COMMENTS OF THE ABA SECTIONS OF ANTITRUST LAW AND INTERNATIONAL LAW ON THE PUBLIC CONSULTATION VERSION OF THE GUIDELINES ON LENIENCY IN CARTEL CASES IN CHILE PUBLISHED BY THE FISCALIA NACIONAL ECONOMICA

February 27, 2015

The views stated in this submission are presented jointly on behalf of the Sections of Antitrust Law and International Law only. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore may not be construed as representing the policy of the American Bar Association.

The Sections of Antitrust Law and International Law (“Sections”) of the American Bar Association (the “ABA”) appreciate the opportunity to submit their views to the Fiscalia Nacional Economica (the “FNE”) concerning its draft Guidelines on Leniency in Cartel Cases (the “Guidelines”) published for public consultation on November 11, 2014. The Sections applaud the FNE’s obvious commitment to helping applicants participate in Chile’s Leniency Program and to administering its Program in a transparent manner as reflected in the decision to develop and solicit public comments on the Guidelines.

Executive Summary

The Sections commend the FNE for its efforts to provide procedural transparency through one comprehensive document. The Guidelines are a helpful reference source that potential applicants and their counsel can use to explain and analyze the leniency application process in Chile. Overall, the Sections believe that the Guidelines represent a substantial improvement over prior guidance materials and will facilitate greater participation in Chile’s Leniency Program.

However, based on the extensive experience with cartel enforcement and private damage litigation possessed collectively by the Sections’ members, the Sections have six major concerns with the FNE’s policies as reflected in the Guidelines.

• First, although the Sections appreciate the FNE’s significant and reasonable interest in confidentiality, particularly during the period in which revealing the existence or contents of a leniency application might jeopardize the FNE’s investigation, the Sections submit that the non-disclosure requirements outlined in the Guidelines are more restrictive than necessary to protect the FNE’s interests and may disincentivize participation in the Leniency Program. The Sections therefore respectfully suggest that the FNE consider greater flexibility with respect to the disclosure of participation by the leniency applicant.

• Second, the Sections are concerned that the Guidelines impose an unnecessarily high evidentiary threshold for obtaining a marker which may deter potential applicants from coming forward and reporting potential wrongdoing. The Sections suggest the FNE clarify the paragraphs outlining this threshold and emphasize that the
evidentiary threshold for obtaining a marker is purposely low in order to encourage companies to come forward as soon as they detect possible cartel activity.

- Third, the Sections believe that the requirement that an applicant submit a detailed, written corporate confession in order to secure leniency will serve as a major disincentive to participating in Chile’s Leniency Program, particularly for applicants whose conduct may potentially expose them to private damage litigation in the United States or other jurisdictions. In particular, this requirement would expose leniency applicants to significant risks in U.S. private damage litigation because the required detailed written confessions would likely be subject to mandatory disclosure to opposing parties in litigation and admissible as against interest in court proceedings. In light of this, the Sections respectfully suggest that the FNE follow international norms and adopt a paperless application process.

- Fourth, given the potential exposure of natural persons under Chilean Law, the Sections agree that it is appropriate and beneficial to immunize employees of a company that receives leniency. The Sections are concerned, however, that a process that requires the applicant to identify all employees seeking protection and that all relevant employees expressly ratify their participation in the conduct prior to execution of the leniency agreement would unnecessarily delay the grant of conditional leniency and may threaten the confidentiality of the process. Based on experience in other jurisdictions, the Sections believe that a formal ratification process is unnecessary and suggest that the FNE remove the ratification requirement from its Guidelines.

- Fifth, the Sections recognize the FNE’s understandable desire that applicants grant the FNE waivers so that it can share information with the other jurisdictions to which the applicant has applied for leniency. However, to the extent the Guidelines give the impression that waivers may not be voluntary and that leniency may be denied for failure to grant a waiver, the Sections respectfully suggest that they be revised so that the leniency process remains predictable and transparent.

- Sixth, the Sections encourage the FNE to consider a more flexible approach to the quantity and timing of requirements for the translation of evidence and corporate submissions.

