



REPUBLIC OF THE PHILIPPINES  
PHILIPPINE COMPETITION COMMISSION  
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### **Rules of the Leniency Program of the Philippine Competition Commission**

The Philippine Competition Commission (“PCC”) hereby promulgates the following Rules of the Leniency Program (“Rules”) as provided in Section 35 of Republic Act No. 10667, otherwise known as the “Philippine Competition Act” (“Act”):

**Section 1. *Leniency Program.*** The Leniency Program of the PCC offers the benefit of leniency in the form of immunity from suit or reduction of administrative fines to an entity that was or is a participant in an anti-competitive agreement as defined in Section 14(a) or 14(b) of the Act in exchange for the entity’s voluntary disclosure of information regarding such agreement subject to the requirements provided herein.

Immunity from suit includes immunity from administrative and criminal liability arising from Section 14(a) or 14(b) of the Act. Immunity from suit likewise includes immunity from civil actions initiated by the PCC on behalf of affected parties and third parties.

The amount of reduction of administrative fines which the entity shall be eligible for shall be in accordance with the appropriate guidelines and other issuances of the PCC.

**Section 2. *Who may apply.*** Any entity who may be liable for a violation under Section 14(a) or 14(b) of the Act may apply with the PCC for leniency.

Any current or former director, officer, trustee, partner, employee, or agent of a juridical entity who may be liable for a violation under Section 14(a) or 14 (b) may apply for leniency independently of their employer, or the corporation, partnership, or juridical entity that they are associated with.

**Section 3. *Immunity from suit.*** An entity reporting an anti-competitive activity under Section 14(a) or 14(b) of the Act before a fact-finding or preliminary inquiry has begun shall be eligible for immunity from suit subject to the following conditions:

- (a) At the time the entity comes forward, the PCC has not received information about the activity from any other source. For purposes of these Rules, “any other source” shall mean an entity that has been granted conditional immunity from suit;
- (b) Upon the entity’s discovery of illegal activity, it took prompt and effective action to terminate its participation therein;
- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties; and
- (d) The entity did not coerce another to participate or to continue participating in the activity, and clearly was not the leader in, or the originator, of the activity.

Further, an entity that reports the illegal anti-competitive activity under Section 14(a) or 14(b) after the commencement of a fact-finding or preliminary inquiry may, at the discretion of the PCC, still be qualified to avail of the benefit of immunity. In such a case, the entity must comply with all the conditions in this Section and subparagraphs (d) and (e) in Section 4 hereof.

Furthermore, an entity that is otherwise ineligible for the benefit of immunity from suit may be considered for the benefit of reduction of administrative fines in accordance with the appropriate guidelines or issuances of the PCC.

**Section 4. *Reduction of administrative fines.*** Even after the PCC has received information about an anti-competitive activity under Section 14(a) or 14(b) of the Act or after a fact-finding or preliminary inquiry has begun, the entity may be eligible for exemption, waiver, or gradation of administrative fines that would otherwise have been imposed on it subject to the following conditions:

- (a) The entity is the first to come forward and qualify for reduction of administrative fines, or is the first to qualify when a previous grant of conditional reduction of administrative fines has been revoked;
- (b) Upon the entity's discovery of an anti-competitive activity under Section 14(a) or 14(b) of the Act, it took prompt and effective action to terminate its participation therein;
- (c) The entity reports the wrongdoing with candor and completeness, and provides full, continuing, and complete cooperation throughout the investigation until the finality of any and all administrative case(s), as well as civil case(s) initiated by the PCC on behalf of affected parties and third parties;
- (d) At the time the entity comes forward, the PCC does not have evidence against the entity that is likely to result in a sustainable conviction for the reported violation under Section 14(a) or 14(b) of the Act; and
- (e) The PCC determines that granting such leniency would not be unfair to others.

**Section 5. *Procedure.*** (a) *Marker.* An entity seeking the benefits of the Leniency Program may request a marker from the PCC at any time prior to the commencement of adjudication on the anti-competitive agreement that it intends to report.

