

# **REGULATION “ON FINES AND LENIENCY”**

## **CHAPTER I**

### **GENERAL DISPOSITIONS**

#### **Article 1**

##### **Object**

The objective of this regulation is to define a methodology, by which the Competition Authority estimates the fines imposed on undertakings that infringe the Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as well as the application of leniency from fines in cases of cooperation with the Competition Authority for the identification of prohibited agreements.

#### **Article 2**

##### **Purpose**

The purpose of this regulation is to establish the methodology and procedures for the imposition of fines on undertakings that infringe the Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, the promotion of cooperation with the undertakings and the prevention of undertakings from taking part in the law infringement practices.

#### **Article 2**

##### **Definitions**

In this regulation, the following words and expressions shall have the following meanings:

1. “Law” is Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”, as amended.
2. “Sales value” is the total value of the sales of all the products concerned with the infringement, realized by the undertaking during the last financial year when the infringement has occurred.
3. “Total turnover” is the turnover calculated pursuant to Articles 15, 16 and 17 of the Law.
4. “Added value” is the evidence that was not previously available and that enables the Competition Authority to prove the suspected infringement.

## **CHAPTER II**

### **THE DETERMINATION OF THE FINE**

#### **Article 3**

##### **The calculation of the amount of the fine**

In the calculation of the fine, the Competition Authority initially defines its base value, for any undertaking or association of undertakings. The base value may increase by taking into account aggravating circumstances, or may be reduced by taking into account attenuating circumstances.

#### **Article 4**

##### **The base amount of the fine**

1. In the determination of the basic amount, the Commission uses the total revenue generated through the sales of the goods and services of the undertaking, that are directly, or indirectly related to the infringement observed in the relevant market. The Commission takes into consideration the total value of sales generated through the sales of the goods and services of the undertaking during the latest financial year when the infringement had taken place (hereinafter referred as “the sales value”).
2. When the infringement by an association of undertakings is related to the activity of the members of the association, the sales value shall be equal to the aggregate turnover (sales value) of the members of the association.
3. In the determination of the sales value by one undertaking, the Competition Commission uses the most complete and reliable data that has available for that particular undertaking. In cases when the data made available by an undertaking are incomplete or unreliable, the Commission may determine the sales value on the basis of partial data that has been able to obtain and/or any other information that deems appropriate.
4. The sales value is determined after deducting any taxes, duties and other tariffs directly related to the sales, as is foreseen in the applicable law.
5. In cases when the geographical area where the infringement has been observed surpasses the territory of the Republic of Albania, the Competition Authority undertakes the following measures:
  - a) determines the aggregated sales value of the products that are related to the infringement in the geographical area of the relevant market; or,
  - b) determines the portion of sales occurring in that market for each undertaking associated with the infringement.

The calculation of the turnover in the relevant market serves as a basis for the calculation of the base amount of the fine.

6. The evaluation of the gravity of the infringement is done on a case-by-case basis, for all types of infringements, and by taking into consideration the circumstances of the event.
7. The base value of the fine is associated with a percentage of the sales value, depending on the degree of gravity of the infringement, multiplied by the number of years of the infringement.

8. The percentage of sales value that shall be considered will be at a level up to 30% of the total sales value. The Competition Authority, in order to determine whether the percentage of the sales value that will be considered in a given issue will be at the upper or lower scale, assesses a number of factors, such as the nature of the infringement, the share of the combined market all companies concerned, the geographical extent of the infringement and whether the anti-competitive practice was implemented or not.
9. Horizontal agreements that concern price setting, market division and restriction of production, which are considered secret by their nature, are among the most harmful restrictions of competition. Therefore, the percentage of sales value to be considered for such a violation will generally be in the upper level of the scale.
10. Based on duration of participation of any undertaking in the infringement, the value determined on the basis of sales is multiplied by the number of years of participation in the infringement given that:
  - a) a) periods less than six months accounted as half a year;
  - b) b) periods longer than six months but shorter than a year accounts as a full year.

Regardless of the duration of participation of the undertaking in the infringement, the Competition Authority shall include into the base value of the fine an amount between 15% to 25% of sales value, as quoted above, in order to prevent the undertakings to enter into horizontal agreements in the future, to engage in fixing the prices, division of market or of suppliers and production restrictions. The Competition Authority may implement this additional amount also in other cases of infringements.

