

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

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**Working Party No. 3 on Co-operation and Enforcement****Roundtable on challenges and co-ordination of leniency programmes - Note by  
Singapore**

**5 June 2018**

This document reproduces a written contribution from Singapore submitted for Item 3 at the 127th Meeting of the Working Party No 3 on Co-operation and Enforcement on 5 June 2018.

More documentation related to this discussion can be found at

[www.oecd.org/daf/competition/challenges-and-coordination-of-leniency-programmes.htm](http://www.oecd.org/daf/competition/challenges-and-coordination-of-leniency-programmes.htm)

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## Singapore

### 1. Introduction

1. The Competition and Consumer Commission of Singapore (“CCCS”) is Singapore’s national competition authority. It is an independent statutory body with the mandate of administering and enforcing the Competition Act (Cap. 50B). The Competition Act is closely modelled on the European Union (“EU”) and United Kingdom (“UK”) both as to how the provisions are worded and in relation to the investigative powers granted to the CCCS. Competition law in Singapore follows an administrative system, whereby CCCS is in the first instance the decision maker as to whether an infringement of the Competition Act has occurred. Repercussions for infringements of the Competition Act are civil in nature;<sup>1</sup> there are no criminal sanctions for an infringement of the Competition Act. As of 1 April 2018, CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap.52A) which is aimed at protecting consumers against unfair trade practices in Singapore.

2. CCCS’s leniency programme has been an important and effective tool to uncover and investigate cartels. This paper sets out the challenges and experiences of CCCS in designing, implementing and administering its leniency programme.

### 2. Overview of CCCS’s Leniency Programme

3. CCCS’s leniency programme is set out in CCCS’s Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016 (“CCCS’s Leniency Guidelines 2016”).<sup>2</sup>

4. CCCS’s leniency programme was first published with a set of eleven (11) guidelines (“the CCS Guidelines 2005”) on CCCS’s approach to how it would interpret and administer provisions of the Competition Act. The CCS Guidelines 2005 were published in anticipation of the prohibition against anti-competitive agreements (section 34)<sup>3</sup> and abuse of a dominant position (section 47)<sup>4</sup> coming into effect on 1 January 2006. CCCS’s leniency guidelines have subsequently been revised in 2009<sup>5</sup> and in 2016.<sup>6</sup>

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<sup>1</sup> Section 69 of the Competition Act gives CCCS the power to issue directions (including directions to pay financial penalties) on undertakings for infringing the Competition Act. Section 86 of the Competition Act gives persons suffering loss or damage directly as a result of an infringement of the Competition Act a right of follow-on action for relief in civil proceedings against any undertaking party to such infringement.

<sup>2</sup> <https://www.cccs.gov.sg/-/media/custom/ccs/files/legislation/legislation-at-a-glance/cccs-guidelines/cccs-guidelines-on-lenient-treatment-for-undertakings-coming-forward-with-information-on-cartel-activity-2016.pdf?la=en&hash=200FEDFC55E57559D0C3FE6E58D53C26B6614E17>.

<sup>3</sup> Section 34 of the Competition Act prohibits 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.

5. While there were few leniency applications in the first five (5) years of the operation of the leniency programme, CCCS has seen a significant rise in the number of applications. Since the introduction of its leniency programme, CCCS has now had more than thirty (30) leniency cases involving more than sixty (60) leniency applicants. Five (5) of these cases have led to the issuance of infringement decisions and the imposition of financial penalties against cartels, including international cartels.<sup>7</sup> This is approximately 41.6% of infringement decisions involving anti-competitive agreements.

6. The significant rise in the number of applications may be attributable to a number of factors, such as the perception of CCCS as an active and rigorous enforcer, a growing level of awareness of CCCS's leniency programme and trust in the way in which CCCS administers the programme.

## 2.1. CCCS's Leniency Programme

7. Under CCCS's leniency programme, undertakings which have infringed section 34 of the Competition Act may be eligible for immunity from, or a reduction in, financial penalties imposed by CCCS, where they inform CCCS of their cartel activities.

8. The possible reductions in penalty available to a leniency applicant are set out in Table 1 below. However, if a leniency applicant is found to be either a coercer or the initiator of the cartel conduct, the applicant can only receive a reduction of up to 50% in financial penalties.

