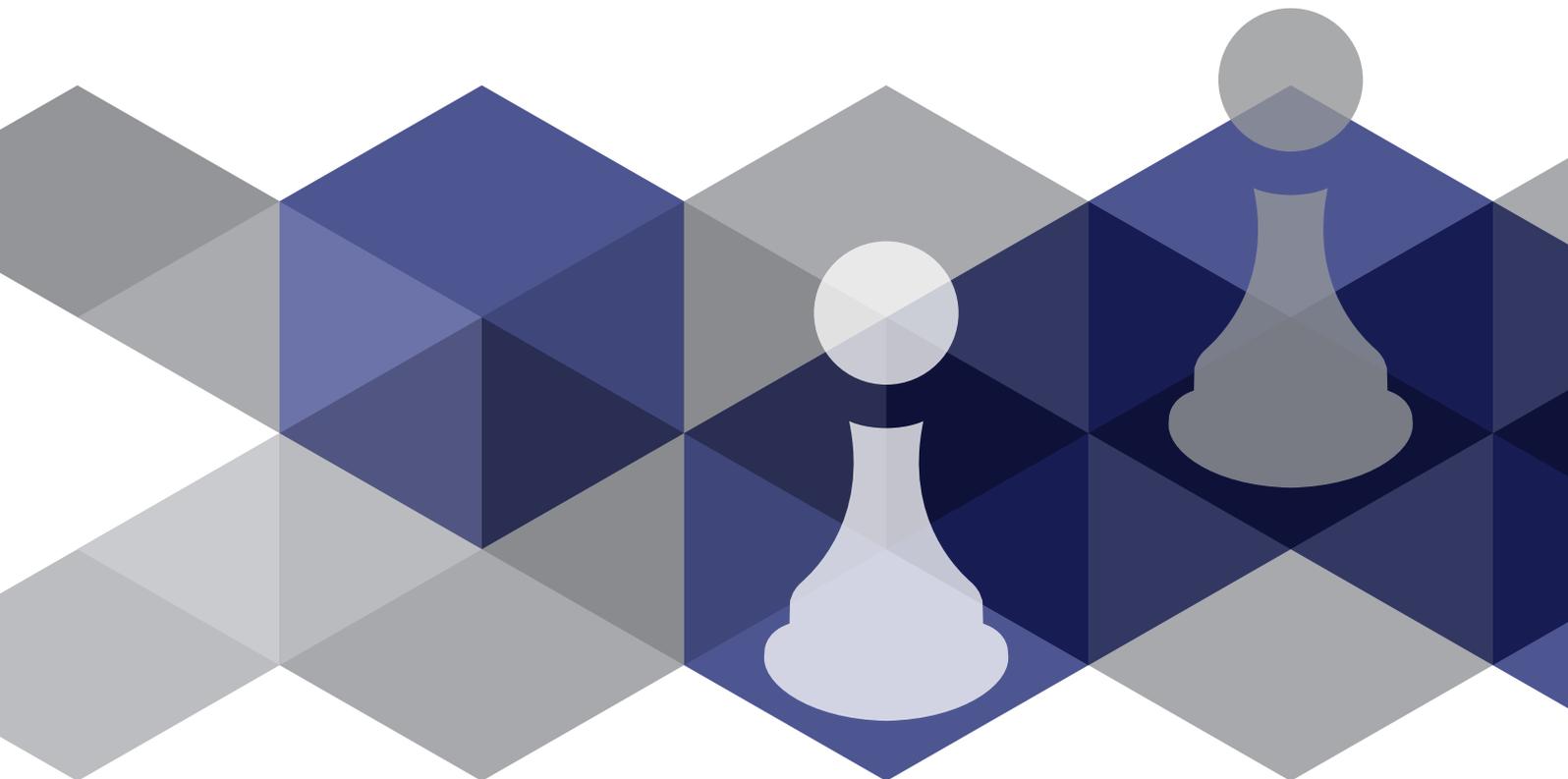


# Leniency Policy

for Individuals Involved  
in Cartel Conduct





# Leniency Policy for Individuals Involved in Cartel Conduct

*Leniency is a key investigative tool used by competition authorities around the world to combat cartels. Cartels differ from other types of anti-competitive conduct. First, they are universally condemned as economically harmful. Second, cartels are usually organised and implemented in secret, making them difficult to detect. An effective leniency policy will increase the risk of cartels being detected and therefore the risk and cost of participating in a cartel. This in turn deters the formation of cartels that would otherwise prevent, restrict or distort competition in the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**").*

