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## Global Forum on Competition

# INVESTIGATIVE POWERS IN PRACTICE – Breakout session 2: Requests for Information: Limits and Effectiveness

**- Issues Note by the Secretariat -**

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This document was prepared by the OECD Secretariat to serve as an issues note for the Breakout session 2 on *Requests for Information: Limits and Effectiveness* for Session IV at the 17th Global Forum on Competition on 29-30 November 2018.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

More documentation related to this discussion can be found at: **oe.cd/invpw**.

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# *Table of contents*



## Boxes

# *Investigative Powers in Practice*

## *Breakout session 2: Requests for Information: Limits and Effectiveness*

## 1. Introduction

1. All around the world competition authorities have undertaken a crucial and challenging mission which is protecting competition in markets. This requires evidence and data gathering in order to conduct a sound legal and economic assessment of firms' behaviour in the market. Information required for such an assessment is not only complex and large but most of the time confidential.

2. In this context, competition authorities are empowered with various investigative tools such as inspections in business and non-business premises, requests for information, voluntary and compulsory interviews and phone or wiretaps. Although terminology changes from one jurisdiction to another, requests for information (RFI) are one of the most utilized investigative tools. RFIs are requests by competition authorities for information, explanation and documents from the parties to the proceedings and from third parties. While a request for information seems a rather simple tool, it is an important investigative tool which involved a degree of diligence and of due process safeguards.

3. In order to explore the limits and effective use of this tool, the note discusses the scope of RFIs. As it will be explained, power to request information is a comprehensive tool. Yet, there are also limitations to this power which will be explored in the second part of this note. Finally, the third section will focus on how to use RFIs effectively.

## 2. Overview of Requests for Information

4. The power to request information is an evidence gathering tool which can be deployed in behavioural investigations, merger cases and market studies. The RFIs can be voluntary (also referred to sometimes as simple request) or compulsory meaning that non-compliance is sanctioned. While some competition authorities (e.g. the Netherlands) do not make a distinction between voluntary and compulsory requests, other competition authorities (e.g. the EU and the US) use both types of RFIs.

5. An information request generally includes the legal basis, the purpose of the request and the deadline for submission of the requested information. RFIs specify the information and documents requested and, if necessary, the format they should be provided in by the recipient. The contact information of the investigative staff may be included in the RFIs (ICN, 2013a, p. 25[1]). RFIs can also provide information about the disclosure procedure in relation to the gathered information, as it is the case in Italy (ECN, 2012, p. 29[2]).

6. The scope of this power can be quite broad. The scope of the information requests is described as "all necessary information", "necessary information", "relevant information" for the purposes of the investigation or "all data and information which may be useful for the application of the law" (ICN, 2013b, p. 22[3]). Of course, the addressee cannot be expected to provide an information which it does not have. However, this does

not mean that only pre-existing, readily available information fall within the scope of this tool. Compliance with the request may require some kind of processing on the side of the respondent. Limits to the power to request information is explored in the section 3.

7. In many jurisdictions, information requests can be addressed to persons as well as to undertakings and associations of undertakings.

8. Besides the parties of the case, competition authorities can request information from third parties, such as customers, suppliers or competitors of the parties subject to the investigation or inquiry. In some jurisdictions other public authorities or organisations can be potential addressees of RFIs. However, in some cases where third parties are under professional secrecy obligations, the extent of power to request information can be limited, as discussed in the section 3.3.

9. Generally, a RFI does not interfere with the time limits for the conclusion of proceedings. However, RFIs may postpone the deadlines in merger cases. For instance, in the phase one, statutory waiting period for the clearance of mergers and acquisitions is 30 days in Turkey. However, the Turkish Competition Authority may request additional information from the parties. In this case, the waiting period restarts when the requested information is submitted to the authority fully. Yet RIFs from thirds parties in a merger case do not have such a consequence since this may lead to unfair delays in conclusion of the transactions in question.

