International Chamber of Commerce
The world business organization

ICC Department of Policy and Business Practices

EC Council Regulation n. 1/2003 and measures for its implementation: the international business community's view point

Prepared by the Commission on Competition

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What business needs

In the competition field, the main requirements of the business community for companies to operate in a profitable and efficient manner in the integrated European market may be summarized as follows.

1. Within the European Union, a company's competitive behaviour should be assessed just once by an independent judicial or administrative authority on the basis of a defined, complete and uniform set of rules with decisions effective throughout the entire EU, using procedures that are compliant with the requirements of due process, reasonably quick and with the possibility of at least one level of appeal.
2. The existence of an anti-competitive agreement and its negative effects must be proved by the judicial/administrative authority or by the party initiating proceedings. The negative effects demonstrated must be concrete, substantial and current.
3. Sanctions for anti-competitive agreements or behaviour should be expressly provided for in the existing set of rules and be proportionate to their anti-competitive effects as established by an independent judicial/administrative authority.
4. Ideally it should be ensured that all competin g companies active within the EU are governed by a defined, complete and uniform set of rules and be judged by judicial or administrative authorities acting as part of the same jurisdictional body within the EU legal system. Prosecuting and decision-making roles should be clearly separated.

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The above picture does not represent today's reality. However, it does represent the basis for a model that would meet the business community's requirements for maximizing its contribution to Europe's competitiveness.

Notwithstanding the valuable and appreciated changes strongly promoted by the European Commission during the last five years with a view to modernizing EU competition rules, the existing legal framework is still far from adequate to meet these requirements. The business community believes that fulfilling these requirements should be a priority for the EU. This would allow a decisive improvement in the performance of the business community and, consequently, in the economic and social development process which is much needed by the European Community.

With a view to achieving this objective, it is hoped and expected that - thanks to the activity of all EU institutions concerned with competition (Council, Commission, European and national parliaments, national authorities, national and European courts, regulatory authorities in specific sectors) - a reliable and uniform set of rules (inclusive of all rules regarding competition, such as regulations, directives, administrative and jurisdictional rulings, guidelines, notices, etc.) will become a reality so as to substantially improve the governance of the most problematic aspects. These include:

- Legal certainty, transparency of the system, parallel application of national and Community competition rules;
- Harmonization of national substantive and procedural legislation (a matter aggravated by the forthcoming entry of new Member States), measures (including training) to ensure uniformity of decisions, co-operation between and among enforcers (Commission, national authorities, national judges);
- Allocation of cases, avoidance of forum shopping, enforcement of decisions of national competition authorities in other countries;
- Due process, rights of parties, confidentiality protection, legal privilege for in-house counsel, leniency programs, commitments on the part of undertakings;
- Harmonised procedures for complaints;
- Damages (competence, effect of statements made in other jurisdictions).

Background

Council Regulation n.1/2003 represents the European Commission 's most ambitious reform within the modernization program of Community policy on competition, which started back at the end of the nineties.

Its main purpose was to make the Commission's action more effective through greater transparency and simplification of procedures, the decentralisation of the decision-making process in favour of national authorities and the concentration of available resources on the most important cases.

Within the consultation process of the Commission with interested parties, ICC (the International Chamber of Commerce) has highlighted the risks and benefits of this initiative and submitted comments and suggestions intended to assist in making the reform effective for both the institutions responsible for its application as well as for the business community.

Now that the Regulation has become final and binding, it has given rise to diverse assessments and reactions within the business community, which is rooted in different legal, economic and cultural contexts. ICC believes that the balance between opportunities and risks offered by the Regulation could be substantially improved in favour of the benefits if a strong effort is made in the decision-making process regarding the implementation instruments provided for by Article 33. This is an opportunity not to be missed.

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Comments on specific proposals

A) Draft Commission regulation relating to proceedings pursuant to Articles 81 and 82 of the EC Treaty

The Regulation should be extended to apply to competition procedures before national competition authorities as well. In practice, the European courts have identified this issue on many occasions and stated that the machinery for protecting rights conferred by Community law are, in the absence of a harmonized system of procedure, those provided for in the domestic legal system of the Member States. Moreover, that machinery must be as effective and no less favourable than that applying to like remedies for the protection of rights founded on domestic provisions.

