



COMPETITION COMMISSION OF PAKISTAN

COMPETITION (LENIENCY) REGULATIONS, 2019

The following Competition (Leniency) Regulations, 2019 (the "Regulations") are proposed by the Competition Commission of Pakistan (the "Commission"), in exercise of its powers conferred by Section 58 of the Competition Act, 2010 (the "Act"). The draft Regulations will replace the Competition (Leniency) Regulations, 2013 and are hereby published, as required by Section 58(2) of the Act, for eliciting public opinion. Notice is hereby given that comments/ suggestions from the public will be taken into consideration by the Commission after the lapse of thirty days from the date of publication of these draft Regulations.

Islamabad
26th July, 2019

NOTIFICATION

S.R.O. _____/2019—In exercise of the powers conferred under Section 58 of the Competition Act, 2010 (the "Act") read with Section 39 thereof, and in supersession of the previous Notification No. S.R.O. 1050(I)/2013 dated 06-11-2013, the Competition Commission of Pakistan (the "Commission") is hereby pleased to make the following regulations, namely:-

COMPETITION (LENIENCY) REGULATIONS, 2019

1. Short title and commencement:

- 1) These Regulations may be called the Competition (Leniency) Regulations, 2019.
- 2) They shall come into force at once.
- 3) They shall apply to an undertaking which is a party to a Prohibited Agreement and/ or is alleged to have violated Section 4 of the Competition Act, 2010.

2. Definitions: In these Regulations, unless there is anything repugnant in the subject or context:

- (a) "Act" means the Competition Act, 2010.
- (b) "Agreement" means an agreement as defined under Section 2(1)(b) of the Act.
- (c) "Applicant" means an undertaking which submits an application pursuant to these Regulations.
- (d) "Commission" means the Competition Commission of Pakistan established under Section 12 of the Act.
- (e) "Evidence" means any information which in the Commission's view will enable it to carry out a targeted inspection in connection with the alleged Prohibited Agreement and/ or find a violation of Section 4 of the Act.
- (f) "Leniency" means total immunity from or reduction in the amount of financial penalties for undertakings involved in Prohibited Agreements which cooperate with the Commission's investigations in any manner provided in these Regulations.
- (g) "Marker" means the indication of a reserved position of an Applicant undertaking in a queue of Applicants for the grant of immunity.
- (h) "Prohibited Agreement" means an agreement or a decision in violation of Section 4 of the Act.
- (i) "Significant Added Value" means the significance of the Evidence as may be determined by the Commission keeping in view the material, corroboratory, incriminating or contemporaneous nature of the Evidence.
- (j) "Undertaking" means an undertaking as defined in Section 2(1)(q) of the Act.

3. Grant of immunity from financial penalties.-

- (1) The Commission shall grant an Undertaking the benefit of total immunity from financial penalties which would otherwise have been imposed if the Undertaking satisfies the following conditions:
 - (a) the Undertaking is the first to submit Evidence which in the Commission's view, at the time of evaluating the application, enables the Commission to carry out an investigation in connection with the alleged Prohibited Agreement and the Commission does not already have sufficient information to establish the existence of the Prohibited Agreement; and
 - (b) the Undertaking:
 - (i) provides the Commission with all the Evidence available regarding the alleged Prohibited Agreement in a timely manner;
 - (ii) does not conceal, destroy, manipulate or remove any Evidence that may be crucial for the investigation;
 - (iii) makes current and if possible former persons associated with the participants and parties to the alleged Prohibited Agreement available for interviews with the Commission;
 - (iv) maintains continuous and complete cooperation throughout the proceedings until the conclusion of the proceedings in connection with the alleged Prohibited Agreement as initiated by the Commission;
 - (v) refrains from further participation in the alleged Prohibited Agreement from the time of its disclosure to the Commission or as otherwise required by the Commission; and
 - (vi) has not taken any steps to coerce another Undertaking to take part in the alleged Prohibited Agreement.
- (2) If an Undertaking does not qualify for total immunity from financial penalty under this regulation, it may still be entitled to the benefit from a reduction in the financial penalty under regulation 4 or regulation 5 of these Regulations.

