

ICC LENIENCY MANUAL

LAUNCH EDITION
APRIL 2016



A user-guide for filing leniency applications worldwide

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Prepared by the
ICC Commission of Competition

ACKNOWLEDGEMENTS

ICC would like to thank all members of the ICC Task Force on Cartels and Leniency, co-chaired by Luciano Di Via and Marcin Trepka, and the ICC Secretariat whose work has been essential to the development of the ICC Leniency Manual. Particular thanks go to Caroline Inthavisay and Martyna Wurm for their invaluable contributions to this publication.

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INTRODUCTION

Cartels

Cartels are agreements made between competitors to engage in illegal arrangements such as price fixing, market sharing or customer allocation, production limitation, and bid rigging. Cartels are harmful to consumers and customers because they result in increased prices and reduced choices. Cartels can also have a negative impact on economic growth and innovation, especially when they prevent new competitors from entering the market and lead to an increase in public investment costs. More importantly, cartels are considered to be the most serious violation of competition law all over the world and, as a result, fighting them has become a priority for competition agencies worldwide. Cartel activities are subject to heavy fines for both undertakings¹ and individuals, and in some jurisdictions, to criminal sanctions including imprisonment.

Leniency programmes

Cartels are usually difficult to detect and to investigate. Cooperation from cartel participants is key to uncovering and punishing the illegal practices. Today most jurisdictions have developed programmes that offer a whistleblower (a cartel participant which provides information and evidence of a cartel and cooperates with the agency to detect and prove the infringement) a reduced fine or even total immunity from a fine imposed on a company active in a cartel including its employees. These programmes, known as “leniency programmes” or “leniency policies”, help competition agencies to have access to first-hand evidence, and to uncover and eliminate secret cartels. A leniency programme sets forth the framework for rewarding a cartel participant which is willing to cooperate with a competition agency.

¹ In this document, the term “undertaking” refers to any entity engaged in any commercial activity.

The meaning of the terms “leniency”, “immunity”, and “amnesty” differs among jurisdictions. In this manual the term “immunity” refers to a full (100%) reduction of fine and the term “reduction of fines” refers to a reduction of fine lower than full immunity. The term “leniency” is used to describe both immunity and a fine reduction. The term “amnesty”² describes immunity from all sanctions. The term “leniency policy” or “leniency programme” refers to the set of rules in the form of a legal act or guidelines adopted by the competition agency governing the leniency process.

Immunity can only be granted to the first-in applicant which provides a competition agency with information about the cartel activity. Most leniency programmes offer immunity to the first applicant that reports cartel activity before the commencement of an investigation. However, some leniency programmes also grant immunity to the first-in applicants that report the cartel after the start of the investigation in cases where the agency does not possess sufficient evidence to prove the infringement and the applicant can offer such evidence.

Leniency programmes also apply to subsequent applicants which, should they provide a given competition agency with substantial new evidence, can obtain a reduced fine. Depending on the timing of the application and the quality of the evidence submitted, the extent of the fine reduction differs from jurisdiction to jurisdiction, varying between 10% and 50% of the fine that would otherwise be imposed on an applicant. In some countries, the order of the applicants is a decisive factor. The reduction of fines is also granted to applicants which, for a number of reasons, do not qualify for immunity (e.g. coercers, cartel ringleaders³).

Apart from submission of information and evidence, the applicant must meet other requirements in order to be granted immunity or a fine reduction. Generally, the applicant must cease its participation in a cartel (usually immediately after the application is filed unless

² “Amnesty” is often used in the United States.

³ The term “ringleaders” is used to describe any entity that initiated or led a cartel.

the competition agency decides differently, and sometimes no later than the time of the application), refrain from disclosing the facts in the application or any part of it, and cooperate with the agency during the investigation and court proceedings.

Very often the applicant will be granted conditional leniency first. In such cases its full cooperation with the competition agency during the time of the investigation will be necessary in order to obtain a final leniency decision—leniency is often granted in the decision issued by the agency at the end of the proceedings in a given case. In jurisdictions where leniency is granted in the form of an agreement signed between the agency and the applicant, the agency generally has the right to terminate the agreement and revoke the leniency if the applicant does not comply with the requirements set in the agreement, or if it does not cooperate fully and continuously with the competition agency throughout the proceedings.

Exclusion

Certain applicants are not eligible for leniency, immunity, or a fine reduction, and the exclusion varies from country to country. Indeed, in many jurisdictions, any entity which coerced other firms to participate in a cartel activity cannot be granted immunity or even a fine reduction. In other places, the exclusion also applies to the cartel ringleaders.

Marker

In principle, when a leniency application is filed, the applicant must join to it all cartel-related information including any supporting evidence based on an evidentiary threshold. This is known as formal (full) application. Collecting the required evidence can be a long process. In some cases an applicant can obtain a marker before the formal application is filed. A marker confirms the applicant's place in the queue for leniency and sets a time limit for the submission of information and evidence that meet the relevant threshold for leniency.

An applicant which has not yet substantiated the formal application can file a shortened version (request for marker), which includes general information about the cartel. Most often, the applicant must disclose its identity in order to obtain a marker. However, in some countries, a marker could be granted as a result of an anonymous contact (e.g. by phone).

If a competition agency accepts a shortened application, then the applicant will be granted a marker. If the applicant provides an agency with all the necessary information and evidence within the period set by the agency, the completed formal application will reflect the date on which the marker was granted.

It is possible that a marker can be granted to the first-in applicant only. In such cases the status of non-first-in applicants (i.e. subsequent applicants) will be put on hold until the agency takes a position on the first application. If the first application is not accepted and the applicant is not granted conditional immunity, a subsequent application for immunity will be considered by the agency. Otherwise, the subsequent applicants will not be eligible for full immunity, and a fine reduction will be the only outcome.

In jurisdictions where a marker can be granted to subsequent applicants, applications are processed simultaneously, and again, the timing of the filing, the disclosure and the credibility of the evidence are key in obtaining immunity or defining the amount of the fine reduction. However, it is important to note that not all leniency programmes provide for a marker system.

Leniency plus

Leniency plus regulation (sometimes called “amnesty plus”) is becoming increasingly popular in leniency programmes. Under leniency plus, an applicant which is eligible for a fine reduction in relation to a cartel in a particular market and is the first-in to inform the agency about another cartel taking place in a separate market, will obtain total immunity in relation to the second cartel and an additional fine reduction in relation to the first cartel.

Leniency for individuals

Leniency applicants can be undertakings and / or individuals such as a company's board members, managers, or other employees. As individuals can be held liable for competition law infringements, they can also apply for leniency and do so independently from the undertaking. There is usually "one queue" for leniency applicants regardless of whether they are individuals or undertakings. An individual must fulfill the same requirements as an undertaking in order to obtain leniency. The individual can benefit from the application filed by the undertaking and be eligible for a so-called "derivative leniency". In most jurisdictions an application made by an undertaking also covers its employees provided that the latter cooperate with the agency during the time of the investigation.

Summary leniency applications in the European Union

In the European Union, summary applications may be used in cases concerning more than three European Union Member States. If a full application has been filed with the European Commission, national competition agencies can grant provisional protection to the applicant on the basis of very limited information. Should any of the national competition agencies pursue the case, the applicant will be given additional time to complete its application. A marker sought through a summary application protects the applicant's position under the respective national leniency programme and operates as an indefinite marker, in particular during the case allocation phase.

Summary applications are accepted in most Member States and can be submitted in English (either throughout the entire procedure or accompanied by a translation into the official language at a later stage).

Independence of particular leniency programmes

Leniency programmes are autonomous and independent of other national programmes. A leniency application filed with one competition agency will be considered as official in that jurisdiction

only. In the case of multi-jurisdictional applications, maintaining the same material scope of the application is essential otherwise an applicant may face the risk of being granted immunity in one country and being fined in another. Furthermore, the same level of protection should be maintained in the participating jurisdiction. Today there is a lack of a common leniency application system at the European Union level which implies that applications submitted to the European Commission and the summary applications filed with national competition agencies are assessed independently. National agencies have no obligation to interpret the summary application with respect to the application submitted to the European Commission.

How to use the ICC Leniency Manual?

The ICC Leniency Manual starts with an outline of the generic leniency application process then delves into the specific filing requirements in targeted countries. The countries are organized in chapters listed in alphabetical order for easy reference. Each chapter features a factsheet which includes a list of issues that the leniency applicant should think about when considering filing an application in a specific country together with a short description of leniency in that country. Furthermore, each chapter provides a colour-coded flowchart which aims to guide the user through each stage of a leniency application process from the very initial contact with the competition agency to its final decision.

A **reference guide** or *aide-mémoire* designed to explain the basic requirements under a generic leniency application is provided at the end of the manual and should be used as a companion to the flowcharts.

REFERENCE GUIDE

TO BE USED WITH THE COUNTRY FLOWCHARTS

(*aide-mémoire* on the basic leniency application filing requirements)

Generally, in order to benefit from a leniency programme an applicant must take the following steps:

Marker request

Marker request

At the time of the request for a marker a brief description of conduct must be submitted including:

- applicant's identity
- parties to the agreement
- products, services affected
- geographic scope
- duration
- aim / nature of the agreement
- information about other competition agencies from whom the leniency has been obtained or which will be requested
- sometimes names and positions of individuals involved

In addition, detailed information about: the circumstances under which an agreement was concluded, the role of each participant, and the scope and circumstances of cooperation must be provided with the formal (full) application.

Evidence threshold

Evidence threshold

Evidence threshold

Submission of information and evidence

The value of the evidence to be submitted by the applicant depends on the time and order of the application. The evidence thresholds are:

- First applicant—before commencement of the investigation or any formal actions: information about the cartel conduct and evidence enabling the initiation of the proceedings and / or carrying out of inspection
- First applicant—after commencement of the investigation or any formal actions: evidence enabling proof of cartel conduct / enabling finding of infringement / evidence enabling the progress of the inspection (if it has not been conducted yet)
- Subsequent applicants: evidence having significant added value to the case, information unknown to the authorities

Requirements

Requirements

In order to benefit from a leniency programme, the applicant must:

- end its participation in the cartel (before submitting an application or immediately after depending on the jurisdiction. Sometimes the agency can decide differently and will ask the cartel participant not to put a sudden end to its participation in order to avoid raising any suspicion)
- refrain from disclosing the existence of the application and any of its content
- comply with the duty to cooperate

Cooperation

Cooperation

The applicant is required to cooperate with the agency throughout the proceedings, also after submitting the application. The most important elements of cooperation include:

- attending meetings with the competition agency
- submitting statements, evidence, documents and information
- ensuring employees, managers, and directors are available for interviews
- not destroying, falsifying or concealing the evidence
- answering the agency's requests
- conducting an internal investigation (sometimes)

GENERIC LENIENCY APPLICATION PROCESS

In jurisdictions where a marker can only be granted to the first-in applicant, the flowcharts introduce two processes: one for the first-in applicant who can be given a marker and another one for subsequent applicants. The status of non-first-in applicants is put on hold until the agency takes a position on the first application. If the first application is not accepted and the applicant is not granted conditional immunity, a subsequent application for immunity will be considered. Otherwise, the subsequent applicants will not be eligible for full immunity but only for a fine reduction. In jurisdictions where a marker can also be granted to subsequent applicants, there is a single process, as illustrated in the flowchart to the right, as the applications are handled simultaneously. However, in both cases, it is common practice to submit an alternative application i.e. to apply for immunity and to ask the competition agency, in the event immunity is not granted, to process the application as the application for a fine reduction. The key stages of a leniency application include:

Initial contact—the applicant can usually contact the competition agency anonymously and seek information about the application process, or sometimes even about the availability of a marker.

Request for a marker—a shortened application which includes general information about the cartel along with a request for additional time to submit a formal application.

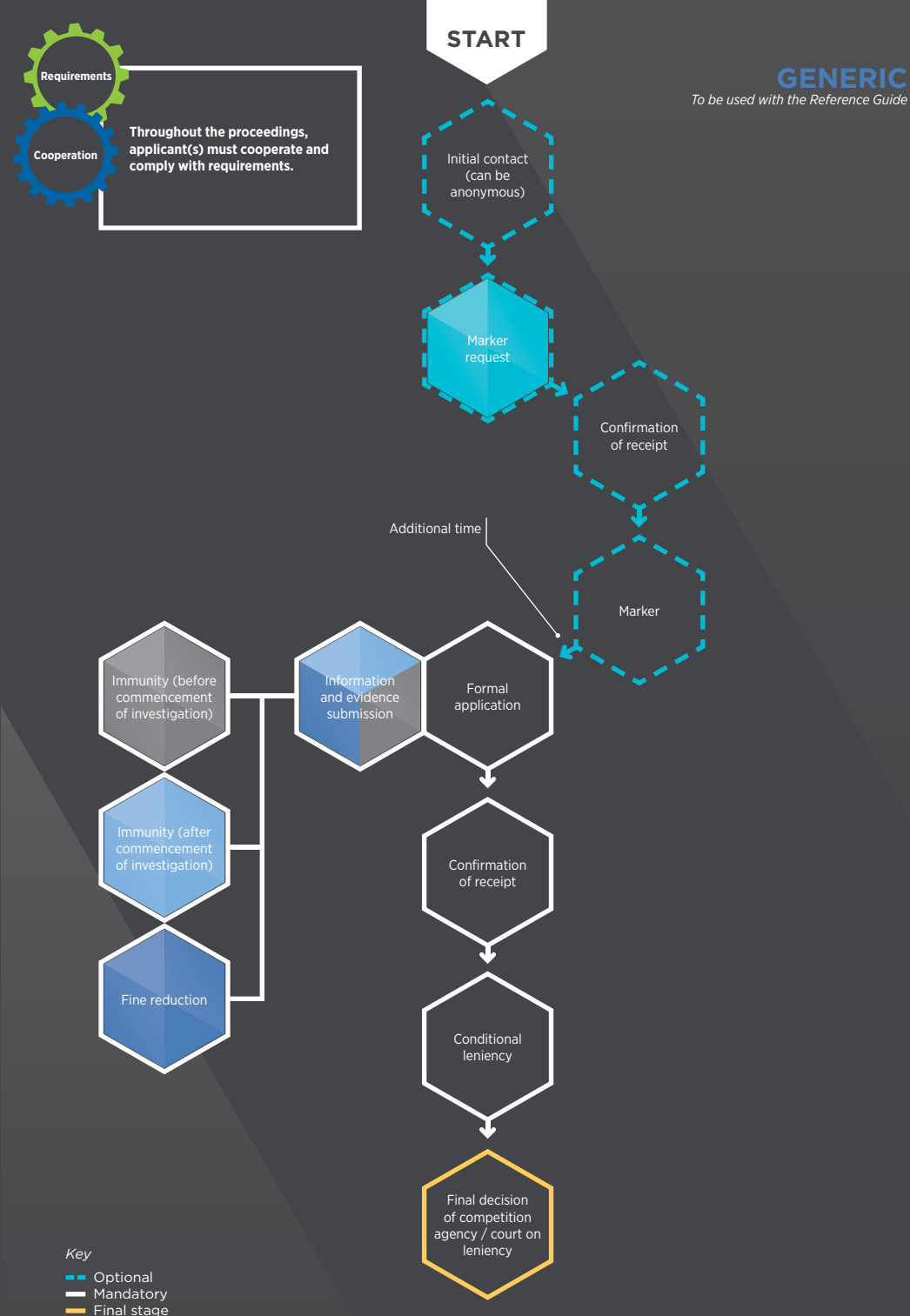
Formal application—full application containing all the relevant information and supporting evidence with the difference depending on the required **Evidence threshold**.

