

Gazdasági Versenyhivatal
(GVH, The Hungarian Competition Authority)

APPLICATION FORM FOR LENIENCY

The English version of the application form serves information purposes. Applications may only be submitted in Hungarian language.

Application form for immunity from fines and reduction of fines pursuant to Article 78/A of the several times amended Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (PURA)

To be used from 1 June 2009

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General information

The application for leniency

1. A leniency application may be submitted for immunity from fines or the reduction of a fine (hereinafter together: leniency application).
2. The proceeding competition council shall grant immunity from fines or reduce the fine imposed on undertakings that disclose to the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter: GVH), in a manner specified by the PURA, agreements or concerted practices between competitors which infringe Article 11 of the PURA or Article 81 of the EC Treaty and which are aimed directly or indirectly at fixing purchase or selling prices, sharing of markets – including bid-rigging –, or at the allocation of production or sales quotas (hereinafter: infringement).¹
3. For the purposes of Articles 78/A and 78/B of the PURA also those organisations, the decisions of which have to be regarded as agreements pursuant to Article 11 of the PURA, shall be regarded as undertakings.
4. Neither more than one undertaking jointly nor one undertaking on behalf of more than one undertaking are allowed to apply for immunity from, or a reduction in the amount of, the fine.² This rule does not prevent each of those members of a group of undertakings, which participated in the infringement, to apply for immunity from fines.

The use of the application form

5. The application shall be submitted to the GVH in accordance with the application form in terms of format, content of the applications, and the way of their submission.³
6. The application form shall be used in cases, where the application has been submitted after 1 June 2009.

Information on the leniency policy

7. The Cartel Section of the GVH gives general information on the enforcement of leniency rules and on the way of submission of applications. The contacts are as follows:

Address: 1054 Budapest, Alkotmány u. 5.
Postal address: 1245, Budapest 5. Pf.: 1036
Telephone: +36 1 472 8871, +36 1 472 8872
Fax: +36 1 472 8905
Email: kartell@gvh.hu

¹ 78/A(1) of the PURA.

² 78/A(8) of the PURA

³ 78/B(9) of the PURA

Further information

8. When framing the application form the GVH took account of the Model Leniency Programme of the European Competition Network.⁴

9. The Explanatory Notes published on the homepage of the GVH, which gives information on the GVH's practice in respect of leniency, may help in the interpretation of the application form.

10. The GVH shall not regard leniency applications, which have been submitted to other competition authorities, as applications also submitted to the GVH with similar object.. A leniency application submitted to the GVH shall not grant immunity from fines that may be imposed by other, foreign competition authorities.

11. Participation in restrictive agreements concluded in the course of public procurement or concession procedures is a crime. Among others, immunity from criminal law consequences may be granted for those persons participating in the infringement, who disclose the infringement to the GVH in the frame of the leniency policy. The information published on the homepage of the GVH gives orientation on the connection between criminal liability and the leniency policy of the GVH.

⁴ <http://ec.europa.eu/competition/ecn/documents.html>

I. General rules of the submission of the leniency application

The form of the application

1. The legal representative or the proxy of the undertaking may submit the leniency application.
2. The leniency application shall contain the name of the party (applicant), the detailed description of the infringement and the exact specification of that point of the PURA, pursuant to which the applicant applies for immunity from fines or the reduction of a fine. No anonym applications shall be submitted. The original or an authentic copy of the written authorization of the proxy of the applicant and the evidences specified by types of applications in [Chapter II](#) of the application form shall be attached to the application.
3. Where the evidences attached to the application are in foreign languages, a Hungarian translation of those evidences shall be attached, too.
4. If several members of a group of undertakings participated in the infringement, the application shall apply to all those undertakings only, if they authorise the undertaking submitting the application to submit the application also on their behalf and they attach those authorisations as enclosures to the application.
5. The application may be submitted in a form in accordance with the rules of law being effective at the time of submission. If the applicant wishes to present its application orally, it may do so per its legal representative or proxy, in person. The GVH makes a record or sound recording of the oral application and the statement or makes a memorandum of them. A memorandum shall be made of the sound recording afterwards. The applicant shall sign the memorandum.
6. The authorized signature of the applicant or its proxy must be put on each page of the written application.

