



**The Competition Authority**

An tÚdarás Iomaíochta

# **The ECN Model Leniency Programme**

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# What is the ECN ?

- **The European Competition Network (ECN) comprises the 27 Competition Authorities of the European Union and the European Commission.**
- **ECN's objective is to build an effective legal framework to enforce EC competition law against companies who engage in cross-border business practices which restrict competition and are therefore harmful to consumers.**
- **It aims to ensure that EU competition law is applied consistently across all Member States.**



# ECN

**ECN is a forum for discussion and cooperation. Member States cooperate through the ECN by:**

- Informing each other of new cases and envisaged enforcement decisions**
- Coordinating investigations, where necessary**
- Helping each other with investigations**
- Exchanging evidence and other information**
- Discussing various issues of common interest**



# ECN

- **The ECN puts this cooperation into effect in several ways:-**
- **Sector specific sub-groups of experts from national authorities e.g. banking, energy, food, mergers, pharmaceuticals, healthcare, motor vehicles, etc.**
- **Working Groups of national experts to work on specific projects**
- **Formal channels of communication among Member States**
- **ECN Newsletter – Internal document produced 4 or 5 times per year**
- **ECN Brief – Public document produced 2 or 3 times per year**



# Leniency Working Group

**2005 – ECN Leniency Working Group commenced the development of a Model Leniency Programme.**

**Group had already analysed defects and problems with the application of leniency across the ECN. It concluded that:**

- **a one stop shop solution needed to be explored**
- **alignment of the 19 existing leniency programmes was needed**
- **guidance necessary for proposed new leniency programmes within the ECN**



# Leniency in the ECN

## Some commonalities among the 20 programmes

- **Full immunity from fines for whistleblowers - usually the first to come forward before an inspection/search**
- **Reduction in fines for others who cooperate – usually after they've found out about the investigation**
- **Coercers/leaders/instigators/recidivists need not apply**
- **Administrative enforcement systems**
- **Full application to every Member State in which the infringement took place**



# Leniency in the ECN

## Some differences

- **Some operated a criminal system**
- **Some had criminal and administrative**
- **Some could set fines themselves**
- **Some allowed full immunity to the first applicant regardless of when they applied**
- **Some operated a queuing system**
- **Some provided for hypothetical applications**



# The Model Programme

**In September 2006 the Heads of the ECN approved a new Model Leniency Programme**

- **The Programme took account of divergences among the various member programmes and enforcement systems**
- **It set out to improve the handling of parallel applications**
- **It set out the main procedural and substantive rules which should be common to all programmes**
- **It committed members to convergence where possible**





# The Model Programme

## Two types of Full Immunity from Fines

### Type 1A

- **Where the applicant is the first to come forward with evidence before the Authority has conducted a targeted inspection, and**
- **Where the Authority did not have sufficient evidence itself to launch an inspection, and**
- **The applicant is not otherwise excluded from availing of the benefits of the programme**



# The Model Programme

## Full Immunity - Type 1B

- **Where the applicant is the first to come forward with evidence which enables the Authority to find an infringement, and**
- **At the time, the Authority had insufficient evidence of its own to find an infringement, and**
- **The applicant is not otherwise excluded from availing of the benefits of the programme**



# The Model Programme

## Excluded Persons

**“An undertaking which took steps to coerce another undertaking to participate in the cartel will not be eligible for immunity from fines under the programme”.**

**Some ECN Members’ Leniency Programmes also exclude sole ringleaders, instigators and recidivists.**



# The Model Programme

## Type 2 - Reduction of Fines

**An applicant that does not qualify for full immunity may however qualify for a reduction in a fine if:**

- The applicant brings evidence of significant added value to the Authority's case relative to the evidence that it previously had.**

**The reduction in the fine will generally not exceed 50% of the fine that otherwise would have been imposed**



# The Model Programme

## Qualification Criteria for Leniency under the Programme:

- **Applicant must end its involvement in the cartel**
- **Applicant must cooperate fully until the conclusion of the case**
- **Applicant must not have destroyed any evidence in advance of the application or disclosed to anyone its intention to apply for leniency**



# The Model Programme

## The Application Process

- **May make an initial anonymous approach for guidance e.g. is full immunity available, does it qualify for leniency**
- **May apply for a 'marker' so as to protect its position in the queue while it gathers the necessary evidence**
- **May make an 'oral' application**
- **CA grants 'conditional' leniency**
- **CA grants final leniency on conclusion of the case**



# The Model Programme

## Information necessary for a 'marker'

- The name and address of the applicant
- The basis for the applicant's approach
- The parties to the cartel
- The affected product and territory
- The duration of the cartel
- The nature of the conduct
- Past or future leniency applications to other CAs



# The Model Programme

## Summary Applications

**Where the Commission is 'well placed' to deal with a case involving 3 or more countries**

- **The applicant makes a 'full' application to the Commission**
- **It makes 'summary' applications to the other countries affected by the cartel which act as an extended marker**
- **The other countries to not grant leniency unless the case is reallocated from the Commission**





# Convergence Project

**ECN Members committed to using best efforts to align their programmes with the model programme**

- **Some Member States have amended, or are in the process of amending, their respective programmes**
- **New programmes are based on the Model**
- **There are now 27 Leniency Programmes**
- **The Cartels/Leniency Working Group is currently examining convergence to date and obstacles to further convergence**



# Issues on Convergence

- **Common Definition of 'Secret Cartels'**
- **Excluded Applicants**
- **Threshold for Immunity**
- **Threshold for Reduction of Fines**
- **Leniency Conditions**
- **Markers**
- **Summary Applications**
- **Disclosure of Leniency Documents**
- **Leniency in reallocated cases**



# Thank You



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