

	<p>Competition Commission of Mauritius 10th Floor, Hennessy Court Corner Suffren Road & Pope Hennessy Street Port Louis Tel.: (230) 211-2005 Fax.: (230) 211-3107 Website: www.ccm.mu</p>	
<p>MEDIA RELEASE</p>	<p>Date:</p>	<p>01/03/2017</p>
<p>AMNESTY FOR CARTEL INITIATORS</p>		

The Competition Commission of Mauritius (CCM) today announces a temporary amnesty for initiators of cartels to come forward and take advantage of its Leniency Programme. The CCM3 – Guidelines on Collusive Agreements have been amended to this effect.

The amnesty will be for a period of six months starting from 1st of March 2017 and ending on 31st August 2017.

Mr Deshmuk Kowlessur, Executive Director of the CCM said ‘the policy worldwide including Mauritius, regarding leniency for cartel is that the initiators of cartel cannot benefit from leniency programmes and get immunity from or reduction in fines. The amnesty for cartel initiators is a one-off opportunity for cartel initiators to benefit from immunity or up to 100% reduction in fines as provided for under the CCM’s leniency programme. The amnesty is a real incentive for any enterprise to end its participation in a cartel. In many cases it is not clear for the cartel participant itself as to which participant is the initiator. The participants being unsure whether they are an initiator finds it too risky to disclose the cartel and apply for leniency. The amnesty provides this unique window of 6 months where such a cartel participant can apply and benefit from leniency without the risk of seeing its application rejected on ground of it being an initiator.’

The Competition Act provides for fines to the tune of 10% of turnover of an enterprise for breach of the cartel prohibitions. This 10% fine can be multiplied by the number of years the enterprise has participated in the cartel to a maximum of five years. The Leniency Programme allows members of cartels to come forward to the CCM and provide evidence of cartel activities to which they have been part of. The first to come forward, before the start of an investigation, may get total immunity from fines or if they come after

the start of an investigation, a reduction of fines of up to 100%. The second applicant for leniency may get up to 50% reduction and subsequent applicants may get up to 25% reduction of fines.

Without such amnesty, initiators of cartels could not apply for leniency, under the Leniency Programme of the CCM. This amnesty now allows cartel initiators as well, to take advantage of the Leniency Programme and therefore benefit from immunity or reduction in fines. It is observed that during the period of the previous amnesty for cartel initiators, the CCM received two leniency applications.

Mr Kowlessur further added that 'The amnesty for cartel initiators is an additional pro-active measure adopted by the CCM to enhance competition in markets by dismantling cartels. It further improves the effectiveness of leniency in the combat against cartels which is the most serious form of anti-competitive behaviour. With the advent of the amnesty it is also wise for non-initiators to apply for leniency as soon as possible since they now face the risk of being exposed by the initiator and to bear the financial penalty.'

The CCM encourages enterprises to contact the CCM to know more about Leniency Programme and the Amnesty being offered. Enterprises can also come anonymously through third parties, such as their legal representatives, to talk to us.

For more information please consult CCM 3 Guidelines on Collusive Agreements available on our website www.ccm.mu.

Explanatory Notes –

AMNESTY FOR CARTEL INITIATORS - EXPLANATORY NOTES

The CCM is providing an amnesty of six months to cartel initiators starting on the 1st March 2017 and ending on the 31st August 2017. The CCM will therefore, during this period, allow even the initiators of cartels to apply for and take advantage of leniency in relation to the prohibitions on collusive agreements under Sections 41-43 of the Competition Act 2007 (the Act).

What provisions are there in the Competition Act 2007 regarding on collusive agreements (also known as cartels)?

Sections 41 of the Act prohibits agreements between enterprises to fix prices, share/allocate markets and to restrict supply. Section 42 of the Act prohibits bid rigging agreements and section 43 of the Act prohibits agreements between enterprises involving resale price maintenance.

These are widely regarded as the most serious forms of anti-competitive behaviour. The Competition Act sanctions such cartels with financial penalties under section 59. The CCM may imposed fines of up to 10% of the turnover of an enterprise for a maximum of 5 years.

What is the Leniency Programme?

Leniency allows members (enterprises) of a cartel to benefit from a reduction of fines if they come forward to the CCM and provide evidence of cartel activities to which they have been part of. The Competition Act provides for leniency in section 59 (7) and the conditions for leniency are set out in section 5 of CCM 3 Guidelines on Collusive Agreements.

An enterprise may benefit (a) full immunity from fines if they come forward and report on its cartel activities before an investigation has been launched by the CCM, or (b) reduction in fines of up to 100% if the cartel participant(s) reports the cartel after the CCM has started an Investigation into the matter.

The first to come forward after the CCM has started an investigation may benefit from a reduction of fines of up to 100%, the second 50% and subsequent applicants may benefit from up to 25% reduction in fines.

What is the amnesty being offered by the CCM?

It has to be noted that under the Leniency Programme, initiators of cartels, the so called 'ring leaders', cannot apply for leniency. They are expressly excluded from benefiting from leniency.

This amnesty allows enterprises that are cartel initiators as well, to take advantage of the Leniency Programme and therefore benefit from immunity from or reduction in fines.

Thus, from the 1st of March 2017 to the 31st August 2017, cartel initiators may benefit from leniency in the same way as non-initiators by satisfying the conditions set out in Section 5 of the CCM 3 Guidelines.

What happens after 31st August 2017?

After 31st August 2017, initiators of cartels will not be allowed to take advantage of the Leniency Programme. If members other than the initiator of a cartel apply for leniency, the initiator will not be able to come forward and seek leniency as well. Therefore, whilst the other non-initiator members of the cartel might be exempt from fines or pay reduced fines, the initiator of the cartel will have to pay the full amount of the fines imposed by the Commission.

More information about Leniency Programme

For more information on the Leniency programme, please read the CCM3 Guidelines on Collusive Agreements, available on the website of the Competition Commission – www.ccm.mu. The CCM3 guidelines provides information on:

- What is leniency?
- The benefits of leniency.
- The conditions to be met to qualify for leniency.
- Information about amnesty for cartel initiators.

How can enterprises contact the CCM regarding Leniency Programme?

Enterprises may contact the CCM either by phone, fax, email or call in at our office for more information on leniency. They may also wish to anonymously contact the CCM for more information about the Leniency Programme and whether they qualify for it. Although not necessary, we encourage enterprises to contact us through their lawyers or legal representatives, without the need to reveal the identity of the enterprises.

1st March 2017

/End of media release