

**Kingdom of Cambodia
Nation Religion King**

**Ministry of Commerce
No. 107 P.N.A.KBB.SSR**

Unofficial Translation

**Decision
On
Requirements and Procedures on Leniency
under the Law on Competition**

Minister of Commerce

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0923/1981 dated 22 August 2023 on the Appointment of the Royal Government of Cambodia;
- Having seen royal decree No. NS/RKT/0224/205 dated 21 February 2024 on the additional appointment of the royal government of Cambodia
- Having seen the Royal Kram No. NS/RKM/0618/012 dated 28 June 2018 promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. NS/RKM/0196/16 dated 24 January 1996 promulgating the Law on the Establishment Ministry of Commerce;
- Having seen the Royal Decree No. NS/RKT/1021/013 dated 05 October 2021 promulgating of the Law on Competition;
- Having seen Sub-Decree No. 38 ANKR.BK dated 16 March 2020 on the Organization and Functioning of the Ministry of Commerce;
- Having seen the Sub-Decree No. 37 ANKR.BK dated 17 February 2022 on the Organization and Functioning of the Cambodia Competition Commission;
- According to the necessity of the Ministry of Commerce.

Hereby Decides
Chapter I
General Provisions

Article 1.- Purpose

This Decision sets out the requirements and procedures for the grant of leniency by the Cambodia Competition Commission (CCC) to Persons engaged in an unlawful Horizontal Agreement, as stipulated under Article 7 of the Law on Competition, contingent upon their cooperation with the CCC through admitting the participation in the unlawful Horizontal Agreement and submitting evidential documents and information of the violation to the CCC, in exchange for Immunity or Reduction from Fines and Sanctions as stipulated under the Law on Competition.

Article 2.- Scope

This Decision applies to Person having participated in an unlawful Horizontal Agreement that directly or indirectly harms competition, as stipulated under Article 7 of the Law on Competition.

Article 3.- Definitions

Key terms used in this Decision shall have the following meaning:

1. **Coercer** refers to a Person who has engaged in an unlawful Horizontal Agreement and exerted pressure on other unwilling Persons to participate in the unlawful Horizontal Agreement.
2. **Leniency** refers to Immunity or Reduction of Fines and Sanctions, as stipulated under the Law on Competition, granted to the Person who has engaged in an unlawful Horizontal Agreement, upon the recommendation of the CCC and the approval of the competent court.
3. **Applicant** refers to the Marker Applicant or Leniency Applicant, in accordance with the provisions as stipulated under this Decision.
4. **Immunity** refers to clemency from Fines and Sanctions, as stipulated under Article 38 of the Law on Competition, granted to Leniency Applicants who request it from the CCC, subject to approval from the competent court.
5. **Reduction** refers to mitigation of Fines, as stipulated under Article 38 of the Law on Competition, granted to Leniency Applicants who request it from the CCC, subject to approval from the competent court.
6. **Conditional Leniency** refers to Leniency granted to the applicant provided that they continue to adhere to the conditions set out by the CCC to comply with obligations until the issuance of a Decision on the Preliminary Examination.
7. **Marker** refers to a mark used as a preliminary basis for determining the pecking order for the request Leniency for unlawful Horizontal Agreement, subject to the subsequent submission of a successful Leniency application.
8. **Decision on the Preliminary Examination** refers to the decision of the CCC on the preliminary report of the Investigating Officers.
9. **Fines** refers to pecuniary penalties imposed by the competent court.
10. **Sanctions** refers to imprisonment imposed by the competent court.

Chapter II

Forms and Eligibility of Leniency

Article 4.- Forms of Leniency

The grant of Leniency may take the following forms:

1. Immunity from Fines and Sanctions;
2. Reduction of Fines and Immunity from Sanctions;
3. Immunity from Fines and Sanctions for natural persons who are current or former employees of the Person that benefits from Immunity from Fines and Sanctions; and/or
4. Discretionary recommendation for Reduction of Fines and Immunity from Sanctions by the CCC for natural persons who are current or former employees of a Person that benefits from a Reduction of Fines and Immunity from Sanctions.

