



# Fairness and transparency in EU competition procedures

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## A. The starting point

If COMP loses in Court, it is often because of a procedural requirement!

Procedure is important: it helps the Authority as much as the Parties: clear, predictable, balanced, fair and transparent procedural framework

## B. The essentials of any procedural framework

[ICN Guiding Principles for Procedural Fairness](#)

[ICN Guidance on Investigative Process](#)

Proportionality of the Authority's measures  
Clarity and transparency on the procedure

## C. Conducting an investigation

### Transparency and disclosure:

- Reasonable deadlines to reply
  - Can and are often prolonged
  - If parties not happy with case team reply → Hearing Officer is involved
- Access to full file with Statement of Objections
  - No internal documents
  - But Non-Confidential Version of ALL documents on file (probative value > business secret)

# Conducting an investigation

Proper document management/registry:

- All documents go on file
- Respecting confidentiality: 'Need to know' access

Performant case tools



# Conducting an investigation

- Adopt and publish rules, notices, guidelines
- Binding and non-binding (best practices)

## D. Decision making

Case team: manager, min. 2 case handlers, paralegal, case assistant and back-up

Checks & balances:

- Hierarchy
- Internal coordination unit
- Chief Economist Team
- Panel
- Hearing Officer (rights of defence)
- Legal Service
- (Member States; Other departments in Commission);



# Decision making - 2

## Adoption by College of Commissioners

- Key role for Competition Commissioner and President

## Review by European Courts of Justice

- General Court: facts and law
- Court of Justice: law



# Rights of defence

Legal Professional Privilege

Sufficient time to reply; State of Play meetings

Statement of Objections: it all has to be there

- Access to full file
- Written reply
- Oral hearing chaired by Hearing Officer

Motivated decision

Right of appeal



# Thank you – Questions?

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