

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

USE OF MARKERS IN LENIENCY PROGRAMS

-- Hungary --

16 December 2014

This document reproduces a written contribution from Hungary submitted for Item III of the 120th meeting of the Working Party No. 3 on Co-operation and Enforcement on 16 December 2014.

*More documents related to this discussion can be found at:
<http://www.oecd.org/daf/competition/markers-in-leniency-programmes.htm>*

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JT03366449

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1. Please describe any marker system you have and its relationship to your leniency program.

1. In Hungary a marker may be granted to protect the place in the queue of an applicant which has not yet gathered all the evidence that is necessary to formalise an immunity application in a cartel case. Such an application may only be submitted if the Gazdasági Versenyhivatal (GVH – the Hungarian Competition Authority) has not yet initiated a competition proceeding in the case indicated in the application for the marker. In the application the applicant must undertake to gather all the information and evidence that is necessary in order to meet the relevant evidential threshold for immunity within the time limit specified by the GVH. Additionally, the application must contain a justification for the delayed release of evidence as well as an express commitment by the applicant that it will supplement the application with additional evidence.

2. In harmony with the ECN Model Leniency Programme, the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Practices (Hungarian Competition Act) provides for a special marker option in the case of those violations, in respect of which – according to the ‘Commission Notice on cooperation within the Network of Competition Authorities’ (Cooperation Notice) the European Commission may be ‘particularly best placed’ within the European Competition Network to deal with the case – the applicant files a leniency application either for immunity or for a reduction of a fine, with the Commission. In such cases – simultaneously with its application to the European Commission – the applicant may file an application (a so-called ‘summary application’) also with the GVH, as a potentially also well placed authority in the sense of the Cooperation Notice. Similarly to the general marker situations, in these cases the applicant does not hand over all the evidence, but it surrenders all the evidence substantiating its claim for immunity at the time set by the GVH, provided that proceeding is initiated by the GVH. The summary marker may be submitted in English, French or German.

3. The introduction of a marker system in Hungary coincided with the alignment of the Hungarian leniency policy with the ECN Model Leniency Programme in June 2009.

2. What is the principal purpose of your marker system? What are the potential benefits of your marker system for the agency and for marker applicants?

4. The main purpose of the marker system is to provide for sufficient time for the undertaking which wishes to cooperate with the competition authority to close its internal investigation aimed at unveiling the competition law violation. The marker system enables an undertaking which does not have the necessary information to submit a full application for immunity to still secure its immunity position by providing a minimum set amount of information. The GVH sets a time limit for the completion of the application. The applicant has to supplement its application within that time limit, while the effective date of the submission of the whole of its application is taken as the date of the submission of the application for the marker.

3. Is your marker system created by statute or regulation, or simply by agency practice? How have you communicated your system to the public – by speeches, written policies or rules, or Frequently Asked Questions (FAQs)?

5. The leniency policy of the GVH is regulated by the Competition Act. Articles 78/A-78/D of this Act set out the procedural framework for leniency, including the procedure on markers. Leniency status also guarantees benefits outside the field of competition law. These benefits include lenient treatment in criminal procedures, and a more advantageous position in private litigation.

6. Information and explanations on the leniency regime are available on the website of the GVH.

4. Who is eligible to obtain a marker under your system? Is a marker available only to the first applicant, or also to subsequent applicants?

7. A marker may only be granted for immunity applicants and not for reduction of fines applicants. Markers are also unavailable for 'B type' immunity applicants, that is when the GVH has already initiated a proceeding but the applicant provides sufficient information to actually prove the infringement.

8. Should two marker applications arrive to the GVH concerning the same infringement the applications are assessed in accordance with the order of their arrival. The second marker application will only be considered if the first application has been rejected.

5. What steps must be taken to initiate the process, and what are the threshold requirements for obtaining a marker?

9. The application for a marker has to identify the applicant, contain a description of the illegal conduct, provide information on where evidence is likely to be found, and also detail which other European competition authorities have been approached with the same marker application. Available evidence has to be submitted with the application. The application must contain a justification for the delayed submission of evidence and also an express commitment by the application that it will supplement the application with additional evidence.

6. Is the grant of a marker automatic upon meeting these requirements, or does the agency retain some discretion? If the agency has some discretion, what factors does it consider?

10. If an application for a marker meets all of the criteria listed in the Competition Act, the GVH automatically grants a marker. The time limit for supplementing a marker is set on a case by case basis.

7. At what point does the marker ripen into a conditional offer of leniency (conditional on compliance with all the ongoing conditions for leniency, such as continuing cooperation with the agency)? What is the process for obtaining the conditional offer of leniency, and what showing by the applicant is necessary for this step?

11. If the undertaking completes its marker within the specified time limit, it is to be deemed as a leniency application submitted at the date of the submission of the marker. The supplemented application has to be assessed on the basis of the general rules relating to immunity applications.

8. Please describe any rules or policies with respect to confidentiality of applications for a marker, and waivers of such confidentiality.

12. The marker application is kept confidential by the GVH. Leniency related information may only be released after the closure of the investigation, when the file is opened for access.

9. If you do not have a marker system, have you considered adopting one? If so, what considerations led you to decide against doing so?

13. N.A.

10. If you have a marker system, please describe your experience with it. Has it been amended over time? Are you considering further amendments?

14. The marker instrument was introduced into Hungarian competition law in June 2009. Since then the GVH has received very few marker applications. Consequently, no problems have arisen and no specific experience has been accumulated. An amendment of the Competition Act in 2014 clarified that markers cannot be applied once proceedings have already been initiated.