



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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[Name and address]

Dear [Name]:

This letter sets forth the terms and conditions of a conditional agreement between the United States Department of Justice Antitrust Division (“Antitrust Division”) and [*insert company name*]¹ (“Applicant”) concerning Applicant’s eligibility for the Antitrust Division’s Leniency Policy, Justice Manual 7-3.400, which is incorporated by reference. Applicant represents that it is fully familiar with the Leniency Policy.

- 1. Applicant’s Eligibility.** Subject to verification of Applicant’s representations in this paragraph, and subject to Applicant’s timely, truthful, continuing, and complete cooperation, as described in Paragraph 3, the Antitrust Division conditionally agrees that Applicant is eligible for [Type A/Type B] of the Leniency Policy.
 - (a) Applicant admits that it participated in [DEFINE CONSPIRACY²] (“the illegal activity”).
 - (b) Upon discovering the illegal activity, Applicant promptly reported it to the Antitrust Division.
 - (c) Applicant did not coerce any other party to participate in the illegal activity and clearly was not the leader or originator of that activity.

¹ If subsidiaries are included in the conditional leniency letter, either name them or if they are too numerous to name, identify them as “entities in which [Applicant] had a greater than 50% ownership interest as of the date of this letter.” If other related entities are included, name them. When subsidiaries or other related entities are included, the parenthetical reference to Applicant will change to “(collectively “Applicant”).

² The definition of the illegal activity will generally follow this format: Beginning at least as early as [XXXX] and continuing until as late as [XXXX], in the [XXXX] District of [XXXX] and elsewhere, Applicant and co-conspirators knowingly entered into and engaged in a conspiracy to suppress and eliminate competition by [allocating customers/employees, rigging bids, and fixing prices] for [affected product or service] in the United States and elsewhere, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

- (d) Applicant has remediated the harm caused by the illegal activity and improved its compliance program to mitigate the risk of engaging in future illegal activity. Applicant has provided a satisfactory plan to make restitution to parties injured by the illegal activity.

2. Conditional Nonprosecution Agreement. Subject to verification of Applicant's representations in Paragraph 1, and subject to Applicant's timely, truthful, continuing, and complete cooperation, as described in Paragraph 3, the Antitrust Division conditionally agrees:

- (a) that it will not bring any criminal prosecution against Applicant for acts or offenses it committed in furtherance of the illegal activity before the date the Antitrust Division executes this letter.
- (b) that it will not bring criminal charges against Applicant's current [and former³] directors, officers, and employees as of the date the Antitrust Division executes this letter, listed in Attachment A ("Covered Personnel")⁴ for their acts and offenses in furtherance of the illegal activity if they provide timely, truthful, continuing, and complete cooperation to the Antitrust Division throughout its investigation of the illegal activity, as described in paragraph 4.

3. Applicant's Cooperation. Applicant has provided, and will continue to provide throughout the Antitrust Division's investigation, timely, truthful, continuing, and complete cooperation, including but not limited to:

³ Former directors, officers, and employees are presumptively excluded from grants of corporate leniency. The Division may in its sole discretion include specific named former directors, officers, or employees in a corporate conditional leniency letter, only when they provide substantial, noncumulative cooperation against remaining potential targets, or when their cooperation is necessary for the applicant to make a confession sufficient to be eligible for conditional leniency.

When assessing whether to provide immunity to former directors, officers, and employees, the Division will consider the factors set forth in Principles of Federal Prosecution, JM 9-27.600, 9-27.620, and 9-27.630. Covered former directors, officers, and employees must provide timely, truthful, continuing, and complete cooperation to the Division throughout its investigation and resulting prosecutions.

Before the Division decides whether to include specific former personnel in the scope of a corporate conditional leniency letter, those individuals must submit to an interview with Division attorneys and company counsel must make a commitment that the company will continue to assist in securing the cooperation of those individuals, including that the former personnel will continue to be made available for interviews and testimony.

