



Principles of transparency and procedural fairness in competition law enforcement

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DESCRIPTION

The recommendations define transparency and accountability obligations such as independence, Impartiality, professionalism, indiscriminate, proportional and consistent; timeliness, meaningful involvement of the parties in the enforcement process, protection of sensitive and privileged information, and judicial review.

Transparency and Predictability

This recommendation calls for a clear and publicly available framework for the enforcement of competition law. Transparency includes clarity about the rights and obligations of the parties, applicable procedures and deadlines. It requires publication of enforcement (administrative and/or judicial) decisions including facts and legal grounds (excluding sensitive information protected from disclosure).

Independence, Impartiality, and Professionalism

Recommendations describe each requirement. Independence includes ensuring that competition authorities are free from political interference and pressure. Impartiality requires addressing serious conflicts of interest with law enforcement officers and ensuring that law is enforced on the basis of relevant legal and economic debates and sound competition principles. Professionalism means providing competition authorities with sufficient resources (in terms of human and financial resources, as well as research and enforcement tools) to perform their duties effectively.

Non-discrimination, Proportionality, and Consistency

Non-discrimination requires equal treatment of the parties without differentiation based on factors such as nationality or ownership. Proportionality includes adequacy like avoiding unnecessary costs and burdens, limiting procedural measures such as inspections and requests for necessary information, and in some cases (if

sufficient information is available) evaluate whether a case has merit and should be pursued or if not is better closed. Consistency includes standardized procedures and steps to ensure objective decision-making through the application of internal checks and counterbalances.

Timeliness

This requires closing of cases within a reasonable span of time, taking into account the nature and complexity of each case and recognizing that antitrust cases can take a long time to close. Recommendations advise having legal requirements, competition authority guidelines, or internal goals (each jurisdiction can be selected) for deadlines or duration of procedural steps that give both the competition authorities and the parties sufficient time to prepare for action and response.

Meaningful Engagement and Parties Right to Respond and be Heard

This principle details the parties core rights of defense. First, it's far incumbent upon opposition government to provide suitable and timely statistics on the outlet of a case, its felony basis, opposition concerns, and status. Five Parties ought to be capable of select their lawyer, and feature possibilities for good enough protection earlier than a very last selection is made. This consists of possibilities to provide their perspectives through counsel, talk records and arguments with the opposition authority, and feature a significant threat to provide earlier than the important thing selection-makers a complete reaction to the allegations and put up proof in guide in their arguments. The proper to reply to allegations entails an attendant proper to get right of entry to applicable proof held *via* way of means of the opposition authority or court, especially statistics on which an adverse decision can be based. The foremost exception to the proper to get right of entry to the case report is the safety of private statistics.

Protection of Confidential and Privileged Information

Therefore, not all competition laws define sensitive information, and there are many that define it. Even if the additional definition "under applicable law" means that the exact scope of sensitive information and the degree of its protection may ultimately differ, take a step forward. Confidentiality of information means that it cannot be disclosed in principle. Competition authorities are obliged to protect such information. However, jurisdictions usually allow the disclosure of sensitive information where necessary to protect the defenses of the parties, usually as part of safeguards. Examples include disclosure to restricted persons (such as legal advisors outside the parties), signing nondisclosure agreements to prevent further dissemination, disclosure in the data room, or private hearings. The recommendations advise on the existence of protection against the illegal disclosure of sensitive information, clear public rules regarding the identification and handling of sensitive information, and policies to protect confidential communications between lawyers and clients.

Impartial Judicial Review

Competition regulation enforcement selections must be reviewed *via* way of means of a courtroom docket,

tribunal, or appellate frame this is unbiased and become independent from the opposition authority. Judicial evaluate is a middle detail of the proper to be heard, and critical for the effectiveness and credibility of opposition regulation enforcement. It is a important supplement to inner assessments and balances, and the procedural ensures that opposition government installed region to make sure due manner. The evaluate frame can also additionally verify whether or not procedural due manner turned into followed, and/or substantial policies have been complied with. All investigations and selections want to be sufficiently sturdy to face up to judicial scrutiny. Thus, ex publish evaluate promotes the thoroughness of the case ex ante, because the investigating authority is aware of that it's far probable to need to shield the case earlier than the courtroom docket. The Recommendation calls for that judicial evaluate encompass the exam of facts, proof and grounds of opposition regulation enforcement selections and that courtroom docket selections are in writing, primarily based totally best on subjects of file and published, difficulty to the safety of personal information.