

GUIDELINES
OF THE PRESIDENT OF THE OFFICE OF COMPETITION AND CONSUMER
PROTECTION
ON THE LENIENCY PROGRAMME

(the procedure of submitting and handling applications for immunity from or reduction of a
fine – “leniency applications”)

I. Introduction

1. The aim of these Guidelines is to increase the transparency of the provisions of both the Act of 17 February 2007 on competition and consumer protection (hereinafter also referred to as "the Act") and the Regulation of the Council of Ministers of 26 January 2009 concerning the mode of proceeding in cases of enterprises' applications to the President of the Office of Competition and Consumer Protection for immunity from fines or their reduction (hereinafter also referred to as "the Regulation") and to present uniform procedures applied under the leniency programme.
2. These Guidelines are not law. They are instructions for enterprises which intend to apply for leniency.
3. Competition restricting agreements belong to the most serious infringements of the Act on competition and consumer protection. Due to their confidential nature, their detection, and consequently counteraction, is to a great degree hindered. Therefore, enterprises which decide to cooperate with the antitrust authority and produce any evidence or information indicating the existence of an infringement of this kind shall be treated in a lenient way. The enterprise which is **the first** to provide the President of the Office with specified information¹ may expect **complete immunity from a fine**.
4. Pursuant to Article 109 of the Act on competition and consumer protection, an enterprise may submit an application for immunity from or reduction of a fine (hereinafter referred to as "the leniency application"), if it is/has been party to a competition restricting agreement.
5. A “competition restricting agreement” should be understood as:

¹ And which meets the requirements set forth in the Act.

- agreements made between enterprises, associations of enterprises and between enterprises and their associations, or some provisions of such agreements,
 - arrangements made in whatever form by two or more enterprises or their associations,
 - resolutions or other by-laws of associations of enterprises or their statutory bodies, aimed at elimination, restriction or any other infringement of competition in the relevant market consisting in, for example: fixing selling prices, dividing the market, restricting the access or eliminating other enterprises from the market.
6. Leniency applications may be submitted in connection with both horizontal agreements (between competitors, e.g. producer – producer) and vertical agreements (between non-competitors, i.e. enterprises functioning at different levels of the supply chain, e.g. producer – supplier).

II. Submitting leniency applications

7. Before submitting the leniency application, the enterprise may contact the Office staff (tel.: **+48 22 55 60 555**) to obtain information on the leniency programme. In particular, the enterprise may present “hypothetical” circumstances of the case (describe anonymously the agreement which it is/has been party to) for preliminary assessment of its eligibility for the leniency programme. All information on the leniency programme are available at the above telephone number everyday Monday to Friday, between 8.30 a.m. and 4 p.m.
8. The leniency application may be submitted in writing:
- 8.1. directly at the Department of Competition Protection, room 552.
 - 8.2. by e-mail to: leniency@uokik.gov.pl
 - 8.3. by fax to: **+48 22 826 10 33**
 - 8.4. by post² to:

Urząd Ochrony Konkurencji i Konsumentów
Departament Ochrony Konkurencji
Pl. Powstańców Warszawy 1
00-950 Warszawa, Poland

² Submitting the application by post is not preferred. When sent by post, the application should be put into two sealed envelopes, none of them bearing any sender information. The first (inner) envelope should bear the inscription “application”. The second (outer) envelope should bear the Office’s address only, without any additional notes.

8.5. Or orally for the record prepared by an employee of the OCCP³.

9. If the application is submitted by the methods set out in points 8.2 and 8.3 above, its original (or its certified copy) must be delivered within 3 days of the date when the application was received by the Office by e-mail or fax⁴. In such event, the date and time of receiving the application by the method indicated in point 8.2 and 8.3 above shall be considered the date and time of receipt of the application. Therefore, if the enterprise sends the application by e-mail to leniency@uokik.gov.pl on 10 December 2008 at 11.52 a.m., it must deliver the original in person (or send it by post) by 14 December 2008 (by 4.15 p.m. in the event when the application is delivered in person at the premises of the Office) – in such event, the date of receipt of the application shall be 10 December 2008, 11.52 p.m.
10. An enterprise which intends to submit the leniency application personally, either in writing or orally for the record, should contact the Office at +48 22 55 60 555 or by e-mail at leniency@uokik.gov.pl to make an appointment.
11. An enterprise which intends to submit the leniency application without prior appointment should go directly to the Department of Competition Protection, room 552 (making an appointment is preferred).
12. An application submitted orally is entered on the record by an employee of the Office. The record contains the factual circumstances presented by the applicant and lists as attachments the statements, evidence and documents that the applicant produced. The record is signed by the employee of the Office who has prepared it and by the applicant. The date of receipt of the application submitted orally for the record is considered to be the date and time when the report was begun to be prepared.

III. Formal requirements for applying for leniency

13. The leniency application should contain a description of the agreement (§ 3 of the Regulation). Producing a detailed and reliable description of the agreement is a circumstance serving **in favour of the applicant**. The description of the agreement should indicate:

³ The leniency application may in particular be submitted orally for the record during an inspection.

