

NOTICE ON THE NON-IMPOSITION AND REDUCTION OF FINES UNDER SECTION 15 OF LAW NO. 287 OF 10 OCTOBER 1990

Scope of application

1. This Notice applies to secret cartels, including those concluded in the context of public tender procedures, with particular reference to the fixing of purchase and selling prices, the limitation of production or sales and the sharing of markets.

Non-imposition of fines

2. The Authority shall not impose the fines provided by section 15(1) of Law no. 287/90 for infringements of section 2 of Law no. 287/90 or Article 81 of the EC Treaty, to the undertaking who is the first to submit voluntarily to the Authority information or evidence as to the existence of an agreement pursuant to paragraph (1) of this Notice, provided that the following cumulative conditions are met:

- a) in the opinion of the Authority, with reference to the nature and the quality of the elements submitted by the applicant, such information or evidence is decisive for the finding of an infringement, possibly through a targeted inspection;
- b) the Authority did not already have sufficient information or evidence to prove the alleged infringement;
- c) the other conditions attached to leniency pursuant to paragraph (7) of this Notice are met.

3. Any undertaking intending to apply for the non-imposition of fines pursuant to paragraph (2) of this Notice, should normally provide the Authority with the following:

- a) the name and the address of the applicant;
- b) the names and the addresses of the other parties to the alleged agreement;
- c) a detailed description of the agreement in question, which shall include:
 - the nature of the agreement, its aims and its functioning;
 - the products and services concerned, the geographic scope and the duration of the agreement;
 - the dates, locations and contents of the contacts between the parties to the agreement, and the names of the individuals who have been involved in such contacts;
 - the names and positions of the individuals, including the applicant's employees and agents, who to the applicant's knowledge are or have been involved in the agreement;
- d) all evidence relating to the alleged agreement in possession of the applicant or available to it, including any explanations and clarifications necessary to understand its relevance;
- e) information on any other applications for the non-imposition or reduction of fines which the undertakings has already submitted, or intends to submit, to other Competition Authorities in relation to the same agreement.

Reduction of fines

4. Undertakings which provide the Authority with evidence of an infringement pursuant to paragraph (1) of this Notice may qualify for a reduction, normally not exceeding 50%, of the fines which would otherwise be imposed under section 15(1) of Law no. 287/90 for infringements of section 2 of Law no. 287/90 or Article 81 of the EC Treaty. In order to qualify, the submitted evidence must significantly strengthen, by its very nature or its level of detail, the evidence already in the possession of the Authority, thereby appreciably contributing to the Authority's ability to prove the alleged infringement. The other conditions attached to leniency pursuant paragraph (7) of this Notice must also be met.

5. In order to determine the appropriate level of reduction of the fine, the Authority will take into account the following:

- a) the timeliness of the cooperation provided by the undertaking, in relation both to the stage of the proceedings and the level of cooperation provided by other undertakings;
- b) the evidentiary value of the material submitted.

6. In any case, if the evidence submitted enables the Authority to establish new and additional facts which have a direct bearing on the amount of the fine, even as aggravating circumstances, these facts shall not be taken into account by the Authority when setting the fine to be imposed on the undertaking which provided such evidence.

Conditions attached to leniency

7. In order to qualify for leniency under paragraphs (2) and (4) of this Notice, the following cumulative conditions must be satisfied:

a) the applicant must immediately end its involvement in the alleged cartel following its application pursuant to paragraph (8) of this Notice. However, the Authority can request or allow the undertaking not to suspend some of its activities in the agreement, whenever this is deemed necessary to preserve the integrity of the Authority's inspections;

b) the undertaking must cooperate fully and on a continuous basis with the Authority throughout the proceedings, and in particular it must:

- promptly provide the Authority with all relevant information and evidence that come into its possession;
- remain at the Authority's disposal to answer promptly to any request that may contribute to the establishment of the relevant facts;
- take any action to ensure that its current employees - and, as far as possible, its former employees – can be summoned and heard by the Authority if necessary;
- refrain from destroying, altering or concealing any relevant information or evidence;
- refrain from disclosing to anyone the fact or the content of a leniency application before the Authority has notified the statement of objection pursuant to article 14 of Presidential Decree no. 217 of 30 April 1998, unless otherwise agreed by the Authority;

c) when contemplating the filing of a leniency application, the undertaking must not inform anyone of such intention, except other Competition Authorities.

Filing the leniency application

a) General rules

8. Any undertaking wishing to benefit from the non-imposition or the reduction of the fines must submit an application to the Authority, including all relevant information and evidence. The Authority provides, upon request of the applicant, an acknowledgement of receipt confirming the date and time of the application. Leniency applications in relation to the same agreement shall be assessed by the Authority in the order of receipt. Access to any evidence submitted by the applicant may be deferred pursuant to article 13(10) of Presidential Decree no. 217 of 30 April 1998.

