

Government of the Republic of Croatia

Pursuant to Article 65 paragraph (4) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 11 November 2010, adopted the following

REGULATION ON IMMUNITY FROM FINES AND REDUCTION OF FINES

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

(1) This Regulation shall stipulate the criteria which the Croatian Competition Agency (hereinafter: the Agency) shall take into account before it takes its decision on immunity from fines or its decision on reduction of fines applicable to undertakings parties to a prohibited horizontal agreement (hereinafter: parties to a cartel and cartel members) within the meaning of Article 65 of the Competition Act (hereinafter: Act).

(2) The objective of granting immunity from fines or reduction of fines referred to in paragraph (1) of this Article is to encourage undertakings cartel members to come forward and provide information on the existence of a cartel to the attention of the Agency.

Definitions

Article 2

For the purpose of this Regulation:

- a) “fines” mean sanctions imposed on undertakings who have been found by the Agency to infringe the provisions of Articles 61 to 63 of the Act;
- b) “cartels” are, by definition, secret and prohibited horizontal agreements entered into between two or more independent undertakings, or decisions by associations of undertakings or concerted practices of undertakings at the same level of production or distribution chain, which have as their object distortion of competition between competitors, whereas cartel members may agree on such matters as purchase or sale prices, allocation of markets allocation of customers, limit total industry output and/or sales and technological development, bid-rigging and similar, which harm the consumers thorough higher prices and less choice of goods and/or services;
- c) “originator or leader” means an undertaking who has taken active steps involving conception, planning and running of a cartel and who actively participated in its implementation. Undertakings which merely took part in prearrangements with and solicitation of competitors will not qualify as originators in the sense of this Regulation.

- d) “instigator or coercer” means an undertaking who has taken active steps to coerce other undertakings - its competitors in illegal activity or compelled other undertakings to subsequently take part in the cartel, in particular by using direct or indirect methods of coercion or threat;
- e) “undertakings” are persons defined under Article 3 of the Act;
- f) “surprise inspection” means inspection of the business and other premises, land and means of transport;
- g) “application” means leniency application – application for immunity from or reduction of the fine which is submitted to the Agency by the undertaking – party to a cartel in line with the provisions of the Act and this Regulation;
- h) “statement of objections” means a statement issued by the Agency based on the preliminary findings in the case;
- i) “corporate statement” means a statement, which may take the form of a written document signed by or on behalf of the undertaking or be made orally, containing presentation to the Agency of the undertaking's knowledge of a cartel and its role and participation therein. Statement relating to the alleged cartel must be made by a responsible person of the undertaking – party to a cartel or by its legal representative.

II GENERAL CRITERIA FOR GRANTING IMMUNITY FROM OR REDUCTION OF FINES

Article 3

- (1) The Agency will grant immunity from any fine which would otherwise have been imposed to an undertaking – party to a cartel who first comes forward disclosing its participation in an alleged cartel if that undertaking is the first to submit information, facts and evidence which enables the Agency to open the proceeding, or, who first comes forward and submits evidence that enables the Agency to find an infringement of the provisions of the Act where the Agency has already initiated the proceeding but has not had enough evidence to close this proceeding and take a decision on infringement.
- (2) Undertakings – parties to a cartel disclosing their participation in an alleged cartel that do not meet the conditions under paragraph (1) of this Article may be eligible to benefit from a reduction of any fine that would otherwise have been imposed. In order to qualify, an undertaking must provide the Agency with enough evidence of the alleged infringement which represents significant added value with respect to the evidence already in the Agency's possession.
- (3) The Agency may act in line with Articles (1) and (2) of this Article only on the basis of an application of the undertaking – party to a cartel for immunity from and/or reduction of the fine provided that the cumulative conditions set out in paragraph (4) of this Article are met.
- (4) Regardless of the fact if the undertaking makes its application for immunity from or reduction of fines, in both cases to qualify for any immunity from a fine all the following conditions must be met throughout the procedure carried out by the Agency:

1. The undertaking must cooperate genuinely, fully, on a continuous basis and expeditiously from the time it submits its application referred to under paragraph (3) of this Article;
2. The undertaking must end its involvement in the cartel immediately following its application to the Agency referred to under paragraph (3) of this Article, except for what would, in the Agency's view, be reasonably necessary to preserve the integrity of the surprise inspections under Article 42 and/or Article 44 of the Act;
3. When contemplating making its application to the Agency, the undertaking must not have destroyed, falsified or concealed evidence of the cartel nor disclosed the fact or any of the content of its contemplated application to the Agency.

