

Leniency Program Guidelines (Draft)

May 2016

This document contains a Draft of Leniency Program Guidelines issued by Technical Secretariat of the Commission for the Defense of Free Competition of Indecopi, under Section 26 of the Peruvian Competition Act, enacted by Legislative Decree 1034, and amended by Legislative Decree 1205.

The publishing of this document aims at receiving the opinions of specialists and the public to clemencia@indecopi.gob.pe or to the office of the Technical Secretariat of the Commission for the Defense of Free Competition by June 10th 2016.

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LENIENCY PROGRAM GUIDELINES (DRAFT)

- EXPLANATORY NOTES -

I. The importance of introducing a Leniency Program

According to Section 1 of the Peruvian Competition Act¹, the main objective of the Commission for the Defense of Free Competition (hereinafter, the Commission) and its Technical Secretariat is to investigate, prosecute and sanction anticompetitive behavior, promoting economic efficiency and consumer's welfare.

In recent years, the repression of agreements among competitors subject to an absolute prohibition (cartels) has been a priority for the Commission, due to the fact that cartels are the most injurious infringement among anticompetitive practices².

The recent amendments to the Peruvian Competition Act, introduced by Legislative Decree 1205, were aimed at strengthening the system of detection and punishment of cartels. In comparison to the then existent provisions, the amendments established clearer rules regarding the processing of applications for immunity or reduction of sanctions with the main goal of having a regulatory framework strong enough to implement an efficient leniency program, complementing and strengthening the efforts of Indecopi in its fight against cartels.

In this regard, inaccuracy on the real extension of these benefits or about the procedure applicable or the level of cooperation that must be accomplished will restrict the incentives for potential applicants to inquire about the availability of a marker or to file an application of benefits. The existence of clearer rules could be insufficient for a potential applicant if it fails to generate an appreciable degree of predictability regarding the benefits resulting from their maximum efforts to fulfill the requirements of the Leniency Program.

¹ **Peruvian Competition Act**
Section 1 – Purpose of the present law.-
This law prohibits and penalizes the anticompetitive behavior with the aim to promote economic efficiency in the markets for the welfare of consumers.

² The *Organisation for Economic Co-operation and Development* underlined «*hard core cartels are the most egregious violations of competition law and that they injure consumers in many countries by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others.* Available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=193>

In the same vein, the *International Competition Network* has mentioned «*Secret cartel agreements are a direct assault on the principles of competition and are universally recognized as the most harmful of all types of anticompetitive conduct. Any debate as to whether cartel conduct should be prohibited has been resolved, as the prohibition against cartels is now an almost universal component of competition laws.*». ICN Working Group on Cartels, *Defining Hard Core Cartel Conduct. Effective Institutions. Effective Penalties*, Building Blocks for Effective Anti-Cartel Regimes vol. 1, ICN 4th Annual Conference, Bonn, 2005, p. 5. Available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc346.pdf>

According to Section 26.7 of the Peruvian Competition Act³, the Commission has the power to issue Guidelines establishing terms, rules, conditions and restrictions. Therefore, the Guidelines here introduced aim at establishing a Leniency Program with predictable, transparent and effective rules in order to maximize incentives of the economic agents involved in cartels to apply for benefits under the Leniency Program, with the objective of strengthening the fight against cartels.

It should be noted that, for the development of this Draft, the Technical Secretariat has analyzed the best international practices related to leniency programs. Likewise, within the Advisory Services Agreement signed by INDECOPI, many recommendations delivered by the World Bank have been considered in issuing this Draft.

II. The Leniency Program is essentially aimed to cartels

The international experience has shown that effective Competition Policies prioritize the detection, investigation and prosecution of anticompetitive behavior that have the most serious impact in consumer welfare: the hard-core cartels (here simply referred to as «cartels»).

For this reason, in 1998, the Organisation for Economic Co-operation and Development (OECD) recommended its members to develop effective action against cartels, due to the undisputed negative economic impact of such offenses, in contrast to other types of anticompetitive behavior⁴. The implementation reports of this recommendation show the progressive importance that Leniency Programs were achieving as one of the main tools used against cartels⁵.

Considering that a main goal of the Peruvian Competition Act is to fight cartels, the present Leniency Guidelines develop rules and benefits available only for applications

³ **Peruvian Competition Act**
Section 26.- Immunity from sanctions.-

26.7. The Commission may issue guidelines setting terms, rules and particular conditions or restrictions for the best application of this Section.

⁴ Indeed, policies introduced to inhibit anticompetitive practices benefit society by counteracting the damaging effects of cartels on prices and production levels, being at cartels are generally recognized as the most harmful to society among anticompetitive behavior. OECD, *Recommendation of the Council concerning Effective Action against Hard Core Cartels*, C(98)35/FINAL (1998).

Policies to inhibit anticompetitive behavior also avoid long-term harmful effects, as explained by Gunnar NIELS *et al.*, i.e. the losses in technological innovation and the reduced competitiveness in sectors related to the market directly affected, including long-term effects. *Economics for Competition Lawyers* (2011).

⁵ For example: OECD, *Report on Hard Core Cartels*, (2000); *Fighting Hard Core Cartels: Harm, Effective Sanctions and Leniency Programmes* (2002) y *Hard Core Cartels: Third Report on the Implementation of the 1998 Recommendation* (2005).

concerning cartels, that is, horizontal agreements⁶ that, according to their nature, are subject to an absolute prohibition⁷.

The connection between the Leniency Program and the success in the fight against cartels, besides the support in economic theory that analyzes the incentives for betrayal among the co-conspirators of such infringements⁸, is consistent with to the best international practices. In fact, as early as 2000, the Department of Justice of United States (DOJ) explained how the Leniency Program was a key tool for detecting and punishing cartels:

The Amnesty Program has been largely responsible for uncovering the majority of the large international cartels that we have recently prosecuted. Its success has already led a number of countries -- such as Canada, the United Kingdom, Germany, and France -- as well as the European Union to develop their own programs with still other countries considering whether to follow. From our perspective, the Amnesty Program is unquestionably the most important investigative tool available for detecting and cracking cartel activity. The success of the Amnesty Program also provides an appropriate lesson on deterrence, the second topic on the agenda. That is because the bedrock principles that apply to effectively preventing cartels are also at the core of implementing a successful amnesty program for detecting cartel activity once it does occur⁹.

