



29 September 2025

REVISION OF EU ANTITRUST PROCEDURAL RULES

Commission Consultation

Introduction

Competition is crucial for business; it provides the best incentive for efficiency, encourages innovation, and guarantees consumers the best choice. BusinessEurope therefore supported the Commission assessing the performance of the EU antitrust enforcement framework with a view to revising the procedural rules. Consistent, harmonised and effective application of EU antitrust rules in accordance with relevant fundamental rights and procedural safeguards is essential for the integrity of the single market; it provides protection and legal certainty.

Improving the effectiveness of antitrust proceedings

As mentioned by the Commission, since the adoption of the Regulations, society has undergone significant changes which have not only impacted commercial relations but also led to an increase of digital data which affects the Commission's investigations. We recognise that the proposals made in the consultation document are valid options to consider, however, we are worried that new powers of the Commission would lead to additional uncertainties for business. The evolution of competition law at national and EU level has led to increased uncertainty for businesses, with a more fragmented landscape across Member States, with different approaches and enforcement practices, such as the use of call-in powers. The existing enforcement framework gives the Commission already extensive powers to investigate competition problems and impose broad remedies to sanction and deter infringements. Also, the Commission as well as national authorities are entrusted with effective enforcement powers in the field of digital markets. In our view, this framework works generally well and there are no competition problems or gaps that could justify altering the existing rules or Commission powers and extend the already powerful enforcement tools which the Commission has at its disposal, such as the use of interim measures, inspections, etc. In addition, the ECN+ Directive has also significantly reinforced enforcement and investigation powers of national competition authorities.

The procedural framework for competition law enforcement should be proportionate and focus on what is necessary for effective enforcement without imposing unnecessary burdens for companies and other market participants. It is equally important that the rights of defence are respected. The Commission and national competition authorities should respect appropriate safeguards for the exercise of their powers in accordance with the EU Charter of Fundamental Rights and with general principles of EU law, at least as far as rights of defence and effective right of recourse



are concerned. The validity of procedural rights which are derived from the principles of the European Convention of Human Rights and the case law of the European Court of Human Rights should be confirmed. Such fundamental procedural rights include the protection of confidential documents, reasonable time-limits to answer requests for information, as well as privilege-related rights and the right to effective judicial control. In this context, BusinessEurope cannot support the introduction of an independent and self-standing power for the Commission to adopt decisions ordering the preservation of information. Having said this, we acknowledge the legitimate digital challenges the Commission is facing (e.g. evidence collection, cloud data, communication channels) but we call for legally secure access mechanisms with clear guarantees regarding confidentiality and territorial jurisdiction.

As regards access to the file, BusinessEurope is worried about granting access to the confidential file especially if, during an inspection, forensic images are taken of information that is not necessary for the inspection as such, but which can include highly sensitive information from a business point of view (e.g. R&D, patent applications, etc.). In addition, the suggested options will undoubtedly generate access to a significant amount of personal information beyond what is necessary for the effect investigation of competition law breaches. However, BusinessEurope can support granting access to the non-confidential file at an earlier stage in the proceedings, so before the statement of objections is notified.

In relation to the summoning of persons and asking them questions, it is important that this does not lead to an infringement of the privilege against self-incrimination. BusinessEurope also believes that competition authorities should be denied accessing and using legal advice communications exchanged with qualified in-house counsel (e.g. registered with a bar and/or subject to ethical standards), which should be protected by Legal Professional Privilege. Indeed, the self-assessment approach introduced with Regulation 1/2003 made in-house counsels essential to ensure effective enforcement of EU competition law rules. Without access to the expertise of inhouse counsel, with their intimate knowledge of the large and complex organisations they represent (which most external counsels often do not have) the current situation denies those organisations access to effective legal representation. Furthermore, in denying company representatives the opportunity to consult in a protected environment with trusted counsel is to the detriment of the Commission's objectives to have organisations self-report. Correspondingly, lack of in-house legal privilege often discourages search and provision of written internal advices clearly flagging legal implications of business decisions and stimulates a culture of hiding, thus jeopardizing sound antitrust compliance. To assure an effective competition law enforcement in the internal market, it is therefore crucial to ensure that the undiminished Legal Professional Privilege is recognised to all qualified in-house counsel in the Member States. In this context, we call for legislative clarification at EU level – with reference to relevant CJEU's case law (Akzo Nobel).

To permit a faster enforcement, the Commission could, in addition to using interim measures and the use of commitment proceedings, consider targeted measures to speed up the process and create more efficient reviews (e.g. to set deadlines for procedures, such as standardised investigation deadlines with "stop-the-clock" mechanisms, as already established in merger control). The problem with current slow enforcement actions is indeed that there is no legal deadline for the Commission to complete antitrust inquiries into anticompetitive conduct and this creates legal and economic uncertainty. For instance, antitrust law could provide that the decision



opening an investigation must set out the date by which the proceedings have to be concluded as is the case in some Member States, such as Italy (Article 6(3) of D.P.R. 217/1998). This date could be extended if duly reasoned. The Commission could consider adopting such a provision at EU level, in line with article 6 ECHR and Article 47 of the Charter, which requires the European Commission (and the NCAs) to conclude their investigation within a reasonable timeframe.

