

Press Release

Landmark opinion of Advocate General Szpunar on leniency programmes and public versions of Commission cartel decisions

Brussels, 22 July 2016 – CDC welcomes the opinion of Advocate General (AG) Maciej Szpunar of 21 July 2016 in Case C-162/15 P, *Evonik Degussa* confirming that information on the functioning of a clandestine cartel, even when it originates from the leniency statements, is not protected from publication in non-confidential versions of infringement decisions by the European Commission (Commission). The opinion gives clear guidance on the alleged conflict between protection of the rights of leniency applicants on the one hand and on the other hand the right of access to information of the public in general and persons potentially damaged by the reported anticompetitive conduct in particular.

While making a distinction between the material leniency statement as such and the information contained therein, AG Szpunar explains that information cannot be classified as confidential or as being covered by professional secrecy solely because it was contained in statements submitted in the context of cooperation with the Commission. AG Szpunar emphasizes that, independent of the source, any information which relates to the functioning of a cartel does not merit protection.

AG Szpunar concludes that the information originating from leniency statements may be contained in public versions of infringement decisions provided that the link that would enable their source to be identified is removed. It is also clear from the opinion that the Commission must publish, in timely manner, a detailed description of the facts constituting the infringement that is non-protected information.

In a remarkable step at the end of his opinion, AG Szpunar makes some general statements on the interpretation of the access to information provisions in Articles 5 to 8 of Directive 2014/104/EU on actions for damages for infringements of competition law, which have to be implemented into national law by the Member States by the end of this year. In this respect he underlines that “*public access to the information relating to the unlawful facts is a fundamental element of actions for damages, since it allows injured third parties to ascertain the course taken by the cartel and facilitates the establishment of the facts relating to the existence and the extent of liability, with respect to all the participants.*”

Till Schreiber, managing director at CDC: “*The opinion provides important guidance on the relationship between the right of access to information and the protection of leniency statements. This is not only relevant for the daily practice of the Commission, but also for national courts and legislators in the context of the implementation of Directive 2014/104/EU.*”

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