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Leniency programs in competition law
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Leniency policy in European Commission proceedings

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Leniency is an integral part of fight against cartels

- Road map for efficient enforcement:
 - Creation of Cartel Directorate
 - Improved investigative techniques
 - Improving the leniency program and establishing a coherent system of leniency within jurisdictions that apply Article 101 TFEU (ex Art 81 EC)
 - Revised the guidelines on fines
 - Introduced the settlement system



Experience with leniency: some numbers

- Increase in number of cartel cases decided:
 - 1990-1994: 11
 - 1995-1999: 10
 - 2000-2004: 33
 - 2005-2009: 33
- Substantial reductions in fines
 - E.g. car glass: -50% for Asahi = 113 500 000€



Immunity applications

- Marker for immunity applicants: time granted to complete internal investigations
- Requirements
 - Disclose (own) participation
 - Enable Commission to carry out a targeted inspection
 - Corporate statement describing the cartel arrangement + documentary evidence
 - Not coerced others



Greater expectations

- Full cooperation from date of application
 - provide all evidence, answer questions
 - do not destroy, falsify or conceal evidence
 - do not disclose application
 - ended involvement
- Not accepting "minimum to qualify"



Race for reduction of fines

- Level of reduction dependent on order in which provide significant added value
- Rewarding cooperation that contributes to making decisive progress
 - detection of clandestine conduct
 - reliable insider information
 - evidence useful for the authority bearing the burden of proof



Critical issues

- Disclosing participation in an alleged cartel
- Description of cartel conduct
 - concrete and detailed description of contacts and arrangements reached; not merely “discussions” or “information exchanges”
- Confidentiality
 - oral statements; specific access to file rules; no disclosure



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Future policy challenges

- Private action
- Criminal enforcement



What is the impact on leniency?

- White Paper on private action (April 2008) suggests that corporate statements of leniency applicants should be protected against court orders requesting disclosure
- Sanctions for individuals – leniency for individuals