Empowering competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

2017/0063(COD) - 22/03/2017 - Legislative proposal

PURPOSE: to propose new rules to enable the competition authorities of the Member States to implement more effectively EU rules on anti-competitive practices.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: both the Commission and the national competition authorities NCAs have enforced the EU competition rules in **close cooperation** in the European Competition Network (ECN). The ECN was created in 2004 expressly for this purpose.

The national competition authorities of the EU Member States are empowered by Council Regulation (EC) No 1/2003 to apply the EU competition rules alongside the Commission. Since 2004, the Commission and the NCAs took over 1000 enforcement decisions, with the NCAs being responsible for 85%.

The NCAs are usually well placed to act where competition is substantially affected in their territory. NCAs have the expertise on how markets work in their own Member State. However, **many NCAs do not have all the tools they need** to effectively detect and tackle competition law infringements.

The Commission considers that a **legislative proposal** is therefore needed to empower the NCAs to be more effective enforcers of the EU competition rules to ensure that NCAs have the necessary guarantees of independence and resources and enforcement and fining powers.

IMPACT ASSESSMENT: the preferred option is to take **EU legislative action** providing NCAs with minimum means and instruments to be effective enforcers, complemented by both soft action and detailed rules where appropriate.

CONTENT: the proposal for a Directive aims to **provide NCAs with all the necessary tools** to more effectively implement the EU competition rules for employment and growth in order to ensure the proper functioning of the internal market. It seeks to enhance the effectiveness of the NCAs, while not imposing one size fits all so as to allow taking into account Member States' legal traditions and institutional specificities.

The proposal focuses on the following:

Independence and resources: the proposal introduces guarantees aiming to protect the staff and management of NCAs from external influence when enforcing the EU competition rules by **explicitly**

excluding instructions from any government or other public or private entity. Moreover, it obliges Member States to ensure that NCAs have the human, financial and technical resources that are necessary to perform their core tasks.

Investigative powers: the scope of NCAs' investigative and decision-making powers varies considerably, which can significantly impact on their effectiveness. The proposal provides:

- for the core minimum effective **powers to investigate** (the power to inspect business and non-business premises, to issue requests for information) and to take decisions (the power to adopt prohibition decisions including the power to impose structural and behavioural remedies, commitment decisions, and interim measures);
- **effective sanctions** in the case of non-compliance of the rules. These sanctions will be calculated in proportion to the total turnover of the undertaking concerned, but Member States will have flexibility in how this is implemented.

Fines and periodic penalty payments: fines can vary by up to 25 times depending on which authority act. National administrative competition authorities should have the power to impose effective, proportionate and dissuasive fines. The proposal:

- provides: (i) that the **maximum amount** of the fine should not be set at a level below 10% of its total worldwide turnover; (ii) that regard should be given to both the gravity and the duration of the infringement;
- provides the possibility to impose **fines on parent companies and legal and economic successors** of undertakings in order to avoid companies escaping from liability for fines simply by restructuring.

Leniency: the proposal seeks to **increase legal certainty** for companies that wish to apply for leniency and thus to maintain their incentives to cooperate with the Commission and the NCAs by reducing the current differences between the leniency programmes applicable in the Member States.

It shall ensure that all NCAs can grant immunity and reduction from fines and accept summary applications under the same conditions. It shall guarantee that employees and directors of companies that file for immunity are protected from individual sanctions, where they exist, provided that they cooperate with the authorities.

Mutual assistance: when one NCAs requests another NCA to carry out **investigative measures** on its behalf to gather evidence located in another jurisdiction, officials from the requesting NCA have the right to attend and actively assist in that inspection. In addition, the proposal calls for these arrangements to allow NCAs to request and provide mutual assistance for the notification of decisions and enforcement of fines when companies have no legal presence in the territory of the requesting NCA.

The proposal also recalls the importance of the **fundamental rights** of companies and obliges the authorities to respect appropriate safeguards in the exercise of their powers in accordance with the Charter of Fundamental Rights.

BUDGETARY IMPLICATIONS: an indicative amount of **EUR 1 million** per year is foreseen to maintain, develop, host, operate and support a central information system (European Competition Network System) in compliance with the relevant confidentiality and data security standards.

Other administrative costs incurred in connection with the functioning of the ECN, e.g. organisation of meetings, developing and providing training programmes, issuing guidelines and common principles are estimated at **EUR 500 000** per year.

The total impact on expenditure is estimated at **EUR 6.877 million** up to 2020 (including human resources and other administrative expenditure).