

The General Guidelines of the Swedish Competition Authority on immunity from fines and reduction of fines KKVFS 2008:3

(Only the Swedish version is authentic)

Introduction

1. According to Chapter 3, Article 5 of the Competition Act (2008:579), the Stockholm City Court, at the request of the Swedish Competition Authority, may order an undertaking to pay an administrative fine where the undertaking, intentionally or negligently, has infringed the prohibitions in Chapter 2, Article 1 or Article 81 of the Treaty establishing the European Community (EC Treaty).

2. When the level of the fine is established according to Chapter 3, Articles 8-11, consideration must be taken of the severity and duration of the infringement as well as other aggravating or mitigating circumstances of importance for the assessment of the infringement. Chapter 3, Article 12 and Articles 14-15 include regulations concerning immunity from fines. Chapter 3 Articles 14-15 contain regulations on reduction of fines.

3. In these General Guidelines, the Swedish Competition Authority provides information on how the Authority interprets and applies the regulations stated in the Competition Act concerning immunity from fines according to Chapter 3, Article 12 and Articles 14-15 and reduction of fines according to Chapter 3, Articles 13-14. In these General Guidelines, issues concerning immunity from fines are covered in points 5-43 and reduction of fines in points 44-57

4. Only one of the undertakings that has participated in an infringement may be granted leniency in the form of immunity from fines. This will be granted to the first undertaking to notify the Swedish Competition Authority concerning the infringement and whose notification provides sufficient material, not previously accessible to the Authority, for it to take action against this infringement. If there is no undertaking that fulfils these conditions, immunity from fines may be granted to the undertaking that is the first one to submit such information that enables the identification of, and assurance that, the infringement has taken place, or if the undertaking has in another considerably material manner, facilitated the investigation of the infringement. Undertakings who are not qualified for immunity from fines may apply for reduction of fines.

Immunity according to Chapter 3, Article 12, first paragraph of the Competition Act

Chapter 3, Article 12 first paragraph of the Competition Act

Leniency regarding an administrative fine may be granted for an undertaking which has infringed a prohibition contained in Chapter 2, Article 1 or in Article 81 of the EC Treaty, if the undertaking is the first to notify the infringement to the Swedish Competition Authority and if it is only owing to the information contained in the notification that the Authority has obtained sufficient material to take action against the infringement.

Chapter 3, Article 12, third paragraph of the Competition Act

However, leniency may not be granted for the administrative fine regarding an undertaking that has compelled another undertaking to participate in the infringement.

Chapter 3, Article 14 of the Competition Act

In order to be granted leniency or reduction according to Article 12 or 13 the undertaking shall in addition to these provisions

- 1. provide all the information and evidence about the infringement the Competition Authority which the undertaking has or gets access to,*
- 2. actively cooperate with the Competition Authority during the investigation of the infringement,*
- 3. not destroy evidence or in another way hinder the future or the present investigation of the infringement, and*
- 4. as soon as possible after an application or after it has provided the information stop its participation in the infringement.*

The undertaking that first notifies the infringement to the Swedish Competition Authority – Chapter 3, Article 12 first paragraph

5. The undertaking that is first to report cooperation between competitors that is an infringement of the Competition Act to the Competition Authority may be granted immunity from fines if the requirements stated in points 7-17 below are fulfilled.

6. Only one undertaking may be granted immunity. It is not possible for several undertakings to apply jointly for immunity. Consequently joint notification will result in none of the undertakings fulfilling the conditions for immunity from fines.

7. One requirement for the granting of immunity from fines is that the Competition Authority, at the point in time when the report is submitted, does not have access to sufficient evidence to take measures against the infringement, i.e. that the Competition Authority does not possess enough evidence to implement an investigation according to Chapter 5, Articles 3-5.

The undertaking has forced another undertaking to participate in the infringement

– Chapter 3, Article 12, third paragraph

8. If it becomes clear from the circumstances that one undertaking, through the application of threats or pressure, has forced other undertakings to participate in the infringement then this undertaking does not fulfil the preconditions for leniency in the form of immunity from fines.