10. Information and documents collected via RFIs may be under some degree of protection from disclosure. For instance, in the US, the Department of Justice (DoJ) may use information gathered through civil investigative demands (CID) in certain ways, however it may not disclose information without the respondent's permission. Such information is exempted from Freedom of Information Act (Broder, 2010, p. 187[4]).

## 3. Limits to RFIs

11. Competition authorities enjoy wide discretion on how to use the RFIs yet this discretion is not without limits. The principle of proportionality, privileges, secrecy obligations and territoriality may limit power to request information.

### 3.1. Proportionality

12. In many jurisdictions, proportionality is one of the principles which limits competition authorities' discretion in using RFIs. As mentioned above, authorities have power to request "relevant", "necessary" or "useful" information depending on the legal basis. In this sense, the scope of the RFIs must be relevant to the subject matter of the case at hand and purpose of the request. For example, the RFI may be concerning a time period longer than investigated conduct's duration in order to clarify the trends in the market. Yet, if the request goes beyond this purpose, it can be deemed unjustified and not proportionate. In order to enable the addressees and the judicial review authorities to assess this, it is crucial to state the underlying reasons and the purpose of the RFI as detailed in Box 1. CJEU decision on reasoning of RFIs

**Box 1. CJEU decision on reasoning of RFIs**

A request for information (RFI) is composed of different elements. One of the most crucial of them is the statement of the purpose for the RFI. A recent decision of the Court of Justice of the European Union (CJEU) sheds light on the importance of clearly stating the purpose and reason of the RFI in cases of mandatory requests (i.e. requests that have to be complied by the recipient subject to penalties).

In 2011, following on-the-spot inspections and two-years of inquiry, the EU Commission issued a decision of request for information to several undertakings active in the cement market concerning a suspected infringement of article 101 of TFEU. The RFI decision of the Commission was challenged before the General Court (GC) which confirmed its lawfulness in 2014. Yet in 2016, the CJEU ruled that the GC erred in law and the Commission's decision to issue the RFI was annulled on appeal.

The verdict of the CJEU is based on the fact that the Commission failed to state reasons clearly and unequivocally for its decision requesting information. The court underlines that stating specific reasons for RFI does not only demonstrate that the RFI is justified but also enables the addressees to assess the scope of their duty to cooperate and to safeguard their rights of defence. It also provides background for EU courts to review request's legality. According to the CJEU, stated reasons for the RFI in question were "excessively succinct, vague and generic", particularly when the length and detail of the questions were considered. Additionally, Advocate General Wahl states in his opinion that subject-matter of the questions might shed light on a statement of reasons since "very precise and focused questions inevitably reveal the scope of the Commission's investigation." However in the case at hand, it was hard to find a common tread among extraordinarily diverse and numerous questions.

The CJEU also pointed out that the Commission should have been able to be more precise about the scope of the investigation considering the information gathered by the dawn raids and previous RFIs during last two years.

*Sources*: Decision of the CJEU, HeidelbergCement v Commission, C-247/14 P, EU:C:2016:149, *http://curia.europa.eu/juris/document/document.jsf;jsessionid=73FB2857F0FD2DAD73AC473661E98B12?text=&docid=174928&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=959015*, Opinion of AG Wahl, *http://curia.europa.eu/juris/document/document.jsf?text=&docid=169761&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1379851*

13. Proportionality requires that compliance with RFI should not be unduly burdensome on the addressee. Researching and processing information to comply with an RFI can take a toll on the resources of an undertaking. In this respect, besides the scope of the case, other factors also may be taken into consideration when issuing an RFI. These can be capacity and resources of the addressee, its position in the proceedings (investigated or third party) and severity of the case (alleged cartel or market study).

14. These factors also can be taken into consideration while determining the due date for the submission of the answers. Deadlines which are not proportionate to the amount and complexity of information requested and resources of the addressee place undue burden as well. In addition to this, tight due dates can cause difficulty for undertakings wishing to exercise their rights such as claiming legal privilege (Wilson, 2017[5]) or refusing to provide self-incriminating answers.

