

ENFORCEMENT OF RULES ON ABUSE OF DOMINANT POSITION IN THE EU AND UZBEKISTAN

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Abstract. Public enforcement of competition law plays a crucial role in protecting consumer interests and ensuring market fairness, complementing private enforcement mechanisms. This paper examines the public enforcement frameworks in the European Union and Uzbekistan, focusing on the procedures, legal instruments, and decision-making processes. In the EU, the European Commission holds significant powers to investigate and enforce competition rules across multiple Member States, following a detailed procedural framework. In contrast, Uzbekistan's enforcement is managed by the Competition Promotion and Consumer Rights Protection Committee, with unique procedural aspects such as the involvement of a special commission and a mandated timeline for case resolution. Both systems allow for judicial review to ensure procedural fairness and proper application of competition law, though they differ in specific enforcement priorities and methods.

Enforcement of rules against abuse of dominant position can be done through private or public means. Public enforcement plays a crucial role in competition law. However, private enforcement is an irreplaceable tool in providing the rights of the third parties who suffered the damages because of infringement of competition law. Below, public enforcement mechanisms will be discussed.

Public enforcement. Public enforcement of rules on abuse of competition law will always exist: as the competition law protects the consumers and the competition, private enforcement by damaged parties will not be enough.

At the EU level, the Commission has a general duty to ensure that the provisions of the Union's Treaties and the measures taken by the institutions under the Treaty are applied and observed. Concerning competition rules, the Commission has powers on inspection and enforcement¹.

When violations of competition rules occur within one Member State or between two Member States, the national competition authorities (NCAs) are typically best

¹ Gray, M., Darbon, C., & Facenna, G. (2006). *EU competition law: procedures and remedies*. Richmond: Richmond law and tax. p. 1

placed to handle the case. The Commission usually investigates anti-competitive practices or agreements that affect competition in three or more Member States or where it is essential to set a European-level precedent. It is also best placed to consider cases where conduct is linked with other Union provisions that the Commission may exclusively or more effectively apply².

Concerning the rules, the enforcement procedures are given in two key legal instruments, notably Regulation 1/2003 and Regulation 773/2004. The procedure based on Regulation 1/2003³ followed by the Commission in the enforcement of the rules of competition may be summarised as follows:

- (1) the initiation of the procedure by a complaint made to the Commission or by the Commission on its own initiative;
 - (2) investigation by the Commission (also referred to as the fact-finding stage);
 - (3) the statement of objections by the Commission if the investigation has revealed infringements or incompatibilities with the rules of competition;
 - (4) the reply to the Commission's statement of objections by the undertakings concerned;
 - (5) hearing at the election of the relevant undertaking;
 - (6) consultation with an Advisory Committee on Restrictive Practices and Dominant Positions;
 - (7) the adoption by the Commission of the final decision and its publication in the Official Journal; and
 - (8) where appropriate, that decision imposes fines or periodic penalty payments⁴.
- EU antitrust proceedings regarding Article 102 TFEU can essentially be initiated as a result of two different events:
- as a result of a complaint by an undertaking, an individual or (exceptionally) a Member State (either a formal complaint in accordance with Article 5 of Regulation 1/2003 or a more informal complaint);
 - at the Commission's own initiative (*ex officio*)⁵.

² Marcin Szczepeński, (2019) *EU competition policy: Key to a fair single market*. European Parliamentary Research Service, p. 2

³ 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, *OJ L 1, 4.1.2003, p. 1–25* <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003R0001>

⁴ Gray, M., Darbon, C., & Facenna, G. (2006). *EU competition law: procedures and remedies*. Richmond: Richmond law and tax. p. 4

⁵ *Ibid.* p. 7

The third scenario, which is for a cartel member acting as a whistle-blower in return for immunity/reduction of fines (under the Leniency Notice), is not available in Article 102 TFEU proceedings.

At any stage, the Commission may decide to close its investigation. This action would be enough in the event of an ex-officio investigation. However, in case of a formal complaint (differently from informal complaints), further procedural safeguards have been put in place: the complainant is heard, the Commission has to take a decision, and as an ultimate remedy, the complainant can appeal the Commission's decision to the General Court⁶.

Where the Commission rejects the complaint without an investigation, the Court reviews the decision's legality to ascertain whether the contested decision is based on materially wrong facts, flawed by mistakes in law or a manifest error of assessment or by misuse of powers⁷.

