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**CCS GUIDELINES ON LENIENT
TREATMENT FOR UNDERTAKINGS
COMING FORWARD WITH
INFORMATION ON CARTEL ACTIVITY
~~CASES 2009~~**

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LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY **CASES**

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1 INTRODUCTION

1.1 Under section 34 of the Competition Act (Chapter 50B) ("the Act"), agreements between undertakings, decisions by associations of undertakings or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore are prohibited.

1.2 Section 34 extends to prohibit cartel activities.¹ Cartel activities include, amongst other things, the following:

- Price-Fixing:
E.g. where parties agree, directly or indirectly, on the prices;
- Establishment of Restrictions / Quotas on Output:
E.g. agreements which restrict output or production;
- Bid Rigging:
E.g. arrangements where parties collude when submitting their tenders;
- Market Sharing Agreements.

Further information on the section 34 prohibition can be found in the *CCS Guidelines on the Section 34 Prohibition*.

1.3 Cartels hurt consumers because they restrict or remove competition between market players and thereby remove the incentive for market players to be efficient or to innovate.

1.4 As cartel activities infringe the section 34 prohibition, undertakings participating or which have participated in them are liable under section 69 of the Act to a financial penalty. Such undertakings may wish to inform the [Competition Commission of Singapore \("CCS"\)](#) of the existence of the cartel activity but might be deterred from doing so because of the risk of incurring large financial penalties.

1.5 Due to the secret nature of cartels, undertakings participating or which have participated in them should be given an incentive to come forward and inform ~~the~~ CCS of the cartel's activities. The policy of granting lenient treatment to these undertakings which cooperate with ~~the~~ CCS outweighs the policy objectives of imposing financial penalties on such cartel participants.

¹ [Cartel activities in these Guidelines refer to agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object the prevention, restriction or distortion of competition within Singapore.](#)

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1.6 As leniency programmes have been found to be effective in other competition law regimes, a similar programme ~~will form~~ forms part of Singapore's enforcement strategy.

1.7 These guidelines are not a substitute for the Act, the regulations and orders. They may be revised should the need arise. The examples in these guidelines are for illustration. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of ~~the~~ CCS. In applying these guidelines, the facts and circumstances of each case will be considered. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

2. TOTAL IMMUNITY FOR THE FIRST TO COME FORWARD BEFORE AN INVESTIGATION HAS COMMENCED

2.1 Under section 69(4) of the Act, an undertaking which has intentionally or negligently infringed the Act's prohibitions faces a financial penalty of up to 10% of its business turnover for each year of infringement (up to a maximum of 3 years).

2.2 ~~The~~ CCS will nevertheless grant an undertaking the benefit of total immunity from financial penalties if all of the following 2 conditions are satisfied:

- The undertaking is the first to provide ~~the~~ CCS with evidence of the cartel activity before an investigation² has commenced, *provided that* ~~the~~ CCS does not already have sufficient information to establish the existence of the alleged cartel activity;
- The undertaking:
 - provides ~~the~~ CCS with all the information, documents and evidence available to it regarding the cartel activity; immediately. Such information, documents and evidence must provide CCS with sufficient basis to commence an investigation;³
 - grants a waiver of confidentiality to CCS in respect of any jurisdiction where the applicant has also applied for leniency or any other regulatory authority for which it has informed of the conduct;
 - unconditionally admits to the conduct for which leniency is sought and details the extent to which this had an impact in Singapore by preventing, restricting or distorting competition;
 - maintains continuous and complete co-operation throughout the investigation and until the conclusion of any action by ~~the~~ CCS arising as a result of the investigation; and

² By the exercise of powers under sections 63 to 65 of the Act.

³ The legal threshold to commence an investigation is set out in section 62 of the Act: CCS may conduct an investigation if there are reasonable grounds for suspecting that, *inter alia*, the section 34 prohibition has been infringed by any agreement.

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- refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to ~~the~~ CCS (except as may be directed by ~~the~~ CCS);

- ~~• must not have been the one to initiate the cartel; and~~

- ~~• must not have taken any steps to coerce another undertaking to take part in the cartel activity~~

2.3 If an undertaking does not qualify for total immunity under paragraph 2.2, it may still benefit from a reduction in the financial penalty of up to 100% under paragraphs 3.1 and 3.2.

2.4 An undertaking which has initiated or coerced another undertaking(s) to participate in the cartel will not be eligible for total immunity nor can it expect to receive a reduction in the financial penalty of up to 100% under paragraphs 3.1 and 3.2. However, such undertakings can still apply for leniency and benefit from a reduction in the financial penalty of up to 50% subject to the conditions set out in paragraphs 4.1 and 4.2.

