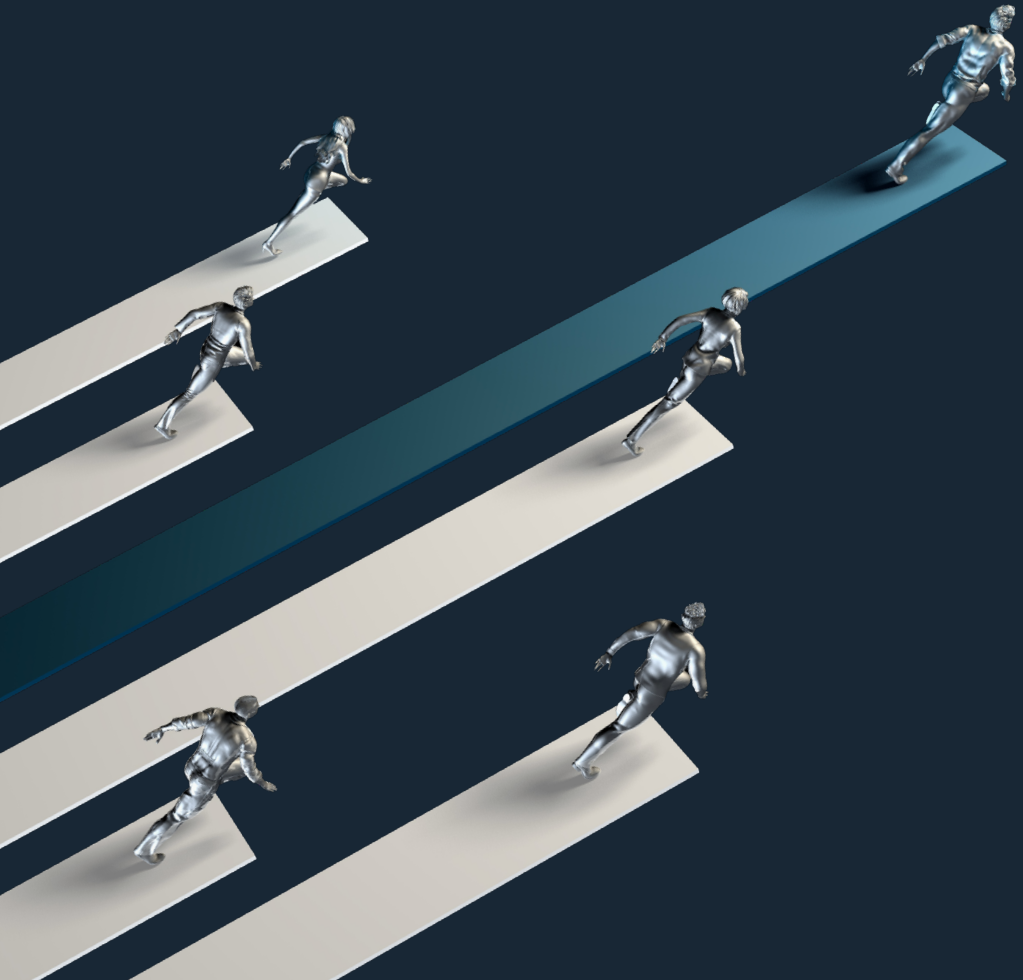


The Leniency Programme

Offered by: The Commission for Protection of Competition (CPC)



Why a Commission for Protection of Competition?

In free market theory, competition creates (1) a profit-motive and incentives to improve and introduce new, higher quality, lower cost goods and services and (2) a self-regulating market.

In practice, the same profit motive can create inequities and distortions to fair competition in the form of attempts to manipulate the market leading to higher prices and lower quality for goods and services and, ultimately, if not controlled, to the compromise of the economy as a whole.

The potential for such manipulation creates, in turn, a need both (1) for legal protection for all participants and a means to file complaints as well as (2) for an agency empowered to conduct investigations and adjudicate alleged free market violations.

As the Organisation for Economic Co-operation and Development (OECD) suggests, well-designed competition law, effective enforcement and competition-based economic reform promote consumer welfare and economic growth while making markets more flexible and innovative.¹

In the Republic of North Macedonia, the Law on Protection of Competition provides for this legal protection as well as for an independent Commission for Protection of Competition (Article 26) with authority to monitor the free and fair exchange of goods and services, conduct investigations for, adjudicate -, and impose fines for violations based on its findings.

What is a breach of competition law?