⁴ Applicant should provide the Division with a list of its current personnel, which will be attached to the conditional leniency letter. In both a Type A and Type B leniency, that attachment will omit any current personnel who have declined to provide timely, truthful, continuing, and complete cooperation with the Division's investigation. In a Type B leniency, the Division will consider current personnel under the Principles of Federal Prosecution and following the standard for individual non-prosecution agreements in exchange for cooperation, JM 9-27.600, 620, and 630. If the Division determines that certain current personnel do not meet that standard, those individuals will be omitted from Attachment A.

- (a) providing a full exposition of all facts known to Applicant relating to the illegal activity;
- (b) providing promptly, and without requirement of subpoena, all documents, information, or other materials in its possession, custody, or control, wherever located, not protected under the attorney-client privilege or work-product doctrine, requested by the Antitrust Division in connection with the illegal activity, to the extent not already produced;
- (c) using its best efforts to secure the Covered Personnel's timely, truthful, continuing, and complete cooperation in the Antitrust Division's investigation into the illegal activity;
- (d) facilitating the ability of Covered Personnel to appear for interviews or testimony in connection with the illegal activity as the Antitrust Division may require at the times and places designated by the Antitrust Division;
- (e) using its best efforts to ensure that Covered Personnel who provide information to the Antitrust Division relevant to the illegal activity respond completely, candidly, and truthfully to all questions asked in interviews and grand jury appearances and at trial;
- (f) using its best efforts to ensure that Covered Personnel who provide information to the Antitrust Division relevant to the illegal activity make no attempt to falsely protect or falsely implicate any person or entity; and
- (g) not committing, participating in, or attempting to commit or participate in any additional antitrust crime in violation of Title 15, United States Code, or any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.

4. Covered Personnel's Cooperation. Covered Personnel will provide timely, truthful, continuing, and complete cooperation throughout the Antitrust Division's investigation, including but not limited to:

- (a) producing in the United States all documents and records, including personal documents and records, and other materials, wherever located, not protected under the attorney-client privilege or work-product doctrine, requested by attorneys and agents of the United States in connection with the illegal activity;
- (b) making themselves available for interviews in the United States upon the request of attorneys and agents of the United States in connection with the illegal activity;

- (c) responding fully and truthfully to all of the Antitrust Division's inquiries in connection with the illegal activity, without falsely implicating any person or entity 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 Antitrust Division with any materials or information, not requested in (a) - (c) of this paragraph and not protected under the attorney-client privilege or work-product doctrine, that they may have relevant to the illegal activity;
- (e) when called on to do so by the Antitrust Division in connection with the illegal activity, participating in affirmative investigative techniques, including but not limited to making telephone calls, recording conversations, and introducing law enforcement officials to other individuals, with all such activity being conducted only at the express direction and under the supervision of attorneys and agents of the United States;⁵
- (f) when called on to do so by the Antitrust Division, 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), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), and contempt (18 U.S.C. §§ 401-402), in connection with the illegal activity; and
- (g) not committing, participating in, or attempting to commit or participate in any additional antitrust crime in violation of Title 15, United States Code, or any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.

5. Tolling. Applicant agrees that if this letter is withdrawn for any reason, the statute of limitations period for the illegal activity and any crimes committed in furtherance of the illegal activity will be tolled for the period between the date the Division executes this letter and the date on which the letter is withdrawn, or for a period of sixty (60) days after the Division executes this letter, whichever period is greater.