Evidence threshold—the evidence that has to be submitted by the applicant depending on whether the applicant seeks immunity before the commencement of an investigation or any formal actions, or after the commencement of investigation or any formal actions, or whether the applicant seeks a fine reduction.

Confirmation of receipt—confirmation of submission of the application in the form of a request for a marker or formal application or confirmation of submission of evidence, specifying the time and date of the submission of the application or information / evidence.

Conditional leniency—conditional assurance that the requirements for leniency are met, and issued after initial assessment of the application in the form of a conditional leniency agreement, conditional leniency letter or conditional confirmation of compliance with the conditions, depending on the jurisdiction. The decision is conditional upon fulfilment of the **requirements** and **cooperation** with the agency.

Final decision on leniency—a final decision of the competition agency or court depending on the jurisdiction and whether the requirements and duty of cooperation are fulfilled. The final decision can also take the form of a leniency agreement.



GENERIC

To be used with the Reference Guide

REGION

European Union

AGENCY

European Commission (EC)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover of the capital group

Scope of leniency

Administrative fines
Cartels

Leniency available for Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant who coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (e-mail, fax, post) or orally (in person)
E-mail: comp-leniency@ec.europa.eu
Phone (for initial contact): +32 2298 4190
or +32 2298 4191

Available languages

All Member States languages

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Immunity may only be granted to the first applicant which informs the European Commission of a cartel and provides evidence that enables the European Commission to conduct an inspection or to prove the cartel infringement.

Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the European Commission. The European Commission will evaluate the final position of each undertaking which filed an application for a reduction of a fine at the end of the administrative procedure in any decision adopted.

It is possible to obtain a marker for immunity applications, however the marker is granted at the discretion of the European Commission on a case-by-case basis. An applicant is required to justify a request for marker. Information on whether the marker is available will generally be given within 24 hours.

The European Commission will not consider other applications for immunity from fines before it has taken a position on an existing application in relation to the same alleged infringement, irrespective of whether the immunity application is presented formally or whether a marker is requested. If the application for immunity is not accepted, the European Commission will contact the subsequent marker applicants.

It is also possible to submit a hypothetical application for immunity. A marker and a hypothetical application cannot be combined due to their different purposes and features. The hypothetical application is available to allow companies to ascertain whether the evidence in their possession would meet the immunity threshold before disclosing their identity or the infringement. The undertaking must present full information and evidence but without disclosing its identity. A marker is granted to protect the place in the queue of an applicant which has not yet gathered all the evidence. To obtain a marker the undertaking must provide some details of the cartel and other general information including the identity of the applicant.



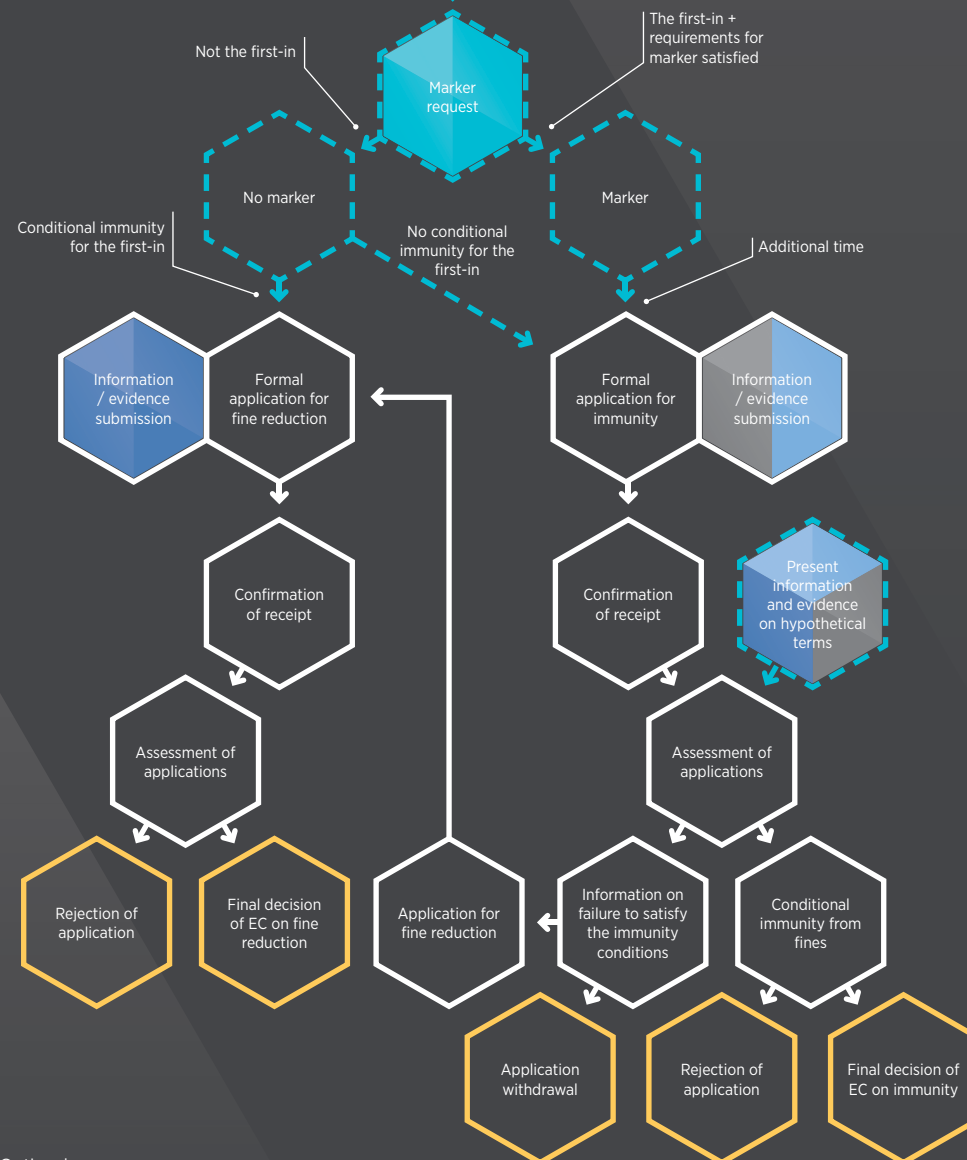
Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR THE EUROPEAN UNION
Termination of participation: immediately after the application, unless the European Commission advises differently.

START

EUROPEAN UNION

To be used with the Reference Guide



COUNTRY

Australia

AGENCY

Australian Competition
and Consumer Commission (ACCC)

FAST FACTS

Maximum fines

Individuals:
Criminal cartel offence: 10 years in jail and / or a fine of AUD 360,000
Civil contravention: a pecuniary penalty of AUD 500,000
Undertaking: whichever the greater of:
• AUD 10 million
• three times the total value of the benefits obtained that are reasonably attributable to the offence or contravention
• where benefits cannot be fully determined, 10% of the group's annual turnover

Scope of leniency

Civil liability, indirectly also criminal liability
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: determined on case-by-case basis
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

Yes

How to submit an application

The only valid way to make an immunity application or request a marker is to contact the ACCC Immunity Hotline
E-mail: cartelimmunity@acc.gov.au
Phone: +61 (02) 9230 3894 (when calling the telephone hotline, it will not be adequate to leave a voicemail or other message)

Available languages

English

Marker

Yes (only for the first-in applicant)

Brief description of leniency

In Australia immunity or a fine reduction is granted under the ACCC's immunity and cooperation policy for cartel conduct. Immunity is only available to the first-in applicant. A subsequent party may still seek leniency (fine reduction) by cooperating with the ACCC under its cooperation policy.

The ACCC is responsible for granting civil immunity and the Commonwealth Director of Public Prosecutions (CDPP) is responsible for granting criminal immunity. The CDPP has yet to bring a criminal prosecution in Australia.

The policy applies to civil proceedings brought by the ACCC. However, the ACCC is also the first point of contact when seeking immunity from criminal proceedings from the CDPP. In order to benefit from the leniency programme the applicant must admit that its conduct may constitute a contravention(s) of the competition law. In the case of undertakings, admissions have to be a truly corporate act.

When the ACCC considers that an applicant meets the conditions for immunity, it will grant conditional civil immunity. The conditional civil immunity will become final at the

conclusion of the proceedings being made against other cartel members.

The ACCC will also make a recommendation to the CDPP that immunity from criminal prosecution be granted. The CDPP exercises an independent discretion when considering such a recommendation. If the CDPP is satisfied that the applicant satisfies the ACCC's criteria for civil immunity, it can provide a letter of comfort to the applicant. Prior to commencement of prosecution the applicant will be granted criminal immunity subject to fulfilment of the conditions and requirements. If they are fulfilled, the immunity becomes final. Revocation of civil and criminal immunity is possible if the applicant breaches conditions of immunity.

Cooperation policy

Civil proceedings: If a party cooperates in an investigation, the ACCC will identify this cooperation in its submissions to the court. These recommendations are not binding, but, as a matter of general principle, courts, in exercising of their discretion, will afford leniency to cooperative parties including in respect to civil penalties. In rare circumstances, the ACCC may use its discretion to grant full immunity

from ACCC-initiated civil proceedings to a cooperating party.

Criminal proceedings: The CDPP will identify, by way of submissions to the sentencing court, any cooperation by the party with the ACCC or law enforcement agencies. Ultimately, the court will use its discretion in imposing a sentence or penalty for cartel conduct. The court will consider the degree to which the party has cooperated with law enforcement agencies in the investigation of the offence, or other offences.

Individuals and related corporate entities

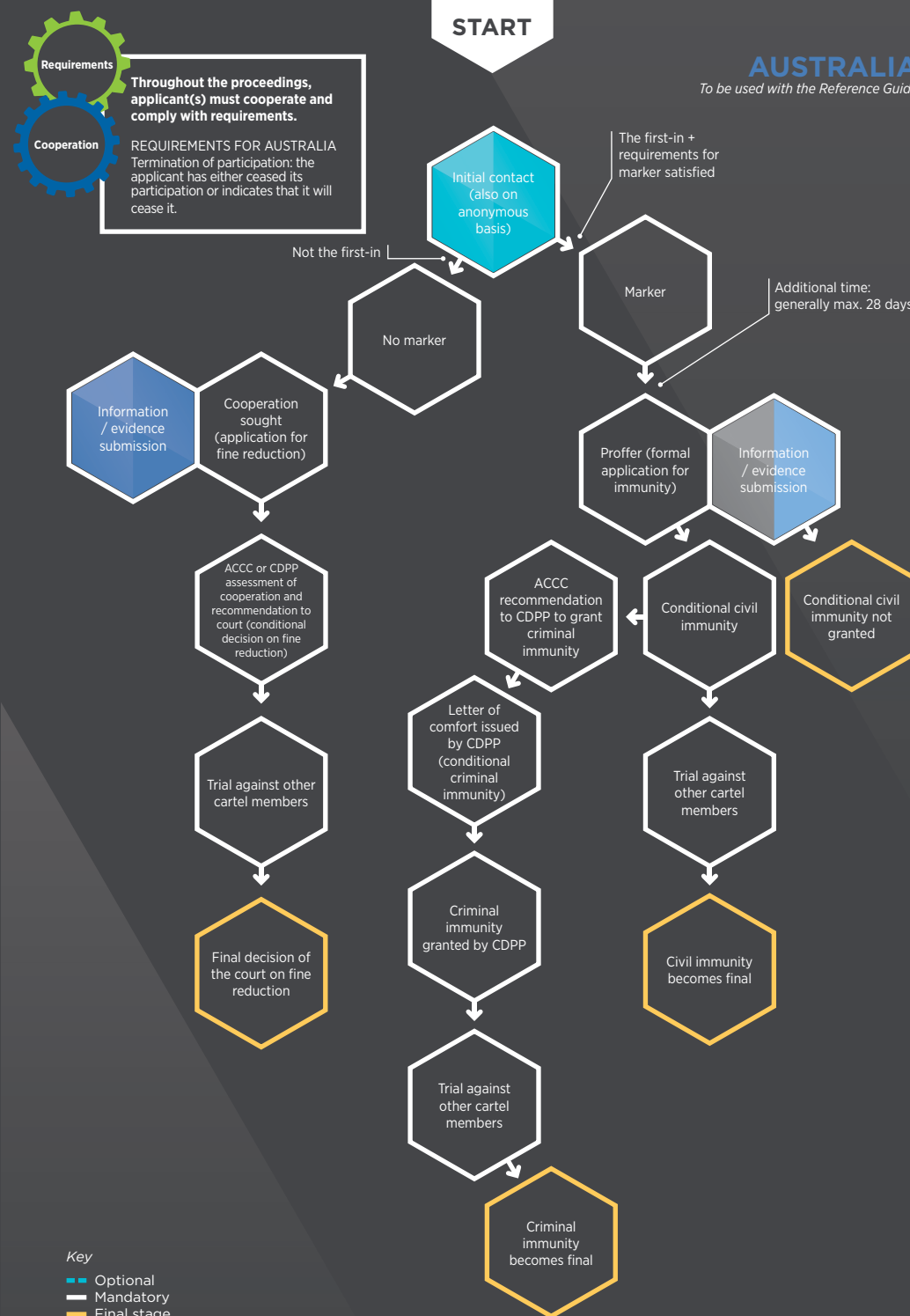
Derivative immunity: If an undertaking qualifies for conditional immunity, it may seek derivative immunity for related corporate entities and / or current and former directors, officers and employees. Those parties must satisfy the criteria individually, in particular: cooperate with the ACCC, admit to their involvement in the cartel conduct and provide full, frank and truthful disclosure to the ACCC.

