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CWG SG1 WEBINAR - ICN

LENIENCY INCENTIVES & DISINCENTIVES IN SOUTH-EAST ASIA

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19 September 2018

CAMBODIA | CHINA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM

LENIENCY REGIME



Singapore	Malaysia	Indonesia	Vietnam	Philippines
<ul style="list-style-type: none"> • Leniency program implemented 	<ul style="list-style-type: none"> • Leniency program implemented 	<ul style="list-style-type: none"> • No formal leniency/immunity • Under consideration – still undecided if 100% immunity should be offered. • But KPPU has previously reduced fines for parties that whistle-blew on cartel. 	<ul style="list-style-type: none"> • 2017 draft competition law contain provisions on leniency – if passed, will take effect in 2019 	<ul style="list-style-type: none"> • Competition Act requires a leniency program to be developed • Commission is expected to issue a separate set of leniency rules soon
Cambodia	Lao	Myanmar	Thailand	Brunei
<ul style="list-style-type: none"> • Act not yet in force 	<ul style="list-style-type: none"> • Act allows for leniency but no formal leniency program implemented yet. 	<ul style="list-style-type: none"> • Competition Act allows for leniency but no formal process introduced yet. 	<ul style="list-style-type: none"> • No leniency introduced in the new Trade Competition Act that came into effect 2017. • But note that leniency was one of the amendments that were considered. 	<ul style="list-style-type: none"> • Competition Order requires leniency regime but no formal program implemented yet.

DIFFERENCES IN LENIENCY PROGRAMS – WHERE TO & WHO’S TALKING?

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Singapore	Malaysia	Philippines
<ul style="list-style-type: none"> • Leniency available for “cartel activity”, which are “agreements which have as their object the prevention, restriction or distortion of competition within Singapore”. 	<ul style="list-style-type: none"> • Leniency available for enterprises what have admitted their involvement in infringing s4(2) of the Act (e.g. price fixing, market sharing, bid rigging). 	<ul style="list-style-type: none"> • Only open to participants of anti-competitive agreements set out in 14(a) & 14(b) of the Act (i.e. price fixing, bid rigging, market allocation, restricting price competition, etc.) • Not available for general “agreements which have the object or effect of substantially...restricting competition”
<ul style="list-style-type: none"> • Cartel initiator/coercer only entitle to a maximum reduction of 50% in financial penalties 	<ul style="list-style-type: none"> • Cartel initiator/coercer not entitled to 100% reduction in financial penalties, but otherwise no fine reduction limit imposed. 	<ul style="list-style-type: none"> • Cartel initiator/coercer not entitled to immunity, but unclear if it may be entitled to 100% reduction in financial penalties via leniency
<ul style="list-style-type: none"> • Have to refrain from further participation in cartel (except as directed by CCCS) 	<ul style="list-style-type: none"> • No requirement to refrain from further participation in cartel as pre-condition for leniency 	<ul style="list-style-type: none"> • Have to take “prompt and effective action” to terminate participation in cartel



FAST TRACK PROCEDURE (FTP)

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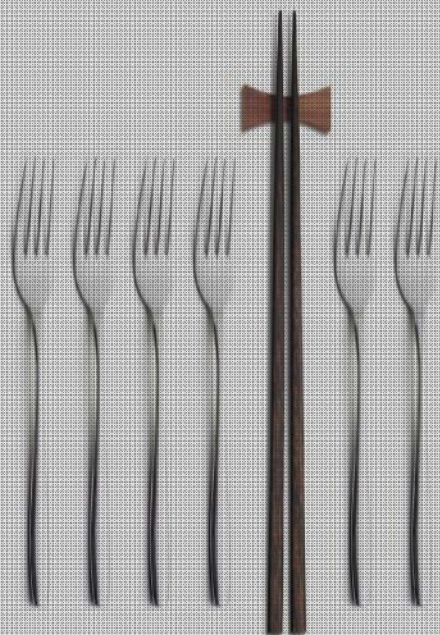
- 10% reduction in financial penalties in exchange for Parties' admission of liability for infringement
 - Vs. Commitments process – No admission of liability
- Applies to Section 34 Prohibition AND Section 47 Prohibition
- Can apply in conjunction with leniency – Discounts are cumulative
- Four stage process – initiation, discussion, agreement and acceptance

FTP ≠ Leniency ≠ Commitments

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