Article 5.- Requirements for the Grant of Leniency

The CCC shall take into account the requirements for the grant of Leniency as follows:

1. A Leniency application shall be submitted before the CCC issues a Decision on the Preliminary Examination by the Investigating Officer and submits the case to the competent court, confirming a violation of Article 7 of the Law on Competition as described in the Leniency application;
2. The Leniency Applicant shall submit a complete Leniency application, including evidential documents and information regarding the violation, along with an admission of its participation in the unlawful Horizontal Agreement; and
3. The Leniency Applicant shall maintain compliance with the obligation after receiving Conditional Leniency until the CCC issues a Decision on the Preliminary Examination of the Investigating Officers and submits the case to the competent court, as stipulated under Article 15 of this Decision.

Article 6: Eligibility for Immunity from Fines and Sanctions

Applicant that has engaged in an unlawful Horizontal Agreement of the law may be eligible for Immunity from Fines and Sanctions as set out in the Decision of the CCC on the Preliminary Examination, subject to the approval of the competent court for a violation of Article 7 of the Law on Competition. To be eligible for Immunity from Fines and Sanctions, the Applicant must be deemed the first to submit evidential documents and information to the CCC, and depending on the CCC's assessment on those evidential documents and information would either:

1. Provide a sufficient basis for the CCC to initiate an examination into the violation of Article 7 of the Law on Competition, as reported by the Applicant, in cases where there is no pre-existing examination; or
2. Advance the examination of the violation of Article 7 on the Law of Competition, as reported by the Applicant, in cases where the CCC already has a pre-existing examination.

If the CCC determines that an Applicant is a Coercer in the alleged violation, Immunity from Fines and Sanctions shall not be granted to the Applicant; however, the Applicant may be eligible for a potential Reduction from Fines and Immunity from Sanctions, in accordance with the criteria set forth in Article 7 of this Decision.

The CCF Directorate-General of the Ministry of Commerce, serving as the Implementing Body and the Secretariat of the CCC, is responsible for reviewing the Leniency application, along with evidential documents and information and carrying out other roles and duties in accordance with applicable laws and regulations.

Article 7.- Eligibility for a Reduction of Fines and Immunity from Sanctions

Applicant that fails to satisfy the eligibility criteria set forth in Article 6 of this Decision, either being a subsequent Applicant to submit information to the CCC or being determined as the Coercer, may nonetheless be eligible for a Reduction of Fines and Immunity from Sanctions imposed for violation of Article 7 of the Law on Competition. To be eligible for a Reduction of Fines and Immunity from Sanctions, the Applicant shall submit evidential documents and information to the CCC, which, in the CCC's assessment, provides significant added value to the CCC's examination.

The range of potential Reductions determined by the CCC shall be set in accordance with the sequential ranking of Applicants as follows:

1. The 1st (first) Applicant for a Reduction of Fines to have provided significant added value to the CCC's examination will be eligible for a Reduction of Fines between 40 (forty) percent to 50 (fifty) percent and Immunity from Sanctions;
2. The 2nd (second) Applicant for a Reduction of Fines to have provided significant added value to the CCC's examination will be eligible for a Reduction of Fines between 30 (thirty) percent to 40 (forty) percent and Immunity from Sanctions;
3. Any subsequent applicants for a Reduction of Fines to have provided significant added value to the CCC's examination will be eligible for a Reduction of Fines up to 30 (thirty) percent and Immunity from Sanctions.

The CCC shall have discretion in determining the specific percentage for a Reduction of Fines to be applied within an applicable range as outlined in the preceding paragraph, taking into account the considerations as follows:

1. In any particular stage, before or during the CCC's examination, early submission of the Leniency application may warrant a greater percentage for Reduction; and
2. Evidential documents and information submitted to the CCC provide significant added value in advancing the examination of the CCC, may warrant a greater percentage for Reduction.

The CCC may decide to no longer accept Leniency applications when it possesses sufficient evidential documents and information to determine an unlawful Horizontal Agreement.

