

## **The Belgian Competition Authority adopts new leniency guidelines**

The board of the Belgian Competition Authority (BCA) has adopted new leniency guidelines on March 1<sup>st</sup>, 2016. These leniency guidelines replace the 2007 notice of the Competition Council on immunity from fines and reduction of fines in cartel cases.

The BCA organised a public consultation on the draft new leniency guidelines from November 2015 to January 2016. We received numerous comments and suggestions from competition lawyers and other stakeholders, which led to an enrichment of the text and clarification of certain points.

### **Why do we need a leniency program?**

Leniency is a tool that allows competition authorities to detect, terminate and sanction cartels more easily, in exchange for a more lenient treatment for the individuals, undertakings and associations of undertakings which have enabled the BCA to detect these practices and to sanction them.

The fight against cartels is one of the priorities of the BCA. Cartels cause serious harm to the economy and to consumers, including through artificial price increases or a restriction of supply.

Cartel agreements are usually secret, and therefore difficult to detect. As in other countries the legislator has ruled that, in the fight against cartels, it is in the public interest to grant individuals, undertakings and associations of undertakings who cooperate with the BCA full or partial immunity from fines.

### **The new leniency guidelines in a nutshell**

The old leniency guidelines date back to 2007. The revision of the guidelines pursues essentially three goals:

#### ***- Set out the practical rules for immunity from prosecution for individuals***

In 2013, the legislator has introduced fines of up to 10,000 Euros for individuals who participated in a cartel for their employer, coupled with the possibility of immunity from prosecution if they cooperate with the BCA. We therefore had to set out the practical terms and conditions for individuals to benefit from immunity from prosecution, as well as the relationship between leniency applications submitted by undertakings and immunity applications filed by their employees.

#### ***- Incorporate the changes to the European Model Leniency Program***

The leniency guidelines also had to be amended to take into account the changes to the European Model Leniency Program at the end of 2012. This program aims to harmonize the leniency programs of the national competition authorities of the Member States of the European Union. An important innovation that was introduced in the European Model Leniency Program in 2012 is the possibility of summary applications for all type of leniency applications, irrespective of type or place in the queue. This innovation

reduces the administrative burden associated with filing a leniency application, when different competition authorities within the European Union may be competent.

**- Clarify the practical modalities of the leniency program**

Finally, the changes are inspired by the practical experience that the BCA has gained since 2007 in applying the leniency guidelines. Specifically, the procedure and the obligations which apply to undertakings requesting full or partial immunity from fines have been clarified. In addition, the rules on confidentiality were reinforced to ensure the effectiveness of the leniency program.

**When will the new leniency guidelines enter into force?**

The new leniency guidelines will enter into force on the day of publication in the Belgian Official Gazette.

A convenience translation of the new leniency guidelines will be made available on the website of the BCA in the coming weeks.

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The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)