Summary report of NCA feedback on the evaluation of Regulations 1/2003 and 773/2004

1. Introduction

In parallel to the public consultation, an internal survey within the European Competition Network ('ECN') took place to gather perspectives from the competition authorities of the Member States ('NCAs') and within the EEA/EFTA framework[1] on the application of Regulation 1/2003 on a confidential basis. Answers were received from 25 authorities in total[2]. The following public summary is based on those answers.

The purpose of this summary is to outline the main points raised by the NCAs without regard to the number of contributions addressing a particular point or whether a particular point of view is shared by all the NCAs. Therefore, in the following, reference is made generically to NCAs. However, for issues on which NCAs expressed diverging views, both sides of the argument are presented.

2. General questions

Generally speaking, the NCAs agreed that Regulation 1/2003 had been a great success and achieved its objective of an effective and uniform application of Articles 101 and 102 TFEU. It had implemented a well-functioning decentralised system of parallel enforcement competence by the Commission and NCAs and had led to an increased and more effective enforcement across the EU, making Regulation 1/2003 unabatedly relevant today, or even becoming increasingly relevant. However, NCAs also identified some restricted aspects in which the current legal framework showed some possible limitations or could still be further improved. In essence, effective and uniform application of EU competition law is not an objective that can be achieved once and for all but is rather an ideal situation that has to be continuously maintained and promoted.

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[1] Through the EEA Agreement, Iceland, Norway and Liechtenstein, as EEA/EFTA states, adhere to the EEA/EFTA-pillar of the agreement, the EU and its institutions constituting the other pillar of the agreement´s two-pillar structure. The relevant competition authorities under this framework enforce Article 53 and 54 of the EEA-agreement, mirroring Articles 101 and 102 of the TFEU, and have strived to follow interpretations and precedents deriving from enforcement of EU/EEA competition rules under Regulation 1/2003, subject to the appropriate cooperation with and obligations towards the EFTA Surveillance Authority and subject to the judgments of the EFTA Court (Chapter II of Protocol IV of the Surveillance and Court Agreement).

[2] Three contributions were submitted by authorities acting within the EEA/EFTA framework, which will also be referred to as 'NCA' feedback for the purposes of this summary.

a) Effectiveness

NCAs agreed that Regulation 1/2003 had achieved its objective of an effective and uniform application of Articles 101 and 102 TFEU in the EU. It was mentioned, for example, that its significant positive contribution can be shown by comparing the number of decisions by NCAs before and after the enactment of Regulation 1/2003. The convergence rule of Article 3 of Regulation 1/2003 in combination with the obligation to notify investigations and envisaged decisions according to Article 11 of Regulation 1/2003 had ensured a consistent application of Articles 101 and 102 TFEU. At the same time, it was indicated that although inconsistent findings or remedies should be prevented, a slightly differing assessment of a similar conduct by several NCAs may also be due to differences in the corresponding market conditions.

NCAs, however, did not necessarily consider Regulation 1/2003 to be flawless. Some NCAs mentioned certain specific legal issues where there had been discrepancies between EU competition law as understood by the NCAs and interpretation or application at the national level. Some NCAs for example mentioned that since Regulation 1/2003 did not unify procedural rules which are very closely linked with the ability to find an infringement, diverging results from EU case-law had sometimes emerged, including on evidentiary standards for specific types of conduct such as information exchanges, limitation periods, permitted use of evidence and fines. Furthermore, it was mentioned as problematic that the Regulation did not further specify the 'effect on trade' criterion and that uniformity was still missing for questions such as limitation periods and the calculation of fines. More generally, NCAs suggested that cooperation with especially national courts should be further improved to avoid unwarranted precedents in case-law.

The system of parallel enforcement of Articles 101 and 102 TFEU by NCAs and the Commission had led, according to all NCAs, to increased and more effective enforcement across the EU. It was mentioned that also the enforcement of national competition law had benefited from that system since synergic effects could be exploited. However, as will be described later in more detail, room for improvement in the cooperation and information sharing was identified. Pursuant to Regulation 773/2004, the Commission has different powers to regulate certain aspects of the proceeding for the application of Articles 101 and 102 TFEU, notably concerning the initiation of proceedings, powers of investigation and the access to file procedure. NCAs found Regulation 773/2004 to effectively empower the Commission. However, it was mentioned that the process to handle complaints, though already better than the previous Regulation, was in some respects still very time and resource consuming.

