

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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**Roundtable on challenges and co-ordination of leniency programmes - Note by
Lithuania**

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More documentation related to this discussion can be found at

www.oecd.org/daf/competition/challenges-and-coordination-of-lenieny-programmes.htm

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Lithuania

1. The legal basis for leniency applications in Lithuania are the provisions in the Law on Competition of the Republic of Lithuania (hereinafter: Law on Competition)¹ and the Rules on Immunity from fines and reduction of fines or the parties to prohibited agreements (hereinafter: Leniency Rules).² The latter were issued by the Competition Council of the Republic of Lithuania (hereinafter: Competition Council).

2. According to Article 38(1) of the Law on Competition, an undertaking, which is the participant of an anti-competitive agreement of competitors or the participant of an anti-competitive agreement of non-competitors on a direct or indirect price fixing (stipulated in Article 5(1) point 1 of the Law on Competition), may be granted immunity from a fine, which is foreseen for such an infringement, if the undertaking, in the request for immunity, provided all the information about such an agreement to the Competition Council and if all of the following conditions are fulfilled:

1. The undertaking in the request for immunity provided the information before the opening of the investigation on the agreement;
 2. The undertaking is the first one of the participants of the anti-competitive agreement, which provides such information in its request;
 3. The undertaking in the request for immunity provides all the information known to it about the prohibited agreement and together with the request on the immunity from a fine submits the evidence confirming the circumstances provided in such a request;
 4. The undertaking co-operates with the Competition Council during the investigation;
 5. The undertaking was not the initiator of the prohibited agreement and did not induce other undertakings to participate in such an agreement.
3. Whereas the Law on Competition establishes general conditions for granting immunity from fines, the Leniency Rules define the detailed criteria and procedures for immunity from fines and their reduction.

4. Leniency Rules were adopted by the Competition Council in 2008 following the Notice of the European Commission on Immunity from fines and reduction of fines in cartel cases³. In 2012, legislative amendments were made to the Law on Competition,⁴

¹ Law on Competition of the Republic of Lithuania as of 23 March 1999, No. VIII-1099, as lastly amended on 19 December 2017.

² Resolution No. 1S-27 of the Competition Council of the Republic of Lithuania, Rules on immunity from fines and reduction of fines for the parties to prohibited agreements, 28 February 2008 (available in English at: <http://kt.gov.lt/en/rules-on-immunity-from-fines-and-reduction-of-fines-for-the-parties-to-prohibited-agreements>).

³ Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ [2006] C 298/17.

according to which the undertakings, which are not competitors, in the case of a direct or indirect price fixing agreement, which is stipulated in Article 5(1) point 1 of the Law on Competition, may benefit from a leniency application.

5. Despite the extended scope of the application of the leniency program (i.e. not only to horizontal, but also to vertical agreements), the number of leniency applications has not increased. In total, since the adoption of the Leniency Rules, 5 leniency applications have been received by the Competition Council.⁵ All of them were related to the horizontal price fixing agreements. For example, the Competition Council started the investigation in the *E-Turas* case⁶ (the case on the concerted practice of travel agencies through the E-TURAS online platform) on the basis of the information received by one of the travel agencies.⁷ The latter undertaking was granted immunity from a fine for the aforementioned infringement.⁸

6. In order to attract more leniency applicants, the Competition Council puts efforts in advocating for the leniency program, for example, in the seminars, conferences etc. Also, the leniency program is presented and explained (in a short, informative and illustrative manner) on the Competition Council's website in both Lithuanian⁹ and English¹⁰. Moreover, the Competition Council has a favourable approach towards leniency applicants and clearly communicates that any doubts during the leniency procedure are interpreted to the benefit of the leniency applicant.

7. It is also noteworthy that Article 40 of the Law on Competition, which foresees sanctions for the heads of the undertakings for having contributed to the anti-competitive agreement of competitors or to the abuse of dominance, refers to leniency: sanctions (such as the prohibition for 3 to 5 years to be the head of a public and/or private legal person, to be the member of the supervisory and/or managing board of the public and/or private legal person as well as the fine of up to EUR 14 481) may not be imposed, for

⁴ The Law amending the Law on Competition of the Republic of Lithuania, 22 March 2012, No. XI-1937.

