

CLIENT ALERT

European Commission Introduces New Settlement Procedure for Cartel Cases

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The European Commission today introduced a new settlement procedure for cartel cases, under which the parties that acknowledge their participation in a cartel may obtain a 10% reduction in fines. This procedure is intended to simplify the Commission's administrative processes, freeing up resources so that it can pursue new cases. It may also reduce the number of appeals to the European Courts in cartel cases.

Parties do not automatically have a right to settlement under the new process, and the Commission will have full discretion to determine whether a case is suitable for settlement. Nor will the Commission negotiate the use of evidence or the appropriate sanction. The Commission will inform the parties of its case and the supporting evidence. Parties will then have to indicate whether they wish to pursue a settlement. In order to settle, parties will have to acknowledge the scope and duration of the cartel as well as the liability of the individual companies involved in a so-called "settlement submission." If the Commission chooses to accept the parties' settlement submissions, it will do so under an abbreviated procedure resulting in a shorter than usual decision. Moreover, until a decision is taken, the Commission will retain the possibility to reject the proposed settlement and revert to its normal process.

In contrast with US practice of plea bargaining, the Commission sees settlement as a tool for achieving procedural savings rather than for evidence gathering. Its main evidence gathering tool in cartel cases will remain its leniency program under the 2006 Leniency Notice. Fine reductions under the new settlement process and the leniency program will be cumulative.

Although the Commission has yet to release full details of the new procedure, it appears to be closely based on its package of proposals launched on October 26, 2007. That package has been widely criticized by lawyers in private practice for failing to offer companies sufficient incentives to make settlement attractive. See e.g. http://www.crowell.com/documents/All-Settled_Where-Are-The-European-Commissions-Settlement-Proposals-Post-Consultation.pdf

The settlement procedure will enter into force on the day of its publication in the EU Official Journal.

For further information:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1056&format=HTML&aged=0&language=EN&guiLanguage=en>

<http://ec.europa.eu/comm/competition/cartels/legislation/settlements.html>

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