Articles 3 and 4: Regulation n. 1/2003 does not require, but merely allows the Commission to record the statements taken under Articles 19 and 20. However, in order to ensure more transparent proceedings and strengthen the rights of defence, the Commission should commit itself to recording all statements made by persons interviewed and by the undertaking's representatives or members of staff on which the Commission intends to rely. More generally, the Commission should also inform the person of his legal rights, including the right not to respond. This commitment should clearly result from the wording of Articles 3 and 4 of the Commission regulation.

Article 4(2): Recordings should be made available to the person interviewed and to the undertaking concerned immediately after the interview.

Article 4 (3): As a matter of principle, persons who are not authorized by companies to make statements on their behalf should not be heard by the Commission. The status of such persons is ambiguous and their obligations are not clearly set out. In the event they are heard as witnesses, the accused party should have the right to be represented at the hearing by a lawyer or any other person who is bound by professional secrecy. ICC recognizes and endorses the fact that the Commission will permit companies to rectify statements made by unauthorized parties, if necessary. However, ICC is also of the view that in circumstances where the Commission takes statements from unauthorized persons, the Commission should ensure that an authorized company representative is also present.

Article 5 (2): The Commission should only be allowed to grant exceptions from the compilation of Form C and from the production of documents in exceptional circumstances. Moreover, the reasons for any eventual dispensation ought to be stated in writing, kept on file and made available to the company under investigation.

Article 6 (1): If the Commission decides to take up an issue raised by a complainant, it ought to have an obligation to immediately inform the company under investigation by providing it with a complete and unabridged copy of the complaint and enclosed documentation at an early stage. (2): The complainant's participation at the hearing ought to be mandatory (save for exceptional and substantiated circumstances), and not "where appropriate," so as to make direct cross-examination by the interested parties possible.

Articles 7, 8 and 9: For reasons of due process and rights of defense, companies under investigation should be informed at a very early stage that the Commission has received a complaint. Furthermore, all records of dealings between the complainant and the Commission should be made available to the defendant in a timely fashion. As a rule the Commission should set up a short timeframe for the handling of the complaints.

Article 13: The concept of "sufficient interest" should be replaced with the concept of legitimate interest as set out in points (33) to (40) of the Notice on the handling of complaints. Written or oral views of all third parties should be made no later than at the end of the oral hearing. The undertaking concerned must be given the timely opportunity to respond.

Article 14(1): ICC endorses the provision that an impartial and independent Hearing Officer should conduct hearings.

Article 14 (3): Officials and civil servants of competition authorities of the Member States should be invited only if they have specific interests that are disclosed. Regulation 1/2003 provides no basis for the attendance of other authorities.

Article 14 (7): It is necessary to make it clear that reference is made to "competition authorities". Third parties should not be allowed to ask questions during the hearing.

Article 14 (8): Records should be made available only to undertakings under investigation, complainants and national competition authorities.

Articles 15(1) and (2): Immediately upon notification, the party should have automatic access to the full file. The right of access should not extend to internal documents that do not contain evidence. In any case, respondent undertakings must be allowed at least the same access to the file as the complainants under paragraphs (1) and (2) of Article 9 of the draft Commission regulation.

Article 16: A new article should be added (Article 16(5)) confirming present case law that the Commission should not be permitted to use or require the production of documents which are subject to legal privilege. Legal privilege is an essential element of due process and should not be restricted. ICC reaffirms its long-standing position that legal privilege should apply in the same conditions to attorneys and to in-house counsels who are subject to the same rules of ethics as attorneys.

Article 16 (2), last line: After "business secrets" the words "or other confidential information" should be added.

Article 16 (3): In certain cases, the nature of the confidential information does not lend itself to a concise description without revealing information that is rightfully kept secret. In such cases it should be possible for companies not to provide the requested "concise description" in writing, explaining verbally the reasons why to the Commission.

Article 17: The words "and which in the Commission's qualified opinion is not" should be added after "which the undertaking and or association considers to be confidential". The Commission decision as to confidentiality should be based on the Community's legal set of rules and should not be implemented until all avenues of appeal are exhausted.

Article 20: The procedural aspects of the deleted regulations should be expressly incorporated in the new regulation.

