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Encouraging complaints

- Complaints are important source of information and cases
- Which complaints are more likely to become a priority case?
  - All complaints welcome and duly assessed, but need to set priorities
  - What increases the chance of a complaint to be prioritised?
    - Genuine competition problem. Likely, significant
    - In key sector, added value of EU action
    - Impact beyond case itself, novel situations
    - Clear and concise. Facts checked, not ‘embellished’
- Commission encourages complaints and ready to help
  - Formal and informal, short and comprehensive
  - Procedural privileges and confidentiality
  - Guidance: talk to us
Limited Resources and Discretion (1)

• Setting priorities inherent feature of the Commission’s administrative activities (*T-24/90 Automec*)
  • Investigate or reject in view of the EU interest
  • Likelihood/significance of the alleged infringement and scope of the investigation (*T-24/90 Automec*)
    • Not cumulative (*T-306/05 Scippacercola*, paras. 188-190)

• The number of criteria not limited, no obligation to use exclusively certain criteria (*C-119/97 UFEX, para 79*)
Limited Resources and Discretion (2)

- The Commission has no obligation to investigate facts which have not been brought to its attention (*T-319/99 FENIN, para 43; Case T-296/09 EFIM, para 41; T-70/15 Trajektna luka Split d.d. para 63*)

- No obligation to take up a complaint even if persuaded that the practices concerned constitute an infringement (*T-5/93 Tremblay, para. 61; T-114/92 BEMIM, para. 63*)

Criteria for rejection (1)

- Limited likelihood of finding an infringement vs scope of the investigation (*T-24/90 Automec para 86*)

- Limited impact on the functioning of the internal market (*C-425/07 P AEPI*, para. 52)
  - Extent and duration
  - Different from effect on trade (*C-425/07 P AEPI*, para. 54)
  - Examples: low value of the market, limited geographic scope of the conduct, isolated action, etc.
Criteria for rejection (2)


- Infringement ended in the past (*C-119/97 P UFEX, paras. 95-96*)

- Undertaking’s commitments to change behaviour (*C-449/98 P IECC*)
Criteria for rejection (3)

- NCAs well placed:  
  a) origin/effects/implementation within its territory;  
  b) able to bring to an end the entire infringement;  
  c) can gather the necessary evidence

- NCA is dealing or has dealt with the same case (Art.13 Reg1/2003): T-201/11 *SiMobil*; T-355/13 *EasyJet*

- **T-70/15 Trajektna luka Split**: the Commission can rely on the reasoning of the NCA without repeating a similar analysis where the NCA has assessed the complaint on the basis of national rules equivalent to Articles 101 & 102
Criteria for rejection (4)

• National Courts
  • Actions initiated before national courts: procedural economy and sound administration of justice (T-24/90 Automec; T-114/92 BEMIM)

• Possibility to refer to national courts (T-575/93 Casper Koelman v Commission of paras 75-80)
  • Advantages
    • The ability of the courts of Member States to apply EU law cannot be questioned (T-70/15 Trajektna luka Split)
  • Limits (T-427/08 CEAHR v Commission, para 173)
Procedure

• Legal basis: Articles 5, 7, 8 of Reg. 773/04

• Admissibility: legitimate interest and compliance with Form C, but not compulsory (Art. 5(2) Reg. 773/04)

• Complainants informed about the next step usually within 4 months

• Complainants entitled to observations and access to documents; Possibility to withdraw the complaint