Summary of the contributions of National Competition Authorities to the evaluation of the R&D and the Specialisation Block Exemption Regulations and the Commission Guidelines on Horizontal Cooperation Agreements

This document should be regarded solely as a summary of the contributions made by National Competition Authorities. It cannot, in any circumstances, be regarded as the official position of the European Commission or its services and therefore does not bind the Commission.

This document only provides a factual summary. This summary does not prejudge the findings of the Staff Working Document to be published at the end of the evaluation phase.

The European Commission ('the Commission') is currently evaluating the EU competition rules on horizontal cooperation agreements. The competition rules on horizontal cooperation agreements that are covered by the evaluation are Commission Regulations (EU) No 1217/2010 (Research & Development Block Exemption Regulation - 'R&D BER') and 1218/2010 (Specialisation Block Exemption Regulation - 'Specialisation BER'), together referred to as the 'Horizontal block exemption regulations' (or 'HBERs'); and the Commission Guidelines on horizontal cooperation agreements ('HGL'). The HBERs will expire on 31 December 2022.

In this context, the Commission asked the National Competition Authorities ('NCAs') to share their opinion of and experience with applying the HBERs and the HGL. NCAs are bound by the HBERs when assessing R&D and specialisation agreements. In contrast, the HGL are non-binding for the NCAs but taken into account by all of them. The NCAs were asked to fill in two different surveys: one about their opinion regarding the three instruments and another one on each of their cases that concerned horizontal cooperation.

The Commission received 29 contributions: the NCAs of all 27 Member States together with the NCAs of Norway and the United Kingdom answered the general survey. In addition, 19 of the 29 authorities also filled in information regarding their cases.

Overall, the NCAs consider that the Commission should maintain the three instruments, while using the review to clarify and adjust the current rules, notably in light of market developments over the last decade.

1. NCAs´ experience with horizontal cooperation

10 NCAs reported that they have not had any cases concerning horizontal cooperation. The remaining 19 NCA had varying experience: some only had a handful of cases while one NCA had as many as 41 cases since 1 January 2011. Figure 1 below illustrates the number of cases concerning horizontal cooperation the NCAs reported on.

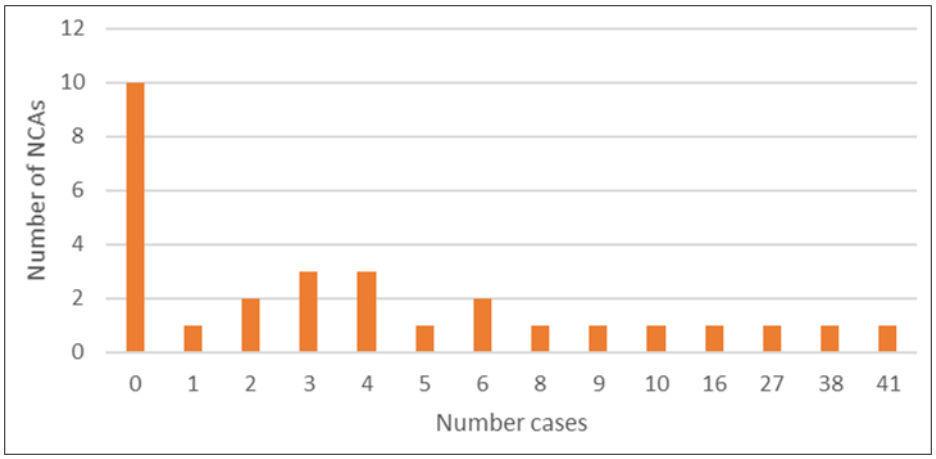

Figure 1. NCAs' case experience

The Commission asked the NCAs explicitly to ignore cartel cases for this question. The Commission also asked the NCAs whether they were aware of cases involving horizontal cooperation that were dealt with by other authorities or courts, i.e. for instance in civil matters. Only one NCA reported such a case.

