



Information Leaflet on Immunity from and Reduction of Administrative Fines for Cartel Participants – Leniency Programme –

Administrative fines of up to 10 per cent of a company's or an association of companies' annual turnover can be imposed for infringements of competition law. An administrative fine of up to 1 million euros can be imposed against company representatives. The amount of the administrative fine in a specific individual case is dependent on the gravity and duration of the infringement that has occurred.

Leniency recipients can be granted immunity from or a reduction of a fine. The general conditions for leniency are set out in Sections 81h to 81n of the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen, GWB*) and in the Bundeskartellamt's Guidelines on the Leniency Programme. This information leaflet provides an initial overview of those conditions.

Where cartel participants contribute to uncovering a cartel of competitors under the leniency regime, the Bundeskartellamt may grant full immunity from or a reduction of an administrative fine. Such cartels of competitors encompass practices such as colluding to fix prices and sales quotas, as well as allocating markets and customers, including collusive tendering. Since, by way of exception, collusive tendering is a punishable offence also under Section 298 of the general German Criminal Code (*Strafgesetzbuch, StGB*), in cases of bid-rigging the Bundeskartellamt only conducts the procedure in relation to companies and associations of companies; company representatives are prosecuted by the public prosecution office in separate proceedings.

The requirement for immunity from or a reduction of a fine is the leniency applicant's continuous and full cooperation with the Bundeskartellamt. *Immunity* from a fine is only granted to the first party to cooperate. The second, third and all subsequent parties to cooperate may be granted *a reduction* of a fine. In both cases, the earlier a cartel participant begins cooperating with the Bundeskartellamt, the more valuable that contribution generally is and the greater the recompense.

Leniency can only be granted upon application. An application submitted for an undertaking applies to all the legal persons that constitute the undertaking at the time the application is filed, as well as to all its former and current directors, managers and members of staff.

Immunity from fines

That cartel participant which, by furnishing sufficient information and evidence, is the first to enable the Bundeskartellamt to obtain a search warrant is granted full immunity from an administrative fine.

If the Bundeskartellamt is already able to obtain a search warrant, full immunity is only possible by way of exception, that is if the cartel participant is the first to submit evidence that makes it possible to prove the offence for the first time.

The granting of immunity from a fine is, in particular, ruled out where the cartel participant has taken steps to coerce other participants to join a cartel or to remain a member of a cartel.

Reduction of administrative fines

Cartel participants which cooperate at a time when the Bundeskartellamt already has sufficient evidence to obtain a search warrant can still be granted a significant reduction of an administrative fine. Key criteria for determining the amount of the reduction are the usefulness of the information and evidence and the point in time at which the leniency application is filed. Cartel participants can thus be granted a reduction of up to 50 per cent of the fine imposed.

Markers

Since the date and time at which leniency applications are submitted are also important in relation to immunity and the amount of any reduction, cartel participants can temporarily secure a place in the queue for leniency by placing a so-called marker. To do so, applicants must declare their willingness to cooperate and provide certain details in brief (the applicant's name and address; the names of the cartel participants; the products and territories affected; the duration and nature of the offence; the applicant's own involvement; and information about applications filed with other competition authorities). The condition for keeping one's place in the queue is that the applicant then submits the finalised leniency application together with the corresponding evidence within the prescribed period.

Contact person

Those wishing to apply for leniency or place a marker may contact either the Bundeskartellamt's Special Unit for Combating Cartels (SKK) (tel.: +49 (0)228 9499-386) or one of the Decision Divisions responsible for prosecuting infringements of competition law (currently Divisions B10, B11 and B12). During a search, leniency applications (incl. markers) may also be submitted to the on-site Bundeskartellamt staff.

Bonn, 23 August 2021