

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

USE OF MARKERS IN LENIENCY PROGRAMS

-- Bulgaria --

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This document reproduces a written contribution from Bulgaria submitted for Item III of the 120th meeting of the Working Party No. 3 on Co-operation and Enforcement on 16 December 2014.

*More documents related to this discussion can be found at:
<http://www.oecd.org/daf/competition/markers-in-leniency-programmes.htm>*

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1. Legislation

1. The CPC adopted new rules on Leniency Programme in 2011. By virtue of The Law on Protection of Competition¹ (LPC) the CPC is entitled to adopt a set of rules on Leniency. On these grounds the CPC adopted *Programme on Immunity from Fines or Reduction of Fines in Case of Participation of an Undertaking in a Cartel* (Programme) and *Rules on the Application of the Programme* (Rules). Thus there is the Law that very briefly delineates the basic principles of the Leniency program and the acts of the CPC by which they are developed in details.

2. Procedural steps and preconditions

2. The national rules on Leniency are developed in close resemblance to the EU rules in general and in particular to the Marker provisions. They share the same principles, benefits, incentives and preconditions as those applied by the EU commission.

2.1. Who is eligible to obtain a marker under your system?

3. The national Marker rules do not limit the potential applicants by their number or by the type of the application – application for immunity, application for reduction of a fine, application for additional reduction. In general if the conditions for a formal application are met an undertaking may initially and optionally apply for a marker.

4. In that context the following national rules are applied. An application for immunity or reduction of fines which is not supported by all the necessary evidence and information of the Programme is treated by the CPC as an application for a marker.² In case immunity from fines cannot be granted, an application for a marker for immunity from fines will be treated as an application for a marker for a reduction of fines.³

5. In terms of the Summary application we could reasonably acknowledge that the Marker rules are not applicable because the information required is identical and they serve different purposes. Thus there are no legal or formal grounds for an undertaking to initially apply for a marker before the Summary application.

2.2. What steps must be taken to initiate the process

6. The Marker application should meet the following minimum content requirements:

- The name, address, and registration information of the undertaking submitting the application;
- The name, address and registration information of the rest of the undertakings participating in the cartel;
- A detailed description of the cartel, including:
 - the affected products and or services;

¹ Art. 101, Par. 5, LPC.

² Art. 20, Rules.

³ Art. 21, Rules.

- the affected territory;
 - the nature of the behavior (such as price fixing, market sharing, setting of production quotas, exchange of sensitive trade information, etc.);
 - the manner of functioning (such as meetings, their location and participants, telephone conversations, correspondence, content of exchanged information, etc.);
 - the period of operation of the cartel.
- Information regarding all other prior or possible future applications for immunity or reduction of fines, submitted to any other competition authority (within or outside of the EU) in relation to the cartel.

2.3. *Granting a marker by the CPC*

7. The CPC is bind by the requirements manifested in the Programme and the Rules. It cannot add complementary positive or negative criteria to evaluate a marker application. That could be done with corresponding amendments in the Programme or the Rules.

8. The CPC has the discretion to consider a formal application that is not supported by all the necessary evidence as an application for a marker (see 2.1).

2.4. *Purpose and benefits*

9. What is the principal purpose of your marker system? What are the potential benefits of your marker system for the agency and for marker applicants?

10. The marker is an optional and simplified way to initiate a participation in a Leniency Programme. It is simplified because it provides the applicant with additional time to produce the evidence required for the formal application while holding its place in line for leniency. It is optional because it is for the undertakings to consider whether to take advantage of it. The marker grants very clear, unambiguous and fundamental procedural benefits for the applicants in their way to the leniency queue.

3. *Steps to conditional offer of leniency*

11. The marker application cannot lead on its one to a conditional offer of leniency. First it should gain the status of a formal application. For that purpose the CPC provides a period of time for the applicant to produce the proper evidence.

12. The CPC considers the applications in order of their receipt. The CPC will consider if an application is eligible for immunity or fine reduction upon the information and evidence submitted. At this stage, the CPC will also evaluate the compliance with the Leniency Programme. Each participant has the following obligations:⁴

- to cooperate with the CPC willingly, honestly and fully;
- not to destroy, falsify, or conceal evidence related to the cartel;

⁴ Art. 30, Programme.

- not to disclose in any way its intention to participate in the present Programme;
- to follow the instructions of the CPC in relation to its participation in the cartel.

13. The granting or the refusal to grant conditional immunity or conditional fine reduction is enacted by written order of the Chairman of the CPC, of which the interested party is notified in writing.

4. Confidentiality

14. The identity of the applicant for immunity and reduction, as well as all the facts and circumstances connected to their identification as an applicant are kept confidential until the issue by the Commission of a statement of objections to the respondents.⁵

15. For example when applying for a court order for an inspection of premises, the application for immunity from fines and the evidence included in it which contain any direct or indirect identification of the applicant, are submitted, if necessary, to the court in a separate folder, denoted as containing legally protected confidential materials. The court is informed that the identity of the applicant shall be kept secret pursuant to LPC.⁶

5. Practice and amendments

16. If you have a marker system, please describe your experience with it. Has it been amended over time? Are you considering further amendments?

17. There is no experience to share so far.

18. The first leniency provisions are introduced into the national competition legislation in 2003 by an amendment to the LPC valid at the time. The first Leniency Programme as we know it nowadays is established in 2009 and it comes with the new LPC from 2008. The present Leniency Programme from 2011 is the second one in line. Its purpose is to make the Programme more transparent and user-friendly rather than to introduce new rules or provisions.

6. Communicating the program

19. The adoption of the Leniency Programme in 2011 coincided with the 20th anniversary of the CPC and competition legislation in Bulgaria. There were a number of events to celebrate the anniversary that were used to promote the Programme.

20. The most attractive and proactive way to promote the Programme was a “presentation” in a form of live spectacle performed by CPC case-handlers and external lawyers. It was presented at a workshop where it was filmed and then published to the CPC’s website. It was very well accepted by the audience.⁷

⁵ Art. 9, Programme.

⁶ Article 38, paragraph 3 of the LPC.

⁷ <http://www.cpc.bg/Competence/Leniency.aspx>.