

Draft Commission Notice
of [...]
on the conduct of settlement proceedings in view of the adoption of Decisions pursuant to Article 7
and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases

(Text with EEA relevance)

(2007/C 255/20)

1. INTRODUCTION

1. This Notice sets out the framework for rewarding cooperation in the conduct of proceedings commenced in view of the application of Article 81 of the EC Treaty ⁽¹⁾ to cartel cases. The settlement procedure may allow the Commission to handle more cases with the same resources, thereby fostering the public interest in the Commission's delivery of effective and timely punishment, while increasing overall deterrence. The cooperation covered by this Notice is different from the voluntary production of evidence to trigger or advance the Commission's investigation, which is covered by the Commission Notice on Immunity from fines and reduction of fines in cartel cases ⁽²⁾ (the Leniency Notice). Provided that the cooperation offered by an undertaking qualifies under both Commission Notices, it can be cumulatively rewarded accordingly ⁽³⁾.
2. When parties to the proceedings are prepared to acknowledge their participation in a cartel violating Article 81 of the EC Treaty and their liability therefore, they may also contribute to expediting the proceedings leading to the adoption of the corresponding decision pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽⁴⁾ in the way and with the safeguards specified in this Notice. Whilst the Commission, as the investigative authority and the guardian of the Treaty empowered to adopt enforcement decisions subject to judicial control by the Community Courts, does not negotiate the question of the existence of an infringement of Community law and the appropriate sanction, it can reward the cooperation described in this Notice.
3. Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ⁽⁵⁾ lays down the core practical rules concerning the conduct of proceedings in antitrust cases including those applicable in the variant for settlement. In this regard, Regulation (EC) No 773/2004 bestows on the Commission the discretion whether to explore the settlement procedure or not in cartel cases, while ensuring that the choice of the settlement procedure cannot be imposed on the parties.
4. Effective enforcement of Community competition law is compatible with full respect of the parties' rights of defence, which constitutes a fundamental principle of Community law to be respected in all circumstances, and in particular in antitrust procedures which may give rise to penalties. It follows that the rules established to conduct the Commission proceedings to enforce Article 81 of the EC Treaty should ensure that the undertakings and associations of undertakings concerned are afforded the opportunity effectively to make known their views on the truth and relevance of the facts, objections and circumstances put forward by the Commission ⁽⁶⁾, throughout the administrative procedure.

⁽¹⁾ References in this text to Article 81 also cover Article 53 EEA when applied by the Commission according to the rules laid down in Article 56 of the EEA Agreement.

⁽²⁾ OJ C 298, 8.12.2006, p. 17.

⁽³⁾ See point 33 below.

⁽⁴⁾ OJ L 1, 4.1.2003, p. 1. Regulation as last amended by Regulation (EC) No 1419/2006 (OJ L 269, 28.9.2006, p. 1.

⁽⁵⁾ OJ L 123, 27.4.2004, p. 18. Regulation as last amended by Regulation No XXX/200Y (OJ L ..., p. ...).

⁽⁶⁾ Cfr. Case 85/76, *Hoffmann-La Roche v Commission* [1979] ECR 461, at paragraphs 9 and 11; Case T-11/89, *Shell v Commission* [1992] ECR II-757, paragraph 39; Joined Cases T-10/92, T-11/92, T-12/92 and T-15/92, [1992] ECR II-2667, *Cimenteries CBR*, at paragraph 39; Joined Cases T-191/98, T 212/98 to T-214/98, *Atlantic Container Line and Others v Commission* [2003] ECR II-3275, at paragraph 138; Judgement of the Court of Justice of 2 October 2003 in Case C-176/99 P, *ARBED SA v Commission*, at paragraph 19; Judgement of the Court of First Instance in Case T-15/02, *BASF AG v Commission*, of 15 March 2006, at paragraph 44; Judgement of the Court of First Instance of 27 September 2006 in Case T-329/01, *Archer Daniels Midland Co. v Commission (sodium gluconate)* at paragraph 358.

