

Leniency guidelines

Scope of the Leniency Guidelines

1. This Guidelines set out the detail of how the Commission for misdemeanors matters within the Commission for Protection of Competition (the CMM) will handle applications for leniency for undertakings.
2. The leniency policy offers undertakings involved in a cartel - which self-report and hand over evidence - either total immunity from fines or a reduction of fines which the CMM would have otherwise imposed on them.

Immunity from fines

3. The CMM will grant immunity from a fine according to the article 65 of the Law on Protection of Competition and according to the By law on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines, if an undertaking:
 - a) Is the first participant who has provided the CMM with sufficient evidence (data/information) or to give information where CMM will find evidence by dawn raid and which evidence is enough to enables CMM
 - To initiate misdemeanor procedure regarding cartel
 - Or to finish already initiated procedure with decision determining existence of misdemeanor/infringement
 - b) has not taken steps to coerce another undertaking to take part in the cartel activity and
 - c) cooperates fully and on a continuous basis with the CMM.
4. An undertaking could be found to be a coercer if there are evidence which indicates that a participant (that is, the coercer) to pressurize an unwilling participant to take part in the cartel. Where an undertaking has been a coercer only reduction of fines will be available.

Reduction of fines

5. An undertaking which does not qualify for immunity may benefit from a reduction of fines by up to 50% if the undertaking:
 - a) provides the CMM with additional oral or written information and, where available, evidence which makes a significant contribution to providing the offence and
 - b) cooperates fully and on a continuous basis with the CMM.
6. The key criterion for determining the discount available will be the overall added value of the material provided by the leniency applicant. This will generally be a function of the stage at which the undertaking comes forward, the evidence already in the CMM's possession and the probative value of the evidence provided by the undertaking. The CMM will also take into account the overall level of cooperation provided.

Conditions attached to leniency

7. In all cases, the applicant must cooperate fully and on a continuous basis with the CMM throughout its procedure. The overall approach to the leniency process by an applicant must be a constructive one, designed genuinely to assist the CMM in efficiently and effectively detecting, investigating and taking enforcement action against cartel conduct.
8. An undertaking should put an end to the infringement immediately, except for what would in the CMM's view, be reasonably necessary to preserve integrity of the inspections (for example to protect the element of surprise of any forthcoming inspections.)
9. An undertaking must provide the CMM with all relevant information and evidence in its possession.
10. Cooperation must be timely, with information being provided promptly and the current employees (and if it is possible the former employees) being made available for interviews or preparation of witness statements in accordance with the reasonable requests of the CMM investigators. The applicant must provide the name of all employees included in the cartel (including the former employees) and to provide that all employees that will be required to provide information and evidence, will fully and on a continuous basis cooperate with the CMM during the procedure. If the applicant foresees or encounters difficulties meeting CMM deadlines or requests, for these should be informed the CMM as early as possible.

11. The cooperation with the CMM implies that the existence and the content of the application cannot be disclosed to any other undertaking, until the submission of the preliminary statement of objection of the CMM. The CMM and the applicant may agree otherwise.
12. An undertaking must not destroy, falsify or conceal relevant information or evidence.

Procedure

Contacts before application

13. Undertakings or individuals thinking about applying for leniency may, before doing so, approach the CMM regarding the application and confidential guidance. Confidential guidance discussions would usually involve a discussion on a no-name basis about a given factual matrix (perhaps expressed “hypothetically”) with a view to the undertaking or individual obtaining comfort on an issue before deciding whether to make an application. Any person who would like to apply for leniency from the CMM, should call the line +389 2 3298 666 or to come to the premises of the CPC and to ask to speak with a senior officer.
14. The CMM will not use information given in consequence of applying for leniency for any other purpose. In the event that leniency is not granted, the CMM will not attempt to establish the undertaking’s identity.
15. In order to benefit from the Guidelines, undertakings can approach the CMM directly or through a legal adviser.

Applying for leniency

The CMM suggest that when applying for leniency, first to contact the senior officer from the CPC.

The leniency applications may be submitted through:

- personally at the archive of the Commission for Protection of Competition,
- by e-mail address – leniency@kzk.gov.mk
- by registered post od address Sv. Kiril I Metodij br. 54, 1000 Skopje (in the case it is recommended to be putted the time of delivery on the document)

In the case of application through e-mail, the original application must be delivered to the archive of the CPC within 3 days.

For more information about the program, an applicant could call a +38 9 2 3298 666 in the period from 9:30 until 15:30 on weekdays.

Marker

16. An undertaking can contact CMM to declare its willingness to cooperate (notification for intention to apply for leniency) when CMM will issue marker. Marker is a formal acknowledgement of a leniency application which records the timing of the application and priority relative to other applicants, protecting an immunity applicant's place in the queue for a certain period regarding other applicants. The CMM sets a relatively low evidential threshold for the gaining of a marker. All that is necessary is to establish a concrete basis for a suspicion of cartel activity and a demonstration of genuine intention to confess. Leniency applicants are encouraged to approach the CMM as early as possible.
17. In the marker, CMM determines the time period in which the applicant must submit leniency application. In certain cases, upon request of the applicant, if there are justified reasons, the CMM could grant an extension to an application.

Content of applications

18. In its application the applicant must submit “corporate statement” according to article 3 of the By law on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines. The CMM notes that, by definition, cartel activities has as their object the prevention, restriction or distortion of competition and therefore neither the applicant nor the CMM will be required to assess the actual effects of the cartel activity before proceeding with an application.

Joint approaches for leniency

19. The CMM will not accept joint approaches made simultaneously by or on behalf of two or more undertakings participating in the same cartel activity.

Oral statements

20. An application (including request for a marker) can also be provided orally on a minutes.

21. The hours when meetings for oral statements are from 9:30 until 15:30. Presence of the applicant outside working hours may be made possible only in exceptional circumstances and subject prior agreement with the CMM.
22. The CMM should become a sufficient informed (preferably 24 hours in advance) to arrange the meeting. The applicant should provide the names of persons who will attend, what equipment will be required and how long the meeting is likely to last.
23. Oral corporate statements should be clear, factual and to the point, with precise sufficiently detailed information. Description of the alleged cartel can be provided orally, whereas other information such as product and market description, general market information and any publicly available information must be submitted in writing, as attachment to the statement.
24. Oral corporate statements cannot contain any business secrets or other confidential information as defined in Article 57 of the Law on the Protection for Competition.
25. If the applicant submits annexes with the oral statement, they must be provided (also) in electronic format (CD-ROM; DVD).
26. If these instructions are not respected CMM may ask an applicant to withdraw that version of the corporate statement and/or to resubmit an applicant statement in a manner that complies with these instructions.

Status of applicants

27. If the first applicant does not fulfill its obligations (especially its obligation to cooperate), its status of priority lapses and the subsequent applicants move up in rank.

Written confirmation

28. The CMM immediately confirms to the applicant in writing that a marker has been placed and/or that the application has been received, stating the date and time of receipt, according

to the article 8 and 12 of the By law on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines.

If the requirements for immunity are satisfied, the CMM assures the applicant in writing, according to the article 9 and 13 of the By law on Immunity of fines and reduction of fines and procedure of the Misdemeanor Commission for granting immunity or reduction of fines.

Access to files

29. The CMM will, upon request of the parties in the procedure, approve inspection of the corporate statement.