In an ever-changing marketplace for goods and services, the protection of competition demands vigilant, competent, and continuous monitoring of economic activity in virtually every sector of the economy. A review of CPC administrative decisions, decrees issued, regulations adopted and enforced, and legal rulings by the judiciary provides a glimpse into the detail and extent of cases closed as well as types of anticompetitive behaviour, penalties paid by those parties found in violation of the law.

Despite the fact that most market participants willingly comply with the law, and fines and criminal prosecution deter others from non-compliance, violators will continue attempts to knowingly and deceptively manipulate the market to their advantage, begging the question of "What is restrictive competition?"

The Law on the Protection of Competition prohibits restrictive practices and agreements, tacit as well as explicit, which distort or restrict competition by a "cartel" defined as two or more businesses coordinating activity and sharing competitive data to the disadvantage of non-participant competitors. "Disadvantage" can mean direct or indirect fixing of prices or discriminating pricing, limits on production, market share or supply, restriction on technical developments or investments.

However, various bylaws exempt certain agreements for reason that they do not restrict competition. These include the exclusive right of purchase and franchise, certain research and development agreements, specialization agreements; technology transfer, license and know-how agreements; distribution and servicing of motor vehicles; and certain agreements within the insurance sector (Official Gazette of the Republic of Macedonia No. 91/05).

¹<https://www.oecd.org/competition/>

How does CPC assure participants comply with free market principles?

CPC protects market participants from restrictive practices through a coordinated programme of deterrence, detection, surveillance, inspection, inducement and enforcement.

Deterrence To the extent that market participants are informed and knowledgeable about CPC decisions, government decrees, regulations published and legal rulings, when they voluntarily comply, they also “self-regulate.”

Detection Given that all market participants will want to protect their competitive advantage, they each also become a potential plaintiff, thereby, de facto, extending CPC’s reach to identify wrongdoing to virtually the entire economy.

Surveillance CPC continuously monitors and assesses market data for anomalies or distortions which suggest manipulation contrary to free and efficient competition.

Inspection In the event of documented, “justified suspicion” that a business is in violation of the Law, CPC has a right of inspection of a premises and seizure of documents to assess wrongdoing.

Inducement Should a business already be party to a cartel, CPC offers a “be first” incentive to report in strict confidence its violation and fully cooperate with CPC’s inspection in exchange for immunity or a reduced fine.

Enforcement Should evidence brought by plaintiffs or through inspection prove wrongdoing, CPC procedures provide for imposition of penalties and fines as provided by the Law.

Why a leniency programme?

CPC’s leniency programme effectively functions both as “violation radar” to alert CPC to the presence of cartels and as a hedge against the formation of others. Cartel members already know they risk exposure by non-participant competitors disadvantaged by cartel behaviour and by CPC market surveillance and surprise inspection. Cartel members also risk exposure by the first member who chooses as an exclusive right the leniency programme’s offer of immunity or reduced penalty by reporting cartel violations to, and fully cooperating with CPC, and by identifying other cartel members who remain fully liable for those violations under the Law.

What are the potential sanctions for participation in a cartel?

The amounts of fines and other penalties imposed for cartel-related activity can vary for reason of multiple factors, including severity and duration of the offense and other aggravating and mitigating circumstances. The basic fine as a rule² varies up to 30 percent of the revenue earned in the relevant market for the most recent year of the offense multiplied by the number of years of the offense. These amounts may be decreased based upon proof that the cartel member had ceased active participation prior to CPC’s initiation of a related misdemeanor procedure or that, while a member of a cartel, actual participation was minimal.

Conversely, amounts may be increased significantly should the cartel member continue to commit the misdemeanor for which CPC may impose fines up to 100 percent for each offense. Similarly, if the cartel member refuses to cooperate or impedes investigation procedures, incites other members to commit misdemeanors, or

² Law on Protection of Competition, Article 64

undertakes vindictive actions against other cartel members to coerce them into taking actions which constitute a misdemeanor. CPC also may increase fines in proportion to illegal revenue gained by a cartel member such that the fine exceeds the amount of the illegal gain.

The Law also provides for suspension of business activity from three to 30 days.³

What are the leniency programme guidelines?

Immunity CPC will grant immunity from fines to a cartel member (“undertaking”) for which the member would otherwise be liable⁴ who is first to report violations and who

- Provides evidence sufficient for CPC to justify and conduct a “dawn raid” and thereafter either to initiate misdemeanor procedure against cartel members implicated or to conclude an existing misdemeanor procedure leading to a misdemeanor/infringement decision
- Cooperates fully and on a continuous basis with CPC
- Has not coerced another member to take part in cartel activity.