The undertaking submits all available information about the infringement

– Chapter 3, Article 14, Point 1

9. If immunity from fines is to be granted, the undertaking is obliged to supply the Competition Authority with all the information at their disposal on the infringement. Consequently the undertaking must, as far as possible, state:

- a) what the illegal cooperation concerns
- b) the goods or services and the geographical area the cooperation encompassed,
- c) the undertakings that have participated in the cooperation,
- d) when this cooperation was initiated and when it was concluded (if it has been concluded),
- e) the contacts that have been established between the undertakings that have taken part in the cooperation and the content of these contacts,
- f) when, at which points in time, these contacts between the undertakings have occurred,
- g) what the participating undertakings have done to facilitate and implement the infringement,
- h) who within the undertaking is able to provide information on the infringement, and
- i) who in competing undertakings have participated in the infringement.

10. The undertaking must also submit copies of the documents that concern the reported infringement that the undertaking has access to, for example notes or Minutes from meetings.

11. If the infringement has also been reported to another competition authority within the European Union, the Competition Authority may deviate from the requirements stated in points 9 e) – i) and point 10.

**The undertaking cooperates fully with the Competition Authority
– Chapter 3, Article 14, Point 2**

12. The undertaking will cooperate on a continuous basis with the Competition Authority during the investigation of the infringement. Consequently the undertaking must place its employees and, if possible perhaps also previous employees, at the disposal of the Competition Authority in order to provide rapid answers to questions concerning their illegal cooperation. The undertaking should also, without reminder from the Competition Authority and without delay, submit such information and documentation that concerns the infringement and that the undertaking becomes aware of after the notification to the Competition Authority has been made. This cooperation requirement also encompasses the processing of the matter through the courts.

13. If the undertaking does not fully cooperate, this may cause a refusal to grant immunity from fines.

**The undertaking does not destroy evidence or hinder the investigation
– Chapter 3, Article 14, point 3**

14. The undertaking may not take measures that hinder the Competition Authority's investigation. The undertaking may reveal to no other party that the infringement has been reported to the Competition Authority before the infringement has become public knowledge through measures taken by the Competition Authority. Neither may the undertaking reveal the content of the report submitted or any additional information that the undertaking has submitted to the Competition Authority during the continued investigation of the infringement.

15. The requirement according to Chapter 3, Article 14, point 3 encompasses measures taken both prior to and after the point in time when the undertaking first submits information concerning the infringement to the Competition Authority. Consequently the undertaking is obliged to, from the point in time when it begins to consider reporting the infringement, ensure that evidence is not destroyed or that the investigation is not hindered in any other manner.

16. If the undertaking should submit erroneous or misleading information to the Competition Authority, this may cause a refusal to grant immunity from fines.

**The undertaking ceases to participate in the infringement
– Chapter 3, Article 14, point 4**

17. In order to be granted immunity from fines, it is necessary that the undertaking has ceased to participate in the infringement or the undertaking, immediately after its notification to the Competition Authority, ceases in its participation. The undertaking may consult with the Competition Authority on how the undertaking is to cease its participation in the infringement.

The Competition Authority's processing of applications for the granting of immunity from fines according to Chapter 3, Article 12, first paragraph

Anonymous contacts

18. It is often in the interests of an undertaking that is considering the notification of an infringement in order to be granted immunity from fines, to ensure that it fulfils all the conditions according to Chapter 3, Article 12, first paragraph, i.e. that the undertaking submits its notification before the Competition Authority has obtained sufficient evidence to enable it to take measures against the infringement and that another undertaking that has participated in the infringement has not already made such a report.

19. The undertaking may contact the Competition Authority anonymously and describe the infringement in hypothetical terms. The Competition Authority's contact information can be found on its website at www.konkurrensverket.se.

