

LENIENCY PROGRAM

Frequently Asked Questions
18 January 2019



**PHILIPPINE
COMPETITION
COMMISSION**

Ensuring businesses compete and consumers benefit

Section 35 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (“PCA”), provides that the Philippine Competition Commission (“PCC”) shall develop a Leniency Program through which the benefit of leniency in the form of immunity from suit or reduction of administrative fines may be granted 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 PCA in exchange for the entity’s voluntary disclosure of information regarding such agreement. On 29 December 2018, the Rules of the Leniency Program (the “Leniency Rules”) was published in two (2) newspapers of general circulation, and on 03 January 2019, the Rules was deposited to the Office of the National Administrative Register.

These FAQs serve to aid the public in understanding the concept of leniency, and to provide a transparent process in applying for the benefits offered under the program. These FAQs are not a substitute for the PCA and the Leniency Rules. The examples in these FAQs are for illustration and the PCC may revise the FAQs from time to time to reflect developments and may publish new or supplemental questions.

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THE CONCEPT OF LENIENCY



A. The Concept of Leniency

1. What is the Leniency Program of the Philippine Competition Commission (PCC)?

The Leniency Program of the PCC allows any entity that participates or participated in a violation of Section 14(a) or 14(b) of the Republic Act No. 10667, otherwise known as the “Philippine Competition Act” (PCA), to avail of “leniency” in the form of either: (1) immunity from suit; or (2) exemption, waiver, or gradation of fines (“reduction of fines”) in exchange for the voluntary disclosure of information regarding such violation, subject to certain requirements.

The PCC will only allow a maximum of one beneficiary of immunity from suit and one beneficiary of reduction of fines for each reported violation of Section 14(a) or 14(b). This principle is meant to ensure that members of a cartel will race to the PCC and disclose the existence of the anti-competitive agreement to obtain the benefits of the Leniency Program.

2. What is the purpose of the Leniency Program?

Violations of Sections 14(a) and 14(b) of the PCA which include price-fixing, bid-rigging, output restriction, and market allocation, are widely considered to be the most harmful form of anticompetitive behavior. The PCC’s Leniency Program is designed to deter the creation of such cartels, and to aid in the detection and prosecution of existing ones by incentivizing cooperation from current and former cartel participants who possess information and/or evidence necessary for a successful investigation and case.

3. What are the benefits available under the Leniency Program?

The benefits available depend on when the entity applied for leniency and the entity’s role in the cartel. The available benefits are summarized in the matrix¹ below:

	Role of Applicant in the Anti-Competitive Agreement	Available Benefits	
		Submitted <i>Marker Request Form</i> PRIOR to start of Preliminary Inquiry	Submitted <i>Marker Request Form</i> AFTER the start of Preliminary Inquiry
Entity No. 1	Participant	<ul style="list-style-type: none">• Immunity from suit	<ul style="list-style-type: none">• No fine• Immunity from suit at the discretion of the PCC
	Leader, Originator, or Coercer	<ul style="list-style-type: none">• 80% reduction of actual fines	<ul style="list-style-type: none">• 45% reduction of actual fines
Entity No. 2	Participant	<ul style="list-style-type: none">• 65% reduction of actual fines	<ul style="list-style-type: none">• 35% reduction of actual fines

¹ The availability of benefits and the amount of the reduction of fines are subject to regular revision by the PCC with due regard to attendant circumstances, or to reflect developments in the application of the Leniency Rules.

		<ul style="list-style-type: none"> • However, immunity from suit may be granted if the first Entity was only given reduction of fines 	<ul style="list-style-type: none"> • However, immunity from suit may be granted at the discretion of the PCC if the first Entity was only given reduction of fines
	Leader, Originator, or Coercer	<ul style="list-style-type: none"> • 50% reduction of actual fines 	<ul style="list-style-type: none"> • 25% reduction of actual fines

Immunity from suit includes immunity from administrative and criminal liability arising from violations of Sections 14(a) and 14(b) the PCA. It likewise includes immunity from civil actions initiated by the PCC on behalf of affected parties and third parties. The benefit of reduction of fines only applies to the administrative penalty that may be imposed by the PCC.

