International leniency coordination

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Today, all major jurisdictions in the world award the first company to seek leniency with respect to a cartel offence 'amnesty' (US jargon) or 'immunity' (EU jargon) from fines. No one will contest that these leniency programmes – and more specifically the 'first-in-the-door' principle that underpins these programmes – have enabled the competition authorities in these jurisdictions to detect more cartel activity and step up their relentless fight against cartels.

Although competition authorities increasingly discuss their enforcement policies with each other and assist each other in individual cases within the frameworks set up for that purpose by bilateral or multilateral cooperation arrangements, their leniency programmes are not identical. We give two examples.

First, in some jurisdictions, like the USA and more recently the UK, companies can self-report immediately after they learn about their cartel participation by putting down a 'marker'. With a marker, whereby a company submits some documentary evidence about the denounced cartel, it can keep its first place in the line while it carries out a full internal investigation in order to perfect its marker.

Other jurisdictions, like the EU, do not as yet have a marker system. In the EU, immunity applicants must indeed "immediately provide the Commission with all the evidence […] available to it at the time of submission".[1] It is true that the EU also gives the immunity applicant the possibility to submit evidence "in hypothetical terms" but even in this scenario it must present "a descriptive list of the evidence it proposes to disclose at a later stage"[2] and, more importantly, it will lose its first place in line if another company comes in with the required evidence before it has completed its internal investigation. Admittedly, the absence of a marker system is likely to be less of an issue for an immunity applicant who is the first to submit evidence that enables the Commission to carry out a surprise visit. One 'smoking gun' document would be sufficient to earn conditional immunity.[3]

Second, some leniency programmes (eg, the EU) require that the first-in-the-door company ends its cartel participation immediately when it submits the evidence, whereas others (eg, the US, Australia and France) in certain circumstances may allow the companies to continue their participation 'undercover' under the auspices of the competent competition authority. The second approach seems to be the more pragmatic one from an enforcement point of view but, as cases like *Stolt Nielsen* illustrate, the line that divides undercover activity from ongoing 'collusive' action may be a thin one (see below).

Although the European Commission insists that the immunity applicant stops its participation in the cartel, it is likely to apply this requirement in a flexible manner. We are informed that when "one authority would require the applicant to immediately stop its cartel activities whereas another would request it to continue in order not to endanger the investigation, […] the ECN members have agreed that the authorities would use their discretion to order termination in such a way that a conflicting demand would not arise in the concrete case".[4]

One must bear in mind that the competition law regimes in which these programmes are embedded, may also present differences and that these differences may themselves have a considerable impact on the dynamics of these leniency programmes. For instance, in regimes where company employees may get fined and jailed for their participation in cartel activity, or where the company itself may have to pay hefty damages for the harm caused to customers and consumers, the potential leniency applicant will want to shelter itself against these liabilities as much as possible (see also below). Plea bargaining mechanisms may help, at least reducing the exposure to criminal penalties (see eg, the US and Sweden).

These few introductory remarks aim at putting into context this year's update of developments in the EU and the USA, to which we now turn.

European Union

Developments in the member states

Most member states are operating a leniency programme today. Austria joined this group on 1 January 2006. Spain and Portugal have adopted a programme that will enter into force soon. Other member states are preparing a leniency programme, like Denmark, or are at least considering to start preparing one, like Italy, where there is now a legal basis for enacting a leniency programme. There are only two out of the 25 member states that do not presently seem to have plans to introduce a leniency programme: Malta and Slovenia. Notably, Maltese legislation provides a legal basis for plea bargaining.

Other member states that have been operating leniency programmes for some time have recently formalised their programme, like Belgium, or revised it in an attempt to bring it more in line with the EU's programme from 2002, like France and Germany.

The first Commission decisions based on leniency applications brought under the 2002 Leniency Notice

Until October 2005, the Commission had not adopted a single prohibition decision based on a leniency application submitted under the 2002 notice. As we explained in last year's contribution, the Commission has clearly had trouble processing swiftly all the leniency applications received over the past four years. In April 2005, Neelie Kroes, commissioner in charge of competition, had therefore voiced some sympathy for the concept of plea bargaining and settling cartel cases informally.[5] Her services are presently looking into this option and we are likely to hear more about it in the near future.