⁵ *Counsel for the Applicant should discuss with the Antitrust Division any concerns, such as safety concerns, regarding engaging in affirmative investigative techniques. The Antitrust Division will take those concerns into consideration in assessing the Applicant's good faith and complete cooperation.*

6. Conditional Leniency Agreement.

- (a) Applicant agrees that it bears the burden of proving its eligibility for leniency, including demonstrating that its representations in this letter are accurate and that it fully understands the consequences that might result from a revocation of this conditional letter.
- (b) Applicant will make restitution before being granted leniency. Applicant is not required to pay restitution to victims whose antitrust injuries are independent of, and not proximately caused by, any effect on (i) trade or commerce within the United States, (ii) import trade or commerce, or (iii) the export trade or commerce of a person engaged in such trade or commerce in the United States, which effect was proximately caused by the illegal activity.
- (c) After Applicant establishes that it is eligible to receive leniency and provides the required cooperation, the Antitrust Division will notify Applicant in writing that it has been granted leniency.
- (d) If at any time before Applicant is granted leniency the Antitrust Division determines that Applicant (1) contrary to its representations in Paragraph 1, is not eligible for leniency or (2) has not provided the cooperation required by Paragraph 3, this letter shall be void and the Antitrust Division may revoke Applicant's conditional eligibility under the Leniency Policy. Before the Antitrust Division makes a final determination to revoke Applicant's conditional leniency, the Antitrust Division will notify counsel for Applicant in writing of staff's recommendation to revoke Applicant's conditional leniency and will provide counsel an opportunity to meet with the Antitrust Division regarding the potential revocation. Should the Antitrust Division revoke Applicant's conditional leniency, the Antitrust Division may thereafter initiate a criminal prosecution against Applicant, without limitation. The Antitrust Division may use against Applicant in any such prosecution any documents, statements, or other information provided to the Antitrust Division at any time under this letter by Applicant or by any of its current or former directors, officers, or employees.
- (e) If at any time before Applicant is granted leniency the Antitrust Division determines that a Covered Personnel (1) caused Applicant to be ineligible for leniency under Paragraph 1; (2) obstructed or attempted to obstruct an investigation of illegal activity at any time, whether the obstruction occurred before or after the Antitrust Division executes this letter; or (3) failed to provide timely, truthful, complete, and continuing cooperation as required under Paragraph 3, this letter shall be void as to that individual and the Antitrust Division may revoke the conditional nonprosecution protection provided to that individual under this letter. Absent exigent circumstances, before the Antitrust Division makes a final determination to revoke an individual's conditional nonprosecution protection, the Antitrust Division will notify such individual (or their counsel, if represented) and Applicant's counsel in writing of staff's

recommendation to revoke the conditional nonprosecution protection granted to the individual under this letter and will provide an opportunity to meet with the Antitrust Division regarding the potential revocation. Should any conditional nonprosecution protection granted to an individual under this letter be revoked, the Antitrust Division may thereafter prosecute such individual criminally, without limitation. The Antitrust Division may use against that individual in any such prosecution any documents, statements, or other information provided to the Antitrust Division at any time under this letter by Applicant or by any of its current or former directors, officers, or employees, including the individual.

- (f) Applicant understands that the Leniency Policy is an exercise of the Antitrust Division's prosecutorial discretion, and Applicant agrees that it may not, and will not, seek judicial review of any Antitrust Division decision to revoke its conditional leniency unless and until it has been charged by indictment or information for the illegal activity. Judicial review of any Antitrust Division decision to revoke any conditional nonprosecution protection granted to an individual under this letter is not available unless and until the individual has been charged by indictment or information for the illegal activity.

7. **Gadget Investigation:** Applicant acknowledges that it is a [subject/target of] [defendant in] a separate investigation into [price-fixing, bid-rigging, and market-allocation] activity, or other conduct constituting a criminal violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, [and related statutes,] in the gadget industry [insert geographic scope--e.g., in the United States and elsewhere] and that some of its current and former directors, officers, or employees are, or may become, subjects, targets, or defendants in that separate investigation.

