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Cartel settlements

Cartel settlements: An overview of EU and national case law

CARTEL, SETTLEMENT, SANCTIONS / FINES / PENALTIES, LENIENCY, FOREWORD

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I. Introduction

If imitation is the sincerest form of flattery, recent years have given the EU cartel settlement process much to modestly blush about. Settlement approaches modelled on the European Commission's program have been adopted – or are about to be – by Member States throughout the EEA. The process has also been mirrored in the Commission's new approach to settling non-cartel matters under the *ARA* line of cases.

The use of settlement tools at European and national level suggests that enforcers and companies alike continue to see value in settlement as an attractive way to expedite cartel cases. Over half of the cartel cases resolved at European level over the last decade involved settlements. National enforcers have resorted to the settlement mechanism in numerous cases in their jurisdictions as well. Some of the European-level cases have also shown the Commission's flexibility in using the tool, including by accepting to settle cases even when one or more parties ultimately opted out or, in one instance, where a Statement of Objections had already been issued.

This popularity and success have not come without tensions. Reliance on the process in complex cases may remove potentially novel portions of the Commission's enforcement practice from the scope of judicial review. When hybrid cases – in which some parties settle while others appeal – have opened up settlement resolutions to judicial scrutiny, certain aspects of this enforcement practice have been called into question, although others have been confirmed. At the same time, as the number of leniency applications has sharply decreased in recent years, the cartel settlement process itself may also have lost some of its luster for companies [***1***].

This short foreword develops these themes by reference to some of the key cases covered in this special issue.

II. The Commission's cartel settlement program

The steps of the EU cartel settlement procedure have been discussed at length, including in the foreword to the previous Concurrences special issue on cartel settlements [*2*]. In this section, we focus on the factors that will influence the Commission's decision to offer to open settlement discussions and a company's decision to engage in such discussions and, ultimately, agree to a settlement resolution.

The Commission's cartel settlement program establishes a parallel track to the later part of the Commission's administrative procedure. Settlement and non-settlement cases both share an initial investigative phase where the Commission builds its understanding of the case. Unlike in the US, the settlement process in Europe therefore only begins relatively late in the lifecycle of a cartel investigation [*3*]. The upshot is that the settlement process does not create a separate, new procedure, it creates a fork in the road in an existing procedure.

Not every case will be offered this fork: it is the Commission's choice whether to give companies the option to settle, although companies intent on settling would do well to broach the subject with the Commission [*4*].

To provide a degree of clarity to companies in the early phases of an investigation as to whether an offer to talk may be forthcoming, the EU Cartel Settlement Notice and other Commission publications have staked out screening criteria. These criteria are designed to assess the likelihood of successfully settling a given cartel investigation within a reasonable period of time. They are not cumulative. The Commission may choose to settle a case – and has in fact done so – even though one or several of these criteria are not met, provided the overall prospect of success is strong enough [*5*]. These screening criteria fall into three categories:

- The first category comprises criteria designed to assess "*the probability of reaching a common understanding regarding the scope of the potential objections with the parties involved within a reasonable timeframe,*" [*6*] including the number of parties involved, [*7*] and how many of these parties have been leniency applicants [*8*]. These factors speak in part to the desire, frequently expressed by Commission officials, to avoid hybrid resolutions, which forfeit some of the procedural economies of the settlement procedure.

- The second category comprises criteria that serve to assess the prospect of achieving procedural efficiencies, including the scale of the burden involved in organizing access to the file and whether there are parallel proceedings in other jurisdictions, which are liable to make parties less inclined to making an admission in Europe.

- The final category focuses on "*the possibility of setting a precedent*" [*9*]. This consideration reflects the facts that the short-form settlement decision is not necessarily well-suited for cases involving novel or complex legal issues and that the significantly reduced likelihood of appeals in settlement cases means that precedent-setting decisions could evade judicial scrutiny altogether [*10*]. As we discuss below, recent hybrid resolutions have called particular attention to this factor with the Courts generally upholding the central tenets of the Commission's case but, on occasion, raising questions around its qualification of certain pieces of evidence.

If the Commission does offer to engage in settlement discussions, companies can then either: agree, without prejudice, to enter into such discussions or continue in the normal administrative procedure and await a Statement of Objections. This should generally be a straightforward choice: participating in settlement *discussions* allows companies to better and more quickly understand the case against them, interact with the Commission as to the scope of the alleged infringement, and, if the discussions are fruitful, ultimately benefit from the upsides of a settlement resolution, which we discuss below. Conversely, there are few reasons why a company would reject an

offer to engage in without-prejudice settlement discussions. A company can opt to cease the discussions and revert to the normal administrative procedure at any time up until it signs the settlement submission near the very end of the process. Leaving the settlement process, particularly at the death, may have costs, including potentially frustrating the Commission [*11*] – although refusing to engage in the process from the outset may frustrate the Commission just as much, or more, if only because it effectively excludes the possibility of settlement for all [*12*]. And it would be unreasonable for the Commission to view what is essentially a "blind" agreement to attend the first meeting as a broader commitment to conclude the process as long as the company otherwise acts in good faith and maintains coherent positions throughout.

If deciding to attend settlement discussions will more often than not be an obvious choice, actually deciding to settle will often be a closer call [*13*]. The basic factors companies will weigh in this decision are well-established and have been much discussed. Key upsides of settling a case include:

- **A 10% reduction to the ultimate fine levied by the Commission.** The settlement process' headline advantage is the 10% fine reduction with which it rewards companies' participation.

- **The possibility of influencing the contours of the Commission's ultimate decision.** Officially, the Commission does not "negotiate" the scope of the case against the companies [*14*]. But since the settlement process requires companies to make an admission confirming the facts and legal qualification of the case against them, a strict interpretation of this position would imply that the settlement process is of an entirely "take-it-or-leave-it" nature. In practice, the settlement process provides companies with a less adversarial forum in which they can still marshal evidence and legal arguments to inform the Commission's ultimate settlement decision. The use of the settlement process in this way is in line with the Commission's intent when developing the procedure: the Q&A published at the time of the settlement notice remarks that the parties will "*have the opportunity to influence the Commission's objections through argument*" [*15*]. In our experience, making effective use of this opportunity can be of substantial value in impacting both the scope of the case and the parameters used to calculate the fine.

- **A short-form Decision.** A settlement decision is typically materially shorter than the infringement decisions that mark the culmination of a standard administrative process. It will also typically refer to a smaller set of evidence. This can be advantageous in a context where the Commission's decision becomes a lynchpin in follow-on litigants' efforts to prove they were harmed by the conduct at issue.

