

Guidelines on immunity from and reduction of penalty payments in cartel cases

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1 Introduction

The Antitrust Damages Act (Laki kilpailuoikeudellisista vahingonkorvauksista) and the amendments to the Competition Act entered into force on 26 December 2016. In the amendment to the Competition Act, the concept of 'leniency statement' used in the Damages Directive ¹ was added to the wording of paragraphs on immunity from and reduction of penalty payments. In addition, the Antitrust Damages Act includes provisions on using a leniency statement as evidence in damage claims proceedings. These guidelines take account of the Antitrust Damages Act as well as the amendments to the Competition Act. These guidelines replace the previous guidelines of the Finnish Competition and Consumer Authority on immunity from and reduction of fines in cartel cases from October 2011 (Guidelines 2/2011). The objective of the Guidelines is to describe the conditions for immunity from and reduction of penalty payments (so-called leniency), the functioning of the leniency system and the leniency procedure applied by the Finnish Competition and Consumer Authority, and to provide more detailed information on the application of the provisions.

The provisions on immunity from and reduction of penalty payments provide the business undertakings involved in secret cartels the opportunity to disengage from them, and upon the fulfilment of the conditions referred to in the Competition Act to either obtain immunity from or a reduction of the penalty payment imposed for a restraint on competition.

¹ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

2 Immunity from penalty payment in cartel cases

2.1 General

Under Section 14 of the Competition Act, a penalty payment shall not be imposed on an undertaking in the case of a secret restraint on competition between competitors, referred to in Section 5 of the Competition Act or Article 101 of the Treaty on the Functioning of the European Union, whereby purchase or selling prices or other trading conditions are fixed; production or sales is limited; or markets, customers or sources of supply are shared, if an undertaking involved in such a restraint on competition:

1. submits a leniency statement and information or evidence, on the grounds of which the Finnish Competition and Consumer Authority may conduct an inspection referred to in Section 35 or 36; or
2. following an inspection referred to in Section 35 or 36, submits a leniency statement and information or evidence, on the grounds of which the Finnish Competition and Consumer Authority can establish that Section 5 or Article 101 of the Treaty on the Functioning of the European Union has been violated.

It is a further condition of immunity that the undertaking has provided the leniency statement and information and evidence referred to in (1)(1) and (1)(2) prior to the Finnish Competition and Consumer Authority obtaining it from some other source.

The field of application of the provision has been limited to secret cartels, i.e. agreements and concerted practices between competitors, the purpose of which is the fixing of purchase or selling prices or other trading conditions; the limiting of production or sales or the sharing of markets, customers or sources of supply and which are serious and confidential by nature. The provision is not applicable to other type of cooperation between competitors. The provision does not hence apply to agreements concerning e.g. production cooperation between competitors, the purpose² of which cannot be deemed to be the restricting of competition and which are not serious or confidential by nature.

An undertaking which has taken steps to coerce another undertaking to participate in a cartel cannot obtain immunity.

² Cf. the division of Section 5 of the Competition Act into restraints on competition which have as their object the significant prevention, restriction or distortion of competition, and restraints on competition which result in a significant prevention, restriction or distortion of competition.

2.2 Information an undertaking must submit to obtain immunity

2.2.1 General

Immunity from the penalty payment is possible both in situations in which the undertaking delivers the leniency statement and information and evidence before the Finnish Competition and Consumer Authority has conducted an inspection referred to in Section 35 (inspections on the business premises of an undertaking) or 36 (inspections of other premises) and in situations in which the Finnish Competition and Consumer Authority has already conducted an inspection. The conditions set on immunity differ from each other, however, depending on whether the undertaking submits the information before the inspection or after the inspection has begun.

However, obtaining immunity is always possible for one cartel member only.

2.2.2 Prior to an inspection by the Finnish Competition and Consumer Authority

A penalty payment shall not be imposed on an undertaking if it is the first one to submit a leniency statement and information and evidence to the Finnish Competition and Consumer Authority which allow the Finnish Competition and Consumer Authority to perform an inspection referred to in Sections 35 or 36.