Individuals who apply for leniency individually must satisfy all the criteria for leniency. Immunity is available to directors, officers or employees who are, or were party to a cartel.

START

AUSTRALIA

To be used with the Reference Guide



COUNTRY

Brazil

AGENCY

Brazil's Administrative Council for Economic Defence (CADE)—*Conselho Administrativo de Defesa Econômica*

FAST FACTS

Maximum fines

Undertaking: 20% of the annual turnover of the product covered by the infringement
Individual: BRL 2 million (approximately US\$ 550,000) for individuals participating in the cartel activity for their own benefit, and 20% of the fine imposed on the undertaking for managers directly or indirectly involved

Scope of leniency

Total leniency: administrative fines, criminal liability
Partial leniency: administrative fines
Cartels and vertical agreements

Leniency available for

Undertaking, individual

Reduction in fines

Partial leniency: a reduction of up to 2/3 of the fine, there is no criminal immunity
Number of applicants: 1. Only the first-in
Cease and Desist Agreement (TCC): amount is up to 50% before the case is remitted to CADE's Tribunal, and up to 15% after the case is remitted to CADE's Tribunal

Exclusion

No

Leniency plus

Yes

How to submit an application

In writing (in person, e-mail, post) or orally (phone, in person),
E-mail: sgprocessual@cade.gov.br
Address: SEP 515, Conjunto D, Lote 4, Ed. Carlos Taurisano, Brasília/DF
Phone: +55 6132 2184 45

Available languages

No specific requirement, as long as the language is understood by the CADE. A template of the Leniency Agreement is available online in Portuguese and English

Marker

Yes (only for the first-in applicants)

Brief description of leniency

Immunity (total leniency) will be granted upon entering into the Leniency Agreement if the CADE did not have prior knowledge of the reported activity at the time the undertaking and / or the individual applied for the marker. Partial leniency (a fine reduction of up to 2/3 of the applicable penalty) will be granted upon fulfilment of the Leniency Agreement if the CADE already had prior knowledge of the activity at the time the undertaking and / or the individual applied for the marker, but did not yet have evidence likely to result in a conviction.

Total leniency grants full immunity. Partial leniency grants the benefit of a reduction of one to 2/3 of the applicable penalty, depending on how effective the cooperation is in fulfilling the Leniency Agreement as well as the good faith of the offender. Partial leniency does not affect potential criminal investigations.

Total or partial leniency can be granted only for a first-in applicant. Applicants that do not qualify for leniency may apply for a Cease and Desist Agreement, also with the CADE.

In the event of a breach of the Leniency Agreement or Cease and Desist Agreement the applicant will lose any of the benefits he has obtained.

Individuals

Both undertakings and individuals can apply for leniency, jointly or independently. The requirements are the same for companies and individuals and they all compete for the same marker (only one queue).

If the applicant is an undertaking, the benefits of the agreement can be extended to its current and former directors, managers, and employees, and to undertakings of the same economic group involved in the activity, as long as they cooperate with the investigations and sign the Leniency Agreement jointly with the undertaking. Individuals and undertakings of the same economic group may also be authorized to subscribe to the Leniency Agreement later by signing an addendum. Such an authorization is at the discretion of the CADE.

Likewise, if the applicant is an individual and the Leniency Agreement is signed without the participation of the undertaking(s) involved in the activity, the benefits will not be extended to the undertaking(s).

START

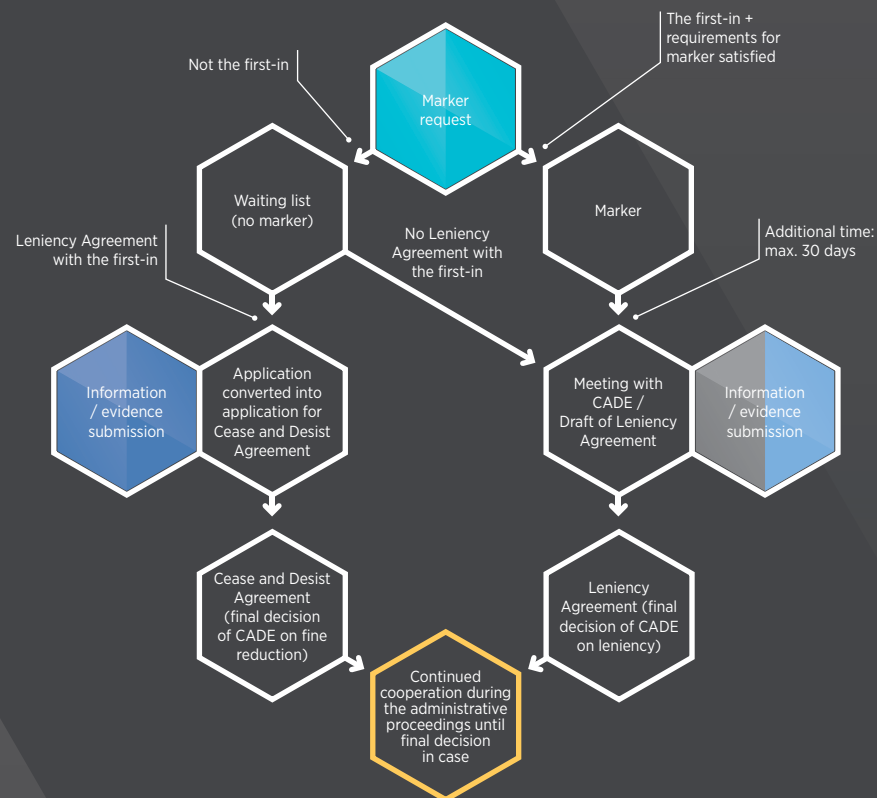


Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR BRAZIL
Termination of participation: by the conclusion of the Leniency Agreement.

BRAZIL

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY
Canada

AGENCY
Competition Bureau (Bureau)

FAST FACTS

Maximum fines

Undertaking and / or individuals: fines of up to US\$25 million per count and / or imprisonment for up to 14 years

Scope of leniency

Criminal liability, cartels

Leniency available for
Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine for subsequent applicants
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

Yes

How to submit an application

Generally orally to Senior Deputy Commissioner of Competition, Cartels and Deceptive Marketing Practices Branch
Phone: +1 819 9712 08

Available languages

English, French

Marker

Yes

Brief description of leniency

In Canada, parties can avail themselves of the benefits of the Bureau immunity and leniency programmes. The immunity programme is available to first-in applicants which cooperate with the Bureau. The leniency programme (concerning the fine reduction) is available to all other applicants, i.e. those "second- in" and subsequent ones.

The immunity and leniency programmes are administered by the Bureau, which carries out investigations under the Competition Act, including investigations relating to contraventions of the criminal provisions (such as the criminal cartel provisions).

While the Bureau investigates such contraventions, it is the responsibility of the Public Prosecution Service of Canada (PPSC) to prosecute them. The Bureau will make recommendations to the PPSC regarding a party's qualifications for immunity or leniency. The PPSC will consult with the Bureau and give consideration to its recommendations. However, the PPSC alone has the independent discretion to grant (or deny) immunity or leniency.

In the case of an immunity application, if the PPSC accepts the Bureau's recommendation for immunity, the PPSC will enter into an immunity

agreement with the applicant. Both the applicant and the PPSC must sign the agreement.

In the case of a leniency application, plea discussions are conducted by the PPSC, but the Bureau may provide assistance (e.g. it may provide details about the leniency applicant's cooperation and the value of such cooperation provided to the Bureau's investigation). A successful resolution of discussions / negotiations between the applicant and the PPSC will typically result in the execution of a plea agreement. The immunity agreement and the plea agreement will set out the terms and conditions under which the applicant is granted immunity from prosecution or leniency in sentencing. It will also set out: the obligations relating to disclosure and continued cooperation, identify who is covered by the agreement, how information provided by the applicant will be treated, and the circumstances under which the agreement can be revoked. The plea agreement will also set out the fine and / or the sentence for the offense of the applicant that the PPSC has agreed to. As a rule, subsequent leniency applicants will not be eligible for a greater fine reduction than earlier applicants.

Revocation of an immunity agreement or plea agreement is possible when the terms and conditions of the agreement

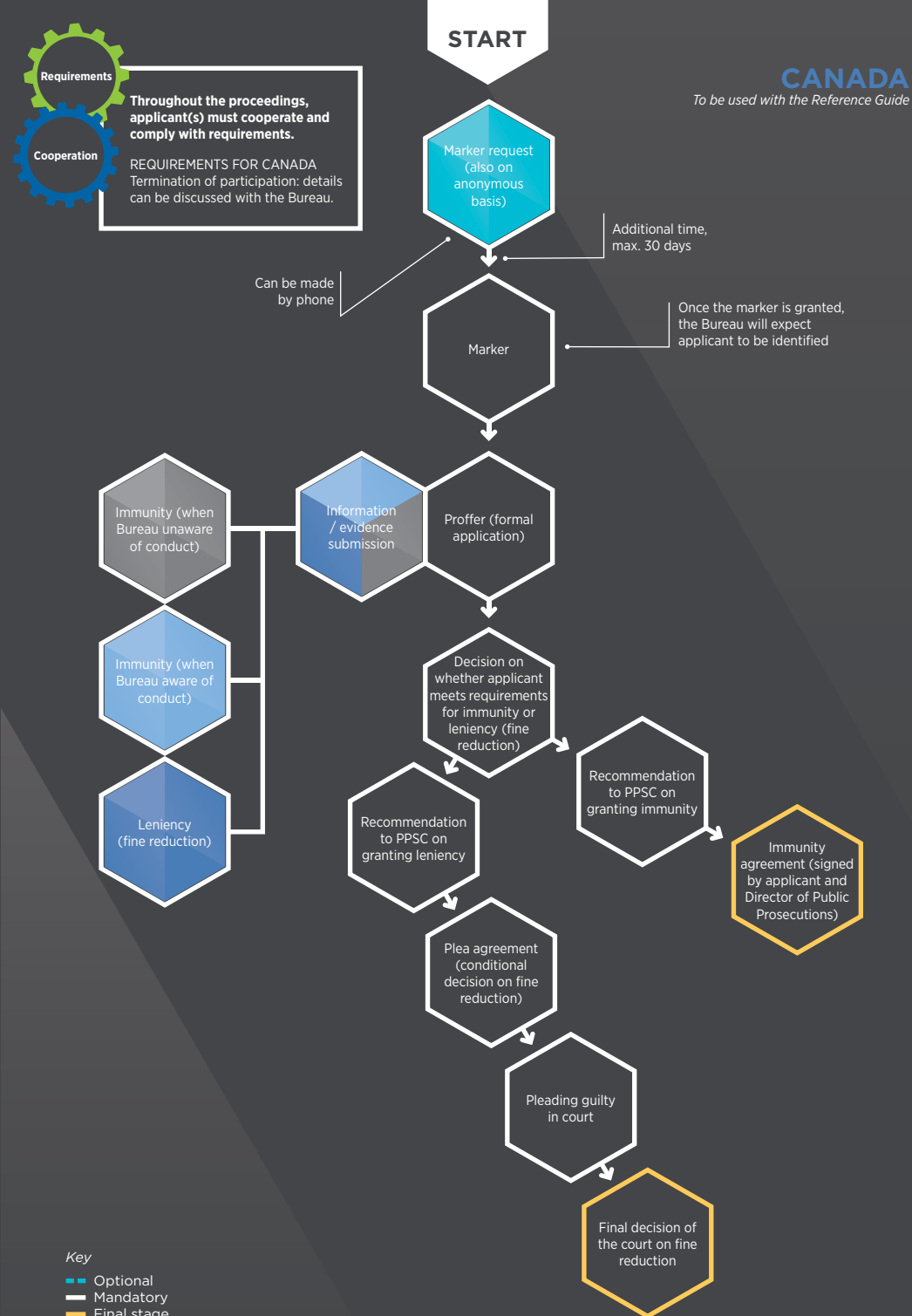
have been breached. However, revocation is uncommon.

Individuals

Both undertakings and individuals can apply for immunity or leniency.

At the request of the first-in leniency applicant, when the first-in applicant is an undertaking, the Bureau will recommend that no separate charges be filed against the applicant's current directors, officers or employees, provided that such individuals cooperate with the Bureau's investigation. Agents and former directors, officers and employees implicated in the offence will also typically qualify for leniency provided that they offer to cooperate with the Bureau's investigation and any subsequent prosecution. The Bureau will determine, on a case-by-case basis, whether to charge r agents and former directors, officers, and employees, depending for example, on their current employment status (i.e. if they are currently employed by another party to the offence).

Any current and former director, officer, employee and agent of the second-in and any other subsequent leniency applicant may be charged depending on their role in the offence.



CANADA

To be used with the Reference Guide

COUNTRY

Chile

AGENCY

National Economic Prosecutor (FNE)
— *Fiscalía Nacional Económica*

FAST FACTS

Maximum fines

Undertaking and individual: UTA 30,000 (approximately US\$ 23 million) for cartels and UTA 20,000 (approximately US\$ 15 million) for other conducts

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Exemption of administrative fine for the first applicant

Amount: up to 50% of the highest fine requested for the participants not benefitting from leniency

Number of applicants: as many as the FNE deems necessary

Exclusion

An applicant which initiated the activity or coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

No

How to submit an application

Online at www.fne.gob.cl

Phone (queries): + 569 90354193

Available languages

Spanish, English (if necessary)

Marker

Yes

Brief description of leniency

Immunity is available for the first applicant who informs the FNE of a cartel and satisfies the leniency requirements. Subsequent applicants which provide evidence that represents significant added value to the one already collected by the FNE may be granted a reduction of the fine. A successful leniency application may be filed even if the FNE has already begun an investigation or conducted an inspection in relation to the relevant conduct.

