

## **JOINT STATEMENT BY DG INTERNAL MARKET AND SERVICES AND DG COMPETITION**

### **THE CODE OF CONDUCT ON CLEARING AND SETTLEMENT - PRIVATE DISCOUNTS AND EX-POST REBATES**

Better regulation is one of the Commission's primary policy objectives. Better regulation means improving the quality of EU legislation, e.g. by deeper stakeholder consultations and the systematic use of impact assessment. However, better regulation also means favouring non-legislative means – such as self-regulation – wherever possible and appropriate. The Commission's effort towards an improved balance between legislation and market-led initiatives is particularly apparent in the financial markets area.

In this context, it is useful to outline the relationship between ex-ante self-regulation and ex-post competition scrutiny. Respecting self-regulation does not per se discharge companies of the obligation to respect competition rules. In other words, complying with a self-regulatory instrument does not automatically mean complying with competition rules. Moreover, competition rules take precedence over self-imposed rules and the latter must be interpreted with this in mind. As is well-known, the Commission assesses compliance with competition rules on case by case basis.

#### **Price transparency**

As regards the Code of Conduct on clearing and settlement, Article 9 of the Code states that infrastructures that have signed the Code agree to the "...publication of all offered services and their respective prices including applicable terms and conditions [and the publication of] all discount and rebate schemes and the applicable eligibility criteria". Article 10 furthermore states that "All organisations agree to apply the published price list". The information published as result of the Code provides a public benchmark for prices, discount schemes and rebate schemes.

#### **Ex-ante private discounts and ex post rebates**

In addition, infrastructures can choose whether to apply more favourable terms to certain customers than appear in the published price list, i.e. they can offer private discounts and rebates provided that the purpose of so doing is not to abuse market power and foreclose competition.

Infrastructures may, if they so choose, on an *individual basis* state that it is their policy not to grant private discounts, or may choose to be transparent about them, provided that this is not enshrined in any collective agreement. It is essential that infrastructures implement the Code in such a way that significantly more information is provided as regards the use of discount and rebate schemes than has often been the case in the past. For example, infrastructures should provide detailed historical information on past policies and practices regarding their rebate schemes.

The Commission is aware of concerns on the part of certain market participants that some infrastructures may be using private discounts and rebates abusively, to foreclose competition. It goes without saying that DG Competition will be vigilant in enforcing competition law to ensure that this is not the case.

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