The Competition Act was amended to include the concept of 'leniency statement'. Previously, the 'information and evidence' referred to in the Competition Act has in practice included corporate statements, because the Government Bill for the Competition Act, for example, states that the information and evidence referred to in the section may include corporate statements, written documents, records from data processing, data, or oral statements by the representatives or employees of the business. The amendment of the Act changes this relationship recorded in the Government Bill for Competition Act. In the future, the aim is to interpret the concept of a leniency statement in accordance with Article 2(16) of the Damages Directive.

According to Article 2(16) of the Damages Directive, a 'leniency statement' means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of fines under a leniency programme, not including pre-existing information.

Correspondingly, the aim is to interpret the concept of 'information and evidence' referred to in the Competition Act in accordance with the definition of pre-existing information as stated in Article 2(17) of the Damages Directive. According to Article 2(17) of the Damages Directive, 'pre-existing information' means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority.

The undertaking obtains immunity on the basis of Section 14(1)(1) if the Finnish Competition and Consumer Authority did not, when the application for immunity was lodged, have sufficient in-

formation to allow it to intervene with the restraint and make a targeted inspection referred to in Sections 35 or 36. If the Finnish Competition and Consumer Authority has obtained this kind of information from some other source, immunity from a penalty payment under 14(1)(1) is no longer possible.

If the Finnish Competition and Consumer Authority has already begun an inspection referred to in Section 35 or 36 of the Competition Act, obtaining immunity under Article 14(1)(1) is no longer possible.

2.2.3 Following an inspection

On the basis of 14(1)(2), an undertaking may obtain immunity also after the Finnish Competition and Consumer Authority has conducted an inspection on the premises of an undertaking or on some other premises on the basis of Section 35 or 36. The provision is applicable to situations in which the Finnish Competition and Consumer Authority holds information, based on which an inspection referred to in Section 35 or 36 has or could have been carried out, yet insufficient to establish the existence of a cartel. In that case, an undertaking party to the cartel obtains immunity if it is the first one to submit to the Finnish Competition and Consumer Authority a leniency statement, information and evidence, on the basis of which the Finnish Competition and Consumer Authority may find an infringement of Section 5 of the Competition Act or Article 101 of the Treaty on the Functioning of the European Union.

The application for immunity shall always be made on the Finnish Competition and Consumer Authority's premises or be delivered following the procedure described in Chapter 6. Applications for immunity from penalty payments cannot hence be made to officials of the Finnish Competition and Consumer Authority or the Regional State Administrative Agency during an inspection referred to in Sections 35 or 36 of the Competition Act, in a situation in which the inspection referred to in Section 35 or 36 has begun.

Immunity from penalty payment on the basis of 14(1)(2) is not possible if some other cartel member has already submitted to the Finnish Competition and Consumer Authority the information referred to in 14(1)(1).

2.3 The undertaking shall be the first one to submit information

It is a condition of immunity that the undertaking submits the leniency statement and information and evidence referred to in Section 14(1)(1) and (2) prior to the Finnish Competition and Consumer Authority obtaining these from somewhere else. Hence only one cartel member may obtain immunity. An undertaking cannot obtain immunity if some other cartel member has already submitted to the Finnish Competition and Consumer Authority the leniency statement and information and evidence referred to in Section 14. Nor is immunity possible if the Finnish Competition and Consumer Authority has obtained the information referred to in Section 14 e.g. in the course of its own investigations or from an external source prior to an undertaking party to a cartel having applied for immunity.

Immunity is hence not possible based on Section 14(1)(1) if the Finnish Competition and Consumer Authority already has the information referred to in Section 14 prior to the undertaking applying for immunity.

Immunity is not possible under 14(1)(2) if the Finnish Competition and Consumer Authority already has the information referred to in (1)(2) prior to the undertaking applying for immunity.

Nor is immunity possible under 14(1)(2) in situations in which another cartel member has, prior to the inspections referred to in Sections 35 or 36, submitted the information referred to in 14(1)(1). Immunity is thus only possible for one cartel member.