4. Grant of reduction in the amount of financial penalty:

- 1) An Undertaking may benefit from a reduction in the financial penalty if-
 - a) the Undertaking seeking reduction provides the Commission with material, additional, contemporaneous Evidence of the alleged Prohibited Agreement; and
 - b) this information is given to the Commission:
 - (i) prior to issuance of Show Cause Notice under Section 30 of the Act; or
 - (ii) after initiation of proceedings under section 30 of the Act but before the Commission has passed an Order under Section 31 of the Act.
 - c) the Undertaking submits additional Evidence, which is previously unknown to the Commission, and it represents Significant Added Value with respect to the Evidence already in the Commission's possession, thus further substantiating the alleged Prohibited Agreement.
- 2) Any application under this regulation shall be entertained subject to the conditions imposed by the Commission including that the Applicant:
 - a) admits the infringement of the provisions of Section 4 of the Act unconditionally;
 - b) abandons its participation in the alleged Prohibited Agreement forthwith unless otherwise required by the Commission; and
 - c) makes a full and true disclosure of all the facts within its knowledge relating to the alleged Prohibited Agreement.
- 3) Any reduction in the amount of financial penalty under these circumstances is discretionary and in exercising this discretion, the Commission will take into account:
 - a) the stage at which the Undertaking comes forward;
 - b) the Evidence already in the Commission's possession; and
 - c) the quality and nature of the Evidence provided by the Undertaking.

Provided that the Undertaking cooperates genuinely, fully and on a continuous basis from the time it submits its application and throughout the proceedings before the Commission and must not have coerced another Undertaking to take part in any Prohibited Agreement, in order to benefit from reduction in the amount of financial penalties as prescribed above.

5. Additional method of reduction in amount of financial penalties.-

- 1) An Undertaking failing to provide sufficient Evidence for grant of immunity in relation to a Prohibited Agreement in one market may be considered for reduction in the amount of financial penalties based on its cooperation in relation to a Prohibited Agreement in another market (hereinafter "Leniency Plus").
- 2) To qualify for Leniency Plus, the Undertaking must satisfy the Commission that:
 - a) the Evidence provided by the Undertaking relates to a separate Prohibited Agreement than the one previously brought before the Commission;
 - b) the Undertaking would qualify for total immunity or reduction in the amount of financial penalty in relation to its activities regarding the second Prohibited Agreement.
- 3) An Undertaking does not need to be in receipt of immunity in respect of the first alleged Prohibited Agreement to receive a reduction in financial penalties under this regulation.
- 4) As a minimum to meet the conditions for Leniency Plus by the Commission, the information provided by the Undertaking under this regulation must be such as to provide the Commission with sufficient basis to take forward a credible investigation or to provide Significant Added Value to the Commission's investigation.
- 5) Any application under this regulation shall be entertained subject to the conditions imposed by the Commission including that the Applicant shall:
 - a) admit the infringements of Section 4 of the Act unconditionally;
 - b) abandon its participation in both Prohibited Agreements forthwith unless otherwise required by the Commission; and
 - c) makes full and true disclosure of all the facts within his knowledge relating to both Prohibited Agreements.

6. Procedure for requesting immunity or a reduction in the amount of financial penalties:

A. Applying for immunity:

- 1) An Undertaking intending to apply for immunity under regulation 3 shall initially apply, through a properly authorized representative, for a Marker, reserving its place in the queue for a period determined by the Commission, so as to allow the Undertaking to gather the necessary Evidence.
- 2) To secure a Marker, the Applicant must provide the Commission with complete information within its knowledge and possession concerning:
 - a) identity and contact details of the Undertaking;
 - b) the parties to the alleged Prohibited Agreement including their contact details, locations and extent of participation;
 - c) the affected product(s) and market(s);
 - d) the affected territory (-ies);
 - e) the estimated market volumes affected;
 - f) the nature of the alleged Prohibited Agreement inter alia price fixing; output restriction; bid rigging; market, customer, or territory sharing;
 - g) the estimated duration of the alleged infringement;
 - h) all Evidence available at the time of applying for a Marker, including but not limited to the aim, intent, purpose of the alleged Prohibited Agreement and the effect, functioning and activities carried out thereunder and as a consequence thereof; and
 - i) information on any past or possible future leniency application to any other competition authority in the world in relation to the alleged Prohibited Agreement.
- 3) Where a Marker is granted, it must be perfected by the Undertaking by submitting the Evidence, including information contemporaneous to the alleged Prohibited Agreement, required to meet the relevant requirements under regulation 3 within the time period determined by the Commission.
- 4) If the Applicant perfects the Marker within the prescribed period, the information and Evidence provided will be deemed to have been submitted on the date when the Marker was granted.
- 5) While processing a Marker, the Commission may not consider other Marker(s) for immunity or applications for reduction in the amount of penalties related to the alleged Prohibited Agreement before it has taken a position on the current Marker.
- 6) Where benefit of immunity is not granted to the current marker holder, the next Undertaking shall move up the queue and the procedure prescribed above in sub-regulation (1) to (5) of Regulation 6(A), as in the case of the current marker holder, shall apply *mutatis mutandis*.
- 7) An Undertaking that has not been granted immunity under regulation 3 may request the Commission to consider its application under regulation 4 or regulation 5 of these Regulations in accordance with the relevant procedure.