2. Effectiveness (Have the objectives of the current HBERs and HGL been met?)

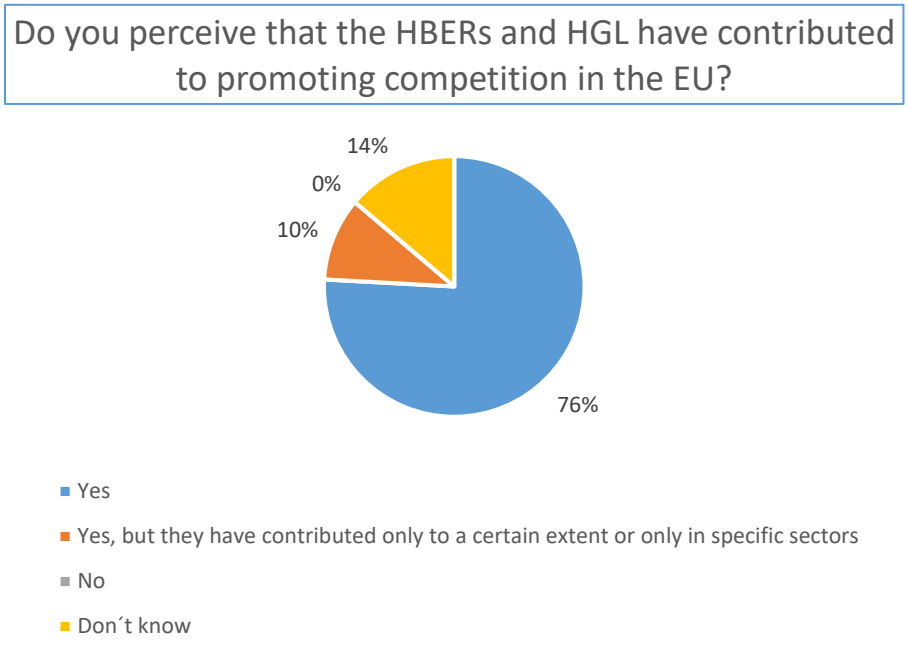

Figure 2 Effectiveness of the HBERs and HGL

Figure 2 illustrates the opinion of the NCAs with regard to the effectiveness of the HBERs and HGL. 22 NCAs considered that the HBERs and the HGL have contributed to promoting competition in the EU. 3 NCAs indicated that they partly contributed and 4 NCAs replied that they did not know. When asked to explain their reply, 16 NCAs indicated specifically that the HGL contributed to promote undertakings' compliance with the competition rules when entering into horizontal cooperation agreements. 4 NCAs indicated that the HGL helped to reduce the risk for divergent application of

Article 101 of the Treaty on the Functioning of the European Union ("TFEU") in the individual Member States.

As is indicated in the HGL, horizontal cooperation agreements can lead to substantial economic benefits like cost savings, increasing investments, pooling of know-how, enhanced product quality and variety, and launching innovation faster. One NCA mentioned that the HGL, and in particular the section dedicated to exchange of information, helped to distinguish between horizontal agreements as either "by object" or "by effect" restrictions of competition. Another NCA considered that the HGL offers insufficient legal certainty regarding the assessment as "by object" or "by effect" infringements and the factors that should be taken into account when analysing the legal and economic context of horizontal cooperation agreements.

An NCA indicated that the general analytical framework provided by the HGL is very useful when evaluating the benefits and competitive concerns of horizontal cooperation agreements and other arrangements. Without the HGL, the assessment of horizontal cooperation agreements would be much more burdensome. Another NCA noted that, in the absence of the HBERs and HGL, undertakings would have difficulty distinguishing horizontal cooperation agreements from cartels and assessing such agreements under Article 101 TFEU. This would make such agreements excessively risky and unlikely to materialise despite the potential benefits for consumers that they may bring.

One NCA mentioned that the HBERs and HGL were most relevant for purchasing and commercialisation agreements and in the telecommunications, services and intellectual property rights sector. Another NCA explained that the HGL might contribute to promoting competition by clarifying that smaller merchants can - under certain circumstances - make use of economies of scale by establishing purchasing associations. This legal certainty may increase the merchants' readiness to cooperate and build a counterbalance to the potential market power of bigger companies.