However, under 14(1)(2), an undertaking may obtain immunity if it is the first one to submit to the Finnish Competition and Consumer Authority the leniency statement and information and evidence referred to in 14(1)(2), even if the Finnish Competition and Consumer Authority already has the information referred to in 14(1)(1), if the Finnish Competition and Consumer Authority has obtained them in the course of its own investigations and not from another cartel member.

2.4 Coercion prevents immunity

An undertaking cannot obtain immunity if it has taken steps to coerce another undertaking to participate in a cartel. The mere leading role or initiative of an undertaking in forming and maintaining a cartel does not prevent immunity, however.

An undertaking that has taken steps to coerce another undertaking to participate in a cartel can still obtain a reduction from the penalty payment if the undertaking fulfils the conditions for a reduction of the penalty payment referred to in Sections 15 and 16 , described in more detail below.³

³ An undertaking that has been awarded conditional immunity referred to in Section 17(2), and that is later found to have taken steps to coerce another undertaking to participate in a cartel cannot, however, obtain immunity. See section 3.4.

3 Reduction of penalty payment in cartel cases

3.1 General

On the basis of Section 15 of the Competition Act, a member of a secret cartel who cannot obtain immunity may be granted a reduction of the penalty payment. Under the provision, other cartel members than the first one to disclose the cartel to the Finnish Competition and Consumer Authority may also benefit from cooperation with the Finnish Competition and Consumer Authority. The amount of the reduction will be determined in the manner described below on the basis of the date and time the leniency statement and information and evidence were submitted.

Under Section 15 of the Competition Act, the penalty payment imposed on an undertaking that participated in a restraint on competition other than the undertaking referred to in Section 14(1) that obtained immunity under Section 14, shall be reduced if the undertaking submits a leniency statement, information and evidence to the Finnish Competition and Consumer Authority that is significant for establishing a restraint on competition or its entire extent or nature, and prior to the Finnish Competition and Consumer Authority receiving the information from some other source. The penalty payment shall be reduced in the following way:

1. 30–50 per cent if the undertaking is the first one to submit the information;
2. 20–30 per cent if the undertaking is the second one to submit the information;
3. 20 per cent at most in any other situation than the ones referred to in Section 15(1)(1) and 15(1)(2).

3.2 Information to be delivered by the undertaking in order to obtain a reduction

The leniency statement, information and evidence shall be deemed to be significant for the finding of the entire extent or nature of a competition restraint if they may be used to confirm that Section 5 of the Competition Act or Article 101 on the Functioning of the Treaty on the European Union has been infringed. The conditions for a reduction of the penalty payment are also fulfilled when the leniency statement, information and evidence obtained by the undertaking support the evidence already held by the Finnish Competition and Consumer Authority, so as to allow the Finnish Competition and Consumer Authority to establish the existence of a cartel on the basis of the information delivered by the undertaking along with the existing evidence.

In addition, the leniency statement, information and evidence are considered significant for establishing the entire extent or nature of the restraint on competition if it can be stated on the basis of the information submitted by the applicant that the information and evidence previously held by the Finnish Competition and Consumer Authority did not fairly represent the actual duration and geographic coverage of the cartel, the branch of industry or product markets covered by the cartel conduct or the gravity of the cartel conduct.

It is also significant whether the information directly demonstrates the violation or only indirectly, and whether the reliability thereof should be ascertained from other sources. In any event, the

leniency statement and information and evidence shall materially assist in the finding of the extent and nature of a restraint on competition. The mere submission of material somehow related to a cartel case is not enough to obtain a reduction.

When the significance of the leniency statement and information and evidence referred to in Section 15(1) is assessed in the investigation of a restraint on competition, it should also be considered what kind of material the Finnish Competition and Consumer Authority already has in its possession. The leniency statement and information and evidence is not considered necessary for finding the entire duration and nature of the restraint on competition if they only repeat or confirm aspects of which the Finnish Competition and Consumer Authority has already obtained a sufficient amount of evidence from other cartel members or other sources in the course of the investigation. The undertaking hence cannot obtain a reduction from the penalty payment referred to in this section if the information supplied by it is already evident from the material in the possession of the Finnish Competition and Consumer Authority, or if the information cannot be deemed to be directly related to the investigation of the cartel case.