Should evidence prove that member has coerced an unwilling member to take part in the cartel, the member guilty of the coercion will only be eligible for a reduction of fines, rather than immunity from the fine.

Reduction of fines. CPC may reduce fines up to as much as 50 percent for a cartel member who does not qualify for immunity but who

- Provides CPC with additional oral or written information and, where available, evidence which makes a significant contribution to documenting the violation
- Cooperates fully and on a continuous basis with CPC

The key criterion for determining the discount available will be the value added by the material provided by the cartel member. This will generally, in turn, be a function of timing, meaning the stage at which the cartel member comes forward, evidence already in CPC’s possession, and the probative value of the evidence provided. CPC also will take into account the overall level of cooperation.

Cooperation Leniency applicants also must meet the following conditions to qualify for both immunity or a reduction in fines

- Assist CPC efforts to detect and investigate cartel conduct
- Cease infringement immediately except when in CPC’s view necessary to preserve integrity of the inspections (for example to protect the element of surprise of any forthcoming inspections)
- Provide CPC with all relevant information and evidence in their possession
- Provide access to current and former employees for interviews or preparation of witness statements

³ Law on Protection of Competition, Article 63

⁴ Law on Protection of Competition, Article 65; Bylaw on Immunity of Fines and Reduction of Fines and Procedures of the Misdemeanor Commission

- Provide names of all employees included in the cartel (including the former employees) who thereafter will be required to provide information and evidence, and to fully and on a continuous basis cooperate with CPC investigators
- Agrees to alert CPC to any problems meeting CPC deadlines or requests
- Agrees not to disclose the existence and content of the leniency application until CPC issues a preliminary statement of objection unless otherwise agreed to with CPC
- Agrees not to destroy, falsify or conceal relevant information or evidence

Leniency applicants who fail to meet these conditions at any time during the investigation or subsequent administrative procedures until closed risk revocation of their pending immunity or fine reduction status.

Pre-application CPC encourages cartel members or individuals considering a leniency application to approach CPC for guidance. Applicants or their legal advisor may visit CPC and to ask to speak with a senior officer. Individuals who wish to remain anonymous can call CPC at +38 9 2 3298 666 from 9:30 to 15:30, Monday through Friday. CPC will respect this confidentiality and answer questions in a generic context. CPC will not use information given in consequence of applying for leniency for any other purpose. In the event that leniency is not granted, CPC will not attempt to establish the undertaking's identity.

Application Those cartel members or individuals who decide to file an application, may do so

- In person at the archive of the Commission for Protection of Competition
- By email address – kzk@kzk.gov.mk
- By registered post address: St. Cyril and Methodius 54 (6th floor), 1000 Skopje, Republic of North Macedonia, while retaining a receipt noting time and date for record purposes

For applications by e-mail, the original application must be delivered to CPC within three days.

For questions concerning the program or the application process, cartel members or individuals may call CPC at +38 9 2 3298 666 from 9:30 until 15:30 on weekdays.

Markers CPC only requires leniency applicants provide a reasonable, factual basis for a suspicion of cartel activity and genuine intention to acknowledge wrongdoing to begin the leniency program application. Given the potential for other cartel members or individuals also to apply, leniency applicants have an obvious incentive to notify CPC sooner rather than later. CPC does not accept any joint applications, meaning separate cartel members or individuals participating in the same cartel.

Hierarchy. After a cartel member or individual notifies CPC of their intention to apply for the leniency program, CPC immediately records the timing and priority of the application relative to others received and then issues a formal acknowledgement to the applicant known as a marker confirming the date and time of receipt.⁵ The marker protects an immunity applicant's place in the queue relative to other applicants and indicates a deadline for submission of the application. An applicant may request, and CPC at its discretion may grant an extension for justifiable reasons.

⁵ Bylaw on Immunity of Fines and Reduction of Fines and Procedure of the Misdemeanor Commission for Granting Immunity or Reduction of Fines, Articles 8 and 12.

Submission. CPC requires submissions for the leniency program to follow guidelines established in Article 3, Bylaw on Immunity of Fines and Reduction of Fines and Procedure of the Misdemeanor Commission for granting immunity or reduction of fines for submission of a corporate statement. CPC does not conduct any assessment of alleged cartel activities before proceeding with an application.

Oral statements CPC also accepts oral applications weekdays from 9:30 to 15:30, and will consider applications after normal working hours subject to prior agreement and when circumstances warrant. Applicants should schedule their appointment 24 hours in advance and provide names of persons who will attend, what equipment will be required and estimate the time required for their statements.

