

ICC LENIENCY MANUAL

THIRD EDITION 2022

3



A user-guide for filing leniency applications worldwide

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A user-guide for filing leniency applications worldwide

Prepared by the
ICC Global Competition Commission

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PREFACE

It is my great pleasure to present the **Third Edition of the ICC Leniency Manual** (the “Manual”). It has been six years since we launched the First Edition of the Manual in Singapore at the Pre-ICN Forum 2016. This edition describes antitrust leniency programmes from over forty jurisdictions.

The **ICC Leniency Manual** was developed because we understood that leniency plays a crucial role in competition law development and enforcement for both businesses and enforcers. Leniency programmes are still the only legal way through which a company can obtain immunity or a substantial reduction of an antitrust fine. At the same time, the antitrust authorities also benefit significantly from such programmes. Thanks to the cooperation with former cartelists, they are afforded the opportunity to obtain insider evidence on a cartel infringement, which otherwise would be difficult to detect because of the secret nature of cartels. This is quite a unique situation as the enforcement authority and the party against whom proceedings have been initiated aim at the same conclusion of the proceedings, *i.e.* confirmation of the practice.

There is no doubt that leniency can still be one of the most effective tools in the fight against cartels which has led to the opening of investigations worldwide. However, at the same time, the average number of leniency applications with each competition authority has been steadily decreasing. In theory, using leniency programmes may look (and should be) relatively easy, and put simply, the applicant files a leniency application and receives a marker, provides the required evidence, fully cooperates with the authority, and obtains immunity. As in most situations, there is more than ‘meets-the-eye’ when it comes to leniency. This applies in particular when one is dealing with international or global cartels involving more than one jurisdiction, and therefore more than one leniency regime. To date, there is no “one-stop-shop” leniency marker solution, which means that filing for lenient treatment with one competition authority does not grant a marker in any other authority potentially concerned. Also, there is no guarantee that every application will be accepted or that a potential applicant will always be given first place in the queue. Additionally, the private enforcement of

competition damages, which has gained momentum, is becoming more and more popular in the EU Member States jurisdictions. The risk of becoming a defendant in damages action litigation brought against a leniency applicant despite the protection mechanisms included in the Damages Directive 2014/104/EU plays an important role in the decision-making process on whether to step forward or not. For these reasons, the extended version **ICC Leniency Manual** could not come at a better time. Indeed, the Manual aims to provide businesses with step-by-step guidance on the leniency application process, be they local or multi-jurisdictional applications. Traditionally, the Manual starts with an outline of the generic leniency application process and then goes into the specific filing requirements in particular jurisdictions. Each chapter covers one country. A potential applicant will quickly learn all the issues they should bear in mind when considering applying for leniency in a specific country. Moreover, a user of the Manual will be familiar with each stage of the leniency application process from the very initial contact with the competition agency to its final decision as each chapter provides a colour-coded flowchart outlining the entire process.

I want to thank all the contributors and competition law experts from over forty jurisdictions who provided their input and their valuable expertise. I wish to express my special thanks to Caroline Inthavisay and the entire ICC Global Competition Commission Secretariat as well as to Martyna Wurm for their hard work, support and patience and without whom the development of the Manual would not have been possible.

A handwritten signature in black ink, appearing to read "Marcin Trepka".

Marcin Trepka
Co-Chair, ICC Task Force on Cartels and Leniency

INTRODUCTION

Cartels

Cartels are agreements made between competitors to engage in illegal arrangements such as price fixing, market sharing or customer allocation, production limitation, and bid rigging. Cartels are harmful to consumers and customers because they result in increased prices and reduced choices. Cartels can also have a negative impact on economic growth and innovation, especially when they prevent new competitors from entering the market and lead to an increase in public investment costs. More importantly, cartels are considered to be the most serious violation of competition law all over the world and, as a result, fighting them has become a priority for competition agencies worldwide. Cartel activities are subject to heavy fines for both undertakings¹ and individuals, and in some jurisdictions, to criminal sanctions including imprisonment.

Leniency programmes

Cartels are usually difficult to detect and to investigate. Cooperation from cartel participants is key to uncovering and punishing the illegal practices. Today most jurisdictions have developed programmes that offer a whistleblower (a cartel participant which provides information and evidence of a cartel and cooperates with the agency to detect and prove the infringement) a reduced fine or even total immunity from a fine imposed on a company active in a cartel including its employees. These programmes, known as “leniency programmes” or “leniency policies”, help competition agencies to have access to first-hand evidence, and to uncover and eliminate secret cartels. A leniency programme sets forth the framework for rewarding a cartel participant which is willing to cooperate with a competition agency.

The meaning of the terms “leniency”, “immunity”, and “amnesty” differs among jurisdictions. In this manual the term “immunity” refers to a full (100%) reduction of fine and the term “reduction of fines” refers to a reduction of fine lower than full immunity. The term

¹ In this document, the term “undertaking” refers to any entity engaged in any commercial activity.

“leniency” is used to describe both immunity and a fine reduction. The term “amnesty”² describes immunity from all sanctions. The term “leniency policy” or “leniency programme” refers to the set of rules in the form of a legal act or guidelines adopted by the competition agency governing the leniency process.

Immunity can only be granted to the first-in applicant which provides a competition agency with information about the cartel activity. Most leniency programmes offer immunity to the first applicant that reports cartel activity before the commencement of an investigation. However, some leniency programmes also grant immunity to the first-in applicants that report the cartel after the start of the investigation in cases where the agency does not possess sufficient evidence to prove the infringement and the applicant can offer such evidence.

Leniency programmes also apply to subsequent applicants which, should they provide a given competition agency with substantial new evidence, can obtain a reduced fine. Depending on the timing of the application and the quality of the evidence submitted, the extent of the fine reduction differs from jurisdiction to jurisdiction, varying between 10% and 50% of the fine that would otherwise be imposed on an applicant. In some countries, the order of the applicants is a decisive factor. It means that the sooner the applicant approaches the competition agency and submits the evidence of the infringement the greater the reduction of fine it can obtain (e.g. in many jurisdictions the first applicant to provide new evidence can benefit from fine reduction of 30-50%, the second 20-30% and the other applicants would have their fine reduced by 20% maximum). However, in some jurisdictions (e.g. European Union) the leniency programmes aim to maintain the race between the applicants for reduction of fines and attach greater importance to the value of the evidence submitted—then in order to qualify for higher band of the fine reduction the applicant does not only have to be the first to apply for fine reduction but also to be the first to submit the evidence constituting significant added value. Otherwise, the applicant that applies later but submits the evidence reaching the threshold of significant added value will benefit

2 “Amnesty” is often used in the United States.

from a higher percentage of reduction. The exact level of fine reduction an undertaking will obtain within the certain band, to which it has been assigned, is usually determined in a final decision ending the proceedings and depends mainly on the total value of cooperation of each applicant. The reduction of fines is also granted to applicants which, for a number of reasons, do not qualify for immunity (e.g. coercers, cartel ringleaders³).

Apart from submission of information and evidence, the applicant must meet other requirements in order to be granted immunity or a fine reduction. Generally, the applicant must cease its participation in a cartel (usually immediately after the application is filed unless the competition agency decides differently, and sometimes no later than the time of the application), refrain from disclosing the facts in the application or any part of it, and cooperate with the agency during the investigation and court proceedings.

Very often the applicant will be granted conditional leniency first. In such cases its full cooperation with the competition agency during the time of the investigation will be necessary in order to obtain a final leniency decision—leniency is often granted in the decision issued by the agency at the end of the proceedings in a given case. In jurisdictions where leniency is granted in the form of an agreement signed between the agency and the applicant, the agency generally has the right to terminate the agreement and revoke the leniency if the applicant does not comply with the requirements set in the agreement, or if it does not cooperate fully and continuously with the competition agency throughout the proceedings.

Exclusion

Certain applicants are not eligible for leniency, immunity, or a fine reduction, and the exclusion varies from country to country. Indeed, in many jurisdictions, any entity which coerced other firms to participate in a cartel activity cannot be granted immunity or even a fine reduction. In other places, the exclusion also applies to the cartel ringleaders.

³ The term “ringleaders” is used to describe any entity that initiated or led a cartel.

Marker

In principle, when a leniency application is filed, the applicant must join to it all cartel-related information including any supporting evidence based on an evidentiary threshold. This is known as formal (full) application. Collecting the required evidence can be a long process. In some cases an applicant can obtain a marker before the formal application is filed. A marker confirms the applicant's place in the queue for leniency and sets a time limit for the submission of information and evidence that meet the relevant threshold for leniency.

An applicant which has not yet substantiated the formal application can file a shortened version (request for marker), which includes general information about the cartel. Most often, the applicant must disclose its identity in order to obtain a marker. However, in some countries, a marker could be granted as a result of an anonymous contact (e.g. by phone).

If a competition agency accepts a shortened application, then the applicant will be granted a marker. If the applicant provides an agency with all the necessary information and evidence within the period set by the agency, the completed formal application will reflect the date on which the marker was granted.

It is possible that a marker can be granted to the first-in applicant only. In such cases the status of non-first-in applicants (i.e. subsequent applicants) will be put on hold until the agency takes a position on the first application. If the first application is not accepted and the applicant is not granted conditional immunity, a subsequent application for immunity will be considered by the agency. Otherwise, the subsequent applicants will not be eligible for full immunity, and a fine reduction will be the only outcome.

In jurisdictions where a marker can be granted to subsequent applicants, applications are processed simultaneously, and again, the timing of the filing, the disclosure and the credibility of the evidence are key in obtaining immunity or defining the amount of the fine reduction. However, it is important to note that not all leniency programmes provide for a marker system.

Leniency plus

Leniency plus regulation (sometimes called “amnesty plus”) is becoming increasingly popular in leniency programmes. Under leniency plus, an applicant which is eligible for a fine reduction in relation to a cartel in a particular market and is the first-in to inform the agency about another cartel taking place in a separate market, will obtain total immunity in relation to the second cartel and an additional fine reduction in relation to the first cartel.

Leniency for individuals

Leniency applicants can be undertakings and / or individuals such as a company’s board members, managers, or other employees. As individuals can be held liable for competition law infringements, they can also apply for leniency and do so independently from the undertaking. There is usually “one queue” for leniency applicants regardless of whether they are individuals or undertakings. An individual must fulfill the same requirements as an undertaking in order to obtain leniency. The individual can benefit from the application filed by the undertaking and be eligible for a so-called “derivative leniency”. In most jurisdictions an application made by an undertaking also covers its employees provided that the latter cooperate with the agency during the time of the investigation.

Summary leniency applications in the European Union

In the European Union, summary applications may be used in cases concerning more than three European Union Member States. If a full application has been filed with the European Commission, national competition agencies can grant provisional protection to the applicant on the basis of very limited information. Should any of the national competition agencies pursue the case, the applicant will be given additional time to complete its application. A marker sought through a summary application protects the applicant’s position under the respective national leniency programme and operates as an indefinite marker, in particular during the case allocation phase.

Summary applications are accepted in most Member States and can be submitted in English (either throughout the entire

procedure or accompanied by a translation into the official language at a later stage).

Independence of particular leniency programmes

Leniency programmes are autonomous and independent of other national programmes. A leniency application filed with one competition agency will be considered as official in that jurisdiction only. In the case of multi-jurisdictional applications, maintaining the same material scope of the application is essential otherwise an applicant may face the risk of being granted immunity in one country and being fined in another. Furthermore, the same level of protection should be maintained in the participating jurisdiction. Today there is a lack of a common leniency application system at the European Union level which implies that applications submitted to the European Commission and the summary applications filed with national competition agencies are assessed independently. National agencies have no obligation to interpret the summary application with respect to the application submitted to the European Commission.

How to use the ICC Leniency Manual?

The ICC Leniency Manual starts with an outline of the generic leniency application process then delves into the specific filing requirements in targeted countries. The countries are organized in chapters listed in alphabetical order for easy reference. Each chapter features a factsheet which includes a list of issues that the leniency applicant should think about when considering filing an application in a specific country together with a short description of leniency in that country. Furthermore, each chapter provides a colour-coded flowchart which aims to guide the user through each stage of a leniency application process from the very initial contact with the competition agency to its final decision.

A **reference guide** or *aide-mémoire* designed to explain the basic requirements under a generic leniency application is provided at the end of the manual and should be used as a companion to the flowcharts.

REFERENCE GUIDE

to be used with the country flowcharts
(*aide-mémoire* on the basic leniency application filing requirements)

Generally, in order to benefit from a leniency programme an applicant must take the following steps:

Marker request

Marker request

At the time of the request for a marker a brief description of conduct must be submitted including:

- applicant's identity
- parties to the agreement
- products, services affected
- geographic scope
- duration
- aim / nature of the agreement
- information about other competition agencies from whom the leniency has been obtained or which will be requested
- sometimes names and positions of individuals involved

In addition, detailed information about: the circumstances under which an agreement was concluded, the role of each participant, and the scope and circumstances of cooperation must be provided with the formal (full) application.

Evidence threshold

Submission of information and evidence

The value of the evidence to be submitted by the applicant depends on the time and order of the application. The evidence thresholds are:

- **First applicant**—before commencement of the investigation or any formal actions: information about the cartel conduct and evidence enabling the initiation of the proceedings and / or carrying out of inspection
- **First applicant**—after commencement of the investigation or any formal actions: evidence enabling proof of cartel conduct / enabling finding of infringement / evidence enabling the progress of the inspection (if it has not been conducted yet)
- **Subsequent applicants**: evidence having significant added value to the case, information unknown to the authorities

Requirements

Requirements

In order to benefit from a leniency programme, the applicant must:

- end its participation in the cartel (before submitting an application or immediately after depending on the jurisdiction. Sometimes the agency can decide differently and will ask the cartel participant not to put a sudden end to its participation in order to avoid raising any suspicion)
- refrain from disclosing the existence of the application and any of its content
- comply with the duty to cooperate

Cooperation

Cooperation

The applicant is required to cooperate with the agency throughout the proceedings, also after submitting the application. The most important elements of cooperation include:

- attending meetings with the competition agency
- submitting statements, evidence, documents and information
- ensuring employees, managers, and directors are available for interviews
- not destroying, falsifying or concealing the evidence
- answering the agency's requests
- conducting an internal investigation (sometimes)

GENERIC LENIENCY APPLICATION PROCESS

In jurisdictions where a marker can only be granted to the first-in applicant, the flowcharts introduce two processes: one for the first-in applicant who can be given a marker and another one for subsequent applicants. The status of non-first-in applicants is put on hold until the agency takes a position on the first application. If the first application is not accepted and the applicant is not granted conditional immunity, a subsequent application for immunity will be considered. Otherwise, the subsequent applicants will not be eligible for full immunity but only for a fine reduction. In jurisdictions where a marker can also be granted to subsequent applicants, there is a single process, as illustrated in the flowchart to the right, as the applications are handled simultaneously. However, in both cases, it is common practice to submit an alternative application i.e. to apply for immunity and to ask the competition agency, in the event immunity is not granted, to process the application as the application for a fine reduction. The key stages of a leniency application include:

Initial contact—the applicant can usually contact the competition agency anonymously and seek information about the application process, or sometimes even about the availability of a marker.

Request for a marker—a shortened application which includes general information about the cartel along with a request for additional time to submit a formal application.

Formal application—full application containing all the relevant information and supporting evidence with the difference depending on the required **Evidence threshold**.

Evidence threshold—the evidence that has to be submitted by the applicant depending on whether the applicant seeks immunity before the commencement of an investigation or any formal actions, or after the commencement of investigation or any formal actions, or whether the applicant seeks a fine reduction.

Confirmation of receipt—confirmation of submission of the application in the form of a request for a marker or formal application or confirmation of submission of evidence, specifying the time and date of the submission of the application or information / evidence.

Conditional leniency—conditional assurance that the requirements for leniency are met, and issued after initial assessment of the application in the form of a conditional leniency agreement, conditional leniency letter or conditional confirmation of compliance with the conditions, depending on the jurisdiction. The decision is conditional upon fulfilment of the **requirements** and **cooperation** with the agency.

Final decision on leniency—a final decision of the competition agency or court depending on the jurisdiction and whether the requirements and duty of cooperation are fulfilled. The final decision can also take the form of a leniency agreement.

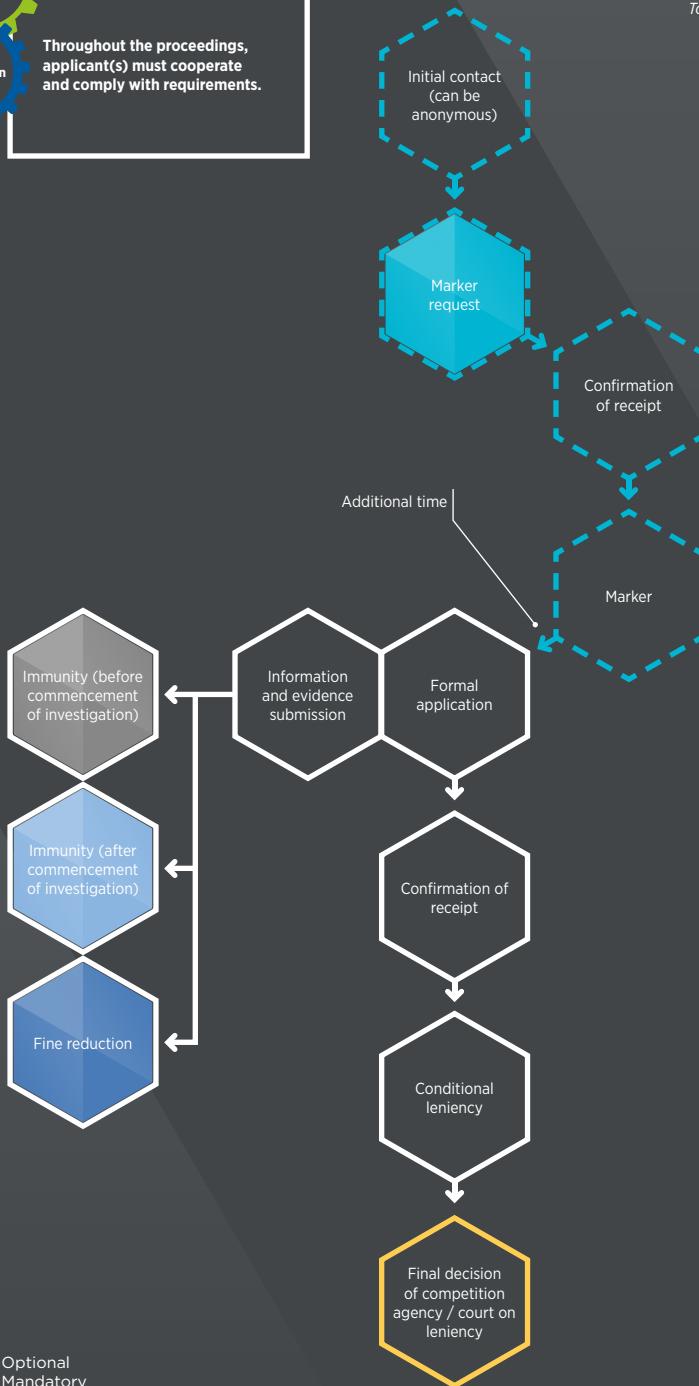


**Throughout the proceedings,
applicant(s) must cooperate
and comply with requirements.**

START

GENERIC

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

REGION

European Union

AGENCY

European Commission (EC)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover of the capital group

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant who coerced others to participate
cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (e-mail, fax, post) or orally (in person)
E-mail: comp-leniency@ec.europa.eu
Phone (for initial contact): +32 2298 4190
or +32 2298 4191

Available languages

All Member States languages

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Immunity may only be granted to the first applicant which informs the European Commission of a cartel and provides evidence that enables the European Commission to conduct an inspection or to prove the cartel infringement.

Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the European Commission. The European Commission will evaluate the final position of each undertaking which filed an application for a reduction of a fine at the end of the administrative procedure in any decision adopted.

It is possible to obtain a marker for immunity applications, however the marker is granted at the discretion of the European Commission on a case-by-case basis. An applicant is required to justify a request for marker. Information on whether the marker is available will generally be given within 24 hours.

The European Commission will not consider other applications for immunity from fines before it has taken a position on an existing application in relation to the same alleged infringement, irrespective of whether the immunity application is presented formally or whether a marker is requested. If the application for immunity is not accepted, the European Commission will contact the subsequent marker applicants.

It is also possible to submit a hypothetical application for immunity. A marker and a hypothetical application cannot be combined due to their different purposes and features. The hypothetical application is available to allow companies to ascertain whether the evidence in their possession would meet the immunity threshold before disclosing their identity or the infringement. The undertaking must present full information and evidence but without disclosing its identity. A marker is granted to protect the place in the queue of an applicant which has not yet gathered all the evidence. To obtain a marker the undertaking must provide some details of the cartel and other general information including the identity of the applicant.



START

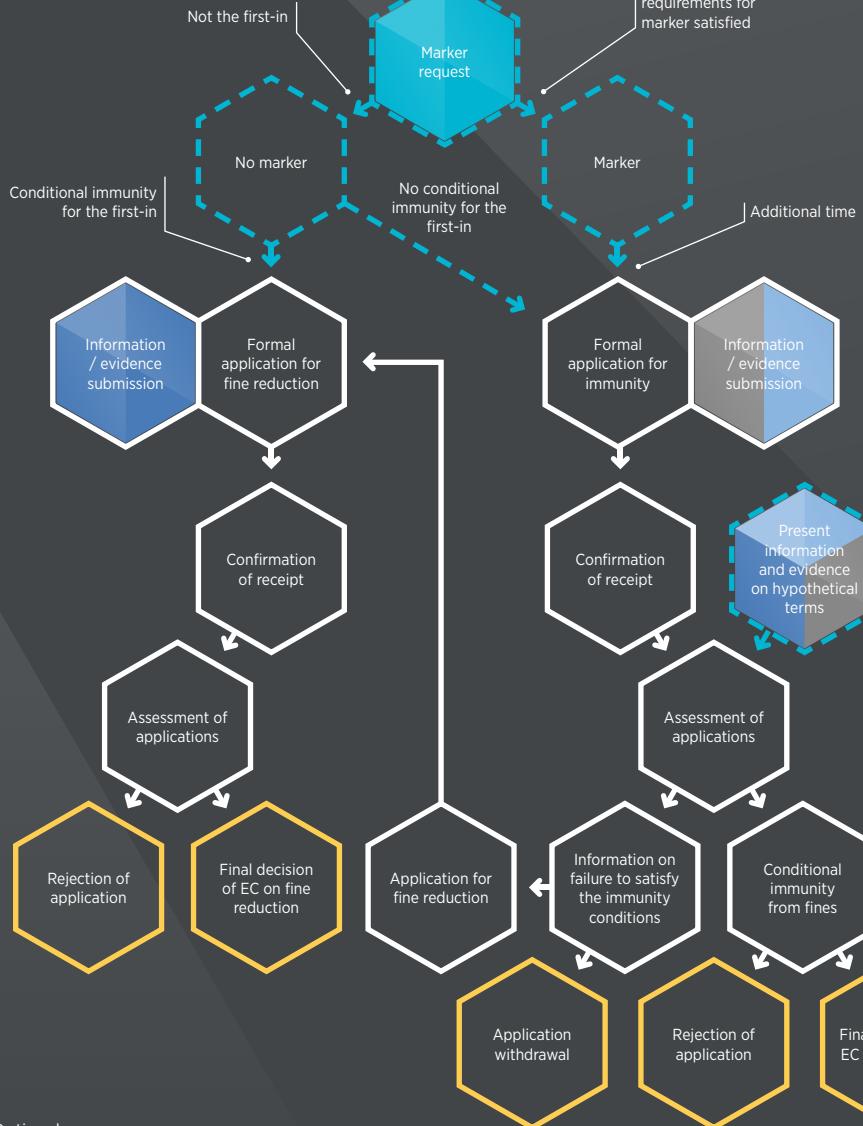
EUROPEAN UNION

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR THE EUROPEAN UNION

Termination of participation: immediately after the application, unless the European Commission advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Albania

AGENCY

Competition Authority of Albania (CAA)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover of each participating undertaking

Individual: up to ALL 5,000,000

Scope of leniency

Cartels, vertical and horizontal agreements, price fixing, production restriction or the allocation of quotas, sharing of markets, bid-rigging

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

A applicant who coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (e-mail, post, online by filling out the application form for the leniency in the official website)

Address: Competition Authority, "Sami Frasheri" St., no.4, 4th Floor, Tirana, Albania.

E-mail: competition@caa.gov.al

Website: www.caa.gov.al

Phone: +355 4 22 34 504

Available languages

Albanian

Marker

Not explicitly but the terms used may be interpreted as covering a marker system.

Brief description of leniency

In Albania, the Competition Commission of Albania (CAA) will grant an undertaking immunity from fines if the applicant is the first who informs and assists the CAA to discover and prohibit a restrictive agreement, by providing evidence and information that the CAA did not previously have and that enable the latter to:

- (i) initiate an investigation with regard to a restrictive agreement;
- (ii) discover an infringement to Article 4 of the law no. 9121, dated 28 July 2003 "On Competition Protection" (Article 4 provides for the prohibition of restrictive agreements).

To qualify for an immunity from a fine, the undertaking should cooperate fully, on a continuous basis and expeditiously throughout the CAA's administrative procedure and provide the CAA with evidence that comes into its possession or is available to it relating to the suspected infringement. In particular, the undertaking should remain at the CAA's disposal to answer swiftly any request that may contribute to the case. It should not destroy, falsify or correct relevant information or data related with the restrictive agreement and inform the CAA that it withdrew from the restrictive agreement.

Immunity will not be granted if at the time of application, the CAA had sufficient information to undertake an investigation in relation to a restrictive agreement, has undertaken such investigation or is about to take a decision.

Undertakings which do not qualify for immunity may benefit from a reduction of the fine if they provide evidence that brings significant added value to the one already collected by the CAA. The Competition Commission may reduce the fine by 30 to 50% to the first undertaking, by 20 to 30% to the second undertaking and up to 20% to subsequent undertakings.

In order to determine the level of reduction within each of these bands, the CAA will consider the time at which the evidence was submitted and the extent to which it represents added value.



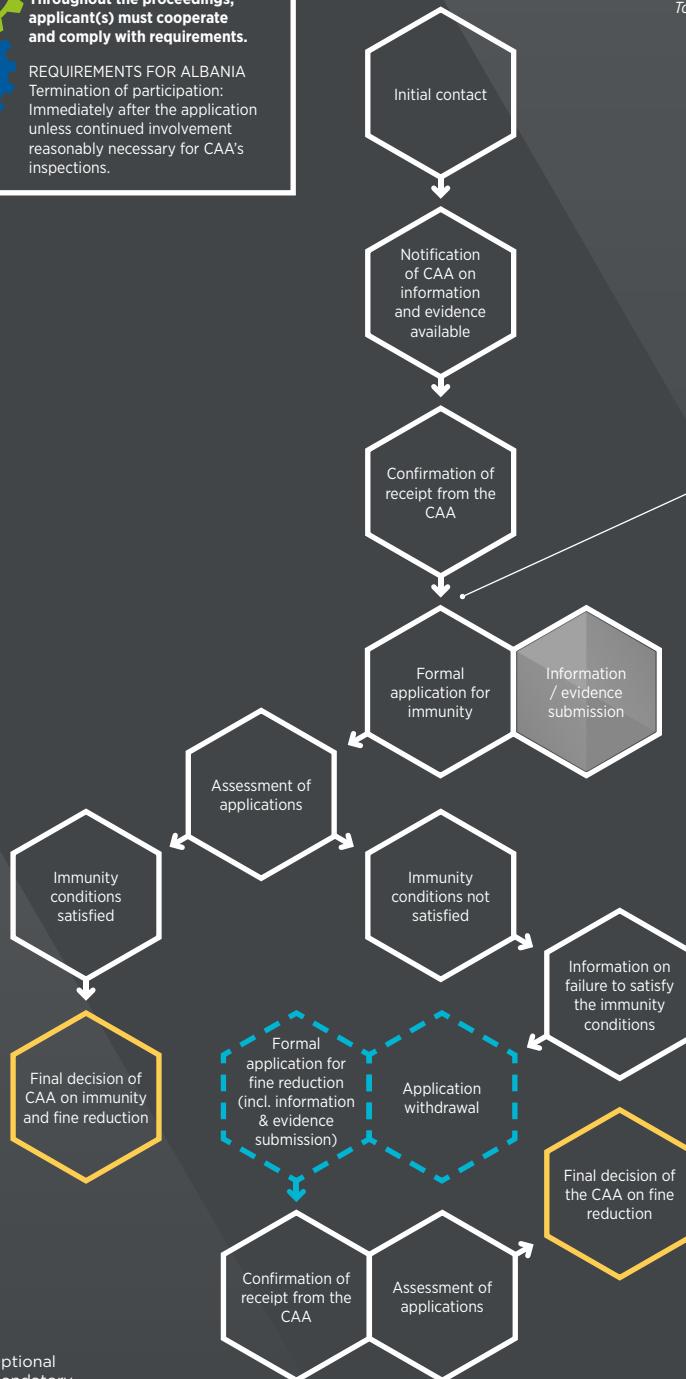
START

ALBANIA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR ALBANIA
Termination of participation:
Immediately after the application unless continued involvement reasonably necessary for CAA's inspections.



