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Interest rate derivatives cartel: Commission imposes the highest fines (thus far)

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On 4 December 2013 the European Commission adopted decisions against the cartels in Euro interest rate derivatives (EIRD) and Yen interest rates derivatives (YIRD), imposing fines to eight banks and financial institutions totalling € 1.71 billion. Taken together, these fines are the highest imposed by the Commission in cartel cases to the present day[1].

The *EIRD* and *YIRD* cartels

In the EIRD cartel, which lasted between 2005 and 2008, traders of different banks discussed their bank's submissions for the calculation of the EURIBOR as well as their trading and pricing strategies, with the aim of distorting the normal course of setting the pricing components for these derivatives.

The YIRD cartel included seven distinct bilateral infringements, lasting between 1 and 10 months in the period from 2007 to 2010. According to the Commission, the collusive behaviour consisted of discussions between traders of the participating banks on certain Yen (JPY) LIBOR submissions. The traders involved are also reported to have exchanged on several occasions commercially sensitive information relating to trading positions or to future JPY LIBOR submissions. The Commission also found that the brokerage company RP Martin facilitated one of the infringements by using its contacts with several banks that did not take part in the infraction, with the aim of influencing their JPY LIBOR submissions.

Leniency and Settlements

The two cases where initiated further to leniency submissions from Barclays (in the EIRD case) and from UBS (in the YRD case). For revealing to the Commission the existence of an undisclosed cartel, the two banks received full immunity, thereby avoiding fines of approximately € 690 million and € 2.5 billion, respectively.

> These decisions illustrate the intense and added scrutiny to which the financial sector, and banking in particular, have been subject by competition authorities, in the EU and elsewhere.

The remaining financial institutions involved also received reductions in fines ranging from 5% to 50%. Under EU leniency rules, infringing companies can also benefit from fine reductions after a cartel is known to the Commission if they voluntarily submit "significant value added" evidence. This was the case of Deutsche Bank, Citigroup, RBS, Société Générale, and JP Morgan (in the *YIRD* case), as well as of the broker RP Martin.

These companies also benefitted from a further reduction of 10% in fines under the settlement procedure. Settlements allow the Commission to offer a 10% discount to defending companies that acknowledge their participation in the infringement and their liability for it, thereby renouncing their right of appeal against the decision before the EU courts. The use of the settlement procedure enabled the Commission to conclude the investigations concerning these companies in approximately two years after the first dawn raids were conducted, a relatively short period for cartel cases.

The investigation proceedings still continue under the "standard" cartel procedure against four other alleged infringers (Crédit Agricole, HSBC, JP Morgan as to one of the cases, and broker ICAP), which opted for not acknowledging their liability and not submitting settlement proposals. If sanctioned, these companies may challenge the Commission's decision before the EU General Court.

Comment

These decisions, the first adopted by the Commission concerning anticompetitive practices in the financial sector since the start of the financial crisis in 2008, illustrate the intense and added scrutiny to which the financial sector, and banking in particular, have been subject by competition authorities, in the EU and elsewhere.

An example of such added scrutiny is the Commission's on-going review under EU State aid rules of Member State measures granting financial support to banks, including the recapitalisation measures taken by Portugal concerning CGD, BCP and BPI[2], whose restructuring plans have been approved by the Commission in the course of this year, and BANIF (investigation still pending)[3].

The decisions on the EIRD and YIRD cartels also reflect a growing trend of companies under investigation to settle the case with the Commission, under the settlement procedure created in 2008, which allows companies to quickly "turn the page" on the case and to benefit from an additional 10% reduction in the fine. (To the Commission this mechanism means a simplified procedure and the absence of prolonged and costly judicial appeals). The settlement procedure is also available in Portuguese law, and the first cartel settlement case (*Foam Cartel*), decided in August 2013, is analysed on page 7 of this Newsletter. ■

[1] See IP/13/1208 and MEMO/13/1090, of 4.12.2013.
[2] Decisions of 24.7.2013 in cases SA.35062 CGD and SA.35238 BPI, and of 30.8.2013 in case SA.34724 BCP.
[3] Decisions of 21.1.2013 in case SA 34662 BANIF, IP/13/31.

New legislation on individual trade practices in force as of 25 February

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2014 brings a new legal regime for so-called "individual restrictive trade practices". Decree-Law n.º 166/2013 of 27 December will enter in force on the 25th of February and introduces a set of important modifications to the current regime, both at substantive level and sanctioning level.