One NCA commented that the HBERs and the HGL are useful tools that have indeed contributed to promoting competition in the EU, yet their effect is by nature relatively limited in scope. They are meant to complement other available tools and guidelines that pursue the same high-level objective of fostering competition in the EU.

a. The R&D BER and Section 3 of the HGL on research and development agreements

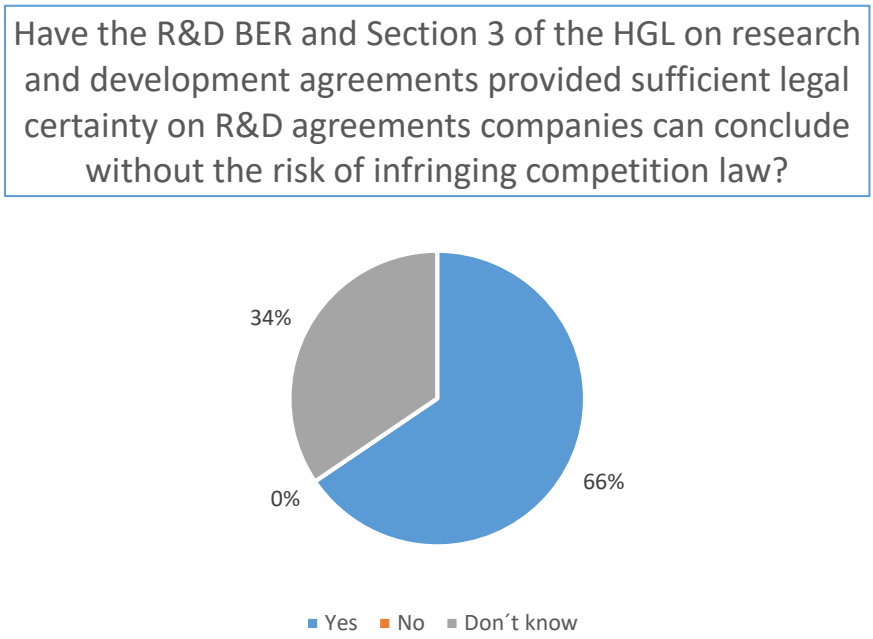

Figure 3 Effectiveness of the R&D BER and Section 3 of the HGL

19 NCAs indicated that the R&D BER and Section 3 of the HGL on research and development agreements provided sufficient legal certainty on R&D agreements for companies. The remaining 10 NCAs did not know (Figure 3).

8 NCAs indicated that they never investigated a matter falling within the scope of the R&D BER or did not have experience in applying the R&D BER or the HGL. An NCA added that guidance documents are always of value, even if an authority did not investigate any cases.

In this respect, an NCA considered that the conditions are defined clearly to give exemption only to those agreements for which it can be assumed with sufficient certainty that they generate efficiencies that outweigh, in line with Article 101(3) TFEU, the harm caused by the restriction of competition.

Another NCA indicated that it has not received complaints from companies claiming that these tools would not provide enough legal certainty. It further remarked that Section 3 of the HGL provides an analytical framework for the assessment of the objectives of the exemptions, as well as explanations and examples of situations where an agreement might be problematic. An NCA considered that the R&D provisions might increase competition with regard to the development of innovative, new products as they empower undertakings to - under certain circumstances - combine their complementary skills, assets or activities without having to fear prosecution due to the infringement of antitrust law.

One NCA suggested that while the R&D BER and Section 3 of the HGL have boosted legal certainty, the texts could be improved in some areas, such as on "R&D poles" or innovation spaces. Another NCA suggested that the current rules do not reflect market developments and case law on horizontal cooperation.

One NCA indicated that some of the drafting in the R&D BER is not clear enough. In particular, this applies to the hard core restrictions listed in Article 5(b) and the definition of ´connected undertakings´ provided by Article 1(2) of the Regulation.

19 NCAs considered that the R&D BER increases legal certainty compared with a situation where the R&D BER would not exist but only the HGL applied; 2 NCAs disagreed. One of these explained that although the BERs are binding, the level of detail contained in the HGL is important for a better assessment of horizontal cooperation agreements. The other NCA explained that over the years European undertakings acquired a sufficient familiarity with the enforcement practice of the Commission and the NCAs, so that legal certainty would not be significantly affected in a situation where only the HGL existed. 8 NCAs did not know.

