



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

[NAME]

Assistant Attorney General

RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202)514-2401 / (202)616-2645 (Fax)

[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 [ABC, Inc.]¹ (“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 it is eligible for leniency as it 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 it is eligible to receive leniency and provides the required cooperation, the Antitrust Division will notify Applicant in writing that it 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 protections of the work-product doctrine. Applicant represents that it is fully familiar with the Antitrust Division’s Corporate Leniency Policy dated August 10, 1993 (attached), which is incorporated by reference herein.² The “date of this letter” as used herein means the date that the Antitrust Division executes this letter.

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

² For a further explanation of the Antitrust Division’s Corporate Leniency Policy and how the Division interprets the policy, see Frequently Asked Questions About the Antitrust Division’s Leniency Program and Model Leniency Letters (Jan. 26, 2017), <https://www.justice.gov/atr/leniency-program>.

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 generic description of industry: e.g., widget] industry [insert geographic scope: e.g., in the United States and elsewhere] (“the anticompetitive activity being reported”). Applicant represents to the Antitrust Division that it is eligible to receive leniency in that, in connection with the anticompetitive activity being reported, it:

- (a) took prompt and effective action to terminate its participation in the anticompetitive activity being reported upon discovery of the activity;³ and
- (b) did not coerce any other party to participate in the anticompetitive activity being reported and was not the leader in, or the originator of, the activity.

Applicant agrees that it bears the burden of proving its eligibility to receive leniency, including the accuracy of the representations made in this paragraph and that it fully understands the consequences that might result from a revocation of leniency as explained in paragraph 3 of this Agreement. As used in this Agreement, discovery of the anticompetitive activity being reported means discovery by the authoritative representatives of Applicant for legal matters, either the board of directors or counsel representing Applicant.

2. **Cooperation:** Applicant agrees to provide truthful, 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) providing a full exposition of all facts known to Applicant relating to the anticompetitive activity being reported;
- (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 anticompetitive activity being reported, to the extent not already produced;
- (c) using its best efforts to secure the truthful, full, continuing, and complete cooperation of [[insert name(s) of any specific former director, officer, or employee “carved in,” i.e., included in the scope of, the conditional

³ *If there is a significant lapse in time between the date the Applicant discovered the anticompetitive activity being reported and the date Applicant reported the activity to the Antitrust Division, the Division reserves the right to require the Applicant to also represent in the eligibility paragraph that it “discovered the anticompetitive activity being reported in or about [month/year] and terminated its participation in the activity in or about [month/year].”*

leniency letter] and]⁴the current⁵ directors, officers, and employees of Applicant[, but excluding [insert name(s) of any specific current director, officer, or employee or specific individual of ambiguous employment status who is excluded from the scope of the conditional leniency letter],⁶

⁴ *The Corporate Leniency Policy does not refer to former directors, officers, and employees and thus they are presumptively excluded from grants of corporate leniency. The Division may, however, in its sole discretion include specific named former directors, officers, or employees in the negotiated scope of a corporate conditional leniency letter or a separate nonprosecution agreement in appropriate cases when they provide substantial, noncumulative cooperation against remaining potential targets, or when their cooperation is necessary for the Applicant to make a confession of criminal antitrust activity sufficient to be eligible for conditional leniency. The decision of whether the Antitrust Division includes specific former directors, officers, or employees in a corporate conditional leniency letter will depend on a number of factors, including whether the Applicant is interested in protecting them and whether it has the ability to help secure the cooperation of key former directors, officers, or employees. The Division will make an individualized, case-by-case decision on whether to include specific former personnel, consistent with the Principles of Federal Prosecution. Justice Manual 9-27.000, <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution>. 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.*

⁵ *Under the Corporate Leniency Policy, current directors, officers, and employees of applicants for Type A Leniency will receive leniency if the corporate applicant qualifies for leniency and they admit their involvement in the illegal antitrust activity with candor and completeness as part of the corporate confession and continue to assist the Division. In addition, current directors, officers, and employees who did not participate in the conspiracy but who had knowledge of the conspiracy and cooperate with the Division are also included in the scope of the conditional leniency letter. Under the Corporate Leniency Policy, current directors, officers, and employees who come forward with applicants for Type B Leniency will be considered for immunity from criminal prosecution on the same basis as if they approached the Division individually. The Division often chooses, however, to include protection for current directors, officers, and employees of Type B applicants in a corporate conditional leniency letter, but the Division may exercise its discretion to exclude from the protections offered by a corporate conditional leniency letter those current directors, officers, and employees of Type B applicants who are determined to be highly culpable.*