It must be noted that the benefit of immunity from suit is available until it is granted to an entity. Hence, in case the first qualified entity is only granted reduction of fines, the second qualified entity may be granted immunity from suit if it submitted the Marker Request Form prior to the start of Preliminary Inquiry, or at the discretion of the PCC if the Marker Request Form was submitted after the start of the Preliminary Inquiry.

4. Which violations are covered by the Leniency Program?

The grant of leniency is available in cases involving violations of Sections 14(a) and 14(b) of the PCA. As mentioned above, such prohibited conduct includes price-fixing, bid-rigging, output restriction, and market allocation.

5. Who may apply under the Leniency Program?

Any current or former participant in a violation of Section 14(a) or 14(b) of the Act, may apply for leniency subject to requirements under Section 35 of the PCA and the PCC's Leniency Rules.

Any current or former director, officer, trustee, partner, employee, or agent of a juridical entity that participates or participated in a cartel may apply for leniency independently of their employer, or of the corporation or partnership that they are associated with.

6. What penalties may potentially be avoided through a successful leniency application?

Administrative and criminal penalties under Sections 29 and 30 of the PCA which may be imposed on entities found to have engaged in anti-competitive agreements under Sections 14(a) and 14(b) of the PCA as well as civil actions that may be initiated by the PCC on behalf of affected parties and third parties, may be avoided or reduced through the Leniency Program. However, the benefit of reduction of fines only applies to the administrative penalty that may be imposed by the PCC.

The possible administrative, criminal and/or civil liabilities are described below:

A. Administrative Fines

First offense: Fine of up to one hundred million pesos (P100,000,000.00);

Second offense: Fine of not less than one hundred million pesos (P100,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00).

Third offense and succeeding offenses: Fine of not less than one hundred fifty million pesos (P150,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00).

In fixing the amount of the fine, the PCC shall have regard to both the gravity and the duration of the violation. The manner of computing the fine is provided in the 2017 Rules of Procedure of the PCC.

B. Criminal Penalties

An entity that enters into any anti-competitive agreement as covered by Sections 14(a) and 14(b) under the PCA shall, for each violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of not less than fifty million pesos (P50,000,000.00) but not more than two hundred fifty million pesos (P250,000,000.00). The penalty of imprisonment shall be imposed upon the responsible officers, directors, or partners of the entity.

When the entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, partners, or employees holding managerial positions who are knowingly and willfully responsible for such violation.

C. Civil Liability

The PCC is empowered under Section 12(a) of the PCA to institute the appropriate civil proceedings on behalf of affected parties and third parties should it deem necessary, after the conduct of inquiry and investigation.

PROCEDURE



B. Procedure

7. *What is the procedure for availing of the benefits of the Leniency Program?*

A. Initial Contact

Anyone seeking to apply for leniency or who has any questions about the Leniency Program may meet with the Leniency Committee at the PCC office or contact the Leniency Committee at the following phone number and email address²:

Phone: (+632) 8771-9777
Mobile: (+63) 919-0618522
E-mail: leniency@phcc.gov.ph

It must be noted that the Initial Contact is not a mandatory step that an entity must take to apply for leniency, nor does it formally begin the entity's application. The Initial Contact allows the entity to clarify any questions it may have prior to formally applying for leniency.

B. Request for a marker

An application under the Leniency Program begins with a request for a marker. A marker protects an entity's place in the queue for applicants under the Leniency Program and allows the entity time to gather the necessary information and evidence to qualify under the Leniency Program.

In order to request a marker, the applicant must submit the Marker Request Form which requires the following information: (a) full name, telephone number and contact e-mail address; (b) identification of the natural person or the legal entity being represented, when applicable; and (c) identification of the relevant conduct and the affected market. The conduct must be sufficiently described for the Leniency Committee to understand the extent of the reported cartel in order to determine if another entity has applied for leniency for the same cartel. An individual applying will be required to manifest whether he/she represents a juridical entity or is personally seeking to avail of the benefits of leniency.

The accomplished Marker Request Form may be submitted to the PCC personally, through registered mail or private courier, or via email to leniency@phcc.gov.ph. The application shall be considered to have been submitted to the PCC on the date and time of actual receipt of the same. Mail must be addressed to:

Leniency Committee
Philippine Competition Commission
25/F, Vertis North Corporate Center 1
North Avenue, Quezon City 1105

If the Marker Request Form is submitted via email, the application shall be considered to have been received by the PCC on the date and time of receipt of the email containing the

² This document was updated on 30 September 2020 to reflect the new contact numbers of the Leniency Committee.

accomplished Marker Request Form. The applicant must forthwith file with the PCC the hard copy of the Marker Request Form personally, through registered mail or private courier. If no hard copy of the Marker Request Form is received by the PCC within twenty (20) days from receipt of the email, the application will be considered abandoned.