15. In some cases, RFI can determine a specific format for the requested information. Similar to time limits, strict formatting requirements may be burdensome on the addressee. In his opinion on Case C-247/14P Heidelberg Cement AG v European Commission,

AG Wahl gives translation of documents to a certain language or conversion of monetary values in a certain currency as examples of unjustified formatting requirements since translation and conversion could be done by the staff of the EU Commission.

**Box 2. Proportionality in requests from third parties**

In 2013, the Hague Court of Appeal upheld the RFI of the Netherlands Authority for Consumers and Markets (ACM) from a forensic IT service provider which carries out competition law compliance activities. The RFI demanded a list of IT company's clients in the sector under investigation. The Court pointed out that the request is proportionate as it did not ask for the results of the audits. It is also stated that the request is justified because the ACM has an interest in knowing the identity of the clients which might have destroyed potentially incriminating data after the audits.

*Sources:* A Competition Authority's access to the information obtained about the clients of a forensic it services provider, https://www.lexology.com/library/detail.aspx?g=45b4f4ab-2cca-438e-ab5c-dd717862deff.

## 3.2. Privileges

16. Even if some information or documents are within the scope of the case at hand, they might be out of the authority's reach. Two corollaries of right to defence limit power to request information where they are applicable. They are legal professional privilege and privilege against self-incrimination.

17. **Legal professional privilege** protects confidential communications between attorney and client from forced disclosure to public authorities or third parties. This protection aims at ensuring all legal and natural persons have unrestricted access to external (and in many countries also to internal) legal advice without fearing their communications can be used against them (OECD, 2018[6]). The scope of this privilege vary from one jurisdiction to another. In majority of jurisdictions[1], if a document qualifies for legal privilege, it cannot be accessed through RFIs (ICN, 2014, pp. 46-47[7]).

18. Another element of the right to defence is **privilege against self-incrimination**. This privilege can be a ground for refusal to provide answers which directly or indirectly involve admission of an infringement. Country applications regarding privilege against self-incrimination differ widely. In some jurisdictions, such as Barbados, Canada, Mexico, New Zealand (ICN, 2013b, p. 25[3]) and Singapore, this privilege is recognised only in criminal proceedings. In the US, this privilege is not applicable to legal persons such as undertakings.

19. When applicable, privilege against self-incrimination provides a ground for limited right to "remain silent". Pre-existing, factual information or documents are not covered by this privilege even if they are incriminating. Therefore undertakings can only refuse to answer questions claiming privilege against self-incrimination, if they involve an admission of the existence of an infringement.

## 3.3. Professional Secrecy

20. In some cases secrecy obligation of addressee can contradict with authority's power to request information. As mentioned previously, communications between a lawyer and his or her client is privileged. Yet in jurisdictions where such protection does not exist, competition authorities may be still not able to gather information from lawyers regarding their clients due to their professional secrecy obligation. For instance in Morocco, while legal privilege is not recognised, confidentiality of information is protected by professional secrecy (DLA PIPER, 2017, p. 111[8]).

21. Professional secrecy is not exclusive to legal professionals. Bankers, accountants and other professionals can have secrecy duty, as well. According to Van Bael (2011, p. 129[9]), it is ambiguous whether competition authorities in the EU can request information from professionals who are under secrecy obligation. He argues that since the Commission is under duty of confidentiality, "the confidential nature of the information sought does not seem to be sufficient ground for turning down the request".