- **A shorter resolution process.** Our analysis indicates that, as of October 2020, the average duration of the ordinary procedure was around 28 months, with longer cases taking up to five years, which would then often be followed by appeals to the courts in Luxembourg, adding several more years to the process. Settlement cases, however, took on average 15 months, with the longer cases running up to around 30 months, with few appeals. Generally, resolving pending litigation quickly is viewed as an upside by companies although, as we discuss below, a speedy resolution may be a double edged sword in the context of increasing follow-on litigation (and, to a lesser extent, by triggering a need to pay the fine sooner).

- **Reduced legal and business overheads.** Although the settlement process makes its own demands on time and resources, these will typically be less than those of the normal administrative process such as the need to process a full access to file procedure, respond to an SO, or prepare and litigate an appeal [*16*].

- **Limited rounds of negative press.** The settlement process will typically only become public when the Commission announces the settlement resolution, leading to a single negative press cycle. Until this announcement is made, the process is generally kept secret both by the Commission and by the companies participating in it, which are bound by confidentiality obligations. Cases in the adversarial procedure, are liable

to generate additional press points. For instance, the Commission may announce that it has sent the parties a Statement of Objections, [*17*] which it would not typically do in a settlement case, and there would be press relating to an appeal process.

Conversely, deciding to settle means giving up on some of the procedural rights that companies enjoy the more during adversarial procedure:

- **Access to file.** Settling parties must waive their right to access the full, non-confidential Commission file , including any potentially exculpatory evidence it may contain. The settlement process still involves an access to file exercise, but the file made available to the Parties only includes a narrower set of evidence selected by the Commission and access to the evidence occurs on an expedited time frame. This may limit parties' ability to construct as strong a factual or legal counter-argument to the claims against them than they could have in the normal procedure.
- **Statement of Objections.** The fully argued Statement of Objections that, in the normal procedure, sets out the detailed legal and factual basis for the Commission's concerns is replaced in the settlement procedure by a shorter Case Overview [*18*]. Companies can comment on the positions taken by the Commission in the Case Overview but cannot meaningfully reject these positions outright. If they did reject them, there would likely be no path to a settled resolution.
- **The ability to appeal.** Most importantly, companies choosing to settle essentially waive their ability to appeal the substance of the case against them. As a matter of process, settling companies do not technically foreswear such an appeal. But in practice settling curtails any real chance of success in appealing the substantive analysis or key parameters of the Commission's case because a settling company must acknowledge "*in clear and unequivocal terms*" its "*liability for the infringement*" [*19*]. Such an acknowledgment does not then leave a company in good stead to head to Luxembourg to challenge its liability for the infringement it has just admitted to, although appealing certain procedural points remains possible [*20*].

To date, companies have weighed these considerations in 35 cartel settlement procedures at the EU level – 34 of these cases concluded with a settlement.

III. Expansion of the use of the settlement procedure

The use of the settlement procedure has consolidated and expanded over the past decade in several ways. First, the Commission's own practice in using the EU settlement procedure has continued to show that it remains the preferred means of resolving cartel cases. Second, the number of jurisdictions with a local settlement process mirroring the one set out in the EU Settlement Notice has increased. Third, the types of cases in which parties are offered the opportunity to settle have also increased to cover non-cartel cases. These trends evidence that regulators and companies alike continue to view the settlement process as an attractive means of resolving cases.

a. At the EU level, the cartel settlement procedure remains popular with the Commission and companies alike

Since the inception of the EU settlement process, one hundred and fourteen groups of companies have used the procedure, resulting in 34 cases being resolved through settlement. Our analysis of the use of the settlement procedure in recent years shows that it remains both the Commission's and companies' preferred way to resolve

cartel investigations.

Over the past decade, a majority – 60% – of the Commission's cartel decisions have involved a settlement resolution. This number has stayed steady throughout the decade despite overall shifts in cartel enforcement. Indeed, the decade has seen a general decline in the number of cartel decisions: between 2011-2015 the Commission adopted a total of 28 cartel decisions, but between 2016-2020 it adopted only 19. Yet, the proportion of these cases that were resolved through settlement stayed steady. 17 of the earlier 28 resolutions involved settlements – a rate of 61%; and 11 of the 19 cases resolved in the latter half of the decade were settlements – a rate of 58%.

In fact, there is some evidence of an increase in the proportion of cases resolved through settlement. Focusing in on the last three years of the decade reveals that nine of the last ten cartel decisions have involved settlement: of four 2018 decisions, three were settlements, and the four cases in 2019 and two cases in 2020 were all settled.

It would be wrong to think that these statistics are bolstered by the Commission resolving small, straightforward cases through settlement and relying on the normal administrative procedure to deal with large, complex cartels:

- Settlement cases have accounted for the majority of the recent fines levied in cartel cases. Since 2016, the Commission has levied roughly EUR 8 billion in cartel fines, of which EUR 5.5 billion have been levied in cartel cases, which is 69% [*21*]. And as these settlement fines would have benefited from the settlement discount, this number actually understates the size of the cases resolved through settlement [*22*]. Extending this analysis to cover the decade shows that, since 2010, the percentage of overall cartel fines covered by settlement cases was 57%.

- Settlement cases include some of the larger and more complex resolutions of the period. The largest resolution in terms of total fines in European cartel enforcement was the *Trucks* case, which was resolved through settlement. The last ten years have also seen a string of complex cartel cases involving the financial sector, including resolutions relating to EURIBOR, Yen Libor, and Forex trading. All of the major financial cases were settled, despite the fact that these cases raised complex and largely novel issues around information exchange in financial markets characterized by atypical competition dynamics and normal market color exchanges. And the recent resolution in *Ethylene* resolved concerns pertaining to coordination amongst buyers, rather than sellers [*23*].

The popularity of the settlement procedure can also be seen in the Commission's willingness to be flexible in how the process is used. The best example of this flexibility is the *Trucks* cartel. In that case, in November 2014, the Commission – which had already conducted dawn raids and issued a number of RFIs – sent the parties a detailed Statement of Objections as part of the normal procedure. The parties later requested that the Commission engage in settlement discussions and – following exploratory conversations with the parties – the Commission agreed. Accepting to engage in the settlement process after having gone to the trouble of preparing a fulsome Statement of Objections and providing access to file, which implies that the Commission had already foregone much of the administrative efficiencies that settlement provides, was potentially surprising [*24*]. It implies that the Commission still views the procedural savings of avoiding drafting a decision and litigating (and potentially losing) appeals to be worth engaging in settlement, even when effort involved in preparing a Statement of Objections had already been expended [*25*].

