The new cooperation procedure in EU competition law for non-cartel cases

Annemarie ter Heegde
DG Competition

Bergen, 5 June 2019

The views expressed are purely those of the speaker and may not under any circumstances be regarded as stating an official position of the European Commission.
Background

Already existing mechanisms for cooperation

In Cartels:

- **Leniency programme** (investigative tool: detection and destabilisation)
- **Settlements** (case-resolution tool: procedural efficiency)

Antitrust cooperation possibilities:

- **Article 9 commitments**: not suitable for all cases
  - *Infringement has ended*
  - *More suitable to find and fine*
  - *Remedies not possible*
Remedying the gap

Introduction of the cooperation procedure in non-cartel cases

• **Aim:**
  - reward cooperation in Article 7 cases
  - Allow companies to cooperate under the existing procedural framework

• *Sui generis* framework - no codification at this stage
• Inspired by the cartel settlement procedure
Assessing suitability for cooperation

• Assessing suitability for cooperation:
  • Probability of reaching a common understanding
  • Within a reasonable timeframe

• No right or obligation to pursue the cooperation path

• No negotiation
Cooperation: what is rewarded?

Companies' **acknowledgement** of:

- Facts
- Their legal qualification
- Liability for the infringement

Cooperation on **evidence**

Proposal and design of suitable **remedies**
Determining the reward

Overall assessment

- Timing
- Extent
- Procedural efficiencies gained

Reward granted under point 37 of the Fining Guidelines (after 10% cap)
What does "acknowledgement" mean?

Example of a Cooperation Submission - contains:

- acknowledgement in clear and unequivocal terms of the company's liability for the infringement (main facts, their legal qualification and the duration);

- indication of the maximum amount of the fine it anticipates to be imposed and which it would accept in the framework of cooperation;

- confirmation that it has been granted sufficient opportunity to have access to the evidence supporting the Commission's objections and that it has been given sufficient opportunity to make its views known to the Commission;

- agreement to receive the final Decision in an agreed EU language (e.g. English);

The Cooperation Submission is made conditional upon the imposition of a maximum fine anticipated
Main procedural steps (1/2): pre-SO setting

State of Play
- Cooperation explained
- Technical meetings
- Company expresses readiness

Cooperation Meeting
- Presentation of the case
- Next steps explained

Access to file (targeted)
- Key documents

Technical discussions
- Common understanding

Indicative fines

Cooperation Submission
- Company confirmation
Main procedural steps (2/2)

- Streamlined SO
- Reply to SO
- Advisory Committee
- DECISION
## Cooperation decisions

<table>
<thead>
<tr>
<th>Decision</th>
<th>Type of cooperation</th>
<th>Before/After SO</th>
<th>Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ARA (2016) – 102</strong></td>
<td>Structural remedy</td>
<td>After SO</td>
<td>30%</td>
</tr>
<tr>
<td><strong>Pioneer (2018) – RPM</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Philips (2018) – RPM</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>40%</td>
</tr>
<tr>
<td><strong>Denon &amp; Marantz (2018) – RPM</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>40%</td>
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<tr>
<td><strong>Asus (2018) – RPM</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>40%</td>
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<tr>
<td><strong>Guess (2018) – cross-border sales restrictions</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>50%</td>
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<tr>
<td><strong>Mastercard (2019) – cross-border sales restrictions</strong></td>
<td></td>
<td>After SO</td>
<td>10%</td>
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<tr>
<td><strong>Nike (2019) – cross-border sales restrictions</strong></td>
<td>Evidence</td>
<td>Before SO</td>
<td>40%</td>
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<tr>
<td><strong>Ab InBev (2019) – cross-border sales restrictions</strong></td>
<td>Remedy</td>
<td>After SO</td>
<td>15%</td>
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</tbody>
</table>
Thank you for your attention!