

Cartel Settlements Taking Stock of the First 8 Years

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Outline

- The EU Settlement Process
- The French Settlement Process
- EU: Benefits for the Parties
- EU: Risks for the Parties
- The EU Settlement Process: Outlook

The EU Settlement Process

The Benefits for the Commission

- “[T]he aim of the new procedure is...” (Case T-456/10, §60)
 - “to simplify and speed up administrative procedures” – True?
 - 2010 *DRAM*: 10 parties, 6 leniency applicants, 6 years + 15 months of proceedings
 - 2016 *Alternators & Starters*: 3 parties, all leniency applicants, single cartel, 3.5 years + 16 months of proceedings
 - “to reduce the number of cases brought before the EU judicature” – True
 - Only 2 appeals from settling parties, 1 withdrawn
 - “and thus to enable the Commission to handle more cases with the same resources” – True?
 - Yearly average number of decisions since 2000: constant at about 6
- Implications for non settlement cases?

The French Settlement Process

- Settlement submission only after full SO and full access to the file
- After settlement submission: «Report on the fine»
- Flat 10% reduction for settling
- ...and up to 10% reduction for commitments (typically compliance programs)
- Savings?
 - Administrative proceedings
 - Appeals
- Policy choice of rewarding enhancements to compliance programs

EU: Benefits for the Parties

- Flat 10% discount
- Generally limited gravity factor (15%-17%)
- Easier to get mitigating circumstances?
 - 2011 *Refrigeration Compressors*: Embraco -18% (+ -20%)
- Harder to get aggravating circumstances?
- Simplified decision (not in France)
- “[The settlement] *notice should not be an obstacle to discussions*” (Case T-456/10, §117)

EU: Risks for the Parties (1)

- If another settling party submits its settlement submission in writing?
- More immediate follow-on private enforcement
 - Decisions are published more quickly
 - But: 4.12.2013 *EIRD* settlement decision not yet available
 - Decisions become final more quickly
 - Acknowledgment of liability (not in France)
- ... and follow-on public enforcement? *DRAM*
- If the case becomes hybrid: publication of full decision
- If you walk away...

EU: Risks for the Parties (2)

- Following an undertaking's withdrawal from the settlement procedure, “[the EC is under the] *obligation to take account of new arguments or evidence brought to its attention during the standard administrative procedure*” (Case T-456/10, §107)
- “[I]f the undertaking does not put forward a proposal for settlement [...] the range [of fines] notified during the settlement procedure is irrelevant” (Case T-456/10, §§104-5)

EU: Risks for the Parties (3)

«You walk away» - A Case Study

- *Animal Feed Phosphates* (2010) – Timab
- Duration of infringement:
 - Settlement proposal: 26 years
 - Actual: 11 years
- The fine:
 - Settlement range of fines: € 41-44M
 - Actual fine: € 59,8M
- Mitigation: from -35% (cooperation outside leniency notice) to 0%
- Leniency: from -17% to -5%
- No settlement reduction: from -10% to 0%

The EU Settlement Process – Outlook

Settlement process reaches maturity?

- Hybrid cases (5 out of 20 cases since 2010):
 - *Animal Feed Phosphates* (2010), standard closed in 2010 (1 party)
 - *EIRD* (2013), standard ongoing (2014 SO)
 - *YIRD* (2013), standard closed in 2015 (1 party)
 - *Steel Abrasives* (2014), standard ongoing (2014 SO, 1 party)
 - *Mushrooms* (2014), standard closed in 2016 (1 leniency party!)
- Parent company liability
- Mitigating circumstances
- Deterrence increase (group multiplier)
- Leniency reduction
 - *Alternators & Starters*
 - Hitachi #2: -30% reduction
 - Melco #3, 15 months after RFI: -28% reduction

Thank you!