



Jukka Lehtonen

Register ID number 1274604847–34

1 (3)

3.3.2010

European Commission
Directorate-General for Competition
COMP-best-practices@ec.europa.eu

COMMENTS ON THE BEST PRACTICES IN ANTITRUST PROCEEDINGS

Confederation of Finnish Industries EK (hereinafter “EK”) appreciates the opportunity to give a contribution to the best practices in antitrust proceedings and submission of economic evidence, and Hearing Officer’s guidance paper. EK welcomes any documents which make it more transparent and easier to understand how antitrust proceedings work in practice. These documents under consultation serve this purpose, and they also increase predictability.

It is essential that companies under investigation have reasonable rights to defend themselves. They must know their position in the process as soon as possible, have access to all relevant documents, have a possibility to express their views etc. The Hearing Officer naturally has a central role in these kinds of issues, and much has already been done, but even more is still to be done. One important question to solve in this field is how to separate different functions from each other, so that the same body does not investigate the case and then make a decision in that same case. Another question is how independent the Hearing Officer can be while it belongs to the same organisation with the investigating and decision-making body.

A need for sufficient procedural rights is increasing all the time, for example, because the level of the sanctions of infringements on competition law seems to be increasing all the time. There has to be the highest possible predictability and transparency concerning sanctions of each infringement.

Jukka Lehtonen

3.3.2010

The companies under investigation face high costs and timely efforts when defending themselves, as is the case also in merger control cases. EK sees this happening in spite of the result of an investigation or merger control process. EK invites the Commission to consider very carefully, what kind of documents and information it requires from the company during the process, in which form it requires it, from whom etc.

In general, EK welcomes any new methods which will enhance the co-operation, discussion and openness between the Commission and the companies. For example, "State of Play meetings" described in the best practices documents, are an excellent way towards this direction. It would be important to companies to have a right to ask for that kind of meetings. They should be arranged as many times under process as it takes to change information and views between the investigator and the companies.

EK is worried about different kind of antitrust proceedings in different member states. That is why EK invites the Commission to seek ways to ensure that the process follows a similar form in any body, the rights of the defendant are equal everywhere, etc. This kind of coherency again increases predictability and decreases the costs and confusion that the companies face.

Another worry for EK concerns the length of processes. In merger control issues there are some timeframes, but under competition law infringement issues there are none. It would be vitally important to companies to have their cases investigated the soonest possible, as well as receive information on the result. The best practices document does not, unfortunately, pay much attention to this essential question.

Moreover, the best practices document does not give any weight to the compliance programs of the companies. In EK's opinion, it should have at least some relevance in the process if the company has implemented a compliance program and if it can show that it has made its very best to avoid any competition law infringements.

Finally, EK sees that these kinds of best practices should also cover, for example, leniency applications and sector inquiries, the amount of which is increasing all the time, as well as their importance and role in the enforcement of the EC competition law.

For further information, please contact:

Senior Adviser Jukka Lehtonen, tel. + 358 9 4202 3287

email: jukka.lehtonen@ek.fi

Jukka Lehtonen

3.3.2010

The Confederation of Finnish Industries EK is the leading business organisation in Finland. It represents the entire private sector, both industry and services, and companies of all sizes. EK's member companies represent more than 70 percent of Finland's gross domestic product and over 95 percent of exports from Finland. EK has 35 different branch federations with a membership of 16.000 companies in all, which employ about 950 000 employees.