

# ANTITRUST REWARDS PROGRAM

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Guidelines





PERÚ

Presidencia  
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INDECOPI

### **Antitrust Rewards Program Guidelines**

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## ANTITRUST REWARDS PROGRAM

### – EXPLANATORY NOTES –

#### I. Purpose of the Program

On the basis of Section 61 of the Constitution, the Peruvian State has developed a legal framework aimed at promoting and protecting the free competition among businesses, with the purpose of encouraging an efficient performance of the markets, as well as development and innovation for the benefit of consumers in Peru.

In this context, the National Institute for the Defense of the Competition and the Protection of the Intellectual Property (hereinafter, Indecopi), through the Commission for the Defense of the Free Competition (hereinafter, the Commission) and the Technical Secretariat of the Commission for the Defense of the Free Competition (hereinafter, the Technical Secretariat) carry out an important role in the investigation, prosecution and sanction of anticompetitive conducts. Recently, these bodies have also received the duty of enforcing a pre-merger review system in all Peruvian markets. Aiming at achieving transparency and predictability in the exercise of these duties, the Competition Act has granted the Commission the power to enforce certain mechanisms that are aimed at maximizing its effectiveness. One of those mechanisms is the Antitrust Rewards Program.

In fact, foreign legislations on antitrust matters show several tools to detect, sanction and deter anticompetitive conducts in the markets. Examples of these tools are: Fines imposed to companies and executives that participated in anticompetitive agreements, criminal sanctions, corrective measures such as disqualification of managers, damages, leniency and rewards programs.

These latter, leniency and rewards programs, are mechanisms based on granting positive incentives to potential informants. Hence, these programs are no different from those existing in Criminal Law enforcement.

As most experienced authorities in antitrust matters, Peru has pursued a Leniency Program as one of the more important tools for timely detecting, proving and sanctioning cartels. This Program, as provided in Section 26 of the Competition Act<sup>1</sup> and regulated in the Leniency Program Guidelines, permits offenders to obtain immunity from an eventual sanction or to mitigate its magnitude in exchange for evidence that would help the authority to detect and prove the existence of horizontal agreements deemed per se illegal (hard-core cartels) and to effectively sanction the offending parties.

In September of 2018 the Competition Act was amended in order to incorporate the Rewards Program<sup>2</sup> with the purpose of improving the efficacy of the Leniency Program and the effectiveness of cartel investigations carried out by the Technical Secretariat. Through the

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<sup>1</sup> The Codified version of the Competition Act was enacted by means of Supreme Decree 030-2009-PCM.

<sup>2</sup> The Competition Act (Legislative Decree 1034) was amended by means of Legislative Decree 1396 (2018).

Rewards Program, persons that have information about anticompetitive conducts may have the chance to receive an economic compensation even in cases when they did not participate directly in the planning or implementation of the conduct. By increasing the number of individuals willing to collaborate with the Technical Secretariat and the Commission in the detection and sanction of cartels, the Rewards Program complements and enhances the system of rewarding tools of the competition authority<sup>3</sup>.

In Peru there are similar rewarding tools that seek to promote the report of unlawful behavior. For instance, the rewards that can be granted to those that deliver information that facilitates or permits the capture of members of criminal organizations, terrorist organizations and those liable for especially harmful crimes<sup>4</sup>, the whistleblowers protection legislation at the administrative level<sup>5</sup> and the rewards framework in criminal procedures<sup>6</sup>.

## II. Material Scope (infringements)

It is well-known that hard-core cartels are secret agreements carried out by companies whose purpose is to limit the competition among themselves and obtain benefits by increasing prices, limiting the output or allocating market shares, among other practices. Due to the difficulty to detect these agreements, competition agencies feel the need to resort to different mechanisms to investigate and obtain evidence, such as leniency and rewards programs.

With that in mind, the Rewards Program aligns with the Competition Act by restricting this benefit only to disclosure of information about cartels. This way, the Rewards Program is accessible to those natural persons that provide decisive information to detect, investigate and effectively prosecute horizontal agreements that are deemed per se illegal, as listed in Section 11.2 of the Competition Act:

- Price fixing or agreements on other commercial conditions.
- Output or sales restrictions, in particular, by establishing production quotas.

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<sup>3</sup> “The principal gain from informants is the potential to uncover infringements that might not otherwise be revealed through leniency or through the competition authority’s investigative work. This has the potential of being significantly deterrence enhancing, by increasing the rate at which cartels are discovered without any significant increase in enforcement resources”. Stephan, Andreas (2014). Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool? CCP Working Paper 14-3, p. 3. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933). Stephan, Andreas (2014).

Maillo González-Orús, Jerónimo (2013), *Rewards programs to fight cartels in Europe: a comparison with third countries*. Work document. Competition Policy Series No. 40, p. 17: “Regarding the advantages, it could be a good complement to the leniency program and could contribute positively to the fight against cartels, potentially having a triple positive effect: first, to facilitate the detection of the cartel (gathering information) with the least effort and possible cost; second, to cause a disincentive effect on the formation and maintenance of cartels by increasing the risk of detection and encouraging the report of not involved third parties (companies feel they are being continuously observed); and third, to promote and foster consensus and general perception about the harmful nature of cartels and the need for their control and eradication. Available at: <https://repositorioinstitucional.ceu.es/bitstream/10637/5590/1/NA581436.pdf>.”

<sup>4</sup> Legislative Decree 1180 (2015) and its Regulations, approved by means of Supreme Decree 011-2016-PCM, grant rewards in order to capture criminal organization members, terrorist organizations and those liable for especially harmful crimes.

<sup>5</sup> The Act to protect informants at the administrative and criminal level was enacted by Law 9542, while its Regulations were enacted by means of Supreme Decree 038-2011-PCM.

<sup>6</sup> Criminal Procedures Code, approved by means of Legislative Decree 957. Fifth Volume (Special Procedures), Section VI.

- Allocating costumers, providers or geographical areas.
- Bid rigging and other coordinations in public tenders and other public procurement processes.

Figure N° 1: Agreements considered per se illegal (hard core cartels)

<p>- <b>Price-fixing:</b> The Commission fined several drugstore chains for agreeing to control prices of several medicines at the retail level, using laboratories and distributors as part of a communication and monitoring mechanism (<i>hub and spoke</i>).</p>	
<p>- <b>Output restrictions:</b> The Commission fined the most important poultry companies and their association for agreeing to limit volumes of production of chicken meat, as a mechanism to generate shortage and artificially increase prices at a national level.</p>	
<p>- <b>Market sharing:</b> The Commission determined that three companies agreed to distribute the public procurement processes called by the Public Social Security and Health Institution (EsSalud) for the acquisition of medical oxygen. The market was divided geographically, so that a company won the bids in the north of the country, another in the center, and the third one in the capital city (Lima) and the south of the country.</p>	
<p>- <b>Bid rigging:</b> The Commission fined two companies for setting prices and volumes of metal containers required in public tenders by the state-owned</p>	

Elaborated by the Technical Secretariat

The Rewards Program does not apply to those individuals who provide information about other kinds of anticompetitive behaviors such as abuse of a dominant position, vertical agreements or horizontal agreements that are not deemed per se illegal. This is because these behaviors are analyzed under the rule of reason, so they are not considered always illegal. Therefore, it is not possible for the competition authority or potential informants to carry out an accurate evaluation of the unlawfulness of the behavior without considering its real or potential impact.

Likewise, most instances of abuse of a dominant position and vertical agreements are not carried out in secret. Instead, they take place wide-open (for example, exclusive agreements, discriminatory practices or refusal to deal) and that's why those affected by the conduct and the authority itself may be aware of their existence and may start an investigation based on traditional mechanisms of investigation, such as information requirements and analysis of the

effects of the conduct. Moreover, the case law of Indecopi has shown that several behaviors reported as abuse of dominant position or vertical agreements were actually legal. For these reasons, the inherent uncertainty of the authority regarding the unlawfulness of these behaviors that are not deemed per se illegal would inhibit providing enough confidence to interested parties about potential rewards.

On the contrary, in addition to being very difficult to detect and sanction, cartels are considered the most harmful conducts for competition in the markets<sup>7</sup>. For this reason, mechanisms as rewards are adopted as part of a policy against cartels.

Moreover, other countries that also have rewards programs to strengthen the enforcement of their competition laws, also exclude its application to infringements other than cartels.

For instance, in the United Kingdom, the Competition & Markets Authority (CMA) offers rewards only to those individuals that provide information about cartels, such as price fixing, output restrictions, market sharing and bid rigging<sup>8</sup>.

Likewise, Hungary established in the Act. LVII of 1996 on the prohibition of Unfair and Restrictive Market Practices, the possibility to grant rewards only to those who submit evidence about horizontal agreements, such as fixing of prices and commercial conditions, output restrictions, technical development and investments, and allocation of markets and sources of supply<sup>9</sup>.

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<sup>7</sup> «Why does the GVH pay reward for the informants who provide information about hardcore cartels? Hardcore cartels cause serious harm to consumers, business partners, competitors and to the whole economy without any benefit. Hardcore cartels are often created clandestinely and even in the course of their functioning they strive for keeping it secret, that is why it is very difficult to detect such collusions. Considering that hardcore cartels cause serious harm and it is very complicated to detect them, according to the legislation, it is justified to reward those informants who provide the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) with indispensable information for revealing and detecting hardcore cartels. The informants who disclose the existence of a cartel (e.g. employees, business partners) take financial risk because of the cartellists' possible revenge; this risk has to be counterbalanced in order to maintain their motivation to assist in the enforcement of the law». Hungarian Competition Authority. *REGULAR QUESTIONS ABOUT THE CARTEL INFORMANT REWARD*, p. 1. "Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>8</sup> CMA. The CMA Guidance of Rewards for Information about Cartels, p. 2: «The term 'cartel' is a catch-all that covers any of the following collusive arrangements between businesses:

- Directly or indirectly fixing prices between businesses - where two or more businesses agree to raise the price of their product or service instead of setting their prices independently of each other and competing in the market place. This is known as price fixing.
- Limiting or preventing supply or production between businesses - where two or more businesses agree to limit or prevent the supply or production of a product.
- Dividing up customers or prospective customers between businesses - where two or more businesses agree that they will not poach each other's customers and/or that business 1 will not compete with business 2 in area A if business 2 agrees to a similar arrangement for the benefit of business 1 in area B. This is known as market sharing.
- In response to a request by a third party to tender for a contract, a secret agreement between businesses that one or more of them will agree not to bid for the contract or one or more of them will put in an artificially high price for the contract to allow another business to win the contract - perhaps for a return of favour on another occasion when another contract is tendered. This is known as bid rigging».

<sup>9</sup> «Act. LVII de 1996, on the Prohibition of Unfair and Restrictive Market Practices

**Reward for the supply of indispensable evidence**

**Article 79/A**

- (1) A natural person who has disclosed to the Hungarian Competition Authority written evidence qualifying as indispensable for the establishment of an infringement committed by competitors by means of agreements or concerted practices which infringe Article 11 of this Act or Article 101 of the TFEU and which are directly or indirectly aimed at fixing purchase

Moreover, In Slovakia, under the Act 136/2001, on Protection of Competition, rewards are also available only to those who provide evidence of horizontal agreements, such as fixing of prices and commercial conditions, output or sales limitation, technical development and investments, and allocation of markets or sources of supply<sup>10</sup>.