⁴ The provision does not refer to applications submitted by e-mail and containing electronic signature within the meaning of the

- 13.1. the enterprises which concluded the agreement (name, registered office, address);
 - 13.2. the products or services to which the agreement refers;
 - 13.3. the territory covered by the agreement;
 - 13.4. the purpose of the agreement (e.g. fixing minimum resale prices, dividing the market);
 - 13.5. the circumstances of concluding the agreement (i.e. the circumstances which led to the conclusion of the agreement);
 - 13.6. the roles of individual participants in the agreement (in particular, the applicant should indicate who was the agreement's initiator and induced other enterprises to conclude the agreement);
 - 13.7. the duration of the agreement;
 - 13.8. whether the application has also been submitted to the competition protection authorities of other European Union Member States or the European Commission – if yes, it is necessary to indicate the competition protection authority to which the application has been submitted, as well as the date of submitting the application;
 - 13.9. how the agreement has been functioning, including, in particular, the dates, places, content and frequency of meetings of the participants of the agreement;
 - 13.10. the names and official positions of the persons who performed significant (key) functions with respect to the agreement (as regards all the enterprises participating in the agreement). The applicant should produce data which make it possible to duly summon the aforementioned persons (e.g. the address their place of employment), as well as clarify if these persons are still in employment with enterprise participating in the agreement.
14. The leniency application should be supplemented by the statements referred to in § 3(3) of the Regulation, namely:
- 14.1. a statement that the enterprise has ceased its participation in the prohibited agreement, specifying the date of cessation;
 - 14.2. a statement that the enterprise has neither been the agreement's initiator nor has induced other enterprises to participate in the agreement.

15. The leniency application should also be supplemented by evidence supporting the claims being made (e.g. minutes of meetings, printouts of electronic correspondence, etc.). Each piece of evidence produced by the applicant, unless it is the original copy, should be certified by a public administration body, a notary, an attorney, a legal adviser or an authorised employee of the applicant.
16. An enterprise may submit an abridged leniency application referred to in § 5 of the Regulation if at the moment of submitting the application it does not possess a complete set of the information required. The abridged leniency application should contain a description of the agreement. This description should indicate at least:
- 16.1. the enterprises which concluded the agreement (name, registered office, address);
 - 16.2. the products or services to which the agreement refers;
 - 16.3. the territory covered by the agreement;
 - 16.4. the duration of the agreement;
 - 16.5. the purpose of the agreement (e.g. fixing minimum resale prices, division of the market);
 - 16.6. whether the application has also been submitted to the competition protection authorities of other European Union Member States or the European Commission (if yes, it is necessary to indicate the competition protection authority to which the application has been submitted, as well as the date of submitting the application).
17. Submitting the abridged leniency application **guarantees the enterprise a place in the queue** of applicants only provided that the application is subsequently completed. The applicant shall be requested in writing to complete the application with specified information⁵ within an appointed deadline. The deadline for completing the application shall be determined based on circumstances of each individual case.
18. In the event that the President of the Office, based on the analysis of the application, decides that the applicant has preliminarily met the formal requirements for eligibility for the leniency programme, the enterprise is notified of this fact in writing. In the notification, the enterprise is informed of its place in the queue of applicants.

⁵ In a request for completing the missing information, the entrepreneur shall not be informed of a position of the submitted application in the queue.

19. The notification is sent to the enterprise when the following requirements are met: the case concerns a competition restricting agreement, the enterprise has produced a description of the agreement, as well as statements that the enterprise has ceased its participation in the prohibited agreement and that it has neither been the agreement's initiator nor has induced other enterprises to participate in the agreement.
20. The notification informing the enterprise that it has preliminarily met the requirements for eligibility for the leniency programme does not mean that the enterprise is guaranteed immunity from or reduction of a fine. The applicant's attitude (e.g. information and evidence it produces) will be verified in the course of the proceedings. A determination on whether immunity from or reduction of a fine is granted is made in the decision concluding the proceedings together with a justification of the President of the Office's stance.

IV. Handling the leniency applications

21. Once the application is received by the Office, the enterprise will be provided with contact data of an employee of the Office who will be handling the case. For all matters related to the application, the enterprise should directly contact the case handler.
22. When considering the leniency application, the President of the Office shall in particular take into account:
 - 22.1. the quality of the evidence produced by the applicant (e.g. if the evidence is useful for proving the existence of the practice);
 - 22.2. whether the leniency application has been submitted prior to or after the initiation of the Office's proceedings (either explanatory or antitrust ones);
 - 22.3. timely replies to questions put forward by the President of the Office.
23. Applications containing the following shall receive positive evaluation:
 - 23.1. a detailed and reliable description of the agreement;
 - 23.2. new evidence (of which the President of the Office has not known before);
 - 23.3. evidence useful in proving the existence of the agreement (i.e. evidence directly related to the existence of the practice), especially evidence which originated during the existence of the practice;
 - 23.4. evidence produced at the applicant's own initiative (not upon request from the antitrust authority).

