



Incentivising leniency applications

Dirk VAN ERPS

Adviser Antitrust and Cartels

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Leniency: introduction

[3rd COMM Leniency Notice!](#) (1996, 2002, 2006)

No "one stop shop" in Europe:

- different programmes: COMM and (almost) all Member States
- [ECN Model Leniency Programme](#)
- [2019/1 ECN+ Directive](#): obligation to have leniency programme

Watch our [ICN leniency video](#) (or trailer)

Leniency: the process

Immunity application

- Marker
- Hypothetical application
- Combined Immunity – Leniency/Reduction for fine application
- Oral procedure ([E-lenency application](#)) or Written procedure

Leniency: the process

Administrative follow-up

- Acknowledgement of receipt
- Requests for clarification: oral, written

Outcome

- Conditional immunity decision
- Rejection letter
- Non-processing letter
- Non-eligibility letter

Leniency: requirements for success

Protection of (oral) corporate statements

- Applicant cannot be worse off than non-applicant
- Access to file: 'orally' – never a 'copy'
- Not disclosed under 'Access to Documents' legislation
- Enshrined in legislation: [2014 Damages Directive](#), Article 16(a) of the [Implementing Regulation 2015 amendment](#)

Leniency: requirements for success

International cartel = international applications = international co-operation?

- Applicant chooses authorities
- Authorities insist on waivers ([ICN model](#))
- First investigative step is typically coordinated

Do not ask to replicate other authorities' file

- evidence, RFIs, internal acts (SO), confidential decisions etc.
- Rationale: disclosure of our file impacts our case



EU Leniency \neq EU Settlement

Leniency: detection tool vs Settlement:
procedural tool

Both provide fines reductions; cumulative

EU settlement \neq US settlement

Leniency and private damages

- Right of cartel victim for compensation
- Current uncertainty about amount of damages
- Safeguards for leniency statements in Private Damage Directive
- Privileges for immunity applicant in Private Damage Directive

Leniency and individual sanctions

- Cartelising employees of leniency applicants can face administrative and criminal sanctions
- ECN+ Directive: Protection of cooperating employees of immunity applicant
- Benefits for cooperating employees of reduction of fines applicants?

Other tools: Whistleblower

New Whistleblower Tools launched in 2017

- A handful of new cases!



The graphic features the European Commission logo at the top left. On the right, a 3D white figure holds a red megaphone. The text 'Blow the whistle!' is in red. Below it, a QR code is on the left, and the text 'Want to help to fight cartels and other anti-competitive activity?' is on the right. At the bottom, the URL 'ec.europa.eu/whistleblower' is displayed.

Blow the whistle!

Want to help to
fight cartels and other
anti-competitive activity?

ec.europa.eu/whistleblower

Other tools: More targeted 'ex officio'

A dedicated cartel unit

- staffed by professionals specialised in digital investigation techniques
- enhanced intelligence gathering and data analysis

Creation and management of a centralised intelligence network of multiple information channels

- other Commission DGs
- other EU institutions
- other non-competition national enforcers



Thank you – Questions?

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