



U. S. Department of Justice

Antitrust Division

Office of the Deputy Assistant Attorney General

950 Pennsylvania Ave., NW, Suite 3218
Washington, D.C. 20530-0001

[Name and address]

Dear [Name]:

This letter sets forth the terms and conditions of an agreement between the Antitrust Division of the United States Department of Justice and [you/your client [Name]] (“Applicant”), in connection with [insert description of conduct: e.g., price fixing, bid rigging, market allocation] or other conduct constituting a criminal violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, in the [insert generic description of industry: e.g., widget] industry [insert geographic scope: e.g., in the United States and elsewhere]. This Agreement is conditional and depends upon Applicant (1) establishing that [he/she] is eligible for leniency as [he/she] represents in paragraph 1 of this Agreement, and (2) cooperating in the Antitrust Division’s investigation as required by paragraph 2 of this Agreement. After Applicant establishes that [he/she] is eligible to receive leniency and provides the required cooperation, the Antitrust Division will notify Applicant in writing that [he/she] has been granted unconditional leniency. It is further agreed that disclosures made by counsel for Applicant in furtherance of the leniency application will not constitute a waiver of the attorney-client privilege or the work-product privilege. Applicant represents that [he/she] is fully familiar with the Antitrust Division’s Leniency Policy for Individuals dated August 10, 1994 (attached), which is incorporated by reference herein.¹

AGREEMENT

1. **Eligibility:** Applicant desires to report to the Antitrust Division [e.g., price-fixing, bid-rigging, market-allocation] activity or other conduct constituting a criminal violation of Section 1 of the Sherman Act in the [insert] industry [e.g., in the United States and elsewhere] (“the anticompetitive activity being reported”). Applicant represents to the Antitrust Division that [he/she] is eligible to receive leniency in that, in connection with the anticompetitive activity being reported, [he/she] did not coerce any other party to participate in the activity and was not the leader in, or the originator of, the activity. Applicant agrees that [he/she] bears the burden of proving [his/her] eligibility to receive leniency, including the accuracy of the representations

¹ For a further explanation of the Antitrust Division’s Leniency Policy for Individuals and how the Division interprets the policy, see Frequently Asked Questions Regarding the Antitrust Division’s Leniency Program and Model Leniency Letters (November 19, 2008), *available at* <http://www.usdoj.gov/atr/public/criminal/leniency.htm>.

made in this paragraph, and that [he/she] fully understands the consequences that might result from a revocation of leniency as explained in paragraph 3 of this Agreement.

2. **Cooperation:** Applicant agrees to provide full, continuing, and complete cooperation to the Antitrust Division in connection with the anticompetitive activity being reported, including, but not limited to, the following:

- (a) producing in the United States all documents and records, including personal documents and records, and other materials in [his/her] possession, custody, or control, wherever located, not privileged under the attorney-client privilege or work-product privilege, requested by attorneys and agents of the United States;
- (b) making [himself/herself] available for interviews in the United States upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with the anticompetitive activity being reported, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503 *et seq.*);
- (d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this paragraph and not privileged under the attorney-client privilege or work-product privilege, that [he/she] may have relevant to the anticompetitive activity being reported; and
- (e) when called upon to do so by the United States, testifying in trial and grand jury or other proceedings in the United States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503 *et seq.*), in connection with the anticompetitive activity being reported.

3. **Individual Leniency:** Subject to verification of Applicant's representations in paragraph 1 above, and subject to Applicant's full, continuing, and complete cooperation, as described in paragraph 2 above, the Antitrust Division agrees conditionally to accept Applicant into the Individual Leniency Program, as explained in the attached Leniency Policy for Individuals. Pursuant to that policy, the Antitrust Division agrees not to bring any criminal prosecution against Applicant for any act or offense [he/she] may have committed prior to the date of this letter² in connection with the anticompetitive activity being reported. The

² If there is a significant lapse in time between the date the applicant terminated his or her participation in the anticompetitive activity being reported and the date the applicant reported the activity

commitments in this paragraph are binding only upon the Antitrust Division, although, upon request of Applicant, the Division will bring this Agreement to the attention of other prosecuting offices or administrative agencies. If at any time before Applicant is granted unconditional leniency the Antitrust Division determines that Applicant (1) contrary to [his/her] representations in paragraph 1 of this Agreement, is not eligible for leniency or (2) has not provided the cooperation required by paragraph 2 of this Agreement, this Agreement shall be void, and the Antitrust Division may revoke the conditional acceptance of Applicant into the Individual Leniency Program. Absent exigent circumstances, before the Antitrust Division makes a final determination to revoke Applicant's conditional leniency, the Division will notify counsel for Applicant in writing of the recommendation of Division staff to revoke the conditional acceptance of Applicant into the Individual Leniency Program and will provide counsel an opportunity to meet with the Division regarding the potential revocation. Should the Antitrust Division revoke the conditional acceptance of Applicant into the Individual Leniency Program, the Antitrust Division may thereafter initiate a criminal prosecution against Applicant, without limitation. Should such a prosecution be initiated, the Antitrust Division may use against Applicant in any such prosecution any documents, statements, or other information provided by Applicant to the Division at any time pursuant to this Agreement. Applicant understands that the Antitrust Division's Leniency Program is an exercise of the Division's prosecutorial discretion, and [he/she] agrees that [he/she] may not, and will not, seek judicial review of any Division decision to revoke [his/ her] conditional leniency unless and until [he/she] has been charged by indictment or information for engaging in the anticompetitive activity being reported.

4. **Entire Agreement:** This letter constitutes the entire agreement between the Antitrust Division and Applicant, and supersedes all prior understandings, if any, whether oral or written, relating to the subject matter herein. This Agreement cannot be modified except in writing, signed by the Antitrust Division and Applicant.

The signatories below acknowledge acceptance of the foregoing terms and conditions.

Sincerely,

Date: _____

Scott D. Hammond
Deputy Assistant Attorney General
Antitrust Division

[Applicant Name]

Date: _____

to the Antitrust Division, the Division reserves the right to grant conditional leniency only up to the date the applicant terminated his or her participation in the activity.

_____ Date: _____
[Counsel Name]
Counsel for [Applicant Name]