

Reduction of Fines under the Leniency Programme

Vienna, 2022

Imprint

Media owner, publisher and editor:

Federal Competition Authority, Radetzkystraße 2, 1030 Vienna

Design and production: Federal Competition Authority

Vienna, January 2022

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Reduction of Fines under the Leniency Programme

Detailed information pursuant to Section 7 para. 4 of the Regulation of the Minister for Digital and Economic Affairs on the Implementation of the Leniency Programme under the Austrian Competition Act, Federal Law Gazette II No. 487/2021 (Leniency Programme Regulation, VO Kronzeugen)

1. Pursuant to Section 7 para. 4 Leniency Programme Regulation, the Federal Competition Authority (BWB) has to provide information on its website about technical procedures and the reductions to fines it intends to apply when it requests reduced fines on the basis of the order in which applicant undertakings or associations of undertakings have submitted information and evidence.

Legal foundations

2. Pursuant to Section 11b para. 2 Austrian Competition Act (WettbG), Federal Law Gazette I No. 62/2002 as amended by Federal Law Gazette I No. 176/2021, the BWB may request the imposition of a reduced fine on undertakings or associations of undertakings that do not fulfil the conditions laid down in Section 11b para. 1 subpara. 3 indent a or b Competition Act, provided the other conditions (subparas. 1, 2 and 4) are fulfilled. If an undertaking or association of undertakings is to be eligible for a reduced fine, information and evidence concerning the suspected infringement must be submitted to the BWB that provide significant added value compared to the information and evidence already in the BWB's possession (Section 11b para. 2 WettbG; Section 7 para 1 VO Kronzeugen).

Concept of added value

3. The concept of "significant added value" relates to the extent to which the quality and/or level of detail of the information and evidence submitted put the BWB in a position to prove the facts of the case in a more conclusive or more complete fashion than would have been possible without this information and evidence.
4. When the amount of the reduction in question is determined within the range to be applied in each case, account is to be taken of the date on which the additional

information and evidence were submitted (from which the place in the queue allocated to the leniency applicant in question is found),¹ and the amount of added value they provide compared to the information and evidence already in the BWB's possession (Section 11b para 2 WettbG; Section 7 para. 2 VO Kronzeugen). Ultimately, the size of the reduction determined is always also the result of a comprehensive appraisal of all the circumstances in the specific case, irrespective of the "place in the queue" allocated by the granting of a marker on the basis of the date of the submission.

5. Should undertakings or associations of undertakings submit information and evidence to the BWB that make it possible to establish additional facts, and so request higher fines, these additional facts will not be taken into consideration in respect of the submitting undertaking or association of undertakings when a reduced fine is requested, and the submitting undertaking or association of undertakings will not be charged in connection with them (Section 7 para. 3 VO Kronzeugen).

¹ The leniency applicant's place in the queue is found either from the date of their application for the granting of a marker, provided the application has been completed within the relevant time limit (Section 3 VO Kronzeugen), or from the date of their application for leniency, should no application for the granting of a marker have been submitted (Section 2 VO Kronzeugen).

Range of reduction

6. The BWB will reduce its fines by the following amounts:

Place in queue	Range of reduction
for the first undertaking/association of undertakings to meet the condition of significant added value	between 30% and 50%
for the second undertaking/association of undertakings to meet the condition of significant added value	between 20% and 30%
for any subsequent undertaking/association of undertakings to meet the condition of significant added value	up to 20%

7. In specific cases where the added value of the information or evidence submitted is extraordinarily significant, the BWB may reduce the fine by an amount greater than the ranges provided for above. For instance, such extraordinarily significant added value may be provided on account of the amount of information and evidence submitted or their high level of detail, on account of their great probative value with regard to material elements of the infringement or if the information and evidence are submitted at a very early point in the investigation. The BWB will finally assess the level of the reduction in a comprehensive appraisal of all relevant circumstances in the specific case (see also para. 4).

Written statement

8. As soon as possible after it receives a complete application for leniency within the meaning of Section 2 para. 1 Leniency Programme Regulation, the BWB will issue a non-binding written statement to the applicant undertaking or association of undertakings, notifying them whether the leniency application has been accepted and whether the BWB is going to apply Section 11b para. 2 Competition Act (Section 8 para. 1 VO Kronzeugen) – subject to the obligation to cooperate laid down in Section 6 Leniency Programme Regulation. Where an application is submitted for the granting of a marker, the BWB will communicate its statement as

soon as possible after the application for the marker has been completed (Section 8 para. 2 VO Kronzeugen). Where a summary application is submitted (Section 3 VO Kronzeugen) and following the determination of jurisdiction by the European Commission, the BWB will also deliver its statement as soon as possible after the summary application has been completed. The BWB will communicate this statement just as promptly to the Federal Cartel Prosecutor.

9. In this non-binding written statement, the BWB will also provide information concerning the reduction of the fine pursuant to Section 7 Leniency Programme Regulation in each case, in so far as this is possible at that point in time in view of the overall situation and the progress made in the investigations. At the least, the BWB will give notification of the prospective range of the reduction.
10. Should an undertaking or association of undertakings have submitted an application under Section 11b para 1 Competition Act and should the BWB view the conditions for complete immunity from fines as not having been fulfilled, it will treat the application submitted under Section 11b para. 1 Competition Act as an application for the reduction of a fine under Section 11b para 2 Competition Act.

Settlement

11. In addition to this, it is possible for undertakings/associations of undertakings that are eligible for a reduced fine pursuant to Section 11b para. 2 Competition Act to seek a termination of proceedings by mutual consent (settlement) and thus obtain a further reduction of their fine (settlement discount) of up to 20% of the previously reduced fine. The Position on Settlements published by the BWB provides guidance on this issue.

Best judgement beyond the scope of the leniency programme

12. Otherwise, in cases beyond the scope of the leniency programme, the BWB may also refrain from requesting a fine or request a reduced fine according to its best judgement.

Federal Competition Authority

Radetzkystraße 2, 1030 Vienna

+43 1 245 08 - 0

wettbewerb@bwb.gv.at

bwb.gv.at