Article 8.- Leniency for Former and Current Employees

In the event that the Applicant is granted Immunity from Fines and Sanctions or a Reduction of Fines and Immunity from Sanctions, former and current employees who have participated in the unlawful Horizontal Agreement may also be entitled to the same Immunity or Reduction from Fines and Sanctions if the former and current employees maintain cooperation with the CCC.

With respect to criminal liability, the CCC shall recommend to the competent court that former and current employees of the Applicant, granted Immunity from Fines and Sanctions, shall also be entitled to Immunity from Fines and Sanctions.

The CCC shall have the discretion to decide whether or not it will recommend to the competent court the granting of a Reduction of Fines and Immunity from Sanctions for former and current employees of the Applicant who is granted a Reduction from Fines and Immunity from Sanctions.

Chapter III

Procedures for Leniency Request

Article 9.- Availability of Markers

Prior to the submission of a Leniency application, a prospective Applicant may contact the CCC to identify the availability of a Marker.

To identify the availability of a Marker, the prospective Leniency Applicant shall confirm its genuine intention to confess and provide evidential documents and information of the unlawful Horizontal Agreement as follows:

- a) A description of the relevant goods or services and the geographic scope affected by the unlawful Horizontal Agreement;
- b) The nature of the unlawful Horizontal Agreement; and
- c) The dates and duration of the unlawful Horizontal Agreement.

The request for the availability of a Marker shall be admissible in an anonymous manner, through oral, written, phone, or other means of communication.

The CCC shall promptly communicate its response to the prospective Applicant regarding the availability of the Marker.

Article 10.- Marker Procedures

Upon the CCC's confirmation the availability of a Marker, a prospective Leniency Applicant shall submit a Marker application to the CCC, attached with evidential documents and information as follows:

1. The Applicant's details of identity and legal representatives;
2. A general description of the unlawful Horizontal Agreement, including the relevant goods or services, the geographic scope affected, the nature, and the date and the duration of the unlawful Horizontal Agreement;
3. A description of all evidence uncovered related to the unlawful Horizontal Agreement;
4. Identification of employees engaged in the unlawful Horizontal Agreement, including their names and addresses;
5. Names and addresses of other known participants, including both natural and legal persons;
6. An admission to have participated in the unlawful Horizontal Agreement;
7. If the applicant has submitted a Leniency application to competition authorities in other jurisdictions concerning the same unlawful Horizontal Agreement, the Applicant shall also provide the same confidential documents and information to the CCC.

Upon the receipt of the Marker application, the CCC shall review and issue a notice to the Applicant indicating:

- a) The completeness of the Marker application;
- b) In case of an incomplete Marker application, the CCC shall specify the deficiencies and provide a deadline to the applicant to rectify the documents and information; or
- c) In case of a rejection of the Marker application, the CCC shall identify the grounds underlying the rejection.

The Marker application, stipulated under the above paragraph, shall be determined by the CCC, with CCF Directorate-General of the Ministry of Commerce, serving as the Implementing Body and the Secretariat of the CCC, responsible for receiving and reviewing the Marker application, along with related documents and information, to report to the CCC and carrying out other roles and duties in accordance with applicable laws and regulations.

Article 11.- Issuance of Marker

Once the CCC receive a complete Marker application, the CCC shall issue a notice to the Applicant, identifying the date and time at which the Marker was issued.

Upon the receipt of the notice on the issuance of the Marker, the Applicant shall submit a complete Leniency application, attached with evidential documents and information, within 15 (fifteen) days to the CCC. In case of failure to provide evidential documents and information outlined in the Leniency

application within the above deadline to the CCC, the Applicant shall, with a reasonable ground, request an extension from the CCC. The CCC shall have the discretion to decide on the extension request by the Applicant.

Where the Applicant fails to submit a complete Leniency application by the prescribed date in paragraph 2 of this Article, the Marker will expire automatically. In this event, the Applicant may apply for a new Marker but the date and time of the receipt of the new Marker Application will serve as a basis for determining the revised pecking order for Leniency.

