



Draft Leniency Policy

Under the

Competition (Jersey) Law 2005

Introduction

Part 2 of the Competition (Jersey) Law 2005 which enters into force on 1 November 2005 prohibits anti-competitive agreements between businesses.

Cartels are a particularly damaging form of anti-competitive behaviour. They include but are not limited to price fixing, market sharing, production or sales quotas, excluding competitors and collusive tendering. Their purpose is to increase prices by reducing or removing competition and therefore directly affect the purchasers of their goods or services. Any business found to have engaged in cartel activity is likely to face a high financial penalty. The JCRA has the power to impose a fine of up to 10 per cent of a company's turnover for a period of up to three years.

The purpose of this Leniency Policy is to give businesses involved in cartels strong incentives to assist the JCRA in the detection of cartels. The JCRA will grant either total or partial immunity from JCRA imposed financial penalties to a business involved in a cartel that comes forward on or after 1 November 2005 with relevant information (as defined below) about the cartel, and cooperates fully with the JCRA throughout its investigation and any subsequent proceedings.

Comments

1) The JCRA welcomes comments on this draft policy.

Comments must be submitted in writing by **5 pm on 10 October 2005** to:

Jersey Competition Regulatory Authority
6th Floor, Union House
Union Street
St Helier
Jersey JE2 3RF
For the attention of Janet Whiteside, Case Officer

The JCRA may publish responses to this Consultation Paper on its website, so any confidential material should be clearly marked as such.

Form of Leniency

Leniency will take the form of total immunity from, or a significant reduction of, the financial penalties that the JCRA can impose. It does not extend to the other consequences of infringing the Law which include the fact that the unlawful agreement is void and cannot be enforced, and the possibility that third parties who consider they have been harmed by the cartel may have a claim for damages in the Royal Court. Leniency

does not provide immunity from any penalty that may be imposed by other competition authorities outside Jersey where the cartel breaches not only Jersey law but also the competition law of one or more other jurisdictions, such as the European Union. It also does not cover penalties for obstruction of JCRA investigations, such as knowingly or recklessly providing materially false or misleading information.

Total Immunity

The JCRA will offer total immunity from financial penalties for an infringement of Part 2 of the Law to the first participant in a cartel to come forward with relevant information, as defined below, relating to the cartel, provided the JCRA has not already started an investigation of the cartel activity, or does not already have sufficient information to suspect the existence of the alleged cartel activity.

The participant must:

- provide the JCRA with access to all information available to them regarding the existence, activities, operation and membership of the cartel. Information includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic information;
- maintain continuous, complete and expeditious co-operation with the JCRA throughout its investigation and any ensuing proceedings;
- use best efforts to ensure that each of the business's related entities provides all assistance reasonably requested by the JCRA;
- refrain from further participation in the cartel (unless the JCRA directs otherwise); and
- not have taken steps to coerce others to take part in the cartel.

If the JCRA at any time determines that a participant granted leniency has failed to meet any of the above conditions, it will not be bound by its grant of leniency to that person.

Significant Reductions in Penalty

If a participant is

- not the first participant to approach the JCRA about a cartel; or
- has approached after the JCRA already has commenced an investigation into the cartel; or
- comes forward when the JCRA already has sufficient information to suspect the existence of the cartel but the information the participant has is useful for the investigation,

this may result in a significant reduction of the financial penalties that the JCRA might impose against the participant. When deciding on the reduction in penalty, the JCRA will take into account the stage at which the cartel participant has come forward, the evidence provided by it and the evidence already in the JCRA's possession. The participant must also fulfil the conditions set out above.

Confidentiality

The participant must not disclose to, or communicate with, any third party¹ regarding:

- the participant's leniency application;
- any request by the participant for clarification regarding its leniency application; and
- any information provided by the participant to the JCRA for the purposes of, or in connection with, the leniency application.

The JCRA is obliged to keep the information it receives in a leniency application confidential, subject to its use to conduct an investigation of the alleged cartel. The JCRA will endeavour, to the extent possible, to keep the identity of a person granted immunity confidential.

Procedure

Enquiry

If you wish to know whether the JCRA's Leniency Policy will apply to you or your company, you (or your advisers) may approach the JCRA for clarification. The JCRA can deal with such inquiries on a 'hypothetical' or 'no-names' basis. Any information provided to the JCRA in this context will not be used by the JCRA for any purpose other than to provide the requested clarification. An enquiry will not be considered to be an application for leniency under the policy.

Enquiries must be directed to the Executive Director of the JCRA.

Application

If a business decides to apply for leniency, this may be done in writing or in person. A leniency application must be made by an officer who has the authority to represent the business for this purpose.

Leniency applications must be directed to the Executive Director of the JCRA.

¹ Except as required by law, or in the case of their communications to other competition authorities, or otherwise with the prior written consent of the JCRA.

Grant of Leniency

The business applying for leniency will be informed as soon as possible whether the application is approved. The business will be required to sign and comply with a Conditional Grant of Immunity Agreement as a condition for approval. A template of the Agreement is attached to this Policy. The Agreement shall remain confidential between the person and the JCRA.

12 September 2005