The Commission's new notice on immunity and reduction of fines in cartel cases: building on success

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On 13 February 2002, the Commission adopted its new notice on immunity from fines and reduction of fines in cartel cases (1). The notice entered into force the following day and replaced the 1996 notice for all cartel cases in which a company had not already applied for leniency pursuant to that notice.

Secret cartels between competitors are amongst the most damaging anti-competitive practices. Repeatedly denounced by Commissioner Monti as 'cancers' affecting the economy, they are so blatantly illegal that their participants deploy considerable efforts to maintain their secrecy. They are therefore particularly difficult to detect and prosecute successfully. The Commission is nevertheless aware that certain cartel members are willing to end their participation and inform it of the existence of such agreements. Their exposure to high fines can nevertheless strongly dissuade them from doing so.

The Commission is of the view that it is in the Community interest to grant lenient treatment to companies which contribute to the detection and prosecution of cartels through their co-operation. The interest of consumers and citizens in ensuring that these infringements are detected and punished outweighs the interest in fining those companies which provide such assistance.

The forerunner of leniency policies in anti-trust matters was the United States' Department of Justice. This approach proved extremely conducive to the unearthing of secret cartels. Despite a certain initial reticence in the EU, the Commission adopted its first notice setting out a leniency policy in 1996. This provided the Commission with an additional and effective tool to discover and punish a string of highly damaging illegal practices. Today an important consensus has emerged on the legitimacy and general effectiveness of leniency policies in anti-trust matters. This has seen the recent adoption of leniency programs in several EU Member States and similar initiatives are being considered in others.

In its 1996 Leniency notice, the Commission stated that as soon as it had acquired sufficient experience in its application, it would examine whether its policy needed modifying. After almost six years since its adoption and its application in 16 cartel decisions, the Commission considered that it was in a position to examine possible modifications to improve the effectiveness and transparency of its policy. These changes have been incorporated in the new 2002 Leniency notice.

1. Application of the 1996 Leniency notice

1.1. An indisputable success

Statistical data highlight the considerable level of success that the 1996 Leniency notice has had. To date, the Commission has applied the 1996 notice in 16 formal decisions with fines, out of a total of 18 cartel decisions adopted since 1998. This last figure in itself represents a very significant increase of the Commission’s anti-cartel activity. Whilst a number of factors may explain this phenomenon, the existence of a leniency policy has doubtless been a major contributor to this success. Additional applications under the 1996 notice have been filed in cases which are still under investigation. Overall, more than 80 companies have filed leniency applications under the 1996 notice. Further formal decisions are therefore to be expected in which the 1996 notice continues to be applied. At the same time separate applications conforming to the criteria of the new 2002 Leniency notice have also been made.

The full list of the 16 formal decisions encompasses the following cases: Alloy Surcharge (January 1998), British Sugar (October 1998), Pre-insulated pipes (October 1998), Greek Ferries

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The total amount of the fines imposed in all of these 16 cases is EUR 2 240 million. As to the ‘value’ of the overall reductions of fines granted, they represent almost EUR 1 400 million. This corresponds to an average reduction per case of approximately 38%, showing that the leniency policy provides tangible benefits to those companies that choose to co-operate with the Commission. Nevertheless, these statistics should not be misinterpreted. Individual reductions granted in the 16 cases mentioned above ranged from total immunity from fines (100% reduction) to small reductions (10%): whilst a handful of companies received very favourable treatment in view of the decisive importance of the elements provided and their early co-operation, many other applicants did not qualify for total immunity since their co-operation was limited to non-contestation of the facts, to a minimum of 10%, when their co-operation was substantially contesting the facts as set out in the statement of objections, rather than actively co-operating with the Commission.

Three companies benefited from full immunity under the 1996 notice: Rhône-Poulenc (now Aventis), with regard to two of the three Vitamins cartels in which it was found to be involved; Bras-série de Luxembourg (a subsidiary of Interbrew) in the Luxembourg brewers case, and Sappi, in the Carbonless paper case. In addition, two companies benefited from a very substantial reduction of their fine, in relation to their decisive co-operation under section B of the 1996 notice. This was the case of Fujisawa in the Sodium Gluconate case (80% reduction) and Cerestar Bioproducts in the Citric Acid case (90% reduction). These two companies did not qualify for total immunity since their co-operation with the Commission was not entirely of their own initiative. Indeed, they only approached the Commission after having received specific requests for information. As for Section C of the 1996 notice (allowing for 50-75% reductions of fines), it has only been applied so far in the Graphite electrodes case, in which Showa Denko received a 70% reduction of its fine.

