

Implementation of the rules on competition

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The purpose of this Communication is to report on the functioning of Council Regulation (EC) No 1/2003.

Council Regulation (EC) No 1/2003, the keystone of the modernisation of the European Union's antitrust enforcement rules and procedures, entered into application on 1 May 2004. Article 44 of the Regulation provides that the Commission shall by 1 May 2009, i.e. after five years of application, report to the European Parliament and the Council on its functioning.

The Regulation was the result of the most comprehensive reform of procedures for the enforcement of Articles 81 and 82 EC since 1962. Its main features are:

- the abolition of the practice of notifying business agreements to the Commission;
- the empowerment of national competition authorities and courts to apply EC antitrust rules in their entirety;
- a more level playing field for businesses operating cross-border;
- close cooperation between the Commission and national competition authorities in the European Competition Network (ECN);
- enhanced enforcement tools for the Commission.

The report is a stock-taking exercise, the aim of which is to understand and assess how modernisation of the EC antitrust enforcement rules has worked during the first five years. It is to be read in conjunction with the accompanying Commission Staff Working Paper which contains a more detailed review.

The report concludes that Council Regulation (EC) No 1/2003 has brought about a landmark change in the way the European competition law is enforced. The Regulation has significantly improved the Commission's enforcement of Articles 81 and 82 EC. The Commission has been able to become more proactive, tackling weaknesses in the competitiveness of key sectors of the economy in a focused way.

In addition, the EC competition rules have, to a large extent, become the “law of the land” for the whole of the EU. Cooperation in the ECN has contributed towards ensuring their coherent application. The network is an innovative model of governance for the implementation of Community law by the Commission and Member State authorities.

In a limited number of areas, the report highlights aspects which merit further evaluation, but leaves open the question of whether any amendment to the existing rules or practice is required. It will serve as a basis for the Commission to assess, in a further stage, whether it is appropriate to take further policy initiatives.

Amongst the questions to be examined include, inter alia: the use made by the Commission of its new or revised powers for effective enforcement; how to streamline the handling of complaints that do not give rise to priority cases; how to improve the procedures concerning fines and infringements; leniency policy; the power of national competition authorities to make observations; clarify and reinforce the legal framework to further enhance existing levels of protection against disclosure.