Commission Regulation (EC) No 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases (Text with EEA relevance)

COMMISSION REGULATION (EC) No 622/2008

of 30 June 2008

amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to 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[(1)], and in particular Article 33 thereof,

Having published a draft of this Regulation[(2)],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) 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[(3)] lays down rules concerning the participation of the parties concerned in such proceedings.

(2) Parties to the proceedings may be prepared to acknowledge their participation in a cartel violating Article 81 of the Treaty and their liability in respect of such participation, if they can reasonably anticipate the Commission's envisaged findings as regards their participation in the infringement and the level of potential fines and agree with those findings. It should be possible for the Commission to disclose to those parties, where appropriate, the objections which it intends to raise against them on the basis of the evidence in the file and the fines that they are likely to incur. 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.

(3) When the Commission reflects the parties' settlement submissions in the statement of objections and the parties' replies confirm that the statement of objections corresponds to the contents of their settlement submissions, the Commission should be able to proceed to the adoption of a Decision pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003 after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 14 of Regulation (EC) No 1/2003.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 622/2008. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) A settlement procedure should therefore be established in order to enable the Commission to handle faster and more efficiently cartel cases. 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. Therefore, the Commission may decide at any time during the procedure to discontinue settlement discussions altogether in a specific case or with respect to one or more of the parties. 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. The prospect of achieving procedural efficiencies in view of the progress made overall in the settlement procedure, including any unreasonable delays, such as delays associated with the resources required to provide access to non-confidential versions of documents from the file, will be considered. Other concerns such as the possibility of setting a precedent may also be considered.

(5) Complainants will be closely associated with settlement proceedings and be duly informed of the nature and subject matter of the procedure in writing to enable them to provide their views thereon and thereby cooperate with the Commission investigation. However, in the particular context of settlement proceedings, providing systematically a non-confidential version of the statement of objections to complainants would not always serve the purpose of enabling complainants to cooperate with the Commission's investigation and may occasionally discourage the parties to the proceedings from cooperating with the Commission. To this end, the Commission should not be obliged to provide a non-confidential version of the statement of objections to complainants.

(6) Regulation (EC) No 773/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 773/2004 is amended as follows:

1. Article 2, paragraph 1 is replaced by the following:

1. The Commission may decide to initiate proceedings with a view to adopting a decision pursuant to Chapter III of Regulation (EC) No 1/2003 at any point in time, but no later than the date on which it issues a preliminary assessment as referred to in Article 9(1) of that Regulation, a statement of objections or a request for the parties to express their interest in engaging in settlement discussions, or the date on which a notice pursuant to Article 27(4) of that Regulation is published, whichever is the earlier.

2. In Article 6, paragraph 1 is replaced by the following:

1. Where the Commission issues a statement of objections relating to a matter in respect of which it has received a complaint, it shall provide the complainant with a copy of the non-confidential version of the statement of objections, except in cases where the settlement procedure applies, where it shall inform the complainant in

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writing of the nature and subject matter of the procedure. The Commission shall also set a time limit within which the complainant may make known its views in writing.

3. In Article 10, paragraph 1 is replaced by the following:

1. 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.

4. The following Article 10a is inserted:

Article 10a

Settlement procedure in cartel cases

1 After the initiation of proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003, the Commission may set a time limit within which the parties may indicate in writing that they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions. The Commission shall not be obliged to take into account replies received after the expiry of that time limit.

If two or more parties within the same undertaking indicate their willingness to engage in settlement discussions pursuant to the first subparagraph, they shall appoint a joint representation to engage in discussions with the Commission on their behalf. When setting the time limit referred to in the first subparagraph, the Commission shall indicate to the relevant parties that they are identified within the same undertaking, for the sole purpose of enabling them to comply with this provision.

2 Parties taking part in settlement discussions may be informed by the Commission of:

a the objections it envisages to raise against them;

b the evidence used to determine the envisaged objections;

c non-confidential versions of any specified accessible document listed in the case file at that point in time, in so far as a request by the party is justified for the purpose of enabling the party to ascertain its position regarding a time period or any other particular aspect of the cartel; and

d the range of potential fines.

This information shall be confidential vis-à-vis third parties, save where the Commission has given a prior explicit authorisation for disclosure.

Should settlement discussions progress, the Commission may set a time limit within which the parties may commit to follow the settlement procedure by introducing settlement submissions reflecting the results of the settlement discussions and acknowledging their participation in an infringement of Article 81 of the Treaty as well as their liability. Before the Commission sets a time limit to introduce their settlement submissions, the parties concerned shall be entitled to have the information specified in Article 10a(2), first subparagraph disclosed to them, upon request, in a timely manner. The Commission shall not be obliged to take into account settlement submissions received after the expiry of that time limit.

3 When the statement of objections notified to the parties reflects the contents of their settlement submissions, the written reply to the statement of objections by the parties concerned shall, within a time limit set by the Commission, confirm that