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# CARTEL INTEL:

## UPDATES FROM OUR EMEA NETWORK

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## Introduction

Welcome to the 16th edition of Cartel Intel!

This bulletin provides a comprehensive overview of recent cartel enforcement and competition law developments across key jurisdictions. Together, these developments reflect an enforcement landscape that remains highly active, increasingly nuanced, and procedurally demanding for companies and competition authorities alike. In particular, we discuss a landmark German Court decision significantly reducing fines imposed by the German Federal Cartel Office in an aluminium forging case, underscoring the importance—and potential rewards—of judicial appeals. We also report on the Spanish National Court's annulment of major fines in the tobacco sector, reinforcing strict evidentiary standards for the Spanish Competition Authority to prove anticompetitive effects in information-exchange cases. Italy features prominently with substantial sanctions imposed by the Italian Competition Authority on fuel market operators for price signalling practices, illustrating the fine line between transparency and unlawful coordination. At EU level, we cover a significant Commission decision fining automotive starter battery manufacturers and their trade association a total of EUR 72 million for alleged price coordination. Last, the UK section analyses the UK Competition and Markets Authority's updated leniency guidance, marking the most significant reform in over a decade and aiming at reshaping incentives for cartel whistleblowers.



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## Germany



## The Higher Regional Court of Düsseldorf significantly reduced fines imposed by the Federal Cartel Office in the aluminium forging case

The Higher Regional Court of Düsseldorf has recently published its landmark decision from spring of 2025, squashing a fine decision by the German Federal Cartel Office (FCO) and lowering the fines imposed by roughly 80%.<sup>1</sup>

It is generally rare for the Higher Regional Court of Düsseldorf, as the Court of First Instance ruling on actions against antitrust fines, to reduce a fine imposed by the FCO whatsoever. A reduction of 80% – and the associated significant limitation of the allegations – shows that the allegations made by the FCO have in many cases proven to be unfounded or significantly less serious.

### The fine imposed in 2020

In December 2020, the FCO imposed fines totalling approximately EUR 175 million on five aluminium forging companies and ten employees for engaging in illegal anti-competitive agreements.<sup>2</sup>

The FCO found that in the period between April 2006 and April 2018, representatives of the companies concerned attended a total of 23 meetings of what they referred to as the “Aluminium Forging Group”.

The allegations made by the FCO can be summarized as follows:

- The companies were in general agreement that their respective procurement costs and cost increases would be passed on to their customers. At their meetings senior staff members regularly exchanged information on individual costs incurred in their procurement processes and on increased costs for aluminium, energy and the processing of aluminium into an input material suitable for forging.

- The companies’ representatives also discussed how these costs could be passed on to customers and informed each other on the progress they had made in this respect. They also agreed to calculate lifetime reductions only based on their own value creation process and not to apply such reductions to procurement costs as well. Lifetime reductions, referred to as “ratio” by the parties involved, are usually agreed once a supply relationship is started and are meant to take account of future productivity gains.

### The Higher Regional Court’s decision

While three of the five companies settled their fine proceedings with the FCO, two of the companies (**Leiber** and **Otto Fuchs**) brought appeals to the Higher Regional Court of Düsseldorf. Leiber settled its appeal in Court as part of an agreement with the FCO. Otto Fuchs continued its appeal and was eventually successful to a significant degree.

Following a very extensive trial with a multitude of hearings and witness examinations, the Higher Regional Court significantly narrowed the scope of the allegations made by the FCO both in terms of substance and duration:

- The duration of the infringement alleged by the FCO was reduced by seven years. While the FCO assumed a period of the infringement alleged lasting from April 2006 to February 2018, the Court limited the relevant period from October 2010 to November 2015.
- The findings regarding the substance of the allegations are similarly clear: The allegation of anti-competitive exchange of information on material surcharges and energy costs could not be upheld.
- With regard to the limited remaining allegations, the Higher Regional Court of Düsseldorf generally found that the exchange was rather vague and concerned price components that only accounted for a small portion of the

costs. The Court concluded that the potential for profit and damage was hence only minimal.

- Interestingly, the Court also made clear that the fact that all market players – naturally–endeavour to pass on additional costs incurred on the purchasing side to customers does not in any way imply in itself that there is a basic agreement or arrangement in this regard.

These findings led the Court to significantly reduce the fines of the two appellants: Otto Fuchs’ fine was reduced from EUR 145 million to EUR 30 million, while Leiber’s fine – following an in-court settlement – was reduced from EUR 7 million to EUR 1.4 million.

