



Putting the Settlement Procedure into Practice

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Settlement Procedure

- A reliable legal framework was set up to increase the overall efficiency of cartel enforcement in the EU : the settlement package (amendments of the procedural Regulation and publication of a Settlement Notice).
- Objective: Simplification of administrative procedure leading to adoption of cartel decision; enable the Commission to handle faster and more efficiently cartel cases. Savings of litigation costs.
- It comes with reduction of fines for the companies and allows for early awareness of likely liability.



Objectives and benefits

For Commission

- **Efficiency gains**
 - Drafting and Translations
 - Access to file
 - Oral hearing and interpretation
 - Less appeals
- **Reinforcing effectiveness / deterrence**
 - More decisions
 - Higher risk of detection
 - Complement to leniency & fines

For Companies

- **Direct financial benefits**
 - Fine reduction (10%) cumulative with leniency
 - Savings in litigation/defence
- **Benefit of finality**
 - Shorter procedure: provides early “exit” route (corporate governance)
 - Early awareness of likely liability
- **Free choice**



Suitable cases

- **To achieve the objectives sought:**
 - Likelihood of reaching a settlement
 - Procedural efficiencies
- **Internal operational screening before exploring settlements, e.g.:**
 - Number of parties concerned / Parties' spontaneous interest to settle
 - Number of successful leniency applicants
 - Expected degree of contestation
 - Impact of aggravating circumstances
 - Parties' foreseeable conflicting positions
 - EU/EEA cases or cases already decided in other jurisdictions
 - Novel legal issues
 - ...



Putting EU settlements into practice Transitional phase / initial cases

- In the initial phase, also cases eligible with an “ordinary” draft SO ready and/or the full file screened for confidentiality.
- Five decisions so far
 - DRAMs decision (19 May 2010) : pure settlement
 - Animal Feed (20 July 2010) : hybrid settlement
 - Consumer Detergents (13 April 2011): pure settlement
 - CRT Glass (19 October 2011): pure settlement
 - Refrigeration Compressors (7.12.2011): pure settlement
- Settlement discussions are taking place in pending cases.
Confidentiality.



Summary of the DRAMs Cartel



- **10 undertakings / 24 companies:** Micron, Samsung, Hynix, Infineon, NEC, Hitachi, Elpida, Toshiba, Mitsubishi and Nanya;
- were involved in a **scheme and/or network of contacts and secret information sharing** by which they coordinated their conduct on general pricing level and quotations to major **PC/server Original Equipment Manufacturers (OEMs)**, ultimately amounting to price coordination to such clients;
- on the market for **DRAMs** (Dynamic Random Access Memory), i.e. **memory chips used in computers and servers**;
- The overall cartel lasted from **1 July 1998 until 15 June 2002**.
- **Fines imposed : € 331 million**



Summary of the Animal Feed Cartel

- Cartel in Animal Feed phosphates (chemical compounds used in feed for animals)
- Longest cartel at EU level ever: over 34 years (1969-2004)
- Covering at all times a large part of the EU (and subsequently EEA) territory.
- Companies allocated sales quotas and customers, coordinated prices and, to the extent necessary, sales conditions and generally exchanged sensitive market information
- Multilateral meetings at European and national level
- At all stages cartel members adapted their strategy and organisation
- Fines imposed: € 175 million





Summary of the Consumer Detergents cartel

- Infringement connected to implementation of environmental initiative to reduce dosages and weight of washing powder and related packaging material
- Industry discussions led to anticompetitive conduct among the major producers: Henkel, P&G and Unilever
- Cartel aimed at stabilisation of market positions and price coordination
- The cartel covered 8 Member States
- Duration: 7 January 2002 – 8 March 2005
- Fines imposed: € 315 million





Summary of the CRT Glass Cartel

- EEA-wide cartel of 4 major CRT glass producers [Asahi Glass-AGC, Nippon Electric Glass-NEG, Samsung Corning and Schott]
- overall duration from 02/1999 until 12/2004
- Coordination of prices at trilateral / bilateral meetings for CRT glass types (target prices, prices for certain sizes and prices to be charged to major customers)
- cartel members engaged also in an exchange of sensitive commercial information
- „ex officio“ case, 3 leniency applications, inspections in Germany in 03/2009
- overall fine of € 128 million on 2 Asian (AGC, NEG) and a German company (Schott)



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Refrigeration Compressors Cartel

- EEA-wide cartel of 5 major producers of household and commercial refrigeration compressors, used in fridges, freezers, vending machines and ice-cream coolers
- Cartel participants: ACC/Eletromeccanica (Italy), Danfoss (Denmark + Germany), Embraco Europe and Whirlpool S.A. (Italy + Brazil), Panasonic (Japan) and Tecumseh (US, Brazil, France)
- overall duration from 04/2004 until 10/2007
- cartel members aimed at coordinating European pricing policies and keeping market shares stable in an attempt to recover cost increases
- cartel members held bilateral, trilateral and multilateral meetings at which they discussed prices and exchanged sensitive commercial information
- All cartel members applied for immunity/leniency
- overall fine of € 161 million imposed





DRAMs, Consumer Detergents, CRT Glass, Compressors : pure settlement scenario

- DRAMs :one year process from start of settlement discussions until decision. Test case and high learning curve
- Consumer Detergents and CRT Glass: real procedural efficiencies shown in these cases. Final decisions within 3 years from immunity application.
- Thorough « hearing » of case, COMP charges, parties arguments
- Utmost respect of rights of defence/procedure
- Streamlined SO and decision
- No negotiation on the fine range !
- Planning is essential



Animal Feed : hybrid settlement scenario

- One of the 6 parties discontinued the settlement route after having been informed of fine range
- From then onwards: bifurcation of procedures
- Cumbersome procedure
 - Non-settling party; full access to file, fully detailed SO, hearing, extensive reply to SO, fully motivated decision
 - Settling party: streamlined SO and decision
- Issues and challenges
 - Model for hybrid cases
 - Avoid free-riding



EU settlements in practice : overview of the procedure (1)

I. Investigation as usual

- Parties may express their interest in a 'hypothetical' settlement

II. Preparation for Settlement Phase

- Screening for suitable cases (point 5 of the Notice)
- Letter to all companies (and MS): initiation of proceedings in view of settlement (Art. 11(6)), request to express their interest (joint representation for undertakings)
- Leniency window closes

III. Bilateral rounds of settlement discussions

- Participating does not imply an admission of guilt or duty to settle
- Disclosure and exchange of arguments on potential objections, liability, fines
- Disclosure of evidence supporting potential objections, liability, fines
- Disclosure of other evidence upon reasoned request
- Commission retains discretion as to the opportunity, order and pace of disclosure and discussions
- Discussions are bilateral, frank and non usable as evidence



EU settlements in practice: overview of the procedure (2)

IV. Settlement

- Settlements submissions by the companies jointly represented (template settlement submission)
- Parties cannot be asked to acknowledge anything formally or to accept the prospect of a certain level of fines unless they have been able during the discussions to effectively exercise their rights to be heard on the envisaged objections, and unless they have been informed of the range of fines that they may incur

V. “Settled” Statement of Objections

- Notification of streamlined SO endorsing company’s settlement submissions, where appropriate
- Company’s reply to SO confirming that it endorses its settlement submission

VI. “Settlement” Decision pursuant to Articles 7 and 23 of Council Regulation n° 1/2003

- Streamlined final decision



Questions