The FNE prosecutes cases before the Competition Tribunal, which is the only institution that can impose fines or remedies. However, the Competition Tribunal cannot fine an applicant which obtained full immunity or impose a higher fine than that included in the FNE's complaint unless it is established that the beneficiary initiated the cartel activity or coerced others to participate in it. The second-in and subsequent applicants can apply to the Competition Tribunal for a fine that is lower than the one granted them by the FNE, on the basis of their cooperation with the FNE.

A leniency application can only be made online. The FNE provides an application form on its website.

After the application is submitted, a Planning Meeting between the applicant and the FNE is scheduled. During the Planning Meeting, the applicant will be given a marker, and the parties will also agree on the ways in which the applicant will provide evidence.

The evidence will be provided in the Meeting for Evidence Submission. During this meeting, the FNE will ask the applicant to sign the formal application for benefits.

If for any reason and at any stage the application for the benefits is not successful, the FNE shall return all the evidence provided by the applicant and destroy any existing copies. The FNE shall not use that evidence in any current or future investigations, unless it is obtained or was obtained outside of the leniency process.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR CHILE
Termination of participation: immediately after the application.

START

Online application

Confirmation of receipt

3 business days

Acquisition of marker / confirmation of place in the queue

Planning meeting with FNE

Meeting for evidence submission

Decision on whether the information is sufficient

30 business days

No

Yes

Additional 30 calendar days

Non-conformity resolution (rejection of the application)

Conformity resolution

10 business days

Subsequent applicants may advance in their positions

Complaint against leniency applicant (and other cartel members) before Competition Tribunal filed by FNE

Decision of Competition Tribunal on immunity or fine reduction

Key

Optional
Mandatory
Final stage

CHILE

To be used with the Reference Guide

COUNTRY

Croatia

AGENCY

Croatian Competition Agency (CCA)
— *Agencija za zaštitu tržišnog natjecanja*

FAST FACTS

Maximum fines

10% of the annual turnover

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which originated the activity or coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (in person),
E-mail: agencija.ztn@aztn.hr
Fax: +385 1 617 64 50
Address: Savska cesta 41/XIV, 10 000 Zagreb
Phone (for initial contact): +385 1 617 64 48

Available languages

Croatian or other languages (Croatian translation must be provided without undue delay)

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Immunity may only be granted to the first applicant that informs the CCA of an undetected cartel (whereby the applicant discloses credible information, facts and evidence that enable the CCA to open a proceeding) or that provides evidence that enables the CCA to prove the cartel infringement during the cartel prosecution in the event that the CCA has not gathered enough credible information to close the proceedings and reach a decision on the alleged infringement.

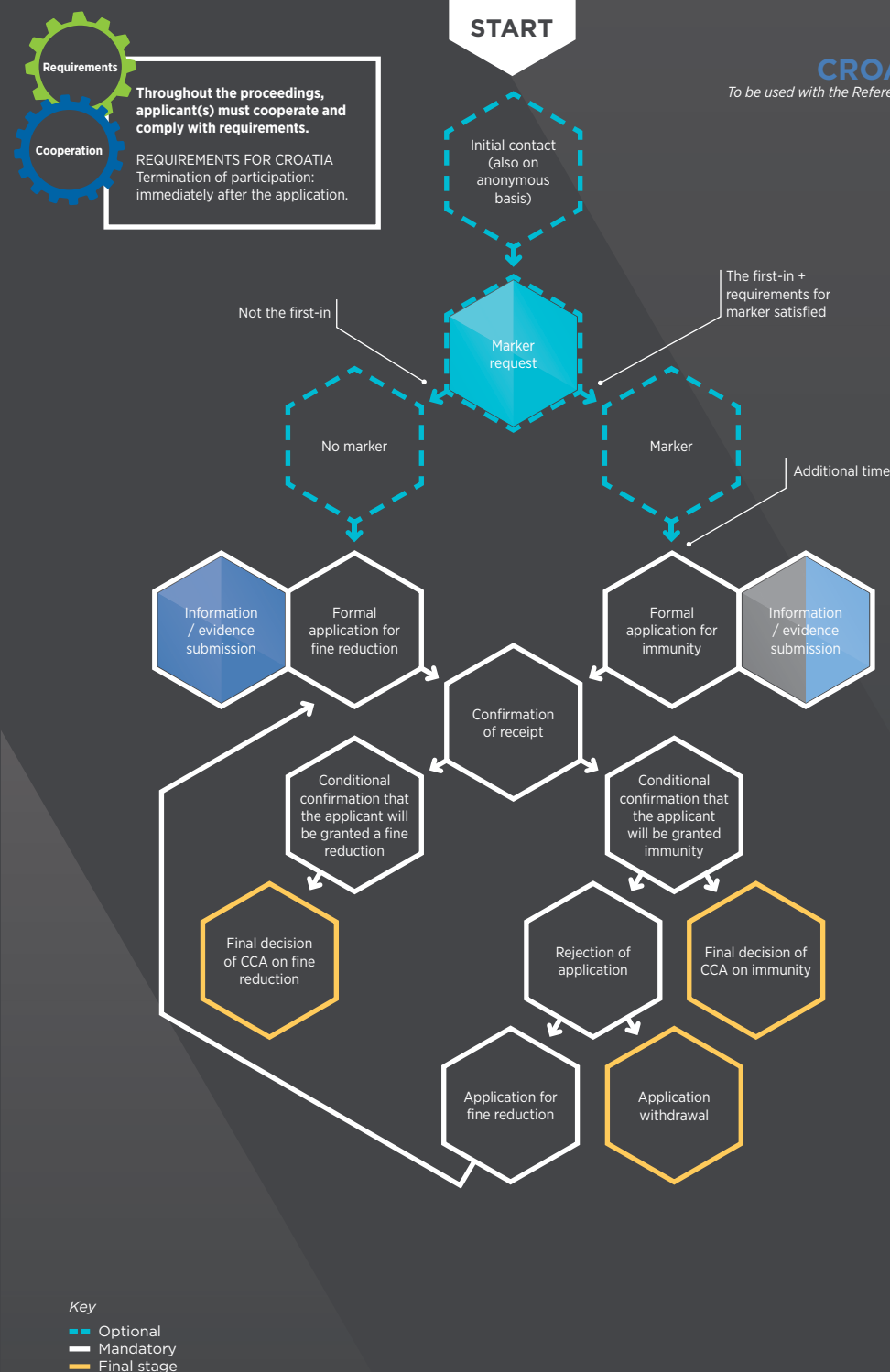
Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the CCA. In principle, the CCA will disregard the application for immunity / reduction of fines or the request for a marker, if these have been submitted after the adoption of a Statement of Objection.

For an application for immunity it is possible to request a marker. If the applicant submits a request for a marker and it fails to provide the requested information and evidence within the deadline, the CCA will consider that the application for immunity has never been submitted and it will be able to use all the information and evidence provided in the request for marker.

Summary applications, as provided in the EU leniency programme, are not formally applicable in Croatia. However, they would not be disregarded and the CCA would consider them as a marker request and proceed in accordance with the local leniency programme.

CROATIA

To be used with the Reference Guide



COUNTRY

Denmark

AGENCY

Danish Competition and Consumer Authority (DCCA)—*Konkurrence- og Forbrugerstyrelsen*

FAST FACTS

Maximum fines

Undertaking: for a less severe infringement - up to DKK 4 million (approx. US\$ 600,000); for a serious infringement - between DKK 4 million and DKK 20 million; for a very serious infringement -DKK 20 million or more.

Individual: for a less serious infringement - a minimum of DKK 50,000 (approx. US\$ 7,600); for a serious infringement -a minimum of DKK 100,000; for a very serious - a minimum of DKK 200,000.

Scope of leniency

Administrative fines, criminal liability
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

No

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (in person)
E-mail: leniency@kfst.dk
Fax: + 45 4171 5100
Address: Carl Jacobsens Vej 35, 2500 Valby
Phone (for initial contact): + 45 4171 5000

Available languages

Danish

Marker

No

Brief description of leniency

Immunity may only be granted to the first applicant who informs the DCCA of a cartel and provides evidence that enables the DCCA to conduct an inspection / search or to prove the cartel infringement.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the DCCA.

An application for leniency shall be submitted to the DCCA. However, in cases where charges are brought by the State Prosecutor for Serious Economic and International Crime

(SPSEI), or an investigation has been conducted by the SPSEI, applications can be submitted to the SPSEI. There is no prescribed form of application for leniency, although the DCCA has a template for submission that applicants can use.

The DCCA recommends that an application be handed over in-person.

Individuals

Both undertakings and individuals can apply for withdrawal of a charge that would otherwise have led to a fine. Individuals can also apply for withdrawal of a charge that would otherwise have led to imprisonment.

An application submitted by an undertaking automatically includes current and former board members, senior managers and other employees, provided that each individual meets the requirements for leniency.

An application for leniency submitted by a former employee or an employee without an agency to bind the undertaking does not automatically encompass the undertaking.

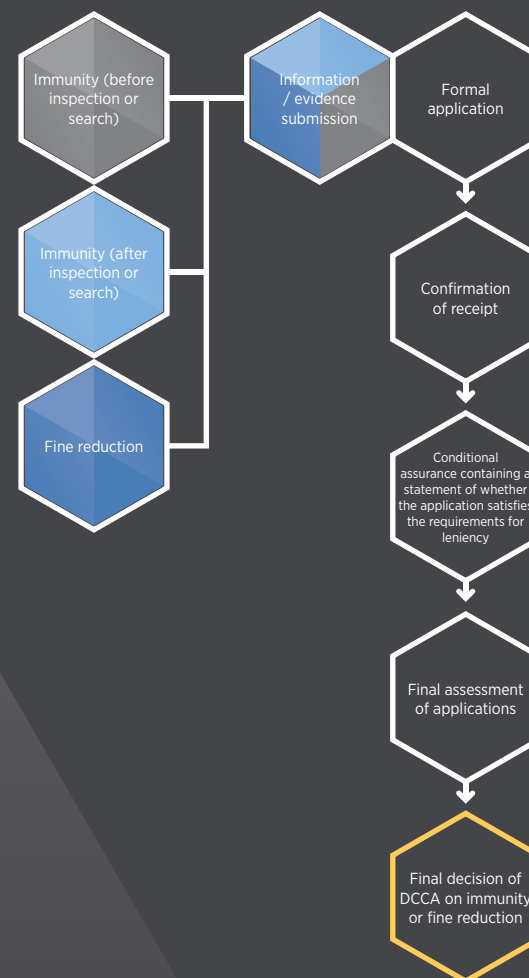
Former employees' lack of cooperation with the competition authorities in cases where the undertaking has applied for leniency does not prevent the applicant from benefitting from leniency.

START



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR DENMARK
Termination of participation:
no later than by the time of application.



Key

- Optional
- Mandatory
- Final stage

DENMARK

To be used with the Reference Guide

COUNTRY

Finland

AGENCY

Finnish Competition and Consumer Authority (FCCA) — *Kilpailu- ja kuluttajavirasto*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (phone, in person)

E-mail: through a secured link via the agency's website: www.kkv.fi/en/facts-and-advice/competition-affairs/leave-cartel/

Address: P. O. Box 5, FI-00531 Helsinki, Finland

Visiting address: Siltasaarencatu 12 A, 00530 Helsinki

Phone: +358 29 505 3351

Available languages

Finnish or Swedish. Certain documents (e.g. annexes) will also be accepted in English

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Immunity may only be granted to the first applicant which informs the FCCA of a cartel and provides evidence that enables the FCCA to conduct an inspection or to prove the cartel infringement. The FCCA shall not proceed to investigate other applications for immunity relating to the same cartel before it has taken a position on whether immunity may be granted to the first undertaking which has applied for immunity.

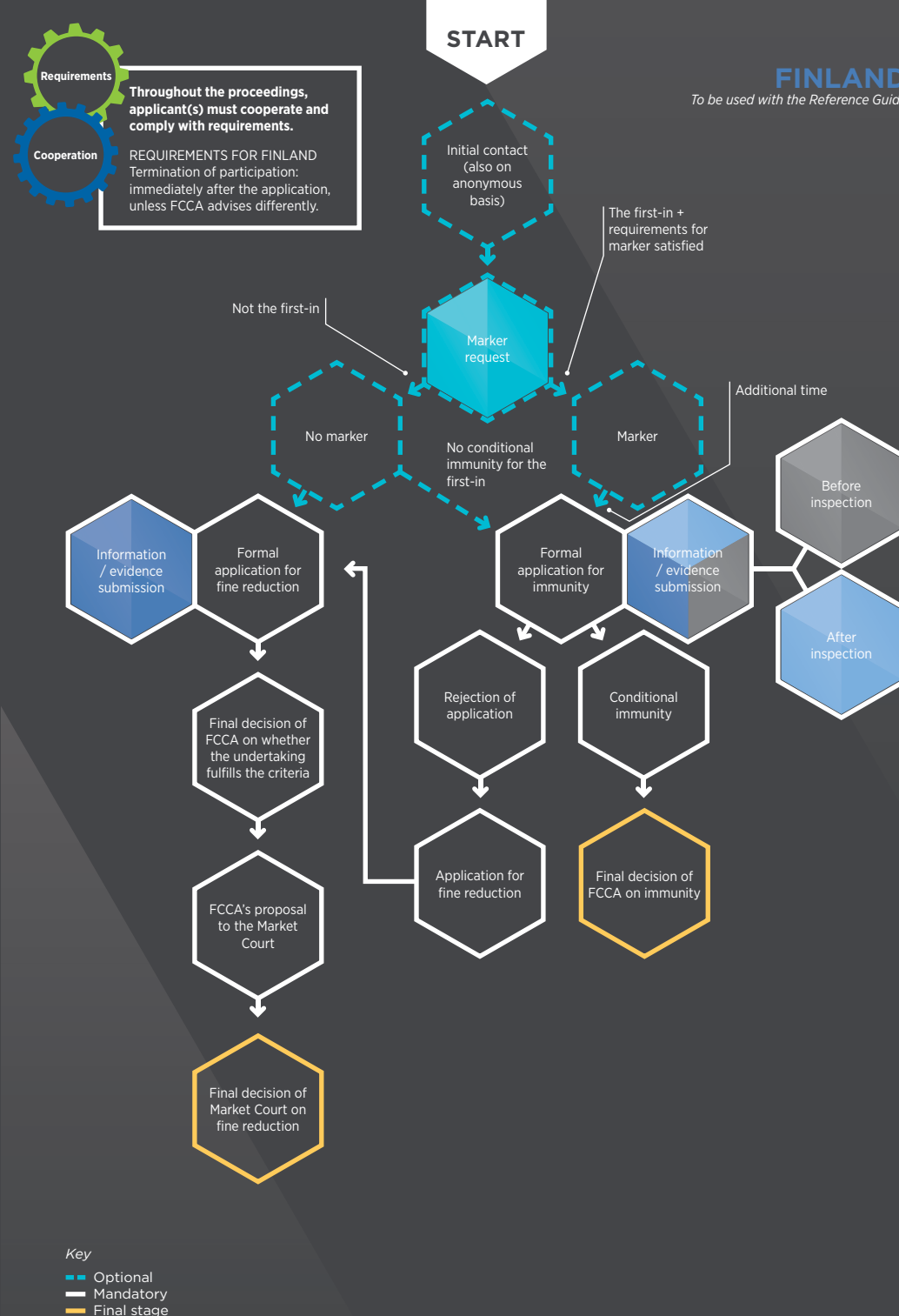
Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the FCCA. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

In principle, the leniency programme only applies to cartel cases. However, in such cases the FCCA can, at its discretion, make a proposal to the Market Court to impose a lower fine on an undertaking which assisted the FCCA in the investigation.

