

ECN+

Proposed Directive to empower the competition authorities to be more effective enforcers

**Workshop – I poteri delle autorità antitrust nazionali e le garanzie:
verso la direttiva ECN+
20.11.2017**



European
Commission

NCAs key co-enforcers of EU antitrust rules

- Since 2004, national competition authorities (NCAs) are **empowered by Reg. 1/2003 to apply EU antitrust rules** alongside COM
- COM and NCAs cooperate closely within the **European Competition Network**
- Action by NCAs has **significantly boosted enforcement**: accounts for **85% of decisions**
- Last decade shown **not simply enough to give NCAs power** to enforce; also need **means and instruments**

Stocktaking

- **2014 Communication** on 10 years of Reg. 1/2003 identified areas for action to guarantee that all NCAs :
 - Have **adequate resources** and are **sufficiently independent** when enforcing EU antitrust rules
 - Have **effective enforcement toolbox**
 - Can impose **effective fines**
 - Have **effective leniency programmes** which encourage companies to come clean across EU
- Further **intensive fact-finding** with NCAs



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Consultation of stakeholders

- **Public consultation ended spring 2016: 80%** of stakeholders think action should be taken
- Meetings held with **Ministries and national competition authorities (June 2015 and April 2016)**
- **Public Hearing co-organised with ECON (April 2016)**
- **Broad support** for empowering national competition authorities to **be more effective**



Proposal for a Directive



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Independence and resources

- Problem: not all authorities have guarantees they can **enforce impartially free from outside influences**
 - Proposal : Ensure national competition authorities **act independently** when they apply EU competition rules
- Problem: some authorities **do not have the resources** they need to do their work
 - Proposal: **basic guarantee of human, financial and technical resources they need**

Effective tools to detect infringements

- Problem: Not all authorities have the **tools they need to detect and stop infringements.**

➤ Proposal:

- Ensure core **minimum effective powers to investigate** and to **take decisions**
- Ensure tools **backed up by effective sanctions** for non-compliance
- Ensure that **key procedural safeguards** are in place

Ability to impose deterrent fines

- Problem: Not all authorities can impose deterrent fines or enforce their payment

➤ Proposal:

- **Remove obstacles** which prevent authorities from imposing **deterrent and proportionate**

fines:

- ensure additional **alternative route to criminal systems**
- ensure **fines** are calculated on basis of common parameters

- **Ensure companies cannot escape payment**

- through **corporate restructuring** or
- because **companies have no legal presence** on the⁸ territory of the authority imposing the fine

Leniency

- Problem: **Leniency programmes work differently across Europe**
- Proposal:
 - ensure that **companies benefit from leniency in the same way across the EU** by translating core principles of **ECN Model Leniency Programme** into law
 - grant **leniency** and **settlement material the same level of protection** as before Commission
 - protect employees and directors of **immunity applicants** from **individual sanctions** if they cooperate