3.3 Determining the amount of the reduction

The amount of the reduction obtained from the penalty payment is determined according to the date and time at which the undertaking involved makes the application for immunity from and reduction of the penalty payment referred to in Section 17(1) compared with other undertakings involved in the cartel. Under Section 15(1)(1)-(3), the penalty payment shall be reduced in the following way:

- 30–50 per cent if the undertaking is the first one to submit the information
- 20–30 per cent if the undertaking is the second one to submit the information;
- 20 per cent at most for other undertakings

The amount of the reduction obtained from the penalty payment depends on how significant the information submitted by the undertaking is in establishing the restraint on competition.

3.4 An undertaking which has obtained conditional immunity cannot obtain a reduction in a case involving the same restraint on competition

Under Section 15(2) of the Competition Act, an undertaking which has obtained conditional immunity from the penalty payment as referred to in Section 17(2) cannot obtain a reduction in a case involving the same restraint on competition. Hence an undertaking which has been the first one to disclose a cartel to the Finnish Competition and Consumer Authority and which has obtained conditional immunity referred to in Section 17(2), cannot obtain a reduction of the penalty payment in a case involving the same restraint on competition. If it is found during the procedure or upon its completion that the undertaking which has obtained conditional immunity does not fulfil the conditions cited in Section 16, or if said undertaking has taken steps to coerce another undertaking to participate in a cartel, it cannot obtain a reduction from the penalty payment referred to in this Section.

4 Conditions for immunity from and a reduction of the penalty payment

4.1 General

Under Section 16 of the Competition Act, immunity from or reduction of the penalty payment is further conditional upon the undertaking:

1. immediately ceasing participation in the restraint on competition once it has delivered to the Finnish Competition and Consumer Authority the application referred to in Section 17(1),
2. cooperating with the Finnish Competition and Consumer Authority during the entire investigation of the restraint on competition;
3. not destroying the evidence covered by the application prior to or following the submission of the application referred to in Section 17(1); and
4. keeping confidential the content of the application referred to in Section 17(1) and the fact of having made an application or considering making an application.

The above-mentioned conditions are cumulative, i.e. the undertaking must fulfil all the conditions set in this section. The fulfilment of the conditions can only be found at the end of proceedings in a case.

4.2 Participation in a restraint on competition is to be terminated immediately

An undertaking shall cease participation in a restraint immediately after it has delivered to the Finnish Competition and Consumer Authority the application for immunity from or reduction of the penalty payment referred to in Section 17(1).

However, the undertaking may, under the direction of the Finnish Competition and Consumer Authority, continue participation in the infringement to the extent it is necessary to secure the success of the inspections referred to in Sections 35 and 36. Continuing participation in a cartel does not usually mean, however, that the applicant would be advised to continue the application of a restraint on competition unchanged. The purpose is solely to secure the success of the inspections referred to in Sections 35 and 36.

The Finnish Competition and Consumer Authority may advise the applicants for example not to suddenly change their conduct thus allowing other cartel members to deduce that the applicant has contacted the Finnish Competition and Consumer Authority. Continued participation is always subject to advice from the Finnish Competition and Consumer Authority. Without such guidance, the undertaking shall not continue its participation in a restraint on competition.

4.3 The undertaking shall cooperate with the Finnish Competition and Consumer Authority

The undertaking shall cooperate with the Finnish Competition and Consumer Authority during the entire investigation of the restraint on competition. The cooperation shall be genuine, com-

prehensive and continuous. The undertaking shall submit all the information and evidence in its possession to the Finnish Competition and Consumer Authority without delay. The undertaking shall make its representatives and employees, and if possible also its former representatives and employees, available to the Finnish Competition and Consumer Authority for the investigation of the matter. The undertaking and its representatives and employees shall reply to the requests and queries of the Finnish Competition and Consumer Authority without delay. The cooperation shall take place on the undertaking's own initiative and be sincere, and the undertaking shall provide the Finnish Competition and Consumer Authority with a correct and undistorted representation of the cartel, its operations, and the role and initiative of the undertaking and its representatives and employees in the cartel.