One NCA commented that the R&D BER offers useful guidance by providing straightforward definitions of important competition law concepts. Moreover, it provides information on market share thresholds and hard-core restrictions that contribute to help undertakings identify the agreements that fall outside article 101(1) TFEU. At the same time, the HGL provide further guidance and clarification of the assessment to be carried out under Article 101(1) and Article 101(3) TFEU, as well as practical examples. This latter argument was also made by three other NCAs.

Three NCAs indicated that the interpretation of the HGL might differ between Member States, but the provision of a safe harbour in the BER for agreements between undertakings below certain market share thresholds contributed to increased legal certainty. Moreover, the interpretation offered in the HGL, which is a soft law instrument, is not binding and is not always taken into account by national courts, thus not offering legal certainty and not always achieving a similar level of uniform interpretation of the law.

On the other hand, one NCA commented that market definition is always a highly debated topic in competition cases and even more so in R&D intensive markets. As a result, applying all criteria is complex and the level of comfort given to undertakings by the HGL and the R&D BER might be less than with other guidelines and BERs. Even if the market was defined before, there may often be insufficient information as to the market share of (other) parties.

b. The Specialisation BER and Section 4 of the HGL on production agreements

Have the Specialisation BER and Section 4 of the HGL on production agreements provided sufficient legal certainty on production/specialisation agreements companies can conclude without the risk of infringing competition law?

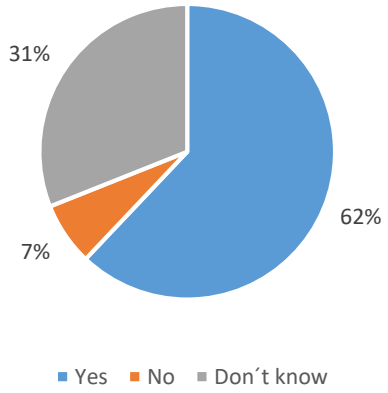

Figure 4 Effectiveness of the Specialisation BER and Section 4 of the HGL

As shown in Figure 4, 18 NCAs considered that the Specialisation BER and Section 4 of the HGL on production agreements provided sufficient legal certainty on production/specialisation agreements companies can conclude without the risk of infringing competition law. 2 NCAs disagreed and 9 did not know.

One of the two NCAs that disagreed mentioned that guidance is missing in relation to joint production and joint distribution. The NCA underlined, that in order to jointly distribute, market and sell a product, a genuine specialisation at production level should take place – in order to avoid any misunderstandings in regard to the difference between a (illegal) market sharing agreement and a (legal) specialisation agreement. In addition, Section 4 and Section 6 of the HGL lacked guidance to distinguish specialisation agreements from vertical agreements.

The other NCA that replied negatively to this question reported difficulties with the scope of application and the assessment of agreements covered. It further suggested clarifying the relationship to other regulations like the Technology Transfer Regulation (Commission Regulation (EU) No 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements)[1] or the VBER (Commission Regulation 30/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices).[2]

One NCA mentioned that the estimation of market shares remains difficult because it implies insight into the production of competitors that is not available and that is difficult to gather even for a competition authority. In addition, the NCA observed that estimations by the parties were not always adequate.

[1] OJ L93, 28.3.2014, p. 17.
[2] OJ L102 23.4.2010, p. 1.

16 NCAs considered that the Specialisation BER increased legal certainty compared with a situation where the Specialisation BER would not exist but only the HGL applied. 2 disagreed and 11 did not know. The more detailed comments repeated those made in reply to the same question for the R&D BER.

c. The remaining sections of the HGL

Next to the sections on R&D Agreements and production agreements, the HGL contains a general introduction on the applicability of Article 101 TFEU to horizontal cooperation agreements and sections on information exchange, joint purchasing, commercialisation and standardisation agreements.

20 NCAs considered that these remaining sections of the HGL provided sufficient legal certainty on horizontal cooperation agreements. 6 disagreed and 3 did not know.

Several NCAs pointed at guidance that is in their opinion lacking, in notably the sections dealing with information exchange (Section 2) and joint purchasing agreements (Section 5).

