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**COMMISSION STAFF WORKING DOCUMENT  
EXECUTIVE SUMMARY OF THE EVALUATION**

**of**

**Regulations 1/2003 and 773/2004**

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## **Introduction**

The purpose of the staff working document is to evaluate Council Regulation 1/2003 (Regulation 1/2003) together with its Implementing Regulation 773/2004 ('Regulation 773/2004') that became applicable on 1 May 2004. Regulation 1/2003 provides the procedural framework for the implementation of the competition rules laid down in Articles 101 and 102 of the Treaty on the Functioning of the EU.

Regulation 1/2003 replaced Regulation 17, adopted in 1962, that had created a system based on direct applicability of the prohibition on anticompetitive agreements and concerted practices set out in Article 101(1) but required undertakings to notify restrictive agreements for exemption under Article 101(3). And while the Commission, national courts and national competition authorities (NCAs) could all apply Article 101(1), only the Commission had the power to grant exemptions under Article 101(3). In this way, Regulation 17 created a centralised system for enforcing EU competition rules. After over 35 years of enforcement under Regulation 17, it became clear that the centralised system under this regulation was not workable against the backdrop of an expanding EU. It was in this context that the debate on modernising competition enforcement was taking place, and this culminated in a legislative proposal by the Commission in September 2000 and the adoption of Regulation 1/2003 by the Council in December 2002.

Regulation 1/2003 introduced major reforms to EU antitrust procedures.

- First, Regulation 1/2003 replaced the centralised notification and authorisation system set out in Regulation 17 with an enforcement system based on the direct applicability of EU competition rules in their entirety, i.e., including Article 101(3).
- Second, it empowered NCAs and national courts to apply Articles 101 and 102 in their entirety.<sup>1</sup>
- Third, Regulation 1/2003 introduced new and closer forms of cooperation between enforcers and formed the basis for creating the European Competition Network (ECN) a forum for cooperation and discussion between the Commission and the NCAs.
- Fourth, Regulation 1/2003 introduced some new powers for the Commission, particularly in terms of investigative tools and decision-making.

The Commission, NCAs, national courts and other stakeholders have had 20 years of experience in applying Regulation 1/2003 and Regulation 773/2004. It is therefore the right time to evaluate the antitrust procedural framework in force since 2004. Such an evaluation is particularly pertinent considering the economy's digitalisation and the Commission's priority to create a Europe that is fit for the digital age and the need for a stronger single market.

## *Methodology*

To conduct the evaluation, a number of evidence collection activities took place. As a first step, a public consultation was launched and, in parallel, an internal survey within the ECN

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<sup>1</sup> With the exception of the possibility to adopt a decision finding that Articles 101 and 102 are not applicable.

took place to gather NCAs' perspectives on the performance of the Regulations. An evaluation support study was also commissioned that collected additional evidence and views. This study involved: (i) over 250 expert interviews; (ii) desk research; and (iii) collecting and analysing data from the Commission, NCAs and non-EU jurisdictions. A conference marking 20 years of Regulation 1/2003 and a targeted stakeholder workshop were also organised, providing an opportunity for an in-depth reflection on some of the topics raised during the public consultation. Finally, all these sources of evidence were assessed against the Commission's own experience to identify trends in the performance of the Regulations. The cumulative evidence collected in the evaluation exercise through a combination of all these sources resulted in a more complete and balanced understanding of the areas where the Regulations have been meeting their objectives and where they have not been (or are no longer) functioning well, or not as well as they could.

## **Evaluation findings**

### *To what extent was the intervention successful and why?*

**Effectiveness:** Overall, the feedback gathered from the evaluation activities points to the Regulations having been effective in their objective of effective and uniform application of Articles 101 and 102. The main changes introduced by Regulation 1/2003 are considered to be successful by external stakeholders, NCAs and the Commission. Abolishing notifications and operating under a system of self-assessment has been remarkably smooth, and functions well. Similarly, the development of the ECN and the co-enforcement of Articles 101 and 102 with NCAs is considered to be a success.

However, some evidence suggests that certain aspects of the Regulations may undermine the Commission's ability to effectively apply Articles 101 and 102. Specifically, the effectiveness of some of the Commission's investigative tools (specifically **requests for information** and **inspections**) is increasingly affected by digitalisation. The **power to take statements** is useful but not as effective as it could be, particularly given the requirement for consent and the absence of penalties for providing false or misleading information. Similarly, some of the Commission's **decision-making powers**, in particular the possibility for the Commission to impose **structural remedies** and **interim measures**, are not as effective as they could be. The lack of powers to impose **finances** for certain procedural breaches could also be undermining effective enforcement.