#### **Article 5** **Aggravating circumstances**

1. In the calculation of the fine, the Competition Authority shall take into consideration the circumstances that may lead to the increase or decrease of the base value as determined above.
2. The basic amount will be increased when the Commission concludes that there are aggravating circumstances such as:
  - a) Repeated infringement of the same type by the same undertaking (s),
  - b) Refusal to cooperate with, or attempts to obstruct the Competition Authority in carrying out its investigations,
  - c) Role of leader in, or instigator of the infringement.

In the cases foreseen under points “a” and “b” and “c”, the base value shall increase up to 100%.

3. The Competition Commission may decide to increase the amount of the fine imposed on the undertakings that have a large annual turnover as a result of the sale of products related to the infringement.
4. The Competition Commission may decide to increase the fine in order to exceed the amount of gains improperly made as a result of the infringement when it is objectively possible to estimate that amount. In any case, the amount of the fine should not exceed 10% of the annual turnover of the preceding financial year, realized by the undertaking or the association of undertakings.

### **Article 6** **Attenuating circumstances**

1. The basic amount of the fine may be reduced when the Commission concludes that there exist attenuating circumstances such as:
  - a) The undertaking is in the position to prove that it has ceased infringement as soon as the Competition Authority intervenes, with the exception of horizontal agreements (cartel agreements);
  - b) The undertaking is in the position to prove that the infringement was committed as a result of negligence;
  - c) The undertaking is in the position to prove that its involvement in the infringement has been very limited and that during the period that the undertaking had been part of the prohibited agreement has avoided its implementation and has engaged in competitive market practices.
  - d) The undertaking has effectively cooperated with the Competition Authority and has not benefited from the “Fines Leniency” Program.
  - e) In cases when the anti-competition behaviour of the undertaking has been authorized, motivated or supported by the public authorities or the legislation.
3. In exceptional cases, the Commission, upon request submitted by the undertaking, may take into consideration the inability to pay by the undertaking, provided that that has been declared and proved.

## **CHAPTER III** **LENIENCY FROM FINES**

### **Article 7** **Leniency from fines**

The undertakings under investigation are advised by the Competition Commission on the opportunity they have to benefit from leniency from fines, if the undertaking cooperates with the Competition Authority on the basis of the dispositions of the Law and this Regulation.

## **Article 8**

### **Immunity from fines**

1. The Competition Commission may grant immunity from fines if the undertaking comes forward for first and assists on the investigation of the prohibited agreement and the identification of the responsible persons, by making available evidence and information that were not formerly in the possession of the Competition Authority, and the enable the latter to proceed with the following steps:
  - a) To launch an investigation concerning a prohibited agreement;
  - b) To identify an infringement, pursuant to Article 4 of the Law.
  
2. In order to be eligible for immunity from fines, the undertaking must fulfill the following:
  - a) To make available to the Competition Authority a copy, or description of the prohibited agreement, where are included the purpose, the scope, the way of functioning, the relevant products involved, the relevant market, the extension and the assessment of the market volume impacted by the prohibited agreement, the date of the agreement, the place of signature, the content and the participants to the agreement, as well as other information that may assist the Competition Authority in the uncovering of the prohibited agreement.
  - b) To disclose the name and address of the undertaking that is applying for applying for immunity from fines, as well as the name and addresses of all the undertakings that participate to the prohibited agreement.
  - c) To disclose the names, positions and addresses of all the offices, and when necessary, the addresses of all the individuals who, to the knowledge of the undertaking applying for immunity from fines, are or have been involved with the the prohibited agreement, as well as all those individuals that have been involved on behalf of the parties.
  - d) To inform the Competition Authority whether it [i.e. the undertaking applying for immunity from fines] has withdrawn from the participation to the prohibited agreement.
  - e) To be available to the Competition Authority for answering its requests that are related to the prohibited agreement.
  - f) To refrain from destruction, falsification or correction of the relevant information pertaining to the prohibited agreement.
  - g) To disclose other information related to the prohibited agreement.
  
3. Leniency from fines as stipulated under Article 2 of this Regulation shall not be conceded if, at the time of the application by the undertaking, the Competition Authority had already had available sufficient information to support the following measures:
  - a) To launch an investigation concerning a prohibited agreement;
  - b) Has already launched such an investigation;
  - c) To make a decision.

