

Regulation no. 1/2013

The procedures relating to obtaining immunity from a fine or reduction of a fine, under the provisions of Law no. 19/2012, of 8 May¹

Article 1

Purpose

The purpose of this Regulation is to establish the procedure for application for immunity from a fine or reduction of a fine, granted in administrative cases relating to infringements referred to in article 75 of the Competition Law (Law no. 19/2012, of 8 May), henceforth referred to as cartel or infringement.

Article 2

Application for immunity from a fine or reduction of a fine

1 — The request for immunity from a fine or reduction of a fine set out in Law no. 19/2012, of 8 May is made through an application addressed to the Competition Authority.

2 — The application must contain the following information, submitted in consecutive order and separately:

- a)* The purpose of the application, including an indication by the applicant as to whether it is merely for immunity from a fine or for immunity from a fine or reduction of a fine;
- b)* Identification of the applicant, including the capacity in which applicant is submitting the application with reference to paragraphs *a)* or *b)* of article 76 of Law no. 19/2012, of 8 May, as well as their contact details and, in the case of legal persons, the identity of the members of the current governing body, along with those who were in office during the period when the infringement took place, with their business addresses and, if need be, their home address;
- c)* Accurate and detailed information regarding the alleged cartel, including its aims, activities and mode of functioning, the product or service concerned, the geographical scope and the duration, as well as the dates, places, contents and participants in contacts relating to the cartel and all relevant explanations regarding the evidence submitted along with the application;

¹ This translation is a non-binding text. It is provided by the Portuguese Competition Authority for information purposes only. While every effort has been made to ensure its accuracy, the only legally binding text is the original Portuguese document, Regulation 1/2013, of 3 January, as published in the Portuguese Official Journal. The Portuguese Competition Authority reserves the right to revise any part of this translation as it deems appropriate in the light of comments and suggestions that are made.

- d)* The names and contact details of the undertakings involved in the alleged cartel, including the identity of current members of their governing bodies, as well as those in office during the period when the infringement took place and, if necessary, their home;
- e)* Other jurisdictions where an application for immunity from a fine or reduction of a fine regarding the same cartel has been or is in the process of being submitted; and
- f)* Identification of any other information relevant to the application for immunity from a fine or reduction of a fine.

3 — The applicant, on presenting the request, must also hand over the evidence of a cartel that is in his possession or control, in particular which relates to the period of the infringement. A list of this material must also be appended.

4 — The written application can be sent to or handed in at the premises of the PCA namely by:

- a)* Fax to +351 217902093;
- b)* Post to the premises of the Competition Authority;
- c)* E-mail to clemencia@concorrenca.pt with advanced electronic signature and date validation; or
- d)* Handed in in person, for example at a meeting with the unit handling these proceedings, at the premises of the Competition Authority.

5 — The submission of a written application may be replaced by oral statements made during a meeting with the unit handling proceedings, at the premises of the Competition Authority.

6 — The oral statements referred to in the previous paragraph must be accompanied by the evidence that is set down in paragraph 3, and are made as follows:

- a)* Oral statements will be recorded at the premises of the Competition Authority, a reference to the date and time and the record will be mentioned in the file;
- b)* Within a deadline set by the Competition Authority, the applicant must verify the technical accuracy of the recording, which will be available at the premises of the Competition Authority. If necessary, the applicant may make amendments to the oral statement and, if the applicant chooses not to make any changes within that time period, the recording is deemed to be approved;
- c)* A transcription of the oral statements will be prepared at the premises of the Competition Authority using its own equipment, and must be complete and accurate. It must be signed by the applicant;
- d)* The Competition Authority can request the cooperation of the applicant at a technical level as per the requirements set out in the subparagraphs above;
- e)* The lack of cooperation as set out in the previous paragraph can be deemed to be a violation of the duty to cooperate under the provisions of subparagraph *a)* of paragraph 2 of article 77 and subparagraph *b)* of paragraph 1 of article 78 of Law no. 19/2012, of 8 May.

7 — The date and time of the application for immunity from a fine or reduction of a fine is deemed to be when the document is received at the premises of the Competition Authority.

8 — The Competition Authority will provide a document certifying the date and time that the application for immunity from a fine or reduction of a fine was received.

