

Report by the Economic Advisory Group for Competition Policy (“EAGCP”)

on

“An economic approach to Article 82”

Explanatory note

With a view to give better guidance, DG Competition presently reviews its policy on the abuse of dominant position under Article 82. In this context, the Chief Economist of DG Competition has commissioned a report from the EAGCP, which is a group of distinguished academic economist advising DG COMP and the Commissioner for Competition. The anti-trust sub-group of the EAGCP has now submitted its opinion on **“an economic approach to Article 82”**.

The report has been produced independently from DG COMP’s internal review process and it does not present DG COMP’s position. The report argues in favour of an economics-based approach to Article 82, in a way similar to the reform of Article 81 and merger control. It supports an effects-based rather than a form-based approach to competition policy. Such an approach focuses on the presence of anti-competitive effects that harm consumers, and is based on the examination of each specific case, based on sound economics and grounded on facts. After highlighting an economic approach to different types of competitive harm, the report discusses how such an approach can be put to work in Article 82 cases. As several alternative practices e.g., refusal to deal, exclusive dealing, prohibitively high access prices for downstream rivals, can often serve the same anticompetitive purpose, it is argued that a competition authority’s investigation should be led by the question what is the nature of the competitive harm involved in that case? The report finally analyses individual issues as price discrimination, rebates, tying and bundling, refusal to deal, exclusive dealing and predation.