(5) Genuine, full and continuous cooperation with the Agency referred to under paragraph (4) point 1 of this Article includes the obligation of the undertaking to submit accurate, complete and clear and not misleading data. This includes in particular:

1. providing the Agency promptly with all relevant information and evidence relating to the cartel that comes into its possession or is available to it;
2. remaining at the Agency's disposal to answer promptly to any request that may contribute to the establishment of the facts;
3. making current (and, if possible, former) employees which may have knowledge on a cartel available for interviews with the Agency;
4. not disclosing the fact or any of the content of its application before the Agency has issued a statement of objections in the case in line with Article 48 of the Act.

(6) An originator or coercer may not be granted immunity from fines.

III Criteria for granting immunity from fines

Article 4

(1) The Agency will grant immunity from any fine which would otherwise have been imposed to an undertaking disclosing its participation in a cartel if that undertaking – party to a cartel is the first to make the application referred to under Article 3 paragraph (3) of this Regulation, where the Agency's findings indicate that this application enables it to:

(a) carry out a surprise inspection referred to under Article 42 and/or Article 44 of the Act; or

(b) find an infringement in connection with the cartel, in other words, the conclusion of a prohibited horizontal agreement within the meaning of Article 8 of the Act.

(2) In the sense of paragraph (1) of this Article the undertaking must provide the Agency with the following documents as a constituent part of the application:

1. A corporate statement (statement on the participation in a cartel), and
2. Information, facts and other evidence in the possession of the applicant at the time of the submission, which relate to the cartel concerned and which originate from the time of the duration of the cartel.

(3) By way of derogation from paragraph (2) of this Article, the information evidence listed above will be provided to the Agency, to the extent that this, in the Agency's view, would not jeopardize the surprise inspections referred to under Article 42 and/or 44 of the Act.

Corporate statement

Article 5

(1) A corporate statement referred to under Article 4 paragraph (2) point 1 of this Regulation is a statement, made in a written form or orally, containing presentation to the Agency of the existence of a cartel and its role and participation therein.

(2) A corporate statement referred to in paragraph (1) of this Article shall be filed in the case and represents its constituent part.

(3) A corporate statement referred to under paragraph (1) of this Article may be made by the undertaking – party to the cartel, its responsible person or lawyers duly authorised to act.

(4) Within the meaning of Article 4 paragraph (2) point 1 a corporate statement, in so far as it is known to the applicant at the time of the submission, shall include:

1. A detailed description of the cartel arrangement, including its aims, activities and functioning; the products and/or services concerned, the estimated market share affected by the cartel, the affected geographic scope, the duration of the cartel, the specific dates, locations, content of and persons – participants in cartel contacts, and all relevant explanations in connection with the pieces of evidence provided in support of the application;
2. The name and address of the legal entity submitting the immunity application as well as the names and addresses of all the other undertakings that participate(d) in the cartel;
3. The names, positions, office locations of the employer and, where necessary, home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the cartel, including those individuals which have been involved on the applicant's behalf;
4. Information as to which other competition authorities, inside or outside the EU, have been approached by the applicant or are intended to be approached in relation to the cartel subject of the application.

Article 6

Oral corporate statements in the sense of Article 5 paragraph (1) of this Regulation shall be recorded and transcribed at the Agency's premises. The typescript forms part of the Agency's file.

Access to corporate statements

Article 7

(1) Access to corporate statements shall be granted by the Agency only to the parties to the proceeding, and after the receipt of the statement of objections referred to under Article 48 of the Act.

(2) Access to the file referred to in paragraph (1) of this Article shall be granted by the Agency provided that the parties to the proceeding, i.e. its legal representatives getting access on their behalf, commit not to make any copy by mechanical or electronic means of any information in the corporate statement to which access is being granted and to ensure that the information to be obtained from the corporate statement will solely be used for the purposes of judicial or administrative proceedings in the matter of competition concerns at issue in the related administrative proceedings and in judicial proceedings against the decision of the Agency.

(3) Where the parties to the proceeding or their legal representatives fail to comply with the obligation on restricted use of the content of the corporate statement within the meaning of paragraph (2) of this Article, the Agency may be regarded, depending on the circumstances of each individual case, as refusal to cooperate with or as obstruction of the Agency in carrying out its investigation within the meaning of Article 64 paragraph (5) point 2 of the Act.

