



The EU perspective on leniency programmes

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Parallel enforcement with Member States

- **European Competition Network (ECN):**
parallel enforcement powers, but each authority has own sanctions policy
 - for leniency soft harmonisation
- **Commission: corporate sanctions ("fines")**
 - corporate leniency
- **Member States:** corporate sanctions + some can also impose sanctions on individuals
 - corporate leniency + in some countries also leniency for individuals

What drives leniency applications?

- 1. level of fines:** fines imposed and the extent those are upheld in Court
- 2. probability of being caught**
 - risk that someone else applies for leniency
 - ex officio investigations
 - ECN cooperation
- 3. leniency programmes**

Experience with leniency: some numbers

- Increase in number of cartel cases decided
 - 1990-1994: 11
 - 1995-1999: 10
 - 2000-2004: 30
 - 2005-2009: 33
 - 2010- 15
- Substantial reductions in fines
 - E.g. car glass: -50% for Asahi = 113 500 000 €

EU leniency programme



Immunity

- 8(a): "targeted inspection"
- 8(b): find an infringement
- Information and documentary evidence
- Disclosure of own participation in a cartel (in corporate statement)
- Coercer excluded

Reduction of fines

- Evidence offering "significant added value" (SAV)
- Disclosure of own participation in corporate statement
- "Compelling evidence": SAV and de facto immunity
- Coercer eligible



Common conditions for leniency

- Duty of cooperation for all applicants
- Flexibility on termination of the infringement
- "Genuine" cooperation: genuine effort to describe the cartel and provide evidence, answer questions
- Not to destroy, falsify or conceal information
- Not to reveal the fact or the content of the application



Effective leniency programme

- Rewarding cooperation contributing to make decisive progress in the case
 - **Detection** of clandestine conduct
 - **Reliable insider information** to identify suspects, understand the modus operandi, avoid raising suspicion in on-going cartels, guide inspections and other investigative measures
 - Evidence useful to the authority that is bearing the **burden of proof**

Effective leniency programme

- Responding to concerns of the applicants, while keeping in mind the public enforcement goal
 - Applicant never worse off regarding the outcome of the procedure -> de facto immunity
 - Concerns on discovery: oral statements procedure; access at the Commission premises; no copies
 - Markers: increasingly flexible; time to complete application; can facilitate case allocation
 - Criminal enforcement by other agencies: safeguards on exchange of information with authorities

Further questions/queries received

- How e.g. information exchanges, signalling or hub and spoke cartels are dealt with?
- Will joint applications be accepted in joint ownership situations?
 - general rules with case by case flexibility
- Multiple filings in the ECN and work sharing
 - summary applications + network coordination
- Diverging standards internationally:
 - cooperation and convergence in approaches, even if legal systems differ