REGULATION
OF THE COUNCIL OF MINISTERS

of 26 January 2009

concerning the mode of proceeding in cases of undertakings' applications to the President of the Office of Competition and Consumer Protection for immunity from or reduction of fines

Pursuant to Article 109(5) of the Act of 16 February 2007 on competition and consumer protection (Journal of Laws, No. 50, item 331, as amended[1]), it is provided as follows:

§ 1. The Regulation specifies the mode of proceeding in cases of undertakings' applications to the President of the Office of Competition and Consumer Protection, hereinafter referred to as the "President of the Office" for immunity from or reduction of the fines referred to in Article 106(1)(1) or (2) of the Act of 16 February 2007 on competition and consumer protection, hereinafter referred to as the "Act".

§ 2. 1. An undertaking which believes that it meets the requirements referred to in Article 109(1) or (2) of the Act may submit to the President of the Office a written application for immunity from or reduction of a fine, hereinafter referred to as "application". The President of the Office provides a confirmation of the date and time of receipt of the application.

2. An application sent by electronic mail or by fax to the electronic mail address or the fax number indicated on the website of the Office of Competition and Consumer Protection, hereinafter referred to as the "Office", is considered as submitted on the day and time when it was received by the Office, provided that the document's original or its copy, authenticated in the way set out in Article 51 of the Act, is delivered to the President of the Office not later than in 3 days of the day when the application was received by the Office by electronic mail or fax.

3. The undertaking may also submit the application orally for the record. The employee who is preparing the record puts the date and the time on the document.

4. The date of receipt of an application submitted orally for the record is the date and hour when the record was commenced to be prepared.

§ 3. 1. The undertaking encloses with the application the evidence or information referred to in Article 109(1)(1) or the evidence referred to in Article 109(2)(1) of the Act.

2. In the application the undertaking may present a description of the agreement, indicating, in particular:

1) the undertakings which concluded the agreement,

2) the products or services which the agreement refers to,

3) the territory which the agreement covers,

[1] Amendments to the Act were published in the Journal of Laws in 2007, No. 99, item 660 and No. 171, item 1206 and in 2008, No. 157, item 976, No. 223, item 1458 and No. 227, item 1505.

4) the purpose of the agreement,

5) the circumstances of concluding the agreement,

6) the roles of the particular participants in the agreement,

7) the names, surnames and official posts of the persons performing significant functions in the agreement,

8) the duration of the agreement,

9) whether an application for immunity from or reduction of a fine has also been submitted to the national competition authorities of the European Union Member States or to the European Commission.

3. Moreover, the undertaking encloses with the application the following:

1) a statement that the undertaking has ceased its participation in the prohibited agreement, specifying the date of cessation,

2) a statement that the undertaking submitting the application was not the instigator of the agreement and that it did not induce other undertakings to participate in the agreement – in cases referred to in Article 109(1) of the Act.

§ 4. The undertaking may also enclose with its application other evidence or information indicating the existence of the prohibited agreement.

§ 5. 1. The undertaking may submit an application indicating, in particular, the following:

1) the undertakings which concluded the agreement,

2) the products or services which the agreement refers to,

3) the territory which the agreement covers,

4) the duration of the agreement,

5) the purpose of the agreement,

6) whether an application for immunity from or reduction of a fine has been also submitted to the national competition authorities of the European Union Member States or to the European Commission,

- if the application contains the preliminary information or evidence referred to in Article 109(1)(1) or (2)(1) of the Act.

2. With the application the undertaking encloses the statements referred to in § 3(3) above.

3. The President of the Office provides a confirmation of the date and time of the application’s submission, specifying, without delay, the scope of information that needs to be produced to complete the application and the deadline within which the undertaking is obliged to complete the application.

4. The application, having been completed within the deadline referred to in section 3 above, is considered as submitted on the date when it was submitted as set out in section 1 above.

5. Failure to provide the necessary evidence or information referred to in Article 109(1)(1) or (2)(1) of the Act on time results in dismissing the application.

§ 6. In the event that the President of the Office finds that the application is incomplete, and in particular that the attachments referred to in § 3 are missing, or that the application contains formal defects, the President of the Office requests, without delay, the undertaking to complete the application within a specified deadline. If the application is not completed within the specified deadline, the President of the Office dismisses the application, and notifies, without delay, the undertaking in writing of this fact, indicating the reasons for the dismissal.

§ 7. In the event that, based on the analysis of the application, the President of the Office finds that the undertaking does not meet the requirements referred to in Article 109(1)(1), or (2)(1), the President of the Office notifies, without delay, the undertaking in writing about the dismissal of the application.

§ 8. 1. In the event that, based on the analysis of the application, the President of the Office finds that the undertaking potentially meets the requirements referred to in Article 109(1) or (2) of the Act, the President of the Office notifies, without delay, the undertaking in writing of this fact. In the notification, the President of the Office also informs the applicant that its acceptance is of preliminary character and that it shall undergo verification in the course of the antitrust proceedings; the undertaking is also instructed about the legal consequences of the failure to cooperate or of inadequate cooperation with the President of the Office.

2. In the notification referred to in section 1 above, the President of the Office also informs the undertaking of the order in which the application was submitted to the President of the Office.

§ 9. In the case of dismissing an application, the application shall not be taken into consideration when establishing the order of submitted applications for the purposes of applying Article 109(1)-(4) and Article 110 of the Act.

§ 10. 1. The undertaking may withdraw its application at any time before the President of the Office issues the decision concerning the prohibited agreement to which the application refers.

2. Withdrawal of an application shall not influence the order of the remaining applications already submitted.

§ 11. 1. An undertaking which believes that it meets the requirements referred to in Article 109(1)(1) of the Act may submit a summary application in the event that it has submitted to the European Commission an application for immunity from fines for participation in a prohibited agreement covering the territory of more than three Member States of the European Union.

2. The summary application indicates:

1) the undertakings which concluded the agreement,

2) the products or services which the agreement refers to,

3) the territory the agreement covers,

4) the purpose of the agreement,

5) the duration of the agreement,

6) the European Union Member States where evidence for the existence of the agreement exists.

3. The summary application also contains information about applications that have been submitted or that will be submitted by the undertaking in other European Union Member States or to the European Commission.

4. With the summary application, the undertaking encloses the statements referred to in § 3(3).

5. In the event of instituting proceedings concerning the agreement to which the summary application refers, the President of the Office requests the undertaking to complete the summary application within a specified deadline with the information or evidence referred to in Article 109(1)(1) of the Act.

6. The application completed within the deadline referred to in section 5 above is considered as submitted on the date when the summary application was submitted.

§ 12. Applications submitted before the date of this Regulation's entry into force are subject to the previous provisions.

§ 13. The Regulation of the Council of Ministers of 17 July 2007 concerning the mode of proceeding in cases of undertakings' applications to the President of the Office of Competition and Consumer Protection for immunity from or reduction of fines, is repealed (Journal of Laws No 134, item 938).

§ 14. This Regulation shall enter into force after 14 days of the date of its publication.