

A VIEW FROM BRUSSELS: FURTHER STRENGTHENING THE FIGHT AGAINST CARTELS

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On the eve of the 50th Anniversary of the European Union the Commissioner for Competition, Neelie Kroes, explains why the fight against cartels is a current priority throughout the EU.

En vísperas del 50 Aniversario de la Unión Europea, la comisaria de competencia, Neelie Kroes, explica cómo la batalla frente a los cárteles es una prioridad actual en la Unión Europea. Kroes nos explica cómo los cárteles provocan que Europa sea menos competitiva y ponen freno a su futuro crecimiento económico. Por este motivo, y bajo las nuevas directrices, se multiplicarán las multas iniciales de acuerdo con el tiempo en que la empresa haya participado en el cártel y se duplicarán las mismas en caso de reincidencia por parte de la compañía.

Private secret agreements between competitors protect their own individual positions, but at a huge cost. OECD studies have found that the artificial price increase can be as much as 50%. This hits direct customers – be they other companies or citizens – but also filters down through the entire

European economy.

In the end, cartels make Europe less competitive and put the brakes on our future economic growth. Why invest, why innovate, when you can sit back and profit unfairly from an illegally engineered allocation of resources?

Back in 2005 I announced that I would put greater priority on the fight against cartels. The dedicated Cartel Directorate is now up and running very well. In 2006 we imposed a record total of over €1.8 billion in cartel fines. Our recent action covered cartels in intermediate products like chemicals, that impose extra costs on downstream European companies, as well as in end products ranging from copper plumbing tubes to zips, that directly hit citizens' purses.

I want the future for cartelists to continue to look as bleak as possible. That is why I am further sharpening our tools in this area.

Two years ago, I said I wanted to build on the increasing success of leniency programmes run by the Commission and a large number of Member States. Our new Leniency Notice enhances the transparency and the certainty of the thresholds and conditions for leniency. It gives companies a better picture of the Commission's procedure, so they know what to expect and what is expected of them. As a result, applicants can expect to receive quicker responses to their applications. The changes take careful account of the views expressed by the legal and business community.

I also said I would look closely at the problem of multiple filings. The ECN Model Leniency Programme is now in place, and we need to see if this addresses the concerns that were raised. The Commission's own system is of course fully in line with the Model Programme, and I am happy to see increasing convergence among national systems as well.

Of course the most visible deterrent signal we are sending out is through our fines. I've heard some people – those perhaps who have something to fear – complaining that the level of fines resulting from our new guidelines is too high. I take this as proof that fines work best when they are predictable and set at a level which ensures effective deterrence, whilst not damaging the market structure itself. So under our new guidelines we will multiply the initial fines according to the length of time a company participated in a cartel. And we will double fines in the case of repeat offenders. Companies now have even more incentive to think twice before they embark on illegal behaviour. It's their choice, and they know that the consequences of misbehaving will hurt.

What's next? Well, the number of leniency applications continues to increase. So we are seriously considering developing an instrument to handle selected cartel investigations more speedily. In certain cases we should be able to reach an agreement with the parties on the scope and duration of the infringement, and their individual liability for it under public enforcement. The application of the fines guidelines would then apply net of any reduction for cooperation. Cooperation and voluntary assistance by the party would justify a rebate in the amount of the fine. This could come on top of the leniency rebate, although we need to think more about the exact modalities.

The debate on direct settlement is well worth having, and the business community has already shown its interest. I would encourage you to contribute your thoughts too. In this context one issue we need to look at very carefully is the link between this kind of direct settlement and civil litigation where plaintiffs seek damages.

And of course, to be really effective, the Commission cannot rely exclusively on the leniency programme for the detection of cartels. It is vital that we retain and strengthen our ability to uncover cartels through our own initiative investigations.

This is an abstract from the opening speech by Neelie Kroes, European Commissioner for Competition Policy, at the European Commission/International Bar Association (IBA) Joint