In the same way as general rule, the European Union Leniency Program is applicable exclusively for cartels. Indeed, in issuing the Commission Notice on immunity from fines and reduction of fines in cartel cases¹⁰, the Competition Commission has established:

⁶ The Office of Fair Trading, now Competition and Markets Authority - CMA, stated, «*Leniency in relation to vertical arrangements is limited to price fixing (for example, resale price maintenance cases). The OFT's leniency policy does not cover other stand-alone vertical restrictions of competition as these tend to be (at least to an extent) visible on the market and therefore over time self-detecting*». Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284417/OFT1495.pdf

⁷ **Peruvian Competition Act**
Section 8.- Absolute Prohibition.-
In cases of absolute prohibition, to verify the existence of an administrative offense, it is sufficient for the competition authority to prove the existence of the conduct.

Section 11. - Horizontal collusive practices.-
11.2. Inter-brand horizontal agreements are subject to an absolute prohibition unless they are complementary or accessories to other lawful agreements, when their object is:
a) To fix prices or other terms of trade or service;
b) To limit the production or sales, in particular by means of quotas (shares);
c) To allocate customers, suppliers or geographical areas; or,
d) To rig bids or abstentions in tenders, contests or other forms of recruitment or public procurement under the relevant legislation, as well as at public and private auctions.

⁸ See, Christopher R. LESLIE, *Antitrust Amnesty, Game Theory, and Cartel Stability*, Journal of Corporation Law, Vol. 31, 2006, 453ff. Available at: <http://ssrn.com/abstract=924376>

⁹ Scott HAMMOND (DOJ – Antitrust Division), *Fighting Cartels - Why And How?, Lessons Common To Detecting And Deterring Cartel Activity*, The 3rd Nordic Competition Policy Conference, September 12, 2000.

¹⁰ Commission Notice on Immunity from fines and reduction of fines in cartel cases 2006/C298/11, issued in December 8 2006.

This notice sets out the framework for rewarding cooperation in the Commission investigation by undertakings, which are or have been party to secret cartels affecting the Community. Cartels are agreements and/or concerted practices between two or more competitors aimed at coordinating their competitive behavior on the market and/or influencing the relevant parameters of competition through practices such as the fixing of purchase or selling prices or other trading conditions, the allocation of production or sales quotas, the sharing of markets including bid-rigging, restrictions of imports or exports and/or anti-competitive actions against other competitors.

Similarly, the European Competition Network restricts the scope of its model leniency program to «secret cartels» involving pricing fixing, establishment of sales quotas, production or market sharing, including bid rigging¹¹.

Excluding the cases of fixing minimum resale prices (vertical restraints that subject to a prohibition similar to cartels to fix prices), the United Kingdom excludes of its leniency program the infringements different from cartels. Thus, according to its leniency guidelines, the Office of Fair Trading (now Competition and Markets Authority - CMA) specified that the leniency program only applies for cartels under the Article 101 of the Treaty on the Functioning of the European Union and/or prohibitions involving price fixing, restricting supply or market sharing¹².

Like other jurisdictions in Latin America, Mexico has recently developed its Leniency Program exclusively for the detection and punishment cartels, considered as absolute monopolistic practices. In this regard, consistently with the Economic Competition Federal Act¹³, the Immunity Program and Sanctions Reduction Guidelines (2015) established that:

¹¹ **ECN Model Leniency Program**
«Scope of the programme. The ECN Model Programme concerns secret cartels, in particular agreements and/or concerted practices between two or more competitors aimed at restricting competition through, for example, the fixing of purchase or selling prices, the allocation of production or sales quotas or the sharing of markets including bid-rigging.». The model is available at:
http://ec.europa.eu/competition/ecn/mlp_revised_2012_en.pdf

¹² «Cartel activity. 2.1. Leniency is available to undertakings and individuals who have participated in cartel activity. 2.2. Cartel activity is defined for the purposes of the OFT's leniency policy for undertakings as agreements and/or concerted practices which infringe Article 101 of the TFEU and/or the Chapter I prohibition and involve price-fixing (including resale price maintenance), bid-rigging (collusive tendering), the establishment of output restrictions or quotas and/or market sharing or market-dividing». OFT Guidelines, Leniency and no-action applications in cartel cases (2013). Guidelines are available at:
<https://www.gov.uk/government/publications/leniency-and-no-action-applications-in-cartel-cases>

¹³ «**Section 53.-Absolute Monopolistic Practices.** Absolute monopolistic practices comprises contracts, agreements and arrangements between competitors (...). Available at:
https://www.cofece.mx/cofece/images/cofece/slider/aRT_CARRUSEL/DOF_Ley_Federal_de_Competencia_Economica.pdf

The Immunity Program and Reduction of Sanctions of the COFECE allows to an economic agent to receive a reduction of sanctions that would be imposed in the case of being a member of an absolute monopolistic practice¹⁴.

As shown, leniency programs around the world have historically focused especially on detection and prosecution of cartels, agreements that are almost universally considered illegal. The illegal nature of this kind of behavior is generally unquestioned and is not subject to further analysis of eventual efficiencies, unlike other offenses that are subject to a relative prohibition (rule of reason).

In the case of horizontal agreements not subject to an absolute prohibition, as well as of vertical agreements, it is not possible for the competition authority nor for economic agents to determine in a prima facie manner the illegality of the conduct carried out without a comprehensive evaluation of its potential or real impact. In fact, the uncertainty for the authority regarding the illegality of an anticompetitive practice subject to a relative prohibition prevents it from providing enough certainty about the potential benefits available for eventual applicant under the Leniency Program.

Therefore, an eventual request for benefits with respect of anticompetitive conducts not subject to an absolute prohibition implies an analysis of incentives and applicable rules beyond the scope of these Guidelines. Considering the need for implementing effective tools to maximize the fight against cartels, these Guidelines will apply exclusively to submissions related to infringements under an absolute prohibition, i.e., cartels.

III. The benefit of immunity includes the non-imposition of corrective measures for restitution

An essential objective of these Guidelines is to clarify the content of immunity from sanctions in order to include the non-imposition of corrective measures for restitution of the illegal gains obtained by the beneficiary of immunity.

The main reason behind this treatment to the beneficiary of immunity is the imperative of maximizing the incentives to economic agents so they will come forward and present the first application to disclose their collusive behavior, allowing the authority to detect and determine, at preliminary level, the existence of hard-core cartels, and to prosecute the offenders.

As international experience shows, the success of Leniency Programs depends on their capability to generate attractive benefits to potential first applicants. This allows the

¹⁴ Free translation of the following text:
«El Programa de Inmunidad y Reducción de Sanciones de la COFECE permite que un Agente económico reciba una reducción de las sanciones que recibiría en caso de ser partícipe de una Práctica monopólica absoluta».

authority to increase the likelihood of detecting cartels and get important evidence before initiating administrative proceedings. Furthermore, the higher the benefits to the first beneficiary -in contrast to the benefits to potential subsequent applicants-, the more intense will be the «*race*» among the members of the cartel in order to obtain the benefits and so the destabilizing effect of the program will be increased¹⁵.

