

COMPETITION COMMISSION OF PAKISTAN

Islamabad, November 20, 2007

NOTIFICATION

S.R.O. 1190(I) 2007 – In exercise of the powers conferred by section 56 of the Competition Ordinance, 2007 (the Ordinance) read with section 39 thereof, the Competition Commission of Pakistan (the Commission), is pleased to make the following regulations, namely:-

Competition (Leniency) Regulations, 2007

1. Short title and commencement.

- (1) These regulations may be called the Competition (Leniency) Regulations, 2007.
- (2) They shall come into force at once.
- (3)¹ *These regulations shall apply to an undertaking which is a party to a prohibited agreement and is alleged to have violated Chapter-II prohibitions provided in the Ordinance.*

2. Definitions.

In these regulations, unless there is anything repugnant in the subject or context,-

- (a) “Commission” means the Competition Commission of Pakistan established under the Ordinance.
- (b) “information” includes estimates and forecasts.
- (c) “Ordinance” means the Competition Ordinance, 2007.
- (d)² “*prohibited activity*” means any of the activities of an undertaking which may infringe provisions of section 4 of the Ordinance.

3. Grant of immunity from financial penalties. - (1) The Commission may grant an undertaking the benefit of total immunity from financial penalties if the following conditions are satisfied:

- (i)³ The undertaking is the first to provide the Commission with evidence of *prohibited activity under*⁴ the Ordinance;
Provided that the Commission does not already have sufficient information to establish the existence of the alleged activity.

¹ Amended vide SRO NO 936(I)/2009 dated 30-10-2009

² Amended vide SRO NO 936(I)/2009 dated 30-10-2009

³ Substituted vide SRO NO 1127(I)/2008 dated 30-10-2008

⁴ Amended vide SRO NO 936(I)/2009 dated 30-10-2009

(ii) The undertaking:

- (a) provides the Commission with all the information, documents and evidence available to it regarding the prohibited activity;
- (b) maintains continuous and complete cooperation throughout the proceedings and until the conclusion of any action by the Commission arising as a result of the proceedings;
- (c) refrains from further participation in the alleged activity from the time of its disclosure to the Commission;
- (d)⁵ must not have taken any steps to coerce another undertaking to take part in any of the activities prohibited under the Ordinance.

(2) If an undertaking does not qualify for total immunity under this regulation, it may still be entitled to the benefit from a reduction in the financial penalty⁶ under regulation 4.

4⁷. Grant of reduction in the amount of penalty.- (1) An undertaking may benefit from a reduction in the financial penalty of up to 100% if --

- (a) the undertaking seeking reduction is the first to provide the Commission with independent, additional or corroborating or contemporaneous evidence of any of the activities prohibited under Chapter II of the Ordinance; and
- (b) this information is given to the Commission:
 - (i) prior to issuance of a show cause notice under section 30 of the Ordinance; or
 - (ii) after initiation of proceedings under Section 30 of the Ordinance but before the Commission has passed any Order under Section 31 of the Ordinance confirming infringement and violation under Chapter-II;

(2) An undertaking may benefit from a reduction in the financial penalty up to 85% if:

- a). the applicant undertaking gives information to the Commission prior to the conclusion of the proceedings before the Appellate Bench of the Commission or prior to participation in proceedings before the Supreme Court where the original order is passed by two or more Members/or prior to recovery of the penalty imposed upon passing of the original order by single Member (where no appeal is preferred) under the Ordinance; and
- b). the applicant undertaking submits additional evidence previously unknown to the Commission which represents significant added value with respect to the evidence already in Commission's possession thus further substantiating the infringement under the Ordinance.

⁵ Sub-clause (d) deleted and sub-clause (e) re-numbered as sub-clause (d) vide Inserted vide SRO NO 1127(I)/2008 dated 30-10-2008

⁶ The words "of upto 100%" deleted vide SRO NO 936(I)/2009 dated 30-10-2009

⁷ Amended vide SRO NO 936(I)/2009 dated 30-10-2009

(3) Any application for leniency under these Regulations shall be entertained subject to the conditions imposed by the Commission including that the applicant shall: (a) admit infringement of the offence unconditionally, b) abandon its participation in any prohibited activity forthwith and c) makes full and true disclosure.

(4) Any reduction in the level of the financial penalty under these circumstances is discretionary. In exercising this discretion, the Commission will take into account:

- (a) the stage at which the undertaking comes forward;
- (b) the evidence already in the Commission's possession; and/or relied upon by the Commission; and
- (c) the quality and nature of the information provided by the undertaking.,

Provided further that the undertaking cooperates genuinely, fully and on a continuous basis from time it submits its application throughout the Commission's administrative procedure."

5⁸. Procedure for requesting immunity or a reduction in the level of penalties.-(1) An undertaking desirous of taking advantage of the lenient treatment detailed in these regulations shall contact the Commission. Anyone contacting the Commission on behalf of the undertaking must have power to represent the undertaking.

- (2) After the initial contact, Commission shall set a time limit, a maximum of eight weeks for the submission of the application for leniency pursuant to regulations 3 *or*⁹ 4¹⁰ as the case may be, alongwith the evidence as required under sub-regulation (4) hereof.
- (3) Applications for leniency may be made in writing. Initial contact can be made by telephone.
- (4) Initial contact with the Commission may be made with the identity not to be disclosed as part of the record. However, in the leniency application, all the relevant information *shall*¹¹ be provided and the undertaking's name must also be given to the Commission.
- (5) The undertaking may provide the Commission with all the evidence relating to the suspected infringement available to it at the time of the submission. Alternatively, the undertaking may present a list of the evidence that it proposes to disclose at a specified later date and provide a description of the nature and contents of this evidence. It must contain the details about the type and duration of the infringement, *the relevant product and geographical markets*¹² affected, and the identity of those involved.

⁸ Regulation 5 deleted and Regulation 6 re-numbered as Regulation 5 vide SRO NO 936(I)/2009 dated 30-10-2009

⁹ Inserted vide SRO NO 1127(I)/2008 dated 30-10-2008

¹⁰ Substituted vide SRO NO 936(I)/2009 dated 30-10-2009

¹¹ Inserted vide SRO NO 1127(I)/2008 dated 30-10-2008

¹² Inserted vide SRO NO 1127(I)/2008 dated 30-10-2008

(6) If an applicant does not fulfil his obligations under these regulations his status of priority shall lapse and the subsequent applicants, if any, shall move up in rank.

6¹³. Confidentiality. - Upon request by the applicant, the Commission may endeavour, to the extent that is consistent with its obligations to disclose or exchange information, to keep the identity of undertakings coming forward with evidence of any of the prohibited activities, confidential until the decision of the Commission to grant leniency under regulations 3 or 4 hereof or until such time as deemed appropriate by the Commission”.

8¹⁴. Effect of leniency.- Immunity granted by the Commission cannot exclude claims by third parties who may have suffered loss as a result of the activities in respect of which immunity is granted. Third parties, therefore, shall have the right to pursue the private claims for damages before the Court of competent jurisdiction.

(Mohammed Hayat Jasra)
Secretary

¹³ Amended vide SRO NO 936(I)/2009 dated 30-10-2009

¹⁴ Regulation 8 should be read as Regulation 7