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Guidelines for Competition Law Compliance Programs

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On June 3rd 2020, the Guidelines for Competition Law Compliance Programs (the “Guidelines”) were approved by the Commission for the Defense of Free Competition (the “Commission”) of the National Institute for the Defense of Free Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* – “INDECOPI”).

Below is a summary of the Guidelines' principal aspects:

1. What is the purpose of the Guidelines?

The Guidelines provide orientation to companies on the benefits of implementing a competition law compliance program (the “Compliance Program”) that is specifically designed for their business activities and is internalized by all their employees. It aims to achieve a change of culture inside organizations and the attitude of its staff.

2. What is a Compliance Program?

It is a self-regulation mechanism whose purpose is to guarantee that organizations comply with their legal obligations sustainably (in this case, with the Unique Ordered Text of the Law for the Repression of Anticompetitive Behavior (*Texto Único Ordenado de la Ley de Represión de Conductas Anticompetitivas*) approved by Supreme Decree N° 030-2019-PCM) as well as the companies' voluntary commitments). It is generally composed of a set of internal measures such as policies, rules, guidelines, and other mechanisms.

3. What are the essential components of the Compliance Program?

The Commission suggests that the Compliance Program contain the following components:

- a. A clear commitment to follow the Compliance Program, demonstrated by the members of senior management: Among other

possibilities, this could be proven through: (i) board meeting minutes or other official documents that denote the approval of the Compliance Program; (ii) a periodic elaboration, reviewal and evaluation of compliance reports; (iii) senior management participation in training; (iv) allocation of financial resources to ensure the fulfillment of the Compliance Program; and (v) the placement of high hierarchical positions to the compliance officer or committee that will give them the authority and autonomy for their functions.

- b. Identify and manage current and potential risks: The following method will be considered: (i) determine who are involved in the risk areas; (ii) set up processes that identify the risks; (iii) identify, analyze and assess those risks considering their causes, probability of occurrence and their effects; (iv) control the identified risks; (v) make a periodic revision; and (vi) document the risk management.
- c. Implement internal rules and protocols: The aim is to promote the draft of documents detailing which mechanisms will eliminate or mitigate the risks of non-compliance with the competition law. These documents must be communicated to the employees of the company in a transversal, periodic, and simple way and will be distributed by members of senior management.
- d. Training: Events will be carried out to disseminate relevant information to all employees about the Compliance Program, as well as performance evaluations may be implemented to examine their understanding of the program. This training must be permanent and documented.
- e. Continuous review and updates of the Compliance Program: There must be a regular review of the Compliance Program, which allows adaptation to any changing circumstances (e.g. due to changes in the market structure) and to prove commitment in its implementation.
- f. Audits: The implementation of an audit is necessary to collect evidence and evaluate the performance of the Compliance Program based on established criteria. It is advisable to carry out these reviews annually by an external advisor.
- g. Consultation and complaint procedure: It is necessary to provide a hotline for queries and complaints, through which employees can consult on what measures to adopt in any non-compliance situation or to report potential infractions. The company must guarantee protection against retaliation.
- h. Official or Compliance Committee: They must be placed in high hierarchical positions of the company and have direct access to other relevant corporate bodies. Among others, they must comply with these functions within the company: (i) identify and assess their risks; (ii) assign the responsibilities of the Compliance Program to all

the staff; (iii) advise on the implementation of the Compliance Program; and, (iv) issue a periodic report on the performance of the Compliance Program.

4. What are the complementary components of a Compliance Program?

- a. Competition Manual: Among others aspects, this document will contain descriptions of the requirements of the legislation applicable to the company, the identified obligations to be performed by the staff (and their practical application), the consequences for non-compliance with the provisions in the document, as well as information about the available confidential mechanisms for queries and reports.
- b. Incentives for employees: Different incentives should be used to encourage the participation of employees in the Compliance Program, such as (i) recognition mechanisms of the commitment when complying with the Compliance Program; (ii) job promotions that consider the performance of the employee under the Compliance Program; or (iii) reminders regarding the compliance; among others.
- c. Disciplinary measures: It is recommended to implement an internal code of conduct that both deters any possible offender and shows the true commitment by the company to integrate and strengthen the Compliance Program. This code should be applied on equal terms to all employees, including senior officials.

5. What are the advantages of implementing a Compliance Program?

The advantages of an effective Compliance Program are:

- a. Early detection of potential breaches of the law that allows an earlier and faster implementation of mitigation measures.
- b. It could be eventually considered by the authority as a mitigating factor to reduce the sanction. The following factors may be considered when the Compliance Program is examined:
 - If the essential components were fulfilled;
 - If the infringement was isolated (this implies that senior management has not participated in the offense);
 - If prompt action was taken against the aforementioned infringement.

If these criteria are met, the Commission may grant a reduction between 5% to 10% of the total applicable fine. This percentage will vary according to the period of time since the violation has been identified and duly reported to the authority and the effectiveness of the actions taken to cease the infringement.

6. Is it mandatory to have a Compliance Program?

The Guidelines are not mandatory. However, it is highly recommended to carry out this type of program to reduce the possibilities of competition law breaches and to access the benefits described above. These advantages are not limited to the company and its business partners, as it also extends to consumers and society.

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For any clarification or additional information regarding the content of this memorandum, please contact Mr. Carlos Patrón (cap@prcp.com.pe), Mr. David Kuroiwa (dkh@prcp.com.pe), Mr. Giancarlo Baella (gbp@prcp.com.pe); or Ms. Jimena Pérez (jpd@prcp.com.pe). To obtain a copy of the Guidelines (in Spanish), please contact Mr. Paul Manrique at: pmb@prcp.com.pe

Note: This article is intended to be a general summary of the Guidelines. However, it does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

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