2. PROCEDURE

5. The Commission retains a broad margin of discretion to determine which cases may be suitable to explore the parties' interest to engage in settlement discussions, as well as to decide to engage in them or discontinue them or to definitely settle. In this regard, account may be taken of the probability of reaching a common understanding regarding the scope of the potential objections with the parties involved within a reasonable timeframe, in view of factors such as number of parties involved, foreseeable conflicting positions on the attribution of liability, extent of contestation of the facts. Additionally, the prospect of achieving procedural efficiencies in view of the progress made overall in the settlement procedure will be considered. Other concerns such as setting a possible precedent might apply. The Commission may only engage in settlement discussions upon the written request of the parties concerned.
6. While parties to the proceedings do not have a right to settle, should the Commission consider that a case may, in principle, be suitable for settlement, it will explore the interest in settlement of all parties to the same proceedings.
7. The parties to the proceedings and their legal representatives may not disclose to any other undertaking or third party in any jurisdiction the content of the discussions or of the documents which they have had access to in view of settlement, unless they have a prior explicit authorization by the Commission. Any breach in this regard may lead the Commission to disregard the undertaking's request to follow the settlement procedure and may constitute an aggravating circumstance within the meaning of point 28 of the Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ⁽¹⁾ (the Guidelines on fines).

2.1. Initiation of proceedings and exploratory steps regarding settlement

8. Where the Commission contemplates the adoption of a decision pursuant to Article 7 and/or Article 23 of Regulation (EC) No 1/2003, it is required in advance to identify and recognize as parties to the proceedings the legal persons on whom a penalty may be imposed for an infringement of Article 81 of the EC Treaty.
9. To this end, the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 in view of adopting such a decision can take place at any point in time, but no later than the date on which the Commission issues a statement of objections against the parties concerned. Article 2(1) of Regulation (EC) No 773/2004 further specifies that, should the Commission consider it suitable to explore the parties' interest in engaging in settlement discussions, it will initiate proceedings no later than the date on which it either issues a statement of objections or requests the parties to express in writing their interest to engage in settlement discussions, whichever is the earlier.
10. After the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003, the Commission is solely competent to apply Article 81 of the EC Treaty to the case in point ⁽²⁾.
11. Should the Commission consider it suitable to explore the parties' interest to engage in settlement discussions, it will set a time-limit of no less than two weeks pursuant to Articles 10a(1) and 17(3) of Regulation (EC) No 773/2004 within which parties to the same proceedings should declare in writing whether they envisage engaging in settlement discussions in view of possibly introducing settlement submissions at a later stage.
12. All parties to the proceedings which belong to the same undertaking and envisage the possibility of introducing a settlement submission and requesting to engage in settlement discussions may appoint joint representatives duly empowered to act on their behalf at any point in time, but must do it no later than the end of the time-limit referred to in point 11.

⁽¹⁾ OJ C 210, 1.9.2006, p. 2.

⁽²⁾ Article 11(6) of Regulation (EC) No 1/2003 reads: 'The initiation by the Commission of proceedings for the adoption of a decision under Chapter III shall relieve the competition authorities of the Member States of their competence to apply Articles 81 and 82 of the Treaty. If a competition authority of a Member State is already acting on a case, the Commission shall only initiate proceedings after consulting with that national competition authority.'

13. The Commission may disregard any application for immunity from fines or reduction of fines under the Leniency Notice on the ground that it has been submitted after the expiry of the time-limit referred to in point 11.

