The Staff Working Document responds to feedback that the Commission has received in consultations to date, including to give guidance on collaborations pursuing sustainability goals and new cooperation models that have appeared as a result of digitalisation. Some provisions of the H-BERs and the Horizontal Guidelines are considered unclear, overly strict and difficult to interpret. This applies in particular to the research & development block exemption and provisions in the Horizontal Guidelines on information exchange, R&D agreements, including to give guidance on collaborations pursuing sustainability goals and new cooperation models that have appeared as a result of digitalisation.

The findings show that while the H-BERs and Horizontal Guidelines have been valuable tools for businesses, they need to be revised in order to address a few important areas where they are not fit for purpose, including to give guidance on collaborations pursuing sustainability goals and new cooperation models that have appeared as a result of digitalisation. Some provisions of the H-BERs and the Horizontal Guidelines are considered unclear, overly strict and difficult to interpret. This applies in particular to the research & development block exemption and provisions in the Horizontal Guidelines on information exchange, R&D agreements, including to give guidance on collaborations pursuing sustainability goals and new cooperation models that have appeared as a result of digitalisation.

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The key feedback identified by the Commission includes:

- Reliance of definitions in antitrust rules
- Disparities in definitions compared to other EU regulations (e.g., source of fundamental, joint venture, parallel competition)
- Inefficient clarity on the degree of generality of horizontal cooperation agreements (lack of cooperation increases the centrality of different types of agreements)
- Too narrow subtype of horizontal cooperation may be insufficient, as cooperation agreements often include some form or interest.
- Need to be clear on the impact of recent case law on competition that needs to be fully captured in agreed guidance.
- Lack of guidance on elements required to fall within Article 101 (1)
- Need to consider the possibility of penalty for any consultations that be Commission or a variety of tools to track notification procedure.
- Need for a clear definition of aggravating factors of horizontal cooperation agreements, including agreements with sustainability goals, joint bidding, joint purchasing and distribution agreements, new forms of cooperation in the motor and construction industries, industry-wide cooperation agreements, and industry-wide cooperation agreements, and existing existing agreements.

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### Purchasing agreements
- Lack of clarity on the distinction between joint purchasing agreements and buyer cartels, and between joint purchasing and joint bidding.
- Not adapted to recent developments, such as the increased importance of joint purchasing agreements between retailers in the EU (retail alliances).
- Certain specific practices should be addressed, such as retailer cooperation where retailer alliances do not purchase any products but aggregate their buyer power to extract fees for services, collective delisting, and exchange of information.
- The position of retailers as regards their dual role as both competitors and as competitors with their own private label products should be clarified.
- Too focused on positive downstream effects on consumers without sufficient consideration of potential negative effects on suppliers and competitors.
- Market share threshold of 15% is too low.

### Agreements on commercialization
- Further guidance needed on the assessment of joint bidding and non-indispensable consortia (those in which parties can compete or are able to meet the tender requirements on their own).
- Need to take into account the recent ECJ case law and market developments (e.g., digital markets, new forms of co-operation such as digital infrastructure sharing).
- Market share threshold of 15% is too low.

### Standardization agreements
- Certain provisions are too detailed or are difficult to apply, e.g., the requirements for license Standard Essential Patents (SEPs) on FRAND (fair, reasonable, and non-discriminatory terms) and the meaning of unrestricted participation in the standard-setting process.
- Legal certainty is lacking due to the absence of a market share threshold or other safe harbors.

### Data pooling, data sharing, network sharing agreements
- Not included or not sufficiently addressed.

### Next steps
In the coming weeks, the Commission should publish its inception impact assessment, which will set out more concretely the policy options for a review of the rules, and stakeholders will be given the opportunity to provide comments. The Commission is currently intending to publish a draft of the revised rules for stakeholder comments at the start of 2022, with a view to having the new rules and guidance in place before the end of 2022.

The blogpost was first published [here](#).