

**GUIDELINES ON THE EXPLANATION OF THE REGULATION ON ACTIVE
COOPERATION FOR DETECTING CARTELS**

CONTENTS

GUIDELINES ON THE EXPLANATION OF THE REGULATION ON ACTIVE COOPERATION FOR DETECTING CARTELS¹

INTRODUCTION

(1) These Guidelines are published as a requirement of the transparency principle and are prepared with an aim to ensure predictability in the interpretation and implementation of the Regulation on Active Cooperation for Detecting Cartels ("Leniency Regulation" or "Regulation"), to minimize any potential uncertainties, and to provide guidance to undertakings enabling them to benefit from the leniency program in a more efficient manner. The Board shall endeavor to implement the leniency program in accordance with the explanations provided in these Guidelines, taking into account the specific characteristics of each separate case, without prejudice to the provisions of the Act no 4054 on the Protection of Competition (the Act) and the leniency Regulation due to their binding nature.

(2) As known, article 16.6 of the Act regulates that to those making an active cooperation with the Authority for purposes of revealing contrariness to the Act, penalties mentioned in paragraphs three and four may not be imposed (immunity), or reductions may be made in penalties to be imposed in consideration of the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly. The last paragraph of article 16 of the Act states that the terms for immunity from or reduction of fines in case of cooperation as well as the procedures and principles concerning cooperation would be determined by regulations to be issued by the Competition Board (Board). Article 27 of the Act, on the other hand, grants the Board the duty and power to issue communiqués and prepare necessary regulations related to the implementation of the Act.

(3) The Leniency Regulation, adopted in accordance with the provisions listed above, was put into effect after its publication in the Official Gazette dated 15.02.2009 and numbered 27142. On 19.02.2009, it was announced on the website of the Authority that a division was charged with the application of the Regulation by the Board. This division was later titled the Cartels and On-the-Spot Inspections Support Division

(4) Leniency Regulation specifies the procedures and principles in relation to the non-imposition and reduction of fines mentioned in Article 16 of the Act with regard to

¹ Hereinafter referred to as the "Leniency Guidelines" or "Guidelines".

undertakings and their managers and employees making an active cooperation with the Competition Authority for the purposes of detecting cartels prohibited under Article 4 of the same Act.

(5) Cartel refers to competition-limiting agreements and/or concerted practices concluded between competitors concerning the subjects of price fixing, allocation of customers, suppliers, regions or commercial channels, introduction of supply amount restrictions or quotas, and collusive bidding in tenders. The price increases created by cartels, which are deemed to be the most egregious infringements of competition, lead to a transfer of income from customers to cartel members. As a result of increasing prices, some people can no longer buy the relevant product and are consequently deprived of the relevant goods or services, which is another harm caused by cartels. Also, cartels decrease the pressure on their members to reduce costs and make innovations. These harms may also lead to other economic, social, cultural and political problems. For instance, as a result of cartels, efficiency is eliminated, entrepreneurship is reduced and other negative outcomes may arise, such as an inability to purchase higher quality products at lower prices by more people.

(6) In comparison with other infringements of competition, it is harder to detect and investigate cartels which are secretive by nature, unless parties to the cartel cooperate with the Authority. Thus, in order to facilitate the detection and investigation of cartels, it is beneficial to grant immunity from or reduction in fines for those undertakings and their managers and employees who enter into active cooperation with the Authority independently from the other undertakings parties to the cartel.

(7) Leniency Regulation, was adopted in order to facilitate the detection and investigation of cartels, and in order to ensure that it meets that goal it must be applied within the framework of the principles of "transparency" and "interpretation to the advantage of applicants/active cooperators".

(8) In accordance with the "interpretation to the advantage of applicants/active cooperators" principle, those who enter into active cooperation with the Authority to reveal and investigate cartels should not be put at a disadvantage in comparison to those who do not enter into such cooperation. Therefore, in those situations for which the Leniency Regulation does not contain a clear arrangement, for which there are uncertainties and which require

interpretation, the principle is that the outcome should be to the advantage of applicants/active cooperators.

1. THE SCOPE OF THE LENIENCY REGULATION

(9) Article 1 of the Leniency Regulation states the purpose and scope as follows: "to regulate the procedures and principles in terms of non-imposition and reduction of fines mentioned in Article 16 of the Act with regard to undertakings and their managers and employees making an active cooperation with the Competition Authority for the purposes of detecting cartels that are prohibited under Article 4 of the same Act."

