

**COMPETITION ACT
(CAP. 379)**

**Immunity from Fines and Reduction of Fines in Cartel
Investigations Regulations**

IN exercise of the powers conferred by article 33(2)(c) of the Competition Act, the Minister responsible for Social Dialogue, Consumer Affairs and Civil Liberties, after consultation with the Board of Governors of the Malta Competition and Consumer Affairs Authority, has made the following regulations:-

Part I

General Provisions

Title. **1.** The title of these regulations is the Immunity from Fines and Reduction of Fines in Cartel Investigations Regulations.

Interpretation. **2.** (1) In these regulations, unless the context otherwise requires:
“the Act” means the Competition Act;
“applicant” means an undertaking within the meaning of article 2 of the Act which is party to the cartel and which applies for immunity from fines and, or reduction of fines in exchange for the voluntary disclosure of information regarding the cartel by submitting an application to the Director General under these regulations and includes participants in a cartel, whether or not active on the same market, contributing to the implementation of the cartel even if only in a subsidiary, accessory or passive role;

“application” means an application for immunity from fines and, or reduction of fines submitted to the Director General in accordance with the provisions of these regulations and consists of the statement made by the applicant and any pre-existing documents attached to it;

“cartel” means an agreement or a concerted practice between two or more competitors having the object of preventing, restricting or distorting competition in terms of article 5 of the Act and, or Article 101 of the TFEU and aimed at co-ordinating the competitors’ competitive behaviour on the market or influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices, the allocation of production or sales quotas and the sharing of markets, in particular bid-rigging:

Provided that these regulations shall also apply to a cartel which includes elements of a vertical nature involving undertakings operating at a different level of the market and for the purposes of these regulations these undertakings shall be considered as

participating in the cartel:

Provided also that these regulations shall also apply to cartels in which participants in a cartel active in a different market may be contributing to even if only in a subsidiary, accessory or passive role;

“coercer” means an undertaking which took steps to coerce other undertakings to participate in the cartel or to continue to be participants thereof;

“fines” means administrative fines that may be imposed in terms of the Act;

“inspection” means an inspection within the meaning of articles 12(7) or 12(8) of the Act;

“Network Notice” means Commission Notice on Cooperation within the Network of Competition Authorities;

“pre-existing documents” means documents which are not specifically prepared for the application, but which existed before and independently of the application;

“secret cartel” means a cartel having elements that make the full extent of the conduct and the fact that it constitutes a cartel more difficult to detect as that conduct is not known to the public or to the customers or suppliers, without prejudice to the fact that not all aspects of the conduct need to be secret;

“significant added value” means the extent to which the evidence provided by an applicant strengthens, by its very nature and, or its level of detail, the ability of the Director General to prove the alleged cartel;

“statement” means a voluntary presentation, in written or oral form, by or on behalf of an undertaking to the Director General of the undertaking’s knowledge of a cartel and its role therein specially prepared to be submitted under these regulations together with witness statements made by employees and directors of the undertaking, but excluding documents pre-existing to the application and attached to the application;

“targeted inspection” refers to an inspection with more precise data resulting from ‘insider’ information that would allow the Director General to carry out more focused inspections and which indicates unequivocally what to look for and where.

(2) Other terms used in these regulations shall have the same meaning as in the Act.

Scope of these regulations.

3. (1) These regulations shall apply only to secret cartels and any reference to cartel in these regulations shall be construed accordingly.

(2) The fine of applicants may be waived or reduced under these regulations where they assist the Director General to prove the existence of the cartel.

Part II

Requirements to qualify for immunity from fines

Evidential Threshold enabling the Director General to carry out a targeted inspection.

4. The Director General shall grant immunity from any fine which would otherwise have been imposed in terms of article 21(1) of the Act to an applicant who comes forward disclosing its participation in a cartel and provided the following conditions are cumulatively met:

- (a) the applicant is the first to submit an application on his own initiative which contains the information and evidence listed in the application form found in Schedule I and which according to the view of the Director General, at the time he evaluates the application, constitutes information and evidence which will enable him to carry out a targeted inspection;
- (b) the Director General did not, at the time of the application, already have sufficient information or evidence to carry out an inspection or had not already carried out an inspection in connection with the cartel; and
- (c) the applicant satisfies the conditions to qualify for immunity under regulation 9.

