



REPUBLIC OF ALBANIA
Competition Authority

REGULATION
ON FINES AND LENIENCY

Pursuant to the articles 24, letter dh and 84 letter ç, of the law Nr. 9121, date 28.07.2003 “On Competition Protection”, Competition Authority issues “The regulation on fines and leniency”.

Chapter I
Determining the fine

Article 1
Calculation of fine

The method of determining the amount of a fine will adhere to the following rules, which start from a basic amount that will be increased to take account of aggravating circumstances or reduced to take account of attenuating circumstances.

Article 2
Basic amount

1. The basic amount will be determined according to the gravity and duration of the infringement, which are the only criteria referred to in Part VI “Administrative Violations and Sanctions” of the Law.
2. When it is possible to calculate or estimate objectively the illegal profits of undertakings acquired infringing this Law, such a profit constitutes the minimal amount of fine.
3. The basic amount calculated according to this method (basic amount increased or reduced on a percentage basis) may not in any case exceed 10%, of the aggregate turnover of the undertakings.
4. The accounting year on the basis of which the aggregate turnover is determined must be the one proceeding the year in which the decision is taken or, if figures are not available for the accounting year, the one immediately preceding it.

5. Depending on the circumstances, account should be taken, once the above calculations have been made, of certain objective factors such as a specific economic context, any economic or financial benefit derived by the offenders, the specific characteristic of the undertakings in question and their ability to pay in a specific social context. The amount of fines should be adjusted accordingly.
6. In case involving associates of undertakings, decision should as far as possible be addressed to and fines imposed on the individual undertakings belonging to the association. If this is not possible (where there are several affiliated undertakings), and on overall fine should be imposed on the association, calculated according to the principles outlines above but equivalent to the total of individual fines which might have been on each of the members of association.

Article 3 Gravity

In assessing the gravity of the infringement, account must be taken of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.

Article 4 Classification of infringement

Infringements will be put into one of two categories: minor infringements and serious infringements.

1.1 minor infringements:

Here are included the infringements of undertakings according to article 73, point 1, letters a, b, c, ç, d.

Amount of fines: 0,1 – 1% of the total turnover in the preceding business year .

1.2 Serious infringements:

Here are included the infringements of undertakings according to article 74, point 1, letters a, b, c, ç, d, dh.

These will generally be horizontal restrictions, as cartels, which aimed at fixing prices, production or sales quotas, sharing, and any other trading conditions, or other practices which jeopardize the proper functioning of the market. There might also be abuse of a dominant position (refusals to supply, discrimination, and exclusion, loyalty discounts) made by dominant firms in order to shut competitors out of the market.

Amount of fines: 2 – 10 % of the total turnover in the preceding business year.

1.3 Other administrative violations:

Here are included the infringements of undertakings which disregard decisions of the Commission as stipulated in the article 76, point 1, letters a, b, c, ç, d, of the Law.

Amount of fines in periodic payments: up to 5 % of the average daily turnover in the preceding business year.

Article 5 General rules

1. Within each of the categories, and in particular as far as serious and very serious infringements are concerned, the proposed scale of fines will make it possible to apply differential treatment to undertaking according to the nature of the infringement committed. As a rule, it be to take account of:
 - The effective economic capacity of offenders to cause significant damage to other undertakings, in particular consumers, and to set fine at a level which ensures that it has a sufficiently deterrent effect.
 - The fact that large undertakings usually have legal and economic knowledge and infrastructure which enable them more easily to recognize that their conduct constitutes an infringements and be aware of the consequences stemming from it under the Law.
2. Where an infringements involves several undertakings it might be necessary in some cases to apply weightings to the amounts determined within each of the two categories in order to take account of the specific weight and, therefore, the real impact of the offending conduct of each undertaking on competition, particularly where there is considerable disparity between the sizes of the undertakings committing infringements of the same type.