C. Issuance of a marker

The PCC shall issue a marker (in the form of a letter) to the applicant indicating the date and time the accomplished Marker Request Form was received and the description of the anti-competitive agreement reported. The marker protects an entity's place in the queue for applicants under the Leniency Program and allows the entity an initial period of thirty (30) days to gather the necessary information and evidence to qualify under the Leniency Program. The period may be extended if the Leniency Committee determines it is warranted in order to allow the applicant sufficient time to gather information and evidence.

It must be noted that the applicant may be contacted by the Leniency Committee, through his/her preferred means, prior to the issuance of a marker to find out more information about the violation being reported.

D. Meeting

The applicant given a marker may request or may be required to attend a meeting with the Leniency Committee in order to discuss the application, any extension to the period to submit information and evidence if warranted, and the information and evidence that will be required. If the applicant fails to attend any of the meetings scheduled by the Leniency Committee, the application may be considered abandoned.

E. Submission of information and evidence

The applicant must provide information and evidence relating to the reported anti-competitive agreement in sealed envelopes or folders within a period of thirty (30) days from the date of receipt by the applicant of the marker, unless the Leniency Committee determines an additional period is warranted. The information and evidence that the applicant must provide include 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.

Evidence such as emails, letters, minutes of meetings, or any other piece of evidence that can prove the existence of the anti-competitive agreement will be given significant value by the Leniency Committee.

F. Evaluation of information and evidence submitted

Unless additional time is warranted, within a period of thirty (30) days from submission of the information and evidence by the applicant, the Leniency Committee will evaluate whether the information and evidence submitted by the applicant: (1) can enable the PCC to carry out a targeted investigation on the alleged anti-competitive agreement; or (2) the entity has provided the PCC with a sufficient basis for initiating adjudication through the filing of a Statement of Objection. If an investigation is ongoing, the PCC shall consider whether the evidence and information provided adds significant value to the same.

To enable the Leniency Committee to decide on an application, the Leniency Committee may schedule meetings with the applicant and gather information from other sources.

G. Grant of Conditional Leniency

After evaluation of the information and evidence submitted, the Leniency Committee may grant conditional leniency in the form of conditional (or provisional) immunity from suit or reduction of fines should it find that the applicant is qualified and the information and evidence it presented is sufficient. The Leniency Committee shall set out conditions and continuing obligations with which the applicant must comply to maintain the grant of conditional leniency.

H. Finality of the Grant of Leniency

Subject to the applicant's continuing, full, and genuine cooperation with the PCC, the grant of conditional leniency becomes final upon the finality of the decision in the administrative and civil case(s) arising from the reported cartel activity.

However, If the applicant fails to comply with any of the requirements to maintain the grant of conditional leniency, the Leniency Committee may revoke the same after notice and hearing.

8. *Who handles an application for leniency?*

The PCC has created the Leniency Committee which is empowered to perform all necessary acts in order to implement the Leniency Rules and these FAQs.

In cases of a denial of an application for leniency or a revocation of the grant of conditional leniency by the Leniency Committee, the aggrieved entity may file an appeal with the Leniency Appeals Committee.

9. *Is there a filing fee for applying for the benefits of the Leniency Program?*

No. The PCC does not impose filing fees on entities seeking to apply for the benefits of the Leniency Program.

10. *What authority must be shown by a representative of an entity applying for leniency?*

If an entity applies through a representative or lawyer, the representative must be specifically granted the power to represent the applicant/s for purposes of obtaining leniency, enter into stipulations or admissions of facts and of documents, and enter into settlements.

Two or more current or former officers, directors, trustees, partners, employees, and/or agents of the same entity who jointly apply for leniency may appoint a common representative specifically granted the powers enumerated above.