Obligation of the applicant to provide information and evidence.

5. The applicant intending to benefit from immunity from fines according to regulation 4 shall provide the Director General with the information and evidence listed in the application form found in Schedule I to the extent that this, in the view of the Director General, would not jeopardize the inspections.

Assessment of evidential threshold.

6. Whether an inspection is successful or actually conducted shall have no effect on the potential granting of immunity from fines to an applicant. The decision to grant immunity to an applicant satisfying the conditions in regulation 4 will be made exclusively on the basis of the quality of the evidence and information submitted by the applicant.

Evidential Threshold to enable the Director General to find an infringement.

7. The Director General shall grant immunity from any fine which would otherwise have been imposed in terms of article 21(1) of the Act to an applicant who comes forward disclosing its participation in a cartel and provided the following conditions are cumulatively met:

- (a) the applicant is the first to provide evidence of the alleged cartel and submit an application on his own initiative which contains the information and evidence listed in the application form found in Schedule I and which in the view of the Director General, constitutes information and evidence which enables

him to find an infringement of article 5 of the Act and, or Article 101 of the TFEU in connection with the cartel;

(b) at the time of the submission of the application, the Director General did not have sufficient evidence to find an infringement of article 5 of the Act and, or Article 101 of the TFEU in connection with the cartel;

(c) no applicant has been granted conditional immunity from fines in accordance with regulation 4; and

(d) the applicant satisfies the conditions to qualify for immunity under regulation 9.

**Mandatory
Assessment
by Director
General.**

8. The Director General shall assess whether the evidence and information submitted in the application satisfying the conditions in regulation 7 is sufficient to find an infringement, taking into account the evidence and facts in his possession.

**Other
conditions for
an applicant
to qualify for
immunity.**

9. In order to qualify for immunity from fines the applicant shall satisfy the following cumulative conditions:

(a) it ends its involvement in the alleged cartel immediately following its application save to the extent that its continued involvement would, in the view of the Director General be reasonably necessary to preserve the integrity of the inspections;

(b) it cooperates genuinely and fully on a continuous basis from the moment it submits its application in terms of these regulations up to the conclusion of the investigation, in particular by:

(i) submitting accurate, complete, clear and correct information;

(ii) providing the Director General promptly with all relevant information and evidence in so far as it is known and available to the applicant at the time of the application and which may come into the applicant's possession or under its control at a later date;

(iii) remaining at the disposal of the Director General to reply promptly to any requests that may contribute to the establishment of relevant facts establishing the cartel;

(iv) doing its best in making current and, to the extent possible, former employees and

directors available for interviews with the Director General;

(v) not destroying, falsifying, altering or concealing relevant information or evidence in respect of the alleged cartel; and

(vi) not disclosing the fact that the application has been submitted and not disclosing any of the content of the application before the Director General has notified his statement of objections to the undertakings concerned, unless and to the extent otherwise agreed with the Director General; and

(c) when contemplating making an application to the Director General but prior to doing so, it shall not have:

(i) destroyed, falsified or concealed evidence which falls within the scope of the application; or

(ii) disclosed, directly or indirectly, the intention to submit an application to the Office or disclosed any of the content of the application it is contemplating except to the European Commission and national Competition Authorities inside or outside the European Union:

Provided that a coercer shall not be eligible for immunity from fines:

Provided further that for the purposes of this regulation “applicant” shall refer to an applicant making an application pursuant to regulations 11, 12, 13(4) and 14.

Only one applicant to benefit from immunity from a fine.

10. (1) Only the first applicant which fulfils the conditions determined by regulations 4 or 7 may benefit from immunity from a fine.

(2) Where more than one applicant requests the Director General for immunity, the Director General shall assess the applications in the order they have been submitted.

Part III

Application Procedure for immunity from fines.

Form of application

11. Without prejudice to regulations 12 to 14, in order to qualify for immunity from fines under regulations 4 and 7, the applicant shall submit a formal full application to the Director General on a form in accordance with Schedule I. The application

form shall be accompanied by a list of attachments as provided in Schedule VI and a list of evidence as provided in Schedule VII which shall form integral parts of the application.

