



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMPETITION

# **Antitrust Manual of Procedures**

## **Interim Measures**

**August 2024**

## Antitrust Manual of Procedures

Internal DG Competition working documents on procedures for the application of Articles 101 and 102 TFEU

August 2024

The text is made available on the internet:

[https://competition-policy.ec.europa.eu/antitrust-and-cartels/procedures\\_en](https://competition-policy.ec.europa.eu/antitrust-and-cartels/procedures_en)

## NOTICE

The public Antitrust Manual of Procedures aims to provide transparency about the Commission's procedures for applying Articles 101 and 102 TFEU.

It was originally published in 2012 as a booklet, with two modules added in 2019. In 2024, the Commission started to re-publish it in the form of self-standing modules, as part of an ongoing update process that will allow the Commission to reflect important developments and changes in its procedures.

The public Antitrust Manual of Procedures is based on DG Competition's Antitrust Manual of Procedures, which is an internal working tool intended to provide practical guidance to DG Competition's staff on how to conduct competition investigations in accordance with the applicable competition rules.

The public Antitrust Manual of Procedures does not create or alter any rights or obligations arising under EU competition rules. In cases of divergence between the EU competition rules and the public Antitrust Manual of Procedures, the former prevail.

The public Antitrust Manual of Procedures has not been formally adopted by the Commission and it does not contain binding instructions. It is not intended to provide complete or exhaustive guidance on every question that might arise. The guidance provided may have to be adapted to the circumstances and specificities of the case at hand. Terms used in the Manual are explained in this [Glossary](#).

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## 1. INTRODUCTION

- (1) Article 8 of Regulation 1/2003 establishes an explicit legal basis for the adoption of interim measures in the field of EU antitrust law. It provides that:

“1. In cases of urgency due to the risk of serious and irreparable damage to competition, the Commission, acting on its own initiative may by decision, on the basis of a prima facie finding of infringement, order interim measures.

2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.”

- (2) Before the entry into force of Regulation 1/2003, the power to impose interim measures was already recognized in the case law. The legal test in Article 8 of Regulation No 1/2003 is based on that case law <sup>(1)</sup>, which required, first, that the conduct of an undertaking gives rise to a prima facie infringement of EU antitrust law; and, second, that interim measures are necessary to prevent a situation that is likely to cause serious and irreparable damage (“urgency”).

## 2. REQUIREMENTS FOR IMPOSING INTERIM MEASURES

- (3) Pursuant to Article 8(1) of Regulation 1/2003, interim measures may only be imposed where the following cumulative conditions are met:

(a) a prima facie infringement can be established, based on a factual and legal analysis indicating “at first sight” that the undertaking under investigation has infringed Article 101 or Article 102 TFEU. The case law indicates that the requirement of a prima facie infringement cannot be placed on the same footing as the requirement of certainty that a final decision must satisfy, and that the finding of a prima facie infringement does not correspond to a “clear and flagrant infringement” or to the existence of a prima facie violation of the European Union competition rules “as a matter of probability”. <sup>(2)</sup>

(b) it is possible to show a degree of urgency, due to the risk that competition <sup>(3)</sup> will be seriously and irreparably damaged before the Commission is able to adopt a final decision on the substance of the case. The case law indicates that it is sufficient that the damage resulting from the implementation of the

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<sup>(1)</sup> See in particular Order of the Court of 17 January 1980, *Camera Care v Commission*, 792/79 R , ECLI:EU:C:1980:18, paragraphs 14 and 19; Order of the President of the Court of 29 September 1982, *Ford v Commission*, 228/82 R and 229/82 R, ECLI:EU:C:1982:320, paragraphs 4 and 13; judgment of the Court of First Instance (First Chamber) of 24 January 1992, *La Cinq v Commission*, T-44/90 , ECLI:EU:T:1992:5, paragraph 28.

<sup>(2)</sup> See e.g. judgment of the Court of First Instance (First Chamber) of 12 July 1991, *Peugeot v Commission*, T-23/90, ECLI: EU:T:1991:45, paragraph 61; judgment of the Court of First Instance (First Chamber) of 24 January 1992, *La Cinq v Commission*, T-44/90 , ECLI:EU:T:1992:5, paragraphs 61 and 62; Order of the President of the Court of First Instance of 26 October 2001, *IMS Health v Commission*, T-184/01 R, ECLI:EU:T:2001:259, paragraph 68.

<sup>(3)</sup> Unlike under the case law pre-dating Regulation 1/2003, potential damage to an individual undertaking is therefore only to be considered where it coincides with damage to competition, in which case the interests of the undertaking may be protected by implication.

conduct in question represents a tangible risk, <sup>(4)</sup> or appears likely (i.e. is foreseeable with a sufficient degree of probability), particularly when it depends on the occurrence of a number of factors. <sup>(5)</sup> While purely hypothetical damage is not sufficient to establish serious or irreparable damage, it is not necessary to establish with absolute certainty that the damage is imminent. <sup>(6)</sup>