It must be taken into account that, despite not having punitive but restorative nature; the corrective measures could represent significant burden to potential applicants. Even more, under certain circumstances, corrective measures could be more onerous than possible fines, due to the fact that fines are subject to a cap, determined by the income of the offenders or its economic group.

Considering the need to boost this incentive in order to develop a more effective Leniency Program, the Guidelines define the benefit of immunity is including the non-imposition of corrective measures of restitution, been conditionally granted only to the first applicant who comes forward before the beginning of an administrative procedure.

This rule is in accordance with the power of the Commission to decide in which cases the imposition of corrective measure of restitution is appropriate, desirable and coherent with the objectives of the Peruvian Competition Act¹⁶ and when it's reasonable to establish a different rule to strengthen the effectiveness of the Act. It is also consistent with the power of the Commission to specify the scope of the application of corrective measures in order to maximize the effectiveness of the system¹⁷.

Finally, the non-imposition of corrective measures of restitution does not imply an exoneration or limitation regarding the liability for the damages caused by the infringer. It just means that the obligation to repair the damaging effects of the infringement will

¹⁵ As HAMMOND points out:
«The “winner-take-all” race dynamic leads to tension and mistrust among the cartel members. (...) Each member of that cartel knows that any of its co-conspirators can be the first to come forward in exchange for total amnesty and seal the fate of the rest. Imagine the vulnerability of being in that position and asking yourself, “Can I really trust my competitors?”».
Scott HAMMOND, *Fighting Cartels - Why And How?, Lessons Common To Detecting And Deterring Cartel Activity*, The 3rd Nordic Competition Policy Conference, September 12, 2000.

Complementarily see: HARRINGTON, Joseph "Optimal Corporate Leniency Programs" (2005) p.3.

¹⁶ **Peruvian Competition Act**
Section 46. - Corrective Measures.-
46.1. In addition of the sanction to be imposed for violation of this Act, the Commission **may issue** corrective measures conducive to restore the competitive process (...)
46.2. The Commission may issue corrective measures to reverse direct or indirect harmful effect of the infringement.

¹⁷ **Peruvian Competition Act**
Section 46. - Corrective Measures.-
46.4. The Commission could issue guidelines in order to define the scope of this article for the better application.

not be required by the Commission at the moment of its final decision in the administrative procedure. The agents harmed by the unlawful conduct will still have the opportunity to fulfill a lawsuit before the courts, according to the Section 49 of the Peruvian Competition Act. An opposite rule would out rightly contravene expressly the Section 26.6 of the Peruvian Competition Act.

IV. The approval of one or more plea agreements permits the definitive granting of benefits for the applicant

Once the Commission grants conditional leniency, the applicant must fulfill its Cooperation Duty until the Commission issues its final decision on the administrative procedure, in accordance with the literal d) of the Section 26.2 of the Peruvian Competition Act¹⁸.

Commonly, administrative proceedings related to anticompetitive behavior conclude with the issuance of Commission's final decision, imposing fines and corrective measures to offenders. Nevertheless, the administrative procedure can also finish with the signing of plea agreements. In this case, the Commission will issue a final decision concluding the administrative procedure for the pleading defendants in exchange of implementing effective measures to reverse the wrongful conduct and to prevent it from happening again.

The subscription and approval of plea agreements constitute a voluntary mechanism for an early conclusion of the administrative proceedings. With this mechanism, the prosecuted parties in an administrative procedure can achieve an effective decision in a short term, replacing the fines that could have been imposed with corrective measures to restore the competitive process and to reverse the harmful effects that the infringement caused.

Therefore, it is possible to conclude that the imposition of sanctions as well as the early conclusion of an administrative procedure by the approval of plea agreements are mechanisms aimed at maximizing the effectiveness of Peruvian Competition Act.

¹⁸

Peruvian Competition Act

Section 26.- Exoneration penalty.-

26.2. The application for immunity will be presented in writing and shall be processed in a confidential file, in accordance with the following procedure:

d. The compliance with the Cooperation Duty established in the conditional immunity letter, since its subscribing and until the Commission issues the final decision in the administrative procedure, exonerates the Applicant from sanctions. The Commission or any other administrative authority cannot start proceedings for the same facts.

In fact, an approved plea agreement not only allows the conclusion of the procedure in a short term -saving procedure costs - but also guarantees immediate restoration of the competitive process, ensuring timely benefits for the consumers. Because of this, the amendment to the Peruvian Competition Act in 2015 strengthened the rules regarding plea agreements.

Accordingly, in order to bring predictability, effectiveness and transparency to the Leniency Program, it is relevant to recognize explicitly that the definitive granting of benefits will also be a consequence of the approval of plea agreements that conclude the administrative proceedings.

LENIENCY PROGRAM GUIDELINES (DRAFT)

I. Introduction

In order to deter economic agents from participating in cartels, restoring the competitive process and reversing the effects caused by such infringements, the Commission for the Defense of Free Competition (hereinafter, the Commission) and the Tribunal for the Defense of Competition and Intellectual Property of Indecopi (hereinafter, the Tribunal) have the power to impose fines and corrective measures.

Regarding fines against economic agents that participate in cartels, such serious infringements are sanctioned with fines higher than 1000 Tax Units - UIT (1 UIT equals to PEN¹ 3950 or about USD 1200) and up to the 12% of the income of the offender or its economic group, relating to all its economic activities in the year previous to the date of the final decision of the Commission².

Besides the sanctions, the Commission and the Tribunal have the power to dictate binding corrective measures to offenders, in accordance with Section 46 of the Peruvian Competition Act³. There are two kinds of corrective measures, those that are designed to restore the competitive process and, on the other hand, those aimed at reversing the effects that the offending conduct may have caused (restitution of the illegal gains arising from the infringement).

Finally, Indecopi could initiate judicial proceedings intended to achieve compensation for damages in defense of collective interest of final consumers, according to the Section 49 of the Peruvian Competition Act⁴.

¹ The Peruvian «Sol» (PEN) is the local currency. Currently, one USD equals to 3.3 PEN approximately.

² In the case of professional guilds or trade associations, the fine shall not exceed a thousand (1000) UIT. In addition, the Commission may impose a fine up to a hundred (100) UIT to each of the legal representatives or to the persons in the management or administrative bodies of the legal persons involved in the infringement.