The current regime – Decree-Law n.º 370/93 – has been in force for 20 years and there was consensus around the need to rethink it. The optimal way ahead was, however, subject to debate considering, on the one hand, that the vast majority of the prohibitions established in the decree-law had seldom been enforced (except for below-cost selling); on the other hand, that a reinforced prohibition of below-cost selling (envisaged by some stakeholders) would be likely to have a negative impact on the general level of prices at retail level (as shown by the recent experiences of other jurisdictions) and, lastly, the fact that the legislation concerned aims at protecting values such as the loyalty and transparency of commercial relationships, which - in a market economy where principles of free (undistorted) competition prevail - would advise that the legislative intervention be carefully drawn and directed at those sectors or the economy/type of players in need of it (rather than applying generally across all sectors/players).

The final outcome was a legislation that maintains to a large extent the *statu quo ante* (without prejudice for relevant modifications on the regime for below-cost selling and for abusive business practices, the latter now comprising a set of rules specifically applicable to the agro-food sector) and a significant increase in the level of sanctions applicable.

Main modifications at substantive level

Formally, the group of misdemeanours covered by the law remains unaltered: discriminatory prices and selling conditions; transparency in pricing and sales conditions; prohibition of below-cost selling, refusal to sell goods or to render services; abusive business practices. However, **in substantive terms significant modifications are introduced in their specific scope and reach, in particular in respect of below-cost selling and abusive business practices**[1].

Regarding below-cost selling, the intent of the legislator was to clarify the regime and to facilitate the interpretation of the law and its control/supervision. To that effect, some of its main concepts where redefined, in particular in what concerns the notion of effective purchase price; also, it is now expressly stated that discounts given in a certain product are taken into account in the calculation of its sale price. **The wording of the law is however still open to dubious interpretations and to uncertainties in its practical implementation.**

An example of this can be seen in the solution found for discounts *"that consist in the granting of a right of compensation in a subsequent purchase of equivalent goods or of goods of a different nature"*, in other words, deferred discounts such as "card-deferred discounts" or "voucher-deferred discounts", both of which are a common practice in retail trade. Some of these discounts have now become relevant for the assessment of below-cost selling, i.e, they will be considered in the calculation of the product's sale price. However, the wording used in this regard is ambiguous and open to different interpretations as to the exact scope of the discounts covered and the calculations to be undertaken as the decree-law merely states, to this effect, the following:" *(…) discounts (…) granted in each product, shall be attributed to the quantities sold for that same product and supplier in the last 30 days"*.

Another novelty with particular relevance for below-cost selling (though applicable equally across all Decree-Law 166/2013) concerns the **specific rules regarding acceptance, reclamation and correction of invoices, which establish very short deadlines for those operations**: reclamation must occur within 25 days from invoice receipt (failing which it is considered as accepted); correction of contested invoices must be undertaken by the supplier within 20 days from reclamation. **Also, modifications included in corrected invoices issued after the referred deadlines are no longer relevant for the assessment of a below-cost selling practice**.

Lastly, it is no longer possible for one undertaking to – legally – engage in below-cost selling in response to a price charged by another undertaking in the same area of activity and which is in a situation of effective (direct) competition with the first undertaking (the respective legal exception having been eliminated).

The most significant modifications – in substantive terms – occur in respect of "Abusive business practices", where a significant broadening of the practices covered is undertaken. The (newly) prohibited practices concern either (i) the business relationship between two undertakings (regardless of their position as supplier or as buyer, their dimension and their area of activity) or (ii) the behavior of a purchaser in its relationship with certain agro-food suppliers (micro and small enterprises, producer's organisations and cooperatives). The provisions added give rise to some perplexity insofar as they prohibit certain business practices – such as those with result in a retroactive modification of a supply agreement or in the obtaining of compensation

> The group of misdemeanours covered by the law remains unaltered. However, significant modifications are introduced in their specific scope and reach, in particular in respect of below-cost selling and abusive business practices.

[1] Other modifications, which are less-structural though of potential relevance: in the prohibition of discriminatory prices and sales conditions, an exception for practices that comply with competition law; in the provision referring to disclosure of sales conditions, an exception for information covered by business secret; in the prohibition of refusal to sell goods or to provide services, an extension if the exemptions (causes for justification).