3. REDUCTION OF UP TO 100 PER CENT IN THE LEVEL OF FINANCIAL PENALTIES WHERE THE UNDERTAKING IS THE FIRST TO COME FORWARD BUT WHICH DOES SO ONLY AFTER AN INVESTIGATION HAS COMMENCED

3.1 An undertaking may benefit from a reduction in the financial penalty of up to 100% if:

- the undertaking seeking immunity is the first to provide ~~the~~ CCS with evidence of the cartel activity;
- this information is given to ~~the~~ CCS after ~~the~~ CCS has started an investigation but before the CCS has sufficient information to issue a written notice under section 68(1) that it proposes to make a decision that the section 34 prohibition has been infringed; ~~and~~
- the conditions under the second bullet in paragraph 2.2 are satisfied;
- the information adds significant value to CCS's investigation (i.e. it genuinely advances the investigation);
- the undertaking was not the one to initiate the cartel; and
- the undertaking must not have taken any steps to coerce another undertaking to take part in the cartel activity.

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3.2 Any reduction in the level of the financial penalty under these circumstances is discretionary. In exercising this discretion, ~~the~~ CCS will take into account:

- the stage at which the undertaking comes forward;
- the evidence already in ~~the~~ CCS's possession; and
- the quality of the information provided by the undertaking.

4 SUBSEQUENT LENIENCY APPLICANTS: REDUCTION OF UP TO 50 PER CENT IN THE LEVEL OF FINANCIAL PENALTIES

4.1 Undertakings which provide evidence of cartel activity before ~~the~~ CCS issues a written notice under section 68(1) of its intention to make a decision that the section 34 prohibition has been infringed but are not the first to come forward may be granted a reduction of up to 50 ~~per cent~~% in the amount of the financial penalty which would otherwise be imposed, if the conditions under the second bullet in paragraph 2.2 are satisfied and the information adds significant value to CCS's investigation in that it genuinely advances the investigation.

4.2 Any reduction in the level of the financial penalty under these circumstances is discretionary. In exercising this discretion, ~~the~~ CCS will take into account:

- the stage at which the undertaking comes forward;
- the evidence already in ~~the~~ CCS's possession; and
- the quality of the information provided by the undertaking.

5 PROCEDURE FOR REQUESTING IMMUNITY OR A REDUCTION IN THE LEVEL OF PENALTIES

5.1 An undertaking ~~which~~that wishes to take advantage of the lenient treatment detailed in these guidelines must contact ~~the~~ CCS. Anyone contacting ~~the~~ CCS on the undertaking's behalf must have power to represent the undertaking.

5.2 Applications for leniency may be made either orally or in writing. Initial contact can be made by telephone to the Assistant Chief Executive or the Director of the Legal and Enforcement Divisions of CCS. Although CCS is of the view that correspondence between CCS and the applicant and/or its legal representatives should be in writing for administrative matters, CCS is prepared to consider conducting the communications between the applicant and CCS orally, whether by way of meeting or telephone conferences.

5.3 Initial contact with or 'feelers' to ~~the~~ CCS may be made anonymously ~~to find out if leniency is available.~~ However, for the leniency application ~~proper~~ to be properly recorded and proceeded with, the undertaking's name must be given to ~~the~~ CCS.

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~~5.4—The undertaking making a leniency application should immediately provide the CCS with all the evidence relating to the suspected infringement available to it at the time of the submission.~~

5.4 ~~5.5—The~~ CCS will provide a marker system for leniency applications under paragraphs 2 and 3 above. ~~If the~~ where an undertaking is ~~unable~~not able to ~~satisfy paragraph 5.4 above,~~immediately provide all the information, documents and evidence available to it regarding the ~~undertaking may alternatively apply for a cartel activity. A marker to secure~~secures an undertaking's position in the queue and ~~discuss the timing and process of perfecting the marker by the prompt provision of relevant information. For an undertaking to secure a marker, the undertaking must provide its name and a description of the cartel conduct in sufficient detail to allow the CCS to determine that no other undertaking has applied for immunity or a reduction of up to 100 per cent, for such similar conduct, for immunity under paragraph 2 or a reduction in the financial penalty of up to 100% under paragraph 3 for a period to be specified by CCS on a case-by-case basis in order to allow for the gathering of the necessary information, documents and evidence.~~

~~5.6—A marker protects an undertaking's place in the queue for a given limited period of time and allows it to gather the necessary information and evidence in order to perfect the marker.~~

~~5.7—To perfect a marker, the undertaking must provide all the evidence relating to the suspected infringement available to it at the time of the submission.~~

