

CPI EU News Presents:

Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (“ECN Plus Directive”)

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January 2019

On December 4, 2018, the Council adopted the Directive to empower the competition authorities of the Member States (the so-called “ECN Plus Directive,” or in the following “the Directive”).² The Final Act was signed on December 11, 2018. At the time of writing, the Directive was awaiting publication in the Official Journal.

Background

Since Regulation 1/2003³ went into force on May 1, 2004, the enforcement of EU competition law has been decentralized: in addition to the European Commission, the national competition authorities (“NCAs”) have the power to enforce the antitrust rules in Articles 101, 102 of the Treaty on the Functioning of the European Union (“TFEU”). Together, the Commission and the NCAs form the European Competition Network (“ECN”). The Network Notice⁴ determines the factors to be considered in the allocation of any given case to one (or, in exceptional cases, two or more) of the competition authorities among those in the ECN. While the Network Notice identifies certain factors that influence the determination of those competition authorities which are “well placed” (or in some cases “particularly well placed”) to deal with a particular case, it is not always self-evident *ex ante* to which competition authority a particular case will eventually be allocated.

While Regulation 1/2003 provides for some convergence on substantive EU and national competition law, and for the procedure and sanctions for cases allocated to the European Commission, Regulation 1/2003 does not provide for the procedure and sanctions in procedures before the NCAs (with the limited exception of Article 5 Regulation 1/2003⁵). In the absence of Union legislation, the principle of procedural autonomy means that Member States are free to determine the procedure and sanctions themselves; the principle of procedural autonomy finds its limits in the principles of effectiveness and equivalence.

The system of decentralized enforcement within the ECN has, by and large, worked well.⁶ However, a review of the working of Regulation 1/2003 has also identified a number of problems, which may impair the effectiveness of enforcement of Articles 101 and 102 TFEU (and the parallel national provisions) by the NCAs.⁷

Issues that were identified in the review of Regulation 1/2003 and the subsequent consultations in the legislative process of the new ECN Plus Directive broadly fall into the following categories:

- independence and resources of NCAs;
- powers of NCAs with regard to investigations, decision-making (in particular fining decisions and periodic penalty decisions), and enforcement;
- leniency programs, in particular with regard to
 - the coordination of the several national leniency programs with each other and with that of the European Commission, and
 - the coordination of the leniency programs and the rules on individual sanctions, in particular criminal sanctions;
- mutual assistance among NCAs; and
- the role of NCAs before national courts.

The Content of the ECN Plus Directive

Scope, Fundamental Rights, Independence and Resources of NCAs

The ECN Plus Directive takes aim at all these issues. It covers the application of Articles 101 and 102 TFEU and the parallel application of domestic competition law by NCAs (Article 1(2) of the Directive). The stand-alone application of national competition law (that is, where EU competition law does not apply) is only covered by the Directive in so far as the Directive's restrictive rules on access to leniency statements and settlement submissions and the use of information gained from access to the file (Articles 31(3) and (4) of the Directive) have to be applied in these cases as well (second sentence of Article 1(2) of the Directive).

Article 3 of the Directive clarifies that the general principles of Union law and the Charter of Fundamental Rights apply to the enforcement of Articles 101 and 102 TFEU and the parallel application of national competition law.

Article 4 of the Directive seeks to ensure that NCAs remain independent from political influence while allowing for the NCAs' proportionate accountability and for general policy rules unrelated to specific sector enquiries or enforcement proceedings. This includes the prohibition of political or other external interference with the NCAs' decision making, prohibitions for enforcers to seek or take instructions from government, limitations on the reasons for which enforcers can be dismissed, the obligation to introduce cooling-off periods for departing enforcers to prevent conflicts of interest, the transparent selection, recruitment and appointment of enforcers, and the power of NCAs to determine their own enforcement priorities.

Article 5 of the Directive requires Member States to ensure "at a minimum that national competition authorities have a sufficient number of qualified staff and sufficient financial, technical and technological resources [...]" for the effective enforcement of antitrust law, and that they can independently decide on the allocation of their budget (within the constraints of national budgetary law). Decisions on appointments and dismissals, as well as the allocated budget have to be published in periodic reports.

Powers of Investigation and Decision Making

Articles 6 to 16 of the Directive essentially provide NCAs with the investigatory and decision-making powers that the Commission already has under Regulation 1/2003.