b) Efficiency

NCAs considered Regulation 1/2003 more efficient than its predecessor Regulation No. 17. They particularly identified efficiency gains through the decentralised enforcement, which allowed more cases to be dealt with and also led to a more efficient case allocation. Furthermore, efficiency gains resulted from the elimination of the notification process for legal examination under Article 101(3)

TFEU, which reduced costs significantly and sped up the administrative processes. Relating to the latter, NCAs agreed that the removal of such a notification system had increased efficiency, since only very few of the previously notified agreements raised competition concerns. In general, NCAs considered the procedures in Regulation 1/2003 and Regulation 773/2004 to contribute to a timely and efficient enforcement.

c) Relevance

NCAs agreed that the objective of effective and uniform application of Articles 101 and 102 TFEU of Regulation 1/2003 was still highly relevant, although they raise some concern that the procedural framework may not be entirely suitable for future developments. Although with a few exceptions, many were of the opinion that digitalisation of markets and procedures posed challenges to the current legal framework for competition law enforcement and considered supplementary tools to be needed to address European-wide and global challenges.

d) Coherence and EU added value

NCAs were also asked whether Regulation 1/2003 is coherent with other EU legislation and policies. While some NCAs considered Regulation 1/2003 overall coherent with other EU legislation and policies, others found that there was always room for improvement. They pointed, for example, to discrepancies between Regulation 1/2003 and the ECN+ Directive (Directive (EU) 2019/1), which would grant NCAs investigative powers going beyond the powers of the Commission in some respects.

NCAs generally found the current system of Regulations 1/2003 and 773/2004 capable of achieving effects that go beyond what would have been achievable by Member States alone (in terms of EU added value). NCAs identified the ECN as a major factor contributing to that effect.

3. Investigation

a) Powers of investigation

Pursuant to Regulation 1/2003 the Commission has several powers to investigate potential infringements of Articles 101 or 102 TFEU. In accordance with Articles 17 to 22 of Regulation 1/2003 the Commission can commence investigations into sectors of the economy and into types of agreements, request information, take statements and conduct inspections. Whilst NCAs mostly agreed on the effectiveness of these powers, they expressed doubts if the currently available tools were fully capable of effective and efficient enforcement in a digital era.

(i) Effectiveness

NCAs largely considered the investigative tools in Regulation 1/2003 (i.e. Articles 17, 18, 19, 20 and 21) to be effective means for detecting infringements. However, some NCAs criticised the power to take statements in the sense that it was somewhat limited as it requires the consent of the

interviewed person and that it should be ensured that interviews can be held remotely. The power to conduct inspections was considered as one of the most important and powerful tools.

Nonetheless, several NCAs saw the absence of appropriate tools to obtain electronic or other evidence in Regulation 1/2003 and 773/2004 as an obstacle to effective enforcement. In particular, NCAs highlighted that the power to impose the retention of data would be an effective tool for competition law enforcement, irrespective of whether the data is saved on domestic servers or abroad. On the other hand, it was also mentioned that there were nevertheless other existing legal means and obligations available to obtain data and that the usefulness of new tools may not be a given. In any event, they needed to be assessed and carefully weighed, taking into account the experience gained with other types of enforcement by authorities that made use of comparable tools. NCAs expressed different views on the capability of the existing tools in relation to the handling of new challenges such as an increased home office culture, the digitalisation of business administration and data processing or the use of privately owned devices for work. Some saw the current provisions as sufficient whilst others disagreed. However, it should be kept in mind, that very detailed regulation for each challenge in such a fast-developing context, could prove as a disadvantage if for example legal definitions are not flexible enough to keep up with new, also unforeseen developments. Drawing from their own experience, some NCAs indicated, that those developments had not posed a serious challenge to their investigations. If the powers of the Commission would be extended, a respective amendment of the NCAs' powers should also be discussed.

(ii) Efficiency and Relevance

Regarding efficiency of the investigative powers, a similar result can be observed. NCAs considered the existing tools as, in principle, efficient. However, the requirement of consent for interviews was seen as a potential weakness of the respective tool. Some NCAs also saw the absence of more specific tools to obtain certain types of electronic and other evidence as an obstacle to the efficient enforcement. Only few NCAs considered the existing investigative tools as entirely sufficient to obtain such evidence.

Across the board all existing instruments were considered as still relevant, although a certain need to adapt to the challenges of digitalisation is frequently mentioned.