³ **Peruvian Competition Act**
Section 46.- Corrective Measures.-
46.1. In addition to the fine to be imposed for the violation of this Act, the Commission may issue corrective measures aimed at restoring the competitive process (...)
46.3. The Court has the same powers conferred to the Commission for issuing corrective measures.

⁴ **Peruvian Competition Act**
Section 49. -Damages.-
According to the preceding paragraph, INDECOPI, in agreement with the Board of Directors, and in defense of diffuse interests and collective interests of consumers, has the power to start a lawsuit for compensation of damages caused by conducts prohibited by this Act, and according to the Section 82 of the Civil Procedure Code. In this case, it will apply, as appropriate, the provisions of Section 130 and 131 of Act 29571, Code of Protection and Defense of Consumer.

In summary, the mechanisms that the Commission or the Tribunal may use in fighting cartels are:

Sanctions	Correctives Measures		Class Action
Fines higher than 1000 UIT with a limit of 12% of the gross income of the offender agent or its economic group.	Injunctions of restitution of competitive process aimed at preventing the continuation or repetition of the infringement.	Injunctions of restitution aimed at reversing the harmful effects arising from the infringement.	Claims in judicial Courts for compensation of damages on behalf of final consumers.

Despite the existence of these mechanisms, a system exclusively based on the repression of conducts is not enough to fight down the cartels, due to the fact that it is limited by the ability of the agency to detect these clandestine behavior and to overcome the difficulties in terms of evidence once they are detected.

The experience of Indecopi, as well as international experience of other competition agencies, has shown that it is necessary to complement enforcement with other mechanisms to maximize the detection of cartels and to obtain significant evidence for the prosecutorial and resolute activities of the Technical Secretariat and the Commission. The most widely recognized of these mechanisms is the Leniency Program.

In line with provisions adopted by other jurisdictions, Section 26 of the Peruvian Competition Act⁵ establishes that any person may apply for immunity from sanctions to the Technical Secretariat in exchange of evidence that help to identify and prove the existence of an illegal practice and punish the offenders.

Accordingly, Leniency Program aims at facilitating the detection of cartels with the incentive of eventual but attainable benefits from sanctions that might be otherwise imposed to the offenders, in exchange of a continuing and complete cooperation with the Technical Secretariat and the Commission. Consequently, the Leniency Program is a tool to destabilize cartels and deter the emerging of new restrictive agreements.

However, it is clear for the authority that the success of this Program depends on the formulation of clear rules, effective procedures and predictable results that truly promote an active and effective collaboration of the applicants in the prosecution of the cartels, in exchange of attractive benefits.

⁵ **Peruvian Competition Act**
Section 26.- Immunity.-
 26.1. Before the start of a disciplinary administrative procedure, any person may request the Technical Secretariat to be exonerated from sanctions in exchange of providing evidence to help to detect and prove the existence of a cartel and to punish the responsible.

In this regard, in accordance to Section 26.7 of the Peruvian Competition Act, the Commission issues these guidelines setting terms, rules and conditions or restrictions for the sake of the effectiveness of the Leniency Program, as an orientating tool for the citizens and companies in their applications for benefits.

Therefore, in line with international best practices on leniency programs, the following paragraphs develop the requirements the economic agents that request for immunity or reduction of fines for its participation in a hard-core cartel have to fulfill, as well as the procedure applicable to such applicants.

II. Glossary

For the purpose of these Guidelines, the following terms will be used according to the meaning described as follows:

Term	Meaning
Benefit	<p>It refers to one of the following benefits:</p> <ul style="list-style-type: none"> • Immunity: Exoneration of 100% of the otherwise applicable fine to an economic agent that incurred in cartel activities as well as non-imposition of corrective measures of restitution. The scope of the benefit granted to the economic agent includes that no other administrative authority could initiate proceedings for the same facts. • Reduction of sanction: The reduction of the fines otherwise applicable to an economic agent for its participation in cartel activities. <p>The immunity or reduction of sanctions do not limit the imposition of corrective measures aimed at restoring the competitive process.</p> <p>These benefits do not limit the liability for the damages caused by the infringement.</p>
Cartel	<p>It is an anticompetitive horizontal agreement subject to an absolute prohibition, according to Section 11.2 of the Peruvian Competition Act. Cartels are also known in other jurisdictions as hard-core cartel.</p>
Class Action	<p>It is a suit filed by Indecopi before the Courts, on behalf of diffuse or collective interests of final consumers, to request compensation of damages arisen from anticompetitive</p>

	conducts against final consumers, according to the Section 49 of the Peruvian Competition Act.
Coercion	It refers to actions that imply violence or threat of violence (including economic reprisals) that have determined the participation of other economic agents in a cartel. For example, actions or threats of boycott, foreclosure of supply or distribution, as well as the prohibition to participate in trade organizations could be considered as acts of coercion when its execution introduces a significant risk of expulsion from the market.
Commission	It refers to the Commission for the Defense of Free Competition of Indecopi.
Conditional Immunity or Reduction of Sanctions Agreement	It is an Agreement signed by the Technical Secretariat and the Collaborator that contains the conditions in which is granted the conditional benefits of exoneration or reduction of sanction are granted as a consequence of revealing the infringement and providing cooperation. It describes the Cooperation Duty of the Collaborator and Confidentiality Duty of the Technical Secretariat. A Conditional Benefits Agreement is binding for the Commission.
Confidentiality Duty	<p>It refers to the obligation of the Technical Secretariat and the Commission to keep undisclosed the source of the evidence obtained, which comprises:</p> <ul style="list-style-type: none"> - The identity of the Collaborator, - The content of the Application, - The Conditional Immunity or Reduction of Sanction Agreement, and - The content of other documents introduced in the processing of the application. <p>The immunity application will be processed under confidentiality rules equivalent to those applicable to confidential information.</p> <p>With the decision to start the administrative proceedings against the offenders, the Collaborator may waive the confidentiality of its identity, its application or the writings and documents submitted in the file, coordinating with the Technical Secretariat and the Commission the disclose of such information.</p>

