European Commission's settlement procedure – a success story

Eric Van Ginderachter
Director, Cartels Directorate, DG Competition, European Commission

Madrid, 28 November 2014
What is the key objective of settlements?

Settlements

Leniency

DETERRENCE

Administrative efficiency

More cartel decisions
European Commission's Settlement Notice

- Instrument created in 2008
- Tailored for the Commission's administrative sanctioning powers
- First decision in 2010: DRAMs
- 16 settlements with 71 undertakings and 1 discontinued settlement
- Settlement fines account for nearly half of all cartel fines since 2010
- EUR 4.15 billion imposed in all settlement cases
- Settlements take place in a wide range of industry sectors
- Many more settlement cases to come...
<table>
<thead>
<tr>
<th>Settlement case</th>
<th>Date</th>
<th>Fine (in EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRAMS</td>
<td>19 May 2010</td>
<td>331 million</td>
</tr>
<tr>
<td>Animal feed phosphates</td>
<td>20 July 2010</td>
<td>116 million</td>
</tr>
<tr>
<td>Consumer detergents</td>
<td>13 April 2011</td>
<td>315 million</td>
</tr>
<tr>
<td>CRT glass</td>
<td>19 October 2011</td>
<td>129 million</td>
</tr>
<tr>
<td>Refrigeration compressors</td>
<td>7 December 2011</td>
<td>161 million</td>
</tr>
<tr>
<td>Water management products</td>
<td>27 June 2012</td>
<td>14 million</td>
</tr>
<tr>
<td>Automotive wire harnesses</td>
<td>10 July 2013</td>
<td>142 million</td>
</tr>
<tr>
<td>Euro Interest rates derivatives</td>
<td>4 December 2013</td>
<td>1.04 billion</td>
</tr>
<tr>
<td>Yen interest rates derivatives</td>
<td>4 December 2013</td>
<td>670 million</td>
</tr>
<tr>
<td>Polyurethane foam</td>
<td>29 January 2014</td>
<td>114 million</td>
</tr>
<tr>
<td>Power exchanges</td>
<td>5 March 2014</td>
<td>6 million</td>
</tr>
<tr>
<td>Bearings</td>
<td>19 March 2014</td>
<td>953 million</td>
</tr>
<tr>
<td>Steel abrasives</td>
<td>2 April 2014</td>
<td>31 million</td>
</tr>
<tr>
<td>Mushrooms</td>
<td>25 June 2014</td>
<td>32 million</td>
</tr>
<tr>
<td>Swiss franc LIBOR benchmark interest rate</td>
<td>21 October 2014</td>
<td>62 million</td>
</tr>
<tr>
<td>Swiss franc interest rate derivatives</td>
<td>21 October 2014</td>
<td>32 million</td>
</tr>
</tbody>
</table>
Key elements of the European Commission's settlement procedure

- Settlement implies acknowledgment of cartel involvement and liability in exchange for a 10% cartel fine reduction (aggregated with any leniency discount)
- Settlement is neither a right nor an obligation
- Start and timetable of settlement discussions are firmly within the Commission's discretion
- Discontinuation and return to the ordinary procedure is possible at any moment (Smart Card Chips case)
- Settlement talks are not negotiations
- Settlement talks are strictly confidential and without prejudice
Are all cases suitable for settlement?

Commission's "screening" criteria

- Parties’ spontaneous interest to settle
- Number of parties
- Number of successful leniency applicants
- Expected degree of contestation
- Parties’ foreseeable conflicting positions on liability
- Impact of aggravating circumstances
- Procedural efficiencies (incl. lack of appeals)
- EU/EEA cases or cases already decided/pending in other jurisdictions
- Novel legal issues
Settlement process

- Investigation procedure
- Formal proceedings
- Settlement discussions
- Prohibition decision
Settlement discussions

- Presentation of the case
- Agreement on the case
- Disclosure of potential fine
- Settlement submission
- Written process, SO and final decision
Hybrid cases

- Hybrid case – combines settlement (for some companies) and ordinary procedure (for companies not willing to settle)

- Animal feed phosphate case, Libor/Euribor cases, Steel abrasives case, Mushrooms case
Benefits of the settlement procedure

Commission's perspective

- Reduced time spent on preparing the access to file
- Reduced drafting work (shorter SO and Decision)
- Limited likelihood of subsequent litigation
- Single language
- Shorter duration for adoption of decision

Parties' perspective

- 10% fine reduction
- Quicker case-resolution
- Ability to face-to-face informally discuss the case with the case team
- Streamlined SO and Decision
- Avoidance of litigation costs
Thank you for your attention