



European Commission

# Competition

GCLC lunch talk – Leniency Applications and the European  
Competition Network: Roundtable Discussion on the  
Interplay between National and EU Procedures

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## Functioning of ECN: key principle

- Regulation 1/2003 aims at more effective enforcement of the EC competition rules, including:
  - More enforcement by national competition authorities
  - Commission to concentrate on priority cases
  - Creation of the ECN, work sharing



## Functioning of ECN: leniency rules

- Sanctions and procedures are not formally harmonised by EU law
- Paralle competences of Commission and NCAs  
-> result in multiple leniency applications

However, effectiveness of leniency programmes is mutually inter-dependent.



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# Convergence of leniency programmes in the ECN

- October 2009 report on textual convergence
- ECN members have essentially followed key features of the MLP
- Only limited diversity, but some issues remain:
  - Applicants that are excluded from immunity
  - Obligation to end involvement in the cartel
- Focus currently on practical convergence: keeping in mind mutual interdependence; informal discussions; sharing experiences; coordination of actions



## Summary applications at NCAs

- This mechanism was designed in order to
  - reduce the burden associated with multiple parallel applications on both undertakings and national CAs, and
  - protect, to the best extent possible, the applicant's position in the queue
- Currently available, at least for immunity applicants, under 24 national leniency programmes
- Information required is comparable to information needed for a marker -> operates as indefinite marker



## Functioning of ECN: Allocation of cases

- Article 11(3): obligation for MSs to inform Commission after first investigatory measure
- Interest for speedy allocation
  - Usually case allocation takes place before the formal period triggered by Art 11 information
  - In most cases the initial authority pursues the case
  - How to determine quicker the scope of the cartel (for case allocation)?
- No legal provisions for involvement of undertakings in case allocation discussions
- Network Notice foresees certain safeguards for leniency applicants when information concerning leniency cases is exchanged



## Scope issues

- **EC leniency notice:** secret cartels - coordinating competitive behaviour on the market and/or influencing parameters of competition
- **MLP:** secret cartels as above; authorities can also apply a "more favourable" approach
- **Horizontal guidelines:** information exchange may constitute a cartel or an element facilitating cartel
- See e.g. ECJ in T-Mobile NL, par 41:  
"..., an exchange of information which is capable of removing uncertainties between participants as regards the timing, extent and details of the modifications to be adopted by the undertaking concerned must be regarded as pursuing an anti-competitive object, ..."