*Considering that it is in the public interest that leniency should be accorded to an undertaking which is willing to terminate its participation in cartel conduct, report that conduct to the Commission and cooperate in the bringing of proceedings against other parties to the cartel, the Competition Commission (the "**Commission**") has adopted a Leniency Policy for Undertakings Engaged in Cartel Conduct (the "**Leniency Policy for Undertakings**").*

*Section 80 of the Competition Ordinance, Cap 619 (the "**Ordinance**") provides that the Commission may make a leniency agreement with a person that it will not bring or continue proceedings in the Competition Tribunal (the "**Tribunal**") for a pecuniary penalty in exchange for the person's cooperation in an investigation or in proceedings under the Ordinance.*

*Having regard to the fact that the Commission may bring proceedings in the Tribunal for a pecuniary penalty under section 92 of the Ordinance against individuals<sup>1</sup> involved in cartel conduct pursuant to section 91 of the Ordinance, the Commission considers it in the public interest also to adopt a Leniency Policy for Individuals Involved in Cartel Conduct (this "**Policy**"). This Policy updates and, as of the date of publication on 8 September 2022, supersedes the previous version of the policy issued in April 2020. Any leniency applications already made under the previous version of the policy shall be handled under that version of the policy.*

*This Policy should be read alongside the Leniency Policy for Undertakings.*

*This Policy does not preclude the Commission from entering into an agreement not to bring proceedings in circumstances other than those provided for in it.*

*Where leniency is not available for an applicant, the applicant is encouraged to cooperate with the Commission's investigation. The Commission will take such cooperation into account in considering the proportionate enforcement response in relation to that individual on a case-by-case basis.*

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<sup>1</sup> This policy applies to individuals who are not acting as an undertaking. See paragraph 2.2 of the Commission's Guideline on the First Conduct Rule which sets out that individuals can be considered an undertaking where they are acting as sole traders or subcontractors. Additionally, see paragraph 3.8 of the Commission's Enforcement Policy which sets out that the Commission considers it important to deter individuals from involvement in cartel conduct in addition to taking action against undertakings.

# 1. Introduction and overview

1.1 This Policy is designed to provide a strong, transparent, and predictable incentive for an individual to stop their involvement in cartel conduct and to report the conduct to the Commission. In exchange for their cooperation, the Commission will commit not to commence any proceedings (including proceedings for a pecuniary penalty) in relation to the reported conduct against the individual who has in place a leniency agreement with the Commission.

## Key elements of the Policy

1.2 This Policy consists of the following key elements:

- (a) First, this Policy applies only to involvement in *cartel conduct*, which gives rise to involvement in a contravention of the First Conduct Rule within the meaning of section 91 of the Ordinance. For the purposes of this Policy cartel conduct refers to agreements and/or concerted practices between two or more undertakings which consist of (i) fixing, maintaining, increasing or controlling the price for the supply of goods or services, (ii) allocating sales, territories, customers or markets for the production or supply of goods or services, (iii) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services, or (iv) bid-rigging.
- (b) Second, this Policy only relates to an application for leniency by individuals.<sup>2</sup>
- (c) Third, leniency is not available under this Policy to individuals whose involvement in the cartel conduct was as the ringleader of the cartel conduct<sup>3</sup> or that coerced other parties to participate in the cartel conduct;

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<sup>2</sup> See footnote 1 in respect of individuals who also act as undertakings. Undertakings who wish to seek leniency should consider the Leniency Policy for Undertakings.

<sup>3</sup> Individuals are disqualified from obtaining leniency on this ground only if they were clearly the single ringleader of the cartel conduct. Wherever possible, the Commission will construe or interpret the ringleader ground of this Policy in favour of accepting a leniency applicant in order to maximise incentives and opportunities for individuals to come forward and report their cartel conduct.



