



Guidelines on the leniency program in Spain: consolidation and update on administrative practice

Communication of 19 June 2013, issued by the Spanish National Competition Commission on the leniency program

The leniency program entitles the Spanish National Competition Commission (SNCC) to grant exemptions or reductions of the fines payable in cases of competition law infringement.

Any company or natural person can request leniency (meaning the fine exemption or reduction) by reporting, revealing and proving to the SNCC the existence of a cartel as well as its participation or its responsibility within such cartel. The fine exemption or reduction favours only the person that requests leniency, regardless of whether its responsibility comes from its direct involvement in the cartel, from its decisive influence as the holding company or if it is the successor company. The leniency program will also favour the legal representatives of the reporting company and their directors, as long as they cooperate.

The exemption will be granted to the first person or company that provides the necessary elements to order an inspection or that provides evidence allowing verification of the infringement. If despite of such evidence being provided, the SNCC does not carry out the inspection or, if it is carried out unsuccessfully, the exemption will also be granted.

The program provides several advantages to leniency applicants. First of all, it is easy to submit the application. It is possible to request assistance from the Directorate for Investigation (DI) of the SNCC, as regards preparation and application for the leniency program.

Upon request, the DI can also accept oral applications. Furthermore, the leniency applicant is absolutely protected by confidentiality until the resolution of the proceeding is achieved. Even though application for fine exemption cannot be presented after the DI issues its Statement of Facts, it is possible to apply for the reduction of the fine stated in such statement, once it is notified to the relevant company or person.

On the other hand, every type of information or documentation about the existence, participation, objectives, functioning and scope of the cartel can be considered as evidence. Once the contact with the DI is established, the DI may request clarifications and the applicant will update the information and evidence "without delay and spontaneously".

If the applicant is not the first to request leniency from the SNCC and, therefore, it cannot be favoured with the fine exemption, or if the company is disqualified to request it, such company can alternatively request the reduction of the fine. A company will be disqualified to request such exemption in case it has taken measures to force the cartel's participation or its continuance but not "if it is due to the performance of the mechanisms set by the cartel".

Finally, in the case of a leniency application before the European Commission in which Spain is a market concerned, an abridged application shall be submitted to the SNCC.