11. *During the Initial Contact, may an entity inquire anonymously as to the availability of the benefits under the Leniency Program?*

Yes. An entity wishing to anonymously inquire as to the availability of the benefit of immunity from suit may contact the Leniency Committee through the phone number and email provided in Question No. 7. The inquiry must specifically describe the anti-competitive agreement, including the relevant product and geographic market involved. The description of the conduct must be sufficient for the Leniency Committee to understand the extent of the reported cartel in order to determine if another entity has applied for leniency for the same cartel.

12. *Why is it important to request a marker as soon as possible?*

It is important to secure a marker as soon as possible because the benefits of the PCC's Leniency Program are limited to two entities per cartel.

Immunity from suit is only available to the applicant that comes forward and is the first to qualify under the conditions established under Section 35 of the Act and Section 3 of the Leniency Rules. As such, it is important that the applicant secure the marker ahead of everyone else who similarly intends to come forward. As a general rule, once the benefit of immunity from suit, conditional or otherwise, is granted, the subsequent applicant can only be eligible for a reduction of fines.

Moreover, if the applicant conditionally granted immunity from suit was already able to provide the necessary evidence and information, the Leniency Committee may not be inclined to further offer the benefits of leniency to the applicant next in the marker queue.

This system is created to encourage cooperation with the PCC at the earliest possible time in order to promptly address the harm caused by the illegal activity.

13. *Does making inquiries with the Leniency Committee guarantee the issuance of a marker?*

No. Only applicants who make formal marker requests through the submission of a fully accomplished Marker Request Form will be given a marker.

14. *Until when can an entity apply for leniency?*

Applications for leniency shall only be allowed prior to the commencement of adjudication on the anti-competitive agreement.

15. Will leniency still be available even if the Enforcement Office is already aware of the violation reported in the Marker Request Form?

Yes, the benefits of immunity from suit and reduction of fines are still available even if the Enforcement Office is aware of the reported violation, provided that all applicable requirements under Section 3 and subparagraphs (d) and (e) in Section 4 of the Leniency Rules, referred to in Question No. 32 of these FAQs, are satisfied.

16. Should a request for a marker be accompanied by evidentiary documents of the reported illegal activity?

This is not necessary. Please refer to the answer to Question No. 7 of these FAQs.

17. How does the marker queue work?

Entities applying for leniency will be placed in a queue in the order that they submitted their Marker Request Form. In accordance with the matrix in Question No. 3, as a general principle, the best benefit will be given to the first entity who comes forward and qualifies.

The applications of entities will be assessed sequentially, starting from the earliest applicant. Should the first applicant withdraw, abandon, or have its application rejected, the applicant next in the marker queue will be given the opportunity to qualify for the available benefit, be it immunity from suit or reduction of fines.

To illustrate, if the holder of the first marker came forward before a Preliminary Inquiry has begun but is not qualified for the benefit of immunity from suit because he is a leader, originator, or coercer in the cartel, the holder of the second marker will be considered for the said benefit. If the holder of the second marker is also not qualified, the Leniency Committee will consider the applications of the holders of the third marker, fourth marker, and so on, until an applicant is qualified for the said benefit.

In the same example, it must be noted that as stated in the answer to Question No. 3, the holder of the first marker may be given the benefit of reduction of fines since the applicant was the first to come forward but failed to qualify for the benefit of immunity from suit.

18. When I apply for a marker, will I know my place in the queue?

If the applicant is the first to apply for leniency, he will be informed in the marker letter of the same. Subsequent applicants will be informed in the marker letter that there are prior applicants, but they will not be informed of their exact place in the queue.

19. Does securing a marker guarantee that the application for leniency will be granted?

No. The marker merely signifies the order of priority among leniency applicants; it does not guarantee the benefits of leniency. The applicant must still submit information and evidence, and the applicant's eligibility will have to be evaluated. In case the application is rejected, the entity next in the marker queue will have the opportunity to fulfill the requirements and enjoy the benefits.

20. *If a subsequent applicant commits to submit information and evidence earlier than the deadline given by the Leniency Committee to an earlier applicant, will the later applicant be able to get ahead of the earlier applicant in the marker queue?*

No. The period given to the earlier applicant to submit information and evidence will be observed even though the subsequent applicant commits to submit information and evidence at an earlier date.

21. *May entities jointly apply under the Leniency Program?*

Entities that are members of a cartel may not jointly apply for the benefits of the Leniency Program. This principle is meant to ensure that cartel members will race to the PCC to disclose the existence of the anti-competitive agreement.