**Comments**

1. **Prohibition Against Disclosure of Participation in Leniency Program**

The Sections appreciate that the FNE has a significant and justifiable interest in ensuring that neither the fact nor the content of an application for leniency be disclosed during a period when doing so can jeopardize the FNE's investigation. However, the Sections respectfully submit that the non-disclosure requirements in Paragraphs 17-18 are more restrictive than necessary to achieve this objective and may create a disincentive to participation in the Leniency Program.
In this regard, the Sections suggest that greater flexibility is required under Paragraph 17 to permit an applicant to comply with the disclosure rules contained in securities laws, such as Section 409 of the U.S. Sarbanes-Oxley Act of 2002 and Form 8-K of the U.S. Securities Exchange Act of 1934. As drafted, Paragraph 17 may place applicants in the untenable position of having to choose between violating the requirements of the Leniency Program—and thereby losing the benefit of immunity—or violating the securities or corporate laws of their home jurisdiction. Moreover, the decision to disclose leniency status under the securities laws is not always unambiguous and often involves the judgment of a company and its counsel about whether disclosure is required. In these circumstances, where a “good faith judgment” may be made that disclosure is required, the Sections suggest that it is important to provide applicants with the flexibility to make such disclosure rather than put a cooperating company at risk of violating other laws.

Furthermore, the Sections encourage the FNE to consider broadening the exception to the non-disclosure requirement in Paragraph 18 because the “extent that information is required by law” exception does not capture all situations where disclosure may be desirable. For example, such a stringent formulation may prevent parties from making required disclosures in connection with corporate transactions (e.g. involving a merger or acquisition, which are normally negotiated in the context of non-disclosure agreements and due diligence processes). Absent disclosure there would be risks of misrepresentation by the seller and the buyer effectively being defrauded. In addition, pursuant to the U.S. Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”), an amnesty applicant under the Antitrust Division's Corporate Leniency Policy can obtain relief from treble damages and joint and several liability if it cooperates with the plaintiffs in related civil damage cases. Pursuant to amendments to ACPERA, cooperation by the leniency applicant must be “timely” in order for the defendant in the civil action to receive the relief, which may require disclosure prior to the ultimate conclusion of investigations by the FNE or other agencies. In the Sections’ experience, the benefits conferred by ACPERA are a significant incentive for parties evaluating whether to seek leniency in international cases. Analogous rules with respect to amnesty applicants are being implemented in Europe.\(^1\)

Moreover, the Guidelines would appear to prohibit disclosure by the applicant beyond the time necessary to safeguard the FNE’s investigation. Paragraph 17 prohibits the disclosure of the application “until the FNE has presented a complaint before the TDLC or ordered the closing of the investigation.” Under the procedures of most jurisdictions’ leniency programs, however, the restrictions on non-disclosure focus on the agency’s collection of key evidence and the need to prevent destruction of that evidence. Thus, procedures often exist that facilitate the disclosure of leniency status once the matter becomes public as to the other suspected cartel participants (for example, following the execution of dawn raids, search warrants or subpoenas).\(^2\) The Sections


\(^2\) For example, to qualify for immunity from the European Commission, an undertaking must not disclose “the fact or any of the content of its application before the Commission has issued a statement of objections in the case, unless otherwise agreed.” European Commission, Commission Notice on Immunity from Fines and Reduction of Fines in Cartel Cases ¶ 12(a) (2006).
respectfully suggest that the FNE allow parties to disclose their leniency status once the matter becomes public and state that applicants communicate with the FNE about such proposed disclosures if there is uncertainty as to the status of the FNE’s investigation.

2. Evidentiary Threshold for Obtaining a Marker

The Sections commend the FNE for its clear commitment to helping companies successfully participate in Chile’s Leniency Program. For example, the mandate of the Leniency Officer to “support [potential or actual applicants] in all stages of the procedure with the aim of obtaining the acceptance of their application” demonstrates the FNE’s willingness to aid companies in successfully navigating the leniency process from obtaining a marker to the actual grant of leniency. Further, the Sections applaud the FNE’s desire to provide guidance and clarity as to what must be submitted in order to obtain a marker.

Nevertheless, the Sections are concerned that the FNE’s commitment to bringing companies into its Leniency Program may be undermined by the unnecessarily high threshold for obtaining a marker under the Guidelines. The Sections believe that for a leniency program to be most effective, the evidentiary threshold for receiving a marker should be low and very transparent. A very clear and low threshold is used to grant markers by various other jurisdictions including the U.S. Department of Justice, Antitrust Division (“DOJ”).