Markers

12. (1) An applicant which plans to apply for immunity and is not in possession of evidence that would enable him to submit a complete application in accordance with regulation 11 may initially apply for a marker by filling an application form found in Schedule II to these regulations.

(2) A marker shall protect an applicant's place in the queue of applications for immunity from fines for a given period of time concerning the same alleged cartel.

(3) To be eligible to secure a marker, the applicant shall justify its application for reservation of a marker.

(4) Where the Director General decides to grant a marker, the Director General shall determine the time-limit within which the applicant is obliged to perfect the marker by allowing the applicant to gather the necessary information and evidence to be able to submit an application in accordance with regulation 11.

(5) Where the applicant fails to perfect the marker by completing an application as specified in sub-regulation 4 of this regulation within the time limit specified by the Director General, the marker shall be deleted from the ranking order of applications.

(6) Where the applicant perfects the marker within the time-limit specified by the Director General, the application shall be deemed to have been submitted on the date when the marker was granted.

(7) Applicants which have been granted a marker cannot perfect the marker by making a hypothetical application.

Hypothetical Applications.

13. (1) Before making a formal full application for immunity from fines in accordance with Schedule I, the prospective applicant may initially submit a hypothetical application to the Director General through a contact person by filling an application form found in Schedule III to these regulations. In order to protect the applicant's anonymity, the applicant need not disclose its identity and the identity of other cartel members. The application shall contain information on a contact person:

Provided that a hypothetical application shall include a detailed descriptive list of information and evidence referred to in Schedule VIII to these regulations which the prospective applicant proposes to disclose to the Director General at a later date agreed

with the Director General. This list shall accurately reflect the nature and content of the evidence, whilst safeguarding the hypothetical nature of its disclosure.

(2) The Director General shall communicate with the contact person until the disclosure of the applicant's identity.

(3) The Director General shall verify that the nature and content of the evidence described in the detailed list referred to in the proviso to sub-regulation (1) meets the conditions set out in regulations 4(a) or 7(a), as appropriate, and inform the contact person accordingly.

(4) Where an applicant subsequently submits an application for immunity from fines in accordance with regulation 11 and no later than on the date agreed upon and where the application corresponds to the description made in the list specified in the proviso to sub-regulation (1), the application shall be deemed to have been submitted at the time when the hypothetical application was submitted.

Summary applications.

14. (1) Summary application refers to an alleged cartel in violation of Article 101 of the TFEU, in respect of which the European Commission is particularly well placed to act in terms of paragraph 14 of the Network Notice.

(2) (a) An applicant who is in the process of submitting or has submitted an application for immunity from a fine or for a reduction of a fine to the European Commission may submit a summary application to the Director General on the form given in Schedule IV to these regulations if the applicant considers that the Office is well-placed to act in terms of the Network Notice.

(b) The summary application shall have an identical substantive scope to the respective application submitted to the Commission.

(3) The Director General shall provide to the applicant an acknowledgement of receipt of the summary application according to Schedule V.II to these regulations and where the applicant is the first to submit an application in relation to the cartel to the Director General, the Director General shall inform the applicant accordingly.

(4) An applicant shall comply with any specific additional information request of the Director General, in particular where the additional information is required for the Director General to reach an informed view on case allocation.

(5) In the case where the Director General decides to investigate, he shall set a time limit within which the applicant shall submit an application in accordance with these regulations. Where the applicant submits such information within the set period, the information provided shall be deemed to have been submitted on the date when the summary application was submitted.

Submission of applications for immunity from fines following the issuance of statement of objections.

15. The Director General may disregard any application for immunity from fines on the ground that it has been submitted after the statement of objections has been issued.

Manner of submission of applications

16. An applicant shall submit an application:

- (a) in writing to the address of the Office by registered mail in a sealed envelope; or
- (b) to the Office personally in writing; or
- (c) to the Office personally by making an oral statement:

Provided that a hypothetical application shall not be submitted by making an oral statement at the Office.

Oral statements.

17 (1) Upon the applicant's request, the Director General may allow oral statements in accordance with regulation 16(c) where the applicant justifies the submission of an oral statement instead of an application in writing and where the applicant presents all evidence and information to the Office:

Provided that the Director General shall not accept an oral statement where the applicant has already disclosed the content of the oral statement to third parties.