CAA will set time limit for submission of requested information and data

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Australia

AGENCY

Australian Competition
and Consumer Commission (ACCC)

FAST FACTS

Maximum fines

Individuals:

Criminal cartel offence: 10 years in jail and / or a fine of AUD 420,000

Civil contravention: A pecuniary penalty of AUD 500,000

Undertaking: whichever the greater of:

- AUD 10,000,000
- three times the total value of the benefits obtained that are reasonably attributable to the offence or contravention
- where benefits cannot be fully determined, 10% of the group's annual turnover in the preceding 12 months

Scope of leniency

civil liability, indirectly also criminal liability, cartels

Leniency available for

undertaking, individual

Reduction in fines

Amount: determined on case-by-case basis

Number of applicants: no limitation

Exclusion

an applicant who coerced others to participate cannot obtain immunity or leniency (fine reduction)

Leniency plus

Yes

How to submit an application

The only valid way to make an immunity application or request a marker is to contact the ACCC Immunity Hotline

E-mail: cartelimmunity@accc.gov.au

Phone: (02) 9230 3894 (if you call the telephone hotline, it will not be adequate to leave a voicemail or other message)

Available languages

English

Marker

Yes (only for the first-in applicant)

Brief description of leniency

In Australia immunity or leniency (fine reduction) is granted under the ACCC's immunity and cooperation policy for cartel conduct (**Policy**). Immunity is only available to the first-in applicant. A later party may still seek leniency (fine reduction) by cooperating with the ACCC.

The ACCC is responsible for granting civil immunity and the Commonwealth Director of Public Prosecutions (**CDPP**) is responsible for granting criminal immunity. The CDPP has initiated a number of criminal prosecutions for cartel conduct since its criminalisation in Australia in 2009.

The Policy applies to civil proceedings brought by the ACCC. However, the ACCC is also the first point of contact when seeking immunity from criminal proceedings from the CDPP. In order to benefit from the Policy, the applicant has to (among other things) admit that its conduct constitutes a contravention(s) of the competition law, and in the case of undertakings, admissions have to be a truly corporate act. Applicants must also enter into a cooperation agreement with the ACCC, and provide full, frank and truthful disclosure to the ACCC. Where the ACCC is of the view that an applicant satisfies the eligibility criteria for conditional

immunity, it will be granted conditional immunity. The conditional civil immunity will become final at the conclusion of proceedings against other cartel members.

The ACCC will also make a recommendation to the CDPP that immunity from criminal prosecution be granted. The CDPP exercises an independent discretion when considering such a recommendation. If the CDPP is satisfied that the applicant satisfies the ACCC's criteria for civil immunity, it can provide a letter of comfort to the applicant. Prior to commencement of prosecution the applicant will be granted criminal immunity subject to fulfillment of conditions and requirements. If they are fulfilled, the immunity becomes final. Revocation of civil and criminal immunity is possible if the applicant breaches the conditions of immunity.

Cooperation policy

Civil proceedings: If a party cooperates in an investigation, the ACCC will typically identify this in submissions to the court and make recommendations to the court in respect of the penalty discount and other sanctions to be imposed on the cooperating party. These recommendations are not binding, but as a matter of general principle courts, in the exercise of their

discretion, may afford leniency to cooperative parties including in respect of civil penalties. In rare circumstances, the ACCC may use its discretion to grant full immunity from ACCC-initiated civil proceedings to a cooperating party.

Criminal proceedings: The CDPP may identify, by way of submissions to the sentencing court, any cooperation by the party with the ACCC or law enforcement agencies. Ultimately, the court will use its discretion in imposing a sentence or penalty for cartel conduct.

Individuals and related corporate entities

Derivative immunity: If an undertaking qualifies for conditional immunity, it may seek derivative immunity for related corporate entities and/or current and former directors, officers and employees. Those parties must satisfy the criteria individually, in particular cooperate with the ACCC, admit to their involvement in the cartel conduct and provide full, frank and truthful disclosure to the ACCC.

Individuals, who apply for leniency individually, have to satisfy all the criteria for leniency.

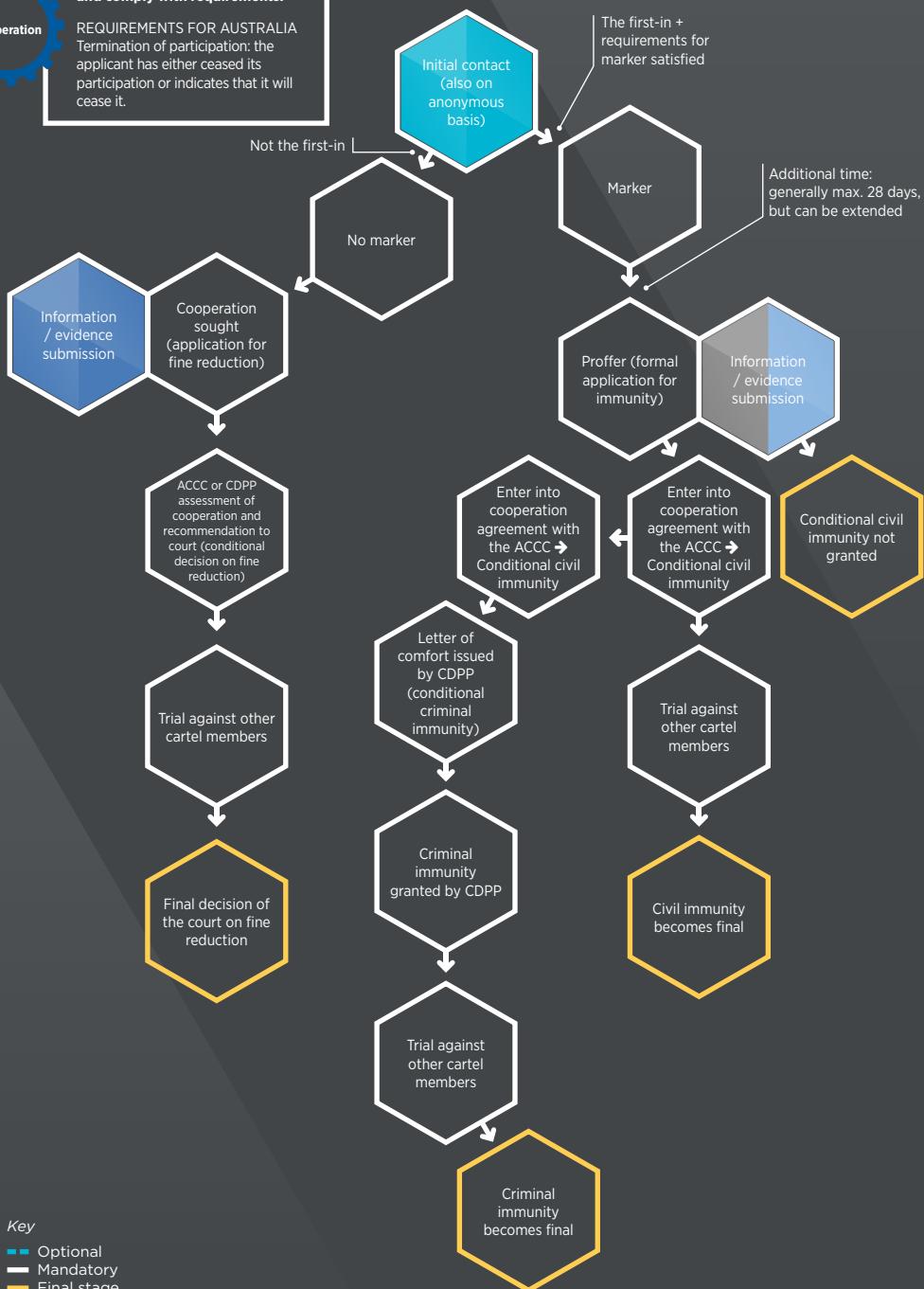
Immunity is available to directors, officers or employees who are, or were party to a cartel.



START

AUSTRALIA

To be used with the Reference Guide



COUNTRY

Austria

AGENCY

Undertaking: Austrian Federal Competition Authority (FCA) – *Bundeswettbewerbsbehörde*

Individual: Austrian Federal Antitrust Prosecutor (FAP) – *Bundeskartellanwalt* in cooperation with the Public Prosecutor's Office (PP) – *Staatsanwaltschaft*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover of the capital group
Individual:

- Fine of up to 360 times the daily fine rate or imprisonment for up to 6 months (the individual's participation in an anti-competitive conduct may qualify as a committal of the criminal offence fraud)
- Imprisonment for up to 3 years (bid riggings)

Scope of leniency

Undertaking:
Administrative fines
Cartels and vertical agreements
Individual:
Criminal liability
Cartels and vertical agreements

Leniency available for
Undertaking, individual

Reduction in fines

Undertaking:
Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

Undertaking:
An applicant which coerced others to participate cannot obtain immunity or fine reduction

Leniency Plus

No

How to submit an application

Undertaking:
In writing (e-mail, fax, post)
Bundeswettbewerbsbehörde
E-mail: wettbewerb@bwb.gv.at

Fax: +43 1 587 42 00
Address: 1030 Wien,
Radetzkystraße 2
Phone: +43 1 245 08 303 or
+43 1 245 08 126

Individual:
In writing (post)
Bundeskartellanwalt
Mag. Heinz Ludwig Majer, MBA
Address: 1016 Wien,
Schmerlingplatz 11
Phone: +43 1 52 1 52 0

Available languages
Undertaking: German or English
(German translation must be provided on request)
Individual: German

Marker

Undertaking: Yes (only for the first-in applicant)

Brief description of leniency

Participation in cartels and anti-competitive vertical agreements is subject to, respectively administrative fines under competition law for undertakings and criminal sanctions under criminal law for individuals. Individuals cannot be held liable under the competition law. In Austria there are in fact two separate leniency programmes—one for undertakings administered by the Austrian Federal Competition Authority (FCA) and another for individuals administered by the Austrian Federal Antitrust Prosecutor (FAP) in cooperation with the public prosecutor's office (PP).

Undertakings

Immunity may only be granted to an applicant, who informs the FCA of a cartel and provides evidence that enables the FCA to file a well-founded application. It is possible to obtain a marker for immunity applications. Undertakings which do not qualify for immunity may benefit from a reduction of fines if they

provide information and evidence, which represents significant value with respect to the evidence already collected by the FCA. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of the evidence.

Individuals

Employees of undertakings, which are considered to obtain immunity or a reduction of fines under the corporate leniency programme, may be (fully) protected from the imposition of individual sanctions—for the same cartel conduct—by Austrian criminal courts.

In order to benefit from such a protection, the individual will have to contact the FAP. In practice, this will often be done in cooperation with the legal counsel of the employing undertaking who is interested to ensure the employee's full cooperation in connection with leniency application of the undertaking. If the FAP within his

discretion then decides, that it would be disproportionate to sanction employees of the concerned undertaking for a criminal action committed in the connection with the competition law infringement, the FAP has to inform the PP about the proceedings at the FCA, any other NCA or the Commission. Thereupon, the PP has to preliminary close the proceedings against the individual, preliminary exempt the individual from any criminal sanction and concede status as leniency applicant, all provided, that the individual declares to fully disclose all his knowledge that may be of any significance for the elucidation of the offences and voluntarily terminates the participation. In consideration of the FAP's discretion, the statute does not provide for a legally granted right of individuals to be exempted from sanctions.

Formally, the result of the individual's leniency proceedings is not linked to the results the undertakings' leniency proceedings.



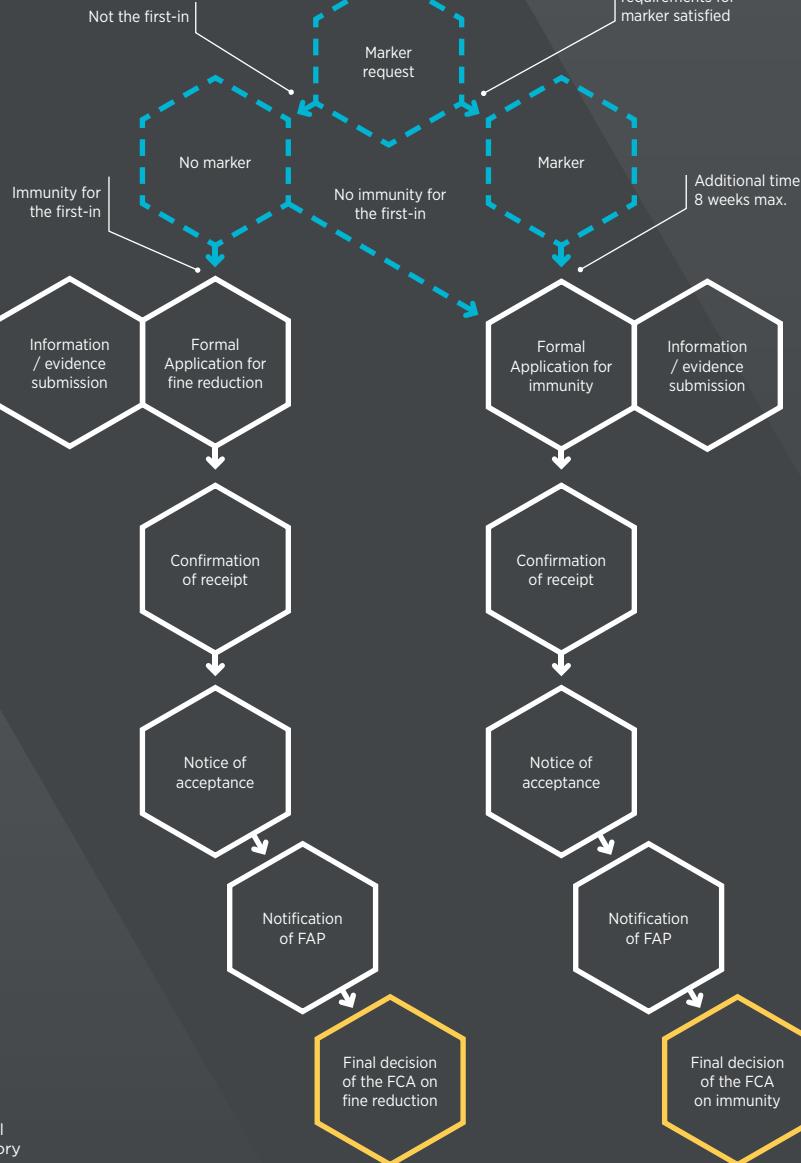
START

AUSTRIA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements

REQUIREMENTS FOR AUSTRIA
Termination of participation: in consultation with the FCA.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Belgium

AGENCY

Belgian Competition Authority
(BCA) – *Autorité belge de la Concurrence / Belgische Mededingingsautoriteit*

FAST FACTS

Maximum fines

Undertaking or associations of undertakings: 10% of the annual worldwide group turnover

Individual: up to EUR 10,000

Scope of leniency

Cartels

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant who coerced others to participate or stay in the cartel cannot obtain immunity but can apply for a reduction in fines if all the requirements are satisfied

Leniency Plus

No

Brief description of leniency

The Belgian Competition Authority (BCA) grants full immunity from fines (Type 1) to the first applicant who (i) provides sufficient information and evidence of an alleged cartel which enables the BCA to justify and conduct a targeted inspection (Type 1A), or (ii) who submits evidence that is sufficient to establish an infringement concerning the alleged cartel (Type 1B).

Reduction of fines (Type 2) is available to applicants who provide the BCA with evidence of the alleged infringement which represents significant added value compared to the evidence already in the BCA's possession, and according to the following scale:

- 30% to 50% reduction for the first applicant,
- 20% to 40% reduction for the second applicant,
- 10% to 30% reduction for subsequent applicants.

How to submit an application

Contact should be made (by e-mail or telephone) with the Competition Prosecutor General

In writing or orally

E-mail: damien.gerard@bma-abc.be

Phone: +32 2 277 76 57

Fax: +32 2 277 53 23

Address: City Atrium, Rue du Progrès 50, Brussels 1210

info@bma-abc.be

Available languages

Dutch and French

Marker

Yes

Individuals

The BCA can only impose fines on (and grant immunity to) individuals who have been involved in price fixing, output limitation or market sharing.

The BCA will grant immunity to individuals who contribute to proving the existence of the infringements by either recognising their involvement in the practices or by providing the BCA with information it did not already have. In addition, the BCA will grant immunity to individuals who sufficiently cooperate with the company's leniency application. Individuals can obtain immunity regardless of their place in the leniency queue. Individuals applying for immunity do not preclude the company from being granted Type 1 and Type 2 immunity.



START

BELGIUM

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR BELGIUM
Termination of participation:
immediately after the application, unless BCA advises differently.

Initial contact
(also on anonymous basis)

Marker request

Marker

Acknowledgement of receipt by registered mail or orally confirmed by the Competition Prosecutor General

Type 1A
Immunity

Information /
evidence
submission

Formal application

Conditional
immunity

Type 1B
Immunity

Type 2
partial Immunity
(fine reduction)

Confirmation
of immunity

Confirmation
(or rejection) of
leniency ("décision de clémence") by
the President of
the BCA

Submission
of a proposal
for decision by
the Competition
Prosecutor
General

After submission,
the applicant has
eight working days
to submit written
comments

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Brazil

AGENCY

Brazil's Administrative Council for Economic Defence (CADE) — *Conselho Administrativo de Defesa Econômica*

FAST FACTS

Maximum fines

Business undertaking: 20% of the annual gross turnover of the undertaking, or its group or conglomerate, for the branch of activity covered by the infringement, and not less than the advantage gained, when possible to estimate.

Other undertakings and individuals:

BRl 2 billion (approx. US\$ 364,508,000), and 20% of the fine imposed on the undertaking for officers/directors directly or indirectly involved, in cases of wilful misconduct or gross negligence.

Scope of leniency

Cartels and other offenses to economic order

Total leniency: administrative fines, criminal liability

Partial leniency: administrative fines

Leniency available for

Undertaking, individual

Reduction in fines

Partial leniency: a reduction of up to 2/3 of the fine, there is no criminal immunity

Number of applicants: 1. Only the first-in

Cease and Desist Agreement (TCC): reduction of up to 50% before the case is remitted to CADE's Tribunal, and up to 15% after the case is remitted to CADE's Tribunal

Exclusion

No

Leniency Plus

Yes

How to submit an application

In writing (e-filing, in person, e-mail, post) or orally (phone, in person).

E-filing: Platform Clique Leniência

E-mail: leniencia@cade.gov.br

(Topic: "Pedido de Marker")

Address: SEPN 515, Conjunto D, Lote 4, Ed. Carlos Taurisano, Brasília/DF

Phone: +55 61 3221-8563

Available languages

The e-filing platform is only available in Portuguese. The leniency agreement may be negotiated and signed in Portuguese and English, but the Portuguese version prevails.

Marker

Yes (only for the first-in applicants)

Brief description of leniency

Immunity (total leniency) will be granted upon entering into the Leniency Agreement if the CADE did not have prior knowledge of the reported activity at the time the undertaking and / or the individual applied for the marker. Partial leniency (a fine reduction of up to 2/3 of the applicable penalty) will be granted upon fulfilment of the Leniency Agreement if the CADE already had prior knowledge of the activity at the time the undertaking and / or the individual applied for the marker, but did not yet have evidence likely to result in a conviction.

Total leniency grants full immunity. Partial leniency grants the benefit of a reduction of one to 2/3 of the applicable penalty, depending on how effective the cooperation is in fulfilling the Leniency Agreement as well as the good faith of the offender. Partial leniency does not affect potential criminal investigations.

Total or partial leniency can be granted only for a first-in applicant. Applicants that do not qualify for leniency may apply for a Cease and Desist Agreement, also with the CADE.

In the event of a breach of the Leniency Agreement or the Cease and Desist Agreement, the applicant will lose any of the benefits he has obtained.

Individuals

Both undertakings and individuals can apply for leniency, jointly or independently. The requirements are the same for companies and individuals, except that individuals may enter into leniency agreements even if they are not the first to qualify with respect to reported facts. Both undertakings and individuals compete for the same marker (only one queue).

If the applicant is an undertaking, the benefits of the agreement can be extended to its current and former directors, managers, and employees, and to undertakings of the same economic group involved in the activity, as long as they cooperate with the investigations and sign the Leniency Agreement jointly with the undertaking. Individuals and undertakings of the same economic group may also be authorised to subscribe to the Leniency Agreement later by signing an addendum. Such an authorisation is at the discretion of the CADE.

Likewise, if the applicant is an individual and the Leniency Agreement is signed without the participation of the undertaking(s) involved in the activity, the benefits will not be extended to the undertaking(s).



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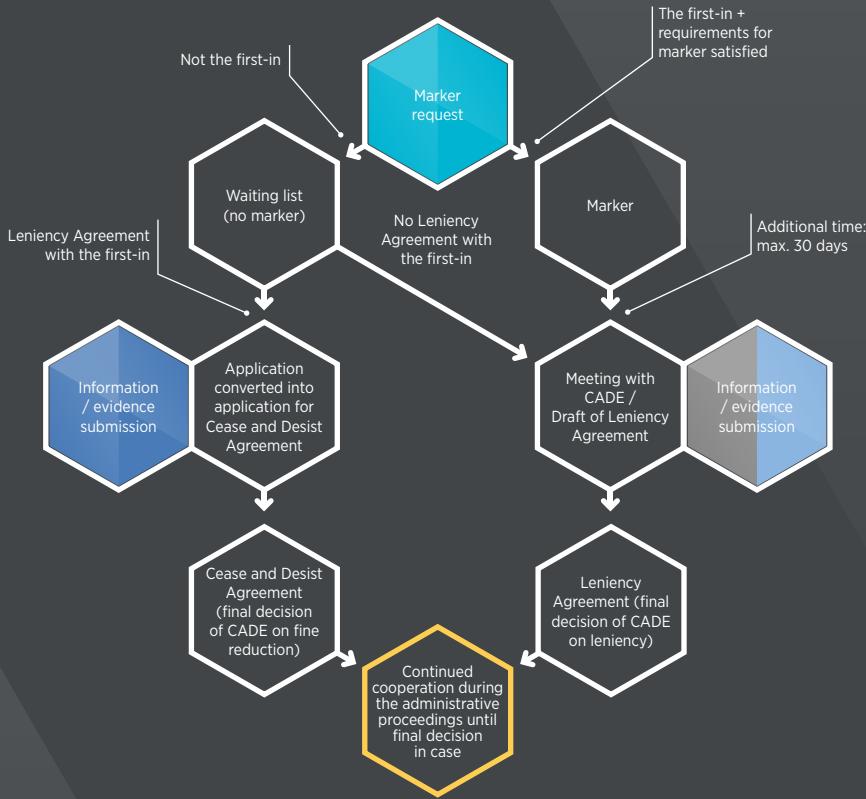
BRAZIL

To be used with the Reference Guide

➤ Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR BRAZIL

Termination of participation: by the conclusion of the Leniency Agreement.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Chile

AGENCY

National Economic Prosecutor (FNE)

– *Fiscalía Nacional Económica*

FAST FACTS

Maximum fines

Undertaking and individual: 30% of the offender's sales corresponding to the line of products or services associated with the infringement during the period of its duration or double of the economic benefit obtained by the conduct. In case it is not possible to calculate the sales or the economic benefit, a fine up to 60.000 UTA (approx. US\$ 47 millions)

Scope of leniency

Administrative fines
Criminal sanctions
Dissolution of entity
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

For the first applicant there is full immunity. For the second applicant, a maximum reduction of 50% of the fine that otherwise would have been requested. Number of applicants: Only the first two applicants.

Exclusion

Applicant that organized the conduct and coerced others to participate cannot obtain immunity or a fine reduction

Leniency Plus

Yes (FNE Guideline—not expressly contemplated in the law)

How to submit an application

Online at www.fne.gob.cl, by Phone : + 56 227535603 or e-mail: encargadodelacioncompensada@fne.gob.cl

Available languages

Available languages Spanish, English (if necessary)

Marker

Yes

Brief description of leniency

Immunity is available for the first applicant who informs the FNE of a cartel and satisfies the leniency requirements. The second applicant which provides evidence that represents significant added value to the one already collected by the FNE may be granted a reduction of the fine. A successful leniency application may be filed even if the FNE has already begun an investigation or conducted an inspection in relation to the relevant conduct.

The FNE prosecutes cases before the Competition Tribunal, which is the only institution that can impose fines or remedies. However, the Competition Tribunal cannot fine an applicant which obtained full immunity or impose a higher fine than the one included in the FNE's complaint unless it is established that the beneficiary initiated the cartel activity and coerced others to participate in it. DL 211 does not prohibit the second applicant to request the Competition Tribunal to reduce the fine requested by the FNE, on the basis of their cooperation with the FNE.

A leniency application can be made online, by phone or via e-mail. The FNE provides an application form on its website.

After the application is submitted, a Nomination Meeting between the applicant and the FNE is scheduled. During the Nomination Meeting, the applicant will be given a marker, and the parties will also agree on the ways in which the applicant will provide evidence.

The evidence will be provided in the Application of Benefits presented to FNE.

If for any reason and at any stage the application for the benefits is not successful, the FNE shall return all the evidence provided by the applicant and destroy any existing copies. The FNE shall not use that evidence in any current or future investigations, unless it is obtained outside of the leniency process.



START

CHILE

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR CHILE

Submit precise, truthful and ascertainable information; termination of participation: immediately after the application; not publicize application

50 days for local cartels—100 days for international cartels (extendable upon request)

Initial contact (also on anonymous basis)

Hypothetical questions

Confirmation of receipt

3 business days

Acquisition of marker / confirmation of place in the queue

Application Meeting

Meeting for evidence submission

60 business days extendable to 60 more days

Decision on whether the information is sufficient

No

Yes

Non-conformity resolution (rejection of the application)

Conformity resolution

Reasonable time to request a hearing to FNE

10 business days

Subsequent applicants may advance in their positions

Complaint against leniency applicant (and other cartel members) before Competition Tribunal filed by FNE

Decision of Competition Tribunal on immunity or fine reduction

Key

- Optional
- Mandatory
- Final stage

COUNTRY

China

AGENCY

State Administration of Market Regulation
(SAMR)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover in the preceding year

Scope of leniency

Administrative fines
Horizontal monopoly agreements

Leniency available for

Undertaking

Reduction in fines

Up to 50% of the fine

Number of applicants: 2 unless in complex, significant cases where certain conditions are met

Immunity

No less than 80% fine reduction to full immunity

Exclusion

An applicant who coerced or organized others to participate cannot obtain immunity, but can apply for reduction.

Leniency Plus

No

How to submit an application

In writing (email, fax, paper-based materials etc) ;
Orally(in person in the premises of SAMR)

Available languages

Chinese

Marker

Yes (called Registration in China, only for the first-in applicant)

Brief description of leniency

Article 46 of the Anti-Monopoly Law (AML), which took effect in 2008, is the legal source of leniency in China. The current single antitrust regulator State Administration of Market Regulation (SAMR) which was consolidated into in 2018 from the previous three competition agencies (National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM) and State Administration for Industry and Commerce (SAIC)) released a guideline in 2020 of leniency on horizontal monopoly agreements which replaced the respective internal rules on leniency by NDRC and SAIC. Article 3 of this new guideline specifies that it only applies to cases of horizontal agreements as its name suggests. However, neither the AML nor this new guideline makes it clear whether leniency will be only applicable to horizontal agreements though one thing is clear that this new guideline is only applicable to horizontal agreements. As a result, whether participants of vertical agreements can and how to apply for leniency is still uncertain since

the previous internal rules of NDRC and SAIC were applicable to both horizontal and vertical agreements and there were successful cases of participants of vertical agreements applying for leniency under the old internal rules.

The first-in applicant can secure immunity if it:

- (i) provides sufficient information and evidence that enables SAMR to file a case or initiate an investigation;
- (ii) provides evidence which helps establish the constituting of the horizontal agreement if SAMR has already filed the case or initiated the investigation

The second and subsequent applicants can obtain reduction only if they provide significant added value to the evidence already in possession of SAMR.

A marker (referred to as "registration" in Chinese) applies only to the first-in applicant. The immunity applicant and the fine reduction applicants will be issued an confirmation receipt

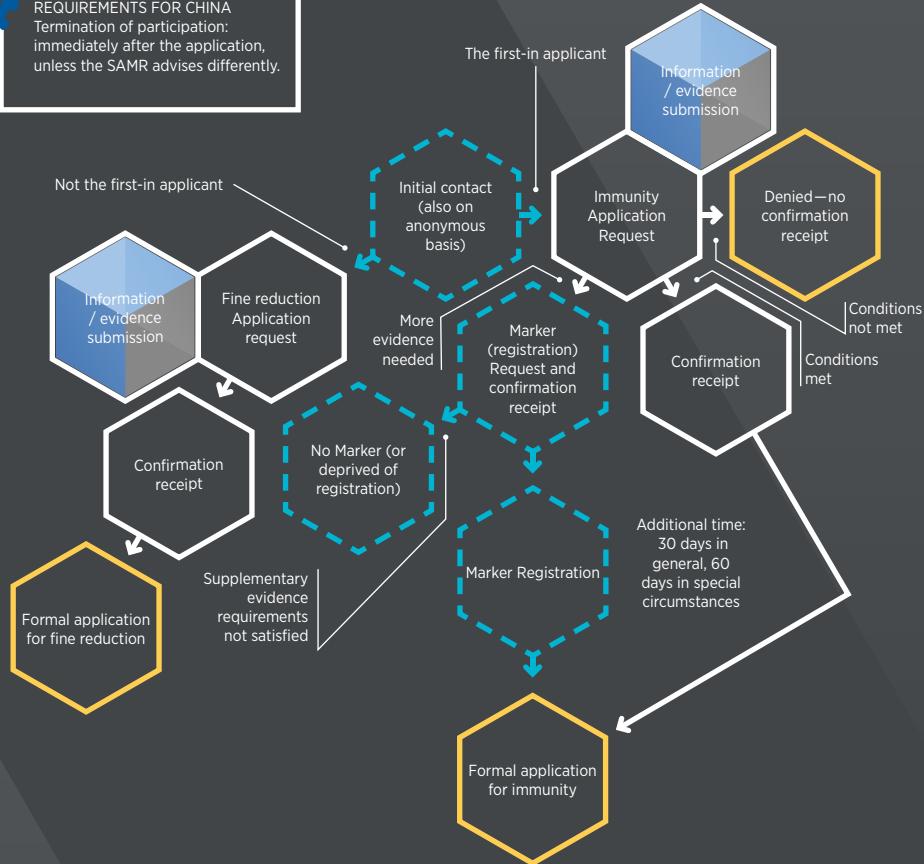
if all conditions are met. The first-in applicant can be registered with SAMR and be issued a confirmation letter if he can't provide all the required evidence at the time of application. A grace period can be given which generally does not exceed 30 days, and can be extended to 60 days under special circumstances.