**Table 1. Possible leniency discounts under CCCS's leniency programme**

Immunity/Reduction	Eligibility
Immunity* <sup>1</sup>	First to apply before CCCS commences investigations, subject to conditions
Up to 100% reduction* <sup>2</sup>	First to apply after CCCS commences investigations, subject to conditions
Up to 50% reduction* <sup>3</sup>	Not the first to apply, but applies before CCCS issues a notice of its intention to make an infringement decision

<sup>4</sup> Section 47 of the Competition Act prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore.

<sup>5</sup> For public consultation documents relating to the revisions to the leniency guidelines in 2009, please see: <https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/public-consultation-for-changes-to-leniency-programme>.

<sup>6</sup> For public consultation documents relating to the revisions to the leniency guidelines in 2016, please see: <https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/public-consultation-on-proposed-changes-to-ccs-guidelines>.

<sup>7</sup> The cases are: Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works [2010] SGCCS 4; Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel [2014] SGCCS 5; CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore (CCS 700/003/11); CCS Decision of 28 November 2017 in relation to bid-rigging of tenders in Singapore (CCS 700/003/15); and CCS Decision of 5 January 2018 in relation to the market for the sale, distribution and pricing of Aluminium Electrolytic Capacitors in Singapore (CCS 700/002/13).

*Notes:*

1. Paragraph 2 of CCCS's Leniency Guidelines 2016.
2. Paragraph 3 of CCCS's Leniency Guidelines 2016.
3. Paragraph 4 of CCCS's Leniency Guidelines 2016.

9. Save for the applicable caps (100% and 50%), there are no fixed percentages for the reduction in financial penalties for undertakings which apply for leniency after CCCS has commenced its investigation. The quantum of any reduction in possible financial penalties is discretionary and dependent on CCCS's assessment of the following factors:

- the stage at which the undertaking comes forward;
- the evidence already in CCCS's possession; and
- the quality of information provided.<sup>8</sup>

10. Conditions for Leniency. To qualify for leniency, an applicant must fulfil the following conditions in order to obtain a discount on any financial penalties that may be imposed.<sup>9</sup>

- provide CCCS with all the information, documents and evidence available to it regarding the cartel activity immediately. The information provided by the leniency applicant must be sufficient to allow CCCS to exercise its formal investigative powers;<sup>10</sup>
- grant an appropriate waiver of confidentiality to CCCS in respect of any jurisdiction where it has also applied for leniency or any other regulatory authority for which it has informed of the conduct;
- unconditionally admit to the conduct for which leniency is sought and detail the extent to which this had an impact in Singapore by preventing, restricting or distorting competition within Singapore;
- maintain continuous and complete co-operation throughout the investigation and until the conclusion of any action by CCCS arising as a result of the investigation; and
- refrain from further participation in the cartel activity from the time of disclosure of the cartel activity to CCCS (except as may be directed by CCCS).

11. Marker System. Where a leniency applicant is unable to provide CCCS immediately with all information, documents and evidence available to it regarding the cartel activity, CCCS can grant a marker to secure an undertaking's position in the leniency "queue" pending the applicant gathering the required material to make its application within a set timeframe. To secure a marker, an applicant must specify the name of the undertaking(s) for which the marker is sought and provide a description of the cartel activity. The undertaking can "perfect" the marker by providing the relevant

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<sup>8</sup> Paragraph 3.2 of *CCCS' s Leniency Guidelines 2016*.

<sup>9</sup> Paragraph 2.2 of *CCCS' s Leniency Guidelines 2016*.

<sup>10</sup> Section 62 of the Competition Act provides that CCCS may conduct an investigation if there are reasonable grounds for suspecting that, *inter alia*, the section 34 prohibition has been infringed by any agreement.

evidence in the prescribed time period, failing which it could lose its position in the queue.<sup>11</sup>

12. Leniency Plus. CCCS may grant an additional reduction in financial penalties where an undertaking co-operating with an investigation by CCCS in relation to cartel activity in one market (the first market) informs CCCS of a completely separate cartel activity in another market (the second market).<sup>12</sup>

13. To qualify for leniency plus, CCCS would have to be satisfied of the following:<sup>13</sup>

1. the evidence provided by the undertaking relates to a completely separate cartel activity. The fact that the activity is in a separate market is a good indicator, but not always decisive; and
2. the undertaking would qualify for total immunity from financial penalties or a reduction of up to 100% in the amount of the financial penalty in relation to its activities in the second market.