The undertaking cannot be deemed to fulfil its obligation to cooperate if a substantial part of the undertaking's employees or the pivotal employees from the point of view of investigating the restraint on competition do not cooperate with the Finnish Competition and Consumer Authority. The undertaking shall not complicate the investigation of the matter through its own activities. The obligation to cooperate begins from the lodging of the application for immunity from or reduction of the penalty payment and lasts until the Finnish Competition and Consumer Authority has completed its proceedings in the case.

4.4 Evidence must not be destroyed

The undertaking shall not destroy the evidence covered by the application prior to, or following, the submission of the application referred to in Section 17(1) to the Finnish Competition and Consumer Authority. The prohibition concerns both the time preceding the lodging of the application, i.e. the time during which the undertaking considers leaving the application, and the time following the lodging of the application.

4.5 Keeping the information confidential

The undertaking shall keep confidential the content of the application referred to in Section 17(1) and the fact of having made an application or considering making an application. The obligation on confidentiality concerns both the time preceding the lodging of the application and the time following it.

Notwithstanding the confidentiality obligation, the undertaking may provide the Commission or a competition authority of another state with information regarding the application. Sharing information may become relevant in a situation in which a cartel covers several states and may hence be under investigation by the competition authorities of several countries or the European Commission. The undertaking seeking immunity from or reduction of the penalty payment may hence have to lodge an application in the same matter before more than one competition authority.

5 Procedure on immunity from and reduction of the penalty payment in cartel cases (Section 17)

5.1 Making the application and the information to be submitted

Immunity from penalty payment referred to in Section 14 and reduction of penalty payment referred to in Section 15 shall be applied from the Finnish Competition and Consumer Authority. In the application, the undertaking shall identify the information which it wishes to submit for consideration in the handling of the case. The application shall contain:

- the applicant's name and address;
- parties to the cartel;
- a detailed description of the functioning of the cartel including the products targeted by the cartel, the regional extent of the cartel, the duration of the cartel, and the nature of the cartel activities;
- a description of how the restraint on competition has been implemented and how it has been maintained;
- applications made to other competent authorities concerning the same cartel conduct and
- information on whether the applicant intends to make an application concerning immunity from or the reduction of the fines to other competent authorities.

5.2 Determination of priority

The prioritisation between the undertakings that have applied for immunity from or reduction of the penalty payment is determined according to the date and time when the undertaking has delivered the information referred to in Section 14(1) or 15(1) to the Finnish Competition and Consumer Authority.

5.3 Extension of time limit for the gathering of information in connection with the application for immunity (so-called marker procedure)

An undertaking which applies for immunity from the penalty payment can request that the Finnish Competition and Consumer Authority extend the time limit for gathering the information referred to in Section 14(1). The Finnish Competition and Consumer Authority can set a date for the applicant by which the information referred to in Section 14 shall be delivered to the Finnish Competition and Consumer Authority. The applicant's priority with respect to other cartel members seeking immunity under Section 14 is secure if the applicant submits the information to the Finnish Competition and Consumer Authority within the time limit imposed by the Finnish Competition and Consumer Authority.

The Finnish Competition and Consumer Authority may impose a time limit for the delivering of information by the immunity applicant (Section 14), but not for obtaining the reduction referred to in Section 15.

In order to obtain a time limit for the gathering of the information referred to in Section 14, the undertaking shall provide the Finnish Competition and Consumer Authority with:

- its name and address;
- its reasoning behind applying for immunity;
- the cartel parties;
- description of the products targeted by the cartel, its geographic coverage, duration and the nature of the cartel activities;
- estimates of the time needed for the gathering of information and the type of information the applicant shall deliver;
- the applications made to other competent authorities in the same cartel case and
- information on whether the applicant intends to make an application for immunity or reduction of fines to other competent authorities.

If the applicant submits the information referred to in Section 14(1) within the time limit, the information is considered to have been submitted at the instant the Finnish Competition and Consumer Authority imposed a time limit for the gathering of information and evidence.

