

# THE EUROPEAN COMPETITION NETWORK AND INTERNATIONAL COOPERATION

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The experience of the Italian Competition Authority

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The views expressed here are personal and do not necessarily reflect those of the Italian Competition Authority

# The need for cooperation

- In recent years, more than 90% of fines against cartels by the US authorities have been international
- Cartel cases investigated in the European Union with a participant from outside the EU: + 450% since 1990
- Mergers with cross-border dimensions: + 250% since 1990



**Italian Competition  
Authority**

**ECN**

**ICN**

**OECD**

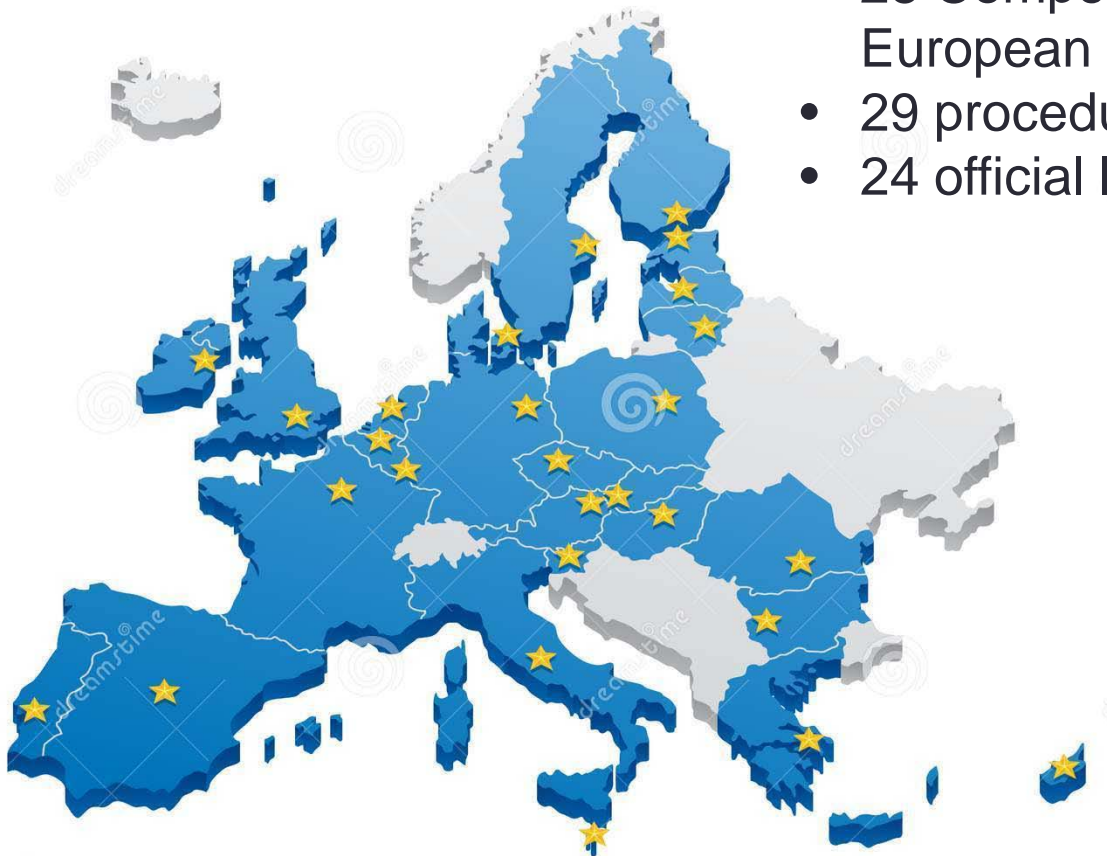
**UNCTAD**

**Bilateral  
cooperation**

# The European Competition Network (ECN)

# THE EUROPEAN UNION

- 28 EU Member States
- 28 Competition authorities and the European Commission (DG COMP)
- 29 procedural laws
- 24 official languages



# Council Regulation (EC) No. 1/2003

- Makes it compulsory for national competition authorities (NCAs) to apply Article 101 TFEU to agreements which may affect trade between EU Member States and Article 102 TFEU to any abuse prohibited by that Article
- Foresees mechanisms of close co-operation between all NCAs in the European Union (ECN)
- Further details of ECN rules are set out in the "Commission Notice on cooperation within the Network of Competition Authorities" (April 2004)