Oral statements should describe alleged cartel activities in clear, factual, detailed, precise and relevant terms, as well as provide any business secrets or other confidential information.⁶ CPC requires other information such as product and market description, general market information and any publicly available information to be submitted in writing to document the statement.

Applicants who fail to follow CPC guidelines for oral statements can expect to repeat the process.

Status A “first applicant” who fails to meet leniency programme obligations, especially the obligation to cooperate, can forfeit “first position” which would then revert the next applicant in the queue as determined by date of application.





Confirmation. If the requirements for immunity are satisfied, CPC informs the applicant in writing.⁷

Access to files CPC will, upon request of the parties in the procedure, approve inspection of the corporate statement.

What is the benefit of the leniency programme to nonoffenders?

The benefit of the leniency programme arguably accrues to the broader market operation and nonoffenders through an incentive which rewards one cartel member so as to implicate others who pay significant fees and penalties. Thereby, the leniency program promotes doubt among, and acts as one more deterrent for those who otherwise might see the risk of wrongdoing worth the reward.

For inquiries, please contact:

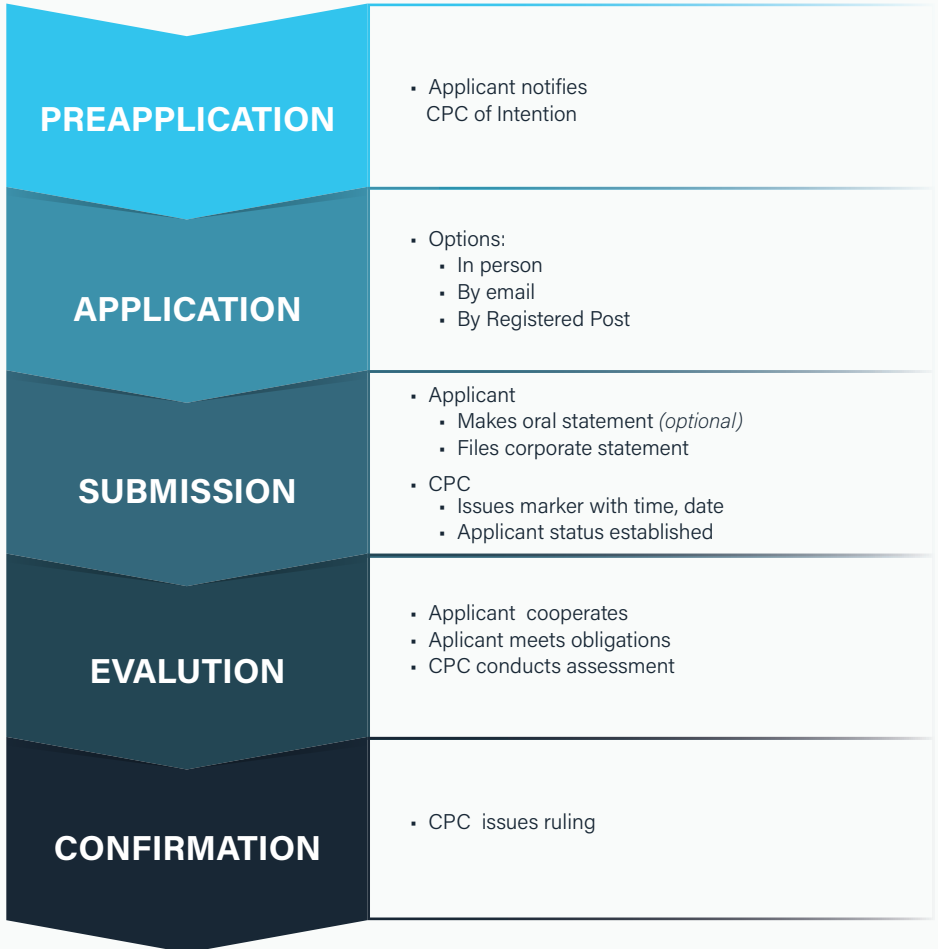
-  Commission for Protection of Competition
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⁶ Law on the Protection for Competition, Article 57

⁷ By law on Immunity of Fines and Reduction of Fines and Procedure of the Misdemeanor Commission for Granting Immunity or Reduction of Fines, Articles 9 and 13

LENIENCY PROGRAM STEPS





**COMMISSION
FOR PROTECTION
OF COMPETITION**