One NCA has found Section 2 of the HGL on information exchange particularly helpful in explaining and exemplifying the circumstances in which the exchange of information is likely to restrict competition and those in which it may have pro-competitive effects. 3 NCAs remarked that Section 2 could be improved by clarifying a number of concepts relating to information exchange. Concepts that were mentioned where guidance was lacking include data sharing and data pooling, illegal signalling, the use of benchmarks by trade associations, hub and spoke arrangements and genuine public information.

One NCA stated that the section on joint purchasing agreements had been of high relevance for its enforcement practice. Nevertheless, some paragraphs in the section were considered too abstract and unclear in part. Furthermore, guidance was lacking on market concentration and purchasing power. Two NCAs remarked that the HGL does not provide adequate guidance on joint bidding.

One NCA referred to the fact that the provisions on environmental agreements have not been included in the 2010 HGL, while they were in the 2000 HGL.

Two NCAs suggested that the HGL should take into account the enforcement challenges posed by digital markets and that they should refer to the most recent cases and case law concerning horizontal cooperation agreements. In particular, the HGL could provide guidance on the definition of relevant markets in the digital economy as well as on the existing market shares thresholds when assessing market power.

One NCA suggested that the HGL lacked guidance on issues of cooperation in the labour market, including on no poaching and wage fixing agreements.

d. Other types of horizontal cooperation agreements that are currently not specifically addressed in separate sections of the HGL

The purpose of the HGL was to provide an analytical framework for the most common types of horizontal cooperation agreements. Given the potentially large number of types and combinations of horizontal cooperation and market circumstances in which they operate, the HGL do not provide specific answers for every possible individual cooperation agreement. They nevertheless aim to assist businesses in assessing the compatibility of individual cooperation agreements with Article 101 TFEU.

The Commission asked the NCAs to indicate whether the HGL provided sufficient legal certainty on other types of horizontal cooperation agreements that are currently not specifically addressed in separate sections of the HGL. In this regard, 6 NCAs considered that the HGL provided sufficient legal certainty on other types of horizontal cooperation agreements that are currently not specifically addressed in separate sections of the HGL; 12 NCAs disagreed and 11 did not know.

Figure 5 Horizontal agreements not addressed in a specific section in the HGL for which guidance is lacking according to NCAs

When asked which type of agreements would have to be specifically addressed to increase legal certainty, the NCAs responded with the agreements listed above in Figure 5. 11 NCAs stressed the need for more guidance on sustainability agreements as they felt such guidance in the standardisation section is lacking. 6 NCAs mentioned that they felt the HGL did not provide sufficient guidance on how to assess joint bidding and suggested introducing a separate section in the HGL. 4 NCAs mentioned that the guidance in the HGL was not sufficient to effectively assess different types of agreements relating to digital platforms. All other types of agreements in figure 5 were mentioned by at least one NCA.

e. Simplification of the application of competition rules by public authorities

One of the specific objectives of the HBERs and HGL is to simplify the application of competition rules by public authorities. Part of the questionnaire was therefore dedicated to questions relating to the application of competition rules by the NCAs themselves. The Commission asked NCAs whether the R&D and Specialisation BERs simplified the application of competition rules for them compared to a situation where the BERs would not exist but only the HGL applied.

The majority of the NCAs indicated that they did not know the reply to these questions, mostly because they did not have (extensive) experience in investigating R&D and specialisation agreements. Among the NCAs that replied “Yes”, several mentioned that the BERs offered more legal certainty because of their binding nature. Other NCAs mentioned that the BERs and the HGL complement each other

NCA were able to reply to the question inquiring whether the HGL simplify the application of competition rules for their authority compared to a situation with no HBERs and HGL. There, 25 of the 29 NCAs responded ´Yes´. 2 NCAs did not know the reply and 2 replied ´No´. NCAs that responded positive to the question mentioned that the HGL provide comprehensive guidance to both undertakings and authorities on how to assess the compatibility of different cooperation agreements. They also remarked that the national courts take the HGL into consideration in their cases.

f. The effectiveness of individual provisions in the R&D and Specialisation BERs

The Commission asked the NCAs in a number of questions whether individual provisions in the BERs allowed the authorities to correctly identify the horizontal cooperation agreements that are compliant with Article 101 TFEU. While most NCAs replied that they did not know the answer to this question, those who did recorded "yes" for the different provisions.

