



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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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 [you/your client [Name]] (“Applicant”) concerning Applicant’s eligibility for the Antitrust Division’s Leniency Policy, Justice Manual 7-3.300, 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 Individual Leniency of the Leniency Policy.
 - (a) Applicant admits that it participated in [DEFINE CONSPIRACY¹] (“the illegal activity”).
 - (b) Applicant did not coerce any other party to participate in the illegal activity and clearly was not the leader or originator of that 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 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.

¹ 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.

- 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:
- (a) producing in the United States all documents and records without the requirements of a subpoena, including personal documents and records, and other materials in [his/her/their] possession, custody, or control, 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 [himself/herself/themself] 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 inquiries of the Antitrust Division 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 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 [he/she/they] may have relevant to the illegal activity;
 - (e) when called upon 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;²
 - (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 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

² 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.

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. **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 Antitrust Division executes this letter and the date on which the letter is withdrawn, or for a period of sixty (60) days after the Antitrust Division executes this letter, whichever period is greater.

5. **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) 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.
- (c) 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.
- (d) 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.

6. **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.

- 7. **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.
- 8. **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 letter 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: _____ Jonathan S. Kanter
Assistant Attorney General
Antitrust Division

[Applicant Name] Date: _____

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