

Hong Kong Updates Its Antitrust Leniency Program

APRIL 28, 2020

On April 16, 2020, the Hong Kong Competition Commission (HKCC) updated its leniency program, taking immediate effect upon release, aiming to further incentivize cooperation in investigation and reporting of cartel activities. Building on its last update in April 2019, the HKCC adds a new policy for individual leniency applicants and further increases the available credit for company applicants.

Below are the most significant changes in Hong Kong's new leniency program.

Timing of the Application Matters for Protection from Follow-on Claims

Hong Kong's new leniency program distinguishes *two types* of applicants for leniency, based on whether the HKCC received their applications *before* or *after* the agency opened an initial assessment or investigation of the conduct.

Type 1. A cartel member that **discloses its participation** in a cartel of which the **HKCC has not opened an initial assessment or investigation**, or

Type 2. A cartel member that **provides substantial assistance** to the HKCC's investigation and subsequent enforcement action of a cartel which **the HKCC is already assessing or investigating**;

Except for a company that is "clearly the single ringleader of a cartel," the HKCC will grant leniency to the *first* cartel member of either type that is otherwise eligible.

The HKCC will agree not to commence proceedings against a successful leniency applicant of *either type* before Hong Kong's Competition Tribunal in relation to the conduct covered by the leniency agreement. The HKCC will not bring proceedings for an order declaring that applicant has violated Hong Kong's competition law (*i.e.* the Competition Ordinance).

However, a Type 2 leniency applicant still risks follow-on private suits for damages. If a follow-on action for damages is brought against alleged participants in the cartel for conduct covered by the leniency agreement, the HKCC may

issue an infringement notice to the Type 2 leniency applicant. The infringement notice generally describes the scope of the conduct and requires that the company admit to a violation of the First Conduct Rule (similar to Section 1 of the Sherman Act in the U.S. antitrust law) so that the follow-on suit may proceed.

Because the HKCC will not issue infringement notices to Type 1 leniency applicants, this new division between Type 1 and Type 2 leniency encourages companies that want to minimize the risk of follow-on damages claims to seek leniency early, before the start of an investigation.

Individuals Are Eligible for Leniency

Under the new policy, individuals (such as employees of a company) involved in cartel conduct can seek leniency. Unless leniency has already been granted to a company, the HKCC will agree not to commence any proceedings against the first individual who reports the cartel to the HKCC and meets all of the requirements for receiving leniency.

If a company enters into a leniency agreement with the HKCC, the leniency can also extend to the company's current and former officers, employees, partners and agents, subject to conditions specified by the HKCC.

Similar to the policy for companies, the HKCC will not grant leniency to an individual who was the "ringleader" of the cartel conduct or who coerced other parties to engage in the cartel conduct.

Key Takeaway

The HKCC is placing increasing emphasis on its leniency program since its success in detecting and enforcing against an [information technology cartel](#) through the program earlier in January 2020. The HKCC is likely to continue expanding its toolbox and increasing the use of its leniency program, further encouraging companies and individuals to self-report cartel conduct as soon as possible. It's important for companies and individuals to work with attorneys who pay close attention to relevant laws and practice in Hong Kong.

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