



European Competition Network (ECN)

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

The European Competition Network

- Council Regulation 1/2003 – a **major reform** of antitrust procedures
- Enabled **direct enforcement** of Art. 101 and 102 TFEU by NCAs and national courts
- Introduction of **formal powers to cooperate**
- **Creation of ECN**: network for NCAs and Commission to apply Art. 101 and 102 TFEU in close cooperation

"The Commission and the competition authorities of the Member States should form together a network of public authorities applying the [EU] competition rules in close cooperation." (Recital 15 of Regulation 1/2003)

The European Competition Network

- Rationale and objective: in a system of parallel competences, need to ensure:
 - **Flexible & efficient division of work**
 - **Coherent and effective application of EU antitrust rules**
- The Commission has a coordinating role
- Detailed rules in Notice on cooperation within ECN ("Network Notice")

Building blocks of the ECN

Effective & Coherent
application of
EU antitrust rules



Cooperation in
the ECN

Effective
Authorities



ECN+ Directive

ECN Cooperation

Formal Cooperation

- Case allocation
- Cooperation on cases
- Mutual Assistance
- Information exchange

Informal Cooperation

- Sector specific issues
- Policy issues

Case allocation

- **Obligation for ECN members to notify each other when they begin an investigation (Art. 11(2) & (3) Reg. 1/2003)**
Before or right after the first investigative measure.
- **Indicative allocation criteria in the Network Notice: Notions of "well placed authority"/COM may be "particularly well placed" to deal with the case.**
- **Usually the authority that receives the complaint/starts ex officio investigation will remain in charge.**
- **Possibility for ECN members to suspend or reject a complaint** when another ECN member is dealing or has dealt with same infringement on same relevant product and geographic markets (Art. 13 of Reg. 1/2003).

Cooperation on Cases: Art. 11(4) Reg. 1/2003

- NCAs' must inform Commission of envisaged (draft) decisions
- Rationale: consistent application of EU antitrust law
- When: 30 calendar days before the adoption of a decision
- Commission must assess and provide feedback within 30 days
- Every year, the ECN unit examines ca. 60 to 100 envisaged decisions from NCAs

Effective case enforcement - Figures

May 2004 – December 2017

- > 2300 new investigations reported (Art.101/102 TFEU)
- > 1000 envisaged decisions submitted to COM (in addition to COM's own antitrust decisions)



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Some ECN enforcement statistics

	Total Year 2004	Total Year 2005	Total Year 2006	Total year 2007	Total year 2008	Total year 2009	Total year 2010	Total Year 2011	Total Year 2012	Total Year 2013	Total Year 2014	Total Year 2015	Total Year 2016	Total Year 2017	Total Year 2018
Total number of case investigations of which the Network has been informed ¹⁾	301	203	165	150	159	150	169	163	110	120	196	179	145	151	165
- of which COM cases	101	22	21	10	10	21	11	26	6	5	23	43	18	29	31
- of which NCA cases	200	181	144	140	149	129	158	137	104	115	173	136	127	122	134
Cases in which an envisaged decision has been submitted by NCAs during the period indicated ²⁾	32	76	64	72	60	70	94	82	85	48	101	94	77	80	67

¹⁾ Case investigations started whether by a National Competition Authority (NCA) or by the Commission.

²⁾ Cases having reached the envisaged decision stage; only submissions from the NCAs under Article 11(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU.

Exchange of Information: Art. 12 Reg. 1/2003

- Power to exchange information between NCAs and with COM, including confidential information
- Power to use in evidence information received from other ECN members

Safeguards

- Information can be exchanged only for application of Articles 101 and 102 TFEU
- Information can be used as evidence only for the same subject for which the transmitting authority collected it