### Practical implications-Appeals can “pay off”

Under German procedural law, the Court hearing the appeal against a fine is not limited to reducing or revoking the fine. Rather, it may also impose a higher fine, e.g., because it considers further allegations to be proven or because it classifies the violations as more serious (so-called “*reformatio in peius*”).

In the past, the Higher Regional Court has often been criticized for effectively deterring fined companies from appealing against the fine decision due to the significant and unpredictable risk of an aggravation of the sanction. The legislature has attempted to mitigate this criticism by reforming the Act against restraints of competition, but the extent to which this has actually reduced the litigation risk is controversially discussed among practitioners.

In this respect, the current decision of the Higher Regional Court is a clear and important signal to companies that the Court is quite prepared to make substantial reductions in fines if the FCO’s allegations prove to be insufficiently substantiated. Whether this decision will encourage other companies to appeal the FCO’s decisions going forward remains to be seen.



### Snapshot: Other German developments

- On 30 October 2025, the FCO informed the German Association of the Automotive Industry (Verband der Automobilindustrie, **VDA**) that it will not review under competition law the Association’s plans to set up a platform for exchanging information on remaining semiconductor supplies. In view of the impending shortage situation, the FCO took the view that the planned information exchange platform can contribute to improving the distribution of products and deferring production constraints (see [here](#)).
- In its yearly review for 2025, the FCO highlighted that cartel prosecution remained a key focus of its work. In the year under review, the authority imposed fines totalling around EUR 10 million on companies and individuals in charge. These fines were issued for various offences, including vertical price-fixing for audio products. At the same time, the FCO received a number of new tip-offs about possible violations of competition law. In addition to the many companies cooperating under the leniency programme, around 600 tip-offs were submitted via the anonymous whistleblowing system, while further tip-offs received via the external reporting unit. Based on this, the FCO initiated new investigations and carried out dawn raids in ten cases, working closely with international competition authorities in some instances (see [here](#)).



1. Case V-6 Kart 1+2/21 (OWi), see [here](#), only German version available

2. Press release available [here](#)

# Spain



## The Spanish National Court annulled the fines imposed by the Markets and Competition Commission on several tobacco companies for failing to prove the anticompetitive effects of exchanges of information

On 3 November 2025, the National Court annulled the fines imposed by the Spanish National Markets and Competition Commission (*Comisión Nacional de los Mercados y la Competencia*, the **CNMC**) on several tobacco companies for alleged anticompetitive practices consisting in exchanges of commercially sensitive information<sup>3</sup>.

The National Court upheld the appeals lodged by the sanctioned companies because it concluded that the CNMC failed to conduct a proper assessment of the effects of the alleged information exchanges committed by the sanctioned companies<sup>4</sup>.

### The CNMC's decision: exchange of commercially sensitive information and effects on the market

In April 2019, the CNMC sanctioned some tobacco manufacturers as well as their common distributor Logista for a single and continuous infringement of Articles 1 of Law 15/2007, on the Defence of Competition ("LDC") and 101 of the Treaty on the Functioning of the European Union ("TFEU"), consisting in the exchange of commercially sensitive information on cigarette sales in the Spanish market between 2008 and 2017, and imposed fines totalling EUR 57.71 million.

The CNMC considered that the tobacco manufacturers exchanged detailed information on cigarette sales through its common distributor Logista on a daily basis. Logista, as a distributor, offered manufacturers two types of information services: (i) "sell-in" data, which consisted of daily and free information on sales volumes to tobacco shops of all the brands distributed by Logista, broken down by province and brand; and (ii) "sell-out" data, which reflected the sales of tobacco shops to final consumers and were offered by Logista to manufacturers at a cost. The CNMC considered that access to "sell-in" data allowed manufacturers to know the sales

volume of their competitors, facilitating coordination and reducing competition.

According to the CNMC, these information exchanges would have made it possible to maintain the stability of market shares, reinforce price parallelism and eliminate incentives to compete in other variables, restricting competition due to their effects. The conduct was classified as a very serious "by effect" infringement.

### The absence of effects and lack of counterfactual analysis alleged by the sanctioned companies

The sanctioned companies appealed the CNMC's decision before the National Court, alleging that the CNMC had not carried out the counterfactual analysis required by European case-law in case of infringements by effect, nor had it proved a causal link between access to sell-in information and the alleged restrictive effects on the market. In particular, the sanctioned entities alleged that access to the "sell-in" data had not allowed them to design competitive strategies or to anticipate rivals' behaviour. The entities stressed that the information provided by Logista referred to Logista's sales volumes to tobacco shops and not to sales to final customers. In addition, the sanctioned entities alleged that the information provided by Logista did not include strategic variables such as price, promotions or product launches. They also denied the existence of contacts or agreements with other manufacturers.

