

Pursuant to Article 65, paragraph (5), of the Law on Protection of Competition Government of the Republic of Macedonia, on its session held on 23.03.2012, adopted the following

Decree on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines

Article 1

General provisions

(1) This Bylaw regulates the detailed conditions for immunity from fines or reduction of fines and procedure of the Misdemeanor Commission (hereinafter: CMM) for granting immunity or reduction of fines (leniency).

(2) This Bylaw does not exclude the application of Article 58 of the Law for Protection of Competition (hereinafter: the Law).

Article 2

Application for immunity of fines

(1) Pursuant to Article 65 paragraph (1) item 1) or 2) of the Law the undertaking which applies for immunity of fines should submit to the CMM application for immunity of fines.

(2) Along with the application for immunity of fines referred to paragraph (1) of this Article, the undertaking applying for immunity of fines should submit the following evidence:

- a) Corporate statement of the undertaking of Article 3 of this Bylaw disclosing its participation in the alleged cartel and
- b) Other evidence relating to the alleged cartel in possession of the applicant or available to it at the time of the submission, including in particular any evidence contemporaneous to the infringement.

Article 3

Corporate statement

(1) A corporate statement is a voluntary presentation by or on behalf of an undertaking to the CMM of the undertaking's knowledge of a cartel and its role therein. Any statement made vis-à-vis the CMM in relation to this notice, forms part of the CMM's file and can thus be used in evidence.

(2) The corporate statement of paragraph (1) of this Article must be given in written form and signed by an authorized person or on behalf of an undertaking or oral corporate statement given on a record which includes, in so far as it is known to the applicant at the time of the submission:

—A detailed description of the alleged cartel arrangement, including for instance its aims, activities and

functioning; the product or service concerned, the geographic scope, the duration of and the estimated market volumes affected by the alleged cartel; the specific dates, locations, content of and participants in alleged cartel contacts, and all relevant explanations in connection with the pieces of evidence provided in support of the application.

- The name and address of the legal entity submitting the immunity application as well as the names and addresses of all the other undertakings that participate(d) in the alleged cartel;
- The names, positions, office locations and, where necessary, home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the alleged cartel, including those individuals which have been involved on the applicant's behalf;
- Information on which other competition authorities, outside of Republic of Macedonia, have been approached or are intended to be approached in relation to the alleged cartel.

(3) Upon the applicant's request, the CMM may accept that corporate statements are provided orally unless the applicant has already disclosed the content of the corporate statement to third parties.

Article 4

Access to corporate statements

(1) CMM will grant access to corporate statements of Article (3) of this Bylaw only to the addressees of a statement of objections, provided that they commit, — together with the legal counsels getting access on their behalf -, not to make any copy by mechanical or electronic means of any information in the corporate statement to which access is being granted. The corporate statement shall not have this specific protection from the moment when the applicant discloses to third parties the content thereof.

(2) The information obtained from the corporate statement will solely be used only for the purposes of the procedure that is conducted in accordance with the Law. The use of such information for a different purpose during the proceeding may be regarded as lack of cooperation within the meaning of Article 65 paragraph (3) of the Law and Article 6 and 11 of this Bylaw.

Article 5

Condition for immunity of fine

(1) Pursuant to Article 65 paragraph (1) item 1) of the Law, CMM will grant full immunity from fine only if at the time of submission of the application for immunity of fine, CMM did not have sufficient evidence to initiate misdemeanour procedure or misdemeanour procedure in connection with the alleged cartel have not been initiated.

(2) Pursuant to Article 65 paragraph (1) item 1) of the Law, CMM will grant full immunity from fine if the following conditions are met:

a) At the time of the submission of the application for immunity of fine CMM did not have sufficient evidence to adopt a decision in connection with the alleged cartel for which the application has been submitted;

b) No other undertaking that first provide the CMM with evidences which enabled the CMM to initiate an misdemeanour procedure in connection with the alleged cartel, has been granted conditional immunity from fines under Article 9 paragraph (1) of this Bylaw and

c) **The undertaking applying for immunity of fine** is first that provide evidences that dates from the time of the existence of the alleged cartel and proof the existence of it and submitted a corporate statement of Article 3 of this Bylaw, enabling the CMM to complete the already initiated misdemeanour procedure with a decision establishing the existence of a misdemeanour.

