

• Austria: Revised Manual on Leniency adopted

On the occasion of the recent amendment of the Austrian competition law (see ECN Brief 1/2013) the Federal Competition Authority (FCA) has revised the existing Manual on Leniency (ML). The first ML had been published with the coming into force of the legal rules on leniency in 2006 and has been revised in November 2011 (see ECN Brief 1/2012). The actual revision of the ML takes into account the case law of the Cartel Court and the Supreme Cartel Court and seeks a further alignment with the ECN Model Leniency Programme (MLP), including its latest revision published in November 2012.

The major changes are as follows:

- Level of evidence to be provided by the first leniency applicant (so called 'type 1A'): the new ML contains a detailed list of evidence and information to be provided which is in line with the MLP. Since there was no indication of the necessary evidence to be provided by the leniency applicant in the previous Austrian ML, the evidential threshold for immunity is thus increased
- Immunity application after inspections by the FCA (so-called 'type 1B') based on the new § 11 (3) 1 lit b Competition Act: The ML clarifies that, despite the open formulation of the legal basis, immunity will be granted only once either to a type 1A or to a type 1B applicant in a given case. A type 1B applicant submits evidence after the FCA has carried out an inspection or has sufficient evidence to apply for a search warrant. The applicant has to provide additional evidence that allows successful proof of an infringement of Art 101 TFEU (or § 1 Cartel Act) in a procedure before the Cartel Court.
- Marker system: In alignment with the MLP the new ML opens the marker system to all immunity applicants (as previously it was available only for cases with EU-dimension). The FCA grants a marker when an applicant delivers all information required by the form attached to the ML. The FCA sets a period not exceeding eight weeks within which the applicant has to perfect the marker.
- Summary applications: An applicant that has filed, or is in the process of filing, a leniency application with the European Commission may file summary applications with FCA. The marker is granted based on the date and time of the summary application. In this case, full submission of all relevant evidence within a given time limit is only required by the FCA, if it decides to act upon the case.

Further amendments include the possibility to confidentially approach the FCA to clarify if immunity is still available in a particular case as well as a clarification of the applicant's duty to cooperate (e.g. with relation to former employees). The ML also clarifies that applications for immunity or for reduction of fines are not taken into consideration once the FCA has filed an application to impose a fine with the Cartel Court.

See Manual (in German)