



# ECN+

## **EU Directive to empower national competition authorities to be more effective enforcers**

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## **NCAs - key co-enforcers of EU antitrust rules**

- Since 2004, national competition authorities (NCAs) are **empowered by Reg. 1/2003 to apply EU antitrust rules** alongside COM
- COM and NCAs cooperate closely within the **European Competition Network**
- Action by NCAs has **significantly boosted enforcement**: accounts for **85% of decisions**
- **Not simply enough to give NCAs power to enforce**; also need **means and instruments**



# ECN+ Directive

- **Commission proposal for a Directive** adopted on 22 March 2017
- **Ordinary procedure:** EP and Council = co-legislators
- **Political agreement** reached on 30 May 2018

# Fundamental Rights

- Article 3: NCAs' powers subject to appropriate safeguards, including **respect of companies' rights of defence** and **effective judicial review**, in accordance with general principles of EU law and EU Charter
- **Some aspects moved from recital to Article 3:**
  - right to be heard
  - right to a statement of objections
- Introduced **explicit reference to need to conduct proceedings within a reasonable timeframe**

# Independence

- Everyone in administrative NCAs should:
  - Act **independently from political/external influence**
  - **Not seek nor take instructions**
  - Refrain from **actions incompatible with duties & (new) for reasonable period after leaving office**, refrain from **same cases**
- Persons taking key enforcement decisions **dismissed only** if: a) **not fulfil conditions for performance of duties** or b) **found guilty of serious misconduct**
- **Clear and transparent procedures** for **selection, recruitment or appointment** of decision making bodies
- **Set priorities in full** incl. reject formal complaints on priority



# Resources

- NCAs should have a **sufficient number of qualified staff** and **sufficient financial, technical and technological resources** to:
  - Conduct **investigations**
  - Adopt **decisions**
  - **Cooperate** closely in the ECN and
  - **Advise** public bodies & **promote public awareness** (only if provided under national law)
- **Independence in spending of allocated budget**
- **Publicly available periodic reports** on activities, amount of resources and appointments & dismissals



# Powers

**Core set** of investigative and decision-making tools

- NCAs can **access information** accessible to company being inspected (even if stored on clouds, servers)
- Legal basis for **continued inspections**
- Empowers some NCAs to **inspect private homes**
- New power to compulsorily summon for **interviews**
- Empowers several NCAs to impose **structural and behavioural remedies**
- Tools backed up by **effective sanctions**

# Fines

- Criminal systems should ensure **alternative route** for administrative NCAs to impose fines:
  - in **their own proceedings** or
  - in **non-criminal judicial proceedings**
- **No escape** from fines through **restructuring**
- **Gravity and duration**: common parameters
- **Consensual settlements may** be considered (Damages Directive)
- **Legal maximum: no less than 10%** of worldwide turnover
- Fines **on insolvent associations** can be **collected from members**



# Leniency - I

- Harmonisation of the **thresholds** and **conditions** for immunity and reduction of fines applicants
- Enabling applicants to submit **leniency statements** not only **in writing** but also **orally or by other means** that permit them **not to take possession** of those statements
- Enabling NCAs to accept **leniency statements** and **requests for marker** in an **EU language bilaterally agreed** with the applicant
- Enabling immunity applicants to initially request a place in the leniency queue (**marker**)

## Leniency - II

- Effective **summary applications system**:
  - In cases with **3MS+** as affected territories
  - **Content** of summary applications
  - The **NCAs** can **ask** only for **specific clarifications** about the summary applications
  - Only in **exceptional circumstances, when strictly necessary for case delineation or case allocation**, may **NCAs ask for full applications** in the period before it is clear whether the Commission will pursue a case in whole or in part

## Leniency - III

- Protection of directors, managers and other members of staff of **immunity applicants** from **individual sanctions** if they **cooperate** with the relevant public authorities and the **immunity application predates** proceedings against individuals:
  - **Full protection** from **administrative** and **criminal** sanctions
  - Possibility for **derogation** concerning **criminal sanctions** allowing to foresee either **full protection or** only **mitigation of sanction** depending on the outcome of the **balancing test** (interest to prosecute or sanction v. contribution of the individual to the detection of the cartel)

## Mutual assistance

- Currently its impossible/difficult to notify procedural acts or enforce fines cross-border
- To tackle this, the Directive enables:
  - **cross-border notification of key procedural acts**
  - **mandatory cross-border enforcement of fines**



# Next steps

- **Final adoption:** by end of 2018
- **Transposition:** in 2 years by end of 2020