Article 6 Duration

1. A distinction should be made between the following:
 - Infringements of short duration (in general, less that one year): no increase in amount
 - Infringements of medium duration (in general, one to five year): increase of to up to 50 % in the amount determined for gravity,
 - Infringements of long duration (in general, more than five year): increase of to up to 10 % in the amount determined for gravity,
2. As rule, the increase in the fine for long-term infringements represents a considerable strengthening of the previous practice with a view to imposing effective sanction on restrictions which have had a harmful impact on consumer over a long period. The basic amount will result from the addition of the two amounts established in accordance with above:

$$X \text{ (gravity)} + Y \text{ (duration)} = \text{basic amount}$$

Article 7
Aggravating circumstances

The basic amount will be increased where there are aggravating circumstances such as:

- Repeated infringement of the same type by the same undertaking (s),
- Refusal to cooperate with or attempts to obstruct the Competition Authority in carrying out its investigations,
- Role of leader in, or instigator of the infringement,
- Retaliatory measures against other undertakings with a view to enforcing practices which constitute an infringement,
- Need to increase the penalty in order to exceed the amount of gains improperly made as a result of the infringement when it is objectively possible to estimate that amount,
- Others

Article 8
Attenuating circumstances

The basic amount will be reduced where there are attenuating circumstances such as:

- An exclusively passive or “follow-my-leader” role in the infringement,
- Non-implementation in practice of the offending agreement or practices,
- Termination of the infringement as soon as Competition Authority intervenes,
- Existence of reasonable doubt on the part of the undertakings as to whether the restrictive conduct does indeed constitute an infringement,
- Infringements committed as a result of negligence or unintentionally,
- Effective cooperation by the undertaking in the proceedings, outside the scope of the Authority ‘s new notice on the non-imposition or reduction of fines in cartel cases,
- Others

Chapter II
LENIENCY FROM FINES

SECTION A

Article 9
Immunity from fines

1. The Competition Commission will grant an undertaking immunity from any fine which would otherwise have been imposed if:
 - a. the undertaking is the first to submit evidence which in the Commission 's view may enable it to adopt a decision to carry out, in the sense of Article 74, point (1), letter a of the Law, or,

- b. the undertaking is the first to submit evidence which in the Authority's view may enable it to find an infringement of Article 4 of the Law.
2. Immunity pursuant to point 1, letter a), of this chapter will only be granted on the condition that the Commission did not have, at the time of the submission, sufficient evidence to adopt a decision to carry out an investigation in the sense of Article 74, point (1) of the Law.
3. Immunity pursuant to point 1, letter (b) of this chapter will only be granted on the cumulative conditions that the Commission did not have, at the time of the submission, sufficient evidence to find an infringement of Article 4 of the Law and that no undertaking had been granted conditional immunity from fines under point 1, letter (a) in connection with the alleged cartel.
4. In addition to the conditions set out in points 1 /a and 2 or in points 1/ b and 3 as appropriate, the following cumulative conditions must be met in any case to qualify for any immunity from a fine:
 - a. the undertaking cooperates fully, on a continuous basis and expeditiously throughout the Authority's administrative procedure and provides the Authority with all evidence that comes into its possession or is available to it relating to the suspected infringement. In particular, it remains at the Authority's disposal to answer swiftly any request that may contribute to the establishment of the facts concerned;
 - b. the undertaking ends its involvement in the suspected infringement no later than the time at which it submits evidence under points 1/a and 1/b, as appropriate;
 - c. the undertaking did not take steps to coerce other undertakings to participate in the infringement.

Article 10 Procedure

1. Any undertaking may submit a request in writing to the Authority for immunity from fines.
2. Should it become apparent that the set out in article 9, point 1, letters a and b of this Regulation, as appropriate, are not met, the Authority will immediately inform the undertaking that immunity from fines is not available for the suspected infringement.
3. If immunity from fines is available for a suspected infringement, of article 4 of the law ,the undertaking may, in order to meet conditions, of in article 9, point 1, letters a and b, of this regulation, as appropriate:
 - a. immediately provide the Authority with all the evidence relating to the suspected infringement available to it at the time of the submission; or

