



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 December 2002**

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**ADDENDUM TO THE "A" ITEM NOTE**

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from : Council Secretariat

to : Council

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Subject : Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No. 1017/68, (EEC) No. 2988/74, (EEC) No. 4056/86 and (EEC) No. 3975/87  
- Adoption

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**Statements to be entered in the Council Minutes**

**JOINT STATEMENT OF THE COUNCIL AND THE COMMISSION ON THE  
FUNCTIONING OF THE NETWORK OF COMPETITION AUTHORITIES**

- "1. The today adopted Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty establishes a directly applicable exception system in which the competition authorities and courts of the Member States, along with the Commission, have the power to apply not only Articles 81(1) and 82 of the Treaty, which have direct applicability by virtue of the case-law of the Court of Justice of the European Communities, but also Article 81(3) of the Treaty.

2. In order to ensure that the Community competition rules are applied effectively and consistently, the Commission and the national competition authorities designated by the Member States (hereafter NCAs) form together a network of competition authorities (hereafter the Network) for the application in close cooperation of Articles 81 and 82 of the Treaty.
3. This Joint Statement is political in nature and does therefore not create any legal rights or obligations. It is limited to setting out common political understanding shared by all Member States and the Commission on the principles of the functioning of the Network.
4. Details will be set out in a Commission notice which will be drafted and updated as necessary in close cooperation with Member States.

### **General principles**

5. The cooperation within the Network is dedicated to the effective enforcement of EC competition rules throughout the Community.
6. Decentralization of the implementation of Community competition rules strengthens the position of the NCAs. These will be fully competent to apply Article 81 and 82 of the Treaty, actively contributing to the development of competition policy, law and practice.
7. All competition authorities within the Network are independent from one another. Cooperation between NCAs and with the Commission takes place on the basis of equality, respect and solidarity.
8. Member States accept that their enforcement systems differ but nonetheless mutually recognize the standards of each other's system as a basis for cooperation.

9. The Commission, as the guardian of the Treaty, has the ultimate but not the sole responsibility for developing policy and safeguarding efficiency and consistency. Therefore, the instruments of the Commission on the one hand and of the NCAs on the other hand are not identical. The additional powers the Commission has been granted to fulfil its responsibilities will be exercised with the utmost regard for the cooperative nature of the Network.
10. Cooperation within the Network and the management of information will be as efficient as possible. All members of the Network will minimize the administrative burden of participating in the Network on the understanding that any information exchanged under Article 11 of the Regulation will be made available and easily accessible to all Network members.

### **Division of work**

11. Without prejudice to Article 11(6) of the Regulation, all Network members have full parallel competence to apply Articles 81 and 82 of the Treaty.
12. Case allocation will be completed as quickly as possible. An indicative time limit (up to 3 months) will be used within the Network. Normally, this allocation will remain definitive to the end of the proceedings provided that the facts known about the case remain substantially the same. If so, this implies that the competition authority which has notified the case to the Network, will normally remain the responsible competition authority if it is well placed to deal with the case and no other competition authority raises objections during the indicative time period.
13. All members of the Network will endeavor to make allocation a predictable process with business and other interested parties receiving guidance as to where to direct complaints.
14. Members of the Network will ensure that those cases which merit a detailed investigation by a competition authority are adequately allocated and assessed. This principle does not prejudice the discretion of all Network members to decide whether or not to investigate a case.

