

CALL FOR EVIDENCE FOR AN INITIATIVE (without an impact assessment)

TITLE OF THE INITIATIVE	Anti-competitive agreements and abuse of a dominant market position – update of informal guidance notice for businesses
LEAD DG – RESPONSIBLE UNIT	DG COMP
LIKELY TYPE OF INITIATIVE	Commission Notice
INDICATIVE TIMING	Q3-4 2022
ADDITIONAL INFORMATION	Link to Notice on informal guidance adopted in 2004 Link to amended draft Notice

This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by this document, including its timing, are subject to change.

A. Political context, problem definition and subsidiarity check

Political context

[Regulation 1/2003](#) set up an enforcement system for Articles 101 and 102 of the Treaty on the Functioning of the European Union. The system is based on self-assessment, as businesses are generally well placed to assess the legality of their actions. They are closer to the facts and have at their disposal the framework for assessment in the form of block exemption regulations, the Commission’s case practice, guidelines and notices and the case law of the EU Courts.

Pursuant to Recital 38 of Regulation 1/2003, the Commission adopted at the same time as Regulation 1/2003 a [Notice on Informal Guidance](#). The purpose of the Notice was to specify the circumstances in which the Commission would consider issuing informal guidance to individual businesses in cases where they were genuinely uncertain about the application of antitrust rules.

Problem the initiative aims to tackle

In order to ensure that the notification system under Regulation 17/62 (repealed by Regulation 1/2003) would not in effect be reintroduced, the Notice on Informal Guidance adopted criteria narrowly interpreting the circumstances in which the Commission could provide informal guidance, pursuant to Recital 38 of Regulation 1/2003. Such a very strict approach is no longer justified, as the system based on the principle of self-assessment by businesses has been tried and tested and become generally accepted by stakeholders. The desirability of a system allowing the Commission to provide guidance to individual businesses in case of genuine uncertainty has also been confirmed in the context of both the evaluation of the Horizontal Block Exemption Regulation ([Evaluation Staff Working Document of 6 May 2021](#), pages 42 and 118) and the consultation on competition policy and sustainability ([Competition Policy Brief 2021-01 of September 2021](#), page 3).

The purpose of this initiative is therefore to update the criteria in the current Notice to enable the Commission to provide informal guidance to businesses in line with recital 38 of Regulation 1/2003, in cases in which they are genuinely uncertain about the application of antitrust rules. This will enable the Commission to use this tool more flexibly, to the benefit of businesses and to increase legal certainty.

Basis for EU action (legal basis and subsidiarity check)
Legal basis
The Treaty on the Functioning of the European Union (in particular Article 103) and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).
Practical need for EU action
The initiative falls under a policy area where the EU has exclusive powers (in accordance Article 3(1)(b) of the Treaty on the Functioning of the European Union). This means that the subsidiarity principle does not apply.
B. What does the initiative aim to achieve and how
Likely impacts
Having in place a well-defined framework under which the Commission can provide guidance will assist businesses in their self-assessment of the legality of their actions pursuant to Articles 101 and 102 of the Treaty on the Functioning of the European Union. This would have a positive impact, especially on businesses involved in emerging ways of doing business, as well as those facing a crisis or other emergencies. Guidance provided by the Commission under the Notice would become publicly available, thereby benefiting businesses more generally by increasing legal certainty for businesses assessing their actions in similar situations. Such publicly available guidance would also contribute to a more uniform application of competition rules in the internal market.
Future monitoring
Future monitoring will take place by means of ongoing feedback from stakeholders provided in the context of the Commission's practice of issuing guidance letters, where appropriate.
C. Better regulation
Impact assessment
Recital 38 of Regulation 1/2003 sets out the specific conditions in which the Commission would consider providing informal guidance ('novel or unresolved' matters, where informal guidance can contribute to the promotion of innovation and investment). The purpose of the update is precisely to ensure the alignment of the Notice on Informal Guidance with a broader interpretation of Recital 38 of Regulation 1/2003. There is therefore limited scope for different policy options that could be assessed in an impact assessment. In parallel to asking for feedback on this document, the Commission has also published a draft revision of the Notice on Informal Guidance. The aim is to obtain views from stakeholders on the envisaged updates to the text of the Notice. The text can be accessed here .