(10) The second section of the Regulation, comprising of articles 4, 5 and 6, basically regulates the procedures and principles related to the non-imposition or reduction of the fines to be imposed on undertakings. Similarly, in line with the second section of the Regulation, in case of an application by undertakings, all managers and employees of the applicant undertaking who admit to the existence of the infringement and enter into active cooperation may benefit from the Regulation as a rule. Therefore, it is not necessary for the undertakings to submit a list of the managers and employees who can benefit from immunity or reduction. Accordingly, there are no barriers before previous managers and employees benefiting from the applications filed by undertakings.

(11) Third section of the Regulation, comprised of articles 7, 8 and 9, concerns the procedures and principles related to the non-imposition reduction of fines for those managers and employees who are found to have had a decisive effect on the infringement and may be imposed a fine up to five per cent of the fine imposed on the undertaking or association of undertakings concerned. This section includes provisions which largely parallel those included in the second section of the Leniency Regulation, and it also makes regulations for those situations where previous or current managers or employees of an undertaking file an application independently from the undertaking at which they are employed.

(12) Article 16.6 of the Act sets up a three-way race between undertakings, between managers/employees, and between undertakings and managers/employees to take advantage of immunity from or reduction in fines by entering into active cooperation. Therefore relevant persons and parties must take this into consideration in all representation relationships before

the Authority. This is because a conflict of interest is created by the fact that undertakings, managers or employees may be granted immunity and discounts for any testimony they may give against each other. In parallel, within the framework of the general provisions on the subject, the Authority may notify the parties concerned of any conflicts of interest identified by the Authority.

2. IMMUNITY FROM FINES OR DISCOUNT IN FINES TO BE IMPOSED

2.1. Non-Imposition of Fines

(13) Provisions on non-imposition of fines are included in articles 4 and 7 of the Leniency Regulation. Article 4 concerns the non-imposition of fines on undertakings and on the managers/employees of these undertakings. Article 7 concerns managers and employees making applications independently of the undertaking at which they are employed. First and second paragraphs of each article set out two alternative situations concerning immunity from fines, where the existence of one would eliminate the other; consequently, in the final analysis there are four alternatives concerning non-imposition of fines, where if one alternative is realized the others can not. These alternatives are explained below:

2.1.1. Non-Imposition of Fines in Applications Made Before the Preliminary Inspection Decision

(14) The first paragraphs of articles 4 and 7 of the Leniency Regulation state that fines shall not be imposed on the first undertaking (as well as the managers and employees of this undertaking) which, independently from the undertakings parties to the cartel and the managers and employees of those undertakings, or on the first manager or employee who, independently of the undertaking, submits the information and evidence and meets the requirements laid down in articles 6 or 9 of the Regulation before the Board takes a decision to carry out a preliminary inquiry. Therefore, those who file the first application before the start of the preliminary inquiry shall not be fined, provided they meet the requirements listed in articles 6 and 9 of the Regulation.

(15) The first paragraphs of articles 4 and 7 of the Leniency Regulation do not include a condition stipulating that, at the time of the application, the competition authority should lack sufficient evidence to take a decision to conduct on-the-spot inspections; these provisions simply state that the first undertaking, manager or employee to apply before the Board takes a decision to initiate a preliminary inquiry shall be granted immunity from fines. Therefore, even where there is sufficient evidence to conclude that article 4 of the Act was violated, the Board shall not impose fines on the first undertaking, manager or employee to submit an application before a certain time which is clearly defined as when "a decision to initiate preliminary inspection is taken," provided they fulfill the requirements specified in articles 6 or 9 of the Regulation.

(16) The first paragraphs of articles 4 and 7 of the Leniency Regulation also do not include a specific requirement for the submission of documents and information sufficient to conduct on-the-spot inspections; it is simply stated that "the information and evidence laid down in articles 6 or 9 of the Regulation" should be submitted. The information and documents required by the relevant articles of the Regulation are those related to the products affected by the cartel concerned, the duration of the cartel, the names of the undertakings parties to the cartel, the dates, places and participants of cartel meetings as well as any other information and documents related to the cartel.

2.1.2. Non-Imposition of Fines in Applications Made After the Preliminary Inspection Decision

(17) The provisions of articles 4.2 and 7.2 of the Leniency Regulation introduces the chance to grant immunity to those applications submitted after the Board takes a decision to conduct a preliminary inquiry.

(18) In order to benefit from non-imposition of fines under the aforementioned paragraphs, first of all there must be no applications submitted under articles 4.1 or 7.1 before the Board's preliminary inquiry decision. This is because if such an application exists, only the owner of that application would be able to take advantage of the immunity.

(19) Second of all, fines shall not be imposed to the first undertaking (and the managers and employees of that undertaking) to submit the information and documents specified and fulfill the requirements laid out in articles 6 or 9 of the Regulation during the time period specified as "from the preliminary inquiry decision until the notification of the investigation report," or to the first manager or employee to make an application independently from the undertaking during the same period. Therefore, those who apply in the second place or later shall not benefit from immunity.