### The National Court's judgments

The National Court reiterated that when a conduct does not reveal sufficient damage to be classified as an infringement by object, an exhaustive contextual analysis is necessary to assess its actual or potential negative effects on competition. The Court pointed out that in order to assess a restriction by effect it is essential to apply the counterfactual method, which consists in comparing the real market situation with what would have existed in the absence of the agreement. The aim is to demonstrate a causal link between the practice and the restriction of competition.

The National Court assessed whether the information exchanged by the sanctioned companies was strategic and concluded that it was not. The National Court's

3. See the decision of the CNMC dated 10 April 2019 in case S/DC/0607/17 - TABACOS.

4. Judgments of the Contentious-Administrative Chamber of the National Court, Sixth Section, of 3 November 2024, appeals 1104/2019, 1105/2019, 1106/2019 and 1108/2019.



conclusion was based on the experts' reports provided by the sanctioned entities, which proved that the only competitive variables in the Spanish tobacco market are price, the launch of new products and promotions. However, the information exchanged in this case (i.e., the "sell-in" data) was related to daily sales volumes to tobacco shops by province. In the National Court's view, that information did not allow tobacco manufacturers to design competitive strategies or anticipate actual demand. Therefore, the National Court stressed that the "sell-in" information was not a sufficient strategic variable to restrict competition, since it does not directly affect those variables on which manufacturers compete.

The National Court recalled that manufacturers cannot decide for themselves the volume of cigarettes they must offer since, according to the Spanish regulations of the tobacco market, tobacco manufacturers are obliged to supply the products regularly and to guarantee coverage of supplies, with similar conditions of service and delivery times for all vendors. Consequently, the National Court concluded that knowing the volume of sales delivered by Logista to tobacco shops did not allow manufacturers to anticipate real demand or design competitive strategies, since manufacturers cannot freely decide the volume of products they sell. According to the National Court, the relevant information for manufacturers to compete

would be that of sales to the consumer ("sell-out" data).

The National Court also concluded that the CNMC's decision lacked a counterfactual analysis, which is an essential requirement to assess an infringement by effect. This assessment must compare the actual market situation with what would have existed absent the alleged anticompetitive practice. The National Court considered that the absence of a proper counterfactual analysis in this case is reflected in the following aspects:

- i. the exit from the "sell-in" data system in 2013 of one of the sanctioned entities did not alter its market share or competitive dynamics, which contradicts the thesis that access to such information reduced competition;
- ii. the CNMC admitted that access to sell-in data had no impact on the roll-your-own tobacco market, even though it is a direct substitute for cigarettes and shares regulatory and competitive characteristics;
- iii. Logista's practice had existed since 1999, but the CNMC only found effects since 2008;
- iv. the evolution of market shares and investments in promotions of some of the tobacco manufacturers evidenced that the alleged reduction in competitive pressure did not exist.

The National Court concluded that the anti-competitive effects attributed by the CNMC to the exchange of "sell-in" information had not been proven. The National Court highlighted that the CNMC had not proven the causal relationship between access to sell-in information and the restrictive effects on competition, nor had it adequately assessed the alternative explanations offered by the sanctioned companies. Consequently, the National Court upheld the appeals and annulled the CNMC's decision.

### Commentary

These judgments reinforce the standard of judicial review in competition matters in Spain, requiring the CNMC to provide rigorous reasoning behind the anti-competitive effects of the conduct sanctioned, especially when it comes to infringements by effect, including exchanges of information. The National Court consolidates the application of the counterfactual method and the need for an exhaustive economic and evidentiary analysis to justify the existence of a restriction of competition by effect, especially in regulated and highly concentrated markets.



### Snapshot: Other Spanish developments

- The CNMC is *investigating* possible anti-competitive practices in the private healthcare sector, focusing on suspected collusion and abuse of dominant position. In November 2025, inspections were carried out at the headquarters of several companies active in the provision of private healthcare services. The scope of the investigation includes both private healthcare services and health consultancy activities. Very serious infringements can lead to fines of up to 10% of the total turnover of the companies in the financial year preceding the imposition of the fine.
- The CNMC is also *investigating* possible anti-competitive practices in public road passenger transport in Castilla-La Mancha. Inspections took place in October 2025 at the premises of several companies. The investigation targets possible agreements or concerted practices regarding the distribution of public service contracts. Such conduct could be considered a very serious infringement and may result in fines of up to 10% of the total turnover of the companies.