(2) In cases where the statements are provided orally they shall be recorded in any form deemed appropriate by the Director General.

(3) Where an oral statement is made, the applicant shall be required to provide the Director General with copies of all pre-existing documents relating to the cartel.

Applicant shall specify whether application is to be considered for immunity and, or reduction of fines.

18. The applicant shall specify at the time of submission of the application, whether the application should be considered for immunity from fines only or for reduction of fines only or for both.

The applicant shall only be an undertaking.

19. (1) Only undertakings shall file an application.

(2) Without prejudice to regulation 13(1), the application shall be submitted by a person entitled or authorized to act on behalf of the undertaking:

Provided that the person submitting the application shall prove his identity by valid authorization and the signatures of the authorized person and the authorizing person on a written power of attorney shall be officially certified.

Number of copies to be submitted.

20. An applicant shall submit to the Office one original and two copies of the application. Confirmation of receipt shall be made by the Office on one copy of the application which shall be returned to the person authorized or entitled to submit the application or the contact person as the case may be.

Acknowledgment of receipt of application.

21. Where an application is submitted under regulations 11 to 13, the Director General shall provide an acknowledgment of receipt according to Schedule V.I to the person authorized or entitled to submit the application or the contact person as the case may be.

Ranking of applications.

22. Applications for immunity from fines shall be considered separately from applications for a reduction of fines. The Director General shall not take any position on an application for a reduction of fine before a position has been taken on any existing applications for conditional immunity from fines in relation to the same alleged cartel.

Granting conditional immunity from fines.

23. When the Director General receives the application referred to under regulation 11, and has verified that the information and evidence submitted in the application meets the conditions for granting immunity from fines set out in regulations 4 or 7 as appropriate, he shall grant the applicant conditional immunity from fines.

Refusal to grant immunity from fines.

24. (1) If it becomes apparent that immunity is not available or that the applicant failed to meet the conditions for immunity from fines set out in regulations 4 or 7, the Director General shall inform the applicant in writing that its application for immunity is rejected.

(2) In the case arising under sub-regulation (1) hereof, where the applicant has specified that the application should be considered for both immunity and reduction of fines, the Director General shall proceed to consider the application for a reduction of

the fine.

(3) In the case arising under sub-regulation (1) hereof, where the applicant has specified that the application should be considered for immunity only, the applicant may withdraw the evidence disclosed for the purposes of its immunity application referred to in regulations 4 or 7 or request the Director General to consider it for a reduction of a fine:

Provided that a withdrawal under this sub-regulation shall not prevent the Director General from using his normal powers of investigation under the Act in order to obtain the information.

**Granting
immunity from
fines.**

25. (1) The Director General shall take his final position on the grant of immunity at the end of the investigation. If at the end of the investigation, the applicant has met the conditions set out in regulations 4 or 7, the Director General shall grant the applicant immunity from fines in the relevant decision.

(2) If an application meets the conditions for immunity from a fine, the applications of other applicants for a reduction of fines shall be assessed in order of their receipt.

**Access to
application and
statements.**

26. (1) The Director General shall not give access to any application to other addressees of the statement of objections before a statement of objections has been issued in accordance with article 12A of the Act.

(2) The addressees of the statement of objections and the legal counsels getting access on behalf of the addressees of the statement of objections shall bind themselves not to make any copy by mechanical or electronic means of the statement contained in the application to which access is being granted and to ensure that the information to be obtained from the statement shall solely be used for the purposes of judicial or administrative proceedings for the application of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 TFEU concerning the same cartel:

Provided that the protection afforded by this sub-regulation shall cease to apply from the moment an applicant or person acting on its behalf discloses the information contained in the statement to third parties.

(3) No access to any application made under these regulations shall be granted to complainants.

Part IV
Requirements to qualify for a reduction of a fine.

Reduction of a fine

27. (1) Applicants that do not qualify for immunity from fines under these regulations may nonetheless benefit from a reduction of any fine that would otherwise have been imposed in terms of article 21(1) of the Act.

