GCLC Annual Conference

Panel - Dynamic Enforcement Tools and their Impact on Outcomes

Presentation - Leniency: a transformative tool to be extended beyond cartels?

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OBJECTIVES OF LENIENCY

• Detection of cartels

• Tool to destabilise cartels

• Deters parties from entering into cartels

• Penetrates sophisticated cartels

• Collection of evidence to sanction cartels
Evolution & Success

- Original notice modified twice based on practical experience with latest version introduced in 2006
- Leniency is now established as a core element in the Commission's enforcement toolbox
- A large part of all cartel cases originate from leniency applications
- Success of the policy leads to considerations of granting reductions for cooperation beyond the field of cartels
REDUCTIONS FOR COOPERATION OUTSIDE LENIENCY

• No structured means to grant reductions as with cartel cases where the leniency and settlement notices apply

• BUT under the current Guidelines on Fines reductions can be granted

• Not a completely new concept (e.g. Hilti, Tetra-Pak, Nintendo)

• Reintroduced and remodelled recently in ARA case
In an abuse of dominance case ARA received a 30% reduction in the amount of the fine for:
  - acknowledging the infringement and liability for it; and
  - offering remedies

Disclosure of evidence is another factor which can lead to reductions.

Level of reduction depends on the extent and timing of the cooperation.
Looking to the future

- Anticipate increasing use of cooperation procedure in anti-trust cases given it
  - leads to quicker adoption of decisions
  - assists evidence gathering; and
  - allows for more targeted remedies
  - reduces the likelihood of appeals

- Reduction of fine and other benefits to parties

- Fills a gap in the enforcement framework and complements leniency, settlements and commitments