Submitting the refusal or return of goods to the requirement of demonstration of responsibility by the supplier is a doubtful solution, considering its contradiction with basic principles of civil law in terms of fulfilment of obligations and contractual liability.

for ongoing or finalised promotions as well as, in the agro-food sector, the purchaser's refusal or the return of goods on the grounds of lower quality or delay in delivery without demonstration of the supplier's responsibility – in absolute terms, i.e., regardless of whether or not the result corresponds to the interest of the parties or of whether or not it was expressly or tacitly agreed between them. This is an unsatisfactory result, both for its marked intrusion in the content of private economic relationships and for the interference in the parties' freedom of contract. Also, in legal terms, submitting the refusal or return of goods to the requirement of demonstration of responsibility by the supplier is a doubtful solution, considering its contradiction with basic principles of civil law in terms of fulfilment of obligations and contractual liability.

The scope of "abusive practices" was further broadened with the inclusion of a new set of negotiation practices that are now prohibited to the extent that they constitute no "imposition" (eg: imposing that an undertaking shall not (re) sell to another undertaking at a lower price; unilaterally imposing a promotion or payments as compensation for a promotion as well as, in the agro-food sector, the *imposition* of direct or indirect payment (discounts) for practices such as (i) non-achievement of sales expectations; (ii) introduction or re-introduction of products; (iii) compensation for costs with a complaint by the customer or to cover any waste of the supplier's products, except if the purchaser demonstrates that it was due to negligence, flaw or contractual breach by the supplier. **However, the option to anchor the illegality of a behaviour (with the associated severe consequences) in an unknown undetermined concept – that of "imposition" – for which the decree-law offers no definition generates a non-negligible degree of uncertainty for the undertakings affected. This is exacerbated by the inherently dynamic (and fierce) nature of commercial negotiations and by the opportunities for abusive use of the notion of imposition (by those who may benefit from it)**.

Sanctions

The decree-law **significantly increases the level of fines applicable**. For fines imposed upon a legal person differentiated thresholds are created depending on whether the breach was committed by a micro, small, medium or large undertaking (according to the thresholds established in Recommendation n.º 2003/361/EC of the European Commission). Thus, large undertakings will now be subject to fines ranging from €5.000 to €2.500.000 for the most severe misdemeanours (which include, amongst other, below-cost selling and abusive restrictive practices) and from € 2.500 e €500.000 for less serious misdemeanours.

Surveillance, investigation and decisional powers exclusively committed to ASAE

The Portuguese Authority for Economic and Food Safety ("ASAE"), up until now charged only with control/inspective powers will cumulate the latter with prosecution and decisional powers of misdemeanours in the area of individual restrictive trade practices. The ASAE is further empowered to (i) impose interim measures (suspension of the execution of a practice deemed restrictive) and to (ii) determine the imposition of a periodic penalty payment (€2.000-€50.000/day, up to a maximum of 30 days and €1.500.000) for each day of breach of the interim measure imposed.

Scope of application

Last but not least, a new provision dealing expressly with the issue of scope of application of the decree-law proposes a new (more complex) solution according to which **the new regime shall apply to "undertakings established in the national territory" (without specifying however what is the specific scope of the notion "undertaking" or "establishment")**; conversely, it does not apply to (i) services of general economic interest, (ii) the purchase/sale of goods and the provision of services subject to sector-specific regulation; and (iii) the purchase/sale of goods and the provision of services with non-EEA origin or destination.

Final comment

The entering in force of the new regime shall impose upon the affected undertakings a significant effort of analysis and evaluation of their commercial practices in order to assure their compatibility with the new rules. Such analysis is particularly challenging in this case, as the new decree-law fails to fulfill some of its purposes in particular, that of enhanced clarity in the legal text and easier interpretation and implementation. Indeed, the new regime is, in some points, unnecessarily complex and, in others, excessively ambiguous, and, against this background, an increase in the litigation around its interpretation and implementation can be anticipated. ■

The proposed Interchange Fee Regulation for card-based payment transactions

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The European Commission in the second semester of 2013 adopted a legislative proposal package on the European Union Payments Framework, which comprises a revised Payments Services Directive[1] and a Regulation on Interchange Fees (***IF Regulation***)[2]. The pending proposed package introduces several changes on payment services in the European Union and, in accordance with the European Commission, *seeks to improve competition by opening up payment markets to new entrants, thus fostering greater efficiency and cost-reduction*[3].