Prioritisation is another instrument to contain the workload generated by the leniency applications. Apparently, in a dozen or so cases, the Commission refused to grant conditional immunity not only because it had considerable doubt as to whether the conditions of the notice were met but also because the case "was not suitable for further investigation".[6] A case may not be suitable because it is "too unimportant for the Commission to investigate, given the Commission's limited resources" or because one or several member state competition authorities may be considered well placed to investigate the matter".[7] In these cases, the Commission issues a so-called non-action letter.

In October 2005, the Commission adopted its first prohibition decision based on information submitted by an immunity applicant under the 2002 notice in the 'Italian Raw tobacco case'.[8] Ironically, this was also the first case where the Commission withdrew

the conditional immunity because the leniency applicant had failed to comply with its duty to cooperate "fully on a continuous basis […] throughout the Commission's administrative procedure".[9] In essence, the applicant had revealed its application to the other cartel participants before the Commission had even had a chance to carry out surprise visits at the premises of these companies.

Since then, the Commission has adopted four other prohibition decisions based on leniency applications brought under the 2002 notice, whereby it granted definitive immunity to the applicant: 'industrial bags',[10] 'rubber chemicals',[11] 'bleaching chemicals'[12] and 'acrylic glass'.[13]

In the second two cases, the press releases mention explicitly what the fine would have been for the immunity applicant, had it not decided to blow the whistle (€130 million for Degussa in the 'bleaching chemicals case' and €265 million for the same applicant in the 'acrylic glass case'). This is an interesting development. Apparently, the Commission hopes that this will underline the financial incentive for cartel participants to come forward and confess their sins. Incidentally, the Commission can give these figures because the guidelines concerning the calculation of fines instruct the Commission to determine first the 'basic amount' of the fine for each company in light of the gravity and the duration of its cartel participation before taking into account: (i) aggravating circumstances, (ii) attenuating circumstances and (iii) cooperation under the 2002 Leniency Notice.[14]

Leniency applications within the European Competition Network (ECN)

In practice, the issues identified last year as the most relevant ones, are still on the table.

First, leniency applicants that wish to obtain immunity in several member states have no choice but to submit multiple filings in all these jurisdictions. This may prevent them from being first-in-the-door everywhere. But Commissioner Kroes seems keen to address this issue: "We are looking at setting up a 'one-stop-shop' for leniency applicants within the EU."[15]

Second, within the ECN, all network members, ie the Commission and the 25 national competition authorities (NCAs), become aware of a leniency application filed with one of them through the information exchange system that has been set up under article 11 of Regulation No. 1/2003. Leniency applicants remain, therefore, concerned that authorities who have not directly received their original application will use the information contained therein to start their own investigation (without granting them immunity). The Commission's response to this is that the Network Notice contains a series of safeguards (eg, the applicant must consent to the exchange of information, the receiving authority must commit not to impose penalties on it or on its employees).[16] We are told that "the first experiences show that all ECN members apply the rules strictly and with caution."[17]

The issue of discoverability of EU leniency applications in US courts

At present, the European Commission is revising its 2002 Leniency Notice. In February 2006, it published a draft amended notice for comments. Its main innovation is to formalise what is already standard practice today: leniency applicants are given the opportunity to confess their participation in a cartel and give all relevant information known to them in the form of an oral corporate statement. The oral statement is taped and transcribed. Of course, the leniency application also has a crucial written component since the oral corporate statement must be accompanied by all available contemporaneous (ie, pre-existing) documentary evidence of the cartel available to the applicant. The distinction between the oral and the written part of a leniency application is important. When at a later stage the Commission addresses its statement of objections to the cartel participants, the latter will have a right of access to the file. Although they will have full access to the documentary evidence submitted by the leniency applicant, the other cartel participants will only be able to read the transcript of the oral statement or listen to the tape at the Commission's premises and take notes.