As to the envisaged possibility of simplifying the proceedings for the application of interim measures, BusinessEurope could only support it insofar as this does not go to the detriment of the right of defence of the investigated companies.

Uniform application and legal certainty

BusinessEurope has always been worried about divergent decision-making at national level and therefore strongly supports the work of the European Competition Network (ECN) to strengthen the coherent application of EU antitrust rules by all enforcers. In this context, we support adapting the existing coordination and information exchange mechanisms between competition authorities so that these cover the application of stricter national laws on unilateral conduct to ensure the coherent enforcement of available competition law instruments. For example, there could be a more structured monitoring mechanism (e.g. peer reviews within the ECN) to improve coherence in enforcement practice. Uniform application can also be encouraged by means of increased transparency so that there is updated information about national decisions in a solid overall knowledge base where relevant legal documentation can be accessed in one place.

It is very important that the Commission sets a clear standard for enforcement as regards certain practices at national level to avoid fragmentation. EU and national decision practice needs to be aligned to achieve the required legal certainty. Divergent approaches in Member States and duplications of procedure should be avoided, and we acknowledge that if a national authority permits, or even encourages, a certain kind of cooperation between companies, it does not necessarily mean that it is permissible under Article 101 TFEU. Having said that, the Commission and national authorities should not only consider the fact that the undertakings concerned have followed the EU or national guidance in good faith as a mitigating factor when considering a sanction, as set out in the relevant guidelines, but also consider not to impose a sanction and to clearly communicate to the undertakings concerned that this would be the outcome, to increase certainty. This will provide an extra level of comfort.

As mentioned, since the adoption of the Regulations, society has undergone significant changes which have impacted commercial relations and will continue to have substantial impact in the coming years. Businesses are rapidly adapting to technological innovations and to changing markets and consumer trends whilst at the same time national competition authorities are also actively enforcing competition rules. A self-assessment on the question of whether a particular form of cooperation between competitors is admissible is increasingly complex in such a dynamic and multifaceted environment and the risk of harmful sanctions is real also since decisions of competition authorities have binding effect for the purpose of damages actions. This requires flexibility in the organisation of both horizontal and vertical relationships, and it is important that competition authorities offer the necessary guidance that reflects these developments and shields businesses from harm. There is a real risk that companies will refrain from cooperating, for example in cases where enhanced



coordination is useful, if they have undue fear that they could be infringing (national) competition rules.

To avoid such legal uncertainty – and potential underinvestment – the Commission should take a pragmatic approach to business' needs. To stay ahead with the dynamic reality, relevant guidelines and notices should be continuously amended or supplemented when authorities' practices and case law becomes a source of legal uncertainty. Likewise, BusinessEurope welcomes the increased flexibility as regards the provision of informal guidance to businesses in line with recital 38 of Regulation 1/2003 and the treatment of novel legal issues. Ex ante guidance by competition authorities (preferably in close coordination with the Commission and other national competition authorities to ensure consistency throughout the EU) is a good way to steer companies or markets at an early stage. Such authorities can thus indicate to companies at an early stage where bottlenecks for fair competition may arise. To this end, it would be good for competition authorities (i) to develop the capacity and willingness to provide guidance on market developments at an early stage and (ii) to investigate the possibility for supervisors to issue case-by-case guidance letters (via a much more informal and faster route than via an infringement procedure) comparable to how this sometimes happens in the form of 'informal opinion' or even 'comfort letters'.

Lastly, the EEA/EFTA States have decentralized public enforcement of EEA competition law in practice in the EFTA-pillar by implementing the relevant parts of Regulation 1/2003 into Protocol 4 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (SCA). However, because of the Commission's refusal to accept decentralised enforcement as a matter of EEA law, neither the competition authorities of the EEA/EFTA States nor the EFTA Surveillance Authority are treated on an equal footing with the authorities of EU Member States in the European Competition Network. Accordingly, the unilaterally established decentralized enforcement of Articles 53 and 54 EEA in the EFTA-pillar is impeded by the lack of power of the competition authorities of the EFTA States to request their colleagues in the EU to carry out inspections on their behalf, as well as their lack of access to confidential information already held by authorities of most of the EU Member States, and vice versa. BusinessEurope urges the Commission to enable full and symmetrical decentralization of EEA competition law throughout the EEA and full participation of the national competition authorities of the EEA/EFTA States and ESA in an "EEA-wide" European Competition Network. The lack of "cross-pillar" effect will impede the uniform enforcement of the competition rules in the EEA and thereby the level playing field in the internal market.

* * *