B. Applying for reduction in the amount of financial penalties:

- 1) An Undertaking intending to avail the reduction in the amount of financial penalties under regulation 4 or regulation 5 may submit a complete application through a properly authorized representative to the Commission containing, in addition to any requirements in regulation 4 or regulation 5, the following information within its knowledge and possession:
 - a) identity and contact details of the Undertaking
 - b) the parties to the alleged Prohibited Agreement including their contact details, locations and extent of participation;
 - c) the affected product (s) and market(s);
 - d) the affected territory (-ies);
 - e) the estimated market volumes affected;
 - f) the nature of the alleged Prohibited Agreement inter alia price-fixing; output restriction; bid-rigging; market, customer, or territory sharing;
 - g) the estimated duration of the alleged infringement;
 - h) all Evidence available at the time of application including but not limited to the aim, intent, purpose of the alleged Prohibited Agreement and the effect, functioning and activities carried out thereunder and as a consequence thereof; and
 - i) information on any past or possible future leniency applications to any other competition authority in the world in relation to the alleged Prohibited Agreement.
- 2) The Commission shall consider application made under sub-regulation (1) of regulation 6(B) on first-come, first-served basis.

C. Contacting the Commission: For both Regulation 6(A) and 6(B), the Undertaking shall contact the Commission, through a properly authorized representative in the following manner:

- a) the initial contact shall be with the Director General of the Cartels and Trade Abuses Department of the Commission either through telephonic means or by an email at leniency@cc.gov.pk, with the identity not to be disclosed as part of the record;
- b) after the initial contact, an officer, not less than the rank of Director, shall be designated by the Chairperson, and in the absence of the Chairperson by the Member supervising the Cartels and Trade Abuses Department, to liaise with the Applicant.

7. Confidentiality: Upon the Applicant's request, the Commission shall endeavour, to the extent that is consistent with its obligations to disclose or exchange information in accordance with the Act, to keep the identity of the Applicant, confidential until the decision of the Commission to grant Leniency under regulation 3, 4 or 5 has been made or until such time as deemed appropriate by the Commission.

8. Grant of Leniency: Once an Applicant has provided all the Evidence available with it relating to the alleged Prohibited Agreement as mentioned under these Regulations, and the Commission is satisfied that the Applicant has made a full and true disclosure in respect of the alleged Prohibited Agreement, it may grant immunity or reduction in the amount of financial penalties under regulation 3, 4 or 5 as it may deem fit by way of issuing a letter.

9. Rejection of Leniency Application:

- 1) If after review of an application, the Commission finds the Evidence provided by the Applicant does not fulfill the criteria prescribed under regulation 3, 4, 5, or 6 it may reject an application.
- 2) If at any point during consideration of the application it comes to the Commission's notice that the Applicant has concealed, manipulated or destroyed Evidence that may have been supportive of the investigation of the alleged Prohibited Agreement, the Commission may reject the application.

10. Withdrawal of Leniency Application: An application may be withdrawn at any time before the Commission has taken a decision on it. However, the Commission may proceed to take action against the Applicant if it deems appropriate in accordance with the provision of the Act.

11. Repeal: With the commencement of these Regulations, the Competition (Leniency) Regulation, 2013 shall stand repealed.

Secretary

Competition Commission of Pakistan

ISE Towers, 55-B Jinnah Avenue, Islamabad, Phone: +92-51-9100260-3 Fax: +92-51-9100258