# The European Competition Network (ECN)

- The main platform in Europe for extensive **formal and informal cooperation** in the application of EU antitrust rules
- Provides a framework for cooperation among NCAs in cases where Articles 101 and 102 TFEU apply
- Underlying objective: creation and maintenance of a consistent competition enforcement environment and a common competition culture in Europe

- Regulation 1/2003 provides ECN with formal mechanisms for
  - **case allocation**
  - (confidential) **information exchange** without the consent of the parties and, if legal requirements are met, use of this information as evidence
  - **assistance to the European Commission** for inspections within their territory
  - inspections or requests for information **on behalf of other members of the network**



# Case allocation

- Cases may be handled by one or more NCAs acting in parallel or by the Commission
- Usually the NCA receiving a complaint or starting an *ex officio* procedure will remain in charge of the case
- Possible re-allocation only at the outset of the procedure
  - NCA informs the network before or without delay after commencing the first formal investigative measure;
  - legal basis for suspending proceedings or rejecting a complaint on the grounds that another authority is dealing with the case or has dealt with it

- An NCA is well placed to act where there is a material link between the infringement and its territory
- Parallel action by two or three NCAs where an agreement or practice has substantial effects on competition mainly in their respective territories and where the action of only one authority would not be sufficient to bring the entire infringement to an end
- The European Commission is well placed if an agreement affects competition in more than three EU countries or if the adoption of a Commission decision is necessary to develop EU competition policy

# Information exchange

- Scope: the Commission and NCAs may provide one another with and use in evidence any matter of fact or of law, including confidential information
- Limitations:
  - Information exchanged shall only be used in evidence for the purpose of applying Articles 101/102 TFEU and in respect of the subject-matter for which it was collected by the transmitting authority
  - No use in evidence to impose sanctions on natural persons
  - Special safeguards for leniency applications

# Assistance to the EC

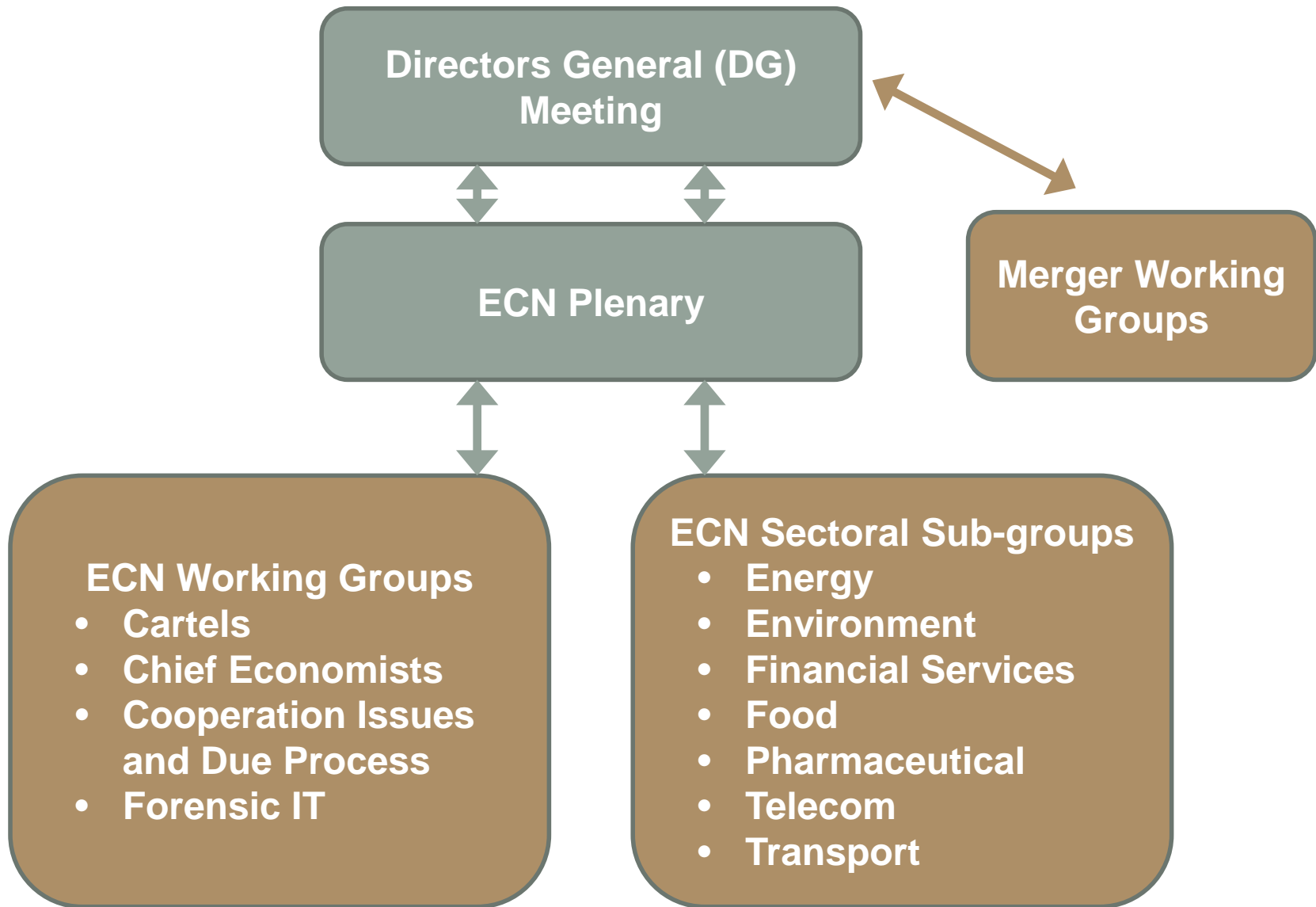
- Assistance to inspections carried out by the EC
  - NCAs assist the European Commission in inspections carried out in their territory
  - Intervention of national police
  - Requests for judicial warrants, where necessary (e.g. inspections in private homes)
- Inspections by an NCA at the request of the EC
  - Officials of NCAs exercise their powers in accordance with their national law