14. If CCCS is satisfied that the above conditions are met, the undertaking will receive a reduction in the financial penalties imposed on it in relation to the first market, which is additional to the reduction which it would have received for its co-operation in the first market alone.<sup>14</sup>

### 3. Challenges in Design and Implementation in Singapore

15. From the outset of enforcing the Competition Act, CCCS recognised the value a leniency programme could bring to its detection and enforcement of the Competition Act against cartels. Since the leniency programme was introduced, CCCS has continually sought to improve and refine it, drawing on the practical experience it has gleaned from administering its programme and from international best practice. CCCS has also benefitted from the extensive public consultation it has undertaken when proposing changes to its leniency programme and the feedback it has received from applicants over the years it has been in place.

16. Set out below are the key factors considered and challenges identified in designing and implementing CCCS's leniency programme in Singapore.

17. Ensuring Sufficient Incentives, Transparency and Certainty. The most immediate challenge faced by CCCS in relation to its leniency programme was in designing a programme that was clear and effective – one that provides undertakings with: sufficient incentives to come forward for leniency and be co-operative; and, at the same time, certainty and predictability in terms of eligibility, conditions for leniency, information

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<sup>11</sup> Paragraphs 5.4 to 5.9 of *CCCS' s Leniency Guidelines 2016*.

<sup>12</sup> Paragraph 6.1 of *CCCS' s Leniency Guidelines 2016*.

<sup>13</sup> Paragraph 6.2 of *CCCS' s Leniency Guidelines 2016*.

<sup>14</sup> Paragraph 6.3 of *CCCS' s Leniency Guidelines 2016*.

required by CCCS and treatment of information provided to CCCS (e.g. confidentiality).<sup>15</sup>

18. When first developing a leniency programme, CCCS relied on the experience and practice of other jurisdictions as well as international best practice as discussed in fora such as the International Competition Network (“ICN”) and the Organisation of Economic Co-operation and Development (“OECD”). At the time, the prohibition against anti-competitive agreements in Singapore was not yet in force, and as such, CCCS did not have the benefit of practical, “on-the-ground” experience to assist its formulation of the programme. In this context, to allow for sufficient flexibility, the first leniency programme in 2005 had broad parameters under which undertakings could apply for leniency and what reduction in penalties (if any) could be expected if an infringement was found.

19. The leniency programme was then revised in 2009 to include a marker system for cartel members who are the first to apply for leniency and a leniency plus system.<sup>16</sup> The introduction of a marker system has had a significant impact on how leniency applications are made. In CCCS’s experience, the vast majority of leniency applications are now made by way of a marker with the applicant then providing the information, documents and evidence available to it to CCCS within a designated time-frame, illustrating that the “race to the door” is a real incentive for undertakings.

20. Recognising that the leniency programme could be further enhanced by providing more transparency and certainty to applicants, the procedural steps within the leniency programme were further revised in 2016. The detail added to the procedural steps in the programme was a reflection of how in practice CCCS had applied its leniency programme and the experience it had accumulated. These revisions included setting out the types of information which must accompany a request for marker, the threshold of information required from an applicant to perfect a marker, the types of documents from a leniency application that would be available on access to file and what happens in the event that the leniency conditions are not met or when an application is withdrawn. The greater detail on procedural steps was to provide applicants with a greater awareness as to what they can expect when applying for leniency.<sup>17</sup>

21. While targeted changes have been made to enhance the certainty and predictability of the leniency programme, in relation to incentives, the core incentives such as immunity or a discount up to 100% or 50% for subsequent applicants remain unchanged. CCCS has however made certain amendments in the *CCCS Leniency Guidelines 2016* to attract more applicants (discussed at paragraphs 25 and 26 below).

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<sup>15</sup> To this end, CCCS published (and keeps updated) its leniency guidelines which set out substantively and procedurally what benefits undertakings can expect to receive, and what will be expected of them, as leniency applicants. *CCCS’s Leniency Guidelines 2016* sets out, at paragraph 9, how information received from leniency applicants will be used and treated by CCCS.

<sup>16</sup> <https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/public-consultation-for-changes-to-leniency-programme>.

<sup>17</sup> <https://www.cccs.gov.sg/public-register-and-consultation/public-consultation-items/public-consultation-on-proposed-changes-to-ccs-guidelines>.

