

# Implementation of the rules on competition

2000/0243(CNS) - 09/07/2014 - Follow-up document

The Commission presents a report on the **ten years of antitrust enforcement** under Regulation 1/2003: Achievements and Future Perspectives.

Regulation 1/2003 was a landmark reform which comprehensively overhauled the procedures for the application of Articles 101 and 102 TFEU ("EU competition rules").

The Regulation: (i) introduced an enforcement system that is based on the direct application of the EU competition rules in their entirety; (ii) empowered Member States' competition authorities ("NCAs") and national courts to apply all aspects of the EU competition rules, in addition to the European Commission; (iii) introduced new, close forms of cooperation between the Commission and NCAs, notably in the framework of the European Competition Network ("ECN").

This Communication: (1) provides a **facts based review** of public enforcement during this period by the Commission and the NCAs; and (2) examines some key aspects of enforcement by the NCAs, in particular **institutional and procedural issues**, with a view to its further enhancement.

The communication concludes that the enforcement of the EU competition rules has considerably increased as a result of the achievements of the Commission, the ECN and the NCAs. **(1) The Commission has a strong enforcement record**, investigating an important number of cases and carrying out inquiries in key sectors of the economy. The sector most investigated by the Commission and the NCAs is basic and manufacturing industries (42 and 92 decisions, respectively). This largely reflects the **prioritisation of the fight against cartels** which have mostly been detected in this sector.

Both the Commission and the NCAs have concentrated on recently liberalised sectors or sectors in the process of liberalisation, such as telecoms, media, energy and transport, which are often characterised by high market concentration and/or the presence of dominant operators.

**(2) The Commission has provided guidance** for stakeholders, NCAs and national courts. After having adopted a series of notices on a range of substantive and procedural matters, it subsequently adopted revised block exemption regulations and accompanying guidelines concerning the application of Article 101 TFEU to horizontal, vertical and technology transfer agreements. Moreover, the Commission issued a guidance paper on its priorities in the application of Article 102 TFEU to exclusionary abuses. It also adopted new guidelines on setting fines, a new leniency notice, a notice on settlements in cartel cases, an information note on inability to pay and a notice on best practices in antitrust cases.

**(3) There has been a dynamic development of close cooperation within the ECN**, which has underpinned the coherent application of the EU competition rules throughout the EU.

The ECN has developed into a multi-faceted forum for exchanges of experience on the application of substantive competition law as well as on convergence of procedures and sanctions.

**(4) NCAs have become a key pillar of the application of the EU competition rules.** Similar to the Commission, the NCAs also concentrated their enforcement efforts on cartels (27%). In addition, the NCAs tackled a significant number of other horizontal practices (19%), including stand-alone exchanges of information where the information exchange did not form part of a broader cartel agreement. The NCAs were also very active in addressing vertical practices (27%), in particular, resale price maintenance, anti-competitive forms of exclusive distribution and exclusive purchasing and restrictions of parallel trade.

**In order to build on these achievements** to create a truly common competition enforcement area in the EU, the Commission considers it necessary, in particular, to:

- further guarantee the **independence of NCAs** in the exercise of their tasks and that they have sufficient resources;
- ensure that NCAs have a **complete set of effective investigative and decision-making powers** at their disposal; and
- ensure that powers to impose effective and proportionate fines and well-designed **leniency programmes** are in place in all Member States and consider measures to avoid disincentives for corporate leniency applicants.

The Commission will further assess appropriate initiatives to best achieve these goals.