Under this 'oral proffer' procedure, the corporate statement remains at all times within the control of the Commission. This aims at minimising discoverability in national courts, especially in the USA, and hence at guaranteeing leniency applicants that they will not be worse off than non-cooperating cartel participants in respect of civil procedures for damages. The Commission is not prepared to go a step further and consider the corporate statement merely as a 'roadmap' in order to get a better understanding of the case. Relying on recent case law, it views such a statement as genuine 'evidence' which, in combination with other corroborating evidence, can constitute adequate proof of the cartel.[18]

Even with the new procedure in place, the Commission remains concerned that these corporate statements could become discoverable in US courts under rule 26 of the Federal Rules of Civil Procedure. On 6 April 2006, the director general for competition expressed this concern to the executive director of the US Antitrust Modernization Commission. Referring to the Commission's earlier amicus curiae interventions in some US district courts (in the 'vitamins' and 'methionine cases') and in the US Supreme Court (in *AMD/Intel*), he argued that international comity must outweigh any USA discovery considerations. He added that, in any event, a broad application of rule 26 could even indirectly hamper enforcement actions of other agencies, including the US Department of Justice.[19]

The interaction between leniency and private damage actions within the EU

Within the EU, discoverability of corporate statements in national courts is less of an issue. In its Leniency Notice, the Commission states that these statements form part of its file and will not be disclosed or used for any other purpose than the enforcement of article 81 EC.[20] Moreover, in its notice concerning the cooperation with national courts, the Commission explicitly stipulates that it "will not transmit to national courts information voluntarily submitted by a leniency applicant without the consent of that applicant."[21]

Nevertheless, the issue remains whether leniency applicants might jeopardise their defence in private damage action cases before these national courts. In the EU, harmed customers or consumers will usually file their damage actions after the Commission has adopted a formal decision prohibiting the cartel. This decision will mention the existence of one or more leniency applications. The question is therefore whether this implies admission of guilt and hence a wider exposure to civil liability on the part of the leniency applicants as compared with the non-cooperating cartel participants.

In its green paper concerning damage actions for breach of the EC antitrust rules, the Commission takes the view that leniency programmes and damage actions both contribute to the effective deterrence from cartel activity. It admits, however, that "consideration should be given to the impact of damage claims on the operation of leniency programmes so as to preserve the effectiveness of the programmes."[22]

Since no member state explicitly recognises the interaction between these private and public enforcement instruments from a legal point of view, the Commission has offered three options to deal with this interaction: (i) the exclusion of discoverability of the leniency application (as explained, this is already the rule for applications submitted to the Commission); (ii) a rebate on damage claims against a leniency applicant; and (iii) the removal of joint and several liability from the leniency applicant.[23] The European Parliament is

engaged in this debate and Commissioner Kroes has announced that she "will wait for Parliament's views later this year before deciding on any possible next steps".[24]

During informal discussions in April and June 2006, some MEPs have – not surprisingly – stated their concern that the EU will copy a US 'litigation culture'. But the Commission has rebutted this concern by arguing that damage actions should act as a deterrent for cartel activity (in which case there would be less infringing activity, not more). This suggests that the Commission considers private damage actions more as a means of enhancing its public enforcement policy than as a means of enabling the victims of cartel activity to obtain compensation for the harm caused to them.

The interaction between leniency and criminal actions within the EU

In several member states, company employees face criminal penalties (in the form of fines or jail sentences) for their participation in cartel activity. Quite naturally, a company that considers filing a leniency application will wonder whether the benefit (ie, immunity from company fines) is worth the cost (ie, criminal liability of its employees).

The European Commission is aware of this problem. Article 12-3 of Regulation No. 1/2003, which concerns the exchange of information between the Commission and the 25 NCAs within the ECN, prevents the receiving authority from using any information exchanged (including, but not limited to, information submitted by a leniency applicant) to "impose custodial sanctions". In its Network Notice, the Commission adds that the members of the network can exchange information pursuant to article 12 without the leniency applicant's consent, if the receiving authority does not use this information to impose penalties on the company itself or any of its employees or former employees.[25]

In purely national cartel cases, employees of leniency applicants may be exposed to criminal penalties, especially if enforcement is the resort of the public prosecutor, not of the competent competition authority.

United States

DoJ anti-cartel enforcement activity

US criminal enforcement against international cartels has continued at a high level over the past year, driven in large measure by the DoJ amnesty programme that was described in detail in our article two years ago.

Two additional participants in the 'dynamic random access memory (DRAM) investigation' (in which Micron Technology has acknowledged receiving DoJ amnesty) have agreed to plead guilty and pay substantial criminal fines. In October 2005, Samsung Electronics Company and its US subsidiary Samsung Semiconductor agreed to pay a criminal fine of US$300 million. This is the second-largest criminal antitrust fine in US history – behind the US$500 million fine paid by F Hoffmann-La Roche in the vitamins cartel. In January 2006, Elpida Memory agreed to pay a fine of US$84 million. These two new fines, together with fines levied against two other DRAM participants, Hynix and Infineon, total US$729 million.[26] Since 1997, the Antitrust Division has imposed nearly US$3 billion in criminal fines, including nine fines of US$100 million or more.[27]

Second-in cooperation

Whereas the benefits of corporate amnesty are readily ascertainable and fully transparent,[28] the benefits are less certain – though potentially still significant – for 'second-in-the-door' defendants.

