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COMMUNICATION TO THE COMMISSION

Working Arrangements for the functioning of the Advisory Committee on Restrictive Practices and Dominant Positions

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According to Article 14(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 ("Regulation 1/2003"), the Commission is required to consult the Advisory Committee on Restrictive Practices and Dominant Positions, which is composed of representatives of the competition authorities of the Member States ("Advisory Committee"), before adopting a decision under Articles 7, 8, 9, 10, 23, 24(2) and 29(1) of the Regulation.

The Working Arrangements for the functioning of the Advisory Committee on Restrictive Practices and Dominant Positions (the "Working Arrangements") serve to guide the Commission's services and the members of the Advisory Committee on a certain number of practical matters related to the functioning of the Committee.

A number of provisions in the Working Arrangements lacked clarity, notably on the voting rules and the manner in which the Commission shall take account of the opinion of the Advisory Committee. Therefore, DG Competition and representatives of the national competition authorities of the Member States discussed and agreed to amend the Working Arrangements.

The proposed amendments to the Working Arrangements have been discussed and agreed between DG Competition and representatives of the national competition authorities of the Member States. Moreover, they have been endorsed by the Directors General of DG Competition and the national competition authorities at their meeting on 28 June 2018. They follow the changes agreed upon in 2016 regarding the Working Arrangements for the functioning of the Advisory Committee on concentrations which were adopted by the College following the written procedure on 18 November 2016 (Decide serial number C(2016)7392).

An Inter-Service Consultation was launched and all consulted services, including the Commission's Legal Service, have given a positive opinion to the proposed amendments.

The envisaged changes are highlighted in the accompanying draft amended Working Arrangements. They include notably:

- Implementing the changes already agreed to for the Working Arrangements of the Advisory Committee on Mergers:
 - Introduction of new rules that in the absence of unanimity on the Opinion or on a part of the Opinion, the Opinion is adopted by a simple majority of the members of the Committee which participate in the Advisory Committee and vote on the Opinion (in particular abstentions are not taken into account - so only yes/no votes are counted). The number of votes in favour and against the Opinion, as well as the number of abstentions will be recorded. These clarifications were asked for because Article 14 of Reg. 1/2003 and the current Working Arrangements are silent on these issues.
 - In cases of a (partially) negative Opinion, the Commission shall explain in writing to the competent authorities of the Member States how it took the utmost account of the Opinion within 15 working days after the adoption of the Decision and offer a telephone conference to address possible questions in

relation to its written explanations. This telephone conference shall take place within 15 working days upon receipt by the Commission of a request by a Member State.

- The commitment by the Commission to publish the Opinion of the Advisory Committee on its website together with the final non-confidential version of the Commission decision (or a provisional version thereof) within two months after the adoption of the final Commission decision. If the decision (or a provisional version thereof) is not yet ready for publication by that time, the Opinion will be published on the Commission's website on its own.
 - The Commission will inform the competent authorities of the Member States of the manner in which the Opinion of the Advisory Committee has been taken into account at the earliest feasible opportunity following the adoption of the final decision in relation to which the Opinion was rendered. The Commission can do so for example by transmitting the final decision and highlighting any changes.
- Greater alignment of wording with Article 14 of Reg. 1/2003 in both paragraph 15 (timing for convening a meeting - so that no additional exceptions will be made to the 14 day period foreseen in Article 14) and in paragraphs 59 and 60 (timing for the written procedure).
 - Introducing a clear obligation to keep the timing of meetings confidential (paragraph 16) to prevent leaks in the press about the timing of Advisory Committees.
 - Some practical changes, e.g. including a reference to the Modalities for Videoconferencing (paragraph 4), ensuring that the request to appoint a rapporteur reaches the rapporteur without delay (paragraph 44), making the up-to-date list of participants available to the other participants three working days before the meeting (paragraph 21).

The Commission is therefore invited to approve the revised Working Arrangements as annexed to the present Communication.

Once approved by the Commission, the Working Arrangements will be published on the website of DG Competition.