

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

USE OF MARKERS IN LENIENCY PROGRAMS

-- Korea --

16 December 2014

This document reproduces a written contribution from Korea submitted for Item III of the 120th meeting of the Working Party No. 3 on Co-operation and Enforcement on 16 December 2014.

*More documents related to this discussion can be found at:
<http://www.oecd.org/daf/competition/markers-in-leniency-programmes.htm>*

Please contact Mr. Antonio Capobianco if you have any questions regarding this document [phone number: +33 1 45 24 98 08 -- E-mail address: antonio.capobianco@oecd.org].

JT03367058

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.



1. Introduction

1. Korea Fair Trade Commission has always placed a high priority on cartel regulation since the enactment of the Monopoly Regulation and Fair Trade Act (MRFTA).

2. Despite of the KFTC's rigorous efforts to regulate cartels and subsequent success, the KFTC was looking for stronger tools for a more effective enforcement. As part of this effort, leniency scheme was introduced in 1997 thirdly in the world following the US and the EU.

3. After then, reflecting ongoing discussions of the global community and some necessary improvements, major revisions of its own Leniency Program have been made. It is one of those efforts to introduce the Marker system in leniency program.

4. A Marker system under a leniency program is a means for applicants to reserve their place in the queue for a finite period of time whilst they conduct further internal investigations and attempt to perfect their application for leniency. Marker system encourages a race for potential applicants to contact the agency.

5. In the followings, I would like to touch upon the contents of the KFTC's marker system.

2. The KFTC's introduction of marker system

6. While operating its leniency scheme, the KFTC has revamped the program for 6 times based on its trials and errors and the two main aspects of the reforms are as follows.

7. First of all the KFTC has improved the system in a way that increases predictability and transparency of the process offering benefits to leniency applicants and raises the benefits to activate competition for leniency applications among cartelists.

8. In addition, under the notion that there should be international convergence in policies handling global cartels, the KFTC has actively participated in making international norms (standards) and improved its domestic system in a way that harmonizes with the system.

9. Against this backdrop, the system reform in 2005 is significant. And the major aspect of the reform is as following.

10. First, the KFTC eliminated its discretion in determining whether to offer leniency benefit and the amount of immunity from fine. The decision was made after considering the fact that in the past cartelists avoided leniency applications because they were not sure of whether they would receive leniency benefits.

11. Second, previously there was an unclear provision that prohibits offering of leniency benefits to companies which led cartels and the KFTC deleted the provision so that the system can be operated with more transparency and predictability.

12. Meanwhile, for the first-in applicants, previously fine reduction of more than 70% was granted when the application was made before the initiation of investigation and 50% reduction after the initiation, but now full reduction of fine is offered regardless of the initiation of investigation.

13. Also, the KFTC set up the Public Notification on Implementation of Leniency Program (hereafter 'leniency notification') to stipulate the details in operating the leniency system, so that the system would be operated more transparently and effectively.

14. In particular, we need to highlight the introduction of “Special Cases on Exceptions to Leniency Application” in the public notification which enables easier application for the leniency program. The Special Cases on Exceptions to Leniency Application stipulated in the Notification is a type of Marker System which I mentioned above.

15. In 2006 oral leniency application was introduced. The KFTC abolished the barriers hindering potential applicants from coming forward by permitting the oral application because accepting only the written application may chill the efforts of applicants who might be fear of the ‘discovery system’ of the U.S., for instance. Oral leniency application can be applied in Marker system also.

3. Main aspects of the KFTC’s Marker System

3.1 Relations between the marker system and leniency

16. In principle, a person who intends to apply for mitigation or exemption of corrective measures or a penalty surcharge shall file a leniency application as described in the leniency notification describing the following matters ;

1. The name of the voluntary confessor, etc., the name of its representative, the business registration number (or the resident registration number), contact information, the name, department, contact information of the person who submits the application;
2. The summary of cartel activities in which the voluntary confessor, etc. has participated;
3. Evidence necessary to substantiate relevant cartel activities and a list of evidential materials;
4. A statement that the applicant will conscientiously cooperate with the Commission until deliberation by the Commission on relevant cartel activities is completed;
5. Whether the applicant has ceased relevant cartel activities.

17. Basically Marker system is a way of the leniency filing for the reason that an applicant may file an application in which some of the descriptions are omitted, where it takes a considerable time to collect evidential materials or where any exceptional situation prevents the applicant from submitting evidential materials together with the application.

3.2 Main purpose of and benefits from the Marker System

18. The Marker System was introduced for faster and more effective case handlings by inducing earlier applications for leniency. In case when it takes some time for marker applicants to collect related evidences, they can benefit from their fast application for the marker system, such as immunity from fine and remedies, and exemption from criminal accusation. Also with using the marker system the KFTC can detect cartels faster and then start investigation, and if the investigation has already begun, the marker system would help the KFTC deal with the case more effectively.