Another example of the Commission's flexibility in using the cartel settlement process is its willingness to settle cases despite some parties deciding not to settle – so-called "hybrid" resolutions. Hybrid resolutions occur when one or more cartel members opt-out of the settlement process but the others agree to settle. The Commission then creates a two track process to manage the settlement proceedings and adversarial investigations in tandem. This eventuality sacrifices several of the procedural savings the settlement process is designed to enable. Indeed, if even just one party does not settle, the Commission must prepare a full Statement of Objections, must grant access to the entire file, and will likely need to litigate the matter in Court. One would therefore understand if the Commission were reticent to settle with some parties when others refused to do so. Indeed, the Dutch settlement notice – likely sensitive to these considerations – excludes the possibility of non-unanimous settlements.

Not so for the Commission: as of October 2020, there had been seven hybrid resolutions, a fifth of the total number of cases resolved. [*26*] Between 2010 and 2016 there had been five such cases: *Animal Phosphates*, *EUROBIR*, *YIRD*, *Steel abrasives*, *Mushrooms*, *EURIBOR* featured no less than three holds-outs, just short of half the number of parties involved [*27*]. 2013 and 2014, in particular, were the *anni horribiles* when it comes to hybrid settlements. In 2013, both settlement resolutions achieved that year were hybrid cases. In 2014, the fact that there were eight settlements diluted the fact that two resulted in hybrids (while another led to an appeal despite all parties settling and another case, *Smart Cards*, saw the Commission attempt to settle the case before returning to the normal procedure due to a lack of progress).

The number of hybrid cases does, however, seem to be falling over time. Since 2016, there have only been two decisions concluding hybrid cases: *Canned Vegetables* and *Trucks*. Both cases featured a single non-settling party.

b. Geographic expansion: the settlement notice has been a blueprint for the development of settlement programs at the national level

One of the signs of the cartel settlement process' success has been its emulation by National Competition Authorities (**NCAs**) in Europe and elsewhere. Settlement procedures are available in Member States including Austria, Belgium, France, Germany, the Netherlands, and Portugal. Although comprehensive statistics on the use of settlements in these jurisdictions are not readily available, these settlement procedures have seen steady use. For instance, between 2015 and 2017, the German FCO settled 11 of the horizontal cartel cases it closed during that period and has recently settled a spate of cartel cases [*28*]. The French Competition Authority (**FCA**) – having issued its first settlement decision in 2016 – used the settlement procedure twice in 2018 and five times in 2019 [*29*].

And NCAs have also been formalizing and refining their approaches to the settlement process. For instance, in the Netherlands, the Authority for Consumers and Markets (**ACM**), having adopted its first settlement decision in 2015, issued in December 2018 an updated notice clarifying its approach to settlements [*30*]. Likewise, the FCA also published an updated notice in December 2018 [*31*]. And some NCAs that have yet to enact a settlement system are in the process of doing so. For instance, Spain is currently considering a reform to the Spanish Competition Act that may introduce a settlement procedure.

These existing and forthcoming NCA approaches are largely modelled on the EU system. They share similar goals. For instance, the FCA's notice explains that the settlement process is designed to "*enable procedural savings,*" speed up cases, and avoid the need to litigate appeals. The NCA's settlement processes also typically mirror the Commission's view of settlement as a procedural tool to be used at the discretion of the NCA in specific cases,

rather than as a procedural right parties can turn to if they please. And although not universal, the types of discounts available through the settlement process broadly mirror the European approach, with the French, Dutch, Belgian, settlement processes all providing for a 10% fine discount for settling parties [*32*].

Although there is more that unites them than divides them, some NCAs have nonetheless adopted approaches to settlement that diverge in certain respects both from the EU Cartel Settlement Notice. These differences include:

- **Differing approaches to the need for an admission.** Under the EU Cartel Settlement Notice, companies must make "*an acknowledgment in clear and unequivocal terms*" of their liability for the infringement. This requirement appears in the systems in some — but not all — members states. The approach in France, for instance, does not require companies settling with the FCA to accept liability, it instead requires parties to agree not to challenge the allegations made against them. Settling a case with the FCO in Germany does require an admission, but it is less broad than that required by to settle with the European Commission: In Germany, a company need only admit the facts, not the legal qualification. The need for an admission is one of the more controversial aspects of the EU settlement process, with some arguing that it limits incentives for parties to settle, a consideration we discuss further below. The divergences may be explained by these considerations. The upshot, however, is that the approach to admission in settlement proceedings is therefore something of a patchwork within the EU [*33*].

- **Differing approaches to enabling hybrid settlements.** Although the EU Cartel Settlement Notice's objective of procedural savings is facilitated by all parties involved in an investigation agreeing to settle, this is not a pre-requisite for the Commission adopting a settlement decision. This is generally also the approach at the national level. For instance, the FCA has indicated it will prioritize using the settlement mechanism in cases in which all of the parties involved request a settlement [*34*]. The practice in Germany is similar. The ACM's settlement notice, however, takes a different approach as it considers, at least in principle, that there are unlikely to be sufficient efficiency benefits to justify entering into a settlement if some parties are not prepared to acknowledge the allegations against them and accept the fine proposed by the ACM [*35*]. As with the need for an admission, the risk of hybrid resolutions – and the impact of judgments in those cases on the Commission's process and settling parties' positions – are viewed as a limitation on the Commission's settlement process. We discuss this issue further below.

- **Differing approaches to how the settlement process fits into the administrative procedure.** Because the settlement process is designed to expedite and alleviate the administrative procedure, a given settlement is generally more likely to meet these goals when settlement discussions are initiated early on in the administrative process. Late settlements would imply that much ink will have been expended in the normal administrative process prior to beginning any settlement discussions. It is therefore interesting to note markedly different approaches to how various countries approach this aspect of the settlement process.
  - At the European level, the paradigm application of the process is for settlement discussions to take place prior to the issuance of a SO in the normal procedure. In fact, since the settlement process itself involves the issuance of a (shorter) Statement of Objections, initiating settlement discussions *after* having issued a SO in the normal procedure implies a need to issue two Statements of Objections in the same case – hardly a hallmark of procedural efficiency. Nonetheless, in *Trucks*, the Commission accepted to do so. The EU position can therefore be summarized as reflecting a strong but surmountable preference for settlement discussions to begin prior to the issuance of an SO. Others approaches, including those in Germany and in the Netherlands, also reflect this preference coupled with similar flexibility. The proposed approach in Spain, which has yet to become law, addresses the procedural trade-offs explicitly. It provides for a higher rate of fine discount for settlements that are achieved without the need for an SO – where the discount is

15% — than for those achieved following an SO – where the discount is 10%.