Figure N° 2: Why only reports about cartels are rewarded?



Because cartels are the infringements that are the most harmful and deemed *per se* illegal, i.e., they are always illegal and do not have justifications at all.

#### Can other competition infringements be reported?

Yes, they can, but they are not eligible under the Rewards Program. Companies can commit other infringements, for example, when they seek to exclude their competitors from the market by abusing of their dominant position, or to carry out vertical agreements (for instance, wholesale-producers or producer-retailers) or other types of horizontal agreements (for example, agreements on quality conditions or denying membership of a competitor to a trade association) that may affect the competition process. However, these conducts may have justifications and are analyzed case by case.

Anyone can report these behaviors, but given the fact that they can actually be legal and not many of them are carried out in secret, **the Competition Act only rewards the report of cartels.**

Elaborated by the Technical Secretariat

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or selling prices, sharing of markets — including bid rigging — or the allocation of production or sales quotas, shall be entitled to receive a reward”.

<sup>10</sup> Act. LVII de 1996, on the Prohibition of Unfair and Restrictive Market Practices

“Article 38g.- Reward for submitting evidence on Agreement Restricting Competition.

(1) Informant is a natural person who (...)

c) was the first to provide the Office with information on agreement restricting competition pursuant to the Article 4 (...).».

(...) Article 4 - Agreement Restricting competition. (...)

(4) There shall be prohibited, in particular, agreement restricting competition which consists in:

a) direct or indirect fixing of prices or any other trading conditions;

b) commitment to limit or control production, sales, technical development, or investments;

c) market allocation or allocation of sources of supply;

d) commitment by the parties to the agreement that different conditions relating to an identical or comparable performance will be applied by them to individual undertakings thereby placing them at a competitive disadvantage;

e) conditions stipulating that the conclusion of contracts that will require the parties to accept supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contract; or

f) coordination of undertakings in public procurement 4), in public tender 4a) or in other similar tendering procedure, in connection with public procurement, public tender or other similar tendering procedure”.



### III. Personal Scope

Contrary to the Leniency Program, which rewards natural or legal persons that breach competition rules, the Competition Act establishes that only natural persons can apply to the Rewards Program.

This is due to the fact that, apart from the offenders and its executives, generally only some individuals are the ones that may have knowledge about the infringement, whether because they interacted with the offenders as suppliers or wholesale distributors.

In that regard, in addition to expanding the scope of potential informants and making it more difficult to maintain and hide cartels<sup>11</sup>, the Rewards Program plays an important role of raising awareness among market participants other than companies<sup>12</sup>, encouraging anyone who is willing to report illegal acts<sup>13</sup>.

Based on these objectives, those who have incurred or are liable for the commission of horizontal agreements per se illegal (cartels) are excluded from the scope of the Rewards Program. These are considered potential applicants to the Leniency Program, where they mitigate the magnitude of their applicable fines and, for this reason, they could not benefit from the Rewards Program.

This would not be the case of the employees of a company or other external collaborators that, even though didn't participate in the anticompetitive conduct, may have knowledge about its existence and development. These people could receive rewards in exchange for providing decisive information to detect, investigate and sanction such anticompetitive behavior.

However, there is a special scenario where employees participated exclusively in the execution of an anticompetitive conduct but without playing any role of decision or control. These are employees who have been entrusted orders to execute and monitor cartel agreements (for example, orders of setting the prices agreed with the cartel members or informing the prices of the cartel members to ensure compliance), but who do not influence or participate in the planning or implementation of the agreement. In this way, they play a peripheral, fungible or easily replaceable role in the cartel. This would not be the case of persons who have assumed, in addition to a role in the execution of anticompetitive agreements, some level of participation in the planning or implementation of the cartel.

Indeed, the experience of Indecopi in cartel enforcement shows that those who participate in the planning of a cartel (conceive and define the scope of the anticompetitive agreement) and the

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<sup>11</sup> «Introducing bounties for individuals decreases the benefits of collusion, especially when the number of employees informed on the agreement is large. While such individual rewards may induce rigidity in the employment structure of the firm, this makes collusion less attractive in the first place and can thus bring additional deterrence. A colluding firm may also have to adopt a seemingly competitive behavior so as not to arouse the suspicions of their employees. This generates an additional cost for colluding firms, which reinforces again the deterrence effect of bounties». Cécile Aubert Patrick Rey, and William E. Kovacic (2005). *The Impact of Leniency and Whistleblowing Programs on Cartels*, p. 36.

<sup>12</sup> In the same way that is regulated in Slovakia under art. 38g (1) of Act 136/2001: «Informant is a natural person who: a) is not an undertaking accordingly to this Act ».

<sup>13</sup> «An open organizational culture and whistleblower protection legislation should be supported by effective awareness-raising, communication, training and evaluation efforts. Such efforts begin with making public and private sector employees aware of their rights and obligations when exposing wrongdoing (...) ». OECD (2017). *OECD Integrity Review of Peru: Enhancing Public Sector Integrity for Inclusive Growth*, OECD Public Governance Reviews, OECD Publishing, Paris, p. 92. Available at: <https://doi.org/10.1787/9789264271029-en>.

implementation of a cartel (coordinate with competitors the adoption of the anticompetitive conduct) have the highest level of involvement and control over the existence of the anticompetitive scheme. On the contrary, it is possible to distinguish those individuals who don't have the power to decide on the configuration of the anticompetitive conduct but participate exclusively in its execution (they monitor and verify that the agreements are being complied). These latter, objectively, would also be liable for the competition infringement, although they played only a minor role in the implementation and development of the cartel, and had little chance to prevent or stop its occurrence<sup>14</sup>.

In order to encourage these mere executors to report anticompetitive conduct in which they have had a peripheral participation, Section 3.2(c) also includes them as potential applicants under the Rewards Program. In this sense, as long as these individuals fully collaborate with the Technical Secretariat and the information they provide is decisive for the detection, investigation and sanction of the cartel disclosed, they may exceptionally obtain not only immunity or reduction of the fines to be imposed (leniency) but they also could be granted a reward.

This is a middle ground position between the proposal of allowing all participants and those liable for a cartel to be rewarded, and prohibiting any benefit to any such participants, in particular for the moral risks that may arise. This moral risk refers, for example, to the cases of people who deliberately participate in anticompetitive practices and benefit from them, with the purpose of later betraying them, damaging their competitors and also obtaining rewards as an extra benefit<sup>15</sup>.

At the comparative level, other countries hold similar positions to these Guidelines. Thus, for example, in the United Kingdom, the CMA considers that an individual directly involved in a cartel, can only apply to the leniency program (immunity) as a general rule and not to the rewards program. However, in special circumstances, the authority may consider paying a reward when the person's role in the cartel was relatively peripheral, for example, an employee who was occasionally instructed by his superiors to attend a meeting of the cartel and he was not asked to take an active role in the decisions of the cartel<sup>16</sup>. In Hungary, the competition authority considers that a reward applicant can be any person who has been in direct contact with the cartel (for

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<sup>14</sup> Regarding the distinction among the planning, commission and execution of a cartel, see the Decision 157-2019/SDC-INDECOPI, p 250-27 of the Tribunal for the Defense of the Competition of Indecopi.

<sup>15</sup> On the contrary, Andreas Stephan holds that there are good reasons to include the members of cartels into the potential informants of a rewards program, without concerning about the moral risks that it may arise. "There are thus good reasons to include cartelists as an eligible group for informant rewards, but some protection is needed to avoid the moral hazard problem of individuals instigating offences in order to secure a reward". De Stephan, Andreas (2014). *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool? CCP Working Paper 14-3*, p. 11. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933).

<sup>16</sup> "Under the CMA's leniency policy any company or individual who has been directly involved in a cartel can gain complete civil and criminal immunity from sanction provided that:

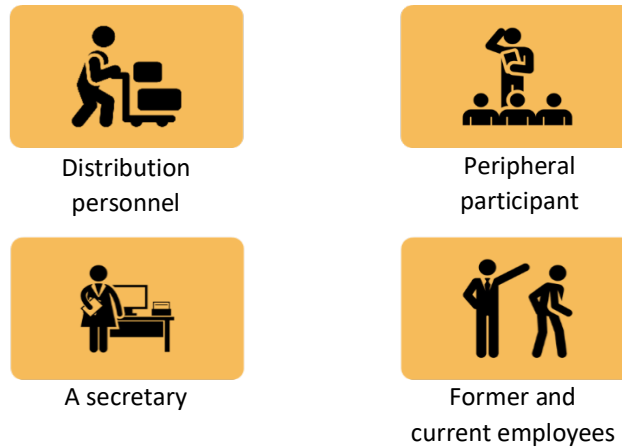
- they are the first to report and confess involvement in the cartel
- they cooperate fully with the CMA throughout the investigation
- the CMA did not have any pre-existing investigation into the cartel.

The CMA does not consider that an individual in such circumstances should ordinarily also gain a financial reward.

However, there may be circumstances where the CMA will consider a reward in addition to immunity from sanction under the leniency policy. This is most likely to be considered where the role of the person in the cartel was relatively peripheral - for example that of an employee who was occasionally directed by his superiors to attend a cartel meeting and who was not asked to take an active part in decision-making about the cartel". CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 5.

example he or she has been an executor of the cartel), or a person who without any direct contact with the cartel possesses information about the infringement (e.g. a secretary who organizes meetings, someone who organizes business trips, an employee of an association that represents the interests of companies or a chamber)<sup>17</sup>.

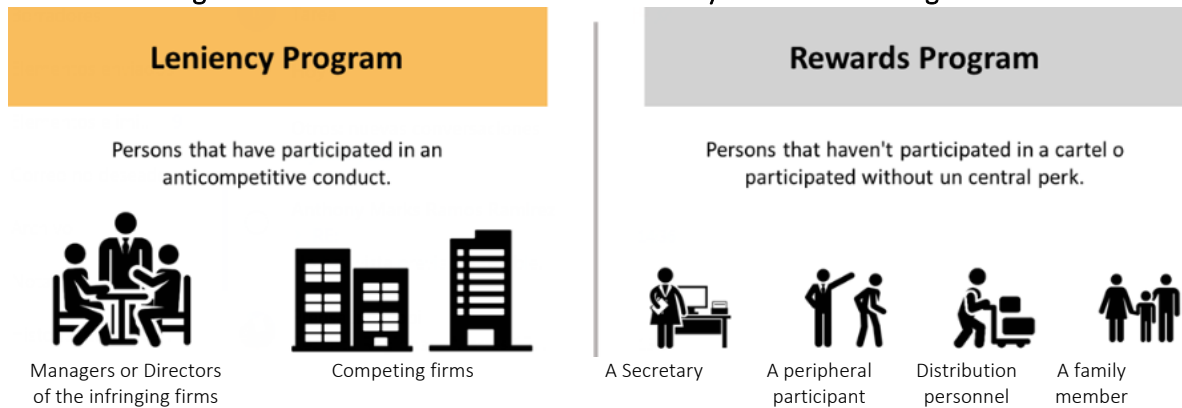
Figure N° 3: Individuals that can apply to the Rewards Program



Elaborated by the Technical Secretariat

Regardless of the aforementioned, in the case of the individuals that fit into the exclusion clauses in items a) to d) of Section 3.1. of the Rewards Program, the Technical Secretariat could recommend them to apply to the Leniency Program, as long as they fulfill the requirements established in the Competition Act and in the Leniency Program.