In a speech delivered at the American Bar Association Spring Meeting of the Section of Antitrust Law, the deputy assistant attorney general for criminal enforcement, Scott Hammond, sought to shed light on the various incentives available to second-in companies and the methods of determining the magnitude of the potential benefits. He described six ways in which a second-in defendant might expect to benefit from cooperation with the government:

- If the information provided by a second-in defendant expands the scope of the cartel as previously understood by the government, the calculation of the fine under the Sentencing Guidelines will not incorporate the self-incriminating information. This reduction in the guidelines minimum fine will act as a starting point for any 'cooperation discount'.
- If the information provided by a second-in defendant substantially advances an investigation, the government may offer a substantial assistance departure and a fine below the guidelines's minimum. This cooperation discount is applied as a percentage off the minimum guidelines fine. Discounts for second-in companies are generally 30 per cent to 35 per cent off the guidelines fine.
- Except in situations where the second-in defendant had a significant leadership role in the conspiracy or in a penalty plus situation, the cooperation discount starting point for a second-in defendant is the minimum guidelines fine as opposed to some other point in the applicable guidelines range.[29]
- The second-in defendant has the opportunity to minimise the number of individual employees who will be subject to prosecution. For instance, in the 'DRAM investigation', second-in Infineon had four individuals carved out of its plea agreement, third-in Hynix had five and fourth-in Samsung had seven.
- There is an increased likelihood that a second-in defendant will qualify for Amnesty Plus credit.
- There is an increased likelihood that the second-in defendant might be approached for affirmative amnesty in an unrelated market where the Antitrust Division is conducting a covert investigation.

The volume of any discount depends on: (i) the timing of the cooperation; (ii) the value of the information offered; and (iii) whether the company provides evidence of other, unrelated conspiracies. Hammond used the example of Crompton Corporation, which was the second-in-the-door in the Antitrust Division's 'rubber chemicals investigation', to illustrate the benefits available when a second-in company chooses to cooperate in an exemplary manner. Crompton cooperated immediately, preserved evidence and provided the government with more than 500,000 documents and more than 30 key witnesses, as well as submitting amnesty applications in four other product areas. For its cooperation, Crompton received an "extraordinary" 59 per cent discount off its minimum guidelines fine.[30]

DoJ revocation of Stolt-Nielsen amnesty

Last year's article detailed the DoJ's attempt to revoke the corporate amnesty granted to Stolt-Nielsen Transportation Group in a pending investigation into the international tanker shipping cartel. This spring, the United States Court of Appeals for the Third Circuit upheld the government's right to withdraw amnesty and pursue its prosecution.

In January of 2003, the DoJ issued a grant of conditional amnesty to Stolt-Nielsen, but, in March of 2004, informed Stolt-Nielsen that its amnesty was being revoked based on evidence developed by the DoJ that its unlawful activities had continued into November 2002, rather than terminating in March 2002 as had been represented by Stolt-Nielsen to the DoJ in its amnesty application. Although the US District Court for the Eastern District of Pennsylvania issued an injunction upholding Stolt-Nielsen's amnesty and barring the government from indicting the company for its participation in the shipping tanker cartel, Stolt-Nielsen's respite was short-lived. In

May 2006, the Third Circuit overturned the decision below, finding that the district court lacked authority to enjoin the government's indictments. The Third Circuit held that because Stolt-Nielsen had the ability to raise the amnesty agreement as a defence in its criminal proceeding, "[s]eparation-of-power concerns [...] counsel against using the extraordinary remedy of enjoining the Government from filing the indictments."[31] Stolt-Nielsen filed a petition for a writ of certiorari to the US Supreme Court on 20 July 2006.[32]

Empagran foreign purchaser case

In a previous article, we described in detail the decision of the United States Supreme Court in *F Hoffmann-La Roche Ltd v Empagran SA*, a purported class action brought on behalf of foreign purchasers of vitamin products asserting damages arising from the vitamins cartel.[33] We further noted that one of the key policy arguments made by the defendants and various amici (including the US DoJ and various foreign governments, including Germany, Canada, Japan, Belgium and the United Kingdom) related to the potential adverse impact that a broad construction of US civil antitrust jurisdiction would have on leniency programmes in international cartel cases – as firms would be less likely to confess their roles in unlawful activities if the consequences for doing so included worldwide liability under US law.