- Conversely, and somewhat unusually, the French process occurs almost entirely after an SO has been notified to the parties [***36***]. Indeed, the process envisages that it is only following such notification that the parties to the alleged infringement can make their application for settlement to the FCA. This difference in approach may limit the authority's exposure to claims by parties that opt not to settle in hybrid cases that their rights of defense have been violated – a frequent complaint in appeals at the European level.

In sum, while there are certain differences in how Member States' approaches to settlement have developed, most such settlement procedures mirror that set out in the EU Cartel Settlement Notice – clear evidence of the perceived success of the notice at achieving valuable procedural efficiencies.

c. Expansion in scope: The Commission and NCAs have used the cartel settlement procedure as a model for settling non-cartel cases

Evidence of the success of the Commission's Settlement Notice can also be found in the Commission's approach to reaching settled resolutions in non-cartel cases. This approach, sometimes referred to as an *ARA* settlement, is less formalized than the cartel settlement process but draws on concepts from the EU Cartel Settlement Notice [***37***]. It is also inspired by aspects of the leniency process and the Commission's approach to settling cases under Article 102 TFEU.

The Commission's fact sheet on this new cooperation process explicitly positions it as something of an extension of the cartel settlement procedure. In particular, the Commission remarks that the "*rationale* [of the cartel leniency and settlement procedures]*, allowing for simpler procedures and a reduction in fines, can be applied to cases outside cartels*." The Commission goes on to explain that the cooperation process is designed for "*companies [...] willing to acknowledge their liability for an infringement (including the facts and their legal qualification)*" [***38***] – the very same audience as the EU Cartel Settlement Notice. The fine discount available for acknowledging liability also appears to be 10% [***39***].

The procedural functioning of the process is also similar to that of cartel settlement. The Commission has acknowledged that "*the procedural steps followed in the Guess case are inspired by the cartels settlement notice*." Indeed, the Commission selects cases as candidates for "*this form of cooperation*" depending on "*the probability of reaching a common understanding with the company within a reasonable time-frame*" – the same basis for selection as the cartel settlement process. And the process follows a similar course from there, including through a "settlement submission" confirming the rights of defense have been respected, followed by a "streamlined" Statement of Objections and Decision [***40***].

The cooperation process is, however, more than a mirror image of the Cartel Settlement Notice for cartel cases. The cooperation process also enables fine discounts in return for cooperation on evidence and on remedies. Just as most settlement cases also featured leniency applications, the same is true of cooperation cases: only two of the thirteen non-cartel cooperation cases to date featured the 10% discount used to reward an acknowledgment of liability without further cooperation [***41***].

In sum, the settlement process has continued to grow since the inception of the EU Cartel Settlement Notice in 2008. It has been used in a growing number of cases and contexts. It has been adopted by NCAs across Europe. And it has served as a basis for the Commission's non-cartel settlement cooperation program. All of these factors showcase a cartel settlement process in good health.

IV. Despite its success, the settlement procedure faces challenges to fully maintain its attractiveness for the Commission and for companies

Although characterized by successes, the last few years have highlighted a number of issues and questions around the use of the cartel settlement process that may impact companies' decision to settle.

a. Recent judicial review of appeals in hybrid cases poses new procedural challenges for the Commission and companies

The greatest direct challenge to the settlement process stems from the difficulty in managing hybrid cases. In these cases, the Commission needs to strike a difficult balance between respecting the rights of defense of non-settling parties and ensuring that the settlement process remains attractive for parties that committed to it. This is not straightforward. For example, one of the attractions of the settlement process is that the Commission's infringement decision will be shorter and less likely to delve in detail into the evidence on file. This is one of the key upsides for settling parties. Conversely, the Commission and its legal service have strong incentives to ensure that decisions that are liable to be challenged in court are detailed, fulsome, and fully utilize all of the evidence at the Commission's disposal. In a hybrid case, the Commission must have an eye on both prizes while issuing both types of decision relating to a single alleged cartel.

These issues have existed since the first hybrid case, when Timab appealed the *Animal Phosphates* decision in 2010. But they are becoming more acute as the General Court has started handing down judgments on the hybrid cases from 2013 and 2014. So far, these judgments have increased the challenge the Commission faces in these hybrid cases, at least on the margins. The judgments contain three major trends of interest for the settlement process:

- **Rights of defense.** A central theme in these cases was the implication of the settlement procedure on undertakings' rights of defense. In its appeal against its implication as a facilitator in the *Yen Libor* cartel, [***42***] ICAP claimed that the approach the Commission had taken to conducting a hybrid settlement had violated ICAP's right to a presumption of innocence because the Commission made findings against ICAP in the settlement decision before ICAP had a full chance to be heard in the normal procedure. The Court upheld ICAP's plea, finding that ICAP's rights had indeed been affected although it found that this violation had not had any impact on the outcome beyond issues already corrected by the Court in response to other pleas. Although a setback for the Commission's approach, the issue may be resolved through process changes, rather than substantive ones. For instance, the Commission could avoid the criticisms leveled by the General Court by adopting settlement decisions at the same time as the infringement decisions against any holdouts, as it had done in *Animal Phosphates* , or by taking "sufficient precautions" to limit references to the non-settling party in the settlement decision to what is necessary to establish the liability of the settling parties [***43***].

- **Fine calculation.** The Court took issue in several of these cases resulting from hybrid settlements with the methodology of the fine calculation. One advantage of the settlement approach is that it provides parties with the ability to gain visibility over – and seek to influence – the Commission's approach to calculating the fine. In several settlement cases, this factor and market specificities in the sectors involved led the Commission to adopt slightly atypical approaches to calculating the parties' fines. Both ICAP and HSBC challenged the Commission's fining methodology in appeals emerging from the interest rate derivate hybrid settlements:
  - In its appeal, ICAP claimed that the Commission had not sufficiently justified the methodology used to calculate the fine. The Court ruled that when the Commission relies on Point 37 of the Fining Guidelines to depart entirely from using value-of-sales to calculate the basic amount, it must give (i) reasons for its

departure from the normal approach and (ii) an outline of the basis for the new approach. The Court found that the Commission had failed to complete the second requirement – a finding later upheld by the European Court of Justice [***44***].