Cooperation Duty	Is the set of obligations that comprises the best efforts of the Collaborator to provide full and active cooperation with investigation and prosecution activities of the Technical Secretariat and the Commission, aiming at proving the infringement and sanctioning the offenders.
Economic Agent, Applicant, Collaborator, Beneficiary	<p>Economic Agent: Every person so defined by the Section 2 of the Peruvian Competition Act.</p> <p>Applicant: The economic agent that applies for one of the benefits under the Section 26 of the Peruvian Competition Act. In the case of a legal person, the application could include companies of its economic group, officials and former employees that assume the Cooperation Duty.</p> <p>An Applicant also comprises the natural or legal person, subject to the Section 2.4 of the Peruvian Competition Act (Cartel facilitators) that request some of the benefits under the Section 26 of the Peruvian Competition Act.</p> <p>Collaborator: The applicant who signs the Conditional Immunity or Reduction of Sanctions Agreement, committing to comply with the provisions therein. In the case of legal persons, the cooperation includes companies of its economic group, officials and former employees that assume the Cooperation Duty.</p> <p>Beneficiary: The Collaborator that receives a definitive benefit under the Section 26 of the Peruvian Competition Act.</p>
Effective result	The conclusion of the administrative procedure: (i) by the issuance of a decision by the Commission determining the responsibility of the offenders and establishing sanctions or (ii) by the approval of one or more plea agreements.
Eligibility	<p>It is the condition of applicant of being apt to sign a Conditional Immunity or Reduction of Sanctions Agreement, after having fulfill the following conditions:</p> <ul style="list-style-type: none"> - To have ceased its participation in the unlawful conduct, unless the Technical Secretariat had requested otherwise, with the aim of facilitating its investigation activities. - To have delivered all the information under its domain, related to the infringement disclosed to the Technical Secretariat. <p>The Applicant has the burden of proving its eligibility.</p>
Indecopi	The National Institute for the Defense of Competition and the Protection of Intellectual Property.

Investigation	Actions carried out by the Technical Secretariat in order to obtain evidence related to an alleged infringement, before the starting of the administrative procedure (preliminary investigation), or in the prosecution stage (sanctioning administrative procedure). It also involves additional actions required by the Commission before issuing its decision.
Leniency Program Guidelines	This document.
Marker	Written communication of the Technical Secretariat setting the priority in which the application presented will be assessed, according to Section 26 of the Peruvian Competition Act.
Peruvian Competition Act	Act for the Repression of Anticompetitive Behavior approved by means of Legislative Decree 1034 (2008) and amended by means of Legislative Decree 1205 (2015).
Plea Agreement	A voluntary mechanism for the early termination of administrative proceedings , subject to the approval of effective measures to reverse the effects of the infringement and ensure the non-recurrence, according to Section 25 of the Peruvian Competition Act. The breach of this commitment is subject to fines and enforcement measures.
Preliminary evidence	Evidence that allows the Technical Secretariat to prove, at a preliminary level, the existence of an infringement. These indications of an infringement allow the beginning of an administrative procedure against the offenders.
Sanctions and corrective measures	<p>Sanctions: Punitive and pecuniary instruments (fines), established as a negative incentive, imposed by the Commission to those who infringed the provisions of the Peruvian Competition Act. The purpose of the sanctions is to discourage the future commission of anti-competitive behavior.</p> <p>Corrective measures: Additional instruments, independent from the fines that the Commission could impose. The corrective measures aim at restoring the competitive process or at reversing the effects that the offending conduct had caused (restitution measures). They do not have a punitive purpose.</p>
Significant added value	It is the necessary condition of the cooperation provided by an Applicant in order to obtain the benefit of reduced sanctions. Information with significant added value encompasses any physical or electronic documents that enable the authority to increase its ability to verify the existence of the infringement and to impose sanctions and effective corrective measures on

	those responsible.
Technical Secretariat	The Technical Secretariat of the Commission for the Defense of Free Competition of Indecopi.
Tribunal	The Chamber specialized in the Defense of Competition of the Tribunal of Indecopi.

III. General Rules

3.1. Available benefits

3.1.1. Immunity

By signing conditional immunity agreements, the Technical Secretariat will grant a conditional benefit consisting in the immunity from fines that could be otherwise imposed to the applicant as a consequence of his infringement. This benefit also implies that corrective measures of restitution will not be imposed to the beneficiary.

If the Commission finds an infringement and decides the imposition of fines, the conditional benefit will become definitive. The Commission will only deny definitive granting of the benefit if the Technical Secretariat informs of a breach in the applicant's Cooperation Duty as established in the conditional immunity agreement signed by the Applicant.

Under no circumstances, the information provided by the beneficiary of immunity will be used by the Technical Secretariat or the Commission against him if a class action of behalf on final consumers is filed according to Section 49 of the Peruvian Competition Act⁶.

To obtain the benefit of immunity, it is mandatory for the Applicant to fulfill the following requirements related to the timing of the application, diligence and procedural conduct:

- a. To be the first to submit an Application to the Technical Secretariat, accomplishing the minimum information requirements and obtaining the first marker. Immunity is

⁶ **Peruvian Competition Act
Section 49. -Damages.-**

According to the preceding paragraph, INDECOPI, in agreement with the Board of Directors, and in defense of diffuse interests and collective interests of consumers, has the power to start a lawsuit for compensation for damages caused by conducts prohibited by this Act, and according to the Article 82 of the Civil Procedure Code. In this case, it will apply, as appropriate, the provisions of Section 130 and 131 of Act 29571, Code for the Protection and Defense of Consumer.

available if, at the time the Application is submitted, the Technical Secretariat has not started an administrative procedure related to the investigated cartel.

The economic agents or cartel facilitators must submit their applications individually. In this regard, joint applications by two or more applicants will not be accepted.

- b. To provide all available information about the investigated cartel, helping the Technical Secretariat with the starting of an administrative procedure against the suspected offenders.
- c. To help the Technical Secretariat and the Commission, during the administrative procedure, to obtain an effective result (Complying with its Cooperation Duty). An effective result could mean (i) a decision of the Commission determining the responsibility of the offenders and establishing sanctions, and (ii) a conclusion of the administrative proceedings by the approval of one or more plea agreements.
- d. To take immediate and conclusive actions to terminate its participation in the investigated cartel, unless otherwise specified by the Technical Secretariat.
- e. The Applicant shall not have coerced other economic agents into participating in the investigated cartel.

3.1.2. Reduction of sanctions

By signing of a Conditional Reduction of Sanction Agreement, the Technical Secretariat will grant a conditional benefit consisting in a discount of the total amount of the fines imposed to the Applicant. The Commission will only deny definitive granting of the benefit if the Technical Secretariat informs of the breach of Applicant Cooperation Duty signed by the Applicant.

Under no circumstances the information provided by the beneficiary of a reduction of sanctions will be used by the Technical Secretariat or the Commission against him if a class action on behalf of final consumers is filed according to Section 49 of the Peruvian Competition Act⁷.

The applicable ranges of potential reduction of fines are the following:

First beneficiary of a reduction	:	From 30 up to 50%
Second beneficiary of a reduction	:	From 20 up to 30%
Third and following beneficiaries of a reduction	:	Up to 20%

⁷ Ídem.

