



سوروهنجاڤي قرساعيشن برونبي دارالسلام

COMPETITION COMMISSION

BRUNEI DARUSSALAM

Guidelines

**LENIENCY**

These Guidelines are intended to be an introductory text and guidance document on how the Commission enforces and administers the provisions under the Competition Act (“Act”). These Guidelines, however, are not a substitute for the Act or any Regulations made pursuant to the Act. They are not exhaustive, and do not set a limit on the investigation and enforcement activities of the Competition Commission of Brunei Darussalam (“CCBD”). In applying these Guidelines, the facts and circumstances of each case will be considered in totality. These Guidelines may be revised should the need arise. In the event that any of the provisions in these Guidelines are inconsistent or incompatible with the provisions of the Act, the provisions of the latter shall take precedence.

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## **1. Introduction**

- 1.1. The Competition Act (“Act”) provides Leniency Regime provision that grants immunity to those involved in anti-competitive agreement or cartel in exchange to full disclosure and cooperation.
- 1.2. These Guidelines set out detailed processes and procedures adopted by the Competition Commission of Brunei Darussalam (“CCBD”) in relation to leniency application under Section 44 of the Competition Act.

## **2. The scope of the Leniency Regime**

- 2.1. A leniency is an agreement between the CCBD and an individual or between the CCBD and a company, where the individual and/or the company is a member of a cartel. Leniency does not cover reports and/or information supplied to the CCBD by party not member of the cartel.

## **3. Breaking the cartel**

- 3.1. Detecting and fighting cartel is a priority pursued by many competition agencies in the region including the CCBD. While cartel conducts can be secretive in nature, making it difficult to detect, leniency is proven to be the most effective tool in incentivizing businesses to break the cartel they are in. It enhances and facilitates investigations and enforcement actions of the CCBD by encouraging cartel members to come forward to provide direct evidence and proactively cooperate.
- 3.2. By having a leniency program in place, cartel becomes less attractive as the members perceive greater risk to be detected by the CCBD. With its clear and certain incentives, it initiates the “race” among the cartel members to first report the illegal conduct to CCBD.

## **4. Key features of the Leniency Regime**

The key features consist of the following elements:

- 4.1. Leniency application is only available to businesses that are part of anti-competitive agreements or cartel under Section 11 of the Act.
- 4.2. Only an undertaking may apply for leniency under the leniency regime.
- 4.3. Leniency is available to the first undertaking that report the cartel conduct to the CCBD as well as other subsequent applicants for leniency and meet all the requirements for the leniency.

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- 4.4. If the undertaking applying for leniency meets the conditions for leniency, the CCBD will enter into an agreement not to prosecute for a pecuniary penalty in exchange for cooperation in the investigation of the cartel conduct.
- 4.5. The undertaking receiving the leniency will, to the satisfaction of the CCBD, agree to sign a statement of agreed fact admitting to its participation in the cartel.
- 4.6. Under Section 44 (2) of the Act, CCBD has a discretion to grant differing percentages of reductions of financial penalties that could otherwise be imposed on infringing undertakings. The CCBD may take into consideration any circumstances including the fact that the undertaking was the first undertaking to come forward to the CCBD about an infringement, the stage in the investigation or other form of co-operation to be provided, and the information already in the possession of the CCBD.
- 4.7. Eligibility criteria for application:
  - (a) Admitted its involvement in an infringement of any Section 11 prohibition; and
  - (b) Provided information or other form of cooperation to the CCBD which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other undertakings.

## 5. Immunity grant

Based on section 44 of the Act, there are two forms of immunity or reduction of penalties given by CCBD to the applicant.