- HSBC also challenged the Commission's approach to fine calculation in its appeal of the *EURIBOR* case [***45***]. The General Court upheld HSBC's claim that the Commission had failed to state reasons to justify its fine calculation. It criticized the lack of explanation in the Decision around the 98.849% reduction factor that the Commission had applied to the gross cash receipts used to calculate the value of sales. The issue was not the use of the reduction factor, but the failure to explain it in the Decision. HSBC's fine was annulled, but the Commission is free in principle to re-adopt it with additional reasoning. These outcomes may constrain the Commission's ability to adapt its approach to fining in response to settling parties' feedback, thereby potentially reducing one of the upsides of the process for companies.

- **Substantive assessment of the infringement.** Both ICAP and HSBC successfully challenged certain of the Commission's findings with respect to their participation in the infringement although, in both cases, the Court upheld the Commission's core findings. Were future appellants to succeed in challenging the core of the Commission's case, this would have implications for the decision-making process of parties that face the choice to settle in the future. Such parties may well factor into their decision on whether or not to settle the risk that another party to the alleged cartel wins on the substance in Luxembourg. The success of such a hybrid appellant would then call into question the decision by other parties to have settled.

None of these outcomes threaten the operation or central attractiveness of the settlement process. Nonetheless, the risk of seeing non-settling parties from the same alleged cartel successfully challenging the qualification of their conduct or having their fines reduced adds a further degree of complexity for companies deciding on whether or not to settle.

b. Duration of cases

The stated objective of the cartel settlement procedure is to procure fast resolutions. This benefits the Commission, but it may also benefit the companies under investigation. A lengthening of the settlement procedure therefore may be seen to dilute its upside. Recently, there has been some evidence of cases taking longer to resolve, even before the likely delays caused by the ongoing pandemic. This is due to two factors.

- First, settlement cases not featuring a hybrid appear to be taking longer to resolve in the second half of the decade. Between 2013 and 2015, settlement cases lasted 10.5 months on average between the opening of proceedings and the Commission's decision. Between 2016 and 2018, they lasted over 14 months on average with available (partial) public information for 2019 putting the duration in that year at 20 months, although the sample size is small.

- Second, hybrid resolutions are bringing new challenges of their own. Previously, the Commission would generally address hybrid cases as part of a two track procedure; issuing a settlement decision and, later, adopting a decision against any holdouts through the normal administration procedure. One implication of the *ICAP* case law discussed above is that the Commission may now decide to move towards an approach whereby it waits to adopt the settlement and the non-settlement decisions at the same time. This implies that the proceedings against settling parties will technically remain open for the full duration of the administrative proceedings (although not all of the increased period would involve an active case consuming company resources).

There may be a silver lining to such delays for companies, however, as there are possible litigation disadvantages to being the first party to resolve a case – a concept we explore further below. In any event, for those who continue to view alacrity as an advantage, the settlement process remains shorter than non-settlement cases. For instance, the most recent non-settlement case, *Capacitors*, lasted 29 months, considerably longer than even the slower settlement proceedings [***46***]. And *Canned Vegetables* – the most recent hybrid decision – involved a settlement in September 2019 but the SO to the non-settling party was only sent more than a year later in October 2020, and the case will continue for that party from there [***47***].

c. Possible challenges from the increase in private litigation

Since the advent of the cartel settlement program, there has been a marked increase in follow-on litigation in Europe. In both its 2018 and 2019 annual reports, the FCO remarked on the steep increase of follow-on litigation in Germany and throughout Europe both numerically and in terms of the "*further professionalization*" of damages claims and through the implementation of the EU damages directive.

An increase in damages litigation may have implications for the attractiveness of settlement resolutions for companies in Europe for several reasons:

- In the EU, a Commission decision finding an infringement of Article 101 TFEU removes the requirement on private litigants to prove an infringement of competition law. This rule applies to both settlement and non-settlement decisions. If a party does not settle, the Commission will normally adopt an infringement decision against them in any event. The legal basis for plaintiffs is therefore the same regardless of whether the companies settled or not. The difference, however, is that a company that does not settle will maintain its ability to appeal the Commission's decision, thereby delaying and possibly foiling follow-on damage actions, whereas a party that settles may receive the decision sooner and will be effectively unable to challenge it, at least on the substance. This may make settling companies the focus of joint-and-several liability actions, obliging them to later pursue contribution from hold-out cartelists.

- Secondly, companies may consider the requirement of the settlement process to admit the facts and the legal qualification as a liability when litigating follow-on claims. As explained above, admission should strictly speaking have a limited impact on private litigation, at least in Europe, because an infringement decision in the normal proceedings would also establish the existence of an infringement. In practice, however, the admission may be seen to color the parties' position in litigation or, particularly, out-of-court negotiations.

- Conversely, however, there are upsides to settlement from a damages perspective as well. Most centrally, the fact that the Commission adopts a short-form decision with more limited references to evidence, may create challenges for litigants to prove individual harm. This upside may be somewhat diluted if the Commission is also adopting a fulsome decision in hybrid cases, which may implicate also the settling parties.

Ultimately, it is likely that an increase in private litigation will impact cartel enforcement in Europe and may already be doing so. For instance, companies may be less likely to make leniency applications, although there is to date little clear evidence that this is driven by increased damages exposure. It is not clear, however, that once parties have already sought leniency or the Commission has already opened an investigation, the threat of follow-on damages makes the decision to settle much more difficult – indeed, some aspects of settlement may dilute rather than exacerbate risks from follow-on litigation.

V. Conclusion

Since the last Special Issue on Cartel Settlements, the EU settlement process has continued to be an attractive procedural tool for the Commission and for companies. The approach it embodies has been ported to new contexts and new geographies. There have, of course, also been challenges, some of which may lead to alterations in how the Commission and companies approach the procedure, but none of which call into question its *raison d'être.*

The case notes and articles in this issue further develop these and other themes.

Note from the Editors: although the e-Competitions editors are doing their best to build a comprehensive set of the leading EU and national antitrust cases, the completeness of the database cannot be guaranteed. The present foreword seeks to provide readers with a view of the existing trends based primarily on cases reported in e-Competitions. Readers are welcome to bring any other relevant cases to the attention of the editors.