A new article should be added to the Commission Regulation Draft in order to provide rules for the application of Article 23(4) of Reg.n.1/2003 so that:

i) The actual recovery of the fines mentioned in the Recital (30) can be made effective and be considered when setting the fines especially when national laws are not applicable (e.g. because the associated undertakings have different nationalities; or because the associations have branches in several Member States);

ii) The associated undertakings that are at risk of being liable for payments of fines can be treated as parties to the proceedings with full protection of their individual rights of defence (e.g. notifications, hearings, written and oral submissions, confidential and privileged documents, etc.)

CONCLUSIONS

It is well understood that the efficiency of the European Competition Network requires a certain degree of information exchange . Such exchange requires that the parties involved be adequately informed and offered the opportunity to be heard, that professional secrecy be preserved and that the information collected and transferred be used only in the context of competition proceedings.

B) Draft Notice on the handling of complaints under Articles 81 and 82 of the EC Treaty

I. INTRODUCTION

(4) The informal collection of information on suspected infringements of Articles 81 and 82 (which may even remain anonymous pursuant to paragraph 82) has no basis in Regulation 1/2003. The notice itself does not mention the following issues, which the ICC considers essential: what use can the Commission make of such information? what is the confidentiality status of the information received? what information is to be conveyed to the accused companies? how are rights of defence protected? etc. The procedure ought to ensure that satisfactory safeguards are put in place to allow companies under investigation adequate and timely access to information used by the Commission in an investigation.

II. DIFFERENT POSSIBILITIES FOR LODGING COMPLAINTS

(13) The word "only" should be deleted and arbitration tribunals should be expressly mentioned: "The authority of arbitration tribunals to apply competition rules remains unaffected."

(23) An indicative time limit of two months to determine which authority or authorities will deal with the case at hand seems too long. An indicative period of two weeks should be adequate.

III. THE COMMISSION'S HANDLING OF COMPLAINTS PURSUANT TO ARTICLE 7(2)

The Commission must set down clear rules under which it considers a complaint to have sufficient Community interest to justify further investigation.

(34) ICC encourages the Commission to continue, in accordance with its past practice, to verify the existence of the plaintiff's legitimate interest, which can never be presumed. The necessity to allow such verification in an adversarial manner makes it all the more necessary to introduce an obligation to give notice of the complaint to undertakings accused of infringement.

(36) In order to be deemed legitimate, an interest must be specific and qualified as such, and not simply inferred, for example from the fact that the complainant is a competitor who considers himself to have suffered damages. To this effect, the content of point (38) excluding the admissibility of pro bono publico complaints is insufficient.

(40) The existence of the requirement of legitimate interest should be verified upon the receipt of and throughout the review of the complaint and not "at any stage of the investigation." This is necessary in order to allow a subject under investigation to take timely and appropriate action in the assessment

procedure before an investigation is fruitlessly conducted by the Commission, thereby causing damage in terms of costs, resources employed and negative publicity.

(45) It is stated that "…the Commission is not obliged to set aside a complaint for lack of Community interest". ICC submits that, lacking any community interest, the Commission should not intervene. Besides, the Community interest concept is very vague and the list of criteria contained in paragraph (44) of the Notice should be clarified further with more practical examples. The concept should therefore be given a meaningful although flexible qualification in the draft Notice.

(53) to (58) The procedure provided under these paragraphs illustrates, notwithstanding the statement contained in paragraph (59), the Commission's intention to exclude investigated undertakings from a procedural phase that is of fundamental importance for the right of defence.

(79) It is not ruled out that, even once a complaint has been rejected, it may be submitted again by others, perhaps with some slight changes. Nor is it clear what importance will be attached to the rejection of a complaint in the event of the subsequent initiation of proceedings against the companies forming the object of the rejected complaint.

(82) The unqualified protection granted to whomever wishes to remain anonymous should be restrained. All persons who inform the Commission about suspected infringement must identify themselves to the Commission. Anonymous information should not be encouraged nor considered. Where the Commission grants a complainant's request for anonymity, that decision and the reason for granting anonymity should be provided to the undertaking concerned.

CONCLUSIONS

The complaint procedure developed by the Commission raises certain issues relating to the rights of the defence and "due process." A careful consideration and a thorough revision of these issues are therefore requested.

