International
Comparative
Legal Guides

Cartels & Leniency 2021

A practical cross-border insight into cartels & leniency

14th Edition

Featuring contributions from:

ABNR Counsellors at Law
Bán, S. Szabó & Partners
Bär & Karrer Ltd.
Callol, Coca & Asociados
Cassels Brock & Blackwell LLP
Cyril Amarchand Mangaldas
DeHeng Law Offices
Drew & Napier LLC
ELIG Gürkaynak Attorneys-at-Law
Morais Leitão, Galvão Teles, Soares da Silva & Associados
Nagashima Ohno & Tsunematsu
NautaDutilh Avocats Luxembourg S.à r.l.
Nyman Gibson Miralis
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Preslmayr Rechtsanwälte OG
Shearman & Sterling LLP
URBAN STEINECKER GAŠPEREC BOŠANSKÝ
Zdolšek Attorneys at law

ICLG.com

Expert Chapter

Q&A Chapters

European Union

Shearman & Sterling LLP

Elvira Aliende Rodriguez

1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

Cartel prohibition is enshrined in EU law under Article 101 of the Treaty on the Functioning of the EU (TFEU), which prohibits "*all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market*". This applies to undertakings only, i.e. any natural or legal person, provided they are engaged in economic or commercial activity.

As to the nature of the prohibition, EU law only provides for civil sanctions for undertakings, and leaves it to national law to lay down criminal penalties for individual participants.

1.2 What are the specific substantive provisions for the cartel prohibition?

Article 101(1) TFEU prohibits three different forms of conduct, namely:

- agreements, both horizontal and vertical (between competitors and non-competitors), notwithstanding whether they are multilateral or bilateral;
- decisions by associations of undertakings, e.g. rules requiring members to adhere to certain price levels; and
- concerted practices, i.e. any direct or indirect contact between competitors with the object or effect of influencing the conduct on the market of a competitor and the coordination between undertakings which knowingly replaces the risks of competition with practical cooperation.

This classification is not rigid: when faced with a "*whole complex of schemes and arrangements*", the Commission does not need to characterise each undertaking's conduct within it as an agreement or a concerted practice; it need only show that the undertakings took part in an overall plan with a single anticompetitive objective, constituting a single infringement.

Conduct is prohibited when it has as its object or effect "*the prevention, restriction or distortion of competition*" within the EU. Article 101(1) provides a non-exhaustive list of practices considered anticompetitive, specifically: fixing purchase or selling prices; limiting or controlling production; sharing markets or sources of supply; applying dissimilar conditions to equivalent transactions; and subjecting the conclusion of contracts to unrelated additional obligations.

There are two limitations to the application of the prohibition under **Article 101(1)**:

- first, in order for EU law to apply, agreements need to have an effect on trade between Member States, otherwise they would be regulated, if at all, by national competition law; and
- second, EU law recognises a *de minimis* rule as per the Commission's 2014 *Notice on agreements of minor importance*: an agreement only infringes Article 101(1) if its effect on competition is likely to be appreciable, i.e. if it has sufficient impact on market conditions. Restrictions by object are not protected by the rule as the probability of negative effects is so high that there is no need to demonstrate any actual or likely anticompetitive effects.

Pursuant to **Article 101(2)**, prohibited agreements are automatically void and unenforceable.

However, under **Article 101(3)**, an agreement covered by the scope of Article 101(1) can be exempted if it satisfies each of the following conditions: (i) it improves the production or distribution of goods; (ii) it grants a fair share of the benefit to consumers; (iii) the restrictions are necessary to achieve those objectives; and (iv) it does not eliminate competition as to a substantial part of the market concerned. Exemptions can be granted individually or in blocks, by category of agreement (*cf. infra* question 1.5). It is to be noted that although object restrictions can in theory benefit from an individual exemption, practice shows it is unlikely that they will meet the conditions set out above.

1.3 Who enforces the cartel prohibition?

The Council of the European Union's *Regulation 1/2003 on the implementation of the rules on competition* (Regulation 1/2003) designates the Commission as the main enforcement body, and more specifically, the Directorate General for Competition (DG COMP). However, the Regulation also confers enforcement rights upon national competition authorities (NCAs): when investigating cartel conduct under national law, NCAs must apply Article 101 in parallel if the conduct may affect trade between Member States; and they cannot prohibit under national law such conduct if it would not be prohibited under Article 101.

In order to coordinate activities between competition authorities, the Regulation establishes a European Competition Network (ECN), which allows for better coordination and the exchange of best practices. The *Notice on cooperation within the Network of Competition Authorities* details its functioning. A directive designed to strengthen the powers of NCAs in order to increase the efficiency of competition law enforcement, known as ECN+, came into force in February 2019. It aims to address "*gaps and limitations in the tools and guarantees of NCAs [that] undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU*" by requiring Member States to ensure that NCAs have appropriate enforcement tools, including various investigative

powers (e.g. the power to inspect businesses premises), harmonising fines within certain parameters and attempting to harmonise the leniency system (*cf. infra* question 9.1).

The Commission's decisions are subject to judicial review by the General Court (GC) and the Court of Justice (CJEU).

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

An investigation can be triggered in five different ways: (i) as a result of a leniency application (the most common start); (ii) following a complaint submitted through the anonymous online whistleblower tool; (iii) through the Commission's own market intelligence; (iv) following a complaint from a third party; or (v) after a reference from an NCA.

The Commission starts collecting information once it decides to pursue the matter. In that regard, its powers of investigation are quite broad and it enjoys a wide margin of discretion in using them, provided their use is necessary and proportionate. In cartel cases, the Commission generally conducts what are known as 'dawn raids' – *i.e.* unannounced inspections of business premises and, where appropriate, of private homes (*cf. infra* section 2).

If, on the basis of the evidence gathered during the searches, the Commission thinks that there are sufficient grounds to initiate proceedings, it will issue a statement of objections, in which it sets out the facts it relies on, the conclusions it draws and the actions it proposes to take.

The addressees of the statement of objections can then have access to the documents in the Commission's file and present their views in both a written and an oral response.