(4) Should the applicant or persons acting on its behalf reveal the content of the corporate statement referred to under Article 5 of this Regulation to third persons, the obligation imposed on the parties to the proceeding relating to restrictive use of the content of the corporate statement to which access has been granted in the sense of paragraph (2) of this Article expires.

Criteria for granting immunity from fines before a surprise inspection is carried out

Article 8

(1) Immunity from the fine will be granted to the undertaking who submitted the application for immunity before the surprise inspection is carried out provided that the following criteria are cumulatively met:

1. the applicant is an undertaking – party to a cartel who came forward first in line with Article 4 of this Regulation, whereas the Agency established, after it had received and assessed the application, that the submitted information, facts and evidence attached to the application for immunity are sufficient to carry out a surprise inspection referred to under Article 42 and/or Article 44 of the Act;
2. at the time of the submission the Agency did not have sufficient evidence to carry out a surprise inspection, or it did not have the relevant grounds to make a request to the Administrative Court of the Republic of Croatia to issue a warrant authorizing the Agency to carry out a surprise inspection under Article 42 and/or Article 44 of the Act, and
3. general criteria for immunity from fines under Article 3 paragraph (4) of this Regulation are met.

(2) The risk relating to the assessment of evidence sufficient to carry out a surprise inspection under paragraph (1) point 1 of this Act shall be borne by the Agency, without taking into account whether a given surprise inspection has or has not been successful, regardless of the reasons. In other words, unsuccessfulness of the surprise inspection may not be the reason for non-adoption of the immunity decision referred to under paragraph (1) of this Article.

Criteria for granting immunity from fines after the surprise inspection has been carried out

Article 9

(1) Immunity from the fine may be granted to an undertaking after a surprise inspection has been carried out, only provided that no undertaking complies with the criteria that must be fulfilled to be granted immunity from the fine pursuant to Article 8 of this Regulation.

(2) In the case referred to in paragraph (1) of this Article the following criteria must be cumulatively met:

1. the applicant is an undertaking – party to a cartel who came forward first in line with Article 4 of this Regulation, whereas the Agency established, after it had received and assessed the application, that the submitted information, facts and evidence attached to the application for immunity are sufficient to find an infringement – conclusion of a prohibited horizontal agreement within the meaning of Article 8 of the Act;
2. at the time of the submission the Agency did not have sufficient evidence to take a decision on an infringement – existence of a cartel or to close a proceeding , and
3. general criteria for immunity from fines under Article 3 paragraph (4) of this Regulation are met.

Article 10

(1) Within the meaning of Article 3 paragraph (3) of this Regulation, an undertaking – party to a cartel may apply to the Agency for immunity from fines provided that conditions under Article 4 or Article 5 are met. The undertaking may either initially apply for a marker and the Agency may grant a marker protecting an immunity applicant's place in the queue for a specified period within which the applicant has to perfect the marker within the meaning of Article 4 or Article 5 of this Regulation. In this case the date on which a marker was granted shall be considered the date of submission of application for immunity from fines.

(2) As a rule, the Agency shall disregard the application for immunity or the application for a marker referred to under paragraph (1) of this Article if these have been submitted after the statement of objections referred to under Article 48 of the Act has been issued.

Granting a marker

Article 11

(1) To be eligible to secure a marker an undertaking – applicant for a marker referred to under Article 7 paragraph (1) of this Regulation shall provide the Agency with justifications relating to his inability to submit all information, facts and evidence to the Agency referred to under Article 4 or Article 5 of this Regulation which are considered necessary criteria to be fulfilled in order to be granted immunity from fines.

(2) The application referred to in paragraph (1) of this Article must include the following:

1. information on the applicant, its name and address;
2. the parties to the cartel,
3. the relevant product and geographic market in the sense of Article 7 of the Act,
4. the estimated duration of the cartel,

5. the nature of the cartel conduct, and
6. information on other past or possible leniency applications or request for a marker referred to under Article 7 paragraph (1) of this Regulation to other competition authorities in relation to the cartel in EU Member States or outside EU.

(3) The Agency may, in justified cases, grant a marker pursuant to paragraph (1) of this Article, and determine the period within which the applicant has to perfect the market by submitting the relevant information, facts and evidence referred to under Article 4 or Article 5 of this Regulation.