Under section D of the 1996 notice, companies benefited from reductions ranging from a minimum of 10%, when their co-operation was limited to non-contestation of the facts, to a maximum of 50%. The percentage reduction obtained varied according to the usefulness of the company’s co-operation to the Commission’s investigation. The timing of the co-operation played a critical role in the level of reduction granted, as well as the nature and degree of detail of the information supplied.

1.2. Review by the Court of First Instance

So far the Court of First Instance has pronounced itself in three occasions on the application of the 1996 Leniency notice, in cases Alloy Surcharge, British Sugar and Pre-insulated pipes. Other appeals involving cases where the 1996 notice was applied are pending. The Court has consistently upheld the philosophy behind the notice and its application by the Commission. The Court has nevertheless clarified a number of important points.

In each of the above cases, the Court confirmed that the granting of different reductions under the same section of the 1996 notice does not constitute a breach of the principle of equal treatment. It is indeed settled case law that a reduction of the fine is justified only if the conduct of the undertaking concerned enabled the Commission to establish the infringement more easily. It follows that the Commission is perfectly entitled to grant leniency applicants different reduction of fines, in accordance with the difference in the value of their co-operation (1).

If the Commission may legitimately take into account differences in the value of the co-operation, both in terms of the quality and timing of the evidence submitted, this however cannot depend on purely random factors, such as the order in which companies are questioned by, or answer to the Commission. In Acerinox and Krupp Thyssen, the Court found that the Commission had erred in law by granting lower reductions to the applicants on the grounds that the content of their submission disclosed nothing more than had previously been disclosed by other applicants: as the same questions had been put at the same time to the companies, the Court concluded that the extent of their co-operation had to be ‘regarded as comparable, in so far as those undertakings provided the Commission, at the same stage of the administrative procedure and in similar circumstances, with

(1) T-21/99 Dansk Rørindustri, para. 245.
similar information concerning the conduct imputed to them' (1). Any differential treatment must therefore be clearly justified.

The Court has also confirmed that the mere fact that the Commission has in previous decisions granted a certain rate of reduction for specific conduct does not imply that it is required to grant the same proportionate reduction when assessing similar conduct in a subsequent administrative procedure (2). Each case has to be assessed on its own merits.

The Court clarified a number of other points. In Tate & Lyle, the Commission had granted only a 50% reduction to the applicant under section D (and not section B) of the notice, in the light of what was alleged to be the retraction of its admission of certain facts or legal qualifications in the course of the proceedings. The Court found that a mere requalification of the facts set out under the Leniency notice may not be considered a retraction as long as the facts themselves are not contested. Also the Commission may not consider it a failure to co-operate if an undertaking contests an element of the infringement which the Commission has not been able to prove in the Decision even if, allegedly, it is a result of the retraction itself (3).

The Court also confirmed that the Commission is entitled to take into account the fact that the co-operation was not entirely spontaneous when deciding the level of any reduction. In ABB, the Court stated that ‘it was perfectly admissible for the Commission not to grant the maximum reduction envisaged by section D to the applicant, which did not declare its willingness to cooperate until after receiving a first request for information’ (4).

Also, even if there has been a certain degree of helpful co-operation, the Commission is justified in refusing to grant a reduction if the undertaking has provided it with incomplete or inexact information (5).

Finally, in HFB, the Court found that the Commission was right not to take account of the applicant’s co-operation as a mitigating factor, as, in the case of cartels, such co-operation clearly falls to be treated under the Leniency notice. The 1998 Guidelines on fines (6) clearly set out that the effective co-operation of an undertaking may be taken into account as a mitigating factor in proceedings ‘outside the scope of the [Leniency] notice’ (7).

2. Issues identified

The leniency policy proved to be particularly effective when combined with the Commission’s other investigative powers, in particular on-the-spot investigations. Nevertheless, experience of its day to day implementation has revealed a number of factors which prevented it from fully developing its potential effectiveness, both in the detection of new cartels and the collection of the evidence required for the adoption of final decisions.