# Italy



## Price signalling: Heavy sanctions imposed by the Italian Competition Authority on fuel market operators for engaging in concerted practices

### Background

On 23 September 2025, the Italian Competition Authority, (Autorità Garante della Concorrenza e del Mercato (**AGCM**)) issued a decision sanctioning the main oil companies in Italy, for an infringement of Article 101 TFEU.<sup>5</sup> The case provides an insight into the practice of price signalling.

### Facts of the case

The AGCM investigation began in March 2023 following an anonymous whistleblowing claim and involved eight oil companies (ENI S.p.A., ESSO ITALIANA S.r.l., Italiana Petroli S.p.A., IPLOM S.p.A., KUWAIT Petroleum Italiana S.p.A., SARAS S.p.a., REPSOL ITALIA S.p.A. and TAMOIL ITALIA S.p.a.). It was the almost simultaneous adjustments to the price of the biofuel component in motor fuel that aroused suspicion.

According to the AGCM, each fuel supplier set its own rate for the biofuel component based on its own cost structures and fuel mix; however, starting from early 2020, a notable convergence occurred whereby nearly all

companies adopted the same benchmark price despite facing differing cost factors.

Initially, each oil company raised its bio premium component price in response to increases in the cost of biofuel inputs, as well as to changes in regulatory requirements.

In the AGCM's view, press announcements in a widely read industry newspaper and internal correspondence demonstrated at a later stage that the companies exchanged detailed pricing information and subsequently adjusted their prices in near-perfect lockstep across various distribution channels, including both direct wholesale and third-party arrangements.

### The alleged infringement

Further to its investigation, the AGCM alleged that the oil companies, by coordinating their bio component pricing adjustments, violated competition rules. Rather than allowing market forces or independently determining cost factors to influence the price, the companies were believed to have engaged in an arrangement – even if not documented in a formal written agreement – that effectively set, in a concerted manner, a common price on the relevant component of the fuel price.

More precisely, the unlawful conduct started with the publication of press releases on an energy-sector newspaper expressly

mentioning the price of the biofuel component applied by one of the most important market players, ENI. According to the AGCM, these press releases had in effect led to the concerted practice, being a price signalling conduct.

The alleged infringement is not solely based on the fact that the bio component price increased; but also on its parallel and coordinated increase. Although the companies involved argued that such increases were merely a rational response to increases in the costs of biofuels and shifting regulatory obligations, the evidence demonstrated that the price adjustments were not autonomously decided.

In particular, in the AGCM's view, there were indications – a combination of internal emails, confidential communications exchanged between high-level managers, and consistent public announcements in the industry newspaper – that each company knew and, in fact, coordinated with its competitors on a precise price benchmark. The AGCM argued that in a market that is highly oligopolistic, transparent, and concentrated, even minor coordination can reduce competition significantly.

The AGCM concluded that the degree of uniformity was beyond what independent market forces would generate, and presented various economic analyses including price variability statistics to support this

conclusion. In addition, several internal communications suggested that the companies had a mutual interest in stabilizing the bio component price and even in using it as a benchmark to negotiate favourable terms with customers by “passing on” the increased costs.

Furthermore, the precise timing of the public press announcements, combined with the fact that certain communications were transmitted to competitors before they reached customers, reinforced the belief that the price-setting mechanism was coordinated rather than competitive.

### The AGCM decision

After an extensive evidentiary review of both endogenous data (the price patterns and internal documents showing common price schedules) and exogenous evidence (the numerous direct inter-party communications and the consistent announcements in the newspaper that served as a price signal), the AGCM found that the companies had indeed engaged in a concerted practice that violated competition law.

The decision concluded that the companies put together a coordinated scheme which, through a series of public announcements as well as confidential communications, effectively synchronized the bio component prices applied to all downstream sales of fuel.

As a consequence, the AGCM imposed sanctions on six of the eight companies involved in the proceedings. As far as REPSOL S.p.A. and IPLOM S.p.A. were concerned, the investigation did not provide sufficient evidence against them.