(20) Third of all, the approval of the applications is dependent on the Board lacking the evidence to conclude that article 4 of the Act was violated. Clearly, in contrast to the applications made before the decision to conduct a preliminary inquiry is taken, the Board has a measure of discretionary power in this situation. However since the Leniency Regulation does not require the evidence submitted in relation to the cartel to be up-to-date, self-incriminatory and with a nature to lead to a finding of violation of article 4, this discretionary power is somewhat more limited than those legal systems where the aforementioned requirement is in place.

(21) Another point that must be emphasized on the subject is the fact that the possibility to be granted immunity from fines is higher for those who apply soon after the Board's decision to conduct a preliminary inquiry is taken or the preliminary inquiry is initiated than for those who apply at later stages.

2.2. Reduction in Fines

(22) Articles 5 and 8 of the Leniency Regulation includes the provisions concerning reductions in fines. The aforementioned articles state that a reduction shall be made in the fines to be imposed on those who, between the Board's decision to conduct a preliminary inquiry and the notification of the investigation report, submit the information and documents specified and fulfill the conditions laid out in articles 6 and 9 of the Regulation independently of the other undertakings, managers and employees, but who can not benefit from the provision in articles 4 and 7 concerning the non-imposition of fines. Basically, these articles make provisions for two groups.

(23) The first group includes those who submit their application under the Leniency Regulation concerning a cartel in the first place after the preliminary inquiry decision but are unable to take advantage of the immunity since the Authority is in possession of evidence to sufficient to conclude that article 4 of the Act was violated. In applications under articles 4.3 and 7.2 of the Leniency Regulation, the Board shall first conduct an immunity assessment; in case it finds that immunity can not be granted due to the existence of evidence sufficient to conclude a violation of article 4 of the Act, it shall address the application submitted as a request for reduction in fines under articles 5 and 8 of the Regulation. Therefore, in applications made with an aim to benefit from the provisions of articles 4.2 or 7.2 of the Act, in case it is undesirable for the application to be addressed under articles 5 and 8 of the Leniency Regulation if rejected by the Board, this state of affairs should be explicitly stated.

(24) The second group includes those who miss the first place to submit their applications under the Leniency Regulation. To clarify: following an undertaking, manager or employee is granted immunity in accordance with articles 4 or 7 for submitting the first application concerning a cartel within the scope of the Regulation, those who submit applications concerning the same cartel either before or after the Board's decision to conduct a preliminary inquiry shall be entitled to receive a reduction in fines according to their order of application.

(25) It may also be said that another group is comprised of those who shall receive reduction in fines instead of immunity due to a violation of the conditions set out in articles 6.1 and 9.1, particularly the coercion of other undertakings parties to the related cartel to violation. However, since this regulation is laid out not in articles 5 and 8 of the Leniency Regulation but in articles 4 and 9, explanations on this issue shall be included under the headings "3. Requirements," and "4. Procedure".

(26) In order to take advantage of article 5 or 8 of the Leniency Regulation, under article 6 or 9, "information and documents related to the products affected by the cartel, the duration of the cartel, the names of the undertakings parties to the cartel, the dates, places and participants of cartel meetings as well as any other information related to the cartel" must be submitted. However, there is no obligation to submit evidence which would contribute significant added value to the evidence already in possession of the Authority. Consequently,

a reduction in fines shall be granted to every case where the requirements listed in article 6 or 9 of the Regulation are fulfilled.

(27) The sub-paragraphs of article 5.1 of the Leniency Regulation provide that the fines to be imposed on undertakings shall be reduced between one third and one half for the first undertaking within the scope of the article, between one fourth and one third for the second undertaking, and between one sixth and one fourth for the third and later undertakings.

(28) The sub-paragraphs of article 5.1 of the Leniency Regulation also determine rates of reduction for the managers and employees of employees who admit to the violation and enter into active cooperation. Accordingly, it is stated that a reduction of at least one third may be granted for the managers and employees of the first undertaking under the scope of the article, at least one fourth for those of the second undertaking, and at least one sixth for those of the third and later undertakings, or the fines may not be imposed at all. Article 8 of the Regulation which includes provisions concerning reduction in the fines to be imposed on the managers and employees of the undertakings who apply independently of the undertaking have a similar nature.

(29) With this provision of the Leniency Regulation, managers and employees who, under article 16 of the Act, might face fines of up to five per cent of the fine imposed on the undertaking are granted immunity from or significant reduction in fines, which might otherwise be quite severe. However, evidence with high conclusive force will be gathered in return, which will help reveal the undertakings parties to the cartel as well as high-level managers and employees of those undertakings who had a decisive effect in the violation.

