



BUNDESKARTELLAMT

Notice no. 9/2006

**of the Bundeskartellamt
on the immunity from and reduction of
fines in cartel cases**

- Leniency Programme -

of 7 March 2006

A. Objective and scope of application

- 1** The Bundeskartellamt can grant cartel participants, who by their cooperation contribute to uncovering a cartel, immunity from or a reduction of fines. The Leniency Programme sets the conditions under which immunity from or a reduction of fines can be granted. The Leniency Programme applies to participants (natural persons, undertakings and associations of undertakings) in cartels (in particular agreements on the fixing of prices or sales quotas, market sharing and bid-rigging), hereafter: cartel participants.
- 2** Contact on a confidential basis, also anonymously via a lawyer, can be established either directly with the head of the Special Unit for Combating Cartels (tel. 0228 9499-386) or the chairman of the competent Decision Division.

B. Immunity from fines

- 3** The Bundeskartellamt will grant a cartel participant immunity from a fine if he
 1. is the first participant in a cartel to contact the Bundeskartellamt before the latter has sufficient evidence to obtain a search warrant and
 2. by providing the Bundeskartellamt with verbal and written information and, where available, evidence which enables it to obtain a search warrant and
 3. was not the only ringleader of the cartel nor coerced others to participate in the cartel and
 4. cooperates fully and on a continuous basis with the Bundeskartellamt.
- 4** At the point at which it is in a position to obtain a search warrant the Bundeskartellamt will as a rule grant a cartel participant immunity from a fine if he
 1. is the first participant in the cartel to contact the Bundeskartellamt before it has sufficient evidence to prove the offence and
 2. by providing the Bundeskartellamt with verbal and written information and, where available, evidence which enables it to prove the offence and
 3. was not the only ringleader of the cartel nor coerced others to participate in the cartel and
 4. cooperates fully and on a continuous basis with the Bundeskartellamt and if
 5. no cartel participant is to be granted immunity pursuant to para. 3.

C. Reduction of fines

- 5** For the benefit of a cartel participant who does not meet the conditions for immunity (paras 3, 4), the Bundeskartellamt can reduce the fine by up to 50 per cent if he
1. provides the Bundeskartellamt with verbal or written information and, where available, evidence which makes a significant contribution to proving the offence and
 2. cooperates fully and on a continuous basis with the Bundeskartellamt.

The amount of the reduction shall be based on the value of the contributions to uncovering the illegal agreement and the sequence of the applications.

D. Obligations to cooperate

- 6** The applicant must cooperate fully and on a continuous basis with the Bundeskartellamt during the entire duration of the proceedings. In particular the applicant has to fulfil the following obligations:
- 7** He must end his involvement in the cartel immediately on request by the Bundeskartellamt.
- 8** He must also hand over to the Bundeskartellamt all the information and evidence available to him after his application for leniency has been filed. This includes in particular all information which is of significance for calculating the fine which is available to the applicant or which he can procure.
- 9** He is obliged to keep his cooperation with the Bundeskartellamt confidential until the Bundeskartellamt relieves him of this obligation (normally after the search has been concluded).
- 10** An undertaking must name all the employees involved in the cartel agreement (including former employees) and ensure that all employees, from whom information and evidence can be requested, cooperate fully and on a continuous basis with the Bundeskartellamt during the proceedings.

E. Marker, Application, Statement of Assurance

I. Declaration of willingness to cooperate (marker) and application

- 11** A cartel participant can contact the head of the Special Unit for Combating Cartels or the chairman of the competent Decision Division to declare his willingness to cooperate (marker). The timing of the placement of the marker is decisive for the status of the application. The marker can be placed verbally or in writing, in German or English. It must contain details about the type and duration of the infringement, the product and geographic markets affected, the identity of those involved and at which other competition authorities applications have been or are intended to be filed.