- (d) Fourth, leniency under this Policy is only available for the first individual that either:
- (i) discloses his/her involvement in cartel conduct in respect of which the Commission has not yet opened an initial assessment or investigation ("**Type 1 Leniency**"); or
  - (ii) is able, in the Commission's view, to provide substantial assistance to the Commission's investigation and subsequent enforcement action of cartel conduct which the Commission is already assessing or investigating ("**Type 2 Leniency**");
- and goes on to meet all the conditions for leniency.<sup>4</sup>
- (e) Fifth, if the individual meets all the conditions for leniency, the Commission will enter into a leniency agreement with that individual not to take any proceedings against them in relation to the reported conduct.
- (f) Sixth, an individual who has entered into a leniency agreement is required to continuously fulfill their requirements under the leniency agreement, including cooperating with the Commission throughout the investigation and in any proceedings initiated by the Commission before the Tribunal (and in any subsequent court proceedings) in relation to the reported conduct. At an appropriate stage (usually at the end of the proceedings), the Commission will issue a letter to the individual confirming that all conditions under the agreement have been fulfilled.

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<sup>4</sup> The Commission has the discretion to agree, having regard to the specific circumstances of the case, that it will not initiate proceedings against further individuals relating to the same cartel conduct where they do not qualify for leniency under this Policy.

## 2. Applying for leniency under the Policy

### Stage 1: Requesting a leniency marker for individuals

2.1 The first step in obtaining leniency is to obtain a leniency “marker”. A leniency marker holds a leniency applicant’s place at the front of the queue for leniency for a period of time set by the Commission<sup>5</sup> to allow the leniency applicant to gather information necessary to perfect its leniency application. Since only one leniency marker for individuals is available per cartel, no other individual can pass the leniency applicant and obtain leniency while the leniency applicant holds the leniency marker. In circumstances where the marker relating to cartel activity has been granted to an individual, the Commission may still, in its discretion, offer not to initiate proceedings before the Tribunal against another individual in return for that individual cooperating with the Commission’s investigation.

#### ***Checking the availability of a marker***

2.2 An individual, or their legal representative, may contact the Commission to ascertain if the leniency marker for individuals is available for particular cartel conduct. They can do so by using the leniency hotline<sup>6</sup> at +852 3996 8010 or by e-mail at [Leniency@compcomm.hk](mailto:Leniency@compcomm.hk).<sup>7</sup>

2.3 These initial enquiries may be made on an anonymous and/or hypothetical basis. To allow the Commission to ascertain whether a marker is available, information on the broad nature of the cartel conduct will need to be disclosed. This could include the affected industry, product(s) and/or service(s), the general nature of the conduct and the time period. While an admission of liability for involvement in cartel conduct is not required to obtain a marker, the applicant must report that they have uncovered information or evidence suggesting his or her involvement in possible cartel conduct. The Commission may require more detail, if it is necessary, to determine the availability of a marker.

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<sup>5</sup> This will ordinarily be at least 30 calendar days.

<sup>6</sup> The leniency hotline is only answered between 8am to 6pm Hong Kong time, Monday to Friday (excluding public holidays). Enquiries about cooperation may also be made using the leniency hotline and e-mail address.

<sup>7</sup> The Commission will handle the steps under this Policy from this Stage 1 (Requesting a Leniency Marker) to Stage 3 (Entering into a leniency agreement) through its Leniency Section staff supervised by the Executive Director (Operations). The Leniency Section staff assigned to a particular application will not be involved in any investigation by the Commission into the conduct forming the subject of that application and will not share any leniency information with the Commission’s investigative staff until after a leniency agreement is in place.



- 2.4 Before confirming the availability of a marker for particular conduct, the Commission will make a preliminary assessment as to whether the reported conduct is cartel conduct, whether a request for a marker has already been made in respect of that conduct and whether leniency is available.
- 2.5 Upon conducting the preliminary assessment, the Commission will approach the applicant and confirm whether a marker is available as soon as it is practicable to do so. Once it is confirmed that a marker is available, the individual will be asked to confirm whether they intend to apply for the marker and, if so, contact details will also need to be provided to confirm his or her identity. This may be done in writing or orally.
- 2.6 If the applicant is informed that a marker is not available, it will be because:
  - (a) another individual has already obtained the marker for that cartel conduct;
  - (b) the conditions in section 1.2(c) and 1.2(d) above are not met; or
  - (c) the Commission's preliminary assessment is that the conduct is not cartel conduct.

