

PROPOSED CHANGES TO THE CCS GUIDELINES ON LENIENT TREATMENT FOR UNDERTAKINGS COMING FORWARD WITH INFORMATION ON CARTEL ACTIVITY

Overview of main changes

The proposed changes mainly concern procedural steps to outline in greater detail what an applicant can expect in applying for immunity or leniency. The changes are to make the process of applying for leniency clearer and more efficient. The changes will provide added certainty to applicants on what they can expect and what will be required from them by CCS during the process.

The key proposed changes reflected in the draft revised *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with information on Cartel Activity* (“Leniency Guidelines”) are both substantive and procedural. The proposed changes in the draft revised guidelines are marked out in blue.

Substantive Changes

- i. Under the current Leniency Guidelines, coercers and initiators of cartel activity are not eligible for immunity or leniency. The draft revised Leniency Guidelines enable coercers and initiators of a cartel activity to apply for leniency and receive a reduction of financial penalty of up to 50%. This is to encourage and incentivise all undertakings that are participants in a cartel to come forward and seek leniency.
- ii. The draft revised Leniency Guidelines specify that all leniency applicants must unconditionally admit the conduct for which leniency is sought and detail the extent to which this conduct had an impact in Singapore by preventing, restricting or distorting competition.
- iii. The draft revised Leniency Guidelines specify that CCS requires a leniency applicant to grant a waiver of confidentiality for CCS to communicate with other competition authorities in other jurisdictions where the applicant has likewise sought leniency, as well as any other regulatory authority for which it has informed of the conduct.

Procedural Changes

The draft revised Leniency Guidelines provide further guidance and clarity on the process when applying for leniency and the conditions under which leniency will be granted. Changes are proposed for: applying for a marker; the conditions required for perfecting a marker; grant of conditional immunity and conditional leniency; and how information leniency applicants will be retained and used by CCS. Specifically:

- i. A request for a marker must be accompanied by information from the applicant defining the market(s) in Singapore affected by the cartel activity for which immunity or leniency is sought and must detail the

impact of the conduct on the identified relevant market(s) in Singapore.

- ii. Once a marker has been granted, CCS will stipulate a deadline for the leniency applicant to perfect a marker. Extensions of time will be considered on a case by case basis and will be at CCS's discretion.
- iii. The threshold of the information required from an applicant to perfect a marker is that the information is sufficient to allow CCS to exercise its formal powers of investigation.
- iv. Where a leniency applicant has perfected its marker for full immunity or leniency from financial penalties of up to 100%:
 - a. CCS will issue a letter to the applicant confirming the perfection of the marker and the grant of conditional immunity or conditional leniency. The letter will outline what conditions the applicant must fulfil before immunity or leniency is finalised. Conditional immunity or conditional leniency will be revoked if the applicant fails to comply with the obligations stated therein.
 - b. The grant of total immunity or leniency from financial penalties of up to 100% will occur when a Provisional Infringement Decision is issued.
- v. In the event that the application for leniency is rejected or withdrawn, a leniency 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.

The draft revised Leniency Guidelines also sets out CCS's procedure regarding oral corporate statements provided as part of the leniency application. In certain instances CCS may require applicants to furnish oral corporate statements as a document to CCS. Leniency applicants will also generally be required to provide CCS with material that is in the public domain or is general market information in a document.

[Draft CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity](#)

Questions for Reflection and Consultation

In addition to inviting any comments the proposed changes in the draft revised Leniency Guidelines, specific questions for the public consultation are set out below.

1. Do you consider the proposed changes to the Leniency Guidelines useful in enhancing the overall certainty, efficiency and clarity of the leniency application process? If not, please explain why and outline what you consider might be a better approach.

2. Do you consider that the proposed leniency reduction of up to 50% of financial penalties available to coercers and initiators of a cartel activity is appropriate, too high or too low? Please provide reasons for your answer.
3. Do you think that the requirement for leniency applicants to admit the cartel activity in which they were engaged will discourage leniency applicants from coming forward? Please provide reasons for your views.
4. What are your views of CCS's processes in relation to oral corporate statements and documents provided by a leniency applicant?
5. Are the conditions, requirements and process of obtaining a marker and its subsequent perfection clear? If not, where and how do you think it can be improved?
6. What are your views on the ability of a leniency applicant to withdraw their information in the event the leniency application is rejected or withdrawn?

Are there any areas where you think CCS should provide further clarification or consider additional changes?