Article 12.- Leniency Application

Upon the receipt of the notice on the issuance of the Marker from the CCC, the Applicant shall submit a Leniency application to the CCC, attached with evidential documents and information as follows:

1. A detailed description of the unlawful Horizontal Agreement comprising:
 - a- The nature of the arrangement or engagement in the unlawful Horizontal Agreement;
 - b- The method in which the unlawful Horizontal Agreement is coordinated;
 - c- Activities and roles of each participant;
 - d- Duration of the unlawful Horizontal Agreement;
 - e- A list of locations and Person with whom significant evidence is likely to be located
 - f- Locations, key dates, and other relevant information of the unlawful Horizontal Agreement.
2. An admission to have participated in the unlawful Horizontal Agreement;
3. Identities and contact information of all other known or suspected participants in the reported unlawful Horizontal Agreement;
4. Names and contact details of all relevant Person of the Applicant, including directors, managers or other employees who could be the witness of the unlawful Horizontal Agreement and an outline of the matter of which they have knowledge of;
5. A description of any enquiries, searches or other information collections already conducted by the Applicant; and
6. All evidential documents and information (excluding legally privileged information) related to the reported unlawful Horizontal Agreement, including securing and making documents available, information technology systems, and evidence from former and current directors, managers, and other employees.

Upon the receipt of the Leniency application, the CCC shall conduct an assessment of the content and notify the Applicant of their decision as follows:

1. The Leniency application is complete and thereupon grant Conditional Leniency to the Applicant;
2. The Leniency application is not complete by identifying the additional documents and information required, providing a deadline as determined by the CCC, and carrying out the procedures outlined in paragraph 2 of Article 11 of this Decision; or
3. In case of a rejection of the Leniency application, the CCC shall identify the grounds underlying the rejection.

The Leniency application, stipulated under the above paragraph, shall be determined by the CCC, with CCF Directorate-General of the Ministry of Commerce, serving as the Implementing Body and the Secretariat of the CCC, responsible for receiving and reviewing the Leniency application, along with related documents and information, to report to the CCC and carrying out other roles and duties in accordance with applicable laws and regulations.

Article 13.- Request for Marker and Leniency

Applicants may request the CCC through oral, written, phone, and other means of communication as determined by the CCC; however, all evidential documents and information shall be provided to the CCC with the signatures or the affixed thumbprints of the witnesses for submitting evidential documents and information.

Chapter IV

Grant of Leniency

Article 14: Conditional Leniency

Upon receiving the complete Leniency application, the CCC shall grant Conditional Leniency and issue a notice to the Applicant confirming:

1. Conditional Immunity or Reduction from Fines and Sanctions; and
2. The conditions or requirements to which the Applicant must adhere in order to obtain the final Leniency.

The CCC has the discretion to revoke Conditional Leniency if the Applicant fails to fulfill any conditions or requirements determined by the CCC and the obligations set forth in Article 15 of this Decision.

Article 15.- Obligations of Applicants with Conditional Leniency

In the event of Conditional Leniency is granted, Applicants shall cooperate genuinely, expeditiously, and fully within the duration of the CCC's Preliminary Examination.

To be granted this Leniency, the Applicant with Conditional Leniency shall ensure their directors, managers, and other employees comply with the obligations as follows:

1. Attend all meetings requested by the CCC;

2. Provide complete and honest evidential documents and information related to the unlawful Horizontal Agreement, regardless of whether that information is requested by the CCC;
3. Remain available and answer any queries regarding the unlawful Horizontal Agreement and sign witness statements;
4. Refrain from tampering with, destroying, or concealing any evidential documents and information related to the unlawful Horizontal Agreement;
5. Refrain from disclosing the facts or content of the Leniency application, Conditional Leniency, or any details surrounding the CCC's Preliminary Examination which has not been made public by the CCC, unless authorized by the CCC; and
6. Terminate their participation in the unlawful Horizontal Agreement, unless otherwise instructed by the CCC.