3.3 Process and requirements of the Marker System

19. Provisions relating to the Marker System are stipulated in "the Public Notification on Implementation of Leniency Program", the internal operation rule set by the KFTC with the authority given by the Monopoly Regulation and Fair Trade Act.

20. According to the Public Notification for reduction, those who participate in the cartel and want to apply for leniency system can obtain a marker. However even after making application for a marker system, when the applicants cannot satisfy the conditions for immunity and reduction of fine, then they cannot benefit from reduction of fines.

21. In order to be recognized as a marker, submission of leniency application document is needed and if there is no reason to decline, the applicant is acknowledged as a marker. However in this case, information on leniency applicants and the summary of the alleged cartel activities should be included and the applicants should explicitly inform the period needed to perfect the information.

22. The period given for amendment shall not exceed 15 days: Provided that, the examiner may give a period of not more than 60 days to an applicant additionally for amendment, upon receipt of a request from the applicant with prima facie proof of a reasonable cause, such that it takes a long time to collect evidential materials. Notwithstanding the period, the examiner may give a period of more than 60 days for supplementation of materials, if the examiner deems it exceptionally necessary to extend the period for amendment for collecting relevant evidential materials regarding an international cartel case and securing admissions and statements thereof.

23. When applying for the Marker System, the applicant is allowed to briefly describe the summary of the cartel, but in order for the application to be an conditional application for leniency, the applicants should submit detailed aspects of the cartel such as the period of the cartel, time and venue of the meetings, methods of contacts and how the meetings were held, the number of meetings and whether the agreed contents were executed, as well as evidences such as statements by the employees or employers.

24. In order for applicants for the marker system to be recognized as leniency applicants, they should apply for the marker system and after the applicant perfects the documents within the agreed upon period, then within 75days after perfecting the documents, Secretary General confirms the tentative position of the applicant and final confirmation is decided during the plenary meeting.

3.4 *Protection of applicants' information*

25. Duty of Confidentiality under the leniency notification is also applied to the maker system applicants. According to the Notification, a public official in charge of investigations or other competent public officials shall use personal information of a voluntary confessor, etc. or the information or evidential materials provided by a voluntary confessor, etc. only for the purpose of handling the relevant case and shall not divulge the identity of a voluntary confessor, etc. to any person other than the public officials of the Commission, who are involved in handling the relevant case.

26. The Commission shall use an alias in identifying a voluntary confessor, etc. in the relevant examination report, and relevant parts in relevant evidential materials that accompany the examination report (Statement of Objection) shall be deleted or shaded, and other necessary measures shall be taken to prevent the identity of the voluntary confessor, etc. from being disclosed.

27. In a case that becomes eligible for the confirmation of the status of a voluntary confessor, etc. under this Public Notification, the Commission may prepare an examination report and a written evidence separately for each examinee (applicant) in the course of examinations or examine people involved separately to prevent the identity of a voluntary confessor, etc. from being disclosed.

28. Notwithstanding the Article (Duty of Confidentiality, etc.), the Commission may submit documents that contain personal information of a voluntary confessor, etc. to a court, when an administrative lawsuit is filed with the court with regard to the relevant case.

4. KFTC's enforcement experiences using the marker system

29. 72.6% of all cartels against which fines were imposed in recent 4 years were uncovered by leniency applications. As such, in Korea leniency program has become a critical tool to detect cartel activities.

**Cases handled by using leniency system
(Unit: case)**

Year	2010	2011	2012	2013	Total
Cartels punished by fines (A)	26	34	24	29	113
Cartels to which leniency program applied	18	32	13	23	86
Cartels punished by fines after making use of leniency program (B)	18	29	12	23	82
Cases dealt with by using leniency program (% , B/A)	69.2	85.2	50.0	79.3	72.6

30. The leniency program has been firmly in place thanks to results of improving the program drastically in 2005 and raising the amount of fines imposed. Above all, the number of leniency applications, previously stood at the average of one case annually before the policy improvements in 2005, surged more than 10 times. Concerning the reason for the sudden increase of the application, it seems that the marker system has played an important role after being introduced to make leniency application easier.

5. Conclusion

31. The KFTC has achieved many improvements in its cartel law enforcements. It is the result of the KFTC's efforts to introduce and consistently enhance the leniency program to detect cartels. In order not to reduce leniency benefits for applicants while maintaining the purpose of leniency program, the KFTC will periodically observe changes in market condition and the market players' behaviors and then reflect the findings when improving regulations.