- (4) The case law suggests that although the conditions of “a prima facie infringement” and “urgency” are cumulative, they are to some extent interdependent. This means that the relative strength of the “prima facie” case may be taken into account in the assessment of urgency and, where appropriate, when weighing up the interests involved. <sup>(7)</sup>
- (5) In addition, it is settled case law that interim measures must, like all measures adopted by the Union’s institutions, respect the principle of proportionality, which requires that the measures adopted cannot exceed the limits of what is appropriate and necessary in order to prevent serious and irreparable damage to competition from occurring. Moreover, where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. <sup>(8)</sup>
- (6) In the pre-Regulation 1/2003 era, the Commission adopted interim measures in eight cases. <sup>(9)</sup> Following the entry into force of Regulation 1/2003, interim measures were used for the first time in the 2019 Broadcom case. <sup>(10)</sup>

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<sup>(4)</sup> Order of the President of the Court of First Instance of 26 October 2001, *IMS Health v Commission*, T-184/01 R, ECLI:EU:T:2001:259, paragraph 144; Order of the President of the Court of 11 April 2002, *NDC Health v IMS*, C-481/01 P(R), ECLI:EU:C:2002:223, paragraphs 68 and 69.

<sup>(5)</sup> Order of the President of the Court of 19 July 1995, *Commission v Atlantic Container Line and Others*, C-149/95 P(R), ECLI:EU:C:1995:257, paragraph 38.

<sup>(6)</sup> Order of the President of the Court of 19 July 1995, *Commission v Atlantic Container Line and Others*, C-149/95 P(R), ECLI:EU:C:1995:257, paragraph 38.

<sup>(7)</sup> See e.g. Order of the President of the Court of 23 February 2001, *Austria v Council*, C-445/00 R, ECLI:EU:C:2001:123, paragraph 110; Order of the President of the Court of 11 April 2002, *NDC Health v IMS*, C-481/01 P(R), ECLI:EU:C:2002:223, paragraph 63; Order of the Vice-President of the Court of 7 March 2013, *EDF v Commission*, C-551/12 P(R), ECLI:EU:C:2013:157, paragraphs 23 and 24.

<sup>(8)</sup> See judgment of the General Court (Fourth Chamber) of 25 November 2014, *Orange v Commission*, T-402/13, ECLI:EU:T:2014:991, paragraph 22; judgment of the Court (Sixth Chamber) of 8 February 2018, *Lloyd's of London*, C-144/17, ECLI:EU:C:2018:78, paragraph 32; judgment of the Court (Second Chamber) of 9 December 2020, *Groupe Canal + v Commission*, C-132/19, ECLI:EU:C:2020:1007, paragraph 104.

<sup>(9)</sup> Commission decision of 18 August 1982 in case IV/30696 – *Ford Werke AG*; Commission decision of 29 July 1983 in case IV/30698 – *ECS/AKZO*; Commission decision of 29 July 1987 in case IV/32279 – *BBI/Boosey & Hawkes*; Commission decision of 26 March 1990 in case IV/33157 – *Eco System/Peugeot*; Commission decision of 25 March 1992 in cases IV/ 31533 – *Schöller* and IV/34072 – *Langnese-Iglo*; Commission decision of 11 June 1992 in case IV/34174 – *Sealink/B&I-Holyhead*; Commission decision of 16 May 1995 in case COMP/35388 – *Irish Continental Group v./CCI Morlaix (Roscoff)*; Commission decision of 3 July 2001 in case COMP D3/38044 – *NDC Health/IMS Health*.

<sup>(10)</sup> Commission decision of 16 October 2019 in case AT.40608 – *Broadcom*.

### 3. PROCEDURE

- (7) Article 8(1) of Regulation 1/2003 provides that the Commission acts on its own initiative ('ex officio'). This means that, although complainants or third parties may encourage the Commission to adopt interim measures, the Commission is no longer <sup>(11)</sup> obliged to decide on (formal or informal) requests for interim measures and, where appropriate, to reject them by decision.
- (8) The procedure that the Commission must follow to impose interim measures essentially mirrors that for the adoption of a prohibition decision pursuant to Article 7 of Regulation 1/2003, and entails corresponding rights of defence for the undertaking concerned.
- (9) This implies that the Commission must open proceedings pursuant to Article 2 of Regulation 773/2004, send an SO pursuant to Article 10(1) of Regulation 773/2004 and grant access to its case file pursuant to Article 15(1) of Regulation 773/2004.
- (10) Furthermore, the addressee of the SO has the right to reply to the SO in writing, pursuant to Article 10(2) of Regulation 773/2004, and to develop its arguments at an oral hearing, pursuant to Article 12 of Regulation 773/2004, if it so requests.
- (11) Likewise, third parties who show a sufficient interest have the right to be heard pursuant to Article 13(1) of Regulation 773/2004, and the AdCom must also be consulted, pursuant to Article 14(1) of Regulation 1/2003.
- (12) As regards time limits, Article 17(2) of Regulation 773/2004 provides that, for proceedings initiated with a view to adopting interim measures, certain time limits, in particular the time limit within which the investigated undertaking may reply to the SO, may be shortened to one week.

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<sup>(11)</sup> Under Regulation 17/62, according to the case law, undertakings had a right to request interim measures, and the Commission was obliged to adopt a formal appealable decision on such requests.