

**PROPOSAL FOR A COMMISSION REGULATION (EC) No .../...**  
**of [...]**  
**amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases**

(Text with EEA relevance)

(2007/C 255/19)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to 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 <sup>(1)</sup>, and in particular Article 33 thereof,

Having published a draft of this Regulation <sup>(2)</sup>,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

- (1) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty <sup>(3)</sup> lays down rules concerning the participation of the parties concerned in such proceedings.
- (2) Parties to the proceedings may be prepared to acknowledge their participation in a cartel violating Article 81 of the Treaty and their liability in respect of such participation, if they can reasonably anticipate the Commission's envisaged findings as regards their participation in the infringement and the level of potential fines and agree with those findings. It should be possible for the Commission to disclose to those parties, where appropriate, the objections which it intends to raise against them on the basis of the evidence in the file and the fines that they are likely to incur. Such early disclosure should enable the parties concerned to put forward their views on the objections which the Commission intends to raise against them as well as on their potential liability.
- (3) When the Commission endorses the parties' written settlement submissions in the statement of objections and, in their replies, the parties confirm that the statement of objections corresponds to the contents of their written submissions, the Commission should be able to proceed immediately to the adoption of a decision pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 14 of Regulation (EC) No 1/2003.

- (4) A settlement procedure should therefore be established in order to enable the Commission to handle cartel cases faster by reaching an agreement with the parties.
- (5) Experience has shown that systematically providing complainants with a non-confidential version of the statement of objections can have negative consequences as regards the willingness of the parties to the proceedings to cooperate with the Commission. While complainants should continue to be closely associated with the proceedings and be informed of and able to provide their views on the nature and subject matter of the procedure in writing, it should be for the Commission to determine how such written information should be given in a particular case.
- (6) Regulation (EC) No 773/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 773/2004 is amended as follows:

1. Article 2, paragraph 1 is replaced by the following

'1. The Commission may decide to initiate proceedings with a view to adopting a decision pursuant to Chapter III of Regulation (EC) No 1/2003 at any point in time, but no later than the date on which it issues a preliminary assessment as referred to in Article 9(1) of that Regulation, a statement of objections or a request for the parties to express their interest in engaging in settlement discussions, or the date on which a notice pursuant to Article 27(4) of that Regulation is published, whichever is the earlier.'

2. In Article 6, paragraph 1 is replaced by the following:

'1. Where the Commission issues a statement of objections relating to a matter in respect of which it has received a complaint, it shall inform the complainant in writing of the nature and subject matter of the procedure and set a time-limit within which the complainant may make known its views in writing. The Commission may also provide the complainant with a copy of the non-confidential version of the statement of objections.'

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1).

<sup>(2)</sup> OJ C 255, 30.10.2007, p. 48.

<sup>(3)</sup> OJ L 123, 27.4.2004, p. 18. Regulation as amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

3. In Article 10, paragraph 1 is replaced by the following:

'1. The Commission shall inform the parties concerned of the objections raised against them. The statement of objections shall be notified in writing to each of the parties against whom objections are raised.'

4. The following Article 10a is inserted:

*'Article 10a*

#### **Settlement procedure in cartel cases**

1. After the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003, the Commission may set a time-limit within which the parties may indicate in writing that they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions. The Commission shall not be obliged to take into account replies received after the expiry of that time-limit.

If two or more parties belonging to the same undertaking indicate that they are willing to engage in settlement discussions pursuant to the first subparagraph, those parties shall appoint a joint representation to engage in discussions with the Commission on their behalf.

2. The Commission may inform the parties willing to introduce settlement submissions of:

- (a) the objections it envisages to raise against them;
- (b) the evidence supporting them, and
- (c) the potential fines.

Should settlement discussions progress to a stage in which the above mentioned information has been disclosed upon request or made available to the parties otherwise, the Commission may set a time-limit within which the parties may commit to follow the settlement procedure by introducing written settlement submissions reflecting the results of the settlement discussions and acknowledging their participation in an infringement of Article 81 of the Treaty as well as their liability. The Commission shall not be obliged to take into account written settlement submissions received after the expiry of that time-limit.

3. When the statement of objections notified to the parties endorses the contents of their written settlement submissions, the written reply to the statement of objections by the parties concerned shall, within a time-limit set by the Commission, confirm that the statement of objections addressed to them corresponds to the contents of their written settlement submissions. The Commission may then proceed immediately to the adoption of a decision pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003

after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 14 of Regulation (EC) No 1/2003.'

5. Article 11(1) is replaced by the following:

'1. The Commission shall give the parties to whom it addresses a statement of objections the opportunity to be heard before consulting the Advisory Committee referred to in Article 14(1) of Regulation (EC) No 1/2003'

6. Article 12 is replaced by the following:

'1. The Commission shall give the parties to whom it addresses a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written submissions.'

'2. However, when introducing their written settlement submissions the parties shall confirm to the Commission that they would only require having the opportunity to develop their arguments at an oral hearing, if the statement of objections does not endorse the contents of their written settlement submissions.'

7. In Article 15, the following paragraph 1a is added:

'1a. After the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003, the Commission shall disclose, where appropriate, the evidence supporting the envisaged objections to parties willing to introduce settlement submissions in order to enable them to do so. In view thereof, when introducing their settlement submissions the parties shall confirm to the Commission that they will only require access to the file after the receipt of the statement of objections, if the statement of objections does not endorse the contents of their written settlement submissions.'

8. Article 17(1) and Article 17(3) are replaced by the following:

'1. In setting the time-limits provided for in Article 3(3), Article 4(3), Article 6(1), Article 7(1), Article 10(2), Article 10a(1), Article 10a(2), Article 10a(3) and Article 16(3), the Commission shall have regard both to the time required for preparation of the submission and to the urgency of the case.'

'3. The time-limits referred to in Article 3(3), Article 4(3), Article 10a(1), Article 10a(2) and Article 16(3) shall be at least two weeks. The time-limit referred to in Article 10a(3) shall be at least one week.'

#### *Article 2*

This Regulation shall enter into force on [date].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Commission*  
Neelie KROES  
*Member of the Commission*

---