[1] There has been much speculation as to the root causes of the decline in leniency cases, including whether the development of damages litigation may weigh against companies' incentives to seek leniency and, ultimately, to settle. In Europe, in particular, the relatively recent development of private damage litigation and the prospect of substantial damages exposure is often cited as a reason for the decline in leniency applications. Interestingly, though, a similar decline in leniency cases can be observed in the United States, where private damage exposure does not seem to have increased meaningfully: private damage actions have been a staple of U.S. cartel enforcement for decades, with immunity applicants benefitting from protection against a trebling of damages. Other factors may be at play, including the global proliferation of cartel regimes and potentially more effective corporate compliance systems. Whatever the reasons, after years of falling over each other in a race to secure leniency over real or perceived cartel offenses, it does seem that companies and the defense bar have discovered an appetite to reweigh the pros and cons of leniency and settlement.

[2] See ***Agapi Patsa, James Robinson, Mara Ghiorghies, Kurt Haegeman***, *Cartel Settlements: An overview of EU and national case law, 21 September 2016, e-Competitions Cartel settlements, Art. N° 81310.*

[3] This is important because it means that the role of settlement is to squeeze procedural upside out of three specific aspects of the case: the drafting of the SO, the drafting of the Decision, and defending an appeal. This is rather different to the role of the process in the US, where the plea agreement also relates to evidence gathering that, in Europe, would correspond more closely to the leniency process.

[4] Proactively raising a desire to settle an on-going investigation led to a settlement resolution in Case AT.39824, *Trucks*, Commission Decision of July 19, 2016, despite the Commission having already issued an Statement of Objections ; see ***European Commission***, *The EU Commission fines truck producers for cartel (MAN / Volvo / Renault / Daimler / Iveco / DAF), 19 July 2016, e-Competitions July 2016, Art. N° 80282* ; ***Mai Muto***, *The EU Commission imposes a cartel fine*

totaling €2.93 billion on four truck producer for coordinating their factory prices of trucks, new emissions technologies and their introduction in the market (MAN / Volvo / Renault / Daimler / DAF), 19 July 2016, e-Competitions July 2016, Art. N° 92784 ; ***Laurent Geelhand, Anthony Maton, Nicola Boyle, Anna Morfey, Alex Petrasincu,*** *The EU Commission concludes a five-year investigation finding that five truck manufacturers coordinated their prices (Trucks cartel), 19 July 2016, e-Competitions July 2016, Art. N° 96517* ; ***Richard Burton***, *The EU Commission imposes record-breaking fines of € 2.9 billion against truck producers (MAN / Volvo / Renault / Daimler / Iveco / DAF), 19 July 2016, e-Competitions July 2016, Art. N° 80690.*

[***5***] See F. Laina and A. Bogdanov, The EU Cartel Settlement Procedure: Latest Developments, Journal of European Competition Law and Practice (2014) 5 (10): 717-727 ("Even in cases where one or the other of [the screening] criteria was not fulfilled, this did not prevent to reach a settlement"). The Commission's practice since the publication of that article has continued in a similar vein.

[***6***] EU Cartel Settlement Notice, para. 5.

[***7***] This appears to be one of the stronger factors in the Commission's approach to deciding when to make an offer to begin settlement discussions. Since 2010, cases with high numbers of parties have typically not resulted in settlement *See e.g.,* ***Richard Burton***, *The EU Commission imposes € 169 M on 14 international groups of freight forwarders for operating four price-fixing cartels (Freight forwarders cartel), 28 March 2012, e-Competitions March 2012, Art. N° 58386* ; ***European Commission***, *The EU Commission fines several producers and distributors for cartel in the retail food packaging sector (Nespak), 24 June 2015, e-Competitions June 2015, Art. N° 74055* ; ***European Commission***, *The EU Commission fines eight producers of capacitors for cartel (Elna / Hitachi Chemical / Holy Stone / Matsuo / NEC Tokin / Nichicon / Nippon Chemi-Con / Rubycon), 21 March 2018, e-Competitions March 2018, Art. N° 86590* ; ***Richard Burton***, *The EU Commission fines 8 Japanese producers of capacitors involved in a cartel for the supply of aluminium and tantalum electrolytic capacitors (Elna / Hitachi / Holy Stone / Matsuo / NEC Tokin / Nichicon / Nippon Chemi-Con / Ruycom / Sanyo), 21 March 2018, e-Competitions March 2018, Art. N° 86627*; ***Richard Burton***, *The EU Commission fines nine producers of window mountings € 86 M for price-fixing cartel (Roto / Gretsch-Unitas), 28 March 2012, e-Competitions March 2012, Art. N° 58387*), the exception being the first settlement cases, AT36511 *DRAMs*, which featured 11 parties.

[***8***] To date, 80% of settled cases have involved a majority of leniency or immunity applicants among the parties and in roughly a quarter of cases all of the parties had filed an application. But AT.39952 *Power Exchanges* ended in settlement despite neither of the two parties having filed for leniency and only a minority of settling parties in AT.39611 *Water Management Products* and AT.39792 *Steel abrasives* had applied for immunity or leniency, see ***European Commission***, *The EU Commission fines € 6.2 million a producer for participation in steel abrasives cartel (Pometon), 25 May 2016, e-Competitions May 2016, Art. N° 79811.* Conversely, there does not appear to have been a settlement offer in AT.40018 *Car Battery Recycling* despite the fact that three of the four companies involved had sought leniency (and been awarded the maximum leniency discounts available).

[***9***] EU Cartel Settlement Notice, para. 5.

[***10***] *See, e.g.*, M. Siragusa and E. Guerri, *Antitrust Settlements under EC Competition Law: The Point of View of the Defendants*, in Claus-Dieter Ehlermann and Mel Marquis (eds), *European Competition Law Annual 2008,* p. 203 ("*Only clear-cut cases should be eligible for settlement*

proceedings. When a clarification of the law is needed, for example because of the complex nature of the facts and evidence relied on, the Commission should opt for fully adversarial proceedings and thereby pave the way for effective judicial review").

[*11*] Another possible cost would arise if the participation of the company in settlement discussions leaks (which would only occur if a party to the settlement discussions violated their duty of confidentiality), which may appear to some as suggesting the company holds something less than a firm belief in the legality of its conduct.

[*12*] While there are examples of hybrid settlements where the Commission has accepted to settle despite one or more companies opting out of the settlement process at some point, it is not clear that the Commission would have opened settlement discussions in these cases had these opt-outs decided not to participate at the outset.

[*13*] As far as we are aware, companies that are offered an opportunity to enter into settlement discussions generally accept to do so, whereas not all companies that have participated in settlement discussions ultimately accepted to settle.