- 5.1. Granting maximum reduction of up to 100 per cent (total immunity):
  - (a) The applicant was the first person to bring attention of the suspected infringement to CCBD;
  - (b) Applicants must provide CCBD with all the information, documents and evidence or other form of co-operation available in assisting in identification or investigation regarding the anti-competitive activity; and

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- 5.2. Granting reduction less than 100 per cent depending on the criteria as follows:
  - (a) Admitted the involvement during investigation stage; and
  - (b) Provide information or any co-operative evidence during the investigation stage.
- 5.3. Under section 45 of the Act, the CCBD have the power to accept or impose any undertakings which the CCBD considers appropriate or close the investigation without making any finding of the anti-competitive activity and shall not impose a penalty on the undertaking

## **6. What is anti-competitive agreement or cartel under leniency regime?**

- 6.1. The CCBD Leniency Regime applies only to cartel conduct under Section 11 prohibitions. A cartel refers to agreements between businesses with object or effect to prevent, restrict or distort competition in any market for goods or services. Regardless whether the agreement was reached formally or informally, written or oral. Cartel conducts are *per se* illegal and includes concerted practices, amongst others, of price fixing, big rigging, market sharing and supply limitation.

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- (i) **Price Fixing:** Competitors directly or indirectly agree to increase or maintain or fix the prices of goods or services, instead of competing to offer the best value for their customers. This includes decisions made by associations to increase prices of product or services, to impose charge or to set guidelines on how much to charge.
- (ii) **Bid Rigging:** Bid rigging or known as collusive tender which refers to the manipulation of tender processes and documents by businesses who agree in advance on who should win the tender, and/or to make sure the tender is awarded at a high price. There are many forms of bid rigging for example bid rotations and bid suppression and etc.
- (iii) **Market Sharing:** Competitors agree to divide up the market either by geographical area or by the types of customer. They agree to only sell at their designated area in the market, without competing with others. This agreement will limit the number of suppliers in the market leading to consumers having to pay more for goods and services.
- (iv) **Supply limitation:** Supply control involves an agreement between competitors to limit the quantity of goods or services made available to the market, shortage of goods or services will lead to increase of prices, as there is not enough supply to provide the large demand in the market.

6.2. Cartel can cause significant harm to consumers, businesses and the economy as a whole. It restricts or removes competition in the market resulting to production of lower quality of goods at higher prices. It also hinders business efficiency and innovation to be better in their playing field.

6.3. For more information on cartel, please refer to the [Guidelines on Anti-Competitive Agreements \(Section 11\)](#).

## **7. Cartel is a hardcore violation of the Competition Act**

7.1. A substantial financial penalty not exceeding 10 per cent of business turnover for each year of infringement, for up to a maximum of 3 years may be imposed against businesses who are found to have violated the Act.

## 8. Leniency form

- 8.1. Online Leniency Form which may be accessed through the CCBD website at [www.ccbd.gov.bn](http://www.ccbd.gov.bn).
- 8.2. The Leniency Form may also be downloaded and submitted to the CCBD via the following means:
  - (a) Email to [exec.secretariat@ccbd.gov.bn](mailto:exec.secretariat@ccbd.gov.bn)
  - (b) Post to the following address

**Chairman of the Competition Commission Brunei Darussalam**

*through*

Executive Secretariat to the Competition Commission Brunei Darussalam  
Level 5, Ministry of Finance and Economy (MOFE) Building,  
Commonwealth Drive,  
Bandar Seri Begawan, BB3910  
Negara Brunei Darussalam

## 9. Application process



## 10. Marker Status

- 10.1. Leniency applicant may ask for a “marker” in order to preserve its priority in receiving leniency while an application is being investigated or prepared.
- 10.2. The marker essentially records



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- (a) the priority
- (b) the date and time of
- (c) matter for which an enterprise intends to submit an application for leniency and contains a stipulation of the date by which the enterprise must complete its application

10.3. In this way, a company with a marker with an earlier date and time is given priority over another company with a marker with later date.

10.4. A marker is valid for 30 days from the date it is granted. If the recipient of a marker fails to complete its application by the end of the specified period, the enterprise will lose its priority position. It may wish to obtain a new marker if it wishes to make a leniency application. All subsequent leniency applicants will receive a marker upon request. An extension of time shall be subjected to valid grounds and it is up to the discretion of the CCBD.

## **11. Confidentiality**

11.1. The identity of person who applied and has been granted leniency shall be confidential and will be kept safe and applicant is required to remain silent on their leniency application.

11.2. It must be noted that it is sometime necessary to reveal information which may identify the source of the information to the third party. When providing information or document, applicant should:

- (a) Clearly identify any confidential information;
- (b) Provide this information in a separate annex clearly marked 'confidential information'; and
- (c) Explain why this information should be treated as confidential.



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