22. CCCS notes that in respect of the incentives offered, there may appear to be an inherent tension between providing certainty and the available leniency discount for subsequent applicants which is *discretionary* up to a cap of 50%. In this regard, the ability of CCCS to exercise discretion in determining the quantum of financial penalty reduction is aimed at ensuring that leniency applicants have a continuing incentive to be as co-operative as possible (although this means less certainty/predictability for leniency applicants as well as potential applicants on the discount they may expect to receive). Importantly, all applicants who are not first-in, regardless of their position in the leniency queue, have a compelling incentive to be as forthcoming and co-operative as possible since they are all equally eligible for up to a 50% reduction in financial penalties.

23. Practically in a Singapore, CCCS has found that this approach has been effective, where subsequent (second-, third- and even fourth-in) leniency applicants have all provided useful information which added significant value to CCCS's investigation, resulting in the same or near similar percentage financial penalty reductions being granted to each.

24. Attracting Applications. Another important factor considered by CCCS in the design of its leniency programme has been how to encourage applications. Besides the leniency discount incentive and the inclusion of a marker system, CCCS has made two further enhancements to the programme.

25. First, bearing in mind the need to provide certainty and the possible dilemma faced by leniency applicants as to whether their conduct qualifies for leniency, CCCS's leniency programme was amended in 2016 such that an undertaking could apply for leniency not only for "hardcore" cartel conduct (i.e. price-fixing, bid-rigging, market-sharing, restriction of output), but also for any *object infringement* of section 34 of the Competition Act. In this regard, CCCS has received a number of applications for immunity/leniency for conduct such as sharing of commercially sensitive information (including information on price). CCCS notes however that not all sharing of information may be considered an "object" infringement.

26. Secondly, as a result of the latest revision contained in *CCCS's Leniency Guidelines 2016*, initiators and coercers of anti-competitive conduct are now eligible for up to 50% reduction in financial penalties (subject to conditions).<sup>18</sup> Previously, such applicants were ineligible for leniency; rather, they could only avail themselves of a co-operation discount which is considerably lower than the possible leniency discount. Since the revision, CCCS's has issued one infringement decision for a case involving an initiator that was awarded a reduction in financial penalties for coming forward with information on its cartel activity.<sup>19</sup>

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<sup>18</sup>Paragraph 2.4 of the *CCCS's Leniency Guidelines 2016*. In determining whether an undertaking has initiated or coerced another undertaking to participate in the cartel, CCCS would consider the surrounding circumstances of each case carefully, including but not limited to whether the undertaking took positive and successful steps to either initiate a cartel (in the case of an initiator) or pressurised an unwilling participant to take part in the cartel (in the case of a coercer).

<sup>19</sup>CCS Decision of 28 November 2017 in relation to bid-rigging of tenders in Singapore (CCS 700/003/15).

27. Ensuring the Value of Leniency Applications to Detecting Cartels and Assisting CCCS's Investigations. In designing its leniency programme, CCCS carefully considered how a leniency application can contribute to not only the detection of a cartel but also to the efficacy of its investigative process. In this regard, to ensure valuable resources were not unnecessarily deployed, CCCS clarified in *CCCS's Leniency Guidelines 2016* that it expects applicants to define the market(s) in which the cartel activity occurred and detail the extent to which this had an impact in Singapore by preventing, restricting or distorting competition within Singapore.

28. This requirement was included to serve as a timely reminder to possible defensive leniency applicants that it is necessary to show with sufficient detail how the cartel activity did or could have had an impact on a market in Singapore. The extent of the impact in Singapore (if quantifiable) is also a factor to be considered for CCCS's prioritisation of the cartel case.

29. *CCCS's Leniency Guidelines 2016* also sets out the requirement for applicants to unconditionally admit to the conduct for which leniency is sought.<sup>20</sup> Undertakings must consequently detail the cartel conduct and admit that they have engaged in that conduct. It is for CCCS to then assess whether it amounts to an infringement of the Competition Act. This requirement was inserted to discourage defensive leniency applications, whereby leniency applicants challenged the fact that the conduct for which leniency has been sought was a cartel conduct. Denials that such conduct infringes the Competition Act are viewed dimly especially should CCCS find that in fact the conduct does infringe the Competition Act. This could result in a leniency application being rejected or the discount granted being considerably smaller than would otherwise have been the case. This is made clear in *CCCS's Leniency Guidelines 2016*. Such warnings have been administered and action has been taken in certain CCCS cases.