## Assistance to other ECN members

- An NCA may in its own territory carry out any inspection or other investigatory measure under its national law on behalf and for the account of another NCA in order to establish whether there has been an infringement of Articles 101/102 TFEU
- The inspection may be carried out simultaneously with an inspection at the national level
- After the inspection, the collected evidence is sent in accordance with the exchange of information mechanism

# Informal cooperation

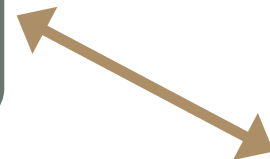
- Active forum for the discussion of general policy issues
- Horizontal working groups and sector-specific subgroups where case-handlers exchange views and learn from each other
- ECN Merger Working Group (since 2010) identifies areas of possible improvements regarding mergers with cross-border impact
- Informal bilateral exchange of non confidential data or market information that can be helpful in conducting investigations



**Directors General (DG) Meeting**



**ECN Plenary**



**Merger Working Groups**



**ECN Working Groups**

- Cartels
- Chief Economists
- Cooperation Issues and Due Process
- Forensic IT

**ECN Sectoral Sub-groups**

- Energy
- Environment
- Financial Services
- Food
- Pharmaceutical
- Telecom
- Transport

# The Italian experience

- The Italian Competition Authority frequently assists the EC for on-site inspections and acquisition of relevant information
- Less frequent inspections on behalf of other European agencies
- Information gathering in Italy on behalf of other European agencies: with regard to sector inquiries (80%) or investigations (20%)



# The International Competition Network (ICN)

- Virtual network of 128 competition agencies
- Mission statement:
  - advocate the adoption of superior standards and procedures in competition policy
  - formulate proposals for procedural and substantive convergence
  - facilitate effective international cooperation

## **Working groups**

- **Advocacy**
  - dissemination of competition principles and development of a competition culture within society
- **Agency effectiveness**
  - identify key elements and good practices of a well-functioning competition agency
- **Cartels**
  - address the challenges of anti-cartel enforcement in different jurisdictions
- **Mergers**
  - promote the adoption of best practices in the design and operation of merger review regimes
- **Unilateral Conducts**
  - promote greater convergence and sound enforcement of laws governing unilateral conduct

## **Work products and activity**

- Recommended Practices
- Manuals
- Teleseminars
- Workshops

## Other key international *fora*

- Organisation for Economic Co-operation and Development (OECD) – Competition Committee
- United Nations Conference on Trade and Development (UNCTAD) - Intergovernmental Group of Experts on Competition Law and Policy

# The benefits of cooperation

- Fosters information exchange
- Encourages coordinate actions in parallel investigations
- Allows to learn from similar experiences in other countries (market data, investigation techniques)