20. During such anonymous contacts, the undertaking selects the information that is to be submitted on the infringement.

21. If the information is not sufficient for the Competition Authority to be able to assess whether the undertaking fulfils the conditions according to Chapter 3, Article 12, first paragraph, the Authority will inform the undertaking of this fact. The undertaking may consequently take a decision on whether to provide more precise information.

22. Based on to the information that the undertaking submits, the Competition Authority takes a preliminary position as to whether the conditions as stated in Chapter 3, Article 12, first paragraph have been fulfilled at the time of the anonymous contact. This position is not legally binding on the Competition Authority as an anonymous contact cannot be considered as a proper report. Neither can the Authority guarantee that some other undertaking does not report the infringement before the anonymous undertaking has made its report.

Notification of infringement

23. Notification may be made in writing or verbally. The Competition Authority's address and contact information can be found on its website at www.konkurrensverket.se.

24. Notification must be made by an authorised representative of the undertaking. If the notification is carried out by an agent then a power of attorney must be attached.

25. The notification should contain the information stated in points 9-10 above. The undertaking should provide the name, address and telephone number of a contact. The undertaking should also state whether it has reported the infringement to another competition authority within the European Union.

Statement of immunity from fines according to Chapter 3, Article 15 of the Competition Act

Chapter 3, Article 15 of the Competition Act

Upon application by an undertaking which notifies an infringement of a prohibition pursuant to Chapter 2 Article 1 or Article 81 in the EC Treaty, the Swedish Competition Authority shall state whether the conditions for granting immunity from the fine as provided for in Article 12 first paragraph, are fulfilled. Such a decision is binding on the Authority as well as the Stockholm City Court and the Market Court.

26. In the Competition Authority's statement on granting of immunity according to Chapter 3, Article 15 it takes a position on whether the undertaking fulfils the conditions stated in Chapter 3, Article 12, first paragraph, i.e. whether the undertaking has submitted its report before the Competition Authority had sufficient evidence to take measures against the infringement and if the undertaking has been the first to report the infringement.

27. As a consequence of its statement according to Chapter 3, Article 15, the Competition Authority may not initiate legal proceedings against the undertaking if it fulfils the other conditions for immunity from fines stated in Chapter 3, Article 14.

28. If the Competition Authority, at the point in time of the submission of report, does not consider that the undertaking has fulfilled the conditions according to Chapter 3, Article 12, first paragraph, the Authority will take into consideration whether the undertaking may be entitled to a reduction or immunity from fines according to Chapter 3, Article 12, second paragraph.

Information about immunity from fines

29. In connection with the fact that other undertakings who have participated in the infringement receive information concerning the Competition Authority's draft summons application on the issue of this infringement, the undertaking that has reported the infringement will be informed whether there exist preconditions for granting of immunity from fines. Information about immunity from fines will be submitted when the Competition Authority's summons application concerning the infringement is submitted to Stockholm City Court.

Immunity according to Chapter 3, Article 12, second paragraph of the Competition Act

Chapter 3, Article 12, second paragraph of the Competition Act

When the Swedish Competition Authority has already received sufficient material to take action against the infringement and no declaration in accordance with Article 15 has been made, leniency may be granted for the administrative fine regarding an undertaking that has infringed the said prohibition, provided

- 1. the undertaking is the first to provide such information that results in it being established that the infringement occurred, or*
- 2. the undertaking in some other way has to a very significant extent facilitated the investigation of the infringement.*

Chapter 3, Article 12, third paragraph of the Competition Act

However, leniency may not be granted for the administrative fine regarding an undertaking that has compelled another undertaking to participate in the infringement.

Chapter 3, Article 14 of the Competition Act

In order to be granted leniency or reduction according to Article 12 or 13 the undertaking shall in addition to these provisions

- 1. provide all the information and evidence about the infringement the Competition Authority which the undertaking has or gets access to,*
- 2. actively cooperate with the Competition Authority during the investigation of the infringement,*
- 3. not destroy evidence or in another way hinder the future or the present investigation of the infringement, and*
- 4. as soon as possible after an application or after it has provided the information stop its participation in the infringement.*

The undertaking is first to submit information that leads to the establishment of the fact that the infringement has occurred

– Chapter 3, Article 12 second paragraph, point 1

30. The undertaking that is first to submit information that leads to the establishment of the fact that an infringement has occurred, assuming that the requirements according to point 32 and points 34-41 below are fulfilled, shall receive immunity from fines.

