



Commission on

COMPETITION

Proposal for a one-marker system in leniency applications

A contribution of the ICC Competition Commission to promote convergence and cooperation

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A position paper on a one-marker system

- In a recent report, the OECD found that of the 56 jurisdictions analyzed only 3 of them have no leniency programs (Argentina, Belarus, and Sri Lanka) and only other 5 jurisdictions have leniency programs but not a marker system (China, Ecuador, Macedonia, Pakistan, and Russia).
- However, even where a marker system is provided, regulation varies significantly with regard to important issues such as: information requirements to obtain a marker; the discretionary or automatic granting of a marker; the timeline to perfect the marker



A position paper on a one-marker system

- With a one stop-shop marker system, once the applicant has made a valid marker request, the agency that has received and cleared the marker application would immediately notify all the other participating jurisdictions that the one-stop shop marker has been granted.
- The successful marker applicant would then have to perfect its leniency applications in all the affected jurisdictions under the substantive standard required by each of these jurisdictions within the time period provided for under the one-stop shop system.



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Potential advantages for business

- Efficient system to report cartel behavior preserving incentives to enter into leniency programs in multiple jurisdictions
- Reduction of regulatory complexity of having to deal simultaneously with multiple marker requests
- Ease the tension between the need to go in for leniency as soon as possible and the need to take the time necessary for the internal investigations needed to meet the information requirements for a successful application under multiple leniency systems



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Potential advantages for agencies

- The system would likely improve the quality of information provided by leniency applicants
- Once a successful marker application is made all jurisdictions participating in the system would be alerted of the existence of the cartel
- It would allow better alignment of the timings of the cartel investigations of the agencies involved as they would all become aware of the conduct at the same time



Conclusion

- In conclusion, the one-marker system may:
 - ✓ improve effective cooperation between the agencies involved;
 - ✓ increase the quality of the evidence provided by leniency applicant;
 - ✓ provide more certainty in the leniency programs.

- For all these reasons, we believe this is a win/win improvement for leniency programs across the world that could promote cooperation and convergence in the interest of all the stakeholders