Article 16.- Final Decision on Leniency

The final decision on Leniency for violations of Article 7 of the Law on Competition is subject to the decision of the competent court upon recommendation by the CCC following the issuance of their conclusion on the Preliminary Examination.

Chapter V

Rejection and Revocation of Leniency

Article 17.- Rejection of Leniency

The Leniency application shall be rejected under circumstances as follows:

- a) The CCC determines that the alleged unlawful Horizontal Agreement falls outside the scope of the Leniency program;
- b) The Applicant fails to rectify the incomplete Marker application or Leniency application within the prescribed deadline; or
- c) Any other valid grounds determined by the CCC that result in the denial of Conditional Leniency.

Where the Leniency application or Marker application is rejected, the CCC shall refrain from using evidential documents and information obtained from the Applicant, in accordance with the procedures stipulated under this Decision, in subsequent legal proceedings against the unsuccessful Leniency Applicant or unsuccessful Marker Applicant. In this event, the CCC shall have the right to obtain the same or similar evidential documents and information from other sources.

In the event of the rejection of the Leniency application or Marker application, the CCC shall retain the following discretion to:

1. Initiate legal proceedings against the unsuccessful Leniency Applicant or unsuccessful Marker Applicant by using the same or similar evidential documents and information obtained from other sources; and
2. Use evidential documents and information obtained from the unsuccessful Leniency Applicant or unsuccessful Marker Applicant against the other participants in the unlawful Horizontal Agreement.

Article 18: Revocation of Marker and Conditional Leniency

The CCC shall revoke Marker and Conditional Leniency under circumstances as follows:

1. The CCC determines that the Applicant fails to fulfill any conditions or requirements determined by the CCC and the obligations set forth in Article 15 of this Decision; or
2. The Applicant acts in dishonest manner related to the following actions:
 - a- Tipping off another Person about the evidential documents and information related to the examination process of the CCC with respect to the unlawful Horizontal Agreement; or
 - b- Tampering with, destroying, or concealing evidential documents and information related to the unlawful Horizontal Agreement, either before or at any time after the Marker application and Leniency application is made.

If the CCC intends to revoke Marker and Conditional Leniency, the CCC shall issue a notice to the Applicant, affording them the chance to provide statement of defense.

In the event of the revocation of Marker and Conditional Leniency, the CCC may use evidential documents and information obtained from the Marker application and Leniency application for its further examination, to be used against the Applicant.

Chapter VI

Confidentiality

Article 19.- Preservation of Confidential Documents and Information of Applicant

The CCC shall uphold the confidentiality of the identity of the Applicant, along with all evidential documents and information received, except in cases where disclosure is carried out in accordance with Article 23 of the Law on Competition.

Article 20.- Verification of Documents and Information

During the verification of evidential documents and information received from the Applicant, the CCC shall refrain from disclosing those evidential documents and information to other Persons, provided that verification can be conducted through alternative methods.

In cases where alternative verification methods are unfeasible, the CCC shall disclose only pertinent segments of the documents and information necessary for verification, allowing the exercise of rights of defense for the other parties participated in the unlawful Horizontal Agreement while preserving the confidentiality of the Applicant's identity and any evidential documents and information.

Chapter VII

Final Provisions

Article 21.- Abrogation

Any provisions contrary to this Decision shall be abrogated.

Article 22.- Implementation

Members of the Cambodia Competition Commission, Director of the Cabinet, Delegate of the Royal Government of Cambodia in charge as Director-General of the Consumer Protection Competition and Fraud Repression Directorate-General, and Heads of all relevant authorities shall be responsible for the implementation of this Decision in accordance with their respective duties from the date of signature.

[Buddhist Date]

Done in Phnom Penh, 3 May 2024

Minister of Commerce

And Chair of the Cambodia Competition Commission

[seal and signature]

CHAM NIMUL

Recipients:

- Office of Council of Ministers
- Cabinet of Samdech Moha Borvor Thipadei Prime Minister
- Cabinet of His Excellency Deputy Prime Ministers
- Municipal and Provincial Administrations
- As stated in Article 22
- Royal Gazette
- Documentation and Archive