C) Draft Notice on guidelines on the application of Article 81(3) of the Treaty

I. INTRODUCTION

(3) and (4) The methodological nature of the Guidelines is affirmed herein. With particular reference to existing guidelines on vertical restraints and on horizontal co-operation agreements, it is expressly stated that they set out the enforcement and evaluation policy that the Commission will adopt in these matters. This confirms that the Guidelines do not constitute sources of law. They are not binding on the judges, although in accordance with the principle of legitimate expectation, the Commission is bound by its own guidelines. Given that, post-modernization, enforcement of Articles 81 and 82 will be shared between the Commission and the national competition authorities, with the Commission responsible for ensuring consistent application of Community competition law throughout the ECN, it should be expressly stated that companies have a legitimate expectation that national authorities are also bound by the Commission's notices.

II. THE GENERAL FRAMEWORK OF EC ARTICLE 81

(10) This is a crucial point since it denies the contextual and unitary nature of the assessment. It is maintained that first an agreement is evaluated pursuant to Article 81 (1) and then, only if the previous evaluation is positive, is the question as to whether an exemption can be granted examined. The parameters for maintaining that an agreement has probable anti-competitive effects are the same in nature as those required for determining its eventual pro-competitive effects pursuant to Article 81 (3).

Therefore the two-phase procedure makes it extremely difficult to prove that a pro-competitive effect pursuant to Article 81 (3) exists once the anti-competitive effect pursuant to Article 81(1) is established. It should at least be recognized that the two-phase procedure does not prejudice the

interpretation of Article 81 (1) on the basis of the agreement's economic impact on the market according to the "rule of reason" concept.

(12) The c urrent formulation of this paragraph, which may lead to a broad interpretation of the scope of Article 81(1), should be replaced as follows:
"The objective of the rules on competition contained in the Treaty is to ensure, according to Article 3.1(g), that competition in the internal market is not distorted. An open single market where competition is not distorted promotes an efficient allocation of resources throughout the Community for the benefit of consumers. Within this framework, the aim of Article 81(1) is to impede anticompetitive agreements which reduce consumer welfare and distort an efficient allocation of resources"

(21) The text should be clarified to read that negative effects are likely to occur "only when at least one of the parties has some degree of market power and the agreement contributes to the strengthening of such market power".

(23) Resort to the contents of the Guidelines for the purpose of self-assessment on the part of undertakings calls for considerable caution. It would certainly be helpful to complement the draft Notice with rules and a checklist describing the degree of investigation that companies should undertake in order to justify their behaviour in the process of self-assessment. Existing notices on horizontal cooperation agreements (2000) and on vertical restrictions (2001) must continue to serve as guidelines for corporate conduct although exceptions may apply based on special circumstances (point 5). Therefore, the Guidelines should spell out specifically that companies may rely on existing notices unless special circumstances apply. Furthermore, though it is understood that the Commission (and the national authorities) should be estopped from imposing fines on agreements that fall within the ambit of Commission notices, the Guidelines should explicitly address this issue. The question also arises whether a third party should be permitted to seek damages from parties to an agreement that is subsequently found to be in breach of EC competition rules even though the agreement complied with the general rules set out in the relevant Commission notice.

III. THE APPLICATION OF THE FOUR CONDITIONS CONTAINED IN ARTICLE 81(3)

As already noted, under the new system, the administrative authority and/or the party alleging an infringement should not be exonerated from considering every element useful for the aggregate application of Article 81, and from giving adequate reasoning. This includes a balanced evaluation of the anti-competitive and pro-competitive effects at the stage of assessing the applicability of Article 81(1). The authority and/or the party alleging the infringement should also provide specific allegations and their evaluation as to why the conditions of Article 81(3) should not apply.

The negative implications of a different reading of the burden of proof are clear. The burden of proving the existence of the conditions for exemption under Article 81(3) (defined by the Commission during its preliminary analysis as "almost unreachable") would rest solely upon the undertaking which is asking for its application.

(74) The Notice adopts a too stringent interpretation of the concept of "fair share" of the efficiencies generated by the agreement for the consumers within each relevant market. Consumers should be compensated in aggregate.

CONCLUSIONS

Taking into account the importance of the Guidelines on the enforcement of Article 81(3) for self-assessment purposes, it would be highly desirable that they be complemented by guidelines on the unitary application of Article 81 in its entirety and a practical checklist.

D) Draft Notice on the effect on trade concept contained in Articles 81 and 82 of the Treaty

Article 3 of the Council regulation, which governs the relationship between Articles 81 and 82 of the Treaty and national competition laws, is the key to the entire reform. Prior the adoption of

Reg.n.1/2003, this question had been regulated on the basis of the principle established under case law of the primacy of Community law.