(iii) Coherence and EU added value

Some NCAs found the existing tools of investigation not fully coherent with other EU law and policies. In that regard, mention was made of (i) the ECN+ Directive allowing NCAs certain powers beyond those of the Commission embedded in Regulation 1/2003 (ii) a potential need for

more clarity on how effective competition law enforcement relates to the General Data Protection Regulation[3] and (iii) attention for the interplay with the EU Charter of Fundamental Rights.

However, overall NCAs agreed that the Commission's investigative tools had EU added value, as they achieved a more effective competition law enforcement compared to investigations only by the individual Member States.

b) Procedural rights of the parties

According to Articles 7(2), 27, 28 and 30 of Regulation 1/2003 and Articles 5-9, 10-17 of Regulation 773/2004 participants such as parties to investigations and other interested parties have several procedural rights during an investigation. Those provision respect fundamental rights and observe the principles recognised in particular by the EU Charter of Fundamental Rights. In this regard, the Commission respects the parties' fundamental right to be heard by addressing a statement of objections to them and by granting parties access to the file. Parties may exercise their right to be heard by submitting their views in writing and by developing their arguments at an oral hearing, if they so request. Parties whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand and the decisions taken should be widely publicised. While ensuring the rights of defence, Regulation 1/2003 and Regulation 773/2004 also protect business secrets.

For its enforcement activity, the Commission benefits from information supplied by undertakings and by consumers in the market. Currently, there are two ways to provide information to the Commission in this respect. One is by lodging a formal complaint pursuant to Article 7(2) of Regulation 1/2003. The other way is the provision of market information that does not have to comply with the requirements for complaints pursuant to Article 7(2) of Regulation 1/2003.

(i) Effectiveness

The legal framework to protect procedural right was considered effective by the NCAs. It was commented, however, that the current framework provided a relatively high level of protection to third parties.

The Hearing Officer and the availability of oral hearings contributed to an effective protection of procedural rights overall. Although the controlling function of an independent and objective Hearing Officer was highlighted positively, one should keep in mind, that the current system was also resource demanding.

Several NCAs suggested drawing inspiration from domestic law, to improve the effectiveness of Regulations 1/2003 and 773/2004 as regards the protection of procedural rights. For example, that

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

a document submitted can only be considered confidential if a sufficiently informative non-confidential version is provided, widening the possibilities for making confidential information available to all parties at the *inter partes* stage of proceedings, subject to certain safeguards, in the interest of the rights of defence, or increasing certain procedural rights during the investigative stage of proceedings, prior to the adoption of a statement of objections.

(ii) Efficiency

There was general agreement among the NCAs that the legal framework for the protection of procedural rights was efficient. It was mentioned, however, that access to files can become an issue, especially since the volume on information is increasing ever more. It was suggested that the access to information could either be further digitalised or granted earlier on in the process. However, in relation to access to information, NCAs overall agreed that the current legal framework provided the right balance between on the one hand, the effort required by the Commission and by undertakings in relation to this process and, on the other hand, the ability of undertakings to effectively exercise their rights of defence.

NCAs indicated that the procedural framework for handling formal complaints was insufficiently efficient. Some would prefer a simplified and less burdensome system as the current system is sometimes considered too formalistic and resource-intensive, requiring a significant amount of Commission's resources that might not be aligned to their relevance. Furthermore, undertakings may be faced with a difficult choice as regards filing a formal complaint, since a complaint with the Commission is EU-wide but time consuming. On the other hand, filing a complaint with NCAs came with the risk of jurisdictional overlaps, parallel proceedings and potential disincentives for NCAs to allocate resources where a risk was perceived that the investigation could be taken over by the Commission.

Similar suggestions were made to draw inspiration from domestic law to improve the efficiency of the protection of procedural rights also in Commission investigations. It was also suggested that the settlement mechanism under Regulation 773/2004 should not be limited to cartels and could be extended to other types of conduct.

(iii) Relevance and Coherence

NCAs considered the procedural rights in Regulations 1/ 2003 and 773/2004 still relevant and found them overall coherent with other EU law and policies, although the protection of procedural rights of parties should be balanced with procedural efficiency.

4. Decision-making

a) Commission decisions

To ensure the effective and uniform application of Articles 101 and 102 TFEU, Regulation 1/2003 grants the Commission a series of decisional powers. In particular, the Commission may require

undertakings and associations of undertakings to bring an infringement to an end and impose on them behavioural or structural remedies (Article 7); order interim measures (Article 8); make binding the commitments offered by undertakings to meet the concerns expressed to them by the Commission in its preliminary assessment (Article 9); and find that Article 101 and/or 102 TFEU are not applicable to a specific case (Article 10).