22. However in 2011, the Luxemburg Administrative Court of First Instance ruled that Luxemburg Competition Inspectorate's request from two notaries regarding the beneficial ownership of companies which were founded before them is not legal. It is stated that secrecy can only be derogated if the notaries were witnesses at court or an explicit exemption was foreseen in the law. The court ruled that in that case the RFI was not lawful since the article in 2004 Competition Act which enables request for information does not constitute an explicit exemption to the law.[2]

23. In some jurisdictions, the competition law includes specific provisions regarding information from third party which may be under secrecy obligation. China's Anti-monopoly Law (article 39), for example, enables the Chinese Authority to review bank accounts of investigated undertakings to analyse their finance flows (Dong, 2016, pp. 168-169[10]). According to Latvian Competition Law (Section 9), Competition Council can request information from electronic communication service operators and credit institutions when investigating an infringement of competition law.[3]

## 3.4. Territoriality

24. Today, a significant part of the economic activity is globalised. Correspondingly, competition authorities often face cases where relevant parties are located outside of their national borders. This situation raises the issue of the territorial scope of the agency's power to request information.

25. There are two public international law principles regarding jurisdictional competence: subject matter jurisdiction and enforcement jurisdiction. Subject matter jurisdiction refers to state's authority to lay down general or individual rules or decisions through legislative, executive or judicial bodies. These rules and decisions are applicable to conduct within its territory (territoriality principle) and to its citizens and undertakings (nationality principle). Enforcement jurisdiction is the power to impose a general rule or decision by implementing measures which can include coercion, and only applies to the domestic territory.

26. Subject matter jurisdiction and enforcement jurisdiction do not always overlap. This situation raises the question that whether a competition authority can issue a compulsory RFI to a non-national addressee which is located outside its jurisdiction's boundaries regarding a case within its subject-matter jurisdiction. There are different

approaches to this matter. As explained by Faull and Nikpay (2014, pp. 1158-1161[11]) some authors argue that issuing an RFI is an extension of subject-matter jurisdiction so it is legally possible. Others suggest that issuing an RFI is an enforcement action through compulsory measures so it is not possible. A third view asserts that "the mere *imposition of fines* on entities located in third countries without being able to *enforce* those fines, does not represent the enforcement of the request for information and thus not a part of the jurisdiction to enforce" (Faull and Nikpay, 2014, p. 1160[11]). In this context, some agencies, such as the EU Commission, choose to use voluntary RFIs or issuing RFIs to subsidiaries located within their boundaries.

## 4. Effectiveness of the RFIs

27. An RFI is a cost efficient tool which does not require travels and organization of lengthy meetings. Since questions in the RFI are designed specifically for the case at hand, they constitute a way to obtain information which cannot be found elsewhere. For example, through RFIs a case team can acquire insight regarding the customary practices of a specific market or explanation on the cost structure of a firm. Therefore it is critical to use RFIs effectively for the competition authorities. Several factors play a role in the effective use of RFIs. They are discussed below.

### 4.1. Right Method

28. In order to obtain truthful and complete information, it is important that the RFI includes the right questions addressed to right respondent in the right way. There are several points to be emphasised in this respect.

29. First of all, the investigative staff that drafts RFIs must have a certain level of knowledge on how to design questionnaires and how to process the acquired information. This may require capacity building efforts on the competition agencies' side. Trainings on some computer programmes to process the information and questionnaire design contribute to better use of the RFIs.

30. A certain level of understanding of the relevant sector is also crucial for effective use of RFIs. This enables the staff to use the correct terminology when drafting the request and focus on the relevant aspects for the investigation. In order to reach a better understanding of the sector, informal meetings with the targets of the RFI or with relevant public authorities could take place before issuing the RFIs.

31. It is important for the drafters of the RFI to determine upfront what use will be made with the gathered information and carefully tailor RFIs according to the needs of the case. Otherwise the investigation team runs the risk to be swamped by a huge amount of information which is not particularly relevant for the investigation and complicates access to the most needed information. For instance, in an RFI aiming at collecting information to define relevant market may benefit from questions aiming at obtaining data useful for quantification purposes, whereas in case of market studies, open ended questions can attract unexpectedly valuable responses.

32. In order to avoid misunderstandings and waste of resources for both the requesting agency and the respondents, RFIs must clearly specify the requested information. In this respect, providing a brief background on the case does not only contribute to transparency of the proceeding but also to the clarity of the request.