9. Before filing a leniency application, an undertaking may approach the Authority even on an anonymous basis in order to seek guidance on this Notice.

10. Upon receiving a properly reasoned request from the applicant, the Authority may allow oral applications. In such cases, any statements made by applicant's representatives shall be recorded on an appropriate medium and transcribed at the Authority's premises. Undertakings making oral statements will still be required to submit all documentary evidence pursuant to paragraph (3) of this notice. Access to oral statements made by the applicant's representatives is deferred pursuant to article 13(10) of Presidential Decree no. 217 of 30 April 1998 until the notification of the statement of objections.

b) Assessment of applications for the non-imposition of fines

11. If the Authority finds that the conditions for the non-imposition of fines set in paragraph (2) of this Notice are not met, it rejects the application and informs the applicant. In this case, the undertaking may request the Authority to consider its application for a reduction of fines, pursuant to paragraph (4) of this Notice, or withdraw the evidence submitted together with its application.

12. If the Authority finds that the conditions for the non-imposition of fines set in paragraph (2) are met, it accepts the application with a decision conditional upon the undertaking's compliance with the conditions attached to leniency pursuant to paragraph (7) of this Notice. The Authority will take its final position on the non-imposition of fines in the decision issued pursuant to article 14(9) of Presidential Decree no. 217 of 30 April 1998.

13. If the Authority, having accepted the application with a conditional decision, finds that the conditions attached to leniency pursuant to paragraph (7) of this Notice are not satisfied, it shall promptly inform the applicant thereof. Failure to comply with the conditions attached to leniency pursuant to paragraph (7) shall disqualify the undertaking from any benefits provided by this Notice in relation to the agreement in question.

c) Assessment of applications for the reduction of fines

14. The Authority shall inform the undertaking of its assessment of the application. If the Authority finds that the conditions for the reduction of fines set in paragraph (4) of this Notice are not met, the applicant can withdraw the evidence submitted together with its application. Acceptance of the application for the reduction of fines is in any event conditional upon the undertaking's compliance with all the conditions attached to leniency set in paragraph (7) of this Notice. If the Authority finds that such conditions are not satisfied, it shall promptly inform the applicant thereof. The Authority will take its final position on the level of reduction of fines in the decision issued pursuant to article 14(9) of Presidential Decree no. 217 of 30 April 1998.

Requesting a marker

15. The Authority, upon receiving an adequately reasoned request from an undertaking wishing to apply for the non-imposition of fines, may set a deadline for the completion of the application, in order to enable the undertaking to acquire all the evidence required pursuant to paragraph (3). To this purpose, when filing the request for a marker, the undertaking shall provide the Authority with at least the following:

- a) the name and the address of the applicant;
- b) the names and the addresses of the other parties to the alleged agreement;
- c) a description of the agreement in question, which shall include:
 - clarifications as to the nature of the agreement;
 - the products and services concerned, the geographic scope and the duration of the agreement;
- d) information on any other applications for the non-imposition or reduction of fines which the undertakings has already submitted, or intends to submit, to other Competition Authorities in relation to the same agreement.

If the application is perfected within the set period, it will be deemed to have been submitted in its entirety on the date when the deadline was set. The evidence submitted by the applicant together with its request for a marker may otherwise be assessed pursuant to paragraph (4) of this Notice.

Summary applications

16. In cases where the European Commission is particularly well placed to deal with a case and conduct the proceedings, the applicant that has or is in the process of filing an application for immunity with the Commission may file a summary application for the non-imposition of fines with the Authority, whenever the applicant considers that the Authority might be well placed to act upon the case. Pursuant to paragraph 14 of the Commission Notice on cooperation within the Network of Competition Authorities, the European Commission is particularly well placed if one or several agreements or practices, including networks of similar agreements or practices, have effects on competition in more than three Member States.

17. Summary applications for the non-imposition of fines shall include at least the following:

- a) the name and the address of the applicant;

- b) the names and the addresses of the other parties to the alleged agreement;
- c) a description of the agreement in question, which shall include:
 - clarifications as to the nature of the agreement;
 - the products and services concerned, the geographic scope and the duration of the agreement;
- d) an indication of the Member States where the evidence of the infringement is likely to be located;
- e) information on any other applications for the non-imposition or reduction of fines which the undertakings has already submitted, or intends to submit, to other Competition Authorities in relation to the same agreement.

18. The Authority provides, upon request of the applicant, an acknowledgement of receipt confirming the date and time of the summary application and informs the applicant whether the benefit of the non-imposition of fines is in principle still available with reference to the agreement in question. If the Authority considers it appropriate to request specific further information, it shall set the deadline by which the applicant is required to provide such information. If the Authority decides to act upon the case, it shall set a deadline for the completion of the application, in order to enable the undertaking to submit the information and evidence required pursuant to paragraph (3). If the application is perfected within the set period, it will be deemed to have been submitted in its entirety on the date when the summary application was made. In this case, paragraphs (11) to (13) of this Notice shall apply.