Where a marker is not available for the first of these reasons, an applicant may request that they are placed in a queue to request the marker should the marker become available at a later stage. The date and time of such a request will be recorded.



### ***Applying for a marker***

2.7 Upon being informed that a marker is available, an applicant can confirm acceptance of the marker either orally or in writing. If the applicant elects to accept the marker, the applicant will need to provide the following details to the best of his or her knowledge at that time:

- (a) the applicant's identity;
- (b) the identities of the undertakings participating in the cartel conduct (including, where applicable, the undertaking to which the applicant has a connection);
- (c) the identities of the key individuals involved at each of the undertakings;
- (d) the time period of the cartel conduct;
- (e) the geographic scope of the cartel conduct;
- (f) a general description of the cartel conduct, including any information or evidence uncovered by the applicant and why they consider this may amount to cartel conduct; and
- (g) in the context of cartels covering multiple jurisdictions, the other agencies which have been or will be approached by the applicant.

2.8 The Commission will confirm that a marker has been granted and determine the timeframe in which the applicant has to perfect it. This may be done orally or in writing at the applicant's request.



## **Stage 2: Perfecting a marker**

- 2.9 An applicant who is granted a marker is required to perfect the marker through a proffer process within the period set by the Commission.<sup>8</sup>
- 2.10 The applicant will make proffers on a “without prejudice” basis, either orally or in writing. Any communications with the Commission on proffers or any related matters may also be made orally or in writing. For the avoidance of doubt, a marker cannot be perfected on hypothetical terms.
- 2.11 To perfect a marker, the applicant will be required to provide a detailed description of the cartel conduct and its functioning, including information about its duration and participants, the products or services affected by it, the names of persons involved in the conduct, and to describe the evidence they can provide in respect of the cartel. The Commission may also ask the applicant to provide access to some evidence in support of the proffer (e.g. documentary evidence relating to the cartel) and/or to make themselves available to be interviewed by the Commission.
- 2.12 Where an applicant considers that they require more time to perfect their marker, they may apply for an extension which will be considered on a case-by-case basis.
- 2.13 Where the applicant and the Commission do not proceed to enter into a leniency agreement, information provided by the applicant when applying for a marker and at the proffer stage will be returned to the applicant and will not be used as evidence in the Commission’s investigation or any subsequent proceedings. The Commission, however, reserves its ability to subsequently request that same information pursuant to section 41 of the Ordinance or to otherwise use its powers under the Ordinance to obtain the information.

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<sup>8</sup> This will ordinarily be at least 30 calendar days.



### **Stage 3: Entering into a leniency agreement**

2.14 Based on the proffer and any additional information provided by the applicant, the Commission will determine whether to make an offer to enter into a leniency agreement.

2.15 The leniency agreement will contain a description of the cartel conduct and will ordinarily require the applicant to confirm that:

- (a) they have provided and will continue to provide full and truthful disclosure to the Commission;
- (b) they have not coerced other parties to participate in the cartel conduct;
- (c) they have, unless instructed by the Commission otherwise, taken prompt and effective action to terminate their involvement in the cartel conduct;<sup>9</sup>
- (d) they will keep confidential all aspects of the leniency application and the leniency process unless the Commission's prior consent has been given or the disclosure of information is required by law; and
- (e) they will provide continuing full and truthful cooperation, at their own cost, to the Commission including in enforcement proceedings against undertakings that engaged in the cartel conduct or against other persons involved in the cartel conduct.

### **Stage 4: Ongoing compliance with the terms of the leniency agreement**

2.16 Where the Commission has in place a leniency agreement with an individual in respect of particular cartel conduct, the Commission agrees not to commence any proceedings in the Tribunal against the individual in respect of that conduct. As part of the agreement, the individual is required to provide complete, truthful and continuous cooperation with the Commission throughout its investigation and any ensuing enforcement proceedings by the Commission before the Tribunal or other courts in relation to that conduct.

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<sup>9</sup> The Commission may instruct the applicant's continued involvement in the cartel conduct e.g. with a view to avoiding 'tipping-off' other cartel participants to the fact of the Commission's investigation, or to assist in investigations into the same or related conduct that are carried out by competition authorities in other jurisdictions.