33. A combination of different investigative tools is more effective than using a single tool. In this respect, RFIs can be used strategically together with interviews or on-the-spot inspections. Information collected by means of other investigative tools can complete or clarify the information received in response to the RFIs. They can also provide input for preparation of the RFIs as mentioned above. However, the sequence of investigative tools can be critical in cartel cases. Sending RFIs before conducting unannounced inspections can be counterproductive as RFIs may alarm the parties about an approaching investigation.

34. Finally, competition authorities may adopt a template or a model RFI which includes all the standard elements of a RFI (e.g. case number, due date, contact information) and points out best practices on how to draft questions (e.g. clear and precise questions). This ensures uniformity across the numerous RFIs issued by the agency and contributes to the quality of RFIs. An internal review mechanism can help to ensure consistency and quality of the RFIs as well. An internal review also ensures that limits to power to request information are respected.

**Box 3. Compelled production of digital information**

In the digital age, most information is produced, processed or stored by electronic means. Therefore it is important to use RFIs as effectively as possible to gather digital information.

ICN underlines some points for the effective production of digital information. ICN suggests that in the preparation stage competition authorities can consider defining certain terms such as "document" in the request and give detailed instructions on how to preserve potentially responsive digital information and how to produce digital information in a certain digital format. During the production process, it is also recommended that, competition authorities get themselves familiar with the computer systems and efforts made by the respondent to preserve digital evidence.

*Source:* ICN (2014), Chapter on Digital Evidence Gathering, http://www.internationalcompetitionnetwork.org/uploads/library/doc1006.pdf, pp. 11, 19.

## 4.2. Encouraging Co-operation

35. Creating an environment that is conducive to cooperation between the competition authority and the respondents is crucial for the effectiveness of RFIs. Consent and trust of the respondents can result in a more complete and prompt information gathering.

36. In this regard, a competition agency's good record of protecting business secrets or private information and a fair procedural framework can help. The ICN Guidance on Investigative Process states that "[r]especting confidentiality is important to ensure continued cooperation and the submission of information from parties and third parties during investigations." (ICN, 2015, p. 6[14]) The EU explains that the confidentiality (and sometimes identity) of complainants and information providers would be protected not only to "protect those third parties' legitimate interests" but also "to avoid discouraging them from providing information" (OECD, 2010, pp. 17-18[15]). In a similar manner, the Canadian Competition Bureau stresses that the "… ability to provide persons who voluntarily provide information an assurance of confidentiality under the Act makes them more willing to cooperate with the Bureau and provide information the Bureau requires to effectively fulfil its mandate" in a public consultation.[4]

37. Transparency of the procedures also encourages cooperation. When addressees know their rights, duties and procedures to follow, they can be expected to be less hesitant when providing information. Along the same lines, an open dialogue between the respondents and the case team minimises misunderstandings, increases the quality of the answers and speeds up the process. According to a survey conducted by ICN (2013a, p. 24[1]), "it is a common practice for agencies to offer the opportunity to consult on their requests for information". To facilitate consultations, several jurisdictions include contact details of staff in RFIs. Some competition authorities send draft RFIs to expected recipients for discussion if this does not endanger the availability of the information needed (ICN, 2013a, p. 25[1]).

38. In some jurisdictions, competition authorities can request information from other public authorities such as sectoral regulators or custom offices. Since the ability to impose sanctions on another public institution for not complying with an RFI is often not an option, good cooperation between the competition and other public authorities becomes the key facto to allow the competition authority to access the information requested. Reaching a common understanding regarding confidentiality issues, procedures and other aspects of an information request can be beneficial. For example, a memorandum of understanding between the competition authority and a sectoral regulator allows to agree on the procedure and substance of information exchanges.

## 4.3. Sanctions

39. The power to request information is more effective when it is backed by sanctions especially in the cases where respondent has a vested interest in the case.[5] Thus various sanctions are imposed in cases of non-compliance, provision of incomplete, misleading or false information and failure to submit information within the time limits set by the RFI.