One of the measures, comprised in the proposed IF Regulation, is the imposition of caps for interchange fees for the most frequently used debit and credit cards (except for the "three-party" card schemes such as American Express and commercial cards), as follows: 0.2% per transaction for debit cards and 0.3% per transaction for credit cards. These price caps are identical to those previously proposed by MasterCard[4] and Visa Europe[5] to cap their EU cross-board payment transactions in previous antitrust proceedings related with interchange fees and, in accordance with the European Commission, *are based on an estimate of the fee at which a merchant would be indifferent between being paid by card or in cash*[6].

The interchange fees caps foreseen in the proposed IF Regulation shall apply to debit and credit card transactions in a two-phase period. In the first phase, two months after the entry into force of the proposed Regulation, the caps will apply to cross-border payment transactions, *idus est* a payment transaction *initiated by a payer or by a payee where the payer's payment service provider and the payee's payment service provider are established in different Member-States or where the payment card is issued by an issuing payment service provider established in a different Member-State than that of the point of sale*[7].

In a second phase, two years after the entry into force of the proposed IF Regulation, the caps shall also be applicable to domestic payment transactions within each EU Member State[8].

According to the European Commission, the reasoning behind this legislative proposal is the need to attend the fragmentation of the EU market in connection with the interchange fees, having regard that there are apparently considerable differences in the fees applied in Member States and to create a level playing field in order to facilitate market entry of new players[9]. In addition, the EU institution considers that regulating interchange fees will benefit consumers and retailers, in particular in Member States where such fees are higher than the proposed caps.

The proposed IF Regulation also introduces some restrictions on the so-called *Honour All Card Rules*. Article 10 of the proposal states that merchants are not obliged by the payment schemes and payment service providers to accept cards or other payment instruments if such cards or payment instruments are not subject to the same regulated interchange fee. It should also be noted that merchants will not be allowed to surcharge consumers for using their card or other payment instruments, having regard that the reduction of the value of the fees will no longer justify such action by merchants for the interchange fee regulated cards, which, in accordance with the European Commission, represent *circa* 95% of all card payments in the EU[10].

Another relevant measure comprised in the proposed IF Regulation is related with the choice of the payment instrument and card brands when performing a payment transaction. Pursuant to Article 8(5) of the proposal, where a payment device offers the choice between different brands of payment instruments, it is up to the payer at the point of sale to choose the brand applied to the payment transaction at issue. As a consequence, the proposed Article 8(6) provides that payment card schemes, issuers, acquirers and payment card handling infrastructure providers shall be prohibited from programming the order of priority of payment applications in payment instrument or at equipment applied at the point of sale which may limit the choice of application by the payer when using a co-branded payment instrument. In accordance with the European Commission[11], this measure aims to prevent the apparent automatic selection of the most expensive brand for the payment.

The rules on the sanctions applicable to infringements of the provisions of the proposed IF Regulation shall be laid down and enforced by the Member States. In addition, Member States shall designate competent authorities to ensure enforcement of this regulation and shall establish adequate and effective out-of-court complaint procedures for the settlement of disputes arising under the proposed Regulation.

The European Commission expects that an inter institutional legislative agreement is reached on the proposal of the IF Regulation in the spring of 2014 by the European Parliament and the Council. ■

The proposed IF Regulation, if approved, imposes caps of 0.2% and 0.3% for interchange fees per transaction for consumer debit and credit cards, respectively. In accordance with the European Commission, the measures provided in the proposed regulation aim at attending the apparent fragmentation of the EU market in connection with interchange fees, having regard that there are allegedly considerable differences in the fees charged in Member States.