The benefit of reduction of fines is applicable in two scenarios:

- Before the Technical Secretariat had started an administrative procedure, when a first application for benefits has been admitted.
- After the Technical Secretariat had started an administrative procedure, regardless whether a first application has been admitted or not.

In both cases, the reduction for each Applicant will depend on the priority order of its Application and on the compliance with the following requirements:

- a. The Applicant must provide additional information respect of that submitted by a prior applicant. The information provided must introduce significant added value for the investigation, prosecution and sanction of the infringement.

The significant added value refers to information (in any format or media) that represents direct evidence about the illegality of the investigated cartel or information that does not need to be confirmed or supported by additional sources, as well as other physical (documents) (e.g. minutes or notes) or electronic (e.g. communications). It has to allow the authority to strengthen its decision to start an administrative procedure or substantially increase its chances to prove the existence of the investigated infringement and to impose fines or remedies.

For example, if the authority counts on certain information about the offending behavior due to actions carried out ex officio or as a result of the cooperation of other applicants, (e.g. evidence of secret contracts between competitors, evidence of an unusual price behavior or suspicious communications), significant added value will arise from information that allows the authority to directly verify the infringement (e.g. electronic communications between competitors evidencing the terms of the anti-competitive agreements, records of meetings that prove the involvement of offenders or notes explaining the meaning of the illegal agreements).

Also, the information may be considered as providing significant added value if it strengthen the initial decision of the Technical Secretariat to start administrative proceedings by allowing to extend the period under investigation, to implicate other offenders or to expand the extent of the market investigated.

- b. To help the Technical Secretariat and the Commission, during the administrative procedure, to obtain an effective result (Complying with its Cooperation Duty). An effective result could mean (i) a decision of the Commission determining the responsibility of the offenders and establishing sanctions, and (ii) a conclusion of the administrative proceedings by the approval of one or more plea agreements.

- c. To take immediate and conclusive actions to terminate his participation in the investigated cartel, unless otherwise specified by the Technical Secretariat.

The Peruvian Competition Act allows the Technical Secretariat to reject applications submitted once an administrative procedure has started. However, this power shall be exercised only after the adequate assessment of the evidence provided by the Applicant, who will have one chance to reinforce his Application as needed. In case of rejection, the Applicant and accompanying documents will be returned to the Applicant and not transferred to the main file of the revealed cartel under investigation.

3.2. Opportunity in the submission of an Application

The opportunity in which an Applicant submits his request for immunity or reduction of sanctions will determine the benefits to be applied. In this regard, the benefits may differ depending on the existence of prior applications or because of the start of an administrative procedure regarding and infringement already revealed.

When the application is submitted before the starting of an administrative procedure, immunity will only benefit the first Applicant that discloses to the Technical Secretariat the existence of a cartel and cooperates with the investigation.

A request for benefits can be submitted even when a dawn raid is being performed. In this case, the Technical Secretary is the officer responsible to indicate the priority order of the Application. In addition, the Applicant and the Technical Secretariat must sign a minute including the minimum information required for the Application. The submission of an application for benefits during the performance of a dawn raid will not disrupt its normal development.

If submitted after the starting of an administrative procedure or when a previous Application for immunity has been admitted, an Application will only be considered as a request for reduction of sanctions.

The deadline for submitting an Application for reduction of sanctions will expire in forty-five (45) working days from the notification of the decision to start the administrative sanctioning proceedings.

3.3. Confidentiality Rules

A fundamental principle of the Leniency Program is the protection of the identity of the Collaborator and of the information submitted with his Application. On the one hand, confidentiality aims at protecting the Collaborator from possible reprisals for his cooperation with the Technical Secretariat and the Commission. On the other hand, the

secrecy about his collaboration with the competition agency is essential for the Technical Secretariat to carry out its activities effectively, in particular during the initial phase of its investigation.

The Technical Secretariat will carry out its best efforts to ensure the confidentiality of the identity of the Collaborator and of the information provided. The main Confidentiality Rules are the following:

- Independent file: Each request for immunity or reduction of sanctions will be processed in a separate confidential file from the file of the preliminary investigation or in which the infringement is being prosecuted. The Technical Secretariat will keep a high degree of diligence in handling the information delivered by the Collaborator.
- Responsible of the file: The Technical Secretariat will appoint an official and a team to be responsible of evaluating the Application. The official responsible and his team, in addition to the Technical Secretary, will be the only persons authorized to access to the confidential information provided by the Collaborator.

The officials who do not comply with the confidentiality rules will be responsible before administrative and criminal courts under the rules applicable to the reveal of confidential information.

- Confidentiality Duty of the Technical Secretariat: The Technical Secretariat will make reasonable efforts to replicate the information obtained through the Collaborator. For this, dawn raids could be performed, or information could be requested, and also interviews and any other proceeding authorized by the Peruvian Competition Act may be carried out.

If, despite of its reasonable efforts, the Technical Secretariat could not replicate the information submitted with other sources, the Collaborator must waive the confidentiality of information that is essential for starting an administrative procedure, due to the fact that it constitutes incriminating evidence against others involved in the infringement.

- Confidentiality duty of the Collaborator: The Applicant or Collaborator may not disclose to third parties his request of benefits without an authorization from the Technical Secretariat. This provision aims to avoid any obstructions to the investigation activities of the Technical Secretariat, in particular by limiting the access to evidence that may prove the infringement under investigation.

The obligation to maintain the confidentiality of the Application is binding until the initiation of the administrative procedure. After the administrative procedure has

started, the Collaborator may reveal his identity, in coordination with the Technical Secretariat.

IV. Procedure for processing applications for benefits

The establishment of clear rules, effective procedures and predictable results in order to create enough incentives on potential applicants for their cooperation with the Technical Secretariat is essential for the proper development of the Leniency Program. The steps described below (and summarized in the attached chart) will guide the Technical Secretariat, the Commission and the Collaborator in the processing of its application for benefits:

4.1. Querying

Any person may consult the general rules of the Leniency Program, as well as the availability of markers for a specific potential application for benefits.

Economic agents may consult about the rules and requirements applicable in the processing of an application and regarding the general rules under the Leniency Program not linked to a specific investigation. This consults aims at providing relevant information about the process to obtain the benefits and at answering any questions that may arise on the program. Hence, the identification of the possible applicants is not necessary.

On the other hand, economic agents may require information about the availability of markers for immunity regarding a specific infringement, in order to know whether they can obtain this benefit through its cooperation with the Technical Secretariat and the Commission. Unlike general consults, to provide information about the availability of markers, the Technical Secretariat will require the identification of the potential applicant and the general explanation of the revealed cartel. The general information that describes a cartel (type of infringement, product or service, geographical extension and approximate period) is essential for the Technical Secretariat to ensure the availability of the marker.