4. Leniency from fines as stipulated under Article 2 of this Regulation shall be conceded if, at the time of the application by the undertaking, the Competition Authority had not sufficient information to uncover an infringement pursuant to Article 4 of the Law.
5. The undertaking that has taken the initiative to obligate the other undertakings become part of the prohibited agreement, or to remain within the agreement, does not benefit from this type of leniency from fines.

### **Article 9**

#### **Application procedures for immunity from fines**

The undertaking interested in obtaining a leniency from fines should submit a request in writing to the Authority for immunity from fines, or partial leniency from fines.

1. The undertaking interested in obtaining a leniency from fines should submit a request in writing to the Authority for immunity from fines, or partial leniency from fines.
2. The Competition Authority shall not accept a request for leniency from fines if such request has been presented after the completion of the investigation report.
3. The applicant undertaking must notify the Competition Authority on prior applications on for leniency from fines and concessions of such leniency.
4. Once the immunity from fines is conceded, the Competition Commission determines the timeframe within which the applicant undertaking must submit the requested information, in order to fulfill the criteria for leniency from fines. In cases of default to comply with the aforementioned criteria, the applicant does not benefit from leniency from fines.
5. If the applicant undertaking has failed to comply with the determined criteria and timeframes, the Competition Authority notifies the undertaking on such default in writing. In such a case, the undertaking may withdraw the application for immunity from fines, or request that the Competition Authority takes into consideration a request for partial leniency from fines.
6. The Competition Commission does not take into consideration other requests for leniency from fines that concern a given infringement, before making a decision on an ongoing application concerning the same infringement.

### **Article 10**

#### **Partial leniency from fines**

1. The undertaking that notifies the participation in a prohibited agreement and that does not meet the criteria for immunity from fines, may apply for a partial leniency from fines.

2. In order to become eligible for a partial leniency from fines the undertaking must make available to the Competition Authority such information that consists in added value to the uncovering of the prohibited agreement. In the evaluation by the Competition Authority are taken into consideration such evidence that concern the infringement and the time when it became effective. This type of evidence is deemed more valuable than subsequent evidence. Similarly, the evidence directly connected to the aforementioned facts shall be deemed to having a greater value than indirect evidence.
3. Through its final decision, the Competition Commission determines the level of leniency from fines as follows:
  - a) For the first undertaking applies a reduction of 30-50%;
  - b) For the second undertaking applies a reduction of 20-30%;
  - c) For the subsequent undertakings applies a reduction of 20%.
4. In order to determine the level of reduction of the fine within each of these bands, the Competition Authority will take into account the time at which the evidence fulfilling the condition stated under point 2 of this Article, was submitted and the extent to which it represents added value. The Commission may also take into account the extent and continuity of any cooperation provided by the undertaking following the date of its submission.
4. If an undertaking was the first to provide evidence relating to facts previously unknown to the Competition Authority, and which have a direct bearing on the gravity of the infringement, or duration of the suspected agreement, the Authority will not take these elements into account when setting any fine to be imposed on the undertaking which was the first, or the only one to provide such evidence.

## **Article 11**

### **Application procedures for partial leniency from fines**

1. The undertaking wishing to benefit from a partial leniency from fines should submit a written request to the Competition Authority, with sufficient evidence on the agreement in question. In the request must be clearly stated the date of its submission.
2. Upon receipt of the request, the Competition Authority shall issue to the undertaking a written confirmation where is stated the date on which the relevant evidence was received.
3. If the Commission concludes that the evidence presented by the undertaking constitutes added value then informs the undertaking in writing, no later than the date on which the investigation report was sent to the undertaking, by informing her on the benefit of the partial leniency from the fine.
4. The Competition Commission informs in writing if the undertakings in the cases when concludes that the applicant undertakings would not benefit from the leniency.

## **Article 12**

In particular cases the Competition Commission may impose a symbolical fine. In such cases the Commission should justify the decision.

## **Article 13** **Entrance into force**

1. The Regulation “On Fines and Leniency from Fines”, adopted by Decision No. 9, dated 01. 06. 2004 of the Competition Commission becomes null and void.

This Regulation takes effect immediately.