(2) In order to qualify for a reduction of fines, an applicant shall disclose its participation in an alleged cartel and submit evidence on his own initiative, which, in the view of the Director General, represents significant added value with respect to the evidence already in the possession of the Director General at the time of the application. For this purpose, the Director General shall generally consider that:

(a) written evidence originating from the period of time to which the facts pertain to have greater value than evidence subsequently established;

(b) incriminating compelling evidence directly relevant to the facts in question such as written statements, email correspondence between the cartel members and other written documents relevant for the establishment of the facts and circumstances of the case and duration of a cartel to have a greater value than evidence which is indirectly relevant; and

(c) compelling evidence to have a greater value than evidence such as statements of cartel members which require corroboration if contested:

Provided that in order to qualify for a reduction of fines an applicant shall also satisfy all the conditions in respect of immunity from fines as provided in regulation 9.

Provided further that a coercer is not excluded from benefitting from the reduction of a fine.

(3) For the purpose of its application, the applicant shall, to the extent possible, use Schedule 1 of these regulations.

Levels of reduction.

28. (1) The Director General shall determine in any decision adopted at the end of the investigation, the following levels of reduction:

(a) for the first undertaking to provide significant added value, a reduction of thirty to fifty *per centum* (30-50 %);

(b) for the second undertaking to provide significant added value, a reduction of twenty to thirty *per centum* (20-30 %);

(c) for subsequent undertakings that provide significant added value, a reduction of up to twenty *per centum* (20 %).

(2) In order to determine the level of reduction within each band mentioned in sub-regulation (1) of this regulation, the Director General shall take into account the time at which the evidence fulfilling the condition in sub-regulation (2) of regulation 27 was submitted and the extent to which the evidence provided by the applicant represents significant added value.

Setting of fines.

29. If the applicant for a reduction of a fine is the first to submit compelling evidence as provided in regulation 27(2) which the Director General uses to establish additional facts increasing the gravity or the duration of the infringement, the Director General shall not take such additional facts into account when setting any fine to be imposed on the applicant which provided this evidence.

Part V

Procedure for reductions of fines applications.

Acknowledgement of receipt

30. The Director General shall provide an acknowledgment of receipt of the applicant's application for a reduction of fine and of any subsequent submissions of evidence in accordance with Schedule V.I.

Preliminary conclusion of evidence submitted.

31. (1) Where the Director General comes to the preliminary conclusion that the evidence submitted by an applicant constitutes 'significant added value' within the meaning of these regulations, he shall inform the applicant in writing of his intention to apply a reduction of fines as early as possible and no later than the date on which a statement of objections is notified to the undertakings concerned.

(2) The Director General shall, within the same time frame specified in sub-regulation (1) , inform the applicant in writing if he comes to the preliminary conclusion that the applicant does not qualify for a reduction of a fine.

Evaluation of final position.

32. The Director General shall evaluate the final position of each applicant which filed an application for a reduction of a fine at the end of the investigation in any decision adopted. The Director General shall determine in any such decision:

(a) whether the evidence provided by an applicant represented significant added value with respect to the

evidence in the possession of the Director General at that same time;

(b) whether the conditions set out in regulation 9 have been met; and

(c) the exact level of reduction in the fine an undertaking shall benefit from within the bands specified in regulation 28(1).

(2) If the Director General finds that the applicant has not met the conditions set out in regulation 9, the undertaking shall not benefit from any favourable treatment under these regulations.

Procedure

33. Regulations 15 to 17, 19 and 20 shall apply *mutatis mutandis* to applications for reduction of a fine.

Part VI General Considerations.

Confidentiality.

34. The Director General shall keep the identity of the applicant confidential for the duration of the proceedings until the statement of objections is notified to the parties concerned, within the scope of the national and European Union obligations of the Director General.

Disclosure of co-operation.

35. The applicant's co-operation with the Director General during the proceedings shall be mentioned in the decision, in order to explain the reason for the immunity from the fines or reduction of the fines awarded to the applicant.

Exchange of statements.

36. Information submitted by an applicant under the present regulations shall only be exchanged with the European Commission and national competition authorities pursuant to Article 12 of Council Regulation (EC) No 1/2003 if the conditions set out in the Network Notice are met:

Provided that statements submitted by an applicant under the present regulations shall only be exchanged with the European Commission and national competition authorities where the protection against disclosure granted by the European Commission and the receiving national competition authority is equivalent to that granted under Maltese law.

Language of the applications.