- (a) Nothing in this Agreement limits the Antitrust Division from criminally prosecuting Applicant or any of its current or former directors, officers, or employees in connection with the gadget investigation.
- (b) The status of Applicant or any of its current or former directors, officers, or employees as a subject, target, or defendant in the gadget investigation does not abrogate, limit, or otherwise affect Applicant's cooperation obligations under paragraph 3 above, including its obligation to use its best efforts to secure the truthful, full, continuing, and complete cooperation of covered employees, or the cooperation obligations of covered employees under paragraph 4 above.
- (c) A failure of a covered employee to comply fully with his or her obligations described in paragraph 4 above includes, but is not limited to, regardless of any past or proposed cooperation, not making himself or herself available in the United States for interviews and testimony in trials, grand jury, or other proceedings upon the request of attorneys and agents of the United States in connection with the illegal activity because he or she has been, or anticipates being, charged, indicted, or arrested in the United States for violations of federal antitrust law [and related statutes] involving the gadget industry. Such a failure

also includes, but is not limited to, not responding fully and truthfully to all inquiries of the United States in connection with the illegal activity because his or her responses may also relate to, or tend to incriminate him or her in, the gadget investigation. Failure to comply fully with his or her cooperation obligations further includes, but is not limited to, failing to produce in the United States all documents not protected under the attorney-client privilege or work-product doctrine, including personal documents and records, and other materials requested by attorneys and agents of the United States in connection with the illegal activity because those documents may also relate to, or tend to incriminate him or her in, the gadget investigation. The cooperation obligations of paragraph 4 above do not apply to requests by attorneys and agents of the United States directed at [price-fixing, bid-rigging, or market-allocation] activity in the gadget industry if such requests are not, in whole or in part, made in connection with the illegal activity.

- (d) The Antitrust Division may use any documents, statements, or other information provided by Applicant or by any of its current or former directors, officers, or employees to the Antitrust Division at any time pursuant to this Agreement against Applicant or any of its current or former directors, officers, or employees in any prosecution arising out of the gadget investigation, as well as in any other prosecution.

- 8. Privilege and Work Product.** Disclosures made by counsel for Applicant in furtherance of the leniency application will not constitute a waiver of the attorney-client privilege or the protections of the work-product doctrine.
- 9. Public Statements by Applicant.** Applicant expressly agrees that it shall not, through present or future attorneys, directors, officers, employees, agents, or any other individual authorized to speak for Applicant, make any public statement, in litigation or otherwise, contradicting Applicant's acceptance of responsibility in Paragraph 1(a). Any such contradictory statement shall, subject to cure rights of the Applicant described below, void this letter, and the Antitrust Division may revoke Applicant's conditional eligibility under the Leniency Policy. The decision whether any public statement by any such individual contradicting Paragraph 1(a) will be imputed to Applicant shall be at the sole discretion of the Antitrust Division. If the Antitrust Division determines that a public statement by any such individual contradicts Paragraph 1(a) in whole or in part, the United States shall so notify Applicant, and Applicant may avoid revocation of its conditional eligibility by publicly repudiating such statement(s) within five (5) business days after notification. Applicant shall be permitted to raise defenses and assert affirmative claims in other proceedings relating to its admission in Paragraph 1(a) provided that such defenses and claims do not contradict the admission in Paragraph 1(a). This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of Applicant in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of Applicant.

10. Parties to the Agreement. This letter is not binding on any other government agency. At the Applicant's request, the Antitrust Division will bring this letter to the attention of other prosecuting offices or administrative agencies.

11. Entire Agreement. This letter constitutes the entire agreement [*or list any other written agreements between the parties, e.g., a separate plea 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 letter cannot be modified except in writing, signed by the Antitrust Division and Applicant.

12. Authority and Capacity. The signatories to this letter on behalf of each party have the authority and capacity necessary to execute this letter and to bind the respective parties.

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

Sincerely,

Date: _____

Jonathan S. Kanter
Assistant Attorney General
Antitrust Division

[Name]
[Position]
[insert company name]

Date: _____

[Counsel Name]
[insert company name]

Date: _____