Mutual Assistance: Art. 22 Reg. 1/2003

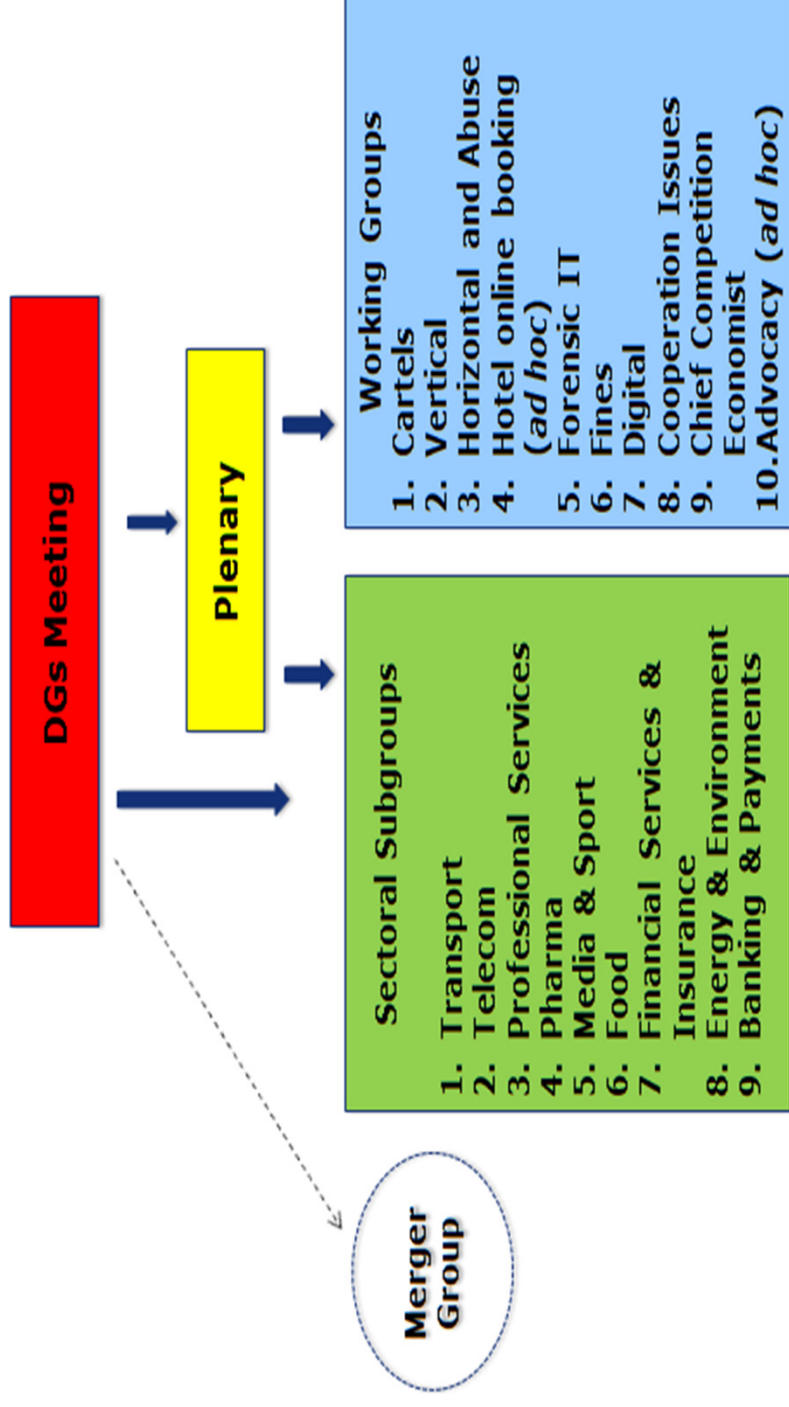
- NCAs may ask other NCAs to carry out fact-finding measures on their behalf:
 - if NCA X is looking into a case and evidence may be found on the territory of NCA Y, NCA X can ask NCA Y to conduct inspections or issue requests for information to try to find this information.
- Commission can request NCAs to undertake an inspection on its behalf
- Where the Commission carries out an inspection, officials from NCAs may actively assist the Commission



European
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Informal Cooperation

