



EUROPEAN COMMISSION

*Brussels, 27.7.2017
C(2017) 5449 final*

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President of the European Affairs
Committee
Assembleia da República
Palácio de S. Bento
P – 1249-068 LISBOA*

*cc. Eduardo FERRO RODRIGUES
President of the
Assembleia da República
Palácio de S. Bento
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Dear President,

The Commission would like to thank the Assembleia da República for its Opinion on the Commission's proposal for a Directive 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 {COM(2017) 142 final}.

One of the Commission's strategic objectives is to achieve a new boost for jobs, growth and investment. To achieve this objective, it is essential to ensure the effective and coherent application of European Union competition law by national competition authorities and national courts. Since Council Regulation (EC) No 1/2003¹ entered into force, the national competition authorities apply Union competition rules alongside the Commission. Now, Union competition rules are being enforced on a scale which the Commission could never have achieved on its own, with national competition authorities accounting for 85% of all decisions applying Union competition rules.

However, national competition authorities still face issues that prevent them from achieving their full potential. The proposed Directive would ensure that national competition authorities have the necessary guarantees of independence and resources and enforcement and fining powers they need to carry out their job. Removing these obstacles will help to eliminate distortions to competition in the internal market for the benefit of consumers and businesses, including small and medium-sized enterprises, which now are suffering harm from such obstacles. The proposed Directive would also enable national competition authorities to provide each other with mutual assistance, ensuring a more level playing field in the internal market.

¹ OJ L 1, 4.1.2003, p. 1-25.

The Commission is pleased that the Assembleia da República shares the view that action is required at the level of the Union, rather than by each Member State individually, in order to best ensure that national competition authorities effectively enforce Union competition rules and to bolster the functioning of the internal market.

The Opinion of the Assembleia da República also refers to the need to closely monitor the proposed Directive's transposition at national level, particularly as regards certain aspects of the inspection of non-business premises (potential legal problems with the competence of judicial authorities that could be triggered by the possibility of entrusting the task of a national judicial authority to a national administrative competition authority acting as a judicial authority in cases of extreme urgency); the maximum limit of the fine (setting a level of 10% of the worldwide turnover of the undertaking); the leniency programmes (doubts on the benefits of undertakings obtaining immunity in leniency proceedings); and the mutual assistance concerning notification of decisions and enforcement of fines (what would be the instruments to implement such mutual assistance).

The proposed Directive requires authorisation by a national judicial authority for inspections of private homes. The proposed Directive does not, however, impose on Member States the obligation to make available the possibility of entrusting, in cases of extreme urgency, the task of a national judicial authority to a national administrative competition authority acting as a judicial authority, but it allows those Member States that currently have this possibility to continue doing so.

Regarding fines, the proposed Directive does not provide for a minimum level, but sets the common legal maximum at no less than 10% of the worldwide turnover of the infringing undertaking. This would ensure that fines reach appropriate levels of deterrence while also being proportionate to the economic strength of the undertaking concerned. The proposal also ensures more efficient coordination and a level playing field for leniency programmes across the Union, which have proved to be a key tool in the fight against cartels.

Finally, the mutual assistance mechanism would ensure that undertakings cannot escape their liability just because they do not have assets or a legal presence in the Member State in which they have infringed the law. The current platform already put in place for cooperation and exchange of information between national competition authorities within the European Competition Network could be used to facilitate the exchange of information required by this mutual assistance mechanism.

The Commission hopes that these clarifications address the issues raised by the Assembleia da República and looks forward to continuing our political dialogue.

Yours faithfully,

*Julian King
Member of the Commission*