After having heard the parties, the Commission assesses the evidence to decide whether its original case still stands. If so, it prepares a draft decision setting out its findings and possible further action (e.g. fines). The final decision is adopted by the full College of Commissioners after consultation with an advisory committee made up of NCA representatives, and it is then notified to the concerned parties.

The length of proceedings can vary considerably. The GC's 2019 annual report shows that the average duration of proceedings in competition law cases has reduced from an average of 48.4 months in 2009 to 27 months in 2019.

1.5 Are there any sector-specific offences or exemptions?

EU competition law does not provide for any sector-specific offences or exemptions. However, 'block exemption regulations' exist in relation to certain categories of arrangements (vertical agreements, technology transfers, specialisation agreements and R&D), providing agreements that meet the criteria with a safe harbour from an infringement of Article 101. The Commission is currently reviewing the Vertical Block Exemption Regulation and the accompanying Guidelines on Vertical Restraints, taking into account feedback from public consultations. In this review, it will determine whether to let the Vertical Block Exemption Regulation lapse, prolong its duration, or revise it. It is also undertaking a review of the two Horizontal Block Exemption Regulations, Commission Regulations (EU) No 1217/2010 (Research & Development Block Exemption Regulation) and 1218/2010 (Specialization Block Exemption Regulation), and the respective guidelines. The Horizontal Block Exemption Regulations exempt certain R&D and specialisation agreements from infringing Article 101 as they are considered to satisfy the conditions of Article 101(3). The review will determine whether, once the Horizontal Block Exemption Regulations expire in December 2022, to let them lapse, prolong their duration, or revise them.

1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

In order for the Commission to find an infringement, the involved undertakings do not need to have a presence inside the EU and practices need not have been conducted in the EU: the essential element is whether the conduct was implemented or had an effect in the EU.

In its September 2017 judgment in the *Intel* case, the CJEU confirmed that the qualified effects test was an appropriate test of jurisdiction. Therefore, if the conduct had an immediate and substantial effect in the EU, the Commission has jurisdiction to carry out competition investigations. In practice, this amounts to assessing whether the cartel may have had an impact on trade within the EU. Therefore, a cartel may be found to have been implemented within the EU even where all the participants are located outside the EU.

The Commission's decision in *Capacitors* in March 2018 is an example of the application of this principle. In this case, the cartel took place mainly in Japan, but the Commission considered that the cartel had been implemented globally, including in the EEA. Commissioner Vestager stated that the Commission "*will not tolerate anti-competitive conduct that may affect European consumers, even if anticompetitive contact takes place outside Europe*".

2 Investigative Powers

2.1 Please provide a summary of the general investigatory powers in your jurisdiction.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes	N/A
Carry out compulsory interviews with individuals	No	N/A
Carry out an unannounced search of business premises	Yes	N/A
Carry out an unannounced search of residential premises	Yes*	N/A
■ Right to 'image' computer hard drives using forensic IT tools	Yes	N/A
■ Right to retain original documents	No	N/A
■ Right to require an explanation of documents or information supplied	Yes	N/A
■ Right to secure premises overnight (e.g. by seal)	Yes	N/A

Please Note: * indicates that the investigatory measure requires the authorisation by a court or another body independent of the competition authority.

2.2 Please list any specific or unusual features of the investigatory powers in your jurisdiction.

The Commission's investigatory powers are listed in Regulation 1/2003: it can issue requests for information, take statements, and inspect premises. Unlike many NCAs, the Commission can exercise these powers on the basis of internal administrative decisions, meaning that no prior warrant is needed. However, if the Commission wishes to inspect private premises (for example, the homes of directors of an undertaking), then this must first be authorised by the national judicial authority of the Member State concerned.

Inspections can be carried out upon production of a written authorisation or ordered by decision, in which case undertakings are required to submit to the inspection. In cartel cases, the Commission most often conducts 'dawn raids', i.e. unannounced searches, at both business and private premises. As stated above, the latter requires the Commission to obtain judicial authorisation and establish a reasonable suspicion that records related to the inspection are kept at the premises.

The Commission is empowered to examine all business records and make copies thereof, including forensic images of electronic data. However, the Commission may only take note of documents which relate to the subject matter of the inspection. The Commission's *Explanatory Note on the conduct of dawn raids* was revised in 2015 and provides further guidance as to the Commission's powers in relation to software and data and notably addresses the 'Bring Your Own Device' policy, under which the Commission can inspect employees' personal devices and media that are used for professional reasons when they are found on the premises.

While searching offices, the Commission can affix seals on any relevant elements, ask staff for clarifications and record the answers provided, which it cannot do when searching private premises.

2.3 Are there general surveillance powers (e.g. bugging)?

EU law does not provide the Commission with any formal surveillance powers. However, it is worth considering the 2016 GC's judgment in the *North Sea Shrimps* case where the GC allowed secretly recorded telephone conversations to be used as evidence as part of the Commission decision. The GC ruled that the only relevant criterion for assessing the admissibility of evidence is reliability. Therefore, the recordings could not be deemed inadmissible on the basis that they were made in secret. The GC considered that the Commission had obtained the recording properly, and the parties had been given the opportunity to challenge the authenticity of the recordings, and therefore the Commission could use the recordings as evidence.

2.4 Are there any other significant powers of investigation?

Regulation 1/2003 does not confer any additional power on competition authorities.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

Dawn raids are carried out by the Commission's own team of officials. However, given that they do not have the power to force entry, they have to rely on national law enforcement authorities, who have the duty to actively assist them under Regulation 1/2003. Such assistance may be subject to a judicial authorisation under national rules, in which case Member State courts can, pursuant to the *Roquette Frères* case, review the scope of the Commission's inspection decision in order to make sure the measures intended are not arbitrary or excessive. However, national authorities may not question the necessity of a search; a request for a full review of the decision can be brought later on before the GC and CJEU. In the GC's judgment in the *České dráhy* case, the GC clarified that the Commission is entitled to seize documents of both direct and indirect relevance during inspections, but that the scope of inspections should be determined based on documentary evidence, not just the suspicions of the Commission. This case, although it is concerned with an abuse of a dominant position, is in line with the CJEU's reasoning in the *Deutsche Bahn* case that an inspection order is well-reasoned only if the subject matter of the inspection reflects the entirety of the information that the Commission inspectors are in possession of.

