

Antitrust: reduction of fines for cooperation

The European Commission has found that ARA breached EU antitrust rules by preventing competitors from entering the Austrian market for the management of household packaging waste between 2008 and 2012 ([press release](#)). The fine was reduced under the Commission's 2006 [Fining Guidelines](#) because ARA offered to cooperate in the proceedings.

This document explains this cooperation and how it can be applied in other antitrust cases. However, this would still need to be assessed on a case by case basis.

Different type of cooperation than in commitment and cartel settlement cases

In antitrust cases other than cartels, there is currently limited practice for rewarding cooperation by the parties in a prohibition decision (Article 7 Regulation 1/2003). While parties can cooperate by offering commitments according to Article 9 Regulation 1/2003, some cases are not suitable for such a solution. This may be because the infringement of competition rules has already finished or the Commission may wish to establish the finding of an infringement and impose a fine.

In cartel cases, parties can cooperate under the leniency and settlements procedures. In other antitrust cases leading to a prohibition decision, there is no structured framework to reward cooperation by the parties and there have therefore been few incentives for the parties to cooperate. Nevertheless, the cooperation by parties in such antitrust prohibition decisions can be rewarded within the framework of the Commission's 2006 [Fining Guidelines](#). This was what was done in the ARA case, in particular by applying point 37 of the Guidelines.

The cooperation by parties had also been rewarded in a number of cases before the entry into force of Regulation 1/2003, such as the Hilti case (1987), the Tetra-Pak case (1991) and in the Nintendo case (2001).

Determining the level of the reduction for cooperation

The level of fines reduction depends on the extent and timing of the cooperation in the specific case and the resulting benefits in terms of efficient procedure and effective enforcement. For instance, in the ARA case, the company has cooperated with the Commission by acknowledging the infringement and ensuring that the decision could benefit from administrative efficiencies, as well as by providing a structural remedy. Other factors that can be taken into account include cooperation by a company through the disclosure of evidence.

Merits of rewarding cooperation in antitrust cases

Cooperation in antitrust proceedings may be very useful to improve the effectiveness of the Commission's enforcement actions:

- cooperation during the proceedings may contribute to adopting prohibition decisions in antitrust cases more quickly
- it may help to make the gathering of evidence more targeted, effective and expedient; and
- it may allow for more and better targeted remedies in prohibition decisions.