



CLEARY
GOTTLIEB

GCLC Lunch Talk on Leniency
May 27, 2011

Antoine Winckler - Cleary Gottlieb Steen & Hamilton LLP

Procedural convergence: an unfinished job (How ?)

- **Model leniency:**

“The purpose of the ECN Model Programme [...] [is to set out] the features of a uniform type of short form applications (so-called summary applications) designed to alleviate the burden on both undertakings and CAs associated with multiple filing in large, cross-border cartel cases.”

(ECN Model Leniency Programme, para. 7)

- **4 examples:**

- Is there a duty to confess ?
- Access to file
- Confidentiality
- Duty to cooperate

The allocation process: crowded skies no traffic control ? (Where?)

- **EUMR v. Reg. 1/2003:**

“Where re-allocation is found to be necessary for an effective protection of competition and of the Community interest, network members will endeavour to re-allocate cases to a single well placed competition authority as often as possible.”

(Commission Notice on cooperation within the Network of Competition Authorities, para. 7)

- **Crashes & near crashes:**

- Elevators
- Not-so hypothetical (1)
- Not-so hypothetical (2)



- **Competing leniencies and conflicting enforcement ?**



Scope uncertainties (What ?)

- **What is a cartel (Information exchanges ? Hub & Spoke situations ?):**

“Other types of restriction such as vertical agreements and horizontal restrictions other than cartels are normally less difficult to detect and/or investigate and therefore do not justify being dealt with under a leniency programme.”

(ECN Model Leniency Programme, para. 14)

- **What is the level of evidence required ?**
- **Where does the cartel stop: the single complex continuous infringement conundrum**



NEW YORK
WASHINGTON
PARIS
BRUSSELS
LONDON
MOSCOW
FRANKFURT
COLOGNE
ROME
MILAN
HONG KONG
BEIJING

CLEARY GOTTlieb STEEN & HAMILTON LLP

www.clearygottlieb.com