

Antitrust: Commission action against cartels – Questions and answers

What is a cartel?

It is an illegal secret agreement concluded between competitors to fix prices, restrict supply and/or divide up markets. The agreement may take a wide variety of forms but often relates to sales prices or increases in such prices, restrictions on sales or production capacities, sharing out of product or geographic markets or customers, and collusion on the other commercial conditions for the sale of products or services.

Cartels shield participants from competition allowing them to charge higher prices and removing the pressure on them to improve the products they sell or find more efficient ways in which to produce them. It is the customers (companies and consumers) who foot the bill in terms of paying higher prices for lower quality and narrower choice. This not only makes consumers and businesses suffer but also adversely affects the competitiveness of the economy as a whole.

What legal basis underpins the Commission's action to combat cartels?

Article 101 (previously Article 81) of the new EU Treaty prohibits agreements and concerted practices between firms that distort competition within the Single Market. Fines of up to 10% of their worldwide turnover may be imposed on the guilty parties. The prohibition of cartels was already in the 1957 Treaty of Rome and the 10% cap has been introduced in 1962 by the first implementing Regulation for competition enforcement (Regulation No 17).

What happens to the proceeds from fines?

The amount of the fines is paid into the Community budget. The fines therefore help to finance the European Union and reduce the tax burden on Member States, i.e. on European taxpayers..

Does the Commission have the last word?

All cartel decisions by the Commission may be appealed against before the General Court of the European Union and then before the European Court of Justice. They can, therefore, be closely scrutinised by these two courts, which are empowered to annul decisions in whole or in part and to reduce or increase fines, where this is deemed appropriate.

What is the European Commission's Leniency Programme?

The Commission's leniency policy encourages firms to provide the Commission with insider information on cartels. The first firm to do so is granted total immunity from fines. Other firms that follow suit may be granted a reduction in the amount of the fine. This policy is very effective in uncovering cartels but does not prevent the Commission from conducting investigations on its own initiative. The first leniency notice was adopted in 1996 and has since been revised and further refined in 2002 and 2006, respectively. For further information, see [IP/06/1705](#), [MEMO/06/469](#) and [MEMO/06/470](#). Companies wishing to approach the Commission in order to benefit from the Commission notice on immunity from fines and reduction of fines in cartel cases should consult:

<http://ec.europa.eu/comm/competition/cartels/leniency/leniency.cfm>

I understand the Commission can settle cartel decisions. How does it work?

The Commission can indeed settle a cartel case under a procedure created in June 2008 (see [IP/08/1056](#) and [MEMO/08/458](#)). This frees up resources to deal with more cases, thereby increasing the detection rate and the deterrence of the anti-cartel rules. Companies may at any time **before** the adoption of a Statement of Objections approach the Commission to manifest their interest in settling an investigation. If the Commission decides that the case is suitable for a settlement, it will set a **time-limit** for the parties to declare **in writing** that they envisage engaging in settlement discussions. Companies that settle a case with the Commission obtain a 10% reduction of the fine. A first settlement decision was adopted in May 2010 [IP/10/586](#).

How does the Commission analyse inability-to-pay claims by the cartel members?

The 2006 Fines Guidelines provide that in, exceptional cases, the Commission may, upon request, take account of an undertaking's inability to pay. In assessing whether a company would risk going bankrupt as a result of the fine, among other things the Commission assesses a company's financial situation on the basis of its financial statements from recent years but also including projections for the current and the two following years. The Commission looks at the company's liquidity, solvency and other financial ratios that are commonly used to assess a company's solidity or the lack thereof. It also assesses the company's relations with banks and shareholders. In the recent bathroom fittings case, 10 companies claimed inability to pay. The claims of five companies were found to be justified and fine reductions were granted.

What action is open to consumers and companies who feel that they have been victims of such illegal agreements?

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages. The case law of the Court and Council Regulation 1/2003 both confirm that in cases before national courts, a Commission decision is binding proof that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine. A White Paper on antitrust damages actions has been published (see [IP/08/515](#) and [MEMO/08/216](#)). More information, including a citizens' summary of the White Paper, is available at:

<http://ec.europa.eu/comm/competition/antitrust/actionsdamages/documents.html>