(30) In accordance with articles 5.2 and 8.2 of the Leniency Regulation, in case it becomes necessary, as a result of the evidence submitted, to increase the amount of the fines imposed because of various reasons such as an extension in the duration of the violation, the increase shall not affect the first undertaking (and its managers and employees) to submit the evidence concerned or the first managers or employees who submit the same independently from the undertakings; the increase shall only affect the other members of the cartel. For instance if, as a result of information and documents submitted by an undertaking, manager or employee making an application to benefit from reduction, it is concluded that the duration of the cartel was six years instead of four, in accordance with article 5 of the Regulation on Fines

to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position² (Regulation on Fines), the fine to be imposed on the cartel member undertakings shall be increased by one fold instead of by half³. However, this increase shall not affect the first undertaking, manager or employee to present the information and document; instead, the fine shall be increased by half during the calculation of the fine which will serve as the basis for reduction.

3. REQUIREMENTS

(31) In the Leniency Regulation, the requirements related to immunity from fines and/or reduction in the fines to be imposed are basically regulated in article 6 for undertakings (and the managers and employees of these undertakings), or in article 9 for those managers or employees who submit an application independently from undertakings. Even though they are laid out in different articles, these conditions are largely similar and may be collected under seven categories; "interpretation to the advantage of the applicants" shall be the governing principle when assessing whether these conditions have been fulfilled.

3.1. Applications Made Independently From Other Undertakings, managers and Employees Parties to the Cartel

(32) Within the framework of the phrase "independently from their competitors or from other undertakings, managers and employees parties to the cartel," included in articles 4.1 and 7.1 of the Leniency Regulation, and later repeated in the second paragraphs of the aforementioned articles as well as in articles 5 and 8 concerning reductions in fines, it is not possible for cartel members to make joint applications to benefit from the Leniency Regulation. This is because if cartel members were given the opportunity to make joint applications when they realized that the cartel was about to disperse, this would pose a risk to

² The phrase "Competition Authority (Authority)" used in these Guidelines also include the "Competition Board (Board)", unless expressly specified otherwise.

³ Published in the Official Gazette dated 15.02.2009 and numbered 27142.

facilitate the establishment and maintenance of cartels by making it possible for cartel members to gain the expected benefits of the cartel while facing either no fines or very minor ones.

3.2. Submission of Information and Documents

(33) Those who apply under the Leniency Regulation must, under articles 6.1(a) and 9.1(a), submit all information and documents on the cartel they have in their possession⁴. All types of books, documents, information and other resources which may be used to substantiate the meetings concerning the cartel can be considered within this framework, including invoices, notes, organizers, meeting minutes, internal-external letters, travel records, reports, working texts, tables, electronic records, computer print-outs, credit card statements and detailed phone records. Similarly, in addition to such documents they have in their possession, applicant undertakings must also submit, either in writing or in accordance with the provision of articles 6.3 and 9.3 of the Leniency Regulation orally, all information they may have on the cartel such as the products affected by the cartel (i.e. medical gas), the duration of the cartel, (i.e. six years), the names of the undertakings parties to the cartel (i.e. undertakings A, B and C), and the dates, locations and participants of cartel meetings (i.e. V from undertaking A, Y from undertaking B and Z from undertaking C attended the cartel meeting held on at the hotel).

(34) In accordance with the phrase "in their possession" included in article 6.1(a) and 9.1(a) as well as with articles 6.1(e) and 9.1(e), the applicants are also obligated to submit any new information or documents they receive until the Board takes its final decision following the conclusion of the investigation. However, applicants may not be placed under obligations which are hard to fulfill, such as submitting the documents in the possession of other cartel members or of the shell companies established in order to organize the cartel.

(35) Leniency Regulation does not list as required information such as the geographical region and volume of trade affected by the cartel, addresses of the other

⁴ In accordance with article 5 of the Regulation on Fines, when calculating base fines, a rate of between two and four per cent of the gross annual income is taken as basis for cartels, which is then increased by half for violations that are longer than a year but shorter than five years, and by one-fold for violations longer than five years.

undertakings parties to the cartel, and other authorities at which a leniency application is filed or planned to be filed. However, such information may be requested if deemed necessary by the Authority, and the applicants are obligated to submit such information to the best of their abilities.

3.3. Prevention of Concealment or Destruction of Information and Documents

(36) Articles 6.1(b) and 9.1(b) of the Leniency Regulation introduce the condition that the information and documents related to the cartel in question must not be concealed or destroyed. This provision has two dimensions.