(i) Effectiveness

NCAs agreed that the decisional powers of the Commission ensured an effective and uniform application of EU competition law. Even if some of these powers might rarely be used, it was mentioned that their mere existence may already have a deterrent effect. Some criticism was voiced on the strict requirements for interim measures, especially as regards the risk of serious and irreparable damage, which might be too demanding in practice, especially in digital markets.

When comparing the requirements for the use of interim measures by the Commission to those for the use of interim measures by NCAs, some NCAs considered the rules adequate to ensure an effective application of such measure. Others, however, disagreed and considered the substantive requirements set out in Regulation 1/2003 less effective compared to some national legal systems where legislators deliberately chose to adopt less stringent requirements. Moreover, it was noted that too burdensome procedural requirements for the use of interim measures may limit their scope of application in practice.

NCAs found the measures the Commission can implement insufficiently adequate to address structural competition concerns, for example, after a sector inquiry had been conducted. It was mentioned that structural concerns and more general economic features could not be influenced directly since the decisions of the Commission were always addressed to individual undertakings and concrete infringements of Articles 101 and 102 TFEU had to be proven. Some NCAs highlighted that whilst there is a need to address structural concerns, there is also a risk of overregulation and conflicting domestic legislation. In that regard several NCAs mentioned that they had decisional powers from their respective national laws that went beyond those provided in Regulation 1/2003. Some NCAs, for example, were empowered to adopt measures to remedy structural market failures, skim profits or impose fines or imprisonment for natural persons.

NCAs pointed to difficulties if their investigations and decisions were to be subjected to legally binding deadlines, despite their presumed benefit for the protection of fundamental rights of the parties. Such deadlines could have negative effects for the effective enforcement, as it seems difficult to determine a suitable length of a deadline, and one could frequently not determine the factors influencing the duration of a proceeding. Although one could expect at least some positive effects of such deadlines, as they would increase legal certainty for undertakings or potentially free up resources for NCAs, NCAs were generally not favourable to having legally binding deadlines as the potential positive effects were not considered to outweigh the expected negative effects on effective enforcement, also in light of increasing complexity. Experience from domestic

competition laws which already provide for such deadlines had shown that such deadlines were rather considered too strict and having negative effects on the quality of decisions, although that view was not shared by all NCAs.

(ii) Efficiency and Relevance

NCAs agreed that the decisional powers of the Commission were efficient in enforcing competition law and of ongoing relevance. Some concern was raised that interim measures were very time consuming, but also that they may become increasingly relevant as investigations are getting more complex and markets become more dynamic and fast-moving, especially digital markets.

(iii) Coherence and EU added value

NCAs saw no incoherences between the decision powers of the Commission under competition law and other EU law and policies and they agreed that Commission decisions and guidance therein ensured a more effective and uniform application of EU competition law than in situations where only NCAs would have had such powers.

b) Fines and limitation periods

Article 23 of Regulation 1/2003 empowers the Commission to sanction infringements of Articles 101 and 102 TFEU as well as procedural breaches by means of fines imposed on undertakings and associations of undertakings. Article 24 of Regulation 1/2003 empowers the Commission to compel compliance with decisions adopted pursuant to Articles 7, 8, 9, 17, 18(3) or 20(4) by means of periodic penalties imposed on undertakings and associations of undertakings.

Articles 25 and 26 of Regulation 1/2003 specify the rules on periods of limitation for the imposition and enforcement of fines and periodic penalty payments. They also specify the actions which may interrupt or suspend a limitation period.

(i) Effectiveness

NCAs agreed that the power to impose fines as sanction for an infringement effectively ensured the compliance with the law. Furthermore, they did not see the system of limitation periods of fines and periodic penalty payments as an obstacle for the Commission's fining power, although there were also a more isolated calls for more harmonisation in the field (in particular on limitation periods and for the possibility of making infringement statements in decisions for those cases where fines were prescribed).

NCAs agreed on the effectiveness of the Commission's fining powers. Limited comments included suggestions that the power to fine should be extended to sanction, for example, failure to appear at an interview, the refusal to answer questions during an interview or persons giving misleading or incorrect information. Furthermore, allowing pecuniary sanctions for natural persons could

ensure their compliance to procedural obligations. Overall, the threat of fines would effectively prevent parties from breaching procedural obligations. One should bear in mind, that the deterrent effect is only achieved, if the powers are actually used when appropriate.