5.3.1 Anonymous contact

Prior to submitting an application for immunity referred to in Section 14, the undertaking may contact the Finnish Competition and Consumer Authority anonymously for example through a lawyer. On the basis of such an anonymous contact, the undertaking can find out whether immunity is possible and receive guidance on the procedure.

The Finnish Competition and Consumer Authority does not set a time limit for the gathering of information referred to in Section 14 on the basis of an anonymous contact.

5.4 Granting conditional immunity

The Finnish Competition and Consumer Authority grants the applicant conditional immunity from the penalty payment once the undertaking has submitted to the Finnish Competition and Consumer Authority the leniency statement and information and evidence referred to in Section 14(1). Having obtained the information referred to in Section 14(1) and having made sure that it is sufficient for the purpose of granting immunity, the Finnish Competition and Consumer Authority provides the undertaking with a conditional immunity from the penalty payment in writing.

The final decision cannot be given at this stage of the investigation because the fulfilment of the criteria referred to in Section 16 can only be established after the investigation has been completed. If it turns out during the investigations that the undertaking does not fulfil the criteria in

Sections 14, 15 or 16, the Finnish Competition and Consumer Authority shall make a written decision on dismissing the application without delay.

The Finnish Competition and Consumer Authority shall not proceed to investigate other applications for immunity relating to the same cartel before it has taken a position as to whether immunity may be granted to the first undertaking which has applied for immunity

5.4.1 Summary application

If the undertaking applying for immunity under 14(1) has submitted or is about to submit an application for immunity in the same case to the European Commission or another competent authority of the member states, conditional immunity may be granted on the basis of a summary application. Lodging the application with several competition authorities is necessary particularly with regard to cross-border cartels, because the application made to one competent authority does not benefit the applicant in the other countries.

In the summary application, applicants shall submit:

- their name and address;
- parties to the cartel;
- the products targeted by the cartel;
- the geographic coverage of the cartel;
- the duration of the cartel;
- the nature of the cartel;
- the Member States in which the information and evidence referred to in 14(1) are located and
- information of the previous and possible future applications for immunity from and reduction of the fines relating to the cartel.

If the Finnish Competition and Consumer Authority requests further information from the applicant, the applicant shall deliver it without delay. In such instances, the FCCA provides a time limit for delivering the information. If the applicant delivers the information within the time limit, the information is deemed to be delivered at the instant the summary application was delivered to the Finnish Competition and Consumer Authority.

5.5 Finnish Competition and Consumer Authority's decision on the fulfilment of the necessary criteria

At the end of the procedure, the Finnish Competition and Consumer Authority shall issue a decision on whether the undertaking fulfils all the criteria set in Sections 14, 15 and 16. If the undertaking does not fulfil the criteria set in Sections 14, 15 and 16, the Finnish Competition and Consumer Authority shall make a written decision on dismissing the application without delay.

The Finnish Competition and Consumer Authority may include the decision on the reduction of the penalty payment granted to an undertaking referred to in Section 15 in the penalty payment proposal on the matter.

The Finnish Competition and Consumer Authority's decision issued at the end of the procedure on the basis of Section 17(3) cannot be separately appealed. The claims connected to the Finnish Competition and Consumer Authority's decision may, however, be presented to the Market Court in the context of the handling of the primary matter concerning a penalty payment.

5.6 Subsequent use of the information and evidence submitted to the Finnish Competition and Consumer Authority

According to Section 17(4) of the Competition Act, the leniency statement, information and evidence submitted to the Finnish Competition and Consumer Authority for obtaining the immunity referred to in Section 14 or reduction referred to in Section 15 cannot be used for any other purpose than the order to terminate a restraint on competition or the order to deliver a product referred to in Section 9, the commitment decision referred to in Section 10, the withdrawal of a Block Exemption referred to in Section 11, or the review of a penalty payment proposal at the Finnish Competition and Consumer Authority, the Market Court or the Supreme Administrative Court referred to in Section 12.