- 12 After the marker has been placed the Bundeskartellamt sets a time limit of a maximum of 8 weeks for the drafting of an application for leniency pursuant to paragraph 14.
- 13 If a cartel is involved for which the European Commission is the best placed authority within the meaning of the Commission Notice*, the Bundeskartellamt can exempt the applicant who has placed a marker for immunity under paragraph 3 from filing an application in accordance with paragraph 14 if he has filed an application with the Commission or intends to do so. If the European Commission does not conduct the proceedings, the Bundeskartellamt can request the applicant to submit an application pursuant to paragraph 14.
- 14 In his application the applicant must submit information which, in the case of paragraph 3, is necessary in order to obtain a search warrant or which, in the case of paragraph 4, is necessary to prove the offence or, in the case of paragraph 5, is significant in proving the offence. Where available, information shall also be submitted on whether the cartel had any effects in other countries.
- 15 An application as defined under paragraph 14 can also be filed verbally and/or in English. If the Bundeskartellamt accepts an application in English the applicant is obliged to provide a written German translation without undue delay. Joint applications by cartel participants are inadmissible.
- 16 If an applicant does not fulfil his obligations (especially his obligation to cooperate), his status of priority lapses and the subsequent applicants move up in rank.
- 17 An application filed by a person authorised to represent an undertaking is also rated by the Bundeskartellamt as one made on behalf of the natural persons participating in the cartel as current or former employees of the undertaking, unless otherwise indicated in the application or by the conduct of the undertaking.

II. Acknowledgement of receipt and statement of assurance

- 18 The Bundeskartellamt immediately confirms to the applicant in writing that a marker has been placed and/or that the application has been received, stating the date and time of receipt.
- 19 If the requirements for immunity under paragraph 3 nos. 1 and 2 are satisfied, the Bundeskartellamt assures the applicant in writing that he will be granted immunity from the fine on the condition that he was neither the only ringleader of the cartel nor coerced others to participate in the cartel and fulfils his obligations to cooperate.
- 20 In the case of an application for immunity under paragraph 4 or for a reduction under paragraph 5 the Bundeskartellamt initially only informs the applicant that he is the first, second etc. applicant and in principle, especially if he fulfils his duties to cooperate, is eligible for immunity or a reduction. A decision on immunity or reduction is made at the earliest after perusal and examination of all the information and evidence obtained during the search because the Bundeskartellamt must first examine whether this is sufficient to prove the offence.

F. Confidentiality, subsequent proceedings, entry into force

I. Confidentiality and inspection of files

- 21** Within the scope of the statutory limits and regulations on the exchange of information with foreign competition authorities the Bundeskartellamt shall treat in confidence the identity of the applicant and protect all trade and business secrets during the course of the proceedings up to the point at which a statement of objections is issued to a cartel participant.
- 22** Where an application for immunity or reduction of a fine has been filed the Bundeskartellamt shall use the statutory limits of its discretionary powers to refuse applications by private third parties for file inspection or the supply of information, insofar as the leniency application and the evidence provided by the applicant are concerned.

II. Skimming-off of economic benefit and order of forfeiture

- 23** If an applicant is granted immunity from a fine, the Bundeskartellamt shall generally neither skim off the economic benefit (Section 34 Act against Restraints of Competition) nor order a forfeiture (Section 29a Administrative Offences Act). If a fine is reduced the Bundeskartellamt shall as a rule only skim off a proportion of the economic benefit or order partial forfeiture which correspond to the proportion by which the fine is reduced.

III. Consequences under civil and criminal law

- 24** This notice has no effect on the private enforcement of competition law. The Bundeskartellamt must refer proceedings against a natural person to the public prosecutor under Section 41 of the Administrative Offences Act if the activity concerned constitutes a criminal offence (in particular within the meaning of Section 298 of the Criminal Code, on fraud relating to bids).

IV. Entry into force

- 25** This regulation comes into force on 15 March 2006 and replaces notice no. 68/2000. Applications filed after this date by those wishing to take advantage of the Leniency Programme shall be exclusively dealt with according to the current regulation.

Bonn, 7 March 2006

Dr. Böge

President of the Bundeskartellamt

* Commission Notice on cooperation within the Network of Competition Authorities, OJ. EC 2004 no. C 101/43.