A full immunity or no less than 80% reduction can be given to the first-in applicant. With other conditions met, the first-in applicant will be granted a full immunity if he is identified as the first applicant before the filing of the case or initiation of investigation by SAMR unless he is the coercer or the organizer of the agreement. A 30% to 50% reduction can be granted to the second applicant and a 20-30% reduction to the third applicant. Under normal circumstances, a maximum of three applicants can be granted leniency. SAMR might consider of granting reduction of no more than 20% to more applicants if the case is significant, complex and it involves multiple market operators while they have all provided different important evidence.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR CHINA
Termination of participation: immediately after the application, unless the SAMR advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Croatia

AGENCY

Croatian Competition Agency (CCA)

—Agencija za zaštitu tržišnog natjecanja

FAST FACTS

Maximum fines

10% of the annual turnover

Scope of leniency

Administrative fines

Cartels

Leniency available for Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which initiated the activity or coerced others to participate cannot obtain immunity

Leniency Plus

No

Brief description of leniency

Immunity may only be granted to the first applicant that informs the Croatian Competition Agency (CCA) of an undetected cartel (whereby the applicant discloses credible information, facts and evidence that enable the CCA to open a proceeding) or that provides evidence that enables the CCA to prove the cartel infringement during the cartel prosecution in the event that the CCA has not gathered enough credible information to close the proceedings and reach a decision on the alleged infringement.

Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the CCA. In principle, the CCA will disregard the application for immunity / reduction of fines or the request for a marker, if these have been submitted after the adoption of a Statement of Objection.

How to submit an application

In writing (in person, e-mail, fax, post) or orally (in person),

E-mail: agencija.ztn@aztn.hr

Fax: +385 1 617 64 50

Address: Savska cesta 41/XIV, 10 000 Zagreb Phone (for initial contact): +385 1 617 64 48

Available languages

Croatian or other languages (Croatian translation must be provided without undue delay)

Marker

Yes (only for the first-in applicant)

For an application for immunity, it is possible to request a marker. If the applicant submits a request for a marker and it fails to provide the requested information and evidence within the deadline, the CCA will consider that the application for immunity has never been submitted and it will be able to use all the information and evidence provided in the request for marker.

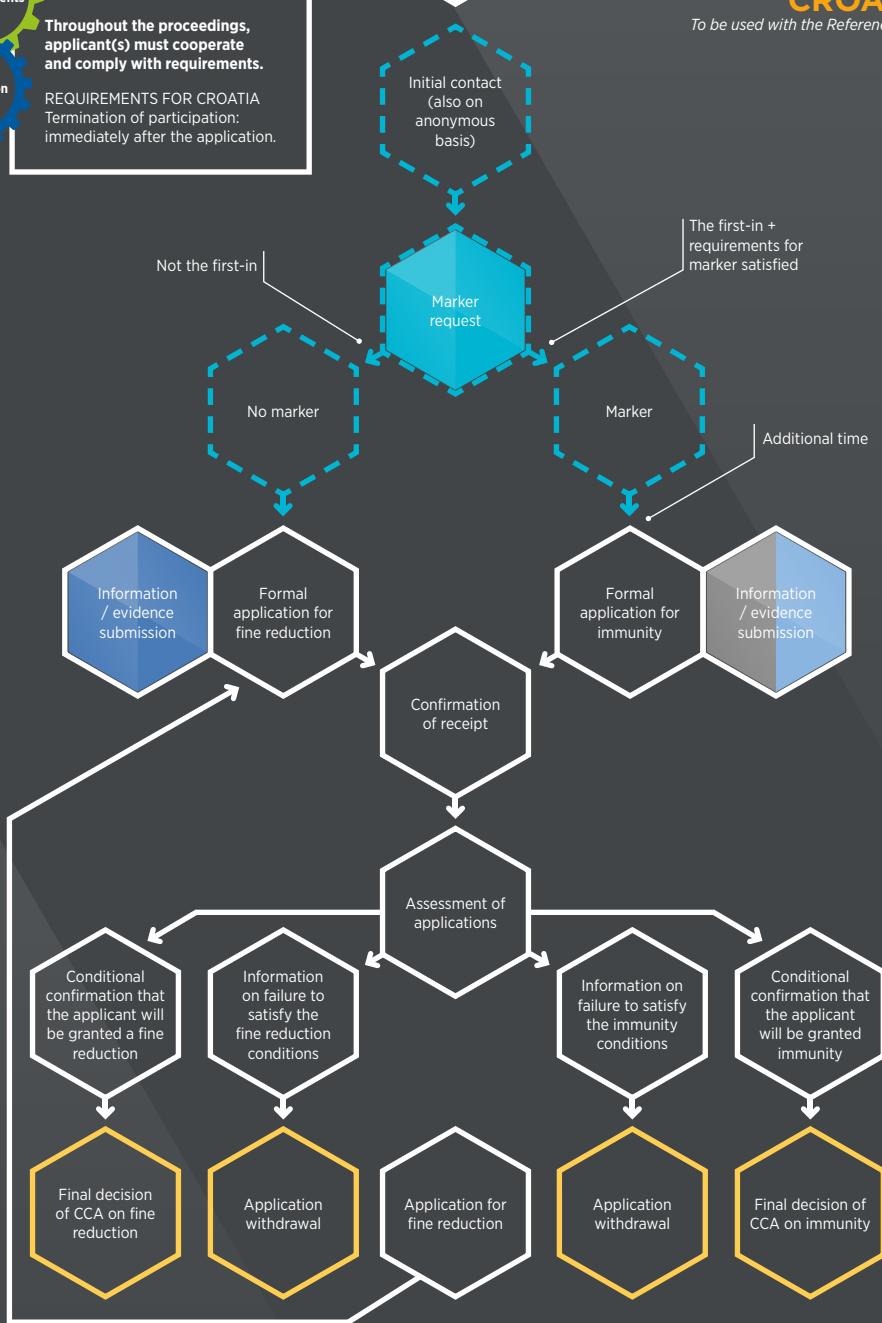
Summary applications, as provided in the EU leniency programme, are not formally applicable in Croatia. However, they would not be disregarded and the CCA would consider them as a marker request and proceed in accordance with the local leniency programme.



START

CROATIA

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Czech Republic

AGENCY

The Office for the Protection of Competition
(Office) – *Úřad pro ochranu hospodářské soutěže*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual group turnover
Individual (in criminal proceedings: 8 years imprisonment)

Scope of leniency

Administrative fines (and, in cases of bid rigging cartels, also a black list), indirectly criminal liability of individuals, indirectly civil liability (scope of liability is reduced)
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Brief description of leniency

Immunity may be granted to the first applicant that informs the Office for the Protection of Competition (**Office**) of a cartel and submits evidence that enables the Office to conduct an on-site inspection or to prove the existence of the cartel.

Undertakings that do not qualify for full immunity may benefit from a reduction in fine if they provide evidence that represents significant added value to that already collected by the Office.

An application for immunity must be submitted no later than a statement of objections is delivered to the applicant. An application for a fine reduction must be submitted within 15 days following the delivery of the statement of objections at the latest.

If an application fulfills the conditions for full immunity, the Office shall conditionally confirm it to the applicant. If the conditions for full immunity are not met, the applicant may ask the Office to regard its request as an application for a reduction of fine.

Leniency Plus

No

How to submit an application

In writing (in person, post or e-mail with electronic signature) or orally (in person)
E-mail: leniency@uohs.cz
Address: třída Kapitána Jaroše 7, 604 55 Brno, Czech Republic
Phone (for initial contact): +420 542 167 216, +420 542 167 284, +420 542 167 308

Available languages

Czech; summary applications may also be submitted in English. If the Office takes up the case, all documents have to be submitted either in Czech or Slovak.

Marker

Yes

An undertaking wishing to apply for full immunity may apply for a marker. The request must be justified (reasons why more time is needed to gather the necessary information and documents) and shall be considered at the Office's discretion. If the Office grants the marker, it shall determine the period within which the applicant has to submit information and documents to qualify for full immunity.

Alternatively, an undertaking wishing to request full immunity may submit a hypothetical application. The undertaking may do so without disclosing its identity (e.g. through its counsel). The Office shall verify whether the list of hypothetical documents qualifies for immunity and inform the undertaking accordingly. Hypothetical application does not substitute a proper application, nor does it serve as a request for marker.

Successful application for leniency has also indirect impact on the criminal liability of individuals (managers). The active involvement of an individual in the successful application leads to the extinction of his/her criminal liability for the cartel.

Successful application for full immunity (only) also leads to the limitation of civil liability. The undertaking is, in principle, not jointly and severally liable with the other members of the cartel, it is liable only to his direct or indirect purchasers and suppliers.



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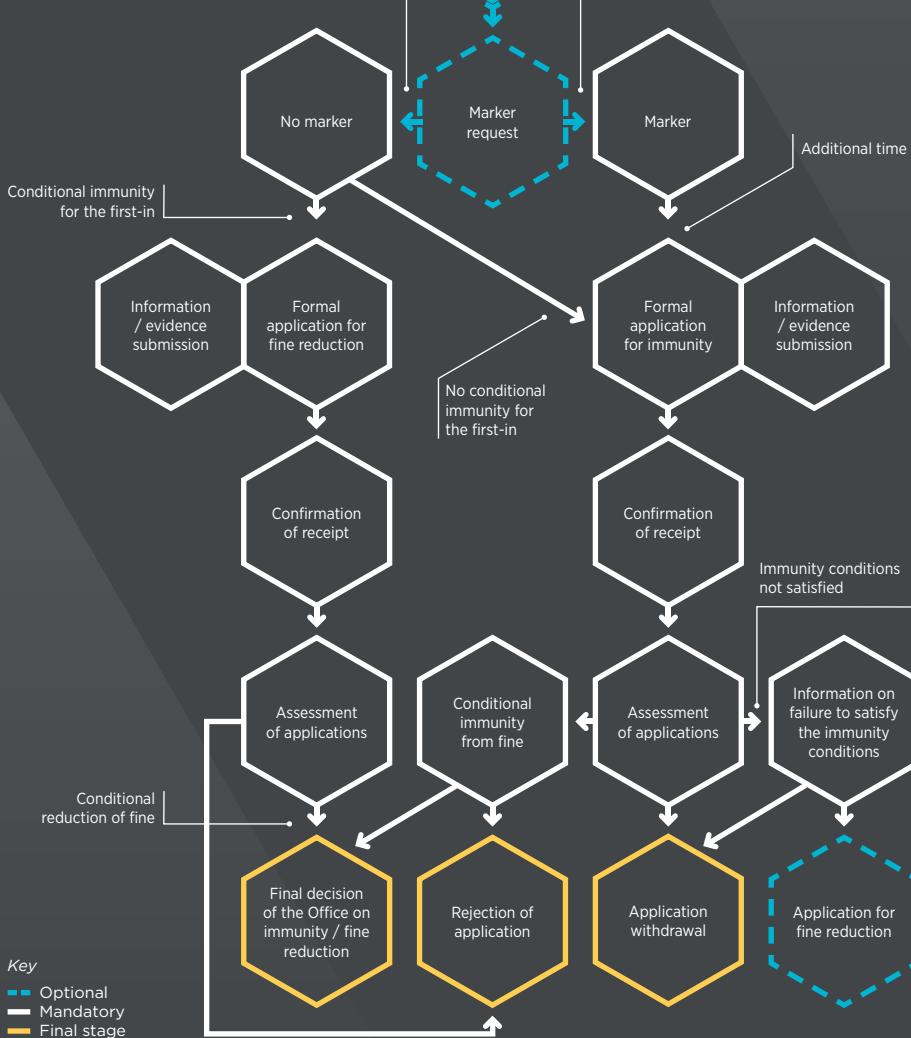
CZECH REPUBLIC

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR CZECH REPUBLIC

Termination of participation:
Immediately after the application, unless the Office advises differently.



COUNTRY

Denmark

AGENCY

Danish Competition and Consumer Authority (DCCA) – *Konkurrence-og Forbrugerstyrelsen*

FAST FACTS

Maximum fines

Undertaking: 10% of the world-wide annual turnover of the group.

Individual: No maximum.

Furthermore, punishable by up to six years of imprisonment.

Scope of leniency

Criminal liability Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate, which has destroyed, forged or hidden evidence, which has revealed its plan to apply for leniency or which does not cooperate fully, cannot obtain immunity or a fine reduction

Leniency Plus

No

How to submit an application

In writing (in person, e-mail, post) or orally (in person)

E-mail: stko@kfst.dk (Stefan Kobbenagel, Head of Department) (further e-mail addresses at <https://www.en.kfst.dk/competition/cartels/avoid-punishment/>)

Address: Carl Jacobsens Vej 35, 2500 Valby

Phone (for initial contact): + 45 4171 5000

Available languages

Danish and English

Marker

Yes (however, the applicant will not be informed of which “number” the applicant has in the queue)

Brief description of leniency

Immunity may only be granted to the first applicant who informs the Danish Competition and Consumer Authority (DCCA) of a cartel and provides evidence that enables the DCCA to conduct an inspection / search or to prove the cartel infringement.

Applicants, which do not qualify for immunity, may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the DCCA.

An application for leniency shall be submitted to the DCCA.

There is no prescribed form of application for leniency, although the DCCA has a template for submission that applicants can use. Furthermore, the law states certain information, which must be included in the application, such as names of the participants of the cartel, detailed description of the cartel, etc.

The DCCA recommends that an application be handed over in-person.

Individuals

Both undertakings and individuals can apply for withdrawal of a charge that would otherwise have led to a fine. Individuals can also apply for withdrawal of a charge that would otherwise have led to imprisonment.

An application submitted by an undertaking automatically includes current and former board members, senior managers and other employees, provided that each individual meets the requirements for leniency.

An application for leniency submitted by a former employee or an employee without an agency to bind the undertaking does not automatically encompass the undertaking.

Former employees' lack of cooperation with the competition authorities in cases where the undertaking has applied for leniency does not prevent the applicant from benefitting from leniency.



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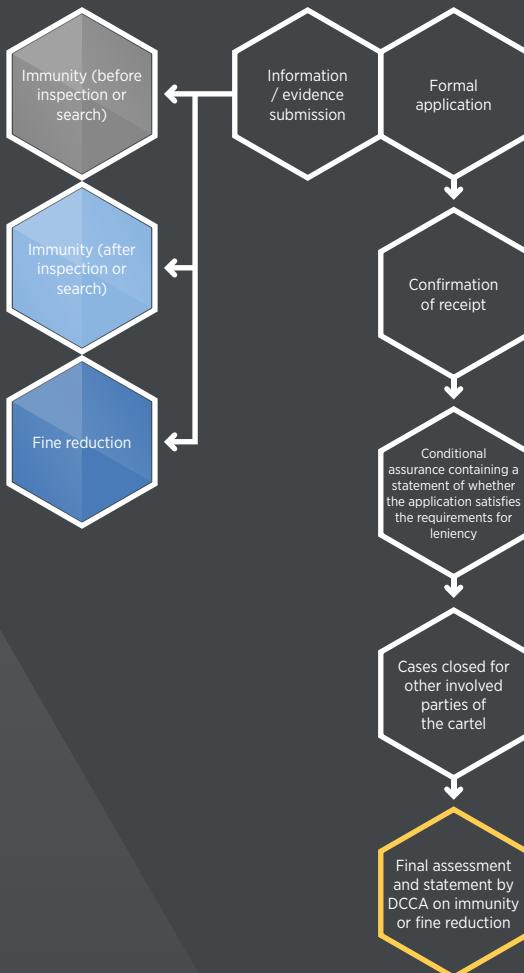
DENMARK

To be used with the Reference Guide

► **Throughout the proceedings, applicant(s) must cooperate and comply with requirements.**

REQUIREMENTS FOR DENMARK

Termination of participation:
Immediately after the time of
application.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Finland

AGENCY

Finnish Competition and Consumer Authority
(FCCA) – *Kilpailu-ja kuluttajavirasto*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover

Scope of leniency

Administrative fines

Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

No

Brief description of leniency

Immunity may only be granted to the first applicant which informs the Finnish Competition and Consumer Authority (FCCA) of a cartel and provides evidence that enables the FCCA to conduct an inspection or, in cases where the inspection has already been conducted, to prove the cartel infringement. The FCCA shall not proceed to investigate other applications for immunity relating to the same cartel before it has taken a position on whether immunity may be granted to the first undertaking which has applied for immunity.

Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the FCCA. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence. Preliminarily, the applicant will be granted conditional immunity/leniency and subsequently immunity will be granted by the FCCA's decision and leniency (a fine reduction) by the Market Court on the basis of the FCCA's recommendation. The latter is due to the delineation that the FCCA does not have independent fining powers.

How to submit an application

In writing (in person, e-mail, fax, post) or orally (phone, in person)

E-mail: through a secured link via the agency's website: <https://www.kkv.fi/en/facts-and-advice/competition-affairs/guidelines/leave-cartel/>

Address: P. O. Box 5, FI-00531 Helsinki, Finland

Visiting address: Lintulahdenkuja 2, 00530 Helsinki

Phone: +358 29 505 3000

Available languages

Finnish, Swedish, or where bilaterally agreed between the FCCA and the applicant, in another EU official language (English is likely accepted by the FCCA).

Marker

Yes (only for the first-in applicant)

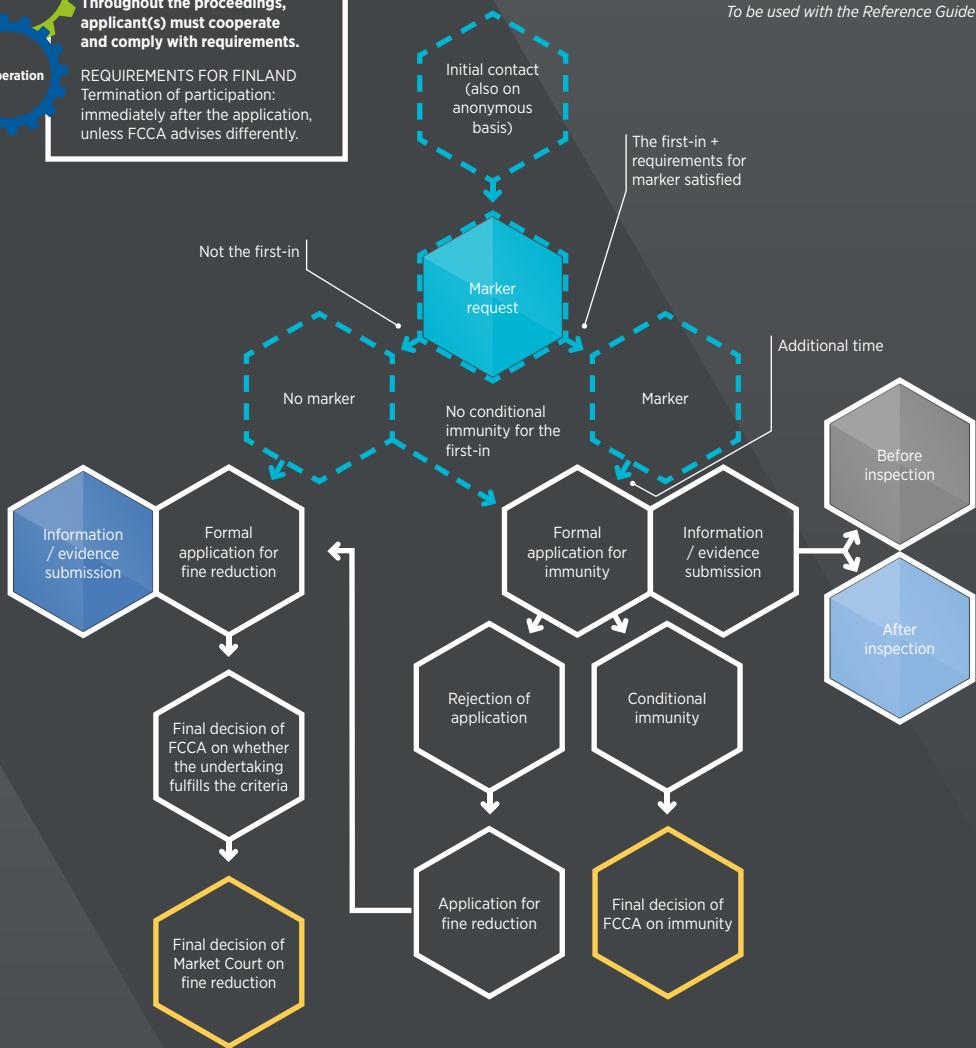
In principle, the leniency programme only applies to cartel cases. However, also in other types of cases, the FCCA may propose that a lower penalty payment be imposed on an undertaking, or refrain from making a penalty payment proposal, if the undertaking has significantly assisted the FCCA in its investigation. In such cases, the Market Court eventually decides whether the penalty payment is reduced or not imposed at all, as the case may be.



START

FINLAND

To be used with the Reference Guide



Key

- Optional (dashed line)
- Mandatory (solid line)
- Final stage (yellow hexagon)

COUNTRY

France

AGENCY

French Competition Authority (FCA)—
Autorité de la Concurrence

FAST FACTS

Maximum fines

Undertaking: 10% of the annual group turnover
Individual: EUR 75,000 and up to 4 years imprisonment

Scope of leniency

Administrative fines, criminal liability
Cartels
Leniency available for Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate or to continue to participate cannot obtain immunity

Leniency Plus

No

Brief description of leniency

Immunity may only be granted to the first applicant who submits information and provides strong evidence of an infringement about which the French Competition Authority (FCA) has no information and where in the FCA's view the evidence submitted by the applicant provides a sufficient basis to carry out a dawn raid (Type 1A Immunity)

If the FCA has already the information on the alleged practices or has carried out a dawn raid, immunity may be granted for the first applicant who provides evidence sufficient to establish a competition law infringement, provided that no other undertaking has obtained a type -1A immunity or that the FCA had already sufficient evidence to establish a competition law infringement (Type 1B Immunity).

Applicants that/who do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the FCA (Type 2 Partial Immunity).

How to submit an application

In writing (post) or orally (in person)
E-mail: clemence@autoritedelaconcurrence.fr
Address: 11, rue de l'échelle, 75 001, Paris
Phone: +33 155 04 02 00

Available languages

French

Marker

Yes

Since 2015, a sliding scale of fine reduction is available to Type 2 leniency applicants:

- 25% to 50% (inclusive) reduction for the first company that provides significant added value,
- 15% to 40% (inclusive) reduction for the second company that provides significant added value,
- A maximum reduction of 25% for lower-ranking companies.

Individuals

An individual cannot apply for leniency independently of the company itself. The company is the sole beneficiary of the leniency application.

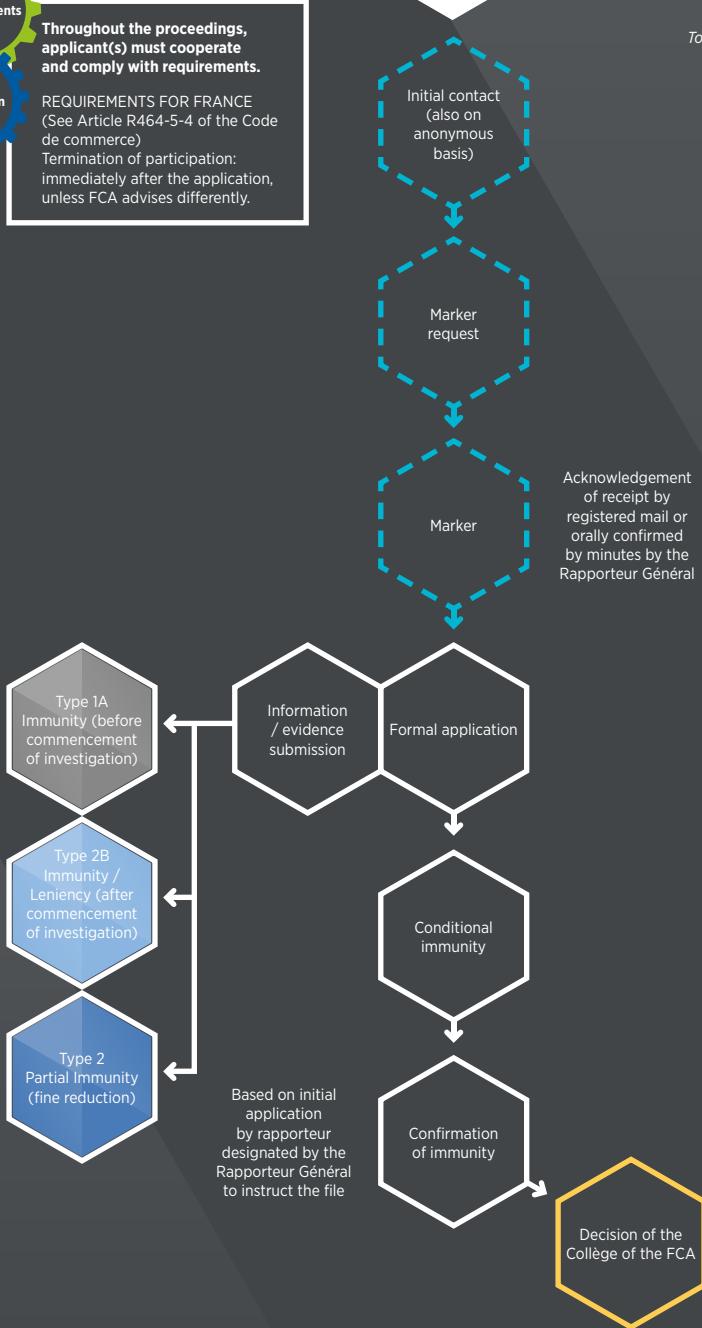
However, since 2021, an individual working for an undertaking to which immunity was granted by the FCA and who cooperated actively with the public prosecutor may obtain immunity for their criminal liability related to the competition infringement at stake.



START

FRANCE

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Germany

AGENCY

Federal Cartel Office (FCO) – *Bundeskartellamt*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual group turnover
Individual: EUR 1 million

Scope of leniency

Administrative fines
Cartels

Leniency available for

cartelists; i.e. undertaking, business association,
individual

Reduction in fines

Amount: up to 100% of the fine for the first applicant,
up to 50% for the subsequent applicants
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (e-mail, fax, post) or orally (in person)
Fax: +49 228 9499-560
Address: Kaiser-Friedrich-Str. 16, 53113 Bonn Phone
(for initial contact): +49 228 9499 386

Available languages

German, English or (if agreed with the competition
authority) in another language of the EU (German
translation must be provided without undue delay)

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant
which contacts the Federal Cartel Office (FCO) and
provides the information and evidence that enables
the FCO to obtain a search warrant or, if the FCO is
already in a position to obtain a search warrant, the
applicant provides as the first information that enable
the FCO to prove the cartel infringement.

Applicants which do not qualify for immunity may
benefit from a reduction of up to 50% of fines if they
provide evidence that brings significant added value
to the one already collected by the FCO. The extent of
the fine reduction depends essentially on two factors:
the time of submission of the evidence important to
the case and the value of this evidence.

In principle, the leniency programme does not apply
to vertical agreements. However, the FCO, when
exercising its discretion in taking up and pursuing
vertical restraints, may grant immunity from or a fine
reduction should the applicants cooperate.

Individuals

The FCO considers an application made by an
individual authorized to represent an undertaking
also as an application on behalf of the represented
undertaking unless indicated otherwise. An
application made by an individual in his own name
only and not on behalf of the undertaking will be
considered as a sole application i.e. not encompassing
the undertaking.