Finally, if there is a marker available for immunity, the economic agent that made the querying can obtain the marker if his application is submitted within a period of three (3) working days. If the application is not submitted within such period, the Technical Secretariat will be free to give priority to another economic agent in obtaining a marker.

4.2. Filing an application for benefits

The application shall be delivered by the Applicant in writing, and will consist in a request for immunity or reduction of sanctions:

- **Individual Leniency:** In the case of natural persons, the application will benefit the Collaborator for its participation in the infringement as an economic agent, a member of the direction or management of an offending company, or as a facilitator of a cartel.
- **Corporate Leniency:** In the case of legal person, the Application will benefit the Collaborator for being a participant in the infringement or as a cartel facilitator. The Application must correspond to a corporate decision made by an officer or a board in the company with enough powers to acquiesce to an eventual sanctioning administrative procedure and to ensure the full cooperation of the company with the competition agency.

In these cases, the application can reach to other companies belonging to the same economic group of the Applicant, as well as actual and former officials of the Collaborator, being the benefits granted under the condition that every official complies with the Cooperation Duty.

The Application must be signed by a representative and delivered to the reception desk of Indecopi, attaching the minimum information required to process the Application, in a closed confidential envelope.

The minimum information referred in the paragraph above must be sufficient to answer the following questions in relation to the alleged cartel and corresponds to the «Five W»:

- What** type of cartel has been carried out? (e.g. price fixing, market sharing, output restriction, bid rigging.)
- What** product or service was affected by the cartel?
- What** economic agents and facilitators have participated in the cartel?
- Which** period, approximately, encompasses the cartel?
- What** has been the geographical extension of the cartel?

The above information aims at revealing the Technical Secretariat the existence of a specific cartel, as well as ensuring the priority order of the Applicant. However, the information does not need to be supported with documents or evidence, which would be introduced in the next stage of the procedure.

Also, considering that the information submitted with an Application could be somewhat inaccurate at the time of submission, the modification of the information will not affect the evaluation made by the Technical Secretariat with respect to the cooperation of the Applicant, inasmuch as it responds to the diligent fulfillment of his Cooperation Duty.

Nevertheless, if the Technical Secretariat finds information about the investigated cartel that deliberately has been hidden by the Applicant, this wrong behavior will be taken into account for the assessment of his compliance of his Cooperation Duty.

If the Technical Secretariat considers that the information provided by the Applicant is not enough to determine the existence of anticompetitive behavior, the Applicant will have five (5) working days to correct his application. If corrected, the Technical Secretariat shall admit the Application.

If admitted, the Technical Secretariat will grant the respective Marker to the Applicant, notifying it within five (5) working days after the request has been submitted or corrected.

If a request for benefits is not admitted, the Technical Secretariat shall return the information provided by the Applicant and erase any copies under its possession. However, the Technical Secretariat may start or continue with its investigation activities in the same market of the application.

4.3. Submission of information and investigation activities of the Technical Secretariat

Once the application is admitted, the Technical Secretariat will arrange a meeting with the Applicant within ten (10) working days to coordinate a schedule for submission of the information related to the infringement revealed.

In the meeting, the Technical Secretariat will designate the officials responsible of coordinations with the Applicant, also responsible of processing the Application, protect the information provided by the Applicant, monitoring the schedule and supervising the Cooperation Duty. While the Application is been processed, the Applicant will be able to check the status of his Application at any fine.

The Technical Secretariat will grant thirty (30) working days for the Applicant to provide all the relevant information he has in his power about the cartel revealed and details of the participation of the co-conspirators. This period will be extended for thirty (30) additional working days if the difficulty of the investigation determines the need of more time to obtain information relevant to begin an administrative procedure or to generate evidence with significant added value.

For example, the extension will be granted when the amount of information to be delivered by the Applicant objectively impede to extract the evidence required in the timeframe granted by the authority.

In addition, an extension will probably be granted if the relevant information is temporarily unavailable to the Applicant (e.g., for being in different jurisdiction). In any case, the Applicant must explain that he diligently made reasonable efforts to obtain and submit the relevant information required by the authority within the initial period established.

If necessary, the Technical Secretariat will perform additional investigation actions in order to maximize the effectiveness of the prosecution of the revealed cartel. This actions may be performed simultaneously or subsequently to the submitted information by the Applicant, and may replicate the documentation provided by the Applicant as from other sources, if it is feasible.

The Technical Secretariat would perform all the complementary actions needed to prove, at preliminary level, the facts alleged in the application and to obtain the relevant evidence within a period of ninety (90) working days from the submission of the information provided by the Applicant. The complexity or the dimension of the investigation and evidence gathered will determine an extension of the initial period.

4.4. Preliminary evaluation of the Application

The evidence provided by the Applicant and the additional evidence that has been obtained by the Technical Secretariat by its investigation activities will be evaluated to establish if it is sufficient to start an administrative procedure or, when applicable, whether the information provides significant added value for the investigation activities of the Technical Secretariat.

When the additional investigation activities conclude, the Technical Secretariat will contact the Applicant to set up a meeting within the following fifteen (15) working days. At the meeting, the Technical Secretariat will expose to the Applicant its conclusions and the conditional benefit to be granted by the subscription of the conditional benefits agreement.

After the exposition of the Technical Secretariat, the Applicant may express his agreement with the conclusions and the applicable benefit or, on the contrary, he may reserve his decision for no longer than five (5) working days. If the Applicant decides to withdraw his application, the Technical Secretariat will return the information submitted by the Applicant to support his application.

The withdraw of the Application would impede the Technical Secretariat to use the documents provided by the Applicant in its investigations or administrative procedures. However, the Technical Secretariat will be able to continue with its investigations in the market affected by the uncovered infringement and to use all the information obtained in exercise of its powers.

4.5. Signing of the Conditional Immunity or Reduction of Sanctions Agreement

If the Applicant expresses his conformity with the conclusions of the Technical Secretariat and with the conditional benefit to be granted, the terms of the conditional benefits agreement will be defined within fifteen (15) working days. To this end, the Technical Secretariat has full negotiation powers to establish the terms of the Commitment.

The Agreement aims at establishing the scope of the Cooperation Duty by the Applicant and the Confidentiality Duty by the Technical Secretariat. Essential aspects of the Conditional Benefits Agreement are the following:

- a. The admission of the Collaborator of its participation in the investigated cartel, according to the findings of the Technical Secretariat.
- b. The condition of «Collaborator» by the Applicant for the following stages of the investigation and prosecution in the administrative procedure.
- c. The essential content of the Cooperation Duty to be fulfilled by the Collaborator during the following stages investigation and prosecution in the administrative procedure.
- d. The extension of the benefits to other companies in its economic group or actual and former officials of the Collaborator, subject to a strict compliance with the Cooperation Duty by each of them.
- e. The waiver of the confidentiality of the evidence provided that could not be replicated but that is necessary for initiating an administrative procedure.

