



UNCTAD Ad hoc Expert meeting on cross border cartels

Best practices on investigations against Cross Border Cartels

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Globalization of CBCs: cooperation has to be *functional and proportionate* with enforcement and advocacy

Approach to the private business sector has **to be mirrored in the public sector of competition enforcement** notably through **creation of National Competition Agencies (NCAs) in countries and regions**, **cooperation amongst them and convergence in our rules.**

On the other hand, we are all aware that **NCAs have limited resources** and have to **focus** on **cases enforcement and advocacy**. Cooperation must be **functional** to these 2 objectives.

In turn, **duplication** of cooperation frameworks is **dysfunctional** and **disproportionate** to enforcement and advocacy.

=> **Cooperation** methods are **an issue.**

The EU Regional response to CBCs has been *the ECN*, a 20 years process

- The **European Competition Network (ECN)**: an organisation of cooperation between EU Commission's DG Competition (**DG Comp.**) and 27 National Competition Authorities (**NCA**s)
- The **ECN has been developed since 2004**, organising cooperation between **very differentiated economies, big and small, more advanced and less advanced** (with geographic, historical factors and different role of State in the Economy).
- With 15 original Member States NCA's in 2003, the ECN has added 10 new NCA's in 2004, 2 again in 2007, 1 in 2013 and lost 1 in 2020 (Brexit).

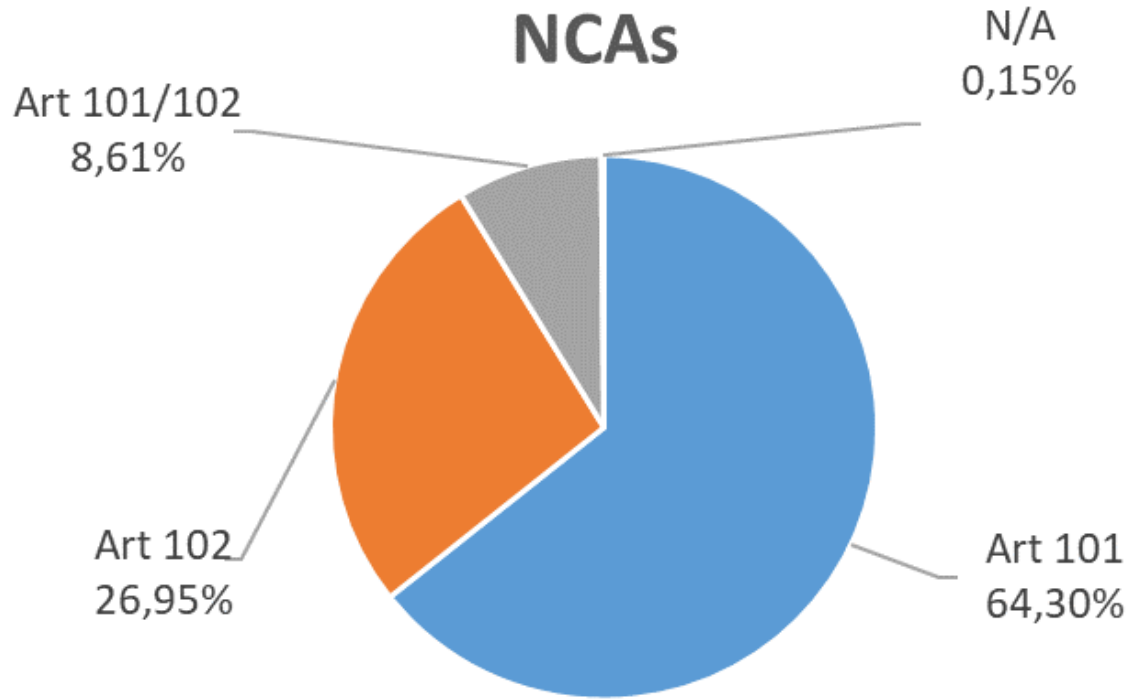
⇒ The ECN is a progressive and evolutive construction (both by geography and chronology)

- **The ECN institutional framework does organize cooperation between countries at different stages of development**