The overall sanction imposed on the market players found in breach of competition law amounts to over EUR 936 million. More specifically, the fine imposed on each company amounts to:

- ENI: EUR 336.214.660
- KUWAIT: EUR 172.592.363
- IP: EUR 163.669.804
- ESSO: EUR 129.363.561
- TAMOIL: EUR 91.029.755
- SARAS: EUR 43.788.944

ENI received the highest fine because the AGCM identified it as the primary instigator of the concerted practice, considering its significant role in publishing the relevant press releases.

The decision stressed that reliance on public channels to announce pricing figures did not lead to genuine market-determined price formation and constituted an abuse of market power.

The sanctioned companies can challenge the decision before the competent Administrative Tribunal.

### Key takeaways

Fuel sector has always been closely monitored by the AGCM given its oligopolistic nature. In this decision, the AGCM emphasized that in a market that is highly oligopolistic, transparent, and concentrated, even minor coordination can reduce competition significantly.

The decision is also relevant because it marks a line between transparency and illegitimate price signalling.

### Other Italian developments

- In October 2025, the AGCM **accepted and made binding** the commitments submitted by a shipping services group (MSC Group) following an investigation into a potential concerted practise established after the acquisition of a significant stake and reinforced by a substantial financing package between two companies of the group. The authority found that these transactions could compromise competitive dynamics on key shipping routes. As a remedy, the commitments require the dismantling of both structural and financial ties through the divestiture of the acquired stake and the sale of a package of assets via a competitive process. Additionally, refunds are planned for tickets purchased before a specified date.

5. Autorità Garante della Concorrenza e del Mercato, [Decision no. 31673 of 26 September 2025](#) (decision available only in Italian)



## The Commission imposed a fine of approximately EUR 72 million on three automotive starter battery manufacturers and their industry association for coordinating prices in the sector

On 15 December 2025, the European Commission (**Commission**) imposed fines totalling approximately EUR 72 million on three automotive starter battery manufacturers, Exide, FET (including its predecessor Elettra) and Rombat and the industry association EUROBAT for participating in an infringement concerning automotive starter batteries. The Commission found that this cartel restricted competition and may have led to higher prices for the manufacturing of cars and trucks in Europe.<sup>6</sup>

### Background

Automotive starter batteries provide an electric current to the starting motor, which starts the engine in cars powered by traditional combustion engines. They also supply power to the electrical equipment of cars.

The Commission's investigation, which concerned automotive starter batteries sold to car producers in the European Economic Area (**EEA**) for use both in new cars, and as replacements, started on 26 September 2017 following an application under the Commission's 2006 Leniency Notice<sup>7</sup> submitted by Johnson Controls International PLC, including its subsidiary Clarios (formerly JC Autobatterie). Resonac (and its subsidiary FET) as well as Metair (and its subsidiary Rombat) submitted leniency applications after the Commission had sent requests for information.

On 30 November 2023, the Commission opened formal proceedings and sent a Statement of Objections (**SO**) to five automotive starter battery manufacturers, EUROBAT and the service provider Kellen. Responses to the SO were received between March and April 2024. Following the assessment of the SO responses and the oral hearing, the Commission decided to close proceedings against the automotive starter battery manufacturer Banner and the service provider Kellen.

### The Commission's findings

The Commission's investigation uncovered that from 2005 until 2017, i.e., for more than 12 years, Clarios, Exide, FET and Rombat, together with the trade association EUROBAT, took part in a coordinated scheme to align pricing practices in the sale of automotive starter batteries to original equipment manufacturers (**OEMs**) in the EEA.

More specifically, the alleged infringement involved secret coordination on how the battery producers passed on lead costs to their customers. Lead is an input material in automotive starter batteries. Manufacturers typically apply a surcharge to reflect changes in raw material prices.

Such surcharges can be legitimate. According to the Commission, the battery manufacturers went further by agreeing, assisted by EUROBAT, to calculate and publish so-called "EUROBAT premiums" in the industry publication Metal Bulletin.

Those figures - according to the Commission - were then used in negotiations with OEMs to ensure the surcharge remained higher than it would have been under normal competitive conditions.

The Commission concluded that this conduct amounted to a single and continuous infringement "by object" under Article 101 TFEU and Article 53 of the EEA Agreement.

The fines were calculated under the Commission's 2006 Guidelines on fines<sup>8</sup>, taking into account the value of sales to OEMs, the duration and seriousness of the infringement, its geographic scope, and the market shares of the companies involved.

Clarios received full immunity after disclosing the cartel under the Commission's leniency program, while FET (including its parent company Resonac) and Rombat (including its parent company Metair) cooperated with the Commission under the leniency programme and received a fine reduction of 50% and 30% respectively.