Figure N° 4: Differences between the Leniency and Rewards Programs



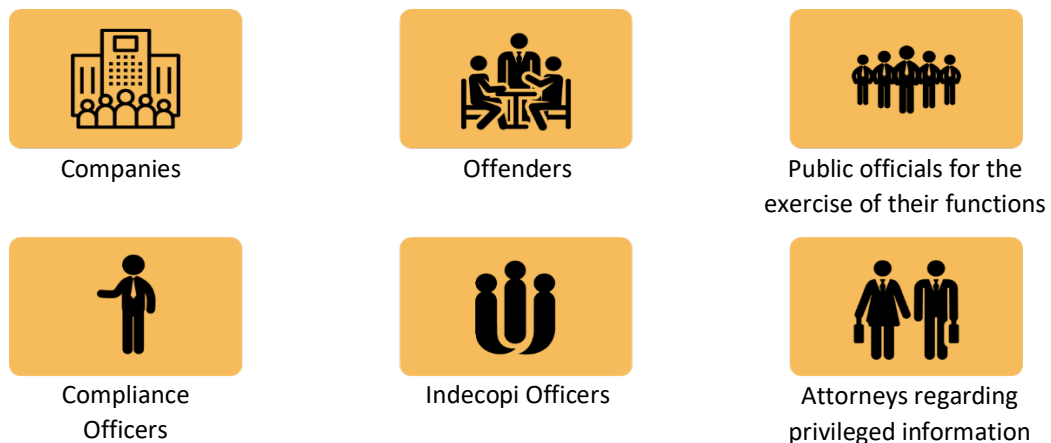
Elaborated by the Technical Secretariat

<sup>17</sup> "Who can provide the GVH with information? Any natural person may furnish the GVH with information that entitles him or her to reward. He or she may be any person who has been in direct contact with the cartel (for instance he or she has been an executor of the cartel), or a person who without any direct contact possesses information about the infringement (e.g. a secretary who organizes appointments, someone who is responsible for organizing (business) trips, an employee of an association representing the interests of undertakings or of a chamber)". Hungarian Competition Authority. *REGULAR QUESTIONS ABOUT THE CARTEL INFORMANT REWARD*, p. 4: "4.

On the other hand, it is pertinent to exclude legal counsels or compliance officers (or members of a compliance committee) of persons or companies involved in an infringement from the scope of the Rewards Programs. Lawyers have been excluded to guarantee the attorney-client privilege, in cases where the confession of guilt of a company or person to their lawyers prevents them from sharing such information to the authority or, what is worst, receiving a reward for it<sup>18</sup>. Regarding the officers and members of compliance committees, they have also been excluded from the Rewards Program in order to encourage them to effectively perform their duties for a company or institution that has adopted an effective compliance program and deter the risk of disclosure of information that was confessed to them through the company's internal reporting channels. In fact, this compliance duty is developed in an environment of trust similar to an attorney-client relationship, and is thus considered privileged.

Finally, similarly to other jurisdictions<sup>19</sup>, employees of Indecopi, their spouses and family members are also excluded from the Rewards Program. Although access to information related to anticompetitive behaviors is generally restricted to the designated personnel of the Technical Secretariat, the Commission and the Tribunal, other employees of the institution may be in a better position than third parties to recognize an anticompetitive activity because of the information they have access to in the exercise of their functions. Thus, their participation in the Rewards Program could generate inquiries about the access to privileged information within an investigation. Another reason to exclude other public officials from the Rewards Program is that they have access to privileged information because of the functions they perform<sup>20</sup>.

Figure N° 5: Individuals excluded from the Antitrust Rewards Program



Elaborated by the Technical Secretariat

<sup>18</sup> See: Cruz Barney, Oscar (2015). *Defense for the defense and advocacy in Mexico*. Mexico: National Autonomous University of Mexico, p.15; and, Guajardo Pacheco, Massiel Maritza (2017). *Constitutional foundations and scope of the attorney-client privilege in the Chilean law* (Thesis to qualify for the Degree in Law and Social Sciences). University of Chile. Chile, p.13.

<sup>19</sup> «1. Short title and commencement.-(...)

(3) These regulations shall apply to persons who furnish information regarding contravention or a possible contravention of section 4 of the Act, except for employees of the Commission and their dependents thereof».

<sup>20</sup> In accordance with this, item f) of Section 39 of the Civil Service Act (Law 30057) establishes that public servants have the obligation to "inform the superior authority or report criminal acts, offenses or irregularities they may notice."

#### IV. Discretion of the Technical Secretariat in the determination and granting of a reward

As in other jurisdictions, the decision to grant or deny rewards is a discretionary power of the Technical Secretariat, depending on the value of the information provided, the possibility of corroborating such information and its investigation priorities. Thus, this decision cannot be subject to appeal<sup>21</sup>.

Similarly, the Technical Secretariat may take into account the different sources of information it has access to in order to decide whether the information provided by the rewards applicant adds a significant value. The authority will especially consider those documents or statements that may have been previously provided by another rewards or leniency applicant, and whose content might still be pending to be corroborated.

The decisive nature of the information provided is analyzed case-by-case based on the level of credibility, specificity and opportunity of the information provided by the applicant, as well as the strength of the evidence obtained from such information and the need for it to be corroborated with further investigation activities. For example, in a case where the Technical Secretariat has not yet initiated a preliminary investigation, the testimony of an employee from a company revealing the existence of a cartel and identifies the executives involved could motivate a dawn raid and, if the information is corroborated, it would qualify as decisive. On the contrary, if in different case, an applicant shows the coordination emails of a cartel which has already been matter of a request for immunity under the Leniency Program, a reward could not be granted since the information would no longer be timely and could hardly provide any added value to the information that the Technical Secretariat already has or could have.

#### V. Pre-application queries

As expected, the Rewards Program is hoped to be an easily accessible tool for those who have information on cartels. To that effect, it is necessary to facilitate and encourage a first contact with the Technical Secretariat, in order to clarify the doubts of potential applicants and to deter submission of applications deemed irrelevant for the investigation duties of the Technical Secretariat.

Indeed, since at first sight, a potential applicant may be afraid to reveal her identity because of fear of retaliation or the need of extra information about its obligations under the Rewards

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<sup>21</sup> «It is essential to understand that rewards are granted at the discretion of the CMA. The CMA is entirely free to reject offers of information and it does not have to give reasons for doing so. Furthermore, where the CMA has agreed to accept some information from a person and the information provides a credible basis for further investigation, the CMA is still free to decide, on the basis of other more pressing priorities, that it will not use the information given and will not therefore give a financial reward. CMA». *The CMA Guidance of Rewards for Information about Cartels*, p. 3: Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf).

Similarly, in Peru, the Tribunal of Indecopi has resolved that the decision of the Technical Secretariat to accept or deny an application to the leniency program is also a discretionary power, and therefore, cannot be challenged by an applicant: "(...) in a procedure for requesting a sanction immunity, the analysis on the evidence presented by the applicant belongs exclusively to the Technical Secretariat of the Commission, which, within its discretion, decides whether or not to grant the benefit to the applicant. Thus, it was not appropriate to be reviewed in a second instance by the Tribunal". Indecopi. Tribunal for the Defense of the Competition (2017). Decision 0079-2017/SDC-INDECOPI, February 9, 2017.

Program, these Guidelines exceptionally allow that the first contact with The Technical Secretariat can be channeled through a representative, keeping the identity of the interested party anonymous.

This first contact will have a guiding nature, so that the potential applicant or her representative can be informed about the scope of the Rewards Program and the possibilities of success the information has in order to receive a reward.

In addition, this first consultation helps the potential applicants to clarify what type of information they can collect in order for their application to have greater chances of success, as well as to receive indications to be careful and mitigate the risks of retaliation they could face<sup>22</sup>. This rule is coherent with the protocols established in other jurisdictions. Thus, in the case of the United Kingdom, the CMA initially allows anonymous queries, but advises the applicant to reveal her identity since the beginning<sup>23</sup>. Likewise, in Pakistan the applicant can make a first contact through the most convenient means to protect the confidentiality of her statement<sup>24</sup>.

## VI. Application to the Rewards Program. Processing of the application.

Once the phase of preliminary queries has concluded and once the decision to apply for the Rewards Program has been made, the interested party must necessarily identify herself and formalize her application. This is necessary to permit effective communications throughout the application process, to encourage potential applicants to have a transparent behavior with the authority and to allow the latter to acknowledge with greater confidence the steps to take based on the evidence provided.

This is also the rule, for example, in the United Kingdom, where in order to assess the credibility and trustworthiness of the information provided, the CMA requires to know the identity of the informant after the initial contact, if it was anonymous<sup>25</sup>. On the other hand, in Taiwan, a verbal

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<sup>22</sup> “We prefer you to approach us before you have obtained all of the information about the cartel. This is so we can discuss with you in advance what risks there might be in obtaining that information and how those risks could be reduced – or whether they should be taken at all. (...) Of course, some people will already have the information that they wish to impart and there is no prospect they will be able to get anymore. Again, the earlier the approach the better”. CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 2. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>23</sup> «Initially the conversation could be conducted on a no-names basis if necessary, though we will always prefer to know your identity from the very start». CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 3. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>24</sup> **S.R.O. 406(I)/2014 Competition (Reward payment to informant) Regulations, 2014.**

### «4. Approaching the Commission.-

- (1) The informant may make initial contact with the Commission either via phone or otherwise, but without necessarily disclosing of his/her name, if the Informant is hesitant to reveal his/her identity at the very start.
- (2) After initial contact, an officer, not less than the rank of Director, shall be designated by the Chairman to liaise with the Informant.
- (3) The officers designated to deal with the Informant shall ensure that any information provided is carefully safeguarded and handled».

<sup>25</sup> «Our officer will want to talk to you to obtain as much detail as possible. Initially the conversation could be conducted on a no-names basis if necessary, though we will always prefer to know your identity from the very start. If the officer's initial assessment is that you have information and/or can gain information that is likely to be of value to us and might well give us a basis for further investigation, we will want to meet you to discuss the information in more detail. At that meeting we will need to know your identity

or written statement must be submitted with the names, contact information and address of the informants, in addition to the details of the anticompetitive conduct reported<sup>26</sup>. Similar requirements are provided in the South Korean regulations for whistleblowers<sup>27</sup>.

In a similar manner to what occurs in the rewards system for the fight against crime and terrorism in Peru, it is important to put on record the application and to assign the applicant a password or pseudonym to protect the confidentiality of her identity. To do so, a minute including the information provided by the applicant must be prepared<sup>28</sup> (refer to Annex 1).