As the DOJ has publicly explained, the purpose of granting a marker is to hold a company’s place at the front of the line for a finite period of time while the company “gathers additional information through an internal investigation to perfect the client’s leniency application.” The experience of many jurisdictions over a number of years confirms that a program requiring only a minimal amount of information up front is sufficient to permit the authority to determine if the company seeking a marker is indeed “first in” to initiate a claim for leniency. A low threshold takes into account that an applicant for leniency will eventually need to acknowledge the existence of a cartel and identify additional details regarding it, including its alleged participants, the territories affected, and its estimated duration. However, this level of detail takes time to develop and is therefore more appropriately required as part of the formal leniency application process.

The FNE’s high threshold for obtaining a marker is set out in several paragraphs of the Guidelines. Paragraph 31 states that the applicant need not fulfill the requirements for obtaining the leniency benefit listed in Paragraph 11 and encourages parties to come forward as soon as they suspect involvement in a cartel. However, Paragraphs 36, 37, and 40 appear to establish a higher and less certain threshold.

Specifically, Paragraph 36 lists all of the details an applicant must provide in order to obtain a marker. It includes commonly-requested information like the company’s identity and the products or services that may be involved in the suspected cartel conduct. However, it also requires the applicant to identify and describe the cartel’s participants, the territories affected, the

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and its estimated duration, at a stage of an internal investigation when these details may be difficult to determine in a reliable manner.

In addition, Paragraph 40 states the requirements for a marker in the negative, noting that a request for a marker may be declared *inadmissible* if any one of the six conditions listed in that Paragraph are met. Notably, several of the conditions in this Paragraph mirror the requirements to obtain a grant of conditional leniency as outlined in Paragraph 11. Paragraph 40 is thus inconsistent with the notion of being able to obtain a marker even if all of the elements listed in Paragraph 11 are not satisfied, and may therefore discourage self-reporting.

Finally, the statement in Paragraph 37 that a marker will be granted if the information provided by the applicant is “found conducive to proving” a cartel also seems to suggest that an applicant must provide substantial evidence of wrongdoing at an early stage in the investigative process.

In contrast, the threshold for obtaining a marker employed by the DOJ is quite low, particularly when the DOJ is not already investigating the wrongdoing. Applicants seeking markers for conduct that is not already being investigated need only report that they have uncovered some information that indicates there may have been a possible criminal antitrust violation; disclose the general nature of what was detected; identify the industry, product, or service involved; and identify the client. Further, the level of detail required in identifying the product or service involved must only be specific enough to allow the DOJ to determine whether leniency is still available. We note, however, that the DOJ’s evidentiary threshold for obtaining a marker “is higher when the [DOJ] already is in possession of information about the illegal activity” and the applicant is therefore ultimately seeking to qualify for “Type B Leniency” which is available when a company seeks full immunity after the DOJ has already received information about the reported conduct from another source. Paragraph 23 of the Guidelines makes clear that the FNE may also grant leniency to companies when the FNE already has an open investigation concerning the same market and/or of the same facts if “the information provided by the applicant [] add[s] value to that in the FNE’s possession.” The Sections believe that, in the case of an ongoing investigation, it would be appropriate for the FNE to adopt an approach similar to that of the DOJ, requiring applicants to provide somewhat more detail in order to obtain a marker.

A low threshold for obtaining a marker can increase the effectiveness of a leniency program by reducing uncertainty. This, in turn, is likely to result in companies becoming more comfortable coming forward quickly before they have completed a full internal investigation. As the DOJ states, “because companies are urged to seek leniency at the first indication of wrongdoing, the evidentiary standard for obtaining a marker is relatively low.” Often when companies first obtain indications of possible collusive conduct, they will not have sufficient information to describe the conduct in detail, including the cartel’s participants, the territories

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4 *Id.*
5 *Id.*
6 *Id.*
7 *Id.*
affected, and the estimated duration as required by Paragraph 36(3), or to say with certainty that a violation took place. Therefore, a requirement to provide this level of detail at such an early stage in a company’s internal investigation may cause companies not to self-report to the FNE.

The FNE is also urged to consider the ramifications of enacting a higher threshold for securing a marker than that employed by other jurisdictions. For members of international cartels contemplating self-reporting possible cartel activity to numerous jurisdictions simultaneously, a similar approach to the marker-granting process greatly facilitates dealing expeditiously with multiple jurisdictions. The U.S. and various other jurisdictions permit companies seeking a marker to do so on the basis of very limited information. If the FNE were to impose a higher threshold, it may deter a leniency applicant from promptly reporting to the FNE.