Only two issues were mentioned. On the questions related to the market share thresholds, one NCA indicated that the respective articles provide that the market share shall be calculated on the basis of value; and only if market sales value data are not available; estimates based on other reliable market information may be used. However, especially in digital markets sales value may not represent market share correctly despite its availability.

Other NCAs commented negatively on the definitions used the Specialisation BER. One NCA stated that the material demands for exemption could use further clarification and lacked examples. Additionally, the Commission may consider clarifying in the HGL that the specialisation may take place on the production level, and not only specialisation on e.g. the customer level. Another NCA felt that the definition of "product" with the exemption of distribution services (Art. 1f)) raised questions as there is no indication as to what the required significance of the production part in the value creation is in relation to the distribution part. That NCA also considered that the definition of price fixing in Article 4 of the Specialisation BER is unclear. One NCA indicated that it is not clear whether the definitions in the Specialisation BER would cover joint bidding in a public procurement context.

g. The effectiveness of other elements of the R&D and Specialisation BERs

Finally, the Commission asked the NCA to identify whether other elements from the R&D and Specialisation BERs were sufficiently effective.

One NCA suggested the extension of the definition of unilateral specialisation to agreements between more than two parties as long as the market shares are below the relevant thresholds. Other NCAs mentioned that they missed guidance in the BERs on (i) horizontal cooperation agreements concerning climate objectives that clearly create benefits to the larger group of consumers and the society as a whole and do not restrict competition more than necessary; (ii) cooperation agreements between competitors related with public health issues; and (iii) joint purchasing or selling agreements that have a relatively small market share.

3. Efficiency (were the costs involved proportionate to the benefits?)

The Commission asked the NCAs whether the costs of applying the R&D and Specialisation BERs and the HGL were proportionate to the benefits these instruments bring.

6 NCAs considered that the rules led to a reduction of costs for undertakings, mainly due to reduced legal costs stemming from the 'safe harbours' and simplification of the rules. The other 23 NCAs did not know.

According to 11 NCAs, the cost for undertakings of ensuring compliance would increase if there would be no R&D BER. The other NCAs did not know. The increase in compliance costs would stem from the need to hire consultants/legal advisers and the loss of safe harbours, each mentioned by 5 NCAs. One NCA considered that safe harbours and hard-core restrictions could eventually be introduced in the HGL. Another NCA referred to the absence of harmonisation requiring companies to follow diverse national regulations.

Were the Specialisation BER not in place, the cost for undertakings of ensuring compliance would increase according to 11 NCAs. The other 18 did not know. The arguments presented are largely identical to those referred to in the previous paragraph.

6 NCAs indicated that their own costs, generated by the application of the R&D or the Specialisation BER or the HGL, had decreased compared with the previous legislative framework. The other 23 did not know. In general, the NCAs indicated that the current framework provides more legal clarity and reflects better the modern business models compared to the previous regime.

Regarding the costs for the authorities themselves, 11 NCAs indicated that the cost of ensuring compliance would increase without the R&D BER in place. One NCA felt that costs would decrease and the 17 others did not know. Costs would increase because of the lack of thresholds, the need to have national regulations or more guidance or intervention from the NCAs that would be more difficult to provide. However, the NCAs were not able to give an estimate of those costs. The one NCA that indicated costs would decrease mentioned that undertakings were less likely to engage in harmful R&D cooperation with competitors in absence of the R&D BER.

Without the Specialisation BER, the cost of ensuring compliance by the NCA would increase according to 12 NCAs; the other 17 did not know. The arguments are mostly identical to the ones in the previous paragraph. One NCA added that the Specialisation BER provides an analytic framework based on economics and previous case law, which is very useful to analyse cases. Another NCA considered the BER to be an anchor that helped convincing the national courts of its analysis in individual cases.