START

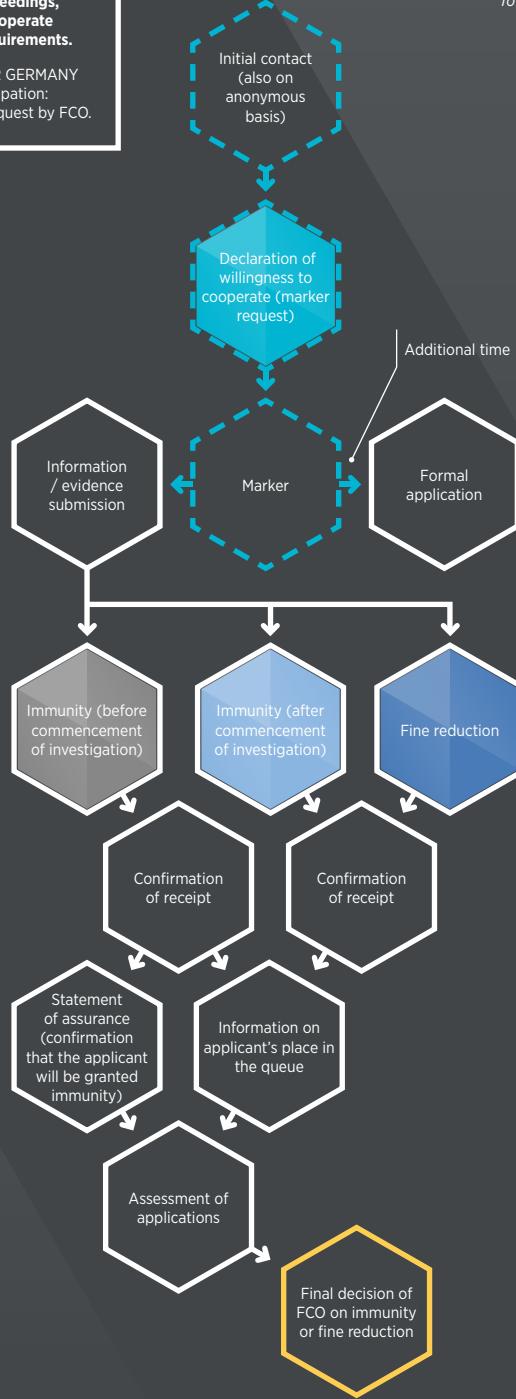
GERMANY

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR GERMANY

Termination of participation:
immediately upon request by FCO.



COUNTRY

Greece

AGENCY

Hellenic Competition Commission (HCC)
(www.epant.gr)

FAST FACTS

Maximum fines

Undertaking: 10% of the total national turnover
Individuals: criminal offence punishable by a fine and/or imprisonment

Scope of leniency

administrative fines, criminal liability
cartels

Leniency available for

undertakings, individuals

Reduction in fines

Amount: up to 50% of the fine for undertakings, up to 70% of the fine for individuals
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency Plus

No

How to submit an application

Application to be submitted to the Chairman of the Hellenic Competition Commission (HCC)—Kotsika 1A & Patisson 10434 Athens, Greece
Phone: +30 210 8809100
Email: contact@epant.gr

Available languages

Greek

Marker

Yes

Brief description of leniency

Type 1A immunity is granted where the applicant is the first to submit evidence to the Hellenic Competition Commission (HCC), which will enable the HCC to carry out a target inspection in relation to an alleged cartel and the HCC did not have, until the application for leniency was filed, sufficient evidence to do so.

If Type 1A is not available, Type 1B immunity can be granted to the applicant who first submits evidence to the HCC to enable it to find an infringement of Article 1 of the Competition Law or Article 101 TFEU in relation to the alleged cartel and the HCC did not have, until the application for leniency was filed, sufficient evidence to find an infringement.

Applicants that do not meet the criteria for immunity may benefit from a reduction of the administrative fines that would otherwise have been imposed (Type 2). In determining the level of fine reduction the HCC will consider the timing of the submission to the HCC of the evidence, its added value and the applicant co-operation with the HCC following the submission.

The Competition law does not specify a deadline for a leniency application and there are no limitations regarding the number of applicants. The date of the application will affect the type of leniency that can be obtained. A marker can be obtained for the applicant to assure his place in the leniency queue to allow him to gather the relevant evidence.

The grant of leniency is provisional until the HCC's final decision on the investigation. It does not affect third parties' ability to bring an action for damages against successful leniency applicants.

Individuals

Individuals can apply for all types of leniency. Any immunity or reduction of fines granted to an individual does not automatically extend to the undertaking that is part in the cartel.



START

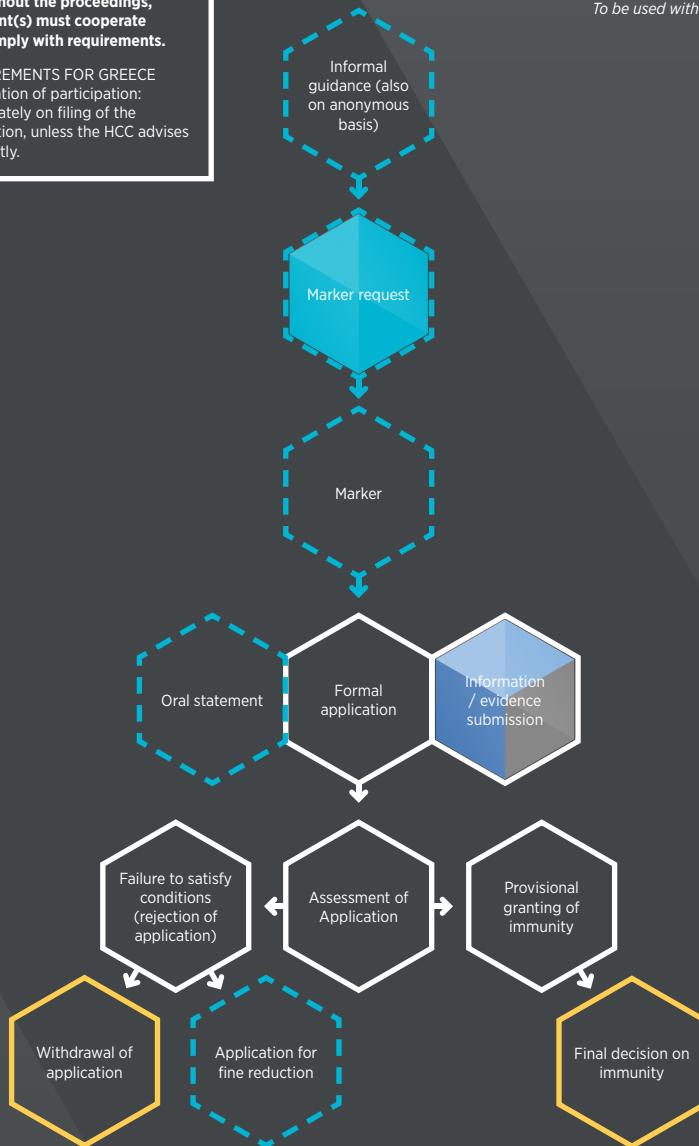
GREECE

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR GREECE

Termination of participation: immediately on filing of the application, unless the HCC advises differently.



Key

- Optional (dashed blue line)
- Mandatory (solid white line)
- Final stage (solid yellow line)

COUNTRY

Hong Kong (China)

AGENCY

Competition Commission (Commission)

FAST FACTS

Maximum fines

Individual and/or undertaking: 10% of the annual turnover multiplied by the duration of infringement in years with a maximum of three years

Scope of leniency

Fines and orders imposed by the Competition Tribunal except for the order, declaring that the applicant has contravened the competition rule Cartels

Leniency available for

individual and/or undertaking

Reduction in fines

Amount: up to 100% of the fine for the first applicant, determined on a case-by-case basis for the subsequent applicants

Number of applicants: no limitation

Brief description of leniency

The leniency programme only applies to the first individual and/or undertaking that reports the cartel conduct. Where the marker relating to cartel activity has been taken by an individual, the Commission may consider it appropriate to have an additional marker for the first undertaking to apply for it. However, in contrast, where the marker has been taken by an undertaking, no additional marker will be made available for an individual. In this situation, the Commission may still offer not to commence proceedings against an individual in return for that individual's cooperation with the Commission's investigation.

The applicant must apply for a marker by phone and provide its identity and general information about the cartel conduct. If the conditions are met, the Commission will give a marker confirming the time and date of the call. The Commission may issue one or more markers with respect to a specific cartel and as a result create a marker queue. A marker only provides confirmation of the applicant's place in the queue for leniency only.

If the Commission decides that leniency is available, the applicant will be required to enter into a written leniency agreement. In the leniency agreement, the applicant will have to confirm that it will sign a statement of agreed facts admitting participation in the cartel and that it will implement the corporate compliance programme. The leniency agreement may be terminated if the Commission believes that the information provided by the applicant is incomplete, false or misleading, or where the Commission considers that the applicant has failed to comply with the terms of the leniency agreement.

Exclusion

An applicant that is the ringleader of the cartel or has coerced other parties to participate in cartel conduct are disqualified from obtaining leniency

Leniency Plus

No

How to submit an application

Request for marker: orally (phone)
Phone: +852 39968010

Available languages

English and Chinese

Marker

Yes

The applicant is required to keep the investigation, its application for leniency and the terms of any leniency agreement confidential, unless the Commission's prior consent has been given or the disclosure of the information is required by law.

An applicant that is not eligible for leniency may still cooperate with the Commission. The Commission may, at its own discretion, consider a lower level of enforcement action, including recommending a reduced fine to the Competition Tribunal or the making of an appropriate order.

The leniency for the first-in applicant is granted by the Commission on the basis of the leniency agreement. With respect to an applicant not eligible for leniency, but which would still like to cooperate with the Commission, the fine reduction may be granted by the Competition Tribunal on the basis of the Commission's recommendation.

Individuals

In April 2020, the Commission published an Individual Leniency Policy, extending applications for leniency to individuals. Previously, only an undertaking could apply for leniency.

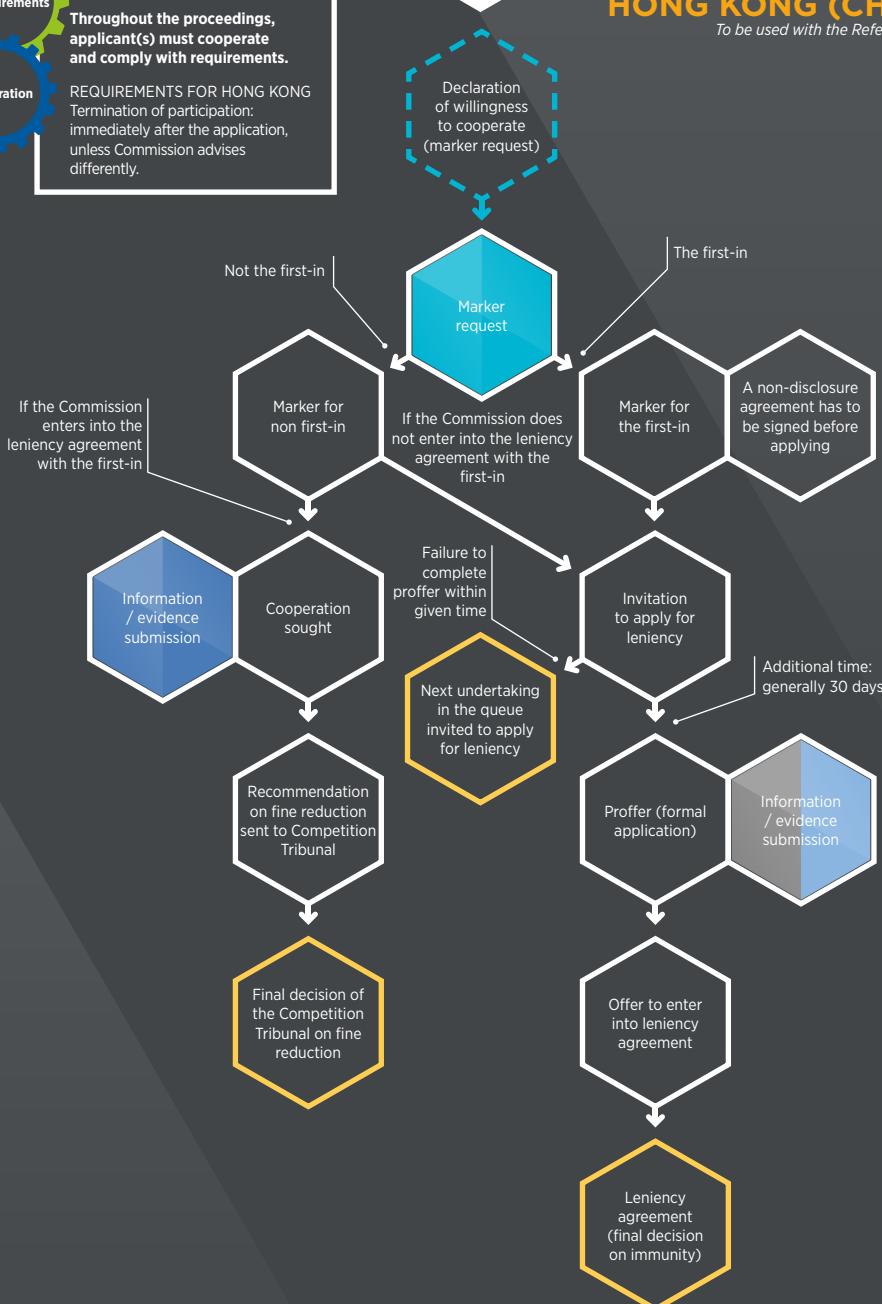
An undertaking may include a person engaged in an economic activity such as an individual operating as a sole trader. If the undertaking enters into a leniency agreement, the leniency extends to its current officers and employees, provided they cooperate with the Commission during the investigation. The leniency extends also to former officers, employees and current or former agents of the undertaking specified in the leniency agreement.



START

HONG KONG (CHINA)

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY

India

AGENCY

Competition Commission of India (CCI)

FAST FACTS

Maximum fines

Enterprise: 10 % of its average relevant turnover for the three preceding financial years. Additionally, for cartels, the CCI may impose a penalty which may be the higher amount of either (i) three times the relevant profits or (ii) ten percent of the relevant turnover of the cartel—for the duration of the cartel.
Individual: 10 % of the average income over the three preceding financial years

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
number of applicants: no limitation

Exclusion

No

Leniency plus

No

How to submit an application

In writing to the Secretary, CCI or to an officer authorized by the Secretary

E-mail: secy@cci.gov.in

Phone: 011-24664100 (for initial contact—which can be via email, fax, or orally)

Available languages

English

Marker

Yes

Brief description of leniency

Requirements

A leniency applicant (an undertaking or individual) can secure immunity if it (i) is the first applicant to the Competition Commission of India (CCI), and (ii) makes a vital disclosure enabling the CCI to form a *prima facie* opinion on the existence of a cartel. Additionally, a leniency applicant can secure an immunity even if the CCI has already initiated a formal inquiry, provided it is the first applicant making such vital disclosure which helps establish the existence of the cartel. However, this disclosure must be made before the CCI's investigative arm—the Director General (DG)—has completed its inquiry into the cartel. The CCI retains significant discretion in determining the penalty reduction. However, while determining the level of penalty reduction, the CCI considers the following factors: (i) the stage at which the applicant comes forward with

the disclosure, (ii) the evidence already in possession of the CCI, (iii) the quality of information provided, and (iv) the facts and circumstances of the case.

The possibility of reduction in penalty extends up to 50% to the second applicant, and up to 30% to the third and subsequent applicants. The second and subsequent applicants can secure reduction in penalty only if they provide a significant added value to the evidence already in possession of the CCI or the DG. If the CCI determines that there is no addition in value provided by the leniency applicant, it may choose not to grant any reduction in penalty. Nonetheless, the voluntary disclosure of cartel conduct may be viewed as a mitigating factor while computing the quantum of any penalty amount.

The CCI may withdraw immunity granted to a leniency applicant if during the course of enquiry by the CCI, the leniency applicant

fails to comply with conditions on which the immunity was granted by the CCI. However, the CCI would still be free to use the information or evidence submitted by such applicant. In case the CCI withdraws immunity granted to an applicant, the subsequent applicants continue to be eligible to seek immunity from the CCI (in order of their applications).

In India, cartel conduct carries no criminal liability, and so leniency only relates to reduction in monetary penalty.

As regards marker requests, in practice, the CCI issues a letter acknowledging the receipt of the application and the fact that it has recorded the order of priority. The CCI, however, does not disclose the priority status to the applicant.

START

INDIA

To be used with the Reference Guide



Throughout the proceedings,
applicant(s) must cooperate
and comply with requirements.

REQUIREMENTS FOR INDIA

Initial contact
(also on
anonymous
basis)

Marker
request

Marker

Requirement to submit the
application within 15 days

Formal
application for
immunity

Information /
evidence
submission

Acknowledgment
of receipt

Notice of
acceptance

Investigation
conducted by DG
& submission of its
findings to

Final
hearing

Final
decision

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Ireland

AGENCY

Director Public Prosecutions (DPP) & Competition and Consumer Protection Commission (CCPC)

FAST FACTS

Maximum fines

Undertaking: greater of either EUR 5 million or 10% of the annual turnover

Individual: same fine and/or prison sentence (10 years)

Scope of leniency

Criminal liability, cartels

Leniency available for

Undertaking, individual

Reduction in fines:

No

Exclusion

An applicant who coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

By phone

Cartel Immunity Phone at the CCPC: 353.87.763 1378 (office hours)

Available languages

English

Marker

Yes (only for the first-in applicant)

Brief description of leniency

In Ireland, determinations of infringements of EU/Irish competition law are made only by courts in either civil or criminal proceedings. The Competition and Consumer Protection Commission (CCPC) has competence to investigate infringements and initiate court proceedings of a civil nature and, for minor cases, a criminal nature. Serious criminal cases can be prosecuted only at the discretion of the Director Public Prosecutions (DPP).

The Cartel Immunity Programme (Programme) allows the granting of conditional immunity from criminal prosecution for the offence of infringing (EU and / or Irish) competition law. It is available to the first cartel participant who comes forward and satisfies all the requirements of the Programme.

The CCPC will not consider second and subsequent applicants under the programme. However, the subsequent applicants can approach the DPP directly in such cases. Second and subsequent applicants can also ask CCPC to have their position in a queue noted and can consent to being contacted if the first applicant no longer requires immunity, has withdrawn from the programme or has its conditional immunity revoked.

The initial contact by an applicant is made by phone. An enquiry whether immunity is available can be made without disclosing the applicant's identity. A contact name must be provided by the applicant or legal advisor to obtain a marker. Within an agreed period, the marker must be perfected by providing the CCPC with further information. If the information reveals a likely criminal offence which warrants a formal investigation the CCPC will recommend the DPP grants conditional immunity to the applicant. The DPP is free to grant or refuse to grant the conditional immunity. After conditional immunity is granted, the applicant must provide full frank and truthful disclosure to CCPC which entails detailed information. Once the terms of the programme are satisfied (and any resulting prosecutions completed) a final grant of immunity will be executed by the DPP.

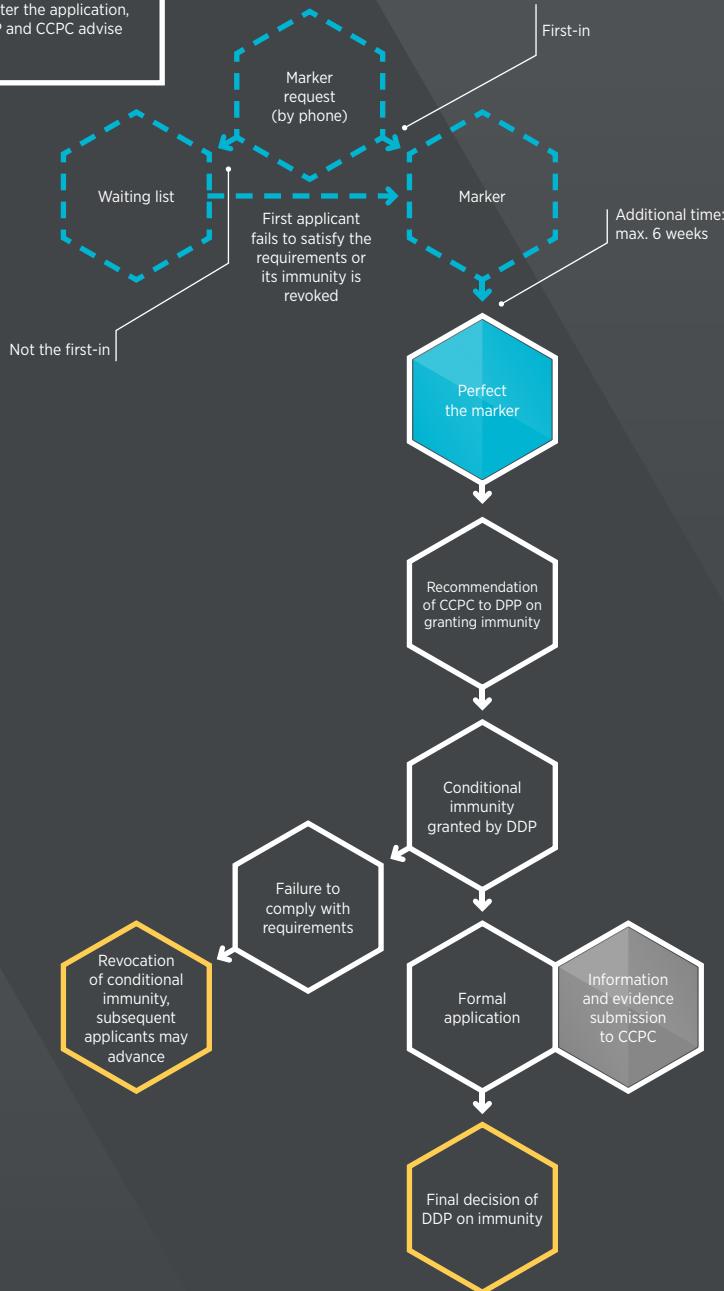
Individuals

Application can be made by an undertaking or separately by an individual who was involved in a cartel. If an undertaking qualifies for immunity, then so does its directors and employees whose involvement in the cartel is admitted.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR IRELAND:
Termination of participation:
immediately after the application,
unless the DDP and CCPC advise
differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Italy

AGENCY

Italian Competition Authority (ICA)

—*Autorità Garante della Concorrenza e del Mercato*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover

Scope of leniency

Administrative fines

Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine Number of applicants: no limitation

Exclusion

Undertakings that have coerced other undertakings to join or remain in a cartel

Brief description of leniency

Full immunity is only available to the first applicant which informs the Italian Competition Authority (ICA) of an undetected cartel and provides information and evidence that are decisive to prove the cartel infringement. Immunity may not be granted to the applicant if the ICA already has in its possession sufficient information or evidence to prove the existence of the secret cartel.

An immunity applicant must also fulfil the following requirements:

- (i) cease its participation in the infringement immediately after submitting its application, unless it is otherwise agreed with or requested by the ICA;
- (ii) co-operate fully and on a continuous basis with the ICA for the entire duration of the investigation, if any;
- (iii) avoid informing anyone of its intention to submit a leniency application, except for other competition authorities or (to obtain a legal opinion) external counsel (provided that the latter does not disclose such information to third parties, either).

Immunity cannot be granted to undertakings that have coerced other undertakings to join or remain in a cartel.

Leniency Plus

Yes

How to submit an application

In writing (in person, e-mail, fax), or orally (in person)

Fax: +39 0685 4521 77

Available languages

Italian (although the use of English at least in the marker is not expressly ruled out)

Marker

Yes (only for the first-in applicant)

Undertakings that do not qualify for full immunity may benefit from a reduction of the amount of the fine that would otherwise be imposed on them. Such a fine reduction is available if the evidence provided by the applicant significantly strengthens, by its very nature or its level of detail, the evidentiary materials already in the ICA's possession. The appropriate reduction in the amount of the fine—which as a rule cannot exceed 50%—is calculated on the basis of the value of the evidentiary materials provided by the applicant, the timeliness of its co-operation in light of the stage of the investigation when such-cooperation starts, and the degree of any co-operation offered by the other members of the alleged cartel.

If the ICA, having accepted the application with a conditional decision, finds that the conditions attached to leniency are not fulfilled, it shall promptly inform the applicant accordingly. In such case, the applicant will not benefit from any favourable treatment in relation to the cartel at stake.



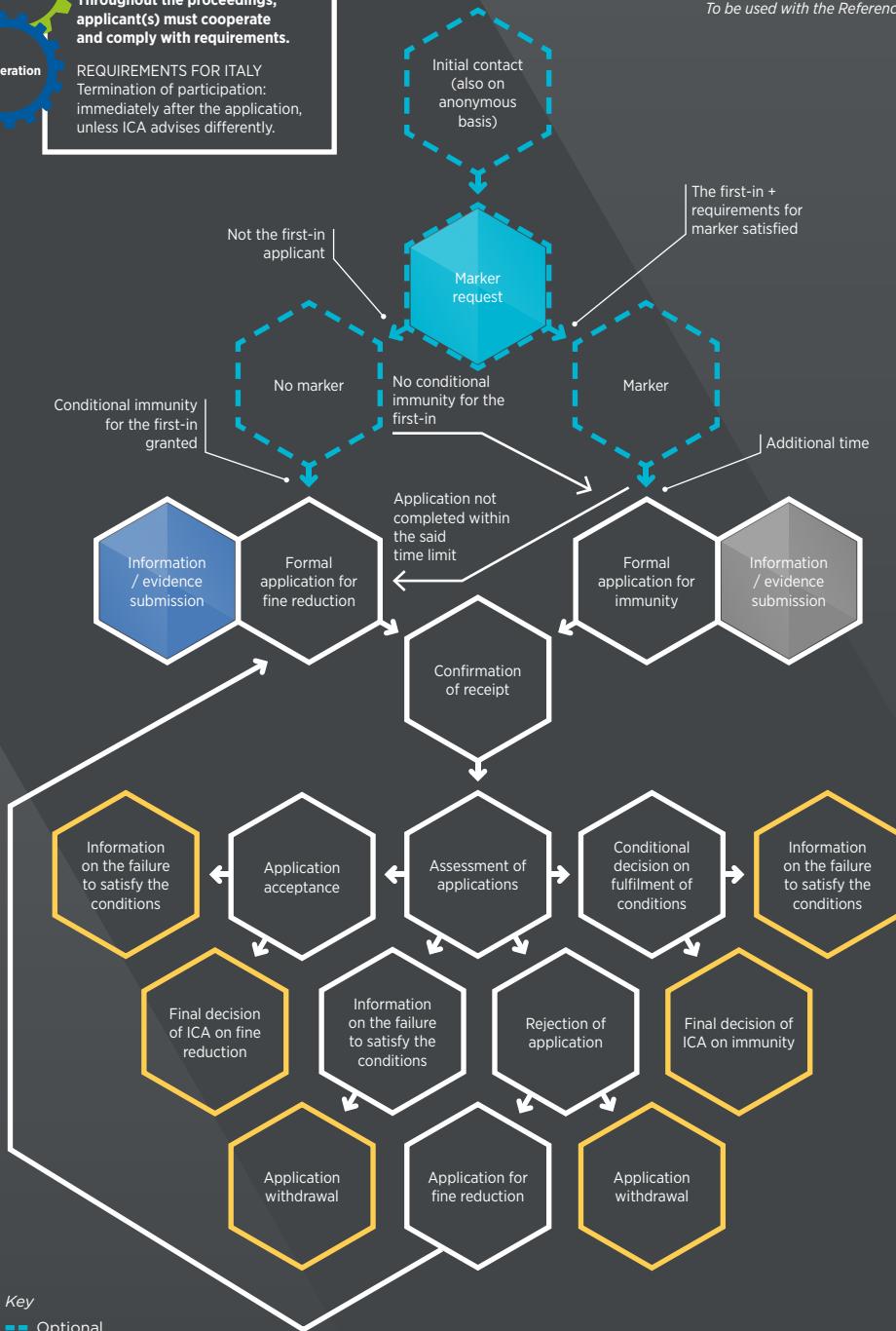
START

ITALY

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR ITALY
Termination of participation:
immediately after the application,
unless ICA advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Japan

AGENCY

Japan Fair Trade Commission (JFTC)

FAST FACTS

Maximum fines

Undertaking: an administrative fine calculated according to the prescribed method based on the amount of proceeds / a criminal fine of up to JPY 500 million (approximately US\$ 4.4 million)

Individual: imprisonment up to five years or a criminal fine of up to JPY 5 million (approximately US\$ 44,100)

Scope of leniency

Administrative fines, criminal immunity only for the first-in applicant (extended to the officers and employees of the first applicant which cooperates with JFTC)

Cartels and vertical agreements

Leniency available for

Undertaking

Reduction in fines

Amount: up to 100% of the fine for the first applicant; up to 20% of the fine for the second applicant; up to 10% of the fine for the third to fifth applicants; up to 5% of the fine for subsequent applicants

In addition, an additional reduction of up to 40% of the fine may be granted for the second or subsequent applicants depending on the level of cooperation

Number of applicants: No limitation
Exclusion
An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency Plus

No

How to submit an application

Form 1 report—email

Form 2 report—fax, in person, post

Form 3 report—email

Reports and evidence can be submitted orally (in person) if justified

Should be submitted with Senior Officer for Leniency Program, JFTC

Email: gmenmen-2020@jftc.go.jp

Fax: +81 3 3581 5599

Address: 1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8987

Phone: +81 3 3581 2100 (09:30 – 18:15)

Available languages

Japanese

Marker

Yes (only before JFTC Investigation Commencement Date)

Brief description of leniency

No limited number of applicants may be granted an administrative fine reduction; only the first applicant is granted a 100% fine reduction which represents immunity.

A 100% fine reduction can only be granted for the first applicant that filed an application before the JFTC Investigation Commencement Date (day on which JFTC formally launches an investigation by taking certain actions such as an inspection or a search and seizure). Subsequent applicants may be granted a fine reduction of up to 20% for the second applicant, up to 10% for the third through the fifth applicants, and up to 5% for the sixth and subsequent applicants. Applications submitted on or after the JFTC Investigation Commencement Date cannot be more than three (and five including applications submitted before the JFTC Investigation Commencement Date).

In addition, for applicants other than the first applicant, an additional reduction of up to 40% (20% for applications submitted on or after the JFTC Investigation Commencement Date) of the fine may be granted, upon a separate application and consultation with the JFTC, to reward cooperation with the JFTC.