In sum, a low threshold for obtaining a marker provides greater certainty for the applicant and encourages early reporting. It is therefore one of the key foundations for an effective leniency program. Thus, the Sections respectfully suggest that the FNE revise Paragraph 36 of the Guidelines with language making clear that, when self-reporting conduct, an applicant may easily satisfy the evidentiary threshold for securing a marker for full immunity by sharing the identity of the client and sufficient information about the products or services and the conduct involved to allow the FNE to determine if first-in leniency is available. Further, because elements of Paragraph 40 directly contradict Paragraph 31 and the Guidelines also state the requirements for obtaining a marker affirmatively, the Sections respectfully suggest that Paragraph 40 be deleted in its entirety.

3. Paperless Leniency Application Process

The Sections commend the FNE for allowing applicants to supply all information necessary for securing a marker verbally. However, the Sections are concerned about the disincentives to participate in the Leniency Program created by the requirement that an applicant submit a detailed, written corporate confession describing its participation in the reported conduct in order to obtain leniency, as described in Paragraphs 48, 51, and 52 of the Guidelines. In particular, the requirement to submit a written corporate confession will create a major disincentive to report international cartel activity to the FNE where private damage litigation is anticipated in the United States or other significant jurisdictions. For example, the written confession currently contemplated by the Guidelines would likely be subject to mandatory disclosure to opposing parties in follow-on U.S. private damage litigation as admissions against the company’s interests and would therefore expose the leniency applicant to significant and unfair litigation risks that would not be present for companies who elect not to self-report or not to cooperate with the FNE’s investigation. In addition, such admissions would also be available for use in other proceedings, such as by European complainants in pursuit of competition proceedings in E.U. Member States.

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8 Public records would be admissible, if relevant, in the U.S. See Fed. R. of Evid. 401 (governing relevance); id. 803(8) (providing a hearsay exception for public records). Indeed, foreign public documents are self-authenticating under Federal Rule of Evidence 902(3) and can be proved under Federal Rule of Civil Procedure 44(a)(2). In addition, admissions of a party opponent would be permissible under the hearsay exceptions for prior witness statements and party opponent admissions in Federal Rule of Evidence 801(d).
If the FNE’s Leniency Program requires members of international cartels to increase their exposure to private damage litigation in order to qualify, then there will be applicants that will be deterred from self-reporting in Chile. Therefore, the Sections urge the FNE to follow the example of the United States, Canada, the European Union, Japan, Australia, and many other jurisdictions and adopt a paperless leniency application process.

Paragraphs 48, 51, and 52 of the Guidelines contemplate a written application that is very detailed. Paragraph 48 states the basic requirement that applicants file their leniency application in writing, and Paragraph 51 explains that the application must include, among other things, “a detailed description of the cartel, its participants, affected markets, operation, duration, geographic scope.” Paragraph 52 further expands upon this general description by providing a “model list of information” to be included in a leniency application. Although the Guidelines state that the list is “non-comprehensive,” it is very extensive, covering more than 20 types of information in three broad categories: information regarding the parties to the cartel agreement; information regarding the industry affected; and information regarding the cartel. With respect to the cartel membership category, the Guidelines suggest that applicants should outline their own participation in the cartel in their written application.

It is understandable that an authority would require an applicant to provide a full oral exposition of all known facts regarding the reported conduct and to make all relevant witnesses and pre-existing documents available to the authority. However, written corporate admissions of wrongdoing will lead to the perverse outcome that a fully cooperating leniency applicant would be in a worse position in civil private damage cases than other cartel participants—even those who refuse to cooperate in any fashion with the enforcement authorities or the representatives of the purported injured parties. If the FNE places companies that self-report in a worse position in civil damages actions than cartel members that refuse to cooperate, then many companies reporting cartel activity to enforcers elsewhere will be deterred from reporting in Chile.9

The Sections therefore suggest that the FNE design a paperless application process. To institute a successful paperless process, the FNE would also need to establish procedures that limit emails and other written communications sent by the FNE to applicants, as such documents may also be subject to mandatory disclosure to opposing parties in future proceedings in other jurisdictions. Thus, the FNE would need to reconsider and amend the practice of sending written confirmation to the applicant when it grants a marker as contemplated by Paragraphs 37 and 38.