The immunity is granted upon the FCCA's decision and a fine reduction is granted by the Market Court on the basis of the FCCA's recommendation.

FINLAND

To be used with the Reference Guide



COUNTRY

Germany

AGENCY

Federal Cartel Office (FCO)—*Bundeskartellamt*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: EUR 1 million

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which led the activity or coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (e-mail, fax, post) or orally (in person)
Fax: +49 228 9499-560
Address: Kaiser-Friedrich-Str. 16, 53113 Bonn
Phone (for initial contact): +49 228 9499 386

Available languages

German or English (German translation must be provided without undue delay)

Marker: Yes

Brief description of leniency

Immunity may only be granted to the first applicant which contacts the FCO and provides the information and evidence that enables the FCO to obtain a search warrant or to prove the cartel infringement.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the FCO. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

In principle, the leniency programme does not apply to vertical agreements. However, the FCO, when exercising its discretion in taking up and pursuing vertical restraints, may grant immunity from or a fine reduction should the applicants cooperate.

Individuals

The FCO considers an application made by an individual authorized to represent an undertaking also as an application on behalf of the authorized representative unless indicated otherwise. An application made by an individual in his own name only and not on behalf of the undertaking will be considered as a sole application i.e. not encompassing the undertaking.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

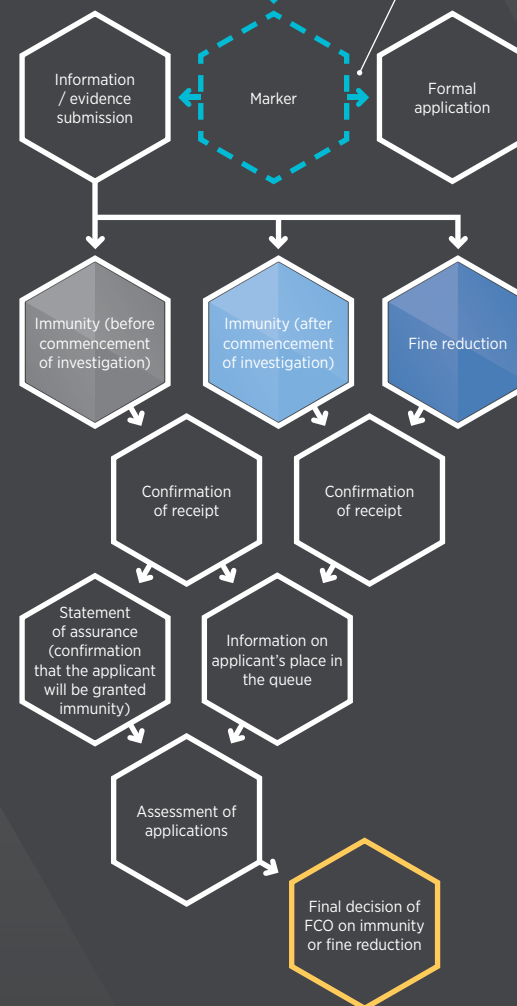
REQUIREMENTS FOR GERMANY
Termination of participation:
immediately upon request by FCO.

START

Initial contact
(also on
anonymous
basis)

Declaration of
willingness to
cooperate (marker
request)

Additional time:
max. 8 weeks



Key

- Optional
- Mandatory
- Final stage

GERMANY

To be used with the Reference Guide

COUNTRY

Hong Kong

AGENCY

Competition Commission (Commission)

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover multiplied by the duration of infringement in years with a maximum of three years

Scope of leniency

Fines and orders imposed by the Competition Tribunal except for the order declaring that the applicant has contravened the competition rule Cartels

Leniency available for Undertaking

Reduction in fines

Amount: determined on a case-by-case basis
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

Request for marker: orally (phone)
Phone: +85 2399 68010

Available languages

English and Chinese

Marker

Yes

Brief description of leniency

The leniency programme only applies to the first undertaking that reports the cartel conduct.

The applicant must apply for a marker by phone and provide its identity and general information about the cartel conduct. If the conditions are met, the Commission will give a marker confirming the time and date of the call. The Commission may issue one or more markers with respect to a specific cartel and as a result create a marker queue. Marker is understood as confirmation of the applicant's place in the queue for leniency only.

If the Commission decides that leniency is available, the undertaking will be required to enter into a written leniency agreement. In the leniency agreement the applicant will have to confirm that it will sign a statement of agreed facts admitting participation in the cartel and that it will implement the corporate compliance programme. The leniency agreement may be terminated if the Commission believes that the information provided by the undertaking is incomplete, false or misleading.

An undertaking that is not eligible for leniency may still cooperate with the Commission, which may, at its own discretion, consider a lower level of enforcement action, including recommending a reduced fine to the Competition Tribunal.

The leniency for the first-in applicant is granted by the Commission on the basis of the leniency agreement. With respect to the applicant not eligible for leniency, but which would still like to cooperate with the Commission, the fine reduction is granted by the Competition Tribunal on the basis of the Commission's recommendation.

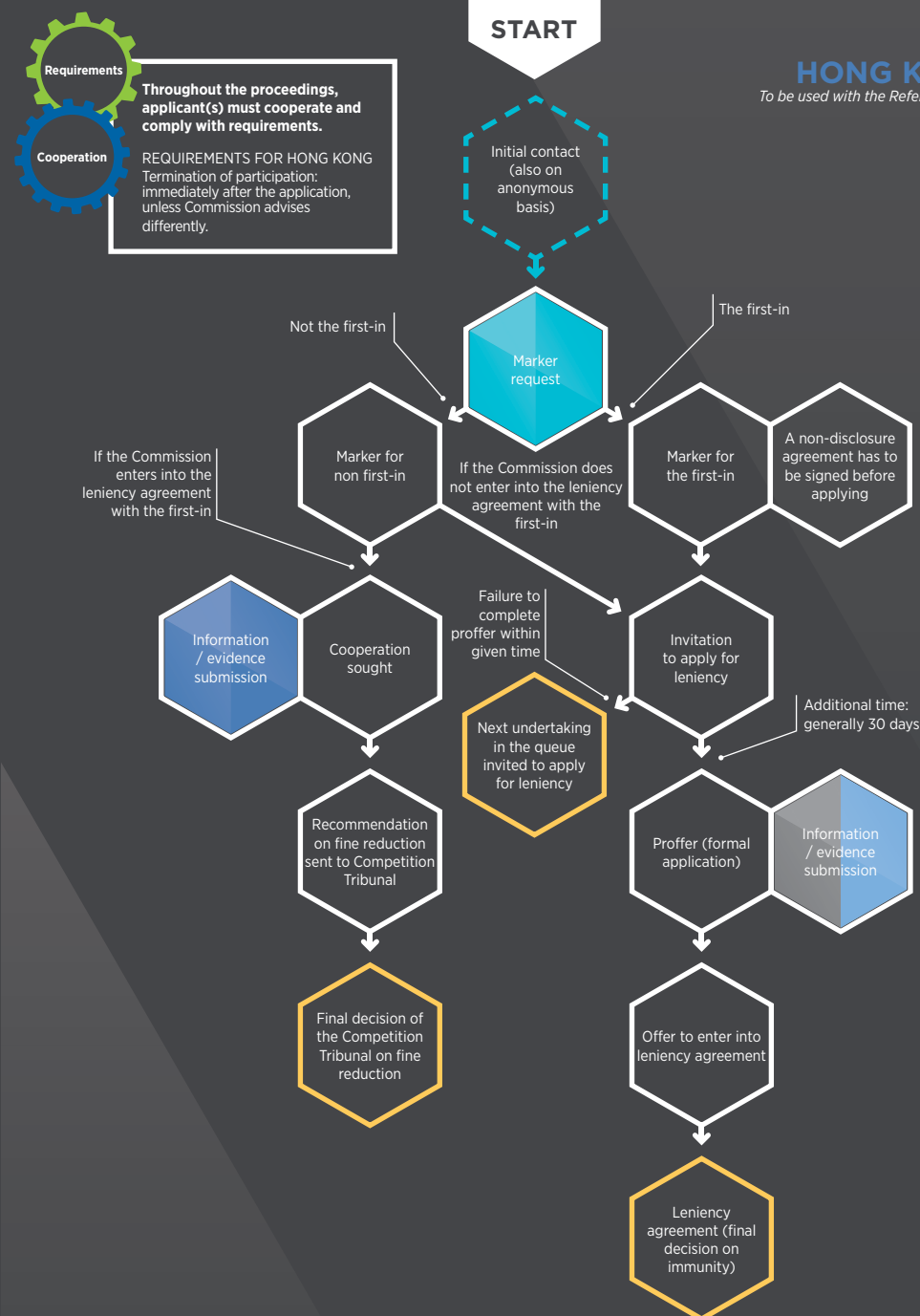
Individuals

Only an undertaking may apply for leniency. An undertaking may include a person engaged in an economic activity such as an individual operating as a sole trader. If the undertaking enters into a leniency agreement, the leniency extends to its current officers and employees, provided they cooperate with the agency during the investigation. The leniency extends also to former officers, employees and current or former agents of the undertaking specified in the leniency agreement.

START

HONG KONG

To be used with the Reference Guide



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Italy

AGENCY

Italian Competition Authority (ICA)
— *Autorità Garante della Concorrenza e del Mercato*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

No

Leniency plus

Yes

How to submit an application

In writing (in person, e-mail, fax,
or orally (in person)
Fax: +39 0685 8211 77

Available languages

Italian

Marker

Yes (only for the first-in applicant)

Brief description of leniency

Immunity may only be granted to the first applicant which informs the ICA of an undetected cartel and provides evidence that enables the ICA to prove the cartel infringement. The immunity may not be granted to the applicant if the ICA has already launched an investigation or is aware of the unlawful agreement.

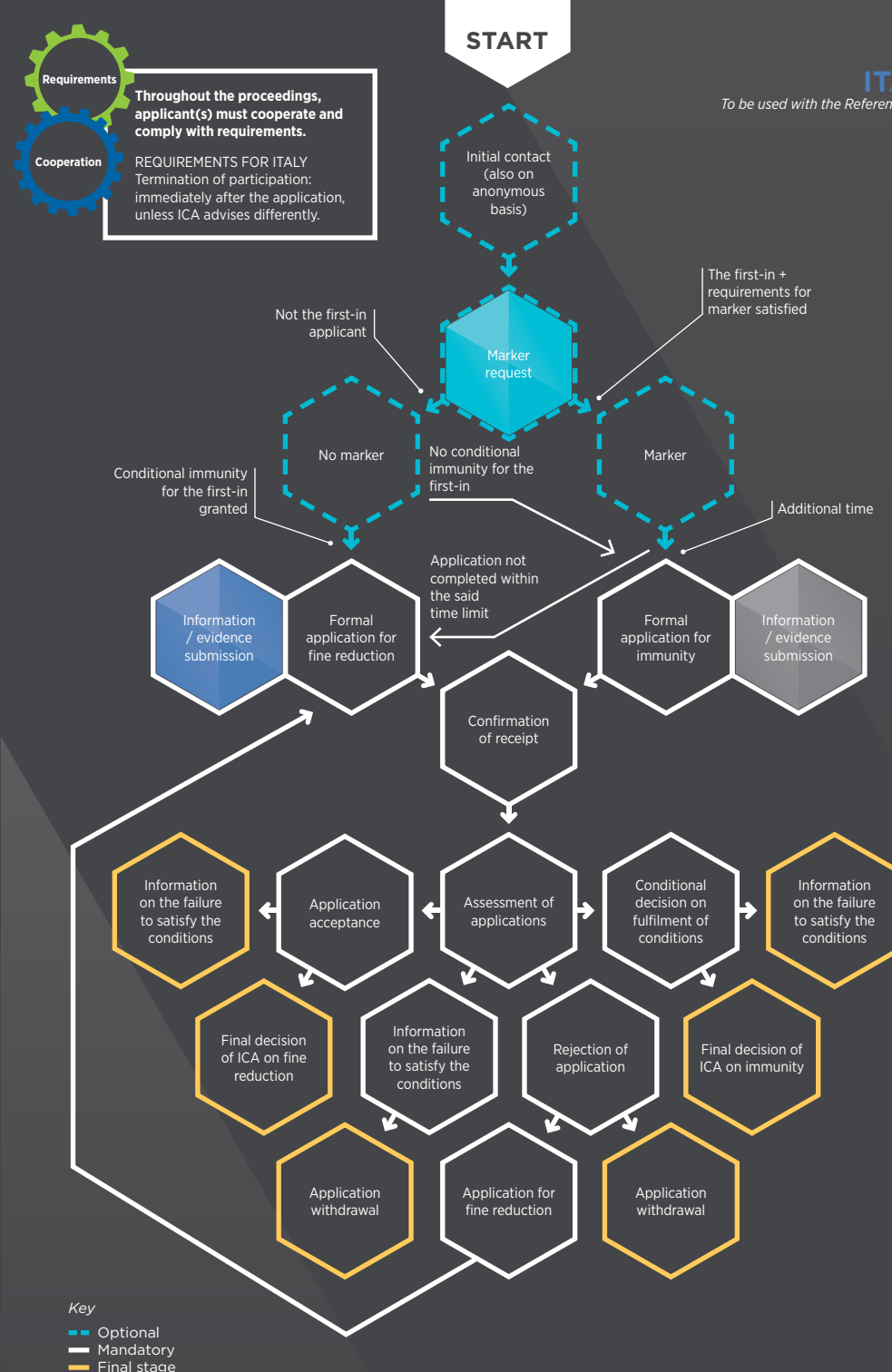
Undertakings which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the ICA. The appropriate reduction in the administrative fine is calculated on the basis of several elements including the promptness of the cooperation provided by the applicant at a given stage. The extent of the other undertakings' cooperation and the relevance of the information and documents provided play a role in determining the fine reduction.