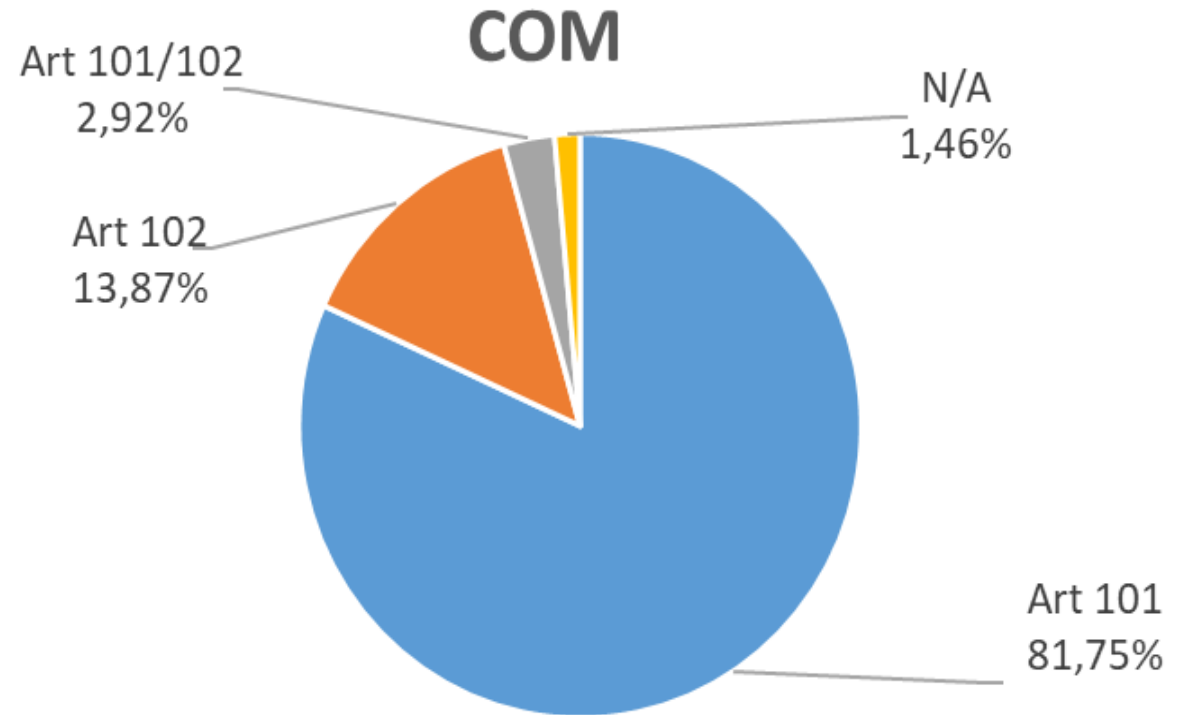
Main functions of the ECN: regional cooperation

- ECN 6 main role (see ECN+ Directive):
 - **Informing each other of new cases** and envisaged infringement **decisions**.
 - **Co-ordinating investigations** where necessary.
 - **Helping each other** with investigations.
 - **Exchanging** evidence and other **information**.
 - **Discussing issues of common interest** (leniency, compliance, thresholds etc.)
 - **Policy coordination** through yearly DGs & plenary **meetings**, WGs, sectoral Subgroups...

ECN Achievements: 1575 cases in 18 years, chiefly against CBC (Art. 101 decisions in the range of 64 to 80 %)*