The final wording of Article 3 tries to reach a compromise: by upholding the principle of primacy of Community law, it has waived the principle that only Community law will apply. This compromise - which radically modifies the original direction of the Commission - does not appear to be satisfactory since it will seriously hinder the uniform application of competition law throughout the European Union and will result in a strong increase in compliance costs for undertakings. In fact, the substantial restriction represented by the "primacy of Community law" does not eliminate the need for undertakings to carefully consider the various national legislations and their respective case laws.

The system, based upon the parallel application of Community and national law, is costly also in terms of a lesser degree of transparency and efficiency in the functioning of the network of institutions responsible for its enforcement.

In summary, the functioning of a system based upon the right of advocation (i.e. to call a pending case before the Commission) and the relationship of networks becomes much more complex in the presence of the parallel application of different laws. ICC therefore once again insists that the Commission should strengthen the promotion of the harmonization of the competition laws of the Member States.

In the present circumstances, it is suggested that a pragmatic approach be adopted in construing and applying Community and national rules. This should be aimed at achieving uniformity in the application of the "key" concepts (something which is simpler for those Member States whose antitrust legislations reflect more or less faithfully the content of Articles 81 and 82 of the Treaty). The emergence of uniform case law may provide a remedy, albeit partial, for the drawbacks of the system of parallel responsibilities, by defining its scope o f application more completely.

Aware of the fact that the "effect on trade among the Member States" concept might be used by certain national authorities as a lever to ignore the primacy of Community law and attempt a re-nationalisation of competition law, the Commission is making an effort with its draft Notice to give a broad interpretation of the concept so as to minimise the risks deriving from the compromise introduced in Article 3 and to make the primacy of Community law effective in a broad range of agreements.

The attempt is to launch, for essentially jurisdictional purposes, a surrogate of the concept of the exclusiveness of Community law. The risk is that, in its practical application, there might be an assumption of a negative effect on trade. It should be emphasized that the Commission's statements will only be used to determine jurisdiction and will not lead to the conclusion that the impact on trade is negative.

E) Draft Notice on informal guidance relating to novel questions concerning Articles 81 and 82 of the EC Treaty that arise in individual cases (guidance letters)

Guidance letters create the legitimate expectation that they bind the Commission. Based on the principle of the uniform application of competition rules, national authorities should be bound too.

Although guidance letters cannot bind the subsequent assessment of the same issues by the Commission, paragraph (25) should be amended so that the Commission, if seized of the same facts and in the absence of new aspects or any development in the case law of the European Courts, is bound to take a previous guidance letter into account.

According to the draft Notice, the issuing of a guidance letter may only be considered if several cumulative conditions are fulfilled. Obviously, the issuing of guidance letters cannot hamper the efficient enforcement of competition rules. However, there should be a positive commitment to provide informal guidance when the above-mentioned conditions are fulfilled and there is no practical impediment due to enforcement priorities.

(11) The right to request a guidance letter should be opened to professional associations particularly where there are different interpretations of Community law by different authorities.

(16) and (17) The Commission should decide on the request for a guidance letter within a short timeframe and give notice of such decision to the party.

F) Draft Notice on co-operation within the network of competition authorities

The cooperation mechanisms between the national authorities and the Commission established by Regulation n. 1/2003 to achieve a uniform application of commun ity competition law are such that the foreseen network is very likely to function successfully as - to a certain extent - it already functions.

The following suggestions are made with the purpose of improving the efficiency of the system:

- As to the allocation of cases, Example 5 in paragraph 15 should be amended so that the Commission can deal with one national market in order to create a "leading case" only when each national market requires a separate assessment.
- The Notice should specify under which circumstances a case decided by one authority may be dealt with again.
- In paragraph 23, the requirement that the undertaking be informed of the transmission of the file should be expressed.