## **Stage 5: Issuance of a final letter**

2.17 At an appropriate stage, the Commission will issue a final letter to the individual to confirm that all conditions under the leniency agreement have been fulfilled. This will usually be at the end of any proceedings by the Commission before the Tribunal or other courts against other participants in the cartel conduct.



## **3. Terminating the leniency agreement**

- 3.1 The termination of a leniency agreement entered into under section 80 of the Ordinance is governed by the provisions of section 81 of the Ordinance. Under this Policy, the Commission will generally only consider terminating a leniency agreement with a party to a leniency agreement under section 81(1)(b) of the Ordinance if it has reasonable grounds to suspect that that party has at any time knowingly provided false or materially incomplete information to the Commission or has otherwise failed to comply with the terms of the leniency agreement.
- 3.2 Where the Commission is of the view that it may be appropriate to terminate a leniency agreement under section 81(1) of the Ordinance, it will, at first instance, inform only the party to the agreement of its concerns and the party to the leniency agreement will be given an opportunity to address the Commission's concern within a reasonable period of time.<sup>10</sup> If the Commission's concerns remain unaddressed, the Commission will only then proceed with the termination process set out at sections 81(2) to 81(5) of the Ordinance.
- 3.3 Where a leniency agreement is terminated, the Commission may at its discretion commence proceedings against the individual that was party to the terminated leniency agreement for the cartel conduct that was covered by that agreement. This may include, without limitation, proceedings in the Tribunal seeking a pecuniary penalty.
- 3.4 Information provided by an individual to the Commission pursuant to a leniency agreement which has been terminated may be retained by the Commission and used as evidence against that individual and other participants in the cartel conduct.

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<sup>10</sup> As this procedure is intended to address any preliminary concern of the Commission and is in addition to the statutory procedure of consultation as set out in section 81(2)-(5) of the Ordinance, the usual time period which the Commission will give the other party to respond to this initial inquiry will be a relatively short one.

## 4. Confidentiality and non-disclosure

### Confidentiality of leniency applications

4.1 To support the Commission's ability to conduct effective investigations, the leniency applicant is required to keep confidential the fact of the investigation, its application for leniency (including any non-public information received by the applicant from the Commission in that context) and the terms of any leniency agreement entered into with the Commission, unless the Commission's prior consent has been given, or if the disclosure of the information is required by law. Where a leniency applicant is contemplating whether to disclose any information relating to its application for leniency on the grounds that such disclosure is required by law, the leniency applicant must notify the Commission forthwith.

### Release of information provided by leniency applicants to the Commission

4.2 The documents and information comprising a leniency application include:

- (a) information provided to the Commission by a leniency applicant for the purpose of making a leniency application and/or pursuant to a leniency agreement; and
- (b) the Commission's records of the leniency application process, including the leniency agreement,

(collectively, "**Leniency Material**").

4.3 Section 125 of the Ordinance imposes a general obligation on the Commission to preserve the confidentiality of any confidential information<sup>11</sup> provided to the Commission. Section 126 of the Ordinance lists the exceptions to this obligation where the Commission may disclose confidential information with lawful authority.

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<sup>11</sup> Confidential information is defined in section 123 of the Ordinance and includes the identity of any person who has given information to the Commission.



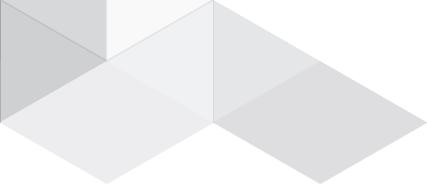
- 4.4 The Commission reserves the right to use and disclose Leniency Material with appropriate confidentiality protections in its investigations and any proceedings it has brought under the Ordinance.<sup>12</sup> However, it is the Commission's policy not to release Leniency Material (whether or not it is confidential information under section 123 of the Ordinance) in connection with other proceedings, such as private civil or criminal proceedings in Hong Kong or in other jurisdictions. Accordingly, where such proceedings are concerned, the Commission will firmly resist, on public interest immunity and other applicable grounds, requests for Leniency Material, including the fact that leniency has been sought or is being sought, where such requests are made, unless:
- (a) it is compelled to make a disclosure by an order of the Tribunal or any other Hong Kong court, by law or any requirement made by or under a law;
  - (b) it has the consent of the leniency applicant to disclose the material; or
  - (c) the relevant information or document is already in the public domain.
- 4.5 If a third party makes an application in whatever form seeking to compel the Commission to disclose Leniency Material, the Commission will advise the leniency applicant of that application as soon as possible.
- 4.6 Further detail regarding the confidentiality of information and documents obtained in a Commission investigation is contained in the Commission's Guideline on Investigations.