With regard to investigations, the Directive in:

- Article 6 provides for the NCAs' power to search business premises (*cf.* the Commission's power in Article 20 Regulation 1/2003), leaving it to national law whether or not prior judicial authorisation is required for such an inspection;
- Article 7 provides for the NCAs' power to search "other premises" where there is a reasonable suspicion that relevant evidence can be found there, in particular the homes of directors, managers and staff, in which case prior judicial

authorisation is required (*cf.* the Commission's power in Article 21 Regulation 1/2003);

- Article 8 and 9 provide for the NCAs' powers to request information and to summon persons for interviews (*cf.* the Commission's power in Articles 18 and 19 of Regulation 1/2003).

With regard to decision making, the Directive in:

- Article 10 provides for the NCAs' power to find an infringement and order its termination by imposing any behavioural or structural remedies that are necessary and proportionate (*cf.* the Commission's power in Article 7 of Regulation 1/2003);
- Article 11 provides for the NCAs' power to issue decisions ordering interim measures, reviewable in expedited appeal proceedings (*cf.* the Commission's power in Article 8 of Regulation 1/2003);
- Article 12 provides for the NCAs' power to make commitments offered by undertakings to resolve competition concerns binding on them after "formally or informally" seeking other market participants' views (*cf.* the Commission's power in Articles 9, 27(4) of Regulation 1/2003).

With regard to fines and periodic penalties, the Directive in:

- Article 13 provides for the NCAs' power to impose, or to request a court to impose, effective, proportionate and dissuasive fines for infringements of Articles 101 and 102 TFEU and the respective national provisions (Article 13(1) of the Directive; *cf.* Article 23(2) of Regulation 1/2003), and for the enumerated procedural infringements (Article 13(2) of the Directive; *cf.* Article 23(1) of Regulation 1/2003); Article 13 of the Directive also ensures that, for purposes of parental liability and economic succession, the European concept of "undertaking" is applied in national law as well;
- Articles 14 and 15 provide for principles for the calculation of fines for NCAs similar to those applicable to the Commission in Article 23 of Regulation 1/2003: the gravity and duration of the infringement have to be taken into account, and the statutory maximum of the fine must not be set lower than 10 percent of the undertakings' global annual turnover; the Directive also goes into some detail with regard to the fines imposed on associations of undertakings;
- Article 16 provides for the NCAs' power to impose periodic penalties to enforce compliance with procedural obligations and the NCAs' decisions (*cf.* the Commission's parallel power in Article 24 of Regulation 1/2003).

Leniency Programs

Chapter VI (Articles 17-23) of the Directive addresses Leniency Programs. For the most part, this Chapter requires Member States to adopt leniency programs that follow the

Commission's Leniency Notice⁸ (Articles 17-20), and establishes a system of markers and summary applications (Articles 21, 22).

Article 23 of the Directive seeks to ensure that individual sanctions do not interfere with the effectiveness of Leniency Programs. To that end, Article 23(1) of the Directive provides that directors, managers, and other staff of an immunity applicant will be "fully protected" from administrative and other non-criminal sanctions for the infringement of laws that pursue predominantly the same objectives to those pursued by Article 101 TFEU - which, according to recital 64, includes national provisions on bid-rigging - provided the following conditions are fulfilled: (1) the applicant discloses its participation; (2) the applicant is the first to submit evidence that allows a targeted inspection or, subsidiarily, to find an infringement; (3) the individuals in question actively cooperate; and (4) the application preceded the time when the individuals in question became aware of the competition proceedings leading to the sanctions.

Even more importantly (especially with regard to bid-rigging), Article 23(2) of the Directive appears to give also criminal immunity to directors, managers, and other staff of an immunity applicant under the same conditions, provided they cooperate with the prosecuting authority. However, as will be discussed below, this criminal immunity is made subject to the possibility of derogation in Article 23(3) of the Directive, which provides that "to ensure conformity with the existing basic principles of their legal system, by way of derogation from paragraph 2, Member States may provide that the competent authorities are able not to impose a sanction or only to mitigate the sanction to be imposed in criminal proceedings to the extent that the contribution of the individuals [...] to the detection and investigation of the secret cartel outweighs the interest in prosecuting and/or sanctioning those individuals."

Article 23(4) of the Directive provides that in cross-border cases, the NCA in the Member State of the prosecuting authority is to act as an intermediary between the authority competent for the prosecution of the individual and the NCA that is pursuing the competition case. Article 23(5) of the Directive clarifies that any immunity under Article 23 is without prejudice to a right to damages of those harmed by a competition infringement.