The submission of the application

7. The application shall be submitted to the Cartel Section of the GVH.
8. A written application shall be submitted in the ways specified by the Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services (hereinafter: PAPA). Among the ways of communication specified by the PAPA the GVH prefers the delivery of documents in person.
9. The GVH acknowledges the receipt of the application and assesses the application according to the procedure pursuant to Article 78/B of the PURA.
10. The time limits for applications differ by the types of applications:
 - A complete application pursuant to Article 78/A(2)a) of the PURA may be submitted prior to the investigative measures specified by Article 65/A of the PURA (hereinafter: targeted inspections).
 - A complete application pursuant to Article 78/A(2)b) of the PURA may be submitted at any time in the course of the competition supervision proceeding.

- A non-final application for immunity from fines may be submitted prior to the competition supervision proceeding and at any time in the course of it.
- An application for the reduction of a fine may be submitted, at the latest, on the day before the date of service of the preliminary position or the day before the starting date for the access to the files of any of the parties, which of the two is the earlier.⁵

The use of the application and of the evidences attached

11. Before a conditional order on the leniency application pursuant to Article 78/B(5) of the PURA is made, the GVH may use the application for immunity and the documents attached to it exclusively to the assessing of the application or the applying for a judicial authorisation pursuant to Article 65/A of the PURA; only the investigator appointed to deal with the case, the proceeding competition council and the court may have access to them.⁶

12. Where the application for immunity from fines is rejected, the GVH shall return, upon request of the undertaking, the application and the documents attached to it, together with the copies possibly prepared of them, to the undertaking submitting the application.⁷ However, this does not prevent the GVH to use its investigatory powers in order to obtain information.

13. Sections 11 and 12 do not apply for applications for reduction of fines and for the use of the evidences attached to those applications, this means that the GVH may use the documents attached to the application for a reduction of a fine from the date of their submission to prove the infringement, and the GVH shall not return to the applicant any of these even if the application is rejected.

Withdrawal of an application

14. Any type of application for immunity from fines (complete application, non-final application, provisional application) may be withdrawn before they are assessed.⁸ Applications for reduction of fines may not be withdrawn under the PURA.

15. Where the application is withdrawn, the GVH shall return, upon request of the undertaking, the application and the documents attached to it, together with the copies possibly prepared of them, to the undertaking submitting the application.⁹ However, this does not prevent the GVH to use its investigatory powers in order to obtain information.

16. The GVH may, ex officio, assess the application for immunity from fines as application for reduction of a fine where it fails to meet the conditions for granting immunity from fines, is nevertheless not withdrawn by the undertaking and may constitute the ground for a reduction of the fine.¹⁰

⁵ 78/A(3) of the PURA

⁶ 78/B(8) of the PURA

⁷ 78/B(8) of the PURA

⁸ 78/B(3) of the PURA

⁹ 78/B(8) of the PURA

¹⁰ 78/B(3) of the PURA

II. Enclosures of the application

In case of applications where the submission of written evidence is required, this evidence shall be submitted to the GVH in a numbered form¹¹, and all evidence shall be accompanied with explanations covering following:

- the applicant shall mark which infringement or partial infringement the given evidence supports, and what source it is from¹²
- the applicant shall state what fact the given evidence proves¹³
- in case of evidence originating from the time of the infringement, the applicant shall explain in detail the manner in which the information contained in the given evidence should be interpreted (if it is not clear from the text of the evidence)¹⁴
- if separate pieces of evidence are related to each other, then the relationship between them shall also be given in the explanation that is attached to the evidence¹⁵
- in case of handwritten documents the relevant parts are to be attached in a typewritten form to ensure the legibility of the evidence
- in case of documents consisting of more than one page that contain parts not exclusively related to the infringement (e.g. records, bill diary etc.), parts that provide evidence of the Infringement are to be precisely marked¹⁶

It is best to avoid submitting materials unrelated to the infringement or the same materials more than once if they do not provide additional value¹⁷.