However, two or more current or former officers, directors, trustees, partners, employees, and/or agents of the same entity that is or was a participant of a cartel may jointly apply for the benefits of the Leniency Program.

22. *Is there a difference between corporate and individual leniency applicants?*

Yes. The distinction between corporate and individual leniency applicants further destabilizes cartels by ensuring that all participants involved, whether juridical entities or individuals, would find incentive to report the anti-competitive practice.

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.

If the leniency applicant is a corporation or a juridical entity, the benefit of immunity from suit or reduction of fines, as the case may be, shall also be enjoyed to the same extent by its current and former directors, officers, trustees, partners, employees, and agents who, at the time information and evidence are required to be submitted under Section 5(b) of the Leniency Rules, come forward and cooperate with the PCC. Such persons are subject to the same duty to cooperate with the PCC as described in the answer to Question No. 37 of these FAQs. Such officers, directors, trustees, partners, employees, and agents that have applied for leniency with the juridical entity may not be allowed to subsequently submit a separate application.

In case of an individual(s) applying for leniency independently of their employer or the juridical entity with which they are associated with, the benefits will not extend to the said 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, evidence, and waiver under Section 5(b) of the Leniency Rules 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 of the Leniency Rules.

23. *What will be considered by the Leniency Committee in deciding whether to grant conditionally the benefits under the Leniency Program?*

The grant of conditional leniency or denial of an application for leniency is discretionary on the part of the Leniency Committee. In exercising its discretion, the Leniency Committee shall consider the information and evidence submitted and determine whether: (1) it can enable the PCC to carry out a targeted investigation on the alleged anti-competitive agreement; or (2) the entity has provided the PCC with a sufficient basis for initiating adjudication through the filing of a Statement of Objection. If an investigation is ongoing, the PCC shall consider whether the evidence and information provided adds significant value to the same.

24. *When is information and evidence sufficient to “carry out a targeted investigation” for purposes of obtaining a grant of conditional leniency?*

Information and evidence are considered sufficient to carry out a targeted investigation if it would allow the PCC to focus the scope of an investigation based on precise information as to, for instance, who and what to investigate, and what to look for and where in terms of evidence.

25. *What is sufficient basis for initiating adjudication through the filing of a Statement of Objections?*

Consistent with the 2017 Rules of Procedure of the PCC, there is sufficient basis to file a Statement of Objections (“SO”) when there are facts and circumstances that would engender reasonable belief that there is a violation of the PCA, its implementing rules, or other competition laws, and that the Entity subject of the SO probably committed it.

26. *When is information and evidence considered to “add significant value” for purposes of obtaining a grant of conditional leniency?*

The standard of “add(s) significant value” refers to the extent to which the information and evidence provided strengthens, by its very nature or its level of detail, the PCC's ability to prove the alleged cartel relative to the information and evidence already within the possession of the PCC.

27. *How will the Leniency Committee evaluate the information and evidence submitted by an applicant for purposes of determining whether to grant conditional leniency?*

The Leniency Committee will evaluate applications on their own merits and determine if the required threshold of information and evidence has been met. In case of several applicants for the same cartel, the Leniency Committee will evaluate applications sequentially and not simultaneously. Only after the Leniency Committee has come to a decision as to whether to grant conditional leniency to an earlier applicant will it open the sealed envelopes and folders submitted by an applicant next in the queue and evaluate the information and evidence.

28. *When the benefits under the Leniency Program have already been conditionally granted to entities, what will happen to the other applicants in the queue?*

The queue will be maintained notwithstanding the grant of conditional leniency. This is because, in cases where the grant of conditional reduction of fines is revoked, the Leniency Committee may turn to the applicant next in the marker queue to offer reduction of fines in exchange of its cooperation in the investigation.

If the benefits of immunity from suit and reduction of fines have already been conditionally granted to earlier applicants, the sealed envelopes and folders of the next applicant in the line will not be opened. Unless the applicant withdraws its application, such sealed envelopes and folders will remain in the possession of the PCC. In case the earlier applicant conditionally granted reduction of fines has its benefit revoked, the sealed envelopes and folders may be opened and evaluated to determine if the applicant is qualified for the benefit of reduction of fines.

