



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

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COMMISSION NOTICE

on the non-imposition or reduction of fines in cartel cases

(96/C207/04)

A. INTRODUCTION

1. Secret cartels between enterprises aimed at fixing prices, production or sales quotas, sharing markets or banning imports or exports are among the most serious restrictions of competition encountered by the Commission.

Such practices ultimately result in increased prices and reduced choice for the consumer. Furthermore, they not only prejudice the interests of Community consumers, but they also harm European industry. By artificially limiting the competition that would normally prevail between them, Community enterprises avoid exactly those pressures that lead them to innovate, both in terms of product development and with regard to the introduction of more efficient production processes. Such practices also lead to more expensive raw materials and components for the Community enterprises that buy from such producers. In the long term, they lead to a loss of competitiveness and, in an increasingly global market-place, reduced employment opportunities.

For all those reasons, the Commission considers that combating cartels is an important aspect of its endeavours to achieve the objectives set out in its 1993 White Paper on Growth, Competitiveness and Employment. This explains why it has increased its efforts to detect cartels in recent years.

2. The Commission is aware that certain enterprises participating in such agreements might wish to terminate their involvement and inform the Commission of the existence of the cartel, but are deterred from doing so by the risk of incurring large fines.

3. In order to take account of this fact, the Commission has decided to adopt the present notice, which sets out the conditions under which enterprises cooperating with the Commission during its investigation into a cartel may be exempted from fines, or may be granted reductions in the fine which would otherwise have been imposed upon them. The Commission will examine whether it is necessary to modify this notice as soon as it has acquired sufficient experience in applying it.

4. The Commission considers that it is in the Community interest in granting favourable treatment to enterprises which cooperate with it in the circumstances set out below. The interests of consumers and citizens in ensuring that such practices are detected and prohibited outweigh the interest in fining those enterprises which cooperate with the Commission, thereby enabling or helping it to detect and prohibit a cartel.

5. Cooperation by an enterprise is only one of several factors which the Commission takes into account when fixing the amount of a fine. This notice does not prejudice the Commission's right to reduce a fine for other reasons.

B. NON-IMPOSITION OF A FINE OR A VERY SUBSTANTIAL REDUCTION IN ITS AMOUNT

An enterprise which:

(a) informs the Commission about a secret cartel before the Commission has undertaken an investigation, ordered by decision, of the enterprises involved, provided that it does not already have sufficient information to establish the existence of the alleged cartel;

(b) is the first to adduce decisive evidence of the cartel's existence;

(c) puts an end to its involvement in the illegal activity no later than the time at which it discloses the cartel;

(d) provides the Commission with all the relevant information and all the documents and evidence available to it regarding the cartel and maintains continuous and complete cooperation throughout the investigation;

(e) has not compelled another enterprise to take part in the cartel and has not acted as an instigator or played a determining role in the illegal activity,

will benefit from a reduction of at least 75% of the fine or even from total exemption from the fine that would have been imposed if they had not cooperated.

C. SUBSTANTIAL REDUCTION IN A FINE

Enterprises which both satisfy the conditions set out in Section B, points (b) to (e) and disclose the secret cartel after the Commission has undertaken

Enterprises which both satisfy the conditions set out in Section B, points (b) to (e) and disclose the secret cartel after the Commission has undertaken an investigation ordered by decision on the premises of the parties to the cartel which has failed to provide sufficient grounds for initiating the procedure leading to a decision, will benefit from a reduction of 50% to 75% of the fine.

D. SIGNIFICANT REDUCTION IN A FINE

1. Where an enterprise cooperates without having met all the conditions set out in Sections B or C, it will benefit from a reduction of 10% to 50% of the fine that would have been imposed if it had not cooperated.

2. Such cases may include the following:

- before a statement of objections is sent, an enterprise provides the Commission with information, documents or other evidence which materially contribute to establishing the existence of the infringement;

- after receiving a statement of objections, an enterprise informs the Commission that it does not substantially contest the facts on which the Commission bases its allegations.

E. PROCEDURE

1. Where an enterprise wishes to take advantage of the favourable treatment set out in this notice, it should contact the Commission's Directorate-General for Competition. Only persons empowered to represent the enterprise for that purpose may take such a step. This notice does not therefore cover requests from individual employees of enterprises.

2. Only on its adoption of a decision will the Commission determine whether or not the conditions set out in Sections B, C and D are met, and thus whether or not to grant any reduction in the fine, or even waive its imposition altogether. It would not be appropriate to grant such a reduction or waiver before the end of the administrative procedure, as those conditions apply throughout such period.

3. Nonetheless, provided that all the conditions are met, non-imposition or reductions will be granted. The Commission is aware that this notice will create legitimate expectations on which enterprises may rely when disclosing the existence of a cartel to the Commission. Failure to meet any of the conditions set out in Sections B or C at any stage of the administrative procedure will, however, result in the loss of the favourable treatment set out therein. In such circumstances an enterprise may, however, still enjoy a reduction in the fine, as set out in Section D above.

4. The fact that leniency in respect of fines is granted cannot, however, protect an enterprise from the civil law consequences of its participation in an illegal agreement. In this respect, if the information provided by the enterprise leads the Commission to take a decision pursuant to Article 85(1) of the EC Treaty, the enterprise benefiting from the leniency in respect of the fine will also be named in that decision as having infringed the Treaty and will have the part it played described in full therein. The fact that the enterprise cooperated with the Commission will also be indicated in the decision, so as to explain the reason for the non-imposition or reduction of the fine.

Should an enterprise which has benefited from a reduction in a fine for not substantially contesting the facts then contest them for the first time in proceedings for annulment before the Court of First Instance, the Commission will normally ask that court to increase the fine imposed on that enterprise.



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