~~5.8—If the undertaking fails to perfect the marker, the next undertaking in the marker queue will be allowed to perfect its marker, to obtain immunity or a reduction of up to 100 per cent in financial penalties. If the marker is perfected, the other undertakings in the marker queue will be informed so that they can decide whether to submit leniency applications for consideration under paragraph 4 of these guidelines. The marker system will not apply to leniency applications under paragraph 4 and such applicants should immediately provide the CCS with all the evidence relating to the suspected infringement available to it at the time of the submission.~~

5.5 To secure a marker, an applicant must specify the name of the undertaking(s) for which the marker is sought and provide a description of the cartel activity. The applicant is also expected to define the market(s) in which the cartel activity occurred and detail the impact of the conduct on the identified relevant markets in Singapore. Sufficient detail of the cartel activity, including the estimated duration of the cartel activity and the parties to the cartel, must be given to allow CCS to determine that no other undertaking has applied for leniency for such similar conduct.

5.6 A marker shall be granted by way of a letter (unless an alternative mode of communication is agreed to by CCS) setting out the date on which the marker was granted, the undertaking(s) to which the marker applies, the subject matter and scope of the conduct for which the marker was sought.

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- 5.7 The grant of a marker is discretionary. However, its grant is expected to be the norm rather than the exception. An applicant will only be informed whether it has been the first to come forward.
- 5.8 To perfect a marker, the undertaking must, within the period specified by CCS, provide information, documents and evidence which meet the requirements for a grant of conditional immunity or leniency (see paragraph 5.11 below). Where an extension of time is required by the undertaking for the perfection of the marker, this will be considered by CCS on a case-by-case basis. Applications for an extension of time should be made at least five working days before the expiry of the deadline set. If the undertaking fails to perfect the marker, the next undertaking in the marker queue will be eligible to obtain immunity or a reduction in the financial penalty of up to 100 %.
- 5.9 The marker system will not apply to leniency applications under paragraph 4 and such applicants should immediately provide CCS with all the evidence relating to the cartel activity. Where an undertaking is not immediately able to provide all the information, documents and evidence available to it regarding the cartel activity, a reasonable time frame for the provision of this information can be agreed by CCS. An applicant will be required when applying for leniency to provide its name and a description of the cartel activity. The applicant is also expected to define the market(s) in which the infringing conduct occurred and detail the impact of the conduct on the identified relevant markets in Singapore. This will assist CCS in determining a reasonable time-frame for furnishing all information, documents and evidence to CCS.
- 5.10 Undertakings may provide information relating to a suspected infringement by way of an oral corporate statement. Information that is public or is general market information should be provided in a document. Oral corporate statements will be recorded and transcribed at CCS's premises. CCS may request for the applicant or the applicant's legal representatives to provide secretarial and/or administrative support, where appropriate. Where an oral corporate statement is made, the applicant and/or its legal representatives will be given the opportunity to verify the accuracy of the CCS's transcript.

Grant of Conditional Immunity or Leniency

- 5.11 For the grant of conditional immunity or leniency, an applicant must provide CCS with all the information, documents and evidence available to it regarding the cartel activity, and such information, information and evidence must provide CCS with a sufficient basis for commencing an investigation or add significant value to CCS's investigation. In practice, this means that the information is sufficient to allow CCS to exercise its formal powers of investigation or advance the investigation. Examples of the types of information and documents required by CCS would include documentary records evidencing the existence of cartel activity, the identification of personnel formerly and currently employed by the undertaking who had engaged in the conduct for which leniency is sought and the provision of information by these personnel about the cartel activity in an interview with CCS.

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5.12 Once CCS considers that the conditions for conditional immunity or leniency have been met, CCS will issue a letter to the applicant confirming the grant of conditional immunity or leniency. The letter will state the conditions and continuing obligations that the applicant has to meet to maintain its conditional immunity or leniency. Failure to abide with the conditions and obligations may lead to CCS revoking the grant of conditional immunity or leniency.

Grant of Immunity or Leniency

5.13 When issuing a Provisional Infringement Decision, CCS will inform an applicant in writing whether immunity or leniency has been granted. The letter will record the scope of the immunity or leniency granted.

6 ADDITIONAL REDUCTION IN FINANCIAL PENALTIES (LENIENCY PLUS)

6.1 An undertaking co-operating with an investigation by ~~the~~ CCS in relation to cartel activity in one market (the first market) may also be involved in a completely separate cartel activity in another market (the second market) which also infringes the section 34 prohibition.