(37) The aspect of the provision related to the prevention of concealment of information and documents, together with paragraph one, sub-paragraphs (a) and (e) of articles 6 and 9, reinforce the obligation to submit to the Authority all information and documents related to the cartel the applicant currently has in its possession, or might acquire in the future.

(38) The second aspect of the provision concerns the prevention of destruction of documents. The destruction of documents after a plan is made to apply for leniency and preparations are started accordingly would mean a violation of the requirement laid out in sub-paragraph (b).

(39) In case managers or employees of an undertaking conceal or destroy information or documents following an application by the undertaking, the Board shall assess whether the incident is isolated or it can be attributed to the undertaking. Within this context, the Board may decide that the requirement concerning the prevention of concealment or destruction of information and documents has been violated, if the act is carried out by a high-level manager, if the act was carried out on the instructions of a high-level manager, if the undertaking failed to take the necessary precautions to prevent the act, or if the Authority is not urgently notified after the act was uncovered.

3.4. Termination of Involvement in the Cartel

(40) Articles 6.1(c) and 9.1(c) of the Leniency Regulation state that involvement in the cartel in question must be terminated, unless the assigned unit requests otherwise on the grounds that this would complicate the detection of the cartel.

(41) If undertakings that file applications under the Leniency Regulation suddenly terminate their involvement in the cartel before on-the-spot inspections were conducted, this may cause other members of the cartel to become suspicious of the situation and spoil evidence. Therefore, under exceptional circumstances, leniency applicants may be asked to maintain the cartel at least until on-the-spot inspections are conducted. If such a request is made, applicants must immediately inform the Cartels and On-the-Spot Inspections Support Division of all communications with the other member of the cartel.

3.5. Confidentiality of Applications

(42) In articles 6.1(d) and 9.1(d) of the Leniency Regulation, it is stated that the application must be kept confidential until the end of the investigation, unless requested otherwise by the assigned unit.

(43) The reason for that provision is that if those undertakings that file applications under the Leniency Regulation announce their application to the public, including the other members of the cartel, before conclusion of the examinations related to the investigation, this may create an opportunity for spoilation of evidence. Therefore, a rule was introduced to keep the application confidential until the notification phase of the investigation report, however the assigned unit was given the power to grant exceptions to this rule. The examples for such exemptions include giving information to other competition authorities as well as to institutions, organizations and supervising authorities they are under an obligation to provide the information in question, in a manner that would not jeopardize the security of the investigation.

(44) Where the application is made by the undertaking, if other cartel members are warned by the managers and employees of the undertaking, the Board shall assess whether the incident is isolated or it can be attributed to the undertaking, similar to the provision related to prevention of destruction of documents. Within this context, the Board may decide that the related provision has been violated if the act is carried out by a high-level manager, if the act was carried out on the instructions of a high-level manager, if the undertaking failed to take the necessary precautions to prevent the act, or if the Authority is not urgently notified after the act was uncovered.

(45) The Authority may keep the identities of leniency applicants confidential until the notification of the investigation report.

3.6. Maintenance of Cooperation

(46) Articles 6.1(e) and 9.1(e) of the Leniency Regulation introduces an obligation to maintain active cooperation until the final decision is taken by the Board following the conclusion of the investigation. Within the framework of this provision, the following are expected from those who file applications under the Regulation:

- a) As a requirement of articles 6.1(a) and 9.1(a) as well, if new information and documents are acquired following the application, these must be submitted.
- b) Requests for assistance such as for the explanation of new information and documents gathered by the Authority through the use of its powers must be responded.
- c) If the applicant is an undertaking, managers and employees including previous managers and employees must be made available for explanations if possible.
- d) Following the application, any statements contradicting the information and documents submitted during the application, including denials of having participated in a cartel must be avoided. On the other hand, this obligation does not prevent those concerned from building a defense within the framework of the procedures laid out in the Act. For instance, submitting proof of mitigating circumstances and similar methods may be used in the defense, in order to ensure even higher reductions in fines. However, it must be noted once again

that statements which contradict the information and documents submitted during the application, particularly denials of having participated in a cartel must be avoided.

3.7. Unavailability of Immunity in Case of Coercion of Other Undertakings to Infringe

(47) Paragraphs five and six of articles 6 and 9 of the Leniency Regulation state that the applicant would not be able to benefit from immunity if it coerced the other undertakings parties to the cartel to infringe. This provision was regulated in a paragraph separate from the previous provisions because it is a condition for immunity alone. In other words, if those who file applications to take advantage of the Regulation have coerced other members of the cartel into infringement, they will lose their right to immunity but can benefit from reductions in fines.