The procedure invoked for enforcing competition rules results in a finding that there is no infringement or in a) a finding of infringement, b) the imposition of an interim measure or c) the imposition of commitment. The Commission must publish all these decisions, which provides transparency of the procedures⁸.

There is some criticism, which notices that the EU model of consideration of the cases does not involve a formal hearing before a judge or other decision-maker who is neutral. The hearing allows the accused business to restate its case to the case team but not to argue in front of an impartial judge, hearing officer, or other person who will rule on guilt or innocence. Instead of making decisions with authority, a designated hearing officer's duty is logistical, ensuring file access and secrecy. However, the presence of the Advisory Committee comprising Member State competition authority representatives lets them comment and ask questions about Commission decisions⁹.

Concerning Art 102 TFEU, worth to note that twofold proof of the violation must be presented in this case to prove an abuse of the dominant position. At this step, identifying the relevant market is essential since the Commission must first establish

⁶ Hendrik Viaene, Stibbe Brussels, (2011) *Administrative proceedings in the area of EU competition law*. Brussels, European Parliament, p.7

⁷ Gray, M., Darbon, C., & Facenna, G. (2006). *EU competition law: procedures and remedies*. Richmond: Richmond law and tax. p. 13

⁸ Ibid p.44

⁹ I. S. Forrester (2009), Due Process in EC Competition Cases; a Distinguished Institution with Flawed Procedures, 34 E.L. Rev. 817. p. 823

dominance. After establishing market dominance, the Commission must show that the dominant undertaking used its position to manipulate the market¹⁰.

Under **Uzbek Law**, the Competition Promotion and Consumer Rights Protection Committee of the Republic of Uzbekistan (the Committee) is the competent authority for public enforcement of rules on competition. Similarly, as in the EU, the competition authority's own inspection and study materials, complaints from persons and legal entities, state and local government organisations, and submissions from the necessary authorities are the basis for initiating and considering cases involving competition law violations.

The main legal instruments in the sphere of public enforcement are the Law on Competition and the Regulation "On the procedure for initiating and considering cases on violations of legislation on competition, natural monopolies, consumer protection, and advertising" (Regulation 225) adopted by the decision of the Cabinet Ministers in 2013¹¹.

According to Regulation N 225, to consider cases of violations of legislation, the anti-monopoly authority shall establish special commissions to consider violations of legislation (hereinafter referred to as the commission) from responsible employees of the anti-monopoly authority. The commission may include representatives of other government bodies and non-governmental, non-profit organisations in the field of consumer protection and ensuring guarantees of freedom of activity of business entities to ensure public control over the decisions made by the commission¹².

The Regulation states the following procedures for considering the cases:

- 1) Initiation of the procedure by complaint, information received by other government bodies, or found by competent authority;
- 2) Preliminary consideration by the Commission of the application and examination of other documents and materials by the anti-monopoly authority;
- 3) Decision in the form of a Statement adopted by the Commission based on the results of preliminary consideration to initiate a case on violation of the legislation or to refuse to initiate a case;

¹⁰ Adam S. (2023). *Course EU Competition Law – Antitrust procedures and judicial review (Syllabus)*, Ghent University, p. 19

¹¹ The Decision of the Cabinet of Ministers of the Republic of Uzbekistan adopting the Regulation "On the procedure for initiating and considering cases on violations of legislation on competition, natural monopolies, consumer protection, and advertising", 12.10.2005, 225 <https://lex.uz/docs/878462> (Accessed on 03.08.2023)

¹² Ibid. para 9

- 4) Sending the Statement to the participants of the case for providing oral or written comments by them;
- 5) Consideration of the case **within a month** by the Commission in the participation of the involved parties;
- 6) Decision of the Commission based on the results of consideration on the merits to establish the fact of violation of the legislation and to take appropriate legal action or to terminate the proceedings on the case¹³.

Based on the results of consideration of the case on the merits, the commission shall decide: to establish the fact of violation of the legislation and to take appropriate legal action; or to terminate the proceedings on the case. The decision is adopted based on the results of the voting of the created special commission¹⁴.