(4) If the applicant perfects the marker within the period set by the Agency as referred to under paragraph (3) of this Article, submits the requested information, facts and evidence, the provided information, facts and evidence will be deemed to have been submitted on the date when the marker was granted by the Agency. The Agency will issue an acknowledgement of receipt thereof in line with Article 9 of this Regulation.

(5) If the undertaking does not act in line with paragraph (4) of this Article, the application for immunity from fines shall be deemed not to be made. In such a case the Agency may freely use all submitted evidence from the attachment to the request for a marker and shall inform thereof the undertaking concerned in writing.

Acknowledgement of receipt

Article 12

The Agency shall issue an acknowledgement of receipt of the undertaking's application for immunity from fines referred to under Article 4 or Article 5 of this Regulation in which it shall confirm the date and, where appropriate, time of application.

Sequence of decision making

Article 13

The Agency shall not take any decisions on the applications for immunity from fines or requests for a marker relating to the same cartel as long as it has taken the decision whether to grant immunity from fines or secure a marker concerning the first submitted application for immunity or request for a marker submitted in the case concerned.

Granting conditional immunity from fines

Article 14

(1) Once the Agency has received the application referred to under Article 9 of this Regulation, it shall verify that the information and evidence submitted meet the conditions for granting immunity from fines set out in Article 4 or Article 5 of this Regulation.

(2) Where the Agency establishes that the criteria set out in paragraph (1) of this Article are satisfied, it will inform the undertaking in writing that the undertaking concerned has been granted conditional immunity from fines.

Refusal to grant conditional immunity from fines

Article 15

(1) If it becomes apparent that immunity is not available or that the undertaking failed to meet the conditions for immunity from fines set out in Article 4 or Article 5 of this Regulation, the Agency will inform the undertaking in writing.

(2) In a case set out in paragraph (1) of this Article, the undertaking may withdraw the evidence referred to in Article 4 and Article 5 of this Regulation which was submitted in the attachment for the purposes of its immunity application, or it may apply for a reduction of a fine.

(3) The withdrawn evidence referred to under paragraph (3) of this Article may not be directly used by the Agency but this does not prevent the Agency from using its normal powers of investigation in order to obtain this evidence in the procedure of establishing distortions of competition and from collecting other relevant facts of the case in the course of the investigation.

Article 16

(1) If at the end of the administrative procedure, the undertaking who has been granted conditional immunity from fines as referred to under Article 14 of this Regulation has met the conditions set out in Article 3 paragraphs (4) and (5) of this Regulation, the Agency will grant it immunity from fines in the relevant decision.

(2) If the undertaking does not act in line with paragraph (1) of this Article, in other words if after having acted in the sense of Article 14 of this Regulation the Agency at any point of the procedure finds that the undertaking has not met the conditions set out in Article 3 paragraphs (4) and (5) of this Regulation, the Agency shall withhold the conditional immunity from fines that has been previously granted and shall urgently inform the undertaking thereof in writing.

(3) In the case referred to in paragraph (2) of this Article the Agency cannot grant the undertaking concerned a reduction of a fine in the sense of this Regulation.

IV REDUCTION OF A FINE

General requirements to qualify for reduction of a fine

Article 17

(1) The Agency may grant a reduction of a fine to the undertakings – parties to a cartel who make an application for a reduction of a fine within the meaning of Article 3 paragraph (3) of this Regulation.

(2) The undertaking wishing to benefit from a reduction of a fine shall submit to the Agency as a constituent part of the application referred to under paragraph (1) the following:

1. corporate statement disclosing its participation in a cartel, and
2. additional compelling evidence of the cartel which represent, in the opinion of the Agency, significant added value with respect to the evidence already in Agency's possession, an which are decisive in the establishment of the infringement.

(3) Articles 5, 6, and 7 of this Regulation shall apply accordingly also to the corporate statement referred to in paragraph (2) point 1 of this Article.

(4) A formal application can be made by any undertaking – party to a cartel wishing to benefit from a reduction of a fine referred to in paragraph (1) of this Article who, to qualify for a reduction of a fine, must submit additional compelling evidence which represents significant added value in line with paragraph (2) point 2 of this Article. The reduction of a fine shall depend on the time of application of a particular cartel member to the Agency, within the meaning of Article 19 paragraphs (3) to (5) of this Regulation.

(5) “Any undertaking” as referred to in paragraph (4) of this Article means both the originator and instigator, although they cannot be granted immunity from fines in the sense of Article 3 paragraph (6) of the Regulation.