Mutual Legal Assistance

Chapter VII (Articles 24-28) provides rules on mutual legal assistance among NCAs. NCAs are to be given powers to search business and other premises, to summon staff to interviews, and to request information on behalf and for the account of another NCA; the applicant NCA "shall be permitted to attend and actively assist" the requested NCA, and the NCAs are allowed to exchange information for this purpose, provided the constraints of Article 12 of Regulation 1/2003 are observed (Article 24 of the Directive).

Articles 25 and 26 of the Directive set out the conditions for legal assistance with, respectively, notifications and the enforcement of fines and periodic penalties (where enforcement in the applicant NCA's Member State proved, despite reasonable efforts, unsuccessful).

Article 27(1) provides that the requested actions are carried out under the law of the requested NCA; an exception to this rule is contained in Article 26(4), under which questions of limitations for the enforcement of fines or periodic penalties are governed by the law of the applicant NCA. Requests for assistance under Articles 25 and 26 are executed by use of a “uniform instrument” to which the act to be notified or enforced is to be attached. The uniform instrument has to contain the information listed in Article 27(2), and in the case of the enforcement of a fines or periodic penalty decision additionally the information listed in Article 27(3). The uniform instrument does not require any act of recognition in the requested NCA’s Member State. However, the applicant NCA has to provide the uniform instrument, and (if required by national law of the requested NCA’s Member State) the act to be notified or enforced, in the official language (or one of the official languages) of the requested NCA’s Member State, unless the NCAs bilaterally agree otherwise.

The requested NCA is not obliged to execute a request for legal assistance if it is manifestly contrary to its Member State’s public policy.

The requested NCA is entitled to a reimbursement of all costs incurred, and may recover these costs from any recovered fines or periodic penalties.

Where disputes arise about the lawfulness of the uniform instrument or the act to be notified or decision to be enforced, the bodies of the Member State of the applicant NCA are competent, and its laws govern the dispute. Where a dispute about the validity of the notification or the lawfulness of the enforcement measures arises, it is the bodies and laws of the requested NCA’s Member State that govern the dispute.

Miscellania

Article 29 provides that the limitation periods for the enforcement of fines and periodic penalties shall be suspended or interrupted for the duration of enforcement proceedings by another NCA or the Commission.

Article 30 provides, *inter alia*, that “the national administrative competition authority is of its own right fully entitled to participate as appropriate as a prosecutor, defendant or respondent in [judicial] proceedings and to enjoy the same rights as such public parties to these proceedings” – a provision that is likely to be welcomed by the German Bundeskartellamt.

Article 31 deals with access to the file and limitations to the use of information gained by such access. As mentioned above, the provisions in Article 31(3) and (4) are the only ones in the ECN Plus Directive that apply not only where EU law and national competition law is applied in parallel, but also where national competition law is applied on a stand-alone basis (Article 1(2)).

Article 32 provides that, *inter alia*, electronic and recorded evidence must be admissible before NCAs. Under Article 33, the Commission’s costs for the European Competition Network System, a central information system, will be borne by the EU budget and the ECN may publish best practices on issues covered by the Directive. Article 34 provides for the usual two-year implementation period (counted from the

date of entry into force, which under Article 36 is the 20th day after publication of the Directive in the Official Journal). Article 35 envisages a review six years after the adoption of the Directive.

Discussion

Changes to national competition laws required by the Directive may seem marginal. For example, in many Member States, the enforcement provisions were already largely aligned with the system in Regulation 1/2003, and most Member States already had leniency programs that were designed along the lines of the Commission's Leniency Notice or the ECN Model Leniency Program.⁹

This does not mean, however, that the Directive will not be welcomed by the NCAs. Provisions on independence and resources were considered important in particular by some NCAs from Central and Eastern European ("CEE") Member States.¹⁰ But it is not only the younger NCAs that sought changes: if provisions on the applicability of the European concept of undertaking with regard to economic succession had existed earlier, the "sausage gap" problem encountered by the German Bundeskartellamt (meanwhile addressed in the 8th and 9th Amendment to the German Act Against Restraints of Competition) could have been avoided. Furthermore, the application of the European rules on Legal Professional Privilege in investigations by NCAs was not only disputed in CEE Member States,¹¹ but also in Germany;¹² Article 3 should put this controversy to rest.

Despite some welcome gap filling, the Directive delivers less than one could have hoped for. A short blog post is not the place for an in-depth analysis, but the following issues deserve some critical comments.

