Obtaining leniency benefit as the 2nd in
- Case of Korea Fair Trade Commission -

Jaeho Moon
Director, International Cartel Division
Korea Fair Trade Commission
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  - The 2\textsuperscript{nd} applicant of a cartel with only 2 cartelists
Leniency benefit for the 2\textsuperscript{nd} or Subsequent applicant

\begin{itemize}
\item Benefit for the 2\textsuperscript{nd} applicant
  \begin{itemize}
  \item 50\% reduction of \textit{administrative fine}
  \item Exemption from \textit{criminal accusation}
  \end{itemize}
\end{itemize}

\begin{itemize}
\item The reason to allow leniency benefit for the 2\textsuperscript{nd} applicant
  \begin{itemize}
  \item Additional evidences from 2\textsuperscript{nd} can contribute to the \textit{expedited case handling}
  \item Provide \textit{more incentive} to apply for leniency
  \end{itemize}
\end{itemize}
Leniency benefit for the 2nd or Subsequent applicant

- Amnesty Plus Program

  - If company X that is under investigation of cartel A discloses cartel B as the first leniency applicant,
    - Company X gets leniency benefit in cartel B case
    - Also, it will get benefit of reduction of or exemption from the administrative fine in cartel A case

<table>
<thead>
<tr>
<th>Size of relevant turnover</th>
<th>Benefit in Cartel A</th>
<th>Benefit in Cartel B</th>
</tr>
</thead>
<tbody>
<tr>
<td>B &lt; A</td>
<td>• 20% reduction</td>
<td>Exemption</td>
</tr>
<tr>
<td>A • B &lt; (A x 2)</td>
<td>30% reduction</td>
<td>Exemption</td>
</tr>
<tr>
<td>(A x 2) • B &lt; (A x 4)</td>
<td>50% reduction</td>
<td>Exemption</td>
</tr>
<tr>
<td>(A x 4) • B</td>
<td>Exemption</td>
<td>Exemption</td>
</tr>
</tbody>
</table>
Leniency benefit for the 2nd or Subsequent applicant

> Illustrated amnesty plus program

**Cartel A**
- L1 (1st): 100%
- L2 (2nd): 50%
- L3 (3rd): ?

**Cartel B**
- L3: 1st

Total turnover: 100

L3’s benefit
- Cartel A: exemption
- Cartel B: immunity

Total turnover: 400
Quality of evidence for 2\textsuperscript{nd} applicant

There is no difference of quality of evidence requirement* between 1\textsuperscript{st} and 2\textsuperscript{nd} applicant

* “necessary evidence proving illegal cartel”

Following issues on the quality of evidence for the 2\textsuperscript{nd} applicant are under discussion in Korea

- Whether the 2\textsuperscript{nd} applicant who provides more amount of evidence or more helpful evidence can be placed as the 1\textsuperscript{st} applicant
- Whether the 2\textsuperscript{nd} applicant who provides the same evidence as the 1\textsuperscript{st} applicant can be qualified for leniency benefit
Other Related issues

- The speed at which the 2nd applicant come forward the agency

  In the past, the law requires to consider only the order of application in making a final decision for leniency benefit

  - However, sometimes a cartelist try to enjoy leniency benefit by submitting de minimis information after significant period has been passed after the beginning of the investigation initiated by the 1st leniency application

- The KFTC recently amended law and limited leniency benefit of the 2nd applicant who applies 2 years after the 1st application

  - However, this issue is still in dispute.
Other Related issues

- The 2nd applicant of a cartel with only 2 cartelists

  - Leniency benefit used to be available regardless of the number of participants in the reported cartel.
    - However there was a criticism that leniency benefit should be limited when both of the participants of 2-membered cartel applies for it.

  - The KFTC recently amended law and limited leniency benefit for a participant of a 2-membered cartel
    - However, this issue is still in dispute.
Thank You

jaehomoon1213@gmail.com