2.1. Difficulty of obtaining early information on undetected cartels

It is crucial that the Commission be in a position to detect a cartel as early as possible. The mere information of its existence has an intrinsic interest, particularly since the Commission has effective investigative tools at its disposal. It should also be in the interest of potential leniency applicants to co-operate as early as possible in order to be eligible to benefit from the notice in full, i.e. a 100% reduction.

In spite of this, there was only a limited number of cases in which a cartel was denounced before the Commission had started to investigate. Over 60% of the cases in which the 1996 notice has been applied were already under investigation in either the EU or in another jurisdiction when the first application was filed.

A seemingly wide-spread concern among companies that there was an excessive level of uncertainty with regard to their final treatment under the 1996 notice resulted in a certain reluctance to come forward spontaneously. Three causal factors may be identified as contributing to this impression.

Firstly, since the final decision is taken by the college of Commissioners and the relevant services (DG Competition) cannot, therefore, make a formal prior commitment to the leniency applicant, companies considered that they did not have sufficient guarantees that the Commission

(2) T-31/99 ABB, para. 2390.
(3) T-202/98 Tate & Lyle, para. 161.
(4) ABB, para. 238; T-17/99 Ke Kelit, para.181-182.
(7) HFB, 608-610.
would at the end of the process grant the total immunity foreseen in section B of the notice.

Secondly, there was an apparent ‘double’ requirement in section B of the 1996 notice since in order to qualify an applicant had to be (i) the first to supply (ii) decisive evidence. Thus, supplying evidence which was not decisive disqualified the applicant and providing this ‘decisive evidence’ after the Commission was in possession of this type of material equally did not permit the applicant to qualify. This seems to have been perceived as placing potential applicants in an ‘untenable’ quandary. The fact that under Section B the Commission retained a certain amount of discretion to determine the applicable reduction within a band of 25% (75% to 100% reduction) reinforced this level of uncertainty and may have fuelled some scepticism on the part of industry.

Finally, a third disincentive was the fact that the 1996 notice excluded from its section B any company which had played ‘a determining role in the illegal activity’. This provision, aimed at excluding ringleaders from full immunity, may have been perceived as being too far-reaching, discouraging spontaneous and early applications by companies which had had a significant role in the cartel and feared that they would ultimately be excluded from the benefit of this section of the notice.

2.2. Limited contribution to the collection of valuable evidence

The 1996 notice did not contribute in a fully satisfactory manner to the collection of decisive evidence of an infringement. This again resulted from a combination of several factors.

Firstly, as the applications were filed rather late in the course of the proceedings, the ‘surprise effect’ was often lost. When the Commission was given the evidence, most cartel participants were already aware of the investigation and had had time to place incriminating documents out of the reach of Commission inspectors if they so wished. The risk for the Commission was therefore that the positive contribution of the leniency policy would be offset by a lessened effectiveness of its classical investigative tools.

Secondly, as potential applicants were reluctant to come forward spontaneously in view of the alleged excessive uncertainty, an application was generally filed only once the company felt it had little choice. Experience showed that many companies filed an application once they discovered that the Commission was already aware of the main details of a case (generally upon receipt of a very detailed request for information). Sometimes the applicants limited themselves to confirming what the Commission was already aware of, without bringing any significant added value to the Commission’s investigation. This defensive attitude was also reflected in the nature of the evidence provided to the Commission.

Indeed, as the prospect of a fine became increasingly likely, filing an application at a late stage of the procedure, whilst maintaining an ambiguous stance and providing the Commission with a minimum amount of ‘usable’ evidence may have become a strategy. Contrary to the situation characterising a ‘section B’ applicant, a late hour applicant had an objective interest in defending a case which was as fragile as possible, since any weakness (it was supposed) could result in a reduced scope of the infringement found, in lower fines and easier subsequent litigation. In this respect, it can be reasonably assumed that not all leniency applicants supplied the Commission with all the incriminating evidence available to them.

2.3. Other issues

Under certain circumstances there was also a tendency for companies to refuse to provide answers to direct requests for information, alleging, for example, that they contained self-incriminating questions, and at the same time providing the very same information requested under the guise of a leniency application. Once again, this illustrates the defensive approach to cooperation that was at times taken by companies.