- b. Initially present this evidence in hypothetical terms. In this case the undertaking must present a descriptive list of the evidence it proposes to disclose at a later agreed date. This list should accurately reflect the nature and content of the evidence, whilst safeguarding the hypothetical nature of its disclosure. Expurgated copies of documents, from which sensitive parts have been removed, may be used to illustrate the nature and content of the evidence.
4. The Authority will provide a written acknowledgement of the undertaking's application for immunity from fines, confirming the date on which the undertaking either submitted evidence under point 3, letter (a) or presented to the Authority the descriptive list referred to in point 3 letter (b) of this article.
5. Alternatively, the Authority will verify that the nature and content of the evidence described in the list referred to in point 3, letter (b), of this article will meet the conditions set out in points 1 letter (a) or points 1, letter (b), article 9 of this regulation, as appropriate, and inform the undertaking accordingly with circumstances.
6. The Commission after examining the evidence submitted by the undertaking no later than on the date agreed and having verified that it meets the conditions set out in points 3 letter (a), (b), the Competition Commission will grant it immunity from fines in the relevant decision.
7. An undertaking which fails to meet the conditions set out in article 9, point 1, letter (a), or letter (b), of this regulation, as appropriate, may withdraw the evidence disclosed and its request for the purposes of its immunity application or request to the Competition Authority to consider it under section B of this regulation. This does not prevent the Authority from using its normal powers of investigation in order to obtain the necessary information.
8. The Competition Authority will not consider other applications for immunity from fines before it has taken a position on an existing application in relation to the same suspected infringement.
9. If at the end of the administrative procedure, the undertaking has met the conditions set out in article 9, point 4/ a, b, the Competition Commission will grant it immunity from fines in the relevant decision.

Section B.

Article 11 **Reduction of a Fine**

1. Undertakings that do not meet the conditions under section A above may be eligible to benefit from a reduction of any fine that would otherwise have been imposed in case of infringement of article 4 of the Law.

2. In order to qualify, an undertaking must provide the Authority with evidence of the suspected infringement which represents significant added value with respect to the evidence already in the Authority's possession and must terminate its involvement in the suspected infringement no later than the time at which it submits the evidence.

Article 12

Added value

The concept of 'added value' refers to the extent to which the evidence provided strengthens, by its very nature and/or its level of detail, the Authority's ability to prove the facts in question. In this assessment, the Authority will generally consider written evidence originating from the period of time to which the facts pertain to have a greater value than evidence subsequently established. Similarly, evidence directly relevant to the facts in question will generally be considered to have a greater value than that with only indirect relevance.

Article 13

Determining of the level of reduction

1. Competition Commission will determine in any final decision adopted at the end of the administrative procedure, whether the evidence provided by an undertaking represented significant added value with respect to the evidence in the Authority's possession at that same time, according to the article 11, point 2, of this Regulation, and the level of reduction an undertaking will benefit from, relative to the fine which would otherwise have been imposed, as follows:
 - First undertaking: a reduction of 30 - to 50 %;
 - Second undertaking: a reduction of 20 - to 30 %;
 - Subsequent undertakings: a reduction of up to 20 %.
2. In order to determine the level of reduction within each of these bands, the Authority will take into account the time at which the evidence fulfilling the condition in article 11, point 2, of this Regulation was submitted and the extent to which it represents added value. It may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission.
3. If an undertaking provides evidence relating to facts previously unknown to the Authority which have a direct bearing on the gravity or duration of the suspected cartel, the Authority will not take these elements into account when setting any fine to be imposed on the undertaking which provided this evidence.

Article 14

Procedure

1. An undertaking wishing to benefit from a reduction of a fine should provide the Authority with evidence of the cartel in question.

2. The undertaking will receive an acknowledgement of receipt from the Authority recording the date on which the relevant evidence was submitted.
3. The Authority does not commit itself regarding the evidence submitted by the undertaking, prior to the decision of the Commission stating if the evidence constitutes added value.
4. At the end of administrative procedures, the Commission will take a decision to make the final position for each undertaking which filed an application for a reduction of a fine.

Article 15

General Rules

1. If the undertaking failure to meet any of the requirements set out in sections A or B of this chapter, and as the case may be, at any stage of the administrative procedure they may result in the loss of any favorable treatment set out therein.
2. The fact that an undertaking cooperated with the Authority during its administrative procedure will be indicated in any decision, so as to explain the reason for the immunity or reduction of the fine. The fact that immunity or reduction in respect of fines is granted cannot protect an undertaking from the consequences of its participation in an infringement of Article 4.

Article 16

Entrance into force

This Regulation enters into force immediately.

Chairman

Zef PREÇI