40. Sanctions include both pecuniary fines and periodic penalty payments. Fines can be a certain percentage of annual turnover of the undertakings or an amount specified in relevant regulations. For instance, in Switzerland, any undertaking that does not fully meet its obligation to provide information or produce documents can be sanctioned with an administrative fine up to CHF 100 000 and any person who wilfully does not comply with the obligation to provide information is subject to a criminal fine up to CHF 20 000.[6]

41. In jurisdictions like Chile, Japan and France, non-compliance or late or inaccurate information submission can be sanctioned by imprisonment when the non-compliance amounts to an obstruction of investigation. In Singapore, knowingly providing information that is false or misleading and refusing without lawful excuse to give information or produce any document is punishable with a fine or imprisonment up to 12 months or both.[7]

42. Besides these sanctions, non-compliance and provision of false, misleading or incomplete information may also have other legal consequences such as illegality of the decision based on that information. The primary object is to ensure that competition rules are enforced based on true and full information. However, it also serves as deterrence for the parties to the proceedings from providing false or misleading information. Provision of incorrect, misleading or incomplete information can be seen as an obstruction of the investigation and be considered as an aggravating circumstance in the final infringement decision. Similarly, failure to fully comply with an information requests may negatively affect the undertakings' potential for immunity or fine reduction under a leniency programme.

**Box 4. Is intent a precondition for a sanction in the case of misleading, false and incomplete information?**

Addressees of RFIs may provide misleading, incomplete or incorrect information intentionally or negligently. In some jurisdictions, intent is a factor considered when imposing sanction for submitting misleading, incomplete or incorrect answers. For instance, in New Zealand and the UK, persons and undertakings can be sanctioned for knowingly submitting false or misleading information (ICN, 2013b, pp. 27-29[3])

In other jurisdictions, intent is not a requirement for imposing sanctions in cases of misleading, incomplete or incorrect information. In Poland, an administrative fine can be imposed on undertakings even if the undertaking unintentionally provides untrue or misleading information or fails to provide information (ICN, 2013b, p. 27[3]). The Turkish Competition Authority (TCA) fined a company for provision of false and misleading information in 2016.[8] The main defensive argument of the undertaking was the lack of intent to provide such information. The argument was dismissed by the TCA because intent was not required for establishing liability. The TCA also emphasised that the undertaking had the experience and capacity to reply RFIs fully and correctly.

43. This raises the question of how to prevent or detect the provision of incomplete, misleading or false information. A correct design of the questions in the RFI can help in this respect. For instance, requesting certified copies of supporting documents, raw data or explanation of any assessment or calculation cited in the response can encourage respondents to be more careful when answering the RFI and to provide the authority with a source for fact-checking. If the questions are not clear enough, addressees may assert that their answers are correct and full since the questions can be interpreted in a certain way.

44. Using RFIs in tandem with other investigative tools such as interviews and on-the-spot inspections allows the case team to cross check the information gathered through RFIs and discourages the provision of incomplete or incorrect information. RFIs to third parties can provide complementary and corroborating information which can reveal any inconsistencies in the information gathered from the parties to the investigation.

## 5. Conclusion

45. RFI is the most used investigative tool by competition authorities. In general, competition authorities can request documents or information which are deemed necessary for the case under investigation. However, this power is not without limits. RFIs must be well justified, relevant and proportionate. When applicable, privileges and professional secrecy also set limits to the power to request information. As economic activities and undertakings become more and more global competition authorities face the question of territoriality when using their power to request information outside their jurisdiction more often than before.

46. Since an RFI is a cost effective way to access case specific and large amounts of information, for competition authorities it is crucial to use RFIs effectively. In this respect, it is important to formulate clear questions which address the correct respondents in the most appropriate format. Using RFIs in conjunction with other investigative tools increases their effectiveness. A good record of confidentiality and transparency can encourage addressees to cooperate with the authorities and to provide higher quality responses in shorter periods of time. In most jurisdictions, the provision of incorrect, misleading or incomplete information, late or lack of compliance with RFIs are subject to sanctions in order to deter such behaviour.