Leniency

By far the most problematic aspect of the Directive is the way in which it deals with leniency programs.

First, despite several calls for the introduction of a one-stop shop very early in the discussions about the Directive (especially triggered by the *DHL Express* case¹³), the Directive stops far short of such a one-stop shop. It does not even introduce a one-stop shop for markers within the ECN. This deficiency is only very partially alleviated by the rules on summary applications and the requirement for national marker schemes. I deplore this failure to introduce a one-stop shop not because it makes life more difficult for cartelists; I deplore it because the dangers of largely uncoordinated national leniency programs (albeit somewhat more harmonized by virtue of the Directive) make leniency programs, at least on the margin, less attractive and therefore less effective.

Secondly, this failure to introduce a one-stop shop regime is exacerbated by the failure to specify that the leniency application may be submitted in English (or French or German). Instead, Article 20(3) of the Directive specifies that leniency application have to be submitted in the official language (or one of the official languages) of the NCA's

Member State, unless otherwise agreed bilaterally between the NCA and the applicant. While many NCAs accept leniency application in English, not all do; and the cost and delay of translating all relevant documents faithfully into several languages creates another, entirely avoidable, barrier to applying for leniency.

Thirdly, I had initially had high hopes for the provision that is now Article 23 of the Directive.¹⁴ While national law usually has no problems to extend immunity under a leniency program to individual administrative, non-criminal sanctions (which is now provided for in Article 23(1)), several Member States are - rightly or wrongly - of the view that under their constitutions it is not possible to award automatic criminal immunity to successful immunity applicants. In these Member States, public prosecutors do not (in theory) have discretion whether to prosecute crimes. The concern is that where the *ultima ratio* of criminal law is invoked, justice has to be done without a view to utilitarian considerations. This means that to the extent there are criminal prohibitions, leniency programs cannot state categorically *ex ante* that the directors, managers, or other staff of the immunity applicant will not be criminally prosecuted. At best, the prosecutor or judge may take the cooperation into account in the decision to prosecute or in the sentence, which may result in closing the case or a reduced sentence in the individual case. The problem is that this will only become clear *ex post* - and so, from an *ex ante* perspective, may prevent leniency applications.

This has two unwelcome effects. First, where criminal prohibitions do exist (especially against bid-rigging), the effectiveness of leniency programs may suffer greatly. Secondly, this consideration in turn may prevent the introduction of a more effective criminal enforcement regime in these countries.

As the considerations are based on (real or perceived) constitutional arguments, they cannot simply be addressed by national legislation (short of a constitutional amendment). However, EU legislation would have had the power to overcome the problem. At first glance, Article 23(2) of the Directive provides for exactly this welcome effect of EU legislation that requires criminal immunity where the conditions for immunity under a leniency program are fulfilled. Unfortunately, what was given by Article 23(2) is taken back by Article 23(3), a provision that was not contained in the Commission's original proposal for the Directive, and which was introduced, according to well-informed sources, "on request by two large Member States." Under this provision, Member States may, by way of derogation from Article 23(2), instead introduce rules under which the decision maker merely balances the weight of the interest in detection and investigation based on cooperation on the one hand and the interest in prosecution on the other, and then decides whether to impose no criminal sanction or to mitigate the sanction. This reintroduces the *ex ante* unpredictability that renders the current system unsuitable for effective leniency programs in the first place, and which Article 23(2) was meant to remove.

The failure to introduce a one-stop shop for leniency applications (or at least markers) and the decision to make Article 23(2) of the Directive subject to derogations are two missed opportunities to make competition law enforcement more effective.

Independence and Resources

While the provisions on independence and resources in the Directive are welcome, they are arguably too unspecific to be of any real help to NCAs subject to attempted political influence or budgetary pressures.¹⁵ What, after all, are a “sufficient number of qualified staff and sufficient financial, technical and technological resources”? When are the NCA staff able to perform their duties “independently from political and external influence”?

The Directive may be able to prevent more overt forms of political influence on the NCA, but it is hardly able to avoid more subtle influences. Decisions on personnel allocation to cases, or the institutional budget, a restructuring of the enforcement authority, implicit indications about career prospects, and similar subcutaneous influences (in today’s world: tweets?) may be just as effective as blunter interventions. The problem with preventing more subtle interventions is that they can only be averted by the institutional self-confidence and the general support of the NCA’s independence both within the NCA and in the general population, not by a seemingly comprehensive but abstract prohibition of individual attempts to interfere.¹⁶ Just as the effectiveness of corporate compliance schemes depends on many soft factors that are difficult or even impossible to assess objectively,¹⁷ the independence of a competition authority depends on factors that are difficult to regulate.

