

## To settle or not to settle: all bets off in cartel cases

February 13, 2017

Losing out on the 10% fine reduction in return for settling isn't the only risk when pulling out of settlement negotiations with the European Commission. The European Court of Justice recently confirmed that abandoning the settlement procedure could, paradoxically, result in a higher fine for a shorter cartel duration. Companies should think twice before deciding on whether or not to settle, since there is no certainty as to when the best deal can be struck, either in the settlement procedure or in the standard cartel procedure.

The European Court of Justice [confirmed](#) the fine imposed by the European Commission on the Roullier group for its subsidiary's participation in the animal feed phosphates cartel. The cartel lasted from 1978 until 2004. Unlike the other five groups of animal feed phosphate producers involved, the Roullier group decided to drop out of the settlement negotiations after hearing the range of the fine that the Commission intended to impose if the case was settled. The Roullier group thus became the only party to the Commission's standard administrative procedure, making it the first "hybrid" case featuring both the standard procedure and settlement procedure running in parallel.

During the standard administrative procedure, the Roullier group successfully argued that it had only participated in the cartel from 1993 until 2004, thus reducing the duration of its cartel participation by 15 years. Ironically, this led to a higher fine than the maximum range discussed during the early stages of the settlement procedure. During the settlement negotiations, the following fine reduction options had been discussed: (1) a 10% reduction for settling; (2) a 35% reduction for mitigating circumstances, granted because the Roullier group provided information on the cartel from 1978 onwards; and (3) a 17% reduction under the Leniency Notice based on information the Roullier group had provided in relation to the period 1978-2004.

The European Court of Justice ruled that the General Court had rightly concluded that the Commission had used the same calculation method to set both the range of fines in the settlement procedure, and the fine imposed in the standard administrative procedure. That the fine in the administrative procedure turned out to be EUR 20 million higher for the shorter cartel duration could be explained by the fact that (1) the turnover of the Roullier group's subsidiary had sharply increased between 1993 and 2004, resulting in a higher basic fine amount; (2) the 10% fine reduction no longer applied since the Roullier group stepped out of the settlement procedure; (3) the 35% fine reduction could no longer be granted because the Roullier group had successfully disputed their cartel involvement for that period; and (4) the leniency discount had been reduced from 17% to 5% for the same reason.

---