Article 3

Summary application for immunity from a fine or reduction of a fine

1 — In special cases and following a duly substantiated request, the Competition Authority may accept an application for immunity from a fine or reduction of a fine as referred to in the previous article by way of a summary application. This is possible if the applicant has requested, or is in the process of requesting, an application for immunity from a fine or reduction of a fine from the European Commission, and the situation is as set out in paragraph 14 of the Commission Communication on cooperation within the network of competition authorities (2004/C 101/03).

2 — The submission of a summary application must include all of the items requested in the form in the appendix of this Regulation, and may be submitted in Portuguese or English.

3 — A written submission of a summary application may be replaced by oral statements, and in this case, the provisions that apply are those in subparagraphs *a)* and *b)* of paragraph 6 of the previous article.

4 — The Competition Authority will provide a document certifying the reception of the summary application with the date and time stamp.

Article 4

The proceedings relating to the application for immunity from the fine

1 — After the reception of an application for immunity from a fine, the Competition Authority may grant a marker, either on its own initiative or as the result of a properly grounded request. This marker sets down an additional period of no less than 15 days during which the applicant may submit further information and evidence to the application.

2 — In order to benefit from the marker under the provisions of the previous paragraph, the applicant must indicate on the request its name and address and information relating to those who are party to the alleged cartel, to the product(s) and/or service(s) involved, and the territory or territories covered, an estimate of the duration of the alleged cartel and how it functioned, along with information on any applications for immunity from a fine or reduction of a fine that the applicant has already submitted or may submit to other competition authorities relating to the alleged cartel, and a justification of the request for a marker.

3 — The Competition Authority may grant a period different from that referred to in paragraph 1 whenever there are reasons stemming from cooperation with other European competition authorities, under the provisions of Regulation (CE) no. 1/2003 of 16 December 2002.

4 — If the applicant completes the request during the additional period that has been granted, the application for immunity from a fine is deemed to have been submitted at the date and time indicated, as set down in paragraph 7 of article 2 .

5 — If an application is not completed within the time set, the application is rejected and the documents that have been submitted will be returned to the applicant, or will be taken into account as collaboration provided for the Competition Authority, under the provisions and for the purposes of subparagraph *i)* of article 69 of Law no. 19/2012, of 8 May. This applies if the applicant so requests within a period of 10 working days from the notification made by the Competition Authority.

6 — After assessing the application for immunity from a fine, the Competition Authority will inform the applicant as to whether the submission complies with the requirements set out in paragraph 1 of article 77 of Law no. 19/2012, of 8 May, and will confirm in writing that conditional immunity from a fine has been granted.

7 — If the Competition Authority finds, after analysing the application, that immunity is not available according to the provisions of paragraph 1 of article 77 of Law no. 19/2012, of 8 May, the applicant will be sent information in writing to this effect.

8 — Within a period of 10 working days after being informed of the decision referred to in the previous paragraph, the applicant may, in the case where immunity only was sought, withdraw the application and any evidence, or request that the Competition Authority consider the application for the purposes of article 78 of Law no. 19/2012, of 8 May.

9 — The Competition Authority will not take into account other applications for immunity from a fine before deciding on any existing applications relating to the same alleged infringement.

Article 5

Proceedings relating to the application for reduction of a fine

1 — If the Competition Authority concludes *in limine* that the elements submitted under the terms of an application for a reduction of a fine have significant added value according to article 78 of Law no. 19/2012, of 8 May, it will inform the applicant of its intention to grant a reduction of the fine, with an indication of the level specified under the provisions of that article.

2 — The provisions set down in paragraphs 1 to 4 of the preceding article are applicable to the proceedings relating to the reduction of a fine.

3 — If the applicant does not submit the request within the period granted, the application will be rejected and the documentation already submitted will be returned to the applicant, or it will be taken into account as collaboration with the Competition Authority, under the provisions and for the purposes of subparagraph *i*) of article 69 of Law no. 19/2012, of 8 May, if the applicant so requests within a period of 10 working days from the notification made by the Competition Authority.

4 — If the Competition Authority concludes *in limine* that the elements submitted under the terms of an application for a reduction of a fine do not provide significant added value according to article 78 of Law no. 19/2012, of 8 May, it will immediately inform the applicant in writing of its intention not to grant a reduction of the fine and the applicant can withdraw the request, as per the provisions set down in the previous paragraph.

5 — The Competition Authority will not take into account other applications for immunity from a fine before deciding on any existing immunity application relating to the same alleged infringement.

Article 6

Proceedings relating to a summary application

1 — If the Competition Authority opens an investigation of the alleged infringement, it will ask the applicant to complete its submission in a period of no less than 15 days, and provide any

information in their possession or other elements that may serve as evidence, and if applicable, a translation into Portuguese of a summary application that has been submitted in English.