2.2. Commencing the settlement procedure: settlement discussions

14. Should some of the parties to the proceedings request settlement discussions and comply with the requirements referred to in points 11 and 12, the Commission may decide to pursue the settlement procedure by means of bilateral contacts between the Commission Directorate General for Competition and the settlement candidates.
15. The Commission retains discretion to determine throughout the procedure on the appropriateness and the pace of the bilateral settlement discussions with each undertaking. In line with Article 10a(2) of Regulation (EC) No 773/2004 ⁽¹⁾, this includes determining, in view of the progress made overall in the settlement procedure, the order and sequence of the bilateral settlement discussions as well as the timing of the disclosure of information, including the evidence in the Commission file used to establish the envisaged objections and the potential fine ⁽²⁾. Information will be disclosed in a timely manner as settlement discussions progress.
16. Such an early disclosure in the context of settlement discussions pursuant to Article 10a(2) and Article 15(1a) of Regulation (EC) No 773/2004 will allow the parties to be informed of the essential elements taken into consideration so far, such as the facts alleged, the classification of those facts, the gravity and duration of the alleged cartel, the attribution of liability, an estimation of the range of likely fines ⁽³⁾, as well as the evidence used to establish the potential objections ⁽⁴⁾. This will enable the parties effectively to assert their views on the potential objections against them and will allow them to make an informed decision on whether or not to settle.
17. When the progress made during the settlement discussions leads to a common understanding regarding the scope of the potential objections and the estimation of the range of likely fines to be imposed by the Commission, the Commission may grant a final time-limit of at least XXX working days for an undertaking to introduce a final written settlement submission pursuant to Articles 10a(2) and 17(3) of Regulation (EC) No 773/2004. The time-limit can be extended following a reasoned request. Before granting such time-limit, the parties will be entitled to have the information specified in point 16 disclosed to them upon request. Upon reasoned request by a party, the Commission services will also grant it access to non-confidential versions of any accessible document listed in the case file at that point in time, in so far as they consider it justified for the purpose of enabling the party to ascertain its position regarding any other aspect of the cartel and provided that the procedural efficiencies referred to in point 5 are not jeopardized ⁽⁵⁾.

⁽¹⁾ 'The Commission may inform the parties willing to introduce settlement submissions of: (a) the objections it envisages to raise against them, (b) of the evidence supporting them, and (c) potential fines. (...)' (Article 10a(2) of Regulation (EC) No 773/2004).

⁽²⁾ Reference to the 'potential fine' in Article 10a(2) of Regulation (EC) No 773/2004 affords the Commission services the possibility to inform the parties concerned by settlement discussions of an estimate of their potential fine in view of the guidance contained in the Guidelines on fines, the provisions of this Notice and the Leniency Notice, where applicable.

⁽³⁾ Judgment of the Court of Justice in Joined Cases 100/80 to 103/80, *Musique diffusion française and Others v Commission* [1983] ECR 1825, paragraph 21, and Judgment of the Court of First Instance in Case T-16/99, *Löfgstör Rör v Commission* [2002] ECR II-1633, paragraph 193, upheld on appeal by judgment of the Court of Justice in Joined Cases C-189/02 P, C-202/02 P, C-205/02 P, C-208/02 P and C-213/02 P, *Dansk Rørindustri and Others v Commission* [2005] ECR I-0000, in particular paragraph 428; Judgements of the Court of First Instance of 15 March 2006, in Case T-15/02, *BASF AG v Commission*, at paragraph 48; and of 27 September 2006 in Case T-329/01, *Archer Daniels Midland Co. v European Commission (sodium gluconate)*, at paragraph 361.

⁽⁴⁾ Article 15(1a) of Regulation (EC) No 773/2004 allows the Commission to exercise its discretion as to the timing of the disclosure of the evidentiary basis in the file supporting the envisaged objections to parties who envisage introducing settlement submissions after the initiation of proceedings.

⁽⁵⁾ For that purpose, the parties will be provided with a list of all accessible documents in the case file at that point in time.

18. The parties may call upon the Hearing Officer at any time during the settlement procedure in relation to issues that might arise relating to due process. The Hearing Officer's duty is to ensure that the effective exercise of the rights of defence is respected in competition proceedings.
19. Should the parties concerned fail to introduce a settlement submission, then the procedure leading to the final decision in their regard will follow the general provisions in Articles 10(2), 12(1) and 15(1) of Regulation (EC) No 773/2004, instead of those regulating the settlement procedure.