24. Applications submitted prior to the initiation of the Office's proceedings (either explanatory or antitrust ones), as well as applications indicating infringements of the provisions of the Act in other product markets shall receive particularly positive evaluation.
25. Destroying, forging and concealing any evidence related to the agreement (both prior to and after submitting the leniency application) shall receive negative evaluation from the President of the Office.
26. Producing information which is misleading, unreliable or partial shall receive negative evaluation from the President of the Office.
27. Disclosing the fact of submitting the application (in particular, prior to the initiation of the proceedings or carrying out inspection activities by the Office) shall receive negative evaluation and be treated as obstruction of proceedings.
28. **The applicant is obliged to cooperate with the President of the Office from the moment of submitting the leniency application.** The circumstances indicated in points 22-24 of these Guidelines should in particular be considered as elements of positive cooperation.
29. All the information and evidence obtained by the President of the Office as part of the leniency programme shall be, pursuant to Article 70 of the Act on competition and consumer protection, made available to the other parties to the proceedings prior to the issuance of the decision concluding the proceedings at the latest (after the parties have been requested to acquaint themselves with the evidence), unless the applicant consents to these information being made available earlier.
30. Only the enterprise which is the first to submit the leniency application and meet the requirements set forth in the Act may expect to be granted full immunity from a fine.
31. The next enterprises to submit leniency applications and met the requirements set forth in the Act may expect the following reductions of fines:
 - 31.1. the second applicant – reduction of a fine⁶ by maximally 50%;
 - 31.2. the third applicant – reduction of a fine by maximally 30%;
 - 31.3. the subsequent applicants – reduction of a fine by maximally 20%.

V. Summary applications

⁶ The fine is determined according to the Guidelines on setting fines for competition restricting practices (available on the OCCP website at: http://www.uokik.gov.pl/en/press_office/press_releases/art143.html)

32. In the event that an anti-competitive agreement concerns the territory of at least three European Union Member States, an enterprise may (under Community regulations) submit a leniency application to the European Commission. At the same time, to “save itself a place in the queue”, the enterprise may submit summary applications to the competition protection authorities of the Member States whose territories are concerned by the agreement (the so-called simplified procedure – summary application).
33. Pursuant to Article 109 of the Act on competition and consumer protection, an enterprise may submit the summary application if it is/has been party to a competition restricting agreement.
34. The summary application may be submitted to the President of the Office when the agreement or any part thereof affects the territory of Poland.
35. The summary application may be submitted in writing⁷ or orally for the record prepared by an employee of the Office.
36. In the case of applications submitted orally for the record prepared by an employee of the Office, the record contains the factual circumstances presented by the applicant and lists as attachments the statements, evidence and documents that the applicant produced. The record is signed by the employee of the Office who has prepared it and by the applicant.
37. The summary application should contain a description of the agreement, indicating:
- 37.1. the enterprises which concluded the agreement (name, registered office, address);
 - 37.2. the products or services to which the agreement refers;
 - 37.3. the territory covered by the agreement;
 - 37.4. the purpose of the agreement (e.g. fixing minimum resale prices, division of the market);
 - 37.5. the duration of the agreement;
 - 37.6. the EU Member States where evidence for the existence of the agreement is to be found;
 - 37.7. applications submitted or planned to be submitted in other EU Member States or to the European Commission (the applicant should list the competition protection authorities to which applications have been or are to be submitted, as well as provide the dates of their submission);

⁷ In the case of applications submitted in writing point 8 of these Guidelines is applies.

38. The summary application should be supplemented by statements referred to in § 3(3) of the Regulation, namely:
- 38.1. a statement that the enterprise has ceased its participation in the prohibited agreement, specifying the date of cessation;
 - 38.2. a statement that the enterprise has neither been the agreement's initiator nor has induced other enterprises to participate in the agreement.
39. Having received the summary application, the President of the Office informs the enterprise in writing of the date and time of receipt of the application (the enterprise is not informed of its place in the queue of applicants). The above information is not to be understood as a notification stating that the enterprise may be preliminarily meeting the requirements for eligibility for being granted immunity from or reduction of a fine.
40. The President of the Office requests the enterprise to complete the application only after proceedings concerning the case to which the application refers have been initiated. After submitting the summary application and before the proceeding are initiated, the enterprise should not complete the application at its own initiative (without having been requested by the President of the Office). Before the initiation of proceedings by the President of the Office, the enterprise produces all the information required and cooperates with the European Commission.
41. In the event that the President of the Office, based on the analysis of the application (after the initiation of proceedings), decides that the enterprise has preliminarily met the formal requirements for eligibility for the leniency programme, the enterprise is notified of this fact in writing. In the notification, the enterprise is informed of its place in the queue of applicants.
42. For any queries concerning these Guidelines, please call + **48 22 55 60 555** or send an e-mail to: leniency@uokik.gov.pl.