On 1 August 2006, the US District Court for the District of Columbia denied the plaintiffs' attempt to reopen the lawsuit once again. Plaintiffs claimed that they were entitled to continue their case on behalf of EU direct vitamin purchasers because there is no adequate mechanism for the private enforcement of antitrust law in the EU.[34] The district court concluded that it would be inappropriate to exercise supplemental jurisdiction over the claims of EU direct purchasers under the EU antitrust laws where the district court lacked original jurisdiction over any viable federal (US) claim. The district court also noted that plaintiffs' true argument was not that it was impossible to litigate antitrust claims in the EU, but rather that the damages prospects in the EU were less advantageous to potential plaintiffs than under the US system. "The mere fact that foreign litigants may obtain larger damages at a lower cost to litigate here in the United States is not, in-and-of-itself, reason to ignore comity [...]" The court also referenced the European Commission's recent green paper on private remedies and noted that it would be particularly inappropriate to ignore comity where the EU is attempting to facilitate antitrust damages claims.[35]

Notes

1 Paragraph 13(a) of the 2002 Leniency Notice (OJ C45/3 of 19 February 2002.
2 Id, paragraph 13(b).
3 Id, paragraph 8(a).
4 See C Gauer and M Jaspers, 'The European Competition Network-Achievements and Challenges - a Case in Point: Leniency' in Competition Policy Newsletter, No. 2006/1 pp 8-11, at p 10.
5 See our contribution, 'International leniency regimes: new developments and their strategic implications', in *Antitrust Review of the Americas 2006*, page 61.
6 Van Barlingen and Barennes, 'The European Commission's 2002 Leniency Notice in practice', Competition Policy Newsletter, No. 2005/3 pp 6 to 16, at p 7.
7 Id, p 12.
8 Press release IP/05/1315 of 20 October 2005.
9 See paragraph 11(a) of the Notice.
10 Press release IP/05/1508 of 30 November 2005.
11 Press release IP/05/1656 of 21 December 2005.
12 Press release IP/06/560 of 3 May 2006.
13 Press release IP/06/698 of 31 May 2006.
14 For the new version of these guidelines, see the DG Competition website at http://ec.europa.eu/comm/competition/antitrust/legislation/fines_en.pdf. The old guidelines from 1998 provided for the same steps in the same order.
15 See her speech at the conference (Concurrence 2006) in Paris on 23 June 2006.
16 Cf pp 37-42 of the notice on cooperation within the Network of Competition Authorities (OJ C101/43 of 27 April 2006).
17 For more details, see Gauer and Jaspers, cit note 4, at pp 9-10.
18 See Van Barlingen and Barennes, cit note 6. The authors note that "nothing convinces more than cartel participants' own admission of misbehavior".
19 See p 7 of the DG Competition submission on discovery to the Antitrust Modernization Commission, of which the text can be found at www.amc.gov/public_studies_fr28902/international_pdf/060406_DGComp_Intl.pdf.
20 Paragraph 33 of the Leniency Notice refers to "written" statements. But in the draft amended notice, the term 'written' has been dropped in line with the introduction of a procedure for oral corporate statement. In paragraph 32 of the notice (unchanged in the draft amended notice), the Commission adds that it will not normally disclose "documents received in the context of this notice".
21 See paragraph 26 of that notice (OJ C101/54 of 27 April 2006). The term 'information' seems to encompass the corporate statement (whether written or oral) as well as any documentary evidence.
22 See p 9 of the green paper which was published as COM(2005) 672 final on 19 December 2005.
23 Id, pp 9 and 10.
24 Her speech during the opening session of this year's competition day in Vienna on 19 June 2006.
25 Cit note 16, paragraph 41.
26 See www.usdoj.gov/atr/public/press_releases/2005/212002.htm.
27 Scott Hammond, deputy assistant attorney general for criminal enforcement, Antitrust Division, US Department of Justice, 'An Update of the Antitrust Division's Criminal Enforcement Program', American Bar Association section of Antitrust Law Cartel Enforcement Roundtable (16 November 2005).
28 US Department of Justice, Corporate Leniency Policy (10 August 1993) available at www.usdoj.gov/atr/public/guidelines/0091.htm.
29 The Amnesty Plus programme applies to companies that approach the Antitrust Division to negotiate a plea agreement in one investigation and also disclose the existence of a second, unrelated conspiracy. The company will receive amnesty and pay no fines in the second investigation and also receive a substantial additional discount in fine for its participation in the first conspiracy. The Penalty Plus programme is the analytical corollary to the Amnesty Plus programme. If, in the context of cooperating with the government on one investigation, a defendant becomes aware of collusion in another market and does not bring that collusion to the attention of the government, and the government later successfully prosecutes that conduct, the government will pursue penalties at or above the upper end of the guidelines range.
30 Scott Hammond, deputy assistant attorney general for criminal enforcement, Antitrust Division, US Department of Justice, 'Measuring the Value of Second-In Cooperation in Corporate Plea Negotiations', 54th Annual American Bar Association section of Antitrust Law Spring Meeting (29 March 2006).
31 *Stolt-Nielsen SA v United States*, 442 F3d 177, 187 (3d Cir 2006).
32 *Stolt-Nielsen SA v United States*, 442 F3d 177 (3d Cir 2006), petition for cert filed, 2006 WL 2055474 (20 July 2006) (No. 06-97).
33 542 US 155 (2004). In *Empagran*, the Supreme Court held unanimously that the plaintiffs' asserted injury had to arise from the US effects of the challenged conduct – and that it was not sufficient to allege merely that some other party had been injured in US commerce