(ii) Efficiency and Relevance

Although generally considering the Commission's fining powers for infringements of Articles 101 and 102 TFEU as well as procedural breaches as efficient, some NCAs also identified certain possible improvements in line with the above suggestions. Furthermore, it was mentioned that a stronger focus on private enforcement could strengthen the Commission's efforts, for example, by introducing class actions.

NCAs clearly considered the fining powers to continue to be of high relevance. In addition, ex ante or alternative powers were considered by some to address fast-moving developments in digital markets or certain market failures. There were also some calls for more uniformity in the calculation of sanctions and to ensure sufficient deterrence.

(iii) Coherence and EU added value

NCAs voiced no concerns on the coherence of the Commission's fining power with other EU law and policies. Similarly, their EU added value was fully agreed upon, also in light of the fact that NCAs were acting within their national territories and generally not covering the effects in more than one national market as the Commission can. As the powers of the Commission and the NCA were complementary, the coordination of fines should be improved according to some NCAs. Especially when several (competition or other) authorities imposed fines on the same undertakings, coordination in view of the proportionality of the fines and to avoid issues of *ne bis in idem* would be necessary.

5. Cooperation

NCAs were also asked about the cooperation with the Commission within the ECN. A set of questions concerned that cooperation and further questions also addressed the cooperation between the Commission and national courts. Both kinds of cooperation are regulated in Articles 11 to 13 and 15 of Regulation 1/2003.

(i) Cooperation between the Commission and NCAs

Generally, NCAs found the cooperation between the Commission and NCAs to effectively ensure the uniform application of Articles 101 and 102 TFEU across the EU. Some NCAs highlighted elements that they found particularly effective, such as the exchange of (confidential) information and evidence, availability of guidance and manuals, and organisational structures such as working groups, consultations with the Commission on the application of EU law and case allocation. It was suggested to promote further coordination in practice also for sectoral inquiries, to make use of the ECN sectoral working groups more actively, and to coordinate at earlier stages of an

investigation before first measures are implemented by an authority. For simpler settlement cases the 30-day period in Article 11(4) of Regulation 1/2003 was sometimes experienced as rather long.

Several NCAs noted that Regulation 1/2003 does not clearly specify the criteria that determine the applicability of Articles 101 and 102 TFEU, i.e., the concept of effect on trade between Member States, and that the further guidance from the Commission including on the case-law of the CJEU were needed to determine the applicability in practice. Some emphasised the importance of having a uniform view on this, while others indicated that problems of interpretation sometimes arise at national court level or for undertakings making self-assessments in this regard.

According to the NCAs, the provisions on cooperation had been adequate and appropriate for the effective and uniform application of Articles 101 and 102 TFEU across the EU. The value of the informal forms of cooperation, such as earlier discussions with the Commission before adopting an envisaged decision or in relation to responses to informal guidance requests was highlighted. Some NCAs suggested there might be room for improvements as regards the allocation of cases within ECN, especially in practical terms of efficient and early coordination where cross-border aspects are involved. Furthermore, the process for consultations of the Commission pursuant to Article 11 (5) of Regulation 1 /2003 was considered very valuable and perhaps underused. It was also suggested that it might not be entirely clear from Article 12 and recital 16 of Regulation 1/2003 whether information gathered in proceedings different from those applying Articles 101 and 102 TFEU may be exchanged, for example, in relation to sector inquiries or proceedings based on national law exclusively and under what conditions.

NCAs overall found the provisions on the cooperation between the Commission and the NCAs efficient, of prevailing relevance and coherent with other EU law.

(ii) Cooperation between the Commission and National Courts

NCAs voiced several points on which they considered the cooperation between the Commission and national courts could be improved. Some NCAs, for example, welcomed the power of the Commission to submit amicus curiae briefs in national proceedings but note that the Commission seems to have been reluctant to use that power more frequently. NCAs would welcome a more active intervention by the Commission, especially where it concerns courts not very familiar with EU competition law and endangering uniformity. Although it was acknowledged that recent efforts to improve the competition law knowledge of judges have improved the situation, there was still room for improvement in terms of training.

NCAs were also sceptical of courts transmitting national court judgments applying Articles 101 and 102 TFEU to the Commission. Several NCAs indicated that they had not been involved in the process and therefore could not assess it. The NCAs drew different conclusions on why the system was not working as intended. For example, it was not always sufficiently clear which authority or which court(s) within Member States were supposed to transmit the judgments. Furthermore,

although the system was considered useful in principle, it was not functioning in a satisfactory manner and in need of reform to make it more manageable and accessible.