The benefits for the NCAs in having the R&D and Specialisation BER and the HGL are, for 11 NCAs, legal certainty. One NCA elaborated that the procedure goes faster because of the HGL. 5 of the 11 NCAs added the benefit of legal conformity in all Member States. Two NCAs mentioned reduction of costs. One NCA indicated that the national court takes the HGL into account when assessing whether the NCA has met the required legal standards in its decisions.

In addition, one NCA mentioned that the HGL provide an analytical framework for screening possible future cases. Three NCAs stated that the HGL constitute a helpful tool for information exchange, joint purchasing agreements and standardisation cases. One of these three NCAs added that increased clarity on the application of competition rules has increased compliance in sectors concluding R&D and specialisation agreements as well as those agreements exemplified in the HGL. Five NCAs explained that they have only experienced the benefit of the HGL – two of them stated that having the HGL in place provides them with a basic framework for their investigations; three mentioned that the HGL give them the necessary guidance when assessing horizontal cooperation agreements. Finally, one NCA explained that the BERs give clear benchmarks as to the market share thresholds, although, for a horizontal cooperation agreement that allows some price fixing (Specialisation BER), the threshold might be too high if definitions are being interpreted broadly. In addition, the HGL have significant relevance in that NCA's cases as they cover the most important types of cooperation.

10 (for the R&D BER) and 9 (for the Specialisation BER) NCAs considered that costs of applying the R&D and Specialisation BER are proportionate to the benefits. The remaining NCAs indicated that they did

not know the reply to this question. In fact, several NCAs specified that they see no costs with the BERs, only benefits.

For the HGL, 17 NCAs considered that costs of having the guidelines are proportionate to the benefits; 1 answered apparently mistakenly that costs are not proportionate to the benefits (but in its comments it highlighted the particular relevance of the HGL for its practice) and the remaining 11 NCAs did not know. Again, several NCAs indicated that they see no costs with the HGL but only benefits.

4. Relevance (do the objectives still match the needs or problems?)

In order to assess the relevance of the R&D and Specialisation BERs and the HGL, the Commission asked the NCAs whether the objectives of the texts are still up-to-date considering the developments that have taken place since their publication.

The NCAs provided many suggestions for major trends that have affected the application of the BERs and HGL and that they felt are insufficiently dealt with in the current texts:

Figure 6 Major trends according to NCAs that affect the application of the R&D and Specialisation BER and the HGL

Respectively 15 and 16 of the 29 NCAs considered that the R&D and Specialisation BERs and their related section in the HGL are still relevant. One NCA considered the R&D BER no longer relevant (although this may be a mistake as the explanations provided make clear that the opposite may have been intended). The remaining NCAs replied "I don´t know" to the question on relevance of both BERs. With regard to the Specialisation BER and Section 4 of the HGL, one NCA commented that the texts are still relevant for the ´old economy´, but they might not be suitable for the internet economy, where different efficiencies and market dynamics might apply.

22 NCAs considered Section 2 of the HGL on information exchange to be still relevant. 7 did not know. 5 NCAs pointed at digitisation and the use of digital platforms to state that possibilities for information exchange have increased and guidance is lacking in the current section. Another NCA felt that the section required additional guidance on information exchange in distribution agreements when the supplier is also a direct competitor of the distributor.

21 NCAs stated that Section 5 of the HGL on purchasing agreements is still relevant. 8 did not know. NCAs indicated that they missed clarifications on (i) how to distinguish between collective boycott and joint purchasing; (ii) how to address purchase agreements between competitors when these have not resulted in a reduction of the final consumer price; (iii) how to distinguish between legitimate joint purchasing agreements and buyer cartels; (iv) how user groups on digital platforms may collectively bargain. One NCA thought that the section does not reflect the internet economy and suggested that the Commission drafts a supplement.

19 NCAs replied that Section 6 of the HGL on commercialisation agreements is still relevant. 10 did not know. The NCAs´ remarks on this section mirrored those of other sections summarized above. In addition, one NCA noted that it may be difficult to determine whether the agreement in question is a commercialisation agreement or whether it is a combination of other types such as purchasing and information exchange agreements.

