

Competition: Antitrust procedures in anticompetitive agreements

(Article 101 TFEU cases)

[Article 101](#) of the Treaty on the Functioning of the European Union (TFEU) prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States (anti-competitive agreements). These include, for example, price-fixing or market-sharing cartels. Anti-competitive agreements are prohibited regardless of whether they are concluded between companies that operate at the same level of the supply chain (horizontal agreements) or at different levels (vertical agreements).

Article 101 can be applied by the European Commission or by the competition authorities of the EU Member States. Details on the application of Article 101 can be found in [Regulation 1/2003](#) (the Antitrust Regulation).

How a case starts

Article 101 cases can originate in: 1) a complaint, 2) opening of an own-initiative investigation, or 3) a leniency application from one of the participants to a cartel. Under the Commission's [Leniency programme](#), the *first* firm to submit evidence that is sufficient for the Commission to either launch an inspection or enable it to find an infringement receives full exemption from its fine (total immunity). When it applies for immunity, the firm must also end its participation in the infringement. Firms that approach the Commission later and that contribute a real added value to the investigation are eligible for a fine reduction, subject to the same on-going cooperation as for immunity applicants.

Investigation

The Commission's investigative powers to enforce Article 101 are detailed in the Antitrust Regulation. The Commission is empowered, for example, to:

- Send information requests to companies;
- In the context of an inspection:
 - enter the premises of companies;
 - examine the records related to the business;
 - take copies of those records;
 - seal the business premises and records during an inspection;
 - ask members of staff or company representatives questions relating to the subject-matter and purpose of the inspection and record the answers.

At the end of the initial investigative phase, the Commission can take the decision to pursue the case as a matter of priority and to conduct an in-depth investigation, or to close it. In cartel cases, if the case is to be pursued, the Commission decides whether or not the case is suitable for the settlement procedure. (See below.)

Statement of objections and prohibition decision

If the in-depth investigation confirms the Commission's competition concerns, a statement of objections (SO), detailing the Commission's concerns is sent to the companies concerned.

Rights of defence: To ensure an objective outcome, the parties are given certain rights of defence. They are entitled to have [access to the file](#) – this means they can see all non-confidential documents from the Commission's investigation. The parties may then reply to the SO in writing within a certain delay. They

may also request an **oral hearing**, which is conducted by an independent [Hearing Officer](#). After examining the parties' arguments, the Commission reviews and sometimes abandons (part of) its initial objections and may decide to close the case.

If the Commission's concerns are not – or only partly dispelled – it drafts a decision prohibiting the identified infringement (according to Article 7 of the Antitrust Regulation). The draft is then submitted to the Advisory Committee composed of representatives of the Member States' competition authorities. This provides a final check of the draft decision. If fines are proposed in the draft decision, the Advisory Committee meets a second time to specifically discuss them. Finally, the draft is submitted to the College of Commissioners which adopts the decision.

Article 9 commitment decisions

Alternatively to a prohibition decision the Commission may take a commitment decision under Article 9 of Regulation 1/2003. This is a quick way of restoring effective competition to the market. Under commitment decisions, the Commission does not have to conclude on the existence of an infringement of the antitrust rules and imposes no fines. It voices its competition concerns and parties can come forward with commitments to address these concerns. If the Commission, after consulting market participants, finds these commitments sufficient, it takes a **decision to make them legally binding**.

The commitments are usually in place for a specific period of time, and if the companies breach them they can be fined.

Fines

A company that has participated in an anti-competitive agreement and so infringed competition law may have to pay a fine. The Commission's fining policy is aimed at **punishment and deterrence**. The fines reflect the gravity and duration of the infringement. They are calculated under the framework of a set of [Guidelines](#) last revised in 2006.

The starting point for the fine is the percentage of a company's annual sales of the product concerned in the infringement (up to 30%). This is then multiplied by the number of years and months the infringement lasted. Certain aggravating circumstances (e.g. repeat offender) or attenuating circumstances (e.g. limited involvement) may increase or decrease the fine. In **cartel cases**, the fine is increased by a one-time amount equivalent to 15-25% of the value of

one year's sales as an additional **deterrent**. The **maximum** level of fine is capped at 10% of the overall annual turnover of a company.

See separate [factsheet on fines](#).

Right of appeal

The addressees of a Commission decision have the right to appeal to the EU General Court, to amend or annul the decision. The Court can cancel, increase or reduce the fine imposed by the Commission.

Judgments of the General Court can be appealed before the European Court of Justice (ECJ) by the unsuccessful party (so the Commission can also be an appellant). However, these appeals to the ECJ are limited to questions of law only.

Settlement

In **cartel cases**, the Commission or the parties may propose a settlement. The Commission may reject the settlement route for cases that are not suitable. In settlement cases, the parties acknowledge upfront their participation in the cartel, resulting in a speedier procedure and an up to 10% reduction in the fines. The Commission presents parties with the evidence and notifies them of its conclusions as to duration, seriousness, liability and likely fine. The parties must make an oral or written submission acknowledging their liability and stating that they accept the Commission's statement of objections. The settlement procedure allows the Commission to adopt a faster, more streamlined decision and to allocate resources to other cases.

Victims' claims for damages

Any citizen or business which suffers harm as a result of a breach of the EU competition rules is entitled to claim compensation from the party who caused it. This means that the victims of competition law infringements can bring an action for damages before the national courts. If the Commission has taken a prohibition decision regarding the infringement, this decision can be used before national courts to prove that the behaviour took place and was illegal.

July 2013. This factsheet provides basic information on competition procedures and is not a substitute for the applicable legislation.

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