Leniency: Introduction, terminology and history

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Leniency: Introduction, terminology and history

• What is a leniency programme?
  – Cartels are often difficult to detect: they are usually operated in secret
  – Leniency programmes are an important tool for competition authorities trying to detect cartels
  – Leniency programmes increase the deterrence of cartels by destabilising them and adding to the risk of detection
  – Leniency programmes can result in considerable resource savings for competition authorities
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• What is a leniency programme? (continued)
  A leniency programme offers a total or partial reduction in the penalty that would otherwise have been imposed on the participants in a cartel in return for the voluntary disclosure of evidence of the existence of the cartel that enables the competition authority to carry out an investigation of it
What is a leniency programme? (continued)

– To qualify for leniency, the cartel participant will be required to satisfy various conditions in the leniency programme

– For example, leniency applicants will be required to provide evidence of the existence of the cartel and to cooperate with the competition authority as it conducts its investigation
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• What is a leniency programme? (continued)
• To be successful a leniency programme requires
  – Adequate sanctions against participants in cartels, to create an incentive to report to the competition authority
  – A clear and predictable framework for the leniency programme
  – Fairness and certainty
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• Terminology
  – ‘The whistleblower’: this refers to the first member of the cartel to divulge the existence of a cartel to a competition authority
  – Where a whistleblower satisfies the criteria of the leniency programme, it will usually be given a total exoneration from the penalty that it would otherwise have suffered
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• Terminology
  – In the US the total exoneration from a penalty is usually referred to as ‘amnesty’; in the EU as ‘immunity’: these terms are synonymous
  – Other members of the cartel may also be entitled to a reduction of the penalties that would otherwise have been imposed where they provide further evidence of the cartel of significant added value to the competition authority’s investigation
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• Terminology (continued)
  – It is not uncommon in cartel cases for there to be one whistleblower, that earns full amnesty or immunity from penalty, and then for one or more other firms to earn a reduction in their penalties
  – For example in the European Commission’s decision on Cathode Ray Tubes Glass Samsung received full immunity as the whistleblower and Nippon and Schott received reductions of 50% and 18% respectively in their penalties
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• History
  – The US introduced a leniency policy for the first time in 1978
  – The US policy has been highly successful since 1993, when a revised system was put in place that guaranteed 100% amnesty to whistleblowers subject to certain conditions
  – The EU introduced a leniency policy in 1996
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• History (continued)
  – The EU system has been revised twice, and the current Notice was adopted in 2006
  – All Member States of the EU (with the exception of Malta) have also adopted leniencies, and they are substantially similar
  – Many other countries also now operate a leniency policy
  – Leniency programmes are now a key feature of the battle against cartels