



Press release

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Bundeskartellamt / Cartel Prosecution

Bundeskartellamt publishes new guidelines on its leniency programme and the setting of fines

Bonn, 11 October 2021: The Bundeskartellamt has published new guidelines on its leniency programme and on the setting of fines in cartel proceedings.

Andreas Mundt, President of the Bundeskartellamt: *“Key witnesses still play a crucial role in uncovering and prosecuting illegal cartels. With the help of the guidelines on our leniency programme companies which are involved in a cartel can more easily judge what they can expect and under what conditions they can be considered for exemption from paying a fine or having their fine considerably reduced.*

With our new guidelines on the setting of fines the Bundeskartellamt is modernising the way it sets fines. The method of calculation, in particular, has been changed and adapted more closely to court practice. However, the turnover achieved from the infringement of competition law still remains the key factor. On the whole, the level of fines will therefore not change significantly. In the guidelines we also explain the possibility adopted in the 10th Amendment to the German Competition Act, GWB, for existing compliance measures to be considered as a mitigating factor, although an infringement has actually occurred.”

The essential feature of leniency programmes is that they enable cartel participants to be granted immunity from or a reduction of the fine if they contribute to uncovering a cartel between competitors. Leniency programmes have been used

worldwide for decades to enforce competition law. They are of key importance in combating cartels because cartels can usually only be uncovered with the help of an insider. In Germany the Bundeskartellamt already issued general administrative principles on leniency in 2000 and revised these in 2006 (so-called “Leniency Programme”). Since then it has been possible to uncover a large number of cartels in a wide variety of sectors with the assistance of key witnesses.

In early 2021 the Leniency Programme was first enshrined into law as part of the 10th Amendment to the GWB and the provisions of the European ECN+-Directive were implemented. These essentially correspond with the Bundeskartellamt’s previous Leniency Programme. In revising the supplementary guidelines, as in the case of the Leniency Programme, the Bundeskartellamt has provided specific details on how the proceeding is conducted, the exercise of its discretionary powers in determining the fine and on the amount of the reduction of the fine.

Amount of fine

In the amendment a number of criteria for setting the amount of the fine were also enshrined into law. For example, the turnover achieved with the products or services that were the subject of the anti-competitive agreement, i.e. the turnover linked to the infringement, has now been legally established as a criterion. In addition, precautionary measures taken by a company prior to and following the infringement to prevent and uncover further infringements (compliance) can be taken into consideration under certain conditions.

In revising its guidelines for the setting of fines the Bundeskartellamt also takes greater account of the practice of the German courts in that a reference value will be determined in future based on the turnover linked to the infringement and the size of the company.

Ultimately the amendments will create more flexibility in the individual case but no essential change in the level of fines is expected.

The guidelines on the leniency programme, an information leaflet with the key facts and the guidelines for the setting of fines are available at the [Bundeskartellamt's website](#).

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