We can observe that public enforcement procedures (initiation, investigation) are quite similar in both jurisdictions. However, there are differences in specific procedures, which change how these cases are considered. First, in Uzbekistan, the special commission, which is created for each case from representatives of different competent authorities and NGOs, adopts the decision. Meanwhile, in the EU, the Commissioner responsible for competition policy adopts the decision. The method of Uzbekistan's system provides impartiality to the decision of the Committee, as it can ensure that there will be fewer possibilities of conflict of interest. Contrarily, the Commission is often criticised for being responsible for investigations, inspection and adoption of the decision. However, the Commission addresses this criticism by stating that there are procedural safeguards that maintain the impartiality and independence of proceedings¹⁵, which is discussed in the next Chapter.

Second, unlike the EU, Uzbek legislation fixed the timeline of one month to consider the cases, which can create inconveniences for detailed investigation.

Thirdly, in the EU, the Guidance on enforcement priorities indicates the priorities in applying Art 102 TFEU, the emphasis of the Commission's activity in investigating exclusionary conduct of dominant undertakings¹⁶. Uzbekistan's legislation lacks this clarity in enforcement priorities. This topic is discussed further in Chapter 3.

Judicial review of decisions.

¹³ Ibid. para 8-20

¹⁴ Ibid. para 22

¹⁵ Philip Lowe (DG Competition). (2009). *Due process in antitrust*. CRA Conference on Economic Developments in Competition Law. Brussels. p. 2 [Due process and fines \(europa.eu\)](https://ec.europa.eu/competition/antitrust/antitrust_cra_conference_2009.pdf)

¹⁶ Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45, 24.2.2009

Courts review of the application of competition law aids in ensuring that procedures are followed, the rights of parties are upheld, and the discretion of competition authorities is exercised within limits established by law. Judges evaluate both the procedural due process that was followed and the accurate and consistent application of the substantive principles of competition law. Courts can also point out factual and legal errors and impose remedial measures, or they can affirm enforcement rulings¹⁷.

In the EU, CJEU has exclusive competence to determine whether acts of the Commission are lawful or not¹⁸. The particular grounds for this assessment are set down in Article 263 TFEU and include issues like lack of competence, procedural errors, treaty violations, or misuse of powers. According to Article 261 TFEU and Article 31 of Regulation No. 1/2003, however, the European Union Courts have “unlimited jurisdiction with regard to penalties” (with the possibility to substitute the amount of the fines) when it comes to disputes concerning Competition law¹⁹.

In this regard, two types of review of the CJEU can be highlighted: the review of the legality under Art 263 and the unlimited review of penalty decisions. However, a review of the legality cannot be indicated as limited. Rather it is connected with the principle of separation of powers and to the exercise of discretionary powers²⁰. “Control of legality cannot be seen as a “limited jurisdiction”, but as a comprehensive way to review the law, the facts and their appraisal”²¹.

Moreover, CJEU recognises the Commission’s discretionary powers, f.e. in making policy choices or technical assessments in competition cases. In this scenario, the Court does not have an absolute review of the decisions based on these powers²² (the topic of discretionary powers is discussed in detail in Chapter 2).

Judicial review in Uzbekistan. Art 40 of the Law on Competition states that persons involved in a case on violation of competition legislation have the right to appeal against a decision of an authorised state body directly to the court or to a higher subordinate body or official.

¹⁷ OECD (2019). The standard of review by courts in competition cases - Background Note. OECD Secretariat. p. 4
[https://one.oecd.org/document/DAF/COMP/WP3\(2019\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2019)1/en/pdf)

¹⁸ Gray, M., Darbon, C., & Facenna, G. (2006). *EU competition law: procedures and remedies*. Richmond: Richmond law and tax. p. 57

¹⁹ Paz, José. (2012). Judicial review in European competition law. p.p. 2-3
https://www.law.ox.ac.uk/sites/default/files/migrated/judicial_review_in_european_competition_law.pdf

²⁰ Ibid. p. 4-5

²¹ Ibid. p. 28

²² J. Mendes (2016), “Discretion, Care and Public Interests in the EU Administration: Probing The Limits Of Law”, *Common Market Law Review*, Vol. 53, pp. 419-52 Sections 3.1. and 3.3

According to the Law on Administrative Procedures, the measures taken in competition law fall under the definition of administrative act²³. Code of the Republic of Uzbekistan on Administrative Court Proceedings establishes the rights of the concerned parties to appeal the decision of the competent authority in the administrative courts²⁴. The procedure for competition cases is the same as for other types of administrative acts. When it is the decision based on the discretion of the Committee, the courts possess limited jurisdiction as in the EU.