2.3. Settlement submissions

20. Parties opting for a settlement procedure must introduce a formal request to settle in the form of a written settlement submission. The written settlement submission provided for in Article 10a(2) of Regulation (EC) No 773/2004 should contain:
 - (a) an acknowledgement in unequivocal terms of the parties' liability for the infringement summarily described as regards the main facts, their legal qualification, and the duration of their participation in the infringement in accordance with the results of the settlement discussions;
 - (b) an indication ⁽¹⁾ of the maximum amount of the fine the parties foresee to be imposed by the Commission and which the parties accept in the framework of a settlement procedure;
 - (c) the parties' confirmation that, they have been sufficiently informed of the objections the Commission envisages raising against them and have been given sufficient opportunity to make their views known to the Commission;
 - (d) the parties' confirmation that, in view of the above, they do not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not endorse their settlement submission;
 - (e) the parties' agreement to receive the statement of objections and the final decision pursuant to Article 7 and 23 of Regulation (EC) No 1/2003 in a given official language of the European Community.
21. The acknowledgments and confirmations provided by the parties in view of settlement constitute the expression of their commitment to cooperate in the expeditious handling of the case following the settlement procedure. However, those acknowledgments and confirmations are conditional upon the Commission meeting their settlement request, including the anticipated maximum amount of the fine.
22. Therefore, written settlement requests cannot be revoked unilaterally by the parties who have provided them unless the Commission does not meet the settlement requests by endorsing the written settlement submissions first in a statement of objections and ultimately, in a final decision (see in this regard points 27 and 29). The statement of objections would be deemed to have endorsed the written settlement submissions if it reflects their contents as regards the description of the cartel and the undertaking's involvement therein and the legal qualification thereof. Additionally, for a final decision to be deemed to have endorsed the written settlement submissions, it should also impose a fine which does not exceed the maximum amount indicated therein.

⁽¹⁾ This would result from the discussions as set out in points 16 and 17.

2.4. Statement of objections and reply

23. Pursuant to Article 10(1) of Regulation (EC) No 773/2004, the notification of a written statement of objections to each of the parties against whom objections are raised is a mandatory preparatory step before adopting any final decision ⁽¹⁾. Therefore, the Commission will issue a statement of objections also in a settlement procedure ⁽²⁾.
24. For the parties' rights of defence to be exercised effectively, the Commission should hear their views on the objections against them and supporting evidence before adopting a final decision and take them into account by amending its preliminary analysis, where appropriate ⁽³⁾. The Commission must be able not only to accept or reject the parties' relevant arguments expressed during the administrative procedure, but also to make its own analysis of the matters put forward by them in order to either abandon such objections as have been shown to be unfounded or to supplement and reassess its arguments both in fact and in law in support of the objections which it maintains ⁽⁴⁾.
25. By introducing a formal settlement request in the form of a written settlement submission prior to the notification of the statement of objections, the parties concerned enable the Commission to effectively take their views into account ⁽⁵⁾ already when drafting the statement of objections, rather than only before the consultation of the Advisory Committee on Restrictive Practices and Dominant Positions (hereinafter the 'Advisory Committee') or before the adoption of the final decision ⁽⁶⁾. Accordingly, the statement of objections notified to the parties may draw on the contents of the settlement submissions, where appropriate, and the amount of the potential fine may be reviewed downwards in light thereof ⁽⁷⁾.

⁽¹⁾ Pursuant to Article 10(1) of Regulation (EC) No 773/2004: 'The Commission shall inform the parties concerned of the objections raised against them. The statement of objections shall be notified in writing to each of the parties against whom objections are raised'. Pursuant to Article 11(2) of Regulation (EC) No 773/2004 and Article 27(1) of Regulation (EC) No 1/2003, the Commission shall base its decisions only on objections on which the addressees of the statement of objections concerned by them have been able to comment.

⁽²⁾ As stated by the Court of First Instance in its judgment of 15 March 2006 in Case T-15/02, *BASF AG v Commission*, at paragraph 58, '(...) however much an undertaking cooperates, the function of the statement of objections is still to give undertakings and associations of undertakings all the information necessary to enable them to defend themselves properly, before the Commission adopts a final decision' (*Ahlström Ösakeyhtiö and Others v Commission*, paragraph 46 above, paragraph 42, and Case C-283/98 *P Mo och Domsjö v Commission*, paragraph 46 above, paragraph 63). 'From that point of view, the fact that the applicant cooperated with the Commission, acknowledging that it had committed unlawful acts and describing those acts, did not mean that it no longer had any right or interest in obtaining a document from the Commission setting out precisely all the objections that the Commission raised against it, including those that might be based on statements or evidence supplied by other undertakings involved(...)'. In the context of settlements, statements of objections should contain information enabling the parties to corroborate that it subscribes their settlement submissions.

⁽³⁾ In line with settled case-law, the Commission shall base its decisions only on objections on which the parties concerned have been able to comment and, to this end, they shall be entitled to have access to the Commission's file, subject to the legitimate interest of undertakings in the protection of their business secrets (Cfr. Joined Cases T-39/92 and T-40/92, *CB and Europay v Commission* [1994] ECR II-49, at paragraph 47; Joined Cases T-191/98, T 212/98 to T-214/98, *Atlantic Container Line and Others v Commission* [2003] ECR II-3275, at paragraph 138).

