1. INTRODUCTION

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III. SETTLEMENTS OF CARTEL CASES

II. Power and Final Decision

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"In this case, the Commission Order for the Final Decision on the

In the absence of a different procedure, the Commission will apply its own rules

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imagine that it would make sense for a company to apply for leniency, or even recognise guilt in a small jurisdiction where the fine and exposure to private damages actions are minor, so as to avoid the cost of defending the case for many years. Yet such a strategy, while making perfect sense at a local level, may be disastrous on a worldwide basis if it recognises guilt or anti-competitive facts and leads to condemnations in the EU and the United States without any discount in the fine and without any protection against private damages actions.

V. PROCEDURAL CONCERNS LINKED TO THE PROCESS OF APPLYING FOR LENIENCY

These tactical considerations lead us to record some concerns about evidence and due process. The double uncertainty—regarding one's place in the queue of leniency applicants and the information already at the European Commission's disposal—is an intentional feature of the EU leniency policy. It is meant to encourage companies to come forward as quickly as possible and provide the fullest story. The concern is that leniency applicants might not be entirely straightforward. They might provide minimal evidence to get the reduced fine while revealing less than the full scope of the infringement. Since it commonly happens that a number of products are affected by overlapping cartels, and that such cartels may cover a long period and several countries, a leniency applicant who tells of only one cartel of short duration might need an incentive to tell more. A longer or broader infringement would have negative consequences in terms of exposure to claims for damages. The requirement of bringing significant added value encourages leniency applicants to provide as much information about the infringement as possible, since not being entirely straightforward may result in losing the benefit of the leniency application if other parties have given the European Commission more evidence. That much is clear enough.

Yet a consequence of the official desire for the fullest disclosure about others' conduct, and the absence of sanctions for speculative or extravagant accusations, is that leniency applicants have an interest in embellishing their confessions to include marginal conduct. 'When in doubt, confess' could be the motto of the leniency policy. We are not saying that leniency applicants would list all leniency applicants receive a fine reduction, a finding of infringement remains a serious matter for any company. Moreover, external counsel are bound by ethical rules and are unlikely to favour wilfully providing incorrect information to the authorities. However, it cannot be denied that leniency applicants will have a tendency to present grey conduct as rather black, while non-leniency applicants will have a tendency to present it as off-white, mere imprudence. Neither position is objectionable nor unethical: they reflect the fact that enforcers have a tendency to regard conduct as either prohibited or legitimate, with no intermediate ground. When presented with unclear or ambiguous facts, defence lawyers might rather characterise them differently.

The typical start of the process of confessing to obtain leniency involves instructing the outside lawyer to approach the European Commission to give a detailed verbal description of the infringing conduct. The oral nature of the statement has the advantage of making it undiscoverable in United States private actions. The only existing traces—the recording at the European Commission's premises and the transcript made under the European Commission's supervision—are internal to the European Commission and, as a result, are not discoverable. The fact that the statement is usually dictated by a lawyer is convenient for the European Commission, as it thus receives a neatly packaged parcel of allegations. This spares it the task of compiling dozens of individual statements, comparing them and reconstructing events. The leniency applicant's lawyers who have done the enquiry will potentially explain the story so as to incriminate others and downplay the role of their client. One might say this is a privatisation of the European Commission's investigative work.

While the regime has advantages for the European Commission, it is not very satisfactory for the inculpated companies. They do not have access to the raw material uncovered by the leniency applicant. There is no opportunity for the alleged co-infringers to challenge the witness whose story the confessing lawyer tells. They will thus not be aware of discrepancies between witnesses, gaps in memory and the relative strength and reliability of each witness's recollection. Whether the meeting place was the Hilton or the Shera ton may not be very important, but whether it was on 12 January or on 13 January might be crucial. If Mr Smith was demonstrably otherwise engaged on 13 January, he could not have attended the cartel meeting. While the European Commission may send leniency applicants additional questions, there is no procedural mechanism for defence lawyers themselves to interview the witnesses underpinning the leniency applications, and no mechanism to discover how credible the unseen witnesses are. This process is difficult to reconcile with requirements of natural justice.

VI. THE (UNDE) WEIGHT GIVEN TO LENIENCY STATEMENTS

Both the European Commission and European courts attribute high probative value to leniency statements. The European Commission generally tends to presume that leniency statements constitute an accurate presentation of the events as they actually occurred, and it tends to give preference to leniency statements over statements denying the existence of any infringement or limiting the scope of the infringement. In the absence of exceptional circumstances, the courts have considered that leniency applicants who admit having committed an infringement have 'resolved to tell the truth' and that their statements constitute reliable evidence. According to consistent case law, statements which counter to the interests of the declarant must in principle be regarded as particularly reliable evidence. On that basis, European courts tend to consider that leniency statements, since they are reputed to be self-incriminatory, are particularly credible due to the potential adverse consequences in terms of fines, follow-on damages or reputational damage for the applicant company. But one recent development from a Dutch District Court cautions against over-reliance on leniency statements. The District Court of Rotterdam found that an alleged cartel infringement had not been sufficiently established. Leniency statements that had


A Deed of Settlement

We set out the necessary clauses for a settlement deed in this section. The agreement must be signed by both parties involved. The deed is effective upon delivery and acceptance by the parties. It is important to ensure that all terms and conditions are clearly stated in the deed.

IV. Custodian's Agreement

The custodian’s agreement is a legal document that defines the rights and obligations of the custodian in relation to the settlement of the security. It is a crucial part of the settlement process and must be carefully considered.

In signing the settlement deed, the parties agree to abide by the terms and conditions set forth in the agreement. The custodian is responsible for ensuring that all legal requirements are met before the settlement is completed.

The settlement deed is a legal document that is used to transfer ownership of securities from one party to another in accordance with the terms of the contract. It is an important part of the settlement process and must be signed by both parties involved.

In summary, the settlement deed must be signed by both parties involved in the settlement process. It is a legal document that defines the rights and obligations of the parties involved in the settlement.

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In this chapter we make a generalised recommendation regarding whether we apply for leniency. Clearly, the question of whether to apply for leniency should be carefully considered. In our view, the question of whether leniency is available to us should be a significant factor.

What we advocate in this chapter is reviewing the dangers and advantages of seeking leniency in the context of a leniency decision in a recent case. One of the cases involved a full information leniency application being considered by the Commission.

The Commission has an extensive cannabis policy. It is important to consider the impact of the decisions made in this decision. The impact of the decision must be considered in light of the case, which is the only case for which the Commission has made this decision.

The Commission has a policy of not providing leniency to applicants who, in our view, are not likely to agree with the Commission.

A number of applications have been made to the Commission for leniency, but only one has been granted. The Commission has never granted leniency to an applicant who has not been able to provide sufficient evidence to support its position.

We are recommending leniency to the Commission in the context of the decisions made in the recent case. The Commission has not provided any evidence to support its decision. The decision was made in light of the case, and it is important to consider the impact of the decision on the case.

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