



Plenary 1: Investigative Strategies and Techniques

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A FEW IDEAS ON STRATEGY FOR OUR MOST PROMINENT TOOLS IN INVESTIGATING CARTELS

- **Surprise inspections at business premises (or private homes):** conducted by our own officials assisted by NCA's officials; comparably more selective. *Enforceable power.*
- **Transparent leniency programme:** demanding interaction with applicants while preserving incentives and protecting corporate statements.
- **International cooperation** (systematically request ICN **waivers**).
- **Requests for information to suspects and to others:** preference to targeted RFI. *Enforceable within our jurisdiction.*
- **The robustness of our case is tested for real before any decision is adopted.** Parties' argue in full knowledge of evidence and provisional findings.

EU LENIENCY PROGRAMME: A race

Immunity for 1st in

100%, but imputed
No joint & several liability for damages

8 (A): "Targeted inspection"

8 (B): Find an infringement

Fine Reduction Bands

50%-30%

30%-20%

Up to 20%

For evidence with "significant added value"

+ pos. of partial immunity for "compelling evidence" adding liability

- Protected corporate statements, all info and documentary evidence
 - Genuine, expeditious, continuous cooperation



HISTORY OF THE EU LENIENCY PROGRAMME

1996 LENIENCY NOTICE: Good start, but, e.g. admissions were later contested in court and immunity was exceptional.

Consolidated a practice of the 80's/90's to reduce fines for cooperation during the investigation (Woodpulp [1985], Polypropylen [1986], Cartonboard [1994]...). Self-reporting was once a ground for **fine exemption** (French-West African Shipowners' Committees [1992]).

2002 LENIENCY NOTICE: new approach

2004 Protection of corporate statements from discovery

2006 LENIENCY NOTICE: current note

2015 Enacted leniency basic concepts in hard law (REGULATION, DIRECTIVE on action for damages) e.g. to better protect corporate statements or exempt immunity applicants from joint and several liability with co-infringers.



Digital review : Methodology

- **IT inspectors, FIT inspectors, Nuix operators**
- **Possible relevant documents are:**
 - 'Collected' – forensic copy from laptops/desktops (not necessarily entire content)
 - Indexed
 - Reviewed on a platform
- **Assessment of relevance by Commission official:**
 - In pple. review on the spot;
 - "Continued inspection" or "sealed envelope" procedure as alternative (remains exceptional).
- **Company receives list and identical copy of relevant documents**