# Endnotes

[1] According to a survey conducted by the ICN (2014, p. 46[7]), in 74% of the 39 respondent jurisdictions addressees of compulsory information requests during an investigation are able to decline to produce information asserting legal privilege (legal professional privilege and privilege against self-incrimination.

[2] Luxembourg Administrative Court Decides That Requests For Information to Notaries Public Conflict With Their Professional Secrecy, http://www.mondaq.com/x/164410/Antitrust+Competition/Luxembourg+administrative+court+decides+that+requests+for+information+to+notaries+public+conflict+with+their+professional+secrecy

[3] Latvian Competition Law, https://www.kp.gov.lv/en/normativie-akti/latvijas-konkurences-normativie-akti

[4] Information requests from private parties in proceedings for recovery of loss or damages, http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04204.html

[5] ICN Guidance on Investigative Process recommends that "[c]ompulsory investigative tools should be backed by the ability to enforce compliance, including appropriate and effective sanctions for non-compliance and obstruction." (ICN, 2015, p. 2[14])

[6] Articles 52 and 55 of Swiss Federal Act on Cartels and other Restraints of Competition https://www.admin.ch/opc/en/classified-compilation/19950278/index.html

[7] CCCS Guidelines on the Powers of Investigation in Competition Cases 2016 https://www.cccs.gov.sg/legislation/cccs-guidelines

[8] The Turkish Competition Authority fines a company for false and misleading information, https://www.concurrences.com/en/bulletin/news-issues/may-2016/the-turkish-competition-authority-fines-a-company-for-false-and-misleading

## References


Broder, D. (2010), *U.S. Antitrust Law and Enforcement*, Oxford University Press. [4]

DLA PIPER (2017), *Legal Professional Privilege*, http://www.dlapiperlegalprivilege.com/system/modules/za.co.heliosdesign.dla.lotw/functions/export.pdf?country=all. [8]

Cauffman, C. and Q. Hao (eds.) (2016), *Procedural Rights in Competition Law Proceedings: Ex Post Proceedings*, Springer. [10]

ECN (2012), *Investigative Powers Report*, http://ec.europa.eu/competition/ecn/investigative_powers_report_en.pdf. [2]

Faull, J. and A. Nikpay (2014), *The EU Law of Competition (3rd Edition)*, Oxford University Press. [13]

ICN (2015), *ICN Guidance on Investigative Process*, http://www.internationalcompetitionnetwork.org/uploads/library/doc1146.pdf. [14]

ICN (2014), *Competition Agency Confidentiality Practices*, http://internationalcompetitionnetwork.org/uploads/library/doc1014.pdf. [7]

ICN (2013a), *Competition Agency Transparency Practices*, http://internationalcompetitionnetwork.org/uploads/library/doc902.pdf. [1]

ICN (2013b), *Investigative Tools Report*, http://www.internationalcompetitionnetwork.org/uploads/library/doc893.pdf. [3]

OECD (2018), *Treatment of Privileged Information in Compeititon Proceedings*. [6]

OECD (2017), *Summary of Discussion of the Roundtable on the Extraterritorial Reach of Competition Remedies*, https://one.oecd.org/document/DAF/COMP/WP3/M(2017)2/ANN2/FINAL/en/pdf. [12]

OECD (2010), *Procedural Fairness and Transparency*, http://www.oecd.org/daf/competition/mergers/50235955.pdf. [15]

Van Bael, I. (2011), *Due Process in EU Competition Proceedings*, Kluwer Law International. [9]

Wilson, T. (2017), *Legal professional privilege in EU merger control*, http://competitionlawblog.kluwercompetitionlaw.com/2017/05/30/legal-professional-privilege-eu-merger-control/ (accessed on 2018). [5]