In order to ensure the priority of their application, the applicant may reasonably submit evidence without the explanations mentioned above, but in such a case the explanations need to be attached as soon as possible. The applicant must also be aware of the fact that if the significant added values evidence consists of the evidence submitted originally with explanations attached in a later stage, than the date considered from the point of view of ranking, will be the latter one (i.e. the submission date of the explanatory attachments).

¹¹ Evidence needs to be numbered even in case of documents submitted in written form or on a data storage device. In case of documents submitted on a data storage device, the number of each piece of evidence is to be shown in the filename.

¹² For example if the applicant was engaged in cartel activity with more than one of its competitors, it needs to be obvious from the application to which agreement with which competitor the evidence is referring to, and whether the evidence originates from the time of the infringement or is a document compiled for the application

¹³ For example in case of a chart or other summary compiled at a later time, specifically for the application, the manner in which the data contained in the infringement supports the establishment of the infringement shall be explained (e.g. it contains data about the actual market layout in correspondence with the agreement etc.)

¹⁴ For example if the numbers or abbreviations in the evidence are not clear, or if there are statements that can be understood in multiple ways, they need to be explained

¹⁵ For example the correspondence regarding a cartel meeting, a diary entry referencing the fact of the meeting, accounts supporting its founding. The relationship between records made at the meeting and statements about the meeting is to be shown in the explanations that are attached to the evidence

¹⁶ Any method that allows the relevant parts of the document to be identified is acceptable. For example if the applicant precisely marks or quotes the part of the page of the document that is relevant, or if attaching the whole document, they make photocopies from or otherwise mark the relevant parts

¹⁷ For example multiple submission of a piece of evidence means added value if the applicant submits the evidence in a chronological order or provides them with detailed explanation.

1. Application for immunity from fines

There are two types of applications for immunity from fines, depending on the date of the submission. Chapters A.) and B.) contain descriptions of the evidences to be attached to the single types of applications.

Applications for immunity from fines may be submitted either as complete applications [see Chapters A.) and B.)] or as non-final or provisional applications. Chapters C.) and D.) specify the circle of those information, which shall be submitted in the case of non-final and provisional applications, respectively.

A.) Complete application for immunity from fines pursuant to Article 78/A(2)a) of the PURA

Pursuant to Article 78/A(2)a) of the PURA immunity from fines shall be granted to the undertaking, which is the first to submit an application for immunity and submit evidence, which enables the GVH to obtain in advance a judicial authorisation to carry out targeted inspections in connection with the infringement, provided that the GVH did not, at the time of the application, already have sufficient information constituting the ground for the judicial authorisation of targeted inspections or had not already carried out such investigative measures.

Furthermore, in order to qualify for immunity from fines, the undertaking must meet the additional conditions set out in Article 78/A(6) and (7) of the PURA, too.¹⁸

The data, which are necessary in order to constitute the ground for the judicial authorisation of targeted inspections, shall be attached to the application in the form of statement and physical evidence. In the frame of this typically the following data shall be submitted:

- The name and address of the undertaking submitting the immunity application and that of each of those undertakings – including the undertakings within the group of undertakings participating (having participated) in the infringement –, which (at the time of the application or prior to that) participated in the infringement;
- The names, positions, office addresses and locations and, where necessary, known home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the infringement on the applicant's behalf or on behalf of other undertakings participating or having participated in the infringement;
- A detailed description of the infringement, including for instance its aims, activities and functioning; the product or service concerned, the geographic scope, the duration of the infringement and the estimated market volumes affected by the infringement; the specific dates, locations, content of and participants in the meetings in respect of the infringement, and all relevant explanations in connection with the pieces of evidence provided in support of the application;

¹⁸ Pursuant to these Sections in order to qualify for immunity from fines, the undertaking must meet the following additional conditions:
a) It ends its involvement in the infringement immediately following its application, except for what would, in the GVH's view announced by order to the undertaking, be reasonably necessary effectively to carry out targeted inspections;
b) It cooperates genuinely, fully and on a continuous basis with the GVH until the conclusion of the competition supervision proceeding; and
c) It did not take steps to coerce other undertakings to participate in the infringement.