More specifically, Rombat was fined EUR 20.218 million, with part of that amount jointly and severally liable with its parent company, Metair. FET was fined

EUR 6.11 million, including an amount jointly and severally liable with its parent company, Resonac. Elettra, FET's predecessor, was fined EUR 15.594 million. The portion linked to its former parent company, Dofin, was capped at zero because Dofin is no longer economically active. Exide received the largest fine of EUR 30 million and EUROBAT was fined EUR 125,000 for its role in facilitating the cartel via the dissemination and use of agreed pricing benchmarks.

### Practical implications

The Commission's decision constitutes a significant enforcement action under Article 101 TFEU, with various practical implications that companies should be aware of.

First, the fine imposed on EUROBAT, albeit relatively small, is a reminder that industry associations and facilitators can be held directly responsible when they help shape or disseminate anticompetitive practices. Trade associations should therefore ensure that their activities do not facilitate conduct or contacts between their members, including any pricing norms or coordinated conduct that could breach EU competition rules.

In addition, the Commission's decision emphasizes the importance of the leniency tool. Companies that are aware of cartel conduct may weigh the benefits of early disclosure to mitigate liability.

Companies operating in concentrated or input-cost-sensitive markets should maintain robust antitrust compliance programmes, especially concerning pricing policies, joint indices, and communications through trade bodies. In particular with respect to price indexes the case is notable. It apparently relates to practices to create, contribute to and use a price index, whereas many of the previous cases have related to manipulation of an index. It shows that even innocuous benchmarking or industry standard data sharing can lead to interest of regulators and high fines.

6. [Case AT. 40545- Automotive Starter Batteries](#), Commission decision text not yet available

7. Commission Notice on Immunity from fines and reduction of fines in cartel cases, available [here](#)

8. Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, available [here](#)

Last, as the Commission pointed out, any person or company affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages, in accordance with the Antitrust Damages Directive<sup>9</sup>. The case law of the Court of Justice of the European Union (CJEU) and Regulation 1/2003 both confirm that in cases before national courts, a Commission infringement decision constitutes binding proof that the behaviour took place and was illegal, enabling affected parties to launch follow-on damages claims against cartel participants, creating further financial exposure beyond EU fines. More specifically, even though the Commission has fined the companies concerned, damages may be awarded by national courts without being reduced on account of the Commission fine.



#### Other EU developments

- Further to its unannounced inspections at the premises of the financial services providers Deutsche Börse and Nasdaq, on 5 November 2025, the Commission **announced** that it has opened a formal investigation to assess whether the companies have entered into unlawful agreements or concerted practices not to compete in the EEA for the listing, trading and clearing of certain financial derivatives. In addition, the Commission is concerned that the companies may have: (i) allocated demand; (ii) coordinated prices; and (iii) exchanged commercially sensitive information.
- In 15 October 2025, the General Court (GC) **dismissed** Red Bull's appeal against the Commission's decision ordering an unannounced inspection at Red Bull's premises, as part of a competition investigation (GC judgment available only in French and German). Although Red Bull argued that the raid was based on insufficient indicia, namely only on a complaint and intelligence brought by one competitor, the GC found that the Commission's decision was "*sufficiently precise and reasoned*". The GC also clarified that under settled EU case law, conduct that took place at the raid, i.e., after the adoption of the inspection decision, doesn't affect the legality of this decision.
- On 10 November 2025, the Commission published a **Competition Policy Brief** discussing whether EU legal professional privilege (EU LPP) in competition law investigations should extend to in-house lawyers. The Policy Brief concludes that there is no compelling legal or policy basis for extending EU LPP to in-house lawyers. The arguments that are being made by some stakeholders in support of such an extension are not persuasive and doing so may even delay and adversely affect competition law investigations according to the authors (see our blogpost [brief here](#)).

9. Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, available [here](#)

# UK



## The UK's Competition and Markets Authority updates cartel leniency guidance

### Introduction

The UK Competition and Markets Authority's (CMA's) leniency policy serves as an essential mechanism for deterring and identifying cartel behaviour. By increasing the likelihood of participant defection in exchange for immunity, the policy contributes to greater instability within cartels. The policy is also key to bringing secretive cartel activity to light given that a majority of the CMA's cartel cases originate from leniency applications. The obligation on leniency applicants to cooperate on an ongoing basis throughout the CMA's investigation also helps the CMA collect crucial evidence for its investigations.

