



European Commission

Competition

Mini plenary III: Settlements and Sentencing

The European Commission perspective

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Cartel enforcement in EU

- EU law (Art. 101 TFEU) prohibits cartels *per se*
- EU - administrative enforcement model – decisions imposing fines on undertakings adopted by the Commission are subject to review by European Courts
- Enforcement by Commission and National Competition authorities (ECN)
- Regulation 1/2003 - effective and adapted investigative powers
- Some numbers - 2000-2010: 68 decisions and ca. 14.5 bill. of fines



Settlements in EU

- Settlements Notice (2008/C 167/01) – cartels only
- Settlement not an investigative tool, but an efficiency instrument
- Objective: simplification of administrative procedure leading to adoption of cartel decision; enable the Commission to handle faster and more efficiently cartel cases
- Complementary to leniency programme – fine reductions are cumulative



Settlements in EU

- Parties have free choice whether to settle or not
- Bilateral discussions between EC and parties
- EC objective – settle with all participants
- If common view reached, the parties introduce “settlement submission”
- Ordinary procedure remains and applies by default if settlement not reached



Settlements: challenges

- Agency gains and case selection - not *'a one size fits all'* approach
 - Likelihood of reaching a settlement
 - Procedural efficiencies
 - Number of parties concerned
 - Number of successful leniency applicants
 - Expected degree of contestation
- Settlements and interactions with private litigation
 - Level of details in settlements decisions
 - Hybrid scenarios: not all the participants willing to settle
 - Disclosure of documents submitted by settling undertakings



Settlements and fines

- EC Fines Guidelines (2006/C 210/02) - a reasonably foreseeable method
- Predictability of fines – incentive for settling companies



Settlements and fines

EC Guidelines

- **Basic amount**
 - The value of sales of cartelised product; reference year
 - The applicable percentage (nature of offence; geographic scope; implementation)
 - Duration
 - The additional amount
- **Adjusting**
 - Aggravating factors
 - Attenuating factors
- **Cap: 10% of total turnover**