

16 April 2020

For Immediate Release

Competition Commission revises leniency programme for cartel conduct

The Competition Commission (Commission) today published a revised *Leniency Policy for Undertakings Engaged in Cartel Conduct* and a new *Leniency Policy for Individuals Involved in Cartel Conduct* to enhance the effectiveness and transparency of its leniency programme for cartel conduct, which will strengthen cartel detection, enforcement, and victim recovery.

Leniency is proven to be an effective investigative tool used by competition authorities around the world to combat cartels, including bid rigging, price fixing, market sharing and output restriction, which are serious anti-competitive conduct under the Competition Ordinance (Cap. 619) (Ordinance). Investigations resulting from leniency have also significantly facilitated private damages actions brought by victims of cartels around the world.

Based on its experience accumulated since the Ordinance came into full effect, the Commission has reviewed and revised its leniency framework with a view to strengthening its efficacy and comprehensiveness, providing stronger and clearer incentives for a cartel member to stop the cartel conduct and report it to the Commission, thereby strengthening enforcement and furthering victim recovery.

Revisions to the Leniency Policy for Undertakings

Major revisions to the Leniency Policy for Undertakings include:

1. Creating a distinction between applications for leniency depending on whether they are received before or after the Commission has opened an initial assessment or investigation of the conduct. Under this revision, leniency is available for the first cartel member that either:

Type 1. discloses its participation in a cartel of which the Commission has not opened an initial assessment or investigation, or

Type 2. provides substantial assistance to the Commission's investigation and subsequent enforcement action of a cartel which the Commission is already assessing or investigating;

and meets all the requirements for receiving leniency.

2. The Commission will agree not to commence proceedings before the Competition Tribunal against a successful leniency applicant (both Type 1 and Type 2) in relation to the conduct covered by the leniency agreement. This includes not bringing proceedings for an order declaring that the successful leniency applicant has contravened the Ordinance.

3. For Type 2 leniency applicants only, in the event of follow-on action for damages being initiated in relation to the conduct covered by the leniency agreement, the Commission may issue an infringement notice to them, requiring a commitment to admit a contravention of the First Conduct Rule, in order to permit the initiation of follow-on proceedings against them.
4. An undertaking that is clearly the single ringleader of a cartel will be disqualified from obtaining leniency.

Same as the existing policy, the leniency for an undertaking will also extend to its current, and possibly former partners, agents, employees and officers, provided that they fully and truthfully cooperate with the Commission.

Leniency Policy for Individuals

A new Leniency Policy for Individuals has been introduced to enhance the comprehensiveness of the Commission's leniency programme. Individuals involved in cartel conduct, such as employees of a company, can now seek leniency under this policy. Except where leniency has already been granted to an undertaking, the Commission will agree not to commence any proceedings against the first individual who reports the cartel to the Commission and meets all the requirements for receiving leniency. Leniency is not available to individuals that are the ringleader of the cartel conduct or that have coerced other parties to engage in the cartel conduct.

Mr. Brent Snyder, Chief Executive Officer of the Commission, said, "Cartel conduct is secretive in nature and therefore notoriously hard to detect. With a leniency programme in place since the full commencement of the Ordinance, we have received applications over the years and the enforcement actions we took in the IT cartel case in January this year are a solid testimony to the importance of leniency in detecting and combating cartels.

By introducing various enhancements to the existing leniency programme, the revised framework effective today will make it easier and more attractive for companies and individuals to come forward and cooperate with the Commission. This will in turn improve detection, strengthen enforcement and enhance deterrence and victim recovery, bringing the benefits of effective market competition to Hong Kong consumers, businesses and the economy."

The Leniency Policy for Undertakings and Leniency Policy for Individuals are available on the Commission's website at www.compcomm.hk.

Both policies take effect from their date of publication today. Any applications already made under the existing version of the Leniency Policy for Undertakings will continue to be handled under that version of the policy.
