



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

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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)

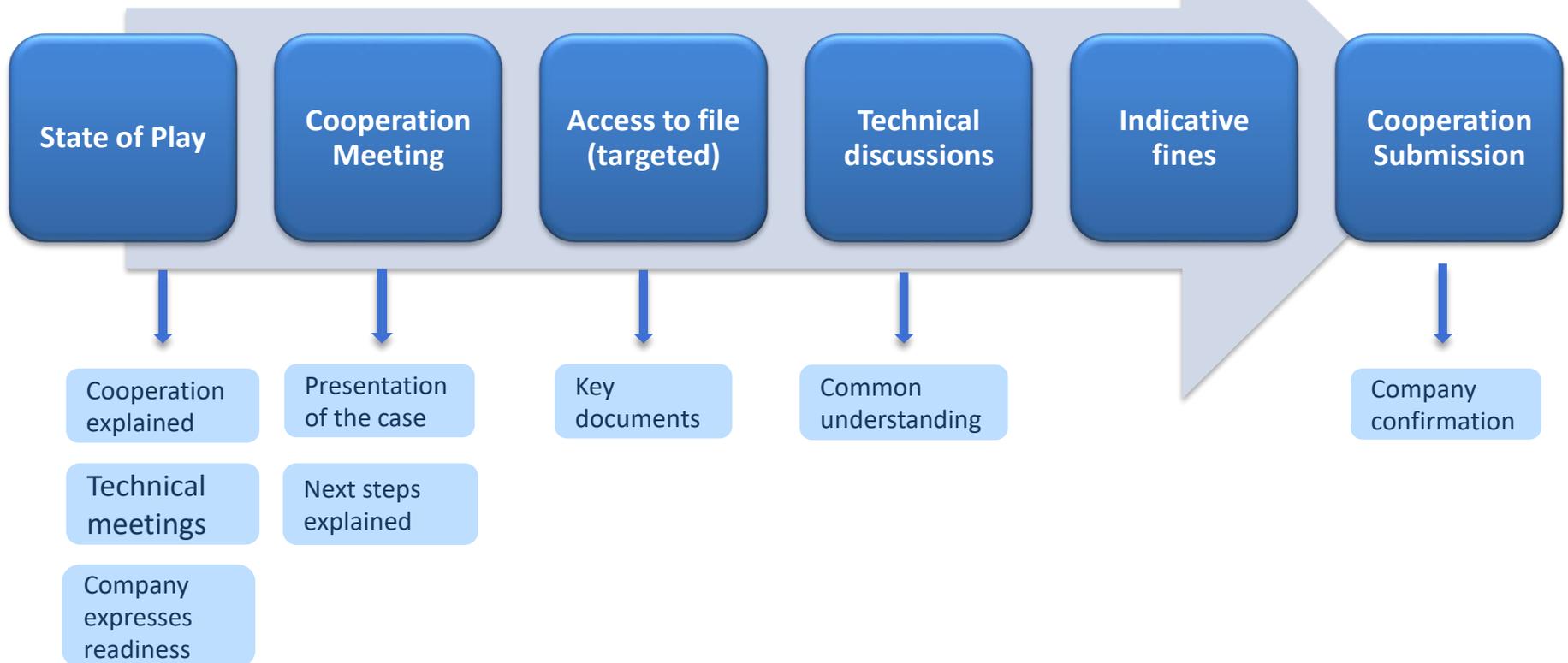
What does "acknowledgement" mean?

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



Main procedural steps (2/2)



Cooperation decisions

Decision	Type of cooperation (other than Acknowledgment)	Before/After SO	Reduction
ARA (2016) – 102	Structural remedy	After SO	30%
Pioneer (2018) – RPM	Evidence	Before SO	50%
Philips (2018) – RPM	Evidence	Before SO	40%
Denon&Marantz (2018) – RPM	Evidence	Before SO	40%
Asus (2018) – RPM	Evidence	Before SO	40%
Guess (2018) – cross-border sales restrictions	Evidence	Before SO	50%
Mastercard (2019) – cross-border sales restrictions		After SO	10%
Nike (2019) – cross-border sales restrictions	Evidence	Before SO	40%
Ab InBev (2019) – cross-border sales restrictions	Remedy	After SO	15%

Thank you for your attention!