⁽⁴⁾ See Judgments of the Court of Justice, in Cases 41/69, *ACF Chemiefarma v Commission* [1970] ECR 661, at paragraphs 47, 91 and 92; Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, *Suiker Unie and Others v Commission* [1975] ECR 1663, at paragraphs 80, 437 and 438; and Joined Cases 209/78 to 215/78 and 218/78, *Van Landewyck and Others v Commission* [1980] ECR 3125, paragraph 68; and judgments of the Court of First Instance in Case T-44/00 *Mannesmannröhren-Werke v Commission* [2004] ECR II-0000, paragraphs 98 to 100; and in Case T-15/02, *BASF AG v Commission*, of 15 March 2006, at paragraphs 93 and 95.

⁽⁵⁾ In this regard, recital 2 of Commission Regulation (EC) No XXX/2008 reads: '(...) Such early disclosure should enable the parties concerned to put forward their views on the objections which the Commission intends to raise against them as well as on their potential liability.'

⁽⁶⁾ As required by Article 11(1) of Regulation (EC) No 773/2004 and Article 27(1) of Regulation (EC) No 1/2003 respectively:

— 'The Commission shall give the parties to whom it addresses a statement of objections the opportunity to be heard before consulting the Advisory Committee referred to in Article 14(1) of Regulation (EC) No 1/2003' (Article 11(1) of Regulation (EC) No 773/2004).

— 'Before taking decisions as provided for in Articles 7, 8, 23 and Article 24(2), the Commission shall give the undertakings or associations of undertakings which are the subject of the proceedings conducted by the Commission the opportunity of being heard on the matters to which the Commission has taken objection. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment. Complainants shall be associated closely with the proceedings' (Article 27(1) of Regulation (EC) No 1/2003).

⁽⁷⁾ See in this regard the judgments of the Court of Justice in Cases *Musique diffusion française and Others v Commission*, above, at paragraph 21; Case 322/81, *Michelin v Commission* [1983] ECR 3461, at paragraph 19; and *Lögstör Rör v Commission*, above, at paragraph 200; and the Judgment of the Court of First Instance in Case T-15/02, *BASF AG v Commission*, of 15 March 2006, at paragraph 62.

26. Should the statement of objections endorse the parties' settlement submissions, the parties concerned should within a time-limit of at least one week set by the Commission in accordance with Articles 10a(3) and 17(3) of Regulation (EC) No 773/2004, reply to it by simply confirming (in unequivocal terms) that the statement of objections corresponds to the contents of their settlement submissions and that they therefore remain committed to follow the settlement procedure. In the absence of such a reply, the Commission may disregard the undertaking's request to follow the settlement procedure.
27. The Commission may legitimately adopt a statement of objections which does not endorse the parties' settlement submission. If so, the general provisions in Articles 10(2), 12(1) and 15(1) of Regulation (EC) No 773/2004 will apply. The acknowledgements provided by the parties in the settlement submission would be deemed to be withdrawn and could not be used against any of the parties to the proceedings. Hence, the parties concerned would no longer be bound by their settlement submissions and would be granted a time-limit allowing them to present their defence anew, including the possibility to request an oral hearing and access to the file, if they so wish.

2.5. Commission decision and settlement reward

28. Upon the parties' replies to the statement of objections confirming their commitment to settle, Regulation (EC) No 773/2004 allows the Commission to proceed, without any other procedural step, to the adoption of the subsequent final decision pursuant to Articles 7 and/or 23 of Regulation (EC) No 1/2003, after consultation of the Advisory Committee pursuant to Article 14 of Regulation (EC) No 1/2003. In particular, this implies that no oral hearing or access to the file may be requested by those parties once their settlement submissions have been endorsed by the statement of objections ⁽¹⁾, in line with Articles 12(2) ⁽²⁾ and 15(1a) ⁽³⁾ of Regulation (EC) No 773/2004.
29. The Commission may legitimately adopt a final position which departs from its preliminary position expressed in a statement of objections endorsing the parties' written settlement submissions, either in view of the arguments provided by the Advisory Committee or for other considerations in view of the ultimate autonomy of the Commission College to this effect ⁽⁴⁾. However, should the Commission intend to follow that course, it will inform the parties of this intention and notify to them a new statement of objections in order to allow for their defence in accordance with the general rules of procedure ⁽⁵⁾. It follows that the parties would then be entitled to have access to the file, to request an oral hearing and to reply to the statement of objections. The acknowledgments provided by the parties in the settlement submissions would be deemed to have been withdrawn and could not be used against any of the parties to the proceedings.