ECN FORA



ECN+ Fundamental Rights

- Article 3: NCAs' powers subject to appropriate safeguards, **including respect of companies' rights of defence and effective judicial review**, in accordance with general principles of EU law and EU Charter
- **Certain aspects mentioned in the Article:**
 - right to be heard
 - right to a statement of objections
 - Explicit reference to need to **conduct proceedings within a reasonable timeframe**

ECN+ Independence

- Everyone in administrative NCAs should:
 - Act **independently from political/external influence**
 - Not seek nor take instructions**
 - Refrain from **actions incompatible with duties & (new)** for **reasonable period after leaving office**, refrain from **same cases**
- Persons taking key enforcement decisions **dismissed only** if: a) **not fulfil conditions for performance of duties** or b) **found guilty of serious misconduct**
- **Clear and transparent procedures** for **selection, recruitment** or **appointment** of decision making bodies
- **Set priorities in full** incl. reject formal complaints on priority grounds

ECN+ Resources

- NCAs should have a **sufficient number of qualified staff** and **sufficient financial, technical and technological resources** to:
 - Conduct **investigations**
 - Adopt **decisions**
 - **Cooperate** closely in the ECN and
 - **Advise** public bodies & **promote public awareness** (only if provided under national law)
- **Independence in spending of allocated budget**
- **Publicly available periodic reports** on activities, amount of resources and appointments & dismissals

ECN+ Powers

Core set of investigative and decision-making tools

- NCAs can **access information** accessible to company being inspected (even if stored on clouds, servers)
- Legal basis for **continued inspections**
- Empowers some NCAs to **inspect private homes**
- New power to compulsory summon for **interviews**
- Empowers several NCAs to impose **structural and behavioural remedies**
- Tools backed up by **effective sanctions**

ECN+ Fines

- Criminal systems should ensure **alternative route** for administrative NCAs to impose fines:
 - in **their own proceedings** or
 - in **non-criminal judicial proceedings**
- **No escape** from fines through **restructuring**
- **Gravity and duration**: common parameters
- **Consensual settlements** may be considered (Damages Directive)
- **Legal maximum: no less than 10%** of worldwide turnover
- Fines **on insolvent associations** can be collected from members



ECN+ Leniency - I

- Harmonisation of the **thresholds** and **conditions** for immunity and reduction of fines applicants
- Enabling applicants to submit **leniency statements** not only **in writing** but also **orally** or **by other means** that permit them **not to take possession** of those statements
- Enabling NCAs to **accept leniency statements** and **requests for marker** in an **EU language bilaterally agreed** with the applicant
- Enabling immunity applicants to initially request a place in the leniency queue (**marker**)

ECN+ Leniency - II

- Effective **summary applications** system:
 - In cases with **3MS+** as affected territories
 - **Content** of summary applications
 - The **NCAs** can **ask** only for **specific clarifications** about the summary applications
 - Only in **exceptional circumstances, when strictly necessary for case delineation or case allocation**, may **NCAs ask for full applications** in the period before it is clear whether the Commission will pursue a case in whole or in part

ECN+ Leniency - III

- Protection of directors, managers and other members of staff of **immunity applicants** from **individual sanctions** if they **cooperate** with the relevant public authorities and the **immunity application predates** proceedings against individuals:
- **Full protection** from **administrative** and **criminal** sanctions
- Possibility for **derogation** concerning **criminal sanctions** allowing to foresee either **full protection** or only **mitigation of sanction** depending on the outcome of the **balancing test** (interest to prosecute or sanction v. contribution of the individual to the detection of the cartel)

ECN+ Mutual assistance

- Currently it's impossible/difficult to notify procedural acts or enforce fines cross-border
- To tackle this, the Directive enables:
 - **cross-border notification of key procedural acts**
 - **mandatory cross-border enforcement of fines**



CONCLUSION: Achievements

- **ECN is a great success story**
- Since 2004, 85% of decisions by NCAs
- **Consistent application of substantive rules**
- Satisfactory **level of convergence** in the **application** of the law
- Facilitated by:
 - **Formal consultation mechanisms in Reg. 1/2003**
 - **Informal dialogue within ECN**