2 — The Competition Authority can grant a period different from that referred to in the previous paragraph whenever there are reasons stemming from cooperation with other European competition authorities, under the provisions of Regulation (CE) no. 1/2003 of 16 December 2002.

3 — If the applicant has not completed the application within the time period set, or if the summary application has not been submitted in Portuguese, it will be rejected.

4 — In the case set out in the paragraphs above, if the purpose of the summary application is merely immunity from a fine and if such is not available, the Competition Authority will so inform the applicant, who can withdraw their application or complete it, under the provisions of the paragraphs above, for the purpose of a reduction of the fine under the provisions of article 78 of Law no. 19/2012, of 8 May.

5 — If the applicant completes the application for immunity from a fine or reduction of a fine in the period fixed under the provisions of the above paragraphs, the application is deemed to have been submitted on the date and at the time indicated in paragraph 7 of article 2, and will follow proceedings under the provisions of paragraphs 6 to 9 of article 4 or of paragraphs 1 and 4 of article 5, respectively.

Article 7

Decision on the application

1 — Granting immunity from a fine or a reduction of the fine depends on fulfilling all the requirements set down, as the case may be, in articles 77 or 78 of Law no. 19/2012, of 8 May.

2 — The final decision on the application for immunity from a fine or reduction of a fine is taken by the Competition Authority in the decision as referred to in paragraph 3 of article 29 of Law no. 19/2012, of 8 May.

3 — The cooperation of an applicant throughout the case, even if no immunity from a fine or reduction of a fine is granted because the requirements for obtaining it are not fulfilled, may be considered under the provisions, and for the purpose of, subparagraph *i*) of paragraph 1 of article 69 of Law no. 19/2012, of 8 May.

ANNEX

(Portuguese Version)

Formulário para apresentação de pedido sumário de dispensa ou redução da coima, nos termos da Lei n.º 19/2012, de 8 de maio, a que se refere o n.º 2 do artigo 3.º do presente Regulamento.

O presente formulário deverá ser preenchido em conformidade com as disposições aplicáveis da Lei n.º 19/2012, de 8 de maio, e do Regulamento do procedimento relativo à tramitação para a obtenção de dispensa ou redução da coima nos termos da Lei n.º 19/2012, de 8 de maio.

1 — Informação sobre o requerente

Empresa (nome, morada) (se o pedido é submetido em nome de outras pessoas jurídicas do mesmo grupo de empresa, por favor indique-as por ordem alfabética):

Representante da empresa:

2 — Informação sobre a alegada infração

Participantes:

Produto(s) e ou serviço(s) em causa (informação tão detalhada quanto possível):

Área geográfica em causa:

Localização dos elementos probatórios:

Breve descrição da alegada infração:

Período de duração da alegada infração:

Outra informação útil:

3 — Informação sobre a apresentação de pedidos de dispensa ou redução da coima perante a Comissão Europeia

Data da apresentação do pedido (se ainda não tiver sido submetido, data prevista pela empresa):

Nome da pessoa de contato na Direção -Geral de Concorrência (DG COMP):

Observações sobre os motivos pelos quais o requerente considera que a Comissão Europeia está particularmente bem posicionada para tratar da alegada infração:

4 — Informação sobre a existência de outros pedidos de dispensa ou redução da coima

Nome das autoridades de concorrência perante as quais foi apresentado um pedido e contatos:

Nome das autoridades de concorrência perante as quais vai ser apresentado um pedido

5 — Informação adicional, se aplicável:

Data:

Assinatura:

(English Version)

Template for the submission of a summary application for immunity from or reduction of fines under Law No 19/2012, of 8 May, mentioned in article 3(2) of this Regulation

This template should be filled in according to the applicable rules set out in the Competition Act and the present Regulation on the procedure for the submission of an application for immunity from or reduction of fines under the Competition Act.

1. Information about the applicant

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

Representative for the undertaking:

2. Information about the alleged infringement

Participants:

Concerned product(s) and/or service(s) *(as specific as possible)*:

Affected territories:

Location of the evidence:

Brief description of the alleged infringement:

Period of the alleged infringement:

Other useful information:

3. Information about the submission of a leniency application before the European Commission

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

Name of the contact at DG Competition:

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 leniency applications

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

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

5. Additional information, if any:

Date:

Signature: