

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

“Official Gazette of BiH”, No. 34/10

Pursuant to Article 25 paragraph (1) item a) and Article 54 paragraph (4) of the Competition Act ("Official Gazette of BiH", No 48/05, 76/07 and 80/09), the Council of Competition, on its 104th session, held on 3rd March 2010 adopted the following:

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

I GENERAL PROVISIONS

Article 1

(1) This Regulation defines 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 Competition Act

(2) This Regulation is applied to undertakings defined by Article 2 of the Competition Act which realize voluntary cooperation with the Council of Competition and deliver evidences necessary for making a decision on infringement of the provisions defined in Article 4 paragraph (1) of the Competition Act.

II IMMUNITY FROM FINES

Article 2

- (1) The Council of Competition shall grant an undertaking immunity from fines which may otherwise be imposed to the undertaking, provided that the undertaking voluntarily submits evidences, unknown to the Council of Competition in the moment of submission, on an agreement defined by Article 4 paragraph (1) of the Act, which would enable issuance of a resolution on initiation of proceeding related to the forbidden agreement..
- (2) Immunity from fine from the paragraph (1) of this Article shall be granted, provided that the Council of Competition at the time of application for immunity from fine did not have enough evidence to issue a Resolution on initiation of proceeding in terms of Article 4, paragraph (1) of the Competition Act, related to forbidden agreement.

Article 3

- (1) An undertaking, 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 suspected violation of Article 4, paragraph (1) of the Competition Act, no later than the moment of submission of application for immunity from fine,
 - b) the applicant must not inform other parties to the agreement on its application for immunity;

- c) the applicant must cooperate continuously and efficiently throughout proceedings and provide complete, true and sincere evidence and information in its possession or under its control to the Council of Competition, including all forms of information, i.e. submit enough evidence related to the supposed infringement of Article 4 paragraph (1) of the Competition Act,
 - d) the applicant must not in any way induce other undertakings to participate in the forbidden agreement,
- (2) Each oral, written or electronic means of communication with the Council of Competition shall be considered as the application for granting immunity from fines.

Article 4

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

III THE PROCEDURE FOR GRANTING IMMUNITY FROM FINES

Article 5

An undertaking as an applicant for immunity from fines shall present in summarized form the facts for the case to the Council of Competition. In the initial stage, an undertaking may use general information in order to protect its anonymity.

Article 6

If the Council of Competition, upon the first communication, decides that the conditions defined by Articles 2 and 3 of this Regulation are not fulfilled, the undertaking interested to obtain the immunity from fines, will be immediately informed that there is no possibility for granting immunity from fines for the case concerned.

Article 7

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

Article 8

When the Council of Competition decides that an undertaking interested to obtain immunity from fines meets the conditions from Article 3 of this Regulation and when that undertaking

is willing to continue the cooperation delivering obligatory in future all information regarding the suspected infringement and description of the illegal activities, the Council of Competition shall, on the basis of submitted information and description of the illegal activities, make a decision on conditional immunity from fines.

Article 9

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

Article 10

- (1) In case that the Council of Competition does not make a decision on conditional immunity from fines, the undertaking that is applicant for the immunity from fines may withdraw all delivered evidence or request that the application for receiving immunity from fines should be considered as a request for reduction of a fine.
- (2) The Council of Competition may not use information received in the proceedings for granting the immunity from fines if such information was withdrawn by the undertaking in accordance with paragraph (1) of this Article.
- (3) Withdrawal of the information submitted by the undertaking in accordance with paragraph (1) of this Article does not prevent the Council of Competition to use its usual competencies for investigation in order to gain that information.

Article 11

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

- a) the undertaking does not cooperate fully, timely and continually;
- b) the undertaking did not present all the infringements of the Act in the case it was involved with;
- c) the undertaking does not provide full, true and honest evidence and information in its disposal or under its control.

Article 12

If upon completion of the proceedings, the undertaking, applicant for immunity from fines, meets all conditions defined in Article 3 of this Regulation, the Council of Competition shall make a final decision on granting the immunity from fines.

IV REDUCTION OF A FINE

Article 13

An undertaking which does not meet the conditions to obtain the 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 granting a reduction of fines shall be taken in consideration, an undertaking is obliged to:

- a) deliver to the Council of Competition information that have additional value concerning the evidence already in possession of the Council of Competition, regarding the character or completeness of the evidence; and
- b) terminate all further participation in suspected infringement, no later then the moment of submission of the evidence, according to the conditions set forth by the Council of Competition;
- c) term additional value in terms of item a) of this Article relates to completeness of the evidence and/or level by which the submitted evidence, in their nature, strengthens the possibility of the Council of Competition to prove the existence of forbidden agreement.

Article 15

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

- a) whether the evidence provided by an undertaking, at the time of its delivery, represent the additional value in accordance with Article 14, item a) of this Regulation and significantly contribute to the establishment of infringement of Competition Act;
- 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:
 - 1) a reduction of a fine of 30-50% will be granted to the first undertaking which meets the conditions defined in Article 14 of this Regulation.
 - 2) a reduction of a fine of 20-30% will be granted to the second undertaking which meets the conditions defined by Article 14 of this Regulation.
 - 3) A reduction of a fine up to 20% will be granted to any other subsequent undertaking which meets the conditions defined by Article 14 of this Regulation.

Article 16

- (1) In order to determine the level of reduction of a fine, as defined by Article 15 of this Regulation, the Council of Competition shall take into account the following facts:
 - a) the time when the evidences were submitted and their additional value; and
 - b) the level and continuity of cooperation provided by the undertaking during the proceedings and especially after the delivery of evidence.

- (2) If an undertaking submits evidences related to the facts, previously unknown to the Council of Competition and which have direct impact on severity and duration of supposed forbidden agreement, Council of Competition shall not take into consideration those elements during the determination of any fine to be imposed on the undertaking submitting these evidences.

V THE PROCEDURE FOR REDUCTION OF A FINE

Article 17

The Council of Competition shall issue to the undertaking a receipt on received evidences, with the date and time when the relevant evidences were submitted.

Article 18

The Council of Competition will not consider any request for a reduction of a fine in case when a conditional decision on immunity from fines has already been granted to an applicant, as defined by Article 8 of this Regulation, in relation to the same suspected infringement of the Competition Act or before the Council of Competition issues a decision concerning another unsolved request for conditional immunity from fines in relation to the same suspected infringement.

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 15, paragraph (1), item b) of this Regulation.

Article 20

The Council of Competition will determine the final reduction category as defined by Article 15, paragraph (1), item b) of this Regulation for each undertaking, applicant for a reduction of a fine, upon completion of proceedings and before making final decision from Article 43 of the Competition Act.

VI 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 in order to support the grounds for granting the immunity from or reduction of a fine to the undertaking.
- (2) This part of the final decision shall not be published due to the infringement of the Competition 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 for infringement of the Competition Act.

Article 23

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

Article 24

With the entry into force of this Regulation, the Regulation on granting immunity from fines or reduction of fines (leniency policy) (“Official Gazette of Bosnia and Herzegovina”, No. 15/06) ceases to be valid.

Article 25

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

C.C. Number: 01-01-50-183-I/10

**President of
the Council of Competition**

Sarajevo, 23rd March 2010

Stjepo Pranjić, PhD