[1] COM(2013) 547 final - 2013/0264 (COD).
[2] COM(2013) 550 final - 2013/0265 (COD).
[3] *See* http://ec.europa.eu/internal_market/payments/framework/index_en.htm.
[4] *See* European Commission MEMO/09/143.
[5] *See* the commitments offered by Visa Europe in antitrust case COMP/39.398 - VISA EUROPE, accessed at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_9023_5.pdf.
[6] *See* European Commission MEMO/13/719, accessed at http://europa.eu/rapid/press-release_MEMO-13-719_en.htm.
[7] Articles 2(8) and 3 of the proposed IF Regulation.
[8] Article 4 of the proposed IF Regulation.
[9] *See* European Commission factsheet "The interchange fees regulation", accessed at http://ec.europa.eu/competition/publications/factsheet_interchange_fees_en.pdf.
[10] *See* European Commission MEMO/13/719, accessed at http://europa.eu/rapid/press-release_MEMO-13-719_en.htm.
[11] *See* European Commission factsheet "The interchange fees regulation", accessed at http://ec.europa.eu/competition/publications/factsheet_interchange_fees_en.pdf.

New European Commission rules for merger review

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On 1 January 2014, the merger simplification package adopted by the European Commission entered into force. The main objective of this reform is to achieve a greater level of efficiency in merger review and to reduce the administrative burdens for the businesses involved.

The most relevant measures introduced by the package include widening the scope of those transactions which may benefit from the simplified procedure and updating the notification forms, as well as changes in the extent of information required from undertakings. The Commission has also revised its guidelines on commitments offered by the parties.

Broader simplified procedure

One of the changes which is expected to have a greater impact is the broadening of the scope of the simplified procedure through an increase in the thresholds for simplified notification and the introduction of a new criterion, thus extending the simplified notification to a larger number of cases without potential anticompetitive effects.

Therefore, the following transactions may now benefit from this procedure:

- Horizontal concentrations, i.e. between competitors in the same product and geographic markets, if the combined market share of the parties is less than 20% (previously 15%);
- Vertical concentrations, i.e. between undertakings with activities in markets upstream of downstream to those of the other(s) part(ies), if the combined market share of the parties is less than 30% (previously 25%);
- Concentrations resulting in a combined market share between 20% and 50%, provided that there is a small increase (HHI index delta below 150) in the parties' market shares.

The Commission estimates that the expanded scope will lead to 60%-70% of notifications being eligible for review under the simplified procedure, which represents an increase of 10% in relation to the current situation.

A new "super-simplified" procedure was also introduced for cases of joint ventures that are active only outside the EEA territory. The concentrations which fall into this category will benefit from an abbreviated version of the Short Form CO, which should only include a description of the activities of the parties involved in the transaction and an explanation that the joint venture will only be active outside the EEA, with no information requirements on markets.

Reduced information requirements?

The new notification (and referral) forms have changed the range of information required from notifying parties, which had long been criticised by companies involved in merger transactions for its extensive and burdensome nature.

Even though the Commission has announced a lighter information burden on undertakings, the intended decrease may not be fully achieved.

In fact, the Commission:

A) **Increased the market share thresholds** (from 15% to 20%, for horizontal overlaps, and from 25% to 30%, for vertical overlaps) which determine the need to provide detailed information on all the relevant product and geographic markets but, at the same time, extended this obligation and thresholds to "*alternative plausible product and geographic market definitions*", which can result in an unnecessary burden for businesses to the extent information requirements cover market sub-segmentations with little relation to the economic reality.

B) **Eliminated some formal requirements and created the "super simplified" procedure** but, at the same time imposed the submission of a larger number of internal documents of the parties related to the transaction itself, to alternative transactions or to any of the affected market.

C) **Allowed individual waiver requests** for certain information categories, which are to be assessed by the Commission within the pre-notification phase, in a maximum of 5 days.

D) **Streamlined the pre-notification phase** by giving the possibility of direct notification, without any pre-notification contacts between the parties and the Commission, for concentrations which do not give raise to horizontal or vertical overlaps between the parties' activities within the territory of the EEA, thus speeding the merger review process for unproblematic cases.

Finally, the Commission also revised its guidelines relating to commitments offered by the parties, in line with the effort of simplification and according to its 2008 Notice on commitments. Therefore, model texts for the offering of divestiture commitments as well as for the appointment of monitoring trustees were introduced in order to speed up these procedures for the parties.

Comments

This simplification package is presented as the Commission's response to frequent criticism relating to the growing complexity of its decision processes and the excessive "bureaucratic" burdens imposed on businesses.

If these changes produce their intended effect, a considerable part of costs incurred by undertakings involved in concentration processes may be reduced and the Commission itself may guarantee a better allocation of its resources, thus promoting a faster, simpler and more efficient merger review process.