Article 6

Other conditions for immunity of fine

(1) Except the conditions stipulated in Article 65 paragraph (1) item 1) or 2) of the Law and Article 2 and 5 of this Bylaw the undertaking that applies for immunity of fine must fulfill the following conditions:

- (a) To submit to CMM on a continuous basis and expeditiously from the time, genuine, **unequivocal/unambiguous** and complete information from the moment of the submission of the application for immunity of fine and throughout the whole procedure. i.e.:
- providing the CMM promptly with all relevant information and evidence relating to the alleged cartel that comes into its possession or is available to it;
 - remaining at the CMM's disposal to answer promptly to any request that may contribute to the establishment of the facts;
 - making current (and, if possible, former) employees and directors available for interviews with the CMM;
 - not destroying, falsifying or concealing relevant information or evidence relating to the alleged cartel; and
 - not disclosing the fact that has applied for immunity before the CMM, nor disclosing the content or part of the content of it until CMM has issued preliminary statement of objection pursuant to Article 42 paragraph (1) of the Law, unless CMM and undertaking that applies for immunity had otherwise agreed;
- (b) The undertaking ended its involvement in the alleged cartel immediately following its application, except for what would, in the CMM's view, be reasonably necessary to preserve the integrity of the procedure;
- (c) When contemplating making its application to the CMM, the undertaking must not have destroyed falsified or concealed evidence of the alleged cartel nor disclosed the fact or any of the content of its contemplated application, except to other competition authorities outside the Republic of Macedonia.

(2) The CMM can refuse the application for immunity of fine submitted pursuant to Article 65 paragraph (1) item (1) or (2) of the Law if it is submitted after CMM has issued preliminary statement of objection.

Article 7

CMM proceeding upon notification of intent for application for immunity of fines

(1) The undertaking applying for immunity of fine pursuant to Article 65 paragraph (1) item 1) or 2) of the Law can submit the notification of intent for application for immunity of fines before the submission of the application for immunity of fine.

(2) For the notification of paragraph (1) of this Article CMM will grant a confirmation letter (marker) protecting an immunity applicant's place in the queue for a period to be specified on a case-by-case basis in order to allow for the gathering of the necessary information and evidence.

(3) To be eligible to secure the marker from paragraph (2) of this Article, the applicant from paragraph (1) of this Article must state the following information in the notification:

-name and address of the applicant;

-name and address of the parties to the alleged cartel;

-description of the affected products and/or services to which the alleged cartel refers and the area on which the alleged cartel operates.

-assessment of the duration of the alleged cartel

- nature of the alleged cartel;

-explanation of the reasons for submission of the notification and

-information of any other former or future possible applications for immunity or reduction of fine submitted to other competition authorities outside the Republic of Macedonia.

(4) In the marker from paragraph (2) of this Article CMM stipulates time limit in which the applicant of the notification is obliged to submit application for immunity of fine from Article 2 of this Bylaw.

(5) If the applicant of the notification submits the application for immunity of fine within the time limit set by the CMM pursuant to paragraph (4) of this Article, the application for immunity of fine will be deemed to have been submitted on the date when the marker from paragraph (2) of this Article was issued.

(6) If the applicant of the notification did not submit application for immunity of fine within the time limit set by the CMM pursuant to paragraph (4) of this Article, CMM can freely dispose of the dates and evidences submitted with the notification of paragraph (1) of this Article, for which the CMM gives written notice to the applicant of the notification.

Article 8

CMM proceeding upon application for immunity of fine

(1) Upon request, the CMM will issue confirmation letter to the undertaking applying for immunity of fine confirming the date and, where appropriate, time of the submission of application for immunity of fines.

(2) The CMM will not consider other applications for immunity of fines before it has taken a position on an existing application in relation to the same alleged cartel, irrespective of whether is it application presented pursuant to Article 2 of this Bylaw or notification for intent for submission of

application for immunity of fine pursuant to Article 7 of this Bylaw.

Article 9

Information on meeting the conditions for immunity of fines

(1) Once the CMM has verified that the undertaking applying for immunity of fine meets the conditions set out in Article 65 paragraph (1) item 1) or 2) of the Law and Articles 2 and 5 of this bylaw shall inform the undertaking in written.

(2) Once the CMM has verified that the undertaking applying for immunity of fine does not meet the conditions set out in Article 65 paragraph (1) item 1) or 2) of the Law and Articles 2 and 5 of this bylaw shall inform the undertaking in written.

(3) In the case of paragraph (2) of this Article the undertaking applying for immunity of fine may withdraw the evidence submitted along with the application for immunity of fine, or request CMM to consider the application for immunity of fine as an application for reduction of fines. This does not prevent CMM to use its ex officio powers in order to obtain the necessary evidence.

Article 10

Immunity of fine

(1) In the Decision establishing the existence of a misdemeanour CMM will grant immunity of fine to the undertaking of Article 9 paragraph (1) of this bylaw, if until the end of the procedure it meets the conditions pursuant to the Article 65 paragraph (3) of the Law and Article 6 of this Bylaw.

(2) In the Decision establishing the existence of a misdemeanour CMM will not grant immunity of fine nor reduction of fine to the undertaking of Article 9 paragraph (1) of this bylaw, if until the end of the procedure it does not meet the conditions pursuant to the Article 65 paragraph (3) of the Law and Article 6 of this Bylaw.