6.2 To qualify for leniency plus, ~~the~~ CCS would have to be satisfied that:

- The evidence provided by the undertaking relates to a completely separate cartel activity. The fact that the activity is in a separate market is a good indicator, but not always decisive; and
- The undertaking would qualify for total immunity from financial penalties or a reduction of up to 100 per cent in the amount of the financial penalty, under paragraphs 2 and 3 in relation to its activities in the second market.

6.3 If ~~the~~ CCS is satisfied with the above, the undertaking will receive a reduction in the financial penalties imposed on it in relation to the first market, which is additional to the reduction which it would have received for its co-operation in the first market alone. For the avoidance of doubt, the undertaking does not need to be in receipt of leniency in respect of the first market to receive this reduction. It is sufficient for the undertaking to be receiving a reduction, by way of mitigation, for co-operation, in the first market.

6.4 For example, as a result of an investigation by ~~the~~ CCS of manufacturers, including XYZ Ltd, in market A, XYZ Ltd carries out an internal investigation and discovers that, ~~as well as having it has~~ participated in cartel activity in Market B. XYZ Ltd has been co-operating with ~~the CCS'CCS's~~ investigation in Market A and is interested in seeking lenient treatment disclosing its participation in cartel activity in Market B.

6.5 Assuming XYZ Ltd qualifies for total immunity in relation to Market B, it can also obtain a reduction in financial penalty in relation to Market A in addition to the reduction it would have received for co-operation in the investigation in Market A

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alone, i.e. an additional reduction in respect of Market A as a result of its co-operation in the investigation into Market B.

7 QUALITY OF INFORMATION PROVIDED BY UNDERTAKING

7.1 As a minimum to meet the conditions for lenient treatment by ~~the~~ CCS, the information, documents and evidence provided by the undertaking under these guidelines must be such as to provide ~~the~~ CCS with a sufficient basis for taking forward a credible investigation or to add significant value to ~~the~~ CCS's investigation. In practice, this means that the information is sufficient to allow ~~the~~ CCS to exercise its formal powers of investigation or genuinely advances ~~the~~ CCS's investigation.

8 CONFIDENTIALITY

8.1 An undertaking coming forward with evidence of cartel activity may in particular be concerned about the disclosure of its identity as an undertaking which has volunteered information. ~~The~~ CCS will therefore endeavour, to the extent that is consistent with its obligations to disclose or exchange information, to keep the identity of such undertakings confidential throughout the course of its investigation, until ~~the~~ CCS issues a written notice under section 68(1) of its intention to make a decision that the section 34 prohibition has been infringed.

8.2 An applicant may submit a request for confidentiality in relation to information provided to CCS. Part 9 of CCS Guidelines on the Major Provisions provides details on CCS's obligations under section 89 and the exceptions under which disclosure is authorised.

9 DISCLOSURE AND USE OF INFORMATION

9.1 Information submitted or obtained from the applicant and its employees or former employees may be used by CCS for its investigation and against the applicant or third parties in proceedings under the Act.

9.2 Subject to confidentiality, information that is in documentary form provided by the applicant will be disclosed to addressees of a Provisional Infringement Decision, during the course of access to CCS's file after a Provisional Infringement Decision has been issued. This will include any corporate statement that is provided as a document to CCS. Access to any such corporate statement is only granted to addressees of a Provisional Infringement Decision, provided an addressee undertakes not to make any copy by mechanical or electronic means.

9.3 In the event that:

- An immunity or leniency application is rejected;

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- Immunity or leniency is not granted;
- Immunity or leniency is revoked by CCS; or
- The applicant withdraws its application for immunity or leniency;

the applicant may withdraw the information submitted for the purposes of its application or still provide the information to CCS and request that CCS consider a mitigating reduction in financial penalties in view of its co-operation. If information is withdrawn by the applicant, this does not prevent CCS from using its formal powers of investigation under the Act to obtain the information.

9.4 Should CCS discontinue its investigation without the issuance of an Infringement Decision, all information obtained from the applicant will be retained by CCS.

9.5 The information obtained from the applicant may be used by CCS if the investigation or part thereof is re-opened. For avoidance of doubt, the conditional immunity or leniency previously granted to the applicant will be available to that applicant in the event CCS re-opens its investigation or part thereof.

~~9~~ ~~EFFECT OF LENIENCY~~

~~9.1~~ ~~Leniency~~

10 EFFECT OF LENIENT TREATMENT

10.1 ~~Leniency~~ Lenient treatment does *not* protect the undertaking from the other consequences of infringing the law, which include:

- the fact that the infringing provision is void and therefore cannot be enforced; and
- the possibility that third parties who consider themselves as having been harmed by the cartel may have a claim under a private right of action.

Leniency Lenient treatment also does not provide immunity from any penalty that may be imposed on the undertaking by other competition authorities outside of Singapore.