The Commission can ask an NCA to carry out the inspections in its place under Article 22(2) of Regulation 1/2003, although it rarely does so. In that case, EU competition rules and not national competition rules apply.

The Commission may wait for legal counsel to arrive before commencing the inspection, but it is under no obligation to do so. The GC has held that the legality of the search is not conditional upon the presence of external legal counsel: in the *Bitumen* cartel case, it upheld the 10% fine increase which the Commission had imposed upon the undertaking for denying officials access to the building pending the arrival of its counsel.

2.6 Is in-house legal advice protected by the rules of privilege?

There is no express recognition of legal privilege in the TFEU, but there is such protection recognised in case law. The CJEU recognised the right for undertakings to correspond with legal counsel without it being used against them, meaning that written communications between a lawyer and his client can be covered by legal privilege, provided they relate to the investigation and counsel is external to the company and qualified to practise in the EEA.

In-house legal advice is not protected because the independence of in-house counsel might be compromised due to their employment relationship. Privilege should, however, cover internal communications created with a view to instructing external counsel and documents prepared by in-house counsel that solely report the advice of external counsel. To avoid inadvertent disclosure in an inspection, all such documents should be marked as 'privileged' and filed separately.

2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

In order to avoid irrevocable harm, the CJEU has ruled that rights of defence should be respected from the outset, including during the course of preliminary procedures.

Parties are protected against self-incrimination to the extent that they cannot be compelled to provide the Commission with information that might lead them to admit to participating in an infringement. Purely factual questions are not considered to be self-incriminatory and must therefore be answered.

The Commission must clearly delimitate the scope of the inspection by defining its subject and purpose, meaning that

it cannot in theory use any information it uncovers that falls outside the scope of its search, unless the documents were found 'by chance'. However, the Commission does not need to identify with absolute precision the product and geographic markets concerned by the search – the search can cover documents that have both direct and indirect relevance as long as the scope of the search is based on documentary evidence.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

Pursuant to Paragraph 28 of the Commission's *Guidelines on the method of setting fines*, obstruction constitutes an aggravating circumstance.

Obstruction has been assessed on a stand-alone basis in recent years – Regulation 1/2003 provides for one-off financial penalties of up to 1% of total turnover, as well as periodic penalty payments of up to 5% of the average daily turnover of a company for failure to answer a formal request fully or to submit to an inspection. The Commission has made increasing use of these powers in the past few years. For instance, in 2012 the Commission fined Energetický a průmyslový holding and EP Investment Advisors €2.5 million for failing to block an email account as requested by the Commission and diverting incoming emails during a dawn raid. This case is not the only one in which the Commission fined companies for breaching the seal during the course of Commission inspections. Previously, in April 2010, the Commission imposed an €8 million fine on Suez Environnement and Lyonnaise des Eaux for breaching the seal and in 2012 the CJEU upheld the €38 million fine imposed by the Commission on E.ON in 2008 for breaching the seal during Commission inspections. In 2018, the Commission sent a statement of objections to Slovak rail company ZSSK, having taken the preliminary view that ZSSK had obstructed a Commission inspection by giving incorrect information and deleting data from a laptop; however, after evaluating evidence and the company's objections, the Commission closed its procedure.

The Commission has increased the fine imposed on cartel participants for obstruction of investigations on the basis of refusing to answer the Commission's oral questions. For instance, in the 2007 *Professional Videotape* case, the Commission increased Sony's fine by 30% because during the inspections carried out at Sony's premises the employees refused to answer the Commission's oral questions.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

To ensure the effective enforcement of competition rules, Regulation 1/2003 gives the Commission, along with the NCAs, the power to impose fines for substantive and procedural infringements. Such fines can be imposed on any undertaking or association of undertakings and a parent company can be fined for the acts of a subsidiary over which it exercises decisive influence.

As for substantive infringements, the Commission can impose fines of up to 10% of the total turnover of the undertakings concerned if they are found to have participated, intentionally or negligently, in a cartel. The Commission enjoys wide discretion when setting the amount of the fines and its Fining Guidelines of 2006 (Fining Guidelines) set out the approach it will normally follow:

- First, to reflect the 'economic significance' of each party's participation in the infringement, a basic amount of the fine is calculated, based on that participant's value of sales (the value of the undertaking's sales before VAT and other taxes to which the infringement directly or indirectly relates in the relevant geographic area within the EEA) for the last full business year of the cartel. An amount of up to 30% of the value of sales, depending on the gravity of the infringement, multiplied by the duration of that party's participation in the infringement, will form the basic amount of the fine.
- Second, the basic amount of the fine is adjusted depending on aggravating and/or mitigating circumstances. The Commission may also increase the basic amount to ensure the fine has a sufficient overall deterrent effect.
- Third, the Commission will make sure the final amount of the fine does not exceed the legal cap of 10% and, finally, will apply leniency and/or settlement reductions when appropriate.

In September 2019, the GC reminded the Commission of its duty to state reasons in its decisions when applying the standard methodology set out in the Fining Guidelines in the *HSBC* judgment.

The Commission can, however, depart from the above methodology when the 'particularities of a given case' justify it, an option that the Commission used in the *Mushrooms* and *Envelopes* cartel cases. In *AC Treuhand*, the CJEU confirmed that the Commission could set the amount of the fine as a lump sum for a consultancy firm with no market activities. Both the CJEU in *Icap* in July 2019 and the GC in *Pometon* in March 2019 and in *Printeos* in September 2019 have emphasised the importance of the Commission justifying fine amounts in a detailed manner when departing from the standard fining methodology.

Interestingly, in *Printeos*, the GC rejected in substance an appeal against the readopted settlement decision. The envelope producer had successfully contested in 2016 the fine imposed as the Commission had not sufficiently explained the variations in fine reductions applied to settling cartel participants. In 2017, the Commission readopted a decision against Printeos, imposing the same fine. Printeos had again introduced an application for annulment of the Commission's Decision to the GC. Although the GC rejected in substance the appeal, the Commission was nonetheless required to pay costs due to its lack of rigour in the fining methodology and reasoning outlined in its decision. The GC indicated that such lack of rigour was all the more regrettable as this was the second time the Commission adopted the decision.

