

SWAZILAND LENIENCY PROGRAMME

A. INTRODUCTION

1. IMMUNITY FROM FINES

Type 1A

- 1 The Commission will grant an undertaking immunity from any fine which would otherwise have been imposed provided:
 - a) The undertaking is the first to submit evidence which on the Commission's view, at the time it evaluates the application, will enable the Commission to carry out targeted inspections in connection with an alleged cartel;
 - b) The Commission did not, at the time of the application, already have sufficient evidence to adopt an inspection decision/seek a court warrant for an inspection or had not already carried out an inspection in connection with the alleged cartel arrangement; and
 - c) The conditions attached to leniency are met.
2. With a view enabling the Commission to carry out targeted inspections, the undertaking should be in a position to provide the Commission with the following:
 - The name and address of the legal entity submitting the immunity application;
 - The other parties to the alleged cartel;
 - A detailed description of the alleged cartel, including:
 - The affected products;
 - The affected territory(-ies);
 - The duration; and
 - The nature of the alleged cartel in its possession or under its control (in particular any contemporaneous evidence);
 - Information on any past or possible future leniency applications to any other competition authorities outside Swaziland in relation to alleged cartel.

Type 1B

3. In cases where no undertaking had been granted conditional immunity from fines before the Commission carried out an inspection or before it had sufficient evidence

to adopt an inspection decision/seek a court warrant for an inspection, the 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, enables the finding of an infringement of Article 30 of the Act in respect of an alleged cartel;
- b) At the time of the submission, the Commission did not have sufficient evidence to find an infringements of Article 30 of the Act in connection with alleged cartel; and
- c) The conditions attached to leniency are met.

Excluded immunity applicants

- 4 An undertaking which took steps to coerce another undertaking to participate in the cartel will not be eligible for immunity from fines under the programme.

11. REDUCTION OF FINES: TYPE 2

5 Undertakings that do not qualify for immunity may benefit from a reduction of any fine that would otherwise have been imposed.

6 In order to qualify for a reduction of fines; an undertaking must provide the Commission with evidence of the alleged cartel which, in the Commission's view, represents significant added value relative to the evidence already in the Commission's possession at the time of the application. The concept of 'significant added value' refers to the extent to which evidence provided strengthens, by its very nature and /or its level of detail, the Commission's ability to prove the alleged cartel.

7. In order to determine the appropriate level of reduction of the fine, the Commission will take into account the time at which the evidence was submitted (including whether the applicant was the first, second or third, etc. Undertaking to apply) and the Commission's assessment of the overall value added to its case by that evidence. Reductions granted to and applicant following Type 2 applications shall not exceed 50% of the fine which would otherwise have been imposed.

8 If a Type 2 applicant submits compelling evidence which the Commission uses to establish additional facts which have a direct bearing on the amount of the fine, this will be taken into account when setting any fine to be imposed on the undertaking which provided this evidence.

III. CONDITIONS ATTACHED TO LENIENCY

- 9 In order to qualify for leniency under this programme, the applicant must satisfy the following cumulative conditions:

- i) It ends its involvement in the alleged cartel immediately following its applications save to the extent that its continued involvement would, in the Commission's view, be reasonably necessary to preserve the integrity of the Commission's inspections;
- ii) It cooperates genuinely, fully and on a continuous basis from the time of its application with the Commission until the conclusion of the case; this includes:
 - (a) Providing the Commission promptly with all relevant information and evidence that comes into the applicant's possession or under its control;
 - (b) Remaining at the disposal of the Commission to reply promptly to any request that, in the Commission's view, may contribute to the establishment of relevant facts;
 - (c) Making current and, to the extent possible, former employees and directors available for interviews with the Commission;
 - (d) Not destroying, falsifying or concealing relevant information or evidence; and
 - (e) Not disclosing the fact or any of the content of leniency application before the Commission has notified its objections to the parties (unless otherwise agreed with the Commission).
- iii) When contemplating making an application to the Commission but prior to doing so, it must not have:
 - (a) Destroyed evidence which falls within the scope of the application; or
 - (b) Disclosed, directly or indirectly, the fact or any of the content of the application it is contemplating except to other CAs or any competition authority outside the EU.

IV. PROCEDURE APPROACHING THE COMMISSION

- 10 An undertaking wishing to benefit from leniency must apply to the Commission and provide it with the information specified above. Before making a formal application, the applicant may on an anonymous basis approach the Commission in order to seek informal guidance on the application of the leniency programme.
- 11. Once a formal application has been made, the Commission will, upon request, provide an acknowledgement of receipt confirming the date and time of the application. The Commission will assess applications in relation to the alleged cartel in the order of receipt.

Marker for immunity applicants

- 12 An undertaking wishing to make an application for immunity may initially apply for a 'marker'. A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

- 13 The Commission has discretion as to whether or not it grants a marker. Where a marker is granted, the Commission determines the period within which the applicant has to 'perfect' the marker by submitting the information required to meet the relevant evidential threshold for immunity. If the applicant perfects the marker within the set period, the information and evidence provided will be deemed to have been submitted on the date when the marker was granted.
- 14 To be eligible to secure a marker, the applicant must provide the Commission with its name address as well as information concerning:
- The basis for the concern which led to the leniency approach;
 - The parties to the alleged cartel;
 - The affected product (s);
 - The affected territory(-ies);
 - The duration of the alleged cartel conduct; and
 - Information on any past or possible future leniency applications to any other CAs and competition authorities outside the EU in relation to the alleged cartel.

Granting Immunity

- 15 Once the Commission has verified that the evidence submitted is sufficient to meet the relevant evidential threshold for immunity, it will grant the undertakings conditional immunity from fines in writing.
- 16 If the relevant evidential threshold is not met, the Commission will inform the undertaking in writing that its application for immunity is rejected. The undertaking may in that case request the Commission to consider its application for a reduction of the fine.
- 17 The Commission will take its final position on the grant of immunity at the end of the procedure. If the Commission, having granted conditional immunity, ultimately finds that the immunity applicant acted as a coercer or that the applicant has not fulfilled all of the conditions attached to leniency, the Commission will inform the applicant of this promptly. If immunity is withheld because the Commission finds at the end of the procedure that the conditions attached to leniency have not been fulfilled, the undertaking will not benefit from any other favourable treatment under this programme in respect of the proceedings.

Procedure for reductions of fines applications

- 18 If the Commission comes to the preliminary conclusion that the evidence submitted by an undertaking constitutes, significant added value within the meaning of the programme, it will inform the undertaking in writing of its intentions to apply a reduction of fines. This confirmation will be given as early as possible and no later

than the date the statement of objections is notified to the parties. The final amount of reduction will be determined at the latest by the end of the procedure.

- 19 If the Commission finds that one or more of the conditions attached to leniency have not been fulfilled, the undertaking will not benefit from any favourable treatment under this programme in respect of the same proceedings.