## **Authority (-ies) well placed to act**

15. Members of the Network will ensure an effective enforcement of Articles 81 and 82 of the Treaty. Cases will be dealt with by an authority, or by authorities, able to restore or maintain competition in the market. To that effect, the members of the Network will take into account all relevant factors in particular in which markets the main anti-competitive effects are felt and which authority is most able to deal with a case successfully depending on the ability of the authority to gather evidence, to bring the infringement to an end and to apply sanctions effectively.
16. Cases will be dealt with by a single competition authority as often as possible. A single NCA will be usually well placed to act if only one Member State is substantially affected by an agreement or practice, particularly when the main anti-competitive effects appear in the same Member State and all participating companies to an agreement or an abusive behavior have their seat in that Member State.
17. Where an agreement or practice substantially affects competition in more than one Member State, the Network members will seek to agree between them who is best placed to deal with the case successfully.
18. In cases where single action is not possible (when competition in several Member States is affected and no NCA can deal with the case alone successfully), the Network members should coordinate their action and seek to designate one competition authority as the lead institution.
19. The Commission will be particularly well placed to deal with a case if more than three Member States are substantially affected by an agreement or practice, if it is closely linked to other Community provisions which may be exclusively or more effectively applied by the Commission, if Community interest requires the adoption of a Commission decision to develop Community competition policy particularly when a new competition issue arises or to ensure effective enforcement.

## Consistent application of Community competition rules

20. After the initial allocation period, when the same case (same market, same parties, same conduct/agreement) is being dealt with by more than one NCA well placed to do so, one national competition authority will take a formal decision, whilst others stay their proceedings or, if this is not possible, the NCAs will deal with the case in close co-operation.
21. After the initial allocation period, when a case is being dealt with by one or several competition authority (-ies) which is (are) well placed to do so, the Commission will normally not open proceedings with the effects of relieving them of their competence pursuant to Article 11(6) of the Regulation unless one of the following situations arises:
- (a) Network members envisage conflicting decisions in the same case;
  - (b) Network members envisage a decision which is obviously in conflict with consolidated case law; the standards defined in the judgements of the Community courts and in previous decisions and regulations of the Commission should serve as a yardstick; concerning facts, only a significant divergence will trigger an intervention of the Commission;
  - (c) Network member(s) is (are) unduly drawing out proceedings;
  - (d) There is a need to adopt a Commission decision to develop Community competition policy in particular when a similar competition issue arises in several Member States;
  - (e) The national competition authority does not object.

Should the Commission decide to open proceedings with the effects of Article 11(6) of the Regulation, it will do so as soon as possible.

22. If an NCA is already acting on a case, the Commission will explain the reasons for the application of Article 11(6) of the Regulation in writing to the NCA concerned and to the other members of the Network.
  23. The Commission will normally not - and to the extent that Community interest is not at stake - adopt a decision which is in conflict with a decision of an NCA after proper information pursuant to both Article 11(3) and (4) of the Regulation has been provided and the Commission has made no use of Article 11(6) of the Regulation.
  24. Network members will inform the other members of the Network about rejections of complaints and the termination of investigations on all cases which have been notified within the Network pursuant to Article 11(2) and 11(3) of the Regulation."
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## STATEMENT BY THE COMMISSION

"The today adopted Regulation establishes a directly applicable exception system. It is without prejudice to the ability of the Commission to issue informal guidance to individual undertakings seeking it, where individual cases give rise to genuine uncertainty because they present novel or unresolved questions for the application of Articles 81 or 82.

The Commission is prepared to issue a Notice which sets out the circumstances under which guidance in the form of written opinions could be provided. The Commission shall have no obligation to provide guidance in any individual case."

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## **STATEMENT BY THE GERMAN DELEGATION ON ARTICLE 2 OF THE REGULATION**

"With a view to supplementing in particular recital 5 of this Regulation, the Government of the Federal Republic of Germany confirms its view that Article 83 of the Treaty is not a sufficient legal basis for introducing or amending criminal law or criminal procedural law provisions. This applies in particular to fundamental procedural safeguards in criminal proceedings such as the presumption of innocence on the part of the defendant. The Government of the Federal Republic of Germany would point out that these procedural safeguards also apply to criminal-law-related proceedings such as monetary fine proceedings and enjoy constitutional status. It accordingly assumes that the present Regulation, and in particular Article 2 thereof, cannot amend or adversely affect such criminal law or criminal procedural law provisions applicable to criminal proceedings or criminal-law-related proceedings and legal principles of the Member States."

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