Total: 1336 cases

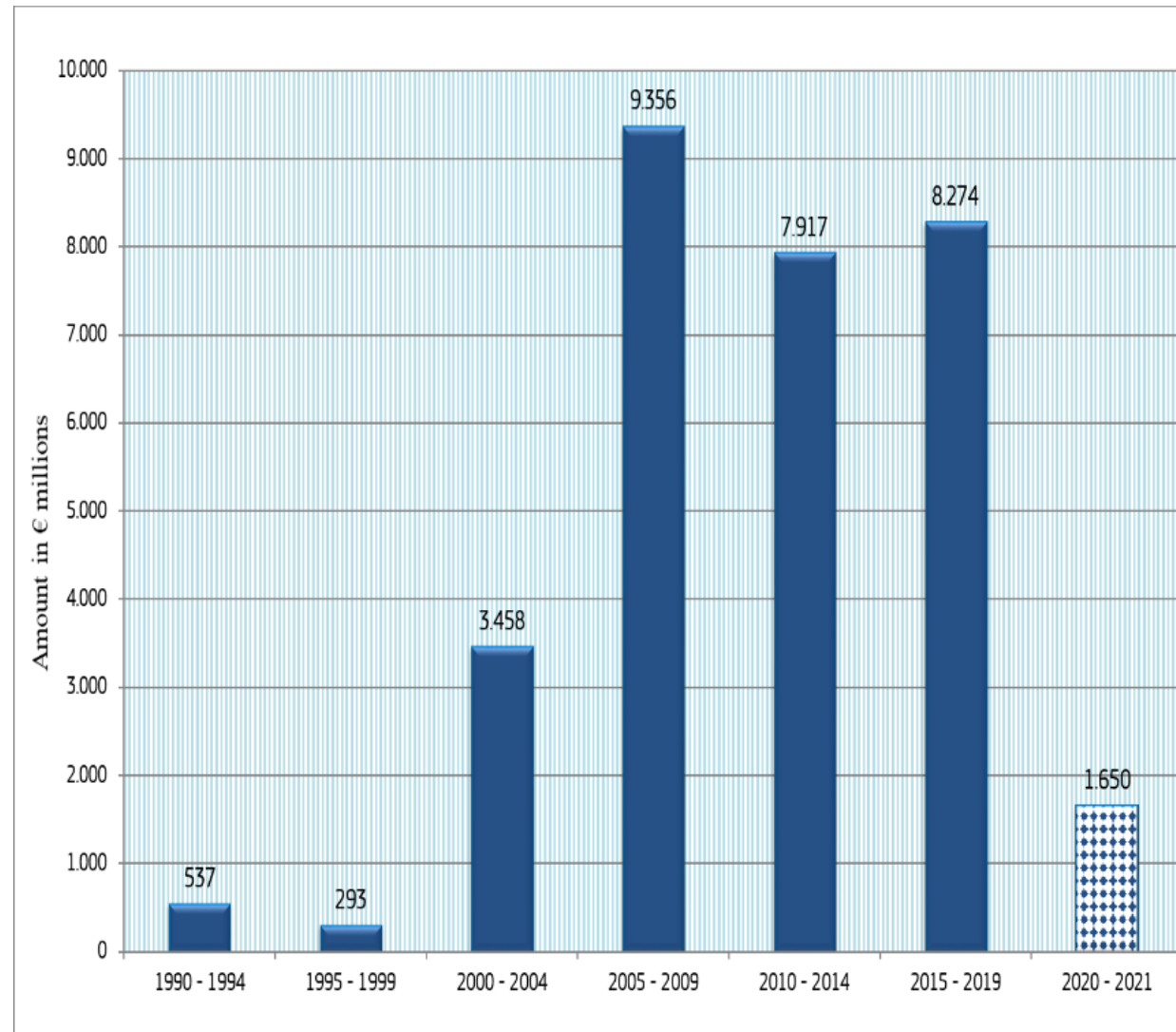


Total: 137 cases

* percentage of envisaged decisions per Legal Base 01/03/2004 – 16/11/2021)

DG Comp.'s regional antitrust achievements : since 1990 more than 31,5 Billions € of fines in 31 years)*

**Note the evolution of
fines after 2004.**



*) Amounts imposed by the Commission (incl. corrections following amendment decisions) and not corrected for changes following judgments of the Courts (General Court and Court of Justice) and only considering cartel infringements under Article 101 TFEU.

Conclusion

There are **various frameworks of cooperation** (multilateral, bilateral formal agreements and informal). Here, we insisted on the **ECN** as providing the best **practical & efficient framework**.

However, we must be conscious of **constraints on resources and legal implications implied by cooperation**. It has taken the EU and its 27 highly differentiated Member States 20 years to build the ECN. The objective is to promote **convergence** on the best design of cooperation framework and tools. Over 20 years, we have proposed many countries and regional organizations programs of cooperation to fight CBCs. We do and will continue.

We acknowledge the need to **take stock of existing instruments and standard and to check where developing countries and countries in transition could find difficulties to apply tools and standards. We also see the need to avoid duplicating already existing instruments** and find the best way to allocate resources.

We propose to **work in a cooperative way, notably with Regional Initiatives** such e.g. AfCFTA uniting 54 countries of the African Union.

Surely, beyond Continents, UNCTAD can assist in identifying which developing countries and regions are willing to tackle CBCs, to participate to frame and design cooperation tools against CBCs, working with the OECD and the ICN to best allocate resources.

Keep in touch



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Thank you for your attention.



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