a national level by the competition authorities concerning the DMA or stricter rules than the DMA but which are aimed at the same purpose and apply to the same companies as the DMA (gatekeepers). A similar system of consultations could be developed).

C) Other suggestions

Members of the AEDC who have participated in this public consultation consider that the Commission can implement further measures to ensure an effective application of Articles 101 & 102 TFEU. In particular we refer to:

a) The Expansion of the cartel settlement procedure to abuse of dominance cases and also for other non-cartel cases under Article 101 TFEU, primarily for vertical cases
b) Power to impose remedies on the parties (structural remedies should be the last resort);
c) Improve the cooperation within the ECN concerning similar parallel cases and in the determination of priorities
d) Written observations by the Commission in NCA competition proceedings under Article 11(4) of Regulation 1/2003 should be made available to the investigated parties.