Applicants on or after the JFTC Investigation Commencement Date must submit information that is not already known to the JFTC or evidence that is not already in the JFTC's possession.

The application must be submitted using special report forms: before the JFTC Investigation Commencement Date—Form 1 (request for marker), Form 2 (application); after JFTC Investigation Commencement Date—Form 3 (application); application for cooperation credit—Form 4 (Request for Consultation). Only Forms 1 and 3 may be sent by email.

The most recent changes came into effect on 25 December 2020.

Individuals

In terms of administrative liability, officers or employees are not separately liable from their undertaking. However, they may be subject to individual criminal sanctions (imprisonment and / or criminal fines).

The leniency programme does not extend to criminal immunity. However, under the JFTC policy, the JFTC does not refer the reported matter of the first undertaking (first-in applicant) to the Public Prosecutors' Office, thereby, essentially providing criminal immunity to the first applicant. Furthermore, such criminal immunity is extended to officers and employees of the first corporate applicant involved in the reported matter on the condition that the officers and employees cooperate with the JFTC's investigation to the same extent as their undertaking.



START

JAPAN

To be used with the Reference Guide

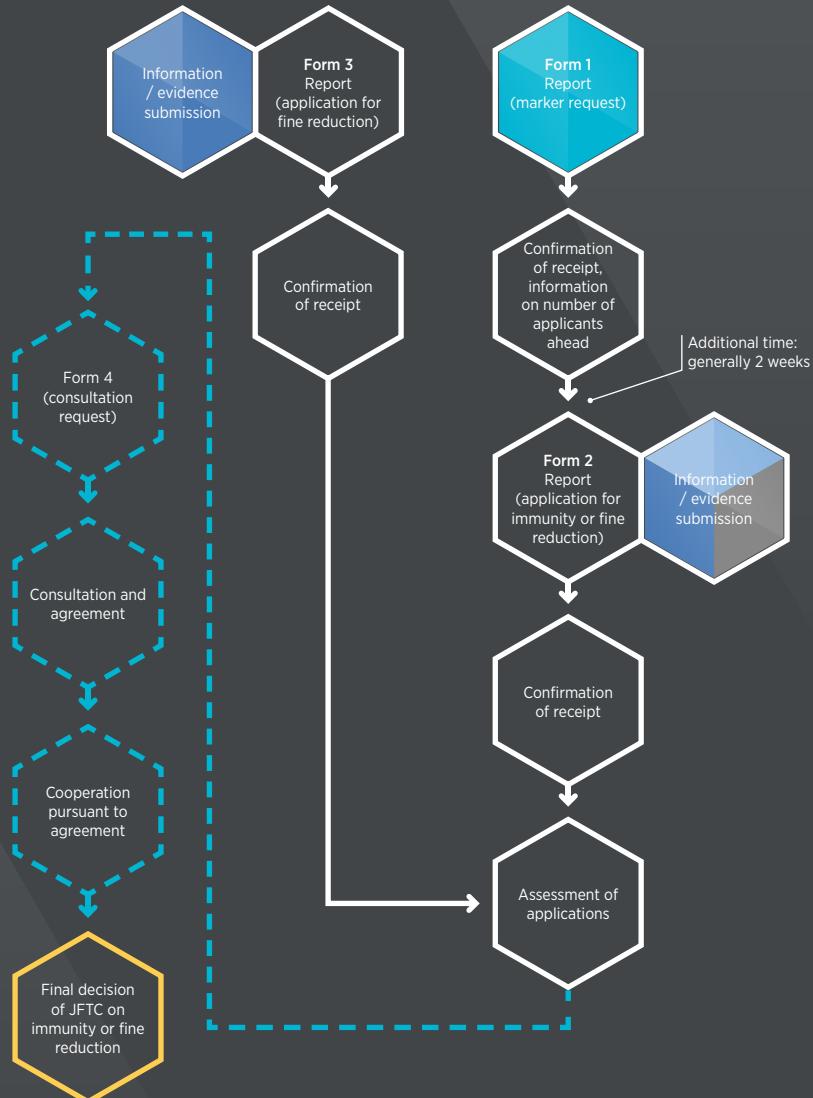
► **Throughout the proceedings, applicant(s) must cooperate and comply with requirements.**

REQUIREMENTS FOR JAPAN

Termination of participation:
prior to the JFTC Investigation
Commencement Date or the
submission of application.

**After JFTC Investigation
Commencement Date**
Can be submitted at the
latest 20 days after JFTC
commencement date

**Before JFTC Investigation
Commencement Date
(before JFTC commences
any formal actions)**



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Kenya

AGENCY

Competition Authority of Kenya (Authority)

FAST FACTS

Maximum fines

Undertakings: 10% of the annual turnover in Kenya
Individual: Imprisonment for a term not exceeding five years and/or a fine not exceeding ten million Kenyan shillings

Scope of leniency

Administrative fines, Cartels

Leniency available for

Undertaking
Individual

Reduction in fines (partial immunity)

amount: up to 50% of the fine
number of applicants: no limitation

Exclusion

Ring-leaders

Leniency plus

No

How to submit an application

In writing: The Manager Enforcement and Compliance of the Authority, either in person or per designated e-mail: leniency@cak.go.ke
By phone: +254 202 628 233

Available languages

English

Marker

Yes

Brief description of leniency

Leniency applications are accepted under the following circumstances:

- (i) when the Authority has no knowledge of the contravention;
- (ii) when the Authority has knowledge of the contravention, but lacks sufficient information to start an investigation; or
- (iii) when the Authority has commenced investigations but requires additional evidence to penalise the offenders, in which case applications may be received for as long as new evidence can be introduced in the file.

Marker applications must contain information substantial enough to enable the Competition Authority of Kenya (Authority) to identify the conduct and its participants, in order to determine whether or not an application for leniency has already been made in respect of the same conduct.

Immunity covers the administrative penalty and, subject to the concurrence of the Director of Public Prosecution, criminal liability.

Fine reduction (partial immunity) is granted to the second and third applicants (50% and 30% reduction in penalties respectively), and to any subsequent applicant who approaches the Authority before investigations are completed and provides useful information that significantly contributes to the success of the investigations (20% reduction in penalties). There is no leniency from criminal prosecution however.

Full leniency will always be preceded by conditional leniency. Full leniency will only be granted when the applicant has satisfied the Authority that it has cooperated fully with the Authority during the entire investigation. If permanent leniency is not granted, the Authority will be at liberty to deal with the applicant as provided in the Competition Act, including entering into a settlement agreement.

Any applicant who gives or discloses any material to the Authority may claim confidentiality in respect of the whole or part of the material in accordance with Section 20 of the Competition Act. The applicant may grant a waiver so that the Authority may disclose the necessary information for enabling the necessary coordination of leniency applications presented in other jurisdictions, if relevant.

Individuals

The applicants' directors and employees will be covered by the leniency agreement (in so far as the personal financial liability is concerned, not necessarily in relation to criminal prosecution) if they fully cooperate with the Authority.



START

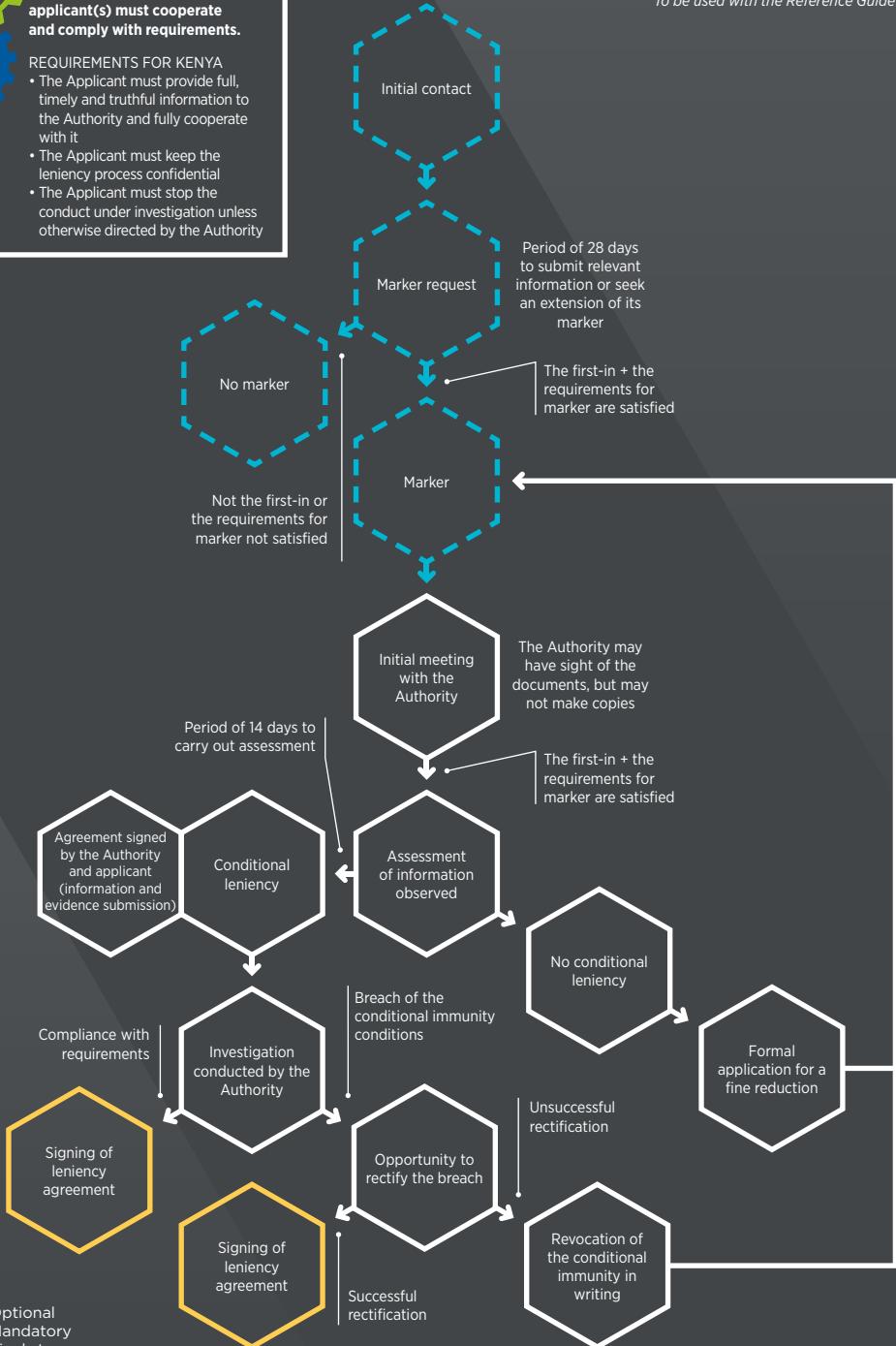
KENYA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR KENYA

- The Applicant must provide full, timely and truthful information to the Authority and fully cooperate with it
- The Applicant must keep the leniency process confidential
- The Applicant must stop the conduct under investigation unless otherwise directed by the Authority



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Korea (Republic of)

AGENCY

Korea Fair Trade Commission (KFTC), Supreme Prosecutors' Office (SPO)

FAST FACTS

Maximum fines

Undertaking: An administrative fine of up to 10% of relevant turnover; a criminal fine of up to KRW 200 million (approx. US\$ 170 million)

Individual: Not subject to any administrative sanction but subject to imprisonment of up to 3 years and/or a criminal fine of up to KRW 200 million

Scope of leniency

- (i) KFTC—Administrative fines, corrective orders, and criminal liability
- (ii) SPO—Criminal liability

Leniency available for

- (i) KFTC—Undertaking
- (ii) SPO—Undertaking and individuals

Reduction in fines

100% of the administrative fine for the first-in; 50% of the administrative fine for the second-in (co-applicants are recognized under certain conditions)

Exclusion

Repeat offender, applicant which coerced others to participate cannot obtain immunity or fine reduction

Leniency Plus

Yes (KFTC only)

How to submit an application

- (i) KFTC
In writing (in person, e-mail, fax) or orally (in person)
E-mail: leniency@korea.kr
Fax: +82 (0) 44 200 4444
Address: Cartel Policy Division,

Fair Trade Commission, Sejong Government Office Complex,

95 Dasom 3-ro, Sejong City

Phone (for initial contact):

+82 (0) 44 200 4534

(ii) SPO

In writing (in person, e-mail, fax) or orally (in person)

E-mail: leniency@spo.go.kr

Fax: +82 (0) 2 3480 2589

Address: Anti-Corruption &

Organized Crime Department,

Supreme Prosecutors' Office, 157

Banpo-daero, Seocho-gu, Seoul

Phone (for initial contact):

+82 (0) 2 3480 2220

Available languages

Korean

Marker

No

Brief description of leniency

(i) KFTC leniency

An applicant which reports its cartel activity before the commencement of the KFTC's investigation and which is the first to provide sufficient evidence of that cartel will be granted immunity including an exemption from administrative sanctions, such as corrective orders and administrative fines, as well as from referral to the Prosecutor's Office. Reduction in fines is obtainable only for the second-in applicant and only within the first two years from the moment a member of a cartel files the first leniency application with the KFTC or begins to cooperate with the KFTC as the first party providing cooperation with respect to the cartel. The subsequent applicants may benefit from a reduction of fines of up to 20% that can be granted outside of the leniency programme on the basis of its cooperation with the KFTC investigation.

In principle, a leniency application must be prepared and submitted using the KFTC's leniency application form.

There is no formal marker regulation under the Korean leniency programme. It is possible to submit a shortened application and apply for additional time for the submission of information and evidence, which in fact can be considered as a marker. However, it is with great scrutiny that the KFTC confirms the first place to the first applicant. Furthermore, it has become increasingly difficult to secure the first place in a queue at the KFTC hearing, which occurs later than the hearing for the main cartel case. As the place of an applicant in the queue can only be confirmed at the KFTC hearing, an applicant cannot be guaranteed a marker before then.

Under the amended Act, the leniency applicant's benefits can be revoked if the applicant later makes in-court statements before the court, which differ from those contrary to statements made during the KFTC's investigation.

In the case of the leniency plus programme, the extent of the fine reduction obtained depends on the size of the second cartel, i.e. whether it is smaller or bigger than

the first one. This is determined by the amount by which the sales of the relevant goods and services has been affected.

Individuals

Individuals are not entitled to apply for leniency. Instead, there is a whistleblowing programme in place that provides a monetary reward to the first informant who presents sufficient evidence of a cartel. The reward amount can be up to KRW 3 billion (approximately US\$ 2.5 million).

(ii) SPO leniency

In December 2020, the SPO established and began to enforce its Leniency Investigation Guidelines. Under these Guidelines, both businesses and individuals may report a cartel case to the SPO, in return for which they could be eligible for an exemption from an indictment (for the first-in) or a 50% reduction in criminal fines (for the second-in), depending on the applicant's place in the queue and the degree of cooperation provided by the applicant.



START

KOREA (REPUBLIC OF)

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR THE KOREA (REPUBLIC OF)

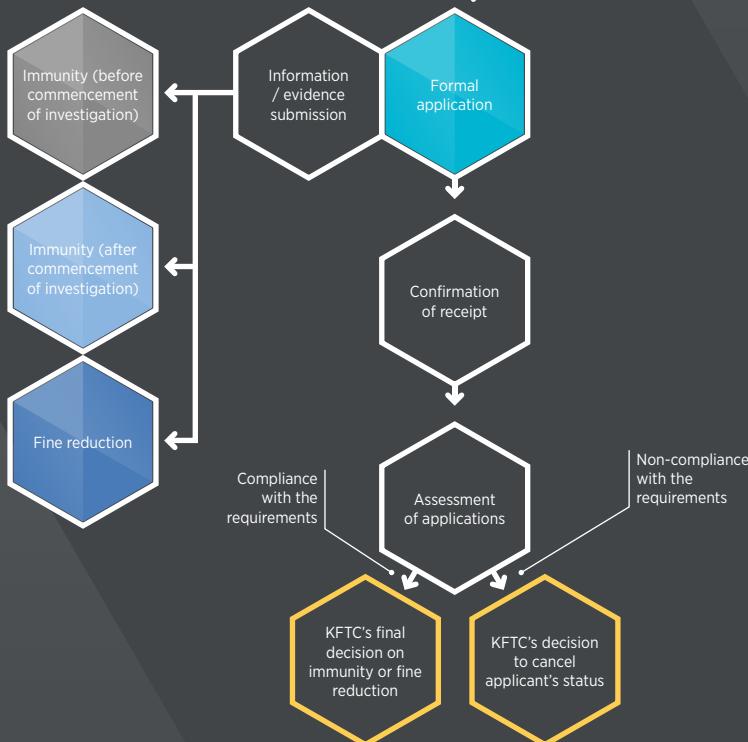
Termination of participation:
Termination before application is recommended, although termination immediately after application may be also acceptable. The KFTC can decide differently depending on the circumstances.

Shortened application

- Information:
 - applicant's identity
 - overview of cartel conduct

Decision on the additional time

15 days, can be extended by up to 60 days



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Lithuania

AGENCY

The Competition Council of the Republic of Lithuania—*Lietuvos Respublikos konkurencijos taryba* (the Council)

FAST FACTS

Maximum fines

Undertaking: up to 10% of the annual turnover
Individual: a suspension of the ability to take a role of a member of a management body or a director for up to 5 years and / or a fine of up to EUR 14,481

Scope of leniency

Administrative fines
Cartels, Retail Price Maintenance

Leniency available for

Undertaking
Individuals

Reduction in fines

Reduction from 50% to 75% (type 2A)
Reduction from 20% to 50% (type 2B)
Number of applicants: no limitation

Exclusion

An applicant which led the activity or coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (explicitly stating that it is a leniency application)

Address: Jogailos st. 14, LT-01116 Vilnius

Initial contact:

E-mail: praneskmums@kt.gov.lt

irma.urmonaite@kt.gov.lt

Phone: +370 5 212 42 25

+370 5 212 66 41

+370 5 260 88 79

Available languages

Lithuanian

English (translation should be provided without delay)

Marker

Yes

Brief description of leniency

An undertaking may only be granted a full immunity (type 1A) under four conditions: (i) the Council has not yet initiated any formal investigation regarding the cartel; (ii) it is the first applicant; (iii) the undertaking supplies all the information it has and cooperates with the Council; (iv) the undertaking did not initiate or coerced others to participate in the cartel (if it did, it could only get a 50% reduction of the fine (type 1B)).

If the application was made after the initiation of a formal investigation, the fine for the first applicant could be reduced from 50% to 75% (type 2A).

Subsequent applicants, providing new evidence, can get a reduction of fine from 20% to 50%, considering the time (order) of submission and the significance of evidence provided therein (type 2B).

If an application fulfils the conditions for full immunity, the Council shall conditionally confirm this to the applicant. If the requirements for full immunity are not met, the applicant may ask the Council to regard its request as an application for a reduction of fine or withdraw the evidence already provided.

The leniency application can only be submitted before the issuance of the statement of objections. The cooperation with the Council after the issuance of the statement of objections can be regarded as a mitigating circumstance and lead to a smaller reduction of a fine.



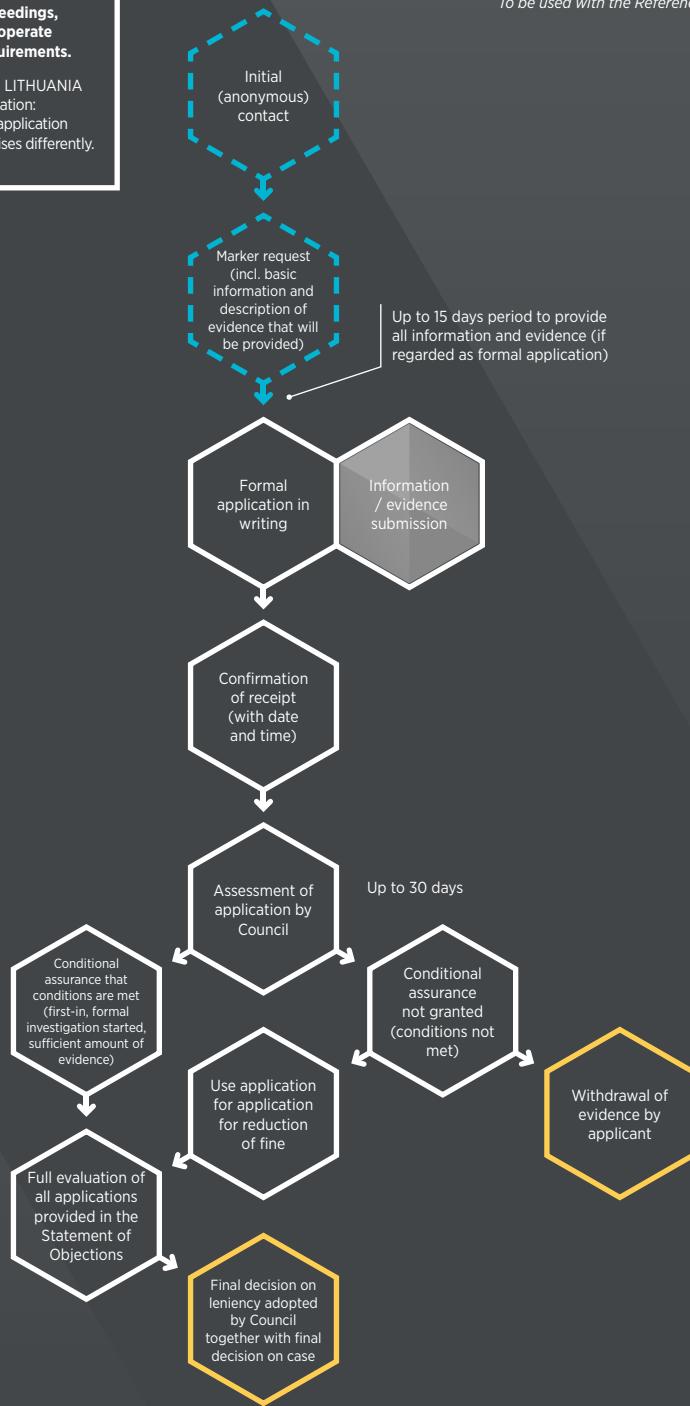
START

LITHUANIA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR LITHUANIA
Termination of participation:
immediately after the application unless the Council advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Macedonia

AGENCY

Commission for Protection of Competition (the Commission) – *Komisija za zaštitu konkurenčije*

FAST FACTS

Maximum fines

10% of the annual turnover Scope of leniency
Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (delivered in person or by post) or in
electronic form (delivered by e-mail)

E-mail: kzk@kzk.gov.mk

Tel: +389 2 3298 666

Fax: +389 2 3296 466

Address: Str. St. Cyril and Methodius no. 54 (6th floor)
1000 Skopje, Republic of North Macedonia

Available languages

Macedonian

Marker

Yes

Brief description of leniency

Leniency applications are handled by the Commission for Protection of Competition (**Commission**) for misdemeanour matters operating within the Commission.

Immunity may only be granted to the first applicant which presents the evidence enabling the Commission for misdemeanour matters to initiate a misdemeanour procedure, or which presents evidence enabling the Commission for misdemeanour matters to complete the already initiated misdemeanour procedure with a decision establishing the existence of a misdemeanour if the existence of the misdemeanour could not have been established without such evidence.

If the undertaking that has admitted to its participation in a cartel fails to meet the conditions for full immunity, the fine which should be imposed as a rule, may be reduced if said undertaking presents to the Commission additional relevant evidence of decisive importance for the adoption of a decision which shall confirm the existence of a misdemeanour. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

Application for immunity of fines starts with submission of application for immunity of fines to the Commission. Along with the application for immunity of fines, the undertaking applying for immunity of fines should submit the following evidence:

- (i) corporate statement of the undertaking disclosing its participation in the alleged cartel and
- (ii) other evidence related 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.

In the Decision establishing the existence of an infringement the Commission will determine the level of reduction of fine which would otherwise be imposed.



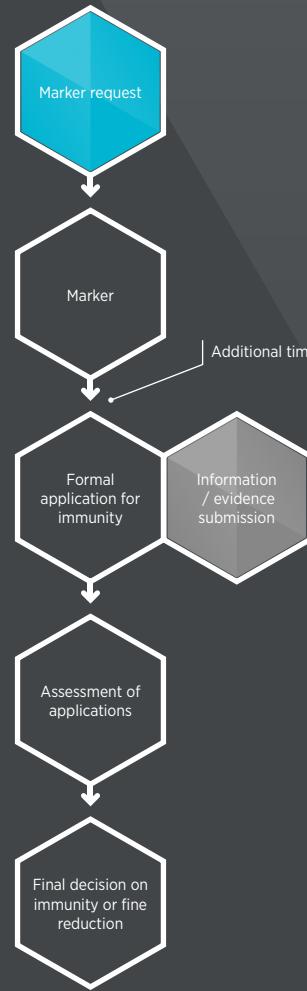
Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR MACEDONIA
Termination of participation immediately after the application.
Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

START

MACEDONIA

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Mexico

AGENCY

Federal Economic Competition Commission (COFECE) – *Comisión Federal de Competencia Económica*

FAST FACTS

Maximum fines

10% of annual turnover
5 to 10 prison years and/or disqualification for 5 years for individuals
Fines for facilitators and agents (financial fines and disqualification)

Scope of leniency

Minimum administrative fine and immunity from ineligibility to act as a company directive and criminal sanctions

Leniency available for

Undertaking and individual

Reduction in fines

Minimum fine for first applicant (US\$ 4)
Up to 50% for second and subsequent applicants

Brief description of leniency

All leniency applicants that fulfil the requirements are granted immunity from being banned from acting as a company directive and from criminal liability. Leniency for the first-in reduces the monetary sanction to the minimum fine (around US\$ 4). The subsequent applicants can receive a maximum of 50% reduction on the corresponding fine. The corresponding percentage of the reduction would be determined based on the value of the evidence provided and the position in the line of applicants.

Both, undertakings and individuals may apply for leniency before or during a cartel investigation conducted by the Investigative Authority of COFECE. Firms, officers, employees and former employees can apply for leniency directly. Leniency may be granted to companies and individuals responsible for participating in a cartel and it may also be awarded to undertakings and individuals aiding and facilitating a cartel.

Exclusion

No

Leniency Plus

No

How to submit an application

+52 (55) 27-89-66-32, or inmunidad@cofeco.mx
Confirm with Head of Investigative Authority

Available languages

Spanish

Marker

Yes (only for the first-in)

The application can only be done by sending an email or leaving a voice mail at the corresponding designated address and number to ensure the right order of the applications received. The applicant receives a marker and has time to perfect it and collect all possible evidence.

The applicant must fulfil the following requirements to get leniency:

- (i) Make the application through the formal channels established and provide sufficient evidence to initiate or advance an investigation
- (ii) Cooperate fully and permanently
- (iii) Terminate its participation in a cartel

COFECE has issued guidelines and Question and Answers in English available at www.cofece.mx and the Head of the Investigative Authority is available for open discussions on real or hypothetical cases.



START

MEXICO

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR MEXICO

Termination of participation: immediately after the application, unless COFECE advises differently.

Meeting between applicant and the Investigative Authority to hand in evidence

Information / evidence submission

Formal application

Possible additional time to hand in evidence and assess it

Assessment of information

Conditional leniency agreement

Assessment of applicants' cooperation during investigation

Final resolution

Cooperation in the trial-type procedure

Initial contact

Marker request

Marker

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Netherlands (The)

AGENCY

Authority for Consumers and Markets (ACM)

—Autoriteit Consument en Markt

FAST FACTS

Maximum fines

Undertaking or individual: max. EUR 900,000, or 10% of turnover multiplied by the duration of infringement in years with a maximum of four years, whichever is the higher

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation
Exclusion
An applicant which coerced others to participate cannot obtain immunity

Leniency Plus

No

How to submit an application

In writing (in person, e-mail, fax, post) or orally (by phone, in person)

E-mail: clementie@acm.nl

Fax: +31 70 7 222 355

Address: Muzenstraat 41, 2511 WB The Hague Phone: +31 70 722 2302

Available languages

Dutch, unless agreed otherwise

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant which informs the Authority for Consumers and Markets (ACM) of a cartel and provides evidence that enables the ACM to conduct an inspection or suffices to establish an infringement.

Individuals

Both companies and individuals can apply for leniency. Individuals can apply for leniency independently, as well as jointly with other individuals, provided that they work at the same undertaking involved in the cartel at the time the application is submitted.

An individual will be granted the same immunity as the undertaking at which he or she works or used to work, if he or she actively cooperates with the authority and the leniency application was submitted by the undertaking before the ACM informed the individual of the relevant enforcement procedure. An individual who applied for leniency will be granted the same reduction of fines as the undertaking at which he or she works and which had applied for leniency earlier, provided that he or she indicates a wish to be considered co-applicant and he or she meets the conditions for fine reduction. The same applies to former employees provided that they do not work for another undertaking suspected of being involved in the same infringement which has not applied for leniency.

