



Principles for Leniency Programmes

**Directors' General of European Competition Authorities
meeting in Dublin on 3 and 4 September 2001**

Introduction

1. The experience of several competition authorities around the globe in the five years preceding this meeting is that offer of lenient treatment to members of cartels, who come forward to co-operate with the authorities, has been of great benefit in facilitating the effective investigation of cartels.
2. As anything that facilitates effective investigation will also serve to deter undertakings from forming cartels in the first place, it is clear that in many jurisdictions the possibility of offering lenient treatment in return for significant and substantial co-operation will lead to significant benefits for the economy.
3. The enforcement of competition law cannot be treated in isolation from the general principles that govern the administration of justice in the jurisdiction involved. The introduction of a leniency programme may not be appropriate or even possible in all jurisdictions and, in particular, where cartels are dealt with as crimes, the general principles of criminal law may apply. However, where a leniency programme is introduced, it is believed that those responsible for devising the programme may wish to have due regard to the principles set out in this Principles.
4. These Principles are put forward to advance the debate on the structure of leniency programmes that is taking place within Europe. Recognising the differences in national situations referred to above, it does not bind the authorities to adopting these principles.

Definition

5. In these principles the word “leniency programme” is used to describe all programmes that offer either full immunity from sanctions incurred for the involvement in a cartel or a significant reduction of their scope or level in exchange for a freely volunteered disclosure of information on the cartel.

High Level Principles

6. As a general rule, the maximum benefit of the leniency programme will be given to the first applicant for leniency who meets all of the relevant requirements of the programme. In addition, the authority should, where possible, have discretion to offer significant but substantially smaller reductions in sanction to second and subsequent applicants.
7. Recognising the success of leniency programmes that offer certainty at an early stage, each authority should endeavour to ensure that its own leniency programme offers the maximum degree of certainty as is feasible within its legal framework to the first



applicant for leniency who meets all of the relevant requirements of the programme. To the extent permitted by the framework in which it operates, the authority will confirm at the time of agreement with the applicant the leniency that will be given, providing that the applicant continues to meet the necessary conditions. The complete and continuous co-operation of the subsequent leniency applicants with the authority enhances the effectiveness of leniency.

8. The authority shall ensure that applications for leniency are considered in order of receipt.
9. Information may be provided on a hypothetical basis in order to discuss the qualification for leniency. This information shall not be used by the authority to initiate any investigation. However, the authority is not precluded from opening an investigation on the basis of information received from another source.
10. Once an application for leniency has been formally completed, consent for the use by the authority of the information provided cannot be withdrawn.
11. The authority shall, to the extent legally possible, honour confidentiality claims by applicants for leniency up to the point that publication of a rapport or decision is required by the relevant legal process.

Co-operation between authorities

12. An application for leniency in one jurisdiction does not count as an application for leniency under another jurisdiction. However, without prejudice to the applicant's responsibility for securing lenient treatment, the authority involved shall, at the outset, make applicants aware of the possibility of applying for leniency under programmes in other jurisdictions. If so requested, the authority may introduce applicants to the appropriate contact point of the other authority.
13. If an authority takes over the case from an authority that has already offered leniency to an applicant, the authority refraining from further investigation shall give notice of it to the applicant. Upon applicant's request and to the extent possible, the ceding authority shall inform the receiving authority of leniency discussions that have taken place and shall invite the receiving authority to consider the applicant favourably, to the extent possible and appropriate, according to its leniency programme or its rules on mitigation of sanction subsequent to co-operation in the investigation.

Good administrative practice

14. The authority shall publicly announce the details of its leniency programme and the person or post to which applications for leniency should be made.



15. The first contact with the authority may be made by applicant's counsel on a no names basis but with disclosure of the sector or industry involved and the kind of practice involved. That contact determines the applicant's place in the queue, provided that the information given is accepted by the authority as sufficient and it is followed up by a substantive meeting with counsel and applicant within a limited time-period agreed upon at the outset.
16. Authorities shall inform each other of their respective leniency programmes and the contact point within their organisation for applications. A list of contact points is attached.
17. The authority shall invite applicants to waive confidentiality claims in respect of other jurisdictions, where the applicant applied for leniency treatment.

Review

18. These principles will be reviewed by the authorities after two years or sooner if developments should require.

Dublin,
4 September 2001