Interim Measures

Recital 38 of the Directive rightly emphasizes the importance of quick intervention in fast-moving markets. However, the operative part of the Directive largely ossifies the position taken in Article 8 of Regulation 1/2003, a provision that has not been used a single time since it was introduced (although there is some older case law under *Camera Care*¹⁸); one may doubt that this is the model to which one should aspire. It is a pity that the opportunity to find more effective solutions in the Directive was missed. In the United Kingdom, for example, the protection of the public interest or “significant harm” (instead of “irreparable harm”) suffice as a precondition for interim measures under s 35 of the Competition Act 1998, and France and Belgium use interim measures with some frequency.

On the other hand, it would arguably be preferable if innovative solutions were implemented by the generally more experienced Commission after revising Article 8 of Regulation 1/2003, in order to ensure some consistency in the practice of interim measures in EU competition law.

Be that as it may, there is some recognition in the Directive that the current solution is not optimal: first, Article 11 provides only for minimum harmonization (“at least”) and so leaves room for innovation on the Member State level; and, secondly, recital 38 of the Directive already envisages the need for its own reform: “There is a particular need to enable all competition authorities to deal with developments in fast-moving markets and therefore to reflect within the European Competition Network on the use of interim measures and to take this experience into account in any relevant soft measure or future review of this Directive.”

Commitment Decisions

It is also somewhat surprising that the preconditions for commitment decisions were not harmonized to a greater degree. Currently, it is occasionally difficult for undertakings to get to a commitment decision because in some Member States commitments can only be rendered before, in others only after a Statement of Objections is issued. Requirements for formal public consultation differ. The Directive does nothing to reduce these disparities or to lead to greater coordination within the ECN.

Conclusion

The Directive will lead to greater harmonization of the Member States' rules on procedure and sanctions before the NCAs. No doubt the Directive will fill some gaps in every Member State's enforcement regime, and will so make enforcement more effective. Unfortunately, the Directive has missed several opportunities to make enforcement even more effective. The failure to introduce a one-stop shop for leniency applications or markers, the decision to allow for derogations from the prohibition on criminal sanctions for cooperating directors, managers, and other staff of immunity applicants, and the failure to devise a more effective system for interim measures are arguably the greatest missed opportunities. There is always the hope for the next iteration of harmonization following the review of the Directive. Perhaps the European legislator will take more decisive measures then. *On verra* – in six years.