However, the success of these measures is largely dependent on their application and the practice of the Commission from now on. ■

First settlement served by the Authority[1]

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Introduction

In July 2013, the Competition Authority rendered its first decision under the settlement procedure available to antitrust infringements, which had been endorsed in mid-2012. Broadly considered, settlement procedures for antitrust breaches in Portugal follow closely the outline of the similar plea bargaining arrangements existing at EU level.

However, unlike the European Commission — that clearly sets at a specified percentage (in this case, 10%) the potential reduction of fine applicable to parties that are rewarded for settlement — the authority does not quantify beforehand the virtual benefit one should expect when engaging into settlement discussions.

A *priori*, this could work as a deterrent for both companies and individuals to even consider entering into such discussions with the authority. This recent case though suggests that there might be an interesting scope for settlement arrangements at national level, especially if the parties are willing to acknowledge their involvement in an infringement and are unlikely to benefit from full immunity from fines under the leniency programme.

The case at stake

This was the first situation in which the authority used the settlement proceedings in an antitrust investigation, which are available in Portugal since 2012.

The investigation of this case was initiated prior to the enactment of the current Portuguese competition act, which entered into force on July 2012. The proceedings concern an alleged cartel between the three main players in the national market for polyurethane foam, used as a raw material in several sectors of the so-called comfort industry, such as furniture, household textiles, automotive, footwear or childcare.

It follows from the information available that the three competitors (FLEX 2000, FLEXIPOL and EUROSPUMA), which account to approximately 90% of the relevant market concerned, implemented between 2000 and 2010 a price fixing agreement and a scheme for the continuing exchange of sensitive commercial information.

The proceedings were triggered by a leniency application, submitted by FLEX 2000, which received full immunity. The remaining two alleged cartelists were fined a total of € 993,000: FLEXIPOL received a fine of € 498,000, resulting from a 50% reduction for leniency and a 38% additional reduction for settlement; EUROSPUMA got a € 495,000 fine that includes a 39,5 reduction as a result of the settlement arrangement. Five members and former members of the board of the undertakings concerned were also fined, in a total of € 7,000 (these individuals were also entitled to immunity and reductions from fines, in the same terms as their respective companies).

Assessment

Neither the competition act nor the 2013 guidelines set out by the authority in respect to antitrust proceedings clarify the amount of reduction expected to be received in settled cases, and this aspect has been highly criticised by practitioners. Ultimately, this means that resort to settlement proceedings in Portugal requires a complex trade-off between opposing interests.

On the one hand, these types of arrangements allow for a swift decision and (an uncertain) reduction of the fine, which can be cumulated with further reductions under the leniency

This case suggests that there might be an interesting scope for settlement arrangements, especially if the parties are willing to acknowledge their involvement in an infringement and are unlikely to benefit from immunity under the leniency programme.

[1] Based on an article first published in the International Law Office Competition Newsletter on 28.11.2013.

Confronting positive and negative factors, it might be difficult to envisage clear advantages weighing in favour of settlement arrangements, since a party does not know at the outset what potential savings it may get from it.

programme. Authors of settlement proposals are also protected to a certain extent against private enforcement follow-on actions given that, as a rule, third parties are not allowed to access settlement submissions contained in the file and other undertakings concerned in the case are only allowed to see those documents for the purposes of preparing their defence, but no copy of these can be made without authorisation by the settlement author.

On the other hand, the facts to which a party in a settlement procedure has confessed cannot be challenged in court.

At first glance and confronting the aforementioned positive and negative factors, it might be difficult to envisage clear advantages weighing in favour of settlement arrangements, since a party does not know at the outset what potential savings it may get from it. Surprisingly, the Authority did not publicly disclose the reductions of fine granted under the settlement procedure in the foams cartel case, even though those were generous figures (c. 40%) when compared to the Commission's practice (set out at 10%).

Furthermore, even the assistance provided to the authority outside the scope of settlement is considered a general mitigating circumstance when setting the amount of the fine, without implying conversely a need for the party concerned to waive the privilege of judicial appeal.

Nevertheless, the recent decision issued by the authority in the foam cartel indicates that companies and individuals may still have a deal of interest in agreeing to a settlement — with the pros and cons mentioned before —, particularly in those situations where they are prepared to confess their wrongdoings and are unlikely to benefit from full immunity under the leniency programme (for instance, because they are not first-in whistle blowers). ■