



DUE PROCESS IN ANTITRUST PROCEEDINGS

KEY MESSAGES

- 1** The assurance of procedural fairness in antitrust procedures contributes to vigorous and credible enforcement of competition law.
- 2** Safeguards must be introduced in EU antitrust procedures to ensure sound administration and decision-making and particularly to achieve increased separation of investigative and decisional powers.
- 3** Due process and sanctions are interconnected: the general raise in the level of fines should meet with an increase in procedural rights.
- 4** Companies' compliance efforts should be recognised and valued by the antitrust authorities.

BACKGROUND

The objective of this debate is to further enhance the transparency and the predictability of antitrust proceedings and ensure a higher level of procedural fairness, not only to help protect the businesses involved but also to contribute to reinforcing a credible public enforcement of antitrust law.

The European Commission's enforcement process does not meet the current due process standards, in particular as regards the lack of a proper separation between the different phases and responsibilities in the procedure. Within the current legislative setting, concrete measures could be adopted to lead to a fairer proceeding and significantly decrease the risk of bias.

The level of necessary procedural safeguards is linked to the applicable sanctions. In recent years, there has been a general increase in the level of the fines: this should be accompanied by an improvement in the protection of the procedural rights of the parties. Alternative types of sanctions could also be considered.

The promotion of a culture of compliance will help to successfully prevent illegal actions from arising in the first place. Businesses should be encouraged to adopt and implement effective compliance programmes.

All competition authorities in the EU and worldwide can improve on their enforcement practices. It is important that public authorities worldwide engage in a dialogue on due process to ensure that best practices are adopted internationally.

WHAT DOES BUSINESSEUROPE AIM FOR?

- EU antitrust procedures are in compelling need for a fundamental reform. Procedures and safeguards should be introduced within the current EU setting to improve fairness and help ensure sound administration and decision-making.
- Concrete measures like the separation of the departments in charge of investigating the case and of drafting the decision should be taken to achieve full separation of powers within the Commission.
- Companies subject to investigations should be granted the possibility to prove their compliance efforts and have this recognised and valued by the Commission.
- Recommended international best practices should be developed within the OECD and the ICN.