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- ² DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO EMPOWER THE COMPETITION AUTHORITIES OF THE MEMBER STATES TO BE MORE EFFECTIVE ENFORCERS AND TO ENSURE THE PROPER FUNCTIONING OF THE INTERNAL MARKET 2017/0063 (COD) (November 21, 2018), <http://data.consilium.europa.eu/doc/document/PE-42-2018-INIT/en/pdf>.
- ³ COUNCIL REGULATION (EC) No 1/2003 OF 16 DECEMBER 2002 ON THE IMPLEMENTATION OF THE RULES ON COMPETITION LAID DOWN IN ARTICLES 81 AND 82 OF THE TREATY [2003] *Official Journal No. L 1* of January 4, 2003, 1–25.
- ⁴ COMMISSION NOTICE ON COOPERATION WITHIN THE NETWORK OF COMPETITION AUTHORITIES [2004] *Official Journal No. C 101* of April 27, 2004, 43–53.
- ⁵ For the controversial content of Article 5 of Regulation (EC) 1/2003, see, e.g. Judgment of the Court (Grand Chamber) of May 3, 2011, Case C-375/09 (*Prezes Urzędu Ochrony Konkurencji i Konsumentów v. Tele2 Polska sp. z o.o., devenue Netia SA*) EU:C:2011:270 [2011] ECR I-3055; Judgment of the Court (Grand Chamber) of June 18, 2013, Case C-681/11 (*Bundeswettbewerbsbehörde, Bundeskartellamt v. Schenker and others*) ECLI:EU:C:2013:404.
- ⁶ See, e.g. Wouter P.J. Wils, *Ten Years of Regulation 1/2003 — A Retrospective*, 4(4) J. EUR. COMP. L. & PRACTICE 293 (2013).
- ⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, TEN YEARS OF ANTITRUST ENFORCEMENT UNDER REGULATION 1/2003: ACHIEVEMENTS AND FUTURE PERSPECTIVES, COM(2014) 453, available at http://ec.europa.eu/competition/antitrust/antitrust_enforcement_10_years_en.pdf and the accompanying COMMISSION STAFF WORKING DOCUMENT, TEN YEARS OF ANTITRUST ENFORCEMENT UNDER REGULATION 1/2003, SWD(2014) 230/2, available at http://ec.europa.eu/competition/antitrust/swd_2014_230_en.pdf.
- ⁸ COMMISSION NOTICE ON IMMUNITY FROM FINES AND REDUCTION OF FINES IN CARTEL CASES [2006] *Official Journal No. C 298*, December 8, 2006, 17, as amended by the AMENDMENTS TO THE COMMISSION NOTICE ON IMMUNITY FROM FINES AND REDUCTION OF FINES IN CARTEL CASES, [2015] *Official Journal No. C 256*, August 5, 2015, 1.
- ⁹ ECN MODEL LENIENCY PROGRAM, AS REVISED NOVEMBER 2012, http://ec.europa.eu/competition/ecn/mlp_revised_2012_en.pdf.
- ¹⁰ See, e.g. Maciej Bernatt, *Anti-Institutional Populism and Antitrust: Setting the Scene*, Working Paper presented at the 13th ASCOLA Conference, New York University, June 21-23, 2018, on file with the author; idem, *Effectiveness of Judicial Review in the Polish Competition Law System and the Place for Judicial Deference* 9(14) YEARBOOK OF ANTITRUST AND REGULATORY STUDIES 97, 117; see also the contribution by Maciej Bernatt to the Workshop on the ECN Plus Directive at the Universität Würzburg, April 27, 2018, briefly summarized (in German) in Argyro Triantafyllou, *The Enforcement of Competition Law in the Light of the Proposal for an ECN+ Directive*, 6(10) NEUE ZEITSCHRIFT FÜR KARTELLRECHT 472, 473 (2018).
- ¹¹ In-depth analysis in Maciej Bernatt, Marco Botta & Alexandr Svetlicinii, *The Right of Defence in the Decentralized System of EU Competition Law Enforcement: A Call for Harmonization from Central and Eastern Europe*, 41(3) WORLD COMPETITION 309 (2018).
- ¹² Martin Buntscheck, *Anwaltskorrespondenz – Beitrag zur geordneten Rechtspflege oder “tickende Zeitbombe”*, 2007 WIRTSCHAFT UND WETTBEWERB 229, 239–241 (in German); Florian Wagner-von Papp, *Germany*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS: COMPETITION LAW (Francesco Denozza & Alberto Toffoletto, eds) (Alphen aan den Rijn, NL: Kluwer Law International, 2013) at para. 535, 536.
- ¹³ Judgment of the Court (Second Chamber) of January 20, 2016, Case C-428/14 (*DHL Express (Italy) Srl and DHL Global Forwarding (Italy) SpA v. Autorità Garante della Concorrenza e del mercato*) ECLI:EU:C:2016:27.
- ¹⁴ See already Florian Wagner-von Papp, *Kriminalisierung von Kartellabsprachen – tut sich da was?* 2014 WIRTSCHAFT UND WETTBEWERB 1155 (in German); idem, *Compliance and Individual Sanctions in the Enforcement of Competition Law* in Johannes Paha (ed), *COMPETITION LAW COMPLIANCE PROGRAMMES — AN INTERDISCIPLINARY APPROACH* (Springer 2016) 135, 169–170, 181–182.
- ¹⁵ See Maciej Bernatt’s various contributions, *supra* note 10.
- ¹⁶ Even where this is the case, this does not prevent attempts to influence the outcome of competition investigations. Cf. Werner Mussler & Kerstin Schwenn, *Aufbruch im Bundeskartellamt*, FRANKFURTER ALLGEMEINE ZEITUNG April 11, 2008.
- ¹⁷ Wouter P.J. Wils, *Antitrust Compliance Programmes & Optimal Antitrust Enforcement*, 1(1) JOURNAL OF ANTITRUST ENFORCEMENT 52 (2013).
- ¹⁸ Order of the Court of January 17, 1980, Case 792/79 R (*Camera Care Ltd v. Commission of the European Communities*) [1980] ECR 119, ECLI:EU:C:1980:18.