⁶ *If a current director, officer, or employee of an applicant does not fully cooperate with the Division's investigation, he or she will be excluded from, or "carved out" of, the conditional leniency letter. Also, as detailed in paragraph 4, if a current director, officer, or employee who is originally included in the scope of the conditional leniency letter stops fully cooperating after the conditional leniency letter is issued, the letter as it pertains to that individual will be void,*

regardless of [his][her][their] employment status,] (collectively “covered employees”), and encouraging such persons voluntarily to provide the Antitrust Division with any information they may have relevant to the anticompetitive activity being reported;

- (d) facilitating the ability of covered employees to appear for such interviews or testimony in connection with the anticompetitive activity being reported as the Antitrust Division may require at the times and places designated by the Division;
- (e) using its best efforts to ensure that covered employees who provide information to the Antitrust Division relevant to the anticompetitive activity being reported 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 employees who provide information to the Antitrust Division relevant to the anticompetitive activity being reported make no attempt either falsely to protect or falsely to implicate any person or entity; and
- (g) making all reasonable efforts, to the satisfaction of the Antitrust Division, to pay restitution to any person or entity injured as a result of the anticompetitive activity being reported, in which Applicant was a participant. However, 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 anticompetitive activity being reported.

Current directors, officers, and employees are defined for purposes of this Agreement as individuals who are directors, officers, or employees of the Applicant as of the date of this letter. [The cooperation requirements in subparagraphs (c) through (f) of paragraph 2 [do not apply to former directors, officers, or employees of Applicant who are not covered employees]⁷[[and]do not apply to [insert name(s) of any specific current personnel or specific individuals of ambiguous employment status who are excluded from the scope of the conditional leniency letter], regardless of [his][her][their] employment status.]]

and the Division may revoke any protection conditionally granted to that individual under the letter.

⁷ *Insert this bracketed language if specific named former personnel are carved into the definition of covered employees.*

3. Corporate Leniency: Subject to verification of Applicant's representations in paragraph 1 above, and subject to its truthful, full, continuing, and complete cooperation, as described in paragraph 2 above, the Antitrust Division agrees conditionally to accept Applicant into [Part A/Part B] of the Corporate Leniency Program, as explained in the attached Corporate Leniency Policy. Pursuant to that policy, the Antitrust Division agrees not to bring any criminal prosecution against Applicant for any act or offense it may have committed prior to the date of this letter⁸ in furtherance of the anticompetitive activity being reported. The 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 its 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 Corporate Leniency Program. 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 Corporate 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 Corporate 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 to the Division at any time pursuant to this Agreement by Applicant or by any of its current or former directors, officers, or employees. Applicant understands that the Antitrust Division's Leniency Program is an exercise of the Division's prosecutorial discretion, and Applicant agrees that it may not, and will not, seek judicial review of any Division decision to revoke its conditional leniency unless and until it has been charged by indictment or information for engaging in the anticompetitive activity being reported.

4. Nonprosecution Protection For Covered Employees: Subject to verification of Applicant's representations in paragraph 1 above, and subject to Applicant's truthful, full, continuing, and complete cooperation as described in paragraph 2 above, the Antitrust Division agrees that covered employees who admit to the Division their knowledge of, or participation in, and provide truthful, full, continuing, and complete cooperation with the Division in its investigation of, the anticompetitive activity being reported shall not be prosecuted criminally by the Antitrust Division for any act or offense committed during their period of employment at

⁸ *If there is a significant lapse in time between the date the Applicant discovered the anticompetitive activity being reported and the date Applicant reported the activity to the Antitrust Division, and hence a significant lapse in time between the date the Applicant was required to take prompt and effective action to terminate its participation in the activity and the date the Applicant reported the activity to the Division, the Division reserves the right to grant conditional leniency only up to the date the Applicant represents it terminated its participation in the activity.*