On the other hand, it is relevant for the Technical Secretariat to properly put on record the information provided by the applicant since it may be used during the investigation and possibly incorporated into the administrative prosecution casefile, ensuring the confidentiality of the identity of the applicant, in accordance with Section 28.1 of the Competition Act (refer to Annex 2).

It is important to protect the confidentiality of the applicant's identity throughout the investigation and administrative prosecution as it helps the applicant to actively and fully collaborate without fearing retaliation. With that in mind, the literature holds that the confidence of knowing that the identity of the informant and the information provided will remain in strict confidentiality is the first factor taken into account by the potential applicant when evaluating

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as an essential part of assessing your credibility and the likely reliability of the information you may be able to give us». CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 3.

<sup>26</sup> **Order Kung Fa Tzu N°10415608631, Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions**

**«Article 3**

Informants referred in the preceding article are limited to natural persons, legal persons or legally established organizations.

Informants may report to the competent authority by written or verbal statements, emails or other means stating clearly following items:

1. names, contact information, and address of informants;
2. content of the reported illegal concerted actions, and specific description of violating conducts, relevant data and clues that may be investigated, etc. which match the criteria specified in Paragraph 1 of Article 6.

Where reports are made verbally, the competent authority shall produce a written statement for the reporting, and have the statement signed by the informant for confirmation».

<sup>27</sup> **Act. N° 10472 of 2011, on the Protection of Public Interest Whistleblowers**

**«Article 8 (Method of Public Interest Whistleblowing)**

(1) Any person who intends to file a public interest whistleblowing case shall submit a statement in writing (including electronic documents. Hereinafter referred to as the "written report"), with attachment of evidence on the acts of violation of the public interests to any person in the Article 6 subparagraphs. The statement shall include the information described in each of the following subparagraphs:

1. The name, resident registration number, address, contact numbers, etc. of the whistleblower;
2. The name of the person who violated public interest;
3. A factual description of the violation of the public interest;
4. The purport and reason of the public interest whistleblowing».

<sup>28</sup> **The Regulation of the Legislative Decree 1180, enacted by the Decree Supreme 011-016-PCM, which establishes the benefit of rewards to encourage and capture members of criminal organizations, terrorist organizations and those liable of high harmfulness crimes.**

**Article 16.- Information Reception Stage**

Stage of face-to-face or non-face-to-face contact between the informant and the police or military officer, in which information is obtained for the location and capture of members of terrorist or criminal organizations, which is recorded in a minute.

In this stage the following actions are carried out:

16.1. After the face-to-face or non-contact contact with the informant, the instructor of the National Police of Peru or the Armed Forces, as appropriate, issues the receipt record of the information in which the identification password, pseudonym or code is granted. The minutes must be approved by the head of the police or military unit that receives the information immediately and must be sent to the police or military unit responsible with reservation, in accordance with the rules on the matter.

the pros and cons of whistleblowing an infringement to the authority. Disclosing her identity may encourage retaliation, which is one of the main costs faced or expected by an informant<sup>29</sup>.

## VII. Information to be provided by the applicant

The duty of collaboration entails the applicant's obligation to submit any information in her possession that can contribute to the authority's investigation and prosecution duties. This is why timely compliance is essential for the success of the Antitrust Rewards Program. This central role of fulfilling the duty of collaboration based on decisive information to investigate a cartel is also shared by other jurisdictions with similar programs. Thus, in Slovakia, it is requested that information filed should assist the Antimonopoly Office of the Slovak Republic in carrying out a targeted inspection to obtain evidence of an anticompetitive agreement<sup>30</sup>. On the other hand, in Hungary, it is necessary for the information submitted to be of an indispensable nature<sup>31</sup>. Finally, in Pakistan the information provided should allow the determination of a company's participation in an anticompetitive agreement that has been known by the undertaking's board of Directors, Management, and/or Employees but not by the public<sup>32</sup>.

In order to allow compliance with the applicant's duty of collaboration, these Guidelines include a standard list of information that the applicant can provide as part of her application. As cartel coordinations are often negotiated or held in a hidden manner, the filing of detailed testimonies, evidence or indications of its occurrence is essential to the Technical Secretariat and to the effectiveness of the Rewards Program<sup>33</sup>. The more relevant information provided, the better

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<sup>29</sup> «Being certain that the information provided remains confidential, along with one's identity, is an essential factor in disclosing wrongdoing. Maintaining confidentiality is the first element of a whistleblower protection system, when this fails, reprisals may ensue». OECD (2016). *Committing to Effective Whistleblower Protection – Highlights*, p. 7. Available at: <https://www.oecd.org/corruption/anti-bribery/Committing-to-Effective-Whistleblower-Protection-Highlights.pdf>.

<sup>30</sup> **Act. 136/2001 Coll. On Protection of Competition**

**«Article 38g.- Reward for submitting evidence on Agreement Restricting Competition.**

(1) Informant is a natural person who (...)

c) was the first to provide the Office with information on agreement restricting competition pursuant to the Article 4 paragraph 1 or pursuant to the provisions of the special legislation 27) parties of which operate on the same level of a production or distribution chain, namely:

1. document in written or electronic form being the decisive evidence on such violation, or
2. information and evidence decisive for conducting inspection pursuant to the Article 22a which should lead to acquisition of decisive evidence enabling to prove such violation».

<sup>31</sup> **Act. LVII of 1996, on the Prohibition of Unfair and Restrictive Market Practices**

**«Reward for the supply of indispensable evidence**

**Article 79/A (...)**

(2) Indispensable evidence shall also include information based on which the court issues a warrant to conduct an unannounced inspection in the course of which the Hungarian Competition Authority takes possession of evidence specified in paragraph (1). The evidence provided also qualifies as indispensable if it can be substituted by other evidence obtained subsequently by the Hungarian Competition Authority».

<sup>32</sup> **S.R.O. 406(I)/2014 Competition (Reward payment to informant) Regulations, 2014.**

**«2. Definitions. - (...)**

(d) "Information" means and includes material information about the involvement of undertaking in a prohibited activity, which is known by the undertaking's board of Directors, Management, and/or Employees but not by the public (...)

<sup>33</sup> «Infringements uncovered over the last decade demonstrate the lengths cartels will go in order to keep their arrangements secret. Efforts to conceal cartels have included: communicating through private email accounts and unregistered mobile phones; using encrypted messages and codenames (...) and hiding expenses relating to cartel meetings as other legitimate costs. Moreover, cartel meetings tend to occur in hotel rooms, private conference rooms and restaurants». Stephan, Andreas (2014). *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool? CCP Working Paper 14-3*, p. 10-11. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933).



chance for this information to be decisive and for the rewards to be granted. However, the Technical Secretariat should have the power to reject information that is not useful –and therefore, that won't justify the payment of a reward–, or information that cannot be corroborated, or whose corroboration is impracticable or will not add value to its investigation activities.

Certain information, such as testimonies, electronic communications or the schedules of meetings among competitors, may be corroborated through dawn raids performed by the Technical Secretariat or through information requirements, provided that the information submitted by the applicant is specific and plausible. In other cases, where the information is inaccurate or could not be verified by evidence, it would be considered of little use by the Technical Secretariat and will be discarded.

Regarding the opportunity for the submission of information, it is understood that the information may not be entirely in the possession or available to the applicant from the outset, therefore subsequent delivery is permitted. However, subsequent delivery due to the immediate impossibility of the applicant should not be confused with premeditated hiding or delay, which is not acceptable in any circumstances due to the fact that it may hinder the investigation tasks of the Technical Secretariat.

Depoorter and De Mot's study (2006) indicates that the amount of the reward to be paid should be negatively correlated with the period that the informant delays the submission of evidence, or acts opportunistically in opposition to the interests of the investigating authority<sup>34</sup>. In this sense, in order for the applicant's work to be meritorious of the payment of a reward, evidence must be presented in an integral, timely and complete manner. By doing so, the probability of detection and punishment of the collusive activity will increase. Therefore, the Technical Secretariat may give the applicant a reasonable period of time for the submission of pending information.

The figure below includes examples of information that can be considered useful or relevant and thus meritorious of a reward under the Antitrust Rewards Program.

[See figure on the next page]

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


<sup>34</sup> «(...) it might be in the interest of the whistleblower to stall in order to reduce uncertainty (gathering additional evidence) and increase the expected payoff (bigger fraud provides larger remuneration) (...). Also, the percentage could be inversely correlated with the delay in filing the claim (...).» Depoorter, B., & De Mot, J. (2006). *Whistle Blowing: An Economic Analysis of the False Claims Act*, p. 160-161. Available at: <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1087>

Figure 6: Decisive information under the Rewards Program

**Examples**

**Information that could be decisive:**

- ✓ Testimony of an employee or former employee of a company that describes in detail the collusion and identifies in particular:
  - What kind of behavior did the cartel develop?
  - What product or service was affected by the cartel?
  - Which companies and officials participated in the cartel?
  - What approximate period did the agreement comprise?
  - What geographical areas or scope (local, regional or national) would have been affected?
- ✓ E-mails exchanged between the commercial managers of two competing companies, agreeing the date and amount of the price increases.
- ✓ E-mails exchanged between a pharmacy chain and its supplier or distributor, asking the competing chain to respect agreed prices or promotions.
- ✓ The electronic calendar or agenda of an executive showing a secret meeting scheduled with her competitors.
- ✓ Hotel reservations or airfare from an executive attending a secret meeting with her competitors.




Elaborated by the Technical Secretariat

Figure 7: Non-decisive information

**Non-relevant information:**

- ✗ Publicly available information: “There are only 3 ice cream producers”, “There is a car manufacturers association”.
- ✗ Assumptions or suspicions of a cartel not supported on actual evidence: “Health insurance companies have the same price”, “Cinemas have raised the price of their tickets by 15%”, “A single telephone company has won similar public tenders for the last 5 years”.
- ✗ Information on potentially anticompetitive conduct not per se illegal: “The soda manufacturer has exclusive contracts with most restaurants in the district”, “The mall did not renew store rental contracts”.



Elaborated by the Technical Secretariat

### VIII. Criteria in the decision of granting a reward

Regarding the criteria for the decision of granting a reward, it is possible to distinguish two large groups: the group of those criteria linked to the value of the information and the group of criteria linked to the applicant's expectations.

The applicant's expectations are essential for determining the amount of the reward as, without the appropriate incentives, the applicant will not decide to cooperate with the authority. These factors are considered in Section 8 of the Guidelines. Stephan (2014) argues that certain costs related to dismissal, career ending, bankruptcy and the applicant's social and personal costs should be taken as a reference for the calculation of an appropriate rewards; as well as uncertainty about the effective payment of the expected amount<sup>35</sup>.

From the authority's perspective, it will only be willing to invest in rewards when this encourages the delivery of information valuable for the cartel's investigation, prosecution and sanction. The criteria set out in Section 8 of the Guidelines aim at this objectives, taking into account the nature, severity, impact and illicit benefits of the reported anticompetitive conduct, as well as the degree of collaboration deployed to facilitate the duties of the Technical Secretariat. Thus, the greater the evidence been presented in a timely manner, the greater the possibilities of the Technical Secretariat to detect the existence of a cartel promptly.