In 2017, three fines of €155 million, €68 million and €27 million were imposed in the *Thermal Systems*, *Car Battery Recycling* and *Automotive Lighting* cartels, respectively, two years after the imposition of a €953 million fine in the *Automotive Bearings* cartel. The Commission also readopted its decision in the *Airfreight* cartel case, imposing a total of €776 million in fines. The total fines imposed by the Commission across seven decisions in 2017 amounted to €1.95 billion. The focus on the automobile sector continued in 2018 with fines of €75.4 million in the *Braking Systems* cartel, €76 million in the *Spark Plugs* cartel and €395.2 million in the *Maritime Car Carriers* cartel issued in February. In 2019, fines of €368 million, €1 billion and €31 million were imposed on the *Occupant Safety Systems II*, *Forex* and *Canned Vegetables* cartels, respectively. In 2020, the Commission fined ethylene purchasers €260 million in *Ethylene* for their participation in the first purchasing horizontal cartel in the chemical industry sanctioned under the 2006 Fining Guidelines.

As for procedural infringements, the Commission can impose fines of up to 1% of the total turnover in the preceding business

year of the undertakings concerned where they supply incorrect, incomplete or misleading information.

The Commission can require undertakings to bring a cartel infringement to an end and impose behavioural or structural remedies to that end, as well as periodic penalty payments to ensure compliance with such instructions.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

The Commission has no power to sanction an individual, except if he is himself an undertaking. However, individuals still run the risk of being sanctioned as the majority of Member States currently have the ability to impose sanctions on individuals, including administrative fines and imprisonment sentences. Some Member States have criminal sanctions for cartel behaviour. For example, Denmark and the UK have specific criminal cartel offences, and in France, Greece and Romania, cartel behaviour can be prosecuted under each country's fraud offences.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

The Fining Guidelines provide that, in exceptional cases and upon request, the Commission can reduce the fine due to an undertaking's inability to pay. Inability to pay claims can be raised during settlement discussions, as in the *Mushrooms* cartel case (2016). To benefit from this, undertakings must provide objective evidence that two cumulative conditions are met: (i) that paying the fine would '*irretrievably jeopardise its economic viability*'; and (ii) a specific social and economic context must be established. The Commission published an *Information Note* in 2010 setting out the principles to be applied in deciding whether to grant a reduction.

As for the first condition, the GC noted in *North Sea Shrimps* (2016) that the mere fact that the imposition of a fine might give rise to or increase the risk of insolvency of the undertaking concerned is insufficient to substantiate a claim of inability to pay. As for the second condition, the GC has indicated in *Donau Chemie* (2014) that it could be fulfilled if the payment were to lead to an increase in unemployment or deterioration in the sectors concerned.

In practice, many requests are unsuccessful. The Commission has, however, accepted reductions to the fines of three undertakings by 50% and 25% in the *Bathroom Fittings* cartel (2010), as well as in the *Pre-stressing Steel* cartel (2010) where it granted reductions of 25%, 50% and 75% to three undertakings. In September 2019, the Commission granted a reduction of the fine of one of the companies in the *Canned Vegetables* cartel after finding it unable to pay following an assessment which included examining the company's financial statements, financial projections, financial strength ratios and profitability.

There are an increasing number of companies suffering financial hardship due to the economic effects of COVID-19. It is possible that the Commission will repeat its 2008 approach, allowing companies to argue that their straitened finances prevent them from paying the fines, and adjusting the calculation of fines to prevent small and medium-sized companies with a small range of products from being disproportionately hit.

3.4 What are the applicable limitation periods?

Regulation 1/2003 sets two types of limitation periods in Articles 25 and 26.

First, the Commission's power to impose substantive fines is subject to a five-year limitation period, while a three-year limitation period applies for the imposition of procedural fines. These limitation periods start to run from the date on which the infringement is committed or in the case of a single and continuous infringement from the date the infringement ended. Any competition authority investigation or proceeding may interrupt the limitation period, in which case time will start running afresh from the date on which the undertakings are notified of the authority's interrupting act. The limitation period may run up until the adoption of a decision imposing a fine subject to a maximum period of 10 years for substantive violations and six years for procedural infringements. The limitation period may also be suspended whilst a decision of the Commission is subject to proceedings before the CJEU, which is particularly valuable for the Commission when it wishes to readopt a decision that has been annulled on procedural grounds.

Second, the Commission's power to enforce both procedural and substantive fines, as well as periodic penalties, is subject to a limitation period of five years, starting from the day on which the decision becomes final. This limitation period may be interrupted by the notification of a Commission decision or refusal to vary the fine or by any action to enforce payment.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

As mentioned above in question 3.2, the Commission has no power to impose sanctions on individuals.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

Please see above questions 3.5 and 3.2.

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

A parent company can be held jointly and severally liable for its subsidiary's involvement in a cartel even if it has not been involved directly in the cartel itself when it is capable of exerting a decisive influence over the subsidiary. It is presumed that the parent can do so where it holds all (or almost all) of the shares in the subsidiary. While this presumption is in theory rebuttable, in practice it is very difficult to do so. In July 2018, the GC in the *Goldman Sachs* case considered that the Commission had correctly applied the presumption even if Goldman Sachs' shareholding in the subsidiary was less than 100% (it actually varied between 84.4% and 91.1%). In this case, the GC considered that Goldman Sachs could exert a decisive influence not only on the basis of the shares it held in its subsidiary but also on the basis of its voting rights, which it could exert as if it was the sole shareholder, and its ability to influence managing decisions, such as appointing board members.

In principle, the liability of a parent company cannot extend beyond that of its subsidiary if the parent company has not been directly involved in the cartel and its liability only arises from the direct involvement of the subsidiary in the infringement. However, in 2017 the CJEU ruled in *Akzo Nobel* that, even though the Commission was time-barred from imposing fines on one of Akzo's subsidiaries involved in the cartel, the parent company could still be held liable in respect of the entire

period, including for the period during which the subsidiary, against whom action was time-barred, participated in the cartel.