⁽¹⁾ In principle, oral hearings and access to the file are held upon parties' request, to ensure that they can exercise their rights of defence.

⁽²⁾ Pursuant to Article 12(2) of Regulation (EC) No 773/2004: '2. However, when introducing their written settlement submissions the parties shall confirm to the Commission that they would only require having the opportunity to develop their arguments at an oral hearing, if the statement of objections does not endorse the contents of their written settlement submissions.'

⁽³⁾ Pursuant to Article 15(1a) of Regulation (EC) No 773/2004: 'After the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003, the Commission shall disclose, where appropriate, the evidentiary basis supporting the envisaged objections to parties willing to introduce settlement submissions in order to enable them to do so. In view thereof, when introducing their written settlement submissions parties shall confirm to the Commission that they will only require access to the file after the receipt of the statement of objections, if the statement of objections does not endorse the contents of their written settlement submissions.'

⁽⁴⁾ See in this regard Joined Cases T-129/95, T-2/96 and T-97/96, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 231, and Case T-16/02, *Audi v OHIM* [2003] ECR II 5167, paragraph 75; Judgement of the Court of First Instance in Case T-15/02, *BASF AG v Commission*, of 15 March 2006, at paragraph 94.

⁽⁵⁾ In accordance with the case law: 'Thus, first, the rights of the defence are infringed as a result of a discrepancy between the statement of objections and the final decision only where an objection stated in the decision was not set out in the statement of objections in a manner sufficient to enable the addressees to defend their interests. Second, the legal classification of the facts made in the statement of objections can, by definition, be only provisional, and a subsequent Commission decision cannot be annulled on the sole ground that the definitive conclusions drawn from those facts do not correspond precisely with that provisional, intermediate classification. The Commission is required to hear the addressees of a statement of objections and, where relevant, to take account of any observations made in response to the objections by amending its analysis specifically in order to respect their rights of defence.' (Case T-44/00, *Mannesmannröhren-Werke v Commission* [2004] ECR II-0000, at paragraphs 98 to 100; Case T-15/02, *BASF AG v Commission*, at paragraph 95).

30. The final amount of the fine in a particular case is determined in the decision finding an infringement and imposing a sanction pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003.
31. In line with the Commission's practice, the fact that an undertaking cooperated with the Commission under this Notice during the administrative procedure will be indicated in any decision, so as to explain the reason for the level of the fine.
32. Should the Commission decide to reward a party for settlement in the framework of this Notice, it will reduce by XX % the amount of the fine after the 10 % cap has been applied having regard to the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ⁽¹⁾ and any specific increase for deterrence ⁽²⁾ used in their regard will not exceed a multiplication by two.
33. In cases settled with leniency applicants, the reduction of the fine granted to them will be the sum of the leniency reward and the settlement reward.

3. GENERAL CONSIDERATIONS

34. This Notice applies to any case pending before the Commission at the time of or after its publication in the Official Journal.
35. The Commission considers that normally public disclosure of documents and written or recorded statements received in the context of this Notice would undermine certain public or private interests, for example the protection of the purpose of inspections and investigations, within the meaning of Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽³⁾, even after the decision has been taken
36. Final decisions taken by the Commission under Regulation (EC) No 1/2003 are subject to judicial review in accordance with Article 230 of the EC Treaty. Moreover, as provided in Article 229 of the EC Treaty and Article 31 of Regulation (EC) No 1/2003, the Court of Justice has unlimited jurisdiction to review decisions on sanctions adopted pursuant to Article 23 of Regulation (EC) No 1/2003.

⁽¹⁾ OJ C 210, 1.9.2006, p. 2.

⁽²⁾ Point 30 of the Guidelines on fines.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.