These are also the criteria used in other jurisdictions to determine the amount of rewards to be delivered. In the United Kingdom<sup>36</sup>, for example, among the factors to be taken into account in quantifying the reward is the value of the information and the extent of the damage caused by the reported cartel, as well as the efforts and risks assumed by the informant.

Moreover, the Guidelines state that, in order for cartels to be detected as soon as possible, there must be some form of sanction or penalty in the payment of the reward for the intentional delay in the delivery of evidence. This is in order to deter perverse incentives to obtain a greater reward by increasing the severity of the consequences of the collusive act<sup>37</sup>.

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<sup>35</sup> «Five main categories of whistleblower risks or costs can identified: Risk of Dismissal (...), Risk of Career End (...), Risk of Bankruptcy (...), Social pressures (...) and Family and personal pressures (...). So how high must a reward be in order to counter the dangers outlined above? As Kovacic suggests, 'a bounty arguably must be large enough to compensate the employee for liquidating her career and accepting the costs of social stigma that might result from informing». Stephan, Andreas (2014). *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool? CCP Working Paper 14-3*. p. 16-18. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933).

<sup>36</sup> «Where a reward is available, its amount will depend on a number of factors:

- the value of the information in terms of what we have been able to achieve from it
- the amount of harm to the economy and consumers which we believe the information given has helped to put a stop to and/or has helped to disclose.
- the effort you have had to invest in order to give us the information.
- the risk you have had to take in order to give us the information».

CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 4. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>37</sup> «The model illustrates the lack of urgency on behalf of the whistleblower upon discovering fraud. (...) In response to this effect, the government could adjust enforcement levels and reward shares to align private and social incentives. By taking into account the perverse incentives of the qui tam plaintiff, the FCA could be improved through mechanisms that punish delays in reporting or tie the reward to prevented damages». Depoorter, B., & De Mot, J. (2006). *Whistle Blowing: An Economic Analysis of the False Claims Act*, p. 157-158. Available at: <https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1087>.

On the other hand, the authority is the only one that can adequately estimate whether or not the information provided by the applicant generates added value to its investigation. Thus, for example, one factor to be considered for determining the payment of the reward and the amount to be delivered is the level of the authority's knowledge about the cartel revealed, that is, whether or not the authority has already launched an investigation in the market where the alleged infringement takes place. If the conduct reported by the applicant does not correspond to a market being investigated by the Technical Secretariat or no inspection or investigation action has been carried out, the applicant's information is likely to add greater value or be more decisive than information provided in the midst of an ongoing investigation linked to the same facts.

It is also recognized that in determining whether a reward should be awarded, the authority may use criteria of opportunity, priority and relevance of the information submitted for its investigation activities. In fact, considering that the authority has limited resources and so granting of benefits should be reserved only in cases where such an investment is justified in the benefit resulting from the prosecution of the most serious infringements. In this regard, the Technical Secretariat may privilege to allocate rewards, for instance, to cases related to products and services of the basic food basket, those involving a large number of affected consumers or those involving a broader geographical scope.

In this sense, criteria could be established to guide the action of the Technical Secretariat, but its decision is discretionary and not subject to appeal. Notwithstanding this, the Guidelines also seek to make the rewards program attractive and predictable, otherwise it would discourage the collaboration of informants that might facilitate the work of the Technical Secretariat.

Moreover, all competition authorities with reward programs that we got the opportunity to engage in dialogue with, recognize that the power to award rewards and the determination of the amount to be paid are under the discretion of the authority. This is expressly noted in some regulations such as of the United Kingdom's Competition and Markets Authority<sup>38</sup>.

#### **IX. Determination of the amount of the reward and method of payment.**

Rewards programs present two kinds of limits or caps on the payable amounts: base and variable amounts. Base amounts rely heavily on the budgetary limits of the authority that funds the program and that has to calculate the investment is willing to make. Variable amounts usually depend on a percentage of the fines that can be obtained by the authority or the State as a result of the informant collaboration.

The Peruvian Antitrust Rewards Programs has opted for a mixed system, which has a first base component and a second variable component that is granted only in some cases. In the first component of the reward cap, the applicant's incentives have been taken into consideration to ensure that her application is attractive. The objective of providing a base component is to provide certainty to the potential applicant that she will receive a reward provided that the

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<sup>38</sup> «It is essential to understand that rewards are granted at the discretion of the CMA. The CMA is entirely free to reject offers of information and it does not have to give reasons for doing so». CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 3. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

evidence she presents is conclusive, timely and of decisive usefulness to the investigation carried out by the Technical Secretariat. Such certainty about the final amount the applicant will receive and the opportunity for payment is enhanced when, instead of having to wait until the end of the administrative prosecution or until the actual collection of fines or compensations, the applicant receives a commitment to obtain a certain amount as soon as the information provided by her is corroborated.

Moreover, a partial down payment of the reward (base amount) may be made immediately after the signing of the Rewards Agreement between the applicant and the Technical Secretariat, after the authority has corroborated the information initially provided. The specific opportunities for effective payment may be adjusted according to the needs of the case, and will be considered in the Rewards Agreement. Notwithstanding what has been agreed in each case, it is envisaged that the Technical Secretariat will seek to prioritize the payment of a portion of the base amount in order to compensate to some extent the costs already incurred by the applicant; while the remainder of the approved base amount will be paid in two parts: one at the beginning of the administrative prosecution and the other when the fine is paid by one or more of the offenders (i.e., after the first or second administrative instances decisions, or after the subsequent judicial process has concluded).

In order to determine the limit or maximum amount of the base component of the reward, the risks to which the collaborator is subject for revealing the cartel and contributing to its pursuit have been taken into consideration. The main cost considered in this component is that of the applicant's unemployment, on the assumption that she must leave or be dismissed from her job in the event of the discovery of her collaboration with the Technical Secretariat.

For the calculation of the cap of the base amount, the simple average wages of managers of large Peruvian companies has been taken as a reference, amounting to PEN 20,747<sup>39</sup> [around USD 6,000]. This is based on the idea that an official at this level (e.g. a manager with knowledge but no involvement in the infringement) or an employee from a lower level can become a potential applicant under the Antitrust Rewards Program. It should be recalled that the rewards applicants may not be the ones that planned or implemented the cartel, as they could only apply for benefits under the Leniency Program. Therefore, it is unlikely that an applicant under the Rewards Program will be in a senior position at the management level (such as a CEO, Chairman, or Vice President of the Board).

For the period of unemployment, the average duration estimated by the National Institute of Statistics and Informatics (hereinafter, INEI) (2019)<sup>40</sup> at the local level corresponds to about 2.5 months, which would amount to a loss for a potential applicant of about PEN 50,000 [around USD 15,000]. However, this average period may underestimate the unemployment time that might face someone who reveals an infringement of their former employer. According to the whistleblower literature, it can be very difficult for an informant to find a new job at least in the

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<sup>39</sup> Ochoa, V. (November 13th, 2018). *Revenue: How much do managers earn in Peru?* "Gestión" Newspaper. Available at: <https://gestion.pe/economia/management-empleo/ingresos-ganan-gerentes-peru-249769>

<sup>40</sup> INEI. (2019). Labor Market Situation in Metropolitan Lima p 63. Available at: <https://www.inei.gob.pe/media/MenuRecursivo/boletines/informe-tecnico-de-empleo-lima-metropolitana-feb-mar-abr2019.pdf>

industry where she previously worked<sup>41</sup>. Considering this, the Guidelines have chosen to multiply by four the maximum amount of the reward, to reach PEN 200,000 [around USD 60,000]. It should be remembered that this is a maximum amount and in cases of lower costs assumed or expected by the applicant, the amount of the reward would be lower.

The limit of the base amount takes into account, in addition to the unemployment period, other direct costs that the applicant might face, such as legal counseling costs. While legal counseling is voluntary and does not necessarily relates to the costs faced by an alleged offender or a leniency applicant, if the rewards applicant proves such an expenditure, it could also be considered by the Technical Secretariat to determine the base amount of the reward, always within the above mentioned limit. The latter also applies to other costs that the applicant may incur as a result of her collaborative efforts, provided that she can adequately substantiate them.

On the other hand, the objective of introducing an additional component to increase the reward (variable or extraordinary) is to align the applicant's incentives with the success of the prosecution and sanction actions against the cartel revealed. In this way, the applicant is encouraged to help with the investigation and effective prosecution of the cartel she revealed, and with its proper sanction. It is for this same reason that the variable amount of the reward seeks to repay the applicant's active collaboration, particularly in complex cases, which could require, for example, that once the administrative prosecution has started, the applicant waives the confidentiality of her identity to enable the authority to prove the infringement and to ensure sanctions of those liable.

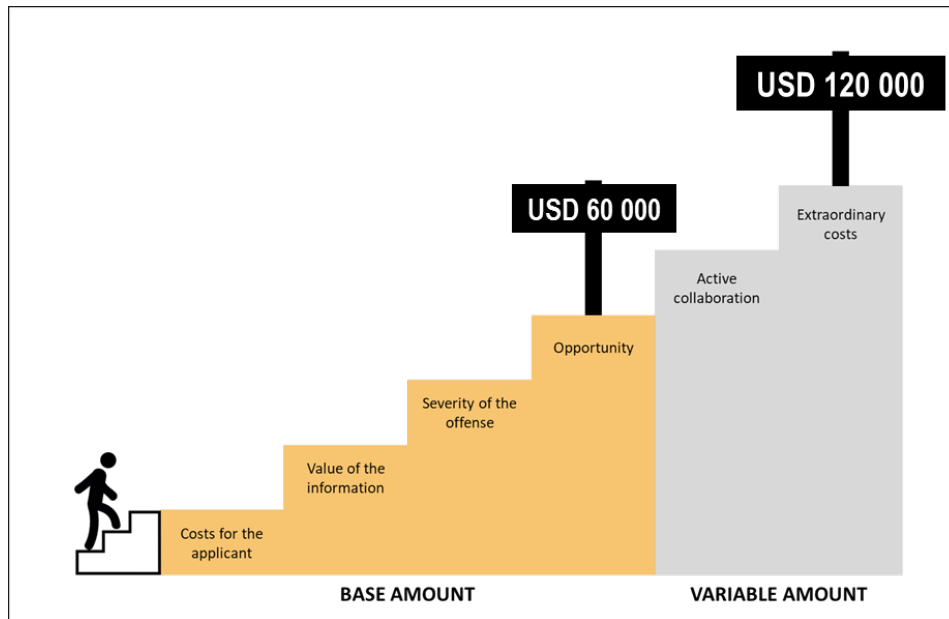
In addition, this variable component would offset the costs that applicants might incur and that might not be covered by the base amount approved by the Technical Secretariat. Indeed, if the collaborator must bear particularly significant costs to meet the requirements of the Technical Secretariat (for instance, if she lives or works abroad and needs to travel as requested by the authority, or if she needs to communicate through translators), as well as if it is subject to particularly serious retaliation actions, the Technical Secretariat will have incentives to offset these costs to ensure the effectiveness of its investigation. In this regard, Stephan (2014) contends that the ideal mechanism for achieving these objectives is to link the reward with the effective sanction of the cartel, crediting the applicant with a percentage of what was collected in fines or as a result of the plea agreements signed by offenders. This is the method used in some systems in the United States<sup>42</sup>. In this regard, the variable amount represents up to 5% of what infringing agents actually pay, as a result of fines imposed or as a result of settlements related to the conduct reported by the rewards applicant, and up to an additional maximum limit of PEN 200,000 [around USD 60,000].