In summary, the litigation risks associated with written leniency applications will likely dissuade members of international cartels from reporting in Chile, thereby undermining the effectiveness of the FNE’s fight against cartels. In contrast, a paperless leniency application process would allow a corporate leniency applicant to cooperate fully with the FNE’s investigation without being disadvantaged in other proceedings. Moreover, it is not clear that a written application process provides significant benefits for an agency over a paperless one.

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9 As the International Competition Network has recognized, “potential leniency applicants may be reluctant to make a written application due to fear of private damages actions, including class actions, arising out of the application…” and “where oral statements by the leniency applicant receive greater confidentiality protections than a written application, a paperless process may increase an incentive to apply for leniency.” International Competition Network, Anti-Cartel Enforcement Manual (2014), http://www.internationalcompetitionnetwork.org/uploads/library/doc1005.pdf.
Indeed, a number of other jurisdictions, including the United States, the European Union, Canada, Australia, Japan, and many others, have found that the paperless process is fully consistent with the fulfillment of their law enforcement mandate. Therefore, the Sections strongly recommend that the FNE abandon the requirement of a written leniency application in order to obtain a grant of leniency.

4. Leniency for Corporate Directors, Officers and Employees: Express Ratification

Given the potential exposure of natural persons to sanctions under Chilean Law, the Sections agree with the FNE that employees who come forward with the company and cooperate fully should also receive the benefits of the leniency program.

As Paragraphs 56 and 72-75 make clear, the Guidelines contemplate that individuals may be protected either because of their position as a director, officer, or employee of a corporate leniency applicant, or because of their own, independent leniency application. Where a legal entity is the leniency applicant, Paragraph 56 directs that its application include a list of the names of their current and past employees and directors who have participated in the cartel and to whom the applicant wishes the leniency benefit be extended. Paragraph 56 further explains that the leniency benefit will be extended to people on this list “if they expressly ratify their will to be creditors of the corresponding leniency benefit, acknowledge their participation in the cartel, collaborate with the FNE, and have not acted as independent undertakings during the period of the infringement.”

The Sections respectfully suggest that the process of requiring a corporate leniency applicant to provide a list of relevant employees and to require each employee on that list to provide express ratification unnecessarily introduces substantial burdens on the leniency applicant and the FNE.

First, a ratification requirement would significantly slow down the leniency application process. To develop the list required by Paragraph 56, a leniency applicant would be required to determine which current and former employees participated in the conduct. Then, it would have to bring in all of those employees to expressly ratify the leniency agreement. Presumably, all of this would have to occur before the execution of a leniency agreement, significantly slowing down the process and potentially jeopardizing the confidentiality of the case.

Moreover, requiring individuals to expressly ratify the leniency agreement may negatively affect the incentives for leniency applications. At this stage, the Sections understand that it is still unclear whether criminal sanctions apply to cartel conduct in Chile. The extension of leniency to individuals would only appear to protect them from civil fines. Thus, managers or directors who are potentially implicated in the conduct may not support a company’s application for leniency out of concern that they may be exposed to criminal sanctions in Chile. For applications related to international cartels, an individual’s ratification may be considered an admission of criminal conduct that could lead to prosecution in a different jurisdiction. This too would be a significant disincentive to support the leniency application.

Finally, a requirement that an applicant provide a list of all employees it would like to bring under its leniency umbrella would limit the FNE’s discretion to determine the individuals
from whom it would like to request cooperation. An applicant would have the incentive to extend leniency to as many individuals as possible, almost regardless of their respective participation in the conspiracy, and the FNE would be bound to accept into the Leniency Program all those that were willing to fulfill the confession and the cooperation requirement. The resulting list may include numerous employees who are of limited, if any, value to the FNE’s investigation.

The Sections acknowledge the importance of the FNE being able to elicit full and continuing cooperation from all relevant individuals that have participated in the reported conduct. However, the Sections believe that full cooperation can be achieved through extending immunity to all relevant employees conditioned on their full, continuing and complete cooperation with the FNE. The FNE would have the right to exclude any employee from receiving protection under the leniency agreement if it believes that individual has failed to cooperate with the FNE’s investigation. If an employee fails to meet his or her cooperation obligations after the leniency agreement is reached, then the FNE would have the right to revoke the protections of leniency when these conditions are not met. Strict enforcement of the cooperation requirement should ensure that the individuals provide the FNE with all the information and documents that it needs. At the same time, it would allow the FNE to exercise discretion as to whom to request cooperation from and would preserve the incentives to participation in the Leniency Program. In the Sections’ experience, this type of approach has worked effectively in the United States and various other jurisdictions in which individuals have potential personal exposure.