[*14*] EU Cartel Settlement Notice, para. 2 – another difference with the US plea bargaining system.

[*15*] Commission Q&A accompanying the legislative package, MEMO/08/458.

[*16*] Of course, if a company opts to engage in the full settlement process and, at the very end, reverts to the normal adversarial process, the opposite may then be true as it will have dedicated resources to settling before also needing to engage in these efforts.

[*17*] For instance, in Case AT.39824, *Trucks*, Commission Decision of July 19, 2016, where settlement discussions atypically began only following a Statement of Objections, the Commission announced in January 2011 that it had conducted dawn raids and in November 2014 that it had sent the parties a Statement of Objections. Conversely, in AT.40135, *Forex*, Commission May 16, 2019, where the parties entered settlement discussions early in the process, the first formal statement made by the Commission was to announce the resolution of the case. (a Forex investigation remains on-going since Credit Suisse opted not to settle and the Commission recently made public that it sent Credit Suisse a Supplementary Statement of Objections).

[*18*] Late in the process, the Commission also sends the parties a Settlement Statement of Objections. But this document serves a different purpose from the Statement of Objections issued in normal proceedings. The Settlement Statement of Objections merely serves as a formal means of recording the legal and factual qualifications that have already been agreed to informally during the settlement. The Case Overview – which comes earlier in the process and which the parties can meaningfully comment on – is, therefore, the closer equivalent to the Statement of Objections that would be issued in normal proceedings.

[*19*] EU Cartel Settlement Notice, para. 20. There is some debate as to whether the need to admit liability constitutes a meaningful downside in a context where – according to some – leniency applicants have already made an admission by way of their leniency submissions. We do not see it this way. Leniency implies loyal cooperation in establishing the facts. Unlike some other regimes, there is no requirement in the Commission's leniency regime to make an admission as to the legal qualification of these facts. If there were, the leniency and settlement programs would (quite awkwardly) overlap, whereas they are generally presented by the Commission as complimentary. As a practical matter, since nothing in the leniency notice requires a legal admission – and companies

have received the full leniency discount available without making one – it will generally not be to a company's advantage to make a legal admission in their leniency statements. The settlement process will therefore usually be the first (and only) moment in the Commission's procedure where a company will face the decision as to whether or not to make a legal admission.

[**20**] To date, there have been three such appeals, all of which have focused on issues relating to fine calculation: Societe Generale appealed a settlement decision in *Euribor*, Printeos appealed one in *Paper Envelopes*, and, most recently, Clariant appealed one in *Ethylene*.

[**21**] This stat provides some tangential insight into how the Commission applies in practice the screening factors it uses to select settlement cases. As discussed above, one such factor is that cases liable to merit high fines are considered, all else equal, somewhat less appropriate for settlement resolutions. But since 2016, average fines have been higher in settlement cases than non-settlement ones.

[**22**] The period also includes 2017, which was something of an outlier year: despite settling three out of seven cases, settlement fines accounted for only 12% of the total fines in 2017.

[**23**] Case AT.40410, *Ethylene*, Commission Decision of July 14, 2020, see ***Daniel Vowden, Adrian Brown, Daniel Barrio,*** *The EU Commission fines ethylene purchasers in the chemical industry for participating in a cartel aimed at purchasing a product at the lowest possible price (Orbia / Clariant / Celanese / Westlake), 14 July 2020, e-Competitions Old articles, Art. N° 99577* ; ***European Commission,*** *The EU Commission fines ethylene purchasers €260 million in cartel settlement for colluding to buy at the lowest possible price (Orbia / Clariant / Celanese / Westlake), 14 July 2020, e-Competitions July 2020, Art. N° 95833* ; ***Richard Burton****, The EU Commission fines ethylene purchasers €260 million in cartel settlement (Orbia / Clariant / Calanese / Westlake), 14 July 2020, e-Competitions July 2020, Art. N° 96292* ; ***Denis Fosselard, Alexi Dimitriou, Neil Cuninghame****, The EU Commission fines ethylene purchasers for having colluded and exchanged information on purchase prices (Orbia / Clariant / Celanese / Westlake), 14 July 2020, e-Competitions July 2020, Art. N° 96108.*

[**24**] In *DRAMs*, the first settlement decision, the Commission had apparently prepared a Statement of Objections, although it was never sent to the parties.

[**25**] The Commission's decision to engage in such discussions in this case may reflect the fact that most of the parties were already leniency applicants (the only party that was not a leniency applicant eventually refused to settle the case – although the Commission would have known this before issuing the SO) and that all of the parties expressed a real interest in settling to the Commission.

[**26**] Public cases in which one or more parties did not settle include: *Animal Feed Phosphates*, *EURIBOR*, *YIRD*, *Steel Abrasives*, *Mushrooms*, *Mushrooms*, *Canned Vegetables*.

[**27**] Interestingly, the hold-outs in EURIBOR included a company that separately settled other cases with the Commission. JPMorgan opted not to settle in EURIBOR, but did settle separate allegations in *Yird*, *CHF Bid-Ask*, and *Forex*. JPMorgan's appeal against the EURIBOR Decision is pending.

[**28**] In recent years, the FCO notably settled cases involving steel manufacturing (FCO Press Release, *Steel manufacturers fined approx. 646 million euros for agreeing on prices of quarto plates*, December 12, 2019), See ***Richard Burton****, The German Competition Authority fines steel manufacturers for collusion and exchange of sensitive information (ThyssenKrupp), 12 December*

2019, e-Competitions December 2019, Art. N° 92922 ; ***Pia Meetz***, *The German Competition Authority fines €646 million three companies and three persons for agreeing and exchanging certain supplements and surcharges for quarto plates (Ilsenburger / Thyssenkrupp Steel / Voestalpine), 12 December 2019, e-Competitions December 2019, Art. N° 93455*, plant protection products (FCO Press Release, *Wholesalers of plant protection products fined for anti-competitive agreements on price lists, discounts and individual prices*, January 13, 2020) ; See ***German Competition Authority,*** *The German Competition Authority fines seven wholesalers of plant protection products and their responsible employees for agreeing on price lists, discounts and some individual sales prices (AGRAVIS Raiffeisen / AGRO Agrargroßhandel / BayWa / Betriebsmittel Service Logistik / Getreide / Raiffeisen Waren / Kassel / ZG Raiffeisen), 13 January 2020, e-Competitions January 2020, Art. N° 92956.*

[***29***] Autorité de la Concurrence, *Rapport Annuel 2018*, page 22 and *Rapport Annuel 2019*, page 27.