Individuals who jointly applied for leniency will be granted the same reduction of fines provided that they indicate which to be considered co-applicants and each of them meets the conditions for fine reduction.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

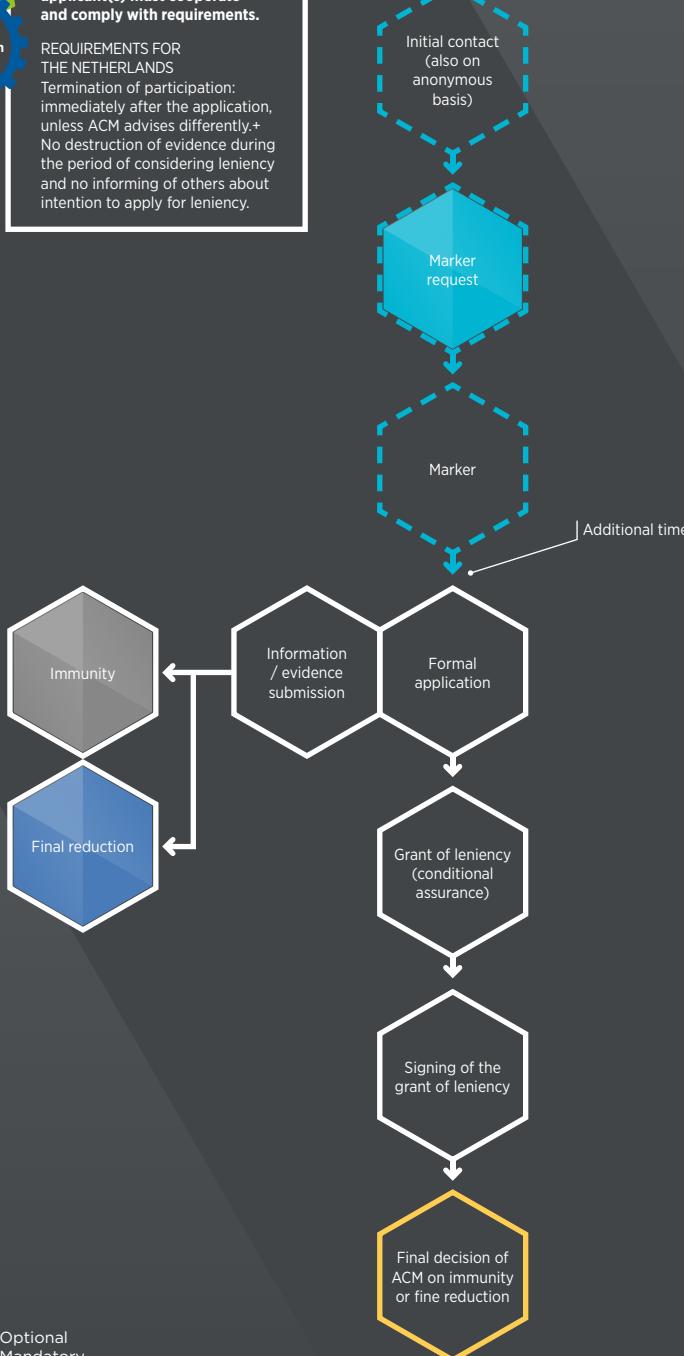
REQUIREMENTS FOR THE NETHERLANDS

Termination of participation: immediately after the application, unless ACM advises differently.+ No destruction of evidence during the period of considering leniency and no informing of others about intention to apply for leniency.

START

NETHERLANDS (THE)

To be used with the Reference Guide



COUNTRY

Norway

AGENCY

The Norwegian Competition Authority (NCA)
– *Konkurranseetilsynet*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: six years imprisonment and / or fines

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine Number of applicants:
no limitation

Exclusion

An applicant which led the activity or coerced others
to participate cannot obtain immunity

Leniency Plus

No

How to submit an application

No formal requirements

Available languages

No specific requirements. If a request for a marker is
made in a language other than English, Norwegian,
Swedish or Danish, a Norwegian translation must be
provided without undue delay

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant
which informs the Norwegian Competition Authority
(NCA) of an undetected cartel and provides evidence
that enables the NCA to conduct an inspection or to
prove the cartel infringement.

Applicants which do not qualify for immunity may
benefit from a reduction of fines if they provide
evidence that brings significant added value to the
one already collected by the NCA. The extent of the
fine reduction depends essentially on two factors: the
time of submission of the evidence important to the
case and the value of this evidence.

For immunity applications, the undertaking can also
submit the evidence in hypothetical terms. In such
cases, the undertaking shall give a clear description
of the nature and content of the evidence so that the
NCA has a basis to assess whether the evidence fulfils
the requirements for granting full leniency. The NCA
will set a time limit for submission of the evidence.

Individuals

Only undertakings can apply for leniency. However,
the NCA has been assigned considerable discretion
to decide whether an individual should be reported
to the prosecuting authorities in a specific case. The
NCA may grant individuals an advance commitment
not to report the criminal offence to the prosecuting
authorities if certain conditions are met (a no-action
letter). The conditions for such advance commitment
are generally the same as the conditions for full
leniency.



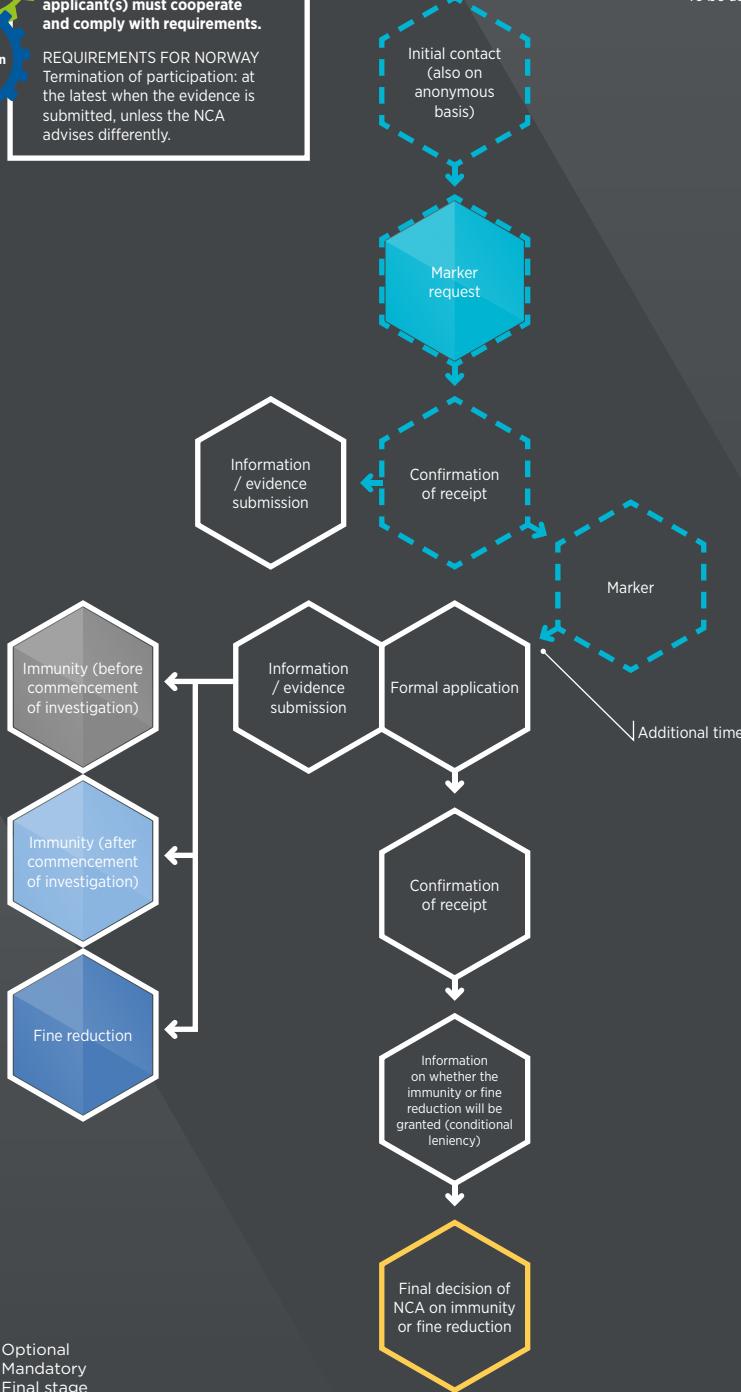
START

NORWAY

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR NORWAY
Termination of participation: at the latest when the evidence is submitted, unless the NCA advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Panama

AGENCY

Consumer Protection and Competition Defense Authority (ACODECO)—*Autoridad de Protección al Consumidor y Defensa de la Competencia*

FAST FACTS

Maximum fines

US\$ 1 million

Scope of leniency

Administrative fines¹
Cartels

Leniency available for Undertaking

How to submit an application

In person to the Head of the Competition Research Department of ACODECO

Address:
ACODECO
Vía Fernández de Córdoba,
Plaza Córdoba,
Entrada C
510-1313

Brief description of leniency

The leniency programme in Panama is called “Clemency programme”. The Clemency programme is applicable to any economic agent party to a Cartel agreement, that takes effect in the Republic of Panama, regardless of the place where it is perfected.

The applicant who provides evidence that helps Consumer Protection and Competition Defense Authority (ACODECO) to act before the courts to prove the existence of the alleged cartel can obtain immunity or fine reduction. Leniency is available only for the first applicant. It can get full immunity or if some additional action from ACODECO is required to collect evidence or improve the use of it, the applicant can benefit from fine reduction of up to 50% of the fine that could be imposed.

The applicant is guaranteed the confidentiality of the identity and documentation provided, if requested by the applicant.

The application form and the evidence must be placed in a sealed envelope and delivered to the head of the Research Department of the Competition. In a period not exceeding 15 working days the economic agent is notified of the Admission to the Programme, by means of a Resolution duly motivated and signed by the ACODECO Administrator.

Reduction in fines

Amount: up to 50% of the fine

Number of applicants:

Only the first-in

Exclusion

An applicant which led the activity or coerced others to participate cannot obtain immunity or fine reduction

Leniency plus

No

Available language

Only Spanish

Marker

No

In case the applicant is not admitted to the Clemency Programme, ACODECO undertakes to return the documents provided by the applicant. At the same time, it will not initiate investigations based on the documentation provided by the applicant or its legal representative for application to the program, unless ACODECO has obtained documentation in a form other than the one referred to in the Benefit or Disability Benefit Guide.

After ACODECO grants the applicant admission to the Leniency Programme, ACODECO will continue the investigation and the respective court proceedings against all the parties involved, including the applicant, in order to maintain the confidentiality of the agreement and the anonymity of the applicant. If the court decision is positive, then ACODECO will proceed to fine all parties, except to the applicant, which according to the resolution, will be exempted from the fine, or will have a reduced fine. In case the court's decision is negative, ACODECO will archive the case. The decision regarding the applicant immunity or fine reduction is final with the admission resolution.

1 Administrative fines in Panama are previously approved before a specialized court.



START

PANAMA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR PANAMA

1. To be a member of the Cartel
2. Not to be the leader of the Cartel or to have been the instigator of its creation.
3. To provide solid evidence of the Cartel to the Antitrust Authority (ACODECO)

Formal application for immunity

Information / evidence submission

Assessment of application

15 days

Information on admission to the program (Admission resolution)

Return of the documents provided by the applicant

Information on rejection of application

Final decision on immunity or fine reduction

Further investigation into the case by ACODECO

Court proceedings against all participants

Key

- Optional
- Mandatory
- Final stage

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: PLN 2 million (approximately EUR 500,000)

Scope of leniency

Administrative fines
Cartels and vertical agreements

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Brief description of leniency

Immunity may only be granted to the first applicant which informs the Office of Competition and Consumer Protection (OCCP) of a cartel and provides evidence that enables the OCCP to launch an investigation or to prove the cartel infringement, if the investigation has already been initiated by the OCCP.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the OCCP. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

The withdrawal of the application or its rejection after the conditional confirmation that the leniency conditions have been fulfilled has no effect on the order of the other submitted applications.

For applications submitted by fax, or via an electronic form without a certified electronic signature, it is necessary to provide the OCCP with the duly executed original of the application within five business days.

COUNTRY

Poland

AGENCY

Office of Competition and Consumer Protection (OCCP) – Urząd Ochrony Konkurencji i Konsumentów

Leniency plus

Yes

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (in person)

E-mail: leniency@uokik.gov.pl

Fax: +48 2282 6103 3

Address: Urząd Ochrony Konkurencji i Konsumentów,
Departament Ochrony Konkurencji, pl. Powstańców
Warszawy 1, 00-950 Warszawa
Phone (for initial contact): +48 2255 6055 5

Available languages

Polish

Marker

Yes

Individuals

Individuals can apply for leniency independently from the undertaking. They must meet all the criteria and provide the required information.

An application of an undertaking which is consistent with all the requirements also covers individuals.

If immunity is granted to an undertaking, the individuals cannot be fined. If an undertaking is granted a fine reduction, the fine imposed on the individual is reduced on the same basis provided the individual cooperates with the agency during the proceedings.

An individual can be granted immunity or a fine reduction even if the undertaking does not obtain immunity or a reduced fine.

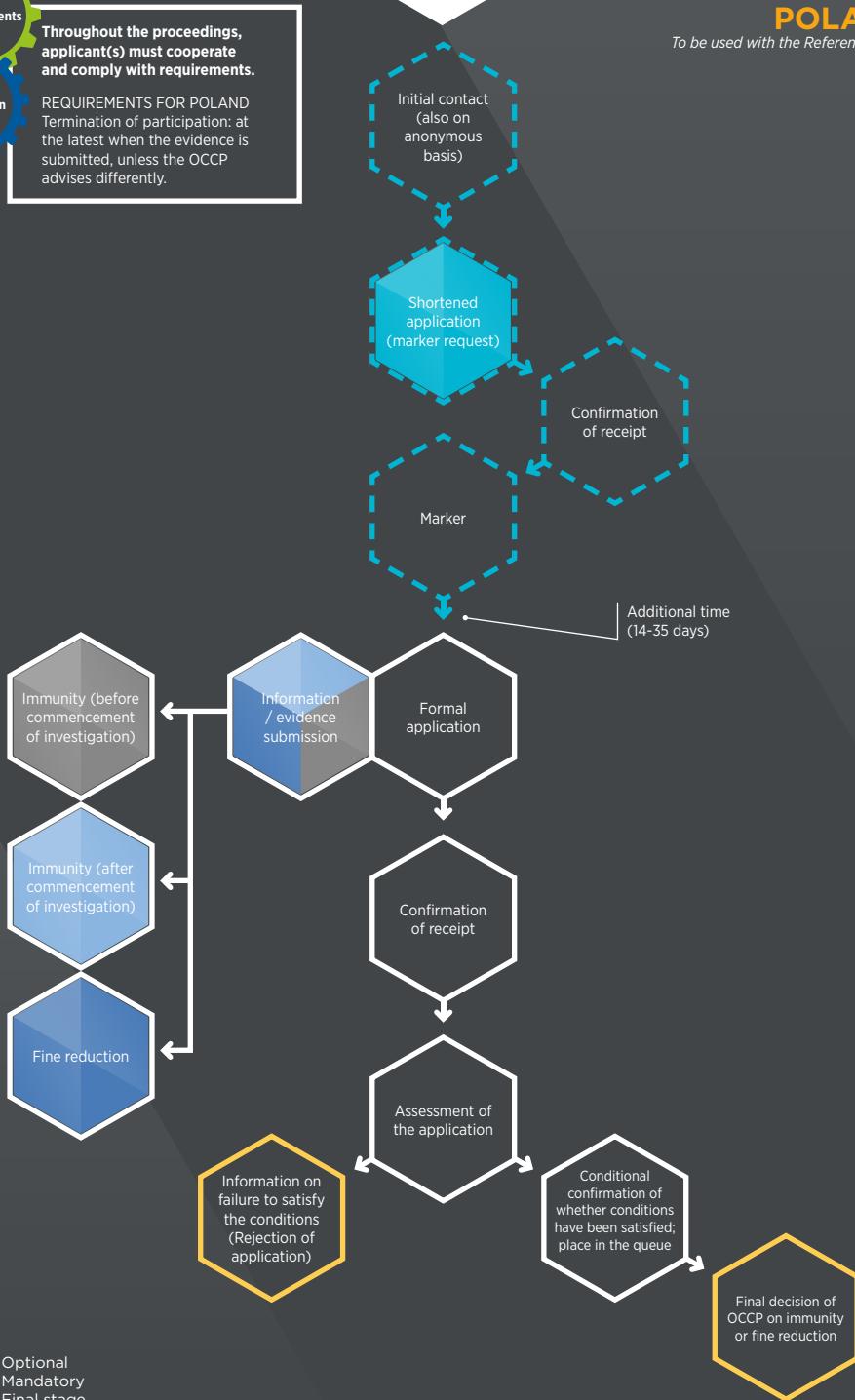
Individuals cannot be fined for bid rigging under Polish competition law. They may, however, be subject to personal criminal liability (imprisonment for up to three years).



START

POLAND

To be used with the Reference Guide



Key

- Optional (dashed line)
- Mandatory (solid line)
- Final stage (solid line)

COUNTRY

Portugal

AGENCY

Portuguese Competition Authority
(PCA) – *Autoridade da Concorrência*

FAST FACTS

Maximum fines

10% of annual turnover

Scope of leniency

Administrative fines

Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50 % of the fine

Number of applicants: no limitation Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Leniency Plus

No

Brief description of leniency

Immunity may only be granted to the first applicant which contacts the Portuguese Competition Authority (PCA) and provides the information and evidence that enables the PCA to obtain a search and seizure warrant or prove the cartel infringement.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the PCA. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

Marker can be granted following applicant's request or ex officio by the PCA.

The final decision on immunity or fine reduction is taken by the PCA in its final decision. The extent of the cooperation of an applicant which does not fully meet the requirements for immunity or fine reduction, is taken into account by the PCA when calculating the fine to be imposed.

How to submit an application

In writing (in person, e-mail, fax, post) or orally (in person)

E-mail: clemencia@concorrencia.pt (with advanced electronic signature and date validation)

Fax: +351 217 902 093

Address: Av. de Berna, 19, Lisboa

Available languages

Portuguese

Marker

Yes

Individuals

Members of the board of directors, or the supervisory board, and those responsible for the executive management and supervision of the business areas in which the infringement has occurred, benefit from the immunity or reduction obtained by the undertaking.

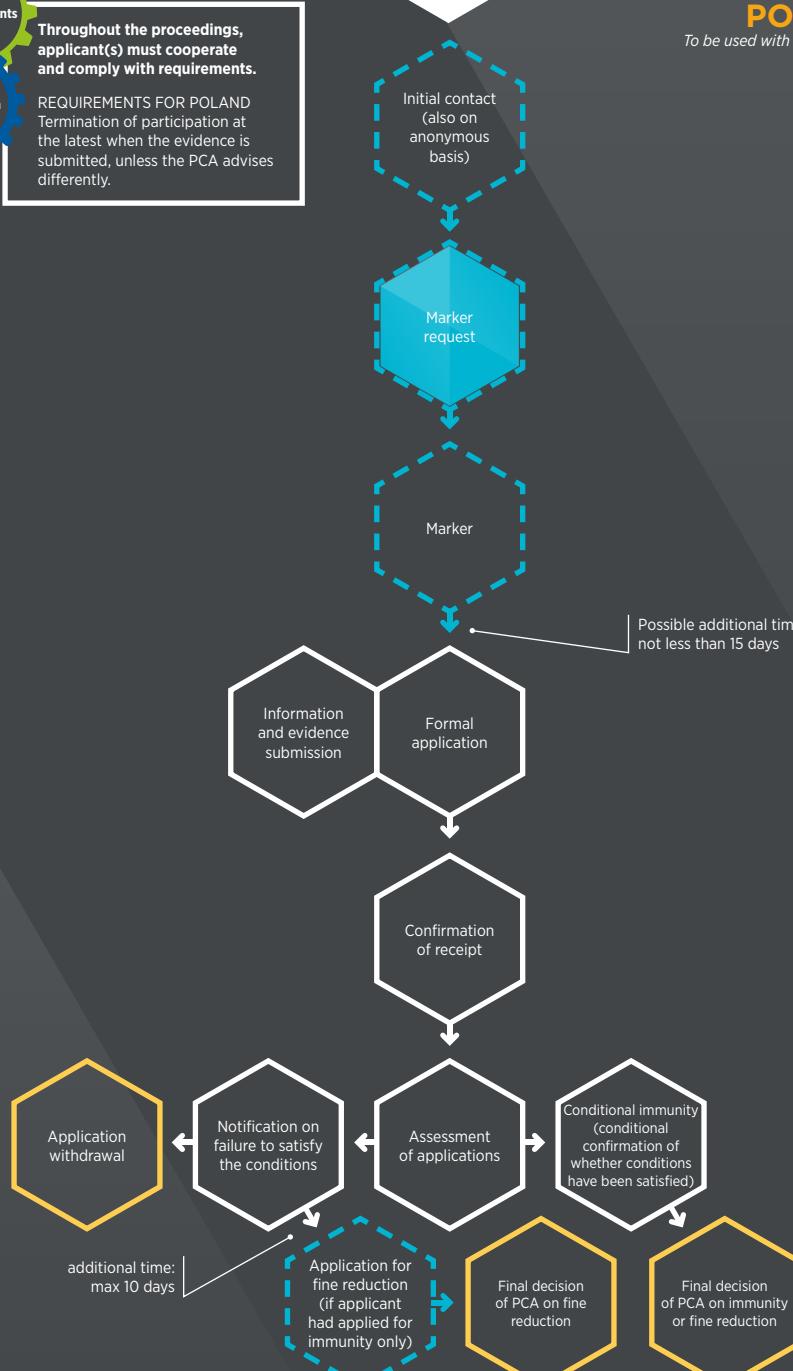
Individuals can also apply for leniency independently from the undertaking. They must meet all the criteria and provide the required information.



START

PORTUGAL

To be used with the Reference Guide



COUNTRY

Romania

AGENCY

Romanian Competition Council (RCC)

FAST FACTS

Maximum fines

10% of the annual turnover

Scope of leniency

Administrative fines

Cartels and vertical agreements

Leniency available for

Undertaking

Reduction in fines

Amount: up to 30% of the fine

Number of applicants: no limitation Exclusion: No

Leniency Plus

No

How to submit an application

In writing only

Address: Piața Presei Libere, nr. 1, corp D1, Sector 1,

013701, București, OP 25 Romania

E-mail: secretar.general@consiliulconcurrentei.ro

modul.clementa@consiliulconcurrentei.ro

Phone (for initial contact): +4 021 405 44 20

Available languages

Romanian

Marker

Yes

Brief description of leniency

Romania's competition laws are fully harmonised with the EU's Regulations and Commission's Guidelines, while its leniency programme is regulated since 2004.

Full immunity from administrative fines may be granted to the applicant notifying the Romanian Competition Council (**RCC**) about the violation prior to issuing a statement of objections in the relevant case. The applicant has to provide all available evidence and/or information concerning the violation, and such information should be material for establishing the violation, essentially meaning that it is sufficient for the RCC to find an infringement. Even if the evidence submitted by the immunity applicant is sufficient, the RCC has certain discretion not to initiate an investigation.

The applicant for a reduction of fines must co-operate with the RCC to the same extent as an undertaking applying for immunity. Unlike the immunity applicant, however, who knows it has conditional immunity early in the proceedings, the undertaking seeking a reduction in fines may have to wait until the RCC issues the statement of objections. An applicant for a reduction in fines who is the first to submit evidence with respect to additional facts in relation to the gravity or the duration of the cartel receives immunity with regard to those facts. The applicant will be granted protection if evidence provides "significant added value".

The Romanian leniency system requires the applicant to actually justify its marker request, thus obtaining a marker is fettered by the RCC's right to request sufficient justification which makes it burdensome. Some of the information, such as the duration of the cartel or the nature of the conduct, will often not be known to the applicant at an early stage and will need to be further investigated.

The marker can be given only to immunity applicants.

Individuals

Individuals are not entitled to apply for leniency.

Under the Romanian Competition Law, designing and organising an infringement of competition rules by a natural person acting as director, legal representative or otherwise exercising management functions in an undertaking qualifies as a criminal offense.

Therefore, there is a natural conflict of interest between the applicant on the one hand and its employees and directors on the other (facing face imprisonment risk). The employees or directors may choose not to co-operate with the applicant for the purpose of uncovering and submitting to the RCC evidence regarding the applicant's involvement in the alleged cartel, since this evidence may lead to criminal liability on their part. The applicant's ability to prepare a leniency filing may be seriously impaired as a result of this conflict of interest, even though one could reasonably expect a more lenient treatment.



START

ROMANIA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR ROMANIA
Termination of participation in violation except for the purpose of further collection of evidence as agreed with the RCC).

Initial contact

Short Application
(Marker request)

The same day

Confirmation of receipt

RCC response /
request to the applicant
for entering into
discussion of opened
investigation (if any)
or granted marker
(anytime during the
procedure)

Formal
application
(information /
evidence
submission)

Up to 15 days
(it can be
prolonged
with
additional 15
days)

Failure to submit
information /
evidence

Assessment of
application;
Max. 2 meetings
can be held with
RCC

Final decision on
immunity / fine
reduction (after
completion of the
investigation)

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Serbia

AGENCY

Commission for Protection of Competition
(Commission) – *Komisija za zaštitu konkurenčije*

FAST FACTS

Maximum fines

10% of the undertaking's Serbian turnover in the year preceding the start of the investigation that led to the imposition of the fine

Scope of leniency

Administrative fines
All types of restrictive agreements, not just for cartels

Leniency available for

Undertakings

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which led the activity or coerced others to participate cannot obtain immunity.

Brief description of leniency

An undertaking participating in a restrictive agreement is eligible for receiving immunity from fine if it is the first one to report the existence of the agreement to the Commission for Protection of Competition (Commission) and delivers to the Commission evidence concerning the agreement which would enable the watchdog to establish an infringement.

An application for full immunity must be submitted before the Commission initiates an investigation – immunity is possible only if the Commission did not know of the restrictive agreement, or knew of it, but did not have sufficient evidence for the opening of an investigation.

If an undertaking does not qualify for immunity from fine, it may be eligible for a reduction of the fine. The Commission may reduce the fine by 30 to 50% to the first applicant for reduction, by 20 to 30% to the second applicant, and by maximum 20% to other applicants.

Leniency plus

No

How to submit an application

In writing (in person or by post) or orally (in person)
Initial contact can be made by email or by phone:
Email: leniency@kzk.gov.rs
Phone : +381 11 3811951

Available languages

Serbian

Marker

Yes

An application for a fine reduction can be submitted up to the moment when the Commission sends a statement of objections to the parties in the proceedings.

The party can report a restrictive agreement to the Commission anonymously (e.g. via an attorney). When approaching the Commission this way, the party must provide to the authority a summary of the restrictive agreement and briefly describe the evidence it has available, without the need to disclose the identity of the parties involved. The Commission will then inform the anonymous applicant whether the authority already had knowledge of the described agreement.

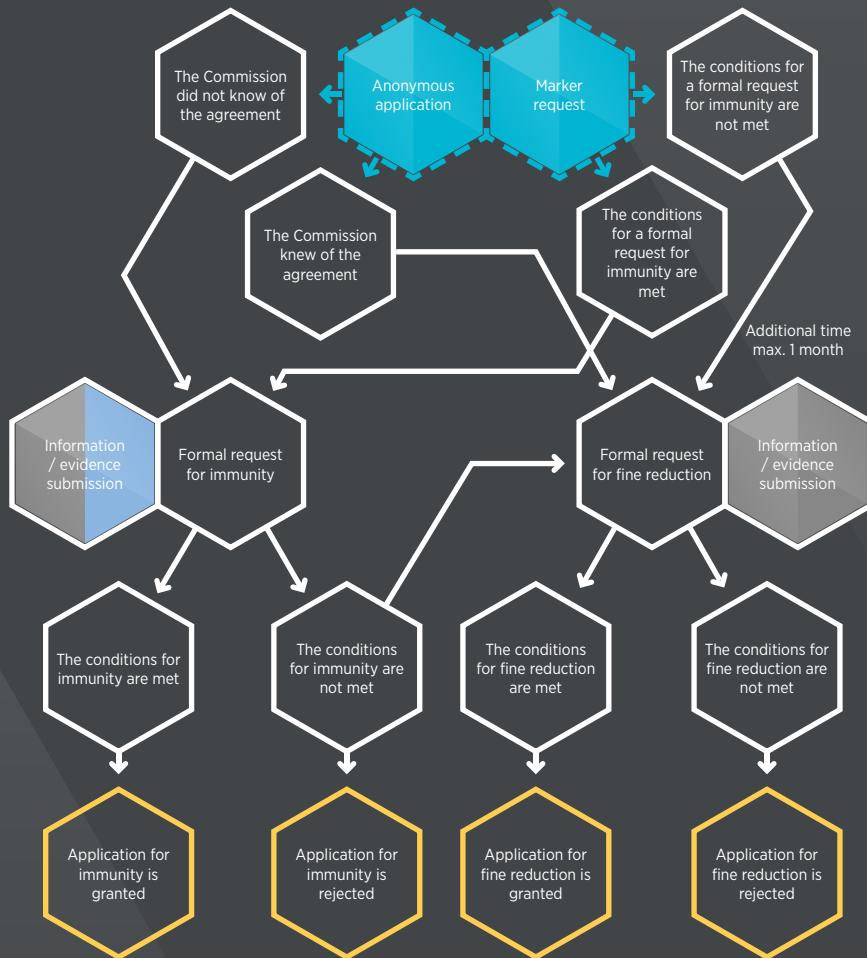
If the authority did have knowledge, it would inform the party that there is no possibility for immunity from fine (though the party may still apply for a fine reduction). On the other hand, if it did not have knowledge of the agreement, it would instruct the party that it can apply for immunity.