## 5. No Further Action

- 5.1 If the Commission decides not to pursue further a matter which is the subject of a marker or leniency agreement, it will advise the leniency applicant of this outcome.

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<sup>12</sup> In a previous enforcement action before the Tribunal, the Tribunal confirmed that the Commission could resist the disclosure of certain Leniency Material in relation to an unsuccessful leniency application on public interest immunity and without prejudice privilege grounds (see *Competition Commission v Nutanix Hong Kong Limited and others* [2018] HKCT 1). The Leniency Material in question comprised without prejudice correspondence and records of without prejudice communication between the Commission and an unsuccessful leniency applicant in that case (though not any documents pre-existing the leniency application). The Tribunal recognised "*a strong public interest in encouraging eligible parties to apply for leniency and in facilitating free and frank communication during the process*" and, on the facts of the case in question, this public interest in non-disclosure outweighed any contrary interest in disclosure.



## Annex A

# Template for a Leniency Agreement with an Individual Involved in Cartel Conduct

*This template contains the standard terms to be used in leniency agreements under section 80 of the Ordinance between an individual involved in cartel conduct and the Competition Commission.*

*The template may be amended to reflect the specific circumstances of the matter in question. The template may also be updated from time to time.*

\* \* \* \* \*

**CONFIDENTIAL**

### **LENIENCY AGREEMENT**

This leniency agreement ("**Agreement**") is made under the laws of the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") on the [**Date**] day of [**Month**] [**Year**] BETWEEN:

A. Competition Commission (the "**Commission**"), an independent statutory body established under the Competition Ordinance (Cap. 619) (the "**Ordinance**");

and

B. [**Insert Name**], of [**insert address and ID Card Number**] (the "**Leniency Party**").



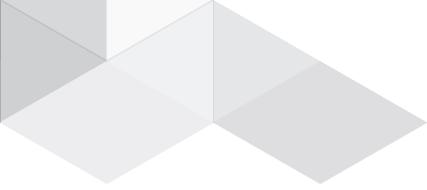
## RECITALS

- (1) The Leniency Party [**was/is**] the [**insert job title/position**] of [**insert name(s) of relevant undertaking**] (the "**Relevant Undertaking**").
- (2) This Agreement is made in connection with [**description of cartel**] conduct in the [**description of industry**] in [**geographical area of cartel, e.g., Hong Kong**] during the period [**relevant period**] (the "**Cartel**").
- (3) The Leniency Party has applied for leniency under the Commission's Leniency Policy for Individuals Involved in Cartel Conduct, issued on 8 September 2022 (the "**Leniency Policy for Individuals**") in relation to the Cartel.
- (4) The Commission considers the Leniency Party as of the date of this Agreement meets the conditions to obtain Type [**1/2**] Leniency as provided for in the Leniency Policy for Individuals.

NOW IT IS AGREED as follows:

### 1 Interpretation

- 1.1 For the purposes of this Agreement, the terms used have the same meaning as in the Ordinance and in addition:
  - (a) "**Confidential Leniency Information**" means any information relating to the Leniency Application and provided pursuant to this Agreement, including without limitation, this Agreement, the fact that Leniency has been sought or is being sought or has been granted pursuant to the terms of this Agreement and, for avoidance of doubt, includes any confidential information:
    - i. provided to the Commission by the Leniency Party for the purposes of making the Leniency Application or under this Agreement; and
    - ii. any information obtained by the Leniency Party as a result of making the Leniency Application or under this Agreement.

