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

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The Committee on Economic and Monetary Affairs adopted the report by Andreas SCHWAB (EPP, DE) on the proposal for a directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

The committee recommended that the Parliament's position adopted in first reading following the ordinary legislative procedure approve the Commission's proposal as follows:

Fundamental rights: the exercise of the powers provided for in the Directive by the national competition authorities (NCAs) should be accompanied by guarantees as regards the **rights of undertakings to a defence**, such as the right to be heard and the right to an effective remedy before a tribunal.

Members considered it essential that the parties under investigation receive at least a **statement of objections** setting out all objections on which the NCA intends to rely in a final infringement decision that adversely affects the interests of the undertaking concerned. NCAs should conduct proceedings within a reasonable timeframe.

Independence and resources: the amended text states that NCAs should:

- have procedures that ensure that, for a reasonable period of time after termination of service, staff and members of the decision-making body refrain from entering into occupations that could give rise to **conflict of interests** in relation to a specific case in which they were involved while at the national competition authority;
- publish a **code of conduct** that covers at least rules avoiding conflict of interests;
- have **sufficient resources**, in terms of qualified staff, legal and economic expertise, financial means and technical and technological equipment, to ensure they can effectively perform their tasks;
- be able to decide independently on the application of the **budget allocations** for the purpose of carrying out their duties;
- submit publicly available **periodic reports** on their activities and their resources to a governmental or parliamentary body.

Powers:

- as regards the power to inspect business premises, Member States should be able to require that an **authorisation** be issued by a national judicial authority prior to these inspections. The inspection of other premises shall not be carried out without the prior authorisation of a national judicial authority;
- **requests for information** shall be specific and appropriate in scope and not compel the addressee of the request to admit an infringement of Articles 101 and 102 TFEU;
- if two remedies are equally effective, national competition authorities should **favour the least burdensome for the undertaking;**
- national competition authorities shall inform the Commission if they close the proceedings;

- in cases where there has been material changes to any of the facts on which a decision was based, or where the undertaking acts contrary to their **commitments**, or where a decision was based on incomplete, incorrect or misleading information provided by the parties, NCAs should have effective means for the reopening of proceedings;
- lastly, decisions to order the imposition of **interim measures** on undertakings shall be proportionate and apply either for a specified time period, which may be renewed in so far that is necessary and appropriate, or until the final decision is taken. The appropriateness of the interim may be reviewed in accelerated appeal procedures.

Leniency: NCAs may have a leniency programme allowing them to grant immunity from fines to undertakings for **secret cartels.**

The amended text stressed the need to **reduce the differences between the leniency programmes** applied at Member State level in order to enhance legal certainty by ensuring that all NCAs can, under the same conditions, issue fines, reduce the amount and accept summary applications.

Members introduced amendments to (i) require national competition authorities to inform an immunity applicant whether or not it has been granted conditional immunity; (ii) specify the information and evidence that the NCA applicant must promptly provide to the NCA with respect to the alleged secret agreement; iii) specify the information to be provided by the undertaking to the NCA so that a marker for a formal application for immunity might be granted.

Mutual assistance: in order to ensure that NCAs devote sufficient resources to the requests for mutual assistance and in order to incentivise such assistance, the requested authorities should be able to **recover the related costs**.