In 2019, the CJEU held that this principle of economic continuity also applies in the context of private enforcement of competition rules. In *Skanska Industrial Solutions*, the CJEU addressed the question of whether, in determining the person responsible for antitrust damages, the Finnish court should apply its national law (under which only the legal entity that caused the damage is liable) or EU law. The CJEU ruled that 'undertaking' is an autonomous concept of EU law and cannot have a different scope with regard to the imposition of fines by the Commission as compared with actions for damages.

In December 2019, a Spanish court asked the CJEU to opine on the factors that should be taken into account in assessing the liability of a parent company, such as its influence over the subsidiary or the extent to which the parent benefitted from the cartel.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

The procedure to apply for leniency under EU law is set out in the Commission's 2006 *Notice on immunity from fines and reduction of fines in cartel cases* (Leniency Notice) and the 2012 *Antitrust Manual of Procedures*.

Full immunity is available to the first undertaking to come forward with information of secret cartel activity that will enable the Commission to either carry out a targeted inspection or find an infringement of Article 101. A company can therefore seek immunity in two cases: (i) before the Commission has sufficient evidence to adopt an inspection decision itself; or (ii) after it has initiated an inspection but the applicant is the first to provide incriminating evidence proving the cartel conduct. In the latter case, applications are subject to a higher evidential threshold and are rarely successful in practice: immunity would only be awarded if the Commission had conducted its inspection based on its own intelligence and this inspection had not generated evidence that would allow it to find an infringement.

To apply, undertakings must provide the Commission with all the evidence they possess, along with a corporate statement comprising a detailed description of the arrangement, the exact location of the offices, and information on other competition authorities that it has approached or intends to approach. In 2019, the Commission made available the eLeniency tool, which is designed to facilitate the submission of documents and statements by undertakings and their lawyers online through a secure, restricted system.

In order to be eligible for leniency, prospective applicants must satisfy a number of cumulative conditions, namely: (i) they cannot have coerced another company to join the cartel or stay in it; (ii) they cannot have tampered with evidence; (iii) they must have terminated their involvement in the cartel before reporting to the Commission, unless necessary to protect the surprise element of subsequent inspections; (iv) they cannot inform others that they have applied for leniency; and (v) they must genuinely, expeditiously and fully cooperate on a continuous basis.

Before formally applying, undertakings can approach the Commission anonymously and in hypothetical terms so as to establish whether the evidence they hold would be sufficient to be awarded immunity.

A company which is not entitled to full immunity may still be able to obtain a reduction in fines where it provides evidence with significant added value to the Commission's existing file, i.e. facts previously unknown to the Commission. Applicants for reduction need to fulfil the same conditions as for immunity (except for coercion). Depending on the value of the evidence brought in, the first applicant will benefit from a reduction between 30–50%, the second from 20–30% and others up to 20%.

Given that cartels usually affect more than one Member State and due to the lack of a central mechanism for undertakings to obtain leniency in all jurisdictions, companies usually submit applications to every relevant competition authority. In *DHL Express*, the CJEU ruled that leniency applications to different competition authorities for the same infringement are fully independent. An NCA that receives a leniency application referring to the undertaking's concurrent application to the Commission does not need to consider the contents of that separate application.

The ECN+ Directive makes ECN instruments legally binding on NCAs and introduces some improvements to guard against the legal uncertainties companies face that disincentivise them from applying for leniency. For example, Member States are required to ensure that NCAs accept summary applications from applicants who have applied to the Commission for leniency, provided that the Commission application in question covers more than three Member States. The Commission is to be the main interlocutor of the applicant until it is clear whether the Commission will pursue the case – for example, it will instruct the applicant on the conduct of any further internal investigations. Member States are required to implement ECN+ by 4 February 2021. (*Cf. infra* question 9.1.)

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

The Leniency Notice establishes a marker system for immunity applicants and thus allows them to secure their position in line for leniency. It is a discretionary system in the sense that the Commission grants markers on a case-by-case basis, depending on the specificities of the case and the applicant's justifications for applying.

The applicant must provide information as to cartel participants, affected markets, the duration and nature of the conduct, any parallel leniency applications, and the reasons for which the grant of a marker is necessary. Once the marker is awarded, the undertaking needs to give the information and evidence required within a set (typically short) period of time.

The ECN+ Directive imposes a requirement on all Member States to establish a marker system. As noted above, this must be implemented by 4 February 2021.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

The Leniency Notice allows for the submission of oral statements. They are recorded at the Commission's premises and form part of the Commission's file. The Commission published a *Guide to the making of oral statements* in October 2013.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

The identity of applicants is kept confidential from other companies subject to the cartel investigation until the issue of the statement of objections, and will become known to the general public

at the time of the publication of the final decision. The contents of the Commission's file are also kept confidential throughout the investigation; access is granted to the addressees of the statement of objections so as to preserve their rights of defence. This covers all documents obtained, produced or assembled during the proceedings, except for internal Commission documents such as correspondence with other competition authorities. Moreover, access to documents containing business secrets or other confidential information may be partially or totally restricted, and corporate statements submitted by leniency applicants can only be accessed on the Commission's premises.

Despite these safeguards, disclosure of documents is nonetheless often a concern of parties to Commission procedures. In the *Lantmännen* hybrid settlement bioethanol cartel probe, the GC rejected an interim order requested by Lantmännen to prevent the Commission from sharing documents exchanged between it and the Commission during the settlement process – its concerns included the fact that confidential information in the documents could be spread to third parties, which may have increased the risk of follow-on damages claims. This judgment was confirmed by the CJEU.

As for disclosure in follow-on actions for damages before Member States' courts, the issue is governed by the applicable national rules (which must be in line with the rules contained in the Damages Directive). The Damages Directive has effectively superseded the previous position established by the CJEU that EU law does not prevent claimants from being granted access to leniency materials as long as they have been adversely affected by the infringement. National courts could thus previously request provision of leniency documents under national rules, while taking into account the need to strike a fair balance between the right of effective redress and the need to ensure the effectiveness of the leniency regime.