(6) As a rule, the Agency shall refuse the application referred to under paragraph (1) of this Article if it was submitted after the submission of the corporate statement under Article 48 of the Act.

(7) Provided that all the conditions for a reduction of a fine in the sense of this Regulation have been met, the Agency shall in its decision taken at the end of the proceeding in the case concerned determine the level of reduction of a fine an undertaking will benefit from, relative to the fine which would otherwise be imposed pursuant to the Act.

Acknowledgement of receipt of the application and sequence of decision making

Article 18

(1) The Agency shall provide an acknowledgement of receipt of the undertaking’s application for a reduction of a fine referred to under Article 17 of this Act, stating the date and, where appropriate, time of the submission.

(2) The Agency will not take any position on any subsequent submissions of an application for a reduction of a fine in the same cartel before it has taken a position on the first submitted application in relation to the same cartel.

Additional conditions for reduction of a fine

Article 19

(1) Additional compelling evidence referred to under Article 17 paragraph (2) point 2 of this Regulation means evidence which represents added value in the sense that without the evidence in question the Agency would not have been able to disclose a cartel or would have disclose it, but mach later in time.

(2) In this assessment, after it has received the application for reduction of a fine, the Agency shall consider any submitted evidence. Incriminating evidence directly relevant to the facts in question, such as written statements, writings and e-mail correspondence between the cartel members, and other written documents relevant for the establishment of the facts and circumstances of the case and duration of a cartel will generally be considered to have a greater added value than evidence

with only indirect relevance, such as statements of the cartel members which require corroboration if contested.

(3) The Agency will determine the level of reduction for the first undertaking to provide significant added value: a reduction of 30-50 %.

(4) The Agency will determine the level of reduction for the second undertaking to provide significant added value: a reduction of 20-30 %.

(5) The Agency will determine the level of reduction for any subsequent undertaking that provide significant added value: a reduction of up to 20 %.

Conditional reduction of a fine

Article 20

(1) If the Agency comes to the preliminary conclusion, within the meaning of Article 19, paragraphs (1) and (2) of this Regulation, that the evidence submitted by the undertaking in line with Article 17 paragraph (2) point 2 of this Regulation, constitutes significant added value, and that the undertaking who submitted the application for a reduction of a fine has met the conditions of Article 3 of this Regulation, it will urgently inform the undertaking in writing thereof, in other words, grant him a conditional reduction of a fine.

(2) If the Agency comes to the preliminary conclusion, within the meaning of Article 19, paragraphs (1) and (2) of this Regulation, that the evidence submitted by the undertaking in line with Article 17 paragraph (2) point 2 of this Regulation do not constitute significant added value or establishes that the undertaking has not met the conditions set out in Article 3 of this Regulation, it shall also urgently inform the undertaking in writing thereof.

(3) In the case of paragraph (2) of this Article, the undertaking may withdraw all evidence referred to under Article 17 paragraph 2 point 2 of this Regulation which have been submitted to the Agency in the attachment of the application for a reduction of a fine.

(4) The withdrawn evidence referred to under paragraph (3) of this Article may not be directly used by the Agency but this does not prevent the Agency from using its normal powers of investigation in order to obtain this evidence in the procedure of establishing distortions of competition and from collecting other relevant facts of the case in the course of the investigation.

Decision on reduction of a fine

Article 21

(1) if the undertaking which was granted a conditional reduction of a fine referred to in Article 20 of this Regulation has met the conditions set out in Article 3 paragraphs (4) and (5) of this Regulation throughout the proceedings carried out by the Agency, the Agency shall in its decision taken at the end of the proceeding concerned determine the level of reduction relative to the fine which would otherwise be imposed in the sense of Article 17 paragraph (7) and Article 19 paragraphs (3) to (5) of this Regulation.

(2) If the undertaking does not act in line with paragraph (1) of this Article, in other words if after it has granted a conditional reduction of a fine in the sense of Article 20 of this Regulation, the Agency at any point of the procedure finds that the undertaking has not met the conditions set out in Article 3 paragraphs (4) and (5) of this Regulation, the Agency shall withhold the conditional reduction of a fine that has been previously granted and shall urgently inform the undertaking thereof in writing.

V TRANSITIONAL AND FINAL PROVISIONS

Entry into force

Article 22

This Regulation shall enter into force on the eighth day following the day of its publication in the Official Gazette.

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Zagreb, 11 November 2010

Prime Minister:

Jadranka Kosor