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) - 11/12/2018 - Final act

PURPOSE: to enable Member States' competition authorities to implement more effectively EU rules on anti-competitive practices.

LEGISLATIVE ACT: Directive (EU) 2019/1 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.

CONTENT: the Directive lays down certain rules to ensure that national competition authorities (NCAs) have the necessary guarantees of independence, resources and enforcement and fining powers to be able to effectively apply Article 101 (agreements between undertakings, decisions of associations of undertakings and concerted practices) or 102 (abuse of a dominant position) of the Treaty on the Functioning of the European Union.

This Directive sets out certain rules on mutual assistance to safeguard the smooth functioning of the internal market and the smooth functioning of the system of close cooperation within the European Competition Network.

Fundamental rights

Proceedings concerning infringements of the competition rules, including the exercise of the powers provided for in the Directive by NCAs, must comply with the general principles of Union law and the Charter of Fundamental Rights of the European Union.

The exercise of the powers provided for in the Directive shall be subject to guarantees as regards the rights of defence of companies, including the right to be heard and the right to an effective remedy before a court. In addition, the proceedings must be concluded within a reasonable time and the NCAs must adopt a statement of objections before taking a decision to establish an infringement.

Independence and resources

In order to ensure the operational independence of NCAs, their leaders, staff members and decision-makers shall:

- be able to carry out their duties and exercise their powers independently of any external political or other influence;

- be subject to procedures to ensure that, for a reasonable period of time after leaving office, they refrain from dealing with implementation procedures that could give rise to conflicts of interest.

In addition, NCAs must, at a minimum:

- have a sufficient number of qualified staff and sufficient financial, technical and technological resources necessary for the effective performance of their functions and the effective exercise of their powers;

- submit periodic reports on their activities and resources to a government or parliamentary body.

Powers

National administrative competition authorities shall be able to:

- carry out all necessary unannounced inspections of undertakings and associations of undertakings with a view to the application of the competition rules and have the right of access to all information to which the entity subject to the inspection has access;

- require undertakings and associations of undertakings, as well as any other natural or legal person, to provide all necessary information within a specified and reasonable time limit. Requests for information shall be proportionate without requiring the addressee of the request to admit the existence of an infringement of the competition rules;

- invite to an interview any representative of an undertaking or association of undertakings, any representative of other legal persons and any natural person where such representative or person may have relevant information;

- reopen enforcement proceedings where there have been material changes to any of the facts on which a decision was based, where undertakings or associations of undertakings act contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties.

Fines and penalties

The maximum amount of the fine that national competition authorities may impose on each undertaking or association of undertakings participating in an infringement is not less than 10 % of the total worldwide turnover of the undertaking or association of undertakings in the business year preceding the decision.

Penalties imposed on undertakings and associations of undertakings must be effective, proportionate and dissuasive.

Leniency programmes for secret cartels

Member States shall ensure that national competition authorities have in place leniency programmes that enable them to grant immunity from fines to undertakings for disclosing their participation in secret cartels. In order to be eligible for leniency, the applicant shall: (i) end its involvement in the alleged secret cartel, except in cases where an NCA considers that its continued involvement is reasonably necessary to preserve the integrity of the investigation; (ii) cooperate genuinely, fully, on a continuous basis and expeditiously with the NCA.

In addition, the Directive: (i) requires NCAs to inform applicants for immunity from fines whether or not conditional immunity is granted; (ii) specifies the relevant information and evidence to be provided by the applicant to the NCA without delay with regard to the alleged secret agreement; and (iii) specifies the information to be provided by companies to the NCA so that a marker granting them a place in the order in which leniency applications are received can be granted.

ENTRY INTO FORCE: 3.2.2019.

TRANSPOSITION: no later than 4.2.2021.