Provisions for the exchange of information, particularly when these are confidential, should be set out more explicitly and extensively than is laid down in paragraphs 26 to 28 of the Guidelines. Rules in the Regulation (Article12) impose only a minimum duty to protect confidential information. The Notice should provide for the possibility of a non-confidential version purged of all business secrets to be circulated and freely exchanged within the ECN. This would facilitate the discussion of the case at hand without endangering confidentiality. It is the responsibility of the Commission to specify in these Guidelines the scope and practical application of such a duty in the Member States, which would also promote an effective harmonization of the rights of defence throughout the Community.
The rules on confidentiality must be subject to the overriding principles of the right of defence and therefore provide for the disclosure of confidential information to the defendant for the purposes of his defence. The rights of defence require that privileged documents and information which are protected under the laws of the Member States should not be obtained by or passed onto other Member States or to the Commission. Member States should not be allowed to use information, no matter how obtained, if such information is privileged and protected under the law of another Member State. In addition, the Notice should explicitly state that any information exchanged within the ECN must not be used for purposes other than the application of Articles 81 and 82 of the Treaty.

(31) Undertakings should have the right to object that the authority entrusted with a case is not the best placed one.

(67) This paragraph should provide expressly that the written consultation procedure may result in a formal opinion of the Advisory Committee being made public.

I. INFOR MATION PROVIDED BY THE COMMISSION TO NATIONAL JUDGES

As regards the obligation of the Commission to lend assistance to national judges, the draft provides for the role of the amicus curiae, the Commission's obligation to convey to the national judges information possessed by it and the Commission's obligation to express opinions on the "enforcement of Community law" - opinions which (as subsequently stated in point 28) may address "economic, factual and legal matters" but may not enter into the merits of litigation pending before a national judge. It should be kept in mind that the Commission's involvement should be limited to the application of the competition rules. In particular, the Commission should have no involvement in the case at hand.

In most systems of civil law, the enforcement of Community law will take place within the framework of civil proceedings where the judge does not have the power to gather evidence on his own initiative but weighs the evidence produced by the contending parties, who in turn have the opportunity to evaluate and control the same in line with the system of due process.

The nature of civil proceedings therefore would be completely overturned if, by using this power, the Commission should provide the judge with information, not only on the status of Community jurisprudence (even including the practice of the Commission itself) or on the structure of the relevant market, but also information on the behaviour of the parties gleaned from accusations (perhaps anonymous) or from investigations conducted by the Commission by virtue of its inquisitorial powers.

In accordance with Article 15 of Reg.n.1/2003, the statements of the Commission should therefore be limited to questions of law regarding the application of the competition rules. In addition, only facts established under a formal proceeding of the Commission should be communicated to the Courts.

ICC is happy to note that the Commission will remain neutral and objective in its assistance to national courts.The draft notice on co-operation between the Commission and national judges should nevertheless be explicitly broadened to make it absolutely clear that any information that the Commission should decide to furnish to a national judge shall be exclusively of a general nature and not concern the behaviour or the specific situations of parties to proceedings underway unless resulting from a case decided by the Commission. In other words, the principle recalled above, according to which the Commission may not enter into the merits of pending litigation, ought to be well substantiated. This principle is too important for the Commission not to provide concrete examples aimed at clarifying it. The draft notice is badly wanting in this respect.

II. INFORMATION COVERED BY PROFESSIONAL SECRECY

The mechanism provided for the protection of secrecy can only function in those systems where the enforcement of antitrust law is assigned to a court acting as a competition authority. It cannot apply to courts acting in civil litigation. In the majority of European systems, therefore, judges will not have the power to protect such information because, in civil proceedings, all pieces of information are put into the court file that are accessible to all parties to the proceedings, including competitors. Article 23 of the Notice should be amended to specifically state that it does not apply in civil procedures.

In addition to the above, ICC suggests that the provisions contained in Article 16 of the draft regulation relating to proceedings by the Commission pursuant to Articles 81 and 82 (allowing the submission of information "purged" of confidential parts, and of a concise description), should be applicable every time the Commission "puts into circulation" information covered by professional secrecy. Therefore the

Notice should include an obligation to prepare a non-confidential version purged of all confidential parts that can be passed on to the Courts.

The Notice does not provide any guidance as to the cooperation between national competition authorities and national courts. It should at least be recommended that the Member States should

consider if procedural rules and practices for cooperation between national competition authorities and national courts are available and, if this is not the case, establish the necessary procedural framework before Regulation n.1/2003 becomes applicable.

Furthermore, the Notice should expressly clarify that paragraphs (3) and (4) of Article 15 of the Regulation providing for the participation of national competition authorities do not apply to the national courts proceedings dealing with appeals against decisions of the national competition authorities.

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The international business community is confident that the efforts requested above in order to improve and to complete the "package" before its final adoption will be positively considered by the Commission.

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