The Damages Directive and the Commission's *Notice on cooperation with national courts* set out rules limiting access to the Commission's file: national courts cannot order parties to disclose leniency statements or settlement submissions at any time, and certain documents such as the statement of objections can only be accessed after the closing of the file. Contemporaneous documents, however, can be disclosed at any time in the process, including before the Commission closes its investigation.

The ECN+ guarantees the confidentiality and non-disclosure of leniency applications by obliging NCAs to ensure that they cannot disclose the leniency statements submitted as part of a leniency application.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

Under the Leniency Notice, applicants must cooperate genuinely and fully with the Commission from the time they submit their application to the end of the administrative proceedings, i.e. the adoption of a final decision.

Applicants must provide the Commission with accurate and complete information. More specifically, they must include any relevant information and evidence relating to the case. They must remain at the Commission's disposal to answer any request as to the establishment of the facts, make staff available for interviews, not tamper with evidence, and not disclose any information relating to their application before the statement of objections, unless otherwise agreed. In the *Deltafina* case, the Commission withdrew conditional immunity because the applicant had breached the obligation of cooperation by disclosing its application for leniency to competitors before the Commission had launched its inspection. However, the company still benefitted from a 50% fine reduction outside of the leniency framework to reward its cooperation.

4.6 Is there a 'leniency plus' or 'penalty plus' policy?

The leniency programme under EU law does not provide for any additional rewards or penalties.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

Individuals can either report a cartel directly to the Commission if they are willing to reveal their identity or use the new anonymous whistle-blower tool launched by the Commission in March 2017. The encrypted messaging system run by an external intermediary allows for two-way communications between individuals and the Commission.

In October 2019, the Commission adopted *Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law* (Whistleblowing Directive). The Whistleblowing Directive protects not only current employees from dismissal, degradation and discrimination, but also former employees, job applicants, supporters of the employee and journalists, among others. Companies with more than 50 employees or more than €10 million annual turnover are obliged to set up suitable internal reporting processes. The deadline for implementation of the Whistleblowing Directive into national law by EU Member States is December 2021.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

A settlement procedure for cartel cases was introduced in July 2008. The rules governing the settlement process are laid down in Regulation 622/2008 and the *Commission notice on the conduct of settlement procedures*. The core feature of the settlement procedure is the formal acknowledgment of an undertaking's participation in a cartel. Such admission is rewarded with a 10% fine reduction, as well as a limitation on any specific increase for deterrence. Settlement agreements can be reached with all participants involved in a cartel, or only with some of them (so-called 'hybrid' settlements).

The settlement process can be divided into three broad stages:

- First, the parties and the Commission must agree to start settlement discussions. An undertaking cannot be forced to engage in a settlement and the Commission has in turn a broad discretion to determine which cartel cases are suitable for settlement, taking into account factors such as the prospect of saving time and resources and the probability of agreeing on the scope of the potential objections within a reasonable timeframe.
- Second, settlement discussions will take place on a bilateral and confidential basis to assess whether it is worth settling. The parties will have the possibility to access the file and to be heard, albeit to a more limited extent than in

the standard procedure. Participants can end the discussions at any time, in which case they will revert back to the normal procedure. Parties deciding to opt-out from the settlement process will not be able to rely on indications regarding the amount of the fine given during settlement discussions, as the recent *Timab* ruling shows.

- Third, parties must submit a formal request in the form of a settlement submission, acknowledging in '*clear and unequivocal terms*' their liability, and indicating the maximum amount of the fine which they foresee being imposed. The Commission will then issue a formal statement of objections and, if the parties agree with its content, will proceed with the adoption of a final decision.

The Commission is increasingly using the settlement procedure and settlement decisions tend to be adopted more quickly. The most recent decisions are the following: in March 2019, settlements in *Occupants Safety Systems II*; in May 2019, settlements in *Forex*; in September 2019, settlements in *Canned Vegetables*; and in July 2020, settlements in *Ethylene*. Interestingly, most of the settlement decisions have stemmed from leniency applications.

Settling parties can still contest the validity of the fine ultimately imposed before the EU Courts, as Société Générale did in *EUROLIBOR* before withdrawing its appeal and Printeos in the *Envelopes* cartel case.

In November 2017, the Icap group, which did not take part in the settlement proceedings in *Yen Interest Rate Derivatives*, successfully challenged its fine before the GC. The GC ruled that the Commission had infringed the presumption of innocence by mentioning Icap and its facilitating role in the cartel in the settlement decision; however, the GC annulled the decision not on those grounds but on the lack of reasoning on the fining calculation, a judgment which was later confirmed by the CJEU.

By contrast, in *Pometon*, the GC rejected similar claims of breach of the presumption of innocence of Pometon, a non-settling party in a hybrid settlements case, considering that although the settlement decision mentioning Pometon had been adopted before the decision in the adversarial procedure, it did not legally define the facts attributed to Pometon and had therefore not prejudged Pometon's liability. This judgment has been appealed to the CJEU by Pometon, the outcome of which remains to be seen.

After *Pometon*, in May 2019, the Commission issued two settlement decisions in the *Forex* cartel (*Three Way Banana Split* and *Essex Express*) while according to official statements, more decisions under adversarial procedure are expected. That implies a likely return of staggered decisions in hybrid settlement cases.

In September 2019, in *HSBC*, the GC analysed another hybrid settlement, annulling the fine imposed on the grounds of insufficient statement of reasons but confirmed HSBC's participation in the infringement. HSBC, JP Morgan and Crédit Agricole decided not to participate in the settlement procedure. Contrary to *Icap*, the GC did not give any substantial guidance in response to a similar pleading raised; instead, it provided a brief discussion of HSBC's procedural plea, confirming the general right of a presumption of innocence and swiftly concluding that, since the Commission had already validly established HSBC's participation in the infringement "*there is no reason to assume that, if the settlement decision had not been adopted before the contested decision, the content of the latter would have been different*".