Another tactic consisted of reluctantly acknowledging the facts, whilst sometimes going as far as contesting the finding of an infringement by the Commission. This approach contradicted and risked seriously undermining the spirit of cooperation envisaged by the 1996 notice. Indeed, the idea behind the notice was that it should reward companies explicitly acknowledging the commission of an infringement under Article 81 EC. By definition, applying for leniency implies recognition that an infringement has been committed.

3. Rationale of the revision

The revisions to the Commission’s notice are intended to tackle the above issues. Three main areas were identified. Firstly, it was thought necessary to grant a very significant reward to the first company enabling the Commission to take a decisive step in the prosecution of a cartel. As for the subsequent applicants, the objective was strictly to
align the level of their reduction of fines to the real added value given to the Commission’s investigation. Thirdly, the Commission sought to introduce more legal certainty in the system, and to render it more transparent.

3.1. Immunity: a major incentive for those companies enabling the Commission to take a decisive step in the prosecution of a cartel

In order to maximise the incentive to co-operate at a very early stage, the Commission decided to provide conditional immunity in writing to the first company to come forward. Immunity can however only be justified if the evidence supplied enables the Commission to take a decisive step towards the successful prosecution of the cartel.

Information of the existence of a cartel the Commission is unaware of has an interest per se. Indeed the Commission has significant investigation tools at its disposal to follow suit. The Commission therefore concluded that being the first to give such information can justify the grant of full immunity. In view of the interest in swiftly obtaining the information and having regard to the importance of not deterring companies from coming forward, it was decided that the companies would only be required to supply the Commission with evidence enabling it to start an investigation by adopting a decision ordering a surprise inspection. The minimum threshold to qualify for immunity when the cartel is still undetected is thus significantly lowered.

There can however be situations where the Commission, for various reasons, has already started an investigation but has not yet gathered sufficient evidence to find an infringement of Article 81 EC. In such circumstances, the willingness of a company to communicate such information is of considerable interest to the Commission, in spite of its prior awareness of the cartel. It was therefore also concluded that the first company to provide evidence enabling the Commission to find an infringement of Article 81 EC could also legitimately qualify for a full immunity from fines.

The Commission is nevertheless confident that, on the basis of its existing powers of investigation, it will normally be able successfully to investigate cartels once it has obtained a minimum threshold of information. The Commission is also aware that granting immunity is a very important derogation from the Commission’s role of imposing fines in the case of the most serious violations of competition law. It has therefore been concluded that only one company may be granted immunity from fines in any given cartel case.

3.2. A strict alignment of the reductions to the real value of the co-operation

Once the Commission has granted immunity to an applicant, or obtained sufficient evidence to find an infringement under Article 81 EC by itself, there may still be justification for reducing the fines imposed on subsequent leniency applicants willing to cooperate with the investigation. Such co-operation will indeed strengthen the Commission’s case and speed up the proceedings.

It was nevertheless thought that the reductions granted should be strictly aligned to the real added value of the evidence given to the investigation. Therefore, in order to qualify for a reduction, leniency applicants should bring to the Commission evidence representing significant added value when compared with the evidence already in the Commission’s possession at the time of the submission. Furthermore, the relative added value of any evidence submitted has an ineluctable tendency to diminish as time goes by. It was therefore decided that the band within which the reduction of fines would be determined would depend on whether the applicant was the first, second, third or later undertaking to meet the criterion of ‘significant added value’.

The Commission was also concerned that potential leniency applicants might be discouraged from coming forward out of fear that some of the information they disclosed might have adverse consequences for the level of the fine to which they are exposed. For example, a leniency applicant could be deterred from supplying evidence of a cartel of longer duration or wider geographical scope than the Commission was aware of, in view of the mechanical increase of the ‘pre-leniency’ fine this would trigger. In order to tackle this issue, the Commission has adopted the principle that where an applicant provides evidence previously unknown to it, which has a direct bearing on the gravity or duration of the suspected cartel, the Commission will not take those elements into account when setting the level of the fine to be imposed on that applicant.

3.3. More certainty and transparency

Another important concern was to increase the legal certainty and transparency of the Commission’s leniency policy. Consequently, the Commission decided to grant, at a very early stage and in writing, conditional immunity from fines to
the successful applicant. The immunity will be confirmed in the decision, on condition that a number of basic additional criteria are fulfilled. The Commission also decided to adopt a more restrictive definition of the criterion leading to the exclusion of an applicant from any immunity.