While the ECN has been pivotal to achieving the objective of a uniform and effective application of EU competition rules, even more coordination within the ECN could possibly have been beneficial in certain respects. The evaluation feedback included calls to avoid unnecessary parallel investigations by several authorities pursuing the same conduct. In addition, the relationship between EU and national competition laws as provided for in Regulation 1/2003 may not always optimally ensure the coherent, effective and complementary enforcement of available legal instruments, especially when it comes to the integrity of the internal market.

Efficiency: The evidence gathered in the evaluation shows that, overall, the Regulations have resulted in an efficient and uniform application of Articles 101 and 102. The net outcomes associated with the Regulations have been generally positive. This is particularly the case in relation to the removal of the notification system and the introduction of the parallel enforcement with NCAs.

However, the results of the evaluation are mixed regarding the contribution of certain procedures set up in the Regulations to timely and efficient enforcement of Articles 101 and 102. Some evidence points to the Commission's investigations being too lengthy, although investigations into breaches of Articles 101 and 102 are acknowledged to be complex.

Bringing together the different features of the Commission's enforcement procedure, the evaluation suggests that certain aspects of the Commission's procedures are not optimally efficient.

**Inspections** are resource-intensive, and the Commission's experience is that digitalisation is having an increasing impact on the efficiency of the inspection tools. Similarly, for certain types of **requests for information**, the results of the evaluation suggest inefficiency, as it can take several months for the Commission to obtain responses from undertakings to such requests.

While intended to be a tool for urgent situations where harm to competition is imminent, the **interim measures** process is procedurally intensive and this may hamper the measure's efficient use. **Commitment procedures**, while generally regarded as an efficient alternative to prohibition decisions, are also relatively lengthy.

Finally, the procedures for granting **access to file** and for **rejecting formal complaints** are not optimally efficient and are resource-intensive.

Coherence: The evidence gathered in the evaluation shows that the Regulations are overall coherent internally and consistent with other EU legislations. However, in certain areas, there may be inconsistencies with recent policy developments. In particular, the Regulations could, in certain aspects, be inconsistent with the case-law and more recent legislation (such as the ECN+ Directive).

*How did the EU intervention make a difference and to whom?*

EU added value: The evidence gathered in the evaluation shows that the Regulations have EU added value. On the Commission's powers, the Regulations provide clear EU added value given the EU's exclusive competences to establish the competition rules necessary for the functioning of the internal market pursuant to Article 3 of the Treaty. The evaluation also highlighted the value that the Regulations bring to the uniform application of EU competition rules in terms of the parallel enforcement of these rules by the Commission and NCAs. Without Regulation 1/2003 and the cooperation through the ECN enabled by it, the uniform application of Articles 101 and 102 would be compromised.

*Is the intervention still relevant?*

**Relevance:** The evidence gathered in the evaluation shows that the objective of the Regulations, namely the effective and uniform application of Articles 101 and 102, is still relevant and arguably even more necessary given the increased co-enforcement of Articles 101 and 102 by the Commission and NCAs. On the impact of digitalisation, the evidence gathered suggests that the Regulations' toolbox certainly remains relevant for the effective application of Articles 101 and 102, although some issues were raised about its adequacy in some aspects.

## **Conclusion**

The Regulations have performed remarkably well. The abolition of the notification system has led to cost savings for the Commission and for businesses. The process has been generally smooth as businesses and their advisers have adapted well to the direct application of Article 101(3). Guidance, however, remains important for stakeholders (either through guidelines or decision-making practice).

Importantly, the Regulations have created a framework for true co-enforcement of EU competition rules by the Commission, NCAs and national courts. By decentralising enforcement, the Regulations have allowed NCAs to become effective enforcers of Articles 101 and 102 TFEU. The same is true for national courts, that have become increasingly important for enforcing these rules. Decentralised enforcement has been supported by the creation of the ECN, which has allowed NCAs and the Commission to work together to ensure coordination and an appropriate allocation of work among competition authorities. While the ECN has been pivotal to achieving the objective of a uniform and effective application of EU competition rules, even more coordination within the ECN could have been beneficial in certain respects.

The changes to the Commission's procedures introduced by the Regulations have also been useful and have enabled the Commission to deploy its investigative tools for an effective enforcement of EU competition rules. The rules have also proven to be resilient, given that they still provide a good framework for competition enforcement 20 years after coming into force. However, the economy's digitisation and globalisation, its increased complexity and the need to adopt decisions faster raise questions about the effectiveness and efficiency of certain aspects of the Commission's procedures. The evaluation also shows that the Regulations may now be inconsistent with, or lagging behind, other more recent legislation in some limited respects, such as the ECN+ Directive.

Finally, the evaluation has shown that the Regulations continue to both have EU added value and relevance.