29. *Until when can an entity withdraw its application?*

The entity may withdraw its application at any time prior to the denial or the grant of conditional leniency by submitting a written notification to the Leniency Committee.

30. *May an entity appeal the denial of an application for leniency?*

Yes. The entity may file an appeal with the Leniency Appeals Committee.

31. *What options are available to an entity to mitigate its liability if the benefits of immunity from suit and reduction of fines are no longer available?*

The entity should consider entering into a settlement (See Sec. 2.17 and Article VIII, Rule IV of the 2017 Rules of Procedure of the PCC) or availing of non-adversarial remedies (Section 37 of the PCA and Rule III of the 2017 Rules of Procedure of the PCC).

QUALIFICATIONS



C. Qualifications

32. *What are the requirements to qualify for the benefits available under the Leniency Program?*

As provided in Sections 3 and 4 of the Leniency Rules, the following are the requirements to avail of leniency:

A. 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.

B. Reduction of 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.

33. What constitutes “prompt and effective action” to cease the illegal activity?

What constitutes prompt and effective action will depend on the particular circumstances in each leniency application. A primary consideration is what steps are taken by management in response to the discovery of the anticompetitive activity being reported. A company terminates its part in anticompetitive activity by stopping any further participation in that activity, unless continued participation is with PCC approval in order to assist the PCC in its investigation in accordance with the obligation to cooperate in Sections 3(c) and 4(c) of the Leniency Rules.

34. Are cartel leaders, originators, and those who coerced another party to participate in a cartel eligible to apply under the Leniency Program?

Yes. While the benefit of immunity from suit is not available to a cartel leader, originator, or anyone who coerced another party to participate in or remain in a cartel, the entity may still avail of the benefit of reduction of fines. As with the discovery and termination representations, the applicant bears the burden of proving the accuracy of this representation.

35. Section 3 of the Leniency Rules provides that, “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.” What will the Leniency Committee consider in exercising its discretion to grant immunity from suit even after an investigation has begun?

If an investigation is ongoing, the Leniency Committee shall consider whether the evidence and information provided significantly adds to the likelihood of attaining a sustainable conviction against the participant/s of the cartel in an administrative or civil case. Evidence such as emails, letters, minutes of meetings, or any other piece of evidence that can prove the existence of the anti-competitive agreement will be given significant value by the Leniency Committee.

36. Who is a cartel leader or originator for purposes of being disqualified for the benefit of immunity from suit?

Only when a juridical person is clearly identified as the single organizer or leader will it be disqualified from obtaining leniency on this ground. If there are two leaders or originators in a cartel, then all the participants, including the two leaders or originators, are potentially eligible for immunity from suit.

If it is not clear if an officer of a corporation acted as a leader or organizer of a cartel on behalf of the corporation, the Leniency Committee may consider the officer alone as the leader or originator. The Leniency Committee will determine, on the basis of an applicant’s

representation and other available evidence, if it is the leader or originator of the reported cartel.

As to applicants who are natural persons, they would only be disqualified from obtaining immunity from suit based their role if he or she is clearly the single organizer or single leader of a conspiracy. Accordingly, in situations where conspirators are co-equals or two or more individual conspirators are viewed leaders or originators, all the participants, including the two or more individual leaders or originators, are potentially eligible for immunity from suit.

37. *What are the continuing obligations of an applicant conditionally granted with leniency?*

The grant of conditional leniency imposes upon the grantee the duty to cooperate with the Enforcement Office until the finality of a decision in any and all administrative and civil case(s) initiated by the PCC arising from the investigation. Such cooperation includes in particular:

- (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.

38. *If one or more individual corporate executives refuse to cooperate, will the corporate applicant be barred from leniency on the basis that corporation is no longer fully and genuinely cooperating with the PCC?*

Not necessarily. The corporation must, in the PCC's judgment, be taking all legal and reasonable steps to cooperate with the investigation. The corporation is expected to exert its best efforts to secure the truthful, full, continuing, and complete cooperation of its current directors, officers, and employees. When the grant of conditional leniency requires the cooperation of specific named former directors, officers, or employees, the company is required to use its best efforts to secure those individuals' cooperation. The PCC's determination of full and genuine cooperation will consider the number and significance of the individuals who fail to cooperate, and the steps taken by the company to secure their cooperation. Of course, in such situations, the non-cooperating individuals would lose the protection given to them, if any, under the Leniency Program.

