



## Review of EU cartel prosecutions 2010-19

This Casenote summarizes the result of a quantitative study of the European Commission's cartel enforcement activities over the decade from 2010 to 2019. The data used are the published prohibition and settlement decisions of the Commission for horizontal agreements (cartels) which infringed Article 101 of the Full treaty of the European Union (TFEU).

### The Caseload

Over the decade 2010 to 2019 the Commission published 51 prohibition, summary, and settlement decisions covering 46 cartels (horizontal agreements) involving 78 separate infringements by 272 undertakings, who collectively paid over €16.2 billion in fines.

The Commission completed an average of five infringement/settlement decisions each year although this varied. Its caseload was small relative to the number of cartels reported to it and the caseload of many national competition authorities within the EU.

In addition, the Commission closed nine investigations without finding an infringement, undertook 17 dawn raids not associated with a published decision, readopted five decisions following an appeal of the original decision, opened two investigations, and issued three Statement of Objections in ongoing investigations.

### Nature of Cartels Prosecuted

The cartels prosecuted by the Commission had an average of 5.3 undertakings, but these varied considerably from two to 17 firms and operated for an average of 6.7 years varying from a low of four months to a maximum of 34 years (Animal Feed Phosphates).

Cartels were concentrated in the car parts (36%) and finance (15%) sectors which together were fined of €9.5 billion (58% of all fines). Over one-third of the infringements and value of fines were in the automotive sector involving the supply of car parts and components to European carmakers. Since 2013 the Commission has published 12 infringement and settlement decisions against firms supplying car parts imposing a total of €2.17 billion in fines. If the trucks' cartel (Trucks and Scania) is added total fines were €6 billion.

### Fines

The total fines imposed by the Commission was €16.2 billion which was an average of €319 million per cartel decision.

The Commission reduced the fines of 218 or 60% of the undertakings/infringements under its leniency programme. These together with the discounts for settlement reduced notional fines by €17.8 billion. This meant that more fines were avoided than were paid by those firms prosecuted for infringing Art 101 TFEU.

The Commission reduced the fines of 54 undertakings before leniency and settlement because they exceeded the 10% cap of worldwide turnover. The majority of these were in the first half of the decade - 40 compared to 14 undertakings during the second half. Ten undertakings had their fines reduced because of their inability to pay.

### Leniency

The Commission relied almost exclusively on whistleblowers to detect cartels. Full immunity was granted to 61 whistleblowers in all but two cartels. All whistleblowers were members of their respective cartels. The two cartels that did not involve a whistleblower came to the Commission's attention because of investigations initiated by a national competition authority (Power Exchanges) and an informant who was not a party to the cartel (Paper Envelopes).

Nearly half the cartels prosecuted appeared to have ceased operation before the whistleblower approached the Commission.

The full immunity applicants avoided fines of over €10 billion (excluding the avoided fines of full immunity applicants in Prestressing Steel, Bathroom Fittings, Mounting for Windows & Window Doors and Shrimps which were not given or redacted).

Five of the 61 (10%) whistleblowers avoided fines of € 5.75 billion or 60% of all the fines commuted under the leniency programme; four of these would otherwise have received the largest fine in their respective cartel.

Partial leniency was given to 162 (43%) of the 371 infringement/undertakings. While there were more during the first (87 undertakings) than the second half (72 undertakings) of the decade because the Commission's enforcement activity slowed in later

years the proportion of undertakings given partial leniency increased from 37% of all undertakings/infringements to 54% during the second half of the decade. The average reduction in fines due to partial leniency increased from £32.6 million to £41.6 million as did the amount of partial leniency reductions as a proportion of total fines (32% versus 39%).

### Settlements

The Commission completed 31 settlement decisions of which six were hybrid decision where one or more undertakings declined to settle. About €1.55 billion in fines were commuted as part of the Commission's settlement programme. During the first half, the total reduction in fines due to settlements was €658 million which rose to €896 million during the second half. All settlements were initiated by a whistleblower with exception of Paper Envelopes and Power Exchanges.

### Recidivism

The Commission fined only seven (or 2.6%) of the 272 undertakings in five cartel decisions for one or more repeat offences surcharging them between 50% for one previous infringement and 60% for all second and further previous infringements. Three repeat offenders received full immunity and the others partial immunity which reduced their fines by 15% to 30%. There was no trend in the incidence of repeat offenders over the decade.

A total of 46 of the 272 (17%) undertakings prosecuted committed two or more infringements involving 167 infringements. These firms were predominantly active in the car parts (15) electronics (11) and financial (6) sectors with the remaining 14 mostly in freight forwarding and food retail packaging. Of the 167 infringements, 42 (26%) of the multiple offenders received full immunity from fines and 92 (55%) received partial immunity. That is 134 (81%) of the 167 had their fines reduced under the Commission's leniency programme. Three were prohibition decisions and eight settlement decisions including one hybrid settlement, with the latter receiving an additional 10% discount.

### Length of Investigation

Article 25 of Regulation (EC) No 1/2003 places a five years' limitation period on the Commission's investigation. The Commission has often exceeded this

time limit. It took on average nearly five years from the application for full immunity to the publication of the infringement decision to complete its investigations despite the leniency and settlement programmes.

The Commission took longer to complete its investigations during the second half of the decade - an average (and median) of 6.2 years (using dates for the official launch of the investigation) compared to an average of 5.5 years.

On three occasions the Commission reduced its fines because it took more than six years to complete its investigation (Smart Cards, Retail Food Packaging Occupant Safety Systems II received reductions of 10%, 5%, and 5% respectively). On the other hand, investigations that took longer did not receive a reduction in fines e.g., LCD (8.5 years), Prestressing Steel (8.4 years), DRAMs (7.9 years), and Scania (7.1 years).

It is not possible to assess whether the leniency programme reduced the length of the Commission's investigation because all but two infringements during the period were detected by a full leniency applicant. There is evidence that the leniency programme increased the length of investigations.

The settlement procedure is designed to decrease the length of the Commission's investigation. Over the period, contested prohibition investigations took an average of 5.75 years compared to 4.8 years for those investigations which were settled. This suggests that the settlement process reduced the length of an investigation by about one year on average. There were few discernible differences between settled and non-settled proceedings other than the latter involving more undertakings i.e., an average of 7 versus 4.

### Procedure

The Commission published 20 full prohibition decisions that had an average of 190 pages. These have become shorter – from an average of 224 pages per decision from 2010 to 2014 to 134 pages for those published between 2015 to 2019. The 31 settlement decisions had an average of 29 pages.

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This Casenote is based on Cento Veljanovski, 'An Empirical Assessment of the European Commission's Cartel Prosecutions, 2010 to 2019' which is available on request.

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