31. Only one undertaking may be granted immunity. It is not possible for several undertakings to apply jointly for immunity. Consequently joint notification will result in none of the undertakings fulfilling the conditions for immunity from fines.

32. Immunity from fines according to Chapter 3, Article 12, Second Paragraph, point 1 may be considered for an undertaking that has voluntarily come forward with vital evidence that an infringement has occurred. Evidence may consist of either verbal information on the infringement or written evidence such as notes or Minutes from a meeting. The undertaking should also document the verbal information, for example through tape recordings or signed statements. This evidence must not have previously been available to the Competition Authority

**The undertaking has significantly facilitated the investigation
– Chapter 3, Article 12, Second Paragraph, point 2**

33. The Competition Authority applies the immunity from fines regulations as stated in Chapter 3, Article 12, Second paragraph, Point 2 restrictively. Consequently the opportunities to be granted immunity from fines according to this regulation are limited.

**An undertaking that has forced another undertaking to participate in the infringement
– Chapter 3, Article 12, third paragraph**

34. When it becomes clear from the circumstances that one undertaking, through the application of threats or pressure, has forced other undertakings to participate in the infringement then this undertaking does not fulfil the preconditions for leniency in the form of immunity from fines.

**The undertaking submits all the information about the infringement
– Chapter 3, Article 14, point 1**

35. If immunity from fines is to be granted, the undertaking is obliged to supply the Competition Authority with all the information at their disposal on the infringement. Consequently the undertaking must, as far as possible, state:

- a) what the illegal cooperation concerns,
- b) the goods or services and the geographical area the cooperation encompassed,
- c) the undertakings that have participated in the cooperation,
- d) when this cooperation was initiated and when it was concluded (if it has been concluded),
- e) the contacts that have been established between the undertakings that have taken part in the cooperation and the content of these contacts,
- f) when, at which points in time, these contacts between the undertakings have occurred,
- g) what the participating undertakings have done to facilitate and implement the infringement,

- h) who within the undertaking is able to provide information on the infringement, and
- i) who in competing undertakings have participated in the infringement.

The undertaking cooperates fully
– Chapter 3, Article 14, point 2

36. The undertaking will cooperate on a continuous basis with the Competition Authority during the investigation of the infringement. Consequently the undertaking must place its employees and, if possible perhaps also previous employees, at the disposal of the Competition Authority in order to provide rapid answers to questions concerning their illegal cooperation. The undertaking should also, without reminder from the Competition Authority and without delay, submit such information and documentation that concerns the infringement and that the undertaking becomes aware of after the notification to the Competition Authority has been made. This cooperation requirement also encompasses the processing of the matter through the courts.

37. If the undertaking does not fully cooperate, this may cause a refusal to grant immunity from fines.

The undertaking does not destroy evidence or hinder the investigation
– Chapter 3, Article 14, point 3

38. The undertaking may not take measures that hinder the Competition Authority's investigation. The undertaking may reveal to no other party that the infringement has been reported to the Competition Authority before the infringement has become public knowledge through measures taken by the Competition Authority. Neither may the undertaking reveal the content of the report submitted or any additional information that the undertaking has submitted to the Competition Authority during the continued investigation of the infringement.

39. The requirement according to Chapter 3, Article 14, point 3 encompasses measures taken both prior to and after the point in time when the undertaking first submits information concerning the infringement to the Competition Authority. Consequently the undertaking is obliged to, from the point in time when it begins to consider reporting the infringement, ensure that evidence is not destroyed or that the investigation is not hindered in any other manner.

40. If the undertaking should submit erroneous or misleading information to the Competition Authority, this may cause a refusal to grant immunity from fines and the Authority may also prosecute this undertaking.