Another way to increase legal certainty was to provide immunity applicants with the possibility of negotiating with the Commission in hypothetical terms if they so wished. This enables companies to check, on an anonymous basis, whether they qualify, so that their position is not at risk of being irredeemably impaired. Also the procedure is more transparent, as the Commission will inform the company about its situation at each major step of the immunity application.

Not surprisingly, the Commission did not grant leniency applicants as much certainty as immunity applicants: in order to qualify for a reduction, they must provide the Commission with evidence representing significant added value to the investigation. Nevertheless, leniency applicants also benefit from increased transparency: no later than on the date on which the statement of objections is sent, they will be informed of the band within which the Commission will determine the applicable reduction.

4. The new 2002 Leniency notice

The 2002 Leniency notice is organised in two distinct sections. Section A deals with immunity from fines and section B with reductions of fines (leniency). Both sections explain in detail the applicable substantial test and the corresponding procedure.

4.1. Immunity applications

4.1.1. Substantive tests

Two alternative test have to be satisfied in order to qualify for conditional immunity from fines. Both are set out in point 8 of the notice and are already known as ‘8(a)’ or ‘8(b)’ tests.

— ‘8(a)’ test

Pursuant to point 8(a) of the notice, an applicant may qualify for immunity if it is the first to ‘submit evidence which in the Commission’s view may enable it to carry out an investigation in the sense of Article 14(3) of Regulation 17’. The applicant must therefore provide the Commission with sufficiently concrete and reliable information to enable it to launch an on-the-spot investigation.

— ‘8(b)’ test

Alternatively, pursuant to point 8(b), an applicant may qualify for immunity if it is the first to ‘submit evidence which in the Commission’s view may enable it to find an infringement of Article 81 EC’. In this case, the fact that the Commission has already conducted investigations, or is in a position to do so without there being an “8(a)” type applicant, does not disqualify the applicant. The counterpart is nevertheless that the applicant supplies information enabling the Commission to find an infringement under Article 81 EC. This requirement is much more demanding: applicants are expected to give very concrete and direct evidence of the infringement in question.

There can only be one successful immunity applicant per cartel: if the Commission has already granted conditional immunity from fines under 8(a), no further applicant is eligible for immunity under 8(b), should the Commission still not be in the possession of evidence enabling it to find an infringement under Article 81 EC. However, should a company be willing to come forward and supply such evidence, it could naturally do so under the leniency procedure (section B) and receive a very significant reduction of its fine (see below). It also goes without saying that an immunity applicant in possession of evidence enabling the Commission to find an infringement under Article 81 EC should supply the entirety of this evidence, even in the case were the Commission was still totally unaware of the cartel in question.

Indeed, immunity applicants are under a general obligation to co-operate fully, on a continuous basis and expeditiously with the Commission throughout the Commission’s administrative procedure. Applicants must therefore disclose all evidence already in their possession or which subsequently comes into their possession (point 11(a)). The Commission would also expect to have full and immediate co-operation from those employees of the applicant who were involved in the facts in question. Immunity applicants must also end their involvement in the cartel no later than at the time they apply for immunity (point 11(b)). Finally, they may only qualify on the condition that they did not take steps to coerce other undertakings to participate in the infringement.

4.1.2. Procedure

A company wishing to apply for immunity must immediately contact DG Competition, primarily through the following dedicated and secure fax number: +322 299 45 85. If immunity is no longer available for the infringement in question, the applicant will immediately be informed. Should
that be the case, the applicant may still request the Commission to consider its application under section B of the notice.

The company may choose to provide the Commission with all the evidence of the infringement available to it. Alternatively the applicant may prefer first to present the evidence in hypothetical terms. This new procedure will allow the company to form an idea of whether or not it will satisfy conditions 8(a) or 8(b), before disclosing its identity, together with the facts and evidence in question, to the Commission.

If the applicant chooses the hypothetical scenario, it must present to the Commission a descriptive list of the evidence it proposes to disclose at a later agreed date. This list should describe in a very detailed manner the nature of the content of the evidence in question (type of document, date, information contained, origin etc.). As far as feasible, expurgated copies of the relevant documents should be annexed. In order to be given a reliable answer by the Commission as to whether it will qualify, the company must enable the Commission to form a very clear idea of whether it will pass the test of 8(a) or 8(b), as appropriate. In this regard, the descriptive list alone should suffice to establish whether the applicable test is passed, the subsequent comparison with the actual evidence (when disclosed) being merely done by way of verification.