⁵ The following five decisions of the Competition Council were adopted as a result of the investigations, which were opened on the basis of the leniency applications: Decision of the Competition Council, 18 February 2010, No. 2S-6; Decision of the Competition Council, 20 January 2011, No. 2S-2; Decision of the Competition Council, 7 June 2012, No. 2S-9; Decision of the Competition Council, 11 February 2015, No. 2S-2/2015; Decision of the Competition Council, 18 December 2015, No. 2S-19/2015.

⁶ Decision of the Competition Council on the compliance of actions of the undertakings providing organized sales of trips and other related services with the requirements of Article 5 of the Law on Competition of the Republic of Lithuania and Article 101 TFEU, 7 June 2012, No. 2S-9. See also: Judgement of the Supreme Administrative Court of the Republic of Lithuania, 2 May 2016, Case No. A-97-858/2016; ECJ, Case C-74/14, "*Eturas*" *UAB and Others v Lietuvos Respublikos konkurencijos taryba*, 21 January 2016, ECLI:EU:C:2016:42.

⁷ Decision of the Competition Council, *E-Turas*, paras 1-4.

⁸ Decision of the Competition Council, *E-Turas*, paras 253-258.

⁹ <http://kt.gov.lt/lt/veiklos-sritys/konkurencija-ribojantys-susitarimai/susijusi-informacija/atleidi-mas-nuo-baudu>.

¹⁰ <http://kt.gov.lt/en/activities/anti-competitive-agreements/related-information/leniency>.

example, on the head of the undertaking if the latter was granted immunity from a fine based on Article 38 of the Law on Competition (Article 40(3) of the Law on Competition).

8. However, the leniency program has still not attracted a considerable number of leniency applications to date. Some of the challenges, which the Competition Council is confronted with when implementing the leniency program, are the following:

9. Firstly, specific challenges related to a small jurisdiction. Due to possibly close relationships in the “business world”, the risk on the side of potential leniency applicants of losing their business connections if they were to submit a leniency application might discourage them from applying for leniency.

10. Secondly, an important issue is related to the concept of an initiator of the prohibited agreement. As it was noted above, according to Article 38(1) point 5 of the Law on Competition (as well as under the Leniency Rules (point 3)), the initiator of the prohibited agreement cannot benefit from leniency. However, the concept of the initiator is not defined or further specified in the Law on Competition or the Leniency Rules. The absence of such a clear definition makes it more difficult for the potential applicants to precisely identify their position/role in the anti-competitive agreement and to evaluate the risks and benefits related to leniency. However, it is noteworthy that the Competition Council has time and again expressed its opinion that it is ready to interpret the aforementioned concept in favour of the leniency applicant. Furthermore, it should not be ruled out that this concept will be further specified on the basis of the implementation of the ECN+ Directive¹¹ into national law.

11. Thirdly, the possibility of the claims in the framework of private enforcement may also adversely affect the potential applicant’s incentive to apply for leniency.

12. The Competition Council has been in the process of updating the existing Leniency Rules pursuing to encourage the undertakings to cooperate with the Competition Council more actively. However, in light of the legal provisions on leniency included in the proposal of the ECN+ Directive,¹² the Competition Council has suspended the process of updating its Leniency program, in order to align it with the implementation of the ECN+ Directive once it enters into force.

13. Finally, by co-operating with other Lithuanian institutions, the Competition Councils expects that the increased possibilities to detect the infringements might also act as an additional incentive for the undertakings to apply for leniency and in such a way to co-operate with the Competition Council. For example, in 2017, the Competition Council signed a tripartite cooperation agreement with the Public Procurement Office and the

¹¹ European Commission, Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, Brussels, 22.3.2017, COM(2017) 142 final,

¹² European Commission, Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, Brussels, 22.3.2017, COM(2017) 142 final, Articles 16-22.

Special Investigation Service of the Republic of Lithuania.¹³ The agreement aims to facilitate the cooperation among the aforementioned institutions by sharing their expertise and information, which may be important while conducting investigations on corruption, violations of public procurement rules or suspected anti-competitive agreements in public procurement.

¹³ The press release is available at: <http://kt.gov.lt/en/news/competition-council-signed-collaboration-agreement-with-public-procurement-office-nbsp-and-special-investigation-service-nbsp>.