The PCC shall issue a marker to the entity indicating the date and time the request for a marker was made and the description of the anti-competitive agreement reported. A marker is necessary to protect an entity's place in the queue for applicants under the Leniency Program and allows the entity an initial period of thirty (30) days within which to gather and submit information and evidence. The entity may request or may be required to attend a meeting with the PCC in order to discuss the information and evidence that will be required, any extension to the period, and other matters related to the application.

(b) *Submission of information and evidence.* The entity must provide, within the time allowed in the preceding paragraph, information and evidence about the reported anti-competitive agreement, relating in particular to the following:

- (i) The entities involved in the alleged anti-competitive agreement;
- (ii) The affected product(s) or service(s);
- (iii) The affected geographic area(s) or territory (-ies);
- (iv) The duration of the alleged anti-competitive agreement;
- (v) The reasons why the entity is eligible under the Leniency Program;
- (vi) The nature of the alleged anti-competitive agreement; and

- (vii) Information on any past leniency applications with the PCC and other competition authorities outside the Philippines in relation to the alleged anti-competitive agreement.

If the entity fails to submit the information and evidence within the allowed period, the succeeding entity in the marker queue that submits the information and evidence in a timely manner shall be considered for the benefit of immunity from suit or reduction of fines, as the case may be.

*(c) Grant of conditional leniency.* Unless an additional period is warranted in consideration of, among others, the complexities of the matter or the voluminous records involved, within a period of thirty (30) days from the submission by the entity of information and evidence, the PCC shall evaluate the same to determine whether the entity should be granted conditional leniency.

The conditional leniency shall be subject to the entity's continuing, full, and genuine cooperation with the PCC until the finality of any and all administrative, as well as civil case(s) initiated by the PCC. Such cooperation includes, among others, the following:

- (i) Providing the PCC candidly and promptly with all relevant information and evidence that come in to the entity's possession or control, or to which the entity has access or gains access;
- (ii) Providing testimony or a sworn statement for the administrative, criminal and/or civil case(s) arising from the reported violation if the PCC, in its discretion, finds such testimony or sworn statement necessary for the case/s. The testimony or sworn statement shall include among others, in so far as it is known to the entity at the time of the submission, a detailed description of the alleged anti-competitive agreement and the activities related thereto, including: the product(s) and/or service(s) concerned; the geographic scope; the duration of the agreement; the specific participation of entities in relation to the anti-competitive agreement; and all relevant explanations in connection with the pieces of evidence provided;
- (iii) Remaining at the disposal of the PCC to reply promptly to any requests that, in the PCC's view, may contribute to the establishment of relevant facts;
- (iv) Making current and, to the extent possible, former directors, trustees, partners, officers, employees, and agents available for meetings and interviews with the PCC;
- (v) Not altering, destroying, suppressing, or concealing papers, records, documents, Electronically Stored Information, other things, or information which relate to any matter relevant to the investigation or proceeding; and
- (vi) Not disclosing the fact of, or any of the contents of the leniency application, unless and to the extent otherwise explicitly authorized by the PCC.

**Section 6. *Basis for granting of conditional leniency.*** If no investigation on the reported anti-competitive agreement is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that: (1) the information or evidence enables the PCC to carry out a targeted investigation on the alleged anti-competitive agreement; or (2) the entity provides the PCC with a sufficient basis for initiating adjudication through the filing of a Statement of Objection as provided under Section 2.11 of the 2017 Rules of Procedure of the PCC. However, if an investigation is ongoing, the PCC shall grant conditional leniency if, in its discretion, it determines that the information and evidence provided adds significant value to the same.

Within fifteen (15) days from notice of denial of an application for leniency the entity may appeal to the appeals committee to be established by the PCC.

**Section 7. *Revocation of the grant of conditional leniency.*** Should the entity that was granted conditional leniency be shown to have violated its obligations or any of the provisions herein, the PCC may revoke the grant of conditional leniency after giving the entity an opportunity to be heard. In case of revocation, any document and information provided by the entity may be used by the PCC as it deems necessary.

Within fifteen (15) days from notice of revocation, the entity may appeal to the appeals committee to be established by the PCC.

**Section 8. *Officers, directors, trustees, partners, employees, and agents.*** Officers, directors, trustees, partners, employees, and agents of an entity may apply under the Leniency Program independently of the juridical entity with which they are associated.