by the unlawful conduct. The Supreme Court then remanded the 'Empagran case' to the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) to consider whether US jurisdiction would nonetheless be appropriate if the foreign plaintiffs could show that their foreign injuries would not have been possible absent the US domestic effects given the economic interdependence of US and foreign vitamins markets. On 28 June 2005, a unanimous panel of the DC Circuit ordered dismissal of the action in its entirety finding that the plaintiffs' alleged foreign injuries were proximately caused by the "foreign effects of price-fixing outside of the United States", and that such injuries were at best only indirectly caused by the conspiracy's alleged US effects. The panel thus concluded that the plaintiffs' claims failed to meet the requirements for subject matter jurisdiction in the US courts. *Empagran SA v F Hoffmann-LaRoche Ltd*, 417 F3d 1267 (DC Cir 2005). The Supreme Court denied certiorari on 6 January 2006.

34 *Empagran, SA v F Hoffman-LaRoche Ltd*, Civ No. 00-1686, 2006 US Dist LEXIS 52946 (DDC 1 August 2006).

35 Arnold & Porter partners Bruce Montgomery and Frank Liss defended Hoffmann-La Roche and Roche Vitamins throughout the 'vitamins proceedings', and with our Arnold & Porter colleague and former FTC chairman Robert Pitofsky, represented Roche in the DC Circuit and Supreme Court *Empagran* appeals.

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Arnold & Porter LLP's antitrust/competition & trade regulation practice assists clients in the United States and Europe in a broad array of industries with comprehensive expertise in both transactions and litigation. More than 60 competition and antitrust attorneys are resident in the firm's offices internationally. They have advised on major mergers and acquisitions, litigation and investigations, criminal antitrust, and have provided counselling in regards to federal, state and European laws governing competition, pricing, distribution, consumer protection and advertising, and intellectual property. Arnold & Porter's lawyers have held significant senior government positions, including chairman of the Federal Trade Commission (FTC); director of FTC's Bureau of Competition; deputy assistant attorney general at the Antitrust Division, Department of Justice (DOJ); and general counsel of the FTC.

Arnold & Porter opened its Brussels office in August 2003 and it has since expanded to a team of 10 competition/antitrust lawyers. Most recently, Luc Gyselen, a senior official with the Directorate-General for Competition (DG Comp) at the European Commission, joined the office as a partner. Heading the European competition practice from Brussels is EU competition expert Marleen Van Kerckhove. Ms Van Kerckhove and Mr Gyselen are joined by partner Susan Hinchliffe, who is permanently based in Brussels, and Tim Frazer, head of the UK competition practice, who divides his time equally between Brussels and London. The team collaborates with the head of Arnold & Porter's global antitrust practice, William Baer, who is based in Arnold & Porter's DC office but also spends a significant portion of his time in Brussels.