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<sup>41</sup>«A further problem relates to whistleblowers' ability to seek reemployment following dismissal. The same US study found that most whistleblowers effectively become blacklisted from finding re-employment within their profession. Glazer and Migdal looked at what happened to 41 corporate informants who were dismissed or left following their whistleblowing. Two thirds had difficulty finding employment and of those, two thirds had to settle for employment in 'fields unrelated to their previous work'. Stephan, Andreas, *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool?* (January 15, 2014). CCP Working Paper 14-3, p. 16-17. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933).

<sup>42</sup>«Mechanisms that pay informants a proportion of fines or moneys recovered, such those in the US, may make it easier for rewards to reach the kind of levels necessary». Stephan, Andreas (2014). *Is the Korean Innovation of Individual Informant Rewards a Viable Cartel Detection Tool?* CCP Working Paper 14-3. p. 18. Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405933](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405933).

Figure 8: Amount of the reward



Elaborated by: The Technical Secretariat

In the United States, operational reward systems outside the antitrust realm use only one variable component based on the amounts to be collected by the authority as a result of the prosecution of offenders. These amounts are usually millionaire<sup>43</sup>. Other countries that have variable reward models in the field of Competition Law are: Hungary (1% of the fine imposed, but not to exceed 50,000,000 forints, approximately USD 185,040)<sup>44</sup> and Slovakia (1% of the imposed fine with the limit of EUR 100,000, approximately USD 114,500)<sup>45</sup>.

The United Kingdom's CMA, for its part, has only a base limit of up to 100,000 sterling pounds (about USD 133,417) and, in principle, makes the payment of the reward once the investigation is completed<sup>46</sup>. However, in a recent report, the CMA has warned that the level of rewards

<sup>43</sup> For example, under the False Claims Act, an informant may receive between 15% and 30% of the fines and penalties collected by the State. The same percentage range applies to reporting tax fraud. In the case of fraud or breaches of securities market rules against the Securities Exchange Commission (SEC) and reports of foreign corrupt practices, rewards can be between 10% and 30% of the collected fines. It is reported that in 2016, the US tax authority (IRS) paid \$61 million to whistleblowers, while the SEC paid \$57 million. Justice Department went to pay \$519 million under False Claims Act. See: Martin Kohn, Stephen (2017). *The New Whistleblower's Handbook*. Lyons Press, p. 10.

<sup>44</sup> Act. LVII of 1996, on the Prohibition of Unfair and Restrictive Market Practices

«Reward for the supply of indispensable evidence

Article 79/A. (3) The amount of the reward defined in this Article shall be one percent of the fine imposed by the Competition Council proceeding in the case, but it shall not exceed fifty million forints».

<sup>45</sup> 136/2001 Coll.

«Article 38g.

(3). Reward for an informant represents 1% of the total of fines imposed on all parties to the agreement restricting competition in the decision of the Office, but not more than EUR 100 000 (...)

<sup>46</sup> «The CMA offers financial reward of up to £100.000 (in exceptional circumstances) for information about cartel activity». CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 4: "The CMA cannot calculate 'up-front' what amount of reward you will get - in particular because it depends on the ultimate value of the information given which will only become fully apparent at the end of an investigation. It follows from this that we can only pay rewards at the end of the investigation». CMA. The CMA Guidance of Rewards for Information about Cartels, p. 1. Available at:

currently expected are too low and that the cap needs to be increased considerably<sup>47</sup>. In Pakistan, the reward amount also has a range between 200,000 and 5,000,000 rupees (i.e. between USD 1,642 and USD 41,043 approximately)<sup>48</sup>.

Considering the maximum reward amounts offered by other countries as a percentage of their GDP per capita, it is shown that Taiwan and South Korea offer very high maximum rewards, 5 or 6 times higher than other countries. If these countries are not considered, the maximum reward amount as a percentage of GDP per capita proposed in Peru is higher than the average of the maximum amounts offered by other countries:

**Table 1**  
**Comparison between maximum reward amounts and GDP per capita per country**

Country	Maximum rewards (USD) <sup>49</sup>	GDP per capita (USD) <sup>50</sup>	Relation
Pakistan	41,043	1,565	26.22
Slovakia	114,500	19,579	5.85
Peru	121,706	7,007	17.37
United Kingdom	133,417	42,580	3.13
Hungary	185,040	16,484	11.23
Taiwan	1,658,045	25,008	66.30
South Korea	2,725,891	33,320	81.81
Estimated	711,377	20,792	30.27

Source: Rewards Programs around the World, World Bank, European Central Bank, Central Bank of the Republic of China (Taiwan)  
Elaborated by the Technical Secretariat

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>47</sup> «The current whistleblowing regime for competition policy is inadequate in a number of respects. First, compensation may be nugatory in relation to the career risk involved for a high proportion of potential whistleblowers (...). The £100,000 limit that it has set on such payments is far too low. It is unlikely even to cover the loss that a typical whistleblower would incur from losing his or her job. It is very unlikely to compensate either for the resulting damage to the whistleblower's career prospects, or for the distress suffered. Neither does it reflect the wider economic and social benefits that attach to successful enforcement of the law.

The maximum compensation should be set at a much higher level. It should be commensurate with the financial impact, the loss of career prospects, and the distress that whistleblowers may encounter». CMA (2019). *Letter to the Secretary of State for Business, Energy and Industrial Strategy*. 21 February 2019, p. 26-28.

<sup>48</sup> **«3. Salient features of the Scheme**

(1) Salient features of the Scheme are as under:

The Scheme involves the payment of rewards for an amount ranging from a minimum of Rs. 200,000 and maximum of five million rupees».

**Competition Commission of Pakistan. Revised Guidelines on "Reward Payment to Informants Scheme".**

<sup>49</sup> Exchange rate to dollars according to Google Currency Converter. November 18th, 2019.

<sup>50</sup> GDP per capita in 2019 according to Statista.



## X. Collaboration duties

As a rewards system that seeks to produce information useful to the authority, it is expected that the payment of rewards is conditional on the fulfilment of the duties of collaboration with the Technical Secretariat. To increase predictability for the benefit of the applicant, Section 10 contains a list of possible collaborative actions that the authority may require from her in the complying with her collaboration duties.

Likewise, in jurisdictions as Taiwan it is mentioned that the authority may deny or order the restitution of the reward when the informant has submitted false information or adulterated evidence, and where she has disclosed details of the facts reported to the authority<sup>51</sup>. Similarly, the Pakistani Act mentions that, if the evidence submitted by the applicant is false, fabricated or inaccurate, the Commission is empowered to revoke the payment of the reward and to demand any paid amount to be returned<sup>52</sup>. In any event, the informant is obliged to remain available and cooperate continuously with the Competition Commission, unless it determines otherwise<sup>53</sup>.

These collaboration duties seek to encourage applicants to provide all relevant information that they can collect and keep their interests aligned with those of the Technical Secretariat.

## XI. Disqualification of the applicant

Establishing a reward system can also lead to perverse incentives for reward-hunters that provide false information in order to achieve a monetary prize, which could even create risks of prosecuting innocent individuals and firms<sup>54</sup>.

To counter this risk, the Guidelines provide for the possibility of imposing certain sanctions<sup>55</sup> aiming at deterring malicious applications. The purpose of establishing the loss of the reward and

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<sup>51</sup> **Order Kung Fa Tzu N°10415608631, Regulations on Payment of Rewards for Reporting of Illegal Concerted Actions**

«**Article 9**

If informants' reporting has any one of following conditions, the competent authority shall not grant any reward or shall recover granted rewards:

1. situations specified in Article 4;
2. informants disclose directly or indirectly to outsiders reported facts or any content thereof before the competent authority imposes fines;
3. informants use counterfeited or altered evidence, and are convicted in a final and binding judgment».

<sup>52</sup> **S.R.O. 406(I)/2014 Competition (Reward payment to informant) Regulations, 2014.**

«**6. Payment of Reward.- (...)**

(2) In the event, the Commission comes to a conclusion that the information provided is false, fabricated or inaccurate, the Commission may by order direct the Informant to return the amount of reward».

<sup>53</sup> **S.R.O. 406(I)/2014 Competition (Reward payment to informant) Regulations, 2014.**

«**4. Approaching the Commission. - (...)**

(5) The Informant shall remain available and continuously cooperate with the Commission unless the Commission issues the Order».

<sup>54</sup> «The social costs of offering whistleblower rewards are somewhat less intuitive. These costs stem from the risk that the incentive of receiving a whistleblower reward may tempt employees to make false reports, some of which succeed and lead to the socially undesirable imposition of a sanction on an innocent employer». Givati, Yehonatan (2017). *Of Snitches and Riches Optimal IRS and SEC Whistleblower Rewards*, p. 39. Available at SSRN: <https://ssrn.com/abstract=2945633>

<sup>55</sup> «[...] In other words, the introduction of a sanction for an unsuccessful report reduces the social cost involved with the employment of whistleblower rewards, which makes rewarding whistleblowers as a law enforcement strategy relatively more desirable». Givati, Yehonatan (2016). *A Theory of Whistleblower Rewards*, p. 11. Available at SSRN: <https://ssrn.com/abstract=2682939>

possible criminal, administrative and civil consequences for the presentation of false information also seeks to reduce unnecessary administrative burdens for the authority, as it will no longer devote resources and time to malicious applications.

In addition, disqualification is appropriate for those who infringe the duties of collaboration and introduce false or misleading information, as well as for those who repeatedly file impertinent or irrelevant applications generating unnecessary to the Technical Secretariat. Likewise, the Securities Exchange Commission (SEC) in the 2018 Annual Report to the United States Congress<sup>56</sup> has recommended the disqualification of the applicant who has applied on three occasions to rewards with irrelevant or non-pertinent information.

## XII. Confidentiality rules

As noted above, the confidentiality of the applicant's identity and of the information provided is crucial in ensuring the operation of the Rewards Program. If the applicant's identity is revealed, the applicant may face employment, financial, legal or social retaliation from his employer, co-workers and others<sup>57</sup>. In this sense, guaranteeing confidentiality is of vital importance to ensure the effectiveness of the investigation actions of the Technical Secretariat.

Likewise, in the United Kingdom, the CMA is under an obligation to protect the identity of the informant if so requested. In this scenario, only the selected staff of the competition authority will maintain communications with the informant<sup>58</sup>. The Slovak Commission's confidentiality policy is similar. In addition, the individual is kept informed about the procedure and the investigation<sup>59</sup>.

