Leniency procedure and the role of the applicant
- Case of Korea Fair Trade Commission -

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Procedures for leniency program

**Leniency application**
- Application
  - Identification information & summary of cartel conducts
  - Evidentiary materials and the list of evidence
  - Simplified application: supplement • within 15 days

**Issue Receipt notice**
- Confirming the date and time of application receipt

**Review**
- If conditions satisfied
  - Market Confirmation Note
    - Issue a written notice confirming applicant status within 15 days after the application (possible to extend 60 days)
    - Require continued cooperation, stop cartel participation etc.
- If conditions not satisfied
  - Denial of Leniency application
    - Issue a written notice of non-satisfaction of requirements

**Exemption or reduction on Penalty**
- If fail to comply with requirements

**Revoke marker confirmation**
Role of the applicant in each stage

Application(1)

Forms

- **Written**: • Identity of the applicant, • outline of the cartel case to report, • relevant evidence, • statement of cooperation with KFTC investigation

- **Oral**: Non-written application. voice/video recording (telephone application is not allowed)

  - **Simplified application**: submit • • first, and • • within the following 15 days (possible to extend 60 more days)

The order of application shall be decided based on the **time of submission**, regardless of the quality of evidence produced at the time of application.
Role of the applicant in each stage

Application(2)

When to Apply

- Before or after the beginning of KFTC investigation on the reported cartel

Important Considerations:

- Individual leniency program is not supported under the Korean cartel enforcement regime.
- Applicants should not have forced other participants to join the cartel against their will.
- Applicants should not have been punished for participating another cartel in last 5 years.
Role of the applicant in each stage

Marker Confirmation

- Role of applicant during marker confirmation period
  - **Full and Continuous cooperation** with KFTC investigation
    - Present every relevant document and state all the facts of the reported cartel that it knows
  - **Stop participating** in the reported cartel
    - May continue its involvement during a certain limited period under a KFTC investigator’s permission

KFTC Marker Confirmation Deadline

- **General rule**: Max. 150 days from application before KFTC issuance of a **Marker Confirmation Notice**
- **International cartel**: possible to take longer than 150 days
Role of the applicant in each stage

Final Decision of Leniency Benefit

The applicant should provide continuous and full cooperation to the KFTC until its final decision is made.

The KFTC can revoke Confirmation Notice if the applicant
(1) failed to provide continuous and full cooperation,
(2) presented false evidence,
(3) failed to cease its involvement in the reported cartel, or
(4) forced other participants to join the cartel.

Benefit

<table>
<thead>
<tr>
<th>Surcharge payment</th>
<th>Criminal Accusation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st applicant</td>
<td>Immunity (100%)</td>
</tr>
<tr>
<td>2nd applicant</td>
<td>Reduction (50%)</td>
</tr>
</tbody>
</table>
Other Related issues

- **Leniency Confidentiality**
  
  - **Protect the identity of leniency applicant/beneficiaries**
    
    - The KFTC should not reveal the identity before or after the final decision. So the KFTC takes the following measures:
      1. Allow oral application
      2. Use pseudo names for applicants in its Examination Report
      3. Redact any necessary parts of the Final Decision when open to the public

  - **Protect information submitted by applicant**
    
    - Other examinees are banned from reading or copying such information
    - Access to such data is allowed, if deemed necessary, only with appropriate protective measures in place
Other Related issues

Requirements be open and transparent

In order to provide predictability to the applicant and secure full cooperation,

- the KFTC sometimes ask the applicant to undertake the following specific tasks to secure cooperation,
  (1) forensic imaging of computers of involved employees
  (2) making employees available for interview
  (3) providing communication records between employees

- the KFTC considers the following criteria to find out whether the applicant forced other participants to join the cartel
  (1) whether assault or blackmail was used
  (2) whether it forced others to the extent of driving them out of the market
Thank You

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