

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренцијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION
ON THE PROCEDURE FOR GRANTING IMMUNITY FROM FINES
(LENIENCY POLICY)**

January, 2006

Pursuant to Article 25 paragraph (1) item a) and Article 54 paragraph (4) of the Act on Competition (Official Gazette of BH, No 48/05), the Council of Competition, in its 22nd session, held on 24 January 2006 has adopted the following:

**REGULATION
ON THE PROCEDURE FOR GRANTING IMMUNITY FROM FINES
(LENIENCY POLICY)**

Article 1

- (1) This Regulation shall define the procedure and conditions for granting immunity from fines or reducing the fines in cases when an undertaking participates in an agreement from Article 4 paragraph (1) of the Act on Competition (hereinafter in the text: the Act).
- (2) This Regulation is applied to undertakings defined by Article 2 of the Act which cooperate voluntarily with the Council of Competition and provide it with evidences necessary for making a decision on infringement of the provisions defined in Article 4 paragraph (1) of the Act.

I IMMUNITY FROM FINES

Article 2

The Council of Competition shall grant to an undertaking immunity from fines which may be otherwise imposed to the undertaking, provided that the undertaking submits evidences, unknown to the Council of Competition at the moment of submission, relating to an agreement defined by Article 4 paragraph (1) of the Act, which would enable issuing a specific resolution authorizing an initiation of proceeding.

Article 3

- (1) An undertaking, an applicant for immunity from fines must fulfill the following conditions at the moment of submission of application to the Council of Competition:
 - a) to end all its activities related to the agreement that violates competition;
 - b) the undertaking must not inform other parties to the agreement concerned on its application;
 - c) the undertaking must cooperate fully, on a continuous basis and expeditiously throughout the proceedings and provide the evidences and information in its possession or under its control, including all forms of information which prove the existence of infringement of Article 4 paragraph (1) of the Act.
- (2) Any oral, written or electronic communication with the Council of Competition shall be considered as the application for immunity from fines.

Article 4

- (1) If the first undertaking, the applicant for immunity from fines, in the same case, fails to meet the requirements as defined within Article 3 of this Regulation, the next subsequent applicant for immunity from fines which fulfills the conditions from Articles 2 and 3 of this Regulation shall be taken into consideration in the leniency procedure.
- (2) The Council of Competition shall not take into consideration the application for immunity from fines of another applicant, in the same case, until it makes a decision on the application for immunity from fines submitted by the first applicant.

II THE PROCEDURE FOR GRANTING IMMUNITY FROM FINES

Article 5

An undertaking as an applicant for immunity from fines must provide the Council of Competition with the facts in draft form of the case concerned. In the initial stage, an undertaking may use general information in order to protect its anonymity.

Article 6

If, during the initial contact, the Council of Competition decides that conditions defined by Articles 2 and 3 of this Regulation are failed to be met, the undertaking interested to obtain the immunity from fines, will be informed that immunity is not available.

Article 7

A joint application for immunity from fines submitted by two or more undertakings shall not be taken into consideration.

Article 8

If the Council of Competition decides that an undertaking seeking to obtain immunity from fines meets the conditions from Article 5 of this Regulation and if that undertaking is willing to continue the cooperation delivering compulsorily a full description of the illegal activities, as appropriate, the Council of Competition shall, on the basis of findings in the said description, grant the undertaking conditional immunity from fines in its relevant decision.

Article 9

- (1) Upon receiving a decision on granted conditional immunity from fines, an undertaking is obliged to provide the Council of Competition with all evidences in its possession.
- (2) The Council of Competition may not use the evidence from paragraph (1) of this Article against the undertaking that is the applicant for immunity from fines.

Article 10

- (1) In case that the Council of Competition does not make a decision on granting conditional immunity from fines, the undertaking that is applicant may withdraw all evidences disclosed for the purpose of its immunity application or request that the application for immunity from fines may be considered as a request for reduction of a fine.
- (2) The Council of Competition may not use information received in the proceedings for immunity from fines if the undertaking withdraws such information in accordance with paragraph (1) of this Article.