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- (b) “**Court**” means the Competition Tribunal, and other courts of the Hong Kong.
  - (c) “**Investigation**” means the Commission’s initial assessment and investigation into the Cartel or any related conduct, including any investigation regarding persons involved in the Cartel, whether or not the Commission has exercised its powers in sections 41, 42 and 48 of the Ordinance.
  - (d) “**Leniency Application**” means the application for leniency under the Leniency Policy for Individuals made by the Leniency Party prior to the execution of this Agreement in relation to the Cartel.
  - (e) “**Parties**” means the Commission and the Leniency Party.
  - (f) “**Proceedings**” means any Court proceedings relating to the Cartel, excluding proceedings in respect of the criminal offences provided for in sections 52, 53, 54, 55, 172, 173 and 174 of the Ordinance.

## 2. Leniency

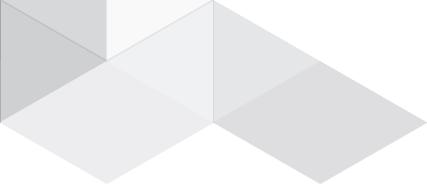
- 2.1 In return for the Leniency Party having satisfied and continuing to satisfy each of the conditions set out in this Agreement, the Commission agrees not to bring Proceedings against the Leniency Party.

## 3. Representation and warranties of the Leniency Party

- 3.1 The Leniency Party expressly represents and warrants the following, and acknowledges that the Commission has relied on these representations and warranties in entering into this Agreement:



- (a) they have not disclosed to any third party (including the Relevant Undertaking) the Confidential Leniency Information (including the fact that they have applied for leniency) unless:
  - i. the disclosure was made to their legal advisor for the purposes of obtaining or receiving advice on the Leniency Application or the terms of this Agreement;
  - ii. the Commission provided its express written consent to the disclosure; or
  - iii. the disclosure was required by law and the conditions provided for in clause 4.2 are met;
- (b) except as otherwise expressly authorised by the Commission, as of **[Date of the application for leniency]** it has refrained from further involvement in the Cartel and shall continue to do so;
- (c) their involvement in the Cartel did not involve coercing other parties to engage in cartel conduct;
- (d) their involvement in the Cartel was not as a clear, single ringleader;
- (e) the information provided to the Commission prior to entering into this Agreement as part of the Leniency Application was and remains complete and is not false nor misleading in any material particular; and
- (f) any opinion provided to the Commission with respect to the Cartel was and remains honestly held.



## 4. Leniency conditions for the Leniency Party

4.1 As a condition of this Agreement, at their own cost, the Leniency Party:

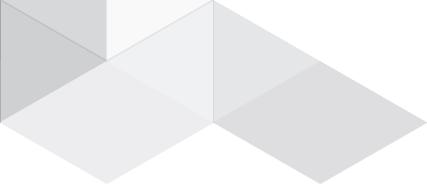
- (a) will maintain continuing full and truthful cooperation with the Commission throughout the Investigation and any ensuing Proceedings. Save as otherwise agreed with the Commission, the Leniency Party shall:
  - i. provide any information reasonably requested by the Commission;
  - ii. give full and truthful information to the Commission during any interviews with the Commission; and
  - iii. give full and truthful evidence in Court if so required.
- (b) will make full and truthful disclosure to the Commission throughout the Investigation and any ensuing Proceedings relating to the Cartel, including but not limited to:
  - i. providing the Commission promptly with all non-privileged information under their power, custody, or control in respect of the Cartel including all records, wherever located, relating to the Cartel as well as identifying other sources of evidence in any form;
  - ii. preserving all relevant non-privileged information which is under their power, custody, or control and assisting the Commission to retrieve all such information;
  - iii. not knowingly or negligently misrepresenting or concealing any material facts to the Commission; and
  - iv. immediately notifying the Commission forthwith of any change in circumstances that may affect the accuracy of the information or any opinion already provided to the Commission;



- (c) will ensure that they keep confidential the Confidential Leniency Information unless:
  - i. the Leniency Party has the Commission's express written consent to release the Confidential Leniency Information; or
  - ii. the release of the Confidential Leniency Information is required by law and the conditions provided in clause 4.2 are met; and
- (d) will, where the Commission has requested that the Leniency Party to continue their involvement in the Cartel, act as directed by the Commission in relation to the Cartel including terminating their involvement when directed to do so.