After a consultation which launched last May, the UK regulator published its updated leniency guidance on 28 October (the "Updated Leniency Guidance"<sup>10</sup>). This latest review represents the CMA's first wholesale change to its leniency policy since 2013,<sup>11</sup> and whilst it does not represent a fundamental departure from its core policy, the updated guidance has key implications on the scope and protection levels for leniency applicants in the UK.

The CMA's objectives with its Updated Leniency Guidance were to reflect changes in legislation and policy over the past decade whilst further incentivising the use of the regime. This article considers the extent to which the CMA's new Guidance achieves those goals.

### Broader Definition of Cartel Activity

The Updated Leniency Guidance adds further examples of cartel activity to the scope of the leniency regime, including:

- information exchange of future pricing intentions whether directly, through third-party platforms or through public announcements;
- competitor agreements to fix purchase prices (and not just sales prices), including agreements to fix wages or other trading conditions;

- 'no-poach' agreements between firms;
- pay-for-delay' agreements; and
- restrictions on innovation aimed at achieving sustainability objectives.

This expanded list of cartel conduct enhances the clarity and predictability of the regime, as previously it has been difficult for businesses to assess whether their specific factual circumstances made them eligible for the CMA's leniency framework.

### Changes to Admission Requirements

Applicants will no longer have to admit participation in cartel activity at the point of making a leniency *application*. Rather, they will be required to do so once a leniency *agreement* is signed. This change is expected to reduce up-front obligations and address concerns that early-stage admissions may deter applications, especially when the full scope of conduct is still unclear.

### Updates to Protection Levels for Applicants

The CMA's leniency programme provides the best 'deal' to those applicants who come forward before the CMA has begun an investigation and no other participant has already applied (so-called 'Type A' applicants). Successful Type A applicants benefit from guaranteed immunity from:

- financial penalties;
- criminal prosecution for all cooperating current and former employees and directors;
- Competition Disqualification Orders (CDOs) for all cooperating current and former directors; and
- exclusion and/or debarment from public procurement on the basis of the competition law infringements exclusion grounds under the Procurement Act 2023.

The most important change introduced by the Updated Leniency Guidance is in reducing the benefits provided to those leniency applicants who do not qualify for Type A leniency, namely **Type B** applicants

(first to apply after an investigation has started and no other participant has applied) and **Type C** applicants (subsequent applicants). Type B and C applicants can now expect the following:

- Full immunity from financial penalties for corporate Type B applicants is no longer available. Removal of the availability of the so-called 'leniency plus' discount in circumstances where a Type/C applicant reports cartel activity in a second market.
- Discounts to financial penalties for Type B applicants are specified: while up to 100% is possible, in practice, discounts are unlikely to exceed 75% and may be much lower.
- Type C applicants may expect to receive significantly less than the maximum available 50% discount.
- Automatic immunity from CDOs of Type B and C applicants will be replaced with discretionary immunity.
- Type B and C applicants are likely to benefit from criminal immunity only in exceptional cases.
- Only Type A applicants (and some Type B applicants with full immunity) are automatically protected from exclusion and/or debarment from public procurement.

### New Online Application Process and Updated Short Guides<sup>12</sup>

The CMA has sought to make the Updated Leniency Guidance as "clear, accessible and user-friendly as possible". To this end, the CMA is introducing a new online tool as the default method for submitting leniency applications, replacing oral submissions. This change aims to streamline the process, making it more efficient for both applicants and the CMA. The new tool has already been trialled between March 2024 and March 2025, however, the CMA is yet to release any user feedback on the online process.

The CMA has also refreshed its short guides to provide businesses and individuals<sup>13</sup> with practical overviews of how leniency works.

### Key Takeaways

The CMA's press release for the Updated Leniency Guidance is titled "*Cartels: being first to apply for leniency matters more than ever*".<sup>14</sup> Indeed, by making guaranteed immunity available only to Type A applicants, the CMA aims to incentivise Type A applications, as now adopting a "wait and see" approach carries greater risk for businesses. At the same time, the regulator has focused on making risk assessment easier for businesses by reducing up-front obligations and clarifying the types of conduct constituting cartel activity. The Updated Guidance encourages early engagement with the CMA and emphasises the leniency enquiry line which can help applicants make informed decisions.

Some of the changes to the Guidance, for example, levels of penalty discounts for Type B and C applicants only formalise the existing decisional practice of the CMA. Others, such as reduced protection from the risk of criminal penalties or debarment from public procurement for Type B/C applications, could have the unintended effect of *detering* businesses from proactively contacting the CMA if they are not certain they will benefit from Type A immunity. These changes could, perversely, reduce the incentives for cartelists to cooperate with the CMA in the first place. Only time will tell whether making Type B and Type C leniency less attractive is the way to drive more Type A applications.