20 NCAs thought that Section 7 of the HGL on standardisation agreements is still relevant. 9 did not know. Also here, the NCAs' remarks on this section mirrored those of other sections summarised above. In addition, 2 NCAs thought that given the importance of standards in shaping markets, Section 7 misses guidance on a fair licensing system for standards, updated to reflect case law developments and the increasing use of SEP-protected technologies. In particular, according to the "*Communication on setting out the EU approach to standard essential patents*" the creation of patent pools or other licensing platforms, within the scope of EU competition law, should be encouraged. Finally, one NCA added that the evaluation and potential revision of the current rules needs to be business-model neutral in order not to distort the level market-created playing field.

5. Coherence (Does the policy complement other actions or are there contradictions?)

The Commission asked the NCAs whether the policies set out in the HBERs and HGL are coherent with other instruments and case law that provide guidance on the interpretation of Article 101 TFEU.

25 NCAs considered that the HBERs and the HGL are coherent with other instruments and/or case law that provide(s) guidance on the interpretation of Article 101 TFEU (e.g., other block exemption regulations, the Commission Guidelines on Vertical Restraints and the Commission Guidelines on the application of Article 101(3) TFEU), 1 NCA disagreed and 3 did not know.

Three NCAs commented that the HGL missed clarification on some horizontal elements of vertical agreements. Some provisions and concepts in the HGL also seemed at odds with similar provisions in the Commission regulation on the application of Article 101(3) of the Treaty to categories of vertical agreements and concerted practices and the Commission Guidelines on Vertical Restraints. One of these NCAs mentioned the need to harmonise the rules on 'dual distribution'.

In addition, one NCA remarked that the HGL do not seem to distinguish consistently between horizontal cooperation agreements and cartels as is done in the Guidelines on the effect on trade concept.

Another NCA suggested to update the concept of restrictions by object in the HGL and the Commission Guidelines on the application of Article 101(3). One NCA mentioned that Section 7 of the HGL on standardisation agreements does not include recent case law on the requirement of SEP holders to respect FRAND terms or the general principles relating to FRAND licensing in accordance with the 2017 'Communication on Setting out the EU approach to Standard Essential Patents'.

17 NCAs considered that the HBERs and the HGL are coherent with other existing or upcoming legislation or policies at EU or national level. 12 NCAs stated that they did not know.

2 NCAs noted that that the assessment of horizontal cooperation agreements promoting climate objectives should be taken into account better.

6. EU Added Value

15 and, respectively, 16 NCAs considered that the R&D BER and the Specialisation BER have added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 TFEU; the other NCAs did not know. In their comments, the NCAs refer to (i) the useful legal criteria, (ii) the coherency amongst Member States, (iii) the instruments being more specific than other more general ones, (iv) the simple self-assessment tools, (v) the legal certainty, (vi) the reduced complexity and legal costs for the parties, (vii) the increased competition law compliance; (viii) and the increased number of pro-competitive R&D agreements concluded – to the benefit of consumers.

For the HGL, 21 NCAs considered that they added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 TFEU; 8 NCAs did not know. The NCAs refer broadly to the same reasons as those summarized in the previous paragraph.

10 out of the 29 NCAs reported that national guidelines on horizontal cooperation were issued. One NCA explained that such national guidelines are currently considered. 18 NCAs have no national guidelines on horizontal cooperation agreements.

The national guidelines that were mentioned cover issues such as joint bidding, collective bargaining for self-employed workers, small and medium sized enterprises and information exchange. As reasons for adopting national guidelines, the NCAs mentioned requests from specific stakeholder groups (trade associations, SMEs) to assist them with their self-assessment and to act as complement to the Commission's HGL. Two NCAs reported that they issued specific guidance on cooperation in light of the COVID-19 crisis. One authority is envisaging adopting national guidance only if the future HGL would not cover certain topics.

23 NCAs considered that the HGL added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 TFEU; the remaining 16 did not know. In their comments, the NCAs referred back to those they had made on previous sections concerning 'effectiveness' and 'efficiency'.

7. Final comments

One NCA pointed to some divergences between the English and the Danish texts of the HGL.

Four NCAs mentioned specifically that they supported that HBERs and the HGL should remain applicable after updating.