7 Appeal Process

7.1 What is the appeal process?

The Commission's decisions can be appealed before the GC, within two months of the decision, by the addressees of the decision and third parties with a direct and individual interest. Actions for annulment can be brought on four grounds: lack of competence; infringement of an essential procedural requirement; infringement of the Treaties; and misuse of powers. The GC has unlimited jurisdiction to review and assess the Commission's decisions and it may cancel, increase or decrease any fine imposed.

Following a judgment by the GC, a further appeal can be brought to the CJEU within two months of the notification of the GC judgment. The CJEU is only competent to review points of law, breaches of procedure and infringements of EU law by the GC.

7.2 Does an appeal suspend a company's requirement to pay the fine?

Fines imposed by a Commission decision must normally be paid within three months of notification. However, the payment of the fine can be suspended if the undertaking gives the Commission an appropriate bank guarantee and agrees to pay interest in case the appeal is unsuccessful. If an undertaking is unable to provide such guarantees, it can also apply for interim measures before the EU courts to suspend the enforcement of the contested decision. However, the majority of applications for interim measures are unsuccessful.

7.3 Does the appeal process allow for the cross-examination of witnesses?

The Rules of Procedure of the EU Courts provide that the Judges and the Advocate General can, at the request of a party or on their own motion, ask witnesses questions. The representatives of the parties can do the same, subject to the control of the President of the Court. Cross-examination of witnesses is thus allowed but there is no absolute right to cross-examination by the parties.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow on' actions as opposed to 'stand alone' actions?

In *Courage and Crehan*, the CJEU established that any individual or business has a right to full compensation for the harm caused to them by anticompetitive practices. This right is an EU right, but its exercise is governed by national rules and damages claims, either following an infringement decision (so-called 'follow-on' actions) or brought on a stand-alone basis. It must be initiated before national courts. In *Manfredi*, the CJEU recalled that victims must, in that context, prove that the harm suffered is the result of a violation of competition rules.

The right to full compensation is enshrined in the 2014 Damages Directive and two provisions are aimed in particular at making it easier for victims to substantiate damages claims. First, the Directive introduces a rebuttable presumption that cartel victims have suffered harm. Second, the Directive makes final infringement decisions of competition authorities (or of review courts) binding on their own national courts and *prima facie* evidence of infringement in courts of other Member States, therefore streamlining follow-on claims.

In addition, the Commission has issued a *Communication on the quantification of harm caused by competition law infringements* aimed at assisting national courts, as well as a detailed practical guide

covering the types of anticompetitive harm and techniques available to quantify such harm.

8.2 Do your procedural rules allow for class-action or representative claims?

Class actions or representative claims are a matter of national law and the Damages Directive does not contain provisions on collective redress mechanisms. The Commission, however, issued in June 2013 a *Recommendation on common principles for injunctive and compensatory collective redress mechanism in the Member States concerning violation of rights granted under Union Law*, where it recommends the introduction of opt-in systems of collective redress as a general rule and the institution of procedural safeguards (such as a prohibition of contingency fees or punitive damages) to avoid abuses. In January 2018, the Commission published a report on the progress made by Member States implementing measures allowing for collective redress. Following the Report, the Commission published a proposal for a damages Directive on representative actions for the collective interests of customers, which introduces a harmonised model for class actions. In June 2020, the *Directive on representative actions for the protection of the collective interests of consumers* was adopted by the Council and the European Parliament. Once approved by the Council and the European Parliament, the Directive will introduce a system of representative actions for the protection of consumers' collective interests against infringements of EU law.

8.3 What are the applicable limitation periods?

Limitation periods for bringing damages claims vary across Member States but the Damages Directive harmonises certain basic rules. It specifies that limitation periods must be for at least five years and should not start to run before the infringement has ceased, and the plaintiff knows or can reasonably be expected to know of the behaviour, the fact that it constitutes an infringement and the identity of the infringer. Moreover, limitation periods must be suspended or interrupted: (i) if a competition authority has initiated an investigation or other proceedings in relation to that infringement, until at least one year after the infringement decision has become final or the proceedings are terminated; and (ii) for the duration of any consensual dispute resolution.

8.4 Does the law recognise a "passing on" defence in civil damages claims?

In line with the right to full compensation, the Damages Directive makes clear that any direct or indirect purchaser in the supply chain can obtain compensation for the harm suffered. In turn, any defendant in a damages action can argue that the plaintiff passed on the whole or part of the overcharge resulting from the infringement down to the supply chain, so that the loss passed on no longer constitutes harm for which the plaintiff needs compensation (the 'passing on' defence). To succeed, the defendant will have to prove the existence and the extent of pass-on of the overcharge.

As Member States now need to quantify actual loss suffered at each level of the supply chain, the Commission has committed to providing guidelines for national courts. An October 2016 *Study on the passing-on of overcharges* was in this context published at the Commission's request. Between July and October 2018, the Commission published and invited comments on a set of draft guidelines. In July 2019, the Commission published the *Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser* (the Passing-on Guidelines) which provide practical guidance to assist national courts in estimating the share of the overcharge passed on to the indirect buyer. (*cf. infra* question 9.1).

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

Cost rules for civil damages in follow-on claims remain at the discretion of Member States. Although the Commission acknowledged that costs associated with damages actions can be a decisive disincentive to bringing damages claims, the Damages Directive does not address that particular issue. However, the Commission has invited Member States to reflect on their cost allocation rules and highlighted the importance of the 'loser pays' principle, which prevails in Member States, and generally serves to filter unmeritorious cases.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

As mentioned in question 8.1, damages claims can only be initiated before national courts. With the coming into force of the Damages Directive, it can be expected that follow-on damages will increase across the EU. To date, Germany, the Netherlands and the UK have been the most prominent jurisdictions for initiating damages claims. In recent years, there have been a significant number of follow-on damages claims introduced in the national courts of these three countries, often brought by companies and not consumers. However, the implementation of the Damages Directive in the EU has increased the number of damages claims in other Member States, as for example Spain.

Netherlands: In March 2017, TenneT was awarded €23 million in damages by a Dutch court due to overcharges it suffered from ABB's participation in the *Gas Insulated Switchgear* cartel. In February 2020, the Amsterdam Appeal Court overruled an earlier lower court judgment, lifting the limitation period in respect of a damages action against one of the *Sodium Chlorate* cartel members and stressed the importance of applying the principle of effectiveness for damages actions for breaches of EU competition law.