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<sup>56</sup> «The proposed rules would codify the Commission's current practice with respect to barring applicants who submit false, fictitious, or fraudulent statements in their dealings with the Commission and permit the Commission to permanently bar any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three award applications that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission action» US Securities and Exchange Commission. (2018). 2018 Annual Report to Congress, p. 26. Available at: <https://www.sec.gov/sec-2018-annual-report-whistleblower-program.pdf>

<sup>57</sup> «(...) Being certain that the information provided remains confidential, along with one's identity, is an essential factor in disclosing wrongdoing. Maintaining confidentiality is the first element of a whistleblower protection system, when this fails, reprisals may ensue» OECD. (2009). Committing to Effective Whistleblower Protection – highlights, p. 7. Available at: <https://www.oecd.org/corruption/anti-bribery/Committing-to-Effective-Whistleblower-Protection-Highlights.pdf>

<sup>58</sup> «For this reason only specially trained officers, mostly with a law enforcement background, will deal with you. They will very carefully safeguard any information you give to protect your identity from disclosure». CMA. *The CMA Guidance of Rewards for Information about Cartels*, p. 3. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299411/Informant\\_rewards\\_policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299411/Informant_rewards_policy.pdf)

<sup>59</sup> **Act. 136/2001 Coll. On Protection of Competition.**

**«Article 38g.- Reward for submitting evidence on Agreement Restricting Competition.**

(4) The Office shall protect the identity of the informant if so requested.

Antimonopoly Office of the Slovak Republic. *Cartel Informant Reward*:





**“Informant protection**

- If so requested by the informant, his identity will be protected from disclosure (...).
  - The Office protects the informant's identity in accordance with the legislation in force and the informant will be properly informed on the further procedure and relating facts on the first contact with the Office».




The duty of confidentiality must also be maintained throughout the prosecution stage for the reasons set out above. This, however, won't obstruct the need of the Technical Secretariat to incorporate certain information into the main file in order to enable the exercise of the rights of defense of the defendants. In this case, efforts should also be made to safeguard the confidentiality of the applicant's identity, unless there is an express agreement between the Technical Secretariat and the applicant to disclose her identity when necessary.

Figure 9: Duties of the applicant and sanctions in the event of non-compliance

**Duties of the applicant:**

- ✓ To collaborate with the investigation and submit decisive information. 
- ✓ To keep a consistent behavior and do not obstruct the prosecution. 
- ✓ To act in a candid, truthful manner. 
- ✓ To not disclose her identity or information submitted to the authority to third parties. 

**Sanctions in the event of non-compliance:**

- ✗ Total or partial loss of the reward. 
- ✗ Disqualification. 
- ✗ Administrative, civil or criminal liabilities, if applicable. 

Elaborated by the Technical Secretariat

### XIII. Other rights of the applicant

Applicants have the right, but not the obligation, to procure themselves with legal advice for the processing of their applications. The Guidelines provide that applicants may receive guidance from the Technical Secretariat so those who would not want to invest in hiring legal counsels to help them with their applications for rewards won't be discouraged.

On the other hand, the provision that the Technical Secretariat will not be able to use the information submitted pursuing an application that was rejected seeks to ensure that the authority won't act as a free rider. At the same time, this rule gives greater certainty to the applicant, in the sense that it assures that the Technical Secretariat will objectively evaluate her application and would not reject information that is useful for its investigations.



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Finally, the right to be informed about the status of the reward application allows to provide greater incentives to the applicant, as she will not be left in the uncertainty about whether her application was accepted or not, as well as about the amount and opportunity of the payment of the reward.

#### XIV. Dissemination of the Rewards Program

An OECD study analyzing the informant system in Peru (“Implementing Whistleblower Protection in Peru, 2017<sup>60</sup>”) proposes the implementation of advertising activities to change the perception about informants. The purpose of this change is to reduce the social costs associated with the stigmas against the individual that disclosed illegal activities. Therefore, it is necessary to encourage such practices that are ultimately beneficial to competition, consumers and citizens in general.

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<sup>60</sup> «(...) To avoid prospective professional marginalization of whistleblowers, Peru could undertake awareness-raising campaigns, allow for fair compensation to whistleblowers suffering prospective losses of revenue, and ensure fair recruitment of civil servants based on merit and on commitment to promoting the public interest».

OECD (2017). *OECD Integrity Review of Peru: Enhancing Public Sector Integrity for Inclusive Growth*. OECD Public Governance Reviews, OECD Publishing, Paris, p. 86. Available at: <http://dx.doi.org/10.1787/9789264271029-en>

## ANTITRUST REWARDS PROGRAM GUIDELINES

### 1. Purpose of the Program

In accordance with Section 28 of the Competition Act, the Rewards Program grants financial incentives to natural persons who, complying with the conditions set forth in these Guidelines, collaborate with the Technical Secretariat of the Commission of Defense of the Free Competition of Indecopi by providing decisive information to detect, investigate and effectively prosecute anticompetitive horizontal agreements deemed illegal per se (a.k.a. hard-core cartel), with the purpose of increasing the probability of detection of these illegal practices and deter economic agents from incurring them.

### 2. Material scope

The Rewards Program applies only in relation to per se illegal cartel behavior as listed in Section 11.2 of the Competition Act.

### 3. Personal Scope

3.1. Rewards will be accessible only to natural persons, nationals or foreigners, excluding:

- a) Legal persons.
- b) Natural persons that, as economic agents, incur in the infringement reported.
- c) Natural persons that, acting in representation, management or direction of other natural or legal person, incur in the planning or implementation of the infringement reported. Persons who only know about the illegal conduct but don't participate on it are not excluded, nor are excluded those persons who exclusively held a peripheral role, only executing a conduct with no actual capacity of control or decision over its planning and implementation.
- d) Natural persons that act as planners, intermediaries or facilitators of the infringement reported.
- e) Attorneys, compliance officers or compliance committee members, in relation to privileged information obtained in the exercise of these functions.
- f) Natural persons who have been disqualified from the Rewards Program according to Section 10 of these Guidelines.
- g) Indecopi officials, their spouses and relatives up to the fourth degree of consanguinity and second degree of affinity.
- h) Public officials and employees, in relation to information obtained in the exercise of their duties.

3.2. In the cases listed in the previous paragraph from a) to d), the Technical Secretariat may suggest the interested party to apply to the Leniency Program, as provided in Section 26 of the Competition Act and the Leniency Program Guidelines.

#### **4. Discretion of the Technical Secretariat in the determination and granting of a reward**

- 4.1. In the exercise of a discretionary power, the Technical Secretariat may grant a reward to the applicant who provides decisive information as stipulated in Section 7 of these Guidelines. The amount and opportunity of the payment of the reward is subject to the provisions in Sections 8 and 9 of these Guidelines.
- 4.2. In the exercise of a discretionary power, the Technical Secretariat may deny a reward, in particular, when the information provided by the applicant cannot be corroborated, is irrelevant for the investigations of the Technical Secretariat or does not add a significant value to its investigation and prosecution actions. In its decision to grant or to deny the reward, the Technical Secretariat will express its reasons.
- 4.3. The decision to grant or to deny a reward is not subject to appeal.

#### **5. Pre-application queries**

- 5.1. Before introducing a formal request for rewards, the potential applicant may contact the Technical Secretariat in order to verify if her application would be within the scope of the Program and if the information she intends to provide has sufficient value for the investigation priorities of the Technical Secretariat. This first query can be carried out anonymously through a representative, who declares under oath that he acts in good faith and on behalf of a potential rewards applicant.
- 5.2. After the query referred to in the previous paragraph, the Technical Secretariat can arrange a meeting at the premises of Indecopi so that the interested party can formalize her application for rewards.

#### **6. Application to the Rewards Program. Processing of the application.**

- 6.1. The application for rewards is submitted in writing at the Indecopi front desk, electronically through the email account or web form authorized by the Technical Secretariat, or in person before the Technical Secretariat at Indecopi premises.
- 6.2. When a reward application is submitted at the Indecopi front desk, it is signed by the rewards applicant or by a duly identified representative or legal advisor, attaching a sealed envelope containing the applicant's contact details and the information related to the infringement being reported. Once the request has been submitted, the Technical Secretariat contacts the interested party to arrange a meeting where it will grant her in person her identification code or pseudonym.
- 6.3. If the application is submitted in person, the Technical Secretariat will record two minutes: the first one, with the applicant's identification information, the applicant's contact information and her code name or pseudonym; and a second one, listing all pieces of information introduced by the applicant, including documents or copies and her written or recorded testimony. Both minutes must be executed by the applicant and the designated official of the Technical Secretariat.

- 6.4. The Technical Secretariat will immediately inform the applicant about her initial collaboration duties, independently of the subsequent information requirements, summons or meetings that the Technical Secretariat might require under the collaboration duties the applicant is committed to under the Rewards Program.
- 6.5. The Technical Secretariat might keep audiovisual records of the meetings held with the interested party or their representatives in the processing of an application for rewards.
- 6.6. It is not a requirement to submit an application for rewards to previously report the possible infringing behavior through the internal procedure for inquiries or complaints established by the interested party's employer.
- 6.7. The application for rewards submitted, the minutes, the testimonies, records and all the information provided by the interested party in the processing of her application for rewards are kept confidential by the Technical Secretariat, under responsibility. The Technical Secretariat may introduce certain relevant information to the case file of the administrative sanctioning procedure against the members of the cartel revealed by the applicant, guaranteeing the confidentiality of the applicant's identity as feasible, unless the latter waives such confidentiality, in accordance with the provisions of Section 12 of these Guidelines.

## **7. Information to be provided by the applicant**

- 7.1. The applicant provides the information in her possession at the time of submitting her application regarding the possible anticompetitive conduct, including the identification of the type of conduct performed, its object, geographical and temporal scope, as well as the identity of colluding persons and firms, including facilitators, and of those involved in the planning, execution, implementation, facilitation or concealment of the cartel. The information provided can be subsequently supplemented at the initiative of the applicant or at the request of the Technical Secretariat.
- 7.2. The information provided by the applicant may consist of her own testimony, as well as documents, files, records and any other additional material that is not publicly available and that may contribute to detect, investigate and effectively prosecute a cartel. For guidance, the interested party may submit the following information:
  - a) Emails, instant messaging records, text messages, audio or video messages, messages through social networks, letters or any means of communication.
  - b) Meetings records or minutes.
  - c) Physical or electronic agendas, physical or electronic schedules, or any activities scheduling system.
  - d) Flights, ground or other transportation tickets linked to the activities of the cartel.
  - e) Reservations and entry tickets to hotels, conference rooms and similar lodgings and gathering centers.
  - f) Bills, receipts and others linked to the activities of the cartel.

g) Any other communication, document or relevant information source related to the agreements or practices among cartel participants, and the persons that participated in its planning, execution, facilitation or concealment.

7.3. The applicant may deliver more information after submitting her application as soon as it is available to her and within the timeframe established by the Technical Secretariat. Concealing information or unauthorizedly coordinating with third parties may lead to the rejection of the application or the loss of any potential rewards.

7.4. The Technical Secretariat rejects the rewards application, in particular, when the information provided by the applicant is dubious, generic, inopportune, impossible or difficult to verify or, in general, when it is of little value for its investigation and prosecution activities against cartels.

## **8. Criteria in the decision of granting a reward**

8.1. The Technical Secretariat approves to grant a reward when it considers that the information presented by the rewards applicant contributes decisively to the detection, investigation and effective prosecution of an infringement under the scope of these Guidelines.