4.2 Where the Leniency Party considers that the release of Confidential Leniency Information is required by law, they shall:

- (a) promptly notify the Commission of the content and form of the proposed disclosure, and why the Leniency Party considers they are required by law to make the proposed disclosure; and
- (b) use their best endeavours to provide the Commission with sufficient time to:
  - i. consider whether the proposed disclosure, including the content and form of the proposed disclosure, is in the Commission's view required by law; and
  - ii. comment on or challenge the proposed disclosure before a court or otherwise.



## 5. Termination

- 5.1 The Commission may terminate this Agreement at any time if one or more of the conditions for termination of a leniency agreement as set out in section 81(1) of the Ordinance are met, including where the Leniency Party has not complied with the terms of this Agreement.
- 5.2 The Parties acknowledge the procedure for terminating this Agreement is set out in section 81 of the Ordinance.
- 5.3 If this Agreement is terminated, the Commission may at its discretion commence Proceedings against the Leniency Party including, without limitation, proceedings seeking a pecuniary penalty under section 93 of the Ordinance.

## 6. Use of information and documents

- 6.1 The Commission may use any information or documents provided by the Leniency Party under this Agreement for the purpose of any investigation and proceedings under the Ordinance, but shall not do so in respect of any investigation or proceedings under the Ordinance against the Leniency Party unless this Agreement is terminated.
- 6.2 All Confidential Leniency Information provided to the Commission by the Leniency Party may, notwithstanding the termination of the Agreement under section 81 of the Ordinance, be used by the Commission to facilitate the performance of its functions insofar as is permitted by law.
- 6.3 The Commission may, in appropriate cases, and where permitted by law, request the Leniency Party to authorise the Commission to exchange confidential information with authorities with competition law enforcement functions in other jurisdictions.
- 6.4 If any third party seeks to compel disclosure by the Commission of Confidential Leniency Information or the Commission's records of the Leniency Application process or the entering into of this Agreement, the Commission will, to the extent reasonably possible, give the Leniency Party prompt notice and shall, in any event, use their best endeavours to resist disclosure unless the Leniency Party consents to such disclosure or the Commission is compelled to do so by an order of a Court, by law or any requirement made by or under a law.



## 7. Continuing obligations

7.1 The obligations in this Agreement are on-going and continue until:

- (a) the Commission issues a final letter to the Leniency Party in accordance with paragraph 2.17 of the Leniency Policy for Individuals; or
- (b) this Agreement is terminated.

## 8. Communications

8.1 Any written notice or communication pursuant to this Agreement shall be delivered by registered mail or by e-mail as follows:

**If to the Commission, to:**

For the attention of [•]  
Competition Commission  
19/F, South Island Place,  
8 Wong Chuk Hang Road,  
Wong Chuk Hang, HONG KONG

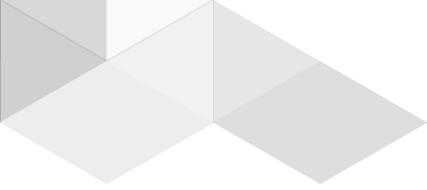
E-mail: [Leniency@compcomm.hk]

**If to the Leniency Party to:**

**[Address]**

For the attention of: [•]  
Email: [•]

or to such other person or address as the Parties may agree.



## 9. Miscellaneous

- 9.1 Entire Agreement: This Agreement is the entire agreement between the Commission and the Leniency Party and supersedes all prior representations, writings, negotiations or understandings, whether oral or written, between the Commission and the Leniency Party relating the Cartel.
- 9.2 Non-Waiver: The failure of the Commission to enforce any provision of this Agreement at any time shall not act as a waiver of the Commission's right to enforce that provision in respect of the particular act or omission or any other act or omission.
- 9.3 Applicable Law: This Agreement is governed by, and shall be construed in accordance with, the laws of Hong Kong. The Parties agree that the Court has jurisdiction to determine any proceedings arising out of or in connection with this Agreement and the matters to which it relates, including any Proceedings brought by the Commission.
- 9.4 Execution in Counterparts: This Agreement may be executed in counterparts.



**AGREED by the Parties:**

SIGNED by [**name of Leniency Party**]

Date:

Name:

Position: [[**Former**] [**insert job title/position**]] of the Relevant Undertaking

SIGNED for and on behalf of the **Competition Commission**

Date:

Name:

Position:



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19/F, South Island Place,  
8 Wong Chuk Hang Road,  
Wong Chuk Hang, HONG KONG