37. Applications can only be submitted in the Maltese or English languages.

Transitory provision.

38. Where the applicant submits an application concerning a breach of the competition rules occurring prior to 23 May 2011,

the applicant shall for the purposes of the second proviso to article 70(2) of the Malta Competition and Consumer Affairs Authority Act indicate that he shall choose the punitive measures in the Act as amended by Act VI of 2011.

**Conflict between
the Maltese and
the English
version**

39. In the event of conflict between the Maltese and English versions of these regulations, the English language version shall prevail.

DRAFT

SCHEDULE I

APPLICATION FORM FOR IMMUNITY FROM AND/OR REDUCTION OF A FINE

1. The application refers to:

- A. immunity from a fine in connection with submitted evidence which, in the view of the Director General, enables an inspection to be carried in connection with an alleged cartel pursuant to regulation 4;
- B. immunity from a fine in connection with submitted evidence which, in the view of the Director General, is sufficient to find an infringement of Article 5 of the Act and, or of Article 101 of the TFEU in connection with the alleged cartel pursuant to regulation 7;
- C. reduction of a fine pursuant to regulation 27(1).

Multiple choices can be marked.

1. Information about the applicant

- 1.1 Name of the undertaking
- 1.2 Legal form
- 1.3 Address
- 1.4 Place of business
- 1.5 Telephone number
- 1.6 Fax number
- 1.7 Contact person (name, position, telephone number, possibly e-mail contact)
- 1.8 Statutory representative of the applicant (name, position, telephone number, possibly e-mail contact)
- 1.9 Legal representative of the applicant (name, position, telephone number, possibly e-mail contact)
- 1.10 Describe the position held during the cartel by the applicant.

If application is submitted by legal representative, the application shall be accompanied by written proof of the representative's authority to act. The authorised person shall enclose with the application the original written authorisation.

2. Type of cartel

- 2.1 Describe in detail the alleged cartel.
- 2.2 Describe when and where the cartel started.
- 2.3 Describe the precise functioning of the cartel, its internal rules and control mechanisms.
- 2.4 Describe the aims, activities and functioning of the alleged cartel.

- 2.5 What is the duration of the alleged cartel? In what time period has the cartel been applied? What is the estimated market volumes affected by the alleged cartel?
- 2.6 Describe the specific dates, locations, content of and participants in alleged cartel contacts.
- 2.7 Describe the nature of the alleged cartel.

Statements in point 2 shall be accompanied by relevant explanations and evidence.

3. Information on other participants to the cartel

- 3.1 Provide the name, legal form, address and place of business of other undertakings participating or that have participated in the alleged cartel.
- 3.2 Provide names of natural persons acting on behalf of these undertakings or the names of other persons who may be contacted by the Office.
- 3.3 Provide the names, positions, office locations and, where necessary, home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the alleged cartel, including those individuals which have been involved on the applicant's behalf.

4. Data on concerned markets

- 4.1 Description of the market covered by the cartel. Which products or services are affected by the alleged cartel?
- 4.2 Which geographical area is covered by the cartel (local, whole territory of Malta, international)?

5. Evidence

- 5.1 Provide all evidence supporting your application (mainly contracts, e-mail communication, other written documents, names of witnesses, dates and other data on meetings, telephone calls and other contacts between the participants to the alleged cartel). Enclose all available evidence with your application.
- 5.2 If it is possible, provide information about other existing evidence that you are unable to submit yourself and provide information on the persons who could provide such evidence;
- 5.3 In case of an application under regulation 4, with a view to enable the Director General to carry out a targeted inspection, you should additionally provide the following information;
 - name and seat of an undertaking in the premises of which this evidence should be found,
 - determination of premises (including offices, rooms) vehicles or person where this evidence should be found,
 - addresses and locations at which evidence relevant to the alleged cartel might be stored.
 - other evidence relating to alleged cartel, which you have at your disposal or is accessible to you.

6. **Other**

Give all other information you consider relevant for the given case and any other evidence relating to the alleged cartel in possession of the applicant or available to it at the time of the submission, including in particular any evidence contemporaneous to the cartel.

