

Abstract

Leniency programmes and private enforcement of cartel law

The available data suggests that there is an indisputable correlation between the declining attractiveness of the leniency programme of the European Commission on the one hand, and the recent boom of private enforcement of cartel law on the other. It seems that in the past few years companies have become demotivated to submit leniency applications, which leads to a lower level of cartel detection and ultimately results in the weakening of both the public and private pillars of cartel law enforcement. This thesis focuses on areas that have not yet been sufficiently clarified by legislation and case-law and that are – when it comes to follow-on proceedings dealing with damages claims, held before national courts – associated with substantial risks for potential leniency applicants: (i) establishing of jurisdiction of national courts in the proceedings on claims for damages caused by anticompetitive conduct, (ii) protection of confidential information within the framework of hybrid settlements with the European Commission and in the proceedings before national courts, (iii) interpretation and application of presumptions of the existence and amount of harm caused by anticompetitive conduct and (iv) determination of the amount of harm caused by anticompetitive conduct by means of judicial discretion. The analysis shows that companies facing “follow-on” claims currently have to put up with a high level of legal uncertainty existing *de facto* in every stage of the court proceedings, and that this state of affairs, which represents one of the decisive factors in dissuading cartelists from cooperation with competition authorities by participating in their leniency programmes, persists even after the adoption of the Directive 2014/104/EU. However, the diversity and unpredictability of the systems for enforcement of claims for damages caused by anticompetitive conduct operating across the EU can be eliminated only to a certain extent and the thought of them ever being sufficiently harmonized on the EU level appears to be an illusory one. The thesis comes to the conclusion that in the current situation efficiency of leniency programmes can be only promoted by making the benefits that go with them significantly more attractive. As a possible way forward, this thesis suggests that a fully successful leniency applicant should be fully exempted from the respective “follow-on” damages claims if the said applicant provides the victims with all information and documents previously shared with the competition authority as part of his leniency application and at the same time is ready to unreservedly cooperate with the cartel victims in order to establish the facts of the case. Such a model would not only give a powerful boost to the chances that the very existence of a cartel will be detected, but would also make the subsequent enforcement of damages from the remaining cartel participants generally easier.