



## EXPLANATORY NOTES ON LENIENCY FOR INITIATORS AND COERCERS OF CARTELS

*The CCM has extended its leniency programme to cartel initiators or coercers. Henceforth, the initiators or coercers of collusive agreements can apply for leniency to benefit from a reduction in fines.*

### **About the CCM**

*The Competition Commission of Mauritius is the body responsible for enforcing the Competition Act 2007. The Competition Act prohibits Restrictive Business Practices. These are anti-competitive behaviours by businesses and are classified into three categories, namely cartels, abuse by monopoly firms and mergers that restrict competition. The CCM's enforcement duty comprises of investigations into suspected occurrence of restrictive business practices and through the imposition of directions and fines on enterprises found to be in breach of the Act.*

### **What provisions are there in the Competition Act 2007 (the Act) regarding on collusive agreements (also known as cartels)?**

*Sections 41 of the Act prohibits agreements between enterprises to fix prices, share/allocate markets and to restrict supply. Section 42 of the Act prohibits bid rigging agreements and section 43 of the Act prohibits agreements between enterprises involving resale price maintenance.*

*These are widely regarded as the most serious forms of anti-competitive behaviour. The Act sanctions such cartels with financial penalties under section 59. The CCM may impose fines of up to 10% of the turnover of an enterprise covering the duration of the illegal agreement but for a maximum of 5 years.*

### **What is the Leniency Programme?**

*Leniency allows enterprises which have taken part in a cartel to benefit from a reduction in fines when they disclose the cartel to the CCM by providing information evidencing the existence of the cartel to which they have been part of. The legal provision for leniency is stipulated in section 59 (7) of the Act and the conditions for leniency are set out in section 5 of CCM 3 Guidelines on Collusive Agreements.*

*An enterprise may benefit from (a) full immunity from fines if it applies for leniency by disclosing its cartel participation **before** an investigation into the matter has been launched by the CCM, or (b) a reduction in fines of up to 100% if the application for leniency and disclosure is made **after** an investigation into the matter has been launched by the CCM.*

*The first applicant to come forward after the CCM has started an investigation may benefit from a reduction of fines of up to 100%, the second and subsequent applicants may benefit from up to 50%.*

### **What is the extension of leniency to initiators or coercers about?**

*It should be noted that under the leniency programme as set out in CCM Guidelines on Collusive Agreements, initiators of cartels, the so called 'ring leaders', and coercers of cartels could not apply for leniency. They are expressly excluded from benefiting from leniency.*

*A new paragraph 5.10A has been inserted to the CCM3 Guidelines. This new amendment extends leniency to initiators and coercers. Thus, enterprises which have initiated a cartel or coerced other enterprises into a cartel may take advantage of the leniency programme and therefore benefit from a reduction in fines.*

### **What is the discount?**

*The maximum discount in any situation for an initiator or coercer is 50%.*

*Depending on the timing of the application by an initiator or coercer, the grant can be a guaranteed 50% reduction or a discretionary reduction of up to 50%.*

*If the initiator or coercer has applied before the CCM has started an investigation into the matter, it will receive a guaranteed 50% reduction in fines. But this guaranteed 50% reduction is subject to the CCM not already having enough information to establish the breach.*

*On the other hand, if an investigation has already started, then the applicant may get up to 50% reduction. The CCM will take into account; the stage at which the coercer comes forward, the evidence already gathered by the CCM, and the quality of information provided. In the case where other enterprises, which are neither the initiator nor the coercer, have already applied for leniency before the initiator or coercer, then it is less likely that the latter will benefit from the maximum reduction of 50%.*

### **Difference between a normal leniency applicant, an initiator and coercer?**

**Normal applicant** refers to an enterprise which is not the cartel initiator or a coercer.

**The initiator** (also sometimes referred to as instigator) is the enterprise which has initiated collusive collaboration for example by making first contact with other enterprise(s) with the view to implement the cartel. The enterprise has taken a leading role in the creation of the collusive agreement (but not necessarily in the implementation of the agreement or in sustaining the cartel practice). In that respect, the initiator can be a relatively small player with no power to coerce others as coercion is not a factor to be considered when determining which enterprise is the initiator.

**The coercer** would be an enterprise which has taken any -

- a. step to force other enterprises to participate in the infringement and/or
- b. retaliatory measures or threat thereof against other enterprises with a view to enforcing and maintaining the practices constituting the infringement.

*The CCM is of the view that for an enterprise to qualify as coercer, there must be evidence of clear, positive and ultimately successful steps from it (that is, the coercer) to pressurise an unwilling participant to take part in the cartel.*

### **How can enterprises contact the CCM regarding Leniency Programme?**

*Enterprises may contact the CCM either by phone, fax, and email or call in at our office for more information on leniency. They may also wish to anonymously contact the CCM for more information about the leniency programme and whether they qualify for it. Although not necessary, we encourage enterprises*

*to contact us through their lawyers or legal representatives, without the need to reveal the identity of the enterprises.*

***More information about Leniency Programme***

*For more information on the leniency programme, please read the CCM3 Guidelines on Collusive Agreements, available on the CCM's website – [www.ccm.mu](http://www.ccm.mu).*

*The CCM3 Guidelines provides information on:*

- What is leniency?*
- The benefits of leniency.*
- The conditions to be met to qualify for leniency.*
- Information about amnesty for cartel initiators.*

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