

Multiplication of parallel proceedings at global level: A negative leniency incentive?

**Session 5: Making a leniency application:
Triggering factors and strategy**

Intervention of Marc Hansen, Latham & Watkins

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Is multiplication of parallel proceedings at global level a negative leniency incentive?

- Increased multi-jurisdictional risks; More enforcers want part of the action
 - Cases are opened by marginally or indirectly affected jurisdictions years after the main markets affected
 - Many of the “late openers” are jurisdictions with limited enforcement practice, and therefore higher likelihood of case going to courts for procedural clarifications
 - Some new enforcement jurisdictions lack predictability
- Infinite jeopardy and the problem of indirect effects
 - Indirect effects where downstream products are traded
 - Not just a double counting issue, but an applicant cannot judge ultimate consequences and exposure from making an immunity application *anywhere in the world*
- What is a cartel – mission creep for agencies increasingly pursuing “atypical cartels” with tools that were designed for hardcore price fixing of the type we all recall from the movie the Informant
 - Is this really appropriate for information exchange cases? Leniency a tool where risk of an “effects case”?
 - Hub and spoke cartels – visibility of each is limited and leniency reporting is by definition very imperfect
- Follow-on damages in increasingly remote jurisdictions
- Increased criminal and/or individual prosecution or exposure across the globe
 - From the US to the UK is one thing, Australia, NL and Germany another, Brazil a third...