Article 11

The Council of Competition may abolish a conditional immunity from fines imposed to an undertaking which is applicant for immunity from fines, if:

- a) that undertaking does not cooperate fully, on continuous basis and expeditiously;
- b) that undertaking did not disclose all infringements of the Act relating to the case in which it was involved;
- c) that undertaking does not provide full and true evidences and information in its possession or under its control.

Article 12

If upon completion of the proceedings, the undertaking meets all conditions defined in Article 3 of this Regulation, the Council of Competition shall grant it immunity from fines in the final decision.

III REDUCTION OF A FINE

Article 13

An undertaking which does not meet the conditions for immunity from fines as defined in Chapter I of this Regulation, can apply for reduction of a fine, which otherwise may be imposed.

Article 14

In order to ensure that the application for reduction of fines shall be taken in consideration, an undertaking is obliged to:

- a) provide the Council of Competition with information that supports the evidences already in possession of the Council of Competition regarding the character or completeness of the evidences; and
- b) terminate all further participation in illegal activities that are under investigation, according the conditions set by the Council of Competition.

Article 15

Among others, in its final decision, the Council of Competition shall determine:

- a) whether the evidence provided by an undertaking, at the time of submission, significantly contributes to the establishment of infringement of the Act on Competition;
- b) the level of reduction of a fine for an undertaking, in proportion to the fine which may be otherwise imposed at the end of the proceedings, as follows:

I a reduction of a fine of 30-50% will be granted to the first undertaking which meets the conditions defined in Article 13. of this Regulation;

II A reduction of a fine of 20-30% will be granted to the second undertaking which meets the conditions defined by Article 13. of this Regulation;

III A reduction of a fine up to 20% will be granted to any other subsequent undertaking which meets the conditions defined by Article 13. of this Regulation.

Article 16

In order to determine the level of reduction of a fine, as defined by Article 14, item b) of this Regulation, the Council of Competition shall take into account the following facts:

- a) the time when the evidences were provided and added value of those evidences ; and
- b) the level and continuity of cooperation provided by the undertaking during the proceedings and after the submission of evidences.

IV THE PROCEDURE FOR REDUCTION OF A FINE

Article 17

The Council of Competition shall give to the undertaking a receipt on submission of evidences, confirming the date and time of submission of each relevant evidences.

Article 18

The Council of Competition will not consider any request for a reduction of a fine if a conditional decision on granting immunity from fines has already been granted to an applicant, as defined by Article 8 of this Regulation, in relation to the same alleged infringement of the Act.

Article 19

The Council of Competition shall, in a case when it comes to the preliminary conclusion that the evidences submitted by the undertaking meet the conditions from Article 14, paragraph (1), item a) of this Regulation, inform the undertaking in writing of its intention to include the

undertaking in procedure for reduction of a fine with a specified category as defined in Article 14, paragraph (1), item b) of this Regulation.

Article 20

The Council of Competition will determine the final reduction category as defined in Article 14, paragraph (1), item b) of this Regulation for each undertaking- an applicant for a reduction of a fine upon completion of the proceedings and before making final decision from Article 43 of the Act.

V FINAL PROVISIONS

Article 21

- (1) In its final decision, the Council of Competition shall state every kind of cooperation provided by an undertaking during the proceedings so as to explain the grounds for granting the immunity from or reduction of a fine to that undertaking.
- (2) This part of the final decision shall not be published due to the infringement of the Act.

Article 22

- (1) Any written statement and information made or delivered on the basis of this Regulation will be included in the file of the Council of Competition.
- (2) Statements and information under paragraph (1) of this Article will not be revealed to the undertakings that are under investigation due to the infringement of the Act.

Article 23

The provisions of this Regulation shall be applied also to the responsible persons in the undertakings under Article 48, paragraph (2) of the Act.

Article 24

This Regulation enters into force 8 days after its publication in the “Official Gazette of BH”, and it shall be published in official gazettes of the Entities and Brčko District of Bosnia and Herzegovina.

CC No. 01-01-26-090-I/06
Sarajevo,
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President
Council of Competition

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