The undertaking ceases to participate in the infringement – Chapter 3, Article 14, point 4

41. In order to be granted immunity from fines, it is necessary that the undertaking has ceased to participate in the infringement or the undertaking, immediately after its notification to the Competition Authority, ceases in its participation. The undertaking may consult with the Competition Authority on how the undertaking is to cease its participation in the infringement.

The Competition Authority's processing of applications for the granting of immunity from fines according to Chapter 3, Article 12, second paragraph

42. An undertaking that considers itself to be entitled to immunity from fines should notify the Competition Authority of this fact when the undertaking comes forward to voluntarily submit evidence on the infringement to the Competition Authority.

43. When the Competition Authority notifies the undertaking of its draft summons application on the issue of the infringement, the Authority will notify the undertaking of its preliminary assessment concerning immunity from fines according to Chapter 3, Article 12, second paragraph. Information about immunity from fines will be stated in the summons application submitted to the Stockholm City Court by the Competition Authority as concerns the alleged infringement.

Reduction of fines under Chapter 3, Article 13 of the Competition Act

Chapter 3, Article 13 of the Competition Act

The fine may be set at a lower amount than would be the case when applying Articles 8-11 for an undertaking which has infringed the prohibition in Chapter 2 Article 1 or Article 81 in the EC Treaty, if the undertaking provides the Competition Authority such information that facilitates the investigation of the infringement to a significant extent.

When assessing the amount of the reduction, account must be taken of whether any other undertaking has already provided such information that has to a significant extent facilitated the investigation.

Chapter 3, Article 14 of the Competition Act

In order to be granted leniency or reduction according to Article 12 or 13 the undertaking shall in addition to these provisions

- 1. provide all the information and evidence about the infringement the Competition Authority which the undertaking has or gets access to,*
- 2. actively cooperate with the Competition Authority during the investigation of the infringement,*
- 3. not destroy evidence or in another way hinder the future or the present investigation of the infringement, and*
- 4. as soon as possible after an application or after it has provided the information stop its participation in the infringement.*

44. If an undertaking is to be considered to have facilitated the investigation to an extent that reduction of fines may be considered, it is necessary that the undertaking has come forward voluntarily to provide the Competition Authority with such evidence on the infringement that has added considerable value to the evidence already accessible to the Authority. The evidence must further illuminate the circumstances surrounding the infringement. Evidence may consist of either verbal information on the infringement or written evidence such as notes or minutes from a meeting. The undertaking should also document the verbal information, for example through tape recordings or signed statements.

45. The requirement that the investigation must have been significantly facilitated cannot be considered as fulfilled by the representatives of the undertaking arriving at the appointed time or willingly answering questions or participating in the investigation in a similar manner only.

**The undertaking submits all the information about the infringement
– Chapter 3, Article 14, point 1**

46. If reduction of fines is to be granted, the undertaking is obliged to supply the Competition Authority with all the information at their disposal on the infringement. Consequently the undertaking must, as far as possible, state:

- a) what the illegal cooperation concerns,
- b) the goods or services and the geographical area the cooperation encompassed,
- c) the undertakings that have participated in the cooperation,
- d) when this cooperation was initiated and when it was concluded (if it has been concluded),
- e) the contacts that have been established between the undertakings that have taken part in the cooperation and the content of these contacts,
- f) when, at which points in time these contacts between the undertakings have occurred,
- g) what the participating undertakings have done to facilitate and implement the infringement,
- h) who within the undertaking is able to provide information on the infringement, and
- i) who in competing undertakings have participated in the infringement.

The undertaking cooperates fully
– Chapter 3, Article 14, point 2

47. The undertaking will cooperate on a continuous basis with the Competition Authority during the investigation of the infringement. Consequently the undertaking must place its employees and, if possible perhaps also previous employees, at the disposal of the Competition Authority in order to provide rapid answers to questions concerning their illegal cooperation. The undertaking should also, without reminder from the Competition Authority and without delay, submit such information and documentation that concerns the infringement and that the undertaking becomes aware of after the notification to the Competition Authority has been made. This cooperation requirement also encompasses the processing of the matter through the courts.