(48) It shall be concluded that other undertakings have been coerced into infringement only when it is demonstrated, by hard evidence, that the applicant used physical violence, or severe economic pressure with a high probability of market foreclosure such as collective boycotts, or related threats. On the other hand, for instance ringleader status either alone or together with competitors, being the largest player in the market, threatening to launch a price war in case of a refusal to participate in the market, lowering the price so as to reduce profitability or using various mechanisms to punish non-compliance with the collusion shall not be interpreted as coercion to infringement.

4. PROCEDURE

(49) Article 6 of the Leniency Regulation specifies the procedures for granting immunity and/or reductions in fines to undertakings (as well as to the managers and employees of those undertakings), while article 9 does the same for those managers of employees who apply independently from undertakings. Even though they are laid out in different articles, these procedural rules are largely similar and may be collected under five categories.

4.1. Cartels and On-the-Spot Inspections Support Division, Anonymous Requests for Information, Official and Hypothetical Applications

Article 3(a) of the Leniency Regulation defines the assigned unit as the unit assigned by the Competition Board for the implementation of the Regulation and announced on the web site of the Competition Authority. Accordingly, following the Regulation's entry into force, on 19.02.2009, it was announced at the web site of the Authority that a unit was established by the Board in order to implement the Regulation. This unit was later titled Cartels and On-the-Spot Inspections Support Division.

(51) In addition to its other duties, Cartels and On-the-Spot Inspections Support Division fulfills the duties laid out in the Leniency Regulation and responds to information requests on the subject. Communication channels such as phone, fax and e-mail announced on the Authority's web site may be utilized for that purpose. It would be beneficial for those who wish to take advantage of the Leniency Regulation to contact Cartels and On-the-Spot Inspections Support Division through the aforementioned communication channels before filing an official application.

(52) Those who wish to benefit from the Leniency Regulation can anonymously call Cartels and On-the-Spot Inspections Support Division. Without prejudice to the discretionary power of the Board, Cartels and On-the-Spot Inspections Support Division gives information to the inquiring party on whether they would be able to benefit from the immunity or reduction in fines in case they applied. Even though it is not required to supply sufficient information to conduct on-the-spot inspections or to prove the existence of an infringement to obtain this information, those who wish to apply would need to provide sufficient information on the product and market related to the cartel to allow for an evaluation on the subject. The level of information required to allow an evaluation would vary depending on the specifics of the individual case.

(53) Applications under the Leniency Regulation must be filed in writing by the relevant party or its representative. The following must be attached to this cover letter:

- a) All documents concerning the cartel in the applicant's possession,

- b) All information concerning the cartel in the applicant's possession, to be submitted in writing or, in accordance with the provision of articles 6.3 and 9.3 of the Leniency Protocol, orally.
- c) Where the application is filed by a representative, documents demonstrating that the representative is duly authorized.

A letter documenting the date and time of the application is given to the applicant by the Cartels and On-the-Spot Inspections Support Division.

4.2. Granting a Grace Period to Applicants

(54) Articles 6.2 and 9.2 of the Leniency Regulation makes it possible to grant a grace period to those who wish to apply in order to complete the information and documents they are requested to submit, also known as an ordering system. Therefore, those who wish to benefit from the Leniency Regulation may either file an application which directly includes all the required information and documents, or they may reserve their place in the application queue with the understanding that they would complete the information documents within the granted period.

(55) The request for the grant of a grace period in order to prepare the information and documents is made in writing by the relevant party or its representative. In order for the Cartels and On-the-Spot Inspections Support Division to be able to grant the aforementioned period, the relevant party must provide information concerning the products affected by the cartel, the duration of the cartel and the names of the undertakings parties to the cartel. This information required for the grant of the grace period may be submitted in writing or, in accordance with the provision of articles 6.3 and 9.3 of the Leniency Regulation, orally. A letter documenting the date and time of the request for the grant of a grace period is given to the applicant by the Cartels and On-the-Spot Inspections Support Division.

(56) Grace period is not solely limited to immunity applications. In other words, the Regulation allows for a broad opportunity for granting grace periods which also covers applications for reduction.

(57) The principle is to grant every request for grace periods. However, in certain situations, such as when a grace period is requested from the Cartels and On-the-Spot Inspections Support Division in order to complete the application at a very late stage of the investigation, due to time limitations the grace period may not be granted or the granted period may be very short.

(58) Grace period to be granted by the Cartels and On-the-Spot Inspections Support Division shall be determined on a case-by case basis, in accordance with the specifics of each file. However, the principle is to avoid granting grace periods longer than one month.

