

**COMPETITION COMMISSION OF SINGAPORE
CONSULTATION DOCUMENTS ON
GUIDELINE ON LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD
WITH INFORMATION IN CARTEL ACTIVITY CASES**

INTRODUCTION

1. On 1 January 2006, the section 34 prohibition against anti-competitive agreements came into force. At the same time, the Competition Commission of Singapore ('CCS') put in place a leniency programme to further the objective of uncovering cartels that infringe the section 34 prohibition. The CCS also issued the Guideline on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity Cases ('Guideline') to explain how the CCS would operate its leniency programme.

CHANGES

2. The proposed changes to the Guideline aim at providing a marker system and a leniency plus system to enhance the effectiveness of the CCS' enforcement action against cartels for the ultimate benefit of the competition process and the consumers. The draft revised Guideline is set out in Annex A.

MARKER SYSTEM

3. It is proposed that CCS introduces a marker system for cartel members, who are the first to apply for leniency in relation to a cartel. An applicant, who is first in line (before an investigation starts) stands to qualify for total immunity from financial penalty. If the applicant is first in line, albeit that an investigation has already been started, the applicant stands to qualify for a reduction of up to 100 per cent in the level of financial penalty.
4. Such applicants will be assigned a marker and allowed a certain time frame to gather the necessary information and evidence to meet the evidential threshold for immunity. This timeframe would be decided based on the circumstances of the case and may be extended if required. To secure a marker, the applicant must provide the name of his undertaking and a description of the cartel conduct in sufficient detail to allow CCS to ensure that no other undertaking has applied for leniency for such similar conduct.
5. A marker protects an undertaking's place in the queue for a given period of time and allows it to gather the necessary information and evidence to perfect the marker. CCS will not replace the first applicant, even if a second applicant satisfies all conditions immediately, until the timeframe has passed for the first applicant. However in such a situation, CCS will also assess if the first applicant genuinely requires the remaining time to satisfy the conditions to perfect the marker. The introduction of a marker system allows applicants to secure a position whilst giving them time to prepare documents and evidence which are necessary to meet the evidential threshold. There is transparency as CCS will inform subsequent applicants if there is already someone ahead of them in the queue.

6. A new management may, after taking over a company, discover that the acquired company was involved in cartel activity and decide to apply for leniency from the CCS. The grant of a marker will give the new management some time to gather evidence on the cartel activity while maintaining their place in the queue for leniency.
7. The marker system will not apply to subsequent leniency applicants (who may be entitled up to 50 per cent in financial penalties). This is to encourage leniency applicants to act quickly if they want to benefit from total immunity or a possible 100 per cent reduction in financial penalty. If a marker is perfected, the other undertakings in the marker queue will be informed so that they can decide whether to submit leniency applications for a reduction of up to 50 per cent in financial penalties. These subsequent leniency applicants will be required to gather their evidence before applying for leniency.

LENIENCY PLUS SYSTEM

8. CCS proposes to put in place a Leniency Plus system to encourage cartel members, who fail to obtain 100 per cent reduction in respect of one cartel to provide information of its involvement in a completely separate cartel activity in a separate market. In addition to immunity or a reduction of up to 100 per cent in financial penalties in the second cartel that was revealed, the applicant may obtain a significant discount on the financial penalty for the first cartel activity. The introduction of a Leniency Plus system is to enable CCS to detect other hidden cartel activities.
9. A cartel member, already under investigation for a cartel in one market, may apply for leniency plus in relation to a second cartel activity, even though it may not have received leniency in respect of the cartel activity in the first market. It is sufficient that it is receiving a reduction, by way of mitigation, for co-operation, in the latter cartel. The undertaking may have its penalty further reduced for the first cartel activity provided it qualifies for immunity or a reduction of up to 100 per cent in financial penalties for the second cartel activity. The actual reduction in financial penalty for the first cartel activity would be decided on a case-by-case basis and is discretionary, depending on, amongst other things, the stage where the applicant comes forward with evidence of the second cartel activity, the evidence that the applicant provides and the evidence that CCS already has in possession, in relation to the second cartel.
10. An example: - as a result of an investigation by CCS of manufacturers, including XYZ Ltd, in Market A, XYZ Ltd carries out an internal investigation and discovers that, as well as having participated in cartel activity in Market A, one of its divisions has participated in separate cartel activity in Market B. XYZ Ltd has been co-operating with CCS' investigation in Market A and is interested in seeking lenient treatment by disclosing its participation in cartel activity in Market B.
11. Assuming XYZ Ltd qualifies for immunity or up to a reduction of up to 100 per cent in financial penalties in relation to the cartel in Market B, it can also obtain a reduction in financial penalty in relation to the cartel activity in Market A over and

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

12. When CCS issues its proposed infringement decision in relation to Market A, the calculation of the financial penalty for XYZ Ltd will reflect the grant of a certain per cent reduction for co-operation and/or leniency, which includes a 'leniency plus' uplift in recognition of firstly, XYZ Ltd's co-operation in the investigation in Market A and secondly, in voluntarily providing information on a different cartel in a separate product market.
13. As far as possible, CCS will speed up investigations into the separate product market (Market B) to keep it in pace with the investigations in the first market (Market A). This is to ensure that enough evidence is gathered in Market B to substantiate the cartel before a decision is made to grant a leniency plus applicant, a "leniency plus' uplift in the reduction for the first cartel in Market A.
14. Although it is unlikely that the investigations in Market B would be completed through the issue of a proposed infringement decision or infringement decision for the second cartel in the separate product market (Market B) before the 'leniency plus' uplift for the first cartel in Market A is decided, CCS will endeavour to ensure that the time difference between both will not be too far away. If XYZ Ltd subsequently withdraws its cooperation for the investigation in Market B, CCS will increase its penalty computation for the financial penalty for XYZ Ltd in Market B to prevent leniency applicants from gaming and benefiting from the 'leniency plus' uplift.