

# CARTELS WORKSHOP: AN ADVANCED SEMINAR ON SUBSTANTIVE AND PROCEDURAL EU DEVELOPMENTS

## **4<sup>th</sup> Cartels Workshop: An advanced seminar on substantive and procedural EU developments**

*Workshop II - Procedural Issues, Wednesday 25 January 2023*

*Interview with Dr. Gordon Christian (Siemens Energy)  
by Daniel Vowden (Herbert Smith Freehills)*



*Dr. Gordon Christian (Principal Counsel Competition, Siemens Energy) has been interviewed by Daniel Vowden (Partner, Herbert Smith Freehills) in anticipation of the 4<sup>th</sup> Cartels Workshop, to be held in Brussels on Wednesday, January 25th.*

***Registrations & Program [here](#)***

***Daniel Vowden:*** It is a pleasure to speak with you. Towards the end of 2022 the European Commission published important practical guidance on its leniency programme ("Leniency Guidance", available [here](#)). This took the form of a series of frequently asked questions. The Commission indicated that the Leniency Guidance was required to facilitate leniency applications in a "more complex leniency landscape". In particular, there is a widespread perception that the Leniency Guidance is, at least in part, a response to declining leniency applications. OECD analysis suggests that leniency applications are in decline worldwide, and in Europe have declined by 70% between 2015 and 2020. Are you persuaded that the Leniency Guidance is likely to reassure businesses and encourage a reversal in this decline in leniency applications?

***Dr. Gordon Christian:*** The reasons behind the well-recognized decline in leniency applications are complex, and in my view, the significant and ever-increasing private enforcement risks following an adverse cartel decision by an antitrust authority are the most important reasons behind the decline. However, the Leniency Guidance in FAQ form, to the extent that it addresses or clarifies uncertainties in the Leniency Notice or prior Commission case practice, at the very least, helps to take those uncertainties off the table as reasons not to apply for leniency.

***Daniel Vowden:*** Turning to the Leniency Guidance itself, for those who have yet to review it are there two or three key takeaways that you would flag?

***Dr. Gordon Christian:*** In my view, the most important new aspect is the possibility for companies to have an informal discussion with the Commission on a no-names basis, and that is also the most commented-upon feature of the FAQs that I have seen in publications on the topic so far. I would also flag the more detailed guidance on what constitutes significant added value (see further on that below) and the additional information on the interplay between whistleblowing and applying for leniency.

***Daniel Vowden:*** To secure a fine reduction under the 2006 Leniency Notice it is necessary for a leniency applicant to provide evidence of significant added value to the Commission's investigation. The Leniency Guidance helpfully elaborates on the nature of this threshold, the assessment of "significant added value", including the value generally attributed to different types of evidence. Do you think these clarifications are helpful? Is there any further guidance that you think the Commission could helpfully provide?

***Dr. Gordon Christian:*** On the one hand, I clearly think that the additional detail in the FAQs on "significant added value" is helpful, as it is one of the most important assessments that a company needs to make when it has uncovered its participation in a cartel – how likely is it that this information will be considered by the Commission to constitute significant added value? On the other hand, the issue is so fact-specific that I think it is very difficult to identify specific further guidance that would be more helpful across the board on this issue.

*To hear more, see the Program, and register for the conference for free, click below:*

**REGISTER FOR THE CONFERENCE**

*\* The views and opinions expressed in this document do not necessarily represent those of the speakers' institution or clients.*