8.2. To decide whether the information provided is decisive, the Technical Secretariat assesses its credibility, specificity and timing, and also its oldness, severity, scope and impact of the revealed cartel, as well as the information available to the Technical Secretariat as a product of its own actions of investigation, leniency applications, or previous requests for rewards being processed.

8.3. To determine the amount of the reward, the Technical Secretariat considers, among others, the added value of the information provided as indicated in the preceding paragraph, as well as the direct costs and risks assumed by the applicant in his personal and professional fields. If the applicant wants the Technical Secretariat to consider her legal counseling fees, these must be supported in accordance with the Directive on Liquidation of Legal Fees and Costs of INDECOPI, approved by Directive No. 001-2015-TRI-INDECOPI, or the regulations that may replace or modify it.

8.4. The payment of the reward will be conditioned to the corroboration of the information provided. If the Technical Secretariat detects the falsehood or misrepresentation of the information provided or other types of fraud, it may deny or revoke the payment authorization and, if the payment has already been made, it would require its reimbursement. In the latter case, the Indecopi Legal Office may start legal actions to ensure proper restitution.

8.5. The decision of granting or refusing a reward, as well as the amount of the reward, is discretionary and belongs only to the Technical Secretariat, based on its assessment on the opportunity, priority and relevance of the information provided and its value to its investigation duties. The decision over these aspects is not subject to appeal.



8.6. Exceptionally, more than one request for rewards may be processed for the same infringement, when the information provided by a new applicant is particularly decisive and produces significant added value to the investigation and prosecution tasks of the Technical Secretariat.

## 9. Determination of the amount of the reward and method of payment.

9.1. The reward consists of a base amount and a variable amount.

9.2. The base amount has a cap of two hundred thousand soles (S/ 200,000.00) [around USD 60,000] and will be determined by the Technical Secretariat according to the criteria outlined in Section 8 of these Guidelines. The variable amount is extraordinary in nature and has a cap of 5% of the amount effectively paid by the offenders, up to two hundred thousand soles (S/ 200,000.00) [around USD 60,000].

9.3. Unless otherwise provided in the Rewards Agreement concluded between the applicant and the Technical Secretariat, the base amount of the reward is paid as follows:

- a) up to ten percent (10%) immediately after the signing of the rewards agreement;
- b) up to thirty percent (30%) immediately after the notification of the decision to present administrative charges against the offending parties;
- c) the remaining of the base amount, within sixty (60) days after the effective payment of fines or commitments under settlements following the administrative sanctioning proceedings against the offending parties.

9.4. The variable amount can be granted in cases of exceptionally active and valuable collaboration by the applicant, particularly when the applicant voluntarily renounces the confidentiality of her identity as a collaborator and the Technical Secretariat verifies that she has assumed particularly significant risks and costs in fulfilling her collaboration duties in excess of the base amount approved.

9.5. The conditional approval of the payment of a variable amount can take place when the Technical Secretariat deems it appropriate, even during the sanctioning administrative procedure started against the offending parties. Subject to availability, the variable amount is paid within sixty (60) days after fines or settlements have been effectively paid and not challenged on appeal or otherwise.

9.6. The payment of the reward will be fulfilled, at the choice of Indecopi, by means of electronic transfer, deposit in a bank account or other mechanism that guarantees the record of the payment made, ensuring to keep the identity of the collaborator safe, in accordance with the administrative provisions issued by Indecopi for this purpose.

9.7. Notwithstanding the foregoing paragraphs, the determination of rewards by the authority and its effective payment are subject to the budgetary availability of Indecopi.

## 10. Collaboration duties

- 10.1. The rewards applicant is compelled to actively collaborate with the Technical Secretariat from the submission of her application, during the investigation stage and even during the administrative prosecution of the offending parties.
- 10.2. Among other obligations, the collaboration duties of the applicant include the following:
- a) Provide, in a truthful, complete and accurate manner, all relevant information under her possession or knowledge that may contribute to the detection, investigation and effective prosecution of the cartel revealed, including information obtained during the investigation or administrative prosecution of the offending parties.
  - b) Provide in a truthful, complete and exact manner all the additional information required by the Technical Secretariat under her possession or knowledge.
  - c) Attend interviews and meetings as required by the Technical Secretariat.
  - d) Collaborate with the Technical Secretariat in the corroboration of the information provided.
  - e) Not to obstruct or hinder dawn raids and other investigation activities carried out by the Technical Secretariat.
  - f) Provide her testimony truthfully, completely and accurately before the Technical Secretariat, the Commission for the Defense of Free Competition, or another administrative or judicial authority, if required.
  - g) Not to lie, hide, falsify or destroy information linked to the cartel reported.
  - h) To keep a conduct consistent with her collaborating status at all times, specially by refraining from denying or discussing the facts reported in the rewards application, particularly during the administrative prosecution stage.
  - i) If applicable, to cease all form of participation in the cartel revealed.
  - j) To keep her collaborator status and the information submitted confidential, unless expressly authorized in writing by the Technical Secretariat, in accordance with Section 12 of these Guidelines.
  - k) Other specific obligations of collaboration as indicated by the Technical Secretariat in the Rewards Agreement.
- 10.3. The payment of the reward is conditioned to the fulfillment of the duties of collaboration. The granting of a reward and the amounts effectively paid may be revoked in the event of default, in accordance with the provisions of Section 8.3 of these Guidelines.

## 11. Disqualification of the applicant

- 11.1. The applicant may fully or partially lose the reward if she fails to comply with her collaboration duties as provided in Section 10 of these Guidelines, especially if she submits false or fraudulent information to the Technical Secretariat; and will also be subject to administrative liability for incurring the infringement defined in Section 46.7 of the Competition Act, aside from the applicable criminal and civil liabilities.
- 11.2. In the case referred to in the previous paragraph, and also when the same applicant has submitted three (3) applications that have been rejected for introducing irrelevant or non-pertinent information, the Technical Secretariat may decide the disqualification of the

applicant to participate in the Rewards Program and reject subsequent applications that she may submit.

## **12. Confidentiality rules**

- 12.1. The applicant's personal identity and the information provided will be kept under strict confidentiality and protected by the Technical Secretariat, under responsibility.
- 12.2. The information on the identity of the applicant is confidential and is stored physically or digitally in a secure space of restricted, controlled and exclusive access to officials previously designated by the Technical Secretariat. The applicant for rewards will be identified with a password or pseudonym from the moment she formalizes her application, as provided in Section 6 and following the template in Annex 1 of these Guidelines.
- 12.3. The application for rewards will be processed in an independent confidential file which will include all the information provided by the applicant and subsequent actions carried out in processing her application. The Technical Secretariat limits access to this file to the minimum number of staff that is deemed necessary.
- 12.4. The applicant may voluntarily give up the confidentiality of her identity and disclose her status only with prior and express written authorization of the Technical Secretariat. The Technical Secretariat may temporarily require the applicant not to disclose her identity and status in order to safeguard the effectiveness of its investigation. Unauthorized disclosure of the identity of the applicant is subject to the administrative, criminal and civil liabilities provided by law.
- 12.5. Notwithstanding the previous paragraph, the Technical Secretariat may introduce a copy of all relevant information provided by the applicant into the main file of the administrative prosecution, ensuring adequate measures to protect the applicant's identity.

## **13. Other rights of the applicant**

- 13.1. To apply to and access the Rewards Program, the applicant is not required to be represented by a lawyer.
- 13.2. The applicant can request the Technical Secretariat to give back the information she provided if her application is rejected. The Technical Secretariat gives back the information within ten (10) business days. The returning of information does not limit the power of the Technical Secretariat to use information related to the cartel revealed by the applicant that has been accessed through its own investigation actions, applications for benefits under the Leniency Program, additional applications for rewards or other sources.
- 13.3. The applicant may contact the Technical Secretariat to find out the status of her rewards application and of the administrative prosecution started against the offending parties.



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#### 14. Dissemination of the Rewards Program

The Technical Secretariat and Indecopi carry out regular dissemination and promotion activities on the Rewards Program in order to increase awareness about it and encourage the participation of potential applicants.



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**ANNEX 1: Minute of granting of code or pseudonym to the Rewards Program Applicant  
[Template]**

**CONFIDENTIAL**

In the city of \_\_\_\_\_ (city), at \_\_\_\_\_ (hour), on \_\_\_\_\_ (date), the signatory parties met in \_\_\_\_\_ (address), in their capacity as Applicant to the Rewards Program and representative of the Technical Secretariat of the Commission for the Defense of Free Competition, according to the Rewards Program provided by Section 28 of the Competition Act and the Rewards Program Guidelines.

In this context, this Minute grants a code/pseudonym to the applicant, whose identity information is indicated below and will remain confidential:

Full Name:

ID Number:

Phone Number:

E-mail address:

Address:

Bank and Account number:

The following code/pseudonym is assigned to the Rewards Program applicant: \_\_\_\_\_, for the purpose of protecting her identity, as established in Section 28 of the Competition Act and as provided in the Antitrust Rewards Program Guidelines.

**TECHNICAL SECRETARIAT**

**APPLICANT**



**ANNEX 2: Minute of submission of information under the Rewards Program [Template]**

**CONFIDENTIAL**

In the city of \_\_\_\_\_ (city), at \_\_\_\_\_ (hour), on \_\_\_\_\_ (date), the signatory parties met in \_\_\_\_\_ (address), in their respective capacities as Applicant to the Rewards Program and representative of the Technical Secretariat of the Commission for the Defense of Free Competition, according to the Rewards Program provided by Section 28 of the Competition Act and the Antitrust Rewards Program Guidelines.

In this context, this Minute attests that the Rewards Program Applicant has declared the following:

- Regarding the anticompetitive conduct revealed:
- Regarding the affected products/services and the affected market:
- Regarding the offending companies:
- Regarding the persons that participated in the infringement and other facilitators or collaborators:
- Regarding the affected geographical areas:
- Regarding the means of communication and contact among the parties involved:
- Regarding the period when the agreement was carried out:
- Regarding the time and manner in which the applicant received notice or information about the cartel:

In addition, the Applicant submitted the following information:

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(Examples: E-mails, instant messaging, text messages, audio or video messages, messages from social networks, letters or any sort of communication, meeting records or minutes, physical or electronic agendas, physical or electronic schedules, or any schedule programming system, transportation tickets, reservations to hotels, bills, etc.)

The Applicant declares that she is committed to obtain and provide the following information:

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PERÚ

Presidencia  
del Consejo de Ministros

INDECOPI

The Applicant declares that she has committed to actively collaborate with the investigation of the Technical Secretariat, fulfilling her collaboration duties as provided by Section 10 of the Rewards Program Guidelines.

The Applicant states, under oath, that all the information provided is truthful.

It is stated that the interview with the Applicant has been registered in an audiovisual record attached to this Minute.

At \_\_\_\_\_ (hour), on \_\_\_\_\_ (date), the meeting between the Rewards Program Applicant and the representative of the Technical Secretariat of the Commission for the Defense of Free Competition was concluded, signing this minute as an approval of its content.

**TECHNICAL SECRETARIAT**

**APPLICANT**



EL PERÚ PRIMERO



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