However, the information and evidence referred to in Sections 14 and 15 of the Competition Act that are interpreted according to the definition of pre-existing information referred to in Article 2(17) of the Damages Directive may also be used in the actions for damages under the Antitrust Damages Act

Unlike pre-existing information, according to Section 8(3) of the Antitrust Damages Act, a court of law cannot use information on the content of a statement ('leniency statement') made for the purpose of applying for immunity from and reduction of fines given to the Commission or a competition authority of an EU Member State as evidence in a court case. However, in accordance with Section 8(5) of the Act, and the provisions of subsection 3 notwithstanding, a statement concerning the interested party can be used as evidence, if said party is referring to it as evidence. In accordance with Section 8(5) of the Act, in such a situation the court of law must request a statement from the Finnish Competition and Consumer Authority on whether or not the leniency statement may be used as evidence in damage claims proceedings.

The Finnish Competition and Consumer Authority considers a priori that as long as the Finnish Competition and Consumer Authority has not issued a written decision referred to in Section 17(3) of the Competition Act, the leniency statement is confidential in accordance with Section 16(1)(4) of the Competition Act, and disclosing its contents could lead to a loss of the conditional immunity from and reduction of a penalty payment. Using a leniency statement as evidence in damage claims proceedings, thus disclosing its contents, before the written decision referred to in Section 17(3) of the Competition Act has been issued, could endanger the investigation of suspected restraints on competition and therefore also the effectiveness of public enforcement.

Therefore, in the opinion of the Finnish Competition and Consumer Authority, a leniency statement should not be used as evidence in damage claims proceedings before the written decision referred to in Section 17(3) of the Competition Act has been issued. If the interested party wishes to file a claim based on Section 8(5) of the Antitrust Damages Act before the written decision referred to in Section 17(3) of the Competition Act has been issued, the interested party must contact the Finnish Competition and Consumer Authority. If the Finnish Competition and Consumer Authority considers that revealing the existence of the application or its contents in damage claims proceedings does not endanger the investigation of suspected antitrust offences, the Finnish Competition and Consumer Authority may state that there is no impediment to referring to a leniency statement.

The aforementioned limitation of use, laid down in Section 17(4) of the Competition Act, does not prevent the Finnish Competition and Consumer Authority from using the information submitted by the applicant to start an investigation or issue a prohibition decision, a commitment decision, or a penalty proposal, or to withdraw a block exemption, provided the leniency statement, information and evidence contain information about restrictions on competition other than the restraint on competition referred to in Section 14(1) that forms the basis for the application. The Finnish Competition and Consumer Authority may use the information submitted by the applicant for example to start proceedings in situations in which the information in question shows that the applicant has abused its dominant position in a manner referred to in Section 7. The provision does not prevent the Finnish Competition and Consumer Authority from sharing information with other competent authorities in the network of competition authorities⁴, notwithstanding the information having been submitted to the Finnish Competition and Consumer Authority to resolve the restraint on competition referred to in Section 5.

⁴ See: Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101. Available at the address:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004XC0427%2802%29:EN:HTML>

6 Submitting information to the Finnish Competition and Consumer Authority

Inasmuch as the date and time of submitting the information referred to in 14(1) and 15(1) is decisive for determining priority between undertakings, it is important that the undertaking revealing the cartel delivers the information to the Finnish Competition and Consumer Authority in a manner which allows the authority to indisputably show the date and time of submission. The undertaking may ensure the proper recording of the time of submission by delivering the information personally or via a lawyer to the Finnish Competition and Consumer Authority

Submitting the information personally or via a lawyer is recommended. The undertaking must contact the Head of Research (cartels) of the department Enforcement 1, or the Head of Department, and agree upon the time and date of a meeting with the Finnish Competition and Consumer Authority. Submitting the information by post is not recommended, as the date and time of submission are unlikely to be recorded with sufficient accuracy for the undertaking. Prior to submitting the information, undertakings shall make sure that the contact information below has not changed.

Contact information

Contact information

Lintulahdenkuja 2, 00530 Helsinki, Finland

Telephone exchange: +358 29 505 3000

kkv.fi/en/leave-cartel