[***30***] ACM, *Richtsnoeren vereenvoudigde afdoening van boetezaken ACM*, December 21, 2018.

[***31***] FCA, *Communiqué de procédure du 21 décembre 2018 relatif à la procédure de transaction*, December 21, 2018 ; see ***Eric Barbier de la Serre, Eileen Lagathu***, *The French Competition Authority publishes a notice clarifying the settlement procedure in competition cases, 21 December 2018, e-Competitions December 2018, Art. N° 88878.*

[***32***] Hungary marks an interesting departure from this approach. The Hungarian authority introduced an approach related to the settlement process that involves fine reductions if the company compensates consumers.

[***33***] Even at the European level, the requirement of providing an admissions in order to settle is not entirely standardized since settling an investigation under Article 102 TFEU does not require an admission.

[***34***] FCA, *Communiqué de procédure du 21 décembre 2018 relatif à la procédure de transaction*, December 21, 2018, para 19.

[***35***] ***Mariska Van De Sanden***, *The Dutch Competition Authority publishes guidelines to clarify its simplified settlement procedure, 21 December 2018, e-Competitions December 2018, Art. N° 88845* ; ***Pauline Kuipers, Piet-Hein Eijssen***, *The Dutch Competition Authority publishes guidelines on its simplified settlement procedure, 21 December 2018, e-Competitions December 2018, Art. N° 93740.*

[***36***] Since there is no liability for individuals in European processes, it is unsurprising that the European settlement process does not involve any settlement advantages for individuals and we therefore do not discuss the issue in this forward. We note for completeness, however, that individual liability is at stake in several member states, and may be reflected in the relevant NCA's settlement process, as is the case in France and in the approach proposed in Spain.

[***37***] The most formal exposition of the non-cartel settlement procedure took place in a Fact Sheet titled "*Cooperation – FAQ*," issued alongside the Commission's decision of January 25, 2019 in Case AT.40428 *Guess* available at: *https://ec.europa.eu/competition/publications/data/factsheet_guess.pdf* . We understand that the

Commission is considering formalizing the approach in a Notice ; see ***Yves Botteman***, *The EU Commission fines a clothing company for restrictions relating to the online sales activities of its authorized distributors (Guess), 25 January 2019, e-Competitions January 2019, Art. N° 89277.*

[***38***] See Commission Factsheet, "*Cooperation – FAQ,*" available at: *https://ec.europa.eu/* competition/publications/data/factsheet_guess.pdf.

[***39***] *See* CASE M.40049 *Mastercard* Commission Decision of January 22, 2019.

[***40***] *Ibid.*

[***41***] AT.40049 *Mastercard* Commission Decision of January 22, 2019 and four of the five settled resolutions in Cases AT.40413,40414,40422,40424 *Video Games* (Capcom received a 15% discount and Valve opted not to settle, leading to the first hybrid case under the cooperation procedure) – all of the other cases earned reductions between 15% and 50% ; see ***European Commission***, *The EU Commission fines a credit card company for obstructing merchants' access to cross-border card payment services (Mastercard II), 22 January 2019, e-Competitions January 2019, Art. N° 88893* ; ***Richard Burton***, *The EU Commission fines a credit card company €570 million for limiting retailers' access to cross-border payment services (Mastercard II), 22 January 2019, e-Competitions January 2019, Art. N° 89614.*

[***42***] Judgment of the General Court in T-180/15, *Icap v. European Commission*, EU:T:2017:795.

[***43***] Judgment of the European Court of Justice in C-440/19P, *Pometon SpA v European Commission*, EU:C:2021:214.

[***44***] Case C39-18, *Icap v. Commission*, EU:C:2019:584 ; See ***Richard Burton***, *The EU Court of Justice reaffirms the General Court's decision to annul the fines imposed by the Commission in the Yen Interest Rate Derivatives cartel case (Icap), 10 July 2019, e-Competitions July 2019, Art. N° 91439* ; ***Alain Ronzano***, *Fine: The Court of Justice of the European Union confirms the General Court's approach to the insufficient reasoning for the calculation of the fine imposed on the facilitator of the cartel on interest rate derivatives denominated in yen (Icap), 10 July 2019, Concurrences N° 4-2019, Art. N° 91117* ; ***Alexandre Lacresse, Barbara Monti***, *Annulment: The Court of Justice of the European Union confirms, for lack of reasons, the annulment of the fine imposed on an undertaking for its role as facilitator of a cartel (ICap), 10 July 2019, Concurrences N° 4-2019, Art. N° 92313.*

[***45***] Case T105-17, *HSBC vs. Commission*, EU:T:2019:675 – currently on appeal to the European Court of Justice ; See ***Richard Burton***, *The EU General Court annuls a decision due to the Commission's failure to sufficiently explain the methodology relied upon in calculating the fine (HSBC), 24 September 2019, e-Competitions September 2019, Art. N° 92151* ; ***Elvira Aliende Rodriguez, Ruba Noorali, Matthew Readings***, *The EU General Court reaffirms the Commission's duty to provide sufficient reasons when explaining fine calculations in cartel cases (HSBC), 24 September 2019, e-Competitions September 2019, Art. N° 91999* ; ***Adeline-Raluca Toader***, *The EU General Court annuls a €33.6 million fine imposed in relation to the Euro Interest Rate Derivatives cartel because of the Commission's insufficient reasoning on the applied calculation method (HSBC), 24 September 2019, e-Competitions September 2019, Art. N° 92860*

[***46***] Case AT.40136, *Capacitors*, Commission Decision of March 21, 2018 ; see ***European Commission***, *The EU Commission fines eight producers of capacitors for cartel (Elna / Hitachi Chemical / Holy Stone / Matsuo / NEC Tokin / Nichicon / Nippon Chemi-Con / Rubycon), 21*

March 2018, e-Competitions March 2018, Art. N° 86590 ; ***Richard Burton***, *The EU Commission fines 8 Japanese producers of capacitors involved in a cartel for the supply of aluminium and tantalum electrolytic capacitors (Elna / Hitachi / Holy Stone / Matsuo / NEC Tokin / Nichicon / Nippon Chemi-Con / Ruycom / Sanyo), 21 March 2018, e-Competitions March 2018, Art. N° 86627.*

[*47*] ***European Commission***, *The EU Commission sends a statement of objections to Italian agricultural cooperative for participation in canned vegetable cartel (Conserve Italia), 5 October 2020, e-Competitions October 2020, Art. N° 97038.*