Immediately after the applicant has handed over the evidence or the descriptive list, as the case may be, the Commission will provide the applicant with an acknowledgement of receipt of the application, confirming its date and the content of the submission (evidence or descriptive list).

The Commission will then verify that the evidence disclosed meets the applicable criteria (as set out in points 8(a) or 8(b) of the notice), or that the evidence which the company proposes to disclose (as described in the list given to the Commission) will meet the applicable criteria. In such cases, it will inform the applicant, which, where it has not already done so, will then have to disclose the information.

The Commission will then grant the applicant conditional immunity from fines in writing, unless the applicant does not meet the criteria set out in 8(a) or 8(b). In such a case the applicant may withdraw the evidence disclosed, or request the Commission to consider this evidence under section B of the notice.

The Commission will not consider any application for immunity in relation to the same suspected infringement.

At the end of the administrative procedure, if the applicant has met all applicable conditions, the Commission will grant it immunity from fines in the relevant decision.

### 4.2. Leniency applications

#### 4.2.1. Substantive test

Companies which do not qualify for immunity may nevertheless qualify for a reduction of the fine. To this end, they must provide the Commission, as set out in point 21 of the Leniency notice, with evidence representing ‘significant added value’ with respect to the evidence already in the Commission’s possession in relation to the same case. The applicant must also terminate its involvement in the suspected infringement.

The evidence will represent added value if it strengthens, by its very nature and/or its level of detail, the Commission’s ability to prove the facts in question. In its assessment of this, the Commission will generally attribute greater value to written and contemporaneous evidence (e.g. handwritten notes of cartel meetings) than to evidence subsequently created (e.g. statements of facts, testimonies). Similarly, greater value will be attached to direct evidence (e.g. list of common ‘target’ prices) than to indirect ones (e.g. records of travel expenses pertaining to cartel meetings).

The notion of ‘significant’ (added value) has not been defined in the Leniency notice. This would indeed have been futile, as such significance can only be determined in the context of each particular case.

#### 4.2.2. Available levels of reduction

In its final decision, the Commission will determine if the evidence provided by a leniency applicant represented significant added value with respect to the evidence in the Commission’s possession at the time.

For each company found to have provided evidence representing significant added value, the Commission will grant a reduction of the fine within a given band. The first company will receive a reduction of the fine of between 30 and 50% and the second a reduction of between 20 and 30%. Subsequent undertakings who have passed the significant added value (‘SAV’) test will receive a reduction up to 20%.

In order to determine the level of reduction within each band, the Commission will take into account
the time at which the submission of the evidence satisfying the SAV test was made (in relation to the stage of the Commission’s proceedings) and the extent to which it provided added value. The extent and continuity of the co-operation provided will also be taken into account.

Finally, it should be recalled that if a leniency applicant provides evidence relating to facts previously unknown to the Commission and having a direct bearing on the gravity or duration of the suspected cartel, these facts will not be taken into account when setting any fine to be imposed on the leniency applicant.

4.2.3. Procedure

A company wishing to file a leniency application must provide the relevant evidence to the Commission, which will immediately deliver an acknowledgement of receipt recording the date and content of the submission. The Commission will not consider any submission of evidence by a leniency applicant before it has taken a position in respect of any existing application for immunity in the same case.

The Commission will inform leniency applicants of whether the evidence submitted at the time of their application passed the SAV test, as well as the band within which any reduction will be determined, no later than the date on which the statement of objections is notified. The final reduction of fine will be determined in the final decision.

4.2.4. Treatment of the information obtained under the Leniency notice.

Information and documents communicated to the Commission under the Leniency notice are treated with utmost confidentiality. Any subsequent disclosure, as may be required by the proceedings, will be made in accordance with the rules governing access to file.

The Commission considers that normally disclosure (out of the scope of access to file), at any time, of documents received under the Leniency notice would undermine the purpose of inspections and investigations within the meaning of Article 4(2) of Regulation No 1049/2001. Such documents will therefore be subject to the applicable restrictions.

Any written statement made vis-à-vis the Commission in relation to the Leniency notice forms part of the Commission’s file and may not, as such, be disclosed or used for any other purpose than the enforcement of Article 81 EC.