- All evidence relating to the infringement in possession of the applicant at the time of the application, if it is known to the applicant at the time of the application.

The application shall contain the information on any past or possible future leniency applications to any other competition authority within or outside the European Community in relation to the infringement.

It is possible that the data specified above are not available to their full extent for the applicant at the time of the application, therefore those data shall be attached to the application, which are available for and known to the applicant at that time. Nevertheless, it has to be emphasized that the application must contain the amount of information, which is necessary for constituting the ground for the judicial authorisation of targeted inspections.¹⁹

The information attached to the application for immunity shall be provided, as far as possible, in a way to promote the more precise specification of the scope of the targeted inspection.

B.) Complete application for immunity from fines pursuant to Article 78/A(2)b) of the PURA

Pursuant to Article 78/A(2)b) of the PURA immunity from fines shall be granted to the undertaking, which

- is the first to submit an application for immunity and
- to submit evidence, which enables the GVH to prove the infringement,
- provided that the GVH did not, at the time of the application, already have sufficient evidence to prove the infringement and
- none of the undertakings meets the conditions set out in Chapter A.).

Furthermore, in order to qualify for immunity from fines, the undertaking must meet the additional conditions set out in Article 78/A(6) and (7) of the PURA, too.

In addition to the application the applicant shall make a statement on the circumstances of the infringement known to him and shall attach to the application the physical evidences known to and available for him. All this together must enable the GVH to prove the infringement.

C.) Non-final application for immunity from fines

A non-final application for immunity from fines may be submitted in both cases of Article 78/A(2) of the PURA.

The non-final application shall include:

- The name of the applicant,
- The data of the infringement known to the applicant and

¹⁹ For instance, it is possible that the applicant is not able to specify the duration or the geographic scope of the infringement at the time of the application, or there are no exact data or concrete evidence on all meetings effectuating the infringement available for the applicant. In such a case the applicant shall provide the information known to him in a way to confirm that part of the infringement, which is known and specified in the application.

- information on the evidences known to the applicant at the time of the non-final application and the specification of the form and content of those evidences.

D.) Provisional application for immunity from fines

A provisional application may be submitted only in connection with an application for immunity from fines pursuant to Article 78/A(2)a) of the PURA.

The provisional application typically shall include the following:

- The name and address of the applicant;
- The names of the other participants to the infringement;
- The product(s) affected by the infringement;
- The territory(-ies) affected by the infringement;
- The duration of the infringement;
- The nature of the infringement and
- Information on the effect of the infringement on the Hungarian market, on whether Hungarian undertakings participated in the infringement, on the estimated size of the Hungarian market affected by the infringement and on the estimated market share of the participants to the infringement on the Hungarian market.

The application shall include a statement on any past or possible future leniency applications to any other competition authority within or outside of the European Community in relation to the infringement.

2. Application for reduction of fines

Pursuant to Article 78/A(3) of the PURA fines may be reduced if the undertakings do not qualify for immunity from fines but provide the GVH with evidence of the infringement, which constitutes significant added value relative to the evidence already available to the GVH at the time when the application was submitted. Furthermore, in order to qualify for a reduction of the fine the undertaking must meet the additional conditions set out in Article 78/A(6) of the PURA.

When submitting an application for a reduction of the fine, the enclosure attached to the application shall include such evidence in relation to the infringement, which represents significant added value relative to the evidence already in the GVH's possession at the time of the application. This means that the evidence must strengthen by its very nature and/or its level of detail the GVH's ability to prove the infringement.