UK: In the UK, the first damages award in a follow-on case was a claim filed by BritNed following the *Power Cables* decision. In October 2018, the English Court did not consider that there was an overcharge but awarded €13 million in damages relating to increased costs paid by BritNed which would not have been paid in the absence of the cartel. In November 2018, the English High Court reduced this by 10% to €11.7 million. Following the Commission's decisions on multilateral interchange fees, damages lawsuits against Visa and MasterCard were brought in the UK. In May 2020, two separate follow-on damages actions against Visa and MasterCard, each containing 58 claimants, were registered with the Competition Appeal Tribunal. Also in May 2020, an opt-out collective action against MasterCard was heard by the UK Supreme Court in *Merricks*. In June 2020, the UK Supreme Court found in favour of a group of British retailers in a consolidated set of appeals against Visa and MasterCard, with the determination of damages to follow absent a settlement. Furthermore, in May 2020, Arcelik, an electrical-appliance manufacturer, announced it received settlements of £20.15 million and £22.8 million from members of the *Cathode Ray Tube* cartel.

Germany: In March 2020, financial right claims lodged a €270 million damages claim against members of the truck cartel in Munich on behalf of 2,900 transport companies.

Spain: In orders published in March and May 2020, a Spanish second instance court partially accepted appeals by two of the cartel members, considering it disproportionate to grant the claimants access to certain information such as delivery costs and product planning documents. In two separate judgments in April 2020, Spanish second instance courts reduced claimants' compensation that previously ranged from 5–10%, to 5% of the truck purchase price.

Hungary: The CJEU issued a recent preliminary ruling in response to a request sent by the Hungarian court in *Tibor Trans v DAF* (a claim following the *Truck* decision), confirming that a cartelist may be held liable for damages to victims with no contractual relationships and outside the place of the infringement. The CJEU ruled that EU's cartel decision covered the entire European market.

9 Miscellaneous

9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

The ECN+, which entered into force in February 2019, aims to address "*gaps and limitations in the tools and guarantees of NCAs [that] undermine the system of parallel powers for the enforcement of Articles 101 and 102 TFEU*" by requiring Member States to ensure that NCAs have appropriate enforcement tools, including various investigative powers (e.g. the power to inspect businesses premises), harmonising fines within certain parameters and attempting to improve the leniency system. For example, Member States are required to ensure that NCAs accept summary applications from applicants who have applied to the Commission for leniency, provided that the Commission application in question covers more than three Member States. However, ECN+ falls short of providing the one-stop-shop system for leniency that many had hoped for. Member States are required to bring into force the necessary laws for the domestic implementation of ECN+ by 4 February 2021.

In March 2019, the Commission made available the eLeniency tool, which is designed to facilitate the submission of documents and statements by undertakings and their lawyers online through a secure, restricted system. It is available online 24 hours a day, seven days a week, and statements can be made in all 24 official EU languages.

In July 2019, the Commission published the Passing-on Guidelines. The Passing-on Guidelines intend to provide national courts, judges and other stakeholders in damages actions for infringements of Articles 101 and 102 TFEU, with practical guidance on how to estimate the extent to which price increases set by a cartel may have been passed down the supply chain.

In July 2020, the Commission adopted a communication on the protection of confidential information by national courts in proceedings for private enforcement. The Communication follows a public consultation the Commission carried out in 2019, which confirmed the need for additional guidance on disclosure of evidence in damages claims proceedings. The Communication provides a series of measures and guidance on effective protective measures that national courts may use to protect confidential information in these proceedings, while considering the specific circumstances of the case.

9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

On 8 April 2020, in response to the COVID-19 pandemic, the Commission adopted a Temporary Framework Communication (https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv:OJ.CI.2020.116.01.0007.01.FRA&toc=OJ:C:2020:116I:TOC), setting out the main criteria that the Commission will follow when assessing cooperation projects aimed at addressing a shortage of supply of essential products and services during the coronavirus outbreak. The Commission's rules allow for some level of cooperation provided it does not spill over into illegal collusion or other anticompetitive behaviour. The Temporary Framework also anticipates the possibility of providing companies with written comfort (via *ad hoc* 'comfort letters') on specific cooperation projects falling within the scope of the Temporary Framework.

There is also an increasing focus on regulating digital markets. In June 2020, the Commission announced its consultation on a new competition tool, which is aimed at addressing structural problems in markets, notably with respect to challenges in the digital sector. The tool aims to address the Commission's perceived gaps in its enforcement toolkit. In July 2020, the Commission launched a sector inquiry into the Internet of Things, focusing on consumer-related products and services connected to a network that can be controlled at a distance, such as wearable devices and smart home appliances. Information gathered during the inquiry will contribute to the Commission's enforcement of competition law in the sector. The Commission is currently requesting information from a variety of undertakings active in the sector and expects to publish its preliminary report based on the responses in the spring of 2021.

Acknowledgments

The author would like to thank her colleagues Patricia Sánchez-Calero Barco, Sujin Chan-Allen, and Olivia Spong for their invaluable contributions to this chapter.

Elvira Aliende Rodriguez is a partner in the Antitrust practice of Shearman & Sterling's Brussels office.
She focuses on Spanish and EU competition law.
Elvira advises clients across a range of sectors, including air transport, chemicals, telecommunications, energy, pharmaceuticals, steel, hotel accommodation, textiles and financial services. She has extensive experience in advising clients on Article 101 (restrictive agreements) and the equivalent provisions under Spanish law. She has also participated in State aid procedures and in Article 102 (abuse of dominance) cases before the EU competition authorities. She has in-depth knowledge of working before the European Commission and the European Courts.

Shearman & Sterling LLP
Avenue des Arts 56
1000 Brussels
Belgium

Tel: +32 2 500 9837
Email: elvira.alienderodriguez@shearman.com
URL: www.shearman.com

ICLG.com

Other titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

@ICLG_GLG

The International Comparative Legal Guides are published by:

global legal group