



European Commission

Competition

Fight against Cartels

A balance and an outlook

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Competition

Overview

Overview

Achievements of last years

- Enforcement by Commission and ECN

Short term challenges

- Settlement procedure
- Economic crisis and enforcement

Long Term challenges

- Private damage action and leniency
- Criminalisation of cartels

What next?

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Make the fight against cartel priority no.1: a Road Map

- Creation of Cartel Directorate
- Improved investigating techniques
- Revisit the EU Leniency Programme and Establish a Coherent System of Leniency within Jurisdictions that Apply Article 81 EC
- Revise the Guidelines on Fines
- Introduce a “plea bargaining like system” in EU Competition Law (*Neelie Kroes : Studienvereinigung Kartellrecht April 2005*)



Some numbers

- 30 cartel cases decided from 2005 (+25 ECN)
- 184 cartel decisions from 2005 until now
- In total 9.44 billion EUR of cartel fines imposed from 2005 until now
- Highest fines in cartel cases: car glass (1.38 billion) and elevators and escalators (992 million)
- Highest fines imposed on individual companies in cartel cases: Saint Gobain (car glass, 896 million), E.ON (553 million), ThyssenKrupp (elevators and escalators, 480 million)



The challenges

- Settlement procedure
- Private action
- criminalisation



Direct settlement : Why ?

The Maths of the fight against cartels (1)

- 65 case handlers > 2 case handlers per case > instant treatment capacity = +/- 30 cases
- Typical case scenario: from beginning of the case to Commission decision : some 40 months
- Post SO procedure (+ languages)
- Nearly all cartel decisions appealed => Maximum possible number of decisions per year: 7 to 9



Direct settlement : Why ?

The Maths of the fight against cartels (2)

- Average of 15 immunity applications granted per year under the 2002 notice
- Creation of a potential backlog of 5 to 8 case/year before any ex-officio enforcement



- Settlement procedure was introduced in summer 2008: Amendments of the procedural Regulation and publication of a Settlement Notice
- Objective: Simplification of procedure leading to adoption of cartel decision; enable the Commission to handle faster and more efficiently cartel cases
- Advantage for companies: comes with reduction of fines and allows for early awareness of likely liability



- White Paper on damage action (published in April 2008) recommends mechanisms to ensure full compensation by all victims of cartels
- Private action is intended to complement, not to replace public enforcement
- Truly European approach
- White Paper contains some procedural suggestions to ensure effective public enforcement (e.g. „investigative privilege“)

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- White Paper suggests that corporate statements of leniency applicants should be protected against court orders requesting disclosure
- Should the civil liability be limited for leniency recipients? White Paper presents some careful considerations for further discussion.

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- Commission can only impose pecuniary sanctions on undertakings ("fines")
- Member States can also impose sanctions on individuals (pecuniary, disqualification orders, custodial)
- Main argument in favour of sanctions against individuals is deterrence

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Sanctions against individuals should come with

- Increased investigative powers
- Sufficiently well resourced and dedicated prosecution bodies
- Willingness of judges to convict
- An efficient leniency program for individuals

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Current procedural safeguards for leniency applicants:

- Exchange of information can only take place with bodies which apply EC competition law
- Safeguards of Article 12(3) of Regulation 1/2003 specifically addressing exchange of information used in evidence to impose sanctions on natural persons
- Safeguards of Cooperation Notice specifically addressing information collected on the basis of a leniency application