Applicant prior to the date of this letter⁹ in furtherance of the anticompetitive activity being reported. [The conditional leniency, immunity, or nonprosecution (hereinafter “conditional nonprosecution protection”) granted to individuals under this Agreement [does not apply to former directors, officers, or employees of Applicant who are not covered employees]¹⁰[[and] does not apply to [insert name(s) of any specific current personnel or specific individuals of ambiguous employment status who are excluded from the scope of the conditional leniency letter],¹¹ regardless of [his][her][their] employment status].]Such truthful, full, continuing, and complete cooperation shall include, but not be 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 anticompetitive activity being reported;
- (b) making himself or herself available for interviews in the United States upon the request of attorneys and agents of the United States in connection with the anticompetitive activity being reported;
- (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 protected under the attorney-client privilege or work-product doctrine, that he or she may have relevant to the anticompetitive activity being reported;
- (e) when called upon to do so by the United States in connection with the anticompetitive activity being reported, participating in affirmative investigative techniques, including but not limited to making telephone

⁹ *If there is a significant lapse in time between the date the Applicant discovered the anticompetitive activity being reported and the date Applicant reported the activity to the Antitrust Division, and hence a significant lapse in time between the date the Applicant was required to take prompt and effective action to terminate its participation in the activity and the date the Applicant reported the activity to the Division, the Division reserves the right to grant conditional leniency, immunity, or nonprosecution to individuals under this Agreement only up to the date the Applicant represents it terminated its participation in the activity.*

¹⁰ *Insert this bracketed language if specific named former personnel are carved into the definition of covered employees.*

¹¹ *See supra note 6.*

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;¹²

- (f) 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), obstruction of justice (18 U.S.C. §§ 1503 *et seq.*), and contempt (18 U.S.C. §§ 401-402), in connection with the anticompetitive activity being reported; 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.

The commitments in this paragraph are binding only upon the Antitrust Division, although, upon the request of Applicant, the Division will bring this Agreement to the attention of other prosecuting offices or administrative agencies. In the event a covered employee fails to comply fully with his or her obligations hereunder, this Agreement as it pertains to such individual shall be void, and any conditional leniency, immunity, or nonprosecution (hereinafter “conditional nonprosecution protection”)¹³ granted to such individual under this Agreement may be revoked by the Antitrust Division. The Antitrust Division also reserves the right to revoke the conditional nonprosecution protection of this Agreement with respect to any covered employee who the Division determines caused Applicant to be ineligible for leniency under paragraph 1 of this Agreement, who continued to participate in the anticompetitive activity being reported after Applicant took action to terminate its participation in the activity and notified the individual to cease his or her participation in the activity, or who obstructed or attempted to obstruct an investigation of the anticompetitive activity being reported at any time, whether the obstruction occurred before or after the date of this letter. Absent exigent circumstances, before the Antitrust Division makes a final determination to revoke an individual’s conditional nonprosecution protection, the Division will notify such individual (or his or her counsel, if represented) and Applicant’s counsel in writing of the recommendation of Division staff to revoke the conditional

¹² *Counsel for the Applicant should discuss with the Division any concerns, such as safety concerns, regarding engaging in affirmative investigative techniques. The Division will take those concerns into consideration in assessing the Applicant’s good faith and complete cooperation.*

¹³ *If the optional bracketed carve-out sentence is included earlier in this paragraph, only the phrase “conditional nonprosecution protection” will be used here rather than repeating “conditional leniency, immunity, or nonprosecution (hereinafter “conditional nonprosecution protection”).” See bracketed sentence associated with notes 10 and 11.*

nonprosecution protection granted to the individual under this Agreement and will provide an opportunity to meet with the Division regarding the potential revocation. Should any conditional nonprosecution protection granted to an individual under this Agreement be revoked, the Antitrust Division may thereafter prosecute such individual criminally, without limitation, and may use against such individual in such prosecution any documents, statements, or other information which was provided to the Division at any time pursuant to this Agreement by Applicant or by any of its current or former directors, officers, or employees, including such individual. Judicial review of any Antitrust Division decision to revoke any conditional nonprosecution protection granted to an individual under this Agreement is not available unless and until the individual has been charged by indictment or information for engaging in the anticompetitive activity being reported.

5. **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.

6. **Authority And Capacity:** The Antitrust Division and Applicant represent and warrant each to the other that the signatories to this Agreement on behalf of each party hereto have all the authority and capacity necessary to execute this Agreement and to bind the respective parties hereto.

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

Sincerely,

Date: _____ [Name]
Assistant Attorney General
Antitrust Division

[Name]
[Position]
[ABC, Inc.] Date: _____

[Counsel Name]
Counsel for [ABC, Inc.] Date: _____