An undertaking wishing to apply for full immunity may apply for a marker. If the Commission grants the marker, it shall determine the period within which the applicant has to submit information and documents to qualify for full immunity. This period cannot be longer than one month.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR SERBIA
Termination of participation no later than at the moment of leniency application.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Singapore

AGENCY

Competition and Consumer Commission of Singapore (CCCS)

FAST FACTS

Maximum fines

10 % of the turnover of the business of the undertaking in Singapore for each year of infringement for up to a maximum period of three years

Scope of leniency

Administrative fines
Cartels

Leniency available for

Reduction in fines

Amount: up to 100% of the fine for the first-in, up to 50% for subsequent applicants
Number of applicants: only the first-in

Exclusion

An applicant which initiated or coerced others to participate cannot obtain immunity

Leniency plus

Yes

How to submit an application

Orally, in writing, through the online form on CCCS' website, via email to cccs_leniency@cccs.gov.sg, or telephone to CCCS' hotline at +65 6325 8206

Address:

Competition and Consumer Commission of Singapore
45 Maxwell Road
The URA Centre, #09-01
Singapore 06918
("Leniency Application" clearly on the top left hand corner of the envelope.)

Available languages

English

Marker

Yes (only for the first-in)

Brief description of leniency

Total immunity may be granted to the first applicant that provides Competition and Consumer Commission of Singapore (CCCS) with evidence of a cartel activity before CCCS commences an investigation, provided that CCCS is not already able to establish the existence of the alleged cartel activity. In addition, the applicant must: (i) be eligible to receive total immunity (i.e. it cannot have initiated or coerced another undertaking to participate in the cartel), and (ii) satisfy leniency conditions.

An undertaking who does not qualify for total immunity may nonetheless qualify for a reduction of up to 100% in the level of its financial penalty (we refer to this as the "reduction of up to 100%") if it is the first to provide CCCS with evidence of the cartel activity after CCCS has commenced an investigation and provided that CCCS lacks sufficient information at the time to issue a proposed infringement decision. In addition, the applicant must (i) be eligible

to receive the reduction of up to 100% (i.e. it cannot have initiated or coerced another undertaking to participate in the cartel), and (ii) satisfy the "leniency conditions".

A leniency application begins when an undertaking contacts CCCS on its own behalf or through a representative. Applications for total immunity and the reduction of up to 100% are both subject to a marker system. Under this system, undertakings may be granted a marker from CCCS to secure its position in the queue for total immunity / reduction of up to 100%, should the undertaking be unable to immediately provide all necessary information, documents and evidence regarding the cartel activity.

An undertaking (or undertakings) who is not the first to come forward but nonetheless provides evidence of cartel activity before CCCS issues a proposed infringement decision may be granted a reduction of up to 50% in the level of its financial penalty which would otherwise be imposed (we refer to this as

the "reduction of up to 50%"), if it (i) provides information that adds significant value to CCCS' investigation, and (ii) satisfies the "leniency conditions". The marker system does not apply for such undertakings.

The undertaking applying for leniency has to grant an appropriate waiver of confidentiality to CCCS in respect of any jurisdiction where the applicant has also applied for leniency or any other regulatory authority for which it has informed the undertaking must also unconditionally admit to the conduct for which leniency is sought and details the extent to which this had an impact in Singapore by preventing, restricting or distorting competition within Singapore;

The "leniency conditions" are found under the second bullet of Paragraph 2.2 in CCCS' Guidelines on Lenient Treatment for Undertaking Coming Forward with Information on Cartel Activity 2016.



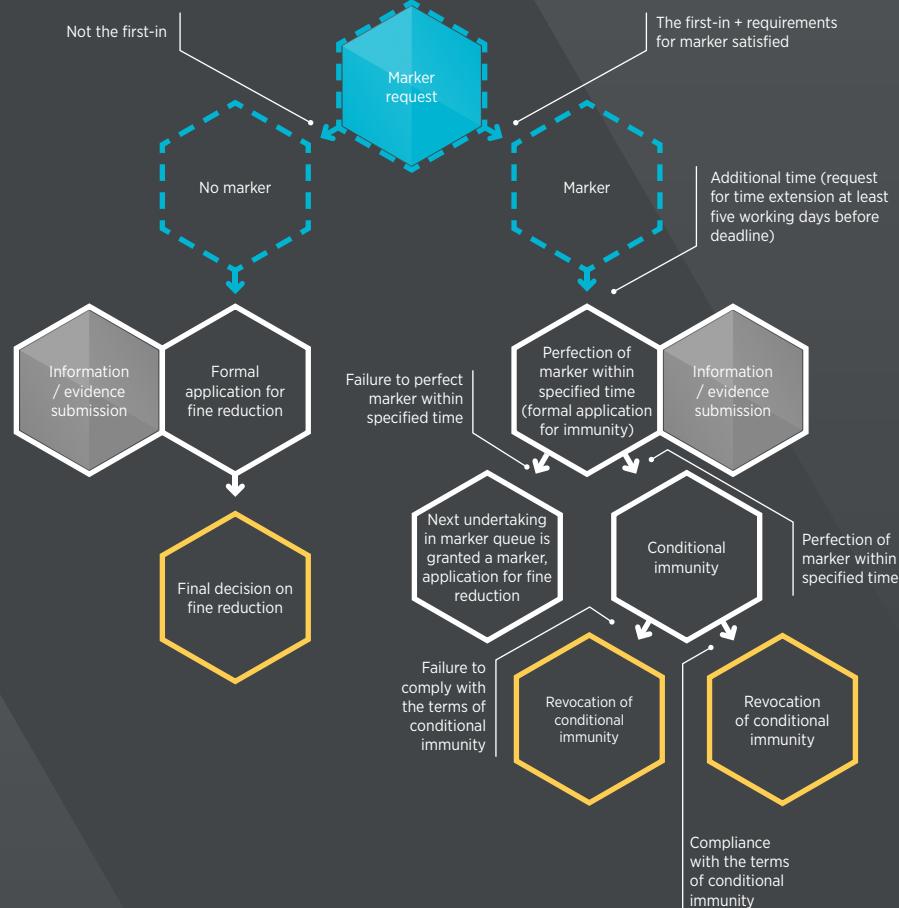
START

SINGAPORE

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR SINGAPORE



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Slovakia

AGENCY

The Antimonopoly Office of the Slovak Republic (Office) – *Protimopolný úrad Slovenskej republiky*

FAST FACTS

Maximum fines

10% of the annual group turnover

Scope of leniency

Administrative fines, indirectly criminal liability of individuals, indirectly civil liability (scope of liability is reduced)

Cartels

Leniency available for Undertaking

Reduction of fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency Plus

No

Brief description of leniency

Immunity may be granted to the first applicant who informs the Antimonopoly Office of the Slovak Republic (Office) of the cartel and provides evidence enabling the Office to carry out a targeted on-site inspection or to prove the existence of the cartel.

Undertakings not entitled to full immunity (e.g. those who provided evidence not sufficient to prove the cartel or who coerced other applicants into the cartel) may benefit from a reduction of the fine if they provide evidence which adds significant value to the evidence already collected by the Office.

An application for a leniency may be submitted at any time, i.e. before the Office has initiated an investigation, during the investigation and at any stage of the administrative proceedings.

If the application fulfills the conditions for full immunity from fines, the Office shall grant it to the applicant. If the conditions for full immunity are not met, the applicant may request the Office to treat his application as an application for reduction of the fine.

An undertaking wishing to apply for full immunity may apply for a marker. The request must be substantiated (which explains why more time is needed to gather the necessary information and documents) and is considered at the discretion of the Office. If the Office grants the marker, it will set

How to submit an application

In writing (in person, post or e-mail with electronic signature) or orally (in person)

E-mail: podatelna@antimon.gov.sk

Address: Drieňova 24, 826 03 Bratislava, Slovakia

Phone (for initial contact): +421 222 122 130

Available languages

Slovak; another official language of a Member State upon request (no legal entitlement to this); summary applications may also be submitted in English (if the Office takes up the case, all documents must be submitted in Slovak)

Marker

Yes

a deadline within which the applicant must submit the information and documents in order to obtain full immunity.

Alternatively, an undertaking wishing to apply for full immunity may submit a hypothetical application. The undertaking may do so without disclosing its identity (e.g. through its legal counsel). The Office will verify whether the list of hypothetical documents meets the conditions for granting immunity and inform the undertaking accordingly. A hypothetical application does not replace a regular application nor serves as a request for a marker.

A successful application for immunity from fines also has an indirect effect on the criminal liability of individuals. The active participation of an individual in a successful application leads to the extinction of his/her criminal liability for the cartel.

A successful application for full immunity (only) also leads to a limitation of civil liability. In principle, an undertaking being awarded full immunity is only liable to its direct or indirect customers and suppliers.



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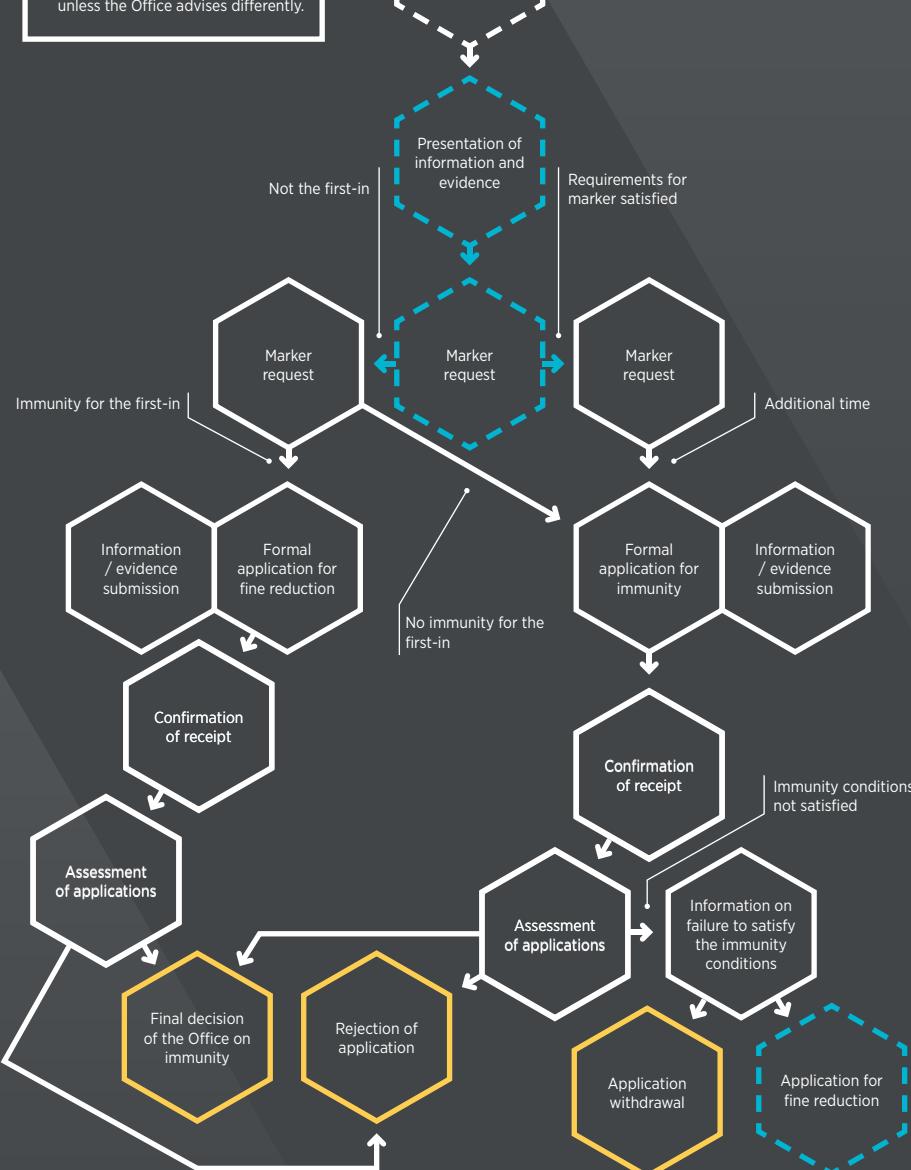
SLOVAKIA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR SLOVAKIA

Termination of participation:
Immediately after the application, unless the Office advises differently.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

South Africa (Republic of)

AGENCY

The Antimonopoly Office of the Slovak Republic (Office) – *Protimopolný úrad Slovenskej republiky*

FAST FACTS

Maximum fines

Firms or associations of firms: 10% of the annual turnover in the Republic and its exports from the Republic during the firm's preceding financial year
Individual: Imprisonment for a term not exceeding ten years and/or a fine not exceeding ZAR 500,000

Scope of leniency

Conduct:
Extent of leniency: administrative fines
Leniency available for: Undertaking

Reduction in fines

No

Exclusion

None

Leniency plus

No

Brief description of leniency

The Corporate Leniency Policy (CLP) is a mechanism through which the Competition Commission (Commission) grants a self-confessing cartel member, having been the first to approach the Commission, immunity for its participation in a cartel provided that certain requirements have been met. The CLP is aimed at cartel conduct which the Commission is unaware of (i) cartel conduct which the Commission is aware of, but lacks sufficient information to commence an investigation, or (ii) cartel investigations requiring more evidence for a successful prosecution.

CLP refers only to the first applicant. Other members of the cartel wishing to confess will be dealt with outside the CLP, on the basis of e.g. settlements.

Immunity granted by another competition authority would not automatically extend to immunity under the CLP. The applicant must submit a separate application meeting the CLP's requirements. Immunity must also be sought in respect of specific and separate

cartel activities. No blanket immunity can be applied for.

Full leniency (or no leniency) will always be preceded by conditional leniency. Full leniency will only be granted if the applicant has cooperated fully with the Commission during the entire investigation (including prosecution). At any point until total immunity is granted, the Commission may revoke conditional immunity if the applicant does not cooperate. If permanent leniency is not granted, the Commission may deal with the applicant as provided in the Competition Act No. 89 of 1998 (Competition Act), including prosecution, entering into a settlement agreement or asking for a lenient sanction when referring the matter to the Competition Tribunal.

An applicant who discloses confidential material to the Commission may claim confidentiality in respect of it.

Individuals

While the Competition Act makes provision for criminal prosecution of cartelists, neither the Competition Act nor the CLP

makes provision for immunity from criminal prosecution.

Only the National Prosecuting Authority (NPA) has the authority to decide to criminally prosecute individuals or not. the Commission may not seek or request the criminal prosecution of a person for an offence if the Commission has certified that the person is "deserving of leniency". Employees of a firm who have caused the firm to engage in cartel conduct, and who have cooperated with the Commission in the course of CLP proceedings, may be classified as "deserving of leniency". However, the definition of the phrase "deserving of leniency" is not yet incorporated in the Competition Act. While it is unlikely that the Commission will request the prosecution of employees of a CLP applicant who have cooperated with the Commission, the final decision vests in the NPA. At this point, there appears to be little political appetite for the pursuance of negotiations between the Commission and the NPA on the provision of criminal immunity in antitrust cases. It may change in future.



START

SOUTH AFRICA (REPUBLIC OF)

To be used with the Reference Guide



COUNTRY

Spain

AGENCY

Comisión Nacional de los Mercados y la Competencia (CNMC)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover of the capital group

Individuals: EUR 60 000 euros

Scope of leniency

Cartels

Leniency available for
Undertaking
Individuals

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant who coerced others to participate
cannot obtain immunity

Leniency plus

No

Brief description of leniency

In order to qualify for immunity, the applicant must be the first to provide the Investigation Division of the Comisión Nacional de los Mercados y la Competencia (CNMC) sufficient information and/or evidence to order an inspection or to prove a cartel infringement. In general terms, the applicant must bring sufficient information on the cartel, cooperate with the CNMC fully, continuously and diligently until the conclusion of the proceeding and end its participation in the cartel at the time the leniency application is submitted. In this regard, an applicant who has taken measures to oblige others to join or remain in the cartel is automatically disqualified from obtaining immunity from fine.

An applicant that does not qualify for an immunity may still obtain a fine reduction under the leniency programme, provided it submits information and evidence that gives the Investigation Division added value. The reduction of the fine will be greater the earlier the reduction application is submitted.

How to submit an application

In writing through the electronic registry (<https://sede.cncompetencia.gob.es>) or orally (in person)

Address: Calle del Barquillo, 5, 28004 Madrid

Phone (for initial contact): +34 91 787 68 44

Available languages

Spanish

Marker

Yes (only for the first-in applicant)

Leniency applications for immunity or reduction may be written or oral. In addition to an acknowledgment of its participation in the cartel, the applicant must provide information (i) on the applicant; (ii) on the rest of the participants in the cartel; (iii) a detailed description of the cartel; (iv) a list of the leniency application that the applicant has presented or intends to present to other competition authorities; and (v) a description of the steps taken in order to end its participation in the cartel.

If at the end of the infringement proceeding the applicant has fulfilled all the requirements to benefit from an exemption, the CNMC will grant the applicant exemption from payment of the fine in the Decision resulting from the proceeding. This Decision will also state both the final amount of the fine and the amount payable by the applicants of a reduction.

The immunity application must be submitted before the Statement of Objections has been notified.



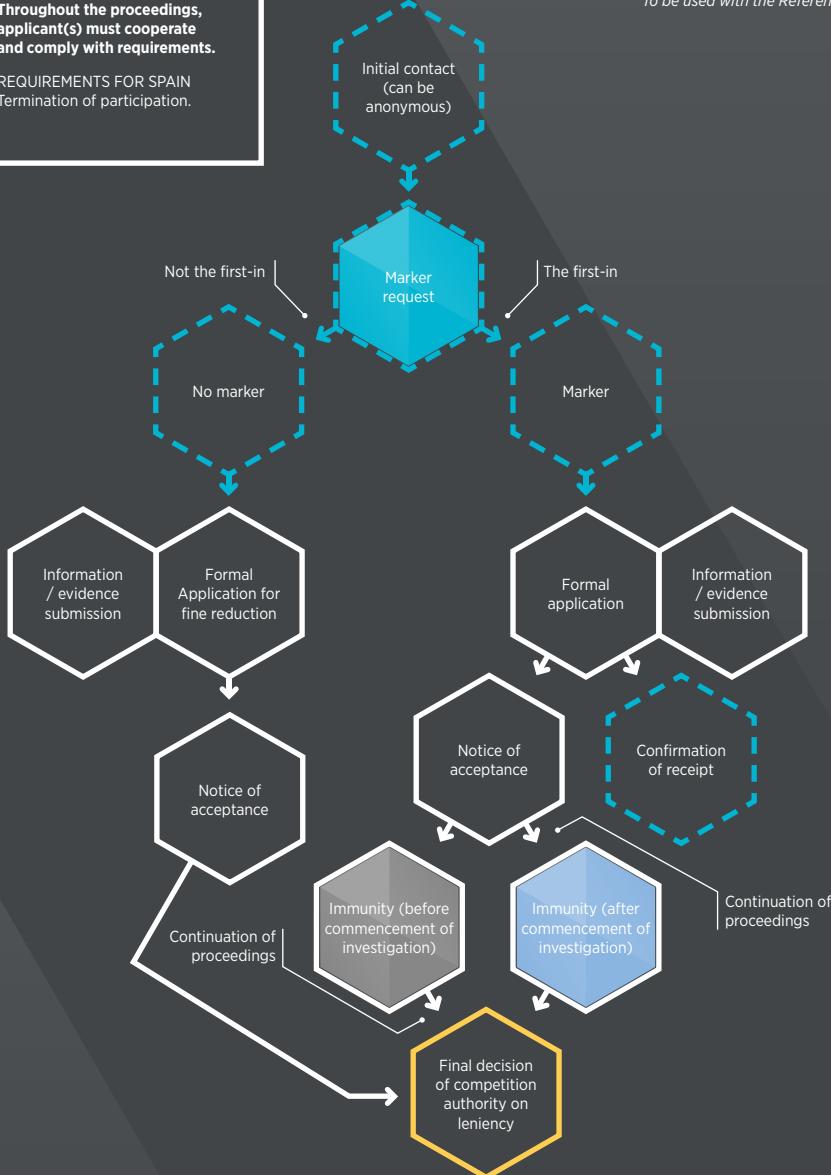
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SPAIN

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR SPAIN
Termination of participation.



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Sweden

AGENCY

Swedish Competition Authority
(SCA)—Konkurrensverket

FAST FACTS

Maximum fines

10% of the annual turnover

Scope of leniency

Administrative fines determined by court

Cartels and vertical agreements

Leniency available for
Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Leniency Plus

No

Brief description of leniency

Immunity may only be granted to the first applicant who informs the Swedish Competition Authority (SCA) of a cartel or other anti-competitive cooperation, whether horizontal or vertical, open or secret. The applicant must either (i) provide evidence that enables the SCA to act against the infringement or, in case the SCA already has sufficient evidence to act against the infringement, (ii) prove the infringement. Upon request by the applicant, the SCA shall state in an official notice whether the conditions for granting immunity in accordance with point (i) are fulfilled. This notice is only a formal confirmation that conditions for immunity exist. The material conditions for immunity should still be met. The notice is binding for the SCA as well as for the court. Such a request is not possible in relation to point (ii).

That the notice is binding for the SCA has the effect that if a Company has been wrongly notified that conditions for immunity exist, another Company can make an injunction to the Patent and Market court claiming it should be the one notified. The court could therefore find that the second company should have gotten the notice. Since both decisions are binding, in theory (if the material conditions for immunity are then met by both companies) both could be given immunity

Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence of considerable value that to a significant extent facilitate the investigation. The extent of the fine reduction depends essentially on two factors: the

How to submit an application

In writing (in person, e-mail, fax, post) or orally (in person)

E-mail: ettergift_kkv@kkv.se

Address: Konkurrensverket, 118 60 Stockholm, Sweden

Visiting address: Ringvägen 100, Stockholm

Phone (the Leniency Group): +45 8 700 15 99
(weekdays at 8.00 AM–17.00 PM)

Available languages

Swedish or English

Marker

Yes (only for the first-in applicant)

time of submission of the evidence important to the case and the value of this evidence.

Where multiple applications for immunity have been made in respect of one infringement, the decisive factor in determining the order of priority is the point in time at which the SCA has at its disposal the relevant information.

Furthermore, if an undertaking provides evidence that leads to an increase of the fine, such evidence shall not be accounted for when the fine is determined for the undertaking that provided the evidence.

The SCA is open to the possibility to discuss the availability for leniency on an anonymous basis (e.g. via external counsel). For the purposes of being granted a “marker” i.e. being reserved a place in the immunity queue, applicants will be required to reveal their identity. The marker system is available only for immunity applicants. When receiving an application for a marker, the SCA will inform the applicant if there is another undertaking ahead in the queue.

When the SCA has concluded an investigation, it may impose a fine. The fine can be appealed to the Patent and Market Court.



START

SWEDEN

To be used with the Reference Guide

Throughout the proceedings,
applicant(s) must cooperate
and comply with requirements.

REQUIREMENTS FOR SWEDEN

Termination of participation:
immediately after the application,
unless SCA advises differently.

Not the first-in or
requirements for
marker not satisfied

Other party first-
in—immunity not
available

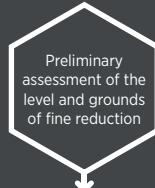
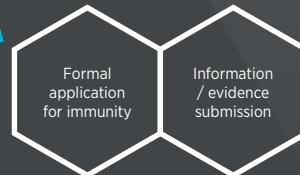
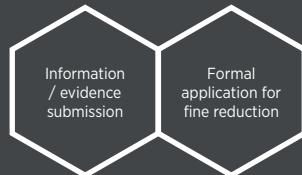
Initial contact
(also on
anonymous
basis)

Marker
request

The first-in +
requirements for
marker satisfied

No immunity for
the first-in—immunity
available

Marker



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Switzerland

AGENCY

Competition Commission (ComCo)

FAST FACTS

Maximum fines

Undertaking: 10% of the turnover achieved on a group level in Switzerland during the preceding three financial years

Scope of leniency

Administrative fines

Cartels and vertical agreements

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant who coerced others to participate or has played the leading role in the relevant infringement of competition cannot obtain immunity

Brief description of leniency

Only the first applicant is eligible for full immunity. The Competition Commission (ComCo) grants an undertaking full immunity from sanctions if it provides information that enables the ComCo to open proceedings, or if it provides evidence enabling ComCo to prove a hard core infringement of competition. This can be a cartel but also a vertical agreement.

An undertaking which does not qualify for immunity may benefit from a reduction of fines if it voluntarily cooperates in proceedings and if it terminates its participation in the infringement of competition law no later than at the time at which it submits evidence. In an explanatory report, the ComCo indicates that such a reduction of fine may even be possible in cases of abuse of dominance for which full immunity will not be available. The reduction can be of up to 50% and depends on the importance of the undertaking's contribution to the success of the proceedings. The amount of the sanction can be reduced up to 80% if an undertaking voluntarily provides information or submits evidence on further infringements of competition (leniency plus).

It is possible to obtain a marker for immunity applications. The marker is the declaration that the undertaking will submit a leniency application. The timestamp of the marker determines the rank of the leniency application if the latter is submitted in due course supplementing the marker. The Secretariat of the ComCo acknowledges receipt of the leniency application, indicating the date and time. It informs the applicant of any additional information to be

Leniency Plus

Yes

How to submit an application

In writing (e-mail = preferred option, post) or orally (in person)

E-mail: selbstanzeige@weko.admin.ch or leniency@weko.admin.ch

Phone (for initial contact or announcement of a submission): +41 58 462 20 40 or +41 79 345 01 44

Available languages

German, French, Italian

Marker

Yes

submitted and in the case of an anonymous leniency application of the period within which the undertaking must disclose its identity. The Secretariat finally informs the applicant in consultation with a member of the presiding body of the ComCo of the extent to which it concerns the requirements for complete immunity from the sanction as fulfilled.

The ComCo shall consider subsequently received applications for immunity from fines only after a decision concerning the first leniency application. If the marker of the first applicant is not supplemented by a leniency application containing all required information it will be disregarded and the rank it occupied becomes available again. If that is the case, the ComCo will contact the subsequent marker applicant. The ComCo will decide at the end of the proceedings whether to grant complete immunity from a sanction. It may only depart from the previous communication by the Secretariat if it subsequently receives information precluding it from granting of immunity.

All undertakings having submitted leniency applications have a duty to cooperate during the entire proceedings that goes beyond the usual obligation to cooperate in administrative procedures. This duty encompasses, in particular, the willingness to make statements during interviews, to respond to requests for information, as well as to submit, voluntarily or upon request of the authorities, all evidence (including international evidence) which is accessible to the undertaking. If its cooperation is insufficient, the undertaking may lose the guaranteed immunity from the sanction.



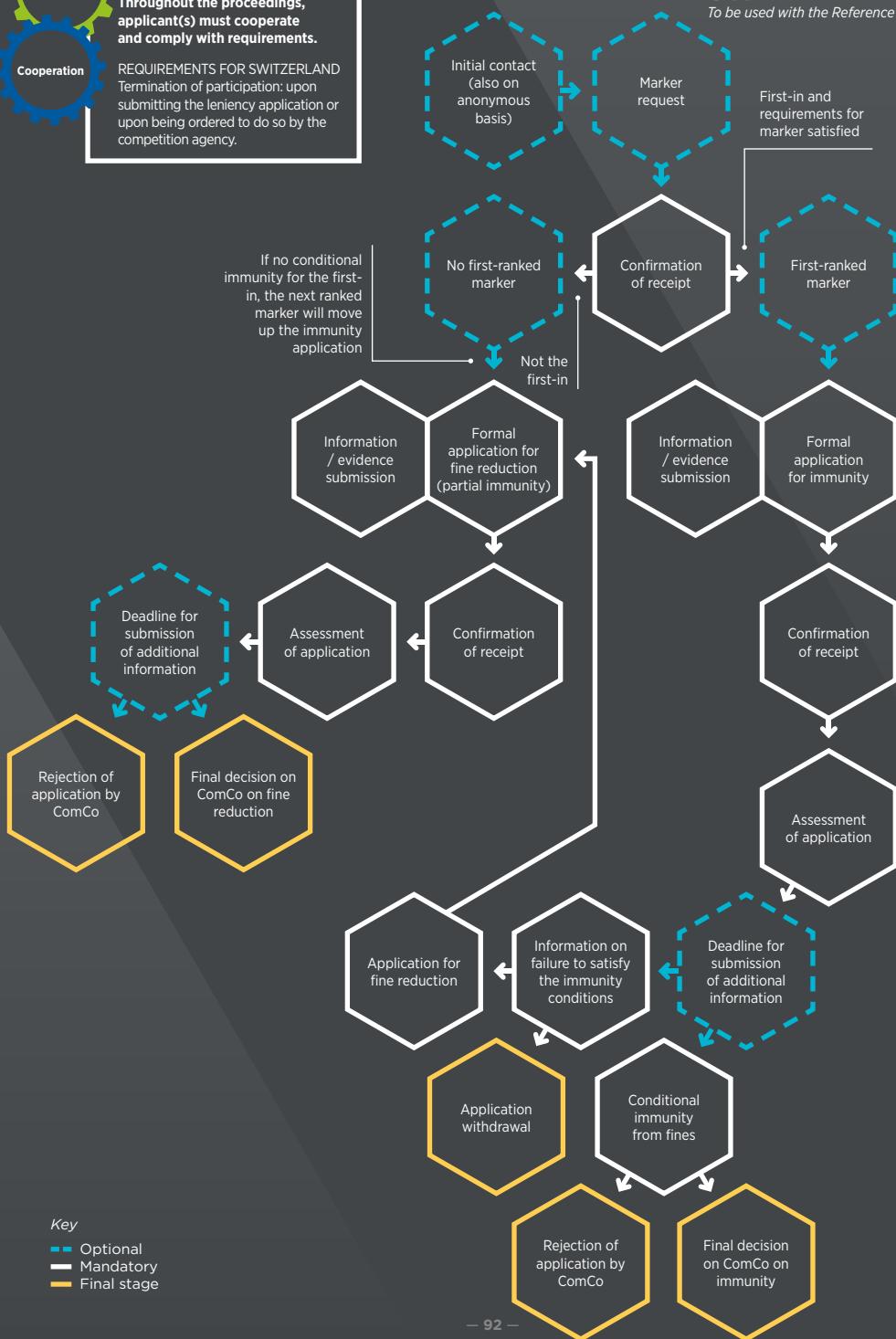
START

SWITZERLAND

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR SWITZERLAND
Termination of participation: upon submitting the leniency application or upon being ordered to do so by the competition agency.



