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# CWG SG1 WEBINAR - ICN

LENIENCY INCENTIVES & DISINCENTIVES IN SOUTH-EAST ASIA

Kala Anandarajah, Partner/Head, Competition & Antitrust And Trade

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

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



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

**NEW**

## 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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For more information, please contact:

[competitionlaw@rajahtann.com](mailto:competitionlaw@rajahtann.com)

**Kala Anandarajah**

Partner (Head, Competition & Antitrust, Trade)

D (65) 6232 0111

F (65) 6428 2192

[kala.anandarajah@rajahtann.com](mailto:kala.anandarajah@rajahtann.com)

**Dominique Lombardi**

Partner (Foreign Lawyer, Deputy Head, Competition & Antitrust, Trade)

D (65) 6232 0104

F (65) 6428 2257

[dominique.lombardi@rajahtann.com](mailto:dominique.lombardi@rajahtann.com)

**Tanya Tang**

Partner (Chief Economic and Policy Advisor)

D (65) 6232 0298

F (65) 6225 0747

[tanya.tang@rajahtann.com](mailto:tanya.tang@rajahtann.com)