CONFIDENTIALITY

The image features a minimalist design with a white background. In the top-left corner, the word "CONFIDENTIALITY" is written in a bold, black, sans-serif font. The bottom-right portion of the image is dominated by a large, dark gray curved shape that sweeps from the bottom edge towards the right, creating a sense of depth and movement. This shape is composed of several overlapping layers, with the topmost layer being the darkest and the layers beneath it becoming progressively lighter, giving it a three-dimensional, layered appearance.

D. Confidentiality

39. *What are the confidentiality procedures observed in the Leniency Program?*

The identity of an entity applying for leniency as well as those who have been granted leniency, conditional or otherwise, shall be confidential and will not be disclosed by the PCC unless the PCC determines that such entity's testimony or a sworn statement is necessary for the administrative or civil case filed by the PCC.

40. *Will the evidence submitted by an entity whose application is withdrawn or denied be used for investigation or prosecution? What happens if the application is abandoned?*

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 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) of the Leniency Rules; or (3) the applicant fails to cooperate with, or follow the Leniency Rules, guidelines, and other issuances of the PCC.

41. *What protections can the PCC offer to an entity under the Leniency Program?*

Aside from maintaining the confidentiality of the identity of the entity, acts of reprisal or retaliation are prohibited and may be penalized. Any entity that commits any form of reprisal or discrimination against anyone cooperating or furnishing information, document, or data to the PCC in connection with an investigation or proceeding being conducted, shall, after due notice and hearing, be penalized in accordance with Section 6.12 of the 2017 Rules of Procedure of the PCC.

Reprisal or discrimination shall include removal, discharge, demotion, suspension, threats, harassment, or any form of retaliation in the terms and conditions of employment, agency, or engagement, as the case may be.

Further, should the PCC find it necessary, the PCC may refer any entity granted leniency, conditional or otherwise, to the Witness Protection, Security and Benefit Program of the Department of Justice ("DOJ") under Republic Act No. 6981, or any other witness protection program available with the DOJ or other law enforcement agency.

VIOLATIONS



E. Violations

42. *Can the conditional grant of leniency be revoked?*

Yes. In cases where the applicant is shown to have violated the Leniency Rules or its obligations in the conditional grant of leniency, the Leniency Committee may revoke the grant upon application by the Enforcement Office and upon due notice and hearing.

Should the conditional grant of leniency be revoked, the Enforcement Office shall keep in its possession the information/evidence submitted by the applicant and may use the same against it and third parties during the course of the investigation and in any subsequent cases that may be initiated.

43. *What happens in case of revocation of the grant of conditional leniency?*

The benefit of immunity from suit, if revoked, may not be granted to another entity. However, in case of reduction of fines, the entity next in line will be considered for the said benefit.

To illustrate, consider a situation wherein Entities A, B, and C, applied for leniency in the said order, and Entity A was granted conditional immunity from suit and Entity B was conditionally granted reduction of fines. If A's grant of conditional immunity is revoked, it may not be granted to another entity. If Entity B's conditional grant of reduction of fines is revoked, Entity C may be conditionally granted the benefit of immunity from suit provided that Entity C complies with the requirements therefor.

However, the foregoing will only be allowed until the filing of the Statement of Objections. After which, even if Entity B's conditional grant of reduction of fines is revoked, Entity C will not be entitled to any benefit.

44. *May an entity appeal the revocation of conditional leniency?*

Yes. The entity may file an appeal with the Leniency Appeals Committee.

45. *What is the consequence of providing false or misleading information in a leniency application?*

Any applicant found to have reported false, misleading or malicious information, data, or documents damaging to the business or integrity of the entities under inquiry, relative to its application for leniency, may be penalized by a fine not less than the penalty imposed in the Section of the PCA reported to have been violated by the entity complained of. This is without prejudice to any penalty that may be imposed under Section 6.11 of the 2017 PCC Rules of Procedure.



Ensuring businesses compete and consumers benefit

Leniency Committee



(+632) 8771-9777
(+63) 919-0618522
leniency@phcc.gov.ph



queries@phcc.gov.ph
enforcement@phcc.gov.ph
mergers@phcc.gov.ph



25/F Vertis North Corporate Center 1,
North Avenue, Quezon City 1105



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