COUNTRY

Turkey

AGENCY

Turkish Competition Authority (TCA)

—Rekabet Kurumu

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: 5% of the fine imposed on the undertaking

Scope of leniency

Administrative fines

Cartels

Leniency available for
Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine for undertakings, up to
100% for individuals

Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate
cannot obtain immunity

Leniency Plus

Yes

How to submit an application

In writing (e-mail, fax, post) or orally (in person)

E-mail: pismanlik@rekabet.gov.tr

Fax: +90 312 266 79 20

Address: Üniversiteler Mahallesi 1597. Cadde No. 9

Bilkent Çankaya 06800 Ankara

Phone (for initial contact): +90 312 291 44 06

Available languages

Turkish

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant, which informs the Turkish Competition Authority (TCA) of a cartel and provides evidence that enables the TCA to conduct an inspection or prove the cartel infringement. To obtain immunity, the application must be submitted prior to notification of the investigation report.

Applicants, which do not qualify for immunity may benefit from a reduction of fines if they provide evidence. A higher reduction will be granted to the first and second leniency applicants.

When determining whether an applicant qualifies for immunity or a reduction in fines, factors such as the quality, efficiency, and timing of the applicant's cooperation as well as explicit demonstration of evidence of a violation are taken into consideration. Accordingly, such determination is at the discretion of the TCA. If there is a settlement procedure along with the leniency application, the reduction rates determined for leniency will be added to the reduction rate determined in the settlement process and applied collectively.

The TCA has sole discretion when assessing whether or not the information submitted with the leniency application is "essential" to the investigation. Accordingly, if information provided is not deemed to have been "essential" to the investigation or has already been obtained by a TCA case-handler, an applicant will at most benefit from a reduction in fines.

The application must be deemed to have been made independently, so as to prevent fraudulent applications.

Individuals

If an individual is the first party to come forward with information and documents that help identify a cartel and which qualify him / her for immunity, the undertaking, to which that individual is related, does not benefit from that immunity.

When an undertaking receives immunity, the same immunity extends to the managers and employees. If an undertaking loses its chance for immunity and benefits only from a fine reduction, managers and employees may still benefit from immunity.

When an undertaking benefits from a reduction in fines, the reduced penalties also apply to its managers and employees who have actively cooperated with the TCA.



START

TURKEY

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR TURKEY

Termination of participation: immediately after the application, unless TCA advises differently.

Preliminary information + written request for additional time (marker request)

Confirmation of receipt

Decision on additional time (marker)

Additional time: max. 1 month

Subsequent applicants may advance in their positions

Failure to submit the documents and information within given time limit

Formal application

Information / evidence submission

Confirmation of receipt

Information on whether immunity or reduction of fines will be granted (conditional assurance)

Immunity (when TCA unaware of conduct)

Immunity (when TCA aware of conduct but lack of evidence)

Leniency (fine reduction)

Final decision of TCA on immunity or fine reduction (after completion of the investigation)

Key

- Optional
- Mandatory
- Final stage

COUNTRY

Ukraine

AGENCY

Antimonopoly Committee of Ukraine (AMC)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover

Scope of leniency

Administrative fines

Cartels and vertical agreements

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine

Number of applicants: no limitation

Exclusion

An applicant which (i) initiated or led the activity or (ii) failed to provide all relevant information and evidence related to the alleged violation which was available to it or could be collected with no difficulties cannot obtain immunity

Leniency Plus

No

How to submit an application

In writing (in person)

An initial contact can be made either by phone or e-mail

Phone: +38(044)251-62-08

E-mail: leniency@amcu.gov.ua

Address: 45 V. Lypkivskoho St., Kyiv 03035, Ukraine

Available languages

Ukrainian

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Full immunity from administrative fines may be granted only to the first applicant which notifies the Antimonopoly Committee of Ukraine (AMC) about the violation prior to issuing a statement of objections in the relevant case. The applicant has to provide all available evidence and/or information concerning the violation, and such information should be material for establishing the violation, sufficiently meaningful for the AMC to find an infringement.

Fine reduction is not available under the leniency programme. However, according to the AMC's public statements the authority will adequately reward subsequent applicants for effective cooperation in collection of evidence (without specifying or limiting their number). Under general rule, the fine may be reduced of up to 50% of the basic amount of fine if there are any attenuating circumstances.

The AMC is not required to make any indication as to whether the conditions are met by the applicant and whether immunity is likely to be granted until rendering the final decision in the case. The formal decision is preceded by the preliminary conclusions indicating aggravating/attenuating circumstances which should be taken into account when determining the level of fine.

It is possible to inquire the AMC whether an investigation has been opened or a marker has been issued. The AMC responds within a working day about an opened investigation (if any) or a granted marker (if any).



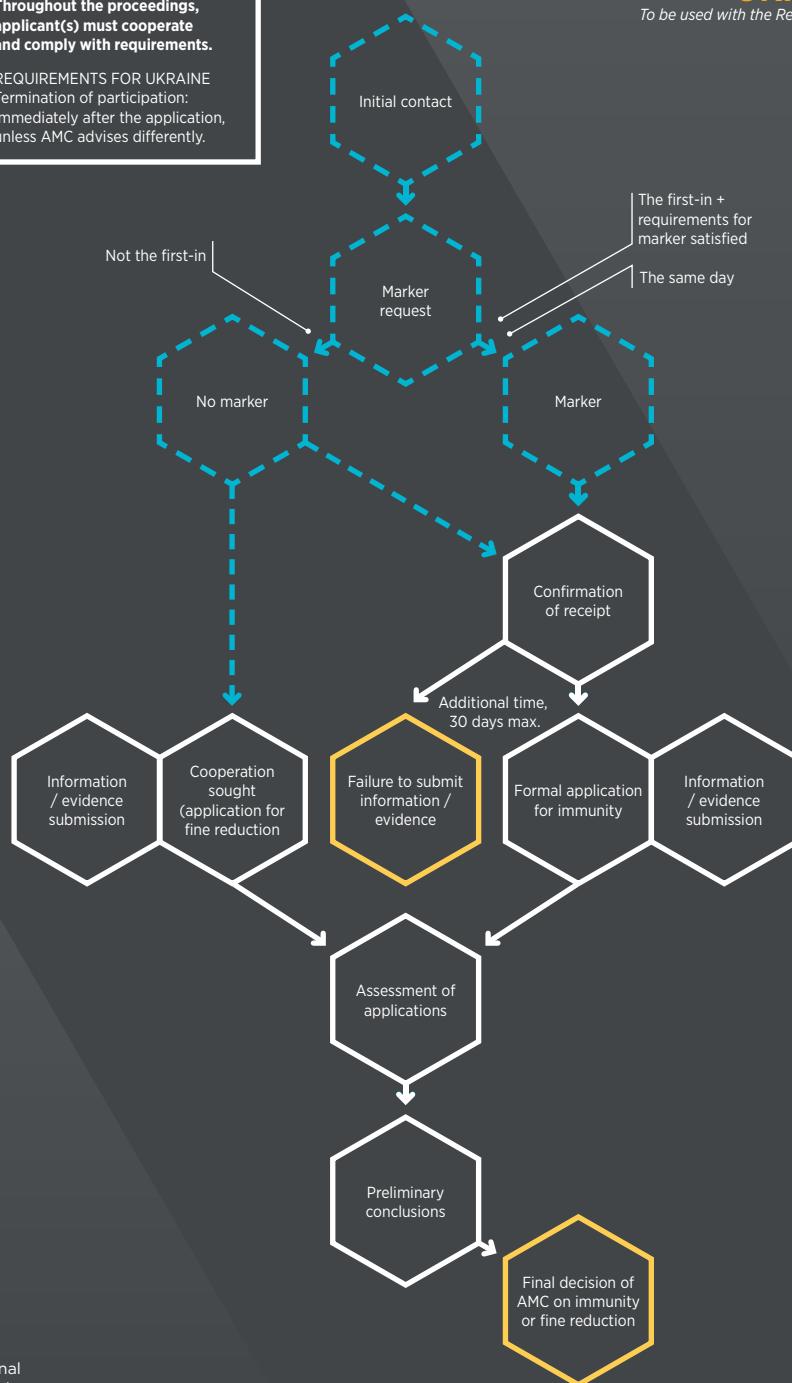
START

UKRAINE

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR UKRAINE
Termination of participation: immediately after the application, unless AMC advises differently.



COUNTRY

United Kingdom

AGENCY

Competition and Markets Authority (CMA)

FAST FACTS

Maximum fines

Undertaking: 10% of a group's worldwide annual turnover

Individual: unlimited

Scope of leniency

Statutory liability (fines), criminal liability, director disqualification
(not civil liability, ie third party actions for damages)

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 100% of the fine for the first-in, up to 50% for subsequent applicants Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Brief description of leniency

The Competition and Markets Authority (**CMA**) in the United Kingdom offers immunity or leniency to undertakings and/or individuals that confess their involvement in a cartel. It can prevent an individual from being prosecuted in England, Wales or Northern Ireland and from being disqualified as a director.

Total immunity from fines will be given to the first undertaking to provide the CMA with evidence of cartel activity before the CMA starts an investigation (Type A Immunity).

At the CMA's discretion, an undertaking may also receive total immunity if it is the first to provide the CMA with evidence of cartel activity after the CMA starts an investigation but before it issues a Statement of Objections (Type B Immunity).

In the same situation as outlined above in relation to Type B Immunity, the CMA can, instead of giving total immunity, choose to grant leniency and reduce the level of the financial penalty by up to 100% (Type B Leniency).

If an undertaking is not the first to come forward or for some other reason does not satisfy the requirements for Type B Leniency, the CMA can reduce the level of financial penalty by up to 50% (Type C Leniency).

Leniency Plus

Yes

How to submit an application

All initial contact should be made by phone
Phone (for all initial contact): +44 20 3738 6833
E-mail: general.enquiries@cma.gsi.gov.uk
Address:
Competition and Markets Authority
25 Cabot Square
E14 4QZAD
London

Available languages

English

Marker

Yes

There is no prescribed form of application for immunity or leniency. In order to obtain immunity or leniency, the applicant must admit that it participated in cartel activity and satisfy a number of other requirements.

Individuals

Individuals may receive a no-action letter from the CMA granting them immunity from prosecution. The CMA may grant a no-action letter if an individual fulfils the requirements, including admitting taking part in the cartel and cooperating completely and continuously throughout the investigation.

Where Type A Immunity is given to an undertaking, blanket immunity is automatically given to all current and former employees and directors who cooperate with the CMA. Where Type B Leniency or Type C Leniency is given to an undertaking, the CMA has a discretion to grant individual immunity to a select number of the current or former employees or directors of the undertaking.

The CMA will not normally apply for a Competition Disqualification Order against any of the current directors of the undertaking that has been given immunity or leniency in relation to the activity to which the immunity or leniency relates.



START

UNITED KINGDOM

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR UNITED KINGDOM

Termination of participation: immediately after the application, unless CMA advises differently.

Initial contact (also on anonymous basis)

Marker request

Marker

Additional time:

Type A Immunity (before commencement of investigation)

Information / evidence submission

Formal application

Type B Immunity / Leniency (after commencement of investigation)

Pre-agreement meeting

Type C Leniency (fine reduction)

Immunity / leniency agreements, no action letters

Shortly prior to issue of Statement of Objections

Continued cooperation until determination of any decision, prosecution or appeal

Key

- Optional
- Mandatory
- Final stage

FAST FACTS

Maximum fines

Undertaking: twice the gain derived from or loss caused by the violation

Individual: imprisonment for 10 years, monetary fine of US\$1 million

Scope of leniency

Criminal liability (only violations of Sherman Act)
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: determined on case-by-case basis

Number of applicants: no limitation

Brief description of leniency

The DOJ has both a corporate leniency policy and an individual leniency policy. Leniency in the United States means that the DOJ will not criminally charge an individual or an undertaking and its current employees for their reported conduct. The leniency programme applies only to the first-in applicant.

There are two types of leniency **Type A Leniency** and **Type B Leniency**. Type A leniency is only available before an investigation has begun. Type B Leniency is available even after an investigation has begun. However, in the latter case the DOJ determines also whether granting leniency would be unfair to others, taking into account how early the undertaking came forward and whether it was the leader and / or originator of the illegal activity. The applicant must confess the wrong-doing. In the case of a company, the wrong-doing must be a corporate act, as opposed to that of an individual executive or officer.

In order to obtain leniency the undertaking must make appropriate restitution. In most cases the DOJ will not require the leniency applicant to make direct restitution to the victims of the violation. The DOJ recognizes that identifying the victims and determining an appropriate restitution amount is difficult and complex. It will be determined through private civil damage litigation.

There is no leniency policy expressly addressing subsequent (later than the first-in) applicants. Details of the cooperation and benefits are determined on a case-by-case basis. Companies that come in earlier and provide more valuable cooperation can obtain greater benefits.

COUNTRY

United States of America

AGENCY

Antitrust Division of the
US Department of Justice (DOJ)

Exclusion

An applicant which initiated or led the activity or coerced others to participate cannot obtain immunity

Leniency Plus

Yes

How to submit an application

An application can be submitted by contacting a DOJ attorney. Most often this process is commenced through a phone call.

Tel: (1) 202 514 3543

Available languages

English

Marker

Yes (only for the first-in applicants)

Affirmative Amnesty occurs when the DOJ discovers potential cartel conduct before anyone has sought immunity. The DOJ then approaches an "insider," discloses the existence of the investigation, and exchanges immunity for the insider's cooperation in exposing the inner workings of the cartel.

There is no uniform leniency proffer. Initial contact with the DOJ is generally conducted orally due to discovery risks in subsequent private damage actions.

If an immunity applicant misrepresents facts or fails to fully cooperate with the DOJ, the DOJ can rescind an immunity agreement.

Individuals

An individual may qualify for immunity even if the undertaking does not seek immunity (Individual Leniency Policy). An individual may qualify for immunity only if the DOJ has not already received information about the illegal activity from another source.

If an undertaking qualifies for Type A Leniency, its current officers, directors, and employees can also qualify for immunity and will not be prosecuted criminally if they admit their involvement in the illegal activity, and cooperate in the investigation. If an undertaking does not qualify for Type A Leniency, individual immunity is considered by the DOJ under the Individual Leniency Policy. In case of second-in and subsequent applicants, benefits for individuals are determined on a case-by-case basis.



START

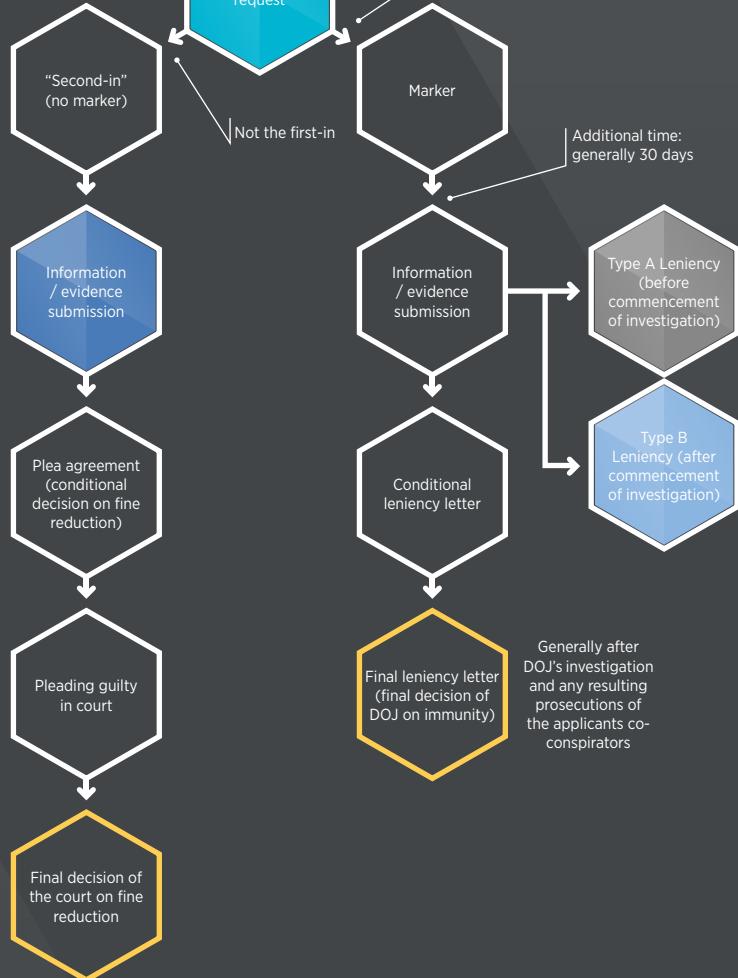
UNITED STATES OF AMERICA

To be used with the Reference Guide

Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR UNITED STATES OF AMERICA
Termination of participation: upon discovery of the activity, unless continued participation is with DOJ's approval.

Possible to keep identity anonymous for a few days while verifying other information



Key

- Optional
- Mandatory
- Final stage

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Caroline Inthavisay, Global Policy Lead—Competition

Are you lost when it comes to leniency?

Marcin Trepka, Baker McKenzie partner in the Global Antitrust and Competition Group simplifies this for you and shares his guidance on how to file a successful leniency application and what risks you should be aware of, particularly in cross-border filings.

Why a leniency is an option worth considering when discovering a risk of cartel behaviour of an undertaking?

First of all, to date, leniency is the only legal way to avoid a significant fine for an antitrust violation. That means that cartel participant reporting itself, and providing evidence of a cartel, can obtain total immunity from a fine or a reduction of such penalty. Secondary, in jurisdictions where also managers may be punished alongside the company for infringement of competition law – they also benefit from a leniency application of a company and can receive immunity from fines. Thirdly, as leniency procedure requires the applicant to cooperate and to provide evidence and in most cases to seize its participation in a cartel, it is also an excellent opportunity to bring the business on the right track and implement an effective compliance programme in the organization. It is a kind of investment that always pays off in the long run.

Could you name the three most essential factors in successfully securing leniency?

More than three factors are impacting the success of leniency; however, the top three would be the following: timing, the scope of application, value of the evidence. In most jurisdictions to obtain full immunity from fines, one must be the first in the queue. One should keep in mind that other cartel members might also consider applying for leniency or already applied. The sooner one applies, the higher chances of the success. It is essential not to miss any part of the violation in the application. Otherwise, one will not be covered by the leniency application in the omitted regard and exposed for fine. Also, in some cases one would not be able to benefit from immunity (i.e. usually if coerced other cartel members to participation). A proper internal investigation helps identify both the scope of a cartel and the evidence, including natural persons involved. The evidence provided should make the cartel violation plausible to at least enable the competition authority to conduct a dawn raid or add value to the investigation. In case of not having all the evidence required, it is worth considering filing for a marker (sometimes also called shorten application) to reserve the place in the queue.

If a cartel covers more than one country, the applicant should apply to each country independently, or is it sufficient to apply to one chosen competition authority?

Unfortunately for the applicants, there is no one-stop-shop leniency system in place. That means that an applicant must apply for leniency in each jurisdiction concerned separately. In such a case, the risk of not being the first in the queue increases. Also, more jurisdictions mean different rules of applying for leniency, including granting markers, evidence thresholds, leniency for individuals, and more. Products like the **ICC Leniency Manual** are an invaluable help in such cases. One can find most jurisdictions in one place with all the requirements presented in a user-friendly way.



Marcin Trepka
Partner
Warsaw

Any new developments regarding leniency programmes worth mentioning?

Although there is no one-stop-shop leniency system, we can observe efforts aiming to unify and harmonise the leniency programmes and competition rules generally at the EU level. In this year the Member States adopted (or will adopt) legal measures to comply with the Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market ("Directive ECN+").

One of the Directive ECN+ issues is leniency, namely that existing differences between the leniency programmes in the Member States lead to legal uncertainty for potential leniency applicants. Therefore, the Directive ECN+ provides for more transparent and harmonised rules for leniency within the EU. As it is still not perfect solution, it is one big step to make applying for leniency less bothersome and increase legal certainty of the applicants. Subsequent editions of the **ICC Leniency Manual** serve the same purpose globally.



"One of the Directive ECN+ issues is leniency, namely that existing differences between the leniency programmes in the Member States lead to legal uncertainty for potential leniency applicants. Therefore, the Directive ECN+ provides for more transparent and harmonised rules for leniency within the EU. As it is still not perfect solution, it is one big step to make applying for leniency less bothersome and increase legal certainty of the applicants. Subsequent editions of the **ICC Leniency Manual** serve the same purpose globally."

Marcin Trepka, Partner, Warsaw



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We are also ranked **#1-ranked firm for cartels globally** and are now the **#3 in the world for merger control**.
Global Competition Review



With over 320 specialist competition lawyers in more than 40 countries, we have deep bench-strength right across Asia, the CIS, Europe, the Middle East, North America as well as Latin America and key jurisdictions in Africa. We are uniquely positioned to assist you globally, regionally and locally – providing robust, coordinated and commercially pragmatic advice wherever you need us.

We are here to support you in your local leniency and cross-border and multi-jurisdictional leniency applications.

ANTITRUST AND COMPETITION

Our Antitrust and Competition Practice handles all types of cases before the antitrust authorities (i.e., the COFECE and the IFT) and competent courts, from pre-merger filings, to investigations, administrative procedures, constitutional (Amparo) proceedings, as well as leniency applications. Our Firm represents clients in the most relevant investigations for alleged absolute monopolistic practices (cartels), illicit mergers, relative monopolistic practices (abuse of dominant position) and essential facilities and market investigation cases. We also devote substantial time in advisory on the compliance by clients with Mexican competition laws with respect to their operations, including advocacy work and mock dawn raids and internal investigations. As a significant portion of our work relates to cross-border deals, we continuously work as co-counsel with the most prestigious international and global law firms.

Our Client



During last year, our antitrust practice participated in 58 merger control filings (over 30% of all merger review cases in 2019), 13 investigations (considering both cartel and abuse of dominance investigations) and several court appeals challenging both procedural aspects and final decisions by the Competition Commission.

Additionally our team has participated in all major merger control cases involving digital platforms.

50% FEDERAL INSTITUTE OF TELECOMMUNICATIONS

35% FEDERAL ECONOMIC COMPETITION COMMISSION

SELECTED CLIENTS



“

“I would recommend them for international cross-jurisdictional antitrust matters,” adding: “They have a special sense of urgency, which makes them unique; the lawyers work directly with the client from the minute you contact them, and are there for whatever you need.”

Chambers and Partners

“The full-service Firm is an important player in the sector, predominantly handling pre-merger clearance for a wide range of high-profile clients.”

Legal 500

“They approach every single issue with the same level of professionalism, whether it's super complex or simple.”

Chambers and Partners

“Creel is one of only two full-service Firms able to compete with the antitrust boutiques in Mexico.”

Latin Lawyer

“This full-service Firm continues to carry out a high volume of merger control filings on behalf of an impressive portfolio of international clients. The Firm has also been busy advising clients from the manufacturing and technology industries in cartel investigations and has a growing presence in antitrust cases.”

Chambers and Partners

”

SELECT CASES

Successfully representing in challenging **COFECE's** first ever case on essential facilities related to landing and takeoff slots in Mexico City's International Airport ("AICM", a saturated airport).

Counsel to **Luxottica** and **Essilor International** in the establishment of a single economic management of their businesses.

Counsel to **AT&T** in its acquisition of DirecTV, Nextel and Time Warner.

Counsel **KKR & Co. L.P.** of the acquisition by KKR & Co. L.P. (indirectly, through wholly owned subsidiaries) of certain shares, companies and assets comprising the baking, cooking and spreads businesses of Unilever N.V. and Unilever PLC.

Counsel to **Sanofi** in connection to the direct or indirect acquisition by Sanofi of Boehringer's Human Healthcare Business; the transaction was structured as a swap.

Successfully representing **Delta** in the constitutional appeal challenging the Mexican Federal Economic Competition Commission's designation of Mexico City's International Airport as an essential facility.

Counsel to **Delta** in the pre-merger filing regarding the cooperation agreement with Aeromexico.

Counsel to **Delta** in the pre-merger filing regarding the acquisition of 49% of Grupo Aeromexico.

Counsel to **China National Agrochemical Corporation** in connection to the acquisition of control by ChemChina (directly or indirectly through China National Agrochemical Corporation) of Syngenta, by means of a public tender offer for all public held registered shares of Syngenta AG.

Counsel to **Nokia Corporation** and **Alcatel-Lucent** in connection to the acquisition by Nokia of sole control over Alcatel-Lucent.

Counsel to both **Uber** and **Cornershop** in the first transaction among digital platforms reviewed by COFECE regarding the acquisition of the majority of shares of Cornershop on a fully diluted basis.

PRACTICE RECENT AWARDS & RANKINGS



BAND 1



ELITE



TIER 1



THE TEAM

The team is comprised of 5 Partners, 1 Counsel and a large group of knowledgeable lawyers.



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Competition and Antitrust

Kroll can support firms operating across the globe, and those going before antitrust and competition authorities worldwide. Our experts include economists, accountants, investigative specialists and technologists. Kroll has a full-service competition advisory, investigation and litigation offering, with considerable experience in supporting clients from pre-investigation phase through the full course of competition or market inquiries led by a relevant authority, and subsequently through the course of any third-party damages claims.

Kroll also supports clients with proactive or reactive antitrust and competition matters. Our team helps clients understand the situation they are facing and assists them in making confident and well-founded decisions when dealing with complex competition-related situations, including proactive non-technical risk assessments, support during disputes and regulatory actions.

Advisory and compliance



Inquiry and investigation support



Appeal support



Third-party damages claims



Competition advisory and compliance services

Kroll can support clients, alongside legal experts, in developing compliance programs to ensure that they remain on the right side of antitrust rules. In this respect, Kroll can undertake risk assessments, develop strategies—be they short-term or long-term—to ensure compliance with rules, and help implement monitoring and reporting procedures.

The Kroll team can also proactively assist with information and intelligence gathering, which may support mergers, and in evaluating competition landscapes.

Competition inquiries, investigations and appeals

Kroll can assist clients and appointed counsel with all aspects of an investigation or probe, including day-to-day engagement with the authority, collation of materials to be provided in response to information requests, preparation of team members for hearings, intelligence gathering to support the evidence base and drafting of responses, as required.

Kroll has a unique evidence-based investigative methodology, including bespoke and proprietary information-gathering tools and an extensive global human intelligence network. The team can leverage its expertise, global reach and technology to provide clients with an informational advantage. A deeper and more refined information set supported by contextual intelligence results, enabling us to apply the most appropriate methodology to each investigation to deliver efficient, effective results.

Kroll's experts are also able to assist clients in respect of analyses and evidence gathering needed to support the substantive issues of cases. Kroll brings to bear

relevant expertise as may be needed on economic and accounting aspects, and in relation to investigation support. For example:

- Undertaking market delineation exercises to circumscribe the market under consideration
- Modeling demand and markets, and undertaking market power assessments (e.g., using a small but significant and non-transitory increase in price, or SSNIP, test)
- Assessing anti-competitive agreements or abusive conduct (e.g., margin squeeze, predation, unlawful discounts or undue price discrimination)
- Supporting clients through merger clearances, due diligence and undertaking merger simulation modelling
- Supporting clients through market investigations, including assessing efficiency issues
- Assessing the provision and lawfulness of state aid.

Competition damages claims

Kroll's experts can advise clients in respect of competition damages claims, including in relation to the quantification of overcharges, also referred to as price inflation, and the passing-on of any effects to parties along the supply chain.

Kroll's accountants have significant experience in providing accounting and financial expert evidence for both claimants and defendants in a wide range of competition law disputes. Our knowledge of and experience in how businesses operate underpins our ability to provide robust expertise relating to commercial and trading issues. Kroll economists can also model market impacts and the range of competitive effects of practices that may have been found to be an abuse of a dominant position.

Kroll's experts may also assist with claimant identification, for example, deploying investigative skills to identify users or claimants who may have been affected by anti-competitive conduct or abusive behavior.

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About Kroll

Kroll provides proprietary data, technology and insights to help our clients stay ahead of complex demands related to risk, governance and growth. Our solutions deliver a powerful competitive advantage, enabling faster, smarter and more sustainable decisions. With 5,000 experts around the world, we create value and impact for our clients and communities. To learn more, visit www.kroll.com.

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ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere.

Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services.

Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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ICC GLOBAL COMPETITION COMMISSION

The ICC Global Competition Commission intends to remain one of the leading voices of business in global competition policy and to develop practical tools and guidance to help companies of all sizes in their daily activities. It also identifies key issues in competition policy facing the international business community and contributes the business voice to resolve these. The commission gathers over 300 leading experts in the field of Antitrust from 42 countries, working together to develop cutting-edge policy for business. As such, the Commission is recognised as a venue for exchange and innovation, and regularly shares the voice of business on antitrust issues with intergovernmental forums such as the European Commission, ICN, OECD as well as national antitrust regulators.