Multiple applications for leniency concerning the same agreement are evaluated by the ICA in the order in which they are received.

If the agency, having accepted the application with a conditional decision, finds that the conditions attached to leniency are not fulfilled, it shall promptly inform the applicant accordingly. Failure to comply with the conditions attached to leniency after a conditional decision is issued shall disqualify the undertaking from any benefits in relation to the agreement in question.

ITALY

To be used with the Reference Guide



COUNTRY

Japan

AGENCY

Japan Fair Trade Commission (JFTC)

FAST FACTS

Maximum fines

Undertaking: an administrative fine calculated according to the prescribed method based on the amount of proceeds / a criminal fine of up to JPY 500 million (approximately US\$ 4.5 million)
Individual: imprisonment up to five years or a criminal fine of up to JPY 5 million (approximately US\$ 45,000)

Scope of leniency

Administrative fines, criminal immunity only for the first-in applicant (extended to the officers and employees of the first applicant which cooperates with JFTC)

Cartels and vertical agreements

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: maximum 4

Exclusion

An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

No

How to submit an application

Form 1 report—fax

Form 2 report—fax, in person, post

Form 3 report—fax

Reports and evidence can be submitted orally (in person) if justified

Fax: +81 3 3581 5599

Address: 1-1-1 Kasumigaseki, Chiyoda-ku,

Tokyo 100-8987

Phone: +81 3 3581 2100 (09:30—18:15)

Available languages

Japanese

Marker

Yes (only before JFTC Investigation Commencement Date)

Brief description of leniency

Technically speaking, all the applicants are granted an administrative fine reduction. However, the first applicant is granted a 100% fine reduction which represents immunity.

A 100% fine reduction can only be granted for the first applicant that filed an application before the JFTC Investigation Commencement Date (day on which JFTC formally launched an investigation by taking certain actions such as an inspection or a search and seizure). Subsequent applicants may be granted a fine reduction of up to 50%. The maximum number of applicants cannot be more than five, and for applications submitted after the JFTC Investigation Commencement Date cannot be more than three.

Subsequent applicants must submit information that is not already known to the JFTC or evidence that is not already in the JFTC's possession. There is no consideration of the evidence's degree of added value.

The application must be submitted using special report forms: before the JFTC Investigation Commencement Date—**Form 1 (request for marker)**, **Form 2 (application)**; after JFTC Investigation Commencement Date—**Form 3 (application)**.

Individuals

In terms of administrative liability, officers or employees are not separately liable from their undertaking. However, they may be subject to individual criminal sanctions (imprisonment and / or criminal fines).

The leniency programme does not extend to criminal immunity. However, when it comes to leniency, under JFTC policy, the JFTC does not refer the reported matter of the first undertaking (first-in applicant) to the Public Prosecutors' Office thereby providing criminal immunity to the first applicant. Furthermore, such criminal immunity is extended to officers and employees of the first corporate applicant involved in the reported matter on the condition that the officers and employees cooperate with the JFTC's investigation to the same extent as their undertaking.



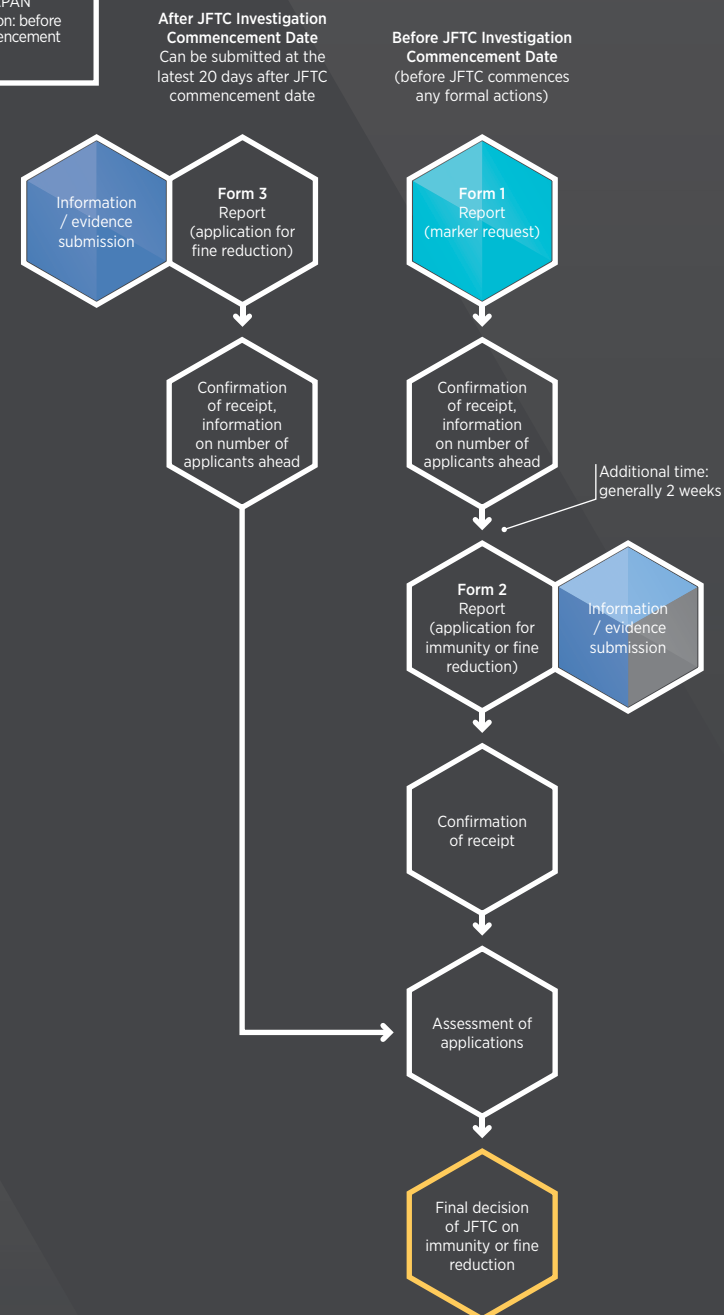
Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR JAPAN
Termination of participation: before JFTC investigation commencement date.

START

JAPAN

To be used with the Reference Guide



COUNTRY

Norway

AGENCY

The Norwegian Competition Authority (NCA)
— Konkurransetilsynet

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: six years imprisonment and / or fines

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which led the activity or coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

No formal requirements

Available languages

No specific requirements. If a request for a marker is made in a language other than English, Norwegian, Swedish or Danish, a Norwegian translation must be provided without undue delay

Marker

Yes

Brief description of leniency

Immunity under the Norwegian leniency programme is called full leniency and a fine reduction is called partial leniency.

Immunity may only be granted to the first applicant which informs the NCA of an undetected cartel and provides evidence that enables the NCA to conduct an inspection or to prove the cartel infringement.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the NCA. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

For immunity applications, the undertaking can also submit the evidence in hypothetical terms. In such cases, the undertaking shall give a clear description of the nature and content of the evidence so that the NCA has a basis to assess whether the evidence fulfils the requirements for granting full leniency. The NCA will set a time limit for submission of the evidence.

Individuals

Only undertakings can apply for leniency. However, the NCA has been assigned considerable discretion to decide whether an individual should be reported to the prosecuting authorities in a specific case. The NCA may grant individuals an advance commitment not to report the criminal offence to the prosecuting authorities if certain conditions are met (a no-action letter). The conditions for such advance commitment are generally the same as the conditions for full leniency.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR NORWAY
Termination of participation: at the latest when the evidence is submitted, unless the NCA advises differently.

START

Initial contact (also on anonymous basis)

Marker request

Confirmation of receipt

Marker

Additional time

Immunity (before commencement of investigation)

Information / evidence submission

Formal application

Immunity (after commencement of investigation)

Confirmation of receipt

Fine reduction

Information on whether the immunity or fine reduction will be granted (conditional leniency)

Final decision of NCA on immunity or fine reduction

Key

- Optional
- Mandatory
- Final stage

NORWAY

To be used with the Reference Guide

COUNTRY

Poland

AGENCY

Office of Competition and Consumer Protection (OCCP)—*Urząd Ochrony Konkurencji i Konsumentów*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: PLN 2 million (approximately EUR 500,000)

Scope of leniency

Administrative fines
Cartels and vertical agreements

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

Yes

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (in person)
E-mail: leniency@uokik.gov.pl
Fax: +48 2282 6103 3
Address: Urząd Ochrony Konkurencji i Konsumentów,
Departament Ochrony Konkurencji, pl. Powstańców
Warszawy 1, 00-950 Warszawa
Phone (for initial contact): +48 2255 6055 5

Available languages

Polish

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant which informs the OCCP of a cartel and provides evidence that enables the OCCP to launch an investigation or to prove the cartel infringement, if the investigation has already been initiated by the OCCP.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the OCCP. The extent of the fine reduction depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

The withdrawal of the application or its rejection after the conditional confirmation that the leniency conditions have been fulfilled has no effect on the order of the other submitted applications.

A leniency application can be also submitted by fax or e-mail. For applications submitted by fax, or via an electronic form without a certified electronic signature, it is necessary to provide the OCCP with the duly executed original of the application within five business days.

Individuals

Individuals can apply for leniency independently from the undertaking. They must meet all the criteria and provide the required information.

An application of an undertaking which is consistent with all the requirements also covers individuals.

If immunity is granted to an undertaking, the individuals cannot be fined. If an undertaking is granted a fine reduction, the fine imposed on the individual is reduced on the same basis provided the individual cooperates with the agency during the proceedings.

An individual can be granted immunity or a fine reduction even if the undertaking does not obtain immunity or a reduced fine.

Individuals cannot be fined for bid rigging under Polish competition law. They may, however, be subject to personal criminal liability (imprisonment for up to three years).



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR POLAND
Termination of participation: immediately after the application, unless OCCP advises differently.

START

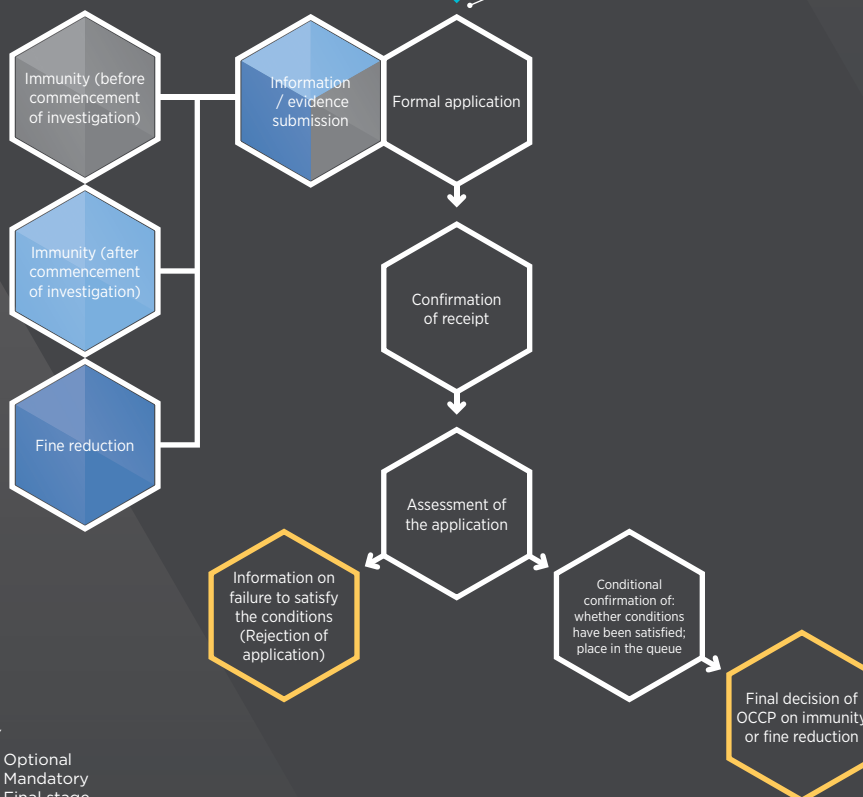
Initial contact (also on anonymous basis)

Shortened application (marker request)

Confirmation of receipt

Marker

Additional time



POLAND

To be used with the Reference Guide

COUNTRY

Republic of Korea

AGENCY

Korea Fair Trade Commission (KFTC)

FAST FACTS

Maximum fines

Undertaking: 10% of relevant turnover
Individual: Not applicable

Scope of leniency

Administrative fines, criminal liability
Cartels

Leniency available for

Undertaking

Reduction in fines

Amount: 50% of the fine and exemption from criminal referral

Number of applicants: 1. Only the second-in

Exclusion

Repeat offender, applicant which coerced others to participate cannot obtain immunity or fine reduction

Leniency plus

Yes

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (in person)

E-mail: leniency@korea.kr

Fax: +82 (0) 44 200 4444

Address:

Cartel Policy Division, Fair Trade Commission, Sejong Government Office Complex, 95 Dasom 3-ro, Sejong City

Phone (for initial contact): +82 (0) 44 200 4534

Available languages

Korean

Marker

No

Brief description of leniency

An applicant which reports its cartel activity before the commencement of the KFTC's investigation and which is the first to provide sufficient evidence of that cartel will be granted immunity including an exemption from administrative sanctions, such as corrective orders and administrative fines, as well as from referral to the Prosecutor's Office. Reduction in fines is obtainable only for the second-in applicant and only within the first two years from the moment a member of a cartel files the first leniency application with the KFTC or begins to cooperate with the KFTC as the first party providing cooperation with respect to the cartel. The subsequent applicants may benefit from a reduction of fines of up to 30% that can be granted outside of the leniency programme on the basis of its cooperation with the KFTC investigation.