30. Ease of Applying to CCCS and Administering CCCS's Leniency Programme. CCCS has also placed considerable weight to ensure that its leniency programme is practical, clear and accessible to applicants, and that it does not impose a large administrative burden on CCCS. To this end, when administering the programme, CCCS is open to arranging "state of play" meetings with applicants, providing reasonable deadlines within which companies can revert to CCCS with information and CCCS may require administrative assistance from applicants for oral statements.

31. There of course remain challenges to the efficacy of the leniency programme.

32. Lack of Awareness. One of the on-going implementation challenges faced by CCCS is to continuously improve the effectiveness of its leniency programme by raising public awareness of the programme (and of competition law generally). A troubling facet of this involves the low levels of awareness of the leniency requirements and procedures, even amongst the legal practitioners in Singapore, notwithstanding CCCS's guidelines and outreach efforts. In a stakeholder perception survey commissioned by CCCS in 2017, only 16% of businesses surveyed have heard of CCCS's leniency programme. Amongst legal practitioners who have had contact with CCCS, 91% indicated that they are aware of CCCS's leniency programme. However, 13% of those legal practitioners who had heard of CCCS's leniency programme were **not** aware that an applicant may still be eligible for reduced penalties if another party has successfully applied for leniency.

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<sup>20</sup> Paragraph 2.2 of *CCCS's Leniency Guidelines 2016*.

33. Leniency applicants, including those which are legally represented, can require significant guidance, not only in terms of leniency conditions and procedures, but also on articulating/scoping their own applications to the CCCS. For example, CCCS has encountered situations where investigated undertakings, fail to identify the correct entities or articulate the conduct for which they are applying for leniency.

34. Co-operation with other Agencies in Cross-border Cartel Cases. CCCS has found, from its past experience, that co-operation (sharing of information) with other agencies can be greatly beneficial in cross-border cartel cases both for CCCS as well for the undertakings (including the leniency applicant) under investigation.

35. For example, in CCCS's investigation into the price-fixing cartel between freight forwarding companies<sup>21</sup>, CCCS communicated with other competition agencies (which had already begun their investigations by the time CCCS opened its investigation) after obtaining substantive waivers from the leniency applicants in the case. This proved extremely useful in scoping the most effective way to gather evidence from the investigated undertakings. Ultimately, this made the investigation less costly (in terms of time and expense) for CCCS as well as the undertakings and individuals involved.

36. The recent revision in *CCCS's Leniency Guidelines 2016* makes clear that it is a condition for leniency that an applicant grant an appropriate waiver of confidentiality to CCCS in respect of any jurisdiction where the undertaking has also applied for leniency or any other regulatory authority for which it has informed of the conduct.<sup>22</sup>

37. CCCS has received feedback that its requirement for a waiver could be detrimental to the number of leniency applications it receives. Feedback cited that an undertaking will be deterred from seeking leniency in Singapore knowing that it may result in exposure in another jurisdiction, particularly if the latter jurisdiction has more severe sanctions (e.g. criminal sanctions) for participation in cartel conduct. CCCS is however cognizant of this and hence deliberately restricted the waiver to pertain to jurisdictions where the leniency applicant had already applied for leniency. Administratively, CCCS has also discussed such waivers with leniency applicants to overcome the concerns associated with providing a waiver.

38. Complementarity with Other Available Discounts/Incentives. Finally, CCCS needs to ensure that the incentives in its leniency programme continue to be balanced with the discounts it grants for co-operation and in relation to its fast track procedure (settlement) that was established in December 2016.

#### 4. Conclusion

39. With this paper, CCCS has provided an overview of its leniency programme and subsequent amendments to share its experience in dealing with some of the factors and challenges it has considered and faced in designing and implementing the programme.

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<sup>21</sup> CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore (CCS 700/003/11).

<sup>22</sup> Paragraph 2.2 of CCCS's Leniency Guidelines 2016.

40. As a concluding remark, CCCS has seen real benefits in co-operating with other competition authorities in investigating cartel conduct notwithstanding that there may be differing criminal and/or civil sanctions applicable to the cartel conduct in each jurisdiction. Continued initiatives in this regard to encourage co-operation, whether this be through formal or informal frameworks, can only enhance this further.