



Date: 9 July 2020

Break A Cartel

What is a cartel?

A cartel is an illegal agreement, formally or informally made between two or more businesses not to compete with each other. Such agreement may include price fixing, supply control, market sharing and bid rigging (collusive tendering). Businesses which are involved in a cartel, or cartel members, typically agree on one or more of the following:

- Prices
- Profit margins
- Output levels
- Discounts
- Credit terms
- Which customers they will supply
- Which areas they will supply
- Who should win the tender

Why is a cartel harmful to consumers and businesses?

When businesses collude or engage in cartels, consumers will have less choice to choose from, prices will be maintained high and there is no incentive for businesses to innovate to provide products or services at their best quality, to compete for customers.

These harms may also affect government resources or public budget, as government is a big consumer through public procurement activities.

Cartel conducts do not just affect consumers but are also detrimental to SMEs due to unequal business opportunities as a result of market entry barriers. This creates inefficiency in the sector and hampers business growth which harms the economy as a whole.

A cartel is a violation of Competition Order. Engaging in cartels is a serious offence under the Section 11: Anti-Competitive Agreements of the Competition Order, with effect from 1 January 2020.

Businesses which are found to have engaged in cartels would be subjected to fines of up to 10% of businesses annual turnover for each year of infringement, for up to a maximum of three years.

What can you do if you are a member of a cartel?

Section 44 of the Competition Order offers a specific provision to incentivize cartel members to come forward with insider information or evidence, in exchange for leniency or immunity from penalty. It also means that with a leniency programme in place, engaging in cartels are more risky, as any members may reveal the cartel to get away from legal consequences. Due to the secretive nature of cartel conducts, this leniency programme is proven to be one of the most effective tools in uncovering cartel conducts.

How does Leniency Programme works?

Leniency programme grants up to full immunity to cartel members to reveal the cartel that they are involved in, with direct evidence and full cooperation. The extent to which the cartel member is given immunity from the penalty will also depend on several criteria, including:

- Whether the cartel member was the first to come forward
- The value of the information and / or evidence given to the Competition Commission Brunei Darussalam (CCBD);
- The unfaltering cooperation provided to the CCBD; and
- The stage of the investigation at which the cartel member reveals the cartel

How can a cartel member apply for leniency?

A cartel member who wishes to come forward and reveal a cartel shall make such application to the CCBD. It is important to note that the identity of the member who applied and has been granted leniency shall be kept confidential under Section 70 of the Competition Order.

Applications can be made via completing the online form available on the CCBD website at <http://www.ccbd.gov.bn/SitePages/apply-leniency-form.aspx>, or by sending the completed form, which is downloadable at <http://www.ccbd.gov.bn/SitePages/apply-leniency.aspx>, to the CCBD Executive Secretariat's email, brunei.competition@jpes.gov.bn.

For more information on CCBD Leniency Programme, visit our Guideline on Leniency available at the CCBD Website.



سوروهنچاي فرسايغن بروني دارالسلام
COMPETITION COMMISSION
BRUNEI DARUSSALAM

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The Competition Order, 2015 grants **leniency** or **immunity from penalty** for a member of a cartel to **come forward with evidence** to reveal a cartel.

Identity of leniency applicant will be kept confidential
- *Section 70, Competition Order.*

To apply for leniency



To learn more www.ccbd.gov.bn | 2233344 ext 230 or 343 | request for briefing