(59) Grace periods granted may be extended where reasonable justification is provided by the relevant parties, such as a claim that there were thousands of documents to examine and dozens of employees to interview and consequently there was not sufficient time to do all of it.

(60) Requests for the grant of a longer initial grace period or for later extensions shall be given careful consideration since these would increase the risk of information leakage to the other cartel members, allowing them to take measures to decrease the success of the investigations. Therefore, detailed information should be given in the letters requesting grace periods or extensions thereof, concerning what examinations are to be conducted by the applicant within the undertaking during the time requested, why the period specified is necessary and whether the cartel is ongoing.

(61) Requirements related to immunity from fines and/or reduction in fines for applicants, included in articles 6 and 9 of the Leniency Regulation, also apply for those requesting a grace period as well. Therefore, for instance, participation in the cartel must be terminated and the application must be kept confidential unless requested otherwise by the Cartels and On-the-Spot Inspections Support Division. Consequently, any communication with the other cartel members during the grace period granted for completing the information and documents must be immediately notified to the Cartels and On-the-Spot Inspections Support Division.

(62) In case the information and documents are completed within the grace period granted by the Cartels and On-the-Spot Inspections Support Division, the application shall be considered to be filed on the date when the grace period was granted.

(63) In case of a failure to prepare the information and documents within the specified period, the state of affairs is notified to the relevant party by the Cartels and On-the-Spot Inspections Support Division. The relevant party may still file an application at a later date; however, if there are other applications filed, the rights granted by the application order will be forfeit.

4.3. Oral Submission of Information

(64) In accordance with the provision of article 6.3 and 9.3 of the Leniency Protocol, information possessed concerning the cartel may be submitted orally. This information is written down by the assigned professional staff and confirmed by the relevant party or its representative. This confirmation is carried out by the relevant party or its representative signing the report prepared by the assigned professional staff or by allowing the electronic recording of the fact that they read the and acknowledged the report.

(65) The opportunity to submit information on the cartel orally may be used for both immunity and fine reduction applications. In both cases, the relevant parties do not need to show grounds for oral submission.

(66) In case these are used as evidence, those under investigation may, following the notification of the investigation report, examine the information provided by the relevant parties orally and maintained as intra-Authority correspondence after being put to writing at the facilities of the Authority; however, they may not take copies via mechanical or electronic means.

(67) In accordance with the Communiqué Concerning the Regulation of Right of Access to the File and Protection of Trade Secrets, which came into force after its publication in the Official Gazette dated 18.04.2010 and numbered 27556 (Communiqué no 2010/3), any party other than those under investigation, such as the complainants, does not have access to

the information and documents presented within the scope of the leniency application. As well, those under investigation may only use these information and documents in the defenses to be submitted under the Act in relation to the file and in appeals to the administrative justice.

4.4. Prompt Notification of the Application Result

(68) Articles 6.5 and 9.5 of the Leniency Regulation states that, following the completion of the application, the Board shall take a decision on granting immunity from or reduction in fines to the relevant parties within the framework of the conditions listed under the title "3. Requirements" and shall notify the applicant thereof. In other words, the Board guarantees in advance that, depending on the nature of the article under which the application was submitted, it shall grant immunity from fines or reductions in the fines to be imposed, provided that the conditions specified in articles 6 or 9 are not violated, or it is not found that these conditions were violated before the application was filed. Due to this regulation, applicants can get information about their legal status beforehand, which provides assurance and reduces uncertainty.

(69) This decision of the Board should not be taken to mean that a violation is found before all of the defenses of the parties have been heard. As a matter of fact, in its final decision, the Board may conclude that a violation did not occur, despite the statements of the parties to the contrary. Also, this decision of the Board simply confirms that the leniency application is filed in line with the procedure and guarantees that the immunity or reduction will only be granted where the final decision to be taken following the conclusion of the investigation finds that a violation took place and imposes fines and where the requirements listed in the Regulation are met. Therefore, this decision is no different than a decision to initiate an investigation stating that the claims were found to be significant and sufficient, and does not mean that the existence of a violation is assumed beforehand by the Board.

(70) The Board, after taking the opinion of the Cartels and On-the-Spot Inspections Support Division on the subject into consideration, decides whether an application can benefit from the Leniency Regulation.

(71) In applications under articles 4.2 or 7.2 of the Leniency Regulation, if it is stated that the application should not be assessed under article 5 or 8 of the Leniency Regulation in case of rejection by the Board and if the Board decides that an immunity can not be granted, then the applicant may request the return of the information and documents submitted. In case it is specified that an assessment under articles 5 and 8 of the Leniency Regulation is not desired, the rights qualified as a result of the application order are forfeit.

