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Improved leniency policy: Overview for businesses in light of Ukraine's new competition law

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At the start of 2024, the Law of Ukraine No. 3295-IX, significantly amending the competition framework, and introducing, among others, an improved cartel leniency, came into force. Further, on 06 February, the respective new leniency procedure, approved by the Antimonopoly Committee of Ukraine (the "AMC") became effective as well.



This procedure replaces the former leniency regulations by aligning them more closely with the European Union standards. The document covers, in particular, the following issues:

- (i) grounds for getting full and partial immunity from fines;
- (ii) the option of utilising a "marker" (see Marker section below); and
- (iii) the opportunity to conduct preliminary consultations with the AMC.

Applying for Leniency

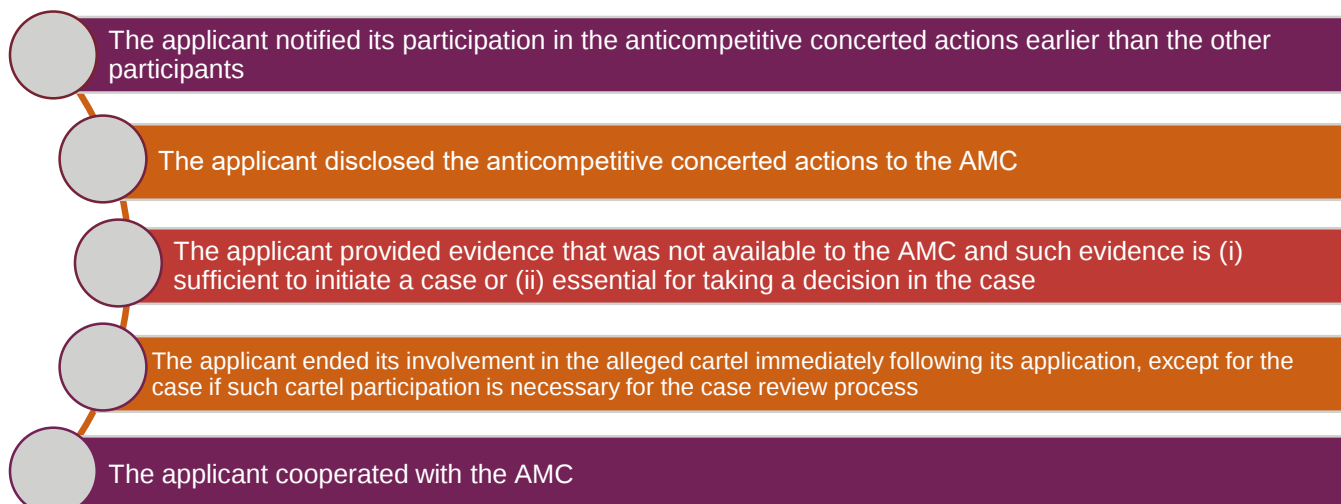


Any legal entity or an individual which participated in anticompetitive concerted actions may apply to the AMC to get immunity from a fine.

To apply, a cartel participant must submit an application to the AMC, where it notifies about existence of anticompetitive concerted actions and obliges to provide the authority with the evidence or information sufficient to initiate a case or which is of the essence for taking a decision in a case.

Full Immunity

Full immunity from a fine is applicable only if all of the following conditions are met:



Such cooperation with the AMC includes:



promptly providing the AMC with all relevant information and evidence relating to the alleged cartel that comes into its possession, or is available thereto



not disclosing the fact or any of the content of a given application before the AMC has issued a statement of any objections in the case, unless otherwise agreed



making current (and, if possible, former) employees and management available for interviews with the AMC

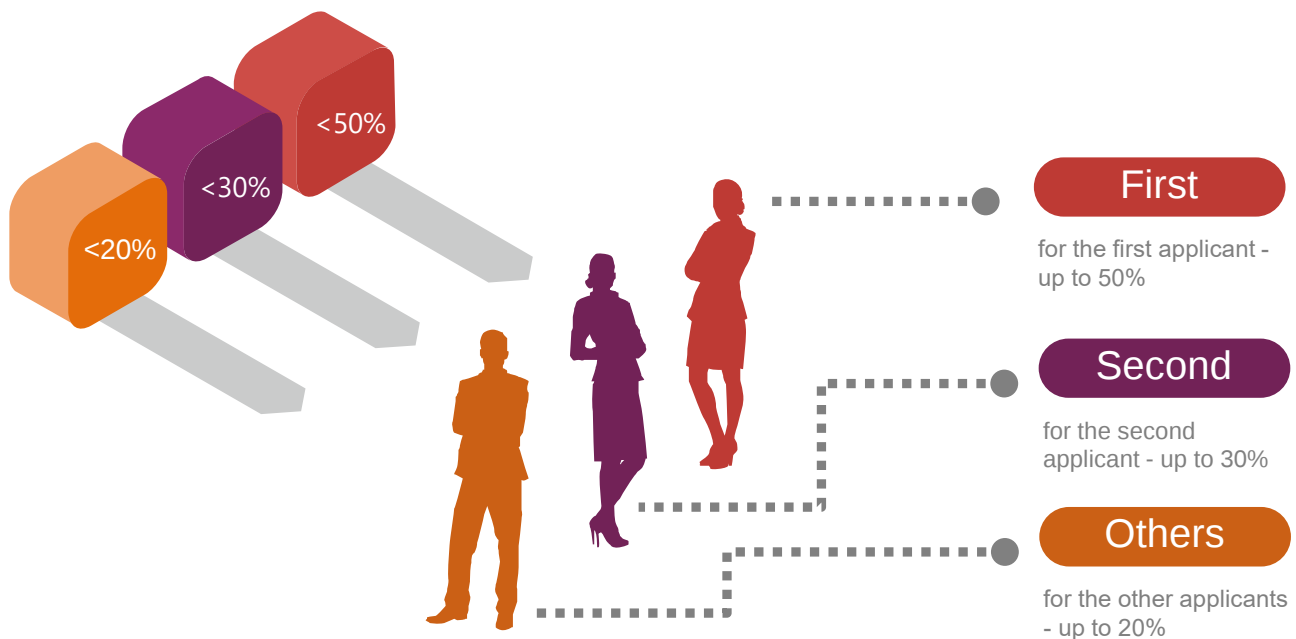


preventing the destruction, concealment or falsification of any relevant information or evidence relating to the alleged cartel

Partial Immunity (Reduction of fines)

All other cartel participants, which are not able to get full immunity, are eligible to have the respective levied fines reduced by up to 50% if they disclose their involvement in the alleged cartel, promptly end their involvement in the alleged cartel, cooperate with the AMC, and provide evidence that is of the essence for taking a decision in the case.

In this regard, the amount of the fine is reduced depending on the priority of the applicants, namely:



Marker



If an applicant is unable to immediately provide all the relevant information to the AMC, it may alternatively apply for a so-called marker. A marker is an instrument which preserves applicant's status as the first party to seek immunity.

In this regard, the AMC may grant a marker protecting applicant's place in a queue for a period to be specified on a case-by-case basis in order to enable time for the gathering of necessary information and evidence.

Preliminary consultations



Before applying for a leniency procedure, a cartel participant may apply for preliminary consultations on the required information and documents. Please note that any information obtained by the AMC during preliminary consultations shall be treated by the AMC as strictly confidential.



Those needing more detailed guidelines on leniency, or seeking to receive special training in this respect, please contact



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