5. Voluntary Waivers

Paragraph 84 of the Guidelines informs applicants seeking a marker for possible international cartel activity that the FNE will request that the applicant voluntarily disclose the identity of “each jurisdiction in which it has applied or will apply for leniency for the same cartel” and grant to the FNE a “waiver” or exception from its obligation to provide confidentiality, thereby allowing the FNE to share information with those jurisdictions. The Guidelines state that a leniency application “shall not be conditioned to the provision of the mentioned waiver.” However, the Guidelines also provide that “the Applicant must justify the reasons for not providing the waiver regarding one or more jurisdictions” and the Guidelines warn that “[t]he lack of a satisfactory explanation may be considered by the FNE as a serious infringement to the duty of collaboration, and deemed incompatible with the award of the benefit.”

The Sections recommend that the FNE revise the Guidelines by making the waiver process transparent and voluntary. The DOJ acknowledges, for example, that “it would create a strong disincentive to self-report and cooperate if a company believed that its self-reporting would result in investigations in other countries and that its cooperation . . . would be provided to foreign authorities pursuant to antitrust cooperation agreements, and then possibly used against the company.” The DOJ therefore maintains “a policy of not disclosing to foreign antitrust agencies information obtained from a leniency applicant unless the leniency applicant agrees first to the disclosure.”

10 The DOJ further notes its understanding “that virtually every other jurisdiction that has considered the issue has adopted a similar policy.” Scott D. Hammond & Belinda A. Barnett, U.S. Dep’t of Justice, *Frequently Asked*
leniency because it failed to provide the FNE with “a satisfactory explanation” introduces a lack of predictability that is inconsistent with the Guidelines’ objective of providing a transparent application process. Moreover, it gives the impression that waivers in Chile may not in fact be voluntary and may effectively be required in order to secure leniency, even when the compelled waiver will potentially disadvantage the leniency applicant in another proceeding in another jurisdiction. For those reasons, the Sections recommend that the FNE drop the provision conditioning the voluntary nature of the waiver process on a determination by the FNE that an applicant has a “satisfactory explanation.”

6. Translation of Evidence and Corporate Statements

Paragraph 55 of the Guidelines requires that all submitted documents be provided to the FNE in the Spanish language. The Sections recognize the importance of the agency being able to work effectively in its local language. However, in international cases such a translation requirement (i) can substantially burden the applicant, because translation is time consuming and extremely costly and (ii) could jeopardize the confidentiality of the applicant and the early stages of the investigation. Therefore, the Sections suggest that the FNE consider adopting the practice of various other authorities such as the German Federal Cartel Office or the Austrian Federal Competition Authorities by initially accepting documents in English and providing a reasonable time frame for the applicant to produce translations of such documents that are crucial to prove the infringement.11 Similarly, the Sections note that, when the DOJ is dealing with relevant documents written in foreign languages, its practice is to only request translations of key documents. Also, if a document is very lengthy and only parts of the document are relevant, partial translation may be sufficient.

Some competition authorities such as the German Federal Cartel Office also accept that the leniency application itself may be made in English, provided that a translation into the local official language is subsequently submitted.12 This is less of an issue if a paperless process is adopted, as recommended above; however, it may still be relevant when extensive information is being communicated orally (e.g. a detailed corporate statement is being read), particularly in an international case where the working language for the investigation by counsel is often English. The Sections therefore invite the FNE to consider amending its Guidelines by allowing time-sensitive initial application steps to be taken in English, with translation to follow where warranted.

Conclusion

The Sections appreciate the opportunity to comment on the FNE’s draft Guidelines and hope that this submission is helpful to the FNE as it proceeds to finalize the Guidelines. The

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11 Note that not all competition authorities that accept documents in English have this policy written into their guidelines or rules.

Sections would be pleased to respond to any questions the FNE may have regarding these comments or to provide any additional comments or information that may be of assistance to the FNE in finalizing its Guidelines. The Sections regard leniency programs as critically important elements of cartel enforcement worldwide, and therefore consider the issues raised in these Comments to be of particular importance.