4.5. Taking of the Final Decision Following the Conclusion of the Investigation

(72) If the Board identifies a cartel in its final decision, to be taken following the conclusion of the investigation and defenses in accordance with the relevant provisions of the Act, it shall not impose fines to those under the scope of article 4 or 7 of the Leniency Regulation; on the other hand, it shall reduce the fines imposed on those under the scope of article 5 or 8 at a level no lower than the minimum and no higher than the maximum rates specified in the discount range that was notified to the applicants after the completion of the application. In accordance with article 16.6 of the Act and articles 6.7 and 9.7 of the Regulation, the nature, efficiency and timing of the cooperation shall be taken into account in determining the final discount rates within the aforementioned range. Accordingly, criteria such as the phase of the investigation in which the application was filed, the nature of the evidence presented, the number of cartel members and the number of those to apply for leniency shall be important. Therefore, *ceteris paribus*, for instance if all five members of a particular cartel were to file leniency applications, the fine to be imposed on an undertaking under the scope of article 5.1(a) of the Regulation might be reduced by half; however, for a cartel with two member undertakings, this rate might be at one third.

(73) In the final decision to be given following the conclusion of the investigation, the Board may decide that the conduct examined did not have the characteristics of a cartel but violated article 4 of the Act and therefore should be fined. In that case the Board shall evaluate the matter under article 16 of the Act.

(74) In article 6.6 of the Leniency Regulation, it is stated that if immunity is revoked because of a violation of the requirements or because other undertakings parties to the cartel were coerced into the violation, then the fine to be imposed on the relevant undertaking may

be reduced at a rate between one third and one half. For instance, if a manager of an undertaking which applied for leniency gives information to the managers of other undertakings parties to the cartel, this may result in the revocation of immunity; however, the fine to be imposed on the relevant undertaking may be reduced due to its significant contributions to the investigation. Therefore, even when immunity is revoked due to the aforementioned reasons, as emphasized in the general preamble of the Leniency Regulation, in accordance with the principle that those who enter into cooperation should not be put at a disadvantage in comparison to those who do not, a reduction in fines may be implemented on the discretion of the Board.

(75) Article 6.6 of the regulation states that in case immunity is revoked, those managers and employees of the undertaking who admit to the violation and enter into cooperation may be granted immunity or the fine to be imposed on them may be reduced by at least one third. This provision is intended to ensure that those who entered into cooperation and who did not cause the revocation of the immunity are not put at a disadvantage. Consequently, on the discretion of the Board, managers and employees in that situation may be granted immunity.

(76) On the other hand, within the framework of various criteria, including the number of managers and employees who did not enter into cooperation with the Authority, their position within the undertaking and the effort displayed by the undertaking to ensure cooperation by those individuals, if it is decided that the undertaking should not benefit from immunity and fines should be imposed, then fines may also be imposed on those managers and employees of the undertaking who did not admit to the violation and enter into active cooperation.

(77) Article 9.6 of the Regulation states that if immunity is revoked because it is established that other undertakings parties to the relevant cartel were coerced into violation, then the fines to be imposed on the relevant managers or employees may be reduced by at least one third; however, a provision similar to that in article 6 is not included concerning the violation of the other requirements.

(78) For applications under article 5 or 8 concerning reduction in fines, violation of the requirements included in article 6.1 or 9.1 may result in a failure to benefit from fine reduction.

(79) Last paragraphs of articles 6. and 9. state that information and documents submitted by the applicants may be used as evidence even if it is established that the requirements were violated.

(80) Last paragraphs of articles 6 and 9 state that violation of the requirements listed in articles 6 or 9 by an undertaking, manager or employee who applied for leniency would not entitle other undertakings, managers and employees to any rights. In other words if, for instance, an undertaking which applied under article 4 of the Regulation is unable to benefit from immunity, this shall not mean that immunity shall be granted to the undertaking which applied after the former undertaking and which would benefit from a reduction in fines in accordance with article 5.1(a).

5. ADDITIONAL REDUCTION

(81) Additional reduction is a practice where if those who are unable to benefit from immunity in an investigation concerning a particular market file the first application concerning a cartel in a different market, they both benefit from immunity from fines in relation to the cartel in the latter market and from additional reduction in fines imposed due to the cartel in the former market.

(82) Within this framework, article 7.2 of the Regulation on Fines state that "in an ongoing investigation, the fine to be given to an undertaking which cannot benefit from the provision for non-imposition of fines under the Active Cooperation Regulation, shall be reduced by one fourth if it presents the information and documents specified under Article 6 of the Active Cooperation Regulation before the Board decides to conduct a preliminary inquiry into another cartel. The provisions of the Active Cooperation Regulation for non-imposition or reduction of fines to be given, are reserved."