

Leniency applications in horizontal monopoly agreement cases: guidance for leniency applicants

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Polish leniency programme

Generally, the leniency program is based upon the EU's leniency notice:

- Full immunity only available to the first applicant;
- Proportional reduction of a fine for the next applicant in the queue.

In Poland, leniency is available to participants in illegal vertical agreements as well as in illegal horizontal agreements.

In some decisions, the Polish Competition Authority found that the vertical agreements had horizontal effects.

Since January 2015, individuals can apply for leniency.

Importance of continuing cooperation with the Competition Authority

Cooperation with the Polish Competition Authority is a strict legal requirement for an applicant to fulfill in order to obtain a waiver or a fine reduction.

The term “cooperation” includes:

- Providing evidence and information;
- Providing oral explanations about the evidence and facts;
- Not destroying or falsifying evidence;
- Keeping confidential the fact of applying for leniency;
- Ceasing to take part in the infringement.

Application and steps:

- An applicant can submit an application in writing or orally.
- The Competition Act describes the scope of information that should be included in a leniency application.
- Possibility to apply for a marker, which protects an applicant's place in the leniency queue for a given period and allows it to gather the necessary information and evidence in order to meet the evidential threshold for leniency.
- For cases in which leniency applications filed before the European Commission concern conduct affecting Poland, an applicant can also file a summary application to the Polish Competition Authority.
- Notification of an initial grant of leniency.
- The final grant of leniency is made in a decision closing the investigatory proceedings.

Current legal basis of leniency:

Competition Act (Article 113(a-k)) of 2007

Leniency Regulation of 2009

Leniency Guidelines of 2009

Leniency Plus

Introduced in the amendment to the Competition Act of 2015

A company or individual who applied for leniency but does not meet the criteria for a fine waiver, may – by submitting a separate leniency motion in another case – obtain:

- An additional reduction of 30 percent of the fine in the pending proceedings; and
- A full waiver of a fine in the “new” or “spin-off” case.

Leniency Plus – how it works?

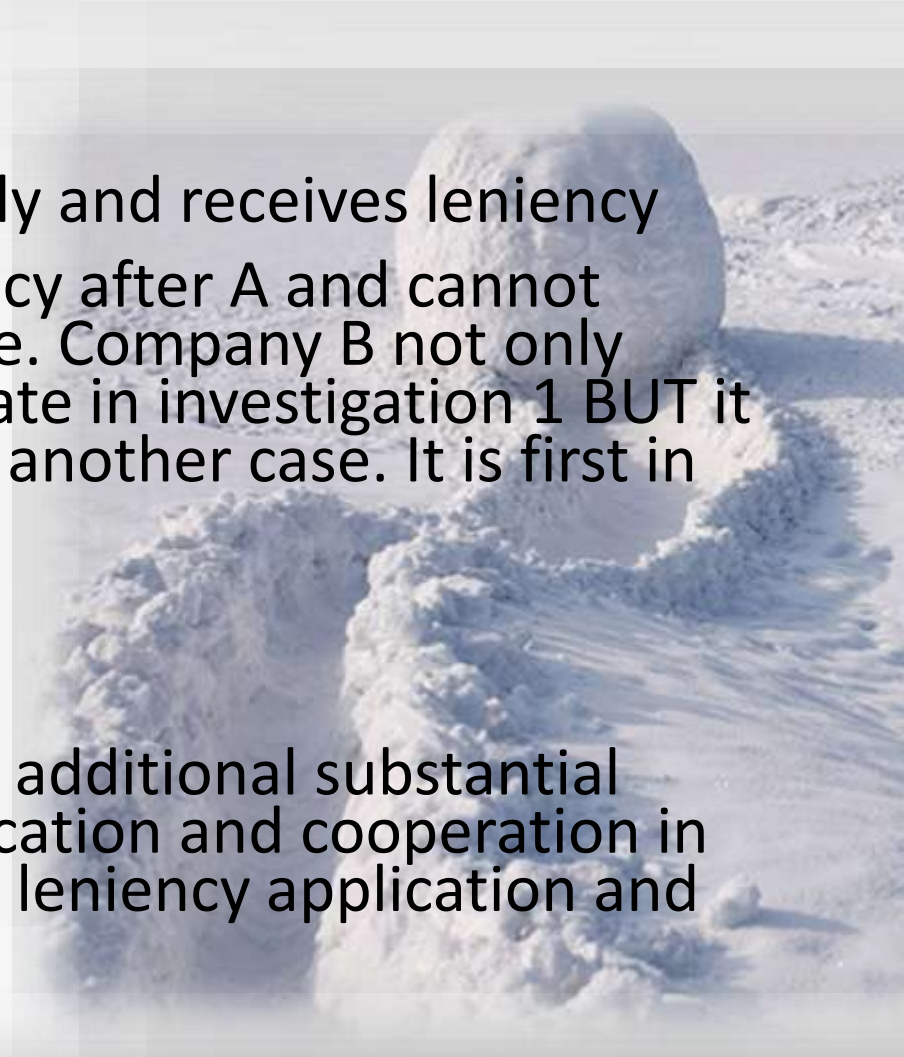
Investigation 1:

- Company A is the first to apply and receives leniency
- Company B applies for leniency after A and cannot qualify for a full waiver of fine. Company B not only admits and agrees to cooperate in investigation 1 BUT it files a leniency application in another case. It is first in the new “spin off” case.

Spin off investigation 2

- Company B receives leniency

The “plus”: Company B gets an additional substantial reduction for its leniency application and cooperation in investigation 1 as a result of its leniency application and cooperation in investigation 2.



Individuals may now file for leniency in Poland

The leniency (and leniency plus) program is available to members of a company's management. Such individuals are subject to fines of up to 500-thousand Euros for anti-competitive agreements.



Statistics

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of applications	0	2	3	6	3	6	8	2	16	5	10

What is important to make leniency work?

Transparency and legal certainty

2009:

- *Guidelines on the imposition of fines.*
- *New leniency regulation (convergence with EU Model Leniency Program of 2006).*
- *Guidelines on leniency.*



Advocacy actions addressed to companies:

- *Information about the possibility of making an anonymous complaint or simply getting in touch with the Authority (dedicated phone number and email address for leniency applications, tips, questions).*



What is important to make leniency work?

Procedural fairness

- Confidentiality
Protection of business secrets.
- Limited access of others to materials provided by leniency applicant
*Evidence and materials provided by leniency applicant, apart from those containing business secrets are available to parties of the proceeding at its final stage (before decision is issued).
Parties are prohibited from making copies of those materials without the written permission of leniency applicant.*
- Convergence with EU standards
It facilitates cooperation in cross-border cases.



What is important to make leniency work?

Extensive enforcement

It applies to all cases based on competition law with particular emphasis on cartels.

Significant risk of detection may lead an individual or company to decide to cooperate with a Competition Authority in the framework of leniency program.



Examples of recent decisions in cases initiated by a leniency application

Price fixing in the transmission of football matches market on *pay-per-view*

Sportfive (a company with the rights to TV broadcasts of 2014 Football World Cup elimination matches) executed an agreement with 11 broadcasters based on determining a minimum price of a single match.

Sportfive decide to file a leniency request and it obtained a full waiver of a fine.



Examples of recent decisions in cases initiated by a leniency application

Collusion in the ski market

Spółka Sport & Freizeit, the representative in Poland of Fisher, a leading manufacturer of ski equipment, required its distributors to sell its products at defined prices and influenced after-season sales dates.

The leniency motion in this case was filled by Intersport Polska, the largest business partner of **Sport & Freizeit**.

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THANK YOU

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