(3) If CMM during the procedure determines that the undertaking of the Article 9 paragraph (1) of this Bylaw during the alleged cartel has taken steps to coerce other undertakings to join the cartel or to remain in it, will not grant immunity of fine pursuant to Article 65 paragraph (4) of the Law.

Article 11

Application for reduction of fine

(1) The undertaking that apply for reduction of fine pursuant to Article 65 paragraph (2) of the Law should submit Application for reduction of a fine to CMM.

(2) Along with the Application for reduction of fine from paragraph (1) of this Article, the undertaking applying for reduction of fine should submit the following evidence:

- Corporate Statement of the undertaking of Article 3 of this Bylaw and
- Evidence relating to alleged cartel which represents significant added value with respect to the evidence already in the CMM's possession.

(3) The concept of 'added value' refers to the extent to which the evidence provided strengthens, by its very nature and/or its level of detail, the CMM's ability to prove the alleged cartel. In this assessment, the CMM will generally consider written evidence

originating from the period of time to which the facts pertain to have a greater value than evidence subsequently established. Incriminating evidence directly relevant to the facts in question will generally be considered to have a greater value than that with only indirect relevance. Similarly, the degree of corroboration from other sources required for the evidence submitted to be relied upon against other undertakings involved in the case will have an impact on the value of that evidence, so that compelling evidence will be attributed a greater value than evidence such as statements which require corroboration if contested.

- (4) The undertaking that apply for reduction of a fine must fulfill the conditions laid down in the Article 65 paragraph (3) of the Law and Article 6 of this Bylaw.
- (5) Any voluntary submission of evidence to the CMM which the undertaking that submits it wishes to be considered for the beneficial treatment must be clearly identified at the time of its submission as being part of a formal application for a reduction of a fine.

Article 12

CMM proceeding upon request for reduction of fine

(1) Upon request to the undertaking applying for reduction of fine, the CMM will issue confirmation letter confirming the date and, where appropriate, time of the submission of application for reduction of fines, and for receipt of any additional evidences.

(2) The CMM will not consider other applications for reduction of fines before it has taken a position on an existing application in relation to the same alleged cartel.

Article 13

Information on meeting the conditions for reduction of fines

(1) When CMM will preliminary verify that the applicant for reduction of fine meets the conditions set out in Article 65 paragraph (3) of the Law and Articles 6 and 11 of this Bylaw, before the submission of the final statement of objection, will inform the undertaking in written.

(2) When CMM will preliminary verify that the applicant for reduction of fine does not meet the conditions set out in Article 65 paragraph (3) of the Law and Articles 6 and 11 of this Bylaw, before the submission of the final statement of objection, will inform the undertaking in written.

(3) CMM may not take into consideration the application for reduction of fine, if it has been submitted after the submission of the final statement of objection.

Article 14

(1) In the Decision establishing the existence of a misdemeanour CMM will determine the level of reduction of fine which would otherwise be imposed in the following way:

— a reduction of 30-50 % for the first undertaking to provide significant added value:

— a reduction of 20-30 % for the second undertaking to provide significant added value and

— a reduction of up to 20 % for the subsequent undertakings that provide significant added value:.

- (2) In order to determine the level of reduction within each of the bands of paragraph (1) from this Article CMM will take into account the time at which the evidence was submitted person to Article (11) paragraphs (1), (2) and (4) from this Bylaw and the extent to which it represents added value pursuant to Article (11) paragraphs (3) from this Bylaw.
- (3) If the applicant for a reduction of a fine is the first to submit compelling evidence pursuant to Article 11 paragraph (3) of this Bylaw which the CMM uses to establish additional facts increasing the gravity or the duration of the infringement, CMM will not take such additional facts into account when setting any fine to be imposed on the undertaking which provided this evidence.
- (4) In the Decision establishing the existence of a misdemeanour CMM will evaluate the final position of each undertaking which filed an application for a reduction of a fine and will determine:
 - (a) whether the evidence provided by an undertaking represented significant added value with respect to the evidence in the Commission's possession at that same time;
 - (b) whether the conditions set out in Article (65) paragraph (3) of the Law have been met;
 - (c) the level of reduction of fine pursuant to paragraph (1) of this Article.
- (5) In the Decision establishing the existence of a misdemeanour CMM will not determine the level of reduction of fine of the undertaking which received conditional reduction of fine if at the end of the procedure it did not fulfill the conditions set out in Article (65) paragraph (3) of the Law and Article 6 of this Bylaw.

Article 15

This Bylaw shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Macedonia¹.

¹ The Bylaw is published in Official Gazette no 41/2012 (26.03.2012)