In principle, a leniency application must be prepared and submitted using the KFTC's leniency application form.

There is no formal marker regulation under the Korean leniency programme. It is possible to submit a shortened application and apply for additional

time for the submission of information and evidence, which in fact can be assumed as a marker. However, it is with great scrutiny that the KFTC confirms the first place to the first applicant. Furthermore, it has become increasingly difficult to secure the first place in a queue at the KFTC hearing which occurs later than the hearing for the main cartel case. As the place of an applicant in the queue can only be confirmed at the KFTC hearing, an applicant cannot be guaranteed a marker before then.

In the case of the leniency plus programme, the extent of the fine reduction obtained depends on the size of the second cartel, i.e. whether it is smaller or bigger than the first one. This is determined by the amount by which the sales of the relevant goods and services has been affected.

Individuals

Individuals are not entitled to apply for leniency. Instead, there is a whistleblowing programme in place that provides a monetary reward to the first informant who presents sufficient evidence of a cartel. The reward amount can be up to KRW 3 billion (approximately US\$ 2.5 million).



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR THE REPUBLIC OF KOREA
Termination of participation: recommendable before application, immediately after application also acceptable, KFTC can decide differently.

START

Shortened application

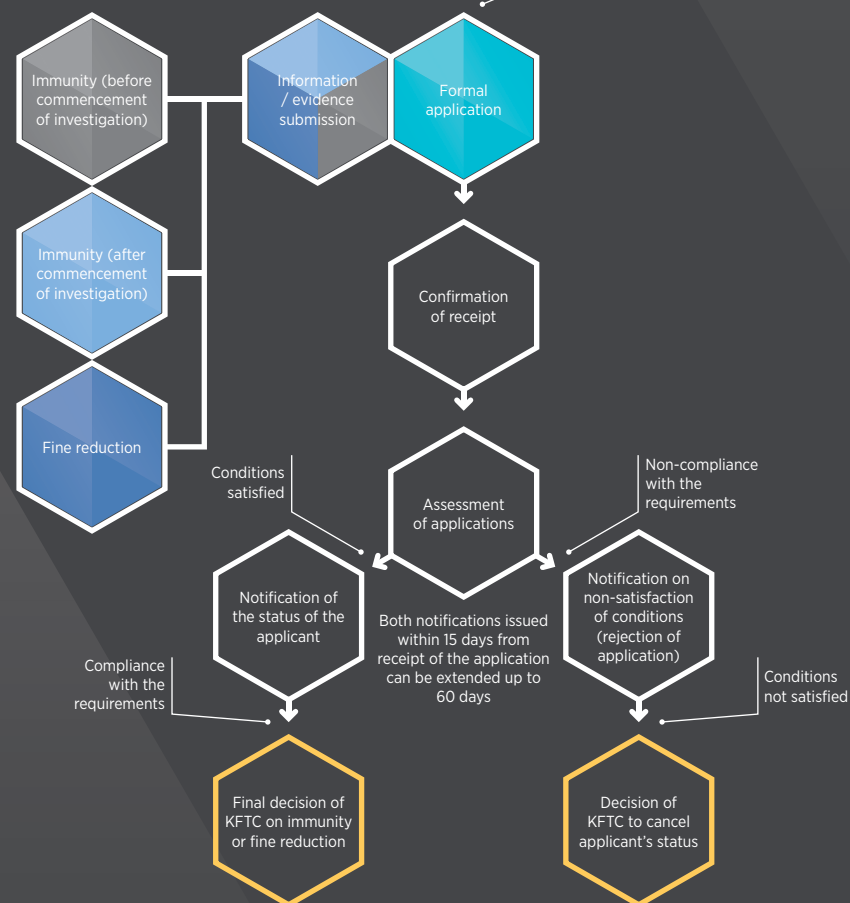
Decision on the additional time

15 days, can be extended by up to 60 days

REPUBLIC OF KOREA

To be used with the Reference Guide

Information:
- applicant's identity
- overview of cartel conduct



Key

- Optional
- Mandatory
- Final stage

COUNTRY

Russia

AGENCY

Federal Antimonopoly Service of the Russian Federation (FAS)

FAST FACTS

Maximum fines

Undertaking: 15% of the income of the violator from the sale of goods (works, services) that are the subject of the violation or the size of the expenditure of the offender for the purchase of goods (works, services); on the market where the violation was indicated: 50% the initial value of the bid (in bid rigging cases)
Individual: RUB 50,000, disqualification up to three years (in administrative process), imprisonment for seven years

Scope of leniency

Administrative fines, criminal liability, cartels and vertical agreements

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 99% of the fine
Number of applicants: 2. Only the second-in and third-in

Exclusion

An applicant which originated the activity cannot obtain a fine reduction

Leniency plus

No

How to submit an application

In writing (in person, e-mail, fax, post)
E-mail: tenishev@fas.gov.ru, delo@fas.gov.ru
Fax: +7 499 755 23 23 (ext. 088-275)
Address: 11 Sadovaya-Kudrinskaya st., 125993, Moscow, D-242, GSP-3
Phone (for initial contact): +7 499 755 23 23

Available languages

Russian

Marker

No

Brief description of leniency

Leniency in Russia can be obtained during an administrative or criminal procedure. A leniency application is usually filed during an administrative procedure and is taken into account while initiating a criminal procedure.

Immunity may only be granted to the first applicant which informs the FAS of a cartel and provides them with new evidence which can help the FAS to prove the cartel infringement. The second and third applicant may benefit from a reduction of fines if they provide sufficient evidence to prove the cartel infringement. The fourth and the subsequent applicants may benefit from a reduced fine outside of the leniency programme if they fulfill certain conditions (e.g. such as cooperation with the agency,

termination of participation in cartel) and did not initiate the cartel. Such a reduction is smaller than the one within the leniency (1/8 of the difference between maximum and minimum fine admissible for such an applicant). In practice criminal investigations are initiated after the administrative investigation is conducted by the competition agency, taking into account the FAS decision on leniency. In order to obtain leniency in criminal proceedings, an applicant is obliged to compensate fully for harm caused by its participation in a cartel. Damages are calculated by the FAS in the course of the investigation and should be approved by the police.

In general, the applicant is obliged to bring sufficient evidence and information to verify a cartel at the moment of filing an application. The

applicant is given a confirmation of receipt that is used only to permit the first applicant to apply for immunity, and the second or third applicant to apply for a fine reduction.

A leniency application can be submitted during the whole period of the investigation, even after the Statement of Objections is published by the FAS but no later than its final decision.

Individuals

Both companies and individuals can apply for leniency during the administrative procedure. In practice, companies and individuals do not apply for leniency separately. Only individuals can apply for leniency during the criminal procedure.



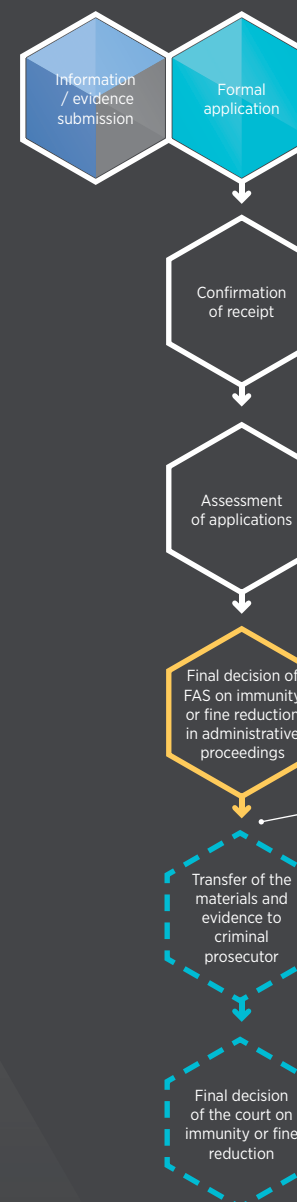
Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR RUSSIA
Termination of participation: immediately after the application.

START

RUSSIA

To be used with the Reference Guide



If it is established that cartel activity is also criminal offence

Key

- Optional
- Mandatory
- Final stage

COUNTRY

The Netherlands

AGENCY

Authority for Consumers and Markets (ACM)
— *Autoriteit Consument and Markt*

FAST FACTS

Maximum fines

Undertaking or individual: max. EUR 450,000 or 10% of the annual turnover, whichever is the higher (EUR 900,000, or 10% of turnover multiplied by the duration of infringement in years with a maximum of four years*)

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

No

How to submit an application

In writing (in person, e-mail, fax, post)
or orally (by phone, in person)
E-mail: clementie@acm.nl
Fax: +31 70 7 222 355
Address: Muzenstraat 41, 2511 WB The Hague
Phone: +31 70 722 2302

Available languages

Dutch

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant which informs the ACM of a cartel and provides evidence that enables the ACM to conduct an inspection. Obtaining immunity by the first-in applicant is also possible after the ACM has begun its investigation, if the ACM has not already issued a Statement of Objections and if the ACM has been provided with the documents dating from the cartel period that are not already in the ACM's possession.

Applicants which do not qualify for immunity may benefit from a reduction of fines. A reduced fine can be obtained if the ACM has not already issued a Statement of Objections. The extent of the reduction in the fine depends essentially on two factors: the time of submission of the evidence important to the case and the value of this evidence.

Individuals

Both companies and individuals can apply for leniency. Individuals can apply for leniency independently, as well as jointly with other individuals, provided that they work at the same undertaking involved in the cartel at the time the application is submitted.

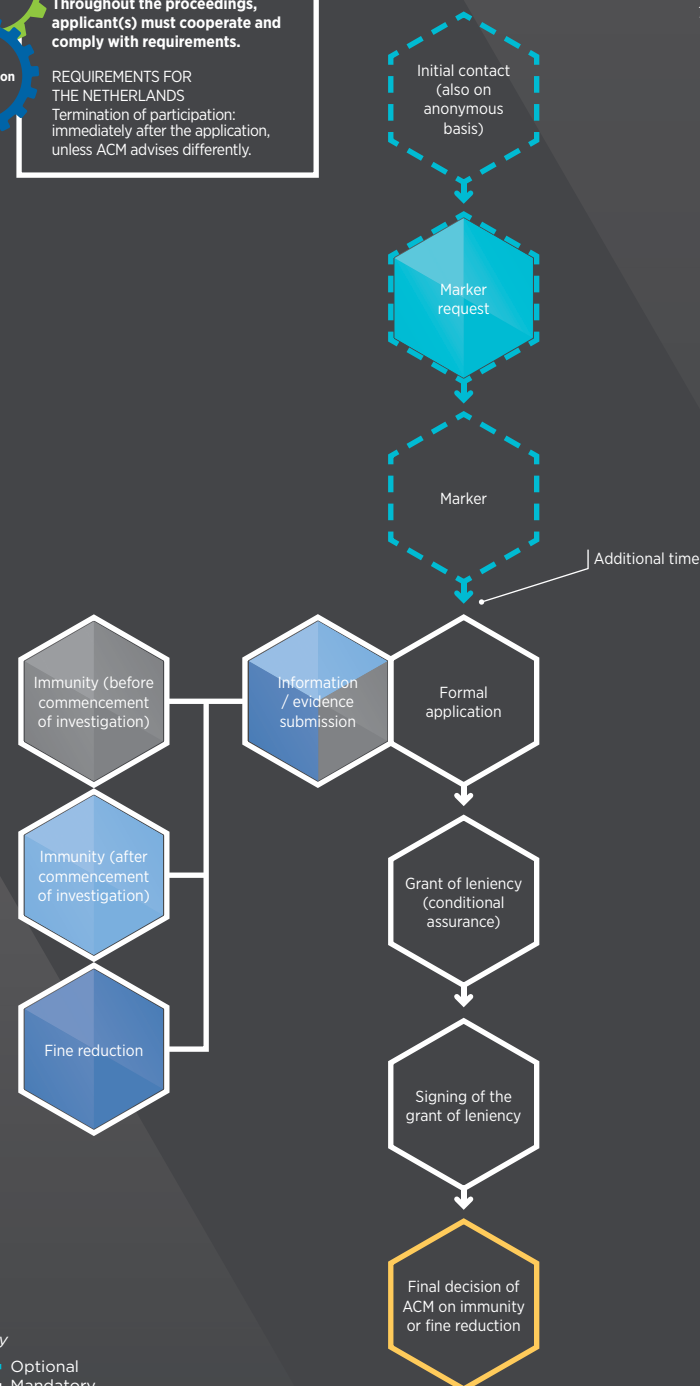
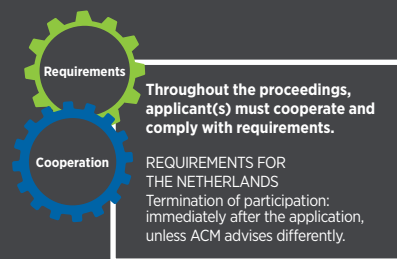
An individual may be eligible for the same immunity or reduction of fines as the undertaking at which he or she works or used to work, if he or she declares that he or she wishes to profit from the undertaking's leniency application and also individually meets the leniency conditions. This also applies to former employees, though the ACM may refuse to apply the undertaking's leniency application to a former employee if the ACM considers such an application to be against the interest of the investigation.

* Legislation increasing these maxima is expected to enter into force in 2016.

START

THE NETHERLANDS

To be used with the Reference Guide



COUNTRY

Turkey

AGENCY

Turkish Competition Authority (TCA)
— *Rekabet Kurumu*

FAST FACTS

Maximum fines

Undertaking: 10% of the annual turnover
Individual: 5% of the fine imposed on the undertaking

Scope of leniency

Administrative fines
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 50% of the fine for undertakings,
up to 100 % for individuals
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity or a fine reduction

Leniency plus

Yes

How to submit an application

In writing (e-mail, fax, post) or orally (in person)
E-mail: pismanlik@rekabet.gov.tr
Fax: +90 312 266 79 20
Address: Üniversiteler Mahallesi 1597. Cadde No. 9
Bilkent Çankaya 06800 Ankara
Phone (for initial contact): +90 312 291 44 06

Available languages

Turkish

Marker

Yes

Brief description of leniency

Immunity may only be granted to the first applicant which informs the TCA of a cartel and provides evidence that enables the TCA to conduct an inspection or prove the cartel infringement. To obtain immunity the application must be submitted prior to notification of the investigation report.