Important to mention that according to the Law on Competition (new edition), financial sanctions in the form of a fine shall be applied in a judicial order, except for cases when the offender admits guilt in the committed offence and pays the fine voluntarily²⁵. Consequently, the court assumes jurisdiction over the ultimate fine amount upon the presentation of the competition authority's decision for approval. This reveals that the judicial review of fines proposed by the Committee actually takes place before the adoption of the decision, and the involved parties may express their claims at this stage. Adoption of the decisions in judicial order is connected with the concept according to which sanctions cannot be applied without proper court proceedings and the right to a fair trial.

Public enforcement of competition law is vital for maintaining fair competition and protecting consumers, complementing private enforcement, which focuses on compensating those harmed by anti-competitive behavior. In the EU, the European Commission holds significant powers for investigating and enforcing competition rules, particularly in cases involving multiple Member States. The process follows a structured procedure outlined in Regulations 1/2003 and 773/2004, from initiating an investigation to making final decisions, including imposing fines. Despite some criticisms about the lack of impartial hearings, the Commission's actions are guided by procedural safeguards. In Uzbekistan, similar public enforcement mechanisms exist, with the Competition Promotion and Consumer Rights Protection Committee overseeing enforcement. However, differences in procedure, such as the involvement of a special commission and the fixed timeline for case consideration, highlight varying approaches between the EU and Uzbekistan. Both jurisdictions

²³ Art 4 of Law of the Republic of Uzbekistan on Administrative procedures, 08.01.2018. № LRU-457 <https://lex.uz/docs/6114000>

²⁴ Art 3-4 of Code of the Republic of Uzbekistan on Administrative Court proceedings, 01.04.2018. [25.01.2018. Code of the Republic of Uzbekistan on Administrative proceedings \(lex.uz\)](#)

²⁵ Art 40 of Law of the Republic of Uzbekistan on Competition, 03.07.2023 № LRU-850 [ЎПҚ-850-сон 03.07.2023. Рақобат тўғрисида \(lex.uz\)](#)

allow for judicial review, with courts ensuring procedural fairness and the proper application of competition law.

Bibliography:

1. Gray, M., Darbon, C., & Facenna, G. (2006). *EU competition law: procedures and remedies*. Richmond: Richmond law and tax.
2. Marcin Szczepański, (2019) *EU competition policy: Key to a fair single market*. European Parliamentary Research Service
3. 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, *OJ L 1, 4.1.2003, p. 1–25* <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003R0001>
4. Hendrik Viaene, Stibbe Brussels, (2011) *Administrative proceedings in the area of EU competition law*. Brussels, European Parliament
5. S. Forrester (2009), Due Process in EC Competition Cases; a Distinguished Institution with Flawed Procedures, 34 E.L. Rev. 817. p. 823
6. The Decision of the Cabinet of Ministers of the Republic of Uzbekistan adopting the Regulation “On the procedure for initiating and considering cases on violations of legislation on competition, natural monopolies, consumer protection, and advertising”, 12.10.2005, 225 <https://lex.uz/docs/878462>
7. Philip Lowe (DG Competition). (2009). *Due process in antitrust*. CRA Conference on Economic Developments in Competition Law. Brussels. [Due process and fines \(europa.eu\)](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009R0001)
8. Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45, 24.2.2009
9. OECD (2019). The standard of review by courts in competition cases - Background Note. OECD Secretariat. [https://one.oecd.org/document/DAF/COMP/WP3\(2019\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2019)1/en/pdf)
10. Paz, José. (2012). Judicial review in European competition law. https://www.law.ox.ac.uk/sites/default/files/migrated/judicial_review_in_european_competition_law.pdf
11. J. Mendes (2016), “Discretion, Care and Public Interests in the EU Administration: Probing The Limits Of Law”, *Common Market Law Review*, Vol. 53, pp. 419-52 Sections 3.1. and 3.3
12. Law of the Republic of Uzbekistan on Administrative procedures, 08.01.2018. № LRU-457 <https://lex.uz/docs/6114000>
13. Code of the Republic of Uzbekistan on Administrative Court proceedings, 01.04.2018. [25.01.2018. Code of the Republic of Uzbekistan on Administrative proceedings \(lex.uz\)](https://lex.uz/docs/6114000)
14. Law of the Republic of Uzbekistan on Competition, 03.07.2023 № LRU-850 [ЎПҚ-850-сон 03.07.2023. Рақобат тўғрисида \(lex.uz\)](https://lex.uz/docs/6114000)