The Cooperation Duty is a set of obligations that encompasses the best efforts of the Collaborator activities to provide the most active cooperation in the investigation and instruction activities of the Technical Secretariat and the Commission, with the aim of allowing them to prove the infringement revealed according the Conditional Benefits Agreement, therefore allowing the attainment of an effective result. The main obligations of Cooperation Duty are the following:

- a. To carry out complete, continuous and diligent cooperation with the Technical Secretariat and the Commission until the end of the administrative procedure of investigation and sanction of the cartel, regarding the disclosed infringement.
- b. To participate actively in providing all kind of information and evidence that the Collaborator has under his control and allowing the proving of the disclosed

infringement and the sanctioning the offenders for planning, developing or executing the cartel.

This obligation comprises but is not limited to the submission of documents (originals and copies), statements and audiovisual records; access to databases, and correspondence, as well as physical and electronic files; interviews with actual and former officials that participated in the revealed cartel; among others. To fulfill these obligations, the Collaborator must proceed as diligently as possible, directing his efforts to enhance the effectiveness of the actions of investigation and sanction by the Technical Secretariat and the Commission.

- c. To refrain from destroying, falsifying or hiding information or evidence, or engaging in any other conduct that could affect the investigation activities of the Technical Secretariat and the Commission, regarding the facts under the scope of the Conditional Benefits Agreement.
- d. To refrain from disclosing to any third party, directly or indirectly, the submission and content of the Application for benefits, the evidence introduced and the cooperation provided to the Technical Secretariat, during the investigation and until the beginning of the administrative procedure, unless a previous writing authorization has been issued by the Technical Secretariat.
- e. To refrain from behaving in a way that is incompatible with the agreement signed. The applicant shall not question the facts recognized in the Application, in particular those related to the type of infringement, the duration of the cartel, the identity of participants or its geographical extension.

The aforementioned obligations do not restrict the right of the Collaborator to access, in a confidential manner, to the technical and legal advice he might consider appropriate to safeguard its rights in the processing of a request for benefits, nor his right to apply for leniency in other jurisdictions, informing the Technical Secretariat as requested.

4.6. Compliance with the Conditional Agreement

The compliance of the Cooperation Duty is essential for obtaining the definitive granting of the benefits conditionally granted with the subscription of the Conditional Immunity or Reduction of Sanctions Agreement. The Cooperation Duty allows the Technical Secretariat to access information that otherwise could not have been obtained or that will generate significant savings in time and resources for the authority, thus fulfilling the objectives of the Peruvian Competition Act in relation to the investigated cartel.

A breach of the Cooperation Duty is an exceptional situation that should be timely noticed by the Technical Secretariat who must give the Collaborator a reasonable opportunity to remedy this breach.

When the actions or inaction of the Collaborator would constitute to the Commission a breach of the Cooperation Duty, the Technical Secretariat will inform him this situation, giving a period of five (5) working days to remedy his default, under warning of losing the conditional benefit.

If the Collaborator corrects the breach noticed, the Technical Secretariat will communicate this situation and discard the warning.

If the Collaborator does not remedy in a timely manner its non-compliance, the Technical Secretariat could report his breach to the Commission, explaining the alleged breach not rectified and recommending them to withdraw the conditional benefit granted due to the breach of a fundamental duty of the conditional benefits agreement.

4.7. Definitive granting of benefits

Once the authority has obtained an effective result in the administrative proceedings, through either the issuance of a decision sanctioning the responsible or an early termination of the procedure through the acceptance of one or more plea agreements, the definitive granting of the benefit of immunity or reduction of sanction by the Commission will be automatic.

If the administrative proceedings conclude with the approval of plea agreements offered by the other economic agents charged with the infringement, the Collaborator might obtain a definitive benefit in advance, if he voluntarily waives the confidentiality of his identity, so the Commission could issue a decision specifying the reason why the procedure culminates in advance also with respect to the Collaborator.

If the Collaborator does not waive the confidentiality of his identity, or if the administrative procedure continues regarding other investigated parties, the definitive benefit will be granted when the Commission issues its final decision, imposing sanctions to the remaining offenders being prosecuted.

The only exception for the automatic granting of a definitive benefit is the breach of the Cooperation Duty and the Conditional Benefits Agreement signed by the Collaborator. The Technical Secretariat will inform the Commission if this is the case before the Commission issues its final decision.

If the Technical Secretariat does not report an infringement of the Conditional Immunity or Reduction of Sanctions Agreement, the Commission will assume that the Collaborator had comply with its commitments and, therefore, will grant the definitive benefit.

The Commission will issue a decision granting the benefit of immunity or reduction of sanctions that shall be enforceable against any instance of Indecopi. This decision in favor of the Collaborator is independent from the decision in the administrative proceedings and is confidential.

5. Contact information

For inquiries about the Leniency Program, please contact the Technical Secretariat at:

Technical Secretariat of the Commission for the Defense of Free Competition

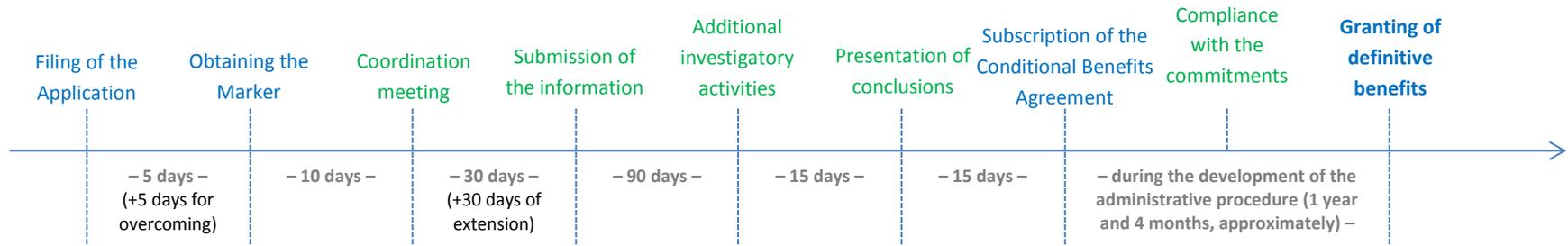
(511) 2247800, extension 3001

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Processing terms of an application for benefits under the Leniency Program

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Note: All periods are shown in working days.