

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

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INFORMATION ON CARTEL ACTIVITY CASES**

CONTENTS

PART		PAGE
1	INTRODUCTION	3
2	TOTAL IMMUNITY FOR THE FIRST TO COME FORWARD <u>BEFORE</u> AN INVESTIGATION HAS COMMENCED	5
3	REDUCTION OF UP TO 100 PER CENT IN THE LEVEL OF FINANCIAL PENALTIES FOR THE FIRST TO COME FORWARD <u>AFTER</u> AN INVESTIGATION HAS COMMENCED	6
4	SUBSEQUENT LENIENCY APPLICANTS: REDUCTION OF UP TO 50 PER CENT IN THE LEVEL OF FINANCIAL PENALTIES	7
5	PROCEDURE FOR REQUESTING IMMUNITY OR A REDUCTION IN THE LEVEL OF PENALTIES	8
6	CONFIDENTIALITY	9
7	EFFECT OF LENIENCY	10

1. INTRODUCTION

- 1.1. Under section 34 of the Competition Act (No. 46 of 2004) (“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. Cartel activities include, amongst other things, the following:
 - 1.2.1. Price-Fixing:
E.g. where parties agree, directly or indirectly, on the prices;
 - 1.2.2. Establishment of Restrictions / Quotas on Output:
E.g. agreements which restrict output or production;
 - 1.2.3. Bid Rigging:
E.g. arrangements where parties collude when submitting their tenders;
 - 1.2.4. Market Sharing Agreements.

Further information on the section 34 prohibition can be found in the Competition Commission of Singapore (‘CCS’) Guideline 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, an undertaking participating in cartel activities is liable under section 69 of the Act to a financial penalty. Undertakings participating in cartel activities and which wish to terminate their involvement and inform the CCS of the existence of the cartel activity 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 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.
- 1.6. As leniency programmes have been found to be effective in other

competition law regimes, a similar programme will form part of Singapore's enforcement strategy.

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:
- 2.2.1. The undertaking is the first to provide the CCS with evidence of the cartel activity before an investigation has commenced, *provided that* the CCS does not already have sufficient information to establish the existence of the alleged cartel activity;
- 2.2.2. The undertaking:
- provides the CCS with all the information, documents and evidence available to it regarding the cartel activity;
 - 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;
 - 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.

3. **REDUCTION OF UP TO 100 PER CENT IN THE LEVEL OF FINANCIAL PENALTIES FOR THE FIRST TO COME FORWARD AFTER AN INVESTIGATION HAS COMMENCED**
- 3.1. An undertaking may benefit from a reduction in the financial penalty of up to 100% if:
 - 3.1.1. the undertaking seeking immunity is the first to provide the CCS with evidence of the cartel activity;
 - 3.1.2. 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
 - 3.1.3. the conditions in paragraph 2.2.2 are satisfied.
- 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:
 - 3.2.1. the stage at which the undertaking comes forward;
 - 3.2.2. the evidence already in the CCS' possession; and
 - 3.2.3. 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 in paragraph 2.2.2 are satisfied.
- 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:
- 4.2.1. the stage at which the undertaking comes forward;
 - 4.2.2. the evidence already in the CCS' possession; and
 - 4.2.3. 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 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.
- 5.3. Initial contact with or 'feelers' to the CCS may be made anonymously. However, for the leniency application proper to be recorded and proceeded with, the undertaking's name must be given to the CCS.
- 5.4. The undertaking should immediately provide the CCS with all the evidence relating to the suspected infringement available to it at the time of the submission. Alternatively, the undertaking may present a list of the evidence that it proposes to disclose at a specified later date and provide a description of the nature and contents of this evidence.

6. CONFIDENTIALITY

- 6.1. An undertaking coming forward with evidence of cartel activity may 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.

7. EFFECT OF LENIENCY

7.1. Leniency does *not* protect the undertaking from the other consequences of infringing the law, which include:

7.1.1. the fact that the infringing provision is void and therefore cannot be enforced; and

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