Overall, NCAs found the provisions on cooperation between the Commission and the national courts sufficient in terms of efficiency, relevance and coherence, but noted shortcomings in their actual implementation. Although some NCAs also indicated they had limited insight into that system compared to ECN cooperation, a more general impression seemed to be that there could be more involvement by the Commission.

(iii) Stricter and diverging national provisions

Excepted from the scope of Regulation 1/2003 are, in accordance with Article 3 of Regulation 1/2003, stricter national rules on unilateral conduct as well as national rules that follow a different objective than Articles 101 and 102 TFEU.

NCAs expressed different views regarding Article 3(2), second sentence, of Regulation 1/2003, allowing Member States to adopt and apply stricter national rules for unilateral conduct. Not all NCAs were aware of which rules are covered by that provision, even if they sometimes considered to have such provisions in their own domestic law. It was further mentioned that it is not clear, for example, whether Article 3(2) of Regulation 1/2003 also applies to sector-specific regulation. Another uncertainty existed concerning the differentiation between unilateral conduct and the wide concept of agreement within Article 101 TFEU, which could make it difficult to assess whether a stricter national law would be permissible for certain forms of conduct. Other NCAs who considered they knew well what kind of provisions are referred to under Article 3(2), second sentence, of Regulation 1/2003 also had relevant domestic law provisions in their own system. Such provisions, are, for example, those on the prohibition of abuse of (relative) market power in cases of economic dependence, which in some Member States were based on provisions of national constitutional law, and as such can be important, in particular also for the private enforcement of competition law. Disregarding the existing uncertainties, it was also mentioned that a certain level of vagueness in Article 3(2) of Regulation 1/2003 was inherent to it, to enable Member States to adopt different kinds of stricter legislation.

Pursuant to Article 3(3) of Regulation 1/2003, Member States are allowed to apply national law provisions that predominantly pursue an objective different from that pursued by Articles 101 and 102 TFEU. Several NCAs indicated that they have respective national laws falling under that provision. Most of the domestic law provisions with a different objective cover unfair competition or trading practices, or regulation in specific sectors such as food or health. As with Article 3(2) of Regulation 1/2003, it was mentioned that Article 3(3) of Regulation 1/2003 appears somewhat ambiguous or that it is difficult to really tell the difference between Article 3(2) and 3(3) of Regulation 1/2003 as some laws on unilateral conduct which also follows a different objective would be covered by both rules.

6. Concluding remarks

Finally, the NCAs were asked (a) if the current provisions in Regulation 1/2003 are sufficient to ensure cooperation also with other (i.e., non competition law) national regulatory authorities in view of the CJEU judgment in C-117/20, *bpost* and potential application of the principle of *ne bis in idem* in such situation and (b) if they had any other comments related to the evaluation of Regulation 1/2003.

Concerning the first question, the current provisions were not always seen as sufficient, although national law may also complement Regulation 1/2003 to some extent to provide for the necessary cooperation. Some NCAs considered a potential need or preference for legislation, guidance or increased cooperation. It was mentioned that situations such as in *bpost*, where parallel investigations by different competent regulatory authorities raised concerns of a potential violation of the *ne bis in idem* principle, is not very common yet. However, there were also NCAs that did not consider further legislation necessary at this point or fear that such a cooperation may result in a dilution of the 'original' ECN cooperation.

Concerning the second question, comments can be broadly categorised in comments on the investigative process and the decision on the one hand, and comments on cooperation on the other.

As regards the investigative and decision-making process, some NCAs highlighted that further coherence with leniency, developments in the field of damages, market studies, informal consultations and/or joint competition advocacy efforts could be addressed. Furthermore, the topic of block exemptions was touched upon, as it was questioned if Article 29(2) of Regulation 1/2003 could be widened, as currently it is practically impossible to withdraw the benefit of an exemption for NCAs. It was further suggested to consider the potential use of structural remedies in the context of the Article 9 commitments process.

Concerning cooperation, it was suggested to notify NCAs earlier about complaints submitted to the Commission, which would help NCAs to start case allocation discussions with the Commission as soon as possible and in a timely manner. Furthermore, clarifications on how to deal with ECN correspondence and access to file as well as the power to exchange data with other regulatory authorities such as the data protection authority or the prosecution offices were suggested. It was also considered relevant to assess whether an adequate legal basis for NCAs to exercise their powers extraterritorially exists or should be introduced.