

COMPETITION COMMISSION OF PAKISTAN

Islamabad, the 30 October 2009

NOTIFICATION

S.R.O. 936 (I)/2009. — In exercise of the powers conferred by section 56 of the Competition Ordinance, 2007 (the Ordinance), the Competition Commission of Pakistan (the Commission) is pleased to make the following further amendments in the Competition (Leniency) Regulations, 2007, namely:

Competition (Leniency) Regulations, 2007

In the aforesaid Regulations, --

(i) in regulation 1, sub-regulation (3) shall be substituted with the following, namely:-

“(3) 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.”;

(ii) In regulation 2, clause (d) shall be substituted with the following, namely:-

“(d) ‘prohibited activity’ means any of the activities of an undertaking which may infringe provisions of section 4 of the Ordinance”.

(iii) In regulation 3, in sub-regulation (1), in clause (i), the words, “activity violating Chapter II of” shall be substituted with the words, “prohibited activity under”;

(iv) In regulation 3, in sub-regulation (2), the words, “of upto 100%”, shall be deleted;

(v) The existing regulation 4 shall be substituted with the following, namely:-

“4. 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 and 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 in the case of passing of the original order by single Member where the time of appeal has not lapsed 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.

(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 of all the facts in his knowledge relating to the prohibited activity.

(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 the time it submits its application throughout the Commission's administrative procedure."

- (vi) Regulation 5 shall be deleted;

(vii) in the existing regulation 6 renumbered as '5', in sub-regulation (2) thereof, the figure "5" shall be substituted with the figure "4";

(viii) the existing regulation 7 renumbered as '6', shall be substituted with the following, namely:-

(ix) "6. **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".

The aforesaid amendments in the Competition (Leniency) Regulations, 2007 shall be operative for a period of 3 years from the date of their notification in the official Gazette, unless reviewed earlier.

No. 9(3) SY/CCP/Reg/Lency/07

(Mohammed Hayat Jasra)
Secretary