48. If the undertaking does not fully cooperate, this may cause a refusal to grant a reduction of fines.

The undertaking does not destroy evidence or hinder the investigation
– Chapter 3, Article 14, point 3

49. The undertaking may not take measures that hinder the Competition Authority's investigation. The undertaking may reveal to no other party that the infringement has been reported to the Competition Authority before the infringement has become public knowledge through measures taken by the Competition Authority. Neither may the undertaking reveal the content of the report submitted or any additional information that the undertaking has submitted to the Competition Authority during the continued investigation of the infringement.

50. The requirement according to Chapter 3, Article 14, point 3 encompasses measures taken both prior to and after the point in time when the undertaking first submits information concerning the infringement to the Competition Authority. Consequently the undertaking is obliged to, from the point in time when it begins to consider reporting the infringement, ensure that evidence is not destroyed or that the investigation is hindered in any other manner.

51. If the undertaking should submit erroneous or misleading information to the Competition Authority, this may cause a refusal to grant reduction of fines.

**The undertaking ceases to participate in the infringement
– Chapter 3, Article 14, point 4**

52. In order to be granted reduction of fines, it is necessary that the undertaking has ceased to participate in the infringement. The undertaking may consult with the Competition Authority on how the undertaking is to cease its participation in the infringement.

The level of reduction of fines

53. The fines of the first undertaking to fulfil the conditions for reduction of fines will be reduced by 30-50 percent in relationship to the level the Competition Authority would otherwise have proposed. The fines of the second undertaking to fulfil the conditions will be reduced by 20-30 percent. The fines of other undertakings that fulfil the relevant conditions will be reduced by up to 20 percent.

54. In order to determine the level of reduction of fines within the stated intervals, the Competition Authority will take into consideration the point in time that the evidence was submitted and the degree to which value was added. The Competition Authority will also consider the degree of cooperation and the continuity of cooperation of the undertaking after the evidence was submitted.

The Competition Authority's processing of reduction of fines issues

55. An undertaking that considers itself to be entitled to reduction of fines should notify the Competition Authority of this fact when the undertaking comes forward to voluntarily submit evidence on the infringement to the Competition Authority.

56. When the Competition Authority notifies the undertaking of its draft summons application on the issue of the infringement, the Authority will notify the undertaking of its preliminary assessment concerning the level of, and reasons for, the fine reduction applicable.

57. In its summons application, the Competition Authority will state the names of the undertakings that have cooperated with the Authority during the investigation of the infringement and that have consequently received a reduction of the fine that the Authority would otherwise have requested. The Competition Authority will also state the reasons for this proposed reduction in its summons application.

General

58. The provisions in the Competition Act concerning immunity from, and reduction of, fines do not restrict the Competition Authority's opportunities to, based on reasons other than those stated in the Act, apply for a summons including fines proposed for the undertaking.

59. These General Guidelines are without prejudice to the interpretations courts may make concerning provisions on fines in the Competition Act.

60. A decision on immunity from fines or reduction of fines does not protect the undertaking from consequences under civil law arising from the participation of the undertaking in the infringement.

61. As concerns information on opportunities for immunity to trading prohibition, please refer to the Competition Authority website at www.konkurrensverket.se.

62. Certain information in the Competition Authority's investigations is classified as secret according to the Secrecy Act (1980:100). Business secrets may be classified according to Chapter 8 Article 4. During the Competition Authority's investigation, information may also be classified as planning secrecy according to Chapter 4 Article 1, or secrecy of investigation according to Chapter 4 Article 4. A statement from an individual may also be confidential according to Chapter 9 Article 27. Chapter 14 Article 5 is also of importance as it regulates the relationship between secrecy and the rights of insight of parties into the matter.

These General Guidelines are applied from 1st November 2008 and replace the Competition Authority's General Guidelines (KKVFS 2006:1) on reduction of, and immunity from, fines.

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