



HELLENIC REPUBLIC

HELLENIC COMPETITION COMMISSION

Athens, November 25, 2011

PRESS RELEASE

The Hellenic Competition Commission (hereinafter referred to as HCC), acknowledging the importance and effectiveness of leniency programmes in antitrust enforcement and the dismantling of illegal secret cartels, introduced a revised leniency programme (Decision No. 526/VI/2011), thereby promoting full alignment with current EU standards.

In that respect, the HCC took account of the European and international experience to date, which confirms that similar programmes are considered to be the most appropriate and effective measure in combating cartels. Such horizontal anti-competitive practices, which aim to coordinate competitive behavior, constitute the most serious violation of competition law. The said practices notably include the fixing of purchase or selling prices, or any other trading conditions, the fixing of production or sales quotas, market sharing, including bid rigging, as well as restrictions on imports or exports.

International and European experience demonstrates the importance of adopting an attractive and effective domestic Leniency Programme. It is expected that its effective implementation will play a key role in the fight against cartels, which, due to their secret nature, are hard to detect without the active cooperation of the undertakings and/or individuals involved.

In this context, and with a view to serving public interest, the HCC adopted a modern incentive framework to reward companies or individuals who are

willing to put an end to their participation in the cartel and cooperate with the HCC.

Such cooperation will be crucial in the detection and punishment of the unlawful collusion, therefore justifying the granting of immunity or reduction from fines, depending on the level of the cooperation provided by each undertaking concerned.

Useful information on the novel Leniency Programme (FAQs)

What is the Leniency Programme?

It is the legal framework providing a lenient treatment, which may amount to full immunity, to undertakings and natural persons who cooperate with the HCC in uncovering cartels, which are prohibited under Article 1 of Law 3959/2011 or Article 1 of the Treaty for the Functioning of the European Union (TFEU).

What types of infringement does it concern?

The Leniency Programme refers to cartel infringements. It encompasses *inter alia* infringements which affect, directly or indirectly, prices, quantities, market shares or other relevant parameters of competition production or sales quotas, market sharing, restrictions on imports or exports, bid rigging, and collective boycott.

Who is entitled to submit a leniency application?

Undertakings or natural persons involved in cartels.

What is the benefit for the applicant?

Total immunity or reductions from fines, when a natural person or undertaking contributes significantly to the detection and establishment of the cartel. For

natural persons in particular, the granting of total immunity from fines also absolves them from criminal liability, while the granting of a fine reduction is regarded as a mitigating circumstance, thus resulting to the imposition of a reduced sanction pursuant to Article 83 of the Penal Code.

It is noted that the new Competition Act (Law 3959/2011) introduces severe fines for natural persons (ranging from EUR 200,000 to EUR 2 million).

What are the decisive conditions for immunity or reduction?

The timing of the application, the degree to which the leniency application entails or enhances the capability of the HCC to establish proof of the infringement, the significance and completeness of the evidence and information submitted by the undertaking or the natural person, which must, in any case, have additional probative value in relation to the evidence already in the HCC's possession.

What does additional probative value mean?

It means that any information and evidence provided substantially improves the HCC's ability to establish critical facts of the infringement.

Which are the types of leniency?

Immunity from fines – Type 1A: Full immunity from fines shall be granted to the applicant who will be the first to submit evidence enabling the HCC to initiate a targeted inspection with regard to a suspected cartel, as long as the HCC did not already possess, at the time of the application, sufficient evidence which would allow the initiation of the investigation procedure concerning the cartel.

Immunity from fines – Type 1B: Alternatively, full immunity from fines shall be granted to the applicant who will be the first to submit evidence which

enables the HCC to establish the infringement of article 1, law 3959/2011 or also of article 101 par. 1 TFEU, in case the evidence already in the possession of the HCC were not sufficient in this respect.

Reduction from fines – Type 2: In case the conditions for the granting of immunity are not met, a reduction from the fine that would otherwise have been imposed may be granted to the applicant who shall provide the HCC with evidence of the suspected cartel, representing significant added value with respect to the evidence already in the HCC's possession

What information must the application contain to be subject to HCC's examination?

The applicants should accompany their leniency applications with a detailed description of the alleged cartel and its objectives, the products or services concerned, its geographical coverage, its duration and background. More importantly, the applicants are required to submit all evidence in their possession or under their control concerning the existence and operation of the cartel.

Who are the excluded immunity applicants?

The new Programme limits the exceptions: only those applications submitted by undertakings which have carried out actions in order to coerce other undertakings to participate in the cartel are *ab initio* excluded from immunity. This exception does not apply to individuals having acted on behalf of the said undertaking.

Is the Commission subject to an obligation to evaluate the applicant's request?

Yes. The HCC is required to examine the application and decide whether the conditions for immunity or reduction from fines are met. However, the

submission of an application does not entail the obligation of the HCC to immediately examine the case regarding the alleged infringement.

Is it possible to submit oral statements?

Upon request by the applicant, the HCC may allow the submission of the statement (including the description of the cartel and all the other elements provided for in the Leniency Programme) in oral form. Access to any transcripts of the oral statements in question is not provided before the serving of the SO to the parties, whereas this right is exercised by means of review of the transcripts in the premises of the HCC.

What is the marker system provided for under the new Programme?

Under the new regime, the applicant may request a “marker”. The granting of a marker protects the applicant’s place in the queue for a given period of time thus allowing it to collect within the said period the information and evidence necessary in order to meet the minimum conditions and requirements for immunity.

May the applicant investigate the applicability of the Leniency Programme before proceeding to a formal application?

Yes. The undertaking or individual who intends to submit a leniency application has the right, before the submission and without providing its identity as yet at this stage, to request clarifications from the HCC as to the applicability of the Programme in the specific case, by presenting the evidence at its disposal on a hypothetical basis.

The present newsletter is of a purely informative nature and does not replace the text to which it refers.