### Other UK developments

- In October 2025, the CMA ended its investigation into the exchange of sensitive information by housebuilders after *accepting commitments* from the seven investigated companies. Barratt Redrow, Bellway, The Berkeley Group, Bloor Homes Limited, Persimmon, Taylor Wimpey and Vistry Group agreed to a series of commitments including an agreement to not share certain types of information with other housebuilders relating to newly built residential dwellings (e.g. pricing, sales volume), the introduction of enhanced compliance measures and training programmes, and a combined £100 million payment made to four different affordable housing programmes in the UK.

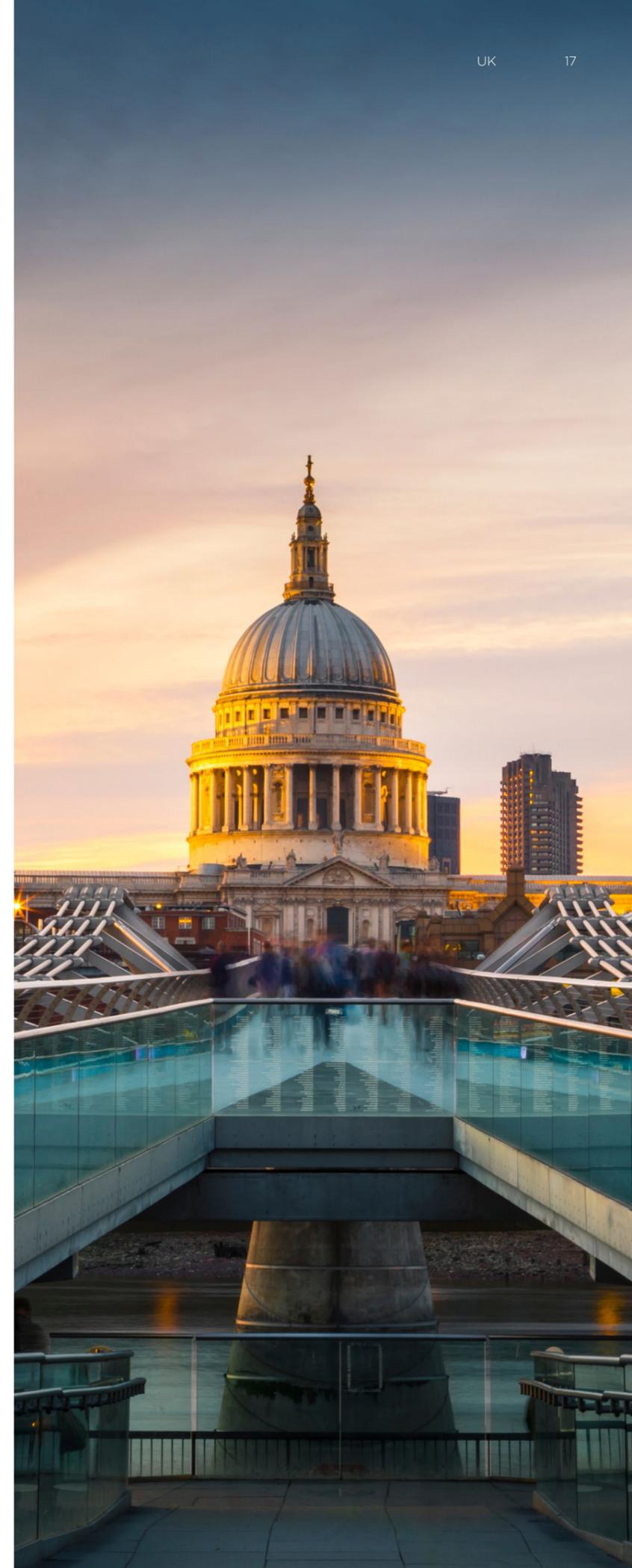
10. "Applications for leniency and no-action in cartel cases", CMA210, 28 October 2025, available [here](#)

11. Some targeted addendums were added to the leniency guidance in 2017 and 2020.

12. The protections against disclosure apply equally to online and oral applications.

13. CMA, [Short guide to cartels and leniency for businesses](#); CMA, [Short guide to cartels and leniency for individuals](#).

14. CMA, [Cartels: being first to apply for leniency matters more than ever](#) (Press Release).



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