7. **Information about any past or possible future applications for immunity from and/or reduction of a fine which the applicant has submitted or intends to submit to the European Commission or other competition authorities inside or outside the EU.**

8. **Place and date:** _____

9. **Name and position held:** _____

10. **Applicant's Signature:** _____

DRAFT

SCHEDULE II

APPLICATION FORM FOR GRANTING A MARKER

I, the undersigned request to be immune from any fine which would otherwise have been imposed in terms of article 21(1) of the Act and is hereby submitting to the Office, an application for a marker since I am not able to submit all necessary evidence to the extent requested in the application form in Schedule 1 together with this application.

The marker is justified because I am not able to submit evidence with this application due to the following reasons:

All evidence will be submitted to the Office in the time period established by the Director General in terms of regulation 12(4).

I, the applicant will provide for the time being the Office with at least the following information:

1. Basic Data:

- (i) name and address of the applicant;
- (ii) the reason which led you to apply for a marker;
- (iii) the parties to the alleged cartel;
- (iv) the affected product or products;
- (v) the affected territory or territories;
- (vi) the duration of the alleged cartel; and
- (vii) the nature of the alleged cartel conduct.

2. Evidence in the applicant's possession or available to him when submitting the application for a marker:

3. Information about any past or possible future applications to any other competition authorities both in or outside the European Union in relation to the alleged cartel

Place and date: _____

Name and position held: _____

Signature: _____

SCHEDULE III

HYPOTHETICAL APPLICATION FORM

1. Information on the contact person:

- 1.1. name and surname;
- 1.2. address;
- 1.3. telephone number;
- 1.4. fax number;
- 1.5. e-mail.

2. Information about the alleged cartel:

- 2.1. detailed description of the alleged cartel;
- 2.2. description of products or services affected by the alleged cartel;
- 2.3. description of the geographic scope of the alleged cartel;
- 2.4. duration of the alleged cartel.

3. Information about any past or possible future applications for immunity from and/or reduction of a fine which the applicant has submitted or intends to submit to the European Commission or other competition authorities inside or outside the EU.

4. Place and date: _____

5. Name and surname: _____

6. Signature: _____

SCHEDULE IV

SUMMARY APPLICATION FORM

1. Information about the applicant:

1.1 Undertaking (name, address) (if the application is submitted on behalf of different legal entities of the same group of companies, please list in alphabetical order)

1.2 Representative for the undertaking.

2. Information about the alleged infringement

2.1 Participants

2.2 Concerned products as specific as possible

2.3 Affected territories

2.4 Location of the evidence

2.5 Brief description of the alleged infringement

2.6 Period of the alleged infringement

2.7 Other useful information

3. Information about the submission of an application on immunity from fines and reduction of fines in cartel cases before the European Commission

3.1 Date of submission of the application (if not yet submitted, date foreseen by the undertaking)

3.2 Name of the contact at the Directorate General for Competition

3.3 Observations why the applicant considers that the European Commission would be a particularly well placed authority to deal with the alleged practices

4. Information on the existence of other applications on immunity from fines and reduction of fines in cartel cases before other competition authorities

4.1 Name of the competition authorities to which an application was submitted and contact

4.2 Name of the competition authorities to which an application is going to be submitted

5. Additional information if any.

6. Place and date _____

7. Name and position held: _____

8. Signature: _____

SCHEDULE V

I

ACKNOWLEDGEMENT OF RECEIPT *(to be completed by the Office for Competition)*

The Office for Competition hereby confirms that on *(indication of the date of receipt)* _____ at *(indication of hour and minute of receipt of the application)* _____ hours it received the application of the applicant/contact person *(indication of the name/title of the applicant or contact person)* for:

- immunity from a fine;
- immunity from and reduction of a fine;
- reduction of a fine.

Place and date: _____

Signature of the official: _____

II

ACKNOWLEDGEMENT OF RECEIPT OF A SUMMARY APPLICATION *(to be completed by the Office for Competition)*

The Office hereby confirms that on *(indication of the date of receipt of the application)* _____ at *(indication of hour and minute of receipt of the application)* _____ hours it received an application from the applicant *(indication of the name/title of the applicant)* for immunity from a fine.

The Office hereby confirms that the applicant is the first to submit the application for immunity from a fine in connection with an infringement of Article 101 TFEU. *(mark one of the options).*

- YES
- NO

Place and date: _____

Signature of the official: _____