Applicants which do not qualify for immunity may benefit from a reduction of fines if they provide evidence that brings significant added value to the one already collected by the TCA. A higher reduction will be granted to the first and second leniency applicants.

When determining whether an applicant qualifies for immunity or a reduction in fines, factors such as the quality, efficiency, and timing of the applicant's cooperation as well as explicit demonstration of evidence of a violation are taken into consideration. Accordingly, such determination is at the discretion of the TCA.

The TCA has sole discretion when assessing whether or not the information submitted with the leniency application is "essential" to the investigation. Accordingly, if information provided is not deemed to have been "essential" to the investigation or has already been obtained by a TCA case-handler, an applicant will at most benefit from a reduction in fines.

The application must be deemed to have been made independently, so as to prevent fraudulent applications.

Individuals

If an individual is the first party to come forward with information and documents that help identify a cartel and which qualify him / her for immunity, the undertaking to which that individual is related does not benefit from that immunity.

When an undertaking receives immunity, the same immunity extends to the managers and employees.

When an undertaking benefits from a reduction in fines, the reduced penalties also apply to its managers and employees who have actively cooperated with the TCA.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

REQUIREMENTS FOR TURKEY
Termination of participation: immediately after the application, unless TCA advises differently.

START

Preliminary information + written request for additional time (marker request)

Confirmation of receipt

Decision on additional time (marker)

Failure to submit the documents and information within given time limit

Subsequent applicants may advance in their positions

Additional time: max. 1 month

Formal application

Information / evidence submission

Immunity (before commencement of investigation)

Confirmation of receipt

Immunity (after commencement of investigation)

Information on whether immunity or reduction of fines will be granted (conditional assurance)

Fine reduction

Final decision of TCA on immunity or fine reduction (after completion of the investigation)

Key

- Optional
- Mandatory
- Final stage

TURKEY

To be used with the Reference Guide

COUNTRY

United Kingdom

AGENCY

Competition and Markets Authority (CMA)

FAST FACTS

Maximum fines

Undertaking: 10% of a capital group's worldwide annual turnover
Individual: unlimited

Scope of leniency

Civil liability (fines), criminal liability, director disqualification
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: up to 100% of the fine for the first-in, up to 50% for subsequent applicants
Number of applicants: no limitation

Exclusion

An applicant which coerced others to participate cannot obtain immunity

Leniency plus

Yes

How to submit an application

All initial contact should be made by phone
E-mail: general.enquiries@cma.gsi.gov.uk
Phone (for all initial contact): +44 20 3738 6833
Address:
Competition and Markets Authority
Victoria House
37 Southampton Row
WC1B 4AD
London

Available languages

English

Marker

Yes

Brief description of leniency

The CMA in the United Kingdom offers immunity or leniency to undertakings that confess their involvement in a cartel. It can prevent an individual from being prosecuted in England, Wales or Northern Ireland and from being disqualified as a director.

Total immunity from fines will be given to the first undertaking to provide the CMA with evidence of cartel activity before the CMA starts an investigation (**Type A Immunity**).

At the CMA's discretion, an undertaking may also receive total immunity if it is the first to provide the CMA with evidence of cartel activity after the CMA starts an investigation but before it issues a Statement of Objections (**Type B Immunity**).

In the same situation as outlined above in relation to Type B Immunity,

the CMA can, instead of giving total immunity, choose to grant leniency and reduce the level of the financial penalty by up to 100% (**Type B Leniency**).

If an undertaking is not the first to come forward or for some other reason does not satisfy the requirements for Type B Leniency, the CMA can reduce the level of financial penalty by up to 50% (**Type C Leniency**).

There is no prescribed form of application for immunity or leniency. In order to obtain immunity or leniency, the applicant must admit it participated in cartel activity and satisfy other requirements.

Individuals

Individuals may receive a no-action letter from the CMA granting them immunity from prosecution. The CMA may grant a no-action letter if an individual

fulfills the requirements, including admitting taking part in the cartel and cooperating completely and continuously throughout the investigation.

Where Type A Immunity or Type B Immunity is given to an undertaking, blanket immunity is automatically given to all current and former employees and directors who cooperate with the CMA. Where Type B Leniency or Type C Leniency is given to an undertaking, the CMA may choose to grant individual immunity to a select number of the current or former employees or directors of the undertaking.

The CMA will not normally apply for a Competition Disqualification Order against any of the current directors of the undertaking that has been given immunity or leniency in relation to the activity to which the immunity or leniency relates.



Throughout the proceedings, applicant(s) must cooperate and comply with requirements.

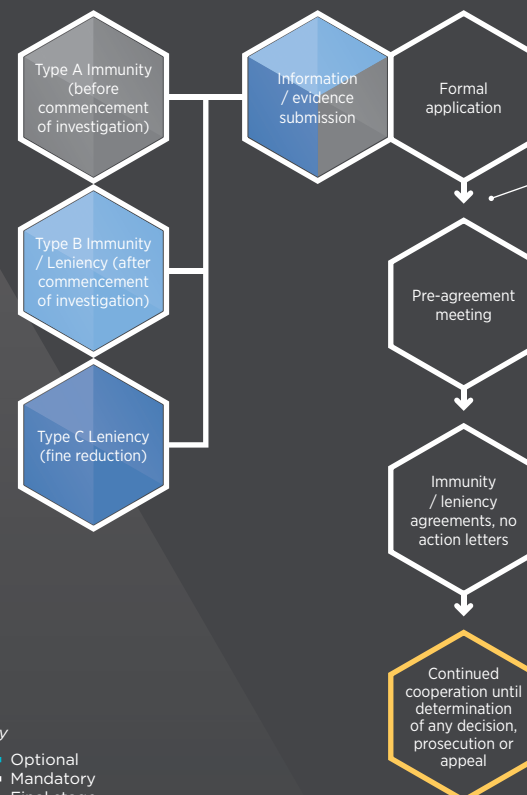
REQUIREMENTS FOR UNITED KINGDOM
Termination of participation: immediately after the application, unless CMA advises differently.

START

Initial contact (also on anonymous basis)

Marker request

Marker



Key

- Optional
- Mandatory
- Final stage

UNITED KINGDOM

To be used with the Reference Guide

COUNTRY

United States of America

AGENCY

Antitrust Division of the
US Department of Justice (DOJ)

FAST FACTS

Maximum fines

Undertaking: twice the gain derived from or loss caused by the violation
Individual: imprisonment for 10 years, monetary fine of US\$1 million

Scope of leniency

Criminal liability (only violations of Sherman Act)
Cartels

Leniency available for

Undertaking, individual

Reduction in fines

Amount: determined on case-by-case basis
Number of applicants: no limitation

Exclusion

An applicant which originated or led the activity or coerced others to participate cannot obtain immunity

Leniency plus

Yes

How to submit an application

An application can be submitted by contacting a DOJ attorney. Most often this process is commenced through a telephone call. Tel: (1) 202 514 3543

Available languages

English

Marker

Yes (only for the first-in applicants)

Brief description of leniency

The DOJ has both a corporate leniency policy and an individual leniency policy. Leniency in the United States means that the DOJ will not criminally charge an individual or an undertaking and its employees for their reported conduct. The leniency programme applies only to the first-in applicant.

There are two types of leniency **Type A Leniency** and **Type B Leniency**. Type A leniency is only available before an investigation has begun. Type B Leniency is available even after an investigation has begun. However, in the latter case the DOJ determines also whether granting leniency would be unfair to others, taking into account how early the undertaking came forward and whether it was the leader and / or originator of the illegal activity. The applicant must confess the wrong-doing. In the case of a company, the wrong-doing must be a corporate act, as opposed to that of an individual executive or officer.

In order to obtain leniency the undertaking must make appropriate restitution. In most cases the DOJ will

not require the leniency applicant to make direct restitution to the victims of the violation. The DOJ recognizes that identifying the victims and determining an appropriate restitution amount is difficult and complex. It will be determined during through private civil damage litigation.

There is no leniency policy expressly addressing subsequent (later than the first-in) applicants. Details of the cooperation and benefits are determined on a case-by-case basis. Companies that come in earlier and provide more valuable cooperation can obtain greater benefits.

Affirmative Amnesty occurs when the DOJ discovers potential cartel conduct before anyone has sought immunity. The DOJ then approaches an "insider," discloses the existence of the investigation, and exchanges immunity for the insider's cooperation in exposing the inner workings of the cartel.

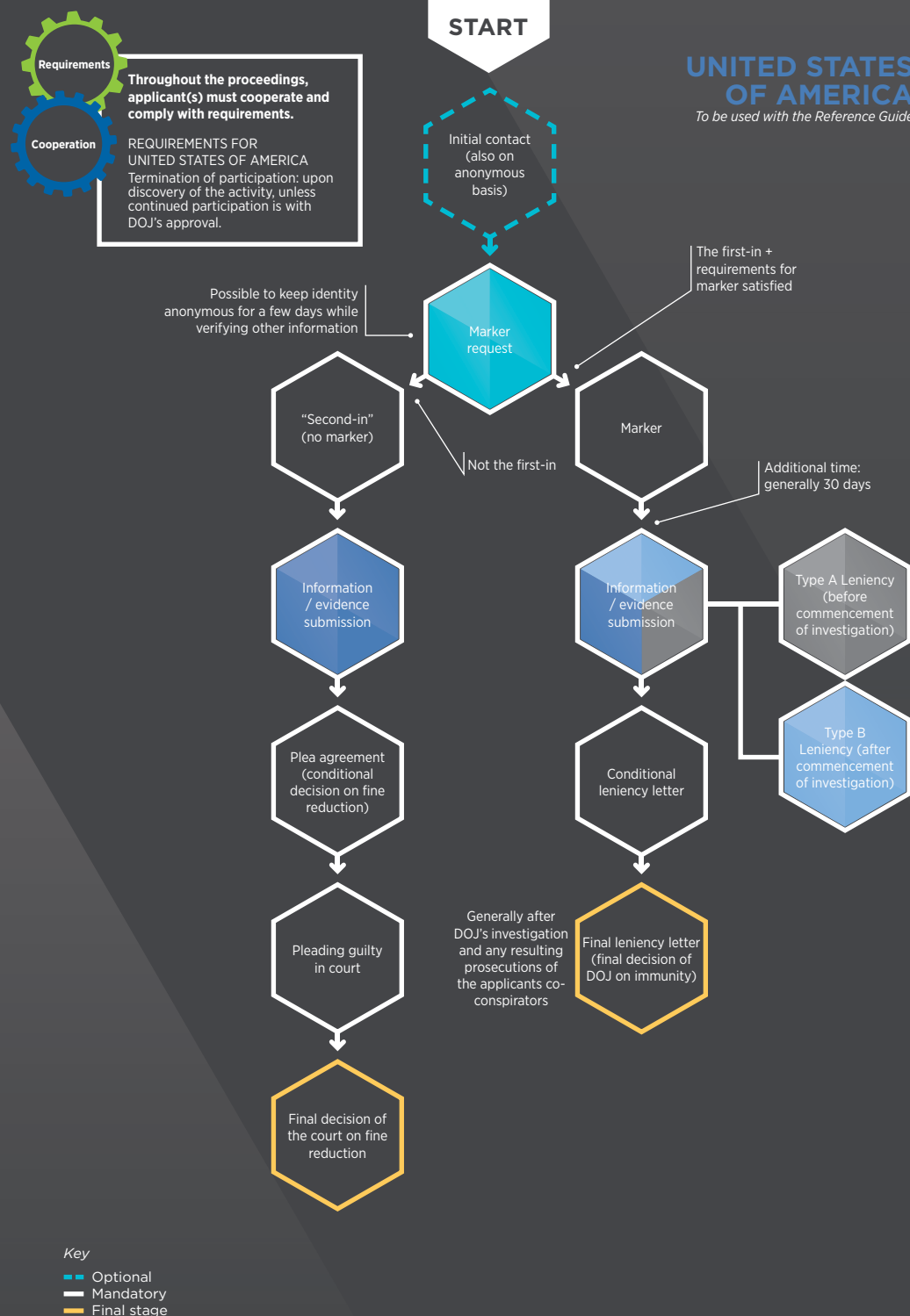
There is no uniform leniency proffer. Initial contact with the DOJ is generally conducted orally due to discovery risks in subsequent private damage actions.

If an immunity applicant misrepresents facts or fails to fully cooperate with the DOJ, the DOJ can rescind an immunity agreement. To date the DOJ has only attempted this action once.

Individuals

An individual may qualify for immunity even if the undertaking does not seek immunity (Individual Leniency Policy). An individual may qualify for immunity only if the DOJ has not already received information about the illegal activity from another source.

If an undertaking qualifies for Type A Leniency, its officers, directors, and employees can also qualify for immunity and will not be prosecuted criminally if they admit their involvement in the illegal activity, and cooperate in the investigation. If an undertaking does not qualify for Type A Leniency, individual immunity is considered by the DOJ under the Individual Leniency Policy. In case of second-in and subsequent applicants, benefits for individuals are determined on a case-by-case basis.



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THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce is the world's largest business organization with a network of over 6.5 million members in more than 130 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world's largest companies, SMEs, business associations and local chambers of commerce.

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ICC COMMISSION ON COMPETITION

The ICC Commission on Competition ensures that business needs and the realities of markets are taken into account in the formulation and implementation of competition laws and policies. It also identifies key issues in competition policy facing the international business community and contributes the business voice to debates to resolve these. The commission brings together over 300 leading experts in the field of Antitrust from 42 countries, working together to develop cutting-edge policy for business. As such, the Commission is recognized as a venue for exchange and innovation, and regularly shares the voice of business on antitrust issues with intergovernmental forums such as the European Commission, ICN, OECD as well as national antitrust regulators.

The production of the ICC Leniency Manual
was made possible thanks to the
generous contribution of K&L Gates LLP

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