Where a juridical entity secures a marker, any and all of its former and current officers, directors, trustees, partners, employees, and agents who, at the time the information and evidence required under Section 5(b) are submitted, come forward and cooperate with the PCC, will be considered to have the same marker and may be granted conditional leniency together with the juridical entity.

Where the application made by the juridical entity is abandoned, withdrawn, or is denied, the individual directors, officers, trustees, partners, employees, and agents who came forward at the time the information and evidence under Section 5(b) are required to be submitted shall take the place of the juridical entity in the queue and they shall be considered to have applied under the Leniency Program independently of the juridical entity.

Where the grant of conditional leniency of the juridical entity is revoked, the grant of conditional leniency given to the officers, directors, trustees, partners, and employees will not necessarily be revoked, subject to Section 7 hereof.

**Section 9. *Joint applications.*** Joint applications between or among parties to an anti-competitive agreement shall not be considered under the Leniency Program. *Provided, however,* That, two or more officers, directors, trustees, partners, employees, and/or agents of the same juridical entity that is a participant to an anti-competitive agreement under Section 14(a) or 14(b) of the Act may jointly apply for the benefits of the Leniency Program.

**Section 10. *Confidentiality.*** The identity of an entity applying for leniency as well as those who have been granted leniency, conditional or otherwise, shall be confidential and shall not be disclosed by the PCC unless the PCC determines that such entity's sworn testimony or sworn statement is necessary for the administrative or criminal case(s), or the civil case filed by the PCC before the appropriate courts, in relation to the reported violation.

**Section 11. *Effect of denial, withdrawal, or abandonment of the application.*** In cases where the application is denied by the PCC or where the entity notifies the PCC that it will withdraw its application prior to the denial or grant of conditional leniency, any self-incriminating information and documents provided shall not be used against the entity or any of its current and former officers, directors, trustees, partners, employees, and agents who have come forward to the PCC at the time of the or denial or withdrawal of the application. However, nothing shall preclude the PCC from initiating or continuing an investigation on the basis of independently obtained information and documents or from using the same as evidence.

In cases where the application is considered abandoned prior to the denial or grant of conditional leniency and there is no written notification made by the applicant, the documents and information submitted may be used by the PCC as it deems necessary. The application will be considered abandoned if, prior to the denial or grant of conditional leniency: (1) the entity fails to appear at any meeting with the PCC; (2) the entity fails to submit information and evidence as required in Section 5(b) hereof; or (3) the applicant fails to cooperate with, or follow the Rules, guidelines, and other issuances of the PCC.

**Section 12. *Violations and Penalties.*** (a) *False information.* Nothing in these Rules shall preclude prosecution of entities that report to the PCC false, misleading, or malicious information, data or documents damaging to the business or integrity of an entity. An entity found to have reported false, misleading or malicious information, data, or documents may be subject to a penalty in the form of a fine of not less than the penalty imposed in the Section of the Act reported to have been violated by the entity complained of.

(b) *Reprisal.* Any entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, documents, or data to the PCC in connection with an investigation or proceeding being conducted, shall, after due notice and hearing, be subject to a penalty in accordance with Section 6.12 of the 2017 Rules of Procedure of the PCC.


**Section 13. *Computation of administrative fines for subsequent violation.*** An entity that has been granted the benefits, conditional or otherwise, under the Leniency Program shall not be considered to have committed an offense for the purpose of computing the administrative fine for a subsequent violation as provided under Sections 6.1 and 6.4 of the 2017 Rules of Procedure of the PCC: *Provided,* That this provision shall not apply to an entity whose benefits under the Leniency Program had been revoked.

**Section 14. *Incorporation Clause.*** All existing rules, guidelines, orders, issuances, or parts thereof which are not inconsistent with any of the above provisions are hereby adopted and incorporated as part of these Rules.

**Section 15. *Separability.*** If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

**Section 16. *Effectivity.*** These Rules shall take effect twenty (20) days after publication in a newspaper of general circulation.

Approved this 27<sup>th</sup> day of December 2018 in Quezon City, Philippines.